report

minority rights group international

Minority Rights in Kosovo under International Rule

By Clive Baldwin

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Minority Rights Group International
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Abbreviations

COMKFOR	Commander of KFOR
DPKO	UN Department of Peacekeeping Operations
EAR	European Agency for Reconstruction
ERRC	European Roma Rights Center
EU	European Union
FCNM	Framework Convention for the Protection of National Minorities
FRY	Federal Republic of Yugoslavia
HCNM	High Commissioner on National Minorities (OSCE)
HPD	Housing and Property Directorate
IAC	Interim Administrative Council
IDP	internally displaced person
JCR	Joint Committee on the Return of Kosovo Serbs
JIAS	Joint Interim Administrative Structure
KFOR	Kosovo Force
KLA (UCK in Albanian)	Kosovo Liberation Army
KPC	Kosovo Protection Corps
KPS	Kosovo Police Service
KVM	Kosovo Verification Mission
MRG	Minority Rights Group International
NATO	North Atlantic Treaty Organization
NGO	non-governmental organization
OHCHR	Office of the High Commissioner on Human Rights
OSCE	Organization for Security and Cooperation in Europe
PISG	Provisional Institutions of Self-Government
RAE	Roma, Ashkalia and Egyptians
SFRY	Socialist Federal Republic of Yugoslavia
SRSG	Special Representative of the Secretary-General
UN	United Nations
UNDM	UN Declaration on the Rights of All Persons Belonging to National or Ethnic, Religious and Linguistic Minorities
UNHCR	Office of the UN High Commissioner on Refugees
UNIFEM	UN Development Fund for Women
UNMIK	UN Mission in Kosovo
UNOSEK	UN Office of the Secretary-General for the future status process for Kosovo

Summary

Nowhere in Europe is there such segregation as Kosovo. Thousands of people are still displaced and in camps. Nowhere else are there so many 'ethnically pure' towns and villages scattered across such a small province. Nowhere is there such a level of fear for so many minorities that they will be harassed simply for who they are. And perhaps nowhere else in Europe is at such a high risk of ethnic cleansing occurring in the near future – or even a risk of genocide.

This is not a description of Kosovo in 1998 or in 2003. It is a description of Kosovo today. For the Serbs and 'other minorities' – the Roma, Bosniaks (Slavic Muslims), Croats, Turks and Albanians of Kosovo – who suffer from expulsion from their homes, discrimination and restrictions on speaking their own language, the pattern of violence they have endured for so long may be about to be entrenched as law in the new Kosovo, as the future status talks continue behind closed doors in Vienna.

How, after one of the longest and most expensive international administrations since the creation of the United Nations (UN), whose mandate was explicitly to secure an environment for refugees to return home and ensure public safety (Resolution 1244, Article 10), has this been allowed to occur?

This report tracks a clear failure on the part of the international protectorate to learn lessons from the past and draw on the minority rights expertise available to it in the UN and other bodies. This failure has allowed decision-makers to remain unaccountable, and produced a Constitutional Framework that refers to minority rights so broadly that they are too wide to be effective. Instead of integration, the current situation encourages the opposite: segregation. The report shows how the initial international governance structure – five different armed brigades in Kosovo, each running a different region and led by a different country (France, Germany, Italy the UK and the USA), each with very different policies towards security and minorities – has kept fresh the wounds inflicted before the security forces first arrived and allowed patterns of violence to be repeated.

The problem is not lack of financing. Conversely, the fact that so much money has been spent on the region has allowed segregation in public services to become an easy solution to conflict between groups. A short-term mentality, the use of quota systems in public services and an electoral system based on rigid ethnic representation show a lack of commitment to implementing minority rights in any meaningful way.

This report shows how the future status negotiations currently under way in Vienna represent both the best hope and the greatest danger for peace.

For hope to be justified, the report emphasizes, there is a radical need for change in mindset and in practice:

- Minority rights should be guaranteed by a rule of law that is actually taken seriously and applied.

Till today, the governing administration, the UN Mission in Kosovo (UNMIK) and the NATO-led Kosovo Force (KFOR) have declared themselves above regulation, overturning even the most basic of human rights laws, that of requiring all detention to be by order of a judge. Rights that exist on paper are made meaningless, and any fragile sense of security minorities have is consistently undermined. Therefore:

- The criminal justice system must hold those responsible for past crimes to account and see them arrested whatever their political power.

Out of hundreds of investigations into the 2004 atrocities, few have been prosecuted, and those few convicted have received lenient sentences.

- All minorities should be consulted on the future of their lives, their property and their country, instead of talks taking place among a select group of people, in secret and behind closed doors.
- Specific efforts must be made to include women's views and international negotiations should include minority rights and gender experts.

When the Constitutional Framework was drawn up in 2001 it was not put up for general consultation. The same mistake is being made today, with talks taking place in Vienna, far from where the most disadvantaged can take part. Understanding the devastating realities facing returning refugees and communities wanting to keep their language alive, to travel in safety and to seek work at all levels of society – all of which have become next to impossible for Kosovo's minorities despite seven years of international intervention – is vital for anyone involved in peacekeeping missions, in reportage or in international governance.

The report shows that measures that separate communities through religion or ethnicity should be transitional, if they have to be used at all. The future status talks offer a chance for change. Otherwise, the danger is that the patterns of segregation that are accepted in Kosovo, and that lead to the terror of ethnic cleansing, will be enshrined in the Constitution, and will be played out again over the next decade.

Kosovo


Leposavić/
Leposaviq
Serbia
MITROVICE/
MITROVICA
Zvecan
Zubin Potok
MONTENEGRO
Podujevo/
Podujeve
Vucitrn/
Vushtrri
Istog/
Istok
Srbica/
Skenderaj
Durakovac
PRISHTINE/
PRISTINA
Obilic/Kopiliq
Prishtine/Pristina
Vitomirica/
Vitomirice
Peje/Pec
Klina/Kline
Kosovo Polje/
Fushe Kosovo
Glogovac/
Gllogovc
Gracanica/
Ulpiana
Novo Brdo/
Novoberde
Kosovska
Kamenica/
Kamenice
PEJE/PEC
Kosovo
Lapushnik/
Llapushnik
Lipljan/Lipjan
Decani/
Decane
Junik
Malisevo/
Malisheve
Stimlje/Shtime
Gnjilane/Gjilan
Djakovica/Gjakove
Rahovac/Orahovac
Ferizaj/
Urosevac
Suva Reka/
Suhareke
GNJILANE
Vitina/Viti
PRIZREN
Strpce/
Shterpce
Kacanik
Prizren
ALBANIA
Dragas/
Dragash
Brod/Brad
THE FORMER YUGOSLAV
REPUBLIC OF MACEDONIA
0
10
20 km

Preface

In 1999 the United Nations took over the administration of Kosovo with minority rights at the core of its mandate. Today, with the future status negotiations beginning, Kosovo remains a deeply divided, and physically segregated society. Kosovo provides important challenges, and also opportunities to fulfil the guarantees of human rights and the promises of international cooperation. To the realization of these promises we must all bring the most faithful application of lessons learned over the past decades of experience with enforcement of rights, peace-building and post-conflict reconstruction. The test that Kosovo offers is also a challenge for the international machinery of human rights and, more specifically, minority rights.

Where ethnic tensions and violence divide societies, as in Kosovo, respect for minority rights advances the conditions for political and social stability and peace. Rather than promoting segregation and separation, minority rights are based on the principle of an integrated society, where each can use their own language, enjoy their culture and practise their religion but still feel part of a broader, inclusive national identity. In such societies, various national, ethnic, religious and linguistic groups are able to live confidently together, communicate effectively, and recognize value in their differences and in their society's cultural diversity.

Central to my mandate as UN Independent Expert on Minority Issues is the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities. This, along with other pertinent regional and international standards on minority rights, offers the essential normative tools from which overdue solutions can emerge. They provide both obligations and guidance in the field of minority rights, but also, once enshrined into a constitutional and legislative framework, a firm foundation upon which to build just societies. On their own such standards are not enough; they require commitment, leadership and creative initiatives to turn principles into reality.

The UN and other inter-governmental organizations currently working in Kosovo, need to more effectively implement human rights standards and human rights-based approaches. I welcome the appointment of the Honourable Marti Ahtisaari, former President of Finland, to lead the future status talks and believe that he will play a pivotal role in forging constructive, collaborative strategies of engagement and inclusive approaches in the negotiations ahead.

The diverse ethnic, religious and linguistic communities of Kosovo must realize that solutions lie in their hands as much as they are the responsibility of governments and the international community, and make concerted efforts to move beyond the current divisions. The political will to reach just and durable solutions must be demonstrated by the whole of civil society, as well as by states and international actors. The political will to respect the rights and value the contributions of all is an essential component of functioning, healthy, prosperous societies: the will to talk, to share, to cooperate, to include and to participate; the will to build bridges and break down barriers between communities, no matter how entrenched those barriers have become. Without such will, the best efforts of the international community will never be sufficient.

There are no easy solutions to the problems of Kosovo; however, there are paths ahead that offer the greatest potential for inclusion, peace, stability and development. Such paths must firmly reject segregation and ethnic cleansing, and embrace the rule of law and minority rights. The alternative is a future of continuing division, distrust and uncertainty, which has the potential not only to bring suffering and conflict once again to the lives of the people of Kosovo, but also to further inflame the tensions of a region that has suffered enough from the destructive consequences of nationalism and discrimination.

I welcome this timely and important report from Minority Rights Group International, which offers a vital and usefully realistic analysis of progress so far on the difficult road to a new Kosovo. A key message of this report is the need for consultation and the meaningful participation of all of Kosovo's communities, a message that I fully endorse.

The report also provides a much-needed assessment of the essential role of minority rights, and guidance on ensuring that they find their place in the future legal framework of Kosovo, whatever the outcome of the future status negotiations.

Gay McDougall
UN Independent Expert on Minority Issues

Introduction

'We cannot let the evil of ethnic cleansing stand. We must not rest until it is reversed.'
(Tony Blair, speaking about Kosovo, April 1999)[1]

'Various advanced norms … have been introduced to tackle many of the key concerns of minority communities. However, the reality in Kosovo remains disconcertingly far from these laudable norms and plans.'
(Council of Europe's Advisory Committee on the Framework Convention for the Protection of National Minorities, November 2005)

In 1999 the North Atlantic Treaty Organization (NATO) went to war for the rights of a minority – the Albanians of Kosovo, within the Federal Republic of Yugoslavia (FRY). Since June 1999, Kosovo has been governed by an interim administration led by the United Nations Mission in Kosovo (UNMIK)[2] and also including the European Union (EU) and the Organization for Security and Cooperation in Europe (OSCE). A 'security presence', called KFOR (Kosovo Force), has been led by NATO and has included soldiers from at least 30 NATO and non-NATO countries. Thousands of international officials have worked in Kosovo, and millions of euros have been spent. Now approaching its seventh anniversary, it is one of the most expensive and long-term international administrations since the creation of the United Nations (UN).[3]

The international protectorate was born in circumstances in which it was clear that its most important priority would be to ensure harmony and cooperation between the different ethnic groups, i.e. ensuring full protection of all rights of these groups, particularly minorities. On paper it would seem that Kosovo would be particularly blessed in being administered by institutions with a long history of working on minority rights protection, such as the UN, which in 1992 agreed a Declaration on the Rights of All Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (UNDM). The UN has a Working Group on Minorities that meets in Geneva each year and gives specialist advice and opinions on the rights of minorities. The OSCE in 1992 established a High Commissioner on National Minorities (HCNM) who has developed unmatched expertise on using and applying internationally recognized minority rights standards in order to prevent conflict. With the resources put into Kosovo, one would expect minority rights to be fully protected there.

Instead, after nearly seven years of international expertise, the situation of minorities in Kosovo in 2006 is dire. The arrival of the international forces and administration in 1999 saw a major wave of what can only be described as ethnic cleansing: targeted attacks on minorities to drive them from their homes. The result was the departure from Kosovo of most of the Serbs, and the displacement of a large number of Roma and Albanians (the latter from Serb areas). Five years later, in 2004, this pattern was repeated. Today, thousands of Kosovo's minorities are unable to live in their homes. On day-to-day protection of basic minority rights – the right of everyone to live in a society where they can speak their language, and practise their culture and religion freely without suffering any detriment – Kosovo has achieved rights only on paper. The trend has been for ever-greater segregation between Albanians and Serbs, down even to village level, with all other groups being largely marginalized. The talks on the future status of Kosovo have not yet brought forward any new ideas for the resolution of this situation.

Clearly, something has gone very wrong. Understanding how the international administration failed to understand and apply minority rights is critical for two reasons. First, it is important for the immediate future of Kosovo. Whatever comes out of the future status discussions must include a structure to ensure that minority rights will be fully implemented, allowing everyone to live freely, learning from the mistakes of the last seven years. However, it is also vital for future peacekeeping that those involved in international missions learn why the UN and OSCE have not used their institutional knowledge of minority rights on such a critical mission.

A brief history of Kosovo

Kosovo, a region of approximately 11,000 sq. km and with an estimated population of 2 million,[4] has, like most of south-east Europe, been inhabited by many ethnic, linguistic and religious groups. Much ink, and indeed blood, has been spilt in attempts by various groups to claim that they were the first to inhabit a particular region and therefore should have a superior (or perhaps the sole) claim. In fact, such claims are meaningless, as all groups who live in Kosovo have the same

rights to live freely and to economic and political participation. Despite this, the history is still referred to frequently, so a brief account is needed.

For many years Kosovo was part of the Roman and Byzantine empires. By 1000 CE, Albanians, who trace their ancestry back to the Illyrians, were living there, as were Slavs (Serbs) and Vlachs. From about 1200 to 1450 Kosovo was part of the Serbian kingdom. Major Serb monasteries were founded at Gracanica, Pec (Peje) and Decani. Most famously, on 28 June 1389, the first battle of Kosovo took place between the armies of the Serbian prince Lazar (whose armies contained nationalities from across the region, including Albanians) and the Ottoman Sultan Murad. Although both leaders were killed, the battle has passed into Serb mythology as a heroic defeat for the Serbs.

However, the Serb kingdom, and with it Kosovo, was not conquered by the Ottomans until 1455. Kosovo remained part of the Ottoman Empire for the next 450 years, with Turkish-speaking rulers, and gradually a large part of the population adopted Islam. Following a brief Austrian occupation of 1689–90, the Ottoman reconquest led to a flight of Serbs from the area. This *Velika Seoba* (great flight) is an important part of the Serb view of history, and marks the point when, according to Serb belief, they became a minority in Kosovo.

