

# FEDERAL REPUBLIC OF YUGOSLAVIA (KOSOVO)

## Amnesty International's recommendations to UNMIK on the judicial system February 2000

### *Introduction*

*The international community intervened in Kosovo in March 1999 with the declared aim of preventing a human rights catastrophe. With the withdrawal of Serbian police and the Yugoslav Army, 10 years of human rights violations perpetrated by these forces against ethnic Albanians came to an end in June 1999. However, more than six months since the deployment of a peacekeeping force, KFOR, led by the North Atlantic Treaty Organization (NATO), and the establishment of the United Nations Interim Administration Mission in Kosovo (UNMIK) serious crimes and human rights abuses continue to be committed with virtual impunity.*

*According to Security Council Resolution 1244, UNMIK has the responsibility for the protection and promotion of human rights and KFOR is mandated to create a secure environment in Kosovo. UNMIK international civilian police and KFOR are struggling to maintain law and order and protect the human rights of all citizens of Kosovo. In particular, they have been unable to prevent violent attacks, including human rights abuses, often motivated by a desire for retribution, against non-Albanians (mainly Serbs, Roma and Muslim Slavs), ethnic Albanians accused of "collaboration", or against ethnic Albanians of moderate political views.*

*UNMIK is tasked with creating a multi-ethnic, independent and impartial judicial system as the guarantor of the rule of law in Kosovo. However, Amnesty International has observed that in some courts judicial*

decisions appear to be made with political, rather than legal considerations in mind. Members of the judiciary have been subjected to undue political pressure through threats, intimidation and even violent attacks. Moreover, delays in the establishment of a functioning judiciary have negatively effected the right to trial without undue delay of people currently held in pre-trial detention. The organization is concerned that there is a growing perception among members of all of Kosovo's communities that justice is not being done in some of Kosovo's courtrooms.

The Secretary-General of the United Nations highlighted the responsibility of UNMIK to place human rights at the core of the UNMIK mission. Indeed, the United Nations has a special responsibility to uphold the human rights standards that it has created. While Amnesty International welcomed the recent appointment by UNMIK of new judges and lay judges as an important step towards the re-establishment of a functioning judicial system, the organization is concerned that this is not enough to correct the problems which currently exist in the justice system and to ensure that it operates within a framework of international human rights norms.

This document presents recommendations which are addressed to Dr Bernard Kouchner, the UN Special Representative of the Secretary-General and head of UNMIK. These include bringing the judicial system and all applicable laws, including the UN's own Regulations for Kosovo, into line with international human rights standards, placing international judges and prosecutors in Kosovo's district courts and appeals structures and providing training in international human rights and humanitarian law for legal professionals in Kosovo.

## **Background**

Over the past 10 years, Amnesty International has extensively documented and campaigned to put an end to human rights violations perpetrated by the FRY authorities against ethnic Albanians in Kosovo. (See: *Kosovo: a decade of unheeded warnings*, volume one, AI Index: EUR 70/39/99, April

1999). During this time, ethnic Albanians living in Kosovo were the victims of unlawful killings, torture and cruel and inhuman treatment. Many political prisoners, including prisoners of conscience, were convicted by courts in proceedings which failed to meet international standards of fairness. Members of ethnic Albanian society were also denied their economic, social and cultural rights. For example, the Serbian authorities denied many ethnic Albanians the right to work. This was particularly the case for members of the ethnic Albanian community who were professionals trained to work in the field of criminal justice. Most ethnic Albanian judges, prosecutors and police officers were dismissed (or put in situations where they had little choice other than to resign) by the Serbian authorities who replaced them with Serbs.

In 1998 Amnesty International witnessed an increase in human rights violations perpetrated by FRY security forces and paramilitaries in Kosovo (See: *Kosovo: a decade of unheeded warnings*, volume two, AI Index: EUR 70/40/99, April 1999). Armed conflict erupted between members of the Kosovo Liberation Army (KLA) which had formed to fight for an independent Kosovo and FRY forces, Serb police and paramilitary groups operating in the region. The vast majority of victims in Kosovo during the period of the armed conflict were ethnic Albanian civilians. However, some Serbs also suffered human rights abuses, such as abductions, beatings and executions, at the hands of armed ethnic Albanian groups such as the KLA.

