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# Serbia and Montenegro<sup>1</sup> (Kosovo/Kosova)

“Prisoners in our own homes”:

## Amnesty International’s concerns for the human rights of minorities in Kosovo/Kosova.

### 1. INTRODUCTION

*“The situation of members of minority communities inside and outside of Kosovo is a highly politicised issue. All sides envision these people as objects of political debate, rather than subjects of law, an approach which is incompatible with human rights”.*<sup>2</sup>

Amnesty International is concerned that, despite the mandate of the international community, under United Nations Security Council Resolution 1244/99 (UNSCR 1244/99), to protect and promote human rights and the incorporation of international human rights standards into applicable law, minorities in Kosovo continue to be denied access both to their basic human rights, and to any effective redress for violations and abuses of these rights.

Almost four years after the end of the war in Kosovo, despite the efforts of the NATO-led Kosovo Force (KFOR) and the UN Civilian Police (UNMIK Police) to provide security and protection, members of minority communities continue to both suffer and fear assaults by the majority community on their lives and property. Their fear is reinforced by continuing impunity for both those who perpetrated violations and abuses of international human rights and humanitarian law during the period of armed conflict, and those responsible for the abuses which have continued since the end of the war.

This climate of fear, insecurity and mistrust, exacerbated by continued impunity, has resulted in the effective denial of the right of minorities to enjoy freedom of movement in Kosovo. Additionally, those who are able to gain some measure of freedom of movement, find themselves subjected to both direct and indirect discrimination when seeking access to basic civil, political, social, economic and cultural rights.

While acknowledging the marked improvements in the security conditions for minorities since July 1999, and in particular, a measurable decline in violent attacks on their lives and property, Amnesty International believes that unless and until the rights of all minorities presently living in Kosovo can be guaranteed, those currently living elsewhere in Serbia and Montenegro as internally displaced persons (IDPs) or as refugees in other countries will be unable to exercise their right to return.

### Background – revenge and retribution

In July 1999, following the signing of the Military Technical Agreement (Kumanovo Agreement)<sup>3</sup> by the North Atlantic Treaty Organization (NATO) and the governments of

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<sup>1</sup> In November 2002, an agreement was reached on a new Constitutional Charter which changed the name of the country from the Federal Republic of Yugoslavia (FRY) to ‘Serbia and Montenegro’. The new name came into force on 4 February 2003 after acceptance by the respective parliaments. Under the new Constitutional Charter, *Kosovo and Metohija* officially remains a province of the state of Serbia.

<sup>2</sup> *Second Annual Report 2001-2*, Ombudsperson Institution in Kosovo, 10 July 2002.

<sup>3</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.

Serbia and the Federal Republic of Yugoslavia (FRY), all Federal and Serbian police, military and paramilitary forces were withdrawn from the province before the end of July 1999. By the end of August, the majority of ethnic Albanian refugees who had fled or had been forcibly expelled to Albania and Macedonia had returned to Kosovo, many of whom found their family members were missing or dead, and their homes deliberately damaged or destroyed by Serbian forces.

Fearing retribution, thousands of Serbs and Roma fled to Serbia or Montenegro or took refuge in mono-ethnic areas in Kosovo as murders, violent attacks, abductions, rapes and attacks on property were perpetrated against Serbs as well as Albanians, Roma and others accused of "collaboration" with the Serb authorities. By the end of August 1999, an estimated 235,000 Serbs and other minorities had left Kosovo;<sup>4</sup> those who remained were concentrated in enclaves and pockets, frequently guarded by KFOR.

Although not all the violence was ethnically motivated, minorities – particularly, but not exclusively, Serbs and Roma – were both individually and indiscriminately targeted, on the basis of their identity – and irrespective of their individual responsibility for human rights violations, including war crimes perpetrated by Serbian forces. By 10 December 1999, KFOR had reported the murders of 414 individuals – 150 ethnic Albanians, 140 Serbs and 124 people of unknown ethnicity – since the end of June.<sup>5</sup>

These attacks forced minorities that remained in their pre-war homes to move into enclaves, or to leave for Serbia and Montenegro, or other countries. This process has continued as members of minority groups have continued – albeit with less frequency and intensity – to be abducted, murdered and suffer attacks on their lives and property, as well as cultural and religious monuments.<sup>6</sup> Although motives for the continuing violence are often unclear, at times they appear to be less informed by revenge, than by a desire to influence the final status of Kosovo,<sup>7</sup> through seeking to undermine the right of minorities to remain in Kosovo, and discouraging minority return.

## Minority Communities in Kosovo

### *Kosovo Serbs*

Although Serbia exercised political control over Kosovo following the revocation of the province's autonomy on 8 September 1990, Kosovo Serbs then made up only around 10 per cent of the population. However, they dominated urban centres and virtually monopolized

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The agreement set out the mandate of the international military presence in Kosovo, and the roles and responsibilities of KFOR and the FRY and Serbian military and police.

<sup>4</sup> On October 15 1999, the Yugoslav Red Cross and local authorities indicated that some 230,884 IDPs from Kosovo were registered in Serbia and Montenegro, *Overview of the Situation of Ethnic Minorities in Kosovo (3 November 1999)*, UNHCR/OSCE.

<sup>5</sup> *Amnesty International, FRY (Kosovo): Update from the field January 2000*, AI Index: EUR 70/02/00, January 2000. Minorities then made up between five and eight per cent of the population.

<sup>6</sup> Following a re-registration process – concluded on 11 April 2001 – an estimated 220,000 Serbs and Roma from Kosovo were registered as IDPs in Serbia and Montenegro, *UNHCR FRY Information Bulletin, November 2001*. However, a figure of 230,800 was cited by UNHCR at the end of the year, *UNHCR 2002 Global Appeal (FRY)*.

<sup>7</sup> The Council of Europe's Commissioner for Human Rights has suggested that the outstanding issue of final status "hampers the readiness of the Serbian and Albanian communities to reconcile and to respect each other's human rights", Report of Alvaro Gil-Robles, Officer of the Commissioner for Human Rights, Council of Europe, *Kosovo: The Human Rights Situation and the Fate of Persons displaced from their homes*, 16 October 2002.

employment in state institutions and state-owned industries.<sup>8</sup> By 1999 the population had further declined relative to the Albanian population, (estimated at between five and eight percent of the population). Following the flight of an estimated 235,000 Serbs and Roma after July 1999, some 100,000 Serbs, including internally displaced persons (IDPs) were thought to remain in Kosovo, a third of them living in the predominantly Serbian municipalities of Zvečan/Zvecan,<sup>9</sup> Leposavić/Leposaviq and Zubin Potok, or in the towns of Štrpce/Shterpece and Mitrovica/ë north.<sup>10</sup> These municipalities – with a minority Albanian population – were, until November 2002,<sup>11</sup> administered by the Serbian government, which funded municipal and other services, including - in the divided town of Mitrovica/ë - hospitals, schools and a parallel university.<sup>12</sup> Serbs living elsewhere in Kosovo travelled to Mitrovica/ë to access these services, as well as to purchase Serbian goods.

Beyond these municipalities, the largest concentration of the 65,000 Serbs living elsewhere in Kosovo remains in Gračanica/Gračanicë, with a population of around 4,000 domiciled Serbs and IDPs, as well as a significant Roma community, protected by KFOR and supported economically by Serbia. Elsewhere in Kosovo, Serbs live in mono-ethnic rural villages or under KFOR protection in majority Albanian urban areas.<sup>13</sup>

Within the Serbian community, political allegiances are divided between those - primarily in Mitrovica/ë and the northern municipalities - who maintain allegiance to Serbia and the Serbian government, and supporters of the *Povratak* (Return) Coalition. The latter, until recently,<sup>14</sup> have moved towards a political accommodation with the Albanian community, with 20 members in the Kosovo Assembly, and a Ministerial post in the Provisional Institution of Self-Government (PISG).<sup>15</sup>

### ***Slavic Muslims – Bosniaks and Gorani***

The Slavic Muslim community, with an estimated pre-war population of between 57,000 and 67,000,<sup>16</sup> define themselves variously as Bosniaks, Bosnians, Torbesh, Muslims or Gorani.

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<sup>8</sup> On 2 July 1990 ethnic Albanian members of the Kosovo Assembly declared Kosovo's independence; according to FRY sources, in 1991 *Report of Federal Bureau of Statistics, relative to 1991 census: "Popis stanovništva, domaćinstava i stanova 1991"*.

<sup>9</sup> Names of towns and municipalities are given first in Serbian, and then in Albanian.

<sup>10</sup> This area, covering roughly 20 per cent of Kosovo, is contiguous with the administrative boundary between Serbia and Kosovo. Overall population figures are taken from *UNDP Human Development Report, Kosovo 2002*, pp. 41-2.

<sup>11</sup> On 25 November 2002, the SRSG signed an order which placed Mitrovica/ë under a single municipal administration, establishing UN offices in the previous parallel structures.

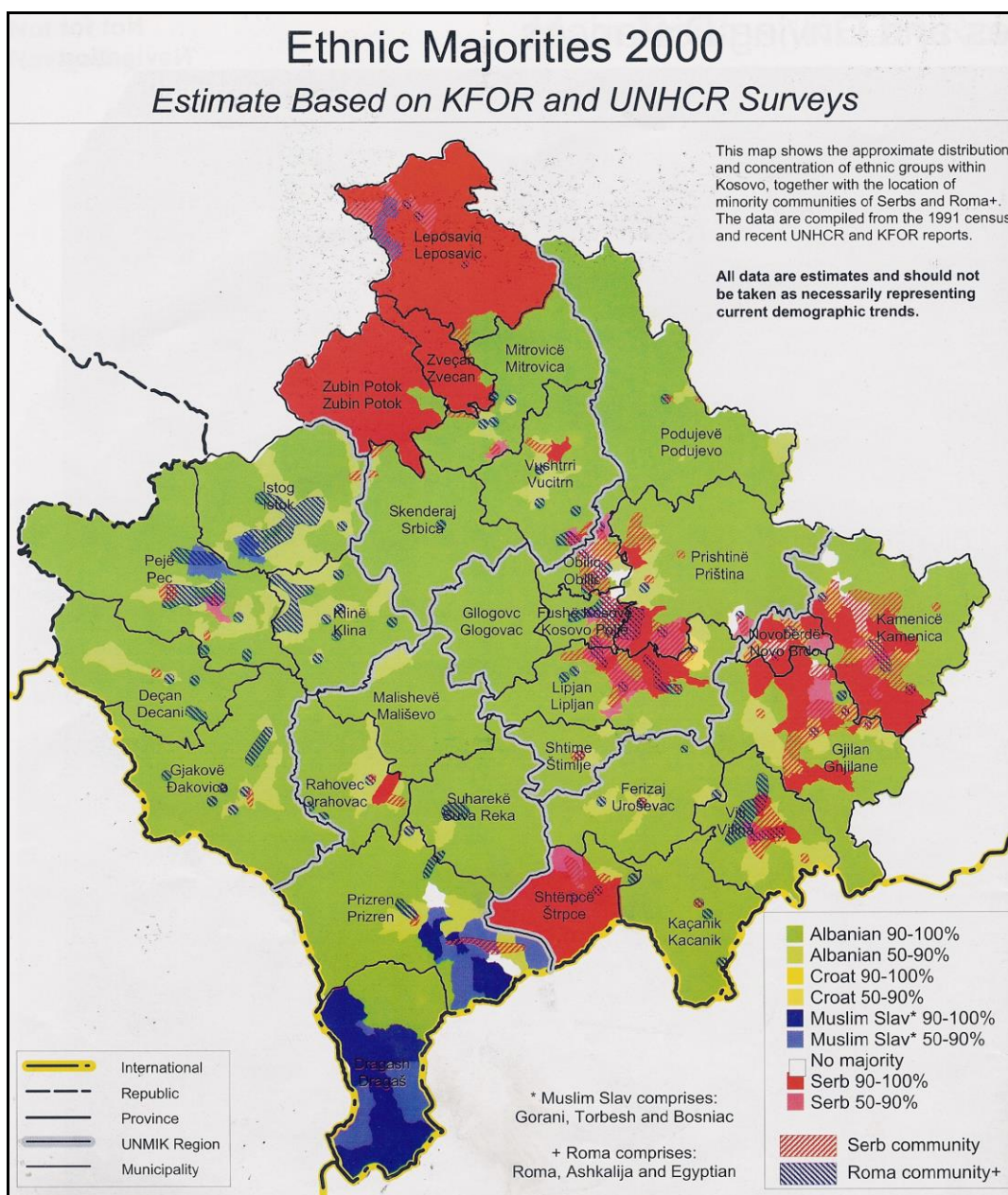
<sup>12</sup> See *UNMIK's Kosovo Albatross: Tackling Division in Mitrovica*, International Crisis Group, Balkans Report 131, 3 June 2002.

<sup>13</sup> Urban communities are also located in Kosovo Polje/Fushë ë Kosovës; Obilic/Obilq, and between Suva Reka and Orahovac/Rahovec. Some 13,000 Serbs live in rural or urban enclaves in Gjilan/Gnjilanë municipality, and in Kamenica/Kamenice municipality an estimated 11,000 Serbs are scattered in almost 43 different locations, *OSCE/UNHCR Eighth Assessment*, October 2001, p. 20. Details of the numbers and locations of minority populations, unless otherwise referenced, are taken from successive *OSCE/UNHCR Assessments of the Situation of Ethnic Minorities in Kosovo*.

<sup>14</sup> On 7 November 2002, members of the Return coalition walked out of the Assembly during a discussion on the agenda because the parliament rejected their proposal to vote on whether it accepted UN Resolution 1244; despite announcing their decision to return on 25 February, the 22 deputies again staged a walkout in protest on 27 February 2003.

<sup>15</sup> *Povratak* finally agreed to participate in the November 2001 elections for the Kosovo Assembly following the signing on 5 November of the UNMIK-FRY Common Document, which sought to address the human rights concerns of the Kosovo Serbs.

<sup>16</sup> UNDP cites 67,000, although the 1991 census lists 57,409 Muslims/Bosniaks, a figure which is contested on the grounds that the *Stranka Demokratske Akcije* (SDA, Party of Democratic Action) and rural



Kosovo: Municipal Boundaries and Location of Minorities

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Between April and October 1999, in the face of murders and abductions by returning Albanians, up to 35,000 *Bosniaks* had left Kosovo mainly to the Muslim Sandžak area of Serbia and Montenegro, as well as to Bosnia-Herzegovina.<sup>17</sup> By 2002, an estimated 35,000 Bosniaks remained in Kosovo, constituting some 3 per cent of the population, the majority concentrated in Prizren town and in villages in the municipality, with other population concentrations in Peć/Peja (4,000) and in Vitimirica/e (2,100) - the home of the Bosniak SDA (Party of Democratic Action) representative in the PISG and the only Bosniak radio station in Kosovo. In urban centres, the population has shrunk to less than 1,000 in Priština/Prishtinë, and 2-3,000 in Mitrovica/ë, where the estimated pre-war population was around 6,000. Very

communities boycotted the census, *Report on the Status of Muslims-Bosniaks in Kosovo following the arrival of KFOR*, Helsinki Committee for Human Rights in Sandžak, October 1999, p.2, fn. 2.

<sup>17</sup> The Helsinki Committee for Human Rights in Sandžak estimate that some 40-45,000 left Kosovo following the arrival of KFOR, *ibid.*, p. 14.

few returns have been reported, but small scale departures continue, particularly from isolated rural areas.<sup>18</sup> Although the security situation for Bosniaks is reported to have improved, a Bosniak interviewed by Amnesty International delegates told them that he still did not feel comfortable speaking Bosnian in the street. Both this interviewee and UNCHR reported that Bosniaks were discriminated against in getting access to employment, and to education and freedom of expression in the Bosnian language.

The *Gorani* [literally, people of the mountain] are Slavic Muslims now living primarily in the Gora, a mountainous region in Dragaš/Dragas municipality bordering both Macedonia and Montenegro. Around 12,000 Gorani live in nine out of the municipality's 15 villages, making up a third of its population, although only Dragash/Dragas has a mixed population. The Gorani escaped much of the conflict, but have experienced violent attacks, especially prior to the 2001 elections, and in early 2002, as well as reported allegations of harassment by members of the Kosovo Police Service (KPS).<sup>19</sup> The population continues to decline in the face of continued human rights abuses and lack of freedom of movement, compounded by a trend towards rural depopulation.

### ***Roma, Ashkali and Egyptiani***

According to UNDP estimates, Roma, Ashkali and Egyptiani remaining in Kosovo, now make up some 1.8 per cent of the population. The Roma were particularly targeted for attacks on life and property in 1999 – including killings and repeated cases of abduction – allegedly carried out by members of the KLA, who claimed that the Roma had participated in the mass violations of human rights against Albanians committed by Serb forces. Although Amnesty International has received reports that some Roma did take part in looting, and – often under duress – in the transport and burial of Albanian bodies killed by the Serb forces, Roma also appear to have been targeted because they had often worked in Serb-owned industries or as agricultural labourers for Serb employers.

Throughout Kosovo, Roma continue to face violent attacks and discrimination, and now often live alongside Serbs in enclaves like Gračanica/Ulpiana - where they are marginalized by the Serb community - or in mono-ethnic enclaves protected by KFOR. Roma also face institutional discrimination in access to basic social and economic rights, and often survive on money from family members abroad or short-term manual work, small-scale agriculture and rubbish collection. Many of those who fled their homes in 1999 are displaced in Kosovo, while an estimated 45,000<sup>20</sup> are displaced in Serbia or Montenegro, or live as refugees in Macedonia or elsewhere.

*Ashkali* regard themselves as a distinct ethnic group, and since June 1999 have sought to distinguish themselves from the Roma, initially to avoid the collective retribution of ethnic Albanians against the Roma who were perceived as being "collaborators" with the Serbian authorities. Being Albanian speakers, often living in areas populated by Albanians, many Ashkali fled or were expelled to Albania and Macedonia by Serbian police and paramilitaries during the NATO bombing campaign, while some Ashkali reportedly joined the Kosovo Liberation Army (KLA/UCK). However, subsequently many Ashkali took refuge with Roma, rather than returning to their homes.

<sup>18</sup> OSCE/UNHCR Ninth Assessment, p.48.

<sup>19</sup> See also Chapter 2, p. 24, below.

<sup>20</sup> Estimates from various sources vary between at between 15,000 and 80,000.

*The Egyptiani* form a separate group distinguishing themselves from both the Roma and Ashkali.<sup>21</sup> Mainly Albanian-speaking, the Egyptiani are nominally Muslim, sedentary and urban, with an estimated population in Kosovo of around 5,000, mainly in Đakovica/Djakovë and Peč/Pejë often with a relatively high standard of living.<sup>22</sup>

### ***Ethnic Albanians***

A significant number of Kosovo Albanians live in areas of Kosovo in which they are the minority population, and where they suffer from the same security concerns and denial of the right to freedom of movement. Particularly in the Serb-dominated northern municipalities, they remain largely unprotected by KFOR or UNMIK Police who have struggled to gain authority - especially in Kosovoska Mitrovica (northern Mitrovicë), which was effectively controlled until November 2002 by Serb *de facto* authorities. Similar problems are faced by Kosovo Albanians in other areas of Kosovo including Štrpce/Shtërpçë, where the majority of the Albanian community now live as IDPs in Uroševac/Ferizaj.

### ***Turks***

An estimated 12,000 *Turks* live in Prizren municipality, with 5,000 in the Prizren *mahala* of Mamusa/Mamushe. Their situation appears to have remained more or less stable throughout the period, and Amnesty International delegates found that members of the Turkish community in Prizren appeared to be integrated into the social and cultural life of the town. However, the community continues to express concerns about the official recognition of the Turkish language, and discrimination in access to employment and education.<sup>23</sup>

### ***Croats***

Fewer than 3,000 ethnic *Croats* remained in Kosovo in early 1999; of these some 400 mainly elderly Croats – around 40 of whom returned during 2001 – still remain, primarily in Janjevo/Janjevë in Lipjan/Lipljan municipality, and in Letnica/Letnicë in Vitina/Viti municipality.<sup>24</sup> Supported by relatives and the Croatian Catholic church, they face few security problems, although thefts and drive-by shootings targeting agricultural assets were reported in 2001.<sup>25</sup>

## **In Safety and Security - The Legal Framework**

The United Nations Interim Mission in Kosovo (UNMIK) - was established by UN Security Council Resolution 1244/99 (UNSCR 1244/99) on June 10, 1999 and was given – under Article 11(j) - the responsibility of "Protecting and promoting human rights". This

<sup>21</sup> Prior to the 1981 census, an association of Egyptiani -- politically opposed to the perceived increasing Albanianization of Kosovo and western Macedonia -- was formed with the intention of gaining recognition as a nationality (*narodnost*). "Egipićani" were subsequently included in the 1991 census; population figures were only published for the-then republic of Macedonia.

<sup>22</sup> Ger Duijzings, *Religion and the Politics of Identity in Kosovo*, pp. 132 ff. Other "Egyptians" are documented throughout Europe from as early as the 15<sup>th</sup> century.

<sup>23</sup> Of four members of the Turkish community AI delegates met in Prizren, three worked for international NGOs, and recognized that without their presence, their employment prospects would be extremely limited. The *OSCE/UNHCR Eighth Assessment* notes Turkish communities in Gjilan/Gnjilanë and Mitrovica/ë with smaller numbers elsewhere.

<sup>24</sup> In May 2002, ethnic Albanian refugees from Macedonia continued to live in properties vacated by Croats, under the Housing and Property Directorate (HPD)'s humanitarian allocation scheme.

<sup>25</sup> Interview, UNHCR, Gjilan/Gnjilanë; Croats, from mainly ethnically mixed families and usually fluent in Albanian, also live in Priština/Prishtinë.

responsibility was further emphasized by the Secretary-General of the UN who stated: "UNMIK will be guided by internationally recognized standards of human rights as the basis for the exercise of its authority in Kosovo".<sup>26</sup>

The international community was also charged under Article 9 (c) of UNSCR 1244/99 to "Establish a safe and secure environment in which refugees and displaced persons can return home in safety...."; under article 11 (k) with "Assuring the safe and unimpeded return of all refugees and displaced persons to their homes in Kosovo"; and under Article 10, with - "... [securing] conditions for a peaceful and normal life for *all* [AI emphasis] inhabitants of Kosovo".<sup>27</sup> UNMIK and KFOR were further charged with re-establishing the rule of law in Kosovo,<sup>28</sup> and on 25 July 1999, the Special Representative of the Secretary General (SRSG) issued UNMIK Reg. 1/1999 providing UNMIK with powers to issue legislative acts, and also setting out the duty - under Section 2 - of public persons to "observe internationally recognized human rights standards".<sup>29</sup>

Despite these provisions, Amnesty International believes that in July 1999 the international community was woefully unprepared to recognize the potential for, and to take measures to address, the massive abuses of human rights of minorities which accompanied – and continued after – the unanticipated rapid return of the Albanian community.<sup>30</sup> The motivation for these abuses appears to derive from historical relationships between the Serbs

<sup>26</sup> S/1999/779: *Report of the Secretary-General of the United Nations Interim Administration Mission in Kosovo*, 12 July 1999, prepared pursuant to paragraph 20 of Security Council resolution 1244 (1999); the report outlined the authority, competencies, structure and main components of UNMIK.

<sup>27</sup> The only specific provision for the protection of the Serb community was for "an agreed number of Yugoslav and Serbian personnel to return" to "maintain[ing] a presence" at Serb patrimonial sites, Article 6, Appendix 2, UNSCR 1244/99.

<sup>28</sup> Under UNMIK Regulation 1999/1, 25 July 1999, Section 1.1 states that, "All legislative and executive authority in Kosovo, including the administration of the judiciary is vested in UNMIK and is exercised by the Special Representative of the Secretary General". Under Section 4, UNMIK was empowered "to issue legislative acts in the form of regulations - to remain in force until such time until they were repealed or superseded by institutions established under a political settlement".

