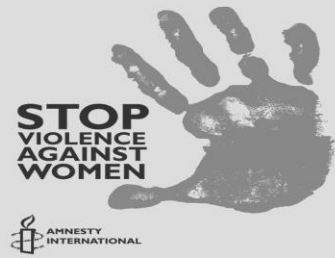


# Kosovo (Serbia & Montenegro) “So does that mean I have rights?”



## Protecting the human rights of women and girls trafficked for forced prostitution in Kosovo

### Introduction

*“A friend introduced me to a woman in Chi[[in]u, she offered me a job abroad and said she would prepare a passport for me, for free. I asked if the job was sex related and she promised that it was not.”<sup>1</sup>*

*“I was beaten and I was forced to have sexual intercourse... if we were not willing, they just beat us and raped us.”<sup>2</sup>*

*“Even in cold weather I had to wear thin dresses ... I was forced by the boss to serve international soldiers and police officers ... I have never had a chance of running away and leaving that miserable life, because I was observed every moment by a woman.”<sup>3</sup>*

Trafficking of women for forced prostitution is an abuse of human rights, not least the right to physical and mental integrity. It violates the rights of women and girls to liberty and security of person, and may even violate their right to life. It exposes women and girls to a series of human rights abuses at the hands of traffickers, and of those who buy their services. It also renders them vulnerable to violations by governments which fail to protect the human rights of trafficked women.<sup>4</sup>

Amnesty International considers the trafficking of women for the purposes of forced prostitution to be a

widespread and systematic violation of the human rights of women.<sup>5</sup>

Since the deployment in July 1999 of an international peacekeeping force (KFOR) and the establishment of the United Nations Interim Administration Mission in Kosovo (UNMIK) civilian administration, Kosovo<sup>6</sup> has become a major destination country for women and girls trafficked into forced prostitution. Women are trafficked into Kosovo predominantly from Moldova, Bulgaria and Ukraine, the majority of them via Serbia. At the same time, increasing numbers of local women and girls are being internally trafficked, and trafficked out of Kosovo.

Less than three months after the deployment of international forces and police officers to Kosovo, trafficking had been identified as a problem by the Organization for Security and Cooperation in Europe (OSCE); and by January 2000, UNMIK’s Gender Advisor had acknowledged, but not yet acted on, the problem.<sup>7</sup> Despite subsequent measures taken by UNMIK and others to combat trafficking, by July 2003 there were over 200 bars, restaurants, clubs and cafes in

<sup>1</sup> 24-year-old trafficked woman from Moldova.

<sup>2</sup> Woman trafficked into Kosovo.

<sup>3</sup> Internally trafficked Albanian girl, aged 12.

<sup>4</sup> In this report, the term “women” generally refers to both women and girls. The term “girls” is used specifically for females under 18 years of age.

<sup>5</sup> The scope of this report does not extend to the prevalent problem of trafficking of women, men and children into other forms of labour exploitation, including begging, the service industry, agricultural work, domestic and other forced labour and into marriage.

<sup>6</sup> In Albanian, Kosova; place names are given in both Albanian and Serbian in this report.

<sup>7</sup> OSCE/ODIHR, *Proposed Action Plan 2000 for activities to combat trafficking in Human Beings*, Warsaw, November 1999, pp. 20-24; “Trafficking in women is a real problem, but it's not at the top of my list of priorities,” Roma Bhattacharjea, UNMIK Gender Advisor; “NATO forces spur Kosovo prostitution boom”, *AFP*, 5 January 2000.

Kosovo where trafficked women were believed to be working in forced prostitution.<sup>8</sup>

Although some women are abducted or coerced, many start their journeys from their home countries voluntarily, believing that the work they are offered – usually in western Europe – will enable them to break out of poverty or escape violence or abuse. Often, as soon as their journey begins, so does the systematic abuse of their rights, in a strategy that reduces them to dependency on their trafficker, and later their “owner”. As their journey continues, the realization grows that the work they have been offered is not what was promised; their documents are taken away from them; they may be beaten; they will – almost certainly if they start to protest – be raped.

When they reach Kosovo, they are beaten and they are raped – by clients, by “owners” and by other staff. Many are virtually imprisoned, locked into an apartment or room or a cellar. Some become slaves, working in bars and cafes during the day and locked into a room servicing 10 to 15 clients a night by the man they refer to as their “owner”. Some find that their wages – the reason they were willing to leave their homes – are never paid, but are withheld to pay off their “debt”, to pay arbitrary fines, or to pay for food and accommodation. If they are sick, they may be denied access to health care. They have no legal status and are denied their basic rights. Some of them are girls as young as 12 years old.

Even if they escape their traffickers or are “rescued” by the police, some women suffer human rights violations by officials. Some are arrested and imprisoned for prostitution or immigration offences, without being afforded the basic rights of detainees. Those recognized as victims of trafficking are denied rights to reparation and redress, and few receive appropriate protection, support and services. Some find that they have little or no protection from their traffickers if they testify in court. Throughout the process, women face discrimination on the basis of their gender, ethnic origin and/or their perceived occupation.

## Research

Amnesty International has conducted research into the human rights abuses experienced by women trafficked into Kosovo since early 2000. Interviews were conducted with a wide range of international and local staff employed by UNMIK, including UNMIK police and the Kosovo Police Service (KPS); the OSCE; the

<sup>8</sup> “Off-Limits List”, July 2003, UNMIK Police Trafficking and Prostitution Unit (TPIU); the “off-limits list” is explained below, see p. 7.

International Organization for Migration (IOM); officers and staff of Ministries within the Provisional Institutions of Self-Government (PISG); members of international and local non-governmental organizations (NGOs), in particular the Centre for the Protection of Women and Children (CPWC)<sup>9</sup> and the Centre to Protect Victims and to Prevent Trafficking of Human Beings in Kosovo (CPVPT)<sup>10</sup> and an NGO providing shelter for minors which wishes to remain anonymous; international prosecutors, members of the local judiciary in Kosovo and members of NGOs working in source countries with trafficked women.

Amnesty International also conducted interviews with women who identified themselves as being trafficked.<sup>11</sup> In order to protect the rights of trafficked women, Amnesty International has throughout the report observed the confidentiality requested by those women, or by organizations working with trafficked women; no citations have been given that could assist in their identification.

The illegal, organized and clandestine nature of trafficking, along with the silencing of trafficked women through coercion, violence and fear, make it impossible to accurately estimate the full extent of the trafficking industry in Kosovo.

## What is trafficking?

“It’s something to do with cars, isn’t it?” - trafficked girl, interviewed by an NGO in Kosovo.

The gravity of the crime of trafficking is reflected in the fact that, in some circumstances, it may constitute a crime against humanity or a war crime. Trafficking in persons, in particular women and children, that amounts to enslavement has been included among the most serious crimes of international concern in the Rome Statute of the International Criminal Court (ICC).<sup>12</sup>

<sup>9</sup> The CPWC is main domestic NGO working with internally trafficked women; in Albanian *Qendra për Mbrojtjen e Grave dhe Fëmijëve (QMGF)*.

<sup>10</sup> The CPVPT is a domestic NGO working in partnership with the IOM; in Albanian, *Qendra për Mbrojtjen e Victimës dhe Paraandalimin e Trafikimit me Qenje Njerëcore ne Kosovë (MVPT)*.

<sup>11</sup> Amnesty International is aware of concerns that the term “trafficked women” identifies and defines women by the violation committed against them, and reinforces the perception of women as victims. However, the organization considers that the term may be understood to encapsulate the experience of being trafficked, distinguishes the trafficking experience from that of migrant workers, and is preferable to terms in current use, including “victim” or “victim of trafficking”.

<sup>12</sup> It is defined in the Rome Statute as a crime against humanity when committed as part of a widespread or systematic attack against any civilian population, pursuant to or in furtherance of a state or organizational policy to commit the attack (Article 7 (1) (c) and (2)

For the purposes of this report, Amnesty International uses the definition of trafficking set out in Article 3 of the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, (the Trafficking Protocol), supplementary to the UN Convention against Transnational Organized Crime.<sup>13</sup> Article 3 provides that:

*“(a) Trafficking in persons shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs”.*<sup>14</sup>

*(b) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used.*

*(c) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered “trafficking in persons”, even if this does not involve any of the means set forth in subparagraph (a) of this article.*

*(d) “Child” shall mean any person under eighteen years of age.*

Amnesty International is applying this definition to women who are trafficked into Kosovo from foreign countries, and to those who are internally trafficked<sup>15</sup>,

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(c)); the related crime of sexual slavery is defined as a war crime when committed during an international or internal armed conflict (Article 8 (2) (b) (xxii) and (c) (vi) of the Rome Statute).

<sup>13</sup> The Trafficking Protocol, also known as the Palermo Protocol, which entered into force on 26 December 2003, was signed by Serbia and Montenegro in December 2000, and ratified in June 2001; the definition set out in Article 3 is the applicable definition in Kosovo.

<sup>14</sup> The International Human Rights Law Group (IHR LG) notes that the terms “the exploitation of the prostitution of others” and “sexual exploitation” were deliberately left undefined in the Protocol, neither are they defined elsewhere in international law, *The Annotated Guide to the Complete UN Trafficking Protocol*, pp. 8-9, IHR LG, May 2002.

<sup>15</sup> Amnesty International uses the term “externally trafficked” to refer to women who have been trafficked into Kosovo from third countries (including, in this case, Serbia), and “internally trafficked” to refer to

including from Serbia, and irrespective of whether their traffickers are participants in an organized criminal group.

Although the majority of women, including those whose testimonies are included in this report, may have begun their journeys as smuggled migrants, in the course of their journey, or following their arrival in Kosovo, they find themselves forced into exploitative prostitution. Amnesty International considers these women to be trafficked.

## A human rights perspective

In this report, Amnesty International highlights the human rights abuses to which trafficked women are exposed, and advocates that respect for, and protection of, the rights of trafficked women must be central to the action of all authorities in their responses to trafficking.

The obligation of states to prevent trafficking – recognized as a form of discriminatory gender-based violence against women<sup>16</sup> – is set out in Article 6 of the UN Convention on the Elimination of All Forms of Discrimination Against Women (the Women’s Convention) and in the Convention of the Rights of the Child (Children’s Convention).<sup>17</sup>

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Kosovo Albanian, Roma and Kosovo Serb women, who are trafficked within Kosovo.

<sup>16</sup> Article 2 (b) of the *UN Declaration on Elimination of Discrimination Against Women* (DEVAW states: “Violence against women shall be understood to encompass, but not be limited to, the following: ... (b) Physical, sexual and psychological violence occurring within the general community, including rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere, trafficking in women and forced prostitution”. See also *The 1995 Beijing Platform for Action*; UN General Assembly, *Further Actions and Initiatives to Implement Beijing Platform for Action*, A/RES/s-23/3, 16 November 2000, Sec 131 a-c., which recognizes trafficking as a form of gender-based violence. See also, Committee on the Elimination of Discrimination Against Women (CEDAW), paragraph 7, *General Recommendation 19*: “Gender-based violence, which impairs or nullifies the enjoyment by women of human rights and fundamental freedoms under general international law or under human rights conventions, is discrimination within the meaning of article 1 of the Convention”, General Recommendation 19, A/47/38, 29 January 1992.

<sup>17</sup> Article 6 of the Women’s Convention obliges states parties to “take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women”. The Children’s Convention requires states to take all appropriate national, bilateral and multilateral measures to protect children from and prevent trafficking of children. For example, Article 35 of the CRC provides: “States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or form”. See also the *Optional Protocol to the Children’s Convention on the Sale of Children, Child Prostitution and Child Pornography*; and the *International Labour Organization (ILO) Convention No. 182 on the Worst Forms of Child Labour* which requires the elimination of “all

Applicable law in Kosovo includes international treaties which require the authorities to act with due diligence to prevent, investigate and prosecute all human rights abuses, including trafficking, and the other human rights abuses to which trafficked women and girls are subjected including acts of torture, such as rape. They also require the authorities to ensure effective redress and adequate reparation to those who have been subjected to such crimes. These international treaties include the European Convention for the Protection of Human Rights and Fundamental Freedoms and the Protocols thereto (ECHR); the International Covenant on Civil and Political Rights and the Protocols thereto (ICCPR); the International Covenant on Economic, Social and Cultural Rights (ICESCR); the Convention on the Elimination of All Forms of Racial Discrimination (the Convention against Racial Discrimination); The Convention on the Elimination of All Forms of Discrimination Against Women (the Women's Convention); the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture); and the International Convention on the Rights of the Child (the Children's Convention).

Even before they enter the trafficking process, many women and girls have already suffered violations of their rights in their home countries, guaranteed under the ICCPR, ICESCR and the Women's Convention. Many trafficked women and girls have been denied access to education, access to employment or to social welfare or have suffered discrimination – on the basis of their gender – in gaining access to these rights. Many of them have already been subject to abuses of their right to physical and mental integrity, through domestic violence and other forms of physical and sexual abuse at the hands of their parents or their partners.

In the process of trafficking, women may be abducted; they will be unlawfully deprived of their liberty, in violation of their rights to liberty and security of their person, enshrined in Article 9 of the ICCPR and Article 5 of the ECHR. Their rights to freedom of movement, guaranteed under article 12 of the ICCPR, are curtailed or denied. Their rights to privacy and to family life, under Article 8 of the ECHR and Article 17 of the ICCPR, are further denied.

They are subjected to torture, including rape,<sup>18</sup> and other forms of cruel, inhuman or degrading

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forms of slavery or practices similar to slavery, such as the sale and trafficking of children". These latter two treaties have yet to be incorporated into applicable law in Kosovo.

<sup>18</sup> A state is responsible under international law to act with due diligence to deter and prevent rape; to investigate allegations of rape; to bring those individuals suspected of being responsible for such

treatment, such as the repeated use of psychological threats, physical beatings and degrading sexual acts. These acts violate the rights of women and girls under Article 7 of the ICCPR and Article 3 of the ECHR, and Article 37 of the Children's Convention, and may even violate their right to life. Trafficked women may also be denied access to health-care guaranteed under Article 12 of the ICESCR and Article 12 of the Women's Convention.

In addition to the abuses perpetrated by traffickers, trafficked women often find their rights violated within the criminal justice system. As detainees, they are not informed of their rights or how to access them. Their rights to the presumption of innocence, to a lawyer and to an interpreter are denied in violation of their rights under Articles 9 and 14 of the ICCPR, Articles 5 and 6 of the ECHR and Articles 37 and 40 of the Children's Convention.

As victims of human rights abuses, they do not routinely receive information about their rights to reparation, including compensation, or how to access them through administrative bodies or the courts.<sup>19</sup> The majority of women will not see those responsible for the abuses of their rights brought to justice.

Some trafficked women have not been protected from forcible return to a country where they would face grave human rights abuses, in violation of Articles 3 of the ECHR and of the Convention against Torture, Article 33 of the 1951 Convention relating to the Status of Refugees, and principles of customary international law.

Respect for the rights of women and girls in Kosovo who have been subjected to trafficking not only requires the authorities to investigate the abuses highlighted above, to bring to justice those responsible for those abuses, and to ensure the victims of such abuses effective redress, including reparation. It also requires the authorities in Kosovo – as well as in their countries of their origin and other countries to which they may be resettled – to ensure respect for the full range of their rights including their rights to dignity, security, privacy, the highest attainable standard of health, an adequate standard of living, safe and secure housing, work, education and social security.

In addition to the legal standards set out above, Amnesty International refers to the Office of the UN

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offences to justice in fair trials; and to ensure access to effective redress and reparation for those who suffered acts of rape and to ensure their protection. International tribunals have confirmed that rape is a form of torture.

<sup>19</sup> See Article 2 of the ICCPR, Article 14 of the Convention against Torture.

High Commissioner for Human Rights (UNHCHR) Recommended Principles and Guidelines on Human Rights and Human Trafficking (UNHCHR Recommended Principles and Guidelines). The protection of the human rights of trafficked persons lies at the heart of the UNHCHR Recommended Principles and Guidelines, which are directed at states, intergovernmental organizations and non-governmental organizations; they are comprised of 17 basic Principles – based in international human rights law – and 11 detailed Guidelines, which set out practical measures for their implementation.<sup>20</sup>

Amnesty International also notes that the UN Commission on Human Rights has recently established a new mandate for a Special Rapporteur on trafficking.<sup>21</sup>

Another important tool to ensure the protection of women's human rights, in particular in the context of armed conflict and post-conflict situations, is Resolution 1325 on women, peace and security, adopted by the UN Security Council on 31 October 2000.<sup>22</sup> This landmark resolution calls on a range of actors – the UN Secretary-General, the UN Security Council, UN Member States, all parties to armed conflict, and those involved in negotiating and implementing peace agreements – to ensure increased representation of women at all levels of decision-making concerning the prevention, management and resolution of conflict; to include more women in peace-keeping and other field operations and to provide training for field staff on the protection of women's human rights; to adopt a gender perspective when negotiating and implementing peace agreements; and to take special measures to protect women and girls from gender-based violence, particularly rape and other forms of sexual abuse.

Resolution 1325 also requested the UN Secretary-General to carry out a study on women, peace and security. The outcome of this study was reported to the Security Council in October 2002 and expanded upon the recommendations contained in resolution 1325.<sup>23</sup> At the same time, UNIFEM (United Nations Development Fund for Women) commissioned an expert study on women, war and peace which further elaborated on measures to further implement resolution 1325.<sup>24</sup> In October 2004, the UN Secretary-General will

submit the first report on the implementation of resolution 1325.

## Due diligence

Where abuses have been perpetrated by organized criminals or private individuals, and where a state has failed to take effective action or bring those responsible to justice, then the authorities – in this case, UNMIK – may be held responsible for those abuses of human rights. With respect to violence against women, the UN Committee on the Elimination of Discrimination against Women (CEDAW) notes that states should exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the state or by private persons.<sup>25</sup> Application of this standard in practice may therefore require states to, for example, introduce measures to criminalize trafficking (as UNMIK has done in Kosovo), effectively enforce this prohibition, provide legal assistance and remedies for victims, and take preventative action to address the underlying causes of trafficking.<sup>26</sup>

## Applicable law in Kosovo

In addition to the human rights standards outlined above, applicable law in Kosovo consists of regulations promulgated by the Special Representative of the UN Secretary General (SRSG) and the law in force in Kosovo on 22 March 1989.<sup>27</sup> Until January 2001, prosecutions in trafficking cases were conducted under the Criminal Code of the former Socialist Federal Republic of Yugoslavia (SFRY) and the Serbian Criminal Codes, including under Article 251 of the Serbian Criminal Code for “intermediation in the exercise of prostitution”, and under Article 18 (8) of the Kosovo Law on Public Peace and Order, which creates a minor offence out of the act of mediating in or forcing another into prostitution; women were convicted of prostitution under the same law.

<sup>20</sup> Report of the Office of the United Nations High Commissioner for Human Rights to the Economic and Social Council, UN Doc.: E/2002/68/Add. 1, 20 May 2002.

<sup>21</sup> <http://www.unhcr.info/resolution/E-CN4-2004-L60-0419.pdf>

<sup>22</sup> S/RES/1325 (2000).

<sup>23</sup> S/2002/1154.

<sup>24</sup> Progress of the World's Women 2002, Volume 1, *Women, War, Peace*.

<sup>25</sup> CEDAW, Article 9, General Recommendation 19, Violence against women, (Eleventh session, 1992)

<sup>26</sup> See Anne Gallagher, *Consideration of the Issue of Trafficking. Background Paper, Asia Pacific Forum of National Human Rights Institutions*, 11-12 November, 2002, p. 11.

<sup>27</sup> See UNMIK Regulation 1999/24, *On the Law Applicable in Kosovo*, 12 December 1999, as amended by UNMIK Regulation 2000/59, 27 October 2000. The regulation provides for four possible sources of applicable law in Kosovo: the law in Kosovo as it existed on 22 March 1989; UNMIK Regulations; the law applied in Kosovo between 22 March 1989 and 12 December 1999 (the date Regulation 1999/24 came into force) if this is more favourable to a criminal defendant or it fills a gap where no law from March 1989 exists; and some, but not all, international human rights standards and laws.

On 12 January 2001, the SRSG promulgated UNMIK Regulation 2001/4, *On the Prohibition of Trafficking in Persons in Kosovo* (see Chapter 3, below).

## Chapter 1: Background

In July 1999, following UN Security Council Resolution (UNSCR) 1244/99 of 10 June 1999 an international peacekeeping force (KFOR) and a UN civilian administration known as UNMIK were established in Kosovo.<sup>28</sup> This saw the removal of the Serbian authorities which had governed the province since 1990, when the authorities under President Slobodan Milošević stripped Kosovo of the autonomy it had been granted in 1974.<sup>29</sup>

From 1990, members of the majority ethnic Albanian population were subjected to a decade of human rights violations perpetrated by the Federal Republic of Yugoslavia (FRY) authorities and the Serbian police.<sup>30</sup> By 1998, an internal armed conflict was being fought in Kosovo between FRY forces, Serb police and paramilitaries the on one side and the Kosovo Liberation Army (KLA) on the other. From 24 March to 10 June 1999, with the declared aim of preventing a human rights catastrophe, the North Atlantic Treaty Organization (NATO) conducted an air campaign against the FRY, codenamed Operation Allied Force.<sup>31</sup> In June 1999, after the conclusion of an agreement with the FRY authorities, NATO ceased its bombing campaign, and by the end of July Serbian police, paramilitaries and the Yugoslav Army had withdrawn from Kosovo.<sup>32</sup>

Under UNSCR 1244/99, UNMIK was mandated with the task of providing an interim administration for Kosovo, and charged in Article 11 (j) with the duty of "Protecting and promoting human rights". Article 9 also provided a mandate for the international NATO-led security presence (KFOR).

<sup>28</sup> Kosovo still remains, pending resolution of final status, a part of Serbia and Montenegro.

<sup>29</sup> On 2 July 1990 ethnic Albanian members of the Kosovo Assembly declared Kosovo's independence.

<sup>30</sup> See *Amnesty International, FRY (Kosovo): A decade of unheeded warnings*, Vols. 1&2, AI Index: EUR 70/39/99 AND EUR 70/40/99, April 1999.

<sup>31</sup> See *Amnesty International, NATO/FRY: "Collateral Damage" or Unlawful Killings? Violations of the Laws of War by NATO during Operation Allied Force*, AI Index: EUR 70/18/00, June 2000.

<sup>32</sup> *Military Technical Agreement between the International Security Force ("KFOR") and the Governments of the Federal Republic of Yugoslavia and the Republic of Serbia*, NATO, 9 June 1999. The agreement set out the mandate of the international military presence in Kosovo, the roles and responsibilities of KFOR and of the FRY and Serbian military and police.

## International presence generates sex trade

In the second half of 1999, 40,000 KFOR troops were deployed and hundreds of UNMIK personnel arrived along with staff from more than 250 international NGOs. Within months of KFOR's arrival, brothels were reported around the military bases occupied by international peace-keepers. Kosovo soon became a major destination country for women trafficked into forced prostitution. A small-scale local market for prostitution was transformed into a large-scale industry based on trafficking predominantly run by organized criminal networks.

Some sectors of the economy grew rapidly, through increased prices paid by international personnel for rented property and services, resulting in an increase in disposable income in certain sections of the population.

By late 1999 the United Nations Development Fund for Women (UNIFEM) had reported on significant organized prostitution in four locations close to major concentrations of KFOR troops. Most of the clients were reported to be members of the international military presence, while some KFOR soldiers were allegedly also involved in the trafficking process itself. Eighteen premises were identified, including in the Gnjilane/Gjilan area, where clients included US military personnel; in Prizren, where users reportedly included German KFOR soldiers and other internationals; in Pejë/Peć, where residents reported Italian KFOR soldiers as clients; and in Mitrovicë/a, where French KFOR reportedly patronized make-shift brothels.<sup>33</sup>

Since then, there has been an unprecedented escalation in trafficking in Kosovo. From the 18 establishments identified in late 1999, by January 2001, some 75 such premises were listed in the first "off-limits list" issued to UNMIK staff. This listed bars, clubs and restaurants where trafficked women were thought to work, and which had been declared "off-limits" to UNMIK and KFOR personnel (see Chapter 6). By 1 January 2004, there were 200 bars, restaurants and cafes on the "off-limits list".<sup>34</sup>

KFOR and UNMIK were publicly identified in early 2000 as a factor in the increase in trafficking for prostitution by the International Organization for

<sup>33</sup> Rachel Wareham, Consultant for UNIFEM Prishtinë/Priština, *No Safe Place: An Assessment of Violence against Women in Kosovo*, UNIFEM 2000, pp. 94-5. For evidence of prostitution in Kosovo prior to 1999, *ibid*, p. 93-4.

<sup>34</sup> UNMIK Trafficking and Prostitution Investigative Unit (TPIU), *End of Year Report*, 2003.

Migration (IOM).<sup>35</sup> In May 2000, Pasquale Lupoli, IOM's Chief of Mission in Kosovo, alleged that KFOR troops and UN staff in Kosovo had fed a "mushrooming of night clubs" in which young girls were being forced into prostitution by criminal gangs. "The large international presence in Kosovo itself makes this trafficking possible."<sup>36</sup>

Nevertheless, in February 2001 the IOM had cautioned, "[t]he fact that you have 45,000 foreigners in Kosovo could be one element in the equation, but it is definitely not the whole equation."<sup>37</sup> The trafficking industry was also assisted by Kosovo's proximity to source countries and well-established trafficking routes via Albania to the European Union (EU), as well as cooperation between Serbian, Albanian, Kosovo Albanian and Macedonian organized criminal networks. A lack of sufficient and experienced police officers and a weak criminal justice system also enabled the development of trafficking.

Although the development of trafficking can be attributed to the presence of the international community, the sex industry has subsequently developed to serve a wider client-base. Over the past three years it has increasingly served the local community, which both the IOM and the CPWC estimate now make up around 80 per cent of the clientele.

Given low levels of prostitution and trafficking of women prior to July 1999, all the available evidence suggests that without the presence of the international community and an influx of ready-made western consumers, Kosovo would have remained a relative backwater in the Balkan trafficking industry.