In March 1999 an international armed conflict erupted in Kosovo, as the North Atlantic Treaty Organization (NATO) commenced a bombing campaign against the FRY forces, Serb police and paramilitaries with the declared aim of preventing a human rights catastrophe. (See: *Kosovo: Amnesty International's concerns relating to NATO bombings*, AI Index: EUR 70/69/99, 18 May 1999). As a consequence human rights abuses by FRY

forces, Serb police and paramilitary groups increased and ethnic Albanians and members of minority communities fled Kosovo into the neighbouring states of Albania and Macedonia (See: *Former Yugoslav Republic of Macedonia: The protection of Kosovo Albanian refugees*, AI Index: EUR 65/03/99, May 1999; *Smrekovnica Prison - a regime of torture and ill-treatment leaves hundreds unaccounted for*, AI Index: EUR 70/107/99, October 1999). In June 1999, NATO ceased its bombing campaign after concluding the Military Technical Agreement with the FRY authorities. Under this agreement all FRY forces, Serb police and paramilitary groups left Kosovo.

### ***To Protect and Promote - the international presence in Kosovo***

In the wake of the FRY forces withdrawal from Kosovo, an international security presence (KFOR) was deployed in accordance with Security Council Resolution 1244. KFOR is responsible for ensuring public safety and order and the creation of a secure environment to which all refugees and internally displaced persons can return. As a part of its mandate, KFOR is required to police the territory of Kosovo until such time as the international civilian police have the capacity to assume full responsibility for this function. Since its deployment in June KFOR has been arresting and detaining people suspected of committing serious crimes, such as war crimes, murder, attempted murder, rape and weapons offences, in Kosovo. Amnesty International has urged KFOR to ensure that it upholds human rights when undertaking police functions.

Resolution 1244 also mandated a civilian presence (the United Nations Interim Administration Mission in Kosovo (UNMIK)) with the task of providing an interim administration for Kosovo. The Security Council gave UNMIK the responsibility for the protection and promotion of human rights in Kosovo. Pursuant to Resolution 1244, in his report of 12 July 1999, the Secretary-General of the United Nations laid out the structure of UNMIK<sup>1</sup> and highlighted the centrality of human rights to the mission by stating that "UNMIK will be guided by internationally recognized standards of human rights as the basis for the exercise of its authority in Kosovo". The Secretary-General appointed Dr Bernard Kouchner as his Special Representative (SRSG) in Kosovo and vested him with all legislative and executive powers, including the administration of the judiciary, and with the authority to "change, repeal or suspend existing laws to the extent necessary". The SRSG is able to "issue legislative acts in the form of regulations".

---

<sup>1</sup>UNMIK is comprised of four pillars, each pillar being responsible for carrying out a specific function. The United Nations High Commissioner for Refugees (UNHCR) responsible for humanitarian affairs, the Organization for Security and Co-operation in Europe (OSCE) is tasked with institution building, the European Union (EU) has the reconstruction mandate, and the UN administration is responsible for civil administration.

In addition to KFOR, UNMIK is responsible for the maintenance of civil law and order and has deployed an international civilian police force. While the Secretary-General has stated that over 6,000 international civilian police officers are required to police Kosovo, to date only 1,971 have been deployed and as a result the international civilian presence has not assumed full responsibility for the maintenance of public order in Kosovo. Amnesty International continues to urge all states contributing to UNMIK to provide the personnel and resources necessary to police Kosovo effectively (See: *Kosovo: Amnesty International calls for more civilian police in Kosovo after attack on Serbs*, AI Index: EUR 70/129/99, 30 November 1999). In particular, UNMIK civilian police need to be provided with sufficient resources to conduct forensic investigations, which are a necessary component of prosecutions. In addition to the international police force, a national police force, the Kosovo Police Service, is being trained by the OSCE, a part of UNMIK, and graduates from a newly established police academy work under the mentorship of UNMIK civilian police. UNMIK civilian police have the primary responsibility for policing in Priština (Prishtina), Mitrovica and Prizren and in these cities UNMIK civilian police run the detention facilities.

UNMIK is tasked with re-establishing an independent, impartial and multi-ethnic judiciary as a guarantor of the rule of law in Kosovo. The civil administration part of UNMIK has a judicial affairs office with four major responsibilities - the administration of the courts, the development of legal policies, the review and drafting of legislation and the assessment of the quality of justice in Kosovo, including training requirements. The OSCE, the pillar of UNMIK responsible for institution building, was mandated by the Secretary-General to develop mechanisms which would ensure that the police, courts, administrative tribunals and other judicial structures are operating in accordance with international standards of human rights. The Rule of Law Division of the Department of Human Rights and Rule of Law has the responsibility to monitor the judicial system.