<sup>29</sup> These standards were subsequently specified in Section 1.3 of UNMIK Regulation 1999/24, and included the Universal Declaration of Human Rights; the European Convention for the Protection of Human Rights and Fundamental Freedoms and the Protocols thereto; the International Covenant on Civil and Political Rights and the Protocols thereto; the International Covenant on Economic, Social and Cultural Rights; the Convention on the Elimination of All Forms of Racial Discrimination; the Convention on the Elimination of All Forms of Discrimination Against Women; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the International Convention on the Rights of the Child.

Section 2, UNMIK Reg. 1/1999, also made provision for courts to request clarification from the SRSG on the implementation of this regulation. Questions still remain about both the interpretation and incorporation of international standards under applicable law. Further, with regard to accountability, under Resolution 1244/99, Kosovo remains part of Serbia and Montenegro (formerly the Federal Republic of Yugoslavia), which remains the accountable state party to such standards, or has been designated as the successor state to the original party, the SFRY. Neither UNMIK nor the PISG are party to the treaties incorporated into applicable law under UNMIK Regulation 1999/24, nor are they accountable through the relevant reporting mechanisms to the relevant treaty bodies. For Amnesty International's concerns about the failure of both the international civilian and military presence to fully respect the provisions of these standards, see for example, *FRY (Kosovo): Amnesty International's Recommendations to UNMIK on the Judicial System*, AI Index: EUR 70/06/00, February 2000; *FRY (Kosovo): Setting the Standard? UNMIK and KFOR's response to the violence in Mitrovica*, AI Index: EUR 70/13/00, March 2000; *FRY (Kosovo) International Officials flout international law*, AI Index: EUR 70/008/2002, September 2002; *Serbia and Montenegro (Kosovo): No impunity for the international community: The apparent lack of accountability of international peacekeeping forces in Kosovo and Bosnia-Herzegovina*, forthcoming.

<sup>30</sup> See also Annex 1 to UNSCR 1244/99, *Statement by the Chairman on the conclusion of the meeting of the G-8 Foreign Ministers held at the Petersburg Centre on 6 May 1999*:



and Albanians, and in particular the human rights violations systematically perpetrated against Albanians throughout the 1990s, primarily by the Serbian police.<sup>31</sup>

The constitutional and legal rights of minorities in Kosovo remained unaddressed until February 2001, when the SRSG promulgated Regulation 2001/9, which established the Constitutional Framework for Provisional Self-Government in Kosovo (Constitutional Framework), and made provision for the representation of minority communities in the elected Assembly.<sup>32</sup> It also made provision for the enjoyment of social, economic and cultural rights by all persons in Kosovo, "... without discrimination on any ground and in full equality, human rights and fundamental freedoms"; however the Framework failed to provide any judicial review mechanisms through which individuals and groups could enforce their constitutional rights, or incorporate the International Covenant on Economic, Social and Cultural Rights.

The Constitutional Framework further expanded on international and regional standards applicable in Kosovo, requiring the Provisional Institution of Self-Government (PISG) to ensure the rights set out in the European Charter for Regional or Minority Languages and the Council of Europe's Framework Convention for the Protection of National Minorities. The Constitutional Framework also reaffirmed the right of refugees and displaced persons to return to their homes. The SRSG retained responsibility for refugee returns, as well as executive powers, most notably over the international judiciary, law enforcement, defence and security – in conjunction with KFOR – as well as responsibility for external relations. The authority and mandate of both the SRSG and KFOR, derived from UN SC Resolution 1244/1999, remained unchanged.

The Constitutional Framework also directly addressed the "Rights of Communities and their Members", charging the PISG with the responsibility of ensuring that communities and their members should have the right to: use their own language and alphabets before courts and other public bodies; receive education and access to information in their own language; enjoy equal opportunities with respect to employment in public bodies and access to public services at all levels; further rights relating to association, the media, religion and the preservation of religious institutions.<sup>33</sup> The PISG was also charged with the administration of public services, and with specific responsibility for the promulgation of legislation to protect the rights of minority groups in accordance with international standards, - including legislation envisaged to protect the right to freedom of expression and prohibit the use of hate speech in the mass media.<sup>34</sup> To date, the PISG has not taken such measures. But on 7 March 2002, the SRSG announced that the process of the phased transfer of competencies from UNMIK to the PISG, as set out in Chapter 5 of the Constitutional Framework, would take place during 2003. At the same time, Michael Steiner announced that "UNMIK will get tougher on violations of minority rights".<sup>35</sup>

<sup>31</sup> See Amnesty International's report, *FRY (Kosovo), A Decade of Unheeded Warnings*, Vols. 1 & 2, AI Index: EUR 70/39/99 & EUR 70/40/99.

<sup>32</sup> Article 9.1.3 (b) of the Constitutional Framework provides that 20 of the 120 seats in the Assembly are allocated to minorities, 10 to representatives of the Kosovo Serb community and a further 10 to representatives of the Roma, Ashkali and Egyptiani (4), Bosniak (3), Turkish (2) and Gorani (1) communities.

<sup>33</sup> Article 4.4 (a) – (p) inclusive.

<sup>34</sup> Article 5.4, Constitutional Framework.

<sup>35</sup> UNMIK/PR/930, 7 March 2003.

## 2. IMPUNITY

Impunity is a highly politicized issue for all communities in Kosovo in the context of both ongoing violations and the legacy of war crimes committed on all sides. All communities – ethnic Albanians and Serbs as well as Roma, Gorani and Bosniaks – continue to fear that perpetrators from the "other" ethnicity remain at large, free to perpetrate further attacks.

Despite the reported decline in ethnically motivated attacks on life and property between 1999 and 2002, Amnesty International is concerned at the failure of the authorities – in both Kosovo and the FRY – to investigate and bring to justice the perpetrators of both the human rights violations and abuses from the period prior to and during the conflict in 1998-9, as well as those which followed the entry of KFOR and UNMIK into Kosovo. This chapter focuses on the failure of UNMIK,<sup>36</sup> and in particular, the UN civilian police force (UNMIK Police), to investigate and prosecute those responsible for human rights abuses against members of minority communities.

### Human Rights Abuses against minority communities

On 10 December 1999 KFOR reported 414 recorded murders (150 ethnic Albanians, 140 Serbs and 124 people of unknown ethnicity)<sup>37</sup> in the six months following the entry of KFOR into Kosovo. During 2000, some 254 individuals were reported murdered, 26 per cent of whom were Serbs and 19 per cent from other minority groups. In 2001, of 136 individuals killed 92 (68 per cent) were ethnic Albanians, 30 (22 per cent) Serbs, six (4.5 per cent) Roma, one Bosniak and seven persons of unknown or other ethnicity.<sup>38</sup> For 2002, UNMIK reported a total of 68 murders, in which 60 (88 per cent) of the victims were Albanian, six were Serbs and two were of other minority ethnicities.<sup>39</sup>

Similarly the numbers of reported abductions of minorities has declined: in 1999, 15 per cent of victims were Serbian, while by 2000, numbers had decreased to nine per cent, although at the same time reported abductions of other members of minority groups abducted increased from 20 per cent to 22 per cent. Comparisons of the periods between January and June 2001 and 2002 respectively, show a 31 per cent decline in reported abductions and 44

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<sup>36</sup> UNMIK was tasked with re-establishing an independent, impartial and multi-ethnic judiciary as a guarantor of the rule of law in Kosovo, and originally discharged this function, until the establishment of a separate Police and Justice Pillar in May 2001 through the UNMIK Administrative Department of Judicial Affairs (ASoJ). ADoJ comprised a judicial affairs office with four major responsibilities - the administration of the courts, the development of legal policies, the review and drafting of legislation and the assessment of the quality of justice in Kosovo, including training requirements. The OSCE, the pillar of UNMIK responsible for institution building, was mandated by the Secretary-General to develop mechanisms which would ensure that the police, courts, administrative tribunals and other judicial structures operated in accordance with international standards of human rights; monitoring was taken on by the Rule of Law Division of the Department of Human Rights and Rule of Law of the OSCE.

<sup>37</sup> Quoted in *Amnesty International, FRY (Kosovo): Update from the field January 2000*, AI Index: EUR 70/02/00, January 2000. Figures more recently published by UNMIK for this period identify 47 per cent of victims as Albanian, 33 per cent as Serbs and 20 per cent as other.

<sup>38</sup> The Serbian Ministry of the Interior claimed that a total of 59 members of minority communities - 33 Serbs and Montenegrins, 20 ethnic Albanians, five Roma, and Aleksandar Dodić, a member of the Serbian Interior Ministry, were killed in Kosovo in 2001. They also reported the abduction of 10 people, eight of whom were Serbs. Of those abducted, three were killed, two managed to escape, and three were released. The fate of two abducted persons is unknown, *Ministarstvo Unutrašnjih Poslova*, 21 January 2002.

<sup>39</sup> *UNMIK Police Press Release*, 17 January 2003.

per cent decline in attempted kidnappings, although no details of the ethnicity of victims were published for comparison.<sup>40</sup>

These bare statistics fail to provide an indication of the range and nature of these abuses, and with a continuing failure to investigate and bring perpetrators to justice, it remains impossible to accurately judge how many of these crimes were in fact ethnically motivated, despite the circumstantial evidence that would suggest them to be so.

In early November 2000, four Ashkali males - one of them only 16 years of age - from the village of Dašovac/Dashevc near Srbica/Skënderaj in central Kosovo were killed. To date, no-one has been indicted or arrested for these killings.

The men had been living in houses in Kosovo Polje abandoned by other Roma, many of which had been burnt or looted, and had no access to electricity. Intending to return and rebuild their houses in Dašovac/Dashevc, the men had made repeated trips back to their home village in the previous months. They had talked to their former neighbours and to the OSCE and UNHCR, which – together with KFOR – had made contacts with ethnic Albanian community leaders in the area who had reportedly given assurances that the returning Ashkalis were welcome. The UNHCR, satisfied that the returnees were going voluntarily and that the security situation made their return feasible, provided the men with tents as temporary accommodation.

On 6 November, without warning the international agencies, the four of them went back to Dašovac/Dashevc to stay. They were visited by OSCE representatives and KFOR, who offered to provide troops to guard them, which they reportedly refused, fearing that it would make them more conspicuous and therefore vulnerable. Unfortunately, their confidence proved unfounded. On Thursday morning the OSCE representative dealing with their case visited and found their bodies lying on the ground outside the tents.

The identity of the killers and their main motivation is still unknown. Some observers have suggested that control of the land which the families possessed was the reason for their murder. Regardless of whether this was true or not, it is clear that they were vulnerable because of their ethnicity. Whether or not the killers' prime intention was to send a message that returnees were in danger and not welcome, that is what they did.

Despite improvements in security conditions since November 2000, this case highlights several continuing concerns: without KFOR protection, the returnees were vulnerable to attack; although the bodies of the murdered Ashkali reportedly lay by their tents in full sight of the neighbours, no one reported the killings to the police until the OSCE staff member discovered them; and potential witnesses were apparently unwilling to give information to UNMIK Police. Finally, no perpetrators have been brought to justice.

Amnesty International considers that the lack of progress in investigating such cases fuels the fear of repeated violence within minority communities, as does the failure of the authorities to accurately monitor investigations and the outcomes of such proceedings which have taken place.<sup>41</sup> In February 2002, for example, UNMIK Police were unable to provide Amnesty International with any figures on the number of recorded crimes – believed to be

<sup>40</sup> *Ibid.*

<sup>41</sup> For the absence of a tracking mechanism and allegations of corruption, see also US Office, Pristinë Kosovo, *Human Rights Report on Kosovo*, 2001.

ethnically motivated - which had resulted in the identification and arrest of a suspect, the indictment of any suspect, and the outcome of any criminal proceedings in such cases.<sup>42</sup> Only relatively few reports of successful prosecutions, reported in the media or in UNMIK Police Press Briefings, provide concrete evidence that criminal proceedings have been completed.

In addition to the deliberate killings of members of minority communities, Amnesty International has continued to receive and monitor accounts of reports of deliberate attacks on both the lives and property of minorities, resulting in injuries and the destruction of both property and other assets. This report does not attempt to list and recount all abuses against members of minority groups which have occurred over the past three years, but cites the following examples as being illustrative of the range and nature of the abuses perpetrated, it is alleged, by non-state actors from the ethnic Albanian community.

On 31 January 2001, a convoy of cars with Serbs travelling to Kosovo was shot at in southern Serbia, allegedly by ethnic Albanians. In early February, a KFOR-escorted convoy near Urosevac/Ferizaj was attacked, killing one Serb and wounding three others. On 13 February the regular twice-weekly KFOR-escorted convoy of buses between Štrpce/Shtërpçë and Serbia was attacked by sniper fire, as a result of which the driver was killed and a number of passengers injured.

On 16 February, following a month of increasing tension, the lead bus of the Niš Express – a convoy of buses carrying Serb civilians, escorted by Swedish KFOR – was destroyed by a remote-controlled bomb near Podujevo. Eleven people were killed, including a two-year-old child, and more than 40 were injured. Though four suspects were arrested by KFOR and UNMIK police in March, the perpetrators have not yet been brought to justice.

On 27 February, Branka and Savita Jović, an elderly Serb couple were found beaten to death by unknown assailants in Kamenica/ Kamenicë. In April and May at least three Serbs were killed in separate drive-by shootings in Vitina/Viti municipality. Attacks continued in August when, on 5 August, a hand grenade was thrown into a Serb couple's backyard in Cernica/Cernicë near Gjilan/Gnjilanë, killing the husband and injuring his wife; on 29 August another Serb, Stanojko Stanković from the village of Vrbesnica, (Štrpce/Shtërpçë municipality), was found shot at the foot of the Sarr mountains, where he had gone to pick juniper berries; and on 7 August, an attack on a convoy of Serb cars near Podujevo resulted in the wounding of three people.

On 4 September, a Serb farmer stabbed to death in Vrbovac near Viti/Vitina, and at the end of the month, on 28 September a former Serb police officer, Trajan Trajković, was shot and killed in Koprivnica/Kopernicë near Gjilan/Gnjilanë. On 30 September, a Serb woman was killed by an explosive device, possibly planted shortly beforehand in a field near Vitina/Viti. On 2 December, an elderly Serb woman was killed in a drive-by shooting as she walked home with her husband from the train station at Obilić/Obiliq.

On 20 February 2002, 13-year-old Sanja Denkic was injured when a hand grenade was thrown into the yard of a house belonging to Savka Tajić, who also sustained shrapnel injuries, in the centre of Kosovska Vitina/Viti. On 22 February 60-year-old Ljubica Kovačević was killed – shot with an entire magazine of 30 bullets – while walking in a street which forms the boundary between the Albanian and Serb communities in Lipljan/Lipjan; her murder was followed by a protest of around 500 Serb residents of the ethnically mixed town.

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<sup>42</sup> The US Office reported that UNMIK Police made 89 arrests in connection with 79 killings during the period January to July 2001, *ibid*.

In April 2002, the house of an Ashkali family who had returned to Vucitrn/Vusshtrri was targeted in a grenade attack; in June a Roma house in Opterusa/Opterushë was set alight in a revenge attack after the head of the family had shot an Albanian in self-defence – the family fled, and their house was subsequently burned.<sup>43</sup> On 14 June 2002, a Roma man reported to UNMIK police that men unknown to him had broken the door and some windows of his house and assaulted his wife, blinded her and then threatened to kill her if she didn't leave her home.<sup>44</sup>

In August 2002, the house of a Roma returnee was set alight after the Albanian who had been occupying the house was evicted, and in September two attacks on Roma houses in Gjilan/Gnjilanë took place, causing minor damage and, on 11 September injuring one person, Ferka Avdullahu, whose family had returned to Gjilan/Gnjilanë on 5 September 2002. In September too, an Ashkali from Urosevac/Ferizaj was assaulted in Oblič/q – reportedly in revenge for acts that had taken place during the war. Three displaced Ashkali and one Serb who had been fishing in a nearby river were also beaten by security guards at the KEK power plant near Oblič/q for no apparent reason on 14 September.<sup>45</sup>

The impact of such attacks on life on minority communities, when they occur after periods of relative safety and security, are perhaps even more marked. On 31 July 2002, five houses in the Serb village of Kllokot/Klokot were destroyed in a series of explosions, which also injured two US KFOR troops after several months without incident in that area.<sup>46</sup> Following these explosions, three subsequent mine explosions occurred, including one which killed a local woman.<sup>47</sup>

OSCE/UNHCR has reported that the security of minority groups appears to have improved most in minority enclaves or where minorities form a significant percentage of the population, and the effective "apartheid" established in Kosovo must be seen as a contributory factor to the decline in ethnically related incidents. However, where minorities are relatively isolated, security incidents continue to be reported.<sup>48</sup>

Amnesty International is also concerned at the retaliatory violence which often follows such attacks, often arising from mass demonstrations which break into riots, or targeted attacks on the suspected perpetrator community. A bomb attack on a vacant Serb house in Parteš/Partesh on 12 March 2001, for example, triggered protests by Serbs who

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<sup>43</sup> Reported in *Update on the Situation of Roma, Ashkaelia, Egyptian, Bosniak and Gorani in Kosovo*, UNHCR Kosovo, January 2003, p. 4.

<sup>44</sup> Amnesty International notes that monitoring has become more difficult because *UNMIK Police Daily Press Updates* CIVPOL have ceased, since 20 July 2002, to include the ethnicity of the victim and the suspected perpetrator of reported incidents or allegations.

<sup>45</sup> UNHCR Kosovo, *Update on the Situation of Roma, Ashkaelia, Egyptian, Bosniak and Gorani in Kosovo*, January 2003; [CDHRF Report, September 2002]

<sup>46</sup> This attack was openly condemned by the major Albanian parties and the Prime Minister Bajram Rexhepi: "The Kosova government condemns these acts and thinks that such acts are motivated by extremists who cannot accept a free and democratic Kosova in the service of the country's citizens. Instead, they want Kosova to remain unstable and with constant tensions". *BBC/Kosovapress*, 1 August 2002.

<sup>47</sup> UNMIK Press Briefing, 11 November 2002.

<sup>48</sup> OSCE/UNHCR reported four such attacks against Bosniaks, three of which took place in towns with a small but well established Bosniak community. On 3 October 2001, a Bosniak was killed by an Albanian in Peć/Pejë, and on 26 December in Mitrovica south, a fatal assault took place on a Bosniak man who spoke Bosnian, and was mistaken for a Serb. On 9 March 2002, two Bosniak men were assaulted in Istog/Istok; on 8 April 2002, a Bosniak man reported missing was found with a wire around his neck and his hands cuffed; an Albanian man was reportedly arrested. Finally, on 14 April 2002, a Bosniak man travelling through the Podujevë/Podujevo municipality was assaulted and his car damaged by a Kosovo Albanian. All of these reported incidents took place outside the Prizren area, where the substantial majority of Bosniaks live, *OSCE/UNHCR Ninth Assessment*, p. 60; *UNMIK Police Daily Press Update*, April 2002.

attacked passing vehicles damaging 12 cars and four trucks; an injured Albanian truck driver was hospitalized for several days.<sup>49</sup> However, the reaction to the attack on the Niš Express on 16 February 2001 resulting in the deaths of 11 Serb civilians and the injury of over 40 others, had an impact on all Serb minority communities in Kosovo.<sup>50</sup> This was the most lethal attack on the Serb community, occurring a week after another bus had been attacked by sniper fire, and in the context of what then appeared to be an increasing number of organized attacks on the Serb community. On the same day, road blocks were erected around the Gračanica/Ulpiana enclave, while Serbs from the nearby villages of Laplje Selo/Llaplassellë and Caglavica/Çagllavicë attacked two Albanian vehicles and set fire to a café owned by local Albanians, at least eight of whom were injured, and who, according to Serb sources, started to leave their homes and flee towards Priština/Prishtinë. Although some peaceful demonstrations were held in other Serb enclaves throughout Kosovo on 17 and 18 February, in the northern town of Zubin Potok at least seven UNMIK vehicles were set on fire, after demonstrations resulted in clashes between KFOR, UNMIK Police and Serb protestors.

Attacks have also been carried out on Serbian orthodox churches, monasteries and other cultural monuments. In February 2001, around the time of the attack on the Niš Express, attacks were reported on an Orthodox church at Gornji Livoc/Livoç i Epërm and at Draganac/Dragancë monastery; mortar rounds were also fired into the Orthodox cemetery in Orahovac/Rahovec. Similar attacks occurred in August, and the cemetery at Staro Gracko/Grackë e Vjetër, near Lipljan/Lipjan was bombed in November. On 29 June 2002 criminal damage was discovered in the cemeteries of Livadica/Livadhi and Miloševo/Miloshevë. Attacks continued up to the end of the year: on 17 November, an explosion completely destroyed the Saint Basil of Ostrog church in the village of Ljubovo/Lubovë, while the previous night, three blasts had rocked the All Serbian Saint church in the village of Đurakovac/Gjurakoc; destroying windows and furniture inside; on 22 December, unknown perpetrators lobbed a hand grenade at the Orthodox church in Priština/Prishtinë.<sup>51</sup>

## Investigations and Prosecutions for ongoing violations

Following two years of virtual impunity, some limited progress in the investigation and prosecution of ethnically motivated crimes was seen in 2002. On 21 February 2002, two Serbs were arrested on suspicion of the murder of a minority Albanian, Muarem Sokolji, on 3 February in northern Mitrovica/ë. On 15 April, Shefket Maliqi and Ismail Jahiu, two ethnic Albanians, were sentenced by an international panel of judges at Gjilan/Gnjilanë District Court to 15 years' imprisonment for murdering a 17-year-old Serb, Aleksandar Dodić, and for serious bodily harm to an Albanian passer-by during a drive-by shooting in the ethnically mixed town of Vitina/Viti.

On 10 May 2002 Roland Bertetzko, a German citizen and former member of the *Ushtria Çlirimtare E Kosoves (UÇK/KLA - Kosova Liberation Army)*, was sentenced to 23 years' imprisonment following his conviction for the murder of Aleksandar Petrovic, who was killed in a car-bomb attack outside the Serbian Ministry of Interior offices in Priština/Prishtinë on 18 April 2001, the attempted murder of four other men, and "terrorism". On 14 May, an ethnic Albanian, Artan Hasani was sentenced to 15 years' imprisonment for the murder of a 70-year-old Serb woman Stana Srdić, in Prizren in March 2000; he had

<sup>49</sup> UNMIK Police Update, 13 March 2001.

<sup>50</sup> See below, pp. 17-18, for further details.

<sup>51</sup> UNMIK Police Press Release, *Explosions at Orthodox Churches*, 17 November 2002; *Beta*, 23 December 2002.

repeatedly attempted to evict her from her home, before assaulting her and leaving her body in the street.

Two ethnic Albanians were also indicted on 27 May 2002 on two counts of murder, six counts of kidnapping and "terrorism" against Serbs in Gjilan/Gnjilanë on 19 June 1999.<sup>52</sup> Finally on 26 September 2002, UNMIK Police in the Priština/Prishtinë region arrested two ethnic Albanian men for the murder of a 50-year-old Serbian woman in late June 1999, and reported that a third suspect was being sought by police.<sup>53</sup>

However, despite recent improvements, Amnesty International is concerned that UNMIK police were both insufficiently prepared and under equipped to investigate the majority of ethnically motivated crimes which took place between July 1999 and 2001. As a result, the majority of such cases remain unresolved.

UNMIK was charged with the maintenance of civil law and order, through the deployment of both an international police force (CIVPOL), and through the recruitment and training of a multi-ethnic domestic police force, *Shërbimi Policor ë Kosovës* (Kosovo Police Service, KPS). As early as late 1999, Amnesty International expressed the organization's concerns at the failure of the international community to adequately resource UNMIK Police to deploy sufficient officers and allocate the resources needed for forensic investigations.<sup>54</sup> The organization remains concerned that the 4,475 international police currently deployed by UNMIK Police is still below the 6,000 originally envisaged, and is also concerned that despite the training and deployment of some 5,186 KPS officers, the numbers of KPS whose duty extends beyond the policing of road traffic offences and other minor offences, remains low.<sup>55</sup> However, Amnesty International welcomes the increasing numbers of minority police, who are now deployed in almost equal proportion to their population across Kosovo: as of March 2003 some 8.5 per cent of KPS officers were Serbian, 3.65 per cent Bosniak, and 2.8 per cent from other minorities.<sup>56</sup> The organization also welcomes the increasing involvement of the KPS in the Community Response Units based at each police station, and in monitoring of threats to minority individuals and communities. The organization also welcomes the forensics training provided to 46 KPS officers in 2002.<sup>57</sup>

Within UNMIK Police, responsibility for the investigation of serious crimes lies with the Central Criminal Investigative Unit (CCIU), established in November 1999 and given the primary task of investigating war crimes, outside of the jurisdiction of the Tribunal, committed within Kosovo between 1998 and 1999, and other serious offences committed prior to the establishment of investigational primacy by UNMIK police.<sup>58</sup> By March 2002, the CCIU deployed a complement of some 50 staff.<sup>59</sup>

<sup>52</sup> UNMIK Press Briefing, 3 June 2002.