## Responsibility and accountability in Kosovo

Following the establishment of UNMIK, a transitional government was also established in 1999 by the ethnic Albanian population. Notwithstanding the establishment of the Provisional Institutions of Self-Government (PISG) in 2001, UNMIK continues to administer Kosovo under UNSCR 1244/99, despite the gradual transfer of certain powers to the PISG. The Special Representative of the UN Secretary-General (SRSG) still retains executive powers, most notably over the international judiciary, law enforcement, minorities and refugees, defence and security – in conjunction with

<sup>35</sup> At the time the IOM was the lead counter-trafficking agency in Kosovo, having established a presence there in January 2000.

<sup>36</sup> "Group launches campaign against forced prostitution in Kosovo", *AFP*, 24 May 2000.

<sup>37</sup> IOM Spokesperson Jean-Philippe Chauzy, in "Trafficking in women on the rise in Kosovo": IOM", *AFP*, 8 February 2000.

KFOR – and external relations. Since 2002, the Department of Justice has taken the lead role on trafficking.<sup>38</sup>

An international police force - UNMIK police or CIVPOL (civilian police) - carries out law enforcement functions, in conjunction with the Kosovo Police Service (KPS). As of 31 March 2004, there were 3455 international police in Kosovo. The UNMIK Police Trafficking and Prostitution Unit (TPIU) was established in November 2000, with the aim of gathering evidence to assist in gathering evidence to assist in the prosecution of those believed to be responsible for trafficking. The TPIU is staffed by both international police officers and members of the KPS.

The **PISG** was established by UNMIK Regulation 2001/9 in May 2001.<sup>39</sup> The Kosovo Assembly was elected in November 2001 and Ibrahim Rugova became President in March 2002. Government ministers with responsibilities related to both the prevention of trafficking and the protection and support of trafficked women include the Minister of Education, Science and Technology, the Minister of Labour and Social Welfare, the Minister of Health and the Minister of Public Services.

Within the Office of the Prime Minister, the Office for Good Governance, Human Rights, Equal Opportunities and Gender Issues has particular responsibility for trafficking, and for the coordination of the PISG's role in the Kosovo National Plan of Action on Trafficking – as required by the Stability Pact Task Force on Trafficking in Human Beings (SPTF).<sup>40</sup>

The mandate of **KFOR** continues to be unaffected by the gradual transfer of responsibilities from UNMIK to the PISG. Originally over 50,000 strong and composed of soldiers from more than 30 countries, by March 2004, it comprised four multi-national battalions totalling 17,000 troops but was subsequently reinforced by some 3,500 extra troops following widespread inter-ethnic violence that month. KFOR personnel are not accountable to either UNMIK or the PISG.

Both UNMIK and KFOR personnel, and contractors working for UNMIK and KFOR, are

<sup>38</sup> Anti-trafficking measures were previously coordinated by the OSCE, as the lead organization within the Democratization and Institution Building "pillar" of UNMIK.

<sup>39</sup> UNMIK Regulation 2001/9, *On A Constitutional Framework For Provisional Self-Government In Kosovo*, 15 May 2001.

<sup>40</sup> The SPTF was established in 2000 to actively support and monitor the development and implementation of regional anti-trafficking measures in south-eastern Europe. The Stability Pact is an EU initiative created in 1999, aimed at achieving stability in the region.



protected from prosecution in Kosovo by immunity granted under UNMIK Regulation 2000/47.<sup>41</sup> Civilians, including UNMIK police, may therefore only be prosecuted if a waiver is granted by the UN Secretary-General; immunity for KFOR personnel may be waived by the head of their national battalion.

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<sup>41</sup> UNMIK Regulation 2000/47, *On the status, privileges and immunities of KFOR and UNMIK and their personnel in Kosovo*, 18 August 2000.

## Chapter 2: Trafficking of Women and Girls in Kosovo

*“Eventually I arrived in a bar in Kosovo, [and was] locked inside and forced into prostitution. In the bar I was never paid, I could not go out by myself, the owner became more and more violent as the weeks went by; he was beating me and raping me and the other girls. We were his ‘property’, he said. By buying us, he had bought the right to beat us, rape us, starve us, force us to have sex with clients.”<sup>42</sup>*

*“If I refused [to have sex with clients] I was threatened. He was pointing the gun to my head, and he was saying.. ‘If you don’t do this in the next minute, you will be dead’. He has the gun, he was just saying do this or you will be dead.”<sup>43</sup>*

Some women are trafficked into Kosovo from abroad, some from within Kosovo itself. There are no accurate estimates of the numbers, but certainly many hundreds of women have been trafficked from their homes and forced to work as prostitutes.<sup>44</sup>

The statistics used in this report relate only to the women assisted by organizations working with trafficked women. Therefore they do not reflect the overall numbers who may have been trafficked into and within Kosovo, but rather the experience of individuals who have, through police raids or other methods of referral, received assistance. Although the TPIU have estimated that around 90 per cent of women working in the sex-industry in Kosovo have been trafficked, international organizations estimate that only one-third of trafficked women ever receive assistance.<sup>45</sup>

### Women and girls trafficked into Kosovo

Some 406 foreign women were assisted by the IOM in Kosovo between December 2000 and December 2003. According to the IOM, 48 per cent of women who have entered its repatriation program – enabling them to return to their home country – originated from Moldova. Of the remainder, 21 per cent came from Romania, 14

<sup>42</sup> Moldovan woman, single parent, 21 years old.

<sup>43</sup> NGO interview, woman trafficked into Kosovo.

<sup>44</sup> *Victims of Trafficking in the Balkans*, *ibid.*, [p. 46] quoting an UNMIK advisor: “there are at least 1,000 if not 2,000... Locals are telling social welfare workers and members of international organizations that there are now bars and brothels even in small villages. In one small town alone, an OSCE source notices five women a week who are probably trafficked.”

<sup>45</sup> Barbara Limanowska, *Trafficking in Human Beings in Southeastern Europe*, OSCE/ODIHR, UNICEF, UNHCHR, 2002 p. 140; for the basis of these calculations, see p.142.

per cent from Ukraine, six per cent from Bulgaria, three per cent from Albania and the remainder from Russia and Serbia proper.

The origins of women registered by the TPIU in 2003 show a different profile, and indicate that women and girls from Albania (few of whom are assisted by the IOM) and internally, trafficked Kosovar Albanians comprise 36 per cent of women registered by the TPIU as working in bars and other premises suspected of involvement in trafficking. Of the women from other countries, 27 per cent were from Moldova; 45 per cent from Bulgaria; nine per cent from Romania and almost seven per cent from Ukraine.<sup>46</sup>

Women trafficked into Kosovo come from some of the poorest countries in eastern Europe. They have suffered more than a decade of economic dislocation, exacerbated by gender discrimination, in countries which have seen dramatic rises in poverty and unemployment.

*“I was desperate, and not because I was having problems with my parents as I heard from other girls, but because we were so poor... My grandmother had a very small allowance, and my mother has only the state allowance for my three brothers. We should have the alimony that my father is supposed to give us, but he is just ignoring us and not helping us at all... I couldn’t live any longer on my grandmother’s pension, so I said that I’d better go somewhere else where I could work hard and earn some money to help my family and my brothers.”<sup>47</sup>*

In September 2002, the IOM published an analysis of the social profile of 168 women and girls from Moldova, for whom they had provided assistance, six per cent of whom were girls under the age of 18.<sup>48</sup> The IOM found that the majority of women and girls (57 per cent) had only received a basic primary education, 24 per cent had received secondary education, 15 per cent had been educated to the age of 18 and four per cent had attended university. Over 70 per cent defined themselves as poor or very poor, those that were employed earning less than \$30US (€30) a month. Some 88 per cent of these women and girls told the IOM that their main reason for leaving Moldova was to find work.

Some 37 per cent of these women and girls were mothers – often separated or divorced; some were single mothers or widowed; less than 10 per cent were reportedly married or living in a stable relationship.

<sup>46</sup> TPIU, *End of Year Report 2003*.

<sup>47</sup> Woman trafficked into Kosovo.

<sup>48</sup> IOM Kosovo, *Return and Reintegration Project, Situation Report – February 2000 to September 2002*, 2002, p. 13.

Many trafficked women have already suffered violations of their physical and mental integrity in their home countries. Based on interviews with 105 trafficked women, IOM found that some 22 per cent had been physically or psychologically abused within their family; another 15 per cent reported physical and sexual violence; seven per cent reported physical or psychological abuse by a husband or partner.<sup>49</sup>

Based on these interviews, IOM suggests that many women's final decision to leave home was precipitated by an argument with their parents or partner, or an episode of domestic violence, as in the following case:

*"Following repeated abuse by her husband, culminating in threats to stab and kill her, a Romanian woman with three children fled her husband, and temporarily took her children to her parents' house. Her husband's cousin – who was aware of her situation – told her that he knew someone who was organizing trips to Germany. Hoping that she might be able to find a job in Germany with the help of an aunt living there, she agreed to go. En route, she found that she had been sold, and was trafficked to Kosovo."*

In cases where women are unable to enjoy their social and economic rights and their vulnerability is exacerbated by abuse and ill-treatment within their families, many women in countries such as Bulgaria, Moldova, Romania and Ukraine may see the opportunity to work abroad as a positive choice, offering them a way out and the chance to earn what they expect to be many times what they can earn at home.

## Recruitment

*"...in any capital, be it Tirana or Budapest, Prague or Warsaw... somewhere there will be a hotel, a cinema, a bar, a restaurant, a café ... named, for our desire, Europa. ... Europe is plenitude: food, cars, light, everything ... It is a promised land, a new Utopia..."*<sup>50</sup>

Relatively few women are abducted, bundled into the back of a car and driven off to be sold. According to the IOM, just over eight per cent of women trafficked from Moldova to Kosovo reported being forcibly abducted; most had chosen to work abroad – almost 60 per cent having been promised work in Italy – although the work

and location they were promised was very different from what awaited them.<sup>51</sup>

According to the IOM, 80 per cent of women report that they are recruited by a relative, friend or an acquaintance. In nearly half the cases, this person is a woman, often a friend:

*"I am three years here. I was 17 years old when I came here. My friend said, 'Do you want to go and work in Kosovo?' I said no. ... At home I was bored. I had nothing to do, so I called her. I came to work for DM10 – 15, which is 5 – 7 Euros as a waitress. That was payment per day. I spent two weeks in Belgrade with one good family there – very good people... Then they got a false passport and I was brought by one man to the Kosovo border... Me and my friend crossed the border, just us. We stayed in a hotel, then one day later we came to Prizren. Two weeks in a hotel in Prizren and at that time my friend paid everything. She brought me to a bar in a village near Prizren. My friend then left me and I haven't seen her since."*<sup>52</sup>

These friends and acquaintances may promise jobs in Italy or elsewhere in western Europe – as waitresses, domestic workers, nannies, dancers, *au pairs* – telling them that they will earn up to €1,000 or €1,500 a month.<sup>53</sup> Women are also recruited by travel agencies or newspapers, advertising for dancers, models, waitresses, hostesses or strippers. Many promises are more banal: a single mother who was earning €30 a month working in a bar in her home country was promised €300 a month as a waitress in Kosovo:

*"I had a friend who worked here. She is not pretty. Her boss asked if she had a pretty friend. She contacted me and proposed me as a waitress."*<sup>54</sup>

Some 22 per cent of Moldovan women interviewed by IOM were at least partially aware that they might work in some sector of the sex industry.<sup>55</sup> However, they still expected to be legitimately employed.

<sup>49</sup> IOM Kosovo, *A General Review of the Psychological Support and Service Provided to Victims of Trafficking*, September 2003, pp. 4-5.

<sup>50</sup> Slavenka Drakulić, *Café Europa. Life after communism*, trans., London, 1996, pp. 5 & 12.

<sup>51</sup> IOM Kosovo, *Return and Reintegration Project*, 2002, p.14. See also "Entity Report: Kosovo", in *Regional Clearing Point First Annual Report on Victims of Trafficking in South Eastern Europe*, IOM, Stability Pact, International Catholic Migration Commission (ICMC), 2003.

<sup>52</sup> Trafficked woman from Moldova; she was subsequently forced into prostitution.

<sup>53</sup> Less frequent strategies include the promise of marriage to a western European.

<sup>54</sup> Woman trafficked from Bulgaria.

<sup>55</sup> IOM uses the term "sex-related work".

This young woman, for example, was initially employed as a stripper:

*"I have a female friend who worked here. When she came back she told me that there is a job. She said she would organize for a contract, and then we can go together. Three of us went together. The contract was in Albanian and English. It was translated into Russian. It was to earn €300 per month, and then 50% off for drinks. We booked a flight from Kiev to Istanbul to Pristina. I also proposed to my other friends to come together. We came as three. When we came in Đakovica we went to a lawyer to sign a contract and for a medical check, and registered in the police station that we would work".*<sup>56</sup>

She was subsequently picked up in a police raid, following reports that several other women employed in this club had been transferred to other establishments and forced into prostitution.

Increasingly, recruiters are issuing women with apparently lawful contracts of employment. This aims both to circumvent the law and to allay women's fears that they will be subjected to exploitation. Some contracts often explicitly state that prostitution is excluded from the contract, or is prohibited on the premises in which they will work.<sup>57</sup>

Some women – IOM estimates just under three per cent – are aware that they will work as prostitutes. A woman, her arms covered in bruises, who had escaped by jumping through a window, said:

*"Yes, of course I knew... I have five brothers and sisters... none of us are working at home... but for me, this is not what I expected – I thought I would be paid ...I would get to choose my clients – this is not prostitution."*<sup>58</sup>

## The journey

### Trafficking routes

*"That night two Serbian men came there and took two other girls and me away. All of us entered [Yugoslavia] illegally firstly by car, and then crossing a river on foot, until we met two other men who were waiting for us. These men took us to a house to spend the night, and the next day somebody else took us to a different house. I do*

<sup>56</sup> Ukrainian woman; her reference to a medical check suggests that she was expected to work as a prostitute.

<sup>57</sup> AI interview with IOM staff, September 2003; see also proceedings in the Miami Beach Club case, p. 13, below.

<sup>58</sup> Trafficked woman.

*not know the name of the city where we were staying. It was a woman that took us away this time."*<sup>59</sup>

More than half (52 per cent) of women who come to Kosovo are trafficked via Serbia, with 22 per cent coming via Macedonia.<sup>60</sup> Women are also trafficked into Kosovo from Albania. According to the UNMIK Border Police, around 10 women a week are trafficked through Prishtinë/Priština airport, all of whom have apparently lawful contracts of employment.<sup>61</sup>

Serbia's geographical location, a decade of war and sanctions and the flourishing of organized crime<sup>62</sup> has made Serbia a central hub in the trafficking of women from central and eastern Europe into Kosovo, Bosnia-Herzegovina, Albania and onward into western Europe via Italy or Greece.

### Sold "just like a cloth"

Women are taken, usually in small groups, to "trading houses" in hotels and private apartments around Belgrade, Pančevo and Novi Sad, and also in Montenegro. There they are paraded in front of potential buyers, often being forced to strip before being sold to their new "owner".

*"First they would put us to get undressed, and to be only in underwear, to look at us and see how we are looking. If you are looking OK, and they [like you], they will buy you. We were like a rag, just like a cloth."*<sup>63</sup>

*"They put us in a line, standing up, and then they sit in an armchair and look at us, choosing one of us."*

*"You will not know who bought you. They will just come and tell you that you must get ready because you [have to] leave."*<sup>64</sup>

A journalist who visited a "trading house" near Belgrade confirmed these reports. He also observed a man bidding for a woman while talking to the purchaser via mobile phone.<sup>65</sup>

From here, women may be trafficked to a range of destinations, including Kosovo. Other networks

<sup>59</sup> Quoted in *ibid.*, p.8.

<sup>60</sup> "Entity Report: Kosovo", *Regional Clearing Point First Annual Report*, p. 134.

<sup>61</sup> AI interview with Stefano Failla, Chief of Investigations, UNMIK Border/Boundary Police, September 2003.

<sup>62</sup> See *Amnesty International, Serbia and Montenegro: Alleged torture during "Operation Sabre"*, AI Index: EUR 70/019/2003, September 2003.

<sup>63</sup> A trafficked woman's account of being "bought".

<sup>64</sup> Women trafficked into Kosovo describe being sold.

<sup>65</sup> AI interview, September 2003.

operate within and between Albanian communities in southern Serbia, Kosovo and Macedonia.<sup>66</sup>

Some women may find themselves held in Kosovo only briefly before they are sent on to other destinations. Like many other Balkan countries with porous borders, no visa regimes and weak legal and economic systems, Kosovo is also a transit country. It may be a matter of chance whether a woman finds herself trafficked to Italy or Kosovo.

## In transit

Many women are aware that their journeys across transit countries are not completely lawful. Sometimes their suspicions are raised while still in their home country. Women may be kept in a locked room, or moved only at night by a succession of different individuals, sometimes including law enforcement officers. By the time they have been taken to another country, most begin to understand what is happening or are told that they have been trafficked.

These women are unlawfully deprived of their liberty, in violation of their rights to liberty and security of their person, enshrined in Article 9 of the ICCPR and Article 5 of the ECHR. Few of them try to escape. Their travel documents have usually been taken away, and they have been told that if they do escape, they are unlikely to reach or cross the border without being arrested.<sup>67</sup> Some traffickers seek to reassure them, suggesting that by the time they reach their destination, everything will be fine. Other women have reported that they had been drugged or sedated. Women who protest are subjected to violent threats and abuse – described as the “breaking” process – often including beatings and rape. This abuse is deliberately designed to instil fear in women and create dependency on their trafficker.

From this point, women are effectively enslaved or “owned” by their traffickers, by the middlemen, and eventually by the owner of the premises where they will work. Although some women are not aware until they reach Kosovo that they have been sold, others have seen money change hands, or have been raped by buyers when they “try the merchandise”.

Women are often sold several times over even before reaching Kosovo. According to the IOM, women may be sold for between €50 and €3500, depending on

<sup>66</sup> In 2002 proceedings at Prishtinë/Priština District court revealed a network involving six Albanian defendants, two of whom originated from Bujanovac municipality in southern Serbia, two from Ferizaj in Kosovo and two from Tetovo municipality in Macedonia, see Verdict P. nr 225/2002, 2 October 2002.

<sup>67</sup> IOM Kosovo estimate that less than half of women trafficked have any form of legal documentation.

her country of origin. By the time she gets to Kosovo she may have been bought and sold several times, her price rising every time she is re-sold.<sup>68</sup>

## Into Kosovo

*“I can never get enough sleep. I always go to bed around 4 or 5 o’clock in the morning, after cleaning up all the tables, dishes, glasses and floors and broken glasses all over the café. I am exhausted when I go to bed and cannot sleep immediately. At 10 or 11 o’clock in the morning I can hear them shouting at us to wake up and we have to do the cleaning of the rooms and beds, and all the sheets. Clients come early at the café and we have to serve them. We are given food like we were animals, very often we have to eat leftovers; we have to serve clients until evening and around 11 o’clock we have to go to serve [have sex with] clients in their rooms. Sometimes this service may start earlier.”<sup>69</sup>*

Once they get to Kosovo, women are taken to bars, restaurants or clubs, where they are either sold to a new owner, or work for the trafficker. Some women begin by working as waitresses, serving meals or drinks.<sup>70</sup> Others are forced into prostitution immediately, often expected to work as waitresses during the day, and as prostitutes at night.

Evidence at a trial at Prishtinë/Priština District Court demonstrated how women contracted to work as dancers at the Miami Beach Club in Prishtinë/Priština were required to work as prostitutes – despite claims by the defence that prostitution was forbidden according to house rules, and that the women were merely encouraged to “provide the atmosphere”.<sup>71</sup> The women described how they were told to tell potential clients that if they wished to be alone with them, then they had to buy a bottle of champagne. Depending on how much the client paid – ranging from DM50 to DM2,400 a bottle – he was entitled to a period of time with the woman in one of the booths or cabins which surrounded the dance floor. An even larger and more expensive bottle entitled the client to sex with the woman in a hotel or a private apartment. Similar systems operate in other establishments.

<sup>68</sup> IOM Kosovo report that Kosovars, Bulgarians and Albanians are “the cheapest” and Ukrainians, Moldovans “the most expensive”, AI interview with, and e-mail received from, IOM, Kosovo.

<sup>69</sup> Internally trafficked minor, aged 17.

<sup>70</sup> Traditionally, work in bars and restaurants has been a male occupation in Kosovo, although this is no longer the case, especially in large towns.

<sup>71</sup> Prishtinë/Priština District court, P.No.137/2001; indictment PP No, 287/2001, dated 4 September 2001. The trial took place between 4 December 2001 and 25 January 2002.

## Deprivation of liberty

Restrictions on the woman's freedom of movement start early in the trafficking process, when her passport or travel documents are taken away from her. Without such papers, a woman is likely to be arrested for immigration or other offences. Deprivation of their liberty continues throughout the process:

*"..the majority of women are held against their will in conditions you wouldn't keep an animal in", former Head of TPIU.<sup>72</sup>*

Trafficked women are seldom allowed any freedom of movement outside the establishments in which they work. They are confined either by threats and coercion, or by being locked in.

*"We worked from 9am to 11pm. After that he said, 'You do what you like', but we were locked. When we asked to go out he said, no, that we had to be here. We slept in a room together, me and another girl. All the windows had bars. He didn't ever beat me; it was just psychological threats. We were coerced in that way; I couldn't go out."<sup>73</sup>*

One woman reported to the CPWC that she had been locked into a room, and kept in darkness, unable even to see the men who entered the room to have sex with her. Another NGO working with trafficked women in Kosovo reported that many of the young women they worked with had been similarly detained, and were so disoriented that they had no idea how many men they had been forced to have sex with.<sup>74</sup>

At a trial in Gnjilane/Gjilan in 2002, a trafficked woman testified that she had been kept in a cellar, where she slept at night and serviced clients during the day. Food, drink and a bucket for use as a lavatory were brought down to her. She only left the cellar when she was driven by the defendant to meet clients.<sup>75</sup>

Some women have been locked into hotel rooms, not even being allowed to go out to buy sanitary protection.<sup>76</sup> Other women have been allowed out to go shopping, but under escort, and without their passports or other travel documents. Some women, however, do manage to escape:

*"I was constantly thinking of a way to escape. When one client took me to the next town with*

*his car, I took the chance and escaped. After hours of hiding in the bushes I knocked on doors asking for help. A young man opened the door, and told me to wait: I was afraid he would sell me, but I knew that nothing can be worse than going back to the bar. He called the police."<sup>77</sup>*

Following raids on bars and restaurants by the TPIU, traffickers have removed many women to other premises – most often rooms in private apartments. Here they receive clients directed from the bars or via telephone. Almost all these women are locked in, with no freedom of movement whatsoever, and levels of violence, including rape, are reportedly much higher than in the bars.<sup>78</sup>

## Torture and other forms of cruel, inhuman and degrading treatment

*"Before I was sold to the bar in Prizren, I was held in an apartment in Gjilan for four days and I was raped by the guards several times."<sup>79</sup>*

Trafficked women and girls are systematically subjected to torture, including rape and other forms of cruel, inhuman and degrading treatment which violate their rights under Article 7 of the ICCPR, Article 3 of the ECHR and Article 37 of the Children's Convention. More than half of the women interviewed by IOM reported that they had been physically abused by the bar owner. A further 25 per cent said that they had also been beaten by bar staff, clients or other people.

Shelters working with trafficked women in Kosovo report that around 40 per cent of women bore signs of physical abuse on entering the shelters; they were predominantly bruised, but some also had broken bones. One woman had been beaten so severely that she was immediately repatriated for surgery to save her eyesight.<sup>80</sup>

In one case, it is suspected that an 18-year-old Moldovan woman, whose body was found in a river near Prizren on 19 February 2001, may have been murdered. The woman, who was found with her purse and documents, had apparently died from drowning. According to UNMIK Police, because the river was very shallow at this point, they suspected that she may have been forcibly drowned or dumped into the river while still alive and drowned while unconscious. A murder investigation was subsequently opened. However,

<sup>72</sup> Interview with former Head of TPIU in, "Saving Girls from Life of Sex Slavery", *Belfast Newsletter*, 30 July 2002.

<sup>73</sup> Romanian woman trafficked into Kosovo.

<sup>74</sup> Interviews with staff at CPWC and CPVPT.

<sup>75</sup> Verdict, N.F., 15 May 2002, Gjilan/Gnjilane District Court.

<sup>76</sup> Verdict Pr. Nr. 131/2001.

<sup>77</sup> 18-year-old Moldovan woman.

<sup>78</sup> AI interview with Pasquale Lupolli, IOM, September 2003.

<sup>79</sup> Moldovan woman aged 21.

<sup>80</sup> AI interview with IOM staff; see also "Entity Report: Kosovo", in *Regional Clearing Point First Annual Report*, p. 147.

although the police reported allegations and strong suspicions of involvement of traffickers, no direct evidence was found and no suspects were identified. The case was subsequently closed on 4 April 2001 by the Prosecutor, but the case was reportedly being reviewed in March 2004, because of new information which “has come to light over the past two years”.<sup>81</sup>

In court proceedings against suspected traffickers, trafficked women routinely testify that violence was used as a means of coercion and control. For example, the Prishtinë/Priština District Court heard testimony that 11 women, contracted to work as dancers at the Miami Beach Club in Prishtinë/Priština, had been subjected to forced prostitution and, over a period of at least six months, to a range of other human rights abuses. Seven of the women testified<sup>82</sup> that the defendant wore a gun on his hip which he used to threaten them with, in order to coerce them into providing sex for clients. One woman had been beaten with a crutch the defendant kept in his office.<sup>83</sup>

The women’s families are also threatened. L.J., for example, was told by her owners that if she refused to provide sexual services, they would kill her three-year-old daughter who remained at home in her country of origin. According to evidence presented at trial, the girl had subsequently been abducted.<sup>84</sup>

Trafficked women and girls may be raped in transit and many are then subsequently repeatedly raped by their owners, who use rape as a means of control and coercion.<sup>85</sup> A Moldovan woman trafficked to Pejë/Peć testified in investigative proceedings that when she had refused to work as a prostitute, the defendant beat and raped her, reportedly to teach her what would happen if she did not do what she was told.<sup>86</sup>

The coercive circumstances of trafficked women also make it impossible for them to give genuine consent

<sup>81</sup> E-mail to AI from Derek Chappell, UNMIK Police, 12 March 2004.

<sup>82</sup> Their statements were made at the investigative stage of proceedings, see Chapter 4, below.

