YUGOSLAVIA

A Human Rights Crisis in Kosovo Province

The protection of Kosovo's displaced and refugees

Introduction

Since March this year the world has looked on as gross human rights abuses perpetrated in Kosovo province of Serbia have forcibly displaced ever multiplying numbers of people, predominantly ethnic Albanians, who form the majority in Kosovo. Civilians have been the principal victims of the violence and have frequently been deliberately targeted. Those who have fled have done so with cause.

The obligations of the international community to provide protection and assistance to those fleeing this conflict are clear. However, much of the emphasis during the conflict has been placed on the provision of humanitarian assistance and not on the rights of those in need of international protection to get it - whether that be as refugees exercising their right to seek and to enjoy asylum in another country or as internally displaced persons to seek safety in another part of the country, and the right to be protected against the forcible return to or resettlement in a place where their life, safety, liberty and/or health would be at risk.

As at the end of September, shortly before the Executive Committee (EXCOM) of the United Nations High Commissioner for Refugees (UNHCR) opens its annual meeting, at which the protection and assistance needs of Kosovo's refugees and displaced persons will be discussed, even conservative estimates put the number of recently created internally displaced persons at more than 260,000 and refugees at over 30,000. The bulk of the refugees, more than 17,000, arrived initially in neighbouring Albania. Several thousand are also thought to have sought protection in the former Yugoslav Republic of Macedonia. On top of this, tens of thousands of ethnic Albanians had already sought protection as refugees, mainly in western European countries, even before the current conflict.

The Serbian and Yugoslav Federal authorities claim that they are only fighting terrorists and deny that they are perpetrating human rights violations and deliberately displacing thousands upon thousands of ethnic Albanians. On the other hand testimony, photographs and video tapes from journalists, human rights organizations and other observers tell a clear story of systematic destruction, not only of ethnic Albanian houses, but also of the population's means of survival, hindering the return of the displaced and refugees. Furthermore, ethnic Albanian people have been victims of extrajudicial

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executions, "disappearances", the use of excessive force, torture, ill-treatment, incommunicado detention and unfair trials. For the civilian ethnic Albanian population remaining in or returning to their homes is not just a question of replacing missing roofs, for them return must mean doing so in safety and dignity, protected from a repeat of the human rights violations which have displaced them in recent months and had led them to fear even the appearance of the Serbian police forces for years before.

Serb civilians and others have also suffered human rights abuses and displacement at the hands of ethnic Albanians, albeit on a much smaller scale. Serbs, Montenegrins and ethnic Albanians perceived as "loyal" to the Serbian authorities have been unlawfully killed, ill-treated, taken hostage and abducted (many are feared to be dead) by the KLA (Kosovo Liberation Army) or other armed ethnic Albanians. Serb civilians have been forcibly displaced from their homes and villages by armed ethnic Albanians although the leadership of the KLA claims that it respects international humanitarian law.

Limited access for human rights monitors

Serious allegations of the massacre of civilians, such as the recent allegations of the unlawful killing of ethnic Albanians in Gornje Obrinje and Golubovac of September have failed to receive impartial investigations. The authorities have restricted the deployment of international human rights observers. Requests by the Office of the UN High Commissioner for Human Rights (OHCHR) to establish an office in Priština and expand its field presence have been denied to date; the Mission of Long-Duration of the Organization for Security and Co-operation in Europe (OSCE) has been barred since 1993; Non-governmental organizations (NGOs) have difficulty in obtaining visas. In short, the authorities appear singularly unwilling to accept international human rights monitors.

The European Community [Union] Monitoring Mission (ECMM) and Kosovo Diplomatic Observer Mission (KDOM) which are present in Kosovo are primarily political in character and are not equipped for adequate human rights monitoring.

Real confidence building must mean human rights monitors

The Security Council Resolution (1199/98) adopted on 23 September refers to international monitoring of the situation in Kosovo without spelling out the need for human rights monitors. A framework for the immediate presence of human rights monitors is urgently needed. It is well recognized that human rights monitors, by their mere presence as witnesses, can serve to limit human rights violations. Human rights monitors can also thoroughly investigate reports of violations, in a role distinct from that of diplomatic observers and humanitarian actors. Moreover, a human rights monitoring mission should and would be able to act independently of the political considerations

binding other agencies involved in finding a political solution for Kosovo. It should help to ensure that the rights of victims of human rights abuses and displaced persons of all nationalities are represented and not ignored for reasons of political expediency.

Recent calls by Sadako Ogata, the United Nations High Commissioner for Refugees, for the creation of the conditions necessary for all displaced people to return home before the winter months set in and the humanitarian crisis deepens, depend on a solution being found to this crisis that guarantees safe returns. It is obvious that an end to the burning and looting of houses in Kosovo villages and an end to the abuses by the forces which cause people to flee from their homes will be the primary step needed. The international community has been adequately alerted to the humanitarian emergency in the region; however, there has been inadequate attention paid to the abuses of human rights of the displaced. Refugees and the internally displaced must not return to their homes without assessments of the safety of this return, without firm guarantees for their security, and without the mechanisms in place to monitor the human rights situation in the province prior to and after return. UNHCR has been firm in its view that there should be no return of refugees and rejected asylum-seekers from their havens in other countries.

Further confidence building would come from demonstrations that impunity for human rights violators will be ended. Although the Serbian authorities cannot be excused from their duty to ensure that thorough and adequate criminal investigations are carried out (and remove anyone suspected of human rights violations from their positions of authority), it is evident that the UN International Criminal Tribunal for the former Yugoslavia (Tribunal) must be the major player in seeing justice done in Kosovo. Although allowing some access for the Tribunal, the FRY and Serbian authorities have failed to cooperate. The Tribunal's President recently addressed the Security Council (which established the Tribunal) to call for action over FRY's failure to hand over for trial men indicted for alleged violations of international humanitarian law in Croatia. A failure which the Tribunal presented as rendering its Kosovo investigations meaningless. The Security Council has so far failed to act in this respect.

The development of the refugee and displacement crisis in the former Yugoslavia

Around two and a half million people were displaced from or within Bosnia-Herzegovina and Croatia in the conflict in the former Yugoslavia between 1991 and 1995. It is both ironic and tragic that the crisis in Kosovo has seen at least 7,000, perhaps many more, Kosovo Albanians seek protection in Bosnia-Herzegovina, up until now the main site of forcible displacement. In Kosovo, Bosnian and Croatian Serb refugees who had been accommodated in Kosovo by the FRY authorities have also been displaced from their temporary or new homes.

The safe and dignified return of refugees and displaced persons who wish to return to their home areas in Bosnia-Herzegovina and Croatia has hardly begun. The

authorities in Bosnia-Herzegovina and Croatia have to varying degrees resisted the return of "minorities" through a combination of bureaucracy, inaction (most of all an unwillingness to solve the problem of damaged homes or homes occupied by displaced persons who cannot or will not move) and other active measures, including the destruction of reconstructed homes. There remain huge problems in terms of the security for returning members of minorities, particularly if they attempt to return in any significant numbers. Concern for their security is reinforced by the widespread impunity for the perpetrators of past human rights abuses.[1]

Besides the intransigence of the authorities in Bosnia-Herzegovina, the delicate political situation has not been helped by the policies of states hosting refugees, in particular Germany, where the authorities have insisted on forcibly repatriating refugees, even though they cannot be assured of returning to their home areas. In many cases they are Bosniacs from the Republika Srpska (the Bosnian Serb entity) who cannot return there. Their relocation to other areas of Bosnia-Herzegovina complicates and may even make impossible the return of other refugees or displaced persons to their home areas. As a further complication, some of the recently arrived Kosovo Albanian asylum-seekers in the Federation (the Bosniac-Croat) entity, have even been housed in centres intended for the temporary accommodation of returning Bosnian refugees.

Despite numerous differences between the situation in Bosnia-Herzegovina and Croatia and that in Kosovo, there are many lessons to be learned from the former; above all, that the situations and problems of Bosnia-Herzegovina and Croatia on one hand and Kosovo on the other are interrelated and interdependent. The international community must act decisively to prevent and redress the human rights abuses which are causing the displacement and that solutions must be found that remove pressure for the premature return of refugees or displaced persons where it is unsafe to do so.

Kosovo refugees prior to the present crisis

[1] See *All the way home: Safe "minority returns" as a just remedy and for a secure future*, AI Index: EUR 63/02/98, February 1998, for Amnesty International's analysis and concerns on the return and protection of refugees and displaced persons from Bosnia-Herzegovina and *Impunity for killings after Storm*, AI Index: EUR 64/04/98, August 1998 on impunity in Croatia.

Prior to March 1998 there was no widespread pattern of internal displacement within Kosovo. Thousands of Kosovo Albanians had, however, sought protection as refugees from frequent human rights violations (in the form of torture, ill-treatment or imprisonment) perpetrated against ethnic Albanians in Kosovo.[2] Before the current crisis, tens of thousands had sought protection abroad, most in Western Europe.

Displacement in the current crisis

The current crisis in Kosovo began at the end of February 1998 with the incidents in Likošane, _irez and Donji Prekaz.[3] Some 20,000 ethnic Albanians were believed to have been displaced within Kosovo or to Montenegro during these and other police operations in the following four weeks.[4] Ethnic Albanians fled, terrified by the killings of some 80 people in the incidents, a large number of whom were apparently unlawfully killed. Moreover, the deliberate and wanton destruction of houses by police, rendering them uninhabitable and the continuing insecurity for ethnic Albanians, particularly men of military age, made the return of the displaced Albanians difficult or out of the question for many.

The majority of the displaced persons initially found shelter in other villages in the eastern part of the Drenica region where police restricted their own movements, apparently fearing attacks by armed ethnic Albanians. Others went to the large towns to the east, Priština, Vu_itrn and Mitrovica. In Mitrovica many literally had to hide from the police who came looking for some of the displaced. In all these places space was found in houses to accommodate them by a combination of connections with extended family members and organization by ethnic Albanian NGOs and political parties.

In the wake of these incidents large numbers of men volunteered as recruits for the KLA or to take up arms and identify themselves as local defence forces. From April onwards the conflict intensified as the KLA gained effective control over most of the Drenica region and the police presence was confined to the towns and major roads. The latter being dominated by the KLA at night.

In May the Yugoslav Army and Serbian police launched attacks in the western part of Kosovo bordering Albania, principally around the town of De_ani. The operations were officially said to be aimed at cutting off the supply of arms coming in for the KLA over the mountains from northern Albania and the movement of KLA fighters who were

[2] See documents in Series A of this series (listed on the inside cover page of this document) for a description of such violations.

[3] See *Drenica, February-April 1998: Unlawful killings, extrajudicial executions and armed opposition abuses* (Document Series A, #2), AI Index: EUR 70/33/98, June 1998.

[4] These estimates come from the UNHCR.

training or organizing there. In practice the tactics were also aimed at depopulating the region. Ethnic Albanian civilians were targeted as well as the armed men. Thousands of people fled their homes when the police moved in on their villages, some hiding in the nearby woods or moving further up the mountains overlooking their villages. Many told Amnesty International and others that they were waiting the opportunity to move back to their homes, but they saw their villages being burned or where attacked by police snipers, mortar rounds or shelling and they joined the thousands who had started to trek over the mountains into Albania or to the neighbouring Yugoslav Republic of Montenegro. The initial decision to flee and where to move to by the civilians seemed to be taken on the basis of a combination of the people's own perceptions of the dangers and orders from the KLA or local individuals who had taken up arms.

The difficulties of access made it initially difficult to make reliable estimates of the numbers of refugees and, in particular, displaced persons, but by early June some 6,500 people had fled into northern Albania and 4,000 into Montenegro with at least 56,000 fleeing within Kosovo, principally to the town of Djakovica and its surrounds and the western part of the Drenica region. Smaller numbers of Serbs also fled out of fear or because of direct attacks upon them by the KLA or other armed ethnic Albanians.

Initially, displaced Albanians were at least temporarily safe from further police abuses in the area under KLA control. However, in late July the situation started to change dramatically with a combination of a failed attempt by the KLA to take control of a town (Orahovac) and the beginning of systematic operations by the police and army to reassume control of Drenica. The KLA appeared to fracture and quickly lost control of villages or which were picked off by the government forces.

The new actions by the government forces included ever more blatant targeting of civilians and deliberate displacement. Greater and greater numbers have also been displaced from the first places of shelter. Because of the reduced territory in which they felt able to move safely and the already

full or damaged accommodation of would-be hosts, displaced persons were forced to remain out in woods and fields with little or no shelter from the deteriorating weather.

The police have also increasingly concentrated on separating and detaining men of military age. Although the majority of the men have been released, families are left with little information about those detained. Moreover, nearly 700 people have so far been kept in custody or tried and convicted on charges of terrorism and armed rebellion. Amnesty International remains concerned that these people have been or will be subject to torture or ill-treatment and eventually unfair trials.

From the already large number of about 60,000 displaced and refugees in early June the number has now exploded to more than 290,000 (about 15 per cent of Kosovo's population), a UNHCR estimate which some consider conservative.[5]

The protection of internally displaced persons and refugees

The Internally Displaced

"The Government of Montenegro appeals to all those intending to enter Montenegro aiming to obtain a displaced/refugee status, not to do so, for there are no possibilities to find shelter".[6]

The recent forced expulsion to Albania in mid-September by Montenegro of some 3,000 Kosovo Albanians serves as a signal to the international community of the need for greater international responsibility sharing in situations where neighbouring countries arguably share a disproportionate burden in protecting those searching for safety. Montenegro, with a population of 650,000, claims that it is already hosting approximately 44,000 internally displaced persons from Kosovo since the conflict began in March. In addition, they host 30,000 refugees from Bosnia-Herzegovina and Croatia and this means that the internally displaced and refugee population constitutes some 11.6 per cent of the total Montenegrin population. In some municipalities, the ones which hosted most of the arrivals, the displaced Kosovo Albanians outnumber the local population.

The government of Montenegro stated that the decision to forcibly expel these Kosovo Albanians and to close its borders was motivated as well by the Serb forces' activities in the western part of Kosovo province, driving people from their villages and burning their homes, and the anticipated surge in the numbers of those seeking a place of

[5] Estimates vary and it is difficult to get precise data on the numbers of those who are displaced given that people are forced to move from one place to the next. Some relief organizations estimate that at end-August as many as 442,000 had been displaced by the conflict.

[6] Statement released on 11 September 1998 by the Government of Montenegro.

safety. UNHCR reported that the decision on the part of the Montenegrin authorities was having severe humanitarian consequences for the large numbers of displaced persons surviving in the mountains in the western part of Kosovo province. The actions of the Government of Montenegro are to be condemned as they endangered the lives of those seeking to enter who they returned at the border and also those they expelled. However, in the memorandum by the Montenegrin government to other states, their plea for full economic support is not surprising, given the challenge presented to their society in hosting an increasing number of displaced persons. Following intervention by the UNHCR the Montenegrin authorities have given assurances that they will not expel further Kosovo Albanians.

The pattern of hiding in the forests and hills close to home before ultimately fleeing further afield is a common feature of the refugee and internal displacement patterns in this conflict. Amnesty International has interviewed Kosovo Albanian displaced persons in Kosovo and Montenegro and others who had ultimately fled for safety as refugees to other countries in the region, after an initial period of seeking haven in the immediate vicinity of their villages, hoping in vain that they would soon be able to return home. The pattern of flight of the **Bekaj** family, who were interviewed by Amnesty International in Hungary and whose case is described further on, is typical of the hardship and uncertainty endured by so many. They initially sought safety near their village, only to witness the destruction of their home and to learn of the death of a family member who remained behind, before seeking shelter in a number of places in Kosovo and Montenegro and then heading to other countries.

Internally displaced persons are of special concern to the international community

- they have unique human rights concerns.

Internally displaced persons are of special concern to the international community, given that their movement is involuntary, and they are also subject to human rights abuses emanating from their displacement. Displaced persons in a conflict have unique human rights concerns - in fact being internally displaced heightens their vulnerability to human rights abuses. The UN **Guiding Principles on Internal Displacement**[7]**,** based in international human rights and international humanitarian law, articulate the rights of the internally displaced and are an important tool to guide the work of all actors in a conflict. Most importantly, the Guiding Principles require the Serbian and Yugoslav authorities to grant and facilitate the rights of international humanitarian agencies and NGOs engaged in humanitarian assistance activities, viz:

[7] Commission on Human Rights 54th Session, UN Doc E/CN.4/1998/53/ADD2.

Principle 25(1). The primary duty and responsibility for providing humanitarian assistance to internally displaced persons lies with national authorities.

Principle 25(2). International humanitarian organizations and other appropriate actors have the right to offer their services in support of the internally displaced. Such an offer shall not be regarded as an unfriendly act or an interference in a State's internal affairs and shall be considered in good faith. Consent thereto shall not be arbitrarily withheld, particularly when authorities concerned are unable or unwilling to provide the required humanitarian assistance.

Principle 25(3). All authorities concerned shall grant and facilitate the free passage of humanitarian assistance and grant persons engaged in the provision of such assistance rapid and unimpeded access to the internally displaced.

The return of internally displaced persons

The "humanitarian centres" recently established and managed by the Serbian authorities in villages in western Kosovo are cause for concern and point to the dilemma of international organizations in protecting and assisting the displaced without adequate support from the international community. These "humanitarian centres" are intended to encourage the displaced to return home, relying on the assistance offered, mainly the distribution of food, at the centres. However, there are inadequate measures at present to ensure that the returnees will be safe from further human rights violations as there is no guarantee for their physical security and a heavy police presence in some of these areas has been reported.

The support of the UNHCR - as lead UN agency with responsibility for the assistance and protection of displaced persons - for these centres is controversial. Some are of the view that UNHCR has no option but to support this Serbian-led program of assistance while others are of the view that given security concerns the UNHCR should "review its participation" in supporting these centres.[8] At a minimum, a strong presence of international human rights monitors should be a fundamental condition of any international support being provided to the Serbian authorities for these "humanitarian centres". It would not be surprising that returnees have little confidence in returning to areas where they have to rely on " humanitarian centres" run by the same authorities who have been engaged in the systematic displacement of large numbers of people, the burning of homes and crops, and other grave violations of their rights. However, those displaced by the conflict are faced with little choice in their search for a place of safety - as the winter months approach theirs is now a search for survival.

[8] Memorandum resulting from the meeting of the Ad Hoc Working Group on the Protection of Persons under Threat in Kosovo, Brookings Institute, Washington, 21 September 1998.

Close scrutiny is needed of the locations where assistance is provided in relation to the mobility of those fleeing human rights abuses. Limitations on the provision of assistance should not in practice contradict Principle 15(a) of the UN **Guiding Principles on Internal Displacement** which states that internally displaced persons have the right to seek safety in another part of the country. Furthermore, Principal 15(d) of the UN **Guiding Principles on Internal Displacement** include the right to be protected against forcible return to or resettlement in any place where their life, safety, liberty and/or health would be at risk.

In addition assistance given to displaced persons must not deprive them of the right to seek asylum elsewhere. EXCOM Conclusion No. 75 (1994) emphasizes that: "activities on behalf of internally displaced persons must not undermine the institution of asylum, including the right to seek and to enjoy asylum in other countries from persecution." Furthermore, the UN General Assembly Resolution on Protection and Assistance to Internally Displaced Persons (March 1996) reiterates the call for: "a more concerted response by the international community to the needs of internally displaced persons while emphasizing that activities on their behalf must not undermine the institution of asylum".

Reception of Asylum-seekers in Europe

Given the recent escalation of the conflict and the surge of refugees driven from their homes, those countries hosting refugees need to allow them access to asylum determination procedures, and to respect the principle of *non-refoulement*, which includes non-rejection at the frontier. Some countries have shown a remarkable capacity for shirking their responsibilities to those seeking asylum at their borders, and there is evidence of *refoulement* and a disturbing pattern of detaining or restricting the movements of Kosovo Albanian asylum-seekers. Border guards are often the first point of contact for asylum-seekers and Amnesty International has received reports of asylum-seekers not being referred in a timely manner to the appropriate authority with responsibility for asylum determinations. Border guards should not decide whether to grant access to an asylum determination procedure and they should be explicitly instructed to refer all those seeking asylum to a more appropriate authority.[9]

"I can't believe that in a country where there is no war that people are treated like this"

[9] EXCOM Conclusions 8 and 15(j).

Rahime Bekaj lived in the transit lounge at the airport in Budapest Hungary for 11 days in September with her three daughters and two young sons before being moved to a refugee reception centre in eastern Hungary. In June they fled their home in Radiševo, a village in Kosovo province, after living in the forest outside their village for a week. When she saw smoke rising from their village Rahime Bekaj fled with her children, and subsequently learned that her husband, who had remained behind, had been killed. They had been searching for a place of safety for almost four months - first in the neighbouring town of Mitrovica, then in Montenegro, and then in Albania. She expressed dismay at their treatment by the Hungarian officials, who for days left them in the transit lounge of the airport without any place to sleep, with no blankets, and without information on what was going to happen to them. They limited themselves to one meal a day as that was all they could afford to buy at the airport restaurant.

There is also a worrying trend towards reliance on readmission agreements and safe third country practices to return asylum-seekers to countries through which asylum-seekers may have transited. Governments are reminded that there should be sustained scrutiny of the integrity of the asylum determination procedures and respect for the principle of *non-refoulement* in those countries to which asylum-seekers are returned. It is also apparent that the flight of many from Kosovo is by land and that this may lead to neighbouring countries bearing a disproportionate responsibility, hosting large numbers of refugees without the capacity to do so. Amnesty International interviewed numerous young Kosovo Albanian men, some as young as 15, who had travelled for weeks, from one country in the region to another looking for a place where they thought they would "have a fair chance to seek asylum". The recognition rates in western European countries reflect the inconsistency in the application of the UN **Refugee Convention** definition of refugees fleeing conflict. While data for all host countries is not readily available the information which is reflects a vast difference in treatment that is difficult to explain - how can it be that Convention refugee recognition rates in the United Kingdom are in the range of 88 per cent acceptance, whereas in Switzerland they are in the range of 5.6 per cent and in Germany they are well below 5 per cent?[10] Obviously, not all of these

[10] Source: European Council on Refugees and Exiles**,** Pre-EXCOM Statement, delivered at

decisions are for those who fled the most recent crisis in Kosovo, however, they indicate a government's view of whether a person fleeing serious human rights violations in an ethnic based conflict is within the protective ambit of the UN **Refugee Convention** definition of "refugee". This interpretation chasm between governments is also indicative of what responsibility a government will take when it comes to providing international protection for those whose claims it has rejected - until recently, both Switzerland and Germany were deporting rejected claimants back to FRY, despite the repeated calls of the UNHCR and NGOs to temporarily halt such deportations.

In its welcome position paper on the treatment of asylum-seekers from Kosovo, the UNHCR stated that Kosovo Albanians fleeing the crisis include those likely to have a good claim for Convention refugee status and that they should be given access to a refugee status determination procedure:

> *...In such circumstances, it may reasonably be assumed that important numbers of those displaced by the current conflict could have a well-founded fear of persecution for 1951 Convention reasons...The escalation of violence in the province into a situation which some have characterized as a state of civil war does not negate the Convention reasons which individuals may have for fleeing the areas. In fact, for some claimants, the conflict may strengthen their refugee reasons for flight. These causes are not mutually exclusive. Persons displaced by war or conflict can legitimately fear persecution. War may very well be the very instrument of persecution, the method chosen by their persecutors - whether part of the State apparatus or not - to repress or eliminate entire groups of people because of their ethnicity or other affiliations".*[11]

The UNHCR also reiterated its appeal to states for a temporary ban on the deportation to Kosovo of rejected asylum-seekers on humanitarian grounds. It further stated that those who do not meet the UN **Refugee Convention** criteria may still have genuine protection needs as victims of violence and conflict.[12]

No part of FRY can be considered safe for the majority of Kosovo Albanian claimants, as violence and persecution increasingly affect an ever wider geographical area, and the fluidity and unpredictability of the situation does not generally permit an

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the 49th Session of the UNHCR Program, 29 September 1998.

[11] UNHCR Position Paper on the Treatment of Asylum-seekers from Kosovo in Countries of Asylum: Relevant Considerations", 25 August 1998, paragraphs 3 and 4.

[12] Groups identified by the UNHCR as being at particular risk of persecution include: able-bodied ethnic Albanian men of military age, ethnic Albanian civilian population in areas of KLA activity, relatives of known or suspected KLA fighters, former KLA fighters, employees of the parallel Kosovo Albanian health and medical services, members of community level emergency groups and members of the Albanian intelligentsia. This list is not considered exhaustive and could include other groups who may also face persecution, for example, draft evaders and deserters.

internal flight alternative. While praising the hospitality and generosity to date of both Montenegro and Albania to those fleeing Kosovo province, UNHCR considers both to be reaching their capacity and asks states not to send refugees back to either, but instead to act on the principles of international burden-sharing and solidarity by allowing Kosovo Albanian refugees to seek asylum in their territories.

In conclusion, UNHCR comments that safety within the borders of FRY is not possible for the majority of those displaced and that the prognosis is for further deterioration of the security situation. UNHCR therefore calls upon all European States to respond to the arrival of Kosovo Albanian asylum-seekers in a way that respects their responsibilities to refugees, and which is principled, humanitarian and protection-based.

The following country reports focussing on the key states[13] and summarising the others confirm that the numbers of Kosovo Albanians seeking asylum has steadily increased over the first six months of 1998 and that the response of governments varies from allowing access to determination procedures to leaving asylum-seekers in limbo - waiting to see if conditions improve so they can be sent back.

Germany

In Western Europe, Germany receives the largest number of refugees from Kosovo. Since the beginning of the current crisis increasing numbers of Kosovo Albanian refugees have entered Germany and sought asylum. During the first six months of 1998, 11,333 FRY nationals applied for refugee status in Germany.[14] Although most of them travel through other countries before arriving in Germany, they are generally granted access to the asylum determination procedure.

Following a 1994 decision by the Federal Administrative Court in Berlin that Kosovo Albanians do not face "group persecution", the recognition rate for Kosovo Albanian asylum-seekers in Germany has been low. In 1996 only 4.5 per cent of applicants from Kosovo were recognized as Convention refugees and only 2.5 per cent in 1997. In the first six months of 1998, 18,310 decisions were made by the Federal Agency on Yugoslav applications for asylum; only 277 (1.5 per cent) were awarded refugee status. As more cases of those who have fled this recent conflict are decided it will be important to see that the advice of UNHCR is heeded with respect to the understanding

[13] This information is not exhaustive and does not cover all those countries currently hosting Kosovo Albanian asylum-seekers. It is based on data provided by Amnesty International sources, the UNHCR and national NGOs and is current to mid-September, 1998.

[14] Some European countries do not specify the ethnic identity of asylum-seekers from FRY in their records. However, the vast majority of refugees from FRY seeking asylum in other European states in both 1997 and 1998 are of ethnic Albanian origin. Where specific data on Kosovo Albanians is available it is given.

that those fleeing the current conflict likely have a good claim to recognition under the UN **Refugee Convention** definition.

In June the Ministers of the Interior of the sixteen German *Länder* (states) and the Federal Government declared a halt to returns of Kosovo Albanian rejected asylum-seekers. However, this was not a formal decision to stop all returns and anyone who had committed a "criminal act" (however minor) could still be deported. Yet, decisions regarding the deportation of Kosovo Albanians who have committed a "criminal act" differ greatly from one administrative court to another - courts in Munich and Aachen concluded that the forcible return of "criminals" is a violation of the protection granted in Article 3 of the **European Convention on Human Rights**. Bavaria and North Rhine-Westphalia have taken a particularly hard line and between mid-June and the end of July continued with deportations to FRY. Several flights carrying "criminals" left Germany for FRY (after the suspension of returns was declared) the latest on 2 September 1998.

Germany has a readmission agreement with FRY which stipulates that all returns must go via the Yugoslav national airline JAT. However, following an announcement on 7 September by the European Union, which banned flights by JAT to member states, Germany is no longer able to return people under that agreement. According to the German Interior Minister Manfred Kanther, the EU's decision would not stop Germany returning those Yugoslav citizens (mostly Kosovo Albanians) who are due to leave. Kanther initially said the returns could continue by alternative means, but it became clear that these alternatives were impractical, and state interior ministers have recognized that the flight ban will impede deportations. Furthermore, some of those rejected asylum-seekers awaiting deportation in detention centres have been released. For now at least there is no danger of return from Germany to Kosovo of rejected ethnic Albanian asylum-seekers and "criminals".

Switzerland

Switzerland hosts the second largest community of Kosovo Albanian asylum-seekers in Western Europe. In 1997 the total number of FRY nationals fleeing to Switzerland was 6,900, and between January and August 1998 another 8,366 arrived to seek asylum. Claims are still being processed according to the usual determination procedure, usually taking two to three months to reach a decision. Currently, virtually all Kosovo Albanians receive a negative decision on the basis of the view that they face no danger of individual persecution or that they have an internal flight alternative. Generally, these decisions reflect the cases of those who came before the current crisis. However, it will be important to monitor that the Swiss authorities follow the advice of UNHCR that those fleeing the current conflict likely fall within the protection contemplated in the UN **Refugee Convention** and that due to the nature of the human rights abuses in Kosovo, they do not have any internal flight alternative. Given that the government cannot deport

these rejected claimants they effectively exist in a juridical limbo with no official status save that of awaiting deportation, which has been banned until the end of April 1999.

In mid-June the government announced a total halt on returns of Kosovo Albanians. Until then those whose claims had been rejected were deported by charter plane to Priština and Belgrade. Returns were originally suspended until 31 July, then extended until 30 September. On 17 September the government announced a further suspension of the ban on returns, until the end of April 1999. Before the ban on returns announced this year, 1,300 people were returned under a 1997 readmission agreement with FRY.

As in Germany, "criminals" do not come under the ban on returns and are still being deported. Sixty "criminals" have been returned to FRY since the ban on returns was introduced in June although the practice varies greatly between the 26 regional cantons. The decree defines "criminal" in vague terms as someone who has committed a "crime or serious offence". Switzerland has made no decision to grant temporary protection to Kosovo Albanian refugees. This possibility is under discussion and it is thought that if the number of asylum-seekers increases significantly a policy may well be introduced. Temporary protection in Switzerland offers the right to family reunion and employment.

Austria

Between 1 January and the end of July 1998, Austria received approximately 2,800 applications for asylum from Kosovo Albanian refugees, about half the total applications received for asylum. Few Kosovo Albanian refugees receive any form of protection in Austria as many are sent back to other countries on 'safe third country' grounds.

Since the beginning of this year claims rejected on grounds of either being manifestly unfounded or because a safe third country has been transited are processed in an accelerated determination procedure. Given a recent decision by the Constitutional court the appeal period for at least those cases relying on a safe third country having been transited has been extended while the government decides on what would be an appropriate time frame to allow for an appeal to be lodged. According to UNHCR, estimates derived from the best available data on asylum applications made, show that Austria detains between 10 and 15 per cent of all asylum-seekers[15] and while an appeal is being lodged the asylum-seeker will be detained. While some Kosovo Albanian asylum-seekers enter Austria via Italy or the Czech Republic, the majority come through Hungary. Rising concern that asylum-seekers sent back to Hungary by the Austrian authorities were then being subject to *refoulement* to FRY reached a peak in mid-July

[15] In Austria detention pending deportation is carried out in prisons known as *Schubhaft* which are under the control of local Federal Police Headquarters, while other prisons are under the control of the Ministry of Justice. The *Schubhaft* hold all people who are detained pending deportation, whether asylum-seekers or not.

following reports about **Ibrahim Islami** - a Kosovo Albanian rejected at the Austria-Hungarian border in March and handed back by the Hungarian authorities to police in Serbia where he said he was severely ill-treated. He finally made his way back to Austria in July. This incident led to a statement in July by Minister of the Interior Karl Schloegl to the effect that if any case of refoulement from Hungary to FRY could be documented he would consider altering the practice of sending Kosovo Albanian refugees back to Hungary.

Having fled fighting in Kosovo, Ibrahim Islami and his family had reached eastern Austria where they were refused refugee status. On being sent back to Hungary on safe third country grounds, they were put in the overcrowded illegal immigrants camp in Györ where conditions have been described by the Ombudsperson as inhuman. The Hungarian authorities then transported the Islamis in a locked bus to the Serbian border where they were handed over, handcuffed, to the Serbian police. According to the police they were "terrorists" and they beat and imprisoned them. The family later escaped and on returning to Austria told their story to human rights activists.

In mid-September Amnesty International interviewed Kosovo Albanian asylum-seekers who reported that they were deported from Austria to Hungary. One 18 year old reported that he was deported from Austria to Hungary in mid-August on the basis that he transited through Hungary and could have sought asylum there. This young man, like many others, had fled Kosovo in early July, briefly transited Hungary by land and then made his way to Austria (where he has relatives). He requested asylum in Austria and it was denied on the basis that he had a safe third country option in Hungary. He reported that he was handed over by Austrian officials to the Hungarian border guards and then moved through a succession of refugee shelters, one of which he described as being like a prison, before finally arriving at one of the community shelters of the Hungarian border guards. He subsequently lodged an appeal of the Austrian asylum decision in his case while in Hungary. He continues to express a fear of returning to FRY and was perplexed as to why he was not able to reside with his uncle in Austria until it was safe for him to go home.

It has been reported by NGOs assisting refugees in both Hungary and Austria that Austria currently returns many Kosovo Albanian asylum-seekers to Hungary, despite concerns expressed by these organizations about access to an adequate asylum determination procedure. On 21 July the Interior Minister announced that deportations to safe third countries of children under the age of sixteen, injured persons and pregnant women (until they give birth) have been halted. However, they are not given access to the full asylum determination procedures in Austria.

Although Austria has generally supported proposals for a burden-sharing agreement between all EU countries there is some evidence that there is little real support for this sort of initiative. Seemingly, other countries are willing to rely on those countries

which share a common border with FRY or which are more accessible by land to absorb a disproportionate share of the responsibility for hosting refugees.

Hungary

Hungary is a major transit country for refugees fleeing Kosovo province. Although there are serious concerns with the adequacy of Hungary's asylum determination procedure and willingness to respect the principle of *non-refoulement*, Kosovo Albanians continue to be sent back to Hungary on the basis of readmission agreements and safe third country grounds. In August 1998 the UNHCR confirmed that it considers Hungary as a safe third country, thereby legitimizing the sending back of refugees who transited Hungary to seek asylum in other European states. However, in both Austria and Germany the press and human rights organizations have put pressure on their governments not to send ethnic Albanians from Kosovo back to Hungary on the basis that it is a safe third country. The case of **Ibrahim Islami** noted above highlights the uncertain consequences of deporting asylum-seekers back to Hungary.

The international community welcomed Hungary lifting the geographic limitation reservation last year and the new Hungarian Refugee Law which came into force in March 1998. However, concerns have been expressed by NGOs that there are serious lapses in the determination of asylum claims. There is evidence that some asylum-seekers have not been adequately informed on how to apply for asylum or their right to. Many applications for refugee status are processed in an accelerated procedure which allows only three days to request judicial review of the administrative decision and where the expulsion decision is not stayed pending review. Amnesty International has documented reports of status determination interviews lasting less than one hour, conducted with interpreters who the claimant stated they could not understand and having been asked to sign forms they did not understand.

Amnesty International has received reports that many Kosovo Albanians with valid travel documents are being deported to FRY without an examination of the risk they might face on return. Those who do enter the country and seek asylum are usually put in reception centres or community shelters, from which many asylum-seekers are not free to leave. Effectively they are subject to the administrative order issued in mid-August which stipulates a "compulsory place of residence" - an order which can lead to harsh results. Those subject to this order are not free to leave the "compulsory place of residence" with the result that they are detained without any judicial review of this decision. The main reason that a "compulsory place of residence" is ordered is due to a lack of ability to provide proof of identity. Since many Kosovo Albanians fled in haste, planning to take temporary refuge near their homes, only to find them destroyed and their return rendered impossible, it is not surprising that many are without identification.

Although the asylum law stipulates that every individual asylum-seeker should be interviewed within four days, people are waiting two to three weeks for their first

interview and between two to three months for a decision on their case. A backlog of asylum cases is mounting in Hungary as the Central District court in Budapest and the Municipal courts argue over who is responsible for processing them. A decision as to where the responsibility lies is expected in the autumn.

Kosovo Albanian asylum-seekers in other European countries

Applications for asylum from Kosovo Albanians have increased consistently across Europe since the current conflict began in early 1998. The numbers arriving in each country differ according to geographical location, with the Scandinavian countries receiving relatively few applications compared with Italy, Belgium, the Netherlands, and the United Kingdom. In the latter there were 895 new applications from Kosovo Albanians in the month of July alone. Despite readmission agreements with FRY in some cases, Belgium, Denmark, France, the Netherlands, Italy, Norway, Sweden and the United Kingdom have all implemented either official or *de facto* halts on returns of Kosovo Albanian asylum-seekers. While the suspensions on return do in most cases include those whose claims have been rejected, it does not include return to safe third countries. In addition, there have been isolated incidents, such as one in Italy in early August, when 40 Kosovo Albanians were among 56 people rounded up and sent back across the Adriatic to Albania without the opportunity to apply for asylum.

In Denmark and Norway asylum claims from Kosovo Albanians have been put on hold while the situation is monitored, whereas in Italy and the United Kingdom claimants are being given full access to the regular refugee determination procedure. Asylum-seekers sent back to Italy on third country grounds also have access to the determination procedure and most Kosovo Albanians have either been granted Convention refugee status or permission to stay on humanitarian grounds. This permission is valid for one year, after which it can be renewed.

Since a 1996 decision by the Immigration Appeals Tribunal, Kosovo Albanians have consistently been recognized as Convention refugees by the United Kingdom Home Office. In the UK, claims from Kosovo Albanians are processed more quickly than average and claims from this group have by far the highest status determination rate. To date the vast majority of Kosovo Albanians claiming asylum in the UK have been given either Convention refugee status or exceptional leave to remain. In contrast, France rejected 78.5 per cent of asylum claims from nationals of FRY in 1997 and continues to block access to the regular status determination procedure for Kosovo Albanians who enter France illegally.

A policy of temporary protection for Kosovo Albanians, as was previously implemented for Bosnian refugees, is a possibility being considered by some European states. For example, the Ministry of Justice in the Netherlands has been discussing whether such a policy should be put in place. However, the government is keen to be part of a Europe-wide approach to protection of Kosovo Albanians and no country is likely to implement a policy of temporary protection unless other countries agree to follow suit.

Conclusions

The above survey of the various practices of those key asylum countries in Europe hosting asylum-seekers show that countries have for the time being halted any returns of rejected asylum-seekers to the region and generally allow access to their asylum determination procedures. However, some states still deny that a person fleeing a conflict can fall within the protective ambit of the UN **Refugee Convention**. UNHCR's position is clear - it has stated that those fleeing the conflict in Kosovo are likely to have fled due to the threat of serious harm arising on the basis of ethnicity or imputed political opinion. Asylum-seekers should be given access to an individual status determination procedure.

Those countries seeking to off-load their responsibilities for the protection of refugees by sending them to so-called "safe third countries" should be held to account and required to ensure that the countries to which Kosovo Albanians are returned are in fact "safe". This requires, at a minimum, that the sending country seeks guarantees from the receiving country that the asylum-seeker will be granted access to a fair and satisfactory asylum determination procedure and that the principle of *non-refoulement* is respected. It is also clear that international responsibility sharing obligations are but rhetoric as countries which share a common border with FRY or which are more accessible by land absorb a disproportionate share of the responsibility for hosting refugees.

As noted above, some countries are currently considering putting temporary protection programs in place. Although Amnesty International is of the view that the nature of the flow of asylum-seekers from Kosovo does not justify any such programs, in the event that programs for temporary protection are established, they must be guided by standards of international refugee law. It is of primary importance that no temporary protection program should prejudice the interests of those who qualify for Convention refugee status and who seek to exert their rights to a determination according to that status. Furthermore, temporary protection programs must not limit the other rights that flow from the UN **Refugee Convention**, such as the right to work or to family reunion. Also, temporary protection programs must have unambiguous criteria for determining when an end to temporary protection may be appropriate, and no returns should be carried out until they can be effected voluntarily, in safety and dignity and based on an independent, impartial assessment that the human rights situation in the country of return is of a fundamental, stable and enduring character and that independent mechanisms for monitoring respect for human rights are in place.

Amnesty International welcomes the fact that countries have seen fit to suspend deportations to FRY for those asylum-seekers whose cases have been rejected after a fair and satisfactory asylum determination procedure. However, there are continuing concerns about those deemed to be "criminals" and that some of them continue to be deported to Kosovo. It is essential that those in continued need of international protection due to an

ongoing conflict in a country not be returned to a situation where their human rights will be at risk.

Given the continuing instability in the region due to the 1991-95 conflict, the nature of the conflict in Kosovo, and the continuing violations of human rights and humanitarian law and the uncertainty as to when the situation will improve, it is safe to conclude that the prospects of asylum-seekers from Kosovo being able to return home soon are remote. The UNHCR should be heeded in its call for asylum-seekers to be granted access to international protection according to the undertakings of the international community under the UN **Refugee Convention**.

Amnesty International's recommendations

Recommendations relating to internally displaced persons

General

- The Guiding Principles on Internal Displacement should guide all parties to the conflict and organizations providing protection and assistance to determine the rights of the internally displaced.
- The UNHCR should review its participation in the provision of assistance to government-run "humanitarian centres" given the concerns about security in these areas. Among the fundamental conditions for confidence building that would indicate international support for these centres would be the presence of international human rights monitors.

To the Serbian and Federal authorities:

Amnesty International's full recommendations to the Serbian and Yugoslav authorities and armed opposition groups are contained in other documents in this series which are listed on the inside cover of this document. The recommendations here focus on the protection of the internally displaced.

- Issue clear instructions to all members of the security forces carrying out law enforcement functions in Kosovo province that unlawful attacks on civilians, arbitrary arrests and expulsions and other human rights violations will not be tolerated under any circumstances and that those responsible will be held criminally responsible for their actions.
- Allow UN agencies such as the UNHCR, United Nations Children's Fund (UNICEF), World Food Program (WFP) and OHCHR as well as NGOs to carry out their activities without impediment.

- Permit the UN High Commissioner for Human Rights to establish immediately an adequately staffed office.
- Cooperate fully with the Representative of the UN Secretary-General on Internally Displaced Persons and UN Special Rapporteurs on Extrajudicial Summary and Arbitrary Executions, Torture, and Violence against Women, as well as members of the UN Working Group on Arbitrary Detention and Enforced or Involuntary Disappearances.
- Cooperate fully with the International Criminal Tribunal for the former Yugoslavia and surrender indictees, so as to make clear that impunity will not be tolerated.
- Hold thorough and impartial investigations into all reports of human rights violations, initiate criminal investigations wherever appropriate and bring perpetrators to justice.
- Remove immediately all those suspected of ordering or perpetrating human rights abuses from positions of power or authority.

To the Montenegrin authorities:

- Respect all aspects of the Guiding Principles on Internal Displacement, in particular Principle 15(a) which states that internally displaced persons have the right to seek safety in another part of the country and 15(d) which states that internally displaced persons should be protected against forcible return to or resettlement in any place where their life, safety or liberty and/or health would be at risk.

To the Kosovo Liberation Army and other armed ethnic Albanians:

- Respect the rights and guarantees for the protection of persons from forced displacement and for their protection and assistance during displacement and return, as articulated in the UN Guiding Principles on Internal Displacement.
- Ensure that all forces abide by basic humanitarian law principles as set out in Common Article 3 of the Geneva Conventions of 1949 which prohibit the killing, mutilation, cruel treatment and torture of all those taking no part in hostilities, as well as hostage-taking.

To the international community:

- Provide the UN High Commissioner for Human Rights with adequate resources to field a substantial human rights monitoring mission with an office in Priština and call on the FRY authorities to conclude an agreement to that effect with the UN forthwith.
- Increase support to the International Criminal Tribunal for the former Yugoslavia to enable it to carry out appropriate investigations into allegations of violations of humanitarian law in Kosovo.

Recommendations to all governments relating to refugees:

- Internationally agreed standards for the protection of refugees should be respected by countries hosting refugees from Kosovo province. In particular, states should respect the principle of *non-refoulement*, which includes non-rejection at the frontiers of territories. Border guards and officials at ports of entry should be made aware of this principle and should refer all cases of a person seeking asylum to an authority more appropriate to be taking decisions on asylum claims. No asylum-seeker should be returned to so-called safe third countries unless the sending country seeks guarantees that those returned will have access to a fair and satisfactory asylum determination procedure and that the country respects the principle of *non-refoulement*.
- Host states should heed the guidance of the UNHCR that those Kosovo Albanians fleeing the crisis are likely to have a good claim to Convention refugee status and should be given access to an asylum determination procedure. In particular, states are asked to note that persons displaced by war or conflict can legitimately fear persecution and therefore qualify for Convention refugee status.
- Host states should grant refugees the necessary identity documents to allow them to move freely within the host communities. They should not be detained for periods of time beyond those allowed by international law.

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