

**Organization for Security and Co-operation in Europe
MISSION IN KOSOVO**

Department of Human Rights and Rule of Law

**HUMAN RIGHTS CHALLENGES
following the March riots**

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GLOSSARY

COMKFOR	Kosovo Forces Commander
CMRB	Crisis Management Review Body
CSW	Centre for Social Work
HPCC	Housing and Property Claims Commission
HPD	Housing and Property Directorate
HROC	Human Rights Oversight Committee
ICESCR	International Covenant on Economic, Social and Cultural Rights
IDPs	Internally Displaced Persons
IPWGHR	Inter-Pillar Working Group on Human Rights
JIS	Judicial Integration Section
KCB	Kosovo Consolidated Budget
KFOR	Kosovo Forces
KFOR FRAGO	Kosovo Forces Fragmentary Order
KPS	Kosovo Police Service
LCO	Local Community Officer
MCO	Municipal Community Officer
OCA	Office of Community Affairs
OMiK	OSCE Mission in Kosovo
ORC	Office for Returns and Communities
OSCE	Organization for Security and Co-operation in Europe
PISG	Provisional Institutions of Self-Government
SRSg	Special Representative of the Secretary-General
UNHCR	United Nations High Commissioner for Refugees
UNMIK	United Nations Interim Administration Mission in Kosovo
UNSC	United Nations Security Council

INTRODUCTION

On 17 March 2004, teachers led their students onto the bridge connecting north and south Mitrovicë/Mitrovica in a protest against the deaths of three Kosovo Albanian children who were allegedly chased into the Ibar River by Kosovo Serbs with dogs. Three hours later, six persons had been killed and houses throughout Kosovo were in flames as angry protesters made their way. The campaign of ethnic violence lasted for three days and left 19 dead, 954 injured, 4100 displaced, 550 houses and 27 Orthodox churches and monasteries burnt and an additional 182 houses and two churches/monasteries damaged.

In the wake of the violence, the OSCE Mission in Kosovo (OMiK), undertook a monitoring programme in order to gain an overview of the human rights violations that occurred in relation to the violence, including the responses (or lack thereof) from the appropriate authorities.¹ A number of human rights challenges have crystallized following the riots.

This document does not contain a detailed analysis or a mapping of the human rights violations that occurred during 17-20 March. The March events reminded us of the far reaching ethnically-motivated violent attacks, carried out especially against Kosovo Serbs and Roma in the summer of 1999. At that time there were no structures in place to address these challenges. It was OMiK's duty to report about these events in full detail.

Today, five years later, institutions are in place. These institutions, international or local, are mandated by law to take on the new challenges. OMiK will devote its resources to assisting these institutions in the management of a broad range of human rights problems resulting from the March events; through monitoring in the short-term, and capacity building and advice in the medium- and long-term.

The purpose of this document is to make OMiK's human rights work transparent. The document at hand is highlighting the key human rights problems stemming from the violence – for the responsible authorities and for the public at large. It can be seen as an early warning indicator. The responsible authorities need to address the identified problems rather sooner than later in order to ensure that ethnic violence does not pay.

Governmental authorities have an inherent obligation under international law to protect residents and their property from violence.² Moreover, under domestic law, the governmental authorities are liable for loss due to death, bodily injury and damage of property due to acts of violence in the course of street demonstrations and public events.³

OMiK will work with the responsible authorities to ensure that the necessary response to the March events is done in a fully human rights and rule of law compliant fashion. UNMIK has the legal obligation to assume responsibility for the shortcomings of its law enforcement agencies, and should promptly and thoroughly investigate and prosecute the crimes

¹ During 23 to 26 March, OMiK Human Rights Officers interviewed approximately 100 victims or witnesses of the violence.

² See Article 1, Protocol 1 of the European Convention on Human Rights.

³ See Article 180, the Law of Contract and Torts. International standards also require governmental authorities to endeavour to have in place effective procedures and structures to respond to various needs of victims, such as access to the justice system and compensation. See for example Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, General Assembly Resolution 40/34, dated 29 November 1985.

committed in relation to the violence.⁴ KFOR should conduct a review of its responses during the violence in order to examine whether there exist structural or operational problems.

The central Provisional Institutions of Self-Government (PISG) and especially the municipalities need to pro-actively provide for essential services such as education and health care to all communities in Kosovo. The minority communities should not have to rely on the services provided by parallel structures. The PISG have to assume full responsibility for its executive powers under the Constitutional Framework⁵ and UNMIK Regulation 2001/19⁶ and operate in a way that parallel structures become superfluous.

OMiK does not wish to dictate certain behaviour or propose a way out of the misery. The way forward needs to be developed in partnership between local and international actors. For the sake of efficiency and for the sake for the people of Kosovo, the challenges outlined in this document have to be met by the responsible authorities. The PISG and UNMIK should, in designing and implementing their programmes in response to the violence, send a clear message that ethnic violence is unacceptable in a democratic society.

⁴ When violence has occurred, governmental authorities have, according to international human rights standards, an obligation to investigate and prosecute those responsible. See Article 3 and 8 of the European Convention on Human Rights as interpreted by the European Court of Human Rights. See for example *Costello-Roberts v. United Kingdom*, European Court of Human Rights, 13134/87, 25 March 1993, *A v. United Kingdom*, European Court of Human Rights, 25599/94, 23 September 1998, *Z and others v. United Kingdom*, European Court of Human Rights, 29392/95, 10 May 2001, and *X and Y v. Netherlands*, European Court of Human Rights, 8978/80, 26 March 1985.

⁵ UNMIK Regulation 2001/9 On the Constitutional Framework for the Provisional Self-Government of Kosovo.

⁶ UNMIK Regulation 2001/19 On the Executive Branch of the Provisional Institutions of Self-Government.

SECURITY

1.1. Introduction

In their immediate response to the events of 17-19 March, KFOR, UNMIK Police and the Kosovo Police Service (KPS) demonstrated serious gaps in their ability to control and contain the violence, and to protect the safety of members of minority communities.

According to Article 28 of the Universal Declaration of Human Rights, “everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realised.” It is the role of KFOR, UNMK Police and the KPS to help achieve this social and international order for the citizens of Kosovo by protecting all citizens’ human rights from infringement by others and by respecting human rights in the exercise of their duties. OMiK’s monitoring of the security sector in Kosovo is primarily focused on the activities of UNMIK Police and the KPS, and, following the events of 17-19 March, the challenge remains that of supporting the development of an effective, accountable and human rights compliant police service that has the confidence and support of members of all ethnic communities in Kosovo.

However, the events of 17-19 March have put the structure of UNMIK Police and the KPS under severe strain, as UNMIK Police focuses its resources on investigating those events, whilst at the same time attempting to maintain its core policing functions, continuing with the transition of responsibilities to the KPS, and adapting its procedures to ensure compliance with the requirements of the recently introduced Provisional Criminal Code and Criminal Procedure Code.⁷

1.2 Human Rights Issues

1.2.1 Concern over the future security of minorities

The events of 17-19 March have severely limited the ability of members of minority communities to live, travel and work in Kosovo and set back their trust in the ability of KFOR, UNMIK Police and the KPS to maintain a secure environment and police effectively.