<sup>83</sup> See verdict, Prishtinë/Priština District Court, P. No. 137/2001 and appeal verdict, Supreme Court of Kosovo, AF 80/2002.

<sup>84</sup> See Supreme Court Kosovo, Appeal Case decision, 3 April 2003 against Prishtinë/Priština District Court verdict P. nr. 225/2003.

<sup>85</sup> See, for example, verdict P. No 10/2001 of 26 April 2001, in which three Serb men convicted and sentenced, along with two others, for trafficking offences were also found guilty of rape. Two Moldovan women and two Serbian women testified that they were raped as a way of forcing them to work; the verdict was upheld on appeal; see verdict AP. 252/2001, 19 March 2003.

<sup>86</sup> See OSCE Department of Human Rights and Rule of Law, Kosovo, *A Review Of The Criminal Justice System, 1 September 2000 – 28 February 2001*, pp. 58-9; the defendant was subsequently sentenced to three years and six months’ imprisonment on three counts of rape, and intermediation in prostitution; he was released pending appeal.

to sex with “clients”. Amnesty International notes that the ICC’s Elements of Crimes do not require force as an element of rape: in this sense it is possible that ‘clients’ of brothels, who are aware of the coercive environment in which trafficked women are held, may be committing rape.<sup>87</sup>

*“She had sex 2,700 times in less than one year; she was subjected to group sex; sex at gunpoint; [she] earned 200,000 Deutschmarks [for the traffickers], she was truly victimised.”<sup>88</sup>*

Violence is part of the process of coercion. Sometimes only one woman is beaten, to demonstrate the consequences of non-cooperation to others, and to reinforce the power relationship between the trafficker/owner and the trafficked women.<sup>89</sup> When women are trafficked by men who claim to be their “lovers”, a mixture of generosity and violence may be used to reinforce the dependency of the trafficked woman on her trafficker.

Trafficked women are repeatedly subjected to psychological abuse. This can include intimidation and threats, lies and deception, emotional manipulation and blackmail, in particular threatening to tell their family back home about the true nature of their work.

Traffickers keep women perpetually insecure by creating an unpredictable and unsafe environment,<sup>90</sup> including moving women from place to place, as described by many trafficked women in Kosovo. It also includes holding them in conditions which Amnesty International considers may amount to inhuman or degrading treatment:

*“We lived on the second floor, [all the] girls in one room. The bar was situated on the first floor. Our owner fed us with liver sausage, fish and bread. We didn’t get money. They didn’t buy us any clothes. If I refused to work they beat me.*

<sup>87</sup> See for example the ICC definition of rape as a crime against humanity in Article 7 (1) (g)-1: 1. The perpetrator invaded the body of a person by conduct resulting in penetration, however slight, of any part of the body of the victim or of the perpetrator with a sexual organ, or of the anal or genital opening of the victim with any object or any other part of the body. 2. The invasion was committed by force, or by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or another person, or by taking advantage of a coercive environment, or the invasion was committed against a person incapable of giving genuine consent. [our emphasis].

<sup>88</sup> AI interview with international prosecutor, March 2003.

<sup>89</sup> IOM Kosovo, *A General Review of the Psychological Support and Service Provided to Victims of Trafficking*, September 2003, p. 10.

<sup>90</sup> See *The Health Risks and Consequences of Trafficking in Women and Adolescents. Findings from a European Study*, Kathy Zimmerman, et al, London School of Hygiene and Tropical Medicine, 2003. pp. 49-51.

*When I was ill, I got no help. It was very cold there.”<sup>91</sup>*

Trafficked women in Kosovo reported being held in unhygienic, overcrowded and stressful conditions, with no opportunity for privacy. Many women have to sleep and live in the same room in which they work, often with others. Physically exhausted by the long hours and the number of clients they are forced to have sex with, women also report being deprived of food:

*“We received one hamburger and one yoghurt a day”; “We had to share four hamburgers and a packet of cigarettes between eight girls”.*<sup>92</sup>

An NGO working with trafficked women described how difficult it was for women to regain their sense of self-esteem after their trafficking experience, having been subjected to such humiliating and degrading treatment.<sup>93</sup>

## Right to health

*“I felt sick, and was coughing a lot. I had a terrible headache and fever. ... I was lying in bed and almost fading, when the owner’s son came into my room and I was beaten badly by him. As a result, I suffered grave bodily injuries. I stayed in bed for three months. Except for other injuries, he broke my hand too. All the time I spent in bed, he repeatedly exploited me.”<sup>94</sup>*

Amnesty International considers that trafficked women are denied their right to health guaranteed under Article 12 of the ICESCR and Article 12 of CEDAW, in being denied access to health care by their traffickers, and by being forced to engage in unprotected sex. In 2002, it was reported that 36 per cent of trafficked women in Kosovo reported being denied any medical care, while only 10 per cent were provided with access to regular health care; the majority of trafficked women were forced to have unprotected sex, with only 40 per cent “occasionally” using condoms.<sup>95</sup> Amnesty International is also aware of reports that trafficked women have been subjected to enforced abortions.<sup>96</sup>

An NGO working with trafficked women reported that some traffickers escort the women to private doctors, whose bills are then paid from the women’s earnings. By the time women were taken to such clinics, their condition was usually quite serious, but most women were unable to return to the clinic to

<sup>91</sup> Ukrainian woman trafficked to Kosovo.

<sup>92</sup> Women trafficked into Kosovo.

<sup>93</sup> AI interview with Naime Sherife, CPWC, September 2003.

<sup>94</sup> Internally trafficked Albanian woman, aged 21.

<sup>95</sup> UNICEF, UNOHCHR, OSCE/ODIHR, *Trafficking in Human Beings in Southeastern Europe*, 2002, p. 96.

<sup>96</sup> See for example, “Si u dhunua Shqipja 22 vjeçare?”, *Kosovarja*, 1-15 May 2003.

get the results of tests and receive appropriate treatment.<sup>97</sup> Many trafficked women suffer long-term damage because of the failure to receive timely and appropriate treatment.<sup>98</sup> The organization notes that, although shelters are able to provide presumptive treatment for sexually transmitted diseases to trafficked women, no voluntary HIV testing is available to them.

Women who have been trafficked also suffer from long-term stress, exhaustion and anxiety, as well as damage to their self-esteem and feelings of self-worth. An IOM study found that a significant number of trafficked women also developed conditions including acute stress reaction, post-traumatic stress disorder and depression.<sup>99</sup>

Young women, in particular, often show signs of self-harm, including cuts or cigarette burns on their arms. One witness described how she saw a girl “voluntarily burning herself on several occasions with cigarettes on multiple places on her arms ... it was a desperate cry for help”.<sup>100</sup> Amnesty International delegates met two young trafficked women who clearly showed similar signs of self-harm.

## Slavery and debt bondage

The Trafficking Protocol includes within its definition of trafficking, slavery and slave-like practices. These are expressly prohibited in Article 8 (1) of the ICCPR,<sup>101</sup> Article 4 of the ECHR, the ILO Convention (105) on the Abolition of Forced Labour, and in Article 1(a) of the Convention Supplementary to the Slavery Convention

<sup>97</sup> Limanowska, *Trafficking in Human Beings in Southeastern Europe*, 2002, p. 96. Until August 2003, the international NGO United Methodist Committee on Relief (UMCOR) ran a free service, including a mobile clinic, making connections with the bar-owners, and encouraging them to let women attend UMCOR’s mobile clinic.

<sup>98</sup> The long term consequences of untreated sexually transmitted infections can include pelvic inflammatory disease, lasting damage to the reproductive tract, kidney and bladder, infertility, miscarriage, infant morbidity and mortality, and cervical cancer, *The Health Risks and Consequences of Trafficking in Women and Adolescents*, p.46.

<sup>99</sup> *A General View of the Psychological Support and Services Provided to Victims of Trafficking*, IOM Kosovo, September 2003. See also *The Health Risks and Consequences of Trafficking in Women and Adolescents*. Both studies note that insufficient research has been carried out into the psychological trauma that trafficked women suffer as a result of their experiences, *ibid*, p. 2 and *ibid*, pp.13-18, respectively.

<sup>100</sup> Verdict, AF Nr. 80/2002.

<sup>101</sup> Article 8, ICCPR: (1) “No one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited. (2) No one shall be held in servitude. (3) (a) No one shall be required to perform forced or compulsory labour.” Article 4(1) ECHR contains a similar provision.



which prohibits specific slavery-like practices, including debt bondage.<sup>102</sup>

Women trafficked into Kosovo are sold into slavery. Each of the trafficked women interviewed by Amnesty International referred to the man to whom they had been sold as their “owner”; NGOs working with trafficked women report the same.

Although women may have previously agreed to repay, from their wages, the person arranging, for example, the costs of their supposed journey to Italy, few of them understood or expected that they had in fact been purchased, and that they would have to repay their “owner” the amount he had paid for them. Neither did they expect to pay additional sums, regularly added to their debt, often apparently for the costs of their food and accommodation.

A young woman who thought she was going to work in a legitimate job in a bar in Kosovo, and who, in addition to bar-work, found herself forced into prostitution, told Amnesty International:

*“I signed a contract for a monthly salary for €100, because of the tax that would be taken out of my salary. However, I had a verbal agreement in my country to work for €300 per month. The owner of the bar said ‘I bought you for €200; you have to pay that back’, and he told me that I had negative €4. Then one day he said, ‘You owe me €80’ and I had to pay with my time. Every three or four days he would say to me, ‘You are minus €20’ or whatever. For three months I earned just €300 – 350 but I should have had €900... When I was in my country they said I would have food, cigarettes etc. There was nothing of that agreement. I paid for my uniform, I paid for medical checks, I paid for my contract, I paid for my trip, everything. I paid €16 for my T-shirt. It had my name on the front and the company’s name on the back.”<sup>103</sup>*

Women at the Miami Beach Club, who under their contracts were supposed to receive a commission on drinks sold, testified in proceedings at Prishtinë/Priština

<sup>102</sup> “Debt bondage, that is to say, the status or condition arising from a pledge by a debtor of his personal services or of those of a person under his control as security for a debt, if the value of those services as reasonably assessed is not applied towards the liquidation of the debt or the length and nature of those services are not respectively limited and defined,” UN Supplementary Convention on the Abolition of Slavery, the Slave-Trade, and Institutions and Practices Similar to Slavery.

<sup>103</sup> Bulgarian woman trafficked into Kosovo; in this case, the woman did receive a small payment: the IOM report that some traffickers have adopted this tactic in order to keep women more compliant, AI interview with IOM, September 2003.

District Court that they rarely received this money. Instead they were regularly “fined” for various reasons: including having sex outside the hotel with clients who had not paid the requisite amount; refusing to have sex with a client who had taken drugs; getting drunk – even though drinking large quantities of alcohol was part of their work; or for arriving late to work.<sup>104</sup>

Other women report paying off one debt, only to be faced with another, in a cycle of debt-bondage from which it is almost impossible to escape.

*“I learned that I was sold to a pimp for 2200 DM (€955). The money he had spent on me I had to work off. When I worked the sum, the pimp sold me to Kosovo for 1750 DM. I never went to anyone for help because I had no opportunity to move. I worked at night with a [guard] only 15 feet away at all times. I was locked up in a room during the day. If I had had the chance, I would have tried to find the Red Cross for help.”<sup>105</sup>*

### Internally trafficked women and girls

*“Before they were victims of trafficking, they were victims of domestic violence or of rape in [the] war or poor education – they all have some reasons to be victims of trafficking.”<sup>106</sup>*

As well as those who are trafficked into Kosovo from abroad, increasing numbers of local women and girls are also being trafficked into the domestic sex-industry. According to the CPWC, the number of internally trafficked women has recently increased dramatically, with over twice the number of girls and women assisted in 2002 as in 2000. Of 253 internally trafficked women and girls supported by CPWC during this period, the majority – some 81 per cent – were under the age of 18. Almost one-third, 32 per cent, were between 11 and 14 years of age.<sup>107</sup> In 2003, the CPWC assisted an

<sup>104</sup> Verdict P. No. 137/2001.

<sup>105</sup> Ukrainian woman trafficked first to Serbia and subsequently to Kosovo.

<sup>106</sup> Interview with Naime Sherife, CPWC, September 2003.

<sup>107</sup> CPWC, *Annual Report 2002*, 25 April 2003. The TPIU has publicly questioned these figures, arguing that the CPWC does not distinguish between victims of trafficking, sexual abuse and domestic violence; see also UNICEF, UNHCHR, OSCE/ODIHR, *Trafficking in Human Beings in South Eastern Europe, Situation Update 2003*, p. 174. In its Annual Report, for 2002, the CPWC reports that in 10 centres across Kosovo, the NGO assisted some 5361 victims, of whom 165 were identified as victims of trafficking, (using the Trafficking Protocol definition), the remainder being victims of rape or domestic violence.

additional 92 cases, 79 per cent of whom were under 18 years old.<sup>108</sup>

Economic conditions in Kosovo, especially in rural areas where the majority of these young women come from, have failed to recover after the war, and unemployment, though less than in 2000, is still running at almost 60 per cent.

According to the CPWC, 84 per cent of internally trafficked women with whom they worked had only received a basic level of education. Some had not completed primary education and five per cent were illiterate. Only 10 per cent had attended secondary school, and only one per cent had received any form of higher education. In 2002, the World Bank reported that only 56 per cent of 15 to 18-year-old girls, the group most vulnerable to trafficking, were enrolled in full-time education. But even girls with some education are not immune.

*"I used to be an excellent student in primary school. One day I met a girlfriend of another class in the same school. She invited me to go out together. She introduced me to some people that liked me and seemed to be very pleasant....I was driven in a room and raped ... since then I'm not free any longer ..."*<sup>109</sup>

Staff at the CPWC told Amnesty International that the majority of young women come from poor backgrounds, often from dysfunctional families with high levels of domestic violence and alcoholism. Many families had also been through several years of displacement, war and trauma:

*"We suffered very much during the war. Our house was burned. We have experienced so much terror in [R.] during the deportation too. Immediately after the war ended, my father married me to my sister's brother-in-law. I didn't love him. After some time there, I left his house, beaten up and mutilated. It was dark. I asked for help in the asphalted street in the village. A driver stopped by, he took me in his car, and he promised to help me and then drove me to the city ... I was sent to a café bar and handed over to the owner of that place. All the time I was there, I was repeatedly exploited and raped. Afterwards, the owner sold me to the place where I was later rescued by the police, seven months after. Every time I asked to be freed, the owner used to tell me that I didn't*

<sup>108</sup> The CPWC also continued to support 59 women and girls from their 2002 case-load, CPWC unpublished Project Report for 2003.

<sup>109</sup> Internally trafficked woman.

*work enough, claiming that I could only earn DM300 for my services, while he bought me for the price of DMI,500."*<sup>110</sup>

Although a majority of internally trafficked girls and women are recruited in similar ways to women from abroad, including by being offered work in western Europe, a higher percentage are reportedly abducted by force. Poor economic conditions also make young women more susceptible to the "lover-boy" trafficker:

*".. he offers to take her out of that. He promises to love her, he promises her marriage; he promises her a job; he promises to take her out of Kosovo".*<sup>111</sup>

Internally trafficked women generally face the same conditions as those from outside Kosovo, although the numbers reporting that they receive any form of payment are extremely few. Both foreign and local women and girls have been found in the same bars, and on the whole report being treated in the same way by bar owners and other workers, although some internally trafficked women are held in much worse conditions. Many reported that they slept for only three or four hours a night, servicing between 10 and 15 clients each day, and were given "high-energy" drinks to keep them awake.

Most of the young women counselled by the CPWC reported that they had worked for between eight months and two years before they escaped or were "rescued" by the police. In contrast to externally trafficked women,<sup>112</sup> only 24 per cent are referred directly by the TPIU or other law-enforcement officers, with the majority of women being referred by other agencies or seeking assistance themselves after managing to escape.

Some young women are sold by members of their own families. One 14-year-old was married to a local bar owner who physically abused her and forced her into prostitution, eventually selling her to three brothers who took her to Prishtinë/Priština, where they forced her to have sex with them and other men.<sup>113</sup> In another case reported to Amnesty International, a 13-year-old Romani girl was initially sold for €500 in marriage to a 40-year-old man, who beat and raped her. When she escaped from him, she went back home: in order to recoup the marriage payment, her mother

<sup>110</sup> Internally trafficked woman, aged 19.

<sup>111</sup> Amnesty International interview with Naime Sherife, CPWC, September 2003.

<sup>112</sup> See footnote 15, p.3, above.

<sup>113</sup> Without any support and unable to return to her family, she returned to work as a prostitute in the bars. OSCE, *Report on the Centres for Social Work*, p.25.

prostituted her in local shops. The child now has to be protected from her own family. In February, UNMIK police reported the arrest of a man who raped a young member of his own family, and then sold her to another man for €100; he was charged with the rape of a minor and with trafficking.<sup>114</sup>

But without family support, young women are even more vulnerable:

*“My parents are divorced. I live anywhere I can, with my uncle’s family, neighbours and cousins. An old man has noticed that I am alone and started to caress me. He invited me to go to his house. He kept saying that he loved me very much. He touched my body and even gave me money for clothes and other things. But there were other men that took me too ... he knew them, but never stopped them ... among other services I had to do striptease on the table in an apartment, a large room and with plenty of people around watching me dance; there were international visitors too, once, I have seen international soldiers ... .”*<sup>115</sup>

Proceedings are currently in progress in the case of five children found locked into a room where it was suspected that they were being abused by both homosexual and heterosexual men. It is not known whether they were orphaned or abandoned. When the children were found, they were malnourished, they had head lice and they were severely traumatized.<sup>116</sup> Other vulnerable children are reportedly initially recruited to sell gum or beg in the streets; while the boys move on to selling cigarettes or phone cards, the girls are forced into prostitution.

Amnesty International has also received reports that young women in Kosovo are vulnerable to a further form of sexual exploitation which Amnesty International considers falls within the definition of trafficking as cited in the Trafficking Protocol. These are cases in which although abusive sexual exploitation has taken place, it is not entirely clear that an economic motive exists. In this form of trafficking, young girls are abducted and subsequently subjected to repeated rape, sometimes by the same group of men, or repeatedly abducted and forced to have sex with different men over a period of several months. After their initial ordeal, sometimes lasting for up to a month, the young women

are released, often dumped outside their home or their school; a few weeks or months later, they are abducted again. On 14 February 2004 UNMIK police received a report that a 14-year-old girl was missing; following an investigation, she was rescued by the police on 1 March: over a period of 20 days, she had been repeatedly raped by eight adult men.<sup>117</sup> In a similar case:

*“I was going to school. I noticed that a young woman near the schoolyard was watching me. I stopped by a burek<sup>118</sup> place and took a look inside. The strange woman approached me and offered me a burek. She paid for it. This lasted for some days, until we became friends. One day she suggested we have a ride with her in her car. I went with her. The car didn’t stop in the neighbourhood I live, but they continued to drive the car in a road unknown to me. Driver was a man. When I asked about the place we were going to, they told me that we are visiting an old city, where I’ve never been before. Indeed, I was sent there and kept in a motel for three weeks in a row. Four men raped me. I was yelling, but no one could hear me since my mouth was closed. Other men came too. After three weeks they sent me to another city. There, too, I was forced to have sex with anyone who visited that private house. After some time they set me free and I came back home. They wouldn’t leave me alone. They came to the door, threatening that they will go to my school and tell everybody what has happened. They even threatened that they will say to my parents that it was me that decided freely to go with them. I was forced to go with them time after time, week after week and sometimes even for three months. I couldn’t continue with school, since some months had already passed and I was absent since the beginning of October ... I feel ashamed and I feel like everyone is watching me as though I am a criminal, and I am so scared of ... I was never paid. They gave me food and dressed me in bridal clothes. I used to shiver from cold when in wintertime I had to wear mini skirts and stay almost naked. When having a cold, I couldn’t go to the doctor. I was given some pills and a juice prepared only for me. Even when I was brought back to my home, I couldn’t go out, and I never told my parents of what has happened to me, because I was scared*

<sup>114</sup> UNMIK Police Briefing Notes, 26 February 2004.

<sup>115</sup> Internally trafficked Albanian girl, believed to be under 12 years of age.

<sup>116</sup> AI interview with the manager of the children's shelter.

<sup>117</sup> UNMIK Police Briefing Notes, 3 March 2004.

<sup>118</sup> Filo pastry pie filled with meat, cheese or spinach.

*and ashamed, until it became too much for me, and too late.*"<sup>119</sup>

## Trafficking from Kosovo

Kosovar Albanian, Serb and Romani women and girls also face a growing risk of being trafficked abroad. At the time of writing, their main destination is the predominantly ethnic Albanian areas of Macedonia, where the TPIU, IOM and CPWC report young women being transferred or re-trafficked from Kosovo.<sup>120</sup> However, internally trafficked young women also report being offered work in Italy, and it would appear that they are increasingly being trafficked, via Albania, into Italy and other parts of western Europe.

*"A friend of mine, he is older than me, told me he could help me get a job in Macedonia; I had the opportunity to leave all the bad things behind [she had been raped and had reported the rape to the police, resulting in problems with her family and friends] The man drove me to a village close to Gostivar. I remember he paid DM200 (€100) to a taxi driver to bring me through the border. Once in Macedonia, I was brought to a bar and told I should work there as a waitress for DM10 (€5) a day. I was accommodated in a house together with other girls from Moldova and Russia, I think they were Russians. None of us was free to leave the house during the day, we were obliged to stay indoors until we would go to the bar. After a few weeks things changed, the owner asked me to sit with the clients of the bar and, if they would want, to accompany them upstairs to the bedrooms."*<sup>121</sup>

By May 2003, some 17 Kosovar women had reportedly been repatriated to Kosovo. Of nine, who were assisted by the IOM, three had been trafficked to Macedonia, two to Italy, one to Belgium and one to the United Kingdom.

*"After a while one of the guys [who had kidnapped and raped her] took me by car to Albania. They brought me to another motel and left me there... for another month. They... raped me several times... One night I was taken away to another city. They put me in a speed boat of desperate people and sent me to Italy... They locked me in an apartment. The next day they told me that I had to work for them – on the street. I refused, began shouting... They beat me*

*a lot; they told me that if I refused they'd kill me and my family back in Kosovo .... I was so afraid. I was in Italy illegally. I couldn't ask for help."*<sup>122</sup>

Prompt and effective action is needed to minimize the risk that young women from Kosovo will be drawn into illegal migration that will in turn expose them to the risk of abuse and exploitation, including, in particular, vulnerability to trafficking and associated human rights abuses.

Such action must address the gender dimensions to increasing poverty in Kosovo, the failing education system, and high levels of family violence and widespread violence against women.

<sup>119</sup> Kosovo Albanian girl aged 13.

<sup>120</sup> Amnesty International interviews with Pasquale Lupolli, IOM; Irina Cocos, TPIU and Naime Sherife, CPWC, September 2003.

<sup>121</sup> 16-year-old from Pejë/Peć, Kosovo.

<sup>122</sup> 16-year-old Kosovar Albanian, trafficked at the age of 14 to Italy.

## Chapter 3: Responses to trafficking – law enforcement and criminal justice

In the absence of the rule of law when UNMIK arrived in Kosovo, UNMIK's mandate included the establishment of a police force and a functioning criminal justice system. It was faced with continuing human rights abuses, including the murder and abduction of members of minority communities, political killings within the ethnic Albanian community and other serious crimes, and the failure of UN member states to provide the resources and personnel to police Kosovo. As a result, UNMIK failed to address trafficking systematically until November 2000, when the Trafficking and Prostitution Investigation Unit (TPIU) was established within UNMIK police.

### Raids, arrests and deportation

UNMIK's initial response in the period from 1999 to 2000 appears to have been to try to control prostitution – which is illegal in Kosovo – rather than addressing the issue of trafficking. This was done predominantly through raids by UNMIK Police and KFOR on premises where trafficked women were believed to work. UNMIK police also arrested women for immigration or documentation offences at borders and within Kosovo. However, the traffickers themselves were rarely targeted.

Raids were conducted by UNMIK police in conjunction with KFOR,<sup>123</sup> often with the assistance of military police forces, responsible to their respective KFOR contingents, including Italian *carabinieri*, French *gendarmarie* or other specialized armed forces.

In 1999, in the absence of procedures to identify and protect victims of trafficking, women appear to have been routinely detained and subsequently charged with prostitution, or other offences. UNIFEM reported on three raids by military police or KFOR in the absence of UNMIK police, where apparently no attempt was made to establish whether the women were victims of trafficking or to determine their assistance needs. Following a raid in Mitrovicë/a, for example, two Serbian women and two Ukrainian women, all believed to have been trafficked, were detained and then released after three weeks “because no one would take responsibility for them”. One was a 16-year-old girl. In Prishtinë/Priština, *carabinieri* raided a brothel near the airport, removed young women present but failed to take

<sup>123</sup> KFOR assumed a policing role from June 1999 on the basis of para. 9 (d) UNSCR 1244/99, which charged KFOR with “ensuring public safety and order until the international civilian presence can take responsibility for this task”.

action to arrest the owners. In the third case, UK Royal Green Jackets (part of KFOR) raided a bar in Prishtinë/Priština, but apparently made no efforts to identify whether women had been trafficked until a foreign civilian present said that they should “check if they have their passports”.<sup>124</sup>

In early 2000, following the establishment of IOM's Counter-Trafficking Program in Kosovo, the IOM introduced procedures for the identification and protection of victims of trafficking arrested in such raids. By the end of April 2000 some 50 women had reportedly been repatriated by the IOM. However, procedures to identify trafficked women were not always routinely applied by UNMIK police, and women reasonably believed to have been trafficked continued to be charged with prostitution.

By February 2001, just four persons had been convicted under Article 251 for “intermediation into prostitution”.<sup>125</sup>

### Trafficking and Prostitution Investigation Unit

In November 2000, the Trafficking and Prostitution Investigation Unit (TPIU) was established within UNMIK police, coordinated from Prishtinë/Priština and comprised of five regional units. Its aims were to gather intelligence and construct a database of information on premises and suspects thought to be involved in trafficking, and to identify “women working in these circumstances” in order to assist in the prosecution of those believed to be responsible for trafficking. The TPIU was staffed, from its inception, by both international police officers and members of the Kosovo Police Service (KPS).

The newly formed unit rapidly launched a series of raids throughout Kosovo, in conjunction with KFOR.