### *Delays in administering justice in Kosovo<sup>2</sup>*

Amnesty International is concerned that delays in establishing a functioning, multi-ethnic, independent and impartial judicial system have had a negative effect on the possibilities for re-establishing respect for the rule of law in Kosovo.<sup>3</sup> UNMIK has now been in place for more

---

<sup>2</sup>Many of the problems which are evident in Kosovo's new judicial system have been highlighted over the past six months by other organizations and individuals. However, UNMIK has been reluctant to act upon some of these observations. See, Lawyers Committee for Human Rights, *A Fragile Peace: Laying the Foundations for Justice in Kosovo*, October 1999; Mariette Moussault and Marita Veen, *Monitoring Kosovo's Legal System*, November 1999.

<sup>3</sup>Amnesty International researchers in Kosovo have conducted interviews with people held in detention, defence lawyers and members of the international community working in the judicial system. The following conclusions are drawn on the basis of these interviews. The researchers are aware of many individual cases which illustrate the concerns outlined in this

than six months, yet human rights abuses and serious crimes continue to be committed at an alarming rate, particularly against members of minority communities, with virtual impunity (See: *Kosovo: six months on, climate of violence and fear flies in the face of UN mission* AI Index: EUR 70/136/99, 23 December 1999). Members of all ethnic groups have been the victims of “disappearances” and abductions (See: *A Broken Circle: “Disappeared” and abducted in Kosovo province* AI Index: EUR 70/106/99, October 1999). Delays in setting up an effective court system have adversely affected the rights of persons currently held in detention to trial without undue delay, in accordance with international fair trial standards, because the judicial system does not have the capacity to expeditiously process their cases.

Amnesty International has observed that there is a growing perception among the people of Kosovo that justice is not being exercised impartially in some of Kosovo's courtrooms. In particular, there is concern that serious criminals and perpetrators of human rights abuses are currently allowed to go unpunished. For-example, a large number of ethnic Albanians who have been apprehended on suspicion of committing serious crimes have subsequently been released by the courts on the stated grounds that there was insufficient evidence. However, in many such cases the detaining power, KFOR or UNMIK civilian police, has asserted that suspects have been released despite the existence of what they claim to be sufficient evidence to warrant continued detention. KFOR and UNMIK civilian police have claimed that the ethnicity of the suspect, or the victim, was the decisive factor which influenced the court's decision. In some cases, the Commander of KFOR, Dr General Klaus Reinhardt, has ordered the continued detention of individuals despite a release order from a judge, using his authority under Security Council Resolution 1244. This practice, in itself, is open to legal challenge and does not enhance respect for Kosovo's newly established judiciary.

At the same time, courts almost always order that persons of Serb ethnicity who are apprehended on similar or lesser charges are held in detention. There has been apparently little progress in preparing the cases against a significant number of persons of Serb ethnicity who have been held in pre-trial detention for six months or more. The courts inability to expeditiously investigate and indict persons held in pre-trial detention led the SRSG to extend the possible period of pre-trial detention, by way of an UNMIK-created law, Regulation 26/1999, for a period of up to one year before an indictment is issued. This is six months beyond the pre-trial detention period provided for in the FRY Code of Criminal Procedure.

Amnesty International has observed that unacceptable pressure, in the form of threats, intimidation and even violent attacks, is being exerted on some members of the judiciary by extremist elements of ethnic Albanian society. This pressure may be affecting the ability of some judges to take decisions impartially and independently based on legal, rather than political, considerations. During December, two former judges were murdered in Kosovo. Although the circumstances of their murders are not clear, the possibility that they were killed in connection with their prior judicial activities cannot be excluded. These disturbing incidents highlight the

---

*document, but as many are ongoing we have taken the decision not to go into the specific details of these cases.*

vulnerable position of legal professionals, including lawyers and prosecutors, working in Kosovo. Amnesty International is concerned that if legal professionals are to be able to carry out their duties in an independent and impartial manner they may need to be provided with protection from such attacks, threats and intimidation while undertaking their official duties.