Additional measures are therefore required in order to rebuild trust and to improve security for minorities. In this context, OMiK welcomes the joint commitment made by KFOR Multi National Brigade (Centre) Commander and the UNMIK Police Prishtinë/Priština Regional Commander to “conduct training and mutual operations and to create an effective command and control system, so together we can fight any situation that we’ll be faced with.”⁸ However, it is regrettable that this commitment was only made after the events of 17-19 March. As long ago as 15 May 2002, COMKFOR ordered (as a cornerstone of the KFOR/UNMIK Security Transition Strategy⁹) that “Commanders should conduct joint training with UNMIK Police personnel in order to better prepare for coherent and appropriate responses to given security threats.”¹⁰ It is clear that a coherent and appropriate response was lacking on 17-19 March 2004.

Nonetheless, many of the displaced persons interviewed by OMiK in the immediate aftermath of the violence indicated their determination to remain in Kosovo and to re-occupy and

⁷ UNMIK Regulations 2003/25 and 2003/26.

⁸ Newspaper report (*Epoka e Re*) Prishtinë/Priština, 16 April 2004.

⁹ KFOR/UNMIK Security Transition Strategy, 29 May 2002, annex B to KFOR FRAGO 1285.

¹⁰ HQKFOR COMKFOR Directive 25: Cooperation with UNMIK Police, 15 May 2002.

rebuild their homes, if appropriate protection is provided by KFOR. The deployment of KFOR reinforcements and the re-establishment of fixed and visible security measures in and around enclaves and patrimonial sites have provided short-term re-assurance for minority communities.

However, whilst an increased KFOR presence is clearly necessary as an immediate response to the mid-March events, it cannot provide a permanent sustainable solution to the security of members of minority communities. The underlying root causes of the violence need to be identified and addressed by UNMIK and the PISG in order to foster conditions whereby minority safety and security can be provided within the framework of the normal policing activities of UNMIK Police and eventually by a multi-ethnic KPS.

OMiK will monitor, as part of its ongoing activities, the implementation of any KFOR strategy to provide security for minority communities, and the interrelationship between the KFOR and UNMIK Police/KPS strategies in this regard, including the implementation of the KFOR/UNMIK Security Transition Strategy.¹¹

1.2.2 Concerns over the thoroughness and impartiality of investigations into criminal acts.

The ethnic character of the violence and allegations that individual Kosovo Albanian KPS officers actively participated in the disturbances (or did not prevent the attacks taking place)¹² may give rise to concern amongst minority communities that police investigations against alleged perpetrators will be compromised if KPS officers participate.

With regard to the conduct of their investigations, UNMIK Police have announced the establishment of dedicated investigation task forces at headquarters and at regional levels to investigate the criminal acts which took place over 17-19 March.¹³ The UNMIK Police Commissioner has briefed OMiK on measures being taken to ensure the continuation of core policing functions, to recruit additional UNMIK Police investigators, and to prioritise the investigation of incidents. UNMIK Police and the KPS need to take steps to reassure minority communities that measures are being taken to maintain the integrity of police investigations and ensure the safety of those witnesses whose evidence is reviewed by police investigators. Such measures would help to address the concerns of minority communities over the impartiality of the investigations.

OMiK does not have the mandate to monitor the conduct of police investigations directly but will raise issues of concern with UNMIK Pillar I (Police and Justice) as they arise in the course of ongoing human rights monitoring programmes.

1.2.3 Concern over the thoroughness and impartiality of UNMIK Police Internal Investigations and KPS Professional Standards Unit Investigations.

It is essential, in order to maintain confidence in the accountability of the KPS, that any allegations of criminal conduct, or violations of policies and procedures (including violations of human rights standards) by KPS officers during the events of 17-19 March are fully and properly investigated.

¹¹ The KFOR UNMIK Security Strategy, signed on 29 May 2002, sets out a commonly agreed set of principles between KFOR and UNMIK Police in order to enable responsibility for security tasks to be handed over to UNMIK Police.

¹² These allegations were made to OMiK Human Rights Officers during interviews with IDPs between 23 and 26 March. Where the interviewees gave consent, these allegations were also passed to UNMIK Police for investigation. It should be noted that IDPs also reported instances of Kosovo Albanian and Kosovo Serb KPS officers carrying out their duties properly and effectively during the violence.

¹³ UNMIK Police Briefing Notes, 31 March 2004.

OMiK currently monitors the procedural aspects of the UNMIK Police Internal and the KPS Professional Standards investigations and will provide a report to the Inter Pillar Working Group on Human Rights¹⁴ in this regard by the end of July.

In the meantime, however, OMiK recommends that UNMIK Police and the KPS take steps to ensure that minority communities, and in particular those individuals who have complained of police misconduct during the March violence, are kept fully informed of the progress and outcome of these investigations.

1.2.4 Impact on transition of the Kosovo Police Service

The long-term development of policing in Kosovo depends on the development of an effective KPS. The mid-March events, and the subsequent allegations that individual KPS officers were either directly involved in, or were passive observers to the ethnically targeted violence,¹⁵ are likely to affect UNMIK Police's transition of police stations under their command to KPS' control. OMiK has also been informed that the level of confidence and trust is low amongst Kosovo Serb KPS officers, following the failure of KFOR, UNMIK Police and their Kosovo Albanian KPS colleagues to protect them and their communities.

In one notable example, all the Kosovo Serb KPS officers working at Štrpce/Shtërpçë Police station refused to return to work alongside their Kosovo Albanian colleagues following the riots. The Kosovo Serb KPS officers only resumed their duties when warned that they would be suspended from duty if they did not comply.

OMiK will continue to monitor the effect of the recent violence on the functioning of multi-ethnic policing in Kosovo.

In a broader context, UNMIK Police has informed OMiK that the transition of police stations to KPS control has been frozen pending a planning and strategy review, which will take into account the events of 17-19 March. OMiK has been requested to provide human rights input into this review and will continue to work in partnership with UNMIK Police within the terms of the OMiK mandate to assist with the development of an effective, accountable, and human rights-compliant police service.

1.2.5 Impact on the implementation of the Provisional Criminal Code and the Provisional Criminal Procedure Code

The new Criminal Code and Criminal Procedure Code came into force on 6 April 2004, only three weeks after the violence.¹⁶

The new codes set out a revised supervisory framework within which UNMIK Police and the KPS carry out their investigations. The Public Prosecutor now has authority over the 'judicial police', who is authorised to perform special investigative functions (for example to carry out covert surveillance operations). Certain officers from the regular police are designated as 'judicial police' in this regard. The codes also set out revised time limits and procedures for police actions on arrest, detention and interview.

¹⁴ The Inter Pillar Working Group on Human Rights was established in 2002 as an UNMIK internal human rights monitoring mechanism. It reports to the high-level Human Rights Oversight Committee, which is mandated to consider and agree on actions and policies to enhance human rights protection in Kosovo.

¹⁵ See footnote 12 *supra*.

¹⁶ UNMIK Regulations 2003/25 and 2003/26.

OMiK is concerned that the mid-March violence may have disrupted the final training and preparations for police implementation of these codes and that the rights of arrested persons provided for in these codes may not be properly upheld.

OMiK will therefore continue its ongoing monitoring programme on the rights of arrested persons in order to assess UNMIK Police and the KPS awareness and implementation of the relevant parts of the new codes.

