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OSCE

Ninth Assessment of the Situation of Ethnic Minorities in Kosovo
(Period covering September 2001 to April 2002)

EXECUTIVE SUMMARY

This, the ninth OSCE/UNHCR joint assessment on the situation of minorities in Kosovo, is published close to the third anniversary of the arrival in Kosovo of UNMIK and KFOR. During that time we have tracked the evolving situation of minorities, stressing the problems that continue to make the day-to-day life of many members of minority communities in Kosovo extremely precarious. This assessment covers a very important period for Kosovo, marked by the transition which began after the 17 November 2001 elections and the resulting establishment of the Provisional Institutions of Self-Government (PISG), including a Kosovo Assembly comprised of all ethnic groups as well as an Executive branch. The time period covered was also marked by a declining rate of general criminality and violent crime in Kosovo. It is within this lens that much of the forthcoming analysis will be framed.

The eighth joint assessment noted a gradual decrease in serious security incidents, representing a tentative step towards the overall stabilisation of many minority communities (at least in terms of basic physical security) following previously volatile periods characterised by unrelenting ethnically-motivated violence. The positive trend has continued during the period covered by this assessment. We note a **gradual improvement in security** with the continued decline in the frequency of serious acts of violence against minorities. However, we also note the continued existence of day-to-day intimidation and harassment, as well as the occasional, if now less frequent, occurrence of extremely violent ethnically-motivated attacks sometimes resulting in loss of life. Minorities continue to be vulnerable to attack, especially when moving outside circumscribed residential areas, even as numbers of incidents are on the decline.

We also look again at what remains a **key problem for minorities: freedom of movement**. The assessment of the period shows that freedom of movement remains the fundamental issue affecting the ability of minorities to live a normal life, and that the exercise of freedom of movement remains highly restricted due to both the objective security situation, as well as perceptions of security. Without freedom of movement, access to many of the essential services, employment and civil structures continues to be extremely difficult and in many cases impossible. The assessment does note an **upward trend in mobility** of minorities during this period which, while encouraging, should not be seen as synonymous with general freedom of movement, which will only be realised when any minority can travel to any location, including urban centres, without special escort arrangements and without fear of harassment or violence.

In this context we examine **access to essential services** and institutions, with an emphasis on the most important of these: **the judicial system; education, health and social services; and public services** as well as **employment**. Obstacles to the realisation of **property rights**, as well as the difficulties minorities have in accessing **housing reconstruction assistance**, are highlighted as key problems hindering stabilisation of minority communities and return of displaced minorities. With the Assembly Election in November 2001 and development of government structures, we also examine **participation in political and civil structures** as well as **inter-ethnic dialogue**.

A particular issue that is addressed, within the context of an emerging self-government in Kosovo, is that of the continued existence and entrenchment of **parallel structures**, which are becoming increasingly detrimental to ensuring access to essential services for minorities and which, in some cases, are perpetuating the isolation of minority communities. Parallel structures notably exist in the judicial system, education and health, particularly for Serbs, with both UNMIK-recognised structures (ambulances and schools) as well as structures not approved by UNMIK (Serb courts) supported by the Belgrade authorities and often by international NGOs. Whilst perhaps in some cases (particularly in the health and education sectors) some parallel structures were and may continue to be inevitable as an interim measure due to insecurity and restrictions of freedom of movement, these structures ultimately provide an unsustainable second-class service for minorities and inhibit important forms of inter-ethnic interaction.

The use of parallel structures by minorities distracts attention from what should be the main issue, that is, the urgent need to address the causes of the continued inability of many minorities to fairly access the courts, hospitals, schools, centres for social welfare and other public services. With a decrease in levels of insecurity and increasing levels of mobility, it is important that UNMIK and the PISG, in consultation with all communities, begin to examine moving

towards integrated structures that accommodate the needs of all communities and offer services on a non-discriminatory basis. **Discrimination is pervasive and requires clear laws and effective remedies** and sanctions, particularly through the justice system. Special temporary measures for minorities may be needed, and lessons can be learned from the measures that allowed access for minorities to the civil and political structures, particularly in the election to the Assembly.

With the formation of the PISG, we stress that assessing the situation of minorities requires not simply assessing the problems, but also the **responsibility of authorities** to right these wrongs and to find solutions. Therefore we look at what UNMIK, KFOR and the PISG have done to address security, freedom of movement, access to services and employment, property rights and civil and political structures, including KFOR's actions to reduce static checkpoints.

One welcome development during this period, which should help produce a unified response from the international authorities on the issues described herein, was the **formation of the inter-agency Advisory Board on Communities (ABC)**. In the 8th Minorities Assessment, UNHCR and OSCE recommended that a body should be established to "ensure that the SRSG has access to reliable information on the situation of minority communities, to guide him in the exercise of his executive powers after the establishment of the Assembly of Kosovo."¹ The first meeting of the ABC was held in December 2001.² The ABC is a high-level advisory body whose function is to provide policy guidelines, advice and recommendations to the SRSG on minority stabilisation and integration in Kosovo. The ABC has had a strong start, generating policy directions on priority issues such as minority access to employment and measures required to improve freedom of movement. The ABC has also noted the importance of dialogue with the Kosovo Albanian political leadership in order to obtain a political commitment to minority integration and returns. It is to be hoped that the PISG leadership will place an equal emphasis on minority issues.

This joint assessment provides a more expansive and detailed analysis of the issue of **return**. Minority return was given increased priority and visibility during the period, with both the first organised returns facilitated by the international community, and the **creation of the SRSG's Office of Return and Communities (ORC)**. Inter-agency efforts to facilitate the small-scale return of displaced minorities through the implementation of multi-sectoral return projects had an important ice-breaking effect. However, the return experiences of 2001 highlighted that facilitating return into an environment where ensuring security necessitates high levels of military protection is not sustainable for larger-scale return. Indeed, although this period witnessed new and unprecedented return initiatives for specific locations, fundamental societal problems (such as lack of inter-ethnic dialogue) and institutional deficiencies (such as lack of implementation of property legislation) continued to be largely neglected. The root causes of insecurity, discrimination and alienation between ethnic groups still remain to be addressed. The fundamental and underlying objective remains to ensure that refugees and IDPs have a **free and informed choice** about whether or not to return. Creating the option to return for substantial numbers of the displaced will require much more meaningful and broad progress in the main issues addressed in this report, namely: security, freedom of movement, property, essential services, employment, participation in civil and political structures and inter-ethnic dialogue. All actors involved in the return process will need to take particular care to avoid the politicisation of the return issue.

Finally, complementing the analysis of thematic issues covered in the report, we also examine the specific situation of each of the **minority communities** (including Kosovo Albanians where they are a minority). This analysis continues to show the highly varied experiences of (and within) different ethnic groups, particularly with regard to security and freedom of movement. But the findings also continue to point to common problems which are experienced to greater and lesser extents by all ethnic minorities, whether due to discrimination, inability to use their own languages amongst the majority community, or ongoing vulnerability to violence. The scale of displacement that persists today amongst each of these groups, as well as ongoing departures of minority families from Kosovo, points to the fact that the conditions faced by minorities in Kosovo today are still highly precarious. Only when Kosovo's minorities feel confident in their long-term future and when all of Kosovo's displaced populations are able to exercise the choice to return to their homes, feeling assured of their safety and confident in their ability to access institutions and participate in social, economic and political life in Kosovo on a non-discriminatory basis, will it be possible to say that the situation of minorities in Kosovo is acceptable.

¹ From 1999, the Ad Hoc Task Force on Minorities was the only inter-agency forum comprehensively covering minority issues at the Kosovo-wide level. The Task Force was weakened by its ad hoc nature, the tendency towards being an information sharing forum rather than having a defined advisory role, and lack of senior-level participation of UNMIK and other agency structures. The Ad Hoc Task Force was initially chaired by UNHCR, and later was co-chaired by UNHCR and OSCE. The Task Force was discontinued in 2001.

² The ABC is chaired by the Principal Deputy to the SRSG and the secretariat function is performed by the UNMIK Office of Return and Communities (ORC). It meets on a monthly basis. Its membership includes the Office of the SRSG and heads or deputy heads of the four UNMIK Pillars, KFOR, UNHCR, UNICEF, UNHCHR, WHO, IOM, OCHA, ICRC, and CoE. The international NGO community has observed the meetings through a delegate of the Alliance for Rights and Tolerance (ART).

RECOMMENDATIONS

The ninth joint OSCE/UNHCR minorities assessment is written for an increasingly wide audience that includes: international civilian and military authorities; policy makers, legislators and civil servants within the Provisional Institutions of Self-Government (PISG); international agencies and organisations; the human rights community, international NGOs and local civil society organisations; and the donor community. Other members of the audience include governments which host refugees and displaced persons, including the FRY authorities, governments in neighbouring states, as well as Western European states. **Our key objective with the following recommendations, linked to the chapters of the forthcoming report, is to assist these actors to formulate strategies and objectives related to improving the situation of minorities and solving the problem of displacement.**

This assessment arrives at a time of transition for Kosovo, with ever-increasing authority in many areas of governance devolved to local officials of the PISG at both municipal and central levels. With this authority comes responsibility. All of the following recommendations should be interpreted with a clear understanding by all readers of the fundamental importance of **empowering and encouraging the emerging local governance structures to take ownership** over the issues with which they have been vested authority and responsibility. Many new initiatives are needed, and these should be undertaken in a partnership between the international community and the Kosovars of all ethnicities themselves, mindful of the imperative to facilitate and to promote local ownership.

Security and freedom of movement

- The effect of the removal of static security measures should be closely monitored by the law enforcement authorities and others, and the results discussed with the communities themselves.
- KFOR in all areas should openly discuss their security measures with the police, and all communities, and foster a spirit of openness. The removal of checkpoints should be portrayed as an increase in freedom of movement for all communities, which will open up isolated enclaves.
- Restrictions by KFOR and other authorities on freedom of movement, particular when these restrictions apply on the basis of ethnicity, should be as limited in scope as possible, explained and removed as quickly as possible.
- More co-ordinated planning between KFOR and UNMIK Police/KPS is needed. UNMIK Police and KPS need to strengthen their roles in ensuring public safety in minority areas and in facilitating freedom of movement in order to be able to take over this role from KFOR.
- In co-operation with municipal officials and community leaders, law enforcement authorities should produce a plan to address continuous "low-level" harassment of minorities, including stone throwing, incorporating prevention through community action as well as sanctions (e.g. prosecutions and convictions). In the case that harassment is perpetrated by minors, authorities should intervene with community leaders, school officials and parents to modify behaviour.
- The police and justice authorities should treat crimes aimed at preventing freedom of movement (such as intimidation and stone throwing at pedestrians and vehicles) as a particular priority.
- The KPS should be fully-integrated, with particular emphasis on KPS from particular communities increasingly going into areas from other communities and enhanced use of ethnically integrated and mixed patrols.
- A plan of action for normalising movement, using both public and private transport should be developed with the participation of security and law enforcement forces, local communities and municipal officials, transport providers, and entities *employing and providing services* to minorities. The plan should envisage a progressive reduction in high-profile escorts. However, escorts should not be reduced when this would mean a reduction in freedom of movement.
- All minorities with limited freedom of movement, should, as a minimum, have access to regular public transport (as opposed to privately-funded initiatives only), no matter whether the latter is profit-making or not.
- Resolution of the licence plate issue is needed by agreement between the Provisional Institutions of Self-Government (PISG), UNMIK and the Belgrade authorities.

Justice

- Steps are needed from both UNMIK and the Belgrade authorities to abolish the parallel system of courts. A negotiated absorption of their staff into the UNMIK system is preferable, with a clear statement from the Belgrade authorities that such courts are no longer legitimate and that inhabitants of Kosovo must use the UNMIK courts.
- Special measures should be taken by UNMIK to ensure not only that minorities are employed by the court system but that they are able to do so, including special security measures, at least at first, and escorts.
- The common practice of having minority cases reviewed only by minority or international judges should be rectified, and likewise, the practice of minority judges only being called for minority cases should be discontinued. In the first place this should be by agreement by the Presidents of the courts. Instead, all sensitive cases involving a judge and a defendant of different ethnicities should be closely monitored by OSCE and others. Any judge of any ethnicity displaying bias or discrimination should be disciplined through the Kosovo Judicial and Prosecutorial Council.
- Successful cases of arrest, trial and prosecution for ethnically-motivated crimes should be widely publicised by the Department of Justice, the media and others involved in the justice system.
- An office of the Ferizaj/Uroševac court should be opened in Štrpce/Shtërpce by the Department of Justice.
- A public awareness programme targeting minorities to disseminate information on the civil justice system should be designed and implemented by the Department of Justice, with the assistance of any interested organisation.

Education

- UNMIK and the Ministry of Education, Science and Technology (MEST), in co-operation with KFOR, UNMIK Police and KPS should develop and ensure the funding of a comprehensive plan to improve security and access of minority students throughout Kosovo, including a Kosovo-wide plan for minority school transport.
- Similar plans should be developed to improve the physical conditions in schools, and to supply books and school supplies to students at no charge, and to develop in-service training for minority teachers.
- UNMIK and the MEST should place priority on the integration of the education system, as a first step resolving the issues that frequently arise regarding the joint jurisdiction of MEST/UNMIK and the FRY Ministry of Education which have a detrimental effect on children's education rights. Standardisation of the curriculum and all administrative practices including those governing employment must be achieved.
- UNMIK and the MEST should consult with educational experts who deal with Roma education issues from other European countries in order to (a) develop a specific programme to address remedial education needs, (b) create incentives to encourage, and, as a last resort, require, parents to send their children to secondary school, and (c) to consider how education in the Romani language might be incorporated into the curriculum.
- Different integrated school models should be analysed, and the best practices should be more widely used.