The Albanian national revival is usually said to have begun with the 'League of Prizren' that originated from a meeting in Prizren, Kosovo in 1878, but was crushed by the Ottomans within three years. A further Albanian rising took place in 1910.

In 1912, the *vilayet* (province) of Kosovo was conquered by Serbia, Montenegro and Bulgaria in the First Balkan Wars and divided between them, with the largest part going to Serbia. After the First World War, Serbia and Montenegro became part of the new country of Yugoslavia.[5] The Yugoslav government discussed expelling the Albanian population of Kosovo.

During the Second World War, most of Kosovo was made part of Italian-controlled Greater Albania. Following Italy's surrender to the Allies in September 1943, the area was occupied by German forces until they were forced to retreat by the advancing Soviet Army a year later. Thousands of Serbs were killed during the war and many thousands fled. Some were denied the right to return at the end of the war.[6]

After the Second World War, Tito came to power and formed what became (in 1963) the Socialist Federal Republic of Yugoslavia (SFRY). Initially the authorities in Kosovo had little power, but more and more power was given to them to run the province. In 1974 the final SFRY Constitution was issued, which gave almost full autonomy to Kosovo although it remained nominally a part of Serbia. Following the death of Tito in 1980, the Albanian-dominated authorities in Prishtine/Pristina had a very large degree of autonomy. Serbs began to complain ever more strongly about discrimination and exclusion in Kosovo, particularly after Albanians demonstrated in 1981, demanding that Kosovo become a full republic. There were also many complaints from all communities that economic development was much more limited in Kosovo than in the rest of the country.

In 1987, Slobodan Milosevic, then a little-known Communist Party official, became famous by going to Kosovo and publicly taking up the cause of the Serb minority there. This led to his coming to power in Serbia. A key part of his rise was the removal of the autonomy of Kosovo in 1989, with power to run the province returning to Belgrade. This was followed by systematic discrimination against the Albanians in Kosovo for the next decade in what was now the Federal Republic of Yugoslavia. Albanian-language education and media were greatly reduced, and Albanians were systematically dismissed from state jobs and discriminated against in hiring for new positions. Kosovo's Albanians responded with a mass peaceful movement, which protested against and boycotted the state institutions. Separate, unofficial Albanian institutions were set up, including elections, which resulted in the leadership of Ibrahim Rugova, and an alternative, unofficial, education system.

However, after 1988–9, little international attention was paid to Kosovo. This remained the case when the international community was focused on the wars further north in Yugoslavia (in Croatia, Bosnia and Herzegovina and, briefly, Slovenia). Kosovo was ignored during the Dayton peace agreements that ended the war in Bosnia in 1995. Only when a 'Kosovo Liberation Army' (KLA, or UCK in Albanian) began operations, leading to a full-scale war in 1998, did the international community notice Kosovo. Both Serbs and Albanians fled Kosovo in 1998, although the numbers are disputed. As the war continued in 1998, NATO countries threatened to bomb Serbia. Milosevic agreed to a ceasefire with the KLA and an international presence, led by the OSCE, to monitor it.[7]

However the ceasefire broke down and the OSCE reported on a new wave of human rights abuses against Albanians, particularly the Racak massacre of January 1999.[8] This led to renewed pressure for an international agreement, with negotiations at Rambouillet in France trying to push Milosevic to agree to an autonomous Kosovo with international supervision. These negotiations failed and NATO began bombing the FRY in March 1999.

The bombing continued for three months. During that period hundreds of thousands of people, largely Albanians, fled Kosovo. Many have alleged this was due

to a deliberate policy of the FRY forces of ethnic cleansing, which formed a key part of the indictment and trial of Milosevic at the International Criminal Tribunal for the Former Yugoslavia (2002–6). In June 1999, under Russian pressure, Milosevic agreed to pull FRY forces and officials out of Kosovo and have them replaced by an international administration and security force.

Minorities in Kosovo

The term 'minority' in Kosovo is even more controversial than usual. As is often the case, members of groups have little wish to be referred to as minorities, the most important issues being their ability to live freely, to speak their own language, and to practise their culture and religion. For Serbs, in particular, there is a fear that by being referred to as a 'minority' in Kosovo they are conceding that Kosovo is an independent state (as Serbs are not a minority in Serbia as a whole). For this reason, the term 'community' has often been used in Kosovo, such as in the rights given under the Constitutional Framework.

However, the term 'minority' is an objective one. It refers to a group based on nationality, ethnicity, language or religion that happens to be a minority in a particular location. In their *Eighth Assessment of the Situation of Ethnic Minorities in Kosovo*, the OSCE and United Nations High Commissioner for Refugees (UNHCR) said:

> *'Though conscious of the growing complexity and sensitivity surrounding minority issues and cognisant of the tendency to speak of local communities as opposed to minorities, we have maintained the structure and terminology of previous reports. This is not done out of insensitivity but rather out of efficacy. Therefore, we continue to use the phrase minority and its use simply refers to any community that lives in a situation where they are a numeric minority relative to the communities surrounding them. As such, the term is as applicable to Kosovo Serbs in Gracanica/Ulpijana as it is to Kosovo Albanians in north Mitrovice/Mitrovica.'*[9]

This is an entirely appropriate approach in Kosovo. The terms 'minority' and 'minority rights' are needed when a particular ethnic, religious or racial group lacks power, usually through being a numerical minority in the area where governmental power rests. In Kosovo this means that every group apart from the Albanians is a minority. Albanians are a minority in the areas in Kosovo that have become Serb-dominated, notably the three most northern municipalities,[10] the north of Mitrovice/Mitrovica city and in Strpce/Shterpce municipality in the south.

Population figures in Kosovo are difficult to verify, both before and after 1999. The SFRY held censuses every 10 years, which included a category of ethnicity. However the last of these was held in 1991 and was boycotted by Albanians. Since 1999 no census has been held. Although the entire population of Kosovo was expected to register for elections after 1999 no figures have been kept on ethnicity.

Serbs

As stated above, Serbs have lived in Kosovo for centuries. Kosovo has a particular importance to Serbs because of the monasteries and the legends around the 1389 battle. The Patriarch of the Serbian Orthodox Church is the Archbishop of Peje/Pec, one of the major cities of Kosovo and the site of one of the main monasteries. Despite the years of secularism under communism, the Serb identity in Kosovo is still largely tied to the Serbian Orthodox Church.

Serbs, however, have long been a numerical minority in Kosovo. According to Serbian history, their minority status began with the flight of many Serbs after the Ottoman Empire reconquered the province in 1690. The province was conquered by Serbia in 1912 and attempts were made to 'recolonize' the province with Serbs; these largely failed. As increasing power was devolved to Kosovo's (largely Albanian) authorities by Yugoslavia, Serbs complained about discrimination and some left the province. Milosevic's rise to power brought a revocation of Kosovo's autonomy and discrimination in favour of Serbs throughout the 1990s. By 1999, it is estimated that there were up to 300,000 Serbs in Kosovo. In some parts of Kosovo they formed the majority, including three municipalities in the north, the municipality of Strpce/Shterpce in the south and the town of Kosovo Polje/Fushe Kosove near Prishtine/Pristina in the centre. Many Serbs lived in the major towns and cities, forming approximately 25 per cent of the population of Prishtine/Pristina. Until the NATO bombing began they were clearly the dominant group in Kosovo.

Roma, Ashkalia and Egyptians

The Roma are believed to have entered the Balkans in the 13th century CE and have remained there ever since.[11] They were found across Kosovo, many becoming sedentary early on. Some adopted Islam, some became Orthodox Christians. Some (largely Muslims) adopted Albanian as a first language, some Serbo-Croatian, with others retaining Romany as a first language. However, as in the rest of Europe, all other communities generally treated the Roma with 'social contempt'.[12] At least 1,000 Roma from Kosovo were killed during the Second World War, as part of the Porajmos, the genocide of the Roma.

Roma, however, have often expressed loyalty to the post-Second World War Yugoslavia that they saw as giving them more freedom than ever before. The number identifying themselves as Roma increased from 11,000 post-war to 43,000 in the 1991 census. The latter is certainly a major underestimate, as Roma have often identified themselves officially as Albanian, Serb or Turk.

With the mass dismissal of Albanians from state employment in Kosovo at the start of the 1990s, some of their positions were taken by Roma. Roma were used by Serb authorities during the ethnic cleansing in 1999 to bury the dead.[13] Among some Albanians, there was an image that Roma had been 'collaborators' with the Serb authorities.

From the 1990s onwards, there has been a clear division of the Roma into three self-identifying groups. Those who largely spoke Albanian as a first language identified themselves as Ashkalia (sometimes spelt Ashkaelia) or Egyptians. The Egyptians consider themselves a group whose ancestry is traced back to Egypt.[14] Both groups have a close affinity with Albanians, but have been largely rejected by Albanians.[15] Those who consider themselves Roma in Kosovo today, however, generally speak either Romany or Serbian as their first language.

After some disputes, the right to self-identification has been acknowledged and the three groups have been recognized by UNMIK, for example with regard to representation under the electoral system. Sometimes the term RAE is used to refer to all three groups together. All three groups can be said to be in the worst position in Kosovo, with the worst education, highest levels of discrimination in the workplace and almost certainly the highest unemployment rates. Within the three communities, the Roma are in the worst position of all.

Bosniaks

Under the Ottoman Empire a large number of speakers of Slavic languages (predominantly the language known as Serbo-Croatian) adopted Islam. They formed a majority of the republic of Bosnia and Herzegovina, and of the Sandzak region of Serbia and Montenegro immediately to the north of Kosovo. The group was only recognized as a national identification in Yugoslavia in 1961, with a census category of 'Muslims in the ethnic sense'. During the Bosnian war in the 1990s, the term 'Bosniak' was adopted for this group, and the Bosnian language promoted as distinct from Serbian and Croatian.

The term 'Bosniak' was also largely adopted after 1999 by the Muslims in Kosovo whose first language was Bosnian. Bosniak has become the accepted term for those who were sometimes referred to as 'Slavic Muslims' and sometimes self-identifying as 'Torbesh'.16 They are particularly concerned to protect the Bosnian language as distinct from Serbian.[17] The community is predominantly Muslim and numbered at least 35,000 in 1999.[18] Bosniaks themselves state that their community in Kosovo numbered at least 100,000 in 1991 and is approximately 57,000 today.[19]

Gorani

Also Muslim and Slav, but distinct from the Bosniaks, is the Gorani community based in the mountain region of Gora in the south-west, probably the most remote region in Kosovo. The Gora numbered approximately 12,000 in their home region in 1999, with smaller communities in the major cities of Kosovo. Their numbers are estimated at 6,000 today.

Croats

There are two small communities of Croats in Kosovo, Janjevo (near Prishtine/Pristina) and Letnica (in the south). Religious identification as Catholic was very important to Croat identity and Letnica is a destination for pilgrimage.

Turks

From the 1450s until 1912, Kosovo was ruled by the Ottoman Empire and the language of government was Turkish. Turkish was named as one of the official languages in Kosovo in the 1974 Constitution.

By 1999, the population of those identifying as Turkish had been reduced to somewhere between 12,000 and 50,000. The majority are in the Prizren region, with smaller communities elsewhere. Many Turks fled to Turkey to escape either the war or unemploy-ment.[20] The critical issue for them has largely been recognition and protection of their language.

Albanians

Albanians have for some considerable period been the majority group in Kosovo. However, they have been a minority in Serbia as a whole, and suffered from policies aimed at reducing their numbers and influence in Kosovo, culminating in the removal of their political power in 1989, loss of jobs and language rights, and ethnic cleansing in March–June 1999. Since the departure of the FRY authorities in June 1999, Albanians have once more been in a position of power in Kosovo as a whole. However they have been or have become a minority in Serb-dominated areas, including the three northern municipalities, the north of Mitrovice/Mitrovica city and the municipality of Strpce/Shterpce in the south. In areas where Albanians are a minority, they have often experienced problems similar to those of minorities elsewhere in Kosovo (including expulsion from their homes, discrimination and restrictions on speaking their language).

Circassians, Jews, Vlachs

In the 1860s, the Ottoman Empire settled thousands of Circassian (Cerkezi) refugees (from the Caucasus) in Kosovo and other parts of the Balkans. Many fled Kosovo when the Ottomans were driven out in 1912. By 1999 a few hundred remained in two villages in Kosovo, and have subsequently wished to keep themselves very quiet.

The Jewish community of Kosovo numbered a few hundred in 1941. Half were transported to their deaths in the Holocaust and the majority of the rest left for Israel after 1945. The population today of Jews is minuscule.[21]

A vanished group in Kosovo are the Vlachs, an Orthodox people who once numbered in the thousands. However, since the Serbian conquest of 1912 they have been completely assimilated into the Serbs and no one in Kosovo today identifies themselves as Vlach.