ACCESS TO JUSTICE

2.1. Introduction

While ensuring access to justice has been a continual challenge for authorities in Kosovo during recent years,¹⁷ the March events did have the consequence of further complicating the situation. First, the ability of Kosovo residents from minority communities to physically access courts to address their specific legal concerns has been further complicated. Secondly, court staff from minority communities – including judges, prosecutors and support staff – have faced additional difficulties in terms of accessing courts as employees.

2.2 Human Rights Issues

2.2.1 The ability of Kosovo residents from minority communities to physically access courts to address their specific legal concerns

Even before the March riots, access to courts by members of minority communities has been a complicated issue. Members of minority communities who need to access courts often face inconveniences in having transportation arranged. In some communities, such as upper Rahovec/Orahovac, individuals who need visit the court must rely on the UNMIK Local Community Office, which will assist in contacting the police station to arrange transport. In other communities, the UNMIK Department of Justice has arranged court liaison offices.

Mitrovicë/Mitrovica presents unique problems regarding access to justice, as it is an ethnically divided town with the courts located in the Kosovo Serb predominated north. KFOR transports court staff from the south to the north three times per day, and from north back to south twice per day. This system has operated smoothly, except for the period immediately following the March riots. At the same time, UNMIK Police operates a shuttle to transport parties and witnesses between the confidence zone in the south and the courthouse. This transport is arranged several times per day, but subject to occasional delays. After the March violence, this transport service resumed on 23 March, at the same time that normal court activities resumed. Thus, while KFOR and UNMIK have taken measures to address the transport situation in Mitrovicë/Mitrovica, access to courts is somewhat limited due to logistical necessities.

At the same time, the events of March may affect the ability of courts to locate members of minority communities, such as witnesses or parties. The President of Prishtinë/Priština Municipal Court, for example, has stated that the court has been unable to establish contact with displaced Kosovo Serbs in order to hear testimonies regarding the events of 17 – 19 March. Given that the determination of residence of individuals has proven challenging even prior to the March events, lack of contact information of displaced persons could further complicate court proceedings and cause delays.

2.2.2 The ability of court staff from minority communities to access their place of work

During and immediately following the events of March, several courts had to shut down entirely for a few days. All courts in the Mitrovicë/Mitrovica municipality were closed from 17 until 23 March. Courts in Leposavić/Leposaviq were closed on 22 and 23 March, while the courts in Zubin Potok were closed on 18 March and reopened on 23 March. The department of the Municipal Court of Ferizaj/Uroševac and the Minor Offences Court in Štrpce/Shtërpçe

¹⁷ For further information, refer to OMiK and UNHCR's joint *Tenth Assessment of the Situation of Ethnic Minorities*, March 2003, pp. 29 – 33.

were reopened a few days after the events in March, though the Kosovo Albanian judges and support staff did not return until 5 April.

Several judges, prosecutors and support staff from courts throughout Kosovo were unable to return to work immediately after the crisis, while a few staff members have still been unable to return. For instance, four Kosovo Serb support staff, employed in the Rahovec/Orahovac municipal and minor offences courts, could not report to work until 3 May. According to their court presidents, they were advised by UNMIK to stay home until further notice. One Kosovo Serb prosecutor has yet to return to work in the Gjilan/Gnjilane Municipal Court. One minority staff member of the Ashkali community has yet to return to work in the Vushtrri/Vučitrn Minor Offences Court. Two Kosovo Albanian staff members from Cabrë/Cabra have still not reported to work in Zubin Potok.

2.3 Steps taken by UNMIK to address the concerns

The UNMIK Department of Justice, through its Judicial Integration Section (JIS), has been addressing access to justice problems affecting minorities, as well as supporting minority court staff. In this context, after the March events, the JIS has been providing additional support to court liaison offices, located in Gračanica/ Graçanicë, Goradëvac/Gorazhdëvac and Novobërdë/Novo Brdo, by providing legal support to displaced Kosovo Serbs. It has been facilitating the work of UNMIK Police in assessing the needs for close protection and secure transport of Kosovo Serbian judges and prosecutors, as well as facilitating secure transport for other court personnel. It has also been exploring options for offering free legal services to victims of the March violence.

2.4 Follow-up

OMiK will continue to monitor the issue of access to justice and provide support and/or recommendations as appropriate. It will look further into: a) whether individuals from minority communities face additional hardships in accessing courts; b) whether court staff have returned to work; c) whether court staff are provided with the necessary security and transport to and from courts; d) whether the courts in the north are provided with all the necessary support; and, e) whether courts possess all necessary information regarding persons displaced throughout Kosovo.

LEGAL SYSTEM MONITORING

3.1. Introduction

As regards the monitoring of the criminal justice system, OMiK has adjusted its activities to give priority to cases relating to the outbreak of violence in mid-March. According to the police, approximately 180 arrests have been made during or following the violence; a number that is expected to increase further as KFOR, UNMIK Police and the KPS continue their investigations. Most of the arrests were made in the Gjilan/Gnjilane and Prishtinë/Priština regions, despite the fact that areas, such as Prizren and Mitrovicë/Mitrovica, experienced large-scale disturbances.

The mid-March violence may affect the criminal justice system in a number of ways. It should however be noted that many of the issues listed below are potential concerns, which have been included on the basis of experience from past monitoring. The level of actual human rights violations, if any, will only become apparent once the trials are complete.

3.2 Human Rights Issues

In relation to the monitoring of riots-related cases, OMiK is of the view that the following concerns may arise.

3.2.1 Perception of bias of Kosovo Albanian judges

The ethnic character of the violence may give rise to concerns amongst the Kosovo Serb and Ashkali communities that Kosovo Albanian judges would be biased in favour of Kosovo Albanians accused. OMiK is concerned with the perception that the minority communities might have of the Kosovo Albanian dominated criminal justice system, rather than actual bias. A lack of trust may discourage witnesses from minority communities from coming forward to report what they know to the police and/or from testifying at trial. This, in turn, may result in denial of justice for the victims of crimes.

From the outset international judges and prosecutors were appointed to deal with war crimes and other ethnically motivated violence, *inter alia*, to avoid any perception of partiality on behalf of the local judges. However, international judges do not have the capacity to deal with all the riot-related cases and will not be available to deal with ethnically sensitive cases indefinitely. Ultimately, it will be for the local judges to show that they handle all cases fairly and impartially and to build trust through good judicial practice.

3.2.2 Witness protection/ intimidation

The lack of trust by minorities in the justice system and in the UNMK authorities' ability to provide effective protection could mean that minority witnesses fear reprisals for giving evidence. Again, this may discourage the witnesses from coming forward.

Such fear may also exist amongst Kosovo Albanian witnesses in relation to high profile cases against Kosovo Albanian accused, such as those cases which charge the alleged ringleaders.

In this regard, OMiK has concerns that the police, prosecutors and judges are still not sufficiently trained in the use of witness protection measures.¹⁸

3.2.3 Pressure on local judges and prosecutors

Due to the sensitive nature of some cases, mainly those against the alleged organisers of the riots, there is a possibility that local judges and prosecutors would come under pressure in the form of threats or bribes. This may seriously affect the proper administration of justice.