<sup>53</sup> UNMIK Police Press Release, 1 October 2002. On 6 July 2002, UNMIK Police also arrested 10 ethnic Albanian men suspected of the murders of Hamze Hajra - an ethnic Albanian formerly employed by the Serbian police - and his wife and three children, on 21 August 2001

<sup>54</sup> See for example, *FRY (Kosovo): Update from the field, January 2000*, AI Index EUR 70/02/00, AI noted that only 1,971 of the 6,000 international civilian police officers required to police Kosovo had been deployed, with the result that the international civilian presence has not assumed full responsibility for the maintenance of public order in Kosovo. See also *FRY (Kosovo): Amnesty International calls for more civilian police in Kosovo after attack on Serbs*, AI Index: EUR 70/129/99, 30 November 1999. Forensic capacity was still deficient in February 2002, when fingerprint evidence in the Bertetzko case had to be sent to Germany for analysis, Interview with defence lawyer, Priština/Prishtinë, February 2002.

<sup>55</sup> UNMIK Police Daily Press Update, 19 December 2002. Some 556 KPS officers were undergoing training at the Academy or in the field.

<sup>56</sup> KPS Statistical Information, <http://www.kosovopoliice.org/english/statistics.html>.

<sup>57</sup> KPS Newsletter, January 2003, *ibid.*

<sup>58</sup> Following the development of Regional Investigative Units, CCIU is also responsible for the investigation of counterfeit currency, auto-theft, international drug trafficking, liaison with the Serbian Ministry of the

However, in the period immediately following the withdrawal of FRY forces from Kosovo, KFOR was required to police the territory of Kosovo until such time as the international civilian police had the capacity to assume full responsibility for this function. KFOR subsequently assumed responsibility for the arrest and detention of those suspected of serious crimes, including war crimes, murder, attempted murder, rape and weapons offences.<sup>60</sup> It was not until February 2002, that UNMIK Police had taken over both operational and investigational primacy in all areas apart from Mitrovica/ë North, which finally came under their control in December 2002.

Amnesty International is concerned that, despite improvements in security and some progress in tackling impunity for past abuses of human rights, the vast majority of ethnically motivated crimes remain unsolved. In 2001, the CCIU reported that it had opened some 823 cases of which 120 had resulted in criminal prosecutions.<sup>61</sup> UNMIK Police also reported a success rate in resolving murders of between 57 per cent and 67 per cent,<sup>62</sup> yet on closer examination these figures only applied to what UNMIK Police described as ordinary, rather than ethnically motivated, murders. A spokesperson for UNMIK police attributed their failure to bring the perpetrators of ethnically motivated crimes to justice to a reluctance on the part of witnesses to come forward, fearing retribution.<sup>63</sup> They also claimed that such crimes generated more complex enquiries, "because they are planned and directed - possibly by terrorist groups, extremist and violent groups and no-one takes credit for them".<sup>64</sup> However, UNMIK police also informed Amnesty International in March 2002 that no systematic analysis of ethnically motivated crimes, assessing how many of these incidents had resulted in successful prosecutions of the perpetrators, was being conducted.<sup>65</sup>

Amnesty International notes the initiative to establish an anonymous telephone crime-line in July 2002<sup>66</sup> which reportedly assisted UNMIK police in the investigation of outstanding serious crimes, and apparently contributed to the arrest of former KLA members

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Interior in relation to Resolution 1244/99 and the MTA-1999 and other co-operation with police forces in Serbia, Macedonia and Albania, liaison with Interpol, as well as the investigations related to disciplinary measures taken against members of the Kosovo Protection Corps (*Trupa Mbrojtëse e Kosovës* – TMK).

<sup>59</sup> Interview, UNMIK police spokesperson, Priština/Prishtinë, March 2002.

<sup>60</sup> For AI's concerns on KFOR's failure to respect human rights in discharging these duties, *FRY (Kosovo) Setting the Standard? UNMIK and KFOR's response to the violence in Mitrovica*, AI Index: EUR 70/13/00, March 2000. For AI's recent concerns on arrests and detentions by KFOR, see *FRY (Kosovo): International Officials Flout International Law*, AI Index: EUR 70/008/2002, September 2002.

<sup>61</sup> *Police in Kosovo, 2001*, p. 14.

<sup>62</sup> In February UNMIK police reported that they, "... are now solving more than 80% of murders..", *UNMIK Police Briefing Notes*, 18 February 2003.

<sup>63</sup> A similar climate of impunity exists around politically motivated murders within the Albanian community. Following the murder of Tahir Zamaj, Enis Zemaj and Hasan Zenaj in the centre of Peć/Peje on 4 January 2003, in the presence of some 40 witnesses, UNMIK police were forced to put out a press appeal for witnesses as none had come forward, *UNMIK Police Peć/Peje Regional Investigations Serious Crimes Unit*, 12 January 2003.

<sup>64</sup> Although some ethnically motivated crimes, such as the series of attacks on the Serb community that took place during February 2001, may fall into this category, AI believes that they are not representative of the majority of such incidents. See *OSCE/UNHCR Eighth Minorities Assessment*, pp. 3-4.

<sup>65</sup> UNMIK police spokespersons also asserted that because the police force was up and running ahead of the judicial system, the lack of capacity within the detention and court systems had undermined the development of law and order. In particular, the spokespersons reported that the police would fail to gain the confidence of the public, if sufficient capacity for pre-trial detention was not available, particularly in cases where they had compelling evidence of threats made against the victims of such crimes. Interview, UNMIK police spokespersons, Priština/Prishtinë, March 2002.

<sup>66</sup> The line was established in conjunction with the launch of the *Dosje e Krimet* (Crime Dossier) television program, source: UNMIK Police.



on war crimes charges. However, the organization is concerned that insufficient progress has been made in establishing measures and mechanisms for the protection of victims and witnesses. The Witness Protection Programme was established in April 2001 in connection with investigations into organized crime, and includes within its remit the protection of victims of trafficking for the purposes of prostitution.<sup>67</sup> According to an UNMIK Police spokesperson, it was not planned to extend the programme to provide protection mechanisms for witnesses of ethnically motivated crimes.<sup>68</sup>

## Failure to Investigate

Amnesty International is concerned that a number of investigations of human rights abuses committed against ethnic minorities in Kosovo may have fallen short of requirements established in international standards concerning thoroughness, promptness and impartiality. The failure of UNMIK police to thoroughly investigate serious crimes has been explored in a number of *ex-officio* investigations by the Ombudsperson's Institution which have examined the failure of UNMIK to investigate the killings of six members - among them an eight-year-old boy - of the minority ethnic Albanian community in Mitrovica/ë, in riots which followed a rocket attack on a bus in the first week of February 2000. According to reports to the SRSG, subsequently published by the Ombudsperson, concerning the right to life of four individuals V.S., V.N., R.C. and S.B. killed on 3 February, the Ombudsperson found that the investigation by the competent authorities into the killing of V.S. and V.N. failed to meet the requirements of Article 2 of the ECHR in guaranteeing the right to life. In particular, he noted that in these two cases the "competent authorities took no investigative actions between 11 September 2000 and 3 December 2001". Noting that Article 2 of the ECHR requires the state to conduct an effective investigation when individuals have been killed as a result of the use of force, whether or not agents of the State are implicated in the killings, the Ombudsperson found "that the authorities exercised proper diligence at the beginning of their investigations regarding the killings of V.S. and V.N. but that they were less diligent during succeeding months, and that even should actions taken after 3 December 2001 bear fruit, a fifteen month gap in pursuing the investigation could not be considered acceptable". "The inadequacy of the investigation, therefore, constituted a violation of the right to life guaranteed under Article 2 of the ECHR".<sup>69</sup>

On 16 February 2001, 11 Serbs were killed and over 40 injured when the lead bus of the Niš Express convoy, in which they were travelling from Serbia to Kosovo, was destroyed by a remote-controlled bomb near Podujevo, despite advance warning to KFOR, who conducted a search of the route in advance of the convoy and provided a heavily armed escort for the convoy. It was the most serious attack on minority communities since September 1999, when a grenade attack on the market place in Kosovo Polje/Fushe ë Kosovës left two Serbs dead and 47 wounded.

Avdi Behluli, Qele Gashi, Jusuf Veliu and Florim Ejupi were arrested by UNMIK Police, and subsequently detained on the order of the investigating judge at Priština/Priştinë District Court on 23 March in connection with the bombing. They subsequently appealed

<sup>67</sup> According to UNMIK police, this is a "procedure" involving an agreement between government agencies; however, UNMIK face problems with "the lack of willingness on the part of potential host nations to accept such persons from Kosovo".

<sup>68</sup> E-mail: UNMIK Police to Amnesty International, March 2003.

<sup>69</sup> *Ex officio* Registration No. 8/01/I, concerning the right to life of V.S. and V.N., 29 January 2002; similar observations were made by the Ombudsperson in: *Ex officio* Registration No. 8/01/II, Concerning the right to life of R.C., 29 January 2002; *Ex officio* Registration No. 8/01/IV, Concerning the right to life of S.B., 29 January 2002; *Ex officio* Registration No. 8/01/V, Concerning the right to life of S.A., 29 January 2002.

against their detention on 28 March 2001 at Priština/Prishtinë District Court. The court, consisting of a panel of international judges, ordered the investigative detention of Florim Ejupi for one month – on the basis of comparison of the DNA found on a cigarette-butt at the detonation site with DNA in a German police database – and the immediate release of Avdi Behluli, Qele Gashi and Jusuf Veliu. In violation of the court order, Avdi Behluli, Qele Gashi, Jusuf Veliu - along with Florim Ejupi - were subsequently detained on the order of the SRSG at the Bondsteel Detention Facility (BDF) without charge or trial.<sup>70</sup> Florim Ejupi escaped from BDF on 14 May, allegedly using a wire-cutter hidden in a spinach pie, although it has been subsequently alleged that US forces were complicit in the escape. Following a review of the case by the Supreme Court on 18 December 2001 the three men were released. No one has yet been brought to justice for this crime.

Although Amnesty International has no position on the guilt or innocence of any of the detained men, the organization has serious concerns about the failure to bring those responsible for the Podujevo bus-bombing to justice. Amnesty International is concerned that UNMIK Police was frustrated in its ability to conduct a thorough and impartial investigation, in the light of allegations made by UNMIK police officers that they were obstructed in their investigations by US KFOR personnel.<sup>71</sup> It has also been alleged that despite the severity of the attack, and its effects on both Serb community and potential returnees,<sup>72</sup> insufficient resources were deployed to the investigation, particularly in its later stages. The organization is also concerned about the failure of KFOR and other unknown players to reveal evidence<sup>73</sup> to either the Priština/Prishtinë District Court or the Supreme Court.

According to UNHCR, the failure to investigate ethnically motivated crimes has contributed to a reported lack of confidence in both law enforcement and the judiciary amongst minority communities, often resulting in the under-reporting of small-scale incidents – even in areas where the overall situation of minorities has improved. Under-reporting is also motivated by the fear of exacerbating tensions or inviting retaliatory attacks, as well as a perceived lack of response by law enforcement agencies. In September 2002, for example, one Serb and three Ashkali residents of the Plemetina/Plemetin Temporary Community Shelter were attacked by security guards from the nearby *Korporata Energjetike e Kosovës* (KEK) power station, yet according to UNHCR no proper investigation has ever been conducted. In other cases where Kosovo Serbs have been attacked – for example, in cases of stone throwing – UNHCR has observed that although KPS attend, they rarely take any

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<sup>70</sup> The three suspects were detained, initially under Executive Orders, until 20 September 2001, when their continued detention was authorized by a Detention Review Commission (DRC) established – in connection with this one case under UNMIK Regulation 2001/18 – for a three-month period to review detentions authorized by the SRSG. The violation of the detention rights of detainees held in administrative detention authorized by the SRSG under Executive Orders, (on the basis of UNMIK Regulation 199/1 and UNSCR 1244/99), was highlighted by Amnesty International, the OSCE and the UN Special Representative of the Commission on Human Rights; Amnesty International also expressed concerns about the DRC to the SRSG.

<sup>71</sup> In a statement to the UK newspaper, *The Times*, on 14 May 2002, the former head of the UNMIK Regional Crimes Squad alleged that, despite being technically in charge of the investigation, information had been withheld by KFOR, and that attempts to interview the suspects were obstructed both before and after their transfer to the BDF. This was confirmed by AI in conversation with a former CIVPOL officer who wishes to remain anonymous. *The Times* also reported that a lead investigator was removed from his post for speaking to the press about the case in August, which subsequently became the responsibility of a single detective. Amnesty International has not been able to confirm this.

<sup>72</sup> UNHCR attribute the decline in returns during 2001 to this and other incidents at around the same time, *UNHCR/OSCE Ninth Minorities Assessment*, May 2002, p.45-6.

<sup>73</sup> Evidence, including NATO intelligence, was provided to the DRC (see above) which, following *in camera* proceedings held in the absence of detainees and their counsel, authorized the men's continued detention. However, following a review of the case by the Supreme Court – which was not provided with access to the evidence presented to the DRC – on 18 December, the three men were released without charge.

effectives measures to apprehend the perpetrators. Similarly, if perpetrators are arrested by KFOR and handed over to UNMIK police, cases are seldom investigated.<sup>74</sup>

## Impunity for War Crimes

*"The rule of law over the rule of fear"*<sup>75</sup>

Amnesty International is concerned at the continuing failure - in both Serbia<sup>76</sup> and Kosovo - to bring to justice both Serbs and ethnic Albanians believed to be responsible for violations and abuses of human rights law and international humanitarian law which took place prior to, during and immediately after the international conflict in Kosovo.

Former President Slobodan Milošević was transferred to the custody of the International Criminal Tribunal for the former Yugoslavia (Tribunal) at the end of June 2001, on charges of crimes against humanity and violations of the laws and customs of war in Kosovo, as well as in Bosnia-Herzegovina and Croatia.<sup>77</sup> Following an announcement on 19 April 2002 by the Chief Prosecutor for the Tribunal that she had opened investigations into three former members of the UCK/KLA and other Kosovo Albanian suspects, on 18 February 2003, three ethnic Albanians – Haradin Bala, Isak Musliu and Agim Murtezi<sup>78</sup> – indicted for crimes against humanity and violations of the laws and customs of war were arrested by KFOR and transferred to the custody of the Tribunal; a fourth suspect – Fatmir Limaj – was arrested in Slovenia on 19 February.<sup>79</sup>

In Kosovo, the trials of more than 19 Serbs accused of war crimes against the ethnic Albanian population had already been completed by mid-2002. Trials began on 5 November 1999, initially before panels of Albanian judges, and subsequently – following the promulgation of UNMIK Regulation 2000/64 on 15 December 2000 – before courts composed of a majority of international judges.<sup>80</sup> Following a series of reports by, *inter alia*, OSCE's Legal Systems Monitoring Service, that several of these war crimes trials had failed

<sup>74</sup> UNHCR Kosovo, *Update on the Situation of Roma, Ashkaelia, Egyptian, Bosniak and Gorani in Kosovo*, January 2003.

<sup>75</sup> UNMIK spokesperson, Simon Haselock, *UNMIK Press Briefing*, 7 February 2002

<sup>76</sup> See *Serbia and Montenegro: Amnesty International's Concerns in Serbia and Montenegro*, AI Index: EUR 70/004/2003.

<sup>77</sup> Slobodan Milošević was indicted on 22 May 1999, along with (the-then) Serbian president Milan Milutinović (surrendered to the Tribunal 20 January 2001), Deputy Prime Minister of the FRY, Nikola Sainović (surrendered to the Tribunal 2 May 2002), Chief of the General Staff of the VJ, Dragoljub Ojdanić (surrendered to the Tribunal 25 April 2002) and Serbian Minister of Internal Affairs of Vojislav Štambelić (died on 13 May 2002, after shooting himself on 11 May).

<sup>78</sup> Agim Murtezi was subsequently released by the Tribunal on 28 February at the request of the Office of the Prosecutor after doubts were raised about his identity; all charges against him were dropped.

<sup>79</sup> The accused were indicted for individual criminal responsibility for the imprisonment and cruel treatment of at least 35 Albanian and Serb civilians, the murder of five Serb and non-Albanian detainees, and the murder of 13 Albanian detainees at or near the KLA-run Lapushnik/Llapushnik Prison Camp in Glogovac/Glllogoc municipality, between May and 25 July 1998. Fatmir Limaj was allegedly responsible for the camp, and was accused of superior responsibility (Case no. IT-03-66-I).

<sup>80</sup> In order to address concerns of ethnic bias in war crimes and inter-ethnic cases, in February 2000 the SRSG promulgated UNMIK Regulation 2000/6, which allowed for the appointment of international judges, initially in Mitrovica. This power was extended by UNMIK Regulation 2000/34, May 2000, which allowed for the appointment of international judges and prosecutors throughout Kosovo. UNMIK Regulation 2000/64 subsequently granted competent prosecutors, the accused or defence counsel the right to petition the Administrative Department of Justice for the assignment of international judges and prosecutors or for a change of venue, in order "to ensure the independence and impartiality of the judiciary or the proper administration of justice". See also, *OSCE Review of the Criminal Justice System, 1 September 2000 - 28 February 2001*, p. 75ff.

to meet international standards for fair trial, by January 2002, eight out of 10 verdicts against those who had been convicted of war crimes by both ethnic Albanian and international panels were subsequently reversed by the Supreme Court; reasons for reversal included – in eight cases – the “incomplete or insufficient establishing of the facts” in all eight cases, and in six, a failure to call defence witnesses. In three cases subsequently sent for retrial, all three defendants were found not guilty.<sup>81</sup>

Criminal proceedings against Serbs suspected of war crimes continued to take place in the Kosovo courts. On 4 September 2002, Kosovo Serb Saša Grković – arrested on 2 June 2001, and indicted on 19 February 2002 – was acquitted on the basis of insufficient evidence on charges of war crimes, including the massacre of over 100 Albanian civilians at Mala Kruša/Krushë e Vogel. On 13 December 2002, Veselin Besović was also acquitted. He had spent 27 months in custody, following his arrest for the possession of illegal weapons in 2001, and subsequent indictment in May 2002 for war crimes between May 1998 and June 1999; he had been accused of murder, torture, inhuman abuse and terrorism upon the Albanian population in the Peć/Peja region.<sup>82</sup>

To date, no Albanians have been tried for war crimes against the minority population. However, the arrest, on 28 January 2002, of Naim Kadriu, Latif Gashi and Nazif Mehmeti,<sup>83</sup> three former members of the UÇK/KLA, on suspicion of war crimes against the Albanian civilian population between 1998 and 1999 was met with disbelief and anger by the ethnic Albanian community, indicating not only a failure, but also a refusal - at all levels of the Albanian community - to consider or accept the issue of impunity. The arrest of the three men on suspicion of participation in crimes against unarmed civilians, including women and juveniles, and involving enforced detentions, beatings, torture and murder, was accompanied by demonstrations protesting against the arrests throughout Kosovo – prompting the publication of conditions to be observed in the holding of public demonstrations.<sup>84</sup> Further demonstrations accompanied the arrests on 18 June of four other former KLA members and on 19 June, the detention of two further suspects including the brother of Daut Haradinaj – leader of the *Aleanca për Ardhmërinë e Kosovës* (AAK, Alliance for the Future of Kosova) – who apparently handed themselves in to the police. In the latter case, five suspects were charged with unlawfully detaining and causing serious bodily harm to members of a rival paramilitary group in June 1999, and were convicted and sentenced to periods of between three and 15 years' imprisonment on 17 December 2002.<sup>85</sup>

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<sup>81</sup> These 19 proceedings are discussed in detail in *Kosovo's War Crimes Trials: A Review*, published in September 2002 by the OSCE Department of Human Rights and Rule of Law, Legal Systems Monitoring Section. OSCE also identified a number of other fair trial issues including a lack of precision in the drawing up of indictments (in four genocide cases, for example, OSCE found that the charges were, in light of the trial evidence, inflated and not grounded in law); an overemphasis on witness credibility; a failure to make appropriate findings with respect to criminal liability; a failure to distinguish factual and legal issues, or to cite case law or other authorities on war crimes jurisprudence; in four cases defendants were even convicted of crimes different to those in the indictment, *ibid.*, pp. 34-52.

<sup>82</sup> UNMIK Media Monitoring, 23 May 2002; B92, 13 December 2002.

<sup>83</sup> Their trial, along with former KLA commander “Remi” Rustem Mustafa (arrested in June 2002), opened on 17 February 2003.

<sup>84</sup> UNMIK Public Announcement, *Applicable Procedures for Public Gatherings*, 9 February 2002.

<sup>85</sup> *Kosovapress* web site, 29 January 2002; According to a statement made by UNMIK Spokesperson Simon Haselock on 7 February 2002, the arrests followed an investigation which had been ongoing since 1999; “Kosovo court jails ex-rebels for total of 31years”, *Reuters*, 17 December 2002.

## **"Disappearances" and abductions<sup>86</sup>**

Ramadan Halilaj, Xhevdet Çufaj and Vehbi Maliqi are all Roma men in their early 20s who lived in the village of Brekovac/Brekovc, two or three kilometres southwest of Djakovica/Gjakovë. Before the NATO bombing Ramadan Halilaj – who was married with five children – and Vehbi Maliqi had worked as day-labourers for local Albanians, while Xhevdet Çufaj – who was married with four children – worked as a herdsman for local Serbs.

In June 1999, while Ramadan Halilaj and his family were eating lunch, six uniformed men, wearing KLA insignia and armed with automatic weapons, came to Ramadan Halilaj's house. According to Afrim Halilaj,<sup>87</sup> Ramadan Halilaj and his five children, his three brothers - including Afrim Halilaj – and his father were present. The armed men took Ramadan Halilaj away for questioning, saying that he would return later. Ramadan Halilaj has not been seen since. His brother has no idea why he was taken, but thinks that it may be because he was the eldest brother.

Two days later, another group of uniformed men came to the house, threatened the family and ordered them to leave within half an hour. They demanded that the family hand over the arms which they claimed had been supplied to them by the Serbs; Afrim Halilaj claims that they had no such weapons. The men beat Afrim Halilaj's cousin, Xhevdet Çufaj, breaking his right arm. Afrim Halilaj believes that Xhevdet Çufaj may have been singled out because he had worked for Serbs as a herdsman.

As soon as the men left, the family gathered together and the 20 men, women and children headed towards Montenegro, avoiding the main road by travelling through the mountains. When the group stopped to rest, armed men in civilian clothes suddenly appeared, and took four men away - including Xhevdet Çufaj and Vehbi Maliqi. Afrim Halilaj's children began to cry, and this is why he thinks they did not take him too.

Soon after, they heard the sound of shots, but were too frightened to go and investigate. Afrim Halilaj believes that these armed men – one of whom he recognized – had followed them from their home.

Afrim Halilaj has not been able to find out what happened to Ramadan Halilaj, Xhevdet Çufaj and Vehbi Maliqi. Amnesty International is not aware that any investigation has been opened into their case.

Amnesty International has repeatedly expressed concerns about the failure of both the authorities in Kosovo and in Serbia and Montenegro to systematically open investigations into the "disappearances" of over 3,000 ethnic Albanians believed to have been arrested by Serb military or paramilitary forces,<sup>88</sup> and of up to an estimated 1,200 Serbs and Roma believed to

<sup>86</sup> Amnesty International considers a person to have "disappeared" if government authorities are believed to have been responsible; a person is considered to have been abducted, and to be "missing" if a non-governmental entity is believed to have been responsible.