The minority experts? The rulers of Kosovo and their knowledge of minority rights

To understand what was done and not done in Kosovo, it is necessary to understand the rather complicated structure of government that emerged in 1999 and afterwards. UN Security Council Resolution 1244 in 1999 made it clear that Kosovo remained part of the Federal Republic of Yugoslavia.[22] In practice, Kosovo has been governed entirely separately from the FRY (which became the union of Serbia and Montenegro in 2003, currently splitting into two distinct republics following a referendum). The main government authority in Kosovo has been the United Nations Mission in Kosovo, set up as the 'international civil presence' under 1244. Resolution 1244 gives it the responsibility for:

> *'a. Promoting the establishment, pending a final settlement, of substantial autonomy and self-government in Kosovo, taking full account of annex 2 and of the Rambouillet accords (S/1999/648);*
> *b. Performing basic civilian administrative functions where and as long as required …*
> *j. Protecting and promoting human rights*
> *k. Assuring the safe and unimpeded return of all refugees and displaced persons to their homes in Kosovo.'* [23]

This interim administration has now lasted nearly seven years, the longest assumption of government in the UN's history. UNMIK itself developed a very complex structure, made up of four 'pillars'. Initially these consisted of: UNMIK, responsible for administration/governance in most areas; the UNHCR, responsible for reconstruction; the OSCE, responsible for institution-building; and the EU mission, responsible for economic development. The UNHCR left the pillar structure in 2000, while keeping a mission in Kosovo, and was replaced by a second UNMIK pillar responsible for policing and justice. Other UN bodies, such as the Office of the High Commissioner on Human Rights (OHCHR), also had offices in Kosovo, as did the Council of Europe, but these were not part of UNMIK. UNMIK has been headed by a Special Representative of the Secretary-General (SRSG), of which there have been a bewildering number since 1999 (apart from the first, Acting SRSG, all European males).[24]

The 'international security presence' set up by 1244 is called KFOR. It is a multinational force and has had at least 30 participating states, largely NATO members, but also including countries such as India, Russia and Sweden. KFOR was set up as a separate body from UNMIK and, while the necessities of the work required cooperation with UNMIK, it is entirely autonomous, not controlled by the civilian authority in Kosovo (unlike the situation under the UN administration in East Timor). Even more confusingly, while KFOR in theory had a united command structure, headed by a Commander (COMKFOR), in practice national units within KFOR often acted according to their own priorities. In particular, the initial five different brigades in Kosovo, each running a region and led by a different country (France, Germany, Italy, the UK and the USA), had very different policies towards security and minorities.[25] KFOR's mandate in Resolution 1244, included, crucially the duties of:

> *'c. Establishing a secure environment in which refugees and displaced persons can return home in safety, the international civil presence can operate, a transitional administration can be established, and humanitarian aid can be delivered;*
> *d. Ensuring public safety and order until the international civil presence can take responsibility for this task …'* [26]

Attempts to have Kosovan involvement in government have only added to the complexities of the government structures. Initially, the failure of UNMIK to assert authority left effective power in much of Kosovo in the hands of the Kosovo Liberation Army. In the Serb areas the situation was a mixture of remaining Belgrade authority ('parallel structures' in areas such as the justice system and education) and day-to-day power in areas such as security resting with informal Serb groups. At the end of 1999 a structure was set up to formalize the relationship. Called the Joint Interim Administrative Structure (JIAS), it created an Interim Administrative Council (IAC), consisting of three Albanians and, later, one Serb, and set up a system of what amounted to ministries in which an (international) UNMIK official and a Kosovan were co-heads. In 2000 elections took place for municipal

authorities and power was handed over to these authorities for a wide range of local issues. In 2001 a Constitutional Framework was issued by the SRSG, which is, in effect, an interim Constitution for Kosovo. This created a system known as the 'Provisional Institutions of Self-Government' (PISG). Following elections to a Kosovo Assembly in 2001, a Kosovo-wide government was chosen consisting of a President, Prime Minister and Kosovan ministers. Much of UNMIK's day-to-day authority was handed over. In October 2005, the Security Council decided to launch the process to resolve Kosovo's future status.

However UNMIK and the SRSG have remained, both in theory and in practice, the most important decision-makers in Kosovo. Ultimate authority rests with them, with some power having been kept by them even after the creation of the PISG (notably policing and justice). The SRSG, under the Constitutional Framework, retains the right to intervene in government at any time and is required to do so to protect communities.

KFOR, although greatly reduced in numbers, has retained much power throughout the seven years. At no time has KFOR declared its mission to secure public safety and order and hand over responsibility complete. Therefore much power on issues affecting minorities has remained with KFOR.

Kosovo, therefore has been, effectively, a UN protectorate for seven years. Given the organizations involved, one would have expected a deep understanding of minority rights and their implementation. The UN has been at the centre of the development of international minority rights. Its major human rights treaties are directly relevant to minority rights.[27] In 1992, its General Assembly passed a Declaration on the Rights of Persons Belonging to National or Ethnic, Religious or Linguistic Minorities, which set out the generally accepted rights of all minorities. Its final Article 9 states that:

> *'The specialized agencies and other organizations of the United Nations system shall contribute to the full realization of the rights and principles set forth in the present Declaration, within their respective fields of competence.'*

The UN has a specialist Working Group on Minorities, which meets in Geneva and has a support staff of specialist minority experts within the UN Office of the High Commissioner for Human Rights. Since UNMIK was set up, the UN has developed its minority expertise further with the creation of a Special Adviser to the Secretary-General on the Prevention of Genocide and an Independent Expert on Minority Issues.

The OSCE, which formed part of UNMIK, has had, if anything, an even greater institutional knowledge of minority rights, and particularly how to use them in resolving and preventing conflict. This has come from the creation of the Office of the High Commissioner on National Minorities in 1992. Based in The Hague, this office was set up as a conflict prevention mechanism, designed to identify minority issues that could cause conflict and recommend solutions, largely through 'quiet diplomacy'. In the 1990s this office worked largely in Central Europe and the Baltic states, but developed and published general guidelines on how to address critical issues for minorities, including public participation, education, linguistic rights, electoral systems and the media.

In fact, what has happened in Kosovo has been the opposite of what was expected. Despite the excellent knowledge that rested within the UN and OSCE on minority rights, minority rights have not been protected in Kosovo. Ethnic cleansing took place in 1999 and 2004 and the general trend has been towards greater segregation, not integration. While a lot of information on the situation of minorities has been gathered, policies towards minorities seem to have been largely haphazard and confused, and rarely rights-based.

To examine what happened, the various structures that were set up to address minority issues will be described, and what they achieved.

A plethora of solutions: setting up structures to deal with minorities

Over the years the various governmental bodies have set up a variety of institutional structures to address minority issues. Minority issues were recognized as a major priority for UNMIK very early on, and the first (Acting) SRSG made this point in a speech in July 1999.[28] An immediate outcome was the setting up by the UNHCR and OSCE (then both part of UNMIK) of an inter-agency Ad Hoc Task Force on Minorities. This body, first chaired by the UNHCR, and subsequently by the OSCE, tried to identify the key problems facing minorities in Kosovo and come up with policy solutions and recommendations. It was largely driven by the two organizations, but would involve UNMIK and KFOR staff – and only rarely minority participation. At the beginning the Task Force met weekly, responded to immediate issues, particularly as seen by OSCE and UNHCR staff in minority areas, and had some impact on KFOR policy.[29] It then began to address systematic problems. However, both the OSCE and the UNCHR felt that the Task Force was increasingly not being listened to and decided to disband it in 2001, arguing that what

was needed was an UNMIK-led body that would be able to develop and implement UNMIK policies.[30]

The impact of the Task Force can be seen, notably in the ten joint OSCE/UNHCR public assessments of the situation of minorities in Kosovo published between 1999 and 2003. These are detailed descriptions of what was happening to each minority group during a critical period. It is probable that during this period Kosovo had more in-depth assessment of the situation of its minorities than anywhere else. This also led to minority issues being a very high priority for both the UNHCR and the OSCE.

UNMIK increasingly set up its own structures focused on minorities. In September 1999 it created Civil Affairs Minority Officers,[31] renamed as Local Community Officers in 2000. At the start of the administration, UNMIK had a senior human rights adviser, who worked closely with the OSCE. However, after he left, he was not replaced, partly because of a disagreement between Prishtine/Pristina, the OHCHR and the UN Department of Peacekeeping Operations (DPKO) over who should make this appointment and what human rights qualifications were required.[32] During an interim period, UNMIK developed an office that focused on human rights issues in general, and returns in particular. At the end of 2001 this was formalized into an 'Office of Returns and Communities', which took over from the UNHCR the coordination of policy on returns, and has dealt with more general issues affecting minorities. In December 2001, UNMIK set up an Advisory Board on Communities to provide policy advice on minority issues. This helped to develop policies on employment and push through the anti-discrimination law.

As Kosovan institutions were set up, they included organized mechanisms to address minority issues. The municipal authorities set up in 2000 were required, by law, to set up a Communities Committee in each municipality. The Constitutional Framework required the Kosovo Assembly to set up a Committee on the Rights and Interests of Communities. The first PISG included a Prime Minister's Advisory Office on Community Issues.

For a long period, approaches to minority issues in the government departments remained haphazard. When the ministries were still controlled by UNMIK, the Department of Health and Social Welfare was the first to create a position of minorities' adviser. In 2001, the OSCE and UNHCR noted an improvement in attempts to deal with minority issues in the Public Utilities Department. At the end of 2001, UNMIK created a Judicial Integration Section to improve minority access to the justice system. But these were, for some years, limited examples.

Another notable failure to integrate policy was on coordination of gender and minority policy. Gender issues do not appear to have been systematically coordinated into the institutional structures to address minority issues. Instead, separate structures were set up for gender issues, with little attempt to look at multiple discrimination.

On the issue of return of minorities, attempts were made to coordinate policy from 2000 onwards. A Joint Committee on the Return of Kosovo Serbs (JCR) was set up, chaired by UNHCR and consisting of UNMIK, the OSCE, KFOR and Serb leaders. The title itself shows it was designed as a political coordinating body, only focusing on one ethnic group. However, it did develop a general set of principles and, in 2001, changing its focus to the return of all the displaced, it became a Task Force on Return and Reintegration, focusing on all communities. Regional and Municipal Working Groups on Return were set up, to involve local authorities. In 2002, UNMIK, in the form of its Office on Returns and Communities, took over responsibility for this work. The SRSG also appointed a Kosovo Serb as an Adviser on Returns in 2001. In January 2005 the PISG appointed a Kosovo Serb as Minister for Returns and Communities.

Ethnic cleansing, the displaced and return

At the heart of minority rights protection in Kosovo is the displacement that took place in 1999 and 2004 and the failure to reverse this. It is therefore necessary to examine this in some detail.

Between March and June 1999, it is estimated that over 800,000 Albanians were expelled from Kosovo. At least 100,000 Serbs had also left Kosovo, fleeing the bombing.[33] That was why a key component of the mandate and duties of UNMIK and KFOR was to ensure the return of the displaced. For the Albanians displaced during the spring, return took place rapidly – indeed, the international authorities originally tried to set up a controlled return but abandoned this as most of the displaced simply returned when they saw the position was safe.

However, the arrival of UNMIK and KFOR saw a new mass exodus from and displacement within Kosovo, that of Kosovo's minorities – particularly of Serbs, Roma and, in certain areas, Albanians. By October 1999 the Yugoslav Red Cross stated that there were 234,000 Serb and Roma internally displaced persons (IDPs) from Kosovo in Serbia and Montenegro.[34]

The reasons for this were numerous. The departure of the FRY armed forces and administrators saw many Serbs leave immediately, fearing what might come afterwards. However, the main reason for the flight in 1999 was a systematic campaign of intimidation against minorities, clearly intended to force them to leave either Kosovo as a whole or certain areas. The first wave of this intimidation

is documented at length by the OSCE and others.[35] It included verbal and physical intimidation, and the burning and occupying of minority homes. The murder of 14 Serb farmers when harvesting in Lipljan/Lipjan (central Kosovo) on 23 July 1999 was widely publicized. The OSCE estimated the number of murders of minorities to be at least 50 a week in the summer of 1999 and still at three a week in October 1999.[36]

The outcome of this was that Kosovo became a province rigidly divided by ethnicity. Albanians fled from Serb-dominated areas, notably the north of Mitrovice/Mitrovica city. Serbs fled from their homes across Kosovo, with the effect that, outside the north, they became confined to enclaves. The largest of these was Strpce/Shtrpce in the south, and other Serb enclaves included the town of Kosovo Polje/Fushe Kosove (where they had formerly been a majority) and the centre of the town of Rahovac/Orahovac (where they lived in what amounted to a ghetto). In Prishtine/Pristina municipality, the estimated 50,000 Serbs living there in June 1999 had been reduced to 600 by the end of October 1999.[37] Two highly publicized killings on the streets of Prishtine/Pristina in 1999 destroyed any remaining confidence Serbs had in the ability of the international administration to protect them. First was the killing of a newly arrived Bulgarian UNMIK staff member in October, supposedly because his killers believed he was speaking Serbian. Then, on Albanian 'Flag Day' in November, a Serb family in Prishtine/Pristina were dragged from their car by a crowd, who attacked them, shot one dead and burned their car. Despite the hundreds of witnesses to this murder only one person was arrested, who subsequently escaped from KFOR detention.[38]

The attacks and intimidation equally targeted the Roma,[39] who were publicly blamed for being 'collaborators' with the Milosevic regime. Roma fled from their homes across Kosovo, and notably from the Roma *Mahalla* (quarter) in south Mitrovice/Mitrovica city, which was burned down. The European Roma Rights Center (ERRC) has described this ethnic cleansing as the 'single biggest catastrophe to befall the Romani community since World War II'.[40]

Bosniaks, Croats and Gora also felt under severe pressure during this period, with similar accounts of attacks and occupation of homes. The Croat community in Letnica was described as suffering 'despair and resignation' due to harassment and failure to obtain protection from UNMIK and KFOR, and most left for Croatia.[41]

The minorities who left their homes became permanently displaced. Albanians and some Serbs went to other homes within Kosovo, but most Serbs and Croats went to Croatia and Serbia. Roma, with nowhere to go, often ended up in displacement camps, most notoriously at Plementina in central Kosovo, where they suffered overcrowded conditions, with some camps being described as uninhabitable because of lead contamination.[42]

The minorities that remained lived in a situation of extreme fear and violence. They felt unable to move freely, due to fear of attack, and often relied on KFOR armed escorts to make the smallest journey. Some minorities, such as the few hundred remaining Serbs in Prishtine/Pristina, found themselves confined largely to a single apartment building, surrounded by armed forces. Minorities felt fearful about speaking their language in public for fear of attack. They also felt systematically excluded from public services because of both their lack of freedom of movement and discrimination in the services themselves.[43]

The overwhelming evidence is that the intimidation was systematic and directly aimed at forcing minorities to leave, and therefore constitutes ethnic cleansing.[44] To understand who organized this and why it was allowed to happen it is necessary to understand who had power in Kosovo in 1999. KFOR entered Kosovo quickly, as it had an army in place on the border, which had been ready for a ground invasion. However, UNMIK did not have administrative staff or police fully in place until 2000 and was severely understaffed during 1999. The resulting gap in civil and policing authority was filled by those with weapons who were prepared to use intimidation to impose their authority, notably former members of the KLA. They set up 'shadow authorities' across the Albanian-majority parts of the province, including people who claimed police powers. In the Serb north, a group known at times as 'the Bridge-watchers' seemed to assume authority, almost certainly with backing from Belgrade. The OSCE clearly linked both groups to the harassment and eviction of minorities in their areas, as was acknowledged by the then SRSG.[45] The OSCE states that 'the evidence in part points to a careful targeting of victims and an underlying intention to expel' and 'A consistent reporting feature has been assumed UCK presence and control.'[46]

What is striking about 1999, and has determined events in Kosovo ever since, is that neither UNMIK nor KFOR was willing or able to take effective action. UNMIK was severely understaffed, particularly in terms of policing. KFOR, an international army, was geared towards defending Kosovo from Yugoslav forces, not dealing with systematic ethnic cleansing. KFOR's only response in 1999 seems to have been to try to protect the few remaining minorities through static checkpoints and escorts – and this was when KFOR was at its maximum strength. No major attempt was made to publicly demonstrate the new international rulers' intolerance of ethnic cleansing, in particular through identification and

arrest of those responsible. Instead, by allowing the intimidation to continue, UNMIK and KFOR effectively showed they tolerated the ethnic cleansing and division of Kosovo. Despite being blamed for ethnic cleansing by the OSCE, leaders of the KLA and, later, members of the Serb Bridge-watchers, were co-opted into power. Many of the 'shadow authorities' that had been linked to the intimidation of minorities were recognized by UNMIK as the effective authorities in the municipalities, at least until the first elections at the end of 2000. The KLA was guaranteed a fixed number of the first recruits to the Kosovo Police Service (KPS). Most notoriously, although the KLA was officially disbanded in September 1999, a Kosovo Protection Corps (KPC) was created. Although an official 'civil defence' force, it has always been allowed to portray itself as the successor to the KLA and as an army (and indeed was initially monitored by KFOR), and, particularly in 1999, it carried out self-styled policing across Kosovo. Although the Regulation (1999/8) setting up the KPC stated that 10 per cent of its members would be from minorities, its emblems were very similar to the KLA's (in Albanian colours) and it was linked for a considerable period with attacks on minorities and other Albanians, and opposition to the use of the Serbian language.[47]

UNMIK and KFOR seem to have been overwhelmed by the ethnic cleansing in 1999 and not known how to reverse it. Despite the evidence that ethnic cleansing needs to be reversed quickly if it is to be reversed at all, no large-scale and systematic attempt was made to break down barriers, reverse the isolation of the minorities and allow them to return. The message that came from KFOR and UNMIK was always that the time was 'not ripe' for return, and the divisions, particularly in Mitrovice/Mitrovica city, hardened into firm lines on the map. This seems to have been largely because of an unwillingness to take on those leaders of Albanians and Serbs who were promoting the ethnic cleansing and segregation of Kosovo.