3.2.4 Capacity of the justice system to cope with influx of cases

OMiK has previously reported on the problems of an increasing backlog of cases and on the current inadequate assignment of judges to courts.¹⁹ This increasing backlog may affect the entire system, and fair trial standards may be compromised in an effort to reduce the workload. The influx of riots-related cases might put further strain on the judicial resources. This is particularly so considering that the courts have only just started to apply the Provisional Criminal Code and the Provisional Criminal Procedure Code²⁰ (see below).

3.2.5 Detention-related issues

The increased number of persons arrested due to the violence may lead to concerns in relation to pre-trial detention. Several cases of detention by KFOR during or following the riots have already been noted. Although OMiK is of the view that, under normal circumstances, KFOR detentions are both illegal and unjustified,²¹ the situation during the riots was such that these detentions may be justified and in accordance with KFOR's mandate under UNSC Resolution 1244, which empowers KFOR to protect the safety and security of the environment. Nonetheless, if not released, all persons detained by KFOR should be handed-over to the civilian authorities at the first opportunity so that the detainees may be formally charged and benefit from a judicial review of their detention.

Concerns may also arise in relation to regular courts who fail to abide by the legal deadlines prescribed in the criminal codes for extending a person's pre-trial detention. OMiK has noted that, even under normal circumstances, courts sometimes fail to provide adequate justification for pre-trial detention. With the added pressure due to the influx in cases, courts may fail to properly consider the issue of pre-trial detention and simply 'rubber stamp' a prosecutor's request.²²

3.2.6 Prison overcrowding

The overcrowding of the prisons and detention facilities in Kosovo (with a prison population of 1301 persons on 17 March, i.e. 151 more than the established prison capacity) constituted a serious problem even before the riots broke out. The penal management may therefore face problems in accommodating a large number of new detainees and prisoners. It should

¹⁸ For more detail regarding the OMiK's concerns regarding the witness protection system, see OSCE report, "Review of the Criminal Justice System (March 2002 - April 2003): Protection of Witnesses in the Criminal Justice System."

¹⁹ See OSCE Mission in Kosovo, Legal System Monitoring Section, Kosovo, Review of the Criminal Justice System "The Administration of Justice in the Municipal Courts" March 2004, p. 10 and OSCE Mission in Kosovo Legal Systems Monitoring Section, Report 9 – On the Administration of Justice, March 2002, p. 10.

²⁰ UNMIK Regulations 2003/25 and 2003/26. The codes entered into force on 6 April 2004.

²¹ See e.g., OMiK report, "Review of the Criminal Justice System (March 2002 – April 2003): Protection of Witnesses in the Criminal Justice System" at page 33.

²² See for example, OSCE, Department of Human Rights and Rule of Law, Weekly Report, (6 February – 12 February 2004).

however be noted that so far most suspects have been released pending trial after a shorter period of detention.

3.2.7 Implementation of the Provisional Criminal Codes and the Provisional Criminal Procedure Code

Investigations that are initiated after the entry into force of the new criminal codes²³ should be conducted under the Provisional Criminal Procedure Code. These codes have introduced major changes in the way that criminal cases are investigated and tried. The sudden influx of cases is bound to make it more difficult for judges and prosecutors to adapt to the new criminal procedure regime.

3.3 Actions by the UNMIK Department of Justice and the Local Judiciary

As of 6 May, around 135 cases directly relating to the riots were being prosecuted in the local courts, while 48 cases²⁴ were being handled by the international prosecutors. The majority of cases involve charges such as looting, theft, and disturbing public peace and order, while a smaller number involve offences such as murder, attempted murder, and attacks on official persons. A few high profile persons have been arrested for allegedly helping to organise the riots.

3.4 Follow-up

OMiK will prioritise the monitoring of the cases arising from the outbreak of violence in March. OMiK will concentrate on monitoring cases handled by the local judiciary, but will also follow up on cases handled by international judges. In addition, the problem of overcrowding in prisons and detention facilities will be monitored.

In light of the above, OMiK will identify potential violations of fair trial rights or any other relevant human rights concerns. OMiK is of the view that the riot cases will serve as a test to ascertain whether the local judiciary is ready to deal with sensitive cases with an ethnic dimension.

²³ 6 April 2004.

²⁴ Department of Justice, Weekly Report, 30 April – 6 May 2004.

PROPERTY RIGHTS

4.1. Introduction

The violent events in March left over 700 homes and religious and public buildings destroyed or damaged and displaced more than 4,000 people. Many of those displaced from their homes are still unable to return due to security concerns, destruction of property, or illegal occupation of their property. The forced displacement of people and the damage to and destruction of property represent a failure of the governing authorities to protect the rights of the most vulnerable, and constitute present and continuing gross violations of human rights related to property, the right to a home, and to adequate housing, amongst others. Under international standards, the authorities have an obligation to ensure that effective remedies for these violations exist and are accessible to the victims. In addition, the March violence generates positive obligations for these authorities to respect and protect the rights of displaced people,²⁵ including their right to return to their homes.

Many of the human rights challenges posed by the March violence are similar to those that already existed in Kosovo due to the post-1999 conflict situation and the transition of the political-economic system (with the changes in ownership and property rights this involves). As such, many of the recommendations that OMiK has previously articulated, on issues such as illegal occupation, reconstruction, and other property rights issues, remain valid. Some of them though may require particular focus in the coming months. Those recommendations will not be repeated in full here.²⁶

4.2 Human Rights Issues

The March violence has also re-emphasized the point that the failure of the competent authorities to protect the rights of the most vulnerable can be seen to be rooted in existing deficiencies in the structures designed to prevent and respond to property-related violations. This failure has in turn contributed to the existence of a climate of relative impunity in relation to property rights violations.

Addressing these deficiencies is fundamental to preventing a recurrence of such violations in the longer term. It is also key to ensuring that people have the secure physical access to their homes and property that is necessary to return. Under international standards, the provision of effective remedies for gross violations of human rights should include reparations when appropriate. Granting reparations normally requires not merely restitution in kind²⁷ but also reasonable measures to guarantee the non-repetition of these violations,²⁸ such as investigation of the incidents and prosecution of those responsible.

4.2.1 Allocation of temporary accommodation for the internally displaced

OMiK is concerned that IDPs' rights to an adequate standard of living during their period of displacement, may be neglected while more politically high-profile issues, such as

²⁵ See the UN Guiding Principles on Internal Displacement ("Guiding Principles", UN document E/CN.4/1998/53/Add.2, dated 11 February 1998) for a detailed enumeration of these rights.

²⁶ See OSCE, *Property Rights in Kosovo, 2002-2003* for a comprehensive set of recommendations.

²⁷ "Restitution" is used here to refer to the restoration/repossession of property lost, not necessarily property confiscated by the State.