Two recent reports by the OSCE Department of Human Rights and Rule of Law, Rule of Law Division, highlight the fact that the current lack of material resources in Kosovo's courts is another factor which is contributing to a crisis in the judiciary.<sup>4</sup> Amnesty International has also observed that Kosovo's courts currently lack basic equipment and that judges, prosecutors and other civil servants working in the judicial system receive very low rates of pay. The OSCE has warned, that if the situation is allowed to continue legal professionals may become open to corruption. No judicial system can function in an effective manner if it is not provided with the necessary financial resources and adequately paid personnel. The organization also takes this opportunity to highlight the need for professional translation services in the current criminal justice system where international bodies, which are the chief collectors of criminal evidence, work in coordination with ethnic Albanian and Serb legal professionals, witnesses and suspects. Amnesty International continues to urge all states contributing to UNMIK to provide the resources necessary to ensure that the Kosovo courts are able to function effectively. (See: *Federal Republic of Yugoslavia (Kosovo): Update from the field, January 2000* AI Index: EUR 70/02/00)

### ***13 December 1999 - SRSG announces new measures in the field of the judiciary***

*At a press conference marking the six-month anniversary of the deployment of KFOR and UNMIK to Kosovo, Dr Bernard Kouchner, the SRSG, acknowledged that there has been a marked increase in criminality in Kosovo and admitted that his administration has been unable, thus far, to establish a functioning judicial system. Attempting to address this situation, the SRSG announced a number of new initiatives in the field of judicial affairs, including the issuing of a Regulation which changed the applicable laws in Kosovo and the appointment of new judges and lay judges. Amnesty International is concerned, however, that the appointment of new judges alone is not enough to correct the serious problems with the judicial system.*

---

<sup>4</sup>Observations and Recommendations of the OSCE Legal System Monitoring Unit, OSCE Department of Human Rights and Rule of Law, Rule of Law Division; Report 1 "*Material Needs of the Emergency Judicial System*", 7 November 1999, and Report 2 "*The Development of the Kosovo Judicial System*", 17 December 1999.

Amnesty International believes that the following recommendations should be implemented by UNMIK to ensure the establishment of an independent and impartial judicial system which functions in line with international human rights standards in Kosovo. The recommendations relate to Kosovo's regular court system and the new Kosovo Court.

The SRSG announced that the Technical Advisory Commission on the Judiciary, a group of 10 Kosovar and five international legal experts, has recommended the establishment of a Kosovo Court for war crimes and ethnically motivated crimes. While the jurisdiction of the Kosovo Court has not officially been announced, we are informed that the court will be able to prosecute persons suspected of committing war crimes (grave breaches of the four Geneva Conventions of 1949 and the two Additional Protocols, violations of the laws and customs of war, crimes against humanity and genocide). The Kosovo Court will also have the power to prosecute serious crimes when committed with the intent to harm a person because of their ethnicity, religious or political beliefs. Thus, it is envisaged that the court will have the jurisdiction to bring to justice people suspected of committing serious human rights abuses against minorities since June 1999. The Kosovo Court will consist of two chambers with three judges each and an appeals chamber. The SRSG also announced that two-thirds of the judges and prosecutors will be from Kosovo and the others, international.

Amnesty International believes that the new Kosovo Court could make an important contribution towards the reconciliation process in Kosovo by determining the individual criminal responsibility of those persons who have committed grave crimes under international law and human rights abuses, rather than allowing entire communities to be held responsible for the crimes of some of their members. Amnesty International hopes, however, that the



*creation of the Kosovo Court will not detract from UNMIK's main task which is the re-establishment of an effective, independent and impartial judicial system which operates within the framework of international human rights standards.*

### ***Amnesty International's recommendations***

#### **1. Review and amend all applicable laws in Kosovo to bring them fully into line with international human rights standards**

Taking into consideration that Security Council Resolution 1244 places the responsibility to "protect and promote" human rights in Kosovo on UNMIK, Amnesty International welcomes the announcement by the SRSG in his address of the 13 December 1999 that "all laws must conform with international human rights standards". The organization notes that the International Covenant on Civil and Political Rights, is already binding in Kosovo, by way of the Federal Republic of Yugoslavia's confirmation that it is bound by this instrument. However, the FRY authorities never undertook a legal revision to ensure the compliance of domestic law with international standards to which the FRY had become a party. Although international human rights standards are binding in Kosovo, ambiguity exists regarding the extent to which the provisions of all applicable laws, which include UNMIK Regulations, are in line with international standards.

In his report of the 12 July 1999, the Secretary-General of the United Nations stated that "UNMIK will initiate a process to amend current legislation in Kosovo, as necessary, including criminal laws... in a way consistent with Security Council Resolution 1244 (1999) and internationally recognized human rights standards". Furthermore, in his report of 16 September 1999, the Secretary-General of the United Nations stated that a review of laws, including criminal laws, was scheduled for completion by the end of October by legal experts of the Council of Europe. Amnesty International notes, however, that the review, amendment and dissemination of the applicable laws, modified so that they conform with international standards, has not been finished. In addition, since September 1999, Regulations 24/1999 and 25/1999, issued by the SRSG, have changed the body of applicable laws in Kosovo and it is unclear whether all new applicable laws will be reviewed and amended to bring them fully into line with international human rights standards.