### The Trafficking Regulation

On 12 January 2001 the SRSG promulgated UNMIK Regulation 2001/4, *On The Prohibition Of Trafficking In Persons In Kosovo*. The Trafficking Regulation bases its definition of trafficking on the Trafficking Protocol.<sup>126</sup>

Section 2 of the Trafficking Regulation criminalizes those engaging in trafficking, and applies penalties of between two and 12 years' imprisonment; where a minor is trafficked, the maximum penalty is set at 15 years' imprisonment. Under the Regulation, those

<sup>124</sup> UNIFEM, *No Safe Place*, pp. 77-8.

<sup>125</sup> OSCE, Kosovo: A Review of The Criminal Justice System 1 September 2000 – 28 February 2001, p.8.

<sup>126</sup> UNIS/CP/439, 7 July 2003.

convicted of organizing trafficking are subject to penalties of between five and 20 years, and those facilitating trafficking are also covered. Section 3 makes provision for the conviction of those withholding the identity papers of trafficked women.

Significantly, the Regulation also addresses the issue of demand, criminalizing those who knowingly use or procure the services of a trafficked person; defendants who are convicted may be sentenced to between six months and five years' imprisonment; where the person is a minor, the maximum penalty rises to 10 years' imprisonment.

The Regulation also includes a number of measures intended to protect the rights of trafficked women. These include: provisions that ensure that their right to voluntary repatriation should not be delayed by the investigative process; provisions for witness protection; and a prohibition against a victim's past history being used as evidence in court, except *in camera* after an application by the defence; and provisions for trafficked women to be granted residence in Kosovo. These provisions are discussed in more detail below.

Section 11 provides that trafficked persons are not criminally responsible for charges of prostitution or illegal entry into Kosovo. However, this provision places the onus on the woman to provide evidence to support a reasonable belief that she is a victim of trafficking. Further measures set out in Section 10 aim to ensure a coordinated program of assistance, but only if the woman provides sufficient evidence that she has been trafficked. Section 10 remains to be implemented.

The lack of consultation with local prosecutors and judiciary during the drafting of the Trafficking Regulation, and the failure to ensure training of all members of the judiciary have resulted in problems in both the interpretation and the implementation of this law.

## After the Trafficking Regulation

*"Women are treated as criminals and as prostitutes, the men don't see them as victims,"* Amnesty International interview with KPS officer.

Despite the promulgation of the Trafficking Regulation, Amnesty International is concerned that neither UNMIK Police, the KPS nor the judiciary were fully informed of its provisions and consequently failed to implement its provisions, including measures for the protection of trafficked women. As a consequence, both law enforcement officers and the judiciary failed to identify women believed to have been trafficked. Section 8 of

the Regulation provides that a person who supplies evidence to support a reasonable belief that they are a victim of trafficking with a defence against prosecution for prostitution or illegal entry into Kosovo. Despite this provision, trafficked women have continued to be arrested and prosecuted for border or status violations, or charged with prostitution offences following raids by UNMIK police, without what appears to have been adequate investigation into their circumstances or status. In some cases, they have subsequently been sentenced to 10-30 days' imprisonment and deportation orders. Women arrested in routine bar inspections were also sentenced and deported.

In 20 cases monitored by OSCE Legal Systems Monitoring Services (LSMS) in 2001, LSMS observed that judges failed to respect this protection against prosecution for prostitution or status offences provided to suspected victims of trafficking. The judiciary argued that there had been no proceedings in, for example, the relevant District Court to establish that the women were victims of trafficking. In other cases they claimed that the Trafficking Regulation failed to set a standard of evidence whereby women could establish their status as a victim. Elsewhere, judges who sentenced four foreign women to 15-20 days' imprisonment on charges of illegal border crossing from Macedonia, and a two-year deportation order, informed LSMS that they had never seen the Trafficking Regulation.<sup>127</sup>

In 2002, almost 100 foreign women were arrested by TPIU personnel, 20 for prostitution, 25 for possession of false documents, 22 for illegal border crossing and 10 for soliciting or procurement; Amnesty International has been unable to obtain figures for the numbers of women convicted, sentenced to a period of imprisonment and deported.<sup>128</sup>

However, the numbers of women arrested and deported declined from 2002,<sup>129</sup> a policy change driven not by the need to protect the rights of trafficked women,

<sup>127</sup> LSMS attributed these arrests, convictions and deportations to a failure to adequately circulate the Trafficking Regulation, and fully inform the judiciary of its provisions; OSCE, *Kosovo: Review Of The Criminal Justice System, March 2001 – August 2001*, November 2001, pp. 55-61.

<sup>128</sup> In one case, on 22 April 2002, a Bulgarian woman and Albanian man were stopped in a car by UNMIK police. She was found not to have valid documents and was arrested on suspicion of prostitution. The Albanian was not arrested on suspicion of involvement in trafficking, but for traffic offences. *UNMIK Police Press Updates*, dates as above. More than 50 other incidents are similarly reported.

<sup>129</sup> This was observed by monitoring UNMIK Police Daily Press Reports, and confirmed by the TPIU.

but according to TPIU, by a lack of enforcement powers for deportation orders made by the courts.<sup>130</sup>

By December 2003, some 33 women had been arrested for prostitution and six for possession of false documents, including a woman, trafficked into Kosovo, who told Amnesty International that, having left her “boyfriend”:

*“I went to the police station because I had a false passport, and they said, ‘Why did you not tell us this before?’ I said, ‘It’s your job, not mine’. I spent 14 days in prison in Prizren, and six days in Lipjan. After five months I had to go to court to testify about how I got the false passport.”<sup>131</sup>*

Amnesty International is concerned that in these and other cases, there appears to have been no adequate inquiry into the status of these women, despite reasonable grounds to suspect that, in many cases, they had been trafficked. As the OSCE Office for Democratic Institutions and Human Rights (ODIHR) has reported, externally trafficked women across the region tend to be recognized as victims only if they choose to participate in the IOM repatriation program; those who – for various reasons – do not wish to be so identified or who the authorities fail to identify, are subsequently either criminalized or left to return to prostitution.

The police or TPIU rarely provided these arrested women with access to a lawyer or with appropriate interpretation services. The judiciary, in convicting and sentencing these women, failed to implement the provisions of the Regulation and served to criminalize women trafficked into Kosovo. In all such cases – including those of possible prostitution or status offences – women should be guaranteed all the rights to which detainees are entitled when they are arrested, including the right to legal assistance.

## Different Strategies

Since the passing of the Trafficking Regulation, the TPIU have adopted a number of different strategies to address the issue of trafficking.

In early 2001, a system of registering foreign women working in bars and suspected of prostitution was adopted throughout Kosovo by the TPIU. This strategy had been used by UNMIK police in the Gnjilane/Gjilan region from March 2000, and had

resulted in their subsequent deportation.<sup>132</sup> Registration is conducted by TPIU officers, who ask the woman to complete – in her own language – personal details, including her name, place and date of birth, place of work, job and address in Kosovo. The link to deportation was abandoned.

Registration was designed as an investigative tool, identifying bars and other premises in which women were suspected of working in (forced) prostitution, and the identity of the traffickers who could be associated with such premises, in order to gain evidence, “so that the most prosecutable cases may be prosecuted”.

The former Head of the TPIU told Amnesty International that registration also provides them with access to potential “victims of trafficking”, allowing officers to explain to registered women that they “could be in danger of being forced into prostitution and the dangers of having been trafficked into the country”; and that in making regular visits to such premises, the TPIU were able to provide women with the opportunity to report criminal behaviour against them.<sup>133</sup>

The TPIU also uses registration to monitor the re-trafficking of women, transferred or sold by their owners to other “owners” in Kosovo, or sometimes Macedonia. The TPIU informed Amnesty International of the case of a young woman who had been able to ring them to inform them that she was just about to be sold; TPIU subsequently conducted an operation to remove her from the premises.<sup>134</sup>

By the end of 2001, the TPIU database included some 1028 women, some listed under the registration scheme, others identified in the course of “TPIU investigations, uniform patrol vehicle stops, KFOR patrols and border police”. Another 1727 women were listed in 2002, and a further 1096 in 2003.<sup>135</sup>

On 6 July 2001, 11 women from Romania, Moldova and Ukraine, who were working as dancers at the Miami Beach Nightclub in Prishtinë/Priština, were interviewed by TPIU investigators and were “advised to register”. UNMIK reported that: “No arrest or seizure was made in this case. Such operations will continue in future to keep tabs on the women perceived to be at a high risk for

<sup>130</sup> AI interview with Irina Cocos, Deputy Head, TPIU, September 2003.

<sup>131</sup> Moldovan woman, trafficked as a minor; she later received assistance from OSCE and IOM. No legal assistance appears to have been provided.

<sup>132</sup> Registered women were authorized to stay in Kosovo for one month, or the duration of their “contract”, after which they were subject to deportation, OSCE, *Kosovo: Review of the Criminal Justice System, March 2001 - August 2001*, pp. 50-1. The new system is no longer linked to deportation.

<sup>133</sup> AI interview with Jamie Higgins, former Head of TPIU, November 2002.

<sup>134</sup> AI interview with Irina Cocos, TPIU, September 2003.

<sup>135</sup> *TPIU Year End Report*, December 31, 2001; *TPIU Year End Report 2002*, December 31, 2002; *TPIU End of Year Report, 2003*.

subjection to prostitution. The registration of such target groups with the TPIU would help monitor their movements and activities better and serve as an insurance against their possible exploitation.”<sup>136</sup> In response to a complaint by two of the women, the TPIU subsequently initiated an investigation into their allegations. However, the women remained at the club for another month before the owner and his assistant were arrested.

Amnesty International considers that in some cases the registration system fails to protect the rights of trafficked women by leaving them working in bars and other premises, where they are vulnerable to further abuses of their human rights, until sufficient evidence for prosecution is gathered against their “owners”.

In the Miami Beach case women were able to alert the police; however, Amnesty International was informed in 2003 by organizations working with trafficked women that an apparently “friendly” relationship between the TPIU and other police, and the bar owners made it difficult for women to trust the police. They reported that women perceived regular police visits to the bars – without any apparent action – as legitimizing their forced prostitution, and some believed that the police colluded with their trafficker in keeping them there. A trafficked woman told Amnesty International:

*“Lots of police came every day and they were friends with the bar owner. UN police came twice. The rest of the time it was KPS, mostly. A police officer came and asked me to go outside. He asked me questions but I couldn’t say anything because of the owner’s threats. His girlfriend spoke my language, and the owner made me write down everything that I had said to the police. There was a registration process. The owner, the girls and the policemen all [sat] together, so that we could hear everything that everyone was saying.”<sup>137</sup>*

This woman told Amnesty International how difficult it had been to convey to a TPIU officer that she wanted to escape: *“The police spoke English, then Serbian. We talked carefully and I told him to say to me, ‘You have to come with us’.”*

Amnesty International is particularly concerned that girls under 18 make up between 15 and 20 per cent of those registered, and that rather than removing girls suspected of being trafficked, the TPIU allowed them to

<sup>136</sup> UNMIK-KFOR-UNMIK Police-UNHCR Press Briefing, 09 July 2001.

<sup>137</sup> Bulgarian woman “rescued” in 2003.

remain in the bars.<sup>138</sup> In response to the organization’s concerns, the TPIU told Amnesty International that in some cases they did contact the IOM, but no attempt was made by the TPIU to remove them: *“If you put the minor in the shelter she escapes and you find her in the bar again. They run away from home and they run away from the shelter.”<sup>139</sup>*

Amnesty International is concerned that registration, which is primarily used as an investigative tool, allows women and girls believed to have been trafficked to remain in the bars, vulnerable to further abuses, until such time as evidence is gathered against their “owners”. Rather than a measure to protect the rights of trafficked women, the registration process occurs in the presence of their “owner”, and is not conducive to women being safely able to identify themselves as a victim of trafficking. Further, because of the apparently friendly relations between the bar owners and the police, registration appears, in the women’s eyes, to legitimize their forced prostitution.

## Border Policing

Measures to control trafficking through the identification of trafficked women or the arrest of suspected traffickers at the borders have been relatively ineffective. Few trafficked women have been identified, either at the international borders or on the administrative boundary line between Kosovo and Serbia proper, even though they are covered by 12 police stations and regular KFOR patrols.<sup>140</sup>

The suspension by the Special Representative of the UN Secretary-General in 2002 of the Law on Movement and Stay of Foreigners,<sup>141</sup> which provided for the earlier arrests and deportation of persons found unlawfully in Kosovo, effectively prevented border police from refusing entry or making arrests, except under UNMIK Regulation 2001/10 or for document offences, without clear evidence of trafficking. However, in cases where the Border Police are able to identify women or girls who they suspect are being

<sup>138</sup> AI interview with Jamie Higgins, then-Head of TPIU, November 2002.

<sup>139</sup> AI interview with Irina Cocos, then acting Head of TPIU, October 2003.

<sup>140</sup> Under UNSCR 1244/999, Kosovo remains part of Serbia and Montenegro, maintaining external borders with Albania, Macedonia which, like the Administrative Boundary Line (ABL) with Serbia, are covered by UNMIK border police; the ABL is also patrolled by KFOR. No visa regime obtains in Kosovo, and with the exception of women suspected of being trafficked, no foreign visitors or workers, including members of the international community, are required to register their presence in Kosovo.

<sup>141</sup> Law on the Movement and Stay of Foreigners, *Sluzbeni list SFRJ*, Nos. 56/80, 53/85 and 30/89.



trafficked, they interview them separately, in order to establish where they may be travelling to, and then notify the TPIU, who may take appropriate action. On 13 May 2002, for example, two men were arrested shortly after crossing the border and handed over to the TPIU. Their two female Ukrainian passengers – who had been beaten and raped – were provided with shelter.<sup>142</sup>

## Closure of premises

In October 2003, despite the arrest of a client and a woman (who the TPIU knew had been trafficked) in the act of sex, and the client's testimony that his friends had purchased the woman's sexual services for him, the investigative judge refused to issue an order to close the premises. The woman was subsequently convicted of prostitution and sentenced to 20 days' imprisonment. When Amnesty International asked why they had brought charges against the woman for prostitution, the TPIU replied: "Some of the women have given up being victims; they just get on with it". The client was not charged under the Trafficking Regulation.<sup>143</sup>

Section 6.2 of the Trafficking Regulation provides an investigative judge with the power to close premises believed to be involved in or associated with trafficking; however, the numbers of premises closed has been low in comparison to the number of raids carried out: in 2002, 370 raids resulted in the closure of 61 premises, many of which later reopened; in 2003, TPIU investigations resulted in the closure of some 57 premises.<sup>144</sup> TPIU expressed their frustration to Amnesty International that the judiciary appeared reluctant to close premises notwithstanding their powers under applicable law.

The organization notes that applicable law in Kosovo prohibits the employment of persons under 18 years of age in "work, which by its nature, or the circumstances in which it is carried out, is likely to jeopardize the health, safety or morals of a young person".<sup>145</sup> The organization is only aware of one instance in which this legislation has been used as a justification for bar closure<sup>146</sup> and urges the authorities to make further use of these measures where there are reasonable grounds to suspect that girls working on

<sup>142</sup> UNMIK-UNMIK Police-KFOR Press Briefing, 20 May 2002.

<sup>143</sup> AI interview with Irina Cocos, then acting Head of TPIU, October 2003.

<sup>144</sup> TPIU, *Year End Report 2002 and Year End Report 2003*.

<sup>145</sup> Section 3.1, UNMIK Regulation 2001/27, *On Essential Labour Law in Kosovo*, 8 October 2001.

<sup>146</sup> On 28 September 2002, police and KFOR conducted raids on 11 café-bars in Gjakovë/Djakovica, 10 of which were subsequently closed for prostitution or employing juveniles or both; three juveniles were "rescued", *UNMIK Press Briefing Notes*, 1 October 2002.

those premises may have been trafficked into forced prostitution, or may be at risk of being trafficked.

In June 2001 the TPIU adopted a strategy of having police accompany local municipal fire-safety and health regulation inspectors in conducting random examinations of bars and cafes and questioning customers and women found at those businesses. For example, a joint Fire-Health-Police inspection team conducted examinations of several bars in Prizren suspected of being venues for prostitution, which resulted in the closure of one for health violations and the recovery of four 20-year-old Moldovan women. Although this strategy has been effective in Prizren municipality, not all municipal authorities have been so willing to collaborate with the TPIU.

However, where such premises have been closed, some owners have merely transferred their operation to a different location. Increasingly, there is evidence that in order to avoid disruption to their business, traffickers have removed women from the bars to private apartments. Clients now visit the bar, café or restaurant, buy sex (usually by purchasing an expensive item on the menu), and are then taken, or given the address, of a private house, flat or hotel room, where trafficked women are kept.

## Undercover operations

Although the TPIU considers that bar raids were initially an effective strategy, frustrated by the lack of progress and the doubling of the number of premises involved in prostitution between 2002 and 2003<sup>147</sup> in June 2003 TPIU decided to largely abandon raids, and to move towards an investigative strategy based on undercover operations and surveillance, conducted in conjunction with the Kosovo Organized Crime Police and the Central Criminal Investigation Unit.<sup>148</sup>

By July 2003, TPIU had carried out 14 undercover operations resulting in six arrests of suspected traffickers. On 17 June 2003, in an undercover operation to investigate the Restaurant California in Prizren, a plain-clothes KPS officer confirmed the suspicion that prostitution services were being offered to customers, and that restaurant staff were directly involved. Subsequently, the restaurant's manager and two women were arrested and six other women working

<sup>147</sup> Since the introduction of the Regulation, the number of establishments on the "off-limits list" has almost doubled. On 1 January 2002, 110 establishments were listed; a year later, 210 establishments were listed; and by March 2004, some 190 premises were listed.

<sup>148</sup> Authorized under UNMIK Regulation 2002/6, *On Covert and Technical Measures of Surveillance and Investigation*, 18 March 2002.

in the restaurant were detained for questioning. The TPIU subsequently applied for the permanent closure of the restaurant.<sup>149</sup>

## Addressing Demand

Amnesty International notes that little has been done to address the demand for the services of trafficked women in Kosovo. The TPIU has rarely arrested men suspected of “knowingly” using the services of a trafficked woman under Section 4 of the Trafficking Regulation.

However, the TPIU indicated to Amnesty International that it intends to pursue UNMIK and KFOR personnel suspected of violating Section 10 more rigorously, and has adopted a new strategy to ensure that international civilian staff working for KFOR international contractors be included. One contractor was arrested in October 2003, but was subsequently dismissed and repatriated; criminal proceedings were not brought against him.<sup>150</sup>

Some Albanians suspected of knowingly using or procuring the services of trafficked women – mainly in cases involving girls – had been arrested, but the TPIU reported there had been difficulties in gathering enough evidence to bring cases to trial.

Amnesty International was informed by the TPIU that they continue to be hampered in their efforts by lack of funding and equipment, particularly for both training and equipment for undercover operations.

Although women have been enabled to leave their situation as a result of UNMIK’s anti-trafficking strategies, UNMIK police have failed to address the problem of trafficking in Kosovo satisfactorily. The number of establishments where trafficked women are thought to work (and the number of women trafficked) has increased, and the numbers of perpetrators brought to justice remains low. Despite the provisions of Section 4 of the Trafficking Regulation which criminalizes those who knowingly use or procure the services of trafficked women, UNMIK has singularly failed to address the issue of demand for the services of trafficked women.<sup>151</sup> Meanwhile, significant numbers of women, considered by the TPIU to have been trafficked, have been prosecuted rather than protected.

UNMIK police and the judiciary need to ensure that the rights of trafficked women are fully respected

<sup>149</sup> UNMIK Police Briefing Notes, 24 June 2003.

<sup>150</sup> AI interview with Irina Cocos, then acting Head of TPIU, October 2003; email: Derek Chappell, UNMIK Police, March 2003.

<sup>151</sup> As far as the organization is aware, no prosecutions have yet been brought under Section 4.

within the criminal justice system, so that having escaped one set of human rights abuses, trafficked women are not subject to a second set of violations at the hands of the authorities.

## Criminal proceedings against traffickers

The number of prosecutions of men suspected of involvement in trafficking is low in comparison to the number of raids and other operations conducted by TPIU. This may, in part, be explained by the understandable reluctance of most trafficked women - borne out of the trauma they have already suffered and continued fear of their traffickers - to give evidence in criminal proceedings. There is evidence to suggest that many externally trafficked women prefer to be repatriated as quickly as possible, rather than waiting until the arrest of their trafficker and then taking part in criminal proceedings against their traffickers.

Recognizing this, Section 5.1 of the Trafficking Regulation provides that “[t]he taking of a statement by a law enforcement officer or investigating judge shall in no way inhibit or delay the voluntary repatriation of an alleged victim of trafficking”. This provision is a source of tension between the IOM, as the repatriating organization, and the TPIU and the Department of Justice and, who consider that the rapid repatriation of potential witnesses provides a barrier to successful prosecutions. Given, as the TPIU acknowledge, the majority of women do not wish to take part in criminal proceedings – “they just want to get out of here” – it remains to be seen whether improved witness protection measures would encourage women to stay and testify. At the time of writing, in the absence of an adequate witness protection programme, it is safer for externally trafficked woman and girls to leave the country. For internally trafficked women, solutions are more complex.

According to the TPIU, in 2001 some 52 indictments were brought against suspected traffickers. By the end of 2001, based on reports in 25 of these cases, 15 had resulted in a conviction for trafficking offences, five in the release or acquittal of the suspect, and five proceedings were continuing. In 2002, a further 92 charges were brought to the attention of the courts. Based on reports in 68 of these cases, some 27 people had been convicted, 19 had been acquitted or released and some 22 remained before the courts. Some 60 further charges were brought in 2003; by the end of the year some 16 people had been convicted, 18 had been

acquitted or released and some 26 remained before the courts.<sup>152</sup>

Overall figures provided to Amnesty International by the Department of Justice, however, differ. According to the Department of Justice, by December 2002, some 80 trafficking cases had been filed under the Trafficking Regulation. Of these, 45 had been completed, resulting in the conviction of some 76 suspects; a further eight were either acquitted or the charges against them dropped.

Although under the Trafficking Regulation the minimum sentence upon conviction for engaging or attempting to engage in trafficking is two years – and five years for a person convicted of organizing a group for the purpose of trafficking<sup>153</sup> – the sentences handed down by the courts by the end of 2002 ranged from four months to six years, with 88 per cent being between four months and three years.

Explanations for the failure to impose at least the minimum sentences set out in the Trafficking Regulation are contested. Members of the international community have alleged that Kosovar Albanian judges ruling on these cases lack understanding of the Trafficking Regulation, and of the gravity of the crime, but also acknowledge that some are subject to pressure by the traffickers. Some Albanian members of the judiciary have stated that their reluctance to impose heavier sentences is informed by concerns for their own security. Until 2003, UNMIK Department of Justice policy appeared to be that trafficking cases were, wherever possible, conducted by international prosecutors and judges, who were provided with security escorts.<sup>154</sup> However, the presence of an international judge in trafficking cases also did not always result in the imposition of the minimum sentence following conviction.

During sentencing hearings lawyers representing suspected traffickers often successfully argued mitigating circumstances on grounds including the age or marital status of the suspect, or the absence of any previous convictions. In one case, a man found guilty of two counts of trafficking and two counts of the withholding of identification papers, under Sections 2.1 and 3 of the Regulation, was sentenced to three years' imprisonment, on the grounds that, "the accused supposedly has not been convicted so far, that he had a

sort of simple mind, he is not well educated, lives on his own without any family left that could give him support and directions for his life, that he had a poor financial status, that he never forced T. and M.[trafficked women] to have sex with him, that he had beaten them, but not several [times]; that he had taken [their] identification papers, but not from the beginning."<sup>155</sup> Amnesty International notes, however, that a 17-year old girl convicted of trafficking other minors, was sentenced to serve up to five years in an educational correctional institution.<sup>156</sup>

Amnesty International notes that members of the international and Kosovar judiciary have failed in the majority of cases to impose sentences according to the provisions of the Regulation, and which match the gravity of the criminal offences and the human rights abuses suffered by the victims.<sup>157</sup>

In many of these cases, the acquittal of the accused or the imposition of a sentence below the minimum provided for in the Trafficking Regulation has been attributed to the fact that the trafficked woman was not present to testify in court trial proceedings, the majority having either been repatriated or unwilling to testify.

Those who have been prepared to give evidence were able to do so under provisions of the Criminal Procedure Code which allow for a witness or injured party to make a statement to the investigative judge.<sup>158</sup> Such statements may then be read into the evidence during the trial, provided that the defence counsel has been afforded the opportunity to cross-examine the witness.<sup>159</sup> However, according to information available to Amnesty International such statements are less likely to carry the weight of statements from defence witnesses who appear in court.<sup>160</sup>

<sup>152</sup> TPIU, *End of Year Reports* for 2001, 2002 and 2003.

<sup>153</sup> Sections 2.1 and 2.3 UNMIK Reg. 2001/4.

<sup>154</sup> In 2003, because of an increasing number of high-profile war crimes trials, international judges presided over only one trafficking trial, in which they sentenced one defendant to three years' imprisonment, and two others to four years, e-mail to AI from Ioan Tudorache, Department of Justice, March 2004.

<sup>155</sup> Pejë/Peć District Court, P.Nr 131/2001, 8 January 2002; Section 2.1 carries a minimum sentence of two years' imprisonment, and Section 3, a minimum sentence of six months.

<sup>156</sup> AI interview with Sebiha Mexhuani, OSCE, September 2003.

<sup>157</sup> Similarly low sentences were imposed under Article 251, prior to the Regulation. On 2 February 2001, for example, D.N. was convicted for one charge under Article 251, three charges of rape and one of falsification of documents, to three years' and six months' imprisonment and released pending appeal. Under applicable law, Article 103 of the Criminal Law of the Republic of Serbia, rape then carried a sentence of between one and ten years' imprisonment.

<sup>158</sup> UNMIK Regulation No. 2000/17, *On The Admissibility Of Certain Witness Statements In Preliminary Investigations*, 23 March 2000.

<sup>159</sup> Both the TPIU and LSMS report that defence counsel have often failed to appear in such proceedings.