²⁸ Reparations also require compensation and rehabilitation. "Study concerning the right to restitution, compensation and rehabilitation for victims of gross violations of human rights and fundamental freedoms. Final report submitted by Mr. Theo van Boven, Special Rapporteur", E/CN.4/Sub.2/1993/8, 2 July 1993, page 56.

reconstruction, are the main focus of attention for the PISG and other relevant authorities.²⁹ Large numbers of those who are displaced from their homes are living in temporary or alternative accommodation because they have no immediate prospect of returning to their homes. Protecting IDPs' right to an adequate standard of living therefore includes access to alternative or temporary accommodation that has a minimum standard of sanitation and is linked to basic infrastructure.³⁰ Yet, OMiK has received reports of cases in which IDPs are living with poor sanitation and in inadequately adapted buildings.³¹

OMiK also is concerned that IDPs' access to alternative or temporary accommodation is being hampered by inconsistent involvement of responsible municipal officials in this process, as well as a lack of coordination in allocation of this accommodation. According to UNMIK Regulation 2000/45 On the Self-Government of Municipalities in Kosovo, municipalities are responsible for the provision of social housing.³² Yet, only some municipal authorities have been involved in finding accommodation for IDPs while others have played no role, leaving it to the IDPs themselves, or other agencies to resolve this issue.³³

While OMiK recognises that municipalities currently have limited resources to provide such accommodation, municipalities are still obliged to appropriately coordinate and direct available resources to help protect this right. Yet, as noted, municipal authorities do not appear to be consistently fulfilling this responsibility. In general, this has led to IDPs receiving accommodation on an *ad hoc* basis through various agencies or not receiving any at all. According to information collected by OMiK, more than 1,000 IDPs were temporarily accommodated by KFOR following the violence, while others were housed in temporary accommodation of other kinds (public buildings, camps etc.) and hundreds more took refuge with private host families. The Housing and Property Directorate (HPD) also has the ability under its mandate to allocate temporary permits to occupy homes for people in need of humanitarian housing assistance, and has done this for some of those displaced by the March violence.³⁴ While OMiK realises that municipalities were confronted with an emergency situation, municipal authorities now should take the lead coordinating role in order to ensure that those displaced in their municipalities enjoy adequate temporary accommodation until they can return home or chose to go elsewhere.³⁵

OMiK is also concerned that if the authorities fail to adequately address the temporary accommodation needs of IDPs, this will tend to encourage IDPs to illegally occupy either public or private accommodations (with better living conditions), thereby perpetuating the cycle of property rights violations (see below).

²⁹ Under the International Covenant on Economic, Social and Cultural Rights (ICESCR), particularly Article 11, as well as Principle 18 of the Guiding Principles, municipal and central authorities should provide, without discrimination, a minimum standard of assistance to IDPs, including basic shelter, food, water, clothing and medical services.

³⁰ Committee on Economic, Social, Cultural Rights, "General Comment 4: The Right to Adequate Housing".

³¹ In Mitrovicë/Mitrovica municipality, for example, 150 IDPs are temporarily accommodated in a hospital and two schools, which reportedly have inadequate sanitation facilities.

³² Section 3.1(k). The Ministry of Labour and Social Welfare and the Ministry for Environment and Spatial Planning may also have relevant responsibilities with regard to provision of temporary accommodation and/or social housing.

³³ An "IDP Coordination Board" established in Mitrovicë/Mitrovica region, identified several concerns relating to the immediate needs of IDPs. These included "host fatigue" in situations where IDPs are housed in private accommodation, lack of PISG support for IDPs' needs and the need for adequate temporary accommodation.

³⁴ This has occurred in Mitrovicë/Mitrovica, for example.

³⁵ OMiK notes that the Housing and Property Directorate also has a humanitarian temporary accommodation scheme which could be used.

4.2.2 Reconstruction

Reconstruction is another area in which OMiK envisages human rights challenges. In a decision taken on 20 March, the Executive Branch of the PISG committed to establish a fund for the repair of property damaged during the violent incidents that erupted in Kosovo on 17 March.³⁶ To date, the PISG have not sought to link the provision of reconstruction assistance to individual returns (or, in other words, they have not sought to make the process demand-driven), but have instead committed to reconstruct all buildings that were damaged or destroyed regardless of demand, or the expressed desire of the displaced property rights holder, to return.

OMiK notes that despite the political decision to reconstruct, this action alone does not fulfil the obligation upon the governmental authorities to create the conditions for sustainable return, such as a secure environment or access to employment. Furthermore, this policy decision does not oblige those whose properties are reconstructed to return to their homes. Those who are displaced from their homes and property should be provided the ability to make an informed choice as to whether or not they will choose to exercise their right to return to their homes. Whether or not the displaced choose to exercise this right, the governmental authorities must take reasonable measures to ensure that their property and other rights are protected.³⁷

A more specific key OMiK concern in relation to reconstruction assistance is linked with the procedures for allocating and implementing this assistance. From its previous monitoring of reconstruction processes undertaken in Kosovo, OMiK has noted that the absence of clearly defined and transparent procedures frequently leads to infringements of the property and other related rights of both potential beneficiaries and third parties. Procedures that integrate appropriate rights protections, are harmonised with applicable laws, and involve the appropriate authorities have been shown to prevent such infringements.³⁸ Within the current context, of particular concern is ensuring sufficient minority access to and participation in the reconstruction process, as this will help guarantee fair estimations for and allocation of reconstruction assistance. Kosovo Serb representatives also have voiced their desire to be included in this process.³⁹ The UN Guiding Principles on Internal Displacement also stress the importance of IDP participation in this process.⁴⁰

Damage assessments carried out to date by the PISG signal that concerns regarding lack of minority involvement are well-founded. These assessments were carried out by *ad hoc* commissions in each municipality in which damage had occurred, under the instruction of a specially-established Inter-Ministerial Central Commission.⁴¹ While the assessments were reportedly intended only to provide a rough estimate of the costs to repair or rebuild damaged

³⁶ Decision of the Prime Minister of the Government of Kosovo, dated 20 March 2004.

³⁷ For example, if a property right holder chooses not to return, the governmental authorities should take reasonable steps to prevent trespass and vandalism, and should take reasonable measures to ensure that the property right holder has reasonable access to courts and municipal services, like the immovable property rights registry, in order to dispose of or lease his property, or to seek redress for infringements of violations.

³⁸ See OSCE Department of Human Rights and Rule of Law Weekly Report, 17-23 March 2003; Chapter 6, OSCE, *Property Rights in Kosovo, 2002-2003* and OSCE/UNHCR, *Tenth Assessment of the Situation of Ethnic Minorities in Kosovo*, March 2003 amongst others.

³⁹ During the week of 3 May (letter is undated), the additional Deputy Presidents of the municipalities of Fushë Kosovo/Kosovo Polje, Obiliq/Obilić, Prishtinë/Priština and Lipjan/Lipljan sent a letter to the Prime Minister requesting the inclusion of Kosovo Serb representatives in the monitoring of the reconstruction process, and Serbian companies as contractors.

⁴⁰ United Nations Guiding Principles on Internal Displacement, *op. cit.*, Principle 28.