Amnesty International therefore urges UNMIK to facilitate the expeditious review and revision of all current applicable laws in Kosovo to bring them fully into line with international human rights standards, in particular, the European Convention for the Protection of Human

Rights and Fundamental Freedoms, the International Covenant on Civil and Political Rights, the Convention on the Elimination of all Forms of Discrimination against Women, the Convention on the Rights of the Child and other UN standards. The organization further urges UNMIK to promptly translate all amended laws into local languages and to disseminate them widely by way of official publication. In doing so, Amnesty International believes that UNMIK will provide an authoritative clarification to all detaining powers and legal professionals in Kosovo of the applicable law and of the human rights standards that must be observed, including the rights which should be afforded to all defendants in criminal cases.

## **2. Review and Amend Regulation 26/1999 in order to ensure that all defendants who are subjected to periods of pre-trial detention exceeding six months are treated in accordance with international human rights standards**

Amnesty International has observed that delays in establishing a functioning judicial system in Kosovo may have adversely affected the right to trial without undue delay of some people who are currently held in detention. Some people have already spent more than six months in detention without an indictment and in February and March this number will increase further. For example, in February, 37 of the 57 un-indicted detainees currently held in the Mitrovica detention facility will have spent more than six months in pre-trial detention. In some cases it appears that there has only been minimal effort on the part of the people responsible for conducting the investigation to prepare and promptly issue an indictment and we are aware that some people in detention are largely uninformed of the current status of the case against them.

The FRY Code of Criminal Procedure states that a person can only be held in pre-trial detention for up to six months, at which stage an indictment must be issued or the person be released. However, UNMIK has authorized a panel of the *Ad Hoc* Court of Final Appeals to extend the period of pre-trial detention for up to a maximum of a year through Regulation 26/1999, utilizing the power vested in UNMIK to change, repeal or suspend existing laws. While Amnesty International appreciates the particular difficulties experienced by UNMIK in meeting the time limits set in the FRY Code of Criminal Procedure, which result from the fact that no functioning judicial system was in place when UNMIK entered Kosovo, the organization is concerned that the extension of pre-trial detention permitted by Regulation 26/1999 should not result in violations of the rights to which all those held in pre-trial detention are entitled under international human rights law.

International human rights standards provide every detainee with the right to be brought to trial "within a reasonable time" or to release (Article 9 (3), ICCPR). All detainees also have the right to challenge their detention before a court (Article 9 (4) ICCPR) by way of a procedure which is "simple and expeditious and at no cost for detained persons without adequate means" (Principle 32 of the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (the Body of Principles)). They also have the right to a review of continued detention by a court or other authority at reasonable intervals (Principles 11 (3) and 39 of the Body of Principles).

However, Amnesty International notes that Regulation 26/1999 fails to provide detainees with the right to challenge a decision issued by the panel of the *Ad Hoc* Court of Final Appeals which extends their period of detention beyond six months. Moreover, it is not clear whether the procedure involving the *Ad Hoc* Court of Final Appeals provides a comprehensive review of the legality of continued detention, as envisaged in international standards. Furthermore, Regulation 26/1999 fails to lay down the standards and criteria according to which a person can be lawfully held in pre-trial detention for more than six months and it does not clearly articulate at what stage a period of extended pre-trial detention can be terminated and by whom. UNMIK should clarify these ambiguities as a matter of urgency.

Amnesty International recommends that UNMIK promptly amend Regulation 26/1999 so that it conforms with internationally recognized human rights standards as detailed above and affords all persons subjected to extended periods of pre-trial detention these safeguards. UNMIK should promptly translate the amended version of Regulation 26/1999 into local languages and ensure that all detainees are aware of the legal provisions governing their detention. UNMIK should further ensure that all Regulations promulgated by UNMIK are in line with internationally recognized human rights standards.