<sup>160</sup> See for example, Appeal Case Decision, Supreme Court of Kosovo, 29 April 2003, upholding the verdict of Prizren District court, P. no. 243/2002, dated 29 November 2002, in which the

Under the new criminal procedure code, which entered into force on 6 April 2004, investigations will be carried out by the police and the office of the public prosecutor, and only limited provision has been made in law for the provision of testimony before an investigative judge.<sup>161</sup> Amnesty International is concerned that this may mean that the statements of externally trafficked women, who do not wish to take part in trial proceedings before they are repatriated, may not be considered admissible. Consideration must therefore be given to the introduction of further special measures for the provision of testimony by victim-witnesses, which protect their rights, but do not compromise the defendant's right to a fair trial.

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suspect was acquitted of charges under section 2.2 of the Trafficking Regulation.

<sup>161</sup> Under the new Criminal Code, investigations will be initiated by the office of the public prosecutor, see Chapters XXIII - XXV, *Provisional Criminal Code of Kosovo*; for the examination of witnesses prior to trial proceedings, see Article 238, (Extraordinary Investigative Opportunity) which makes provision for a pre-trial judge to take testimony from a witness "where there is a unique opportunity to collect important evidence or there is a significant danger that such evidence may not be subsequently available at the main trial".

## Chapter 4: Protection and support for trafficked women and girls

Assistance to all trafficked women, regardless of whether they participate in criminal proceedings, is fundamental to ensuring respect for and protection of their rights, including enabling them to become active agents in determining their own future and in ensuring their access to redress, including reparation, for the human rights abuses to which they have been subjected.

### The right to assistance

International standards require states to provide appropriate protection and support services for women who are victims of violence. General Recommendation 19 of the UN CEDAW requires states to provide: “Appropriate protective and support services” and “Protection Measures, including refuges, counselling, rehabilitation and support services for women who are the victims of violence or who are at risk of violence”.<sup>162</sup> UNHCHR Guideline 4.5 counsels states to “ensure that entitlement to such information, assistance and immediate support is not discretionary but is available as a right for all persons who have been identified as trafficked”.<sup>163</sup>

Amnesty International also notes that Articles 6 and 7 of the Trafficking Protocol make provision for the support, assistance and protection of victims of trafficking, as do Articles 24 and 25 of the Convention on Transnational Organised Crime. However, these provisions merely require state parties to “consider implementing” them “in appropriate cases”. In Kosovo, provisions for both “victim protection and assistance” are set out in Section 10 of the Trafficking Regulation.

Some three years after the promulgation of the Trafficking Regulation, Amnesty International is concerned that an Administrative Directive (AD), intended to provide guidance on the implementation of Section 10 of the Regulation, is yet to enter into force.<sup>164</sup>

<sup>162</sup> Article 24 (b), *CEDAW General Recommendation 19*.

<sup>163</sup> The UN Declaration of Principles of Justice for Victims of Crime and the Abuse of Power, for example, provides for both “Access to justice and fair treatment” and “Assistance”, defined as including “the necessary material, medical, psychological and social assistance through governmental, voluntary, community based and indigenous means”. UN GA Resolution 40/34, 29 November 1985.

<sup>164</sup> The text of an AD implementing Section 10 of the Trafficking Regulation was reportedly completed by April 2001, but its final authorization was delayed, reportedly because of concerns related to lack of capacity to meet the costs of compensation as well as further debate over its provisions. A second draft was completed in April 2002, and a third in September 2003.

The organization is also concerned that the text of the draft finalized in September 2003, which had been due to enter into force on 1 October 2003,<sup>165</sup> failed to provide adequate recognition of the rights of victims of trafficking to assistance, and an enforceable right to compensation.

The September 2003 draft of the AD sets out the procedures by which a trafficked woman may apply for assistance and reparation. It requires a trafficked woman to make an application, providing supporting documentary evidence, to the Victim Assistance Coordinator (VAC) in order to receive the free assistance of an interpreter and legal counsel; temporary safe housing, psychological, medical and welfare assistance; assistance with reintegration and/or return; financial assistance and reparations. Decisions are to be made by the VAC within 30 days of the application.

Amnesty International is concerned that the bureaucratic layers created by this procedure, and the absence of concomitant obligations to advise a victim of her rights, may undermine her enjoyment of those rights.

The organization is particularly concerned that such procedures are creating new obstacles to the enjoyment of these rights given that, at the time of writing, all of these services, with the exception of legal advice and access to compensation, are already provided by international and domestic organizations whose work is described later in this chapter. Amnesty International believes that the introduction of an application process for such assistance may, in practice, be inconsistent with CEDAW General Recommendation 19, and with UNHCHR Guideline 9.1 which requires that: “victims of trafficking have an enforceable right to fair and adequate remedies, including the means for as full rehabilitation as possible. These remedies may be criminal, civil or administrative in nature”.

The AD also places a responsibility on a trafficked woman to provide evidence “to support a reasonable belief” that she has been trafficked. Amnesty International is concerned that this imposes an unnecessary burden on a trafficked person, and notes in this regard that it is likely that a woman who is aware of the requirement to make such an application in order to access services and assistance will already have been identified by the TPIU, OSCE and either the IOM or, for example, the CPWC, as a “victim of trafficking”. The previous draft AD, dated April 2002, did not include provisions requiring a trafficked woman to undergo a

<sup>165</sup> Amnesty International understands that the draft AD was not authorized because of the number of concerns about its provisions expressed by both the TPIU and other organizations working with trafficked women.

procedure to qualify for assistance, but rather conceived the role of the VAC as *coordinating* the provision of assistance by a number of different NGOs, UNMIK and the PISG; the organization recommends that the current draft be amended to reflect such provisions of the April 2002 draft.

In providing for a decision on assistance to be made within 30 days, the AD also fails to recognize that trafficked persons require *immediate* support following their “rescue” or escape from a trafficking situation (as is the current practice in Kosovo). Even an expedited process, in which a decision is made within three days, as envisaged in Section 7, in Amnesty International’s view, may not respond adequately to the urgency of the need for assistance and services for trafficked persons. In this respect Amnesty International notes that Recommendation 13 of the Brussels Declaration recognizes that trafficked women require immediate assistance and protection.<sup>166</sup>

The composition of the panel envisaged in the appeals procedure raises further concerns.<sup>167</sup> In particular, the organization is concerned that there is a risk that the trafficked woman’s right to confidentiality will be compromised by making confidential information available to a wider audience than should be necessary, thus exposing the woman to further risk of repercussions.<sup>168</sup> The organization also notes that the TPIU have expressed concerns that this procedure could compromise their investigations, by making details relating to traffickers available to the panel, and placing shelter staff at even further risk.<sup>169</sup>

Although the organization welcomes a mechanism that makes provision for reparations outside of a judicial procedure, Amnesty International is concerned that both the awarding of assistance and the provision of reparations are not only subject to an assessment of the means of the trafficked woman – although the details of how these should be assessed are not set out in the draft – but also dependent on available resources, which the VAC has admitted are very limited.<sup>170</sup>

<sup>166</sup> Brussels Declaration on Preventing and Combating Trafficking in Human Beings, 18-20 September 2002.

<sup>167</sup> The review panel will be composed of a Supreme Court Judge, two representatives of the Department of Social Welfare, UNMIK police and representatives of the [IOM] and relevant domestic NGO, Section 3.2 Draft Directive, September 2003.

<sup>168</sup> Draft Section 4.2 (d) requires the applicant to provide details of the circumstances under which she was trafficked and “information on the alleged traffickers”.

<sup>169</sup> AI interview, Jennifer Mc Mullan, former Head of TPIU, September 2003.

<sup>170</sup> Some €50,000 was envisaged: AI interview with Mumbi Njau, Coordinator, Victim Advocates and Assistance Unit, September 2003

Amnesty International is also concerned that responsibility for implementation of the AD will lie with the Department of Justice, rather than, for example, with the Department of Health and Social Welfare, which would appear to be a more appropriate location for the provision of assistance and support.<sup>171</sup>

Following meetings with the Victim Advocates and Assistance Unit (VAAU) in March and September 2003, in which the organization raised its concerns, in a subsequent telephone conversation with the UNMIK Office of Legal Affairs in November 2003, the Senior Advisor to the Deputy SRSG indicated that Amnesty International’s concerns about the requirement that trafficked women apply assistance would be addressed, although no specific assurances were given.<sup>172</sup>

In light of these concerns Amnesty International urges UNMIK to amend the September 2003 AD so as to ensure that trafficked women and girls receive immediate and appropriate assistance, without having to make a formal application. The organization recognizes, however, that some coordination is necessary to enable a trafficked woman to realize her rights to reparation, given that so few trafficked women are able to do this through criminal or civil proceedings against traffickers.

Amnesty International also notes that the draft AD makes no specific provisions for children who are victims of trafficking. The organization urges that UNMIK ensure that the AD be amended to include specific measures to safeguard the best interests of trafficked children, for whom there should be an immediate enjoyment of the right to assistance and adequate compensation.

## Qualifying for assistance

Approximately 50 per cent of women who access shelters have been “rescued” by the police in raids; others – through their own agency, or with the help of others – who manage to escape, or are occasionally allowed to leave by their traffickers, may be referred to shelters by other NGOs and agencies.<sup>173</sup> The status of women who have been “rescued” in police raids is determined in the course of a series of up to three interviews conducted at a police station. These interviews are conducted, often in the early hours of the morning, without the presence of a lawyer.

<sup>171</sup> Amnesty International notes a strong presumption in relevant Council of Europe Recommendations that the provision of assistance and support should be detached from the judicial process.

<sup>172</sup> AI telephone conversation with Nick Booth, OLA, November 2003.

<sup>173</sup> AI interviews with IOM and CPWC, September 2003. CPWC, *Annual Report*, April 2003.

When women are removed from bars they are arrested and treated as criminal suspects until they can prove otherwise. However, they are not given the rights to which detainees are entitled under applicable law, including access to a lawyer; furthermore, children are interviewed without the presence of a legal guardian (see below). They will be deprived of their liberty unless and until they can establish that they are victims of trafficking.

A police spokesperson described the detention of women as a “soft form of arrest”, claiming that a formal arrest process would traumatize them further.<sup>174</sup> However, local NGOs have reported to Amnesty International that the TPIU and other international police officers often failed to treat these women and girls as victims of crime, instead, for example, they have referred to internally trafficked girls as “prostitutes”.<sup>175</sup>

Under the “Standard Operating Procedure” (SOP),<sup>176</sup> externally trafficked women are first interviewed by the TPIU to establish whether they have been trafficked. If a woman is identified as a trafficked woman, the TPIU then contacts the OSCE Regional Trafficking Focal Point,<sup>177</sup> who conducts a further interview with the woman and makes a decision as to whether she should be referred to the IOM. If so, she is taken to Prishtinë/Priština for a further interview to establish if she is eligible for IOM assistance, and willing to enter the IOM repatriation program. As noted below, there are no special procedures within the SOP for externally trafficked children.

*“Sometimes the women decide [to repatriate] immediately, but in other cases we have to stay for a couple of hours to convince her.”<sup>178</sup>*

The IOM seeks to ensure that women are willing participants in the repatriation program, and understand that they will be taken to a closed shelter and effectively detained until repatriation. The IOM have, since 2000, conducted over 700 screening interviews, but have

<sup>174</sup> Interview, Derek Chappell, October 2003; see also, UNMIK-KFOR-UNHCR-UNMIK Police Briefing, 18 June 2001. In regional police stations, women are held in the TPIU offices; pending the confirmation of funding, a specialized suite where women may be interviewed is reportedly being provided in Prishtinë/Priština, AI telephone conversation with TPIU, March 2004.

<sup>175</sup> Interview with Naime Sherife, CPWC, September 2003. NGOs working with internally trafficked girls also queried police investigational techniques.

<sup>176</sup> The SOP is an agreement between the TPIU, the OSCE, and the IOM as to their respective roles and responsibilities towards externally trafficked women and girls.

<sup>177</sup> The Regional Trafficking Focal Point is a human rights officer within the OSCE Human Rights and Rule of Law Division, established in 2001.

<sup>178</sup> AI interview with IOM staff member, September 2003.

observed in 2003 that fewer women wished to accept their services.<sup>179</sup>

Some women do not wish to be repatriated: some are afraid that by being repatriated by the IOM they will be too easily identified as victims of trafficking when they return home, fearing reprisals from their traffickers, their family or their community. For women who do not want to enter the repatriation program but wish to return to their home country, IOM provides a limited mini-program, assisting women in obtaining the necessary travel documents.<sup>180</sup>

Trafficked women who choose not to identify themselves as victims of trafficking or who cannot at the time of interview decide whether they wish to be repatriated are excluded from the IOM assistance program, although they are given a telephone number to ring if they change their minds. Some provision is made at the Interim Secure Facility (ISF, see below) shelter for externally trafficked women who do not immediately wish to be repatriated.

For those unable or unwilling to be identified as victims of trafficking, there is little protection, counselling or other services, since the demise of the mobile health-clinics run by the United Methodist Committee on Relief (UMCOR, see below). If they are arrested, they have little option following their release but to return to the bars. For example, the TPIU informed Amnesty International of a woman who was sentenced to four months’ imprisonment for prostitution.<sup>181</sup> After her release, she wanted to return to her home country, but was unable to get a passport, nor did the police have powers to deport her.

*“She is now trapped in a vicious circle. There is no possibility for her to leave Kosovo and she remains working here in a bar. There are no embassies or offices of other countries in Pristina, and although there are such things in Belgrade, they are not allowed to go across the border in order to access their embassies, so they just go back to the bars.”<sup>182</sup>*

Amnesty International has several concerns about this process. Women face interviews by the police and others in unfamiliar surroundings, often shortly after raids and

<sup>179</sup> This figure includes repeat interviews with women who were interviewed on several occasions before they eventually decided to enter the IOM program.

<sup>180</sup> Similar assistance has been provided by the OSCE.

<sup>181</sup> Although this woman had voluntarily travelled to Kosovo to work as a prostitute, the TPIU, considering her circumstances, identified her as a trafficked woman.

<sup>182</sup> Interview, Irina Cocos, Deputy-Head TPIU; IOM also informed Amnesty International of cases of trafficked women released from Lipjan Prison.

arrest, often without any female police officers present, and without any legal representation. Within hours of their arrest, they have to decide whether to enter a repatriation program. Furthermore, there are no special procedures for girls under 18.

Internally trafficked women are similarly interviewed by the TPIU, then caseworkers from a local NGO and then referred to a shelter for assistance. At the end of March 2004, a Standard Operational Procedure for internally trafficked women and girls had not yet been agreed.

## Support and assistance for girls

*“Children who are victims of trafficking shall be identified as such. Their best interests shall be considered paramount at all times. Child victims of trafficking shall be provided with appropriate assistance and protection. Full account shall be taken of their special vulnerabilities, rights and needs”.* Principle 10, UNHCHR Principles and Guidelines.

International standards call for measures additional to those identified for adults to protect the rights of children who are trafficked, and ensuring in accordance with Article 3(1) of the Children’s Convention that “the best interests of the child shall be a primary consideration”.<sup>183</sup>

Under applicable law in Kosovo responsibility for the protection of all children – including trafficked girls – lies with the PISG Ministry of Labour and Social Welfare.<sup>184</sup> A model agreement exists between the Ministry of Labour and Social Welfare and the child protection shelters in Prishtinë/Priština and Prizren (see below), which specifies procedures to be undertaken and criteria to be applied in cases of emergency and planned admissions these shelters.<sup>185</sup> Further procedures developed in 2003 by the Ministry to identify and protect internally trafficked girls, including some very young children, are not yet adequately defined or fully operational.

Until early 2003, internally trafficked girls were taken directly into the care of the CPWC. The new procedures, initiated by the Department of Social Work, involved the assignment of a case-worker, and where

<sup>183</sup> These measures are set out in detail in Guideline 8 of the UNHCHR Principles and Guidelines.

<sup>184</sup> The Ministry exercises overall responsibility for social welfare; protection and assistance is provided by municipal Centres for Social Work administered by the Department of Social Welfare. See Annex VII (iv), UNMIK Regulation 2001/19, On the Executive Branch of the Provisional Institutions of Self-Government in Kosovo, and the Law on Marriage and Family Relations, 24 February, 1984.

<sup>185</sup> Ministry of Labour and Social Welfare, *Admission criteria for Child Protection Shelters in Prishtina and Prizren*, March 2003.

necessary a legal guardian, for each child. A 24-hour “on-call” system was established, so that social workers might be called out to police stations to conduct an assessment, and to refer girls to an appropriate shelter.<sup>186</sup> However, according to the TPIU and shelter NGOs, social workers have not always been available, an allegation accepted by the Department of Social Welfare. In some cases girls have been detained overnight at police stations as a result, including in November 2002, when several Kosovar Albanian girls were detained without even their parents being notified.<sup>187</sup> The organization notes that the capacity of the regional Centres for Social Work (CSW)<sup>188</sup> to address cases of trafficked girls has been called into question by the OSCE.<sup>189</sup>

These still limited provisions apply only to internally trafficked children, and there are no specific procedures for externally trafficked girls within the IOM program, as recommended by the United Nations Children’s Fund (UNICEF).<sup>190</sup>

## Shelters

*States shall ensure that trafficked persons are protected from further exploitation and harm and have access to adequate physical and psychological care. Such protection and care shall not be made conditional upon the capacity or willingness of the trafficked person to cooperate in legal proceedings.”* Paragraph 8, UNHCHR Recommended Principles and Guidelines.

In Kosovo, provision is made, under Section 10.1 (c) of the Trafficking Regulation, for trafficked women to receive temporary safe housing, psychological, medical and social welfare. Until June 2003, this was provided by shelters run in cooperation with the IOM, the CPWC and other NGOs in Kosovo. In June 2003, under a Memorandum of Agreement between OSCE and UNMIK, and pursuant to the Regulation, the Interim Secure Facility (ISF) was opened, and is run by the Department of Justice VAAU. By March 2004, the ISF had provided shelter to 10 women – both internally and

<sup>186</sup> In each case, the TPIU conduct a risk assessment, which is provided to the relevant shelter.

<sup>187</sup> Information received by AI, November 2002; AI interviews with staff at Department of Health and Social Welfare, September 2003.

<sup>188</sup> The Ministry of Health and Social Welfare and the Centres for Social Work (CSW) fall under the PISG.

<sup>189</sup> OSCE Department of Human Rights and Rule of Law, Kosovo. *Report on the Centres for Social Work, Social Services*, March 2003, p.5.

<sup>190</sup> See for example, Section 3.2, *Guidelines for Protection of the Rights of Children Victims of Trafficking in Southeastern Europe*, UNICEF, May 2003. AI notes that IOM met with the head of the Department of Social Welfare in February 2004 to discuss a Memorandum of Agreement, e-mail from IOM Kosovo, March 2004.



externally trafficked – including seven women yet to make a decision about whether they wished to enter the IOM repatriation program.<sup>191</sup>

Although the stated aim of the ISF was to encourage the cooperation of victims of trafficking with law enforcement agencies, it would appear that this aim has not yet been achieved. By March 2004, as far as the organization is aware, only one woman had been placed at the ISF while making a decision whether or not to testify. In addition, because the ISF's security was compromised by international police within a week of its opening, neither the TPIU nor the UNMIK Witness Protection Unit (WPU) consider it suitable for witness protection.<sup>192</sup>

Concerns were expressed to Amnesty International by both the then ISF manager and other providers about the standard of support, assistance and staffing at the ISF, including a lack of appropriate skills (including language skills) and experience among staff. Amnesty International is also concerned that the ISF appears to have little clarity about its role, particularly in relation to other providers and in its duplication of existing systems of support for internally trafficked women.<sup>193</sup>

## Shelters for externally trafficked women

From February 2000 shelter for externally trafficked women who agree to enter the IOM program was provided by an international NGO, working with local staff; in 2004 responsibility for the IOM shelter was in the process of being transferred to a domestic NGO staffed by experienced shelter workers. The shelter opened in February 2000 and has subsequently worked with more than 300 women and girls.

The shelter provides food, accommodation, medical support, counselling and a range of educational and other activities. Staff include social workers, medical practitioners and a psychiatric nurse. Treatment is available for women with sexually transmitted infections, but not testing. HIV/AIDS testing is not available. Before leaving Kosovo, women are given a medical record card and their case file is forwarded to IOM's partner organization in the receiving country,

<sup>191</sup> At least two women had decided, after a few days, to be repatriated by IOM; others left, one reportedly returning to the bar where she had worked; ISF staff anticipate that women may stay for a maximum period of one month before making a decision, AI interview with ISF manager, September 2003; e-mail from IOM staff, March 2004.

<sup>192</sup> AI interview with former Head of ISF, September 2003.

<sup>193</sup> The ISF had by September 2003 already sheltered one victim of domestic sexual abuse.

where the woman is expected to continue with the reintegration program.<sup>194</sup>

Elsewhere in the region, the IOM has been criticized for using an approach that, rather than empowering trafficked women, reinforces their status as "victims".<sup>195</sup> However, although Amnesty International recognizes this concern, it also acknowledges the skill, care and commitment with which trafficked women and girls are supported by IOM and their partner NGO.<sup>196</sup>

## Shelters for internally trafficked women and girls

Internally trafficked women have been offered shelter by the CPWC since 2000.<sup>197</sup> After initial counselling, medical and legal advice, the CPWC contacts other organizations, in conjunction with the Ministry of Health and Social Welfare, to assist those who wish to reintegrate back into their own family. Given the strong notions of shame in Albanian culture, this process may be long and difficult.<sup>198</sup> The Ministry has recently begun to recruit and train families to foster trafficked girls whose families do not want them to return.

In conjunction with the Ministry of Education, the CPWC provides girls with education, including teaching basic literacy, organizing school placements or making arrangements to take examinations privately. Tests and treatment for sexually transmitted infections are available. The CPWC also runs a drop-in service for trafficked women.

Internally trafficked girls who are considered to be at low risk of revictimization are accommodated in

<sup>194</sup> An evaluation of the effectiveness of the reintegration of women from Kosovo was beyond the scope of this return project. However, concerns have been raised that few women receive long-term support and that many are re-trafficked, see for example, UNICEF, UNOHCHR, OSCE/ODIHR, *Trafficking in Human Beings in South Eastern Europe, 2003 Update on Situation and Responses to Trafficking in Human Beings*, November 2003, pp. 197-8.

<sup>195</sup> Kvinna Till Kvinna and Stiftelsen Kvinnoforum for Sida (Swedish International Development Cooperation Agency) *IOM Regional Counter-Trafficking Programme in the Balkans*, see, for example, pp. 102-5.

<sup>196</sup> Trafficked women reportedly associate the IOM program with stigmatization, criminalization, re-victimization – through detention, denial of freedom of movement in the shelters, invasive and personal questions and the "fit to travel" medical examination – lack of long term protection and any real options for the future, *Trafficking in Human Beings in South Eastern Europe, 2003 Update*, pp. 197-8. See also Sida, *IOM Regional Counter-Trafficking Programme in the Balkans*, pp. 83-6 & 105.

<sup>197</sup> The CPWC have also assisted a number of externally trafficked women.

<sup>198</sup> A woman whose behaviour is 'shameful' (mbarre) is not only affected as an individual, but through the strong perception of family liability, her family is also 'shameful' or 'dishonoured'.

two open child protection shelters, with a high ratio of staff to children, one in Prishtinë/Priština and the other in Prizren. Counselling services are provided by the staff of domestic NGOs, including the CPWC and a volunteer clinical psychologist. Staff collaborate with the IOM for medical treatment and counselling, and with the CPWC over high and medium risk cases. A legal guardian is appointed for each child, and casework is designed to ensure that, in accordance with international standards, the best interests of the child are the primary consideration.<sup>199</sup> These provisions have not yet been extended to externally trafficked girls, although under applicable law, the PISG is ultimately responsible for the welfare and protection of all children within Kosovo.

Medium or high risk girls and women are also provided with secure shelter accommodation by the CPWC; other domestic NGOs run shelters in Gjakovë/Đakovica and Pejë/Peć.<sup>200</sup>

## Security of shelters

Responsibility for the protection of externally trafficked women, while they remain in Kosovo, lies with the TPIU and other police, and with the IOM-partner NGO which runs the IOM shelter. This shelter has remained secure, regularly changing location.

The CPWC is extremely concerned about security of women in their care. A break-in took place at CPWC's office (not the shelter) on 4 January 2003, in which five computer hard discs containing confidential data and testimonies of trafficked women and girls and other victims of violence against women were stolen; other valuable equipment was not taken. Although police patrolled the area for the next 24 hours, shelter staff told Amnesty International of their concern that UNMIK had failed to acknowledge the threat to the safety of the women – including trafficking victims - whose recorded testimonies had been stolen. In response to criticism at the lack of progress by the police in identifying the perpetrators and recovering the stolen information, an UNMIK police spokesperson reportedly stated, "We patrolled 24 hours a day in the town before and after the incident and try our best to prevent such

crimes – but we are not security guards for *private businesses*" [AI emphasis].<sup>201</sup>

With the exception of one incident in which a social worker breached procedure by taking the family of a trafficked girl to a shelter, the security of the two open shelters for low risk internally trafficked girls has not yet been compromised. As noted above, the security of the ISF was compromised by international police within weeks of its opening.

## The right to international protection

*"Safe (and, to the extent possible, voluntary) return shall be guaranteed to trafficked persons by both the receiving State and the State of origin. Trafficked persons shall be offered legal alternatives to repatriation in cases where it is reasonable to conclude that such repatriation would pose a serious risk to their safety and/or to the safety of their families".* Paragraph 11, UNHCHR Recommended Principles and Guidelines.

Many trafficked women and girls face a real risk of intimidation, coercion, threats or further violence to themselves or members of their families, including the risk of re-trafficking following return to their home country. The United Nations High Commission for Refugees (UNHCR) recognizes that in certain circumstances a trafficked woman may be able to sustain a claim to refugee status on the basis of her trafficking experience and the risks that she faces as a consequence.<sup>202</sup>

Given the special vulnerability of trafficked women in both their country of destination and their country of origin, in accordance with standards applicable in the international refugee protection regime, Amnesty International underscores that there should also be a duty on the part of the authorities to ascertain and evaluate any protection claims and assess this risk where a trafficked woman expresses a wish not to be returned to her country of origin.<sup>203</sup> In such circumstances, if she is found to be entitled to international protection, there should also be a responsibility to assist in identifying appropriate durable solutions. In particular, it should be

<sup>199</sup> Articles 3.1 and Article 12 of the Children's Convention requires that the views of the child are solicited and respected.