⁴¹ The full title of the Commission is the "Inter-Ministerial Commission on the management of the budgetary fund of the Government of Kosovo for the Repairment (sic) of Damages."

homes, information collected by OMiK indicates that there was considerable inconsistency throughout Kosovo in the manner in which they were carried out and that in many cases the assessments failed to include the participation of the affected communities.⁴²

Focusing on ensuring effective minority access and participation as well as strong rights protections are essential in the tendering, allocation and implementation phases in the reconstruction process. As OMiK has noted in previous reports,⁴³ a strong model for creating such a defined process exists and has been used effectively for over two years—the *UNMIK Housing and Reconstruction Guidelines 2002* (the Guidelines), issued by the Ministry of Environmental and Spatial Planning.⁴⁴ Key provisions of the Guidelines which could be considered for the reconstruction programme of houses damaged during the mid-March events are those ensuring the involvement of minority community members, property rights verification, and review and appeal mechanisms.⁴⁵

As noted above, reconstruction assistance does not alone fulfil the government's obligations towards the displaced, particularly in cases where it is determined that the displaced are *unable* to return. When conditions are such that return is impractical or impossible,⁴⁶ responsible authorities may have additional obligations to provide assistance, or possibly compensation, aside from or in lieu of reconstruction assistance.⁴⁷ Yet, there exists a risk that the provision of cash alternatives to reconstruction could be used for political ends to encourage migration or permanent displacement rather than purely as a form of reparation. In order to minimise this risk, the PISG and UNMIK should ensure that their policies first and foremost facilitate and promote *the right* to return for those who wish to exercise it but also ensure that, for those who do not wish to exercise it, that their rights, such as to dispose of their property freely and to receive appropriate reparations, are respected and protected.

4.2.3 New Illegal Occupations

Addressing illegal occupation is also part of the broader assistance required to facilitate return and ensure appropriate reparations. In general, illegal occupation of residential and non-residential property has been widely acknowledged as a continuing and widespread problem throughout Kosovo, which is impeding return related to the 1999 conflict, and hindering the economic development of Kosovo itself.⁴⁸ During and in the aftermath of the March violence, some partially destroyed or forcibly abandoned properties were newly illegally occupied or

⁴² OMiK has learned, for example, that more than half of the damage assessments undertaken at municipal level were carried out without the required endorsement of minority community members or representatives of those affected by the damage. This includes Prizren and Mitrovicë/Mitrovica municipalities, which suffered some of the worse damage.

⁴³ See OMiK Department of Human Rights and Rule of Law Weekly Reports 16-22 April 2004 and 17-23 March 2003, *Property Rights in Kosovo 2002-2003*, June 2003, and *OSCE/UNHCR Tenth Assessment of the Situation of Ethnic Minorities in Kosovo*, March 2003.

⁴⁴ The current applicability of the Guidelines, however, remains unclear. The Guidelines were published in 2002 and extended for use in 2003 by means of an executive decision. OMiK is not aware of any instruction extending the use of them for 2004 or to the current reconstruction programme (burnt or damaged property during the mid-March events).

⁴⁵ Some provisions, such as beneficiary selection criteria and the complimentary procedures, may not be compatible with the post-March reconstruction process.

⁴⁶ For instance, if the security situation prevents return for a sustained period of time, or restitution is impossible or impractical, conditions might be such that a person is unable to return.

⁴⁷ Principle 29.2 of the UN Guiding Principles on Internal Displacement.

⁴⁸ See Introduction and Chapter 2, OSCE, *Property Rights in Kosovo, 2002-2003*, UNMIK Regulation 1999/23 On the Establishment of the Housing and Property Directorate (HPD) and the Housing and Property Claims Commission (HPCC), 15 November 1999. See also OSCE, Department of Human Rights and Rule of Law Weekly Report, 12-18 December 2003 on illegal occupation of commercial and agricultural land.

illegally re-occupied, while many other properties were left vulnerable to illegal occupation when the occupants fled.⁴⁹

For instance, in Mitrovicë/Mitrovica municipality, 24 Kosovo Albanian apartments in northern Mitrovicë/Mitrovica have been illegally occupied by Kosovo Serbs. In Obiliq/Obilić municipality, a property belonging to a Kosovo Serb is being illegally occupied by a Kosovo Albanian. The HPD is in the process of placing the property under its administration.⁵⁰ In other areas, such as Svinjare/Svinjarë in Mitrovicë/Mitrovica region, individuals have spray painted their names on abandoned properties.

Key Human Rights Concern

In general, under international human rights standards and domestic law, the authorities must take reasonable measures to protect against or prevent further violation of displaced property rights holders' rights, including damage or trespass to their properties.⁵¹ Previously, OMiK has articulated concerns about inadequate protection against illegal occupation in Kosovo, many of which are relevant in this context.⁵² In the wake of the March violence two additional concerns have arisen.

The Role of HPD and the Courts

Prior to the March violence, there was confusion regarding the competencies of the Housing and Property Claims Commission (HPCC) over illegal occupations in relation to abandoned residential property.⁵³ In relation to the March violence, more confusion could be created. The HPD is able to take newly abandoned properties under its administration.⁵⁴ Such measures by HPD could be effective in protecting the properties and thus preventing further violations of the rights of the displaced. However, HPD's activities may cause some confusion for the regular courts about their and HPCC's jurisdiction over related claims because these activities may give the courts the impression that HPCC has jurisdiction over these cases. Currently, the HPCC has no jurisdiction to adjudicate claims regarding the newly illegally occupied properties, unless there was a previous claim on the property in question. The regular courts have jurisdiction over these claims, as illegal occupation and damage to property violate both the civil and criminal codes.

⁴⁹ Such reoccupation refers to properties which have been restored to their rightful possessors, who subsequently abandoned the property during the 17-19 March violence, thus leaving their properties again vulnerable to illegal occupation.

⁵⁰ OMiK is investigating two other cases of possible illegal occupation in Lipjan/Lipljan municipality.

⁵¹ See Principle 21, UN Guiding Principles on Internal Displacement. See also case law related to the right to an effective remedy (Article 13, ECHR) and to property rights such as *Airey v. Ireland*, 6289/73, 10 September 1979, para. 32, *Blentic v. R.S.*, CH/96/17, 5 November 1997, paras 26-32; *Mantovic v. R.S.*, CH/96/1, 11 July 1997, para. 56. See also Article 2, International Covenant on Civil and Political Rights. For Kosovo-specific law, see paragraph 11(j), UN SCR 1244; Section 2, UNMIK Regulation 1999/1 On the Authority of the Interim Administration in Kosovo, and Chapters 2 and 3.2, UNMIK Regulation 2001/9 On a Constitutional Framework for Provisional Self-Government, amongst others.

⁵² See previous OMiK publications referenced in footnote 43 *supra*.

⁵³ Specifically, confusion or lack of clarity existed over to which entity potential HPCC claimants who did not meet the deadline should submit their claim after the HPCC 1 July 2003 claims submission deadline passed. See Department of Human Rights and Rule of Law Weekly Report, 26 May – 1 June 2003 for a more in-depth discussion.

⁵⁴ See Section 1.1, UNMIK Regulation 1999/23, and Section 12, UNMIK Regulation 2000/60 On Residential Property Claims and the Rule of Procedure and Evidence of the Housing and Property Directorate and Housing and Property Claims Commission, 31 October 2000.

UNMIK Police and the Kosovo Police Service

UNMIK Police and the KPS also have a critical preventative and remedial role in protecting the property and related rights of the displaced. They possess the authority to apprehend trespassers or illegal occupiers as well as to support the enforcement of eviction orders when required. Yet, according to information that OMiK has received, UNMIK Police and the KPS are not necessarily using their authority fully to protect property rights, but rather generally focus their property-related activities on enforcing court-, HPD- or HPCC orders.⁵⁵ In order to assist the police in protecting property rights, OMiK suggests additional training (and relevant policy guidance) for UNMIK Police and the KPS on their competencies in relation to trespass, illegal occupation and post-eviction procedures.