### **3. Provide legal professionals in Kosovo with substantive and practical training in international human rights law**

Some legal professionals appointed to serve in Kosovo's new judicial system have been unable to work in an official capacity for the past 10 years. Those legal professionals who were able to work, participated in a system which, at times, encouraged a flagrant disregard of human rights norms. Efforts have been made to train newly appointed legal professionals. However, Amnesty International notes that the training which has been offered, thus far, has failed to focus on the practical application and interpretation of international human rights law. In his report of 12 July 1999, the Secretary-General stated that in addition to training in domestic and international law, newly appointed legal professionals should receive continuous training in the application of international instruments on human rights. In view of this, the organization urges UNMIK, through the OSCE, to implement a comprehensive mandatory training program for legal professionals which focuses on substantive areas of international human rights law and its application, as a matter of urgency.

Legal professionals in Kosovo would benefit greatly from training, in which the Council of Europe has developed a thorough expertise, which incorporates an examination of the case law of the European Court of Human Rights. They should also be given the opportunity to review the case law of the Human Rights Committee. Amnesty International believes that all training programs should encompass an examination of the following UN standards:

- the Universal Declaration of Human Rights
- the International Covenant on Civil and Political Rights
- the International Covenant on Economic, Social and Cultural Rights
- the Convention on the Elimination of all Forms of Discrimination against Women

- 
- the Convention on the Rights of the Child
  - the UN Standard Minimum Rules for the Treatment of Prisoners
  - the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment
  - the UN Basic Principles on the Independence of the Judiciary
  - the UN Guidelines on the Role of Prosecutors
  - the UN Basic Principles on the Role of Lawyers
  - the UN Code of Conduct for Law Enforcement Officials and the commentary thereto
  - the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials

Amnesty International recommends that UNMIK, in line with the Secretary-General's report of 12 July 1999, translates or facilitates the expeditious translation of these instruments into the appropriate local languages, ensures the placement of them in every courtroom in Kosovo and makes them available to all defence lawyers and prosecutors.

#### **4. Place international judges and prosecutors in Kosovo's five district courts**

In his report of the 12 July 1999, the Secretary General tasked UNMIK with "endeavor[ing] to have all elements of Kosovo society appropriately represented [in the judiciary]...[and] promot[ing] the independence of the judiciary as a guarantor of the rule of law". While Amnesty International appreciates that this is no easy task and recognizes the attempts made by UNMIK to implement the Secretary-General's directive, it is clear that more than six months after the establishment of UNMIK, these goals are far from being achieved. Indeed, the organization has observed that there is currently a lack of trust in the judiciary and that, for the reasons outlined in a letter to the SRSG dated 3 February 2000, there is a growing perception among national and international observers that justice is not being done in some of Kosovo's courtrooms. Moreover, many of Kosovo's newly appointed judiciary do not yet have a detailed and practical knowledge of the way in which international human rights standards and procedures, which form the basis of UNMIK's judicial program, are applied in practice.

Placing a small number of international judges and prosecutors in Kosovo's courtrooms for a limited, initial period, would help the capacity of the newly appointed judiciary to provide fair, independent and impartial decisions which take into account relevant international human rights standards and would help to foster perceptions that the courts' decisions are based solely on legal considerations. The participation of international judges and prosecutors would add legitimacy to judicial decisions particularly in sensitive cases which involve suspects and judges of different ethnicities and may also enhance public perceptions that the international community is actively involved on a daily basis in making justice a reality in Kosovo.

In all other areas of the UN interim administration, for example the police, prison service and civil administration, international professionals have been appointed to oversee the independent and impartial establishment and functioning of institutions critical for the administration of justice. In particular, Amnesty International notes the methodology used to train and establish a Kosovo police force - a vital component of the criminal justice system. A crucial

component of the program is the placement of international professionals to work side by side with their local counterparts for an initial period in order to provide them with the training, guidance and confidence to act in a professional, independent and impartial manner. The organization highlights that the presence of internationals in these institutions has led to the common perception by all parties in Kosovo that they have been established to serve the interests of justice.

The placement of international judges and prosecutors in each of Kosovo's courts may also help to facilitate the establishment of a multi-ethnic national judicial system in Kosovo. At present, in the wake of violent ethnic conflict, mistrust between different ethnic groups is still painfully evident. Many legal professionals are understandably reluctant to work with professionals from different ethnic groups. Amnesty International believes, however, that the presence of international judges in the courts may assist judges from different ethnic groups to work together and indeed help to bridge the gap in understanding which currently exists between the ethnic Albanian and Serb communities.