<sup>200</sup> Temporary accommodation often has to be provided by refugees for victims of domestic violence; a worker at one such shelter told Amnesty International of the difficulties they had experienced in providing support and services to women and girls with such different and specific needs, AI interview with staff at the Safe Women's House, Gjakovë/Đakovica, November 2002.

<sup>201</sup> Interviews with Sevdie Ahmeti, CPWC, March and September 2003; See also "Kosovar Abuse Victims in Jeopardy", *Balkan Crisis Report*, No. 403, 3 February 2003.

<sup>202</sup> See paragraph 18, *UNHCR Guidelines on International Protection: Gender-Related Persecution within the Context of Article 1a(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees*, HCR/GIP/02/01, 7 May 2002.

<sup>203</sup> See Paragraph 196, *UNHCR Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees* HCR/IP/4/Eng/REV.1 Reedited, Geneva, January 1992, UNHCR 1979

recognized that local integration in Kosovo (where she may be as fearful as she is of returning to her country of origin) may not be viable, and resettlement to a third country may be the only feasible alternative.<sup>204</sup>

Amnesty International also notes in this regard that the principle that no one should be returned to a country where they risk serious human rights abuses (the principle of *non-refoulement*) may apply not only under the 1951 Convention Relating to the Status of Refugees and its related 1967 Protocol, but also to Articles 3 of both the ECHR and the Convention against Torture, respectively. The UNHCHR Recommended Principles and Guidelines further underscore that general principles of human rights law may provide for “protection from summary deportation or return where there are reasonable grounds to conclude that deportation or return would represent a significant security risk to the trafficked person and/or her /his family”.<sup>205</sup> These principles are reflected in the Trafficking Regulation.

Amnesty International welcomes the signing, in December 2002, by the Deputy SRSG on behalf of Kosovo, of the Statement on Commitments to Legalize the Status of Trafficked Persons (Tirana Statement). In so doing, the Kosovo authorities agreed to grant temporary residence to victims of external trafficking for three months or longer.<sup>206</sup> However, the organization is not aware that formal mechanisms to implement this have yet been introduced.

While finding long-term solutions may be problematic for both internally and externally trafficked women, such solutions are essential to ensuring that protection of their human rights is effective. Externally trafficked women need to be able to access solutions which take full account of their special vulnerability not least as essential and often inadequately protected witnesses of transnational organized crime. Research in 10 EU member states by Anti-Slavery International has demonstrated that if victims of trafficking have the right to remain in the country of destination, temporarily or permanently, and receive appropriate services, conviction rates of traffickers are higher.<sup>207</sup> However, critiques of temporary residency programs in Belgium, Italy and the Netherlands suggest that adequate protection, including witness protection, is lacking in

these states.<sup>208</sup> Amnesty International considers that in order to address the problem of trafficking in an effective way, it is necessary to open up long term solutions of not only local integration and voluntary repatriation with effective re-integration measures, but also the possibility of resettlement to a third country, where necessary. There is currently no legal framework for externally trafficked women to claim citizenship or residency in Kosovo, leaving them in a legal limbo, until the final resolution of the status of Kosovo. With regard to social integration, even if they are allowed to remain, it may prove extremely difficult for women from, for example, eastern Europe to integrate into Kosovo’s predominantly Albanian community where minorities, including Serbs, continue to face discrimination and ethnically motivated violence.

Likewise, it may be impossible for some internally trafficked women to reintegrate into their close-knit communities, and that without the protection of their family and community some may find they are again vulnerable to re-trafficking. Therefore the granting of protection in a third country as a long-term solution for internally trafficked persons may also, in certain circumstances, be necessary to ensure effective protection.

Amnesty International therefore recommends consideration of long-term protection, possibly in third countries, for both externally and internally trafficked victims of trafficking who are at risk in their home countries and in need of continued protection.

<sup>204</sup> See also Section 12.1 of the Trafficking Regulation.

<sup>205</sup> UNHCHR Recommended Principles and Guidelines 4, paragraph 6, which also requires states to consider ensuring that the protection of trafficked persons is built into anti-trafficking legislation.

<sup>206</sup> The agreement was signed at the Third Regional Ministerial Forum by Ministers from Albania, Bosnia-Herzegovina, Bulgaria, Croatia, Hungary, Macedonia, Moldova, Turkey and Serbia and Montenegro (then FR Yugoslavia), 11 December 2002.

<sup>207</sup> Elaine Pearson, *Human Traffic, Human Rights Redefining Victim Protection*, Anti-Slavery International, 2002, pp. 4-5, 35-62.

<sup>208</sup> Many women reportedly leave witness protection programs because they are effectively imprisoned in shelters or those living in more open shelters are vulnerable to intimidation by their traffickers. Others face further discrimination in seeking employment, social services or other services, *Commission of the European Communities, DG Justice and Home Affairs, Research based on case studies of trafficking in human beings in 3 EU Member States*, i.e. Belgium, Italy and The Netherlands, Hippokrates JAI/2001/HIP/023. See also, Council Framework Decision on Combating Trafficking in Human Beings, 22 January 2001; EU Council Directive on the Short-Term Residence Permit Issued to Victims of Action to Facilitate Illegal Immigration or Trafficking in Human Beings who Cooperate with the Competent Authorities, Brussels, 11 February 2002.

## Chapter 5: Access to Justice

Very few trafficked women in Kosovo are able to gain access to justice, including the right to seek redress through the criminal justice system. To date, no trafficked woman has been able to obtain reparations for the damage she has suffered as a result of abuses of their human rights.

### Lack of legal assistance

*“Legal and other assistance shall be provided to trafficked persons for the duration of any criminal, civil or other actions against suspected traffickers.”* Principle 9, UNHCHR Principles and Guidelines.

According to applicable law in Kosovo, an injured party has the right to legal representation at all stages of any criminal proceedings.<sup>209</sup> Section 10.1(b) of the Trafficking Regulation provides for “free legal counsel in relation to trafficking issues (criminal or civil)”, and states that law enforcement officers should inform the victim of this and other rights.<sup>210</sup>

However, victims of trafficking are neither informed of their right to legal assistance on arrest, nor given access to a lawyer, and although domestic NGOs have engaged lawyers for internally trafficked women in particular cases, women trafficked from abroad who testify in investigative proceedings have not been provided with a lawyer.<sup>211</sup> In proceedings attended by Amnesty International, while an internally trafficked girl was assisted by a social worker and the organization observed that the social worker, prosecutor and judge treated the witness sensitively, any legal representation for the witness was notably absent.

Access to a lawyer is fundamental to ensuring, in the first instance, that women are informed about their rights and the implications of making a statement that may be used in proceedings. They may also require advice about, for example, witness protection, the right to redress and reparation, repatriation or return, and the availability of any temporary residence permits, as well as representation in any subsequent proceedings.

The Department of Justice Victims’ Advocacy and Assistance Unit (VAAU) informed Amnesty International in September 2003 that legal advice will be provided to trafficked women by Victim Advocates (VA), established within the Department of Justice

<sup>209</sup> Article 59 of the Criminal Procedure Code, *Sluzbeni List SFRJ*, No. 4, 14 January 1977.

<sup>210</sup> Section 10 (b).

<sup>211</sup> IOM describes the information provided to trafficked woman as legal advice, but they do not provide the women with access to a lawyer, AI interview with IOM, September 2003.

VAAU. By March 2004, the VAs had provided such assistance in 24 cases of trafficking.<sup>212</sup> However, these Victim Advocates are not qualified lawyers, nor specialists in trafficking and, according to the VA Coordinator, their role is primarily that of referral, including assistance in gaining access to justice.<sup>213</sup> Amnesty International therefore considers that this provision continues to deny women their right to a lawyer.

### The right to witness protection

*“States shall provide protection and temporary residence permits to victims and witnesses during legal proceedings.”* Principle 8, UNHCHR Principles and Guidelines

The UN Convention against Transnational Organized Crime<sup>214</sup> requires a state “to take appropriate measures within its means to provide effective protection from potential retaliation or intimidation for witnesses in criminal proceedings who give testimony concerning offences covered by this convention and, as appropriate, for their relatives and other persons close to them”.

In 1999, the UN General Assembly invited governments to “take steps, including witness protection measures/programmes, to enable women who are victims of trafficking to make complaints to the police and to be available when required by the criminal justice system, and to ensure that during this time women have access to social, medical, financial, and legal assistance and protection as appropriate”.<sup>215</sup>

All victims of trafficking, irrespective of their participation in legal proceedings, are entitled to protection. Women who decide to testify as witnesses against traffickers may require more rigorous measures. Measures to ensure their protection are needed before proceedings, during the trial, and where a convicted person has been freed on appeal, until all further proceedings have been completed. Even then, consideration must also be given to further protection needs.<sup>216</sup>

<sup>212</sup> E-mail to AI from Sebiha Mexhuani, OSCE, March 2004.

<sup>213</sup> AI interview with Judith Lavois, VA Coordinator, October 2003.

<sup>214</sup> Article 24.1.

<sup>215</sup> UN GA Resolution 53/116 of 1 February 1999.

<sup>216</sup> See also the provisions of the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (A/RES/40/34), 29 November 1985; the CoE Recommendations on the Position of the Victim in the Framework of Criminal Law and Procedure (1985) (Recommendation R (85) 11 of the Committee of Ministers; Recommendations Rec. (2002) 5 of the Committee of Ministers to Members states on the protection of women against violence, adopted on 30 April 2002 and Explanatory Memorandum; and Article 68 of the Rome Statute.

Despite provisions for the protection of witnesses made in the Trafficking Regulation,<sup>217</sup> by September 2003 Amnesty International had found little evidence that – with some exceptions – measures had been routinely taken to provide protection to trafficked women willing to testify in court.

## Witness protection – the law

*“[The] ability to successfully prosecute trafficking cases where you can’t provide security to witnesses is almost zero.”*<sup>218</sup>

The protection of women prepared to act as witnesses is required by Section 5.2 of the Trafficking Regulation and although not explicitly set out in the regulation, may be provided through the courts or, in a separate scheme, through the Witness Protection Unit (WPU).

Under UNMIK Regulation 2001/20, *On the Protection of Injured Parties and Witnesses in Criminal Proceedings*, public prosecutors, defence counsel, injured parties or witnesses may apply for a protective measure or an order of anonymity.<sup>219</sup> Under this Regulation, protective measures include: “omitting or expunging names, addresses, working place, profession or any other data or information that could be used to identify the injured party or witness”; “testifying behind an opaque shield, through image or voice-altering devices, or contemporaneous examination in another place communicated to the court room by means of closed-circuit television, or video-taped examination of the injured party witness prior to the court hearing with the defence attorneys present”; the assignment of a pseudonym; closure of sessions to the public; ordering the defence not to reveal identity; and ordering the temporary removal of the accused from the court-room if the witness “refuses to give testimony in the presence of the accused or if the circumstances indicate to the Court that the witness will not speak the truth in the presence of the accused”.

If these measures are insufficient, then “the Court may in exceptional circumstances order that the injured party or witness shall remain anonymous to the accused and the defence attorney. In making this determination, the Court shall conduct a hearing in a closed session which includes only the public prosecutor, essential court and prosecution personnel, and the witness or injured party”.<sup>220</sup>

<sup>217</sup> See Section 5.2 and Section 7.4.

<sup>218</sup> Amnesty International interview with international prosecutor, March 2003.

<sup>219</sup> Section 3.1.

<sup>220</sup> Section 4.2. Similar provisions are made for defence witnesses under section 4.1.

Amnesty International notes these comprehensive measures for the protection of witnesses, and recognizes that such measures have been introduced because of the exceptional vulnerability of witnesses in trafficking and other serious cases, especially in jurisdictions like Kosovo where the rule of law is not well established. However, the organization urges that in their implementation, such provisions should not be permitted to prejudice the right of the accused to a fair trial, as guaranteed under Article 14 of the ICCPR.<sup>221</sup>

In such circumstances, the case for considering specific measures for witness protection, including for example resettlement to a third country, may be even more compelling.

Amnesty International is concerned that externally trafficked women have rarely been granted such protection. Only at the instigation of certain international prosecutors have these measures been used. Furthermore, local NGOs reported to Amnesty International that they were unaware of any trials involving internally trafficked victims and local prosecutors and judges in which these measures have been taken. Anti-trafficking organizations also reported to Amnesty International that neither judges nor prosecutors routinely informed trafficked women of their rights to protection and the measures available, as they are required to do under Section 3.1 of Regulation 2001/20.<sup>222</sup>

## Witness Protection Unit

An international prosecutor in Kosovo told Amnesty International, *“You cannot imagine the degree of intimidation that exists because it doesn’t exist in a Western country”*.

In June 2001 UNMIK police established a Witness Protection Unit (WPU).<sup>223</sup> However, financial constraints have limited the WPU to serious war crimes

<sup>221</sup> See also Article 68.5 of the Rome Statute: “Where the disclosure of evidence or information pursuant to this Statute may lead to the grave endangerment of the security of a witness or his or her family, the Prosecutor may, for the purposes of any proceedings conducted prior to the commencement of the trial, withhold such evidence or information and instead submit a summary thereof. Such measures shall be exercised in a manner which is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial.”

<sup>222</sup> Amnesty International interview with Sevdie Ahmeti, CPWC, September 2003. Similar provisions are made in Articles 168-174 of Chapter XXI: Protection of Injured Parties and Witnesses, *Provisional Criminal Procedure Code of Kosovo*, UNMIK Regulation 2003/26, 6 July 2003.

<sup>223</sup> OMIK Department of Human Rights and Rule of Law, *Kosovo: Review Of The Criminal Justice System (March 2002 - April 2003)* “Protection of Witnesses in the Criminal Justice System”, p.12.

cases and high profile political cases. The unit only has capacity to provide protection to five witnesses and their immediate families at any one time.

The WPU had only been involved in one trafficking case by September 2003, providing the witness with a safe place to live, and escorting her to court. In another high-risk case, the WPU was prepared to provide protection for a woman willing to return from her home country to testify, but this case did not proceed to trial.<sup>224</sup> In September 2003, preparations were also being made in another case.

Because of the WPU's inability to accommodate the number of witnesses requested by prosecutors in cases involving other serious crimes, and the inappropriateness of housing victims of trafficking with other witnesses, in 2003 the WPU and TPIU jointly prepared an application for funding to the PISG Ministry of Finance for a separate facility to house victims of trafficking prepared to testify. Given the risks to those who testify, and the inadequacy of current measures, Amnesty International supports this initiative.

Few trafficked women have been willing to testify in proceedings under the Trafficking Regulation. The majority of those who have provided testimony have taken part in the investigation stage, and few have appeared in court during the trial stage. It is reported that intimidation may occur at any stage between the police investigation and full trial, or after proceedings, and women may withdraw their consent to participate at any time.

## The need for witness protection

The low rate of convictions in trafficking cases has been attributed by the Department of Justice and the TPIU to the absence of victim-witnesses during trial proceedings. Yet without adequate witness protection, many of those prepared to attend court have been subjected to such intimidation prior to trial that they either changed their statements or decided not to testify.

In 2001, over a period of three months, three persons were arrested on two occasions during police investigations into their alleged involvement in trafficking. They were released on both occasions on grounds of insufficient evidence, despite witness statements by several foreign women made to police investigators that they had been trafficked by the suspects into Kosovo. According to the OSCE, when questioned "for just a couple of minutes" by an

<sup>224</sup> TPIU attribute these failures to a lack of cooperation by the authorities in the sending state, AI interview with I.C., Deputy Head of TPIU, October 2003.

investigating judge, and without adequate translation, the women reportedly stated that no one had forced them into prostitution, and that they had come to Kosovo voluntarily. Despite the previous statements made by the women to the police, reportedly the public prosecutor concluded that the case should be dropped for insufficient evidence.<sup>225</sup>

In November 2002, for example, an Albanian male, J.T, was acquitted of a trafficking offence by Prizren District Court.<sup>226</sup> Two women, J. and S., had lodged a complaint alleging that in January 2002 J.T. had forced them to engage in prostitution. By the time the case came to trial, S. had "changed her statement because of fear", and although J.'s statement was read out, she was not present in court. The accused was acquitted of charges related to trafficking.<sup>227</sup>

Where no protection measures have been applied for, trafficked women willing to testify have had no choice but to face the accused across the court room. OSCE have noted the failure of the judiciary to take steps to protect the interests of the witness in such cases. In one case, the investigative judge ordered that two trafficked women, who had been raped and beaten by the defendant, separately confront the defendant in court. The OSCE reported that the confrontation "dissolved into a shouting match which the investigating judge did not intervene to stop".<sup>228</sup> NGOs also report that trafficked women were left vulnerable to cross examination which breached the provisions of Section 7 of the Trafficking Regulation, which prohibits raising the witness' history in court, except following a petition by the defence, when such evidence may be heard *in camera*.

In a case in 2001-2, the four accused were charged with sexual intercourse with a girl under 14 years of age. No witness protection measures were invoked, and the Kosovar Albanian girl had to face the accused across the court, in a trial that lasted for 11 days. Two men were convicted, one *in absentia*, and two

<sup>225</sup> OMIK (OSCE Mission in Kosovo), Department of Human Rights and Rule of Law, *Kosovo: Review of the Criminal Justice System, October 2001*, p. 54.

<sup>226</sup> Under Section 2.2 (1) of the Trafficking Regulation.

<sup>227</sup> Decision by the Supreme Court of Kosovo, 29 April 2003; verdict P no. 243.2002, 29 November 2002. J.T was, however, convicted for illegal arms possession. An appeal by the public prosecutor for a retrial on the basis of "incorrect evidence, the incomplete factual situation and the decision given for the sentence" was judged to be unfounded by the Supreme Court in April 2003.

<sup>228</sup> The OSCE reported that the judge appeared to find the interaction entertaining, but that neither of the women changed their statements, although both appeared traumatized by the experience, OMIK, *Review of the Criminal Justice System, 1 September 2000 – 28 February 2001*, July 2001, p. 58.

others released on appeal. Subsequent intimidation of the young woman and her family has been so intense, including attempts to abduct her again, that she has been unable to leave her house without her father.<sup>229</sup>

Concern has been expressed about the practice of releasing men convicted of trafficking pending appeal. On 6 June 2003, for example, R.J. was released pending appeal against a three-and-a-half-year sentence passed by Prishtinë/Priština District Court for trafficking five Ukrainian women who were forced into prostitution at the Madonna Club in Prishtinë/Priština, some of the women had testified against him, but had subsequently returned to Ukraine. Following R.J.'s release, the women reportedly received threats via an associate in Ukraine that R.J. was coming to kill them. They were given police protection and accommodation in safe houses in Ukraine. On 19 September 2003, R.J. remained at large, the appeal not yet having been heard.<sup>230</sup>

Amnesty International recognizes that efforts were made in proceedings held in 2003 to ensure the protection of victim-witnesses, usually on the initiative of individual prosecutors. In Gnjilane/Gjilan for example, protective measures, including reporting restrictions and anonymity, have been used in trafficking and other sensitive cases. An international prosecutor also informed Amnesty International that the provision of testimony via closed circuit television (CCTV), either within the court building or in the witness' country of origin, was also envisaged.<sup>231</sup>

These provisions have been applied in some cases involving internally trafficked girls, as in Mitrovicë/a in March 2003, when a separate hearing was held before an investigative judge to hear the evidence of child witnesses. In September 2003, five children aged between four and eight, who had been found in a house thought to be used as a brothel, gave testimony to the court. They had been provided with security, protection and legal advice under the supervision of a psychologist, and were accompanied at all times by their case manager. Before testifying in a separate room, they were introduced to the judge and translator, and were able to take breaks while giving their testimony. However, the children's safety was severely compromised even before the investigative proceedings when their photographs and names, which were known to the Department of Justice, were made available to

Radio-Television Kosovo and shown on the weekly program *Krimite Dossier* (Crime File).<sup>232</sup>

Both local NGOs and the IOM have stressed the need to give greater priority to the respect and protection of the human rights of women and children who testify in court proceedings. Those who testify are not only exposed to significant risks, but they also may suffer personal trauma in recounting their experiences. If the court discontinues proceedings, this can be highly distressing, and in such circumstances potential witnesses are given no protection.

## The right to reparation

*"Trafficked persons, as victims of human rights violations, have an international legal right to adequate and appropriate remedies. This right is often not effectively available to trafficked persons as they frequently lack information on the possibilities and processes for obtaining remedies, including compensation, for trafficking and related exploitation. In order to overcome this problem, legal and other material assistance should be provided to trafficked persons to enable them to realize their right to adequate and appropriate remedies"* Guideline 9, UNHCHR Principles and Guidelines.

Victims of human rights violations are entitled to an effective remedy under Article 2 of the ICCPR and Article 13 of the ECHR, while the Trafficking Protocol merely obliges states to make provision for the possibility for trafficked persons to obtain compensation for damages suffered, requiring states to provide trafficked persons with information on relevant court and administrative proceedings. The Protocol does not address the question of whether funds should be provided by the state or from the confiscation of assets.<sup>233</sup>

In Kosovo, Section 6 of the Trafficking Regulation requires the establishment of a reparation fund, authorized to receive funds from the confiscations of assets, used in - or resulting from - the crimes prosecuted under the regulation. However, to date, no such fund has been established, due to the failure to authorize the Administrative Directive. The AD envisages an administrative process for paying compensation, although it does not preclude proceedings for reparation in criminal or civil proceedings.<sup>234</sup>

<sup>229</sup> Indictment, PP no. 522/2001; P. no. 418/2002.

<sup>230</sup> MSNBC News, "Kosovo court fails trafficking victims", 19 September 2003.

<sup>231</sup> AI interview with international prosecutor, September 2003.

<sup>232</sup> AI interview, September 2003.

<sup>233</sup> Article 6 (6) Trafficking Protocol; the UN Convention against Transnational Organized Crime makes similar provisions in Article 25 (2).

<sup>234</sup> Draft Administrative Directive, September 2003.

All victims of trafficking should be entitled to redress and reparation for the violations they have suffered, irrespective of whether they agree to testify.<sup>235</sup> Under the Criminal Procedure Code, an injured party may claim compensation, or recovery of possessions, before the end of criminal proceedings.<sup>236</sup> A decision on this claim may be made in the final judgment concerning the accused. There is also a parallel civil process for such claims.

Amnesty International does not know of any cases in which a victim of trafficking has used the available mechanisms to claim reparations, including compensation. This may be, in part, because of the lack of legal representation for victims of trafficking.

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<sup>235</sup> The European Convention on the Compensation of Victims of Violent Crimes, provides for compensation for serious bodily injury or impairment of health even in cases where the offender cannot be prosecuted or punished.

<sup>236</sup> Article 103-1 of the SFRY CPC.



## Chapter 6: 'Boys will be boys: you'd better educate your girls'<sup>237</sup>

The Special Rapporteur on Violence against Women spoke in April 2001 of a "vast increase in trafficking activity" in Bosnia-Herzegovina and Kosovo: "*It is absolutely essential that all UN forces are held to the same standards of international human rights law as are nation states..... To do otherwise, creates a climate of impunity in which offences proliferate ... Especially where UN is running administrations such as in Kosovo and East Timor we feel it's absolutely essential that some kind of structure be in place to deal with these kinds of issues.*"<sup>238</sup>

The UN Secretary-General also acknowledged in 2000 that there is "some evidence that prostitution increases with international intervention" and that "peacekeeping personnel may have condoned the establishment of brothels and been complicit in the trafficking of women and girls". He also noted that "[t]oo often, contributing States fail to prosecute their nationals accused of serious wrongdoing while on Services for the [UN]".<sup>239</sup> In 2003 the Secretary-General subsequently published a Bulletin calling for special measures prohibiting UN forces and staff from committing acts of sexual exploitation and abuse sexual abuse.<sup>240</sup>

Amnesty International is extremely concerned that the UN administration in Kosovo has effectively allowed the development of a flourishing industry dependent on the exploitation of trafficked women. Although the Kosovo sex-industry now services both local and international men, it is clear that it initially grew out of post-conflict militarization and the presence of a highly-paid international military and civilian community.

The organization also considers that UNMIK -- in failing to prosecute international personnel suspected of involvement in trafficking, or of knowingly using the services of trafficked women -- has created a climate of impunity for abuses and violations against trafficked women.

<sup>237</sup> Norwegian KFOR spokesperson, at a meeting in Prishtinë/Priština organised by local NGOs, UNIFEM and other international organizations in 1999, AI interview with Igballe Rugova.

<sup>238</sup> Address to the UN Human Rights Commission, 9 April 2001, "UN peacekeepers fuelling trafficking in women, UN expert warns", *AFP*, 9 April 2001.

<sup>239</sup> Paras. 267-272, *Women, Peace and Security*, Study submitted by the Secretary-General pursuant to Security Council resolution 1325 (2000), UN, 2002

<sup>240</sup> ST/SGB/2003/13, Secretary-General's Bulletin, *Special measures for protection from sexual exploitation and sexual abuse*, 9 October 2003

Despite the rapid growth of trafficking in Kosovo, few – if any - measures were taken to address the demand from military and civilian personnel until January 2001, almost 18 months after the arrival of the international community in Kosovo.<sup>241</sup>

### The demand

*"Many men and young men raped me, young and old, local and international ... We were about 20 persons in that house. Only two were from Moldavia and all the rest Albanian."*<sup>242</sup>

*"..... even in cold weather I had to wear thin dresses ... I was forced by the boss to serve international soldiers and police officers ... I have never had a chance of running away and leaving that miserable life, because I was observed every moment by a woman ..."*<sup>243</sup>

In 1999 to 2000 internationals were estimated to comprise 80 per cent of the clients of trafficked women. According to UNMIK police, although by the end of 2000 members of the international community – "mostly KFOR soldiers" – still constituted 40 per cent of the clientele, the majority of customers were local men. Nevertheless, many trafficked women interviewed by the OSCE Legal Systems Monitoring Service (LSMS) in 2000-1 stated that international police officers were among their frequent "clients".<sup>244</sup> In 2002, when the international community comprised some 30 per cent of clients, they reportedly generated some 80 per cent of the industry's income.<sup>245</sup>

According to information from the TPIU, NGOs working with trafficked women and the testimonies of the women themselves, UNMIK police and KFOR personnel continued to use the services of trafficked women in 2003.