4.3 Follow up

OMiK will continue to monitor, analyse, and advise on the allocation of temporary accommodation, the reconstruction process and the resolution of illegal occupations arising from the violence of mid-March. It will also focus more strategically on addressing the culture of impunity surrounding property rights.

OMiK will advocate for greater public awareness of the consequences of insecure property rights, increased accountability of the authorities for active and passive failures to protect property rights, effective enforcement in the legal protection of property rights and the strengthening of property-related laws and institutions.

⁵⁵ For instance, in Pejë/Peć municipality, an illegal occupant broke an HPD order and illegally re-occupied the property. Upon the request of the rightful owner who had returned, the illegal occupant was removed from the premises. He, however, was not charged with trespass or arrested. In other regions, OMiK has received complaints that despite being approached when a trespass has occurred, the police have not acted.

NON-DISCRIMINATION

5.1. Introduction

Following the outbreak of violence against minority communities during the March events, the access to essential services (such as healthcare, education, social welfare, public utilities) and institutions for minority communities (in particular IDPs) is even more restricted due to their limited freedom of movement. Further, the access of minority civil servants to their duty stations proved to be difficult because of displacement and/or because of increased security concerns. Lastly, following mid-March events, the use of all official languages by public officials and the allocation of municipal budget to minority communities through the fair share financing scheme⁵⁶ proved to be even more crucial in order to facilitate the integration of minority communities into public life.

In the aftermath of the mid-March violence, provision of essential services (such as education, healthcare) to affected minority communities is being addressed through existing parallel structures.⁵⁷ In this context, it is of utmost importance that both the responsible municipal and central authorities respond to the needs of these vulnerable groups in accordance with their positive obligations under the applicable law. Any different approach might lead to the strengthening of the existing parallel structures, or to the establishment of new ones.

The following examples are not deemed to be exhaustive but rather illustrative of the general human rights challenges that OMiK identified in the area of non-discrimination after the mid-March events.

5.2 Human Rights Issues

5.2.1 Access to primary and secondary education for students from minority communities

OMiK is concerned about the lack of access to education for displaced students from minority communities. Following the recent events, several schools have been burnt, damaged or occupied by IDPs⁵⁸ which prevents or makes the physical access to school difficult, in particular for those minority students who have been displaced. For instance, most schools in the Prishtinë/Priština region are working to accommodate from 15 (in Prishtinë/Priština) to 300 (in Fushë Kosovë/Kosovo Polje) additional students following the mid-March events. In Mitrovica/Mitrovicë region, following the destruction of Svinjare/Svinjarë village, schools in Mitrovica/Mitrovicë north have to accommodate an extra number of internally displaced students. In some cases, this has created a tremendous need for additional space⁵⁹ and materials.

⁵⁶ See Section 4.4 to 4.8 of UNMIK Regulation 2003/41 On the Approval of the Kosovo Consolidated Budget and Authorising Expenditures for Period 1 January to 31 December 2004 and Administrative Instruction 2004/01 On the Administration of Fair Share Financing by Municipalities.

⁵⁷ See Department of Human Rights and Rule of Law, report on Parallel Structures in Kosovo, October 2003.

⁵⁸ The school in Šilovo/Shillovë is being used as a temporary shelter to accommodate IDPs from Gjilan/Gnjilane town. Therefore, the facility has a limited capacity to organise classes.

⁵⁹ In Fushë Kosovë/Kosovo Polje municipality, approximately 40 Roma students, who used to attend catch-up classes at Sveti Sava School, do not have access to the school in Uglar/Ugljare due to the lack of space. It appears that the catch-up class students might be accommodated in Kuzmin School.

Furthermore, the availability of school transport for IDPs and other minority students and the lack of security escorts for these students have an impact on their ability to attend school.⁶⁰ For instance, in Vushtrri/Vučitrn municipality, access to secondary education for minority students is still problematic due to the lack of escorted transportation to Mitrovica/Mitrovicë north, which in some cases, has still not been re-established.

Additionally, as a result of the mid-March events, many mixed schools remain closed. For example in Viti/Vitina, so far, the Municipality, Kosovo-Serb parents, teachers and the Kosovo-Serb school director could not reach any agreement over the future of the mixed school in Mogila, which remains closed. The Kosovo Serbs do not want their children to attend a mixed school any longer and request the creation of a shift system in order to separate the Kosovo Albanian children from the Kosovo Serbs. No agreement on this issue has been achieved.

5.2.2 Access to Social Welfare for minority communities

OMiK is concerned that the lack of freedom of movement interferes with the ability of members of minority communities to access basic social services, particularly when it comes to the Social Assistance Scheme. This situation raises even more concern regarding the outreach capacity of the Centres for Social Work (CSWs) to provide minority communities with social assistance and protection.⁶¹ It also appears that after the events UNMIK Local Community Officers (LCOs) started to play a crucial role in the distribution of the social security assistance fund for the minority communities. This situation represents a setback in terms of the sustainability of the above process.

5.2.3 Access to health care for IDPs and minority communities which remained in locations affected by the mid-March events

OMiK is concerned that the access to health care for members of minority communities is significantly affected by the mid-March events. This problem is more pressing when it comes to secondary health care. The access to healthcare is hindered either because of the lack of secure transportation to existing health facilities or because the facility has been burnt⁶² or seriously damaged. For instance, in Gjilan/Gnjilane and Viti/Vitina municipalities, minority communities can use only the ambulances located in Kosovo Serb enclaves. The Roma community in Gjilan/Gnjilane does not feel comfortable to use the Gjilan/Gnjilane hospital and prefers travelling to Šilovo/Shillovë to seek medical services. There is no transportation provided to the ambulances located in the Kosovo Serb enclaves and in case of emergency situation, no alternative referral system is in place.

⁶⁰ In Lipjan/Lipljan town prior to the violence in mid-March the Kosovo-Serb students living in south Lipjan/Lipljan used to access their school walking through the backyards of Kosovo-Serb houses. These houses, however, have been burnt and the students feel they have no safe passage at this time. There is a static check-point set up outside the primary school, but no escort had been organized for the students that still have a problem travelling to the school.

⁶¹ In Viti/Vitina municipality, there is only one CSW office located in Viti/Vitina town. Due to the restricted freedom of movement, the access to this CSW is very limited for the Kosovo Serbs, Roma and Kosovo Croats living in the rest of Viti/Vitina municipality, particularly following the mid-March events. The situation is similar in the CSW sub-office in Gornje Kusce/Kuscë i Epërm (Gjilan/Gnjilane municipality). The sub-office is partially functional, but due to the limited freedom of movement, it is currently not accessible to the members of minority communities living in other villages in the municipality. Mitrovica/Mitrovicë (northern part) and Zvečan/Zvečan municipalities have received a significant number of IDPs. The needs of the additional numbers of IDPs with regard to social assistance and protection services have to be addressed.