The small number of international judicial professionals, which Amnesty International urges UNMIK to place in Kosovo's courts as a strictly interim and temporary measure, should be carefully selected from countries working in the civil law tradition. Any international professionals chosen to work in Kosovo should also have training and experience in the application of international human rights law. Amnesty International urges UNMIK to take steps to introduce international judges and prosecutors into the five district courts of Prizren, Priština/Prishtina, Pe\_/Peja, Mitrovica and Gnjilane/Gjilan and the *Ad Hoc* Court of Final Appeals. The organization also recommends that international judges sit on the panel for serious crimes, which is prescribed by the FRY Code of Criminal Procedure for crimes which carry a sentence of over five years. Furthermore, Amnesty International believes that UNMIK should attach an international prosecutorial advisor to each of the five district courts in Kosovo. The creation of these offices would serve as an effective way of ensuring that national prosecutors receive the appropriate professional training in line with the UN Guidelines on the Role of Prosecutors.

## **5. Ensure that there is an independent and impartial judicial oversight mechanism**

Kosovo's court system is currently being monitored by the Legal System Monitoring Unit (LSMU), a part of the OSCE Rule of Law Division in the Department of Human Rights and Rule of Law. However, the same Rule of Law Division has also been significantly involved in setting up the court system and appointing judges and prosecutors. It appears, therefore, that there may be a conflict of interests between the two mandates which the OSCE Rule of Law Division has been assigned. In Amnesty International's view, the institution monitoring the conduct of the courts should be structurally independent from the body which plays an important role in the appointment of judicial personnel. Otherwise, it may be restrained in its capacity to report frankly on the progress made and the problems encountered. Moreover, Amnesty International notes that the LSMU is currently staffed with seven legal professionals who, as yet, have not been able to

sufficiently cover and actively monitor the proceedings of the current judicial system in Kosovo. In addition, the LSMU has not focussed on monitoring the extent to which international human rights standards are upheld by the judiciary in Kosovo.

Amnesty International recommends that UNMIK establish an independent mechanism which is in a position to examine impartially and report on the performance of the newly established judiciary and its adherence to international human rights law. In order to be effective, any such mechanism should also have the ability to act upon its findings and take steps to intervene when it identifies problems; thus its function must extend beyond mere reporting. The organization believes that observations made by such a mechanism regarding cases of serious misconduct, failure in the due execution of office, and/or having being placed by personal conduct or otherwise in a position incompatible with the due execution of office should be directly referred to the SRSG in order for him to trigger an investigation by the Advisory Judicial Commission, the body responsible for reviewing complaints against officers of the court and recommending the appointment and removal of judges and prosecutors.

Pending the establishment of long-term review mechanisms within Kosovo itself, Amnesty International recommends that this change could be put into effect by transferring the responsibility for monitoring the court system from the Legal System Monitoring Unit, the Rule of Law Division, to the OSCE Human Rights Division or by ensuring that the responsibility for monitoring the court system is assigned to the Office of the High Commissioner for Human Rights. Professionals mandated with monitoring the judicial system should have a background in human rights and be provided with field training in all applicable laws, including procedural codes and international fair trial standards.

### ***Ensure that the Kosovo Court for War Crimes and Ethnically Motivated Crimes is a just, fair and effective institution***

It is particularly important that the highest standards of human rights are observed by the new Kosovo Court, as its visibility and the sensitive nature of the prosecutions which it will initiate will attract much attention in Kosovo and beyond. The high visibility of the Court means that it has the potential to set an example to other courts in Kosovo and indeed the FRY as a whole. Thus, Amnesty International recommends that the following measures be taken to ensure that the Kosovo Court functions as a just, fair and effective institution.

## **6. Provide legal professionals in Kosovo with substantive training in international humanitarian law**

Because of the specific and complex nature of international humanitarian law and the numerous contemporary developments in international law and jurisprudence since the creation of the two international criminal tribunals and the adoption of the Rome Statute for an International Criminal Court, Amnesty International recommends that UNMIK should facilitate a substantive and practical training program in international humanitarian and international criminal law for judges, defence lawyers and prosecutors. Any such training program should not only involve a practical analysis of the four Geneva Conventions and Protocols thereto, the Genocide Convention and the developing international case law regarding crimes against humanity, but it should also involve an examination of the relevant case law of the International Criminal Tribunal for the former Yugoslavia (ICTY). Such a training program could be extended to national legal professionals not working at the Kosovo Court, if the Court is to have the ability to refer cases involving suspected violations of international humanitarian law and crimes against humanity back to the regular court system for prosecution. Amnesty International believes that ICTY personnel are ideally placed to provide substantive and practical training to national legal professionals who are appointed to work at the new Kosovo Court.