In 2003 allegations about the use of trafficked women were regularly posted on the internet Message Board site of the UNMIK police. For example, in response to a message "Looking for Vesna", the following reply was posted on 16 August 2003, "*I saw her last at the Miami Bar. She was with a large Albanian male whom she seemed to be afraid of and she*

<sup>241</sup> UNMIK Press Release 470, "UNMIK Outlaws Trafficking of People" 14 January 2001; see also *Reuters*, "Sex bars and clubs in Kosovo barred to U.N. police", 31 May 2001.

<sup>242</sup> Internally trafficked Albanian girl aged 17.

<sup>243</sup> Internally trafficked Albanian girl aged 12.

<sup>244</sup> Limanowska, *Trafficking in Human Beings in Southeastern Europe*, p. 96; OSCE, Department of Human Rights and Rule of Law, *Kosovo: Review of the Criminal Justice System*, October 2001, p. 51.

<sup>245</sup> Based on IOM and CPWC estimates; a trafficked girl reported that KFOR soldiers paid DM100 for one hour; local men would be charged the same amount for a night.

*seemed to be harassed. She was being forced to look for clients in the bar. A UNMIK CIVPOL officer paid €150 for two hours with her. Can anybody inform TPIU?"*

Although the proportion of international clients has reportedly declined since 2000, the number of establishments on the "off-limits list" has continued to rise.

Despite UNMIK's counter-trafficking strategies, members of the international community remain a significant part of the market for trafficked women. Although internationals reportedly now make up of 20 per cent of the client-base, Amnesty International also notes that the international community (both male and female), probably make up around two per cent of the population of Kosovo.

### The "Off-limits list"

Following the promulgation of the Trafficking Regulation in January 2001, a Code of Conduct was distributed to UNMIK staff on 24 January 2001. It warned of severe consequences for UN staff suspected of using the services of trafficked women, including disciplinary action, dismissal and the possibility of criminal proceedings following a waiver of immunity.

*"UN Code of Conduct: The purpose of this circular is to provide guidance to ensure staff respect human rights and do not financially contribute to organized crimes in Kosovo. It should be noted that consequences for UNMIK staff who disregard this information will be severe. Such staff will be subject to disciplinary action which may include dismissal. Further staff may be subject to criminal proceedings as per the applicable law, including UNMIK Regulation no 2001/4. International staff members who enjoy immunity from personal arrest and detention under the 1946 Convention on Privileges and Immunities of the United Nations are advised that the immunity is for the benefit of the United Nations and not for them personally and that such immunity may be waived in the event staff are prosecuted for crimes related to prostitution, including the use of the sexual services of a victim of trafficking."*

The first "off-limits list" was issued at the same time as the Code of Conduct. It named more than 150 night bars, nightclubs and dancing clubs, motels, hotels, restaurants and coffee bars suspected to be involved in prostitution. A revised list was issued in July 2002, naming some 155 establishments; by January 2004, some 200 establishments were listed.

### UNMIK POLICE

Allegations that UNMIK police were involved in trafficking were first reported in 2000, and have continued until at least 2003 when one UNMIK police commander was sent home,<sup>246</sup> and proceedings opened on 9 June 2003, when four men, including an international police officer, were arrested in Pejë/Peć on suspicion of involvement in "a prostitution slavery conspiracy".

In July 2001 it was reported that UNMIK police had launched an investigation into allegations, first reported in 2000,<sup>247</sup> that two US and one female Romanian police officer had been assisting the owner of a brothel in Mitrovicë/a in the trafficking of women. The investigation, by the Internal Investigation Department, followed an internal report by the head of the regional police unit who recommended a thorough inquiry and warned that "the whole credibility of the United Nations Mission in Kosovo Police is in question".<sup>248</sup> The report alleged that one US officer had been picking up trafficked women on the boundary between Kosovo and Serbia proper while in uniform, and while driving an UNMIK police car. A second US police officer was alleged to have warned the owner that a police investigation was underway, and to have divulged police information about previous trafficking and prostitution operations. The Romanian officer was accused of alerting the brothel owner about police plans to arrest him. When police went to search the club, it was closed. A third US national named in the internal report was sent home for a "professional error in judgement".

At a press briefing on 13 August 2001 UNMIK police stated: "The investigation has now been concluded. Two officers were found to have contravened the Code of Conduct. They have been repatriated. Two other officers have received letters of reprimand. Whilst the four committed professional misconduct, to varying degrees, evidence was not found to support criminal charges."<sup>249</sup>

<sup>246</sup> US Department of State, Section 5 (f), *Country Reports on Human Rights Practices: Serbia and Montenegro*, 25 February 2004.

<sup>247</sup> "[T]here is a suspicion that UNMIK international police officers might be involved in trafficking", minutes from October 18 Trafficking Round Table Meeting", OSCE, Prishtinë/Priština, 22 October 2001, quoted in Limanowska, *Trafficking in Human Beings in Southeastern Europe*, p. 96.

<sup>248</sup> "UN police officers probed over Kosovo trafficking", *Reuters*, 5 July 2001. The U.S. State Department also appears to have been involved in the investigation.

<sup>249</sup> See <http://www.unmikonline.org/press/2001/trans/tr130801.html>.

## Proceedings against members of UNMIK Police

Amnesty International recognizes that the TPIU has recently shown greater willingness to investigate reports of the involvement of UNMIK personnel in trafficking, and to request a waiver of immunity from prosecution. However, criminal prosecutions remain rare, and those few cases which have proceeded to the trial stage have almost all been brought only where the victim was less than 14 years of age.<sup>250</sup> No police officer had been prosecuted under Section 4 of the Trafficking Regulation by March 2004.

Before 2002, few investigations against international police officers resulted in prosecutions, a concern highlighted by OSCE in October 2001.<sup>251</sup> In summer 2001, an international public prosecutor was appointed to a case involving an UNMIK police officer. Considering the testimony of the 13-year-old victim not to be strong and consistent enough, the prosecutor reportedly did not file a request to an investigating judge to initiate an official investigation, nor did he request a waiver of immunity according to Section 6 of UNMIK Regulation 2000/47. The investigation was closed and the police officer was repatriated. OSCE LSMS expressed concern in view of the fact that: “the suspect had given four contradictory statements to police investigators; material evidence, including blood drops and cigarette butts, were found in the empty house which the suspect admitted he had rented for that particular night. He also admitted that he had initiated sexual conduct with the victim, although due to [unspecified] circumstances, was unable to proceed with sexual intercourse.”<sup>252</sup>

The reluctance to bring charges against international police under the Trafficking Regulation is also seen in a case in Mitrovicë/a, where a girl reported an UNMIK officer for sexual abuse. Both the girl and the suspect reportedly mentioned a third person who had found a house, brought the girl to the house and “convinced” her to meet the suspect. The girl alleged that she had been taken from her home by force and taken to the house. The “third person” was reportedly not even questioned by police. Consequently, the police

officer was not charged in connection with procuring the services of a potentially trafficked girl.<sup>253</sup>

OSCE also documented a case in 2001 in which a Turkish woman reported to UNMIK police in Rahovec/Orahovac that she had been raped and forced into prostitution by a Kosovo Albanian. She reportedly stated that some of her clients had included UNMIK police officers stationed in Rahovec/Orahovac, and alleged that she could both identify the men and show the investigators the location of their apartments. Despite the obvious conflict of interest, the UNMIK police in Rahovec/Orahovac were put in charge of the investigations. They determined that the victim lacked credibility and the case was dropped.<sup>254</sup>

On 9 June 2003 four men, including an international police officer from Pakistan, were arrested in Pejë/Peć on suspicion of involvement in “a prostitution slavery conspiracy”, and on 13 June the charges were confirmed by an investigative judge. Immunity was waived and the UNMIK officer was charged with Obscene Behaviour and Failing to Perform Official Duties. Three other ethnic Albanians – including a KPS officer who later committed suicide – were charged with “Obscene Behaviour, Rape and sexual intercourse with a minor under the age of 14, Causing Injuries, and Neglectful Treatment of Minors”.<sup>255</sup> Investigative proceedings opened in September 2003 in Prishtinë/Priština, but had not been concluded by the end of March 2004.

## KFOR

### KFOR’s use of trafficked women and involvement in trafficking

*“German soldiers... They have been scared of their chiefs. That he will catch them in a brothel and make [cause] them trouble. They were not allowed to go with prostitutes during their service... The Germans came the whole November and December, even after their commander did forbid that. They said, they would get a lot of trouble. They told the pimp, that if someone would be coming, he should alarm [alert] them... After a while the pimp employed a guardian.”<sup>256</sup>*

<sup>250</sup> Sexual Intercourse and Unnatural Debauchery with a Person who has not turned Fourteen Years of Age, Article 106, Criminal Law of the Republic of Serbia, 1977.

<sup>251</sup> OSCE, *Kosovo: Review of the Criminal Justice System*, October 2001, p.52.

<sup>252</sup> OSCE, *Kosovo: Review of the Criminal Justice System*, October 2001, p.52.

<sup>253</sup> Under Section 4, Regulation 2001/4. OSCE, *Kosovo: Review of the Criminal Justice System*, October 2001, p.52.

<sup>254</sup> *ibid.* The same report also describes two other cases, in which charges were similarly dropped.

<sup>255</sup> “Suspects Charged with Sex Crimes” *UNMIK Police Press Release*, 13 June 2003; “UN Policeman in Kosovo arrested over child sex case”, *AFP*, 13 June 2003.

<sup>256</sup> Bulgarian woman trafficked to Macedonia, interviewed in 2001, Inge Bell Archive.

Amnesty International is concerned that KFOR and other international civilian personnel on leave from Kosovo who visit Macedonia for “rest and relaxation”, in addition to German KFOR personnel stationed there, may also be using the services of trafficked women. In a documentary shown on German television in December 2002, a member of German KFOR, who has been stationed in Macedonia, provided credible evidence that members of German KFOR were using the services of trafficked women – including children.<sup>257</sup> This information was corroborated by a press spokesperson for German KFOR and a senior KFOR officer interviewed during the program. Further evidence was provided by young women who had worked in brothels in Macedonia used by German KFOR troops.

Although there is no “off-limits list” in Macedonia, members of KFOR stationed in Macedonia are prohibited from leaving their base except on official business. Evidence provided by a German KFOR soldier suggests that strategies to avoid detection are well developed:

*“We drove out of the barracks as usual in our military jeep just as usual with a driver’s pass so that no one can become suspicious of us... we drove around and waited until 11 pm, and then drove to the brothel as fast as we could. We called the brothel’s owner that we are coming... the owner opened the gate so we could drive straight into the garage.”<sup>258</sup>*

Evidence of KFOR’s use of trafficked women in Kosovo comes from the testimonies of trafficked women, from reports and sightings of KFOR soldiers at bars known to have been involved in trafficking, and from a small number of cases in which disciplinary procedures against members of KFOR have been publicly reported. In 2001, for example, three UK Royal Marine Commandos were reportedly sent home after being discovered on 1 December 2000 in a lap-dancing bar; they were subsequently charged with drunkenness and leaving their base without permission. The previous year a British army lieutenant colonel was allegedly sent home after being discovered in a brothel in Prishtinë/Priština.<sup>259</sup> In 2003, five members of French KFOR were sent home after allegations that they had been involved in trafficking in Mitrovicë/a.

<sup>257</sup> ARD Weltspeigel, Director, Inge Bell, broadcast 17 December 2000.

<sup>258</sup> Interview with German KFOR soldier, Inge Bell Archive.

<sup>259</sup> “Colonel caught in brothel”, The Times, 6 July 2000; “Royal Marines sent home from Kosovo after strip-club booze up”, AFP, 11 January 2001.

*“The problem is that nobody considers the need of brothels in the German [KFOR] contingent. The Americans and the French and others, who however, have their army brothels. I am not trying to say that the prostitutes have to come over from America or France but the brothel can be rented for a certain period of time and stay under units’ control.”<sup>260</sup>*

Evidence of the involvement of KFOR troops in the trafficking of women in Kosovo has been documented from early 2000. Repeated allegations have been made against members of the Russian KFOR contingent, both as users of trafficked women, and in the trafficking of women – either directly or with the assistance of Serb traffickers. As early as 2000 Russian KFOR troops were allegedly involved in bringing Moldovan and Ukrainian women – allegedly disguised in Russian army uniforms – into the Russian base at Fushë Kosovë/Kosovo Polje. A Hungarian NGO working with trafficked women “reported that Russian KFOR was involved in bringing in women for sex work... They [the trafficked women] believed their clients were KFOR soldiers, NGO staff, OSCE staff and quite a few locals. The KFOR would take off their insignia and identifying badges, and the Americans would say they were ‘Russians’.”<sup>261</sup>

In January 2002, five Kosovo Serbs from Fushë Kosovë/ Kosovo Polje were indicted for forcing four Serbian and Moldovan women “to exercise prostitution, selling them to different clients and especially to Russian KFOR soldiers, sending them to the Monastery of Diviqi in Skenderaj to have sexual relations”.<sup>262</sup> In 2003, Amnesty International also received allegations from a member of French KFOR stationed in Mitrovicë/a that in 2002 “colleagues were entertained with trafficked women” by fellow officers in Russian KFOR on the base at Fushë Kosovë/ Kosovo Polje.<sup>263</sup> The Russian contingent left Kosovo in early 2003; Amnesty International is not aware of any charges or disciplinary action against Russian troops.

The organization is also aware of allegations that women have been trafficked explicitly for KFOR’s use, as was shown in proceedings in 2001, when a Kosovo Serb was charged with a trafficking offence for

<sup>260</sup> Interview with German KFOR soldier, Inge Bell Archive.

<sup>261</sup> NGO Salamon Alapitvany, quoted in *No Safe Place*, p. 77.

<sup>262</sup> They were charged under Article 251, rather than Regulation 2001/4. Appeal Case decision, AP 252/2001, dated 19 March 2003, upholding the verdict P10/2001, dated 26 April 2001, Prishtinë/Priština District Court.

<sup>263</sup> E-mail received from French KFOR officer, 2003.

arranging for a Kosovo Serb victim to meet soldiers “in a KFOR camp outside Kamenica”.<sup>264</sup>

In September 2003, TPIU informed Amnesty International that some 10 French KFOR soldiers were similarly suspected of involvement, “but we don’t get to touch them”.<sup>265</sup> Amnesty International has also received credible allegations about the use of trafficked women within KFOR national battalions, including at Camp Monteith in Gnjilane/Gjilan and Camp Bondsteel near Ferizaj/Uroševac, where US KFOR personnel are prohibited from leaving their bases.<sup>266</sup>

## Accountability

*“A mechanism should be established with powers to investigate allegations of human rights violations by peace-keeping personnel. States contributing troops to the peace-keeping operation should promptly conduct independent and impartial investigations into reports of violations of human rights and humanitarian law by their nationals and bring to justice those responsible. Those suspected of such violations should be suspended from duty pending the outcome of investigations.”*<sup>267</sup>

UNMIK police, other UNMIK personnel, KFOR personnel and contractors and staff of some other organizations<sup>268</sup> enjoy a general immunity from prosecution, unless explicitly waived by the UN Secretary General, or in the case of KFOR, by their national commander.<sup>269</sup>

## UNMIK Police

According to the TPIU, investigations were carried out by UNMIK Police Internal Affairs into allegations against ten UN staff, including UNMIK police in 2002;

<sup>264</sup> He was charged under Regulation 2001/4 by the Kamenica Municipal Court in August 2001, OSCE, Department of Human Rights and Rule of Law, *Kosovo: Review of the Criminal Justice System*, October 2001, p.58.

<sup>265</sup> AI interview with Irina Cocos, TPIU, September 2003.

<sup>266</sup> According to information received in October 2003, US KFOR were reportedly taking measures to address this.

<sup>267</sup> *Amnesty International=s recommendations for the protection of human rights in post-conflict peace building and reconstruction in Kosovo*. AI Index: EUR 70/91/99, June 1999.

<sup>268</sup> For example, the IOM: AI interview with Pasquale Lupoli, then-Chief of IOM Mission in Kosovo, September 2003.

<sup>269</sup> Both UNMIK and KFOR personnel are covered by UNMIK Regulation 2000/47 *On the status, privileges and immunities of KFOR and UNMIK and their personnel in Kosovo*, 18 August 2000. Article V, Section 20, states: “The Secretary-General [of the United Nations] shall have the right and the duty to waive the immunity of any official in any case where, in his opinion, the immunity would impede the course of justice and can be waived without prejudice to the interests of the United Nations. In the case of the Secretary-General, the Security Council shall have the right to waive immunity.”

by September 2003, investigation had been initiated against two UNMIK police officers, as well as two KPS officers. The TPIU informed Amnesty International that in the majority of these cases waivers for the purposes of prosecution were not requested or granted. However, waivers were requested and granted in one case in 2002 and another in 2003, enabling prosecutions of two officers to take place.<sup>270</sup>

UNMIK policy states that any person found at any premises on the “off-limits list” will be subject to disciplinary action. UNMIK police have also stated that if an officer is caught in any of the cafés or bars on the “off-limits list”, he is immediately sent home. However, according to information received by Amnesty International, in practice, the UNMIK Police Internal Affairs Department Policy states that investigators must first establish whether a suspect has been using the services of a prostitute (whether trafficked or not). If this can be established, then a statement must be taken from the woman concerned. However, “Internal Affairs advises that a ‘she says’ (*sic*) will not be sufficient to take action against the officer”; neither is identification of the officer by means of a photographic line up considered sufficient to warrant action. The investigator is required to carry out an “in depth interview with the female party to obtain specific details relating to personal aspects of the officer”.<sup>271</sup>

According to the TPIU, “several successful investigations were conducted during 2003 and personnel identified were relieved of duty, criminally charged, disciplined under parent codes of conduct or repatriated to their home country”.<sup>272</sup>

By the end of 2002, some 57 UNMIK police officers had been dismissed or repatriated, ten of whom – according to Derek Chappell of the UNMIK police – were repatriated in connection with allegations related to trafficking; at the end of 2003, the same figure was quoted.<sup>273</sup> Although UNMIK police asserted that they had been informed in each of these cases that the officers would be disciplined or prosecuted in their home countries, they were unable to confirm that any of the repatriated officers had in fact been disciplined or

<sup>270</sup> One case was ongoing in September 2003: despite the waiver, the suspect had been released from investigative detention by an international judge; TPIU then appealed against the release, AI interview with Jennifer McMullen, Head of TPIU, September 2003.

<sup>271</sup> “Internal Affairs Policy”, TPIU Standard Operating Procedure, undated but made available to AI October 2003.

<sup>272</sup> TPIU Interim Report, 2003; Year End Report, 2002; [check 2001]

<sup>273</sup> At least one other UNMIK police officer was repatriated in 2003, see Section 6 (f), US Department of State, *Country Reports on Human Rights Practices - 2003, Serbia and Montenegro*.

charged with any criminal offences.<sup>274</sup> Derek Chappell also expressed concern that US police officers would not be subject to any disciplinary procedures, as they were not accountable to the US government, but rather had been recruited by a private agency, *Dyncorp*.<sup>275</sup>

Amnesty International notes that immunity from prosecution is also afforded to contractors working for both UNMIK and KFOR, and members of some intergovernmental organizations. The organization also notes that, with one exception, no investigations have been opened against contractors suspected of a criminal offence under the trafficking regulation.<sup>276</sup>

## NATO and KFOR

From January 2002 to July 2003, between 22 and 27 KFOR troops were suspected of offences related to trafficking, and were reported by the TPIU to the Provost Marshall and Commanding Officer. TPIU were unable to provide further information as to whether any disciplinary proceedings had been taken against these individuals.

No KFOR personnel suspected of trafficking or of using the services of trafficked women or girls have been prosecuted in Kosovo, either before or after the promulgation of the Trafficking Regulation. Amnesty International has similarly been unable to find any evidence of any criminal proceedings against members of KFOR in their home countries.

The NATO-led military presence in Kosovo, despite having been established by a UN resolution, has not adhered to the standards applied during UN Department of Peace Keeping (DPKO) missions.<sup>277</sup> In

<sup>274</sup> “We have no information as to what their home countries may do in the way of internal or criminal charges. Many police agencies regard a breach of the Code of Conduct by their officers while serving in Kosovo as the same as breach of their Code of Conduct at home - and in this case they would be subject to internal discipline measures once home. This varies from country to country and of course we have no way of pressing charges in a foreign country,” email to AI from Derek Chappell, March 2004.

<sup>275</sup> AI interview with Derek Chappell, October 2003. For allegations concerning the involvement of international police, including *Dyncorp* personnel, in trafficking in Bosnia-Herzegovina, see Human Rights Watch, *Hopes Betrayed: Trafficking Of Women And Girls To Post-Conflict Bosnia And Herzegovina For Forced Prostitution*, HRW Index No. D1409, November 26, 2002. For disciplinary proceedings against a contractor in 2003, see p. 32, ft. 136.

<sup>276</sup> For disciplinary proceedings against a contractor in 2003, see p. 26, ft. 150.

<sup>277</sup> A Memorandum of Agreement between OHCHR and the DPKO, dated 22 November 2002, requires at E12 that “The SRSG or Head of Peacekeeping Operations shall ensure that all staff of the operation - whether military or civilian - are aware of, and abide by, international human rights and humanitarian law standards. The SRSG shall issue instructions to this effect”.

none of their responses to Amnesty International did KFOR, NATO or any individual military spokespersons make any reference to the UN Codes of Conduct.

In September 2002, at a meeting at NATO Headquarters in Brussels, Amnesty International raised the issue with NATO representatives of the alleged involvement of KFOR in trafficking and in the use of trafficked women. Robert Serry, Director of the NATO Balkan Task Force, stated that it was not possible to deny that troops used prostitutes, but that it was unfair to single NATO out for criticism, as they were not solely responsible for the problem. Adding that he was “rather proud of NATO troops” he stressed that: “In Macedonia [troops] were not allowed out of barracks and there were stringent rules on this.” At the same meeting, Colonel Larson of Denmark, responsible for civilian and military cooperation (CIMIC), admitted that NATO was aware of the problem and that the issue of soldiers and prostitutes was “hard to end. Soldiers [are] under stress, away from [their] families at home, and cannot be confined to barracks for months and months”. Colonel Larson emphasized that NATO itself was unable to address the issue, as the conduct of troops and any subsequent disciplinary action was a matter for the respective national authorities in each of the countries contributing troops to KFOR sending countries.<sup>278</sup>

In September 2003 Amnesty International outlined its concerns to KFOR and requested a meeting. In response, KFOR provided the organization with what was described as “an on-the-record” statement:

*“1. KFOR utterly condemns the trafficking of women and seeks, under the mandate provided by UN SC Resolution 1244/99, to reinforce and support the fight against such activities in close cooperation with the local law enforcement agencies. 2. COMKFOR [Commander of KFOR] has directed that all KFOR Forces are made aware of UNMIK Regulation 2001/4 on the ‘Prohibition of Trafficking in Persons in Kosovo’ and the fact that such acts are also prohibited under several instruments of international public law. 3. COMKFOR requires subordinate commanders of Troop Contributing Nations to publish national policies that regulate against the use of prostitutes for sexual services and to ensure that such regulations are enforceable through National disciplinary sanctions. 4. The use of prostitutes is against KFOR standing orders and any soldier breaking*

<sup>278</sup> NATO meeting in Brussels, 13 September 2002.

*those orders is subject to disciplinary action by his own nation.*<sup>279</sup>

The organization notes that no reference was made to the possibility of criminal proceedings being taken against KFOR personnel.

In October 2003 Amnesty International again requested a meeting with KFOR to discuss this response, and questions arising from it, including information on cases in which disciplinary sanctions had been applied. KFOR declined to meet, or make any further comments.

Some countries sending troops to KFOR have implemented disciplinary measures or have given their forces effective training in human rights standards before deployment.<sup>280</sup> However, other sending countries have failed to take any measures against members of their forces accused of involvement in trafficking or the use of trafficked women.<sup>281</sup> Amnesty International is concerned at the absence of any uniform policy within NATO, and the lack of a centralized policy or investigating body to ensure the accountability of all national forces deployed in peace-keeping forces including KFOR.<sup>282</sup>

The organization notes that measures have recently been taken by NATO to develop policy on combating the trafficking of women and children, “which would apply to all personnel taking part in NATO-led operations”, and which would *inter alia* address aspects of operations, training, education and awareness. However, the organization notes that NATO Resolution 323 on Trafficking in Human Beings fails to address the issues of demand and accountability.<sup>283</sup>

## UN Guidelines

Guideline 10 of the UNHCHR Recommended Principles and Guidelines sets out the *Obligations of peacekeepers, civilian police and humanitarian and diplomatic personnel*. It recognizes the “special concerns” raised by the involvement of such personnel in trafficking. Guideline 10.3 calls on such missions to ensure: “that staff employed in the context of peacekeeping, peace-building, civilian policing, humanitarian and diplomatic

<sup>279</sup> E-mail, dated 17 September 2003, to Amnesty International from Chris Thompson, Wg Cdr Royal Air Force, KFOR Press Spokesman.

<sup>280</sup> See above for examples of disciplinary action against UK personnel, p. 44.

<sup>281</sup> AI interview with Head of TPIU, September 2003; AI interview with UNMIK Police spokesperson, October 2003.

<sup>282</sup> *Amnesty International, The apparent lack of accountability of international peace-keeping forces in Kosovo and Bosnia-Herzegovina*, AI Index: EUR 05/001/2004. April 2004.

<sup>283</sup> See, for example, <http://www.nato.int/docu/speech/2003/s031215e.htm> and NATO Resolution 323 on Trafficking in Human Beings

missions do not engage in trafficking and related exploitation or use the services of persons in relation to which there are reasonable grounds to suspect they may have been trafficked.[emphasis added] This obligation also covers complicity in trafficking through corruption or affiliation with any person or group of persons who could reasonably be suspected of engaging in trafficking and related exploitation.”

Guideline 10.7 states that: “Intergovernmental and non-governmental organizations should, in appropriate cases, apply disciplinary sanctions to staff members found to be involved in trafficking and related exploitation in addition to and independently of any criminal or other sanctions decided on by the State concerned. Privileges and immunities attached to the status of an employee should not be invoked in order to shield that person from sanctions for serious crimes such as trafficking and related offences.”

Amnesty International considers this guideline to be weak. It only requires a disciplinary investigation, rather than a criminal investigation, and only applies when a person is suspected of involvement in trafficking, but not when they are suspected of knowingly using the services of trafficked women or girls. Even when personnel are suspected of involvement in trafficking, the guidelines leave the imposition of criminal sanctions to “the state concerned”, rather than prosecution under applicable law in the courts of the host country.