⁶² For example, after the hospital in Fushë Kosovë/Kosovo Polje was burnt during the March events, Kosovo Serbs and Roma in the Prishtinë/Priština region have limited options for receiving secondary health care services. The only facilities providing secondary health care services are in Graçanicë/Gračanica, Laplje Selo/ Llapje Sellë, and north Mitrovicë/Mitrovica.

5.2.4 Access to working places for minority communities

OMiK is concerned that members of the minority communities employed in the Kosovo Civil Administration in several municipalities have not returned to work following the mid-March events.⁶³ For instance, Kosovo Serbs in Fushë Kosovë/Kosovo Polje and Obiliq/Obilić who worked in the municipal building have not returned to work. In Gjilan/Gnjilane, most of the Kosovo-Serb civil servants still do not go to work in the building located in town due to security concerns. No clear policy has been set up regarding the consequences of non-attendance of the Kosovo Serb employees to work with regard to their contracts.

OMiK is also concerned that the current displacement of CSW minority employees and the difficulties they encounter in accessing their working places, affect their ability to provide services to the members of minority communities.⁶⁴

5.2.5 Access to public utilities for minority communities

OMiK is concerned about the IDPs' access to public utilities (such as electricity, water, gas, etc.). According to the information collected so far, there appears to be some confusion over the role of the municipalities in ensuring that such services are provided either to IDPs or former IDPs returning to their location.⁶⁵ Municipalities need to assume their responsibilities⁶⁶ in order to ensure that the IDPs have access to public utilities and have their right to an adequate standard of living respected.

5.2.6 Non-Compliance of central and municipal authorities with the standards on use of official languages

The issue concerning use of one's language in the public sphere continues to be a significant obstacle to the ability of minorities to access efficiently essential services. The issue has been addressed by a specific Task Force⁶⁷ on "Language Standards Compliance" which recently produced a final report with conclusions and recommendations.

⁶³ In cases where Municipal Community Offices (MCOs) premises were already separate from the municipal premises they continued to work (with some exceptions where employees have been displaced in other locations). For example: all Kosovo-Serbs employed in Prishtinë/Priština are working in Gračanica/Graçanicë; Kosovo Serb MCO staff members in Lipjan/Lipljan were housed in two separate buildings (one in town, and one satellite office in Donja Gušterica/Gushterica e Ultë) where they continue to work.

⁶⁴ For example in Gjilan/Gnjilane municipality, the CSW sub-office designated to work for the minority communities in Gornje Kusce/Kuscë i Epërm is open, but not fully operational, due to the lack of secure transportation for the Kosovo Serb staff employed there. Also, due to the unavailability of an alternative accommodation in Obiliq/Obilić municipality, the CSW Kosovo Serb employee is currently displaced in Mitrovica/Mitrovicë north, making impossible to travel to work.

⁶⁵ For example, in Obiliq/Obilić the IDPs are currently living in containers. The international non-governmental organisation GOAL has agreed to help adapt the containers and make them more liveable (i.e. by creating windows). The Organisation has made no promise to provide any funds for utilities. However, the Additional Vice President of Obiliq/Obilić municipality stated that he believed that GOAL will provide such funding. The Kosovo Serbs, displaced from Belo Polje, Pejë/Peć region, were able to return to a rebuilt house on 22 April but KFOR is still providing electricity and water.

⁶⁶ See Section 3.1 of UNMIK Regulation 2000/45 on Self-Government of Municipalities in Kosovo.

⁶⁷ Chaired by the Office of Community Affairs (Pillar II-Civil Administration), the Task Force was composed of representatives of the Office of the Prime Minister, the Ministry of Public Services, OMiK, the Office for Returns and Communities (ORC), UNMIK Regional and Municipal Administrations and Directorates.

5.2.7 Fair allocation of grants to minority communities within the Municipal Fair Share Financing

OMiK notes that following the mid-March events, municipal practices in the allocation of grants to minority communities and fair share financing become even more critical. It remains of utmost importance that minority communities have an active role within this process.

Furthermore, it appears that some Municipal Community Officers (MCOs) started requesting a separate UNMIK budget from the municipal one. No policy has been developed yet with regard to the MCOs requesting a separation of budgets.⁶⁸

5.3 Actions taken by UNMIK/PISG to address the concerns

5.3.1 Access to working places for minority communities

Communication between the municipal bodies and the Kosovo Serb civil service employees has primarily been handled through UNMIK representatives in most Prishtinë/Priština region municipalities affected by the mid-March events.

Since mid-March, LCOs have had a proactive role⁶⁹ in trying to facilitate the dialogue between municipal authorities and temporarily displaced Kosovo Serb education officials.

In Gjilan/Gnjilane municipality the municipal administration is currently discussing the issue of minority teacher transportation to their work places with UNMIK facilitating the dialogue.

Also, in Gjilan/Gnjilane, UNMIK has tried to facilitate the return process of the Kosovo-Serb civil servants working in the municipality. However, neither the municipality's administration nor the Kosovo-Serb employees have taken concrete steps to resolve this situation.

5.3.2 Non-Compliance of central and municipal authorities with the standards on use of official languages

No significant attempts to improve the situation in this field have been identified since the mid-March events. However, it must be stressed that the above mentioned Task Force has issued conclusions and recommendations suggesting the need to firmly address this issue. The Task Force also recommended the formulation of an Administrative Direction on Language Use by the Ministry of Public Services and the immediate allocation of a fund⁷⁰ to provide the necessary language services.

⁶⁸ As an example, the MCO in Fushë Kosovë/Kosovo Polje has written a formal request to the Local Community Office Assistant requesting that the MCO receives a separate office space and begins to operate on a separate budget. Furthermore, the heads of the MCO in Lipjan/Lipljan and in Obiliq/Obilić municipalities stated that their offices must have separate budgets.

⁶⁹ The LCO Assistant in Fushë Kosovë/Kosovo Polje invited UNHCR, ORC, and OMiK to visit three school directors (who are now all working out of the same building in Ugljare/Uglar) and the Deputy Director of Education in the municipality. However, there was not anyone present from the Municipality, neither from the MCO, nor from the Department of Education. Likewise, the LCO in Lipjan/Lipljan has travelled around to the schools in the municipality in order to visit them and has lent support to the staff.

⁷⁰ The expenses for language services would be released from the Kosovo Consolidated Budget (KCB) surplus of 2003 and at a later stage would become an integral part of the expenses of the KCB.

5.4 Follow up

For all of the aforementioned identified human rights challenges, OMiK will continue monitoring, advising and issuing concrete recommendations to the involved UNMIK/PISG authorities.

Discussions throughout this process, in particular at municipal level, will be crucial to the follow up of commitments undertaken by the responsible authorities.

OMiK will also follow the upcoming developments in the legislative process of the Anti-Discrimination Law.⁷¹ Its promulgation will be crucial to provide remedies for potential violations of fundamental rights in the aforementioned areas.

⁷¹ Anti-Discrimination Law, adopted by the Kosovo Assembly on 19 February 2004. The Law has not yet been promulgated. The law had as its genesis, model legislation in the form of an Omnibus Anti-discrimination Law, which was drafted by OMiK and submitted to the PISG for consideration in September 2002. OMiK strongly advocated for the promulgation of such a law since early 2002, and has provided legal advice to the PISG on a continuous basis, throughout its preparation.