In subsequent years, minorities continued to leave Kosovo. The authorities found it difficult to provide minorities with the three 's' words – security, space (homes) and sustainability – which are crucial not only for return but also for ensuring that isolated communities can stay. Minorities continued to feel chronically insecure. Although attacks on minorities decreased from the very high levels of 1999, very few ever felt able to travel and live freely. Every so often new attacks would begin. Attempts made by UNMIK to assert its authority in northern Kosovo, including Mitrovice/Mitrovica city, were invariably met with organized rioting and attacks. A notable and public attack on minorities was the bombing in 2001 of the 'Nis Express' service connecting Serbs in isolated communities in central Kosovo with Serbia proper. On the critical issue of confidence in the ability of the authorities to protect them, the minorities were never able to feel assured. As will be set out below, in the critical area of homes – reclaiming occupied homes, rebuilding destroyed homes and protecting minorities from forced sales of homes – the international authorities did very little. The harassment leading to sales of homes resulted in many minorities leaving, such as the Roma in Ferizaj/Urosevac. And the fact of living in such conditions, often unable to travel, made day-to-day sustainable living impossible, causing minorities to give up and leave.

On the return of the displaced minorities, very little was done in the critical early months; instead the displaced became more and more permanent. Before the creation of the JCR in mid 2000 there was no coordination and policies were implemented haphazardly. For example, the British army had its own policy on the return of Serbs to Prishtine/Pristina, and the American office (Embassy) tried to set up its own return scheme of Serbs to a village in the north of the province. The JCR began to coordinate this, but for quite some time was focusing its attention on small-scale return to particular villages (notably in Istog/Istok) rather than addressing the major Kosovo-wide problems of security, property and discrimination.

One particular approach directly violated the rights of the minorities to return. The basic principle of every Kosovan having the right to return to their home was set out in Resolution 1244 and therefore UNMIK and KFOR were required to prioritize this. Yet the approach of many units of KFOR was to try to control this return and, in particular, to say it could not take place until KFOR had created a 'safe and secure environment'. Sometimes this led KFOR to implement policies that amounted to opposing returns. A notorious example was German KFOR, in the south-west in 2000–1, which often portrayed return at that time as being 'premature' and likely to lead to disturbances. Rather than dealing with the disturbances, German KFOR instead tried to prevent return, through setting up checkpoints and monitoring persons entering the Serb areas, to prevent anyone 'not authorized' entering them. This was a serious violation of the rights of all persons to determine when they wished to access and return to their homes. It was only when the head of the OSCE and COMKFOR intervened, concerned about Serbs boycotting the 2001 election, that German KFOR relaxed its policy.[48]

As stated above, gradually return policy became more coordinated, particularly after the creation of the Office on Returns and Communities. UNMIK and UNHCR produced a manual for sustainable return in 2003. However, it appeared that the number of returnees actually went down in 2002, although it increased a little in 2003.[49]

March 2004

In early 2004, UNMIK was claiming much progress on the rights of minorities. At a major international conference, Jean-Christian Cady, UNMIK's head of justice and policing said:

> *'Kosovo is a good example of what the international community and the United Nations can achieve to stop ethnic cleansing and build policy instruments that will prevent it from occurring again.'*[50]

Violence against ethnic groups seemed to have decreased. A set of laudable 'Standards' for Kosovo to achieve before future status talks had been set out in 2003, including full protection of minority rights. However, what the decision- makers were ignoring was that the big problems had not been resolved. Neither UNMIK nor KFOR had ensured that minority groups could exercise their right to live freely in Kosovo, and only a few thousand had returned. Kosovo remained a fundamentally segregated society. Even the Standards did not start from the position of ending the segregation in Kosovan society, which was being seen as almost inevitable. The warnings on this by bodies such as the Ombudsperson were largely ignored.

The failure of UNMIK and KFOR's policies was dramatically shown by a new wave of ethnic cleansing in March 2004, nearly five years after the international authorities had taken over responsibility for Kosovo. The violence began following the reported deaths of three Albanian children and one Serb teenager. Within hours, groups of young Albanians attacked Serb, Roma and Ashkalia communities across Kosovo. In what Kofi Annan later described as an 'organized, widespread and targeted campaign', homes and churches were burned down.[51] Serbs, Roma and Ashkali fled in what, as in 1999, can only be described as ethnic cleansing. One striking example was the departure of almost the entire remaining community of Serbs in Kosovo Polje/Fushe Kosove. The violence left 19 dead, 954 wounded, 4,100 persons displaced, 550 homes destroyed, and 27 Orthodox churches and monasteries burned.[52]

What was also notable was the almost complete failure of UNMIK and KFOR to prevent this. This was very similar to 1999. Although KFOR by 2004 had 18,000 troops instead of over 40,000, it now had years of experience in Kosovo. UNMIK had a fully functional administration and police service (the latter consisting of international UNMIK police and the Kosovo Police Service). Yet report after report, set out in most detail by Human Rights Watch, shows minorities saying that when they called for assistance, UNMIK and KFOR security forces did not come, or if they did, they came late and said they could only evacuate the minorities, not protect them. Despite this disaster, the international community continued to refuse to learn and apply the basic lessons, primarily the need for effective accountability and prosecution of such crimes. Rather than take any responsibility, the blame was put entirely on the Kosovan politicians. Within the international administration there was an attempt to prevent the use of the term 'ethnic cleansing'.[53] The Standards were adopted, stating that 'No one is above the law', and much of the damaged property rebuilt. However, once again the main issues causing segregation were not addressed. Two years later, very few people have been convicted for the crimes that took place in March 2004 and those that have have been largely at a low level. One of the main reasons for this has been stated to be that the response of the international community was to set up a separate international police unit (in a judicial system that was based on judicial, then on prosecutorial investigation). This unit was disbanded in January 2005, due to its ineffectiveness.[54]

The main decision taken by the international community in response to the ethnic cleansing was to decide to resolve Kosovo's future status, but without any prior guarantee of minority rights. Two years later, the segregation of Kosovo is more firmly entrenched than ever, and the ethnic cleansing of 2004 has not been reversed.

Other issues

Security

> *'The Parties undertake to take appropriate measures to protect persons who may be subject to threats or acts of discrimination, hostility or violence as a result of their ethnic, cultural, linguistic or religious identity.'*[55]

In Kosovo, the critical issue for most minorities has been that of day-to-day security. Organized violence, harassment and attacks on property began at the start of the international administration and have continued ever since. Minorities do not feel adequately protected by the authorities in Kosovo. As described above, organized systematic ethnic cleansing took place in 1999 and 2004, but at all times ongoing insecurity has been chronic. What is critical is not only the actual insecurity but also the perception of minorities as to whether they can be adequately protected.

When one looks at the issue of security over the years one can see it coming in waves. After the first wave of attacks in 1999, the authorities hailed a reduction towards the end of 1999. This was followed by a new outbreak of violence in February 2000, following an attack on a UNHCR-run bus for minorities. Later that year attacks

decreased, which was again hailed as a success. Once more this was followed by a new wave of attacks on minorities, notably the bombing of the 'Nis Express' bus carrying Serbs in February 2001, in which 10 were killed. A further reduction in violence in 2003 ended with the attacks in March 2004 outlined above. It seems that, throughout the period, attacks have been organized.[56] At no time can one speak of a situation of normality, with minorities feeling adequately safe and secure.

Apart from the day-to-day fear this has caused for minorities, forcing them to leave their homes and, if staying in Kosovo, congregate in mono-ethnic enclaves, a critical outcome has been the restriction on freedom of movement. Minorities have felt afraid of moving freely, and needed escorts to do so. Again, apart from the violation of a fundamental right, this has made it very difficult for them to access employment and services, including health, education and social assistance.

In nearly seven years, the international authorities have not come up with policies leading to a permanent and sustained increase in security for minorities. Responses have been hindered by the lack of coordination and confused responsibility for security. In 1999–2000, a critical issue was the failure of all countries to provide adequate police – UNMIK police did not become fully staffed until late 2000. As stated above, KFOR was not made subject to civilian control, so has operated independently. At the same time, and perhaps critically, for years Kosovans were not made responsible for security. A Kosovo Police Service was set up quickly and has a good record for recruitment of minorities. Yet giving it power has been much slower. UNMIK retained direct control of security (policing) and justice, even after the creation of the PISG. Similarly, setting up a justice system has taken a very long time.

It is therefore not surprising that the response of the authorities to the minorities' needs has been erratic. KFOR, which one should remember is made up of armies, not police forces,[55] initially provided checkpoints, patrols and escorts. This was requested by minorities. Attempts have been made to deal with the issue of freedom of movement by building new roads and, for a period, the UNHCR ran a bus service for minorities.[58] Later, though, KFOR removed most of its permanent installations as troop numbers were reduced.

Some new laws have been passed to attempt to address ethnic hatred and supposedly make convictions easier. The first regulation on the prohibition on incitement to racial hatred has been rarely used though, as it is considered to be badly drafted – it appears that UNMIK did not use any of the numerous models available in the rest of Europe. The Temporary Media Commissioner in Kosovo did take action to fine newspapers for racial hatred,[59] but again there seems to have been no coordinated approach.

The effect of the military measures that have been taken has been to reinforce segregation. Unless the aim is for Kosovo to be a permanently divided armed camp, measures that separate communities cannot be much more than a temporary solution. The underlying problems need to be addressed and they have not been. Most importantly, despite the overwhelming evidence of the organized nature of the ethnic cleansing and violence, no leaders have been prosecuted. While a few people have been tried for attacks on minorities, they seem to have been very low level. As stated above, the approach seems to have been to co-opt into power those accused of organizing the violence. Since 1999 there have been allegations that attempts to investigate and arrest senior figures in Kosovo have been prevented for political reasons.[60]

Segregation and discrimination

Respect for minority rights aims at a society where everyone can speak his/her language, and practise their religion and culture without suffering any detriment. This means integrated societies, not societies that are rigidly divided by ethnicity or religion. Worst of all can be division that aims at creating mono-ethnic areas. Almost invariably, minority rights within such areas are limited. The best form of long-term stability in a society is integration with respect for diversity. This requires effective measures to tackle discrimination and to ensure that all groups have access to public services and employment on an equal basis.

UNMIK and KFOR have done very little to take measures towards an integrated society. After the March 2004 ethnic cleansing, the then SRSG said 'The concept of a multiethnic Kosovo that the international community has been persistently attempting to implement in recent years is no longer tenable.'[61] In fact the international community, after a few attempts at the start of its mission, has never really tried to create an integrated Kosovo that allows all persons to live freely.

Instead the policies adopted have effectively reinforced the division of Kosovo into Albanian and Serb areas, with services divided accordingly. Other minorities have been treated as effectively second class.

The ethnic cleansing of 1999 led to Albanian and Serb areas. On a temporary basis, preserving such divisions probably made maintaining a modicum of security easier. Very little has been done to end such divisions, however.

From 1999, UNMIK and KFOR have allowed all aspects of Kosovo to become divided. This has been seen most clearly in public services such as health and education. In July 1999, the majority of Serb and other

minority staff in Prishtine/Pristina hospital walked out, following numerous cases of intimidation and harassment. Reports of poor treatment for minorities were numerous.[62]

In Mitrovice/Mitrovica hospital in what had become a Serb area, Albanian staff and Albanian patients were harassed, and a Serb leader said publicly that there should be no Albanians in the hospital. KFOR proved unable to do anything about this and all Albanians left the hospital in September 1999.[63] Serb patients were banned from Gjilan/Gnjilane hospital in September 1999. Rather than address the issue of discrimination in the hospitals, the authorities have preferred to allow separate systems to develop. For example, after Serbs felt unable to use Prishtine/Pristina hospital, a health facility was set up in the Serb village of Gracanica/Ulpijana.

The education system, divided since 1990, has become even more so. As with so many other issues, no attempt was made to impose integration. UNMIK's initial overall ideal policy appears to have been to aim for 'two schools under one roof', in which different groups shared the buildings but had segregated classes.[64] This itself is far from ideal as it promotes segregation, with different knowledge of history, language and culture. But even this has been impossible to introduce. In Mitrovice/Mitrovica, UNMIK announced mixed schools in September 1999. However, following a wave of violence instigated by Serbs in response, the policy was suspended a week later, showing once more that the international authorities were intimidated by violence. Albanians were left with facilities in the south of a worse status than in the north.[65] In Prizren, both Bosniaks and Turks reported harassment and denial of education in their language.[66] By 2000, Roma, Ashkali and Egyptian children were still largely not receiving education.[67] Roma girls suffered disproportionately.[68] A system of parallel structures, where Serb schools are effectively run by Serb authorities, has been tolerated as a way of ensuring a modicum of public services to schools.

