

FEDERAL REPUBLIC OF YUGOSLAVIA (KOSOVO)

Amnesty International's recommendations on the return of refugees to Kosovo

1. Legal Framework

By any interpretation of the international legal definition of a refugee, people who fled Kosovo were Convention refugees with a right to international protection under the 1951 Geneva Convention relating to the Status of Refugees. They fled because of a fear of persecution for reasons of their race, religion, national origin, or political opinion.

The Geneva Convention does not distinguish between refugees who were granted an individual asylum hearing and those who have been granted temporary protection, humanitarian status, or any other status under the domestic immigration policy of an asylum state. Article 3 of the Geneva Convention provides, "The Contracting States shall apply the provisions of this Convention to refugees without discrimination as to race, religion or country of origin." Just as refugees from any other country at any other time, refugees from Kosovo must be protected by the rights guaranteed by the Convention -- most importantly the right not to be sent back to a territory where their life or freedom would be in danger.

Because of the large influx of refugees from Kosovo, some states opted to fulfil their legal obligation not to send back refugees by granting temporary protection outside their normal refugee protection systems. However, as temporary protection ends, these states must continue to abide by their obligations to the principle of *non-refoulement*.

In granting temporary protection, states may not have formally recognized Kosovars as Convention refugees. But the lack of a formal recognition does not make a person any less entitled to the protections of international refugee law. As the UNHCR Handbook on Procedures and Criteria for Determining Refugee Status explains, "He does not become a refugee because of recognition, but is recognized because he is a refugee."¹ A state may consider Kosovars who have been in temporary protection to be recognized Convention refugees, or may consider them to be asylum-seekers who have as yet not had access to a status determination procedure. In either case, they may not be forced to return to Kosovo without an individualized assessment of whether they have a continuing well-founded fear of persecution in Kosovo.

¹UNHCR Handbook on Procedures and Criteria for Determining Refugee Status ¶28, UNHCR (1992).

This logic would apply equally to Kosovars who were protected under the Humanitarian Evacuation Program (HEP). The Convention was drafted specifically to provide a legal basis for international cooperation during refugee crises. HEP was a novel example of such international cooperation. People protected under HEP are clearly protected by the Convention.

A Convention refugee may not be forcibly returned to his or her country of origin unless “He can no longer, because the circumstances in connexion with which he has been recognized as a refugee have ceased to exist, continue to refuse to avail himself of the protection of the country of his nationality.”² This rule has been elaborated by the UNHCR Executive Committee (EXCOM), which has concluded:

[I]n taking any decision on application of the cessation clauses based on ‘ceased circumstances,’ States must carefully assess the fundamental character of the changes in the country of nationality or origin, including the general human rights situation, as well as the particular cause of fear of persecution, in order to make sure in an objective and verifiable way that the situation which justified the granting of refugee status has ceased to exist.... [A]n essential element in such assessment by States is the fundamental, stable and durable character of the changes, making use of appropriate information available in this respect, inter alia, from relevant specialized bodies, including particularly UNHCR. ... [T]he ‘ceased circumstances’ cessation clauses shall not apply to refugees who continue to have a well-founded fear of persecution.³

Amnesty International believes that international protection should not be ended for refugees until the conditions in the country of origin are demonstrated to have substantially and durably improved to the point where there is no risk of serious human rights violations against returnees. Amnesty International believes that anyone who expresses a wish not to return, because of fear of suffering serious human rights violations or abuses, should have access to a fair and satisfactory individual asylum procedure in the host state. This procedure should also identify special categories of persons who cannot reasonably be expected to return where compelling reasons exist, for example, ex-detainees, victims of extreme violence and trauma, and particular attention should be paid to victims of rape and sexual violence.⁴

² 1951 Geneva Convention article 1(C)(5), U.N.T.S. No. 2545, V. 189, p. 137.

³ EXCOM Conclusion No. 69 (1992).

⁴ See Geneva Convention article 1(C)(5).

2. Continuing Protection Needs for Populations from Kosovo

The security situation in Kosovo remains poor, and has worsened in recent weeks with an upsurge in killings. Minorities, particularly Serbs, are at greatest risk - eight Serbs, including a woman and a four-year-old child, were killed by gunshots or recently placed landmines in the period 26 May to 2 June 2000 alone - but ethnic Albanians have also been the victims of killing and violence, as demonstrated by the still unsolved murders of two prominent ex-members of the Kosovo Liberation Army (KLA), Ekrem Rexha and Besim Mala, and the killing of Halil Dreshaj, a member of the Democratic League of Kosovo (LDK) on 15 June 2000, reportedly by two men wearing KLA badges. The inadequacy of resources provided to the civilian police operation, coupled with the inability of KFOR to provide continuous protection to individuals and groups, especially those in remote areas, have resulted in a clear shortfall in security in general within Kosovo.