<sup>87</sup> Interview, Podgorica, Montenegro, June 2000. Amnesty International subsequently intervened on behalf of several Roma IDPs in Montenegro who had been unable to report their family members missing, as they were unable or unwilling to return to Kosovo, advising the MPU of their cases.

<sup>88</sup> Despite cooperation by the authorities in Serbia in both the exhumation and DNA identification process AI is concerned that little progress appears to have been made in initiating proceedings against those believed to have been responsible for the fate of ethnic Albanians believed to have been arrested by Serb police or paramilitary forces during 1999, many of whom appear to have been transported, after death, in refrigerated trucks to various locations in Serbia for reburial, see, for example, *Concerns in Europe [and Central Asia]*,

have been abducted by the UÇK/KLA or other armed ethnic Albanians, prior to and during the NATO Operation Allied Force, and following the arrival of KFOR and UNMIK in Kosovo. In particular, Amnesty International's membership has campaigned to urge UNMIK police to open investigations into the abduction and killings of the estimated 1,200 missing Serbs, Roma and other minority groups.<sup>89</sup> According to the latest Consolidated List of Missing Persons, 4233 persons (3,324 Albanians and 909 minorities) are still considered as missing.<sup>90</sup>

In all communities, associations of the families of the missing have continued to address the relevant authorities with their concerns: the Serb *Association of Families of Kidnapped and Missing Persons from Kosovo and Metohija* have taken repeated actions – including marches and demonstrations, hunger-strikes and road-blocks – to try and draw attention to their demands that the bodies of their relatives be exhumed, identified and returned to them for burial, and that those responsible are brought to justice.

The organization recognizes that, after much delay, progress has been made in 2002 towards the establishment of a comprehensive program of exhumations, and the identification of exhumed bodies. This followed the signing of a memorandum of understanding between the SRSG and the International Commission for Missing Persons (ICMP) on 25 July 2001, in relation to the provision of facilities for DNA identification of mortal remains.<sup>91</sup> Under pressure from both domestic Serbs and the FRY and Serbian governments prior to the Kosovo assembly elections, on 5 November 2001 UNMIK made a renewed commitment in the UNMIK-FRY Common Document to establish the fate of those abducted and "disappeared", and in February 2002 UNMIK and FRY authorities signed three protocols establishing collaboration between the parties on cross-boundary repatriation of identified remains, exchange of forensic expertise and joint verification teams on hidden prisons. In April 2002 the forensic institute in Orahovac/Rahovec was reopened, and in May, Jose Pablo Barbayar was appointed to head the Office of Missing Persons and Forensics (OMPF); the number of staff dedicated to work on the "disappeared" and abducted also increased.<sup>92</sup>

In February 2003, the OMPF reported that during 2002, exhumations had been conducted by the OMPF at some 80 per cent of previously unknown sites, and estimated that some further 500 to 700 mortal remains would be exhumed at the remaining sites in 2003. Some progress was also made in the identification of some 141 mortal remains, by both conventional techniques, and through the DNA identification processes – some 85 mortal remains were either identified through this process, or their identities corroborated.

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*FRY/Serbia and Montenegro (including Kosovo)*, AI Index: EUR 01/007/2002, September 2002; AI Index: EUR 01/002/2003, February 2003.

<sup>89</sup> The Association of Families of Kidnapped and Missing Persons from Kosovo and Metohija claims that 75 per cent of the estimated 1,300 missing Serbs have been abducted in Kosovo since the arrival of KFOR.

<sup>90</sup> UNMIK/PR/917, dated 3 February 2002 [*sic*], published 3 February 2003. Of the missing 164 are considered to be dead, although their bodies have not yet been recovered. According to OMPF, these figures include the 4,019 bodies recovered to date, of whom 2,122 have been identified.

<sup>91</sup> A DNA program, established to identify mortal remains exhumed from mass graves, was developed by the ICMP in Sarajevo, Bosnia-Herzegovina. This program, which has now been extended throughout the region, enables the bodies of the "disappeared" and abducted to be identified and released to families for burial within a much shorter time-frame than through conventional identification methods. The process involves taking samples of DNA from the bones of exhumed bodies, and further samples of DNA from the blood of living relatives. The DNA sample from the bones is then cross-matched for identification against the data-bank of DNA blood samples taken from surviving family members. Cross checking of other ante- and post-mortem data is used to confirm the DNA identification. It was reported that DNA testing would begin in Kosovo with the 1,250 unidentified bodies, originally exhumed by the Tribunal, and then re-buried for later identification.

<sup>92</sup> The Bureau for Detained and Missing Persons was subsequently abolished in June 2002.

Relatively few bodies of Serbs and Roma believed to have been abducted by ethnic Albanians have been exhumed and returned to their relatives.<sup>93</sup> Petrija Piljević, a 57-year-old Serb woman from Priština/Prishtinë, was according to neighbours, abducted by three men wearing KLA uniforms who took her from her flat on the afternoon of 28 June 1999. She was crying and screaming. Her sons Dragan and Zoran subsequently fled to Serbia. In August 2001, her son Dragan Piljević was shown a selection of photographs of clothing taken from bodies exhumed in Kosovo. In one photograph, he recognized his mother's blue track-suit bottoms, navy socks, cream blouse and black jacket. Reportedly, Petrija Piljević had been shot twice, at close range, in the chest. At the end of August 2001, her body was returned to her family, and buried in Prokuplje in southern Serbia. However, no investigation had been initiated into her abduction by March 2002, and Amnesty International has not been able to establish whether any subsequent progress has been made in this case.

Despite progress in the exhumation of mortal remains, and some – albeit limited – continued progress in the identification of bodies<sup>94</sup> in 2002, apart from the investigations previously conducted by the Tribunal in 1999 and 2000, little progress has been made in opening investigations into more than 4,000 outstanding cases of "disappearances" or abduction, and very little progress has been made towards bringing the perpetrators to justice, despite the responsibility of the CCIU for the investigation of alleged war crimes including "disappearances" and abductions. According to officers in the CCIU, resources have determined that only "the most serious allegations" are investigated, and unless large numbers of people are involved, "disappearances" and abductions are given low priority. Indeed, three years after the majority of "disappearances" and abductions occurred, even basic information relating to the numbers, identities and circumstances under which they occurred had not been fully computerized by the MPU.<sup>95</sup> Without this information, and sufficient resources to initiate investigations, the MPU and UNMIK Police as a whole continue to be woefully ill-equipped to address these outstanding – and continuing – abuses and violations of human rights.

Amnesty International reminds the SRSJ that under Article 14 of the UN Declaration on the Protection of all Persons from Enforced Disappearance, "Any person alleged to have perpetrated an act of enforced disappearance in a particular State shall, when the facts disclosed by an official investigation so warrant, be brought before the competent civil authorities of that State for the purpose of prosecution and trial unless he has been extradited to another State wishing to exercise jurisdiction in accordance with the relevant international

<sup>93</sup> On 14-16 April 2002, relatives of missing Kosovo Serbs were invited to Kursumlija in Serbia to examine clothes and personal effects found with 350 bodies, believed to be those of Serbs exhumed from various locations in Kosovo. It was subsequently reported that the relatives of 53 individuals had been able to identify items of clothing or personal effects belonging to their missing family member.

<sup>94</sup> In 1999 and 2000, Tribunal investigators exhumed 4,392 bodies from 876 graves in Kosovo, and carried out autopsies on 3,620 bodies, of which 2,099 were identified, and reportedly returned to their families. Approximately 1,500 unidentified bodies were then reburied in two UNMIK cemeteries and Kosovo municipal cemeteries, for later identification. In mid-February 2001, the MPU took over responsibility for exhumation and identification, and by April 2002 had recovered 85 bodies from 69 exhumations.

<sup>95</sup> In February 2002, the International Committee of the Red Cross (ICRC) reported a total of 3,750 tracing requests still open, of which 598 had been submitted to the ICRC by Serbs, 136 by Roma and 129 by members of other minority groups. The remaining 2,877 requests were submitted by Albanians. They anticipated a rise of tracing requests during the year, predominantly from Serbs displaced elsewhere in the FRY. These figures represented an increase on figures previously published in April 2001 in the updated *Book of Missing Persons in Kosovo*, which listed 3,525 people reported missing in Kosovo between January 1998 and April 2001. On 26 March 2001, the MPU had reportedly closed 376 out of a reported 3,399 cases.

agreements in force. All States should take any lawful and appropriate action available to them to bring all persons presumed responsible for an act of enforced 'disappearance', found to be within their jurisdiction or under their control, to justice.

Further, Amnesty International notes that "disappearances", abductions and subsequent extra-judicial executions violate the right to life of the missing person, while the suffering experienced by the relatives of the "disappeared" and abducted can amount to violation of their right to freedom from torture and cruel, inhuman or degrading treatment, including as a result of the persistent failure of the authorities to investigate; to inform the relatives of the fate and whereabouts of their loved ones; and to bring the perpetrators to justice.

## Access to Justice

*"I can't accuse all the Albanians, there are some good people – but in war, awful things happen".*

M. F., a Gorani man, told Amnesty International, "I grew up in Decani/Dečan, where we lived for 30 years, and when the bombing started we came to Dragaš, but my mother and father stayed in Dečan. Even after the bombing, my father wanted to stay in his house, even though my brother went with KFOR to fetch him and persuade him to go to the monastery in Dečan. Then they were visited by Albanians that we knew, and they told my father to leave the town, and they hit him with a rifle butt. So they agreed to come and join us, and my brother went to Dečan to fetch him on 18 June. When he arrived at 10am in the morning, he found my mother sitting in front of the house crying. The house was still smouldering. My mother said that the house had been set on fire, and [that my] father had gone to seek help, but that he had been stopped by a group of around 50 Albanians... I don't want to talk about it any more."

M. F. has tried repeatedly to find out what happened to his father. He said that he had reported the crime at the police station in Dragaš, but nothing was done; subsequently he discovered that translators had told "the whole town". M.F. then paid an Albanian from Dragaš to go to Dečan to try and find out what had happened, but had not received any information. M.F. had also travelled to Belgrade – where he felt more secure – to talk to the International Committee of the Red Cross. He is too frightened to travel to Dečan, or to the Missing Persons Unit in Priština/Prishtinë.<sup>96</sup>

The organization has also repeatedly expressed concerns that members of minority communities are denied access to justice, despite the efforts made by UNMIK towards establishing an independent, impartial<sup>97</sup> and multi-ethnic judiciary, and to ensure minority access to the courts.<sup>98</sup> Despite the appointment of international judges and prosecutors under

<sup>96</sup> Interview with M.F., Dragaš, March 2002. M.F. told AI that he would be interested in receiving rent or compensation for their house and property, but at the time had no idea how to go about it; AI understands that the Norwegian Refugee Council (NRC) is pursuing property cases on behalf of Goranis who previously lived in Dečan, *NRC Monthly Report*, September 2002.

<sup>97</sup> UNMIK police also told Amnesty International that they believe that Albanian suspects have been released despite the existence of what UNMIK police claim to be sufficient evidence to warrant continued detention, alleging that the decision of the court to release the suspect was informed by the ethnicity of the suspect, or the victim.

<sup>98</sup> See, for example, *FRY (Kosovo) Amnesty International's Recommendations to UNMIK on the Judicial System*, AI Index: EUR 70/06/00, February 2000.



UNMIK Regulation 2000/6,<sup>99</sup> and measures taken – following the signing in November 2001 of the Common Document – to increase the numbers of minority judges and prosecutors,<sup>100</sup> as well as minority court officials, the largely Albanian judiciary continues to be perceived as biased by minority communities – not only because of the overturning of judgments in the majority of war crimes cases brought against, in particular, the Serbian community, but also because of the continuing impunity for attacks against minorities.

In February 2002, NRC reported to Amnesty International: "Gračanica Serbs will not come to courts in Priština/Prishtinë unless they can get a lift from UNMIK police, if this does not happen, they won't turn up. Gračanica want their own court with international judges, similarly at Plemetina".<sup>101</sup> Reports continue to be received that members of minority communities continue to refuse to attend courts, the majority of which lie outside of the enclaves (with the exception of the illegal parallel courts established in Mitrovica/ë and the northern municipalities). In tandem with the process of dismantling these parallel Serbian courts, municipal and minor offences courts were officially opened by UNMIK on 13 January 2003 in Leposavić/Leposviq and Zubin Potok; but with the exception of the proposed opening of departments of the Ferizaj/Uroševac municipal and minor courts in Štrpce/Shtërpçë by the end of March 2003 no courts have been opened in other enclaves.<sup>102</sup> Other measures – including the continued, but uneven, provision of escorts and a court shuttle between Priština/Prishtinë and Gračanica/Graçanicë – have been taken to address the problems posed by the continuing denial of freedom of movement, yet in their most recent report OSCE/UNHCR note that "one of the greatest problems of public access to justice remains physical access to the courts".<sup>103</sup>

## Conclusions & Recommendations

Amnesty International believes that UNMIK and KFOR have failed in their duty to ensure respect for human rights by failing to take timely and appropriate action against abuses of human rights by private actors where that abuse would constitute a grave violation of human rights if directly inflicted by state agents. In particular, the organization believes that in initially mandating KFOR – a military body – to establish the rule of law in Kosovo, the UN Security Council failed to ensure that appropriate policing structures were established to address alleged ethnically motivated crimes.

Until such incidents are investigated and the suspects identified and brought to trial, it is impossible to establish whether these crimes are ethnically or otherwise motivated. Within minority communities, however, each attack will be believed to be ethnically motivated unless proven otherwise.

Amnesty International is concerned that, given its other duties and responsibilities, and the relatively small number of staff deployed in the CCIU, insufficient resources are

<sup>99</sup> See p.19, fn. 80, above; UNMIK Reg. 2000/6, 15 February 2000; UNMIK Reg. 2000/34, (amending Regulation 200/6), 27 May 2000.

<sup>100</sup> This was facilitated by the Joint Declaration signed on 9 July 2002 between the Serbian Ministry of Justice and the UNMIK Deputy SRSG for Police and Justice who, on 12 December 2002, appointed a further 21 Serbs as judges bringing their number to 25; a Bosniak and a Gorani judge were also appointed.

<sup>101</sup> Interview with NRC, Priština/Prishtinë, February 2002. OSCE/UNHCR similarly reported in May 2002 that two Serbs employed at the court in Orahovac/Rahovec had been unable to get to work, and had not been paid since their appointment in March 2001, *OSCE/UNHCR Ninth Assessment*, p. 16. The situation was subsequently resolved.

<sup>102</sup> *OSCE/UNHCR Tenth Minorities Assessment*, March 2003, p. 30.

<sup>103</sup> *Ibid.* pp. 31; UNHCR/OSCE also note that access to detention centres for the families of minority detainees remains a problem.

available for the prompt, thorough and impartial investigation of outstanding human rights violations and abuses, a view shared in confidence by various members of the international police force. The organization also notes the recommendation advocated by Adem Demaçi of the Council for the Defence of Human Rights and Freedoms (CDHRF), that investigations into ethnically-based crimes, particularly with regard to obtaining witness statements from members of the Albanian community, might be more productive if members of the KPS were trained to conduct criminal investigations.

In the context of impunity, Amnesty International notes the initiative to establish an anonymous telephone crime-line in July 2002 which has reportedly assisted UNMIK police in the investigation of outstanding serious crimes, and contributed, for example, to the arrest of former *UÇK* and *TMK* members on war crimes charges.

Amnesty International is also concerned that insufficient progress has been made in establishing measures and mechanisms for the protection of victims and witnesses. The organization is extremely concerned that the absence of a comprehensive witness protection program is a barrier to the investigation of past abductions of Serbs, Roma and other minorities. The resulting reluctance to give testimony due to the absence of a witness protection program is further compounded by the refusal (because of current relations between the communities) of many ethnic Albanians to provide evidence relating to such abductions to the UNMIK police.

*To the UN Secretary-General*

Amnesty International urges the UN Secretary-General and the UN SRSG to ensure that impunity for the perpetrators of both war crimes and the subsequent and continuing attacks on members of minority communities is given the highest priority by UNMIK, and in particular, by UNMIK Police. To this end, Amnesty International urges that sufficient resources - including trained personnel - are made available to UNMIK Police to strengthen and augment the current complement of the CCIU in order to ensure the prompt, impartial and thorough investigation of both ongoing and outstanding ethnically motivated crimes, as well as for outstanding human rights violations and abuses, including "disappearances" and abductions, for which impunity prevails.

*To the UN SRSG and Deputy SRSG (Police and Justice) and UNMIK Police*

The organization urges UNMIK not only to take all measures necessary to ensure the identification and return of the bodies of those who have been abducted to their families for burial, but also to take measures to ensure that legal provisions are made to guarantee the relatives appropriate redress.

Further, and with reference to the provisions of the UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, and the continuing nature of violations against minority communities, Amnesty International urges UNMIK Police to establish, within the CCIU, a unit dedicated to the investigation of all outstanding ethnically motivated killings, so that the perpetrators may be brought to justice.

Amnesty International urges UNMIK police to take further measures to ensure the recruitment and deployment of multi-ethnic members of the KPS to the CCIU, and the provision of KPS officers with appropriate training so that KPS officers may be involved in assisting in the investigation of outstanding ethnically motivated human rights violations and abuses.

Amnesty International calls for the establishment of a designated witnesses and victim protection unit, to be specifically allocated to the victims and witnesses of ethnically based crimes.

Amnesty International urges the establishment of an independent inquiry into the alleged obstruction by KFOR of the investigation into the attack on the Niš Express bus near Podujevo in February 2001, which reportedly prevented the UNMIK Police from fully, impartially and thoroughly investigating this attack. Amnesty International also urges that the incident continue to be investigated so that the perpetrators are finally brought to justice.

### 3. "WE ARE PRISONERS IN OUR OWN HOME":<sup>104</sup> THE RIGHT TO FREEDOM OF MOVEMENT

As early as July 1999, OSCE and UNHCR reported that some minority communities faced daily intimidation "which has completely restricted their freedom of movement."<sup>105</sup> Three years later, despite the efforts of KFOR to provide security for members of minority communities and UNMIK's attempts to restore the rule of law in Kosovo, OSCE and UNHCR continue to report that, "freedom of movement remains the fundamental issue affecting the ability of minorities to live a normal life".<sup>106</sup>

#### Reality and perception<sup>107</sup>

Every minority individual interviewed by Amnesty International identified denial of freedom of movement as one of the primary problems they faced in their daily lives. The denial of this right appeared to be both a practical and psychological problem, and to operate on both an individual and community level. In practice, denial of freedom of movement prevents – or hinders – minority individuals from gaining access to basic rights and services, including justice, education, work, land, housing, health and social welfare. Access to these rights – where minorities gain sufficient freedom of movement to access the relevant institutions – is often further compounded by direct or indirect discrimination in the provision of services. In such circumstances, even one negative experience was likely, as in the case of Roma women in Gjilan/Gnjilanë, to prevent them from attempting to access such services again.<sup>108</sup> On a psychological level, the fear of travelling outside defined boundaries contributed to feelings of imprisonment, isolation, exclusion and despair for the future.

Almost every minority individual interviewed by Amnesty International delegates appeared to have constructed their own personal boundaries – boundaries which often varied within families or households – beyond which they felt that the risk to their lives was too great. In certain enclaves, these boundaries were physical – having been constructed by KFOR – and many individuals never moved outside these physical limits. Even in communities which had not experienced attacks, such as the small community of Serbs who had returned to the isolated village of Osojane/Osojan, near Istok/Istog, and who remain guarded continuously by Spanish KFOR troops, returnees expressed a frustration and sense of isolation that was sometimes overwhelming. "The main problem is freedom of movement," Z. a young man in his early twenties from Osojane told Amnesty International, "It feels like being in prison. We are on our land and that keeps us alive, but I feel like I am living on a reservation like a [North American] Indian. We have a bar. I try to forget. I want to go to Peć, to Istok. There are 15 young people here. Every day is the same - it's boring - we watch TV - we play football with Spanish KFOR - what keeps us alive is that we are friends."

Amnesty International spoke to Serbs displaced from the village of Žegra/Zhegër, south of Gjilan/Gnjilanë, living as IDPs in the villages of Donja Budriga/Budrigë e Poshtme

<sup>104</sup> Interview with two Serb women, Prizren, see below, pp. 30-1. Their names are known to Amnesty International.

<sup>105</sup> *OSCE/UNHCR Preliminary Assessment of the Situation of Ethnic Minorities in Kosovo*, July 1999, p. 3.

<sup>106</sup> *OSCE/UNHCR Ninth Assessment*, May 2002, p.1.

<sup>107</sup> Albanians in Priština/Prishtinë told Amnesty International that they feared that Serbs from Gračanica/Gračanicë would come into Priština/Prishtinë and attack them, while Serbs in Gračanica/Gračanicë feared that, despite KFOR security posts, Albanians from Priština/Prishtinë would drive into Gračanica/Gračanicë and attack them.

<sup>108</sup> See Chapter 4, p. 37.

and Parteš/Partesh, some three to four kilometres away from Žegra/Zhegër. Security was high: Amnesty International witnessed armoured personnel carriers (APCs) form temporary roadblocks as Serb children arrived for school in Parteš/Partesh; later that afternoon, APCs were in operation again, escorting an UNMIK-provided bus of elderly Serbs back to Donja Budriga/Budrigë e Poshtme after shopping at the KFOR-patrolled Serb market in Gjilan/Gnjilanë.

Elsewhere individuals and groups had challenged what they perceived as enforced boundaries,<sup>109</sup> while others had gradually felt more confident in extending the space in which they personally felt confident to operate. These boundaries might be as narrow as a person's house and yard, a small area of a town, a complete enclave, and for some groups a municipality or a region.

## The legacy of impunity

Amnesty International believes that denial of the right to freedom of movement is the direct consequence of the impunity enjoyed by perpetrators of ethnically motivated attacks on members of minority communities over the past three years, and despite a decline in the numbers of reported murders and other attacks on life and property, practical, psychological, and political factors continue to reinforce the fear of attack.

Amnesty International believes that both real and perceived fears about freedom of movement can be considered violations of the right to both physical and mental integrity. Such fears are not merely based on the fear of attacks on that particular individual - although in such cases, the problems faced by the individual, their immediate family and their community are intensified - but are more likely to be derived from reports of attacks on individuals within their own community, or in another similar community in another part of Kosovo, including reports in the recent, and often not so recent, past.<sup>110</sup>

On 19 July 1999, 120 Serb families were forcibly evicted from Žegra/Zhegër by ethnic Albanian paramilitaries. In describing their fear of attack and their consequent lack of freedom of movement, IDPs interviewed by Amnesty International each took the deaths and injuries which had occurred in July 1999 as their main reference point. Even the most recent incident they referred to had occurred more than two years before - when on 7 January 2000, 14 members of the IDP community, escorted by KFOR had visited their church in Žegra, to hold an Orthodox Christmas mass. As they left the church, a crowd of around 1000 Albanians who had gathered in the main street, threw stones and other missiles at their vehicles.

No-one in Žegra/Zhegër reported any attacks on life and property after January 2000,<sup>111</sup> yet individually and collectively the community - unable to return to their own homes, now occupied by ethnic Albanians, or their land - continued to fear further attacks. In recent months the IDPs had periodically erected roadblocks along the road through Donja Budriga/Budrigë e Poshtme to Parteš/Partesh to prevent Albanians using it as a short cut, and to symbolically limit the freedom of movement of the Albanian community.

<sup>109</sup> In Orahovac/Rahovec for example, Roma women reported asking KFOR to remove the razor wire surrounding their *mahala*, as it intensified their feelings of being imprisoned.

<sup>110</sup> While AI delegates were in Kosovo, the impact of the recent murder of a Serb woman, Lubica Kovačević, shot while walking with her husband in the middle of Lipjan/Lipljan on 22 February 2002, resonated throughout the minority communities we visited.

<sup>111</sup> But see p. 13; further attacks were reported in 2002-3.

Like the IDPs from Žegra/Zhegër, many individuals interviewed by Amnesty International had never been physically attacked, but yet they lived with the constant fear of attack, compounded by being subjected to racial abuse and harassment.

In Gjilan/Gnjilanë and Orahovac/Rahovec, Roma and Ashkali women told Amnesty International delegates that they were repeatedly subjected to verbal abuse – “Go back to Serbia”, “Madjup”<sup>112</sup> – if they ventured into the Albanian part of the town. Women reported being spat at, of men miming that their throats would be cut, and various other, often gendered forms of abuse, directed at them by groups of young Albanian men aged 15 to 25. Other forms of harassment reported to Amnesty International included, for example, Albanians emptying their rubbish into an area near a Serb flat in Priština/Prishtinë; the shooting of a dog belonging to a Serb family in Prizren; swastikas spray-painted onto the walls of Roma houses in Gjilan/Gnjilanë.

S., a 27-year old Roma business-woman living in Rahovec/Orahovac,<sup>113</sup> is a founder member of a Romani women’s group in the Kosova Women’s Network (KWN), involved in the identification and development of income generation initiatives for Romani women who have been denied access to their pre-war employment.<sup>114</sup> She lives with her older sister, C., and grandmother in the *mahala*,<sup>115</sup> and they are able to survive relatively well on money sent by four brothers and a sister working abroad. The sisters told Amnesty International how members of the Albanian community had responded in 2001, when 14 Romani women went – for the first time since the end of the war – down into Rahovec to the *Dom Kulturi* for a performance connected with a Kosovo-wide campaign against violence against women. “The [Albanian] women [in the *Dom Kulturi*] said, Oh no! It is those who massacred us! They are here! We said, if we had massacred you, then you wouldn’t be here. We have just come to see the play.” After the performance insults were thrown again. According to the sisters, the women who insulted them were not people they had known in the town before.

Since then C. has seldom visited the town, afraid that Albanians will “throw words” again, although S. reported that freedom of movement for their community had improved since 2001. “It is much easier if we go to Djakova or Prizren, then no-one looks at us,” C. added. S. confirmed that freedom of movement was much better for Roma in Prizren, where she was able to sell bed-linen, made by the Roma women’s group.

While some Roma feel that freedom of movement is not a major problem in Prizren, members of the Serb community, in particular, find their freedom of movement extremely restricted. Amnesty International interviewed two young Serb women in their mid-20s, and their grandmother – a former teacher – who live in the centre of Prizren. The fence, which surrounds the courtyard of their house, is topped with barbed wire erected by KFOR, and sandbags are placed in front of their doors; a notice placed by KFOR on the fence indicated that entering the building without KFOR permission was an offence. Despite the apparent awfulness of their situation, they reflected that it had improved: for the first two years, the grandmother had never left the house; KFOR soldiers had lived with them – and had even done their shopping for them - to afford them protection from attack, after an intruder had entered their house through the roof.

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<sup>112</sup> An Albanian term of abuse for Roma, originally used to describe the sedentary Roma community in Djakovica/Gjakovë.

<sup>113</sup> Despite her self-confidence, like all other interviewees, S. asked us not to use her name (which is known to Amnesty International).

<sup>114</sup> Many of these women had previously worked in a local plastics factory, and at a vineyard and wine-bottling plant. They have been unable to return to their jobs: the companies have now been taken over by Albanians, and only Albanians are employed.

<sup>115</sup> An area or part of a town or city.

Both young women were able to work: one of the sisters worked in the human rights department of an international NGO based in Prizren. She was collected by car every morning from her house, and returned there at the end of the day. She reported that she was prohibited from leaving the office - for her own security - by that organization, "even to buy a packet of cigarettes". Her sister, who worked as a teacher of 10 first-grade children in a small school in an outlying Serbian village 25 kilometres from Prizren, was picked up by German KFOR personnel in an APC each Monday morning and taken to the village where she stayed all week until she was returned by KFOR to her home every Friday evening. Each time she had to telephone KFOR 48 hours in advance to ensure that they came to collect her.

## Pushing the boundaries

In their ninth report, OSCE/UNHCR identified that the reported increase in freedom of movement had been achieved "in spite of ever-present security risks", and in part due to the "personal determination of some members of minority communities to exercise this right".<sup>116</sup> Amnesty International met with such individuals.

M.K. is a retired engineer living in the Yu-building in Priština/Prishtinë, where 167 Serbs,<sup>117</sup> including 24 children, live alongside members of the international community – in the middle of an otherwise ethnic Albanian housing project – constantly protected by KFOR since a mortar attack at the end of August 1999. With the help of the European Agency for Reconstruction they have established a self-contained community with its own shop selling goods – including newspapers – imported from Serbia, a community centre providing information and internet access (also used by a few Albanians), sports facilities and a satellite TV receiving Serbian RTS television.

M.K. was playing chess with an old friend, M.S. who lived more than two kilometres away, and had walked through the town to the Yu-building. M.K. had also recently started going into the centre of Priština/Prishtinë in order to obtain KS registration plates for his car, which would massively increase his freedom of movement.<sup>118</sup> He had already twice visited the MEB bank -which he alleged was guarded by the UÇK<sup>119</sup> – in order to withdraw funds with which he subsequently bought car insurance – only available from two insurance companies in the centre of Priština/Prishtinë. As soon as he felt able to go into town again, he intended to register his car and collect the new plates.

Like S. in Orahovac/Rahovec, the Serbian sisters and their grandmother living in Prizren were prepared to contest the boundaries set for them by UNMIK and KFOR, occasionally leaving the house – "taking our granny as protection" – to go shopping, which had previously been done for them by KFOR. "Everyone knows us", they said, "and we just have to try. If it works, it works, we just have to keep trying. You have to believe in yourself".<sup>120</sup>

<sup>116</sup> OSCE/UNHCR *Ninth Assessment*, May 2002, p.11.

<sup>117</sup> Interview, Priština/Prishtinë, February 2002. An estimated 400 Serbs live in Priština/Prishtinë.

<sup>118</sup> Previous registration plates indicated the driver's town of origin; KS number plates were introduced in 1999, and though available to minorities from their introduction, Serbs reportedly initially refused to accept them, source: UNMIK Police. Their introduction was still being challenged by Serb representatives in northern Kosovo as late as November 2002, *Tanjug News Agency*, 12 November 2002.

<sup>119</sup> Later the same day AI delegates passed the bank and found that it shared an entrance with an UÇK veterans' office and a branch office for the *Trupa Mbrojtëse e Kosovës* (TMK - Kosovo Protection Corps; the demilitarized UÇK/KLA). Albanian security guards were posted outside the building.

<sup>120</sup> A.M. told Amnesty International delegates how when she had to attend a work-related meeting in Priština/Prishtinë, she had asked her Albanian driver to take her to the newly refurbished shopping centre so

## Practical and Legal Remedies

Much of the freedom of movement which members of minority groups in Kosovo are now able to "enjoy" has been facilitated only through the continued provision of static security points and escorts by KFOR, and more recently by UNMIK and UNMIK Police security escorts along specific routes though Kosovo. These have included the "Freedom of movement" train, which runs through Serb enclaves, KFOR-escorted alternative bus services (in conjunction with UNHCR, UNMIK and various NGOs) and civil services bus-lines to bring minorities working for UNMIK into Priština/Prishtinë, as well as escorts for individuals, and for emergencies.

Yet despite overall improvements in the provision of escorted transport services, freedom of movement in Kosovo is limited, conditional, not always available, and only guaranteed through the provision of UNMIK Police or KFOR escorts. Indeed, OSCE/UNHCR have emphasized that this progressive rise in mobility is not equivalent to a fundamental improvement in freedom of movement, which should – in order to be fully enjoyed – not be based on special transports and escorted movements. Indeed, it has been regularly reported that the increased mobility of minorities has been accompanied in some areas by an increase in security incidents, in particular stone-throwing at both buses and trains.<sup>121</sup>

The right to freedom of movement is guaranteed under both Article 2 of Protocol No. 4 to the ECHR<sup>122</sup> and Article 12 (1) of the ICCPR – both incorporated into applicable law in Kosovo – which guarantee that "Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence...". Article 5 (d)(i) of the Convention against All Forms of Racial Discrimination (CERD) guarantees the right, without racial or ethnic discrimination "to freedom of movement and residence within the border of the State". The right is also reinforced in Chapter Four of the Constitutional Framework, which provides at Article 4.4 (e) for all communities to have the right to, "Enjoy unhindered contacts among themselves and with members of their respective communities within and outside of Kosovo".<sup>123</sup>

Principle 14 of the Guiding Principles on Internal Displacement states that: "(1) Every internally displaced person has the right to liberty of movement and freedom to choose his or her residence; and (2) In particular, internally displaced persons have the right to move freely in and out of camps or other settlements." This principle, as the second subparagraph indicates, also applies to those displaced persons who find themselves living in isolated mono-ethnic enclaves, which their inhabitants described to Amnesty International delegates as prisons or "Indian [*sic*] reservations".

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that she could go shopping. At the check-out, she spoke to a young Albanian woman in Serbian, and was amazed to receive a reply in the same language. Similarly, a Gorani man, visiting Prizren to buy spare parts for his washing machine found that when he attempted to speak in Albanian, the owner of the shop encouraged him to speak his own language.

<sup>121</sup> OSCE/UNHCR *Ninth Assessment*, p.11; on 30 September 2002, CIVPOL reported that a truck driver and two accomplices threatened a bus driver that they would damage his bus for carrying Serbian passengers. No injuries were reported. KFOR *Daily News Update*, 17 May 2002 reported that stones were thrown at a train near Pantina/e, resulting in a male passenger receiving a serious eye injury.

<sup>122</sup> Protocol 4, Article 2.1, ECHR: "Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence".

<sup>123</sup> The only provision for freedom of movement in UNSC 1244/99 is under Article 9 (h), which requires KFOR to: "[Ensuring] the protection and freedom of movement *of itself* [AI emphasis], the international civil presence, and other international organizations".



Denial of the right to freedom of movement is generally considered in the context of the denial of freedom of movement by the state,<sup>124</sup> rather than as is the case in Kosovo, by non-state actors.<sup>125</sup> In Kosovo, freedom of movement of members of minority groups is effectively denied not by the state, but by non-state actors – the perpetrators of ethnically motivated attacks, racial or ethnic abuse and harassment. Indeed, it is the state - in the form of KFOR and UNMIK – who have been responsible for establishing progressively increased levels of freedom of movement. However, Amnesty International believes that the state - in the form of UNMIK and the PISG – has the responsibility to guarantee minority groups their right to freedom of movement.

In the previous chapter, Amnesty International identified measures that should be taken by UNMIK to challenge the impunity afforded to those responsible for the murders, abductions and other violent attacks on minorities which contribute to the denial of freedom of movement. Similarly, Amnesty International believes that both UNMIK and the PISG should seek to further counter the climate of fear experienced by members of minority communities. To date, little provision has been made in domestic law to challenge those who seek to deny freedom of movement through intimidation and harassment, although as early as February 2000, the SRSG promulgated UNMIK Regulation 2000/4, *On the Prohibition against Inciting to National, Racial, Religious or Ethnic Hatred, Discord or Intolerance*. This provided for those who publicly incite or spread hatred, discord or intolerance between national, racial, religious, ethnic or other such groups, "which acts are likely to disturb public order" to be punished by fine or imprisonment for up to five years; those in positions of authority are liable to imprisonment for up to eight years.<sup>126</sup> However, Amnesty International is only aware of one case in which an arrest has been made under this law.<sup>127</sup>

The organization also notes that while none of the legislation relating to minorities envisaged in the Constitutional Framework has yet been introduced by the PISG, other sections of Albanian civil society have taken initiatives to establish inter-ethnic cooperation and dialogue. The organization welcomes measures taken by the Committee for Understanding, Tolerance and Co-existence (CUTC), founded by the Council for Defence of Human Rights and Freedoms (CDHRF) on 2 May 2001. Moves towards cooperation and understanding have also been made by women's NGOs including Local Women's Councils founded in 2001 under the auspices of the Kosovo Women's Initiatives and composed of regionally based representatives, with a 20 per cent representation of women from minority

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<sup>124</sup> The concept of the "state" is in itself problematic in Kosovo, which under UN SC 1244/99 forms part of the state of the Federal Republic of Yugoslavia, now Serbia and Montenegro. However, as Serbia and Montenegro is currently unable to guarantee rights to Serbs living in Kosovo, the relevant "state" bodies have to be identified as the UNMIK administration and the PISG.

<sup>125</sup> In CERD General Recommendation 19, the Committee has observed that "a condition of partial segregation may also arise as an unintended by-product of the actions of private persons" and has affirmed that "a condition of racial segregation can also arise without the initiative or any direct involvement by the public authorities", *General Recommendation XIX, Racial segregation and apartheid, Article 3, Forty-seventh session, 1995*. It could be argued that a *de facto* racial or ethnic segregation exists within Kosovo; Article 1 states that "In this Convention, the term 'racial discrimination' shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life."

<sup>126</sup> Under Sections 1.3 and 1.4 of the Regulation, a period of eight years' imprisonment, or up to 10 if the acts were systematic or carried out by persons in authority, could be imposed if public order was disturbed though "coercion, jeopardizing of safety, exposing to derision of national, racial, ethnic or religious symbols, damaging belongings of another, or desecrating monuments or graves".

<sup>127</sup> On 3 October 2002, UNMIK police reported that two men had been arrested on suspicion of committing terrorism, incitement of racial hatred and attempting weapons trafficking, and had been detained by KFOR at US Bondsteel.

communities, as well as by the Kosova Women's Network – a network of ethnic Albanian women's organizations, which in June 2001 expanded its activities to include women's groups from Turkish, Roma, Ashkali, Egyptian and Serbian communities. Further initiatives have also been taken by predominantly Albanian youth groups including *Bol Ma!* (Enough!) and Urban FM, as well as individual members of the former Albanian Students' Union and by the Ombudsperson's Institution.<sup>128</sup>

## Recommendations

### *To UNMIK & KFOR*

Amnesty International urges both KFOR and UNMIK to ensure that sufficient resources are provided so that they may continue to take all necessary and possible measures to enable members of minority communities to enjoy freedom of movement, until such time as a security presence is no longer required to guarantee this right.

The organization urges UNMIK Police and the judiciary to take all measures necessary to ensure that the perpetrators of all ethnically motivated crimes - including low-level forms of harassment - are brought to justice. The organization further urges the authorities, that where such offences are committed by minors, to take appropriate measures to deal with minors suspected of such offences, in accordance with the protection guaranteed to minors made in the Convention on the Rights of the Child.

In relation to attacks perpetrated by private individuals, Amnesty International calls on the UNMIK Police to fully implement the law on racially motivated abuse (UNMIK Reg. 2000/4), and for allegations of this offence to be investigated as promptly, thoroughly and impartially as any other ethnically motivated crimes.

Amnesty International urges UNMIK to provide political and financial support to confidence-building measures, concerted attempts at both a political and grass-roots level to build a constructive dialogue between the majority and minority communities and the provision of human rights education, in conjunction with the PISG, the Institution of the Ombudsperson and domestic NGOs.

### *To the PISG*

Amnesty International calls on the Kosovo Assembly to adopt laws and enforcement mechanisms to prevent defamation and hate speech, as they are required to do under Article 5.4 of the Constitutional Framework,<sup>129</sup> and to take all possible measures to challenge and work towards the elimination of racism within Kosovo.

The organization also urges the PISG to follow the lead shown by some Albanian NGOs, and to take, support and develop initiatives – including human rights education programs – that will encourage mutual tolerance and understanding between the diverse communities of Kosovo.

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<sup>128</sup> "The Ombudsperson may promote reconciliation between ethnic groups", Section 4.2, *UNMIK Reg. 2000/38, On the Establishment of the Ombudsperson Institution in Kosovo*, 30 June 2000.

<sup>129</sup> Under UNMIK Reg. 19/2001, Article 5.4 (a), the PISG should, "adopt[ing] laws and enforcement mechanisms in accordance with international human rights and freedom of expression standards as contained in Article 19 and 29 of the UDHR and the ECHR and its Protocols to prevent defamation or hate speech in the Kosovo systems of mass media".

## 4. ACCESS TO SOCIAL AND ECONOMIC RIGHTS

*"This is the third year of living from day to day. Our lives have shrunk to survival, with no plans for the future or for our children".<sup>130</sup>*

A displaced community of approximately 40 of the 120 Serb families forcibly displaced from the village of Žegra/ Zhegër, near Gjilan/Gnjilanë on 24 June 1999 remain in the nearby villages of Parteš/Partesh and Dornji Budriga where they live with relatives, or rent property from other Serbs, themselves displaced in Serbia. According to the Norwegian Refugee Council (NRC), as from October 2002, many members of this community face eviction as their Serb landlords, now living as IDPs in Serbia, now wish to sell their properties.<sup>131</sup> Previously employed at a radiator factory, now destroyed, and its parent factory in Gjilan/Gnjilanë which now only employs ethnic Albanians, in March 2002 two-thirds of the families were subsisting on humanitarian aid provided by two agencies,<sup>132</sup> while a third – mainly elderly people – received 35-50 DEM (€25) social assistance each month. A smaller number relied on remittances or social assistance from Serbia. The *ambulanta* in both villages were inadequate, women received no ante-natal care and the nearest hospital they could attend in safety was in Serbia, to which they had to travel with a KFOR escort. KFOR also escorted children to school, and buses taking people to the market in Gjilan/Gnjilanë.

The community owns 150-200 hectares of agricultural land in Zegra/Zhegër, four or five kilometres from where they now live. Community leaders believe that if they were able to access this land they would be able to provide themselves with some of the food needs of the community, with employment, and possibly some income.<sup>133</sup> However, the applicable law – UNMIK Regulation 2000/60 – which provides for the restitution of pre-war property<sup>134</sup> does not cover agricultural land. Negotiations with KFOR for protected access to this land have continued throughout 2002.<sup>135</sup>

The International Covenant on Economic, Social and Cultural Rights was incorporated into applicable law under UNMIK Regulation 1999/24.<sup>136</sup> The right to enjoyment of the principal ICESCR rights – the right to work; the right to housing; the right to public health, medical care, social security and social services; the right to education and training – without discrimination are also reinforced in Article 5 (e) of CERD, also applicable in Kosovo. Article 4.4 of the Constitutional Framework further expands on specific economic, social and cultural rights to be enjoyed by minorities: "Communities and their members shall have the right to, *inter alia*.... receive education in their own language; enjoy equal opportunity with respect to

<sup>130</sup> AI interview with M.N., an IDP from Žegra, March 2002.

<sup>131</sup> NRC, *CRP(Civil Rights Project) Monthly Report - September*, 15 October 2002. MN reported that he paid 450 DEM (€225) a year in rent.

<sup>132</sup> In theory, the withdrawal of humanitarian aid entitles former beneficiaries to social assistance; in practice, many of the families will either fail to qualify for social assistance, or may have difficulty accessing this benefit because of their limited freedom of movement.

<sup>133</sup> *The WPF/UNHCR 2001 Food Assessment in Minority Areas* provided a profile for the nearby village of Cernica, with a population of 76 households which continues to be protected by KFOR. With access to only 60 hectares of land, (15 per cent of original holdings), used to grow wheat and maize, the community has only been able to survive through the sale of 80 per cent of their cows and tractors. 55 per cent of the community were dependent on food aid, 11 per cent benefited from social assistance.

<sup>134</sup> Section 1, UNMIK Reg. 2000/60 defines "property" as "any residential house or apartment, any socially owned apartment and any associated property".

<sup>135</sup> See for example, *NRC (CRP) Monthly Report - September 2002*, 15 October 2002.

<sup>136</sup> As amended by UNMIK Reg. 2000/59.

employment in public bodies at all levels, and with respect to access to public services at all levels." Amnesty International notes, however, that the ICESCR is omitted from the international standards that the PISG is required to "respect and ensure" under Article 3.2 of the Framework Constitution.<sup>137</sup>

The situation of minorities in Kosovo reveals the indivisibility and interdependence of rights guaranteed under both the ICCPR and the ICESCR, where continued violations and abuses of civil and political rights have resulted in the effective denial of access to basic social, economic and cultural rights. In seeking to access these rights members of minority communities are subject to both indirect discrimination, in being unable to travel in safety, for example, to workplaces, schools or hospitals, and direct discrimination, based on their ethnicity, if they are able to travel, in gaining access to full enjoyment of those services.

Members of minority communities find themselves unable to gain access to, or are discriminated against in seeking access to, all social and economic, as well as cultural rights. Minorities seeking to return to their pre-war homes find themselves either unable to regain their property, partially due to the enormous backlog of claims which have yet to be addressed by the under-funded Housing and Property Department, and partially due to discrimination by municipal authorities responsible for the allocation of funds for reconstruction.<sup>138</sup> This report focuses on access to three basic ICESCR rights – health, education and employment.

## Health

*"Even the doctors are afraid to treat you," asserted a young Serb woman in Prizren, "The best way to get treatment is to go to the hospital with a member of the international community, and it's best to speak Albanian, even though they can all understand Serbian."*

Amnesty International is concerned that minority communities suffer discrimination in both the provision of healthcare and in access to healthcare. Article 12.1 of the ICESCR recognizes "the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, including the creation of conditions which would ensure to all medical service and medical attention in the event of sickness".<sup>139</sup> In General Comment 14, the Committee on ESC Rights state that this right should not be understood as a right to be healthy, but "as the right to a system of health protection which provides *equality of opportunity* for people to enjoy the highest attainable state of health".<sup>140</sup> Amnesty International believes that members of minority communities are neither provided with a system of health protection, nor with the equality of opportunity in access to healthcare provision, which - according to the UN

<sup>137</sup> Other ICESCR rights denied to minorities in Kosovo are not included in this report, though AI is aware of cases relating, for example, to Article 15 (cultural life), as well as, for example, related ICCPR rights including freedom of expression.

<sup>138</sup> See Chapter 5, below; for a more detailed analysis, see *OSCE/UNHCR Ninth Minorities Assessment*, pp. 30-38. For the provision of equal access to social welfare, see *OSCE/UNHCR Tenth Minorities Assessment*, March 2003, pp. 39-41.

<sup>139</sup> See Para.1, Committee on Economic, Social and Cultural Rights (CESCR), General Comment 14, *The right to the highest attainable standard of health*, CESCR, 25 April - 12 May 2000, E/C.12/2000/4; the right to health is also recognized in Article 25.1 of the UDHR, Article 5 (e) (v) of ICERD, Articles 11.1 (f) and 12 of CEDAW and in Article 24 of the CRC, all of which have been incorporated into domestic law in Kosovo under UNMIK Regulation 2000/28.

<sup>140</sup> CESCR General Comment 14, *The right to the highest attainable state of health (Article 12)*, para. 8. Paragraphs 18 and 19 further articulate the principles of non-discrimination and equal treatment, with respect to the right to the highest attainable state of health. These rights include (a) the right to maternal, child and reproductive health, (c) the right to prevention, treatment and control of diseases, (d) the right to health facilities, goods and services. These rights are further elaborated in Article 12.2 of the ICESCR.

Committee on Social, Economic and Cultural Rights - is a "fundamental human right indispensable for the exercise of other human rights".<sup>141</sup>

Amnesty International has received allegations of direct discrimination against members of minority communities in the provision of healthcare. The UNMIK Social Welfare office in Gjilan/Gnjilanë reported that they were aware of cases in which Albanian doctors had refused to see minority patients, or where they had been deliberately kept waiting for several hours without reasonable cause. A Roma woman informed Amnesty International that when she had taken her daughter to the hospital in Gjilan/Gnjilanë, the doctors had only spoken to her in Albanian, which she had not understood, and had failed to provide her daughter with any treatment. She refused to attend the hospital again.<sup>142</sup> Another interviewee reported that she had only been able to receive treatment at the same hospital after KFOR troops escorting her had threatened the doctor at gun-point to provide treatment.

The Health Policy for Kosovo, published by the Department for Health and Social Welfare in February 2001, aspired to provide healthcare facilities to all patients. In practice, a new "parallel"<sup>143</sup> health system for minorities has developed, as Albanians returned to the hospitals – often leaving primary and secondary care facilities understaffed – and Serb medical staff then took over smaller health facilities in the enclaves and the 580-bed hospital in northern Mitrovica/ë, which was funded by the Serbian Ministry of Health.<sup>144</sup>

Primary healthcare remains inadequate throughout Kosovo, particularly in rural areas. Although this is a problem for all communities - some 28 per cent of the overall population identified the costs of healthcare as prohibitive<sup>145</sup> - minorities, especially those with no access to employment, face particular difficulties. A member of a Serb family of five persons told Amnesty International that they spent some 20 per cent of the family's monthly income – 250 DEM (€125) – on medicines for his 82-year-old mother; an Ashkali IDP similarly reported that since medicines for his heart condition cost 80 DEM (€40) he had stopped taking medication; indeed, in December 2002, NRC reported that Serbs in Mushnikova and Drajcici (Prizren municipality) were neither able to find, nor buy, the medicines they needed.<sup>146</sup>

Amnesty International delegates found primary healthcare for minorities failed to meet even basic standards: Roma in Gjilan/Gnjilanë attended an *ambulanta* at the Orthodox Church, which the World Health Organization (WHO) had identified as inadequate in 2001. A Romani woman told Amnesty International how she had taken her feverish child to the *ambulanta*, where staff were unable to provide her with any treatment, necessitating a two-hour bus journey to Bujanovac in Serbia, and then on to the hospital in Vranje. In Priština/Prishtinë, Serbs in the Yu-building had made their own *ad hoc* arrangements, renting a room for an *ambulanta*, which, with little medical equipment or drugs, was opened for two hours a day by a Serb doctor living in the Yu-building.

<sup>141</sup> CESCR General Comment 14, paragraph 1.

<sup>142</sup> Interview, Violeta and Sh., Gjilan/Gnjilanë; AI delegates were shown the documentation received by the women at the hospital, which was in Latin and Albanian. The women had completely misunderstood the diagnosis given.

<sup>143</sup> Between 1989 and 1999, the healthcare system was dominated by Serbs, following the dismissal or resignation of ethnic Albanians from positions in the health service in 1989. Subsequently, a "parallel" health system, based on a combination of private initiatives and 96 clinics run by the *Mother Theresa* charity, provided healthcare to the Albanian community.

<sup>144</sup> For more information on continuing problems in the healthcare system, see *Human Development Report: Kosovo 2002*, UNDP, 2002, p. 85 ff.

<sup>145</sup> *Ibid.*, p. 88.

<sup>146</sup> Interview, N.N.; interview, H.B.; *NRC Activities Report*, November 2002.

Given the prevalence, within the enclaves, of long-term ill-health, anxiety, depression, addiction, and mental health problems associated with trauma,<sup>147</sup> Amnesty International is concerned that the failure to ensure the provision of an adequate healthcare service within the enclaves violates the right to health of minority individuals and communities. In the absence of adequate healthcare or any measures to assist IDPs to purchase basic medicines, IDPs from Žegra/Zhegër reported a decline in both the mental and physical health of their community, including an increase in mortality rates and the incidence of illnesses. Indeed, when Amnesty International delegates visited Parteš/Partesh in March 2002, they were unable to buy aspirin in the *ambulanta*'s pharmacy. It appeared that there had been no improvements in healthcare in the year since a report in 2001 by the WHO, which categorized the quality of primary, secondary and tertiary care in Parteš/Partesh and Donja Budriga as unacceptable.<sup>148</sup> Pregnant women received no ante-natal monitoring, unless they were able to travel to Vranje in Serbia, 70 kilometres away, by private car or with a KFOR escort to the border; IDPs from this area also travelled to northern Mitrovica/ë. In an emergency, Greek KFOR was able to take people to the Albanian-run hospital in Gjilan/Gnjilanë, where minorities allege they are discriminated against.

Minority communities face additional problems in accessing both secondary and tertiary healthcare,<sup>149</sup> for routine or emergency treatment. Indeed, secondary provision – the Health House/*Dom Zdravlija* – appeared not to exist outside Gračanica/Gračanicë for many minority communities visited by Amnesty International delegates. For secondary or tertiary healthcare, or in case of medical emergency, minorities therefore were travelling long distances. Serbs and Roma in Gjilan/Gnjilanë travelled over 30 kilometres to Bujanovac in southern Serbia, rather than attend the local hospital. A bus was organized by KFOR, though Roma told delegates they preferred to travel in a private car, referring to previous attacks on KFOR-escorted buses.<sup>150</sup>

In an emergency, the minority patient or their relative has to telephone KFOR, or go to a KFOR check-point, and then wait for either KFOR or UNMIK Police to come and take them to either the Health Houses in Kosovo Polje/Fushë e Kosovës or Gračanica/Gračanicë if they live in Priština/Prishtinë, or in other cases, to Mitrovica/ë. In Mitrovica/ë, according to representatives of the Kosovo Doctors' Association and the Serb Doctors' Association, standards of medical treatment had declined, along with access to medicines and sanitary equipment. It was also claimed that patients who arrived at Mitrovica/ë hospital for treatment, arrived at the hospital at a point when their health condition had deteriorated. In one instance reported to UNMIK staff, a man had bled to death while waiting to be taken to hospital.<sup>151</sup>

Amnesty International concludes that there is compelling evidence to suggest that the UNMIK Department of Health continues to deny members of minority communities "the equality of opportunity for people to enjoy the highest attainable state of health", as required by Article 12.1 (d) of the ICESCR, and in CESCR General Comment 14.

<sup>147</sup> *Access to Healthcare in Kosovo's Minority Areas*, WHO, Kosovo, May 2001.

<sup>148</sup> *Ibid.* WHO also reported that access to ante-natal care and maternity services and to emergency transport was unacceptable.

<sup>149</sup> Healthcare in Kosovo in 2002 was funded by 18% of the Kosovo Consolidated Budget, and provided through a three-tier system of *ambulanta*, health-centres or health-houses (*Dom Zdravlija*), and hospitals. *Ambulanti* provide primary healthcare, and are in most cases located within, and are accessible to, minority communities. However, the level and quality of service provided by most of the *ambulanti* within minority communities fails to meet international standards, and many continue to rely on humanitarian organizations for donations of prescription medicines; *ambulanti* are not able to deal with medical emergencies.

<sup>150</sup> There have been at least three attacks on such buses; see for example, the Podujevo attack, pp. 12, 17-18.

<sup>151</sup> Interview, UNMIK Department of Health & Social Welfare, Gjilan/Gnjilanë.

## Education

The right to education is guaranteed under Article 13 (1) and (2) of the ICESCR,<sup>152</sup> which recognises the right "of everyone to education" stressing that in order to achieve this right, education should be available at all levels. This is reinforced by Article 6 of General Comment 13 to the ICESCR which states that in all forms of education, and at all levels of education, the right to an education should be (a) available and (b) accessible... "to everyone, without discrimination", defining non-discrimination as accessible to all, "especially the most vulnerable groups, in law and in fact, without discrimination on any of the prohibited grounds", emphasizing that education should be "within *safe* [our emphasis] physical reach, either by attendance at some reasonably geographic location (e.g. at a neighbourhood school or via modern technology (e.g. access to a distance learning programme)".<sup>153</sup> Further, UNMIK Regulation 2000/11, *On the Establishment of the Administrative Department of Education and Science*, makes provision under Section 2.1 (b) for "the promotion of a single unified, non-discriminatory and inclusive educational system, so that each person's right to education is respected and quality learning opportunities are available to all, irrespective of their ethnic or social origin, race or gender, disability, religion, political or other opinion".<sup>154</sup> The right to "receive education in their own language" is also guaranteed to all communities under Section 4.4 (b) of the Framework Constitution.

### *Primary and Secondary Education*

Despite the provisions of UNMIK Regulation 2000/1, with the exception of a mixed ethnicity school in Kamenica/Kamenicë, few minority children receive the same standard of education as majority children.<sup>155</sup> Although many Serb children now have access to elementary education following the reconstruction of schools in the majority of enclaves, outside the enclaves schools have problems in recruiting qualified teachers because of security concerns, and problems with the provision of escorts. L.M, a Serb elementary-school teacher living in Prizren, teaches in a small Serbian village about 16 kilometres away. Each Monday morning, she is collected from her house by a KFOR APC (Armoured Personnel Carrier), and taken to the village where she remains until the Friday evening, when KFOR pick her up and take her home.

<sup>152</sup> (1) The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.

(2) The States Parties to the present Covenant recognize that, with a view to achieving the full realization of this right: (a) Primary education shall be compulsory and available free to all; (b) Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education; (c) Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education; (d) Fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education; (e) The development of a system of schools at all levels shall be actively pursued, an adequate fellowship system shall be established, and the material conditions of teaching staff shall be continuously improved.

See also Article 29 (1) of the Convention on the Rights of the Child.

<sup>153</sup> Articles 6 & 7, *Committee on Economic, Social and Cultural Rights, General Comment 4*, The right to education, (Article 13), December 1999.

<sup>154</sup> Section 4 (a) of this regulation, promulgated on 3 March 2000, also provides for a non-discriminatory employment policy within the Department.

<sup>155</sup> UNMIK attempted to establish a uniform curriculum in late 2001.

For minority children living outside the enclaves, going to school often means a KFOR-escorted journey of several kilometres. The 20 elementary-school age children, living in the Yu-building in Priština/Prishtinë, are escorted daily to the *osnova skola* at Laplje Selo/Llapiasellë, eight kilometres away, while the four older children are driven a few more kilometres to the *srijedna skola* (secondary school), in Gračanica/Ulpiana. The children travel to and from school in a bus escorted by Greek or Swedish KFOR. This pattern is repeated elsewhere throughout Kosovo, except in enclaves where minorities have set up their own "parallel" education system outside of that financed and administered by UNMIK.<sup>156</sup>



Serb children being escorted home from school by KFOR, Priština/Prishtinë February 2002

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In Dragaš/Dragash, a Gorani father reported that there was only one regional *osnova skola* for Bosniak children, and that his 15-year-old son was only able to receive secondary education in two subjects, economics and law: "Just two professions, nothing else. There's one school, but the teaching [in Albanian and Bosnian] is separated. Lots of teachers have left, and they [the remaining teachers] are not particularly good." A Bosniak reported a similar situation in Prizren: "Now that the Serbs are gone, there are no new teachers, but in Peć/Peja there is now a college to train Bosniak economics teachers." While such teachers remain to be trained, the Bosniak community continues to express concerns about their reduced access to education in their own language, as guaranteed in Article 4.4 (j) of the Framework Constitution, and Article 14 of the Framework Convention on the Protection of National Minorities, incorporated into the Framework Constitution under Article 3.2 (h).<sup>157</sup>

<sup>156</sup> The teachers in these schools, which follow the Serbian Ministry of Education Curriculum, are run by teaching staff, generally paid by UNMIK, or in some cases by the Serbian Ministry of Education.

<sup>157</sup> Article 14 states: "(1) The Parties undertake to recognise that every person belonging to a national minority has the right to learn his or her minority language; (2) In areas inhabited by persons belonging to national minorities traditionally or in substantial numbers, if there is sufficient demand, the Parties shall endeavour to ensure, as far as possible and within the framework of their education systems, that persons belonging to those minorities have adequate opportunities for being taught the minority language or for receiving instruction in this language". The Framework Constitution also includes, at Article 3.2 (g), the European Charter for Regional or Minority Languages.



For the RAE community, access to education is further compromised by direct discrimination, and a historical antipathy towards formal education. Despite a number of initiatives by UNMIK – including a “catch-up” program - to provide Roma children with the language and other skills they might need to access education, the majority of Roma children remain outside the education system.<sup>158</sup>

### **Higher Education**

Despite UNMIK’s intention to reopen the University of Priština/Prishtinë as a multi-ethnic university – (during the 1990's the institution had been dominated by Serbs, with Albanian students attending the parallel university system) – the University of Priština/Prishtinë is now a wholly Albanian institution.<sup>159</sup> Consequently, following an agreement reached between UNMIK and the Serbian Ministry of Education on 16 September 2001, another Serb University of Priština/Prishtinë was reopened in northern Mitrovica/ë, administered by the Serbian Ministry of Education, and teaching the Serbian curriculum.<sup>160</sup>

For young people from minority communities outside of Mitrovica/ë, access to higher education has become increasingly problematic. M.P., a Serb IDP from Žegra/Zhegër, had attended a year of law school at the Faculty in Priština/Prishtinë; in his second year, after June 1999, like many other Serbian students, he attended the temporarily relocated Faculty in Vranje in Southern Serbia.<sup>161</sup> Since the relocation of the University of Priština/Prishtinë to Mitrovica/ë, M.P. is no longer able to continue his education, as his family is unable to fund the costs of travel to, and accommodation in, Mitrovica. M.P.’s sister had not been able to find work since August 2000, despite receiving her teaching diploma.

For M.P. and his sister, the impact of their truncated education and opportunities defined their lives: “I can’t convey the difficulty. We need to start our whole life from the beginning - I should be able to finish school. Everything we had was destroyed - we are without anything now.”

Amnesty International concludes that the right to education for minorities living in Kosovo is not only compromised by the denial of freedom of movement, but also by discrimination in the employment of minority teachers, the lack of developed curricula, a

<sup>158</sup> In Gjilan/Gnjilanë, following a “catch-up” program, an UNMIK plan to integrate over 100 children into an Albanian primary school was thwarted by community fears for the safety of the children, encouraged - according to Balkan Sunflowers - by a community leader. Consequently UNMIK agreed to bus the children to a nearby Serbian village, but as only eight children registered to do so the community leader then decided that the “catch-up” school would become a permanent resource, despite the refusal of UNMIK Department of Education to fund “parallel education”. As a result 55 children aged between seven and 17 receive a substandard education, delivered by two Serbian teachers and untrained RAE volunteers paid by the Serbian Ministry of Education. More recent reports suggest that a new community leader is keen to move towards a curriculum that will allow eventual integration. For an assessment of Roma children’s access to education, see Balkans Sunflowers Minorities Program, *The RAE Condition in Gjilan, Gracanica (Pristina Mun.), Plemetina Village (Obilic Mun.), and Zitkovac (Zvecan Mun.)*.

<sup>159</sup> For reports of a proposal to open a new department within the Education faculty of the University to provide training for primary and secondary education in the Bosnian language, see *OSCE-UNCHR Minorities Report 9*, p. 21, ft.30

<sup>160</sup> See also Administrative Directive 2002/2, implementing UNMIK reg. 2000/11, *On the Establishment of the Administrative Department of Education and Science*, [check 2001/9] which established a Faculty for higher education in Slavic languages - to be known as the North Kosovo university - “pending preparation of a regulatory framework for [and] structuring [the] higher education system in Kosovo”. In May 2002, Albanian students from south Mitrovica protested their exclusion from this mono-ethnic university, *Daily News Update*, 17 May 2002.

<sup>161</sup> Other faculties were relocated to Niš and Kruševac in Serbia.

failure to provide teaching in minority languages, and the failure to provide equality of access to higher education.

## Employment

The right to employment is guaranteed under Article 6 of the ICESCR, which recognizes the right to work, and Article 7 which recognizes the right of everyone to the enjoyment of just and favourable conditions of work. The enjoyment of this right, without discrimination, is further reinforced by Article 5 (e) of the CERD.

Although employment is a primary concern for all communities, for minorities access to employment is an important factor in deciding whether they should continue to remain in Kosovo.<sup>162</sup> Prior to 1999, the majority of Serbs either worked in state-owned industries or for government or municipal authorities in urban centres; they were universally and summarily dismissed from these posts in June 1999.<sup>163</sup> In 2002, it was estimated that 50 per cent<sup>164</sup> of the potential workforce were unemployed; within some Serb and Roma communities, this figure may be as high as 90 per cent, although some are able to work in the informal economy.

The impact of the lack of freedom of movement on economic activity cannot be underestimated – especially in agricultural communities. Serbs in rural communities, whether they derived most of their income from farming, or merely supplemented their income with agricultural work, have similarly been denied access to employment through denial of their freedom of movement, which prevents access to pre-war markets and contact with other agricultural communities. Even those who now farm in order to provide their own food face security problems in accessing agricultural land.<sup>165</sup>

Despite legislation prohibiting discrimination in employment<sup>166</sup> a survey of employment practice, conducted between March and May 2001 in the 20 departments of the Joint Interim Administrative Structure (JIAS) found that members of minority communities, and in particular Serbs, were substantially under-represented within JIAS staff.<sup>167</sup> UNMIK was thus in contravention of its own legislation, and Article 4.4 (d) of the Constitutional Framework which guarantees all communities the right to "enjoy equal opportunity with

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<sup>162</sup> This remains so, despite reports that some two-thirds of Serbs in Serbia proper are living below the poverty line, *The Guardian*, 14 March 2003.

<sup>163</sup> AI notes that following the revocation of Kosovo's autonomy in 1989, ethnic Albanians were similarly subjected to summary dismissal from posts in the state and public sectors, and subsequently discriminated against in the provision of services by the state and public sector on the basis of their ethnicity.

<sup>164</sup> UNDP, *Human Development Report, Kosovo 2002*, p. 69 ff.

<sup>165</sup> See Balkans Sunflowers Minorities Program, *The RAE Condition in Gjilan, Gracanica (Pristina Mun.), Plemetina Village (Obilic Mun.), and Zitkovac (Zvecan Mun.)*, see also Chapter 4; dozens of other individuals have been killed while working in their fields - the most serious attack occurred on 23 July 1999 when 14 Serb farmers were shot dead while working in their fields in Gračko, near Priština/Prishtinë.

<sup>166</sup> See below; see also Public Services Administrative Instruction No. JIAS/PS/AI/200/1: "In order to lay a solid foundation for the emerging Kosovo civil service, the process of recruitment into all grades must be transparent, competitive, fair, and meritorious, reflecting the multi-ethnic character of communities of Kosovo and ensuring equitable gender balance to the extent possible."

<sup>167</sup> 93.9 per cent of employees identified themselves as Albanians, while only 2.3 per cent identified themselves as members of a minority ethnic group; further only four of the 19 departments advertised job vacancies in all of the official languages and application forms were not available in all languages, *JIAS Employment Survey: Results Report*, UNMIK Transitional Department for Good Governance, Equal Opportunity and Gender, 12 November 2001. On 12 November 2001, this Department was succeeded by the Prime Minister's Advisory Offices for Good Governance, Human Rights, Equal Opportunity and Gender, and Communities.

respect to employment in public bodies...".<sup>168</sup> This is particularly noticeable in view of the large number of members of minority groups, particularly those who have completed a university education, who are employed elsewhere in the international community by international NGOs in both professional posts and – even if they are overqualified for such posts – as drivers or translators. M.K. reported that almost every one of the 143 Serb adults living in the Yu-building in Priština/Prishtinë was employed by the international community.<sup>169</sup>



Plemetina Collective Centre in the shadow of the KEK power station

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H.B. is a 58-year-old Ashkali male, forcibly evicted from his home in Obilić/q in June 1999, who now lives at the Plemetina/Plemetin collective centre, located in the shadow of the *Korporata Energjetike e Kosovës* (KEK) electricity power station. Some 7,000-10,000 personnel were formerly employed at KEK, the majority of whom were Serbs and Roma. H.B. had worked at KEK for 28 years until 18 June 1999, when the new Albanian management had told him – and other Roma and Ashkali workers – not to come back. He has been unable to find any other employment since then. Neither did he believe that he would now be entitled to a full pension.

Other Serbs and Roma formerly employed by KEK have lodged appeals against their dismissal, several of which have been taken up by the Norwegian Refugee Council (NRC). On 3 April 2001, Gani Bajrami, a Roma from Orlan/e, applied to return to his job at KEK. He had worked for KEK as a security guard at the Batllava hydroelectric dam from 1995 until June 1999, when he left work because of concerns for his personal security. He was informed on 19 April 2001 that, as he had not reapplied for his job before 1 July 2000 – up to which

<sup>168</sup> Section 4.2, UNMIK Reg. 2001/19 requires non-majority community representation in the civil service to be closely proportionate to the representation of non-majority communities in the assembly, where 20 of the 120 assembly seats have been set aside for minorities; thus 16.6 per cent of JIAS employees should have been from minority communities.

<sup>169</sup> Three out of four members of the Turkish community in Prizren interviewed by Amnesty International were employed by international NGOs.

date former employees had been entitled to return to work - he could not be reinstated. On 21 December 2001, the Priština/Prishtinë Municipal Court (as a civil court of the first instance) nullified the KEK decision as illegal, and instructed KEK to return the plaintiff to work and to his previous duties within a period of eight days "under the threat of forced compliance".<sup>170</sup> KEK appealed against the decision; at the end of February 2003 the appeal was still pending at Priština/Prishtinë District Court.<sup>171</sup>

To date, NRC – a small international NGO – is the only organization to have actively advocated in employment cases on behalf of minority communities.<sup>172</sup> Throughout Kosovo, few former employees have been returned to their former positions: in Gjilan/Gnjilanë, Roma community leaders submitted a list of employees to each of the companies which had formerly employed them, asking for restitution to their former jobs. No replies were ever received, and as far as Amnesty International is aware, no further actions were taken by the Roma community leaders.

## Prohibitions against discrimination in employment and access to services

All UNMIK regulations establishing the various departments responsible for the provision of services, including health and education, prohibit any discrimination by these departments in both the provision of services and in employment.<sup>173</sup>

Amnesty International is concerned that UNMIK itself is in violation of the prohibitions against discrimination articulated in section 2 of UNMIK Regulation 1/1999, and subsequently in Section 1.4 of UNMIK Regulation 1999/24, which states: "No person undertaking public duties or holding public office in Kosovo shall discriminate against any person on any ground such as sex, race, colour, language, religion, political or other opinion, national, ethnic or social origin, association with a national community, property, birth or other status." Although UNMIK has repealed legislation that was perceived to be discriminatory against one section of the population,<sup>174</sup> they have also promulgated regulations – with regard to the sale of property in certain areas of Kosovo – which was judged by the Ombudperson's Institution to discriminate against Serbs.<sup>175</sup>

<sup>170</sup> Hearing held at Priština/Prishtinë Municipal Court, 21 December 2001, nullifying KEK Decision no. 1166, 19 April 2001.

<sup>171</sup> E-mail from Civil Rights Project Manager, NRC, 28 February 2003.

<sup>172</sup> In December 2002, for example, 79 per cent of the cases taken up by NRC were brought by members of minority communities, and almost half of all cases were generated by requests for assistance made by IDPs within Kosovo, or IDPs in Serbia and Montenegro.

<sup>173</sup> See, for example, Section 2.1, UNMIK Reg. 2000/9: *On the Establishment of the Administrative Department of Health and Social Welfare*, 3 March 2000; Section 2.1(b), UNMIK Reg. 2000/11, *On the Establishment of the Administrative Department of Education and Science*, 3 March 2000; UNMIK Reg. 2000/24, *On the Establishment of the Administrative Department of Labour and Employment*, 21 April 2000. UNMIK Reg. 2000/9, *On the Establishment of the Administrative Department of Local Administration*, 2 March 2000: s.2.2 (f) "[The Department shall:] Monitor the quality of Municipal services, and ensure that the services are provided on a non-discriminatory, efficient, transparent and accountable basis."

<sup>174</sup> UNMIK Reg. 1999/10, *On the Repeal of Discriminatory Legislation affecting Housing and Rights in Property*, 13 October 1999. This legislation discriminated against Albanians.

<sup>175</sup> See for example, *Special Report No. 5 of the Ombudsperson Institution in Kosovo On Certain Aspects of UNMIK Regulation 2001/17, On the Registration of Contracts for the Sale of Real Property in Specific Geographical Areas of Kosovo* (22 August 2001) dated 29 October 2001. The Regulation, in effect, attempted to regulate – or indeed prevent – the sale of property by members of minority communities to members of majority communities in certain areas.

In March 2000, UNMIK introduced - in law if not in practice - a series of regulations which prohibited discrimination on the grounds of both ethnicity and gender, in both service provision and employment practice within the Administrative Departments providing essential services including local administration, health and social welfare, education, and other public services, reconstruction, post and telecommunications and in employment. Regulations passed at the same time, regulating employment in the private sector, make no such provision.<sup>176</sup>

Further, in establishing the Administrative Department for Democratic Governance and Civil Society, the regulation charged the Department with "promotion of democratic governance, and the promotion of democratic principles, human rights, pluralism, non-discrimination, equal opportunity, gender equality". It also made explicit reference to minorities, charging the department with responsibility for "the promotion of public participation in governance, fulfilment of civic responsibilities, minority re-integration and post conflict reconciliation", as well as specifying non-discriminatory employment policies within the department.<sup>177</sup>

Regulations were also promulgated with regard to the regulation of public affairs by municipalities - the basic unit of local government. Section 2.3 of UNMIK Regulation 2000/45, *On Self-government of Municipalities in Kosovo*, charged "All organs and bodies of a municipality [to]ensure that the inhabitants of the municipality enjoy all rights and freedoms without distinction of any kind, such as race, ethnicity, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and that they have fair and equal employment ...Municipalities shall give effect in their policies and practices the need to promote coexistence between their inhabitants and to create appropriate conditions enabling all communities to express and develop their ethnic, cultural, religious and linguistic identities".<sup>178</sup> Given that municipalities are responsible for almost all local service provision, including *inter alia* pre-primary, primary and secondary education, primary healthcare, social services and housing, their role with respect to the provision of services to members of minority communities without discrimination is key.<sup>179</sup>

Thus by the end of 2000 legislation to ensure that both at governmental level (administrative departments) and at municipal level, a policy of non-discrimination in both employment and service provision was in place. However, this legislation failed to provide any specific mechanisms – apart from recourse to civil proceedings – by which those alleging discrimination were able to seek redress.

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<sup>176</sup> See for example, UNMIK Reg. 2000/33, *On Licensing of Security Service Providers in Kosovo and the Regulation of their employees*, 25 May 2000.

<sup>177</sup> UNMIK Reg. 2000/40, *On the Establishment of the Administrative Department for Democratic Governance and Civil Society*, 10 July 2000.

<sup>178</sup> UNMIK Regulation 2000/9, *On the Establishment of the Administrative Department of Local Administration* provides at s.2.2 (f) that the Department shall: Monitor the quality of Municipal services, and ensure that the services are provided on a non-discriminatory, efficient, transparent and accountable basis.

<sup>179</sup> The regulation was promulgated on 11 August 2000. To enable them to discharge this responsibility, s.23 establishes a Communities Committee and a Mediation Committee - with the provision that each community in the municipality is represented by at least one member of the communities committee (23.3 (a)), and that the Mediation committee should include "representatives in a fair proportion of communities in the municipality who do not belong to the community that is in the majority in the municipality" (s.23.3. (D) (ii)). The responsibility of the Communities committee are set out in s.23.4 and they are required to ensure that "no person in public office discriminates against any person, that all persons enjoy, on an equal basis, political, economic, social and cultural rights, and fair and equal employment opportunities", and that the civil service contains a fair proportion of representatives of communities at all levels.

Section 2 of UNMIK Reg. 2001/27 prohibits discrimination in employment on the basis of race, ...religion, ...national extraction or social origin. Under Section 25.2 of the same Regulation, a violation of Section 2 determined by a labour inspector (s.24) may be punishable by a fine of 20,000 DEM (€10,000). However, the regulation does not provide a specific mechanism, such as an employment tribunal, by which persons alleging discrimination by government or municipal departments might gain redress, except to provide that redress may be sought in the civil courts.<sup>180</sup>

The organization therefore welcomes the recent drafting of an Omnibus Anti-discrimination Law which aspires to bring applicable law in line with international standards, to promote uniformity in the adjudication of all forms of discrimination and to provide effective legal remedies for victims of all forms of discrimination, and effective, proportionate, and dissuasive sanctions to address violations.<sup>181</sup>

## Conclusions & Recommendations

Amnesty International concludes that members of minority communities are subject to both indirect and direct racial discrimination in violation of the CERD, and as a consequence are denied access to rights set out in the ICESCR.<sup>182</sup> Direct discrimination occurs where services are denied to minorities, or not provided on the same basis as services enjoyed by the majority population; indirect discrimination results from restrictions on freedom of movement, and the resultant provision of substandard services within minority communities.

Progress for minorities in gaining access to basic social and economic rights on an equal basis has been hampered by the growth of parallel services, particularly in education and healthcare. Although such services may satisfy, in part, short-term community needs, beneficiaries are often provided with services that fall short of those available to majority communities.

Amnesty International recognizes the dilemma faced by UNMIK in reconciling the international community's long-term aspirations towards a multi-ethnic Kosovo with the immediate need to provide, particularly in the field of education, realization of the basic rights set out in domestic law and applicable international standards. The organization also recognizes that, although there are serious and genuine concerns about freedom of movement, it has also been possible to observe a reluctance to use services or a willingness to set up parallel institutions that is perhaps more informed by community politics than by community fears.

<sup>180</sup> To date, few plaintiffs have been successful in gaining redress through the civil courts; see for example, the case of Elife Murseli who had alleged that she had been subject to unfair recruitment practice by the Kacanik Education Authority, under Article 36, UNMIK Regulation 2000/45. Despite the decision of the Kacanik Municipal Court in her favour, the Ombudsperson found that UNMIK Department of Education and Science had violated Article 6 of the ECHR in failing to execute the final judgment of the competent court, Ombudsperson Institution in Kosovo, *Report: Registration number 122/01, Elife Murseli against the United Nations Mission in Kosovo*, 10 December 2001.

<sup>181</sup> Information received from OSCE, Kosovo. The draft law was submitted by the OSCE at the end of August 2002 to the Office of the Prime Minister for proposal to the Kosovo Assembly - pending a ruling by the UNMIK Office of Legal Affairs that the law did not come within the remit of UNMIK's reserved powers.

<sup>182</sup> Article 1(1) of CERD defines racial discrimination as: "Any distinction, exclusion, restriction or preference based on race, colour, descent, or *national or ethnic origin* [AI emphasis] which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms; in the political, economic, social, cultural or any other field of public life." This definition also includes xenophobia, and discrimination based on caste or ethnicity.

*To UNMIK and the PISG*

To amend UNMIK Regulation 2001/19, which established the Framework Constitution for the Provisional Self-Government of Kosovo, to include the International Covenant on Economic and Social Rights.

Further, Amnesty International urges the Assembly to pass into law, as soon as reasonably possible, the proposed Omnibus Anti-Discrimination Law, and to take appropriate measures to guarantee access to prompt and effective legal remedies for all those alleging such discrimination to all persons in Kosovo, irrespective of their ethnic background.

To ensure that all minorities are guaranteed the rights set out in the Framework Convention on the Protection of Minorities, and – with reference to education – those set out in the *Hague Recommendations Regarding the Education Rights of National Minorities*.<sup>183</sup>

*To the PISG*

Amnesty International believes that members of minority communities are currently denied the rights to education, employment and public services as guaranteed in the Constitutional Framework, and urges the Kosovo Assembly to pass the necessary legislation and implement measures to ensure that all communities are provided with the guarantees set out in Chapter 4 of the Constitutional Framework.

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<sup>183</sup> "The Hague Recommendations Regarding the Education Rights of National Minorities", Foundation on Inter-Ethnic Relations, October 1996.

## 5. THE RIGHT TO RETURN

Amnesty International is concerned that without guarantees for the safety, freedom of movement and access to social and economic rights for those minorities already living in Kosovo, the prognosis for safe and sustainable minority return remains bleak. Continuing violations and abuses of human rights, and continuing impunity for those violations and abuses, will inform any decisions to return that Kosovo Serbs and Roma – currently displaced in Serbia and Montenegro, or those granted temporary protection in third countries – may wish to make.

The launch of yet another "Task Force on Returns"<sup>184</sup> – comprising representatives of UNMIK, KFOR, UNHCR and the PISG – on 1 November 2002 signals the continuing failure of both the international community and the PISG to ensure the conditions necessary for the safe and sustainable return of any significant numbers of members of minority communities.

The organization is also concerned that a lack of commitment to the return process from international funders may well provide a further barrier to the prospects for return. In reports prepared for a donor conference held in Brussels on 5 November 2002, UNMIK identified a funding gap of some 37,413 million Euro required to facilitate returns in 2003 – including funding required for both the reconstruction and repossession of property – based on the "known intentions of particular IDP communities", and noting that funding needs were likely to "continue to increase in the following years".<sup>185</sup>

By November 2002, UNMIK had estimated that in 2002 some 2,467 minority IDPs had returned to Kosovo, contributing to an estimated total of 5,800 minority returnees,<sup>186</sup> a substantial increase on 2001, when UNHCR had observed that "no significant spontaneous return movement of internally displaced minorities or minority refugees have taken place in the last year".<sup>187</sup> However, UNHCR reported that only 924 Serbs had returned in 2002, as compared to 2,505 Serb returns between January 2000 and December 2001,<sup>188</sup> the majority (1,826) of whom returned in 2000. Reports from all sources have consistently indicated that – to date – the majority of the Serb IDP population have little intention of returning to Kosovo. Many – although numbers are uncertain – have made their final decision, taking up employment<sup>189</sup> and, increasingly during 2001, selling their property in Kosovo.

<sup>184</sup> UNMIK Office of Returns and Communities, *2003 Strategy for Sustainable Returns*, 5 November 2002.

<sup>185</sup> *Kosovo: UNMIK – Government Report for the Donor Co-ordination Meeting for Kosovo, Brussels, November 2002*, pp. 41-2. UNMIK Office of Returns and Communities, *2003 Strategy for Sustainable Returns*, 5 November 2002, pp. 14-15.

On 26 June 2002, UNHCR warned of a funding crisis that could threaten their operations throughout the Balkans, and possibly result in cuts to their programs in both Kosovo and Croatia, *UNHCR urges continued support for the Balkans*, <http://www.unhcr.ch/cgi-bin/texis/vtx/home/>

<sup>186</sup> Michael Steiner, SRS, speech to the Humanitarian Working Group of the Peace Implementation Council, Geneva, 27 June 2002. Despite the overall decline in serious crimes against members of minority communities after February 2001, and a tendency for a decrease in the number of departures (which had previously outweighed arrivals), UNHCR also observed an increase in the sale of property during 2001.

<sup>187</sup> *UNHCR Protection*, 2002, p.4. UNHCR Priština/Priştinë, *Minority Returns from Internal or External Displacement by Community of Return*, March 2003.

<sup>188</sup> This figure excludes those returning to a situation of displacement, Mitrovica north and northern municipalities.

<sup>189</sup> Interview, Leskovac Human Rights Committee, July 2002; for example, Serbian police officers previously deployed in Kosovo have been relocated to duties in Serbia, interview with UNHCHR, Serbia, July 2002.



Despite the human rights violations and abuses suffered by Roma and Ashkali living in Serbia,<sup>190</sup> and an increase in forcible returns from third countries, few of the pre-war population had returned to Kosovo by the end of 2002. In 2000, some 700 RAE had returned spontaneously, mainly from Montenegro, and in 2001, a further 286 - including the organized return of 127 individuals from Macedonia – had returned. But by 2002, although numbers remained relatively low, the rate of returns had almost doubled on the previous two years, with 362 Roma and 861 Ashkali and Egyptiani returning during the year.<sup>191</sup>

## Background

The right of refugees and displaced persons to return is guaranteed in international human rights law, which guarantees the right to freedom of movement and residence in Article 13 of the Universal Declaration of Human Rights, reiterated in Article 12 of the ICCPR.<sup>192</sup> This right is further endorsed in the Guiding Principles on Internal Displacement: Principle 14 describes the right to liberty of movement and freedom to choose one's own residence, while Principle 28 sets a duty for "competent authorities" to establish conditions and provide the means "which allow internally displaced people to return voluntarily, in safety and in dignity, to their homes or places of habitual residence".<sup>193</sup> In Kosovo, this right was further reinforced by UNSC Res. 1244/99 at Article 9 (c) which provides that KFOR should "Establish a secure environment in which refugees and displaced persons can return home in safety....", and at Article 11 (k) where UNMIK is mandated to "[assure] the safe and unimpeded return of all refugees and displaced persons to their homes in Kosovo". The same right is expressed in the Framework Constitution, which provides "for all refugees and displaced persons to have the right to return to their homes".<sup>194</sup> Primary responsibility for the protection of minorities and returning refugees lay with UNHCR until November 2001 when responsibility for returns, and the protection of minorities, passed from UNHCR to the UNMIK Office for Returns and Communities.<sup>195</sup>

Given the highly politicized context in which the right to return is perceived amongst Serbs, a number of other players have sought to influence, and in some cases determine, the dynamic of the return process, including the Kosovo-based Serb political alliance – the *Povratak* (Return) Coalition - and the Serbian Government Coordination Centre for Kosovo and Metohija, led by Serbian Deputy Prime Minister Nebojša Čović. On 13 January 2001 the Joint Committee on the Return of Kosovo Serbs (JCR)<sup>196</sup> published the *Framework for Return 2001*, identifying conditions necessary for sustainable return, such as *inter alia*, the creation of adequate security conditions, inter-ethnic dialogue and basic reconstruction needs. RAE communities identified similar pre-conditions in their *Framework for Roma, Ashkali and Egyptiani Returns*, published in February 2001.

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<sup>190</sup> See, for example, *FRY: Amnesty International's concerns in the Federal Republic of Yugoslavia*, AI Index: EUR 70/010/2002, September 2002.

<sup>191</sup> UNHCR Priština/Prishtinë, *Minority Returns from Internal or External Displacement by Community of Return*, March 2003.

<sup>192</sup> As well as in Protocol No. 4 to the ECHR.

<sup>193</sup> Developed by the Representative of the Secretary-General on Internally Displaced Persons. Commission on Human Rights 54<sup>th</sup> Session, UN Doc E/CN.4/1998/53/ADD.2.

<sup>194</sup> Chapter 3, *Constitutional Framework*, UNMIK Regulation 2001/19

<sup>195</sup> UNMIK's primary responsibility for returns had already been set out in Regulation 2001/18, which established areas of responsibility of the PISG, and those reserved for the SRSG.

<sup>196</sup> The JCR was established in May 2000 under the joint presidency of the principals of UNMIK, KFOR, SNC, OSCE and UNHT, and including UNMIK Deputy SGRGs for civilian, administration and reconstruction.

Although the SRSG and, through him, UNMIK were identified as responsible for returns in the Framework Constitution, following the formation of the PISG in March 2002, the return coalition *Povratak* lobbied for the creation of a Ministry for Returns. Subsequently, a new cabinet level post of Inter-Ministerial Coordinator for Returns in the Office of the Prime Minister was established in April 2002, and Milorad Trajković of *Povratak* was subsequently appointed to the post.<sup>197</sup> On 10 June, another *Povratak* member, Nenad Radosavljević, was appointed Senior Adviser in the UNMIK Office of Returns and Communities. At a municipal level, several mechanisms were in place by 2002, including the establishment of Municipal Working Groups on Returns in 24 out of 30 municipalities.<sup>198</sup>

Security improvements by early 2002 prompted further initiatives<sup>199</sup> by UNMIK, expressed in the SRSG's identification of ten "benchmarks" – including enforcement of the rule of law and freedom of movement – required for minority return. The document reinforced UNMIK's role in creating these conditions through multi-ethnicity and integration, facilitated by the presence of Serbs in the PISG and complemented by the strengthening of relations with Belgrade.<sup>200</sup> Identifying returns as a priority for UNMIK, the SRSG in 2002 promised that "this year and next year would be decisive". UNMIK then published *The Right to Sustainable Return* on 17 May – launched on 21 May 2002 at the house of an Ashkali returnee in Vučitrn/Vushtrri – emphasizing that returns should be based on individual and informed decisions, and that they should be sustainable. The document also prioritized support for return to the returnee's place of origin, counselled against re-location to new settlements and – clearly mindful of the Osojane/Osojan return<sup>201</sup> – against "strategic or state motivated returns" conditioned by "political or other conditionalities".

In May, UNMIK's plans for returns to 25 different locations were outlined, and 22 local and regional groups started work to prepare the infrastructure, and on 5 July the SRSG announced an increase in assistance for returning IDPs.<sup>202</sup> However, Amnesty International is concerned that, despite these initiatives, few returns have taken place.

Apart from security considerations, the return process has also been hindered by a failure of both the reconstruction and repossession processes to adequately address the needs of minority communities. According to UNHCR/OSCE minorities appear to have been subject to both direct and indirect discrimination in gaining access to reconstruction funding. In early 2001, UNHCR/OSCE reported that expenditure on minority reconstruction - allocated through municipal housing commissions - amounted to two per cent of the 2000 budget, in comparison to the five to 10 per cent committed to minority reconstruction, a shortfall which had led to allegations of discrimination by minorities against the Albanian municipal authorities. Despite the allocation of some 15 per cent of the reconstruction budget

<sup>197</sup> This post is afforded the rank of Minister, and the right to participate in Cabinet meetings.

<sup>198</sup> *Briefing of Peacekeeping Under-Secretary General to the Security Council, SC/7434*, 26 June 2002.

<sup>199</sup> In April 2002, the SRSG announced the completion of damage assessment in over 80 minority and urban areas, and that Serb returns to 14 villages and non-Serb minority returns to another seven locations should start "within the next three months", *Report of the SRSG to the Security Council, 4518<sup>th</sup> and 4519<sup>th</sup> Meetings, SC/7375*, 24 April 2002.

<sup>200</sup> Other "benchmarks" included: existence of effective, representative and functioning institutions; development of a sound basis for a market economy; clarity of property title; normalized dialogue with Belgrade; and the reduction and transformation of the KPC (Kosovo Protection Corps, TMK) in line with its mandate. This policy was further articulated in the "*Returns and Reintegration Programme for 2002 to 2003*", May 2002.

<sup>201</sup> See below.

<sup>202</sup> In his address to the Security Council in April 2002, the SRSG reported that damage assessment in 80 minority villages and urban locations had been completed; it was anticipated that Serb returns to 14 villages and seven non-Serb locations would take place within the following three months, *Address of Michael Steiner SRSG, UNMIK PR/719*, 24 April 2002.

for minorities in 2001, in practice, by September 2001 only 3.72 per cent (242 out of 6,500) of damaged houses belonging to minorities had received assistance.<sup>203</sup>

The right of minorities to gain access to their pre-war property was specifically guaranteed under Section 2.5 of UNMIK Reg. 2000/60, which provided that, "Any refugee or displaced person with a right to property has a right to return to the property, or to dispose of it in accordance with the law, subject to the present regulation". Provision for the resolution for such property claims outside of the judicial system, and outside of the authority of Municipal Authorities was established by UNMIK regulation 1999/23, *On The Establishment of The Housing and Property Directorate and The Housing and Property Claims Commission*<sup>204</sup> which established the Housing and Property Directorate (HPD) and the Housing and Property Claims Commission (HPCC).<sup>205</sup> Provision was made in s.1.2 of the regulation for the HPD to receive and register claims concerning residential property, "As an exception to the jurisdiction of the local courts", and with jurisdiction over the three categories of claims, including at "(c) Claims by natural persons who were the owners, possessors or occupancy right holders of residential real property prior to 24 March 1999 and who do not now enjoy possession of the property, and where the property has not voluntarily been transferred". The vast majority of claims by minorities fall into this category.

Initially, minorities encountered difficulties in both registering and following up their claims. HPD offices were originally established in urban areas, which few minorities were prepared to visit, but subsequently opened mobile HPD units, with minority access in some areas - notably Peć/Pejë - assisted by the NRC, who were able to provide HPD with information about caseloads in particular villages or town where residents lacked freedom of movement.<sup>206</sup> Access was subsequently increased following the implementation of the FRY-UNMIK Agreement in November 2001, and three HPD offices were opened in Kraljevo, Niš and Belgrade; mobile teams, operating from offices in Kosovo, extended the claims collections process to Novi Pazar, Kursumlja and Vranje. By the end of 2001, only 1,918 claims had been registered outside Kosovo,<sup>207</sup> but - following the opening of these offices -

<sup>203</sup> *UNHCR/OSCE Eighth Minorities Assessment*, p. 25; for the relative lack of progress, see also *UNHCR/OSCE Tenth Minorities Assessment*, March 2003, pp. 44-6. UNHCR also identified problems related to the lack of freedom of movement, in that recipients of reconstruction assistance could not always be guaranteed delivery of materials, or satisfy the conditions requiring them to be *in situ* to receive the reconstruction assistance; the absence of extended family networks to assist with the reconstruction was also noted: Interview with UNHCR Protection Officer, Priština/Priştinë, February 2002.

<sup>204</sup> 23 November 1999; The HPD - which operates separately, and outside of UNMIK - was charged with the following: (a) Conduct an inventory of abandoned private, state and socially owned housing; (b) Supervise the utilization or rental of such abandoned property on a temporary basis for humanitarian purposes; rental monies of abandoned private and socially owned property shall be recorded in a separate account in trust for the rightful owner, subject to deduction of relevant expenses; (c) Provide guidance to UNMIK, including CIVPOL and UNHCR, as well as KFOR on specific issues related to property rights; and (d) Conduct research leading to recommended policies and legislation concerning property rights. The two other categories of claims are: (a) Claims by natural persons whose ownership, possession or occupancy rights to residential real property have been revoked subsequent to 23 March 1989 on the basis of legislation which is discriminatory in its application or intent; (b) Claims by natural persons who entered into informal transactions of residential real property on the basis of the free will of the parties subsequent to 23 March 1989.

<sup>205</sup> See also UNMIK Reg. 2000/60, *On residential property claims and The Rules of Procedure and Evidence of the Housing and Property Directorate and the Housing and Property Claims Commission*, 31 October 2000.

<sup>206</sup> *NRC Annual Report, Civil Rights Project*, 15 February 2002, p. 5.

<sup>207</sup> *Property Rights in Kosovo*, OSCE Mission in Kosovo, January 2002.

by September 2002, the number of claims registered had reached 20,900 of which 13,500 had been collected outside Kosovo.<sup>208</sup>

Despite these efforts to ensure the registration of claims by members of minority groups, the number of claims which have been resolved have, until recently, remained relatively small in number, mainly due to a lack of funding for the HPD, which has been dogged with financial problems since its inception.<sup>209</sup> Reorganization of the HPD in mid-2002 led to a significant increase in the rate at which claims were verified – between July and September 2002 some 4,005 claims were verified, making a total of 5,996 verified claims to date. However, the number of claims resolved by the HPD remains low, and the numbers of cases taken before the Kosovo Courts with respect to the determination of property ownership have as yet been relatively small in number, partially because few minorities enjoy unhindered access to the courts.<sup>210</sup> Where evictions of some 440 unlawful occupants have been ordered, HPD have reported that evictees have returned to the properties, broken the seals and either re-occupied or looted the properties; flats have also reportedly been set on fire.

### "Spontaneous Returns"<sup>211</sup>

*"If the international community really want to bring us back then they have to think about the young people."*<sup>212</sup>

Spontaneous, unaccompanied returns by Serbs have continued in rural areas - particularly to enclaves around Priština/Prishtinë where Serb communities have remained since 1999, few having returned to urban areas previously dominated by Serbs. Roma, Ashkali and Egyptian communities have predominantly returned to semi-urban areas. The social profile of minority returnees is comparable with that of Bosnia-Herzegovina: predominantly of pensionable age, they include a smaller number of middle-aged returnees whose children have completed their education, but relatively few families with children of school age. Their decisions to return have been influenced by the presence of others of the same ethnic group, perceived improvements in the security situation - usually conveyed by relatives - and the probability of gaining access to housing, land and education.

Despite a number of successful returns, many spontaneous returns have been frustrated, or prevented, by continuing attacks.<sup>213</sup> In Gjilan/Gnjilanë in March 2002, Amnesty

<sup>208</sup> HPD Periodic Report, July-September 2002, <http://www.hpdkosovo.org/>. See below for barriers faced by IDPs in Serbia in accessing documents in order to prove title to their property. The NRC has also identified that minority Albanians in northern Mitrovica face similar problems in accessing the necessary documents.

<sup>209</sup> The HPD is not part of UNMIK, but is managed by UN-HABITAT. In November 2002, continued funding of the HPD through 2003 was estimated at 5.5 million Euro, *Kosovo: UNMIK – Government Report for the Donor Co-ordination Meeting for Kosovo, Brussels, November 2002*, p. 42. UNMIK Office of Returns and Communities, *2003 Strategy for Sustainable Returns*, 5 November 2002, pp. 14-15

<sup>210</sup> According to OSCE Serbs only enjoy "relatively unhindered access [to courts] in Kamenica/Kamenicë, Vitina/Viti, Gjilan/Gnjilanë and Mitrovica/ë, and in the illegitimate parallel courts in Northern Mitrovica/ë, Mitrovica/ë region and Štrpce/Shterpçë. Roma experience similar problems in Priština/Prishtinë, Kosovo Polje/ Fushe e Kosoves and Oblicë/q and Gjilan/Gnjilanë. OSCE also noted the lack of uniform policy by UNMIK police in the provision of escorts for those who need to attend civil courts.

<sup>211</sup> "Spontaneous returns" may be understood to include returns that are unassisted or unprompted by an internationally organised return arrangement. It is usually associated with returns by the individual or family's own means, and is not normally accompanied by other kinds of assistance. Spontaneous returns are not necessarily voluntary.

<sup>212</sup> Returnee, Osojane/Osojan, March 2002.

<sup>213</sup> In the Gjilan/Gnjilanë area, collaboration between returning IDPs, UNHCR and other agencies has resulted in the successful return of Serbs to the mixed villages of Makreš/Makresh and Stara Kolja in Novoberdo/Novo Brdo municipality, Interview, UNHCR Field Office, March 2002.

International delegates met a man<sup>214</sup> whose brother's family had planned to return to two houses within the Roma *mahala*. He was salvaging what he could from the wreckage of one of the properties, both of which had been burned a few weeks after his brother had announced his intention to return, despite 24-hour KFOR patrols and floodlighting of the area introduced after two other houses had been burned following the house-holders' expressed intentions to return.



A Roma man salvages what he can from the remains of his brother's house

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When Amnesty International met L.M. – a 50-year-old Roma woman – she had returned to Gjilan/Gnjilanë three months previously, and by March 2002 was almost at the point of leaving again. In her 50s, with five adult children who also wished to return, L.M. had lived in Gjilan/Gnjilanë for 29 years before she had “left her city with a broken heart” in March 1999. After the bombing, she returned, believing that, as an Albanian-speaking Roma, “I would be free”, but within a few months, “because of all the problems” she left again, moving to Bujanovac in southern Serbia. Assisted by an international NGO, she was now trying to return to her home. She reported how Albanians had moved into her property, demolished the house, and the adjoining two houses and reused the materials - “from three houses they have built a new house”. Because the HPD do not accept claims relating to destroyed property, she was attempting to locate her former neighbours so that, despite the absence of any applicable process, they might make a joint claim for the restitution of their three properties.<sup>215</sup> She told Amnesty International how she had been intimidated by local Albanians at a meeting with municipal officials, and that when she had visited the site of her house during a “go and see visit” - accompanied by 15 international staff and municipal officials - a group of Albanians had threatened the group with verbal abuse, one of them allegedly wielding an axe. Unable to regain her job as a nurse at the local hospital, LM was resigned to leaving again, “Because I have no life here.”<sup>216</sup>

<sup>214</sup> He did not wish to give his name to AI delegates.

<sup>215</sup> LM also noted that the HPD official had “thought I was Albanian because I am white”.

<sup>216</sup> In March, an estimated 56 persons remained in the two Roma *mahalas* in Gjilan/Gnjilanë out of an original population of 3,000. However by December 2002, a leader of the Roma community was reported as

## "Organized returns"<sup>217</sup>

In contrast to those who return "spontaneously", other refugees and IDPs have returned with the assistance of various agencies, primarily UNCHR, who have – through a system of "go and see visits", conducted in liaison with local communities, ensured that conditions necessary for sustainable return are in place both in advance of, and during the progress of such returns. Over the last two years successful returns have taken place under the auspices of UNHCR, especially in Gjilan/Gnjilanë municipality, to the mixed villages of Makreš/Makres and more recently to Gjilan/Gnjilanë town itself.

### *The return to Osojan/e*

The Osojan/Osojane valley was one of five sites in the Peć/Peja region identified as a location for return in the Serb *Framework for Return 2001*.<sup>218</sup> Conditions for return to the rural settlement, consisting of seven predominantly Serb villages and hamlets and isolated from the nearby urban Albanian population in Istok/Istog, were identified as including the provision of security, the removal of unexploded ordnance and mines, the funding of bus lines, the provision of security escorts and the rehabilitation of the road linking the valley to the northern municipalities. Houses were identified as in need of reconstruction, as was the *ambulanta* and the school. Investment was also needed for the water and electricity infrastructure, as well agricultural projects, and the rehabilitation of the nearby [former uniform] factory, in order to ensure a sustainable return. The report concluded: "Promotion of inter-ethnic dialogue, as well encouraging Kosovo Serbs to participate in municipal structures, would be essential components of safe and sustainable return." When Amnesty International delegates visited Osojan/Osojane in March 2002, some seven months after the return, few of these conditions were in place.

In July 2001, a "go and see" visit for IDPs living in the Belgrade area was met with organized protests in Istok/Istog by 1-2,000 Albanians, who reportedly identified a number of suspected war criminals among the potential returnees. However, a second visit provoked little reaction, and on 13 August 2001 the first group of 54 IDPs returned, amidst enormous publicity, and with the "blessing" of the Serb Orthodox Church. They were joined on 23 August by a further 83 IDPs. Almost immediately, on seeing the conditions that faced them, some 43 decided to return to Serbia.<sup>219</sup> Meanwhile in Istok/Istog, some 2000 Albanians protested their return.

When Amnesty International delegates visited in March 2002, 101 returnees protected by some 163 Spanish KFOR troops were living – either in their own homes or temporary structures – clustered in the bottom of the valley. Although some returnees had rebuilt their homes themselves, a large number of houses were still under reconstruction; according to UNHCR, and other returnees interviewed by Amnesty International, the majority

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stating that the security situation had improved, and that some 18 Roma families had returned, *KosovaLive*, 7 December 2002.

<sup>217</sup> "Organised returns" may be understood to include returns that are part of an organised return arrangement, usually including transport assistance and other forms of reintegration assistance. As with spontaneous returns, organised returns are not necessarily voluntary.

<sup>218</sup> *Framework for Return*, 13 January 2001, pp. 31-2. According to several sources, the return to Osojane/Osojan was conceived as early as February 2000, following a meeting between Orthodox Bishop Artemije and Madelaine Albright, then US Secretary of State.

<sup>219</sup> *KFOR News Release*, 3 September 2001. UNHCR confirmed that those who left, decided to do so almost immediately, although they reported that one returnee had stayed long enough for his house to be reconstructed, and then had promptly sold it. According to UNHCR, returnees are now required to sign a contract agreeing to remain for three years.

of returnees were reportedly unable or unwilling to rebuild their own houses, and so paid ethnic Albanian labourers were being escorted into Osojane/Osojan each day to work on the reconstruction of the houses.<sup>220</sup> Although some returnees were working on rebuilding the *ambulanta* and the school, little agricultural work had taken place, despite the donation of a tractor and other materials by the Serbian Coordination Committee. Returnees continued to depend on humanitarian aid, much of it imported from Serbia.



Returnee standing outside the house he rebuilt, Osojane/Osojan, March 2002

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The return to Osojane/Osojan highlights Amnesty International's concerns about the politicization of the return process: ostensibly managed by UNMIK, but with the political backing of Belgrade and the Serb Orthodox Church, UNHCR – which assisted the return from their office in Peč/Pejë – also identified this return as extremely problematic. Despite the “go and see” visits, UNHCR expressed concerns to Amnesty International that they had been unable – in the four-month process preceding the return – to get the names of any returnees. This was confirmed in Amnesty International's interviews with returnees – including a 93-year-old woman, who had “just got on the bus” – who had made their decision to return at extremely short notice, never believing that they would actually get to Osojane/Osojan. “On August 12 [2001], we decided to come on a visit; when we saw the situation, it was awful, everything was burned, there were no animals, there was no life. But after 20 days all the dogs came back.”<sup>221</sup>

Amnesty International is concerned that no dialogue between the Serb and Albanian communities had been established prior to the return, neither had any measures been taken

<sup>220</sup> According to UNHCR and some of the other returnees, significant numbers of returnees had refused to participate in - and in some cases had obstructed - the reconstruction process. Water and electricity supplies were being replaced by two international NGOs.

<sup>221</sup> Interview with V.K, Osojane/Osojan, March 2002.

subsequently to foster re-integration, although a few returnees had talked to some Albanians living in the immediate vicinity. By March 2002, not one returnee had ventured into the outside community, except to attend a meeting subsequently cancelled by Albanian municipal representatives. Despite some recent initiatives to remedy the situation, on 10 October 2002, when a bus of 41 Serb pensioners from Osojane/Osojan travelled into Peć/Peja to register for their pensions, the bus was attacked by some 600 local Albanians with stones and petrol bombs; several UNMIK Police, KPS and KFOR personnel were injured.<sup>222</sup>

Finally, no strategy had been devised to ensure the sustainability of the return and the ultimate withdrawal of KFOR protection.<sup>223</sup> The viability of the return has, from its inception, been entirely dependent on the military security presence, upon which returnees are – according to UNHCR – psychologically dependent. By September 2002, a total of 300 Serbs had returned to Osojane/Osojan, where they remain guarded by KFOR, isolated in their valley, with no freedom of movement, and as yet no prospects of employment or of integration.<sup>224</sup>

### *The return to Vučitrn/Vushtrri*

By contrast, the return to Vučitrn/Vushtrri appears only to have taken place after many of the conditions of sustainable return had been put in place. No organized returns of RAE had taken place since the murder of the Ashkali refugees in November 2000,<sup>225</sup> but in May 2002, 59 Ashkali individuals returned to the Vučitrn/Vushtrri municipality, a return facilitated by the ethnic Albanian NGO, the CDHRF, in conjunction with the UNMIK Office for Returns and UNHCR.<sup>226</sup> This return had been initiated by the IDPs, in conjunction with the CDHRF Committee for Understanding, Tolerance and Coexistence (CUTC), who had travelled to Serbia to meet with the Ashkali families who had reportedly been living at a rubbish dump in Novi Sad. The CUTC had also met with representatives of the local Albanian community, the KPC/TMK and the KPS – and had seen the adoption by the municipal assembly of a resolution in favour of the return. Efforts had also been made to seek the cooperation of families occupying the houses of the Ashkali families – and in identifying those individuals who might have tried to frustrate the proposed return.<sup>227</sup>

The CDHRF reported that “the displaced persons stated that their return was conditioned with [*sic*] the will of the majority, that is Albanians”, a sentiment that was also – perhaps surprisingly – expressed to Amnesty International delegates by one Osojane returnee.<sup>228</sup>

<sup>222</sup> UNMIK Police Daily Press Update, 10 October 2002. By 25 October, five suspects – including some of those believed to have been responsible for organizing the attack – had been arrested, UNMIK Police Press Release, 25 October 2002.

<sup>223</sup> Interview, UNHCR Field Office, Peć/Peja, March 2002.

<sup>224</sup> CDHRF, *Report on the situation of minority communities during September, 2002*. Similar political initiatives have been proposed: on 22 May 2002 Miroslav Solević, Chair of the Council for Serb Returns, announced that a column of 30,000 to 100,000 Serbs would attempt a mass return to Kosovo on 28 June, Vivodan (St Vitus Day) – the anniversary of the 1389 Battle of the Field of Kosovo Polje. UNMIK Media Monitoring, 23 May 2002, quoting *Koha Ditore* and *Zeri; Danas* and *B92*, 6 June 2002. Solević announced another planned return – reportedly involving some 5,000 families on 16 September 2002, but no such returns have taken place to date.

<sup>225</sup> See Chapter 2, p.11.

<sup>226</sup> The return was accompanied by a much-publicized visit – on 21 May – by the SRSG and the press, UNMIK Daily Update, 22 May 2002. According to reports 352 Ashkali families had lived in Vushtrri before June 1999; when KFOR entered Kosovo, only 24 people remained.

<sup>227</sup> Despite these measures, UNHCR have reported a grenade attack on the returnee community, as well as persistent stone-throwing by Albanian children against returnee children, *Update on the Situation of Roma, Ashkaelia, Egyptian, Bosniak and Gorani in Kosovo*, UNHCR (Kosovo) January 2003.

<sup>228</sup> CHDRF, *Monthly Report*, April 2002.



## IDPs in Serbia and Montenegro

In addition to the estimated 22,500 Serbs, Roma and members of minority communities – including Albanians - displaced within Kosovo,<sup>229</sup> Serbia and Montenegro currently hosts the largest number of displaced persons in Europe, with an estimated 202,000 IDPs in Serbia and 32,000 IDPs in Montenegro, both of which also continue to host almost 390,000 refugees from Bosnia-Herzegovina and Croatia.<sup>230</sup>

Conditions for Serbs displaced from Kosovo remain, for the most part, unsatisfactory. Following their re-registration in April 2002, some improvements have been made in the provision of access to basic humanitarian, social and other forms of assistance, although access to healthcare remains inadequate. Some seven per cent of registered IDPs remain in collective centres<sup>231</sup> - including unofficial centres, which often had no access to water or electricity and are excluded from regular humanitarian assistance programs. The remaining 93 per cent of IDPs live in private accommodation, either in rented accommodation where they face problems in finding money for rent and other living expenses, or with relatives, friends or a host family, where conditions are often overcrowded and IDPs often remain financially dependent on their overstretched hosts.<sup>232</sup> However, along with domiciled Roma, the displaced Roma and Ashkali community<sup>233</sup> suffer from frequent ill-treatment and harassment by Serbian police, including repeated evictions from their temporary settlements, and suffer from racist attacks by non-state actors, who are very rarely brought to justice. They also face both practical problems and active discrimination when seeking IDP registration or acquiring legal identity cards, without which they are unable to gain access to health and social welfare services.<sup>234</sup> Even where they gain access they then face routine discrimination. Roma children are also discriminated against in gaining access to education in both Serbia and Montenegro.

The return of Roma to overcrowded enclaves in Kosovo, where the majority of returnees live with relatives, and where communities are already dependent on an overstretched social welfare system, would place unbearable strain on public services unable to cope with existing demands,<sup>235</sup> and where, without freedom of movement, Roma are unable to resume their pre-war occupations.

## Minority refugees in third countries

Amnesty International is extremely concerned about the forcible return of minority refugees, particularly from the European Union (EU) and Switzerland. From January to the end of July 2002 UNHCR documented 3,740 forcible returns (53 ethnic minority persons) mainly from states in the EU which in 1999 had granted refugees temporary protection outside of the 1951 Convention relating to the Status of Refugees. Amnesty International considers that the

<sup>229</sup> This figure is an estimate, *UNHCR*, 31 August 2002.

<sup>230</sup> Based on statistics published by UNHCR.

<sup>231</sup> On 6 January 2003, the Serbian Commissioner for Refugees, Sanda Rasković Ivić, announced plans to close some 70 collective centres, *Studio B TV*, 6 January 2003.

<sup>232</sup> *UN Office for the Coordination of Humanitarian Affairs (OCHA)*, 26 April 2002, pp. 16-17.

<sup>233</sup> Some 28,000 Roma were registered as displaced in Serbia and Montenegro in 2002, although Roma groups claim that up to 80,000 remain displaced, *UN OCHA*, 26 April 2002, p. 22.

<sup>234</sup> Roma, many of whom live in extreme poverty, find it impossible to travel in order to acquire identity cards. Records were transferred from Kosovo in June 1999, but records for Priština/Prishtinë residents, for example, were transferred to Kraljevo, and Gnjilane/Gjilan records to Niš. In Leskovac, where all personnel records for displaced people from Uroševac/Ferizaj and Pejë/Pejë are held, officials reportedly refused to issue identity cards to both Roma and Albanians holding the necessary documentation.

<sup>235</sup> Interview, UNMIK Social Services officer, Gjilan/Gnjilanë.

forcible return of members of minority groups to Kosovo would be a violation of the principle of *non-refoulement* and place minority individuals at risk.<sup>236</sup>

Both Amnesty International and UNHCR have repeatedly opposed the return of minorities to Kosovo, and to date, threats to forcibly return minority refugees have been rescinded by several governments. However, the organization is increasingly concerned about reports of the numbers of Roma who have been, and continue to be, forcibly returned. In Germany, although both Roma and Serbs will be exempted from a "repatriation" programme, proposed for 2003 in Memorandum of Understanding between the German government and UNMIK, some 1,000 Bosniaks, Gorani, Turks, Ashkali and Egyptiani will be returned.<sup>237</sup> In Austria measures were taken to exclude refugees from Serbia and Montenegro from state shelters while appeals were being heard, although Kosovo Serbs have been exempted from the new ruling.<sup>238</sup>

Amnesty International notes that in considering whether an internal flight alternative is available in other parts of Serbia and Montenegro, UNHCR have concluded that internal displacement for minorities from Kosovo in Serbia or Montenegro "do[es] not offer an adequate or reasonable alternative to international protection".<sup>239</sup>

## Conclusions & Recommendations

Amnesty International is concerned that UNMIK has failed to implement adequate measures to ensure that all those internally displaced within Kosovo and elsewhere in Serbia and Montenegro, as well as refugees in third countries, are able to exercise their right to return in safety and in dignity.<sup>240</sup>

Amnesty International is extremely concerned that little has been done to monitor, fully investigate and bring to justice those responsible for those incidents of return-related violence, harassment and intimidation which have occurred. In the light of continued proposals for the organized mass return of Serbs, the organization is concerned that such attacks may well increase in frequency and intensity.

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<sup>236</sup> In addition to members of minority groups, or ethnic Albanians from areas in which they should be a minority, AI also identifies several other categories of individuals who should continue to enjoy protection. These include former detainees, victims of extreme violence and trauma (including victims of rape and sexual violence), persons who refused to join or deserted from the KLA, persons known to be critical of the former KLA or the self-declared "*Provisional Government of Kosovo*", and ethnic Albanians who risk being accused of collaboration with the former Serbian authorities, as well as members of families involved in blood feuds, *Amnesty International's recommendations on the return of refugees to Kosovo*, AI Index: EUR 70/31/00, July 2000.

<sup>237</sup> On 6 December German interior ministers announced that some 32,000 minority refugees – including Roma and Ashkali would be returned – either voluntarily or forcibly - in coordination with UNMIK, *AFP*, 6 December 2002. This was superseded by the Memorandum of Understanding, dated 31 March 2003.

<sup>238</sup> *Tough new asylum rules bite in pre-vote Austria*, Reuters, 3 October 2002.

<sup>239</sup> In an interview with AI in March 2002, UNHCR officials identify the paucity of mechanisms and support available for those who had already been forcibly returned.

<sup>240</sup> Factors in Kosovo mirror those identified by minority returnees in Bosnia-Herzegovina: the rights to personal security; to be freely able to express their national affiliation or religious beliefs, and to express themselves in their own language; to be free from discrimination in seeking employment and in enjoying other rights; and of their children to receive an adequate education. Concerns were also expressed about impunity for those – often still holding positions of leadership – suspected of violations of international humanitarian law, *Bosnia-Herzegovina: Righting the Wrongs*, AI Index: EUR 63/28/97, December 1997.

***To EU member states and other states hosting refugees from Kosovo***

Amnesty International urges host countries to ensure that all minority refugees from Kosovo should have access to an individual procedure, and urges host countries not to end international protection for any member of a minority community.<sup>241</sup> Host countries should also ensure that refugees still in need of protection are not subject in any way to pressure or inducement to "voluntarily" return.<sup>242</sup>

If the return of rejected asylum-seekers from Kosovo who have been found not to be in need of protection in a fair procedure cannot be effected in safety and dignity and with full respect for their human rights, it should be delayed in a manner consistent with basic human rights principles. If, after a reasonable period of time, it becomes clear that a rejected asylum-seeker cannot be returned, she or he should be permitted to have her or his application for protection revisited, including the consideration of new claims.

***To the authorities in Serbia and Montenegro***

While recognizing that all IDPs in Serbia and Montenegro have the right to return, Amnesty International urges the Serbian authorities in particular to be guided by the principles of protection set out in the 1998 Guiding Principles on Internal Displacement and to refrain from supporting return initiatives outside of a program of organized and phased returns organized in conjunction with the UNMIK Office for Returns and Communities, UNHCR and relevant NGOs.

Further, Amnesty International urges the Serbian government in particular to do all in its powers to improve the availability of personal documents and other records, currently held in Serbia, which are needed by IDPs in Serbia and Kosovo in order to gain access to their property and other rights.

***To the international community***

Amnesty International urges the international community to continue to provide troops to KFOR and police officers to UNMIK, until such time as is no longer necessary, in order to ensure the safety of minority returnees who have returned to their homes.

Amnesty International urges the international community to ensure that the necessary funding is provided to UNMIK and its implementing partners to ensure the continued funding of the return and reconstruction process. Similarly, the organization urges the international community to ensure that the required funding is provided through UN-HABITAT to the Housing and Property Directorate to ensure that the backlog of property claims by members of minority communities are resolved as swiftly as possible.

***To UNMIK***

Amnesty International urges that in order to guarantee sustainable return, the following conditions should be in place: security, freedom of movement, access to illegally occupied property, the reconstruction of property and access to cultivated lands, and non-discriminatory access to services including education, healthcare, social assistance, and other public services. The organization also urges that further measures be implemented to support voluntary returns, including provision of effective access to the Housing and Property Department.

Amnesty International urges UNMIK to undertake a systematic documentation and analysis of suspected incidents of return-related attacks against life and property. The organization urges that all such incidents of attacks on persons and property are promptly and

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<sup>241</sup> This includes ethnic Albanians who originate from areas of Kosovo where Albanians are a minority.

<sup>242</sup> *UNHCR Position on the Continued Protection Needs of Individuals from Kosovo*, April 2002.

fully investigated, and that all those reasonably suspected of organizing or participating in such crimes are brought to justice in the course of fair proceedings. Amnesty International further urges that adequate resources be made available to the CCIU within UNMIK Police to similarly fully investigate and deal with the backlog of such cases.

***To the PISG***

Amnesty International urges the PISG to take all necessary measures to ensure that the Albanian community, including municipal authorities controlled by the Albanian majority, take all necessary measures to ensure the successful return and integration of minority returnees, including through ensuring the provision of non-discriminatory access to public services including education, healthcare and social assistance.

Recognizing the initiatives to facilitate return taken by the Albanian NGO, the Council for the Defence of Human Rights and Freedoms, Amnesty International urges the PISG to take a lead in encouraging other sections of Albanian civil society to adopt similar initiatives to facilitate the return of minority IDPs.

## ABBREVIATIONS

AAK	Alliance for the Future of Kosova; in Albanian, <i>Aleanca për Ardhmërinë e Kosovës</i>
CIVPOL	UN Civilian Police Force (UNMIK Police)
CDHRF	Council for the Defence of Human Rights and Freedoms; in Albanian <i>Këshilli për Mbrojtjen e të Drejtave e të Lirive të Njeriut</i>
ECHR	European Convention for the Protection of Human Rights and Fundamental Freedoms
HPD	Housing and Property Directorate
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICTY	International Criminal Tribunal for the former Yugoslavia (Tribunal)
KFOR	Kosovo Force (the NATO-lead peacekeeping force)
KLA/UÇK	Kosovo Liberation Army; in Albanian <i>Ushtria Çlirimtare e Kosovës</i>
KPS	Kosovo Police Service; in Albanian, <i>Shërbimi Policor ë Kosovës</i>
LDK	Democratic League of Kosovo; in Albanian <i>Lidhja Demokratike e Kosovës</i>
NATO	North Atlantic Treaty Organization
NRC	Norwegian Refugee Council
OHCHR	Office of the (UN) High Commissioner for Human Rights
OSCE	Organization for Security and Co-operation in Europe
PISG	Provisional Institutions of Self Government
(P)PDK	Party of Democratic Progress; in Albanian <i>Partia për Progres Demokratik të Kosovës</i>
SDA	Party of Democratic Action; in Bosnian, <i>Stranka Demokratske Akcije</i>
SRSG	Special Representative of the [United Nations] Secretary-General
TMK	Kosovo Protection Corps (KPC); in Albanian, <i>Trupa Mbrojtëse e Kosovës</i> .
UN	United Nations
UNHCHR	United Nations High Commissioner for Human Rights
UNHCR	United Nations High Commissioner for Refugees
UNMIK	United Nations Interim Administration Mission in Kosovo