In employment, minorities lost their jobs en masse in 1999. Attempts to remedy this have been quite limited, and often restricted to strict quotas. Mass discrimination, for example, is reported against the Roma in hiring by public and private employers and very little has been done to address this. At least one Roma was told that 'minority' jobs were meant for Serbs only.[69]

Since 1999, very little has been done to break down this division. Most importantly, there has been no clear anti-discrimination strategy. The one significant step was the passing of an Anti-Discrimination Law in September 2004.[70] This event was one of the few examples where there was cooperation between international organizations and the Kosovan government and international best practice was used. The initial impetus for this law came from the OSCE, which began pushing for such a law in 2000.[71] The law was largely drafted by OSCE and the Prime Minister's Office. It relied heavily on EU standards and experience.[72] For political reasons, the main Serbian party in the Assembly opposed the creation of an independent body to help enforce the law.[73] Other than that though, the law is generally good. It is one of the few areas where Kosovo has passed laws and policies in advance of most of the rest of Europe, based on understanding of what works elsewhere.

The law has scarcely been implemented, despite a commitment to do so under the 2004 Standards Implementation Plan. The OSCE itself produced a plan for its implementation and organized training of judges. Yet there is little record of a systematic take-up and change in policies among state officials, and not one legal case has been brought.[74] Nearly two years after the law was passed, the PISG has finally produced a plan for its implementation.

Property

With the ethnic cleansing and near-permanent displacement of minorities from and within Kosovo, property issues have been among the most important. These come in three main areas.

First is the illegal occupation of homes formerly owned/occupied by minorities. This is largely in the cities. Second is the destruction of minority-owned homes (mainly in the countryside), often followed by illegal construction on the site. Both these issues need to be addressed before minorities can hope to return.

The final main issue has been the ongoing attempt to drive minorities out of parts of Kosovo through forced sales – i.e. targeting minority areas and homes and harassing the owners until they sell their homes, often for prices far below the normal market value. This has been a critical component of the ongoing departure of minorities from the province.

The international response to dealing with all of the above has left a lot to be desired. In March 2004, after nearly five years of government, UNMIK stated that 'immovable property rights in Kosovo are not sufficiently respected or protected'.[75] Return of occupied property requires two steps: first that all property should be quickly, fairly and legally granted to its rightful owner; then that that owner should be allowed to use his/her property in the way s/he desires and, most importantly, that any illegal occupiers should be evicted.

The international community, purporting to apply lessons from Bosnia, decided in 1999 that the regular Kosovo courts could not deal with the property claims. Instead, a complicated system involving a Housing and Property Directorate (HPD) and a Housing Claims

Commission was set up to deal with residential property claims. However, it was chronically under-funded from the start, particularly when compared with either the regular courts, with minor return projects or with the vast amounts of money spent by the international community on elections. The HPD did not open an office in the Prizren region (covering one-fifth of Kosovo) until February 2003. Very few special arrangements were put in place to ensure that minorities could use the system freely. When property titles were awarded, at times KFOR and UNMIK police refused to carry out eviction orders, fearing unrest.

On the issue of the reconstruction of destroyed homes, some of the vast sums of assistance money did go to this vital issue. But it does not seem to have been well thought out or planned. At times minority homes were reconstructed and then immediately burned down. Notoriously, the European Agency for Reconstruction (EAR) insisted that all its projects be determined by the municipal authorities, despite overwhelming evidence that many of these municipalities were biased against Serbs and other minorities.[76] The result was that in 2000 an estimated 2 per cent of EAR assistance went to minorities and in 2001 only 3.7 per cent.[77] Agencies funding and carrying out reconstruction projects failed to understand and apply the concept of indirect discrimination. Their policies, which they said treated everyone equally, ended up discriminating against minorities. One example of this was reconstruction agencies requiring everyone seeking assistance to present themselves in person, despite many minorities being outside Kosovo or having major restrictions on freedom of movement.

Finally, across Kosovo, minorities found themselves pressurized into forced sales of homes. At the root of this lay the fear of minorities for their security. With no confidence they would be protected by the authorities, they succumbed to pressure to sell their homes in order to make money to start a new life elsewhere. In some parts of Kosovo there seemed to be a focused attempt to force minorities to sell. Over the years this seemed, for example, particularly prevalent amongst the Serbs in Kosovo Polje/Fushe Kosove. The OSCE and UNHCR described what would happen: young Albanian men would visit a Serb home and politely offer to buy it. If refused, some time later the house would be stoned. The men would return with a lower offer. Again, if this was refused, the stoning would continue until the Serbs sold. Such houses were deliberately targeted to leave the remaining Serbs feeling vulnerable.

The response of the authorities was to make the situation of the minorities worse, through giving UNMIK Municipal Administrators the power to refuse to register inter-ethnic sales of homes.[78] Ostensibly, this was done to halt the continuing flight of minorities from large parts of Kosovo. However, internal consultations within UNMIK revealed large-scale opposition to this. It was pointed out that it violated the rights of minorities over their property, was discriminatory as it only applied in minority areas, and made the situation of minorities worse as they would still leave but, being unable to sell their homes, would now have no money. Above all, it addressed a symptom rather than the cause of the problem, which was the lack of security of minorities. Despite this, the law was pushed through by UNMIK at the behest of Serb leaders, who threatened to boycott the 2001 elections otherwise. The effect could easily have been predicted. Serbs still left Kosovo, as they still faced security threats, but now found themselves without money as they were not able to sell their homes. In fact it appears that the fear and uncertainty about this law led to a rise, not a reduction, in sales of homes by minorities.[79] Short-term politics had again taken priority over the rights of members of minorities and their long-term future.

Participation

> *'The Parties shall create the conditions necessary for the effective participation of persons belonging to national minorities in cultural, social and economic life and in public affairs, in particular those affecting them.'*[80]

The international community, as elsewhere in the world, stressed elections as the solution to Kosovo's problems. Vast amounts of money and time were spent organizing municipal elections in 2000 and elections to the Kosovo Assembly in 2001 (repeated in 2002 and 2004 respectively). The importance of ensuring minority participation was recognized to some extent. Minority representation was guaranteed in the municipal authorities and in the Kosovo Assembly. However, it seems that in the second round of municipal elections, minority representation dropped significantly.[81]

The Assembly has a complicated system of minority representation. It appeared to copy, to some degree, that of Bosnia, based on guaranteed seats for named minority groups. It guarantees 10 seats for Serbs and 10 for 'other' minorities, divided according to the relative size of communities, (Roma/Ashkali/Egyptians had four seats, Bosniaks three, Turks two, and Gora one). Minorities were also free to stand for the Assembly under the normal electoral system. What the system could not address, of course, were boycotts by minority groups. In 2000, the Serbs largely boycotted the municipal election. The SRSG therefore appointed Serbs to numerous municipal authorities. In 2001 the Serbs did participate, voting overwhelmingly for a party called Povratak, which participated in the Assembly. In 2004 the government of Serbia called

for a boycott of the Kosovo Assembly elections that was largely adhered to.

What has been positive about the approach to participation is that it has gone beyond simple representation in assemblies and attempted to ensure minority representation in government. The original JIAS Interim Administrative Council (four persons) eventually included a Serb, Rada Trajkovic, and four of the initial co-heads of departments (ministers) were minorities. The Constitutional Framework provides that, of the seven members of the Presidency of the Assembly, one shall be from a Kosovo Serb party and one from a party representing 'non-Kosovo Albanians and non-Kosovo Serbs'. It also requires the Assembly to create a Committee on Rights and Interests of Communities with two members from each community in the Assembly, which can review draft laws in the light of communities' interests. It requires at least two ministers (three if there are more than 12 in total) to be from 'Communities other than the Community having a majority representation in the Assembly', with one of these minority ministers being Serb and the other being from 'another Community'. All of this has been applied.

At municipal level, Regulation 2000/45 required each municipal authority to set up a Communities Committee and a Mediation Committee to represent minority interests. However, the effectiveness of these seems to have been very limited. It was not helped by the fact that no central guidelines were in place.[82]

However, the right of minorities is the right of *each* member of the minority 'to effectively participate in decisions affecting them'. This has not been achieved in Kosovo for several reasons. First, the right to participate has largely been the right of minority leaders to participate. Many decisions have been held to have involved 'minority participation' when only a few leaders were consulted. Before 2001, very few of these leaders could claim any democratic accountability, and even after 2001 there was not a culture of accountability of leaders. A few attempts were made to try and speak to communities themselves, such as the Platform for Joint Action for the Roma, Ashkalia and Egyptians, but all of these proved short-lived and consisted of a few visits by leaders to communities, without sustained involvement. It should be noted that the vast majority of minority leaders have been men.

A notorious example of consultation was on the drafting of the Constitutional Framework in 2001. This set out the rights of communities (minorities) but was not put up for general consultation. Instead a small secretive group drafted it. Minority consultation consisted of discussions with a few Serb leaders. Another example of leaders making their own decisions was that of the leaders of the Povratak party to veto the creation of an independent body to implement the anti-discrimination law. This decision was made due to a general policy of opposing permanent structures in Kosovo, but was hardly in the general interest of Serbs. In 2003 the OSCE said that the elected minority representatives lacked accountability to their electorate.[83]

Even more important, though, was the fact that, even today, the Kosovo PISG has very limited power. The Constitutional Framework that set up the PISG says nothing in it shall affect or diminish the authority of UNMIK or KFOR. The SRSG has the power to override the PISG at any time. He also has specific reserved powers, including: 'Full authority to ensure that the rights and interests of Communities are fully protected',[84] justice and law enforcement, and the Housing and Property Directorate. Confusion has grown up over who is responsible for what, as is recognized by the Council of Europe:

> *'This has in some cases resulted in a situation where the responsibilities are not clearly assumed by any of the authorities involved, and individuals find it difficult to identify an interlocutor who would address their legitimate concerns.'*[85]

On the critical issues for minorities, particularly security and housing, decisions are made by UNMIK and KFOR. Yet minorities have barely been able to participate in decision-making by either. Neither UNMIK nor KFOR ever seem to have accepted that they were acting as governmental powers in Kosovo, not peacekeeping missions, and acted accordingly. This is shown most notably by a regulation passed by UNMIK in 2000.[86] This regulation, which has been applied, purports to grant total immunity to UNMIK and KFOR and their staff from legal accountability in Kosovo. Given that neither is an elected authority, they have no electoral accountability either. And given that UNMIK initially refused to allow monitoring by international bodies such as the Council of Europe, minorities have not, until recently, been able to hold their government accountable internationally.

The first time UNMIK accepted international accountability was in accepting monitoring by the Council of Europe on compliance with the Framework Convention for the Protection of National Minorities (FCNM). This was a welcome step. However, the participation of minorities has to some degree been limited. Rather than give the lead to minorities and the Kosovan government, both the report and the shadow report were coordinated by the OSCE (probably the first time that the same body has coordinated both an official report and a shadow report). The shadow report itself stressed that the role of its coordinator was not to draft, 'nor to impose undue external influence'.[87]

Minorities had some input into the shadow report, but the Council of Europe has referred to the 'lack of understanding' in UNMIK on the issue of participation. Indeed, the shadow report itself states that 'the ideal practice during the drafting procedure of the Official Report would include consultations with minority members. Nevertheless in the case of Kosovo that practice has not been followed.'[88]

Minorities have not been able to affect decisions that affect them. UNMIK's Kosovo Standards Implementation Plan of March 2004 stated that 'It is essential that Kosovo's institutions … make more progress in allowing the full participation of all communities.'[89] Minorities have complained constantly that they have had no input into KFOR's decisions on security policies, which were vital for their lives. KFOR would change policies, notably in reducing/removing permanent presence, without consultation.[90] Whatever the merit of these decisions in themselves, the lack of consultation led to a feeling of utter powerlessness and insecurity among minorities, given the danger they were in. This lack of accountability and ability to influence decisions affects all people in Kosovo. However, given the particular vulnerability of minorities, including their restricted freedom of movement, they have been affected more than others. Another example of the lack of consultation with minorities was the law restricting strategic sales.

The only official body that gave minorities, and others, some way of holding UNMIK accountable has been the Ombudsperson, an institution set up in 2000. KFOR has refused to allow the Ombudsperson to monitor its actions. The Ombudsperson did have, however, the power to investigate UNMIK, and many of his general and specific investigations have been on minority issues. Yet the first Ombudsperson reported a general unwillingness of UNMIK even to reply to, let alone comply with his findings. The Ombudsperson's power to investigate UNMIK was actually removed in 2006. The effect has been to make UNMIK one of the least accountable governments in the world and, once more, to leave minorities powerless to hold their government to account.

A lesson of many ethnic and religious conflicts is that participation, particularly in the political system, needs to involve more than simple representation by quota. Political systems set up by those who do not understand minority rights often fail to address issues of discrimination and assume that strict quotas will be enough. In fact, quotas often lead to rigid division on the basis of ethnicity/religion and may even reduce minority rights as all minority issues are left to the minority representatives. It seems that if the political system set up by UNMIK and OSCE in Kosovo does have an ancestor, it is that set up by the international community in Bosnia, one of the most divisive in the world. The Bosnian system is rigidly divided by ethnicity, with a two-tier system where three 'constituent peoples' have superior rights and all other groups are referred to as 'Others' and are clearly second class. While the Kosovo system does not repeat all of these mistakes it bears some very similar hallmarks. Although the Constitutional Framework does not use an official term 'Other', it implies the term, with Albanians and Serbs being treated differently. The rigid quota system is not accompanied by measures to ensure that the government represents all Kosovans and respects minority rights.

Equally important is paying particular attention to the needs of minority women. The international community has put several quota systems in place to ensure that approximately 30 per cent of elected officials were women. However, in the first government appointed under the 2001 Kosovo Assembly, not one minister was a woman. This has been a general problem. In a report to the Security Council in January 2004, the Secretary-General stated that:

> *'The Provisional Institutions still have a poor record of placing women in high-level and managerial positions. The presence of women in legislative bodies reflects only the minimum legal requirements for gender representation in electoral lists, with 33 out of 120 seats in the Kosovo Assembly and 28 per cent of all municipal assembly seats being occupied by women. In the public sector, there is only 1 woman minister out of 10 ministers, 1 woman permanent secretary out of 9 permanent secretaries, 7 women out of 18 parliamentary committee heads, and only 2 women out of 30 chief executive officers in municipalities.'*[91]

Minority women, though, have often been prominent, including the first Serb member of the IAC, then the most senior executive group of Kosovans. In the 2001 Assembly, one of the most prominent members was a young Turkish woman who became a member of the Presidency of the Assembly and chaired the Health Committee. However, she was not chosen by her party to stand in the next Assembly elections. There is little evidence of any specific work being done by the authorities to discover and address the particular needs of minority women. In March 2006, a group called the Women's Peace Coalition was formed, consisting of women from different ethnic groups. It has been lobbying for inclusion in the status discussions, pointing out that the seven Kosovan representatives are all men.