The United Nations Interim Administration Mission in Kosovo (UNMIK) has warned of a “prevailing climate of insecurity” in Kosovo. UNMIK has noted that

the international police force at UNMIK’s disposal remains woefully understaffed. Of the authorised strength of over 4,700 officers, only 2,548 have been deployed to date. The situation, combined with the absence of a fully functioning judicial system, has given rise to a general climate of impunity and lawlessness in many parts of Kosovo, with alarmingly high rates of common as well as ethnic crime. In addition to the frequent outbreaks of ethnic tension and violence that continue to cause great concern for the overall stability of Kosovo, attention must also be given to the highly volatile situation in the region as a whole. ... The situation for members of ethnic communities in a minority situation within a particular location remains precarious. They face serious risk of harassment, violence or death, severely restricting their freedom of movement, often limited to small enclaves, while many continue to leave Kosovo.⁵

⁵UNMIK, *Policy Paper on Repatriation of Kosovar Albanians* (April 2000). This assessment is confirmed by the UNHCR/OSCE *Update on the Situation of Ethnic Minorities in Kosovo* (Period covering February through May 2000), which warns that “Lack of security and freedom of movement remain the fundamental problems affecting minority communities in Kosovo. Criminal activity remains unacceptably high, with a continued shortfall in UNMIK Police staffing, and the lack of a properly functioning and impartial judicial system.” According to UNHCR/OSCE, UNMIK police now number “some 3,030 personnel [...]”. This represents a marked improvement [...], but the number of available officers continue to fall short of the 4,718 authorised.”

According to some reports, this “prevailing climate of insecurity,” although partly linked with crime, also reflects an organized campaign directed against certain groups.⁶

A. Patterns of abuse and available protection

According to FRY government sources,⁷ 1,027 people have been killed in Kosovo in the period between 9 June 1999 and 4 June 2000. Of these, 902 were identified as being Serb or Montenegrin, without figures for other minorities being cited. Members of minority groups have also disproportionately been the victims of rape, abductions, violent ill-treatment, forced expulsion and destruction of property. At greatest risk are those living in isolated rural communities where international forces are unable to provide constant and adequate protection. However, incidents of killings despite the immediate presence of international forces have also been reported, including, on 2 February 2000, a rocket attack on a bus escorted by KFOR troops resulting in the death of two Serbs.

By far the greatest numbers of human rights abuses suffered by ethnic Albanians are at the hands of other Albanians. These range from killings, rape and abduction of women, beatings and ill-treatment, to evictions and looting. A considerable number are reported to have been committed by members of the Kosovo Protection Corps (KPC/TMK), an ostensibly civilian unarmed force established by UNMIK, but in some areas effectively an armed force operating outside the control of the UN administration. The leadership and much of the membership of the KPC is drawn from former members of the KLA, and it remains closely linked to the Democratic Party of Kosovo (PDK), the political successor to the KLA, and represented on the Kosovo Transitional Council. Although some such incidents are plainly connected with everyday criminal activities, a number of victims have been members of the groups identified below (see section 3). Some of the attacks have taken place in daylight, and on the streets of cities and towns, despite the presence of KFOR troops and UNMIK police.

⁶ E.g., on 21 June the Special Rapporteur of the Commission for Human Rights Bosnia-Herzegovina, Croatia and the Federal Republic of Yugoslavia, Jiří Dienstbier, was reported as stating at a press conference that “What is happening in Kosovo is not some revenge or understandable revenge, it is very well organised, all these expulsions and evictions are a political goal of Albanian extremists and not the revenge of ordinary people,” (UN rights envoy denounces Kosovo ethnic violence, *Reuters*, 21 June 2000)

⁷ Quoted in “*Broj ubistava na Kosmetu povećan za sto puta od dolaska KFORa*” (Number of killings in Kosovo a hundred times greater since the arrival of KFOR, *Politika*, 8 June 2000).

B. Places of Greater Safety

There are certain areas (enclaves) in which the Serb population make up a local majority, mainly the northern part of Kosovska Mitrovica town and the surrounding area, where around 70,000 Serbs are believed to remain, and the area around Gnjilane (Gjilanë) in the southeast, where a lesser number are concentrated. Many of these people have fled from other areas of Kosovo.

