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Kosovo: Approve Special Court for Serious Abuses ^[1]

Parliament Should Also Endorse EU Law Mission Extension

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(Brussels) – Kosovo ^[2]'s parliament should approve the establishment of a special court located abroad to try alleged war crimes and other serious crimes committed during and after the 1998-1999 Kosovo war. The parliament should also agree to extend the mandate of the European Union Rule of Law Mission (EULEX) and allow it to continue investigating and prosecuting serious and politically sensitive crimes in Kosovo.

The EU is seeking to extend EULEX and to establish the specialized court within the Kosovo court system but with a special chamber based in an EU member state. The Kosovo parliament plans to review the proposal before it dissolves for elections planned for May 2014.

“The proposal to establish a special court and extend the EU law mission is Kosovo’s chance to advance justice and individual accountability for very serious crimes,” said Lotte Leicht ^[3], EU director at Human Rights Watch. “The parliament should vote yes, to show that it takes the rule of law seriously and is committed to justice for serious abuses.”

Under the proposal before parliament, the specialized court will have a seat in Kosovo, but proceedings will take place in a special chamber abroad. The separate judicial chambers will hold filings, and sensitive records and be operated by international staff. EULEX will appoint the judges and prosecutors. If parliament approves the court, it will still need to adopt new legislation and perhaps amend the constitution to allow for the establishment and operation of the special judicial chambers.

Under the proposal, international judges and prosecutors in the broader EULEX mission will be “embedded” in Kosovo institutions. EULEX judges and prosecutors will not take on new cases, with some exceptions. When EULEX judges sit on mixed panels, Kosovo judges would be in the majority, again with some exceptions. The exceptions are not elaborated in the proposal, but should include all cases involving war crimes, terrorism, organized crime, and serious corruption, Human Rights Watch said.

Despite progress, the justice system in Kosovo remains weak, with inadequate security for judges, court staff, prosecutors, and plaintiffs. The lack of adequate measures to protect witnesses is of particular concern and makes the need for an EU-based chamber pivotal.

The inability of Kosovo's justice system to protect witnesses in sensitive cases, even with international involvement, led the EU in 2011 to establish a special investigative task force [4] to conduct a criminal investigation into alleged crimes identified in a 2010 Council of Europe report [5] prepared by Swiss senator Dick Marty.

Previous war crimes cases in Kosovo and at the International Criminal Tribunal for the former Yugoslavia (ICTY) have been marred by threats and even the deaths of witnesses [6].

To protect witnesses and information, the task force based its operations in Brussels and employed only international staff.

The Marty report accused some members of the Kosovo Liberation Army, the wartime ethnic Albanian rebel group, of abductions, beatings, summary executions, and in some cases, the forced removal of human organs on Albanian territory. The victims, according to the Marty report, were mostly Serbs and Roma from Kosovo but also included ethnic Albanians suspected of having collaborated with the Serbian government before or during the war, or members of rival armed groups. After the war, some leaders of the rebel group entered politics and now serve in high positions.

The proposed special court would adjudicate criminal prosecutions arising from the work of the special task force. The task force says its investigation is coming to a close, but it has not announced whether it will issue indictments. Indictments hinge in part on the creation of a court operating outside Kosovo but under Kosovo jurisdiction, where witnesses will feel secure enough to testify. Some prominent Kosovo politicians may be among the potential indictees.

In addition to the EU [7], the United States has expressed support [8] for the establishment of a special court based abroad, saying it would help Kosovo build its "international credibility." The US helped fund the special investigative task force and sent a senior former official to serve as lead prosecutor. US and European diplomats have said that if Kosovo's parliament rejects the special court, the UN Security Council will address the issue.

"The establishment of this special court outside Kosovo is critical for the integrity and credibility of

the process,” Leicht said. “Given the known record of witness intimidation and deaths, it’s likely anyone with information would feel unsafe to testify in Kosovo.”

Human Rights Watch documented ^[9] systematic war crimes by Serbian and Yugoslav forces during the 1998-99 war, including forced expulsions, rape, and killings. While some cases have gone to the ICTY or the Serbian war crimes court, much more is needed to hold those responsible for the most serious war-era crimes to account, Human Rights Watch said.

Since EULEX was established in 2008, its international prosecutors and judges have played a pivotal role in investigating, prosecuting, and adjudicating cases involving public officials, war crimes, and corruption in Kosovo. But with its mandate due to expire in June, the Kosovo government and some EU officials contend that the mission should scale down its operations, stepping away from direct responsibility for investigations and trials and moving toward a more advisory role.

In January, 17 international judges ^[10] from the EULEX mission said, however, that international lawyers should remain in charge of war crimes, organized crime, and corruption cases in Kosovo. “We believe that we have not yet reached the stage where the more complex and very sensitive cases, such as war crimes, serious corruption and organised crime should be completely handed over to the local judiciary,” the judges wrote to the head of the EULEX Executive Division.

Human Rights Watch also believes that cases involving war crimes, organized crime, and serious corruption should fall within the exceptions to “no new cases” and majority Kosovo-judge panels in the proposal before parliament. EULEX prosecutors should continue to prosecute such cases before panels in which EULEX judges are the majority.

As part of the agreement on EULEX’s future mandate in Kosovo, the government and the EU should also make it an immediate priority to enhance witness protection and security across the justice system as part of the overall strengthening of the rule of law in Kosovo, Human Rights Watch said.

“Kosovo has come a long way in the 15 years since the war,” Leicht said. “But when international judges there say the justice system is not ready to handle sensitive cases, Kosovo’s parliament needs to listen and to act on behalf of Kosovo’s people to advance protection and justice.”

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[3] <http://www.hrw.org/bios/lotte-leicht>

[4] <http://www.sitf.eu/index.php/en/>

[5] http://assembly.coe.int/CommitteeDocs/2010/20101218_ajdoc462010provamended.pdf

[6] http://www.nytimes.com/2011/10/07/world/europe/death-of-war-crimes-witness-casts-cloud-on-kosovo.html?_r=0

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