Some attempts were made, albeit gradually, to bring together Albanian and Serbian women's organizations. However, UNIFEM (UN Development Fund for

Women) reported that these attempts broke down following the 2004 violence.[92]

The intersecting of gender and minority discrimination was not fully recognized in the anti-discrimination law. Although the initial plan was to create a comprehensive law to address discrimination on all grounds, instead a 'Gender Equality' law was passed, separate from the development of anti-discrimination law, which makes no mention of minorities.

Language

A critical issue for most minorities is that of language. Much work has been done internationally on what the right to speak one's first language means and what it does not. Some detailed recommendations and a long explanatory note have been agreed by the OSCE – the Oslo Recommendations.[93] These were based on expert knowledge and long experience of working on language issues across Europe.

In Kosovo, the official languages under the 1974 Constitution were Serbo-Croat, Albanian and Turkish. The international community was faced with a difficult situation as to what extent minority languages should be recognized, protected and used. However, by 2000 the OSCE and UNHCR reported that the language policy was still confused and far from uniform.[94]

On paper, much has been done. The Regulation on Municipal Authorities in 1999 required the use of both Albanian and Serbian. The Constitutional Framework sets out extensive rights for minorities in Chapter 4, stating that:

> *'Communities and their members shall have the right to:*
> *(a) Use their language and alphabets freely, including before the courts, agencies, and other public bodies in Kosovo;*
> *(b) Receive education in their own language;*
> *(c) Enjoy access to information in their own language …*
> *(i) Provide information in the language and alphabet of their Community, including by establishing and maintaining their own media …*
> *(o) Be guaranteed access to, and representation in, public broadcast media, as well as programming in relevant languages …'*

These rights go far beyond the international standards and, indeed, those that apply in other countries, as they appear to apply to all communities, at all times and in all places. Much effort was placed by UNMIK into some degree of translation of all documents.

In fact, the problems on this particular issue are unusual. First, little has been done to stop third parties restricting persons' right to use their language in public, including the destruction and removal of signs, and even threats and violence against persons speaking the 'wrong' language in public. This has been essentially a security issue, but an attempt to require municipal authorities to protect signs was removed from the 1999 Regulation at the drafting stage.

Another issue has been the basic segregation of Kosovo, and preference given to Albanians and Serbs. Other languages have been treated as second class, with the Turks in particular complaining about the downgrading of their language. It took many demonstrations and complaints by the Turks before UNMIK and the OSCE agreed to use Turkish in the first voter and civil registration in 2000. The education system has remained rigidly divided, with no attempt to push through learning of each other's languages.

Finally, the rights granted have at times been almost too wide to be effective. They have been drafted by non-minority experts. For example, the right under the Constitutional Framework is granted to everyone to 'receive education in their own language'. This is actually impossible to implement as it gives no indication of its limits, e.g. as drafted it would require a minority of one person to have the right to all education up to university level in their own language. This broad and bad drafting of rights has meant it has been impossible to apply them at all. The Council of Europe has stated that 'the current legal framework is overly complex, and it fails to spell out sufficiently clearly the operative regulations concerning language use'.[95] In 2004 a report of an UNMIK Task Force on Language Standards Compliance stated that 'In spite of the legal requirements … Kosovo's authorities' compliance with the Language Standards is unsatisfactory and fraught with innumerable difficulties (some technical, others psychological).'[96] It identified two main reasons: lack of translation resources, and the hostility of Albanians towards using 'Serbo-Croat'. It does appear, though, that international standards, such as the Council of Europe directives, have been increasingly referred to and used in policies on languages. A draft language law is still under discussion. However, leaders of the Turkish community have criticized the draft law as reducing the recognition of the Turkish language at both central and municipal level, in comparison with the existing (pre-1989) law and the Constitutional Framework.[97]

Future status

After the ethnic cleansing of March 2004 it was recognized that a new approach was needed. The main decision was to focus on the future status of Kosovo.

Marti Ahtisaari, former President of Finland, was appointed to lead talks to resolve this and set up a team based in Vienna. At the time of writing, indications are that future status will be independence for Kosovo.

Minority involvement in these discussions, which will almost certainly decide the future constitution of Kosovo, has been very limited. It is unfortunate that the discussions are taking place in Vienna, which limits the participation of the most disadvantaged. The smaller minorities were consulted only once, in January 2006, but only on 'minority issues'. Representatives of these minorities have subsequently requested participation in the Kosovan team of negotiators and have been refused.[98] Once again, the future of Kosovo is being decided without minority participation. Minority participation and minority rights are not high on the agenda of those determining the future of Kosovo from so far away.

Instead, in Vienna 'minority issues' are focused almost exclusively on the Serbs and on the issue of 'decentralization'. Decentralization is seen as the solution to minority problems. However the discussions seem to be moving towards the creation of 'Serb' municipalities, which will be given as much power as possible over issues such as education, the justice system and the police, effectively entrenching segregation. In a draft paper from UNOSEK (the United Nations Office of the Special Envoy of the Secretary-General for the future status process for Kosovo)[99] on decentralization, no mention is made of anti-discrimination measures, or minority rights, or integration. It is difficult to see how such a proposal can lead to a sustainable solution for Kosovo, particularly as each municipality would have its own minorities and minority rights problems. Those working in Vienna, who do not appear to include any experts on minority rights, are creating a future for Kosovo that ignores the rights of both individuals and groups and entrenches segregation, even in areas such as the police force where integration had been progressing. No attempt is being made to create an integrated education system.

Given the lack of interest in minority rights in UNOSEK, particularly with regard to all the minority groups except the Serbs, the Kosovo Delegation for Negotiations has drafted its own 'Framework for the Protection of Communities in Kosovo'.[100] Incredibly, it appears that minorities were once again largely excluded from participation in its drafting, and discussions on it took place in Thessalonica – as if those drafting such documents appear to believe it is too difficult to discuss the future of Kosovo in Kosovo itself.[101] This document, running to nearly 60 pages, is a curious mixture of a proposed constitution, new laws, exhortations on minority rights and proposals for 16 councils and commissions that are supposed to protect minority rights. This Framework repeats many of the problems that have afflicted Kosovo since the international community arrived on the scene. Despite stating that all people in Kosovo will be equal, it describes the smaller minorities (i.e. not the Serbs) as 'other communities', clearly relegating them to second-class status. Despite stating that discrimination will be outlawed (in fact it already is), this Framework would entrench segregation further, by putting into law ethnic quotas in all parts of public services, including the police, for example, rather than addressing discrimination. The Framework creates a series of new and lengthy rights on paper but, if put into practice, the creation of new rights and laws could undermine the existing laws, particularly the anti-discrimination law. Worse, by creating a whole series of commissions (such as a language commission) it would risk undermining the existing structures, particularly the need for rights to be enforced by the rule of law and the already existing institution, the Ombudsperson. The drafters do not seem to be aware that the anti-discrimination law, although good on paper, has not been implemented at all in two years. The Framework does not provide any solutions to the crucial need for effective security and an accountable justice system. Minorities are being offered at best a series of paper rights, without any effective means of enforcement.

The root causes of the problem

After seven years of being governed by the UN and other international organizations, and with security guaranteed by NATO, the situation of minorities in Kosovo is little short of disastrous. The authorities have allowed a segregated society to develop and become entrenched, and thousands of minorities remain displaced. Ethnic cleansing took place as recently as two years ago.

The situation of minorities in Kosovo remains the worst in Europe. This cannot simply be explained as a result of conflict. Other societies have seen conflict and face ongoing problems. In Northern Ireland, despite the peace deal, little has been done to break down the segregation of towns and cities by religion. In Cyprus, there is no sign of a resolution to the 40-year conflict and, in particular, the return of the displaced, restoration of property and recognition of minority rights. In Turkey, the existence of most minorities – including 15 million Kurds – is still officially denied. One result is the denial of the Kurds' freedom to speak their language, and there are thousands of displaced Kurds and Syriac Christians.[94] Bosnia and Herzegovina, ironically itself under international supervision for a decade, has rigid segregation into three 'constituent peoples' and second-class status for all other groups. But none of these situations is as bad for minorities as in Kosovo.

Nowhere in Europe is there such segregation as in Kosovo, with thousands displaced and still in camps, and ethnically pure towns and villages scattered across such a small province. Nowhere is there such a level of fear for so many minorities that they will be harassed or attacked, simply for who they are or what language they speak. Nowhere in Europe can be described as at such high risk of ethnic cleansing occurring again in the near future – or even, given the killings, at risk of genocide.

The causes of this failure of the international protectorate must be examined, to ensure that the right lessons are learned and applied, both in Kosovo and in future peacekeeping missions.

First, the problems in Kosovo have not been to do with lack of resources. Millions of euros, and thousands of international officials, have been poured into Kosovo. Given Kosovo's population of just over 2 million, this may be one of the largest amounts of money spent by the international community per capita anywhere in the world. But it has not been spent wisely. Indeed, the amount of money poured into Kosovo may have made the situation of minorities worse by permitting the creation of unsustainable segregated systems, such as separate health services.

Neither has the root cause of failure in Kosovo been a failure to acknowledge the existence and importance of minorities. In theory, all communities are recognized in Kosovo and granted rights. There is no systematic denial of their existence, as in Turkey or France. Minority issues have been acknowledged as very important since 1999. The amount of information available to authorities about minorities, particularly through the official OSCE/UNCHR reports, has been extensive.

It has not been even an issue of lack of rights on paper. 'Communities' were granted extensive rights under the Constitutional Framework. As described above, a very advanced anti-discrimination law has been passed. Detailed guidelines and policies on return have been written. The 'standards for Kosovo' appeared to address many of the needs of minorities. Although there is no minorities law as such, this still amounts to extensive protection of minorities – on paper.

The main reasons for the problems of minorities today are discussed below.

A mindset of segregation, not minority rights

Despite the fact that minority rights promote integrated societies, and despite the fact that conflict prevention requires integrated societies, the international community in Kosovo has, time and again, reinforced the segregation that it allowed to develop in 1999. In fact, dealing with minority issues seems to have meant simply addressing the demand of Serb leaders for effective segregation. All other minority groups have been effectively treated as second class.

This is evident in the security policies adopted, in the electoral system based on rigid ethnic representation, in the approach to public services based on separate education and health systems for Albanians and Serbs, and in employment and other services where quotas often seem to be the only solution proposed. The few exceptions have been the passing of the anti-discrimination law (though its implementation has hardly been a priority) and, to some degree, the setting up of the KPS, which has largely adopted an integrative approach, with police from all communities being used everywhere and, so far, the threat of a segregated police force being avoided.

There has clearly been a failure to understand minority rights and, particularly, the need to fully address discrimination. The idea of an integrated society has been

seen as an ideal for the future rather than a necessity for a peaceful Kosovo. This mentality of segregation has continued and has even become more entrenched, despite the anti-discrimination law that outlaws segregation. The future status discussions have focused on plans for 'decentralization', which appears to mean effective segregation between Albanians and Serbs. Even the 'Framework' on minorities still reflects a segregationist mentality. In all of these proposals, the smaller minorities are reduced to second-class status.

Short-term politics before everything else

Going through what has happened in Kosovo year by year, the sense of short-term 'political' considerations taking priority at the expense of minority rights is overwhelming. Most important has been the status of Kosovo itself. Resolution 1244, and the creation of UNMIK and KFOR, were temporary measures that left the future status of Kosovo uncertain. The effect of this on Kosovo's minorities has been particularly pernicious. Albanians and Serbs have wanted to stake their claim to parts of Kosovo and therefore the incentive to cleanse areas has been strong. No long-term solutions, including for critical issues such as education, have been possible. Rather than negotiate in Kosovo, Serbs have looked to Belgrade for protection.

At the same time, a disastrous policy of the international administration since 1999 has been to accommodate those carrying out ethnic cleansing rather than arrest them. The ethnic cleansing carried out by Albanians and Serbs has been systematic, requiring organization at the highest level. In 1999 KFOR had 50,000 soldiers and, throughout this period, the international administration has had the backing of the most powerful countries in the world. Yet they seem to have been reluctant to tackle the organizers of the attacks on minorities. As shown above, the attacks on minorities were linked with members of the KLA and a group of Serbs in Mitrovice/Mitrovica. Rather than being arrested, the leaders of the KLA and Serbs were co-opted into government. The message that has been given out again and again is that the international administrators accepted the outcome of ethnic cleansing and the attacks on minorities. Only low-level perpetrators have been arrested.

At the same time, UNMIK and KFOR have allowed parallel structures largely governed from Belgrade to function because a confrontation would cause short-term problems. With separate education, police and even judiciary for Serbs, promoting an integrated society (let alone dealing with rights of minorities in Serb-dominated areas) has been impossible.

Another pernicious but persistent mentality has been that of the 'time not being right' for aggressively enforcing the right to return and reversing the ethnic cleansing. In fact, the longer ethnic cleansing is allowed to go unchallenged, the more difficult it is to reverse and for people to return. However, the approach in Kosovo seems to have been to avoid tackling the issue of segregation and return. Extreme examples are set out above, for example of the role of German KFOR and others in not addressing the right of people to reclaim their property. The basic issue is that, although everyone, including minorities, has the right to return, this right has been treated as a privilege to be allowed only when it would not cause problems.

Lack of clear and accountable government

Another serious problem preventing the development of sound, long-term policies has been the system of government set up in Kosovo. As described above, it is dazzlingly complex. From the beginning KFOR and UNMIK were set up as separate bodies, with KFOR having responsibility for the most important issue for most minorities – security. But KFOR itself was hardly a unified body, with individual units and brigades often making their own policies. When the PISG was set up, it simply added a third element of confusion to the picture. It is not surprising, then, that there has been no consistent long-term – or even understandable – policy on security and other important matters.

The development of policy has been badly affected by the fact that UNMIK and KFOR are not accountable for their decisions to those they affect. UNMIK and KFOR are accountable neither to an electorate nor, in any meaningful way, to the media. Their approach is shown by the declaration of full immunity under Resolution 2000/47, which deprives all Kosovans of any accountability. As stated above, minorities have complained again and again about the lack of consultation with them about what is being done to protect them. This leaves them feeling helpless but also produces bad policies. Again, international officials have ended up only consulting with a few (sometimes self-styled) leaders. The only way to hold UNMIK accountable for its behaviour towards minorities was through the Ombudsperson, and even that institution no longer has the power to hold UNMIK to account. There has been no method at all for holding KFOR accountable.