Gnjilane and the surrounding area in particular have seen a number of attacks on Serbs since the entry of KFOR in June 1999 despite the presence of international forces. In the period 6-11 May 2000 alone an elderly man was found dead, six Serb men were injured in a grenade attack on a Serb-owned shop, and two Serb-owned houses were blown up. The proposed return of a number of ethnic Serb internally displaced persons (IDPs) currently in Serbia to the village of Osojane, initiated by the US and supported by Serb representatives, was met by a hostile demonstration of around 2,000 local Albanians opposing the return of Serbs to the area.

The largest group of Roma, Aškalije and Egip_ani minorities that remains in Kosovo is located in the town of Djakovica (Gjakovë) and its surrounding villages. The Roma population there numbers some 7,000, while several thousand remain in the Prizren and Pe_/Pejë areas. Despite these relatively large numbers, there have been reports of killings of, and armed attacks on, Roma in these areas and elsewhere. There have also been reports that some Roma IDPs within Kosovo have been harassed and threatened by remaining Serbs.

Many ethnic Albanians remain internally displaced within the province, either because their homes are destroyed or as a part of a general movement towards the larger towns. In the case of Kosovska Mitrovica, there has been an exchange of populations between the northern and southern parts of the town, with the former now largely Serb and the latter mainly Albanian. Ethnic Albanians whose homes were originally in the northern part of the city risk violence and harassment if returned to their former homes, and attempts by KFOR and UNMIK to return locally displaced ethnic Albanians to their homes there have met with resistance from local Serbs, resulting in violent clashes and the use of tear gas and rubber bullets on the part of KFOR troops. On 18 June the news service of the independent Belgrade Radio B2-92 reported that Serbian inhabitants of Donje and Gornje Vitinje had prevented a group of 20 Albanian families, accompanied by representatives of UNMIK and KFOR, from returning to their homes in the villages.

C. Political considerations

The question of return is complicated by a number of political factors. Chief among these is the fact that representatives of both Serb and Albanian sides are reluctant to oppose the return of members of their communities. Serb representatives use it as a way to criticize the actions and effectiveness of the international presence. Albanian representatives see it as a distraction from more pressing concerns such as the issue of Kosovar prisoners currently held in Serbia. It is also possible that UNMIK and KFOR and certain contributing countries will be inclined to overestimate the stability and security in the province in order to demonstrate that they have made successful progress towards creating conditions for return. This should be taken into consideration when assessing claims made by any of these parties.

3. Identifying Refugees with Continuing Well-Founded Fears of Persecution

Given the paramount international legal obligation on host states not to send back refugees to territories where their lives or freedom would be in jeopardy, the situation on the ground in Kosovo indicates that many Kosovar refugees have a continuing need for international protection. The United Nations High Commissioner for Refugees (UNHCR) has identified several categories of refugees other than non-Albanians who face a high risk of physical violence, harassment, and discrimination if returned to Kosovo:

- persons or families of mixed ethnic origin;
- persons associated, or perceived to have been associated, with the Serbian regime after 1990;
- persons who refused to join or deserted from the Kosovo Liberation Army (KLA/UCK)
- persons known to be outspokenly critical of the former KLA or the former self-proclaimed "Provisional Government of Kosovo" and members or supporters of political parties not aligned with the former KLA or the former self-proclaimed "Provisional Government of Kosovo."
- persons who are known to have refused to follow the laws and decrees of the former KLA or the former self-proclaimed "Provisional Government of Kosovo."⁸

Amnesty International believes that these and other categories of refugees from Kosovo are at risk of continued persecution if they are returned to the province.

⁸*Kosovo Albanians in Asylum Countries: UNHCR Recommendations as regards Return* (Update, March 2000).

A. Members of Ethnic Minorities

These include Serbs, Montenegrins, Muslim Slavs (including Bošnjaci or Bosniacs and Gorani), Roma, Aškalije and Egip_ani, Turks and other smaller groups, especially if their mother tongue is Slav and/or their Albanian weak. Members of all these minorities have been attacked or suffered harassment or damage to property at the hands of ethnic Albanians. Individuals of an ethnically mixed background and those who are partners in mixed marriages should also be considered at risk.

B. Ethnic Albanians

Among ethnic Albanian a number of categories of refugees would be at risk if they returned to Kosovo. Prominent among these are the following:

- People with a history of political or other opposition to the KLA, or to individuals prominent therein. These include, but are not limited to, people who had deserted from the organization or refused to respond to its unofficial “call-up” during the period of conflict.
- Ethnic Albanians who risk being accused of “collaboration” with the Serbian authorities. This definition should not be restricted to informers or suspected informers, members of the police or army or those who worked in the prison service. It would include those who had responded to call-up to and performed military service in the Yugoslav Army, whether they had served within Kosovo or not, as well as people who had worked for state-owned enterprises such as power, water and heating, or agricultural cooperatives. Such people were victims of kidnappings and killings at the hands of the KLA or other armed ethnic Albanian groups even before the outbreak of open conflict between the KLA and Serb security services and NATO’s subsequent intervention.
- Ethnic Albanians whose homes were in Serbia proper. The majority of these are from the area of southern Serbia bordering Kosovo, where there is a sizeable ethnic Albanian population. There is growing tension in this region, with armed clashes between Serbian police and an ethnic Albanian armed group called the Liberation Army of Bujanovac, Medvedje and Preševo in which both sides have suffered fatal casualties, as well as reports of harassment and ill-treatment of ethnic Albanians on the part of the police. A certain number of those already returned to Kosovo are from this area, and they are effectively unable to return to their homes. This area of Serbia is sometimes referred to by Albanian sources as ‘Eastern Kosovo’.

· Members of families involved in a blood feud. Despite great efforts on the part of many prominent Albanians, such feuds persist, and the danger to such men (rarely women) is very real.

C. Victims of Rape and Sexual Violence

Amnesty International believes that particular attention should be paid to those who have suffered from serious human rights abuses, including rape and sexual violence. Amnesty International has serious concerns about the problems facing these women, for whom sustainable return should involve more than material solutions.⁹

For ethnic Albanian women whose trauma stems from being victims of sexual violence, including rape, there is a serious prospect that, in addition to the possibility of being re-traumatized by the process of return, they will face serious stigmatization within their own communities. Although some informal arrangements for the protection of these women exist, Amnesty International believes that there is currently insufficient provision for these women, both with regard to attacks on their personal integrity, and to their protection - as witnesses - from perpetrators who are thought to remain at large in certain areas of Kosovo.

For women from minority groups, the risk of re-traumatization or re-victimization is even higher. Amnesty International believes that until the rule of law can be established in Kosovo, and until the Victims and Witness Unit of the Kosovo Court is established, there is no real possibility that women from minority groups will be afforded the protection they need. Further, members of minority communities continue to face significant problems in accessing both health and social services, making it very difficult for women from minority communities to gain access to psycho-social support.

⁹ In the context of Bosnia-Herzegovina, see for example, *Daunting Prospects. Minority Women: Obstacles to their Return and Integration*, (UNHCR, April 2000, pp.16-17).

4. Recommendations

Amnesty International believes that anyone who expresses a wish not to return should have access to a fair and individual asylum procedure in the host state to determine if they have a well-founded fear of suffering serious human rights violations or abuses. Amnesty International believes that Kosovars who fall into any of the categories described above have a continuing well-founded fear of persecution in Kosovo, and therefore cannot be forced to return. They should continue to receive international protection without discrimination, as prescribed by the Geneva Convention, in their country of asylum.¹⁰

The need for careful attention to individual cases is particularly acute because of the wide range of circumstances that might put an ethnic Albanian at risk of persecution. It is impossible to catalogue all of the circumstances that might create such suspicion. Each case must be carefully and fairly evaluated to understand the level of risk faced by individual refugees.

The asylum procedure should also identify persons who do not want to return because of compelling reasons arising out of previous persecution. This includes victims of extreme violence, torture or trauma, particularly the victims of rape and sexual abuse.¹¹ Such refugees should continue to receive international protection, and should not be forced to return.

Finally, it is critical that returning states take account of the fragile state of Kosovo's economic and social infrastructure. UNMIK has warned:

Mass, unco-ordinated returns over a short period could overburden the present and future system, thus derailing the delicate transition from a UN-implemented emergency relief programme to a locally based, more permanent social welfare system. Any immediate mass movements into Kosovo would likewise strain capacities of the public utilities sector at a time when the electricity and water supplies are beginning to recover after years of neglect.¹²

¹⁰ UNMIK also notes a potential future risk should there be renewed hostilities along Kosovo's border with Serbia or further persecution of ethnic Albanians in Serbia. "Further flight of ethnic Albanians across Kosovo's southeastern border from Serbia ... would require a total reassessment not only of Kosovo's absorptive capacity, but also the appropriateness of repatriating people into a potentially explosive security situation."

¹¹ See UNHCR Handbook ¶ 136.

¹² UNMIK, *Policy Paper on Repatriation of Kosovar Albanians*.

Amnesty International believes that many ethnic Albanians can safely return to Kosovo. But returns should not jeopardize difficult progress toward achieving political and economic stability in Kosovo, which is necessary both to prevent future mass violations of human rights and to ensure the continuing capacity to absorb returning refugees. Amnesty International agrees with UNMIK that “the prevailing conditions in Kosovo argue forcibly in favour of guaranteeing that all repatriation programmes be designed as co-ordinated, phased and orderly movements.”