Amnesty International considers that UNMIK and successive SRSGs have failed to abide by the UN’s own guidelines on trafficking, and have failed to adequately address the demand by international peacekeepers and civilian personnel for the services of trafficked women.

In March 2004, recognising that “Peacekeepers have come to be seen as part of the problem in trafficking rather than the solution”, the DPKO published a policy paper, which, in accordance with the UN Secretary-General’s “Zero Tolerance” stance on such exploitation, aimed to “establish a system to monitor, prevent, minimize, investigate and punish involvement of peacekeeping personnel in ... human trafficking and other sexual exploitation and abuse”.<sup>284</sup>

Amnesty International welcomes this initiative by the DPKO, but regrets that it has come too late for the women and girls in Kosovo who have been abused and exploited by the men who came to keep the peace.

<sup>284</sup> DPKO, *Human Trafficking and United Nations Peacekeeping*, DPKO Policy Paper, March 2004.

## Chapter 7: Recommendations

Recommendations are made in two sections:

1. To the UN, UNMIK, KFOR and NATO to prevent abuses of the human rights of trafficked women and girls and the need for their staff, personnel and contractors to be brought to account for such abuses;
2. To all states engaged in combating the trafficking of women and girls into forced prostitution.

Within this section, Amnesty International makes recommendations to the UN, the PISG and other actors in Kosovo, to take specific measures to address abuses against trafficked women and girls and to ensure the protection of their human rights. These recommendations are made in the context of the National Plan of Action to Combat Trafficking in Human Beings in Kosovo (NPA), as agreed at Palermo in December 2000, within the framework of the guidelines advocated by the Stability Pact for South Eastern Europe.

### 1. Recommendations to UNMIK and KFOR

Amnesty International considers that members of UNMIK and KFOR and other civilians in the international community in Kosovo have been effectively afforded immunity from prosecution under applicable law in Kosovo. Noting the UN Secretary-General's call for "Zero Tolerance" of sexual exploitation and sexual abuse, Amnesty International calls on both the civilian and military authorities to tackle the lack of prosecutions for abuses of the rights of trafficked women and girls.

Amnesty International urges:

- i. UNMIK and KFOR to implement the provisions of their respective codes of conduct;
- ii. UNMIK to ensure that the "Off-Limits List" is regularly distributed to all personnel, and that the provisions of the UNMIK Code of Conduct with regard to the off-limits list are robustly enforced and that the Special Measures outlined in the UN Secretary-General's bulletin on *Special Measures for Protection from Sexual Exploitation and Sexual Abuse* are strictly enforced;
- iii. UNMIK to amend Regulation 2000/47 *On the Status, Privileges and Immunities for KFOR and UNMIK and their Personnel in Kosovo*.

Jurisdiction "of respective sending states" should be extended to other jurisdictions, including Kosovo, for investigation and prosecution of alleged human rights abuses by KFOR personnel, including against trafficked women and girls. Furthermore, in order to ensure consistency, the decision to waive immunity should be taken by the UN Secretary-General rather than by the commanders of the respective national contingents;

- iv. UNMIK and KFOR to ensure that all allegations of contraventions of the applicable codes of conduct by international staff and personnel be promptly, independently and impartially investigated, and where reasonable suspicion exists of a criminal offence under Sections 2 and 4 of the Trafficking Regulation, the immunity of the suspect should be lifted and they should be subjected to disciplinary and/or criminal proceedings in Kosovo, with full access to international legal safeguards;
- v. UNMIK and KFOR to ensure that all contractors working for them, including police officers supplied by private companies, are made fully and regularly aware of the UN Code of Conduct and the Trafficking Regulation, and that they will also be subjected to investigation and prosecution in Kosovo for alleged human rights abuses, including under the Trafficking Regulation, where there is reasonable suspicion that they may have committed a criminal offence.

### 1.2 Recommendations to the UN

Amnesty International, noting the comments of the UN Secretary-General and the UN Special Rapporteur on Violence against Women on the contributory role of peace-keeping forces in the development of trafficking, and in particular, the recommendation made in the March 2004 UN Department of Peace Keeping Operations (DPKO) draft policy paper:

- i. Calls on the DPKO to ensure the effective enforcement of all relevant codes of conduct in all peace-keeping missions; further, that the recommendations made above should be applied to all peace-keeping missions;
- ii. Calls on the DPKO to urgently implement the recommendations in their draft policy paper, "to establish a system to monitor, prevent, minimize, investigate and punish involvement of peacekeeping personnel in activities that support human trafficking and other sexual exploitation



and abuse"; the organization also urges the DPKO to ensure that any such system ensures that any personnel reasonably suspected of a criminal offence will be subject to investigation and prosecution in criminal proceedings;

- iii. Urges the UN to ensure that the Privileges and Immunities of UN personnel are not applied to any UN personnel reasonably suspected of human rights abuses, including involvement in trafficking or the knowing use of the services of a trafficked woman or child. Persons reasonably suspected of such offences should be subject to investigation and prosecution;
- iv. Urges the UN to establish an effective system of follow-up and reporting on results of such investigations (whether disciplinary or criminal) to ensure that a consistent approach is taken towards ending impunity for those responsible for abuses of the human rights of women and girls.

Amnesty International welcomes Security Council resolution 1325 (2000) on women, peace and security which makes a range of recommendations to the UN Secretary-General, the UN Security Council, UN Member States, all parties to armed conflict, and those involved in negotiating and implementing peace agreements. Amnesty International calls on the UN and Member States to take all steps necessary to ensure full and prompt implementation of this resolution, in particular that:

- i. All actors involved in negotiating and implementing peace agreements should adopt a gender perspective, including ensuring measures for the protection of and respect for the rights of women and girls;
- ii. All states should put an end to impunity and prosecute those responsible for sexual and other violence against women and girls.

### 1.3 Recommendations to NATO and NATO member states

Amnesty International welcomes measures being taken by NATO to develop a policy on trafficking and urges the Secretary General of NATO to ensure that this policy includes:

- i. Measures to ensure that all NATO personnel involved in peace-keeping or other deployments are, during training, made aware of the range of human rights abuses to which trafficked women and girls are subjected, and the criminal nature of these abuses;

- ii. Measures to ensure that all NATO personnel are made aware that involvement in trafficking and the knowing use of the services of trafficked women are criminal offences, which are subject to prosecution;
- iii. Provisions prohibiting NATO forces from involvement in trafficking or knowingly using the services of trafficked women;
- iv. Measures to ensure that commanders of national contingents are fully aware of their responsibilities in ensuring that personnel reasonably suspected of involvement in trafficking, or of knowingly using the services of trafficked women and girls, are (in addition to any disciplinary procedures) brought to the attention of the prosecuting authorities, and that any immunity<sup>285</sup> granted to such personnel is waived so that they may be subject to prosecution by the domestic authorities.

## 2. Recommendations for the protection of the rights of trafficked women and girls

Amnesty International urges all governments:

- i. To take measures to ensure the protection of and respect for the human rights of trafficked women and girls. In accordance with General Recommendation 19 of CEDAW, states must exercise due diligence to prevent, investigate, prosecute and punish acts of violence against women, whether those acts are perpetrated by state agents or private persons. The organization notes that application of this obligation requires states to not only introduce measures to criminalize trafficking (as UNMIK has done in Kosovo), but also to effectively enforce this prohibition, provide legal assistance and ensure remedies for victims and take preventative actions to address the underlying causes of trafficking;
- ii. To ensure that the rights of trafficked women are respected in accordance with the United Nations Office of the High Commissioner for Human Rights (UNHCHR) Recommended Principles and Guidelines on Human Rights and Human Trafficking.

<sup>285</sup> Under the UN Convention or the relevant Status of Forces Agreement.

**Amnesty International welcomes the initiative taken to hold a conference in October 2003<sup>286</sup> with the aim of establishing a National Plan of Action to Combat Trafficking in Human Beings in Kosovo, as agreed at Palermo in December 2000, within the framework of the guidelines advocated by the Stability Pact for South Eastern Europe**

**In Kosovo, Amnesty International urges UNMIK and the PISG:**

- i. To ensure that all elements of the Plan of Action ensure the protection of the human rights of trafficked women and girls;
- ii. To cooperate in urgently developing and implementing the Plan of Action, ensuring commitment to the plan by representatives of all relevant UNMIK Departments and relevant Ministries and Departments within the PISG;
- iii. To fully involve all relevant domestic NGOs, international NGOs and the IOM in the design and implementation of the Plan of Action;
- iv. To ensure that provisions of the plan are sustainable through capacity-building, training and the provision of adequate resources, in particular, to seek to guarantee funding for shelter provision for both internally and externally trafficked women and girls.

## **2.1 PREVENTION OF TRAFFICKING**

**In order to prevent the human rights abuses and violations which occur in the process of trafficking, governments should take preventative action and, in particular, to address violations of social and economic rights of women and girls, which render them vulnerable to trafficking.**

**In Kosovo, Amnesty International urges that in addition to measures taken by law enforcement agencies and the criminal justice system to identify and bring traffickers to justice, sustainable measures should be taken to prevent further internal trafficking and the trafficking of women and girls from Kosovo.**

**Amnesty International recommends that UNMIK and the PISG:**

<sup>286</sup> The conference was organized by, in alphabetical order, representatives of the Centre for the Protection of Women and Children, the Ministry of Labour and Social Welfare, the International Organization for Migration, the Organization for Security and Cooperation in Europe, Save the Children, United Nations Children's Fund and United Nations Interim Mission in Kosovo, including the Department of Justice Victim Assistance and Advocacy Unit and the Department of Health and Social Welfare.

- i. Commission a comprehensive program of research into the current social and economic status of young women and girls in Kosovo, identifying factors which make young women vulnerable to trafficking, and including both qualitative and quantitative data. Such research should enable the design and implementation of targeted policies in conjunction with relevant IGOs, NGOs, and within the broad framework of the Kosovo Action Plan for the Achievement of Gender Equality.
- ii. Take steps to ensure that objective information on both the dangers of trafficking, and on legal channels of migration is available to women and girls, also including through TV, radio and print media;
- iii. Pending the final status of Kosovo, to collaborate in the preparation of reports to the CRC and CEDAW. To prepare reports as required by the Stability Pact Task Force on Trafficking in Human Beings and Regional Clearing Point.

**Amnesty International urges, in particular, the PISG Department of Education, in partnership with relevant NGOs:**

- iv. To take measures, given the low percentage of girls between 12 and 16 in full-time education, including the provision of funding, transportation and appropriate security measures, to ensure that all girls between 12 and 16 are guaranteed access to meaningful full-time education;
- v. To ensure that all awareness-raising strategies and programs resulting from the NPA, including in the school curriculum, provide a strong human rights component, ensuring that girls and women are made aware of their rights and how to access them, and the potential for abuses of those rights by traffickers.

**The organization also urges both UNMIK and the PISG Department of Employment to:**

- vi. Encourage donors and investors to provide opportunities for the safe and gainful employment of young women, particularly in rural areas.

**Amnesty International urges the EU and its member states:**

- i. Within the framework of existing partnerships, to assist the governments of source countries, including Bulgaria, Kosovo, Moldova, Romania and Ukraine, to address abuses of the economic, social and cultural rights of women and girls, and the prevalence of violence against women, which significantly contribute to the vulnerability of women and girls in source countries to being trafficked;
- ii. Further, that the EU, as an integral part of its counter-trafficking policies, should prioritize economic and other assistance to source countries as a measure to address the root causes of trafficking;
- iii. To actively develop the legislative process in this field and implement all specific items relating to the protection of the rights of the victims of trafficking, including in particular the rights of trafficked women and girls, as contained in the Brussels Declaration of September 2002;
- iv. To ensure that national legislative and administrative frameworks accord the widest protection of the rights of trafficked women and girls, in accordance with international legal standards, including in particular human rights and refugee law;
- v. To go beyond proposals aimed protecting victims of trafficking prepared to testify in criminal proceedings and to adopt appropriate legal instruments in order to enhance the protection of the rights of all trafficked women and girls.

**Amnesty International urges member states of the Council of Europe:**

- vi. Regarding the negotiations of an intergovernmental convention on trafficking within the framework on the Council of Europe, member states should ensure the convention ensures the highest level of protection of and respect for the rights of trafficked women and girls;
- vii. Council of Europe bodies and mechanisms should prioritize the monitoring and reporting of measures taken by member states with respect to their protection of the rights of trafficked women and girls including in source, transit and destination countries.

## 2.2 ADDRESSING DEMAND

**All states should ensure that anti-trafficking strategies address the issue of demand for the services of trafficked women and girls and include legislation, as in Kosovo, to criminalize the knowing use of the services of trafficked women and girls.**

**In Kosovo, the Plan of Action should include:**

- i. Specific awareness-raising strategies aimed at men in both the local and the international community, to ensure that they are made fully aware of the abuses suffered by trafficked women, and of the consequences – including criminal proceedings under the Trafficking Regulation – of their use of the services of trafficked women;
- ii. In addition to the recommendations made to UNMIK, (above) with respect to the prosecution of members of the international community suspected of knowingly using the services of trafficked women, Amnesty International also encourages the TPIU to vigorously pursue the prosecution of local men knowingly using the services of trafficked women.

## 2.3 INVESTIGATION

**In Kosovo, Amnesty International urges:**

- i. That sufficient funding and other resources, including where necessary, additional personnel and funding for undercover surveillance operations and equipment is made available to the TPIU;
- ii. That in interviewing women for the registration process, and in subsequent visits to bars, the TPIU should ensure that all interviews are held in confidence, out of the sight and hearing of other staff or “owners” of bars, so that women are provided with the opportunity to identify themselves as being trafficked and that measures may be taken to immediately remove them from danger of further abuse and violations;

Given concerns that the deficiencies in the registration process continue to place trafficked women in danger of abuses of their rights, Amnesty International urges that:

- iii. The TPIU be provided with sufficient resources to be able to immediately remove any children or girls believed to be under the age of 18, and reasonably suspected to have been trafficked, from premises in which they are working in forced prostitution, and that sufficient provision is made for their reception and assistance.

**The organization also calls on UNMIK to:**

- iv. Secure funding for the provision of suitable premises at all regional police headquarters for the reception and interview of all victims of violence against women, including trafficked women and girls.

**2.4 THE RIGHTS OF TRAFFICKED WOMEN**

Amnesty International considers that law enforcement authorities must respect their duty to ensure the rights of trafficked women, including their rights to be free from discrimination and to equal treatment under the law, to ensure that all women and children who may be victims of trafficking are identified, and that their rights are respected and that they are protected.

<b>In Kosovo, Amnesty International recommends that the TPIU should:</b>
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- i. Ensure that all trafficked women and children detained by law enforcement officers are fully informed of their rights and how to access them, including the rights to independent legal counsel and an independent and impartial interpreter, as well as information about all of the options available to them;

Recognizing the reasons why trafficked women are not always prepared to identify themselves as trafficked:

- ii. Develop more sensitive strategies to ensure the identification of trafficked women and children by both the TPIU and other UNMIK police, and members of the KPS, including during the registration process;
- iii. Recruit more female officers competent in appropriate languages;
- iv. Aim to ensure that through sensitive questioning, trafficked women are not criminalized for status or other offences, but that their rights, including to the presumption of innocence, to counsel and to interpreters, are respected.
- v. In conjunction with OSCE VASS, IOM, CPWC, ISF and other support agencies to explore possibilities to ensure that women are only interviewed once to establish if they are victims of trafficking, as recommended by the Council of Europe Council of Ministers;
- vi. Ensure that the need to investigate and prosecute traffickers does not compromise the protection

and respect of the rights of trafficked women and girls.

The organization also recommends to UNMIK:

That the new Criminal Procedure Code be amended to ensure that trafficked women are not treated as criminal suspects, but as victims of human rights violations.

**2.5 THE RIGHTS OF TRAFFICKED CHILDREN**

Amnesty International considers that special measures must be taken to ensure the best interest of the child lies at the centre of any decision made in respect of children who have been trafficked.

<b>In Kosovo Amnesty International calls on UNMIK and the PISG to:</b>
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- i. Ensure that the Ministry of Social Welfare, in conjunction with the TPIU, domestic NGOs, IOM and Save the Children agree a Standard Operating Procedure (SOP) which will ensure that the rights of all internally and externally trafficked children are respected and protected, and taking into account the UNICEF *Guidelines for Protection of the Rights of Children Victims of Trafficking in Southeastern Europe*;
- ii. Ensure that children are not detained by law enforcement authorities, and ensure the appointment, where necessary, of a legal guardian to protect the best interests of the child, in addition to the appointment of competent legal counsel;
- iii. Strengthen the Centres for Social Work, by providing appropriate training to social workers to increase their capacity, expertise and ability to provide support to children who have been trafficked;
- iv. Ensure that other measures for the protection of children respect the provisions of the UNICEF *Guidelines for Protection of the Rights of Children Victims of Trafficking in Southeastern Europe*;
- v. Incorporate the Optional Protocol to the Children's Convention into applicable law in Kosovo.

**2.6 ASSISTANCE AND SUPPORT**

Amnesty International urges authorities to ensure that all trafficked women and children are guaranteed access to immediate assistance and support, and to ensure that all strategies for the

**support and reintegration of trafficked women respect the woman's agency and assist her in reclaiming and asserting her rights; this right should not be conditional on a woman's agreement to testify in criminal proceedings.**

**In Kosovo, Amnesty International urges UNMIK to amend the current draft of the Administrative Directive to the Trafficking Regulation to ensure that:**

- i. Trafficked women and children are provided with immediate access to assistance and support without having to apply for such assistance; that such assistance is coordinated, but not decided, by the Victim Assistance Coordinator, so that trafficked women may have access to all the rights afforded to victims of human rights abuses;
- ii. Particular provision is made to protect the best interests of children who have been trafficked;

**The organization also urges the Department of Social Welfare, relevant NGOs and the IOM and other participants in the shelter assistance working group:**

- iii. To agree and implement, as a priority, a Standard Operating Procedure for internally trafficked women;
- iv. To ensure that all strategies for support and reintegration respect the agency of trafficked women, and assist them in reclaiming and asserting their rights.

## **2.7 THE RIGHT TO HEALTH**

**In Kosovo, Amnesty International urges the Department of Health and Social and Welfare:**

- i. To seek donors to assist in the resumption of a mobile clinic and associated outreach program to provide women working in the sex-industry in Kosovo with appropriate information on reproductive health, free medical examinations, STD testing and treatment, to include, if requested, voluntary HIV counselling and testing, until permanent sources of funding are made available;
- ii. To ensure, in conjunction with the IOM, CPWC and other providers, that all trafficked woman and girls in their care are offered appropriate information on reproductive health, voluntary STD and HIV counselling and testing, and follow-up treatment, if appropriate.

## **2.8 THE RIGHT TO REPARATION INCLUDING COMPENSATION**

**Victims of human rights violations, including trafficking, have an enforceable right to reparation, including compensation; this right must not be conditional on their participation in criminal proceedings brought against the perpetrators.**

**In Kosovo, Amnesty International recommends that UNMIK:**

- i. Implement the Administrative Directive to the Trafficking Regulation to ensure that trafficked women and children are guaranteed their rights to reparation, including compensation, outside of a judicial process;
- ii. Ensure that appropriate funds are available for assistance and reparation to all women and children who have been trafficked in Kosovo;
- iii. Ensure that all women are made aware that they may also, as part of the criminal or civil proceedings, lodge criminal or civil claims against their traffickers, and to provide them with access to free legal advice and an independent interpreter during such proceedings; to ensure that they continue to provide protection during such proceedings.

## **2.9 ACCESS TO JUSTICE**

**In Kosovo, Amnesty International recommends that the Department of Justice and Kosovo Judicial Institute ensure that:**

- i. Training is provided to both international and local prosecutors and the judiciary, to ensure that they are fully informed of the provisions of the Trafficking Regulation, and the nature and the range of human rights abuses to which trafficked women and girls are subjected;
- ii. Consideration is given to eliciting the opinion and testimony in proceedings of expert witnesses, with expertise on trafficking and in working with victims of trafficking;
- iii. Legal assistance is provided to all victims of internal and external trafficking, including for the purpose of obtaining reparation.

## **2.10 WITNESS PROTECTION**

**Amnesty International urges states to ensure that the safety of women (and their families where relevant) who agree to appear as witnesses in proceedings in trafficking cases is guaranteed; this protection should**

**be provided at all stages of the proceedings, including appeals. An evaluation of the need for the long term-protection of such witnesses must be made and, where indicated, provided for.**

**In Kosovo, Amnesty International calls on UNMIK:**

- i. To ensure that the provisions of Regulation 2001/20, (Articles 168-174 of the Criminal Code of Kosovo) are enforced in trafficking cases, and that this legislation is amended to criminalize any interference with or intimidation of witnesses or their families;
- ii. To amend UNMIK Regulation 2001/20 (Article 168-174 of the Provisional Criminal Code of Kosovo), making it mandatory for judges to inform witnesses in trafficking proceedings of the protection measures to which they are entitled;
- iii. To consider the introduction into the new Criminal Code of Kosovo of special measures for the provision of testimony by victim-witnesses, which protect their rights, but do not compromise the defendant's right to a fair trial, ensuring that trafficked women may be able provide testimony, admissible in trial proceedings, prior to any repatriation process;
- iv. To allocate, from within the Kosovo Consolidated Budget or through donors, adequate funding for the provision of a dedicated witness protection facility for trafficked women both within Kosovo and, when necessary, following trial in third countries;
- v. In making decisions about whether to release a person convicted of trafficking on bail pending appeal, due regard is had for the safety and protection of victims, their families and other witnesses.

## **2.11 THE RIGHT TO TEMPORARY AND LONG-TERM PROTECTION**

**Amnesty International recommends consideration of long-term protection and solutions, possibly in third countries, for both externally and internally trafficked victims of trafficking who are at risk in their home countries and in need of continued protection.**

- i. Recognizing that there is a range of ways in which the crime of trafficking needs to be addressed, Amnesty International calls on the responsible authorities in Kosovo, and in other

destination countries, to actively explore ways in which legal migration could be expanded to minimize the risk of being trafficked;

- ii. The organization also urges UNMIK and the PISG to consider other solutions for trafficked women, including long-term protection in Kosovo, where feasible and, where necessary, resettlement to third countries.

**Amnesty International also recommends that UNMIK:**

- iii. Immediately implement the provisions of the Tirana Agreement, so that externally trafficked women may be granted a three-month temporary stay in Kosovo.

**Amnesty International recommends that the Inter-Agency Trafficking Working Group:**

- iv. Develop procedures, in conjunction with the ISF and other providers, to ensure that women are given adequate or reasonable time for reflection, of at least three months, in which to decide their future;
- v. Recognizing that under current shelter security regimes, a temporary stay would in effect condemn trafficked women to a period of detention and might so fail to resolve the issue of involuntary return, Inter-Agency Trafficking Working Group should be empowered to explore alternative possibilities, including by exchanging information with NGOs in relevant countries, for the provision of secure and safe accommodation outside of a secure shelter environment.

## Abbreviations and Acronyms

ABL	Administrative Boundary Line	ECHR	European Convention for the Protection of Human Rights and Fundamental Freedoms
AFP	<i>Agence France Presse</i>	EU	European Union
CAT	Committee against Torture	FRY	Federal Republic of Yugoslavia
CCIU	Central Criminal Investigation Unit	ICCPR	International Covenant on Civil and Political Rights
CCTV	Closed circuit television	ICESCR	International Covenant on Economic, Social and Cultural Rights
CEDAW	Committee on the Elimination of Discrimination Against Women	ICMC	International Catholic Migration Commission
CERD	Committee on the Elimination of All Forms of Racial Discrimination	IHRLG	International Human Rights Law Group
CIMIC	Civilian and military cooperation	ILO	International Labour Organization
CIVPOL	Civilian police	IOM	International Organization for Migration
CoE	Council of Europe	ISF	Interim Secure Facility (Shelter)
CoM	Committee of Ministers (Council of Europe)	KFOR	Kosovo Force
COMKFOR	Commander of KFOR	KJI	Kosovo Judicial Institute
CPC	Criminal Procedure Code	KLA	Kosova Liberation Army
CPVPT	Centre to Protect Victims and to Prevent Trafficking of Human Beings in Kosovo (In Albanian: <i>Qendra për Mbrojtjen e Victimës dhe Paraandalimin e Trafikimit me Qenje Njerëcore ne Kosovë - MVPT</i> )	KPS	Kosova Police Service
CPWC	Centre for the Protection of Women and Children (In Albanian: <i>Qendra për Mbrojtjen e Grave dhe Fëmijëve - QMGF</i> )	LSMS	Legal Systems Monitoring Services (OSCE)
CRC	Committee on the Rights of the Child	NATO	North Atlantic Treaty Organization
CSW	Centres for Social Work	NGO	Non-governmental organization
DEVAW	UN Declaration on Elimination of Discrimination Against Women	NPA	National Plan of Action on Trafficking in Human Beings
DoJ	Department of Justice	ODIHR	Office for Democratic Institutions and Human Rights
DPKO	Department of Peace Keeping	OPM	Office of the Prime Minister, Government of Kosova
		OMIK	OSCE Mission in Kosovo
		OSCE	Organization for Security and Cooperation in Europe
		PISG	Provisional Institutions of Self-Government
		SFRY	Socialist Federal Republic of Yugoslavia
		SOP	Standard Operating Procedure

SPSEE Europe	Stability Pact for South Eastern
SPTF	Stability Pact Task Force on Trafficking in Human Beings
SRSG	Special Representative of the UN Secretary-General
STD	Sexually Transmitted Disease
TPIU	Trafficking and Prostitution Investigation Unit
UMCOR	United Methodist Committee on Relief
UNHCHR	United Nations Office of the High Commission on Human Rights
UNHCR	United Nations High Commissioner for Refugees
UNICEF	United Nations Children's Fund
UNIFEM	United Nations Development Fund for Women
UNMIK	United Nations Interim Mission in Kosovo
UNSCR	UN Security Council Resolution
VA	Victim Advocate
VAAU	Victim Assistance and Advocacy Unit (Department of Justice)
VAC	Victim Advocates Coordinator
VASS Team	Victim Assistance Support
WPU	Witness Protection Unit