Very little has been done to ensure that the particular voice of minority women has been heard on an ongoing basis, or to make decision-makers accountable to them.

On top of this, UNMIK and KFOR have had a determinedly short-term agenda. There have been six SRSGs in seven years, and international staff and KFOR troops have

usually only been in Kosovo for a short period (KFOR rotated troops every six months), despite the power they have been exercising. There has been very little building of institutional knowledge. Although the situation is not quite as bad as in Bosnia, there has been a plethora of elections (four in six years), again focusing on short-term issues.

Lack of any real protection of human rights and the rule of law

Another fundamental problem with the international administration has been the way in which human rights, and the rule of law itself, were largely marginalized, nearly always taking second place to short-term political considerations. Despite the large OSCE mission officially forming part of UNMIK, actually achieving policy change in UNMIK and KFOR on human rights issues was very difficult. The SRSG's Human Rights Adviser resigned after only six months and was not replaced. Human rights have effectively been seen as optional.

Even more surprising was the lack of respect for the rule of law, which was also effectively seen as optional, particularly in relation to UNMIK and KFOR, the governing authorities. Again, Regulation 2000/47 must be mentioned, which purported to make them immune from all forms of legal proceedings. Laws were passed but were not translated quickly into Albanian, let alone into minority languages. Even the most basic of all human rights law, that of requiring all detention to be by order of a judge, was overturned by KFOR and UNMIK, which declared themselves above the law, not needing to comply with judgments or human rights standards.

The result is that all the drafting and purported granting of rights has been meaningless as, even when rights are proclaimed, the authorities are not required to take action. The Constitutional Framework itself has had minimal impact. The chapter on 'Communities' Rights', as pointed out above, was not drafted by minority experts and in many cases is so broad as to be unusable. But, worse, it has not been applied as supreme constitutional law. Although the Constitutional Framework had provision for a Constitutional Chamber to review and probably strike down laws and policies that were in violation of the Framework, in practice this has never happened.

Similarly, the 'Standards for Kosovo' have failed really to improve the situation of minorities. The Standards themselves are good, and meet many of the minorities' needs. Where they failed was on implementation, which effectively required full and detailed cooperation (and accountability) between the PISG, UNMIK and KFOR.

The impact of the lack of rule of law also helps explain the lack of security. The bombing of the Nis Express in 2001 was one of the most severe attacks on minorities. Afterwards, a suspect was arrested, evidence was presented against him and he was detained under court order in Prishtine/Pristina Detention Centre. Then US KFOR arrived at the Detention Centre (not in their Area of Responsibility) and took him to their detention centre in Camp Bondsteel. Later they announced he had escaped (the first person ever to do so) and he was not heard of again, until there were rumours of his arrest in 2004. Three others were detained by KFOR, two being members of the KPC. However, KFOR refused to produce evidence to the court and therefore an (international) judge refused to order their detention. Instead the SRSG, acting in violation of the court order, ordered their detention. This took place at a time when UNMIK wanted Serbs to participate in elections and Serb leaders were demanding action on the Nis Express bombing investigations. This detention without any court order was strongly criticized by the OSCE and others as a violation of the rule of law. The political nature of this train of events became apparent when, after the elections, no further order was made for detention and, with KFOR still refusing to present evidence to the court, the suspects were released. No one was therefore prosecuted for one of the worst atrocities against the Serbs.

Weakness of civil society/ failure to engage

A further critical weakness in Kosovo has been the failure to engage with civil society and, particularly, to go beyond a few leaders of the minority communities. MRG (Minority Rights Group International) has found Kosovo to have fewer independent minority non-governmental organizations (NGOs) than anywhere else in the region.

Paradoxically, this may have been partly because of the input of such large amounts of international money. The OSCE and many international governments poured a large amount of money into what they called 'supporting civil society', but this seems largely to have consisted of money to support NGOs technically; these NGOs then became dependent on international largesse and large amounts of 'training'. Individuals working for NGOs have left to work for international organizations or left Kosovo. What has rarely been done is to support the ongoing campaigning of NGOs that can engage with minorities and represent them.

The status of Kosovo has also made it very difficult for independent NGOs to operate. The uncertain status of Kosovo has meant, for example, that decisions about the Serbs have largely been taken by the authorities in Belgrade. The international authorities have hardly helped in this situation. By stressing elections above everything else

they have encouraged the politicization of all life. And, given UNMIK and KFOR's opaque decision-making, when decisions have been made this has largely happened behind closed doors, and 'consultation' with the minority communities has largely meant talking to male leaders. The involvement of the distinctive voice of minority women has been limited.

This is shown, most notably, by the drafting of the Constitutional Framework, which should have been the keystone for the protection of minority rights. However, it was drafted behind closed doors by a group of international experts. Given the outcome, it is difficult to believe that any of them were experts in minority rights. The minority communities consulted consisted of a handful of Serbs, chosen, it appears, by Belgrade. Rather than concentrate on minority protection their input seemed to be to object to anything that would amount to signs of independence of Kosovo. Again, uncertainty over Kosovo's status has prevented the actual facts being dealt with. The Constitutional Framework was then simply passed by UNMIK – it appears that the pressure to hold an election in 2001 was more important than the need to engage in full consultation with the minorities themselves (and indeed Kosovans). Incredibly, the same mistake has been made again in the discussions on the future status of Kosovo, which is being determined in Vienna, a long way from Kosovo, and without the participation of minorities. Again, the pressure to get a settlement seems to be more important than the need for participation and to get the best, rather than the quickest, settlement.

Failure of international organizations to apply lessons from outside Kosovo and use their institutional memory

In Kosovo, then, basic mistakes with regard to the understanding and application of minority rights have been made. What is almost incredible is that they have been made under an international administration consisting of institutions, notably the UN and OSCE, with a long institutional memory of addressing minority rights.

The OSCE had been engaged in Kosovo before even the Kosovo Verification Mission (KVM). The then HCNM had been the 'personal representative' of the OSCE Presidency on Kosovo until 1998. In the introduction to the OSCE's *As Seen, As Told* in 1999, the then SRSG called upon the HCNM to come to Kosovo. The HCNM did come, but for only one day. The OSCE in Kosovo set up and ran its extensive work on minorities with minimal input from its own HCNM. The HCNM (by now Rolf Ekeus) did not visit Kosovo again until 2005. The mentality was that each OSCE mission would be set up and run itself with minimal coordination and input from the OSCE centre. Incredibly, the HCNM was not seen as vital to determining policy in Kosovo.

The situation has been even worse with the UN bodies. Kosovo is one of the biggest ever UN missions and has seen the UN assuming a major governmental role. Minorities have been at the heart of the long-term future. Yet it appears that UNMIK did not even begin communicating with the UN's own minority experts in Geneva until very recently. The UN's own Working Group on Minorities has not been invited to visit and contribute to the policies on minorities. Even the new UN Independent Expert on Minority Issues has not been asked to play any role. Again, policy on minorities has been drawn up in Prishtine/Pristina, ignoring the institutional knowledge of the UN.

To understand this one must understand the structure of the UN. UNMIK was set up by and is accountable to the Security Council; it is actually run by the Department of Peacekeeping Operations, which, like the Security Council, is based in New York. Human rights work in the UN is largely governed by its OHCHR, based in Geneva. As stated above, human rights generally have been minimized within UNMIK – it appears that the OHCHR was not consulted on the creation of UNMIK. Even within the OHCHR itself minority issues are minimized; until the creation of the Independent Expert on Minority Issues in 2005 there was only one minority expert in the Office (there are now three). Understanding of minority rights in the UN in New York is virtually non-existent – MRG has never met any minority rights expert working there. This lack of minority rights knowledge is difficult to understand given the importance of minority issues in conflict prevention. The lack of institutional expertise in the UN has been painfully shown by the repeated mistakes in Kosovo.

What has happened, then, is that those working on minority issues in Kosovo have not been able to benefit from the decades of experience that the organizations themselves have on understanding and implementing minority rights. It is not surprising then, that the most obvious model – that of segregation – has been used, rather than that of minority rights.

Conclusion

In 1999, Bernard Kouchner, the then SRSG wrote:

> *'If ethnic hatred triumphs, then everything that people of goodwill [in Kosovo] and their friends in the international community struggled for during the last 10 years would have been in vain.'*[95]

The situation of minorities today in Kosovo is the worst in Europe. The authorities have not been able to provide the most important protection, that of minorities being able to live and practise their way of life in security. After seven years, minorities remain displaced, unable to live in their homes. Kosovo is a segregated society with no vision of integration or clear plan for the ending of discrimination. Minorities largely remain powerless to affect the decisions that matter.

The future status negotiations represent both the best hope and the greatest danger. The lessons of the last seven years argue strongly for a very different approach that will lead to the ending of the segregation in Kosovo, rather than another deal made in secret. The future status negotiations must lead to a break with the recent segregationist past in Kosovo, and guarantee real equality for all, and the right to live freely and practise their own language, religion and culture. If a radical change is not made now, the history of the international protectorate will become a major indictment of the ability of the international community, and the UN in particular, to manage a post-conflict situation and create a long-term resolution to ethnic problems.

Recommendations

In Kosovo

To all those involved in future status discussions, including UNOSEK, the Kosovan government and the Contact Group:

Future status negotiations

- Everyone involved in the discussions, in particular UNOSEK, should prioritize understanding and entrenching minority rights for all communities in Kosovo. UNOSEK should make a public statement stressing the importance of minority rights.
- The discussions should have the full participation of all groups in Kosovo, in particular the smaller minorities, and including minority women. Minorities should participate in discussions on all issues, not simply those issues labelled 'minority issues'. Those involved in the negotiations should visit and consult with minority communities regularly.
- During the course of the year, the discussions should move from Vienna to Kosovo to ensure full participation of the Kosovans, particularly minorities.
- Those involved in the discussions should make full use of the international minority rights expertise available, particularly that of the UN (e.g. the Independent Expert on Minority Issues and the Working Group on Minorities) and the OSCE High Commissioner. UNOSEK should appoint a minority rights expert.
- It should be made clear that the aim of the negotiations is a good settlement that ensures full protection of the rights of all Kosovans. No artificial deadline should be imposed that would put this at risk.

New status and constitution of Kosovo

- Whether the outcome of the negotiations is independence for Kosovo (as is likely) or some form of substantial autonomy, a new constitution for Kosovo will be needed. This constitution should include the following principles with regard to minority rights:
  - It should set out a guarantee of rights that are entrenched, superior to other forms of the constitution and are broad and simple (rather than detailed provisions that are difficult to apply). Specific measures, such as quotas, should not be set out in a constitution, as this makes them difficult to adjust later.
  - These provisions should include, preferably as the first Articles, a guarantee of the equality, in theory and in substance, of all citizens and all communities in Kosovo, and a commitment to an integrated Kosovo for everyone. The rights of everyone to choose their identity, and practise their language, religion and culture anywhere in Kosovo without suffering any detriment should be set out.
  - The constitution should state, as does the anti-discrimination law, that segregation is discrimination.
  - The constitution should recognize all communities as equal in Kosovo. There should be no superior treatment for particular communities (e.g. Serbs or Albanians). Terms implying second-class status, such as 'Others' or 'Non-Serb minorities' must not be used.
  - The constitution should state that the public services in Kosovo will be integrated, including education, but with a duty to meet the needs of all communities in Kosovo, particularly with regard to specific languages, religion and culture.
  - The constitution should make it clear that the most important way of implementing the rights will be by law, and that there will be an independent and powerful legal system with all authorities subject to the rule of law.
- A constitution should not be imposed on Kosovo. Any draft emerging from the negotiations should be translated into all languages in Kosovo and be subject to extensive rounds of consultation and comments, including public meetings in all communities. The draft should be revised after this public consultation.

Ending segregation and discrimination

- All parties in Kosovo should commit, as a priority, to ending segregation and discrimination and ensuring integration. The starting point should be the application of the anti-discrimination law. Judges, lawyers and public officials should be systematically trained in this. A public awareness campaign should begin as soon as possible. Test litigation should be supported.
- Decentralization should not be seen as the main way of protecting minority rights, nor should it lead to segregation. The rights of all people and all communities in Kosovo to practise and use their language should be fully protected in every municipality.

Decentralization should be legally subject to the constitutional and legal prohibition on discrimination and segregation.
- Artificially designed municipalities, intended to create local ethnic majorities, should be avoided.
- There should be fully integrated police and justice systems, and public services. Decentralization must not lead to *de facto* segregation of these. Discrimination in the public services, and particularly the idea that a community can only be served by members of its own community, should be vigorously tackled.
- The public education system in Kosovo, including all schools and institutes of tertiary education, should be fully integrated. There should be no 'ethnic' schools or universities. Provision of education in all the languages of Kosovo should be guaranteed in law and in practice. All languages, religions and cultures should be taught. There should be a common curriculum across Kosovo, particularly in the teaching of history, in different languages where necessary.

Ensuring security and reversing ethnic cleansing

- A full and public discussion should be carried out by the UN into why security protection of minorities has been so weak and what should be done in the future to give minority communities a sense of security and desire to return to their homes. Minority communities, including women, should be fully consulted on this.
- The constitution should require all sectors of government, and particularly the justice system and police, to prioritize the protection of minorities.
- There must be guarantees of the independence of the judicial sector and the prosecution from political interference. Prosecutors, who take the lead on investigation, should be required by law to prioritize ethnic crime and to pursue the leaders and organizers of this.
- Particular care and vigilance should be taken to ensure the integration of the justice and police sectors. Any allegations of discrimination against any members of these should be quickly and effectively investigated.
- If Kosovo becomes independent it should be spelt out clearly that future aid and integration into European structures will depend on ensuring the security of all minorities in Kosovo, and ensuring that the displaced have a free choice as to whether to return.

Rule of law

- There should be a clear commitment to ensuring that the rule of law functions in Kosovo, particularly with regard to the implementation of rights. The courts and justice system should be seen as the primary defender of rights, including minority rights.
- All parties should commit to ensuring that there is an independent, fully resourced and effective justice system, which in particular can hold the government authorities to account.
- For minorities it will be particularly important to ensure that the criminal justice system, the anti-discrimination law and property laws are implemented. Minorities should be given assistance to bring test cases under the anti-discrimination law.