## **7. Issue a Regulation facilitating the participation of international defence lawyers in Kosovo's court system**

Amnesty International is aware that in a number of particularly sensitive cases, notably those involving persons suspected of committing war crimes, local defence lawyers have met with problems when attempting to prepare a defence for their clients. For example, due to fears for their safety, some ethnic Albanian defence lawyers who are currently preparing a defence for Serbs clients accused of war crimes and other serious crimes are unable to travel to other parts of the FRY to interview prospective defence witnesses. Some ethnic Albanian defence lawyers have also stated that they do not feel comfortable travelling in Serb areas in Kosovo where their clients are detained or where crucial defence witnesses are located. Some Serb defence lawyers have also faced similar problems when attempting to prepare a defence, because their ability to travel through ethnic Albanian areas is severely limited. Many of these problems could be alleviated by providing legal professionals with appropriate protection. However, Amnesty International believes that in some cases, where the defendant so desires, it would enhance the defendant's right to prepare a defence if they were able to be represented by an international defence lawyer as has occurred in war crimes prosecutions in national courts in Bosnia-Herzegovina. The organization recommends, therefore, that UNMIK issue a Regulation which facilitates the participation of international defence lawyers in Kosovo's courts.

## **8. Attach to the Kosovo Court a unit for the protection of victims and witnesses**

In order for the Kosovo Court to function effectively, protection and assistance to victims and witnesses must be viewed as a crucial aspect of the Court's work. If an effective witness protection and support program is not developed, people's lives will be put at risk and witness testimony may be unreliable or entirely unavailable, putting the trials and justice in jeopardy.

Principle 6 (d) of the UN Declaration of the Basic Principles of Justice for Victims of Crime and Abuse of Power states that the judicial system should take “measures to minimize inconvenience to victims, protect their privacy, when necessary, and ensure their safety, as well as that of their families and witnesses on their behalf, from intimidation and retaliation”. Amnesty International believes that if those responsible for genocide, crimes against humanity and serious crimes under international law, particularly cases of rape and sexual assault, are to be brought to justice, effective programs to protect witnesses will have to be developed by the Court in cooperation with KFOR, UNMIK civilian police, inter-governmental organizations, non-governmental organizations and other states.

The Court should be able to ensure that all necessary and effective measures are taken to protect victims and witnesses from unnecessary anguish and intimidation. These measures should encompass protection before, during and after the trial until the security threat ends. During investigations and trials, the Court should take effective steps to avoid inadvertent disclosure of the location and identity of persons to those who might harm them, by taking such steps as setting up clear divisions with separate personnel to work with witnesses for the prosecution, on the one hand, and with witnesses for the accused and the court, on the other. The Kosovo Court should have the technical facilities that permit witnesses, where necessary, to testify by closed circuit television and by means which permits witnesses' testimony to be heard and seen in court, but not seen by the general public. In highly sensitive cases, where witnesses are unavailable to attend the court because their safety cannot be guaranteed in Kosovo, the Court may consider enabling such witnesses to testify outside Kosovo, for example in Montenegro, provided the necessary legal guarantees are in place. The Court should have the technical facilities to enable such witnesses' testimony to be taken.

In order to ensure the necessary protection and support for witnesses testifying at the Kosovo Court, Amnesty International recommends that UNMIK attaches a Victims and Witnesses Unit to the Kosovo Court which has the capacity to serve both the prosecution and the defence. The Victims and Witnesses Unit, in coordination with KFOR and UNMIK civilian police, should ensure that the necessary protection is provided to witnesses, in particular when travelling into and out of Kosovo. The Unit should further have the capacity to ensure that victims are provided with the necessary support during the sensitive period when they have to give testimony on traumatic events which they have experienced. Amnesty International recommends that the Unit be staffed with professional personnel with experience and expertise in the field of witness protection and that they include persons with relevant experience in dealing with victims of sexual violence, gender violence or violence against children. Furthermore, an effective witness protection program will involve the conclusion of agreements with States to facilitate the long term resettlement of victims, witnesses and their families in other countries when necessary for their safety.

The need to protect and support witnesses will be a principal requirement for the Kosovo Court. However, the need to provide such services to other witnesses is also evident in some cases which are currently pending in Kosovo's five district Courts. Amnesty International, therefore, urges UNMIK to provide the Victims and Witnesses Unit of the Kosovo Court with the capacity



and resources to extend, where necessary, effective protection and support to victims and witnesses in other cases.