Employment

- The Ministry of Public Services should aggressively promote policies of affirmative action (not just hiring quotas) in minority hiring practices in the public sector. Further, all currently existing legislation that provides for quotas in hiring should be re-examined to make certain that such quotas are proportionate to the interest which the state seeks to protect, i.e. to provide effective equality in employment of minorities.
- The PISG should systematically re-evaluate all hiring practices in the public sector in order to ensure that they are effective both in theory and in practice to ensure equality.
- All grievance procedures through which minority candidates may appeal hiring decisions should be evaluated by the Ministry of Public Services, and if they are not functioning effectively, measures must be taken to ensure that they provide an effective legal remedy for anyone who suffers from discriminatory hiring practices.
- All civil servants should be trained to be able to identify discriminatory conduct and to implement policies and procedures to eradicate it within their respective offices. Further, administrative directives should be circulated throughout the civil service and mandatory training should be conducted to ensure that all civil servants understand their legal obligation to adhere to international human rights standards, particularly as they relate to equal treatment of members of minority communities.

- A comprehensive anti-discrimination law is needed in Kosovo. OSCE's proposal for the enactment of an omnibus anti-discrimination law in Kosovo should be adopted, as such a law would serve to strengthen currently existing law on discrimination by conforming it to international and European anti-discrimination laws and standards. The law is intended to promote uniformity in adjudication, and would provide effective legal remedies for victims of most forms of discrimination, as well as effective, proportionate, and dissuasive sanctions to address violations. This law should be ideally passed by the Assembly.

Health

- Multi-ethnic secondary healthcare must be developed by the healthcare authorities, and they must enforce the cardinal rule of the medical profession that doctors must treat any patient regardless of their racial or ethnic origin.
- The Ministry should discourage unsustainable parallel systems of healthcare, whilst ensuring that everyone has equal access to health care, regardless of ethnicity.
- The Ministry of Health must ensure that information about healthcare and healthcare facilities reaches members of minority communities. The Ministry should conduct an awareness campaign for members of the Roma, Ashkaelia and Egyptian communities.

Social Welfare

- The effect of the "re-registration" requirement of the social assistance scheme in practice needs to be closely monitored by the Ministry of Labour and Social Welfare. Any practice that is indirectly discriminatory (i.e. that minorities, without freedom of movement, will have more problems complying with) should be abolished. The fundamental duty on the authorities to ensure that every person can live in dignity and has sufficient funds to do so, should be the priority. UNMIK should improve transparency with humanitarian agencies that monitor minority access.
- The Centres for Social Welfare should enhance co-ordination and direct collaboration between their employees working in majority areas and those working in minority areas.

Housing

- Housing Reconstruction Guidelines should carry legal weight. The Ministry of Environment and Spatial Planning (MESP) should draft laws to present to the Kosovo Assembly outlining non-discriminatory allocation criteria, transparent selection processes, and mechanisms providing accountability and appeal.
- The ongoing turn-over of responsibility to municipalities should be accompanied by the establishment of an effective interim monitoring mechanism and include accountability to UNMIK and to the MESP of both the Directorates and the MHCs through monthly reporting.
- Given the absence of quotas or floors for minority reconstruction in the 2002 Housing Reconstruction Guidelines, donors should ensure that their implementing NGOs meet appropriate targets, which can be best established through participatory consultations, which include Local Community Officers.
- NGOs, as MHCs' implementing partners (and therefore agents of the state), should be held accountable by both the MHCs and the Ministry of Environment and Spatial Planning for their conduct.
- The reconstruction criteria should require a distribution of assistance based on vulnerability that has similar effects for each ethnicity. For example, the reconstruction criteria should require that a figure, say 20% of *all* houses, minority or otherwise, deemed Category IV and V should be reconstructed. Additional resources should be committed until the proportion of total houses reconstructed is similar in minority and majority communities.
- Immediate housing and reconstruction needs in the places of origin of minorities who remain displaced *within* Kosovo must be addressed, for all cases where reconstruction is the key obstacle to return, including those IDPs who have on their own initiative returned from outside of Kosovo into saturated host-family arrangements.
- An adequate funding mechanism responsive to reconstruction needs for spontaneous and organised minority return should be established. Funding responses should take into account the additional costs of return projects associated with crucial balancing projects for neighbouring majority communities.

Property

- Property adjudication should be placed at the top of the agenda for financing in the KCB and by donors, with a view to both minority stabilisation and returns. Resources should be allocated to the HPD and HPCC to enable effective (a) deployment of mobile teams to minority areas, (b) awareness raising, (c) claim intake and processing, including HPCC decision-making, and (d) management of property under HPD administration, including the effective protection of vacated property in order to avoid re-occupation or damages.
- The HPD should accelerate its efforts to delegate authority to capable municipalities, including identifying and initiating the process of delegation in such municipalities.
- An HPD office should be established in Prizren as soon as possible. HPD should establish permanent or temporary satellite offices where necessary.
- There should be an increase in minority representation on HPD staff to facilitate minority access.
- Every Local Communities Officer (LCO) should be fully aware of the HPD mechanisms.
- Work towards a new and functioning cadastre should be made a priority by UNMIK and the PISG. Interim protections must be instituted to protect the property rights that exist at present. Registration fees should be adjusted according to vulnerability, and such initiatives publicised, in order to facilitate the registration of property rights.
- Reasonable accommodation should be made by all authorities dealing with property for the unique circumstances of certain minority communities. For example, Roma, Ashkaelia and Egyptians with unrecognised property rights should be provided with assistance as a matter of priority to establish ownership or possession of relevant property. Immediate attention should be paid to various property disputes between these communities and municipalities.
- The Assembly and UNMIK must fill in the gaps in the property law, make the law clear, and adapt it to new realities (namely a market economy).

Elections

- Special attention should be paid by OSCE to minority participation in the electoral process leading to the Municipal assembly elections due to take place in autumn 2002, including the registration process.³ Information campaigns should identify and reach out to the electorate in Serbia proper, Montenegro and FYROM with more sensitivity to language (including materials in Romani as well as other languages). Special attention should be paid to ensure that Roma, Ashkaelia and Egyptian communities are better informed of the voter registration process and locations of voter registration centres, particularly outside of Kosovo.
- The strictly proportional electoral system for Municipal Elections 2002 increases opportunities for minority participation at the local level if small minority political parties get into coalition. This is so as in this system there are no set-aside seats for minorities. OSCE Democratisation Department should make sure that minority political parties are well-informed and trained on electoral law and electoral behaviour. Special emphasis should be put on minority voter registration.
- The Central Election Commission (CEC) and the OSCE should ensure a higher level of involvement of non-Serb minority observers in the forthcoming elections.
- OSCE should establish outreach teams for the forthcoming Municipal elections, who should dedicate their time and work to the various minority communities on a proportional basis.
- Lack of freedom of movement will have a much greater impact in the coming municipal elections than in the Assembly elections, as there are 30 assemblies to elect and minority communities' parties need to be able to move freely to campaign among their electorate. A determined effort must be made by OSCE and others involved in the election to ensure access to those with limited freedom of movement, including equal access to use of media for campaigning.

³ The international community should improve efforts to ensure the implementation of the Copenhagen document, which outlines standards for equality in chances for political entities while campaigning. See document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE, Section 7.7, 1990

Participation in civil and political structures

- All Municipalities should be required to set up their Community and Mediation Committees as a priority, and report on their functioning.
- If, after consideration of the levels of participation of minority communities inside and outside of Kosovo in the autumn 2002 elections, it is found that there is effective under-representation of minorities in Municipal Assemblies, special measures may be needed by the SRSG to ensure minority participation.

Tolerance, reconciliation and inter-ethnic dialogue

- A media campaign should publicise positive examples of inter-ethnic co-operation between the Assembly members, as well between leaders at the municipal level, to promote tolerance at all levels of society.
- Priority should be given to training and education to legislators within the Assembly as well as those who implement policies as civil servants, to ensure that opportunities and policies promoting reconciliation and inter-ethnic dialogue are central and not marginal features of their work.
- Kosovar civil society initiatives should be given more support to promote human rights, inter-ethnic dialogue and tolerance, and to disseminate their messages through media and mass information.
- Agencies designing economic development projects, as well as donors funding such projects, should include inter-ethnic co-operation components to foster confidence building through the pursuit of common interests. Initiatives should also be developed and supported to foster inter-ethnic youth activities such as sports events, concerts and other cross-cultural activities that are stimulating and interactive.
- The prospect of a Truth and Reconciliation Commission should be openly discussed in the media, led by the PISG and UNMIK.

Return

- The central importance of creating conditions for return through inter-ethnic dialogue and confidence building must be recognised. Return planning which foresees substantial return but circumvents the dialogue process should be avoided. Priority must be placed on the quality and sustainability of first returns, not the quantity, in order to effectively lay a solid foundation for a meaningful process.
- Security planning should be harmonised with civilian efforts to stabilise inter-ethnic relations through dialogue and confidence-building. More co-operation is needed between the military and civilian agencies to better define a conceptual framework for post-return security planning (including phased reduction of security measures in returnee settlements). Security planning must consider the impact of the perception created by strict security measures among all communities, and must ensure that physical and psychological barriers between minority returnees and the majority community do not become entrenched. Highly militarised return environments that reinforce physical and psychological separation should be avoided.
- More equitable attention should be given to Roma, Ashkalia and Egyptian IDPs and refugees, as well as to the issue of Kosovo Albanians displaced from Serb-majority areas. Displacement of all ethnic groups should be addressed simultaneously, although all actors must recognise that concrete progress for actual return will vary depending on the complexity of regional political/security environments.
- The newly-formed structures of the PISG should engage themselves in and support the return process, as mandated by the Constitutional Framework. The international community should ensure that support is given to the PISG to initiate a political dialogue and consensus-building process on the issue of return.
- The PISG and the international community, especially UNMIK and donors, should encourage municipalities to constructively engage in the return planning process, by ensuring provision of municipal services to return areas and by exercising positive leadership vis-à-vis inter-community relations. The donor community should consider providing positive incentives for municipalities who support minority integration and return.
- Information dissemination of accurate information on return and related issues (individual rights, rule of law, etc.) with Kosovar media and other local opinion makers is needed. Special attention should be paid to monitoring the use of media vis-à-vis minority return to ensure fair and responsible coverage.

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SECURITY AND FREEDOM OF MOVEMENT

Security - General Situation

1. The trend noted in the previous report of a **progressive decline in serious physical attacks on minorities**⁴ has continued in the period under review. Despite the decrease in serious incidents of violence, harassment, intimidation and humiliation of members of minority communities in Kosovo continued to prevail as a feature of daily life. These incidents continue to have a negative effect on the security, freedom of movement, socio-economic well being and morale of minority communities. Lower level violence also serves as a reminder that more serious or fatal acts can (and do) occur, admittedly at less frequent intervals than previously, but the threat of serious violence remains ever present, making it difficult to raise minority confidence levels.
2. Despite the decline in the number of serious incidents of violence, the period did still see periodic instances of shootings, grenade attacks, and violent physical assaults perpetuated with an ethnic motive against minority men and women of all age groups. The following security incidents are illustrative of the seriousness of attacks which, if less frequent than previously, still threaten ethnic minorities in Kosovo today. On 4 September 2001, a Kosovo Serb farmer from Vërbovc/Vrbovac (Glogovc/Glogovac) was fatally stabbed, while two drive-by shootings on 22 November 2001 and 22 February 2002 resulted in the deaths of two elderly Kosovo Serb women in Obiliq/Obilić and Lipjan/Lipljan municipalities respectively as they were exercising their right of freedom of movement. The firing of five shots from a pistol on 30 January 2002 by a Kosovo Albanian towards a group of Kosovo Serb children waiting for a train at Plemetina village station in Obiliq/Obilić fortunately did not result in bodily harm, but demonstrates that even minority children can still be subject to attack. On 26 December 2001, a Bosniak was killed in majority-Albanian south Mitrovicë/Mitrovica, the fatal assault apparently sparked by the fact that the victim had used the Bosniak language, which was mistaken for Serbian. In a context where minorities face regular intimidation and harassment, and where periods of calm can still be violently interrupted by serious ethnically-motivated attacks sometimes resulting in loss of life, a safe and secure environment has yet to be fully established⁵. Despite a progressive decline in the number and frequency of serious physical attacks, **the situation is still generally characterised by inter-ethnic tensions, violence, and a high degree of impunity.**
3. **The security situation in north Mitrovicë/Mitrovica remained extremely fragile during the period**, becoming particularly volatile in April 2002. On 8 April 2002, following the arrest of a member of the Kosovo Serb "bridge gang" at a KFOR checkpoint, a group of about 40 members of the so-called bridge gang group, supported by about 300 other Kosovo Serb individuals, violently protested against the arrest. This led to a riot, following the intervention of UNMIK Police and a special police unit, who then had to be backed up by a KFOR anti-riot unit. At least 20 international police officers sustained non-life threatening injuries from stones and hand grenades used by the Serb rioters, with one officer seriously injured, whilst several rioters were also injured. As in previous periods, periodic upsurges of political protest and occasional violence in north Mitrovicë/Mitrovica continue to have a negative effect on ethnic minorities in the Serb-dominated north, particularly those few non-Serbs remaining in isolation in northern urban Mitrovicë/Mitrovica town, who quickly become subject to intimidation during periods of heightened tension in the northern municipalities. The few remaining ethnic Albanians (who are a minority in this Serb-majority area) continued to be house-bound and were subject to threats periodically by members of the majority Serb population, while other non-Serbs (such as some Bosniak families) also faced an increase in intimidation. Also targeted for intimidation and harassment during such periods were individuals of all ethnicities with any links (through employment) to UNMIK and the international administration. For example, on 15 April, about 30 Kosovo Serbs physically blocked access to the police station in Zubin Potok to prevent the deployment of new Kosovo Serb and Bosniak Kosovo Police Service officers, and again special police units had to be deployed to evacuate officers from the station. Such periodic upsurges of protest, often with a component of violence, continue to make the situation of non-Serb minorities in the northern municipalities highly precarious.
4. **In addition to the more serious forms of ongoing violence described above, persistent harassment, intimidation and humiliation continues to characterise the daily lives of many minorities throughout Kosovo.** Forms of harassment include persistent stone throwing at moving vehicles and at pedestrians, vandalism of minority homes, businesses, cultural/religious sites and cemeteries, setting fire to abandoned houses, and verbal abuse or spitting. As the numbers of extremely serious incidents of violence have declined, there has been an unfortunate tendency within some sectors of the international community to downplay the adverse effect of the less serious forms of violence, as instances of harassment and intimidation often do not

⁴ For the purposes of this assessment, the term "minority" refers to ethnic communities whose members are a minority in the area or municipality where they live. Each of Kosovo's ethnic groups are a minority somewhere in Kosovo.

⁵ Further examples of incidents of ethnically-motivated violence are included in the chapter on the situation of specific minority communities.

cause serious physical injury. In those cases where perpetrators of stone-throwing and verbal harassment are children or youth, there has been a tendency by the authorities to dismiss such unacceptable conduct as childhood mischief. The law enforcement authorities rarely investigate incidents of delinquency or take action to deter or punish them, and such acts are also very rarely addressed by community leaders (such as school directors and teachers). Moreover, acts perpetrated by children are in some cases committed with the explicit participation or implicit encouragement of adults, who may be onlookers to the incidents. Despite the lack of seriousness often assigned to low-level violence against minorities⁶, the fact remains that these incidents constitute an unlawful interference with the victims' human rights, particularly the personal integrity and security of the person. Furthermore, these incidents have an adverse effect on an individual's perception of security, negatively impacting on the enjoyment of fundamental human rights, especially of freedom of movement. The cumulative negative psychological impact on members of minority communities, who have been subject to harassment and intimidation for nearly three years, should not be underestimated. Some departures of Kosovo Serbs, especially those who are isolated and/or living in mixed areas, can be directly attributed to unrelenting harassment, such as stone throwing at windows and intimidation outside of the doors of minority homes.

5. In light of the above, **the main challenge for minorities in Kosovo continues to be the threat of physical violence which permeates their lives.** This overriding concern continues to influence individual perceptions of security, and therefore the exercise of freedom of movement, which leads to limits on access to a multitude of social and economic rights, particularly health care, social services, education, employment opportunities, reconstruction of residential property and public utilities. This has undermined the ability of a large number of members of minority communities to secure the means by which they can be self-supporting. Insecurity which undermines the viability of minority communities and which corrodes the individual's will to remain not only induces ongoing displacement, but also impedes sustainable return.

Freedom of movement

6. As has been the case since 1999, **continued insecurity for minorities means that freedom of movement remains severely curtailed.** Freedom of movement means the right or liberty to move freely about the entire territory without unlawful limitations or interference, as well as the right to choose a residence within it.⁷ Freedom of movement is not achieved merely when one is no longer subject to life threatening attacks when travelling about, but at the very least should also include: the liberty to move without having to endure stone throwing, humiliating acts, insults and other insidious forms of mistreatment; freedom of access to all locales including urban centres and the opportunity to access shops and services; the ability to travel without requiring special collective transport or escort arrangements; and the ability to choose one's place of residence and to access one's property. Taking this as the general standard, minorities in Kosovo continue to not fully enjoy this right, which is indispensable for the enjoyment of not only economic, social and cultural rights, but also civil and political rights, in particular freedom of assembly. The lack of freedom of movement restricts access to health services, education, work opportunities, land, social security, public services and utilities.
7. **Minorities continue to have real physical security concerns, at times life threatening, travelling within Kosovo.** Violent incidents, if less frequent than before, are still common enough to be perceived as pervasive by minorities, restricting their freedom of movement. Regular reports are received of vehicles transporting minorities being pelted with stones or other objects, occasionally causing damage or injury and serving as a powerful deterrent to normal mobility. Free movement is not only prevented by harassment such as stone throwing, but also by protest and obstruction, and even more serious instances of violence against persons trying to exercise this right. For example, on 28 September 2001, a Kosovo Serb man was shot dead while driving a van with eight passengers from the Kamenicë/Kamenica market to his village. In Viti/Vitina, on 21 October 2001, assailants shot at two Kosovo Serb males travelling on a tractor through the mixed village of Mogila. The suspects fired four shots at the victim, who nevertheless managed to escape unharmed. On 13 March 2002, in Podujevë/Podujevo, a tire was dropped from a flyover onto a mini-bus carrying Kosovo Serb passengers that was being escorted by KFOR, causing damage to the vehicle. An example of obstruction of freedom of movement was seen in late 2001, when a group of displaced Kosovo Albanians were prevented from visiting their villages of origin in majority-Serb northern Mitrovicë/Mitrovica (despite UNMIK and KFOR efforts to facilitate the visit) when Kosovo Serbs protested and set up roadblocks. Likewise, in majority-Serb Štrpce/Shtërpce municipality, in January 2002,

⁶ It should be noted that responses by authorities to this problem have not been uniform. In the Prishtinë/Prishtina region, KFOR has expressed concern about low-level violence against minorities, especially stone-throwing, and have taken steps to try to reduce such incidents in several municipalities where they have been most prevalent.

⁷ Article 12(1) of the International Covenant on Civil and Political Rights states: "Everyone lawfully within the territory, has the right to liberty of movement and freedom to choose his residence." Article 2 of Protocol No. 4 to the European Convention for the Protection of Human Rights and Fundamental Freedoms, states that: "Everyone lawfully within the territory of the State shall, within that territory, have liberty of movement and freedom to choose his residence."

Kosovo Albanian Municipal Assembly members were obstructed from entering the municipality building to perform their duties. They were forced to seek refuge in the police station (being eventually evacuated by KFOR and UNMIK Police), as a result of organised roadblocks and protests by a large group of Kosovo Serbs. However, after strong pressure from KFOR, Kosovo Albanians were, in April 2002, finally able to access the municipal building to perform their functions.

8. Despite these continuing serious problems affecting the day to day lives of minorities, **there has been a progressive rise in the mobility of minorities**. It must be understood from the outset that this progressive rise in mobility is not entirely equivalent to a fundamental improvement in normalised *freedom of movement*. The increased mobility and travel of minorities have mostly been achieved in spite of ever-present security risks, through the active involvement of the international civil and security presence in Kosovo to provide more frequent, flexible and varied escort arrangements for individual travellers, commercial buses and internationally-sponsored collective transport initiatives. KFOR has also engaged in creative initiatives, such as the creation or rehabilitation of alternative secondary routes bypassing normal roadways and avoiding majority areas in order to allow minorities to travel more freely (along some routes even in private vehicles without escorts). It is through these special and exceptional arrangements that minorities have achieved significant improvements in mobility, rather than through a significant and durable change in security and inter-ethnic relations which would allow for *genuine freedom of movement*. The increase in mobility must be qualified by the fact that minorities, with only a few exceptions in some regions, still have not increased movements into urban centres, and increases in movement in or through ethnically-mixed areas has been limited according to local circumstances. Also, transport services accessible to minorities continue to be mostly UNMIK-sponsored initiatives (rather than commercial bus services) with KFOR military escort, pointing to the fact that exceptional measures still prevail to ensure the minimum of mobility for many minorities.
9. While the efforts of the international civilian and military agencies has positively favoured greater mobility, increases in mobility are also linked to improved perceptions of localised security as the rate of extremist violence has declined, as well as being a testament to the determination of the minorities to venture out and the high threshold of forbearance towards insults, intimidation, humiliation and harassment which they have adopted as a coping mechanism. In early 2002, a Kosovo Serb woman in Lipjan/Lipljan poignantly expressed the daily experience of traversing majority neighbourhoods, describing that she has learned to passively ignore verbal harassment or spitting while walking to work, only reacting (by beginning to run) on the days when stones are thrown. Another classic demonstration of the ordeal that persons in minority situations have to regularly endure is an incident in Mitrovicë/Mitrovica municipality, on 3 December 2001, when several Kosovo Albanians stoned a bus providing daily transport for Kosovo Serbs in the vicinity of the ethnically-mixed village of Suvi Do/Suvidoll. Several of the bus windows were broken and a Kosovo Serb passenger sustained injuries. At the same time, Kosovo Albanians cannot move in northern Mitrovicë/Mitrovica without an extreme risk to their physical safety.
10. It is worth noting that in some areas not only has the increased movement of minorities been accompanied with a rise in the number of security incidents such as stone throwing, but that most minority travel is still restricted between locations in rural areas or in peri-urban areas. There is very limited movement by minorities from rural areas to the main urban centres. For example, in Prishtinë/Priština region the opening of new back-roads and widening of existing secondary country roads by KFOR has created a dense network of roads centring around Gračanica/Gračanice and linking up with Obiliq/Obilić and Fushë Kosovë/Kosovo Polje. This has reduced the need for minorities to travel through majority populated areas considered potentially hazardous thereby enhancing their sense of security when travelling on these roads, thus indirectly preventing displacement as a result of the increased sense of freedom of movement. This is viewed by all stakeholders to be a temporary solution until the fundamental problem of security is resolved. Also, the increase in the use of UNMIK-issued "KS" motor vehicle registration plates by minorities has contributed to the ease in freedom of movement without escorts, though it must be noted that they still cannot legally travel to Serbia proper, where many maintain family, social and commercial contacts, with vehicles registered in Kosovo.⁸
11. Progress in the quality and durability of enhanced mobility is varied by location and by region. In some cases, increased mobility does not necessarily translate into an increase of access to goods and services. For example, in Obiliq/Obilić Kosovo Serbs reported in November 2001 that some members of their community were venturing, with great caution and for the first time, into the centre of Obiliq/Obilić town without escort. However, upon closer

⁸ During the period, UNMIK was engaged in discussions with FRY authorities to obtain agreement on recognition of UNMIK-registered vehicles, which would thus remove a large obstacle for Kosovo Serbs and others travelling to Serbia, who at present can only do so by paying for two auto insurance policies and two sets of vehicle registration and licence plates.

examination it was found that these venturesome Kosovo Serbs in Obiliq/Obilić do not have access to goods that are available in Kosovo Albanian owned shops as the proprietors declined to provide them with service. Meanwhile, a different scenario was seen in Fushë Kosovë/Kosovo Polje town, where Kosovo Serbs were able, with some limitations, to access goods in some Kosovo Albanian shops. Indeed, in some of these shops the owners serve their Kosovo Serb customers using the Serbian language, even in the presence of other Kosovo Albanian customers. Yet, motor vehicles transporting Kosovo Serbs in the area were regularly pelted with stones. In other areas, significant generalised improvements in freedom of movement and access to goods and services can be interrupted by instances of violence. For example, relatively more substantial generalised improvements in mobility and inter-ethnic interaction were noted in the Gjiilan/Gnjilane region.⁹ In both Gjiilan/Gnjilane and Viti/Vitina towns, Kosovo Serbs have been increasingly moving in the streets, accessing some shops and public services. In Gjiilan/Gnjilane town, increased mobility has been a direct result of international efforts to provide special transport to bring Serbs from surrounding areas into town for a market day three times a week. Initially, KFOR ensured a high level of presence during the period of confidence-building, but the high military presence has successfully and gradually been reduced. In the same region, Kosovo Serbs and Albanians travel regularly, interact and trade at the green market in Kamenicë/Kamenica municipality. However, even such noteworthy improvements can be interrupted by violence, as in an incident on 4 January 2002, when five Kosovo Albanian men assaulted three Kosovo Serb men, resulting in one of them sustaining serious head injuries. On the same day another five Kosovo Albanian men were arrested for throwing stones at a Kosovo Serb's vehicle and a similar incident occurred in the evening in the municipality. The situation became so volatile that, to reduce rising tension, the authorities in the area temporarily imposed a limited curfew. In the same region, the small number of remaining Serbs in Ferizaj/Uroševac town continue to be house-bound with no meaningful progress in mobility or access to services. In various locales within the Gjiilan/Gnjilane region, such as certain villages and routes in Kamenicë/Kamenica municipality, stone-throwing remains a persistent problem that deters minorities from travelling certain roads, but in other locations in the region, Kosovo Serbs are increasingly transiting unescorted in their private vehicles. These examples point to localised improvements in freedom of movement, with simple reference to the fact that it is sometimes misleading to overestimate progress in freedom of movement, with simple reference to the absence of a progression of physical attacks. What is needed is to assess the quality and durability of the apparent freedom of movement, whether such increases in mobility are accompanied by increases in lasting, positive interaction with the majority population, and whether minorities are able to use their increasing mobility to effectively access goods and services.

12. In addition, individual minorities' perceptions of freedom of movement and their personal determination to exercise this right are important factors related to improvements to the situation. Minority perception, *inter alia*, is as a result of past experience, objective threat levels, KFOR and personal security measures as well as the precautionary coping mechanisms that individuals have developed over time. It is in this mode that there has been noted a very gradual but perceptible increase amongst a small number of minorities to cautiously hurry through urban centres such as Prishtinë/Priština to access services, employment or meeting with other persons to break their sense of isolation¹⁰. Other more risk-averse members of the same ethnic communities, in the same places, do not dare to step outside their apartments without escort arrangements. This does not mean that the latter category of people are limiting their freedom of movement due to an overly-cautious perception of the security risk, but rather that those minorities who are choosing to exercise mobility are taking calculated risks after almost three years of almost constant interference with their fundamental freedoms.

Response of authorities

13. Assessing the nature and the scope of the insecurity and lack of freedom of movement faced by minorities is only the first step towards resolving the problems. Identifying solutions requires assessing what measures have been taken (or should be taken) by the authorities to ensure security and improve freedom of movement. The main

⁹ Improvements in freedom of movement in some areas during the period were clearly linked with particular regional developments. In the Gjiilan/Gnjilane region, the de-escalation of the internal armed conflict in FYROM following the signing of the Framework for Peace in August 2001 (and the return of the majority of the ethnic Albanian Macedonians who had sought temporary refuge in eastern Kosovo), the demobilisation of the "UCPMB" and the resolution of the Southern Serbia crisis all had a positive impact on minority freedom of movement. The re-opening of Gate 5 and the stabilisation of the eastern boundary between Kosovo and Southern Serbia, as well as the general reduction of tensions and violence within the region during the period, were the primary factors which encouraged Kosovo Serbs in Gjiilan/Gnjilane, Kamenicë/Kamenica and Novobërdë/Novo Brdo in particular to begin resuming regular travel between Kosovo and Serbia proper for commercial, social and family reasons as well as to access services such as secondary schooling and medical care not easily accessible to them in Kosovo.

¹⁰ It must be noted that those minorities who are increasingly venturing to exercise freedom of movement within urban Prishtinë/Priština are from those few isolated minority households who live in the urban area. In general, minorities (especially Kosovo Serbs) who live in rural and semi-urban areas are still not able to travel into the major urban centres such as Prishtinë/Priština and Pejë/Peć. Again, this illustrates the fact that localised security and localised mobility is slowly improving within certain limited parameters, but these advances are not generalised.

authorities involved include KFOR, responsible for ensuring a safe and secure environment, but it becomes increasingly important to examine the role of the police, both UNMIK Police and Kosovo Police Service (KPS), as the assumption of full responsibility for civilian safety, public order and law enforcement falls on these structures, particularly, in the long term, on the KPS. It is also important to examine the role of civilian authorities, both international and local, in addressing the causes of insecurity and lack of freedom of movement, and in taking steps to remedy them. The role of the judicial system is particularly important in addressing security issues, and will be assessed in the next section.

14. The main developments in the response of the authorities during the period were linked to a **decision by KFOR to change its approach**, and thus adjust its security mechanisms, across Kosovo. The stated objective behind the approach which emerged during the period was to avoid any situation where security measures could, indirectly, perpetuate the perception of threat, increase barriers between ethnic communities, discourage inter-ethnic contacts, or reinforce the isolation of minority communities. A key element of the new strategy was the objective to remove or reduce static security arrangements (e.g. guard towers/checkpoints) in favour of wider area security through an increase of mobile patrols and other less visible security measures.¹¹ Various KFOR contingents expressed the views that mobile patrols are a more effective deterrent to ethnically motivated crime and allow a quicker response to incidents wherever they occur in enclave or mixed areas. With regard to freedom of movement, KFOR on the one hand continued to support minority transport initiatives with security escorts (even in some areas providing new escorts for new transport initiatives). On the other hand, in other areas KFOR began to reduce escorts (with some escorts taken over by UNMIK Police), or replace direct and high-profile escorts with less visible and distant forms of security. The different types of security measures put into place by KFOR have, in some locations, shown signs of helping to achieve the objective of removing artificial barriers between communities, in some cases positively influencing increased mobility of minorities. In other locations, the results have been less favourable, although there are no indications that objective safety has been compromised as a result. The immediate (short-term) results of the implementation of new security mechanisms, both in terms of reducing static checkpoints as well as in changing or reducing close escort arrangements, follow. Several locations in which KFOR implemented a removal of static security measures were assessed in depth.
15. In **Caglavica/Cagllavice** (a mixed village in rural Prishtinë/Priština), stationary checkpoints were removed, and co-ordinated patrols of KFOR, UNMIK Police and KPS (with only Serb officers) were simultaneously increased. KFOR and UNMIK Police confirmed that there had been no change in the security situation since the removal of checkpoints and the guard tower. However, they attributed the maintenance of the status quo to various factors, including the lack of property disputes and the high number of UNMIK Police officers living in the village. While security remained stable, Serb inhabitants continue to sell their property, primarily because they have no sources of income due to restricted freedom of movement which not only prevents access to formal employment, but also prevents them from feeling secure in working their agricultural lands. Serb community members confirmed that, while they perceive local security to be calm, they still fear moving outside the village. The new security mechanisms have not yet appeared to increase confidence or mobility.
16. In early January 2002, KFOR removed checkpoint "D26" and abandoned its guard tower situated on the main road between the Kosovo Albanian village of Kushtove/Kosutovo (Mitrovicë/Mitrovica) and the Kosovo Serb village of **Zupče/Zupce** (a Serb-inhabited village which is near to an Albanian village in the municipality of Zubin Potok). The checkpoint was one of several which controlled access to Serb-majority Zubin Potok, including Čabra/Čabra, the only Kosovo Albanian village in the municipality (1,500 inhabitants). This checkpoint was intended to ensure security for all communities within the mixed area. Upon removing the checkpoint, KFOR increased mobile patrols in the area. In the area surrounding "D26", KFOR assesses that the security situation has improved over the past year, citing no serious incidents in 2001 and none since the removal of the checkpoint. Interaction between the Kosovo Serb majority living in Zubin Potok municipality and the Kosovo Albanian minority living in the village of Čabra/Čabra has been increasing. Two of the 17 Municipal Assembly members are Kosovo Albanians and co-operation between them and the Serb assembly members is positive. UNMIK officials noted that escorts for Kosovo Albanian municipal employees were becoming increasingly unnecessary. Although the description of this co-operation by the two communities themselves was more muted, both indicated a willingness to co-operate with each other. UNMIK Police and the UNMIK civil administration in Zubin Potok opposed the removal of the checkpoint, arguing that static measures provide a higher level of security and create a sense of psychological security among the population. This opposition also seemed linked

¹¹ Regional KFOR informed that such an instruction has been issued from COMKFOR requiring the removal of the majority of static security measures by May 2002 and a switch to more mobile security, but the authors have not seen the order itself, nor its date. KFOR contingents have also explained that the change in policy reflects a strategic direction, not any reduction in overall resources devoted towards the security of minorities.

to the fact that UNMIK Police and the Kosovo Serb villagers said that they had not been informed about KFOR's decision to remove the checkpoint. Kosovo Serb villagers in Zupče/Zupçe said they were feeling more insecure as a result of the removal.

17. The enclave of upper **Rahovec/Orahovac** town, a quarter inhabited by Serbs, Roma and Egyptian populations, has three entrances, all of which were previously guarded by KFOR. The three checkpoints were first abandoned, and then removed, in October 2001. KFOR increased patrols in their place. In this particular location, the objective of minimising psychological barriers caused by the visible separation of the enclave was seen as particularly important. KFOR carried out an information campaign in the quarter by conducting meetings with the community leaders prior to removing the checkpoints. UNMIK Police were consulted before the removal of the static security measures took place and because KFOR was not reducing overall resources for the enclave, UNMIK Police did not modify their own security measures. KPS performs patrols, either independently or with international police officers, although there is only one Serb KPS officer. After the removal of the static measures, UNMIK Police confirmed that crime has not increased, and KFOR described the security situation as "calm, but not stable."¹² Members of the Kosovo Serb community also perceive the overall security situation as improved. Despite initial apprehension about the removal of the static checkpoints, the community now has a more positive view of the changes, particularly as the checkpoints had contributed to the perception of being "locked in." The removal of the checkpoints allows Albanians to enter the enclave, and the Roma and Egyptian inhabitants of the enclave have been beginning to mix with the Albanian community in the town, although a few incidents have occurred. While the psychological impact on the Serbs has been positive, actual impact in terms of freedom of movement and interaction has not yet been seen, and the Serb and the majority community still remained highly divided. The Serb population still does not leave the enclave, stating that they are afraid and that acts of intimidation continue.
18. The present security arrangements in the Serb returnee villages of **Osojane/Osojan Valley** provide a contrast to the above-mentioned scenarios.¹³ Surrounding hills naturally protect the four Serbian villages located in the valley, five kilometres from the main road. Since the return of Kosovo Serbs to the village in later summer 2001, no security incidents have occurred. The area around Osojane/Osojan is intensively controlled and protected by KFOR. There are two static checkpoints at both ends of the valley, KFOR has a high manpower allocation to patrol the valley regularly, and the surrounding mountains are monitored from elevated watchtowers with floodlights, creating a completely guarded area. The Serb community to date has had very little contact with their Albanian neighbours (with a few exceptions, including a few neighbourly exchanges between individuals, and limited and cautious interaction with Albanian workers who come into the valley to work on reconstruction projects). Serb community members are fearful of the Albanian reaction if they attempted to interact, and have adopted a defensive and inward looking perspective since their return. The normalisation of the relations between the Serb returnees and the majority has not yet begun in earnest. Existing security barriers do not prevent movement of Serbs out (although they do highly restrict movement of others in), but reinforce the isolationist attitudes amongst the returnees as well as the negative perceptions of the majority community. KFOR recently announced its intention to begin scaling down static security measures, with eventual removal of the main checkpoint.
19. In the locations assessed in depth, the removal by KFOR of static measures has not led to any immediate increase in ethnically-motivated violence. The levels of positive psychological impact on the minority communities seem to vary by location and particular situation, and very importantly, on whether KFOR had clearly communicated to the community (and the police) to explain their actions (and the reasons for the actions) in advance. Highly visible barriers, which reinforce tendencies of communities to avoid or minimise contact, as in Osojane/Osojan, are impossible to sustain in the long-term and are undesirable in themselves. In all cases where security mechanisms are changed, the enhancement of the role of UNMIK Police and KPS as well as complementary initiatives by international and local civilian authorities to promote dialogue and confidence building are of critical importance.
20. While the movement away from static measures largely relates to local security, KFOR's strategic shift has also resulted in changes with regard to **freedom of movement escorts**. UNMIK Police has increasingly been taking over escort responsibilities, but KFOR continues to undertake substantial activities on a daily basis to escort individuals, private vehicle or commercial bus convoys, and special bus services provided by the international

¹² A case of arson was reported shortly after the modification of the security measures, following a usual pattern of periodic burning of unoccupied minority properties (some of them previously burnt) along the "boundary" areas between the enclave and majority quarter. The Serb community perceives these fires as a form of low-level and ongoing harassment.

¹³ The Osojane/Osojan minority return is described in depth in the return chapter.

community. In some areas, escort arrangements have actually increased as new minority transport initiatives are put in place, or new routes are added. In other locations, escorts decreased in number, or changed in strategy as per the lower-visibility approach.

21. **The expansion of KFOR escort services between minority areas, including to isolated villages and hamlets has given more opportunity for the minorities particularly Kosovo Serbs (who face the most restrictions) to travel than before.** For example, in September 2001, KFOR established a new escort service for an UNMIK-sponsored bus line between the enclaves of upper Rahovec/Orahovac and Gračanica/Gračanice, via the small Serb villages and hamlets in Lipjan/Lipljan municipality, along part of the route using alternative roads tarred by KFOR for the purpose of minority transport, avoiding some majority areas. Such exceptional measures have made a large difference in the ability of minorities to travel within Kosovo. Since March 2002, the extension of the Central Fushë Kosovë/Kosovo Polje to Zvečan/Zvečan train services, which will now run from Leshak/Lesak to Hani i Elezit/Djeneral Jankovic, is another example which increases the mobility of minorities beyond their immediate environs. Minorities in Kosovo generally experience limited but improved possibilities for movement, while major constraints still exist in certain communities particularly in urban areas and isolated hamlets.
22. At the same time, KFOR has, whenever possible, endeavoured to reduce direct escorts in favour of area security.¹⁴ During the period, this did not have any substantial impact on the levels of security, although in some cases the minorities did perceive, to greater or lesser extents, a crisis in confidence related to such changes. For example, in Suvi Do/Suvidoll (a mixed village in northern Mitrovicë/Mitrovica), KFOR replaced high-visibility tank escorts of buses and vehicle convoys with lower visibility measures, such as placing soldiers inside buses and/or following buses and convoys with a military jeep, maintaining a higher presence only at strategic points along the route, such as in an Albanian neighbourhood. Despite the fact that there was no upsurge in incidents (periodic stone-throwing continued at about the same rate), minority passengers expressed feeling much less secure, although as a matter of necessity, especially those who use the transport to go to their workplace, most continue to use the service. Another example is the case of the Serb-inhabited villages of Suvo Grlo/Suvogërl and Banja/Banjë (Skenderaj/Srbica), where KFOR reduced the escort of Serb residents in APCs,¹⁵ requiring them to either walk or drive their own vehicles between the villages, with KFOR patrols along the two kilometre road. The Serb community complained that KFOR was not consistently present, and fear combined with several stoning incidents, resulted in increased anxiety and a significant reduction of movement, which increased isolation.
23. Despite KFOR's strategy to reduce direct escorts in favour of area security, security escorts are unfortunately still a necessity and other arrangements such as the provision of secure transportation to and from work for minority workers are still the norm rather than the exception. Indeed, UNMIK has acknowledged that it has considerable difficulties retaining the services of a number of minority staff employed in the civil service, as the minority staff often do not turn up for work or simply resign due to lack of secure transportation. This has particularly been noted with regard to urban centres where most administrative hubs are located. To address this issue, in February 2002 the UNMIK Directorate of Infrastructure Affairs initiated a pilot project with four **civil service bus lines** from the regions to Prishtinë/Prishtina,¹⁶ at an estimated cost, until May 2002, of Euro 360,000. Many minorities continue to rely on such measures, while others are increasingly taking the decision to exercise mobility with a resolute personal forbearance in the face of risk. The authorities have a clear duty to take measures to improve security so that freedom of movement is assured everywhere; to provide temporary measures to increase general mobility; and to provide special measures to ensure that freedom of movement restrictions do not prevent access to key services. Often, the responsibilities in these three areas are viewed strictly within the purview of KFOR and/or the international civilian authorities. However, it is becoming increasingly clear that international actors need to take steps, not only to contain conflict through special measures such as special bus lines and military security measures, but also by fostering inter-ethnic relations which will contribute to a transformation of the security environment. This latter responsibility can only be realised through the active engagement and commitment of local authorities and community leaders, with the support of the international community.

¹⁴ Practices are not consistent across different regions. In Prizren region, for example, KFOR continues to tend to employ much higher security, sometimes using multiple armoured personnel carriers in addition to lighter vehicles for close escort, whereas in some other regions which were not notably different in terms of their general security environment, direct escorts were reduced to a greater extent.

¹⁵ Armoured personnel carriers

¹⁶ Minority civil servants are transported to Prishtinë/Prishtina on a daily basis by special UNMIK-sponsored shuttles, escorted by KFOR, from Kamenicë/Kamenica (via Gjiçan/Gnjilane), Mitrovicë/Mitrovica (via Vushtrri/Vuđitrn and Obiliq/Obilić), Istog/Istok (via Klinë/Klina), and Prizren (via Suharekë/Suva Reka, Shtime/Shtimlje and Lipjan/Lipljan).

24. As illustrated above, KFOR's general security practices, co-ordinated with transport initiatives of the civilian agencies, have been crucial for guaranteeing that minorities are able to progressively exercise more mobility. A notable exception, which is problematic from the human rights perspective, is the practice of KFOR MNB (S)¹⁷ with regard to continued restrictions of freedom of movement for Kosovo Serbs in Prizren municipality. Kosovo Serbs from the Zhupa Valley in Prizren municipality who are mostly displaced in the Serb-majority municipality of Štrpce/Shtërpçë, to the east, are still restricted from exercising the choice to move freely beyond a designated zone within Prizren.¹⁸

ACCESS TO JUSTICE

25. Access to the judicial system is a special type of access to an essential service, of growing importance to all minorities. Minorities' treatment by the **criminal justice** system, both as defendants and as victims, is a very important part of security – only fair and public trials of suspected perpetrators of inter-ethnic crime can ensure the rule of law. Of equal importance is access to **civil justice**. The legal system should provide effective remedies to many of the key problems faced by minorities, including discrimination and property issues, so it is vital that minorities are able to use a civil justice system that meets their needs and enforces remedies. Minorities face similar problems in accessing both parts of the justice system.

Physical access to courts

26. The biggest problem of access to court for certain minority groups is **physical access**. In civil cases, minorities must be able to access the court to lodge their claims and to appear as claimants, while in criminal matters, minorities need to be present in court as witnesses or defendants. All minorities using the justice system need to have access to lawyers and minority court staff. The key issue affecting physical access is freedom of movement, which varies from group to group and region to region. For example, some minority groups, such as Ashkaelia and Egyptians in Prizren and Pejë/Peć regions, and members of all minorities in Kamenicë/Kamenica, have experienced improvements in their ability to move freely within the municipal town centres and thus have been able to physically access the courts. Other groups such as Kosovo Serbs in Rahovec/Orahovac and in the small enclaves in central Kosovo, and Kosovo Albanians in northern Kosovo, have only limited freedom of movement and therefore need assistance (e.g. escorts) to get to the court buildings.
27. The **response of the authorities** has varied. A bus service goes from south Mitrovicë/Mitrovica to the court in the north, but this still creates problems for Kosovo Albanians who are in a minority situation in the north, who must first get to the Albanian south. One problem is shown by the case of two Serb employees of the court in Rahovec/Orahovac. Employed in March 2001, they have not been able to access work (and therefore have not been paid) due to their lack of freedom of movement and the lack of an escort service. This appears to be due to two problems – first that neither KFOR nor UNMIK Police were able to agree on an escort service with UNMIK, and budget problems in the hiring of a vehicle.¹⁹ In the Serb enclave of Gorazdevac/Gorazhdec, (Pejë/Peć) an UNMIK office receives legal complaints from the Serbs and submits these to the court on their behalf. There have been no special measures for the Serbs in Štrpce/Shtërpçë, who have no access to any UNMIK court (officially they fall under Ferizaj/Uroševac courts but have no freedom of movement to get there). Although before 1999, the Ferizaj/Uroševac court had an office in Štrpce/Shtërpçë, UNMIK has not reopened it and currently has not provided for it in the budget.

¹⁷ Multi-National Brigade South, responsible for the Prizren region in southern Kosovo.

¹⁸ During 2001, Serbs faced restrictions in passing the Prevalac checkpoint at the boundary between Štrpce/Shtërpçë and Prizren/Zhupa Valley, and thus had difficulties visiting their places of origin and their properties, or making social visits to existing Serb populations in Prizren. In recent months, KFOR has relaxed the policy at Prevalac, allowing all travellers to pass, but Kosovo Serbs can still only travel freely up to the Sredska/Sredskë checkpoint in Zhupa Valley. Organisations, particularly those involved in the return process, have requested, but have not yet received, the written policy of the Brigade, but it appears that Serbs are only being allowed to move beyond the checkpoint if they are travelling to certain Serb-inhabited villages just beyond Sredska/Sredskë. Serbs who wish to travel to Prizren town or other locales beyond, are, it appears, not allowed to do so by KFOR regardless of their own personal assessment of the risks involved. Whilst KFOR security arrangements (checkpoints, etc.) are put into place to enhance security and prevent incidents, they should not impose freedom of movement restrictions on the basis of ethnicity. Individuals should be able to exercise a free and informed choice as to risks to their personal security, and exercise mobility accordingly. KFOR has often, during periods of particular instability, restricted movements through minority areas (e.g. restrictions of ethnic Albanian movement through Serb enclaves) but such restrictions should be removed as soon as possible to ensure that all Kosovars of all ethnicities enjoy equal rights to move through the territory, and equal right of use of public roadways. Except in very particular circumstances (when temporary and exceptional measures may be needed), prevention of members of certain ethnic groups from exercising a choice to move freely is paramount to violating the right to liberty of movement and the right to choose one's place of residence, as well as being unjustified discrimination on the basis of ethnicity. Recently, there were indications that MNB (S) may be reviewing their policy and practice in this regard.

¹⁹ DOJ stated in April 2002 that a vehicle had been found and that the two persons should sign a new contract imminently.

Employment in courts

28. One indicator of how minorities are able to access courts in general is **how many are willing and able to work in the courts**. As of April 2002, there were 343 judges and prosecutors and 456 lay judges appointed to the 55 courts in Kosovo. Out of the 343 judges and prosecutors, 16 (4.71%) were Kosovo Serbs (only four of whom were actually working), seven (2.06%) Turks, 12 (3.53%) Bosniaks (of whom only 10 were working) and two (0.59%) Roma. Albanian judges represent 89.11% of judges and prosecutors. However, given that only four Serbs and 10 Bosniaks actually assumed their appointments, the percentages for these two ethnic groups can be more accurately expressed as 1.18% Serb and 2.9% Bosniak.
29. The relatively low number of minorities working within the judicial system, and the fact that some appointees are actually not performing their functions, can be attributed to several problems. The main problems are the lack of physical access and freedom of movement, the continued parallel Serbian court system, and discrimination, including the general perception that minority judges are only needed for cases involving members of minorities. One example of the last-mentioned cause is the case of two Kosovo Serb lay-judges in Rahovec/Orahovac. Appointed in 2001, they have never been asked to sit on a panel. Court staff stated that the lay-judges had not yet been called because there had been no cases involving Kosovo Serbs in the court.

Parallel structures

30. **One of the key problems that particularly affects Kosovo Serbs remains the existence of parallel courts**, which are widespread. For example there are parallel courts for Mitrovicë/Mitrovica and the northern Serb municipalities, there is the "Municipal Court of Uroševac" based in Leskovac, Serbia proper, (which also nominally covers Štrpce/Shtërpce), and the "Municipal Court of Lipjan/Lipljan," located in Niš, Serbia proper, but with a judge based in Lipjan/Lipljan municipality itself. The staff, including the judges, of such courts are still paid by the Belgrade authorities, who are said to have put pressure on the Serb judges initially appointed to the UNMIK Kosovo courts to resign. Such courts are still used by Serbs to attempt to resolve disputes including property, registration and, in the north, criminal cases. They can, in theory, attempt to deal with both criminal and civil matters, although the courts outside the northern municipalities do not address criminal issues, having no actual power of enforcement. The parallel courts themselves are not legitimate in Kosovo, not being recognised by UNMIK, but UNMIK has not taken any action to end their activities.
31. **These parallel courts are very problematic** for several reasons. Their existence, and continued use, is a sign that Serbs in Kosovo and Belgrade do not accept, trust or use the UNMIK courts (which do have enforcement powers). Moreover, the parallel courts themselves do not bring any benefit to the Kosovo Serb community, because, having no power of enforcement, they can not provide any effective remedy to any dispute, and can merely complicate matters such as property disputes. In criminal cases, Serbs in the northern municipalities run the risk of suffering double jeopardy, if they are tried for the same offence both by a parallel court, and then by an UNMIK court that will not recognise the decision of the parallel court. This has in fact happened to a Kosovo Serb from Zubin Potok, who was detained for 16 months in Serbia proper, tried and acquitted for murder by the parallel court for Mitrovicë/Mitrovica, and then arrested and tried again by the UNMIK Mitrovicë/Mitrovica District Court. By not using the UNMIK courts, which have the power of enforcement, Kosovo Serbs are harming their own interests in relation to the proper administration of justice.

Lawyers and languages

32. **Access to a legal system also means access to legal advice**. Again, this is a particular problem for minorities who have limited freedom of movement. Whilst persons have the right under international law (directly applicable in Kosovo) to effective legal assistance, this does not necessarily mean that they have the right to a lawyer of their own ethnic community, although issues of language may make this desirable. It is encouraging that there seem to be relatively few problems in minority lawyers accessing the judicial system, beyond difficulties with freedom of movement. Indeed a Serb lawyer in Mitrovicë/Mitrovica stated that neither he nor his Serb colleagues had problems in the UNMIK courts. Nevertheless, there are still no Roma lawyers in Kosovo, and only a few Serb lawyers working within the system.
33. **Language issues in the judicial system in general are still a problem**. Translation of UNMIK Regulations into Serbian and Albanian tends to be slow, making it difficult for both majority and minority defendants/parties/lawyers to understand and use the law.

Discrimination

34. Monitoring of access within the justice system suggests that there is **less evidence of direct discrimination** within the justice system than has been identified in the past. The clearest example of previous discrimination came with the treatment of Serbs accused of war and ethnic crimes, who were tried in 2000 at a time of heightened emotions. OSCE's concerns about these trials, as set out in its reports on the criminal justice system, have been addressed by the use of international judges, who, together with locals, have reheard all the cases. In the few civil cases involving minorities that have been monitored, there is no evidence of any discrimination in the final rulings of the court. In substantiation, one of the few Serb lawyers practising in the regular court administration stated that he had not experienced discrimination in the system.

Criminal justice

35. During the reporting period, UNMIK Police and KPS made important and notable advances in law enforcement and fighting crime, most specifically in combating illegal activities such as evasion of customs duties, smuggling, illegal possession of weapons, burglary, theft of vehicles and other goods, and assaults linked to personal or family disputes between persons of the same ethnicity. UNMIK Police has found that reporting of "normal" crimes has increased, as has the ability of the law enforcement and judicial officials in identifying, arresting and trying perpetrators of these crimes. There have been relatively fewer improvements in the case of ethnically-motivated crime, although there has been progress. It is widely accepted that the vast majority of serious inter-ethnic crimes which have taken place over the last two and a half years have resulted neither in identification nor arrest of suspected perpetrators, and that most ethnic crimes committed in 1999 and 2000 have not been prosecuted.²⁰ But focusing on the most recent period, there have been improvements in arrest and prosecutions of ethnically-motivated crimes perpetrated in 2001. As a result, there have been a number of successful **prosecutions in serious cases of ethnically-based violence**, including murder. For example, on 12 December 2001 a Kosovo Albanian was convicted of illegal possession of weapons and causing general danger in connection with the planting of a bomb in a store in Gjiilan/Gnjilane in March 2001 (the store was owned by an Albanian, but results of the police investigation suggest that the victim was targeted because the storekeeper did business with Serbs). Similarly, three Kosovo Albanians were convicted of murder on 4 February 2002, for the drive-by shooting of a Serb near Kamenicë/Kamenica in June 2001. During this period, the trial was also ongoing of two Kosovo Albanians for a shooting incident in Viti/Vitina on 30 April 2001, in which a Serb was killed. On 12 April 2002, the defendants were convicted of both the murder of the Serb, and grave bodily injury of an Albanian bystander. In all these cases the court panels consisted of two international and one local judge.
36. Despite this, given the perceived poor record of arrests and prosecutions during the bulk of the previous two years, the belief among the minority population that few perpetrators of ethnically-motivated attacks are ever apprehended persists, which continues to reinforce the fears of minorities for their personal security. Continued under-investigation and failure to prosecute less serious crimes further strengthens the conviction that impunity prevails in Kosovo for inter-ethnic violence, resulting in many minorities feeling unmotivated to report ongoing incidents. Members of minority communities have told that they "do not see the point" in continuing to report to law enforcement authorities the less serious but unrelenting forms of harassment suffered, especially in the case where stone-throwing or other harassment is perpetrated by children and young people.
37. Any ethnic bias in the criminal justice system, whether intended or not, means that minorities accused of crimes will not receive a fair trial. As stated above, in 2000 there were many concerns about the fairness of the trials of war crimes and other serious crimes alleged against Kosovo Serbs for incidents in 1998-1999. These **concerns regarding fair trials have largely been addressed** by the greater involvement of international judges in such cases, both in conducting current trials, and reviewing past cases where there are allegations of bias. However, particular problems remain. For example, Serbs in Gracanica/Gracanice, facing trials in Prishtinë/Priština, are still having problems in accessing legal advice, in securing escorts to the Minor Offences Court and in security inside this Court.
38. A significant number of district court trials are delayed or court investigations hampered in cases involving **Kosovo Serb witnesses**. There are considerable logistical problems in notifying these witnesses, since most have left Kosovo and cannot be traced in Serbia proper, and those who are still in Kosovo refuse to attend court hearings without guarantees as to their safety. The absence of important witnesses in criminal court proceedings brings about serious delays which impact the right of the defendants, who are normally also members of a

²⁰ No specific figures on the percentage of inter-ethnic crime that has been successfully prosecuted are available. However, the high number of crimes affecting minorities reported to our organisations and to the police in 1999 and 2000, and still relatively few successful prosecutions, show that the majority of the previous crimes have not been prosecuted.

minority community, to be tried within a reasonable amount of time.²¹ There have been, during this period, a number of convictions (including for war crimes) involving Kosovo Serb defendants, that were sent back from the Supreme Court for retrials in the first instance court, because facts had not been established properly since important witnesses in Serbia proper were not called. As an illustration: the case of a Kosovo Serb defendant sentenced to 12 years and 6 months imprisonment, for an ethnically-motivated murder, was sent back to the first instance court for retrial by the Supreme Court in April 2001 because the key Serb witnesses had yet to be heard. During the course of the retrial, because of the non-appearance of witnesses the entire proceeding was delayed. The last session of the retrial, in mid-February 2002, was again postponed as the defence witnesses failed to appear, with the international presiding judge stating that "it will be the last possibility given to defence witnesses to be heard". The outcome of the retrial is still unclear, more than 10 months after the decision for retrial. The general lack of witness support, assistance services, and protection mechanisms continue to be detrimental to court proceedings in such cases.

39. The lack of freedom of movement and need for escorts can cause particular **problems for minority detainees**. For example, one problem is the transport of Serb detainees who are released from detention back to their place of residence. In Gjiilan/Gnjilane, both UNMIK Police and the court disclaimed responsibility for ensuring such transports, arguing that detainees should make transport arrangements with their families beforehand. This problem was eventually resolved by assistance provided by local Serb community structures for the transportation of released Serb detainees back to their homes as well as the promise of KFOR assistance.
40. A continuing widespread problem is **access to family and legal visits** for minority detainees. The right of detainees to have access to the outside world, meaning the right to communicate and to receive visits, is guaranteed both by domestic applicable law and international human rights instruments and it provides fundamental safeguards against human rights abuses. The actual possibility of visits from minority families or lawyers in areas without freedom of movement is dependent on the availability of the police or KFOR escorts, which often vary. Even where escorts are provided for Kosovo Serb defence lawyers in particular, minority defence counsels often have very limited time to see their clients and, consequently, the preparation of a proper and effective defence is jeopardised. Kosovo Albanian defence lawyers are facing identical difficulties to consult their clients and prepare defences for those detained in the northern part of Mitrovicë/Mitrovica.

Civil Justice

41. Civil justice can resolve some of the most serious problems affecting minorities, in particular discrimination, access to essential services and property issues. However, when looking at the use of civil justice, it has been found that **minorities still rarely use the civil justice system**, although the numbers may be increasing from a very low base.²² Minorities have stated that this is due to a variety of reasons. Importantly, very few are aware or believe that the justice system can meet their needs. This can be due to lack of knowledge of the system, or the success it can have, or a belief, justified or not, that the system can never provide any effective remedies, either because it is unable, or that the persons within it will not assist minorities. Another reason is actual physical restrictions on access to courts. A final reason is the continued existence of parallel court structures, which are used by Kosovo Serbs despite their lack of capacity to enforce effective remedies, and the fact that, in using illegitimate structures, minorities effectively decrease direct pressure on the UNMIK judicial structures to accommodate their needs.

Remedies and special measures

42. There have been two major efforts specifically to address access of minorities to the justice system. The first has been the **Norwegian Refugee Council's Civil Rights Project (CRP)**²³ to provide legal assistance to minorities. This work has been invaluable, being the only source of direct legal assistance for civil cases, allowing minorities to lodge and pursue cases, and also to negotiate settlements, for example, in employment disputes. Without such special programmes in place, most minorities would lack access to remedies due to lack of information and lack of freedom of movement in addition to lack of legal assistance. For example, in December 2001, an Ashkaelia man received a positive judgement in the Prishtinë/Priština municipal court for reinstatement of his pre-conflict job with KEK, as a result of CRP filing a legal action. CRP staff identified the case after encountering the plaintiff during a field visit in rural Podujevë/Podujevo municipality. The court found that KEK had wrongfully refused to reinstate the Ashkaelia employee. KEK acknowledged that the employee had come to the workplace

²¹ As required by Article 6(1) ECHR and Article 14(1) of the ICCPR.

²² In Mitrovicë/Mitrovica municipal court there were 38 civil cases recorded in 2001 where both parties were Serb (the majority being inheritance cases), and 14 cases where one party was Serb (the majority being property cases). The Serbs in Vushtri/Vučitrn and Skenderaj/Srbica do not use the UNMIK civil courts at all, instead using the parallel courts or none.

²³ A UNHCR project funded largely by ECHO.

in September 1999 to request his job back, but nonetheless argued that the defendant had failed to report to work before the legal deadline. The court rejected this argumentation, agreeing that the defendant, having notified KEK of his intention to work and lacking freedom of movement to safely travel to the workplace prior to the deadline due to his ethnicity, should have been reinstated.²⁴ This case highlights the critical importance of free legal aid programmes, which invest efforts in outreach to minorities who might otherwise not have access to effective remedies.²⁵

43. At the end of 2001, and following the signature of the Common Document between UNMIK and Belgrade, the Department of Justice created the **Judicial Integration Section (JIS)** to focus on minority community access to the justice system. The JIS has three stated aims: the integration of minority judges and prosecutors into the courts; facilitating access to courts for minorities in enclaves and following up cases in the courts in which minorities are involved. This welcome development has brought attention to improving minority access at all levels, as well as promoting an integrated judicial system rather than one in which, for example, Serb judges only deal with Serbs. The JIS is still in the process of formation, but there remains an urgent need for UNMIK to tackle the parallel court structures in co-ordination with Belgrade authorities.

DISCRIMINATION AND ACCESS TO ESSENTIAL SERVICES

44. Along with security and freedom of movement, **discrimination** is another key issue that affects minorities' ability to live reasonable lives in Kosovo. Discrimination, whether direct or indirect,²⁶ intentional or not, prevents minorities from fair access to essential services and employment, and prevents the conditions for a fair choice on return. It is imperative that discriminatory practices, especially by authorities, are recognised, eliminated and that the minorities are given effective remedies against discrimination. At the same time, access to essential services does not only require redressing discrimination, but also solving the problems of freedom of movement and parallel structures.

Equality in access to Education

45. In the sphere of education, the issues of the **lack of freedom of movement and security** for minority communities prevent the operation of an efficient educational system at all levels which is in compliance with international human rights standards for minority education.²⁷ These factors manifest themselves in areas such as the hiring of qualified teachers to teach in minority languages, access to higher education, and transportation to and from school for minority students. In the Mitrovicë/Mitrovica region for example, transport is a major issue for the Serb community living in the enclaves in southern Mitrovicë/Mitrovica municipality, in Vushtri/Vučitrn and in Skenderaj/Srbica, who remain completely dependent on KFOR's daily escorts. Should these cease or decrease, there is currently no contingency on which to fall back.
46. Many of the **Serb enclaves have newly reconstructed elementary schools**. However, qualified Kosovo Serbs teachers who live within the region and who would have to commute are not applying for the posts in the enclaves mostly because of security concerns and problems with transport (KFOR escorts) that they would have to face every day. Consequently, the schools are very frequently forced to employ people from the villages who have lesser qualifications for teaching.
47. Also, a general problem for most Serb enclaves throughout Kosovo is that many can **only provide elementary education**, thus requiring secondary students from these enclaves to travel outside of their enclaves in order to

²⁴ The plaintiff has not yet been reinstated in the workplace because KEK is appealing the decision in district court.

²⁵ The European Agency for Reconstruction (EAR) is supporting a Kosovo-wide legal aid initiative, implemented by the Chamber of Attorneys of Kosovo. The EAR project aims at building a permanent local capacity by creating a legal aid structure providing free legal aid in civil matters for those who lack economic means. The project has as one of its goals to ensure that legal aid is accessible to all Kosovars regardless of ethnicity, and to this end, has established legal aid desks in Gračanica/Graçanicë and northern Kosovo. However, the project is less specialised in the area of minority outreach, while the NRC Civil Rights Project has as its core strategy overcoming the particular obstacles faced by minorities in accessing legal aid, and seeking remedies in civil court with particular attention to instances of discrimination.

²⁶ In this context, direct discrimination could be described as the situation which occurs when an individual or a group is treated less favourably on grounds of ethnicity, whereas indirect discrimination refers to a policy or practice which is designed to be neutral yet *effectively* disadvantages or disproportionately affects a particular individual or group of one ethnicity, perhaps due to the failure to take into account that group's particular circumstance.

²⁷ See "The Hague Recommendations Regarding the Educational Rights of National Minorities" (October 1996) published by the Foundation on Inter-Ethnic Relations for recommendations for states on how they might more fully implement the education rights of minorities which are protected under international human rights standards.

attend secondary schools. Without an integrated education system and freedom of movement, this causes severe problems. For example, for security reasons, the Serb pupils in Vushtrri/Vučitrn can only attend secondary schools located in Mitrovicë/Mitrovica north²⁸ and not the secondary school in their municipality. Usually, the escorts from many of the villages are not provided every day so the children attending secondary schools have to go to Mitrovicë/Mitrovica north and stay there the whole week. The difficulty in finding and paying for accommodation in Mitrovicë/Mitrovica has been frequently emphasised by the parents.

48. Compounding the difficulties is the fact that security escorts are being cut back in certain locations, and parents are being asked to assume responsibility for transporting their children to schools, often without consultation. In some cases, such as the Prishtinë/Prishtina region, students are being asked to take unescorted transportation to school with soldiers being stationed at "sensitive" points along the route. When this measure was imposed by KFOR in Prishtinë/Prishtina region without consultation, the parents stopped their children attending school from 14 January to 4 February 2002. After discussion with KFOR, the children returned to school, but with continued grave misgivings from the parents. It remains the case that over 200 Serb children in Prishtinë/Prishtina rural north, of secondary school age or over, have either no or inadequate access to education.
49. The PISG Ministry of Education, Science, and Technology (MEST) has developed a project document entitled "School Buses for Kosovo Minority and Vulnerable Communities School Children". The project, which is still contingent on obtaining international funding, will attempt to address school transportation for minority and vulnerable children but lacks a plan for the participation of the security forces in its implementation. The project document also mentions that "the school administrations reported a significant increase in the number of minority school age children attending schools regularly or newly enrolling schools for the first time in all municipalities where the school bus transport had been introduced under the [previous] school bus project" and supplies statistics to substantiate this claim.²⁹

Access to higher education

50. **Access to university education** for Serbian-speaking students did improve during the period, albeit through the establishment of a parallel structure in northern Mitrovicë/Mitrovica, sanctioned by UNMIK. Until October 2001, Kosovo Serb and other minority students using the Serbian language effectively had no access to university education within Kosovo since the sole institution, Prishtinë/Prishtina University, was inaccessible due to security problems and used almost exclusively by Albanian-speaking students.³⁰ After June 1999, Kosovo Serb university students, most of them displaced outside of Kosovo or in northern municipalities, resumed classes in "re-located" faculties re-established under the same administration as the pre-conflict Prishtinë/Prishtina University (1991-1998) in various cities in Serbia proper (e.g. Niš, Krusevac, Vranje). In 2001, UNMIK agreed with the Belgrade authorities on the restoration of these faculties to Kosovo, albeit in northern Mitrovicë/Mitrovica, therefore still representing a separate and parallel structure. In autumn 2001, some students began attending classes in northern Mitrovicë/Mitrovica, and in early 2002, a branch of the northern university system was also opened in Gračanica/Gračanicë, offering Serbian and English language and literature studies.³¹ While it is still discouraging that university education for Albanian and Serbian speaking students continues to be divided (with no indications on when it may be possible to bring them together in the future), it is nonetheless very important that Serbian-speaking students do now have access to an institution for higher education within Kosovo. Indeed, the lack of university education opportunities was often cited as one key factors why return of young IDPs was considered to be non-viable. However, the main problems of the Serbian-speaking students (Kosovo Serbs, Bosniaks and others) living in locations other than the northern municipalities, as discussed above in the case of primary and secondary education, continues to be inadequate freedom of movement making access difficult. Discrimination is also an issue that must be addressed with a view to achieving equality in access and integration in the long-term.

²⁸ There is one secondary school (technical) located in Priluzje (Vushtrri/Vučitrn) and one in Suvo Grlo (Skenderaj/Srbica).

²⁹ See Project Document School Buses for Kosovo Minority and Vulnerable Communities School Children, Section A2, note 9, dated February 2002, published by UNMIK.

³⁰ After June 1999, Prishtinë/Prishtina University was re-established under UNMIK administration, initiating a long-term process to reform the higher education system (curricula, grading system, etc.) as per the Bologna Declaration to accord with European standards. Presently, the curricula is taught in Albanian, although a proposal has been made to establish a department within the Education Faculty to expand the curriculum to include the Bosnian language, to produce teachers to be qualified to offer primary/secondary school education in the Bosnian language.

³¹ The university structure in northern Kosovo, officially called Prishtinë/Prishtina University (unofficially referred to as the northern University), is considered by UNMIK to be temporary until the two entities can be joined under a common administration. The university faculties in the north continue to be administered under the Serbian Ministry of Education, under Serbian curricula. After the decision to re-locate the faculties, Serb students of these faculties protested the move back to Kosovo. It may prove to be the case that a significant number of Kosovo IDPs enrolled in the faculties in Serbia will re-register in other Serbia-based universities rather than moving back to Kosovo under the prevailing circumstances, where their future is uncertain and/or where they would have to move into displacement in northern municipalities in order to have easy access to their faculties.

While the principle obstacles to most non-Albanian speaking students at the moment to the university faculties in Prishtinë/Prishtina remain insecurity and the lack of freedom of movement, the few contacts Kosovo Serbs in particular have had with the institution (e.g. in obtaining educational documents) have indicated that discrimination is an issue that must be tackled.

Parallel education systems and their effect on the right to education

51. A major problem of the education system remains the **parallel systems** that are set up throughout Kosovo, with the Serbs effectively having their "own" educational structure, run from Belgrade, which has a confused and uneasy relationship with the UNMIK education system. The following case study is illustrative of the issues that can occur as a non-majority community tries to organise their own school in an isolated village, and the complications that can arise when parallel systems assume responsibility for the various substantive and administrative aspects of the educational process.
52. The example of the delivery of education in **Cërkolez/Crkolez village** in Istog/Istok municipality is illustrative of the impact of parallel schools. In Cërkolez/Crkolez, where no school facility existed in the pre-war period because of the isolation of the Serbian sector of the village, the community established a so-called "home school" for primary education. The school was staffed by existing teaching staff as a measure to ensure that Serb children had at least minimal access to education. The school is located in a private house, with 12 pupils representing all primary grades except the first level and follows the curriculum that is designated for primary schools by the Serbian Ministry of Education. The Serbian Ministry of Education provides textbooks and teaching materials, while UNMIK provides school supplies for students. The school does not have permanent premises. A parcel of land has been purchased as a result of a donation made by an international NGO, but a school building cannot be built due to a lack of funds. In the past, members of the international community have discussed with representatives of Serbian and Albanian communities a potential project to establish an inter-ethnic school in Cërkolez/Crkolez village. But negotiations between both communities broke down after the issue arose as to where the school premises would be located, and how it would be managed. Generally, the Serbian community wanted to have their own school in their part of the village due to security concerns and to ensure continuous access to school premises in future.
53. A total of 13 staff are currently working in Cërkolez/Crkolez primary school. There had been complaints from school personnel, since not all Serb teaching staff who wanted to be put on the UNMIK payroll could be employed because UNMIK existing criteria requires a certain ratio of teaching staff to pupils. However, a compromise was achieved in January 2002. UNMIK has recruited a director, a technician and six teachers for the primary school and the Serbian Ministry of Education pays the remaining five school staff.
54. The above-mentioned case illustrates many of the issues that can arise from the parallel systems of education in Kosovo. First, the apparent dual system of administration for the staff is unsatisfactory. Second, the quality of the teaching staff is difficult to assess because the question arises as to which standards should apply to measure their skills: those of the Serbian Ministry of Education, or those of the PISG Ministry of Education, Science, and Technology (MEST). Third, the curriculum is designated by the Serbian Ministry of Education, which can cause problems if there are differences in the standard curriculum requirements between the Serbian Ministry and the PISG Ministry of Education, Science, and Technology. Fourth, the Serbian Ministry of Education supplies books free of charge, but then difficulties can arise as to whether the selection of texts meets MEST standards, and what might be done in the case of conflicting standards governing the selection of textbooks where the texts might be antiquated, or of a controversial political content. Thus, the degree to which a school can function in such an ambiguous situation can be a major issue, even when as in this case, a compromise is reached. It is the students who ultimately pay the price for such a bifurcated school administration, notwithstanding the fact that the right to education is theirs, not their parents. And of course, parallel systems of education greatly reduce contact between the communities, retarding the prospect of reconciliation in the future.

Mixed schools initiatives

55. While most minority children continue to have little option other than to receive education through ad hoc or parallel structures, **school integration initiatives in Viti/Vitina and Rahovec/Orahovac municipalities** point to a more positive example of pro-active efforts to ensure equal access to education. These initiatives illustrate that it is possible, with the co-operation of all communities, to begin to move towards the goal of providing equal access to common educational facilities, supported by municipal structures, for children of all ethnicities.
56. In **Mogila**, a mixed village in Viti/Vitina inhabited by ethnic Albanians and ethnic Serbs, as of March 2002 children of both ethnicities were attending primary school in the same facility, during different shifts. It is anticipated that integrated classes with participation of both Albanian and Serb students will be given in specific subjects such as

art and physical education/athletics. A similar multi-ethnic school initiative recently began to be implemented in the mixed village of **Binac** (also in Viti/Vitina). Previously, Serb children were attending primary classes in an ad hoc school set up in a private house, while the Albanian children used the main primary school in the village. In April 2002, some of the Serb students began attending their classes in the main school facility in one schoolroom, while the Albanian students receive instruction in two adjacent classrooms. Joint activities for the school children are being planned.

57. The mixed school initiatives in Binac and Mogila were based on the signing of a memorandum of understanding between UNMIK, KFOR, local officials of the municipality, school directors, teachers and parents, as a result of facilitated dialogue. Ethnic Serb children receive instruction in their own language according to the standard Serbian curriculum, while ethnic Albanian children are taught in their language in the curriculum which is applied in Kosovo. The role of international officials is still very important (for example, in Mogila, international staff of the international NGO Caritas teach the mixed classes, with the participation of local teachers), but it is envisaged that as the initiatives develop, full ownership as well as responsibility for resolution of any problems which arise should be increasingly taken by local communities. In Mogila, there are plans to create a multi-ethnic parent-teacher association, which could address potential concerns or problems as they arise. While these initiatives are still relatively new, they constitute a very positive example of community-supported integration in the sphere of education. Not only do these types of initiatives further the best interests of children by ensuring equal access to education in their own languages, but in facilitating and encouraging interaction between children of different ethnicities, and also promoting tolerance building amongst the youngest Kosovar generation.
58. A similar mixed school initiative is being implemented in **Upper Rahovec/Orahovac** town, currently with the active participation of the Albanian, Roma and Egyptian students in a new facility built on a new site nestled between the majority and minority community neighbourhoods.³² 275 children (20% of them Roma and Egyptian) attend classes together in Albanian language, and share all activities. At the moment there is only one minority (Egyptian) teacher, which according to the community is a function of a lack of qualified candidates. Children do not have military or police escort, nor are extraordinary security measures in place at the facility, in line with a conscious decision to bring children together in what is (and what would be perceived to be) a normal environment. This was made possible by steady improvements in the security situation in the area. Despite efforts to build confidence, and initial indicators of willingness and enthusiasm from Serb community members prior to the opening of the school in January 2002, the initiative has still not resulted in the participation of Serb children in the school. Concerns expressed by the Serb community are related to security. Over 50 Serb children continue to study in a separate facility, with a disproportionately high number of Serb teachers (11) and other school staff. The reluctance to participate in the mixed school initiative may be due, at least in part, to the fact that teachers are hesitant to take any step perceived to undermine the preservation of the Serbian curriculum and educational system, as well as a desire to maintain the status quo, in which some are receiving salaries from Belgrade in addition to UNMIK salaries. However, security concerns are always cited as the main obstacle.

Education in one's mother tongue

59. The right of every person belonging to a minority community to **learn one's language** is clearly enshrined in international human rights instruments as well as in Kosovo's Constitutional Framework.³³ The following case illustrates the difficulties that certain members of the Bosniak community are having in preserving their language as an essential part of their identity.
60. In **Gjakovë/Dakovica** municipality, **access to primary education in the Bosnian language** is a concern within the Bosniak community, and Bosniak parents feel that they effectively have little choice but to enroll their children in an educational system which will deprive their children of their right to learn in their own language. In the municipality, a class was established to teach the Bosnian language to seven pupils, but there have been many problems in sustaining the Bosniak class due to the lack of teachers in the Bosnian language, irregular payment

³² The initiative involved the support of many international agencies, but received particular impetus and expertise from UNICEF, and was implemented by World Vision, with Japanese government funding.

³³ See Chapter 4, Section 4.4 of the Constitutional Framework which states that: Communities and their members shall have the right to "... (b) Receive education in their own language". Yet the obligations of the State to contribute resources to mother tongue education are subject to wide discretion on the part of the state. For example, under Article 14 of the Framework Convention for the Protection of National Minorities in deciding whether to allocate resources to teaching and instruction in a minority language, the state can take into account the demand for such education, and the availability of resources for such education in consideration of the financial situation of each state. But also Article 14 of the Convention must be read in conjunction with Article 5 of the Framework Convention, which obligates the state to "promote the conditions necessary for persons belonging to national minorities... to preserve the essential elements of their identity, namely their language".

to existing teachers and the small number of pupils available. Last year, the class was cancelled, and some children had to start their education in Albanian language from first grade, thus losing a school year.³⁴

61. In general, Bosniak parents in Gjakovë/Dakovica are reluctant to have their children follow the official curriculum in Albanian asserting that, since their children do not speak Albanian proficiently, their education will be adversely affected by an abrupt change to a new language. Many parents do not necessarily object to the principle of their children learning Albanian, since all Bosniak pupils learn Albanian language in primary schools as a separate subject. In fact they recognised the benefit of this as a method of improving their children's future prospects in the job market. However, the parents of the children draw the line at abandoning their own language, and demand access to education in Bosnian language. They insist that cultural assimilation is being forced upon them *de facto* and that the lack of access to education in the Bosnian language will discourage Bosniak families from returning. However, there are practical difficulties in providing education in the Bosnian language for members of the Bosniak community in Gjakovë/Dakovica municipality, where the number of potential Bosniak students do not, apparently, meet the required quota for hiring of necessary staff.
62. There are many issues associated with balancing the right of a member of a minority community to learn his or her minority language with the available resources of the state, yet in Kosovo, this right has a special significance as a factor which, for example, can facilitate conditions for return and which will allow an already-fragile community to continue to exist and its members to remain in their places of origin. Thus, there is a **special obligation, notwithstanding acknowledged resource limitations, to ensure education for numerically small minority groups in their mother tongue** as this right is integrally linked with the right to remain in Kosovo, and the right of displaced families to return. Therefore creative solutions must be found which will address situations such as the above-mentioned case.³⁵
63. The Kosovo Turk community has reasonable access to education in its language inside Kosovo. Furthermore Turkey provides scholarships to Turkish students to study there especially at university level, as well as Turkish NGOs co-operating with them.

Special educational needs of the Roma, Ashkaelia, and Egyptian communities

64. In considering the educational needs of the Roma, Ashkaelia, and Egyptian communities, it must be noted first that the Roma, Ashkaelia, and Egyptian communities have **varying degrees of access to education depending upon whether they predominantly speak Albanian or Serbian**. Generally, the Ashkaelia and Egyptian communities tend to speak Albanian while the Roma tend more to speak Serbian. The language that is spoken can have an effect on the freedom of movement of members of each community thus impacting adversely, for example, on their ability to travel freely to school.
65. The number of Roma children attending school is particularly low.³⁶ Particular reasons are that the children are not encouraged by their parents to attend classes nor do they appear to be enthusiastic about school, due in part to their lack of ability to communicate as effectively in the Serb language as they do in their mother tongue. The Roma community living in the northern municipalities does not have the opportunity for education in their mother tongue.³⁷ For example, Roma children from the collective camp in Mitrovicë/Mitrovica north attend classes in Serb language in the school located in the vicinity of the camp. The fact that Roma children's only option is to receive education in their second language may discourage their participation, however, when asked, Roma parents state that they prefer that their children attend classes in the Serb language, emphasising that improvement of their language skills will make the integration easier. The lack of options, combined with the pressure to assimilate to the local majority, results in a less than satisfactory end result.

³⁴ See the Hague Recommendations Regarding the Educational Rights of National Minorities & Explanatory Note, recommendation 12 which states that "Research also indicates that in primary school, the curriculum should ideally be taught in the minority language. The minority language should be taught as a subject on a regular basis. The official State language should also be taught on a regular basis preferably by bilingual teachers who have a good understanding of the children's cultural and linguistic background..."

³⁵ Art. 14 of Framework Convention for the Protection of National Minorities; Art. 29 & 30 of the UN Convention on the Rights of the Child; Chapter 4.4 (b) of Constitutional Framework for Provisional Self-Government in Kosovo. Note also The European Charter on Regional or Minority Languages, Part III - Measures to promote the use of regional or minority languages in public life in accordance with the undertakings entered into under Article 2, paragraph 2, Article 8 - Education. Specifically, Article 2, paragraph 2 of the Charter requires that at least three paragraphs or sub-paragraphs from Article 8 must be applied to promote the use of regional or minority languages in education.

³⁶ For example, there are a total of 39 children of school age in Leposavić/Leposaviq, of whom only 17 attend classes.

³⁷ Such an option has never been provided as part of the Kosovo educational system. Usually they have only had the option of attending classes in the Serbian or the Albanian language.

66. In the Mitrovicë/Mitrovica region, the international community through various NGOs has attempted to **facilitate Roma integration into the educational system** by providing classes focused on the development of learning techniques, and by offering assistance with lessons and improvement of language skills. The purpose of these "catch up" classes is to put them on an "equal skills" level with other students when they enter school. CARITAS France is also trying to integrate parents into the project they are currently running in the Mitrovicë/Mitrovica camp, thus attempting to change parents' attitude toward education and its importance.
67. Another factor that influences Roma children's attendance at school is whether they are **accepted by other students, teachers and school administrators**. In Leposavić/Leposaviq, the school refused to accept Roma children residing in the collective camp in Mitrovicë/Mitrovica, as they supposedly did not meet the school's proficiency requirements for the Serbian language in violation of the children's right to have adequate opportunities for being taught their minority language or for receiving instruction in this language. The children were required to attend school in Mitrovicë/Mitrovica north for a certain period of time. Only after long negotiations, was the situation resolved at the end of 2001, and Roma children were admitted to the school. In the case of Roma children, though, such discrimination is not merely the result of post-conflict conditions and lack of resources; rather it is the result of a systemic racism against Roma, which relegates them to the status of a minority among minorities in almost all societies where they live.
68. In the small community of nine Ashkaelia families who returned from displacement to Vranjevac/Kodra e Trimave (urban Prishtinë/Prishtina) in late 2001, **Ashkaelia children were not able to attend the nearest Albanian primary school**, due to the effective opposition of the school director to the integration of the students. In their nearby school, the staff expressed the opinion that the Ashkaelia children would have to endure problems (taunting, harassment, stone throwing from other students) and did not express willingness to take measures to ensure the smooth reintegration of the returnee children. However, the Ashkaelia returnee children were welcomed at another Albanian school in the area, whose school director made special efforts to introduce the children to the other students and ensure their dignified integration by taking steps such as holding meetings with teachers.

Equality in the field of Employment

69. The problem of **equal access to employment** is one of the key issues which affect a member of a minority community's decision whether to remain in Kosovo, or if they have departed, whether to return. The lack of equal access to employment is largely a function of several factors, including security and freedom of movement, inability to communicate in the majority language, and discriminatory practices. The relative importance or prevalence of these three main factors varies widely, depending on ethnic group and by location, and also varies widely between public and private sector employment.

Public Sector Employment

70. **The public sector (UNMIK, central authorities and local municipalities) is the main employer of minorities.** The vast number of minority individuals are unemployed. But of the small percentage of minority community members who are employed, over 70% are employed in the public sector.³⁸ Despite this fact, there has only been partial compliance with guidelines regarding minority employment within the civil service as stipulated in UNMIK Regulation 2001/9³⁹ and UNMIK Regulation 2001/36⁴⁰, and thus there is much room for progress. While some of the structures of the Provisional Institutions of Self-Government (PISG) have reached responsible levels of minority employment, other structures such as the Ministry of Education, Science, and Technology (Prishtinë/Prishtina office - 0% minority staff; all positions filled), the Ministry of Finance and Economy (0% minority staff; 20 of 37 positions filled) and the Office of the Prime Minister (10% minority staff; 10 of 77 positions filled) are still far from the floor set in UNMIK Regulation 2001/19⁴¹ for the minimum acceptable level of minority employment. And while there are still many vacancies to be filled in each of these Ministries and in the Prime Minister's Office, it must be determined whether the early hiring patterns thus far were the result of a distinct lack of minority recruitment techniques, problems with locating qualified minority employees, or simply as the result of

³⁸ This percentage does not account for the number of members of minority communities who may be employed in the public sector by KFOR, NGOs, or other UN agencies as such figures were not available. Thus of the small percentage of minorities who are employed, those who are employed in the public sector may be higher than stated.

³⁹ Chap.4 (4.4): "Communities and their members shall have the right to: (...) (d) Enjoy equal opportunity with respect to employment in public bodies at all levels (...)."

⁴⁰ Chap.2 Sec.2.1 (h): "Inclusiveness: recruitment at all levels in the Civil Service shall reflect the multi-ethnic character of Kosovo and the need for equitable representation of all the communities in Kosovo."

⁴¹ Sec.4.2: "Members of the Civil Service shall be recruited from all the communities of Kosovo on the grounds of professional qualification, competence and merit after fair and open competition. The non-majority community representation in the composition of the Civil service at all levels shall be closely proportionate to the representation of non-majority communities in the Assembly."

a failure to place an emphasis on the hiring of minority candidates. It should be noted that other Ministries have made significant strides in minority hiring, such as the Ministry of Environment and Spatial Planning (with 30% minority staff; 120 out of 294 positions filled).

71. **Some of the problems which minority community members face in seeking employment in the public sector are discussed herein.** UNMIK Regulation 2000/45⁴², UNMIK Regulation 2001/9⁴³ as well as UNMIK Regulation 2001/36⁴⁴ are very often not applied, resulting in a lack of equal access to information on job vacancies for minorities. Furthermore, although job announcements are printed in Albanian language newspapers, generally they are not printed in Serbian language newspapers. It is a regular occurrence that job vacancies are not translated into the languages of minorities. For certain municipal civil service positions that are filled by appointment and paid by the central administrative departments (e.g. Ministry of Education, Science and Technology and the Ministry of Culture, Youth, Sports and Non Resident Affairs), job announcements as well as interviews are conducted in Prishtinë/Prishtina, hindering potential minority candidates from receiving information about job vacancies. Also, minority candidates are very often, due to lack of freedom of movement, unable to attend the interview. Quite often positions which minorities are offered are lower profile positions. In this way, from the statistical point of view, quotas for minorities are met, but minority candidates are effectively excluded from upper-level positions within the municipal administration. Minority representatives often complain about a lack of transparency in the recruitment process regarding municipal civil service positions designated for minority representatives. It is alleged that there are instances where less-qualified candidates have been arbitrarily approved by the interviewing commission. And finally, UNMIK is not ensuring that contract tenders are being posted in Serbian-language newspapers, thus denying Kosovo Serbian companies access to such information.

Public utilities employment

72. **The percentage of minorities employed in the public utilities sector Kosovo-wide is unacceptably low.** In the past these companies were municipal companies. However, they will soon have an independent status as public utility service providers. The local authority for public utilities is the Supervisory Board for Public Utilities (SBPU), although one SBPU may cover several municipalities if the same company covers more than one municipality. The SBPU⁴⁵ is responsible for the supervision of the overall management of the company as well as the nomination of its general manager and approval of the senior staff. As it stands, the composition of the SBPU does not provide safeguards to ensure the participation of minorities in the decision-making process regarding public utility policy, and in particular, to ensure that the staffing of the company exhibits a balance between majority and minority populations.

Minority employment in the civil service

73. **In an employment survey which evaluated employment levels of Kosovo Consolidated Budget (KCB) employees of all communities in central JIAS Departments, of those who responded to the questionnaire 93.9% identified themselves as ethnic Albanian, 1.5% as Bosniak, 1.0% as Serbian, 1.7% as Turkish, 0.5% as other and 1.5% did not answer.** No respondents identified themselves as Ashkaelia, Croatian, Egyptian, Gorani or Roma.⁴⁶ This points to the tendency for Serbs to self-identify as such, despite being the least tolerated minority, while other ethnic groups most notably the Roma, Ashkaelia and Egyptian (the same groups that have lower levels of political participation) are less inclined to identify themselves as members of these groups publicly, as a coping mechanism in an environment where they are a distinct and marginalised minority. According to staff composition data submitted by the 20 JIAS departments, 26 (2.3%) of 1,103 KCB employees are members of minority communities.⁴⁷ Therefore, equality in representation of all ethnic communities in the civil service is far from meeting the required standards. Even for those minorities that are employed, their ability to achieve senior level positions is seriously limited.

⁴² Chap.1 Sec.9.3: "All official documents of a municipality shall be printed in both the Albanian and Serbian languages."

⁴³ Chap.4 (4.4): "Communities and their members shall have the right to: (...) (c) Enjoy access to information in their own language."

⁴⁴ Chap.2 Sec.3.1: "Detailed provisions concerning recruitment procedures and terms of employment for civil servants shall be set out in a subsequent administrative direction. Such administrative direction shall include, *inter alia*, the following requirements: (a) That available positions are widely advertised in the Albanian and Serbian languages."

⁴⁵ The Supervisory Board for Public Utilities is composed of 1. A representative of the central authority, as chairman; 2. One member of the Municipal Assembly (a member of the P.U. municipal committee); 3. The municipal administration (director of the public utilities department); 4. One citizen representing the population; 5. A representative of the major donors.

⁴⁶ Respondents included 410 KCB employees, approximately 35% of 1157 positions filled from all 20 JIAS Departments. See JIAS Employment Survey: Results Report 12 November 2001, Methodology, Paragraph A, p. 4

⁴⁷ Former Transitional Department for Good Governance, Human Rights, Equal Opportunity and Gender. JIAS Employment Survey-Results Report, 12.11.2001.

74. In accessing equal employment opportunities for members of minority communities in the **municipal administration**, it is evident that the number of members of minority communities who are employed varies from one municipality to another. This is due to the absence of a clear policy and procedures on affirmative action at the central level, the lack of clear procedures to encourage minority job applicants, and is also due in part to the political negotiations on the municipal level that often determine who will be hired.
75. Also, good faith attempts at **positive action** to balance employment opportunity at the municipal level have **resulted at times in indirect discrimination** against a minority. For example, in Bresje hospital (the Russian hospital in Fushë Kosovë/Kosovo Polje), the former UNMIK Department of Local Administration (now PISG Ministry of Public Services) decided to re-adjust the number of workers per community to compensate for the fact that the Kosovo Serb community had been numerically over-represented (186 Kosovo Serb workers versus 16 Kosovo Albanian). To address this condition, the Department of Local Administration announced that 71 posts would be reserved for Kosovo Albanian workers and 53 posts would be set aside in total for all minority communities. The criterion for setting the quotas was to be based on the representation of minority community in the Kosovo Assembly. The use of the "Kosovo Assembly" ratio poses a problem, as this ratio does not reflect the actual percentage of members of each community in the total population in most municipalities. Such percentages must be computed carefully in order to establish acceptable percentage goals for minority hiring. More problematic, though, is the fact that while this attempt to balance municipal hiring appeared to be neutral in its intent, it indirectly discriminated against the Serb community, because apparently the fact that Serbs who lost their jobs will have much fewer opportunities to seek employment than other communities was not taken into account. This is due to their security concerns and a lack of freedom of movement, as well as the small likelihood of any member of the Serb community finding employment in a hospital outside their enclaves. (Serb medical staff have no access to employment in Prishtinë/Prishtina Hospital, nor do Serb patients have access to that main regional institution; both medical staff and patients rely on Bresje hospital.) Thus members of the Serb community would lose their jobs while no provisions are being made to address the special problems they would face in seeking employment elsewhere in violation of their right to equal access to employment opportunities. Therefore attempts at balancing the hiring of members of all communities, while they may seem legitimate on their face, must be careful not to cross the line between affirmative action which is legitimate, and reverse discrimination which is in violation of international human rights standards.⁴⁸
76. **Minority employees can be first choice when dismissals are necessary.** Specific examples include the hospital and health system restructuring in Prizren, which left approximately 30 Bosniaks jobless. This feeds the perception that Kosovo institutions controlled by Kosovo Albanians are at least indifferent to the concept of affirmative action, and that they are only implemented at the insistence of internationals. Nevertheless, in a few municipalities positive developments can be noted. In Gjiilan/Gnjilane, most of the Kosovo Serb municipal staff members live in surrounding villages and they travel without difficulties to the main town. In Kamenicë/Kamenica, where a relatively high involvement of Kosovo Serbs in the Municipal Assembly has been achieved, few obstacles to the work of Kosovo Serbs as municipal officials are noted. In Mitrovicë/Mitrovica South, the municipal employees were hired after all the vacancies were published, and their applications considered by a panel, which had international representatives assigned to it as observers.

Equal Access to Social Services

77. The people of Kosovo suffer from a barely functioning social services system. The lack of capacity to carry out vocational community-based social work affects minority and majority communities alike. But for members of minority communities there is the added hardship of a **lack of freedom of movement which interferes with their ability to access basic social services, particularly when it comes to the Social Assistance Scheme (SAS)**. For this reason, most minorities who live in enclave like situations or are isolated continue to rely upon outreach and mobile services to obtain information about social assistance, to register themselves, and to receive their welfare benefits. During the first half of 2001, the social assistance authorities (through the Centres for Social Welfare) took over implementation of the social assistance scheme (SAS) to minorities, in part through hiring of minority staff with the purpose of ensuring that the CSWs could perform the functions which, in 2000, had largely been performed by international NGOs on behalf of the social welfare authorities.⁴⁹ However,

⁴⁸ It should be noted that, as of the writing of this report, UNMIK had not carried through with the proposed balancing of Bresje hospital staff, possibly in part due to demonstrations by the Kosovo Serb health workers. The final decision on how this matter will be resolved has been delegated to the UNMIK Municipal Administrator.

⁴⁹ As of early 2001, the CSWs assumed responsibility for delivery of assistance, and international NGOs ceased to perform this function, although in some areas NGOs continued to provide crucial support to bolster the capacity of the CSWs, such as in Prizren where ICMC continued to provide vital transport assistance for social assistance officers to be able to access isolated minority communities.

stringent re-application requirements⁵⁰ have had a tendency to result in the de-registration of minority SAS beneficiaries, sometimes without prior notification, while effectively offering them limited opportunities to re-register due to their dependency on mobile and outreach services. The previous OSCE/UNHCR minority assessment stated that minorities "are being punished by the system" and that responsible authorities "failed to take adequate action...instead [shifting] the responsibility to those least able to overcome discrimination, the beneficiaries themselves." This statement, unfortunately, has continued to hold true.

78. In early 2001, minorities were effectively exempted from **re-application requirements** since the CSWs had not yet built the capacity to ensure outreach, and most minorities could not reach CSW premises on their own owing to security. In July and August 2001, humanitarian NGOs as well as agencies such as OSCE and UNHCR began to receive complaints while visiting many minority communities in various regions of Kosovo that they had stopped receiving SAS benefits. In a few cases, minorities who had been able to approach the CSW reported that had been told they were no longer registered on the beneficiary roll. Upon inquiry, it was established that some minorities had been de-registered because they had missed the deadline for re-registration (previously not enforced). Most minorities were not made aware of the re-registration deadline, nor had many received a visit from a CSW worker to re-register. For example, an elderly disabled Kosovo Albanian woman living in Leposavić/Leposaviq, dependent upon house-visits, had received neither her assistance nor any visit by CSW. Dozens of Kosovo Serb families in Lipjan/Lipljan similarly complained about the unanticipated discontinuation of benefits, and in other municipalities, other minorities experienced the same problems.⁵¹
79. The ability of the CSWs to improve their performance vis-à-vis minorities still depends upon increasing not only capacity to ensure adequate **flow of information** to minority communities, but also available resources for **mobile outreach services**. During the period, social assistance officers posted to minority areas continued to suffer from a lack of material supplies to perform their functions.
80. Access to social assistance (SAS) for members of the **Roma communities** appears to be a particular problem. In Prizren, a RAE Community Advocate⁵² interviewed approximately fifteen families to investigate why they were not eligible for social assistance. The Community Advocate found that when the families visited the CSW and requested social assistance, they were told orally that they were not eligible for social assistance, and either were not informed of the criteria for eligibility, or given false information (such as that they had to produce a card that showed they received food aid). After OSCE informed the CSW that the majority of these refused persons appeared to meet the requirements of Category II for social assistance claims, the CSW agreed to again interview the families in order to re-evaluate their eligibility for social assistance.
81. To cite a more positive development, a previous obstacle to minority access to SAS was removed when a policy was put into place giving **CSW directors the discretion to exempt applicants** from some documentation requirements on the basis of lack of access to such documentation, as is often the case for some minorities, particularly Roma, Ashkaelia and Egyptian.

Equal Access to Health Care

82. The right to adequate health care is a right that many who are members of minority communities do not enjoy. Often hygienic conditions are poor in health care facilities, and standards of sanitation are low, due to a lack of equipment for sterilisation. Although enforcement of sanitation standards in healthcare facilities can be problematic for members of all communities in Kosovo, they are a particular problem for members of **minority communities who cannot search for more hygienic facilities** (such as larger regional facilities including regional hospitals) if the small, local facility that they use is substandard.
83. Also, members of minority communities **may not have access to a pharmacy** in their communities where they can purchase medicine, and the delivery of drugs to health facilities is irregular. While primary care within minority communities is less dependent on the service of mobile teams of KFOR doctors, there have still been

⁵⁰ Beneficiaries of category I assistance must re-register (and re-qualify) for assistance every six months, while for category II recipients, the re-registration requirement is every three months.

⁵¹ Concerned international agencies had increasing difficulties monitoring the process