International involvement in Kosovo

- UNMIK, and any successors, should prioritize the following:
  - ensuring a much greater level of security – and perception of security – for minorities, in particular investigating and prosecuting leaders of attacks on minorities, such as in March 2004;
  - implementing the anti-discrimination law and ensuring that public services are integrated, particularly education.

In future peacekeeping missions

The lack of understanding in Kosovo of minority rights should never be repeated, particularly when so many conflicts are about minority issues (ethnicity, language and religion).

- The UN Department of Peacekeeping Operations (DPKO) should appoint a minority rights expert to advise on minority issues and policies in current and future peacekeeping missions.
- The UN as a whole (the Independent Expert, the Working Group and other experts in New York) should draw up guidance for basic policies on minority rights in pre- and post-conflict situations. These should build on knowledge from the past, particularly from Kosovo, and stress the implementation of UN standards, including the UNDM, the importance of rights for all minority groups, not just a few; tackling discrimination through laws and policies and not promoting segregation; ensuring the right to choose identity.
- DPKO, working in particular with member states that carry out peacekeeping, should promote and develop an understanding that ethnic cleansing needs to be reversed quickly after conflict, allowing refugees to return. Situations such as Kosovo, where peacekeepers have continually said that the 'time is not right' for return, should never occur again.

- The UN Office of the High Commissioner on Human Rights should increase significantly the training on minority rights of its staff and other UN staff in conflict regions. OHCHR staff in any office where there has been or is likely to be ethnic or religious conflict should be experts in minority rights.
- The OSCE Office of the High Commissioner on National Minorities should have a coordinating role for all work done by the OSCE in missions on minority issues. The Office should arrange regular meetings in The Hague and elsewhere for all OSCE staff working on minority issues (who should be minority experts) to share experiences.

Relevant International Instruments

International Covenant on Civil and Political Rights, 16 December 1966

Article 27

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.

United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (Adopted by General Assembly resolution 47/135 of 18 December 1992)

Article 2

[…]

2. Persons belonging to minorities have the right to participate effectively in cultural, religious, social, economic and public life.
3. Persons belonging to minorities have the right to participate effectively in decisions on the national and, where appropriate, regional level concerning the minority to which they belong or the regions in which they live, in a manner not incompatible with national legislation.

Article 9

The specialized agencies and other organizations of the United Nations system shall contribute to the full realization of the rights and principles set forth in the present Declaration, within their respective fields of competence.

Framework Convention for the Protection of National Minorities (1995)

Article 3

1. Every person belonging to a national minority shall have the right freely to choose to be treated or not to be treated as such and no disadvantage shall result from this choice or from the exercise of the rights which are connected to that choice.

Article 6

[…]

2. The Parties undertake to take appropriate measures to protect persons who may be subject to threats or acts of discrimination, hostility or violence as a result of their ethnic, cultural, linguistic or religious identity.

Article 15

The Parties shall create the conditions necessary for the effective participation of persons belonging to national minorities in cultural, social and economic life and in public affairs, in particular those affecting them.

Notes

1 Speech to Chicago Economic Club, 22 April 1999.
2 See www.nato.int/kfor
3 Previous UN administrations in Cambodia, East Timor and West Papua have been much shorter in duration.
4 See, for example, Statistical Office of Kosovo, 2000, http://www.ks-gov.net/esk/index_english.htm
5 Initially known as the Kingdom of Serbs, Croats and Slovenes.
6 See Malcolm, N., *Kosovo: A Short History*, London, Macmillan, 1998, ch. 15.
7 This was known as the Kosovo Verification Mission (KVM).
8 OSCE, *Kosovo/Kosova, As Seen, As Told,* Part 1, Warsaw, OSCE, 1999, http://www.osce.org/documents/mik/1999/11/1620_en.pdf
9 OSCE/UNHCR, *Eighth Assessment of the Situation of Ethnic Minorities in Kosovo,* Pristina, OSCE/UNHCR, 2001, p. 1.
10 Zubin Potok; Zvečan/Zveçan; Leposavič/Leposaviq.
11 It is now generally believed that Roma originated in what is now Pakistan and north-west India. See Malcolm, *op. cit.,* ch. 11.
12 *Ibid.*
13 See ERRC, *Justice for Kosovo,* http://www.errc.org/cikk.php?cikk=2457&archiv=1
14 The English word 'gypsy' is thought to derive from a belief that the Roma originated in Egypt.
15 OSCE/UNHCR, *Eighth Assessment, op. cit.,* p. 34.
16 *Ibid.,* p. 42.
17 One major difference is that the Bosnian language invariably uses the Latin script, unlike Serbian which is normally written in Cyrillic.
18 OSCE/UNHCR, *Assessment of the Situation of Ethnic Minorities in Kosovo* (Fourth Assessment), Pristina, OSCE/UNHCR, 2000.
19 Shadow Report, *FCNM in Kosovo*, Pristina, 2005, p. 29.
20 Many Albanians also went to Turkey.
21 Malcolm, *op. cit.,* ch. 11.
22 Resolution 1244 (UN Security Council, 10 June 1999) even refers to an 'agreed number' of Yugoslav and Serb military and police personnel returning to Kosovo. There has been no attempt to make this happen.
23 Resolution 1244, Article 11.
24 Namely: Sergio Vieira de Mello (acting), Bernard Kouchner, Hans Haekkerup, Michael Steiner, Harri Holkeri, Soren Jessen-Petersen.
25 KFOR is now divided into four brigades.
26 Resolution 1244, Article 10.
27 See, for example, the International Covenant on Civil and Political Rights, Article 17, the Convention on the Rights of the Child, Article 12 and the Convention on the Elimination of All Forms of Racial Discrimination.
28 OSCE/UNHCR, *Preliminary Assessment of the Situation of Ethnic Minorities* (First Assessment), Pristina, OSCE/UNHCR, 1999.
29 See OSCE/UNHCR, *Assessment of the Situation of Ethnic Minorities* (Second Assessment), Pristina, OSCE/UNHCR.
30 See OSCE/UNHCR, *Ninth Assessment of the Situation of Ethnic Minorities*, Pristina, OSCE/UNHCR.
31 OSCE/UNHCR, *Assessment of the Situation of Ethnic Minorities in Kosovo* (Third Assessment), Pristina, OSCE/UNHCR, 1999.
32 Personal information.
33 See OSCE, *As Seen, As Told,* Part 1, *op. cit.,* ch. 14.
34 Quoted in *ibid.*, Part 2, p. xvi.
35 *Ibid.*
36 *Ibid.,* Part 2, Introduction.
37 *Ibid.,* p. 68, quoting UNHCR and the Centre for Peace and Tolerance, Pristina.
38 See OSCE/UNHCR, Fourth Assessment, *op. cit.,* p. 18.
39 In 1999 the documents do not distinguish between Roma, Ashkalia and Egyptians.
40 ERRC, *Written Comments Concerning Kosovo for the UN Human Rights Committee*, Budapest, ERRC, 2006, http://www.errc.org/cikk.php?cikk=2531
41 OSCE, *As Seen, As Told,* Part 2, *op. cit.,* p. 43.
42 ERRC, 'Victims of Kosovo poisoning bring lawsuit at European Court of Human Rights', Feb. 2006, http://www.errc.org/cikk.php?cikk=2519
43 OSCE/UNHCR, Second Assessment, *op. cit.,* p. 1.
44 For a summary of the definitions of ethnic cleansing see Petrovic, D., 'Ethnic cleansing – an attempt at methodology', *European Journal of International Law,* vol. 5, no. 1, 1994, p. 359.
45 OSCE, *As Seen As Told,* Part 2, *op. cit.,* Foreword.
46 *Ibid.,* Executive Summary.
47 See *The Observer,* 'Revealed: UN-backed unit's reign of terror', 12 March 2000, quoting an internal UNMIK report. The leader of the KPC, Agim Ceku, was reported to be present at a mass walk-out by KPC members when the Serb language was used at an official function. He was nominated as Prime Minister of Kosovo in 2006.
48 Interview with international officials, 2005. See also OSCE/UNHCR, *Ninth Assessment, op. cit.*
49 See OSCE/UNHCR, *Tenth Assessment of the Situation of Ethnic Minorities in Kosovo,* Pristina, OSCE/UNHCR, 2002.
50 Speech at Stockholm International Forum, 28 January 2004.
51 Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo, S/2004/348, 30 April 2004.
52 See notably, Human Rights Watch (HRW), *Failure to Protect: Anti-minority Violence in Kosovo,* New York, HRW, 2004.
53 Interviews with international officials, Pristina, 2005.
54 See OSCE, 'The Response of the Justice System to the March 2004 Riots', Pristina, Dec. 2005; Human Rights Watch (HRW), *Not on the Agenda: The Continuing Failure to Address Accountability in Kosovo Post-March 2004,* New York, HRW, May 2005.
55 FCNM, Article 6.
56 See in particular the ten OSCE/UNHCR *Assessments of the Situation of Ethnic Minorities in Kosovo.*
57 With the partial exception of French and Italian police forces attached to their armies.
58 One of these buses, carrying Serbs, was attacked in February 2000.
59 OSCE/UNHCR, *Assessment of the Situation of Ethnic Minorities in Kosovo* (Sixth Assessment), Pristina, OSCE/UNHCR, 2000, p. 27.
60 See, for example, International Crisis Group (ICG), *Finding the Balance: The Scales of Justice in Kosovo,* Brussels, ICG, 2002.
61 See Hehir, A., 'Kosovo five years later', *ZMag,* vol. 17, no. 6, June 2004, http://zmagsite.zmag.org/Jun2004/hehir0604.html
62 OSCE, *As Seen As Told,* Part 2, *op. cit.,* p. 72.
63 *Ibid.,* p. 95.

64 See OSCE/UNCHR, Fourth Assessment, p. 16, *op. cit.*
65 OSCE, *As Seen, As Told,* Part 2, *op. cit.,* p. 101.
66 *Ibid.,* p. 120.
67 OSCE/UNHCR, *Assessment of the Situation of Ethnic Minorities in Kosovo* (Fifth Assessment), Pristina, OSCE/UNHCR, 2000, p. 2.
68 OSCE/UNHCR, *Eighth Assessment, op. cit.,* p. 13.
69 See ERRC, *Written Comments Concerning Kosovo, op. cit.*
70 See Fabian, G., 'Implementation of the anti-discrimination law in Kosovo: a plan in need of execution', http://www.errc.org/cikk.php?cikk=2459
71 See OSCE/UNHCR, *Fifth Assessment, op. cit.*
72 The EU has years of experience of anti-discrimination law on the grounds of gender. Two Directives passed in 2001 have required all member states (and applicant states) to pass laws prohibiting discrimination on the grounds of race, religion, disability, age and sexual orientation.
73 The main reason for this opposition seems to have been a desire to oppose the creation of all permanent institutions in Kosovo.
73 See Fabian, *op. cit.*
75 UNMIK, *Kosovo Standards Implementation Plan,* Pristina, UNMIK, March 2004, p. 85.
76 See OSCE/UNHCR, Sixth Assessment, *op. cit.*, p. 31.
77 OSCE/UNCHR, *Eighth Assessment, op. cit.*, p. 14.
78 UNMIK, Regulation on the Registration of Contracts for the Sale of Real Property in Specific Geographic Areas of Kosovo, August 2001.
79 OSCE/UNCHR, *Ninth Assessment, op. cit.,* p. 38.
80 FCNM, Article 15.
81 OSCE/UNHCR, *Tenth Assessment, op. cit.,* p. 61.
82 *Ibid.*, p. 62.
83 *Ibid.*, p. 60.
84 Constitutional Framework, ch. 8 (a), http://www.unmikonline.org/constframework.htm
85 Advisory Committee on the FCNM, Opinion on the Implementation of the FCNM in Kosovo (adopted on 25 November 2005), ACFC/OP/I(2005)004, para. 17.
86 Regulation No. 2000/47, On the Status, Privileges and Immunities of KFOR and UNMIK and their Personnel in Kosovo.
87 Shadow Report, *op. cit.*, p. 13
88 *Ibid.*, p.16.
89 UNMIK, Kosovo Standards Implementation Plan, *op. cit.,* p. 3.
90 See, for example, OSCE/UNHCR, Fourth Assessment, *op. cit.*, p. 5, re the removal of static guards without consultation.
91 Report of the Secretary-General on the United Nations Interim Administration of Kosovo, 26 Jan. 2004.
92 UNIFEM, 'Gender profile', Kosovo, http://www.womenwarpeace.org/kosovo/kosovo.htm
93 See 'Oslo Recommendations regarding linguistic rights of national minorities and Explanatory Note', http://osce.org/documents/hcnm/1998/02/2699_en.pdf
94 OSCE/UNHCR, Fifth Assessment, *op. cit.,* p. 15.
95 Advisory Committee on the FCNM, Opinion, *op. cit.,* para 73.
96 UNMIK, Conclusions and Recommendations of Task Force on Language Compliance, internal document, 2004.
97 Assembly Support Initiative Newsletter, Prishtine/Pristina, Feb. 2006.
98 See Waringo, T., 'Kosovo: The Missing', *Transitions Online*, May 2006; URL: http://www.tol.cz/look/TOL/article.tpl?IdLanguage=1&IdPublication=4&NrIssue=167&NrSection=2&NrArticle=17178
99 UNOSEK, internal document on decentralization, April 2006.
100 Kosovo Delegation for Negotiations, *Framework for the Protection of Rights of Communities in Kosovo,* April 2006.
101 Interview with UN officials, June 2006.
102 Only Armenians, Jews and Greeks are acknowledged to be a minority.
103 OSCE, *As Seen, As Told,* Part 2, *op. cit.,* Foreword.

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working to secure the rights of minorities and indigenous peoples

minority rights group international

Minority Rights in Kosovo under International Rule

After seven years of international administration – the longest and most expensive since the creation of the UN – Kosovo remains one of the most segregated places in Europe, with thousands of displaced persons still in camps, and many 'ethnically pure' towns and villages.

The report discusses the failure on the part of the international protectorate to learn lessons from the past and to draw on the minority rights expertise available within the UN and other bodies. It shows how decision-makers have been unaccountable, and how the Constitutional Framework they have produced treats minority rights in a way that encourages segregation rather than integration.

As the future status of Kosovo is negotiated, the report calls for radical change away from the acceptance of patterns of segregation that lead to ethnic cleansing and towards minority rights guaranteed by the rule of law.

The report is essential reading for all those interested in understanding Kosovo and how to create a more hopeful future there, while its analysis also holds lessons for those working for the effective implementation of minority rights in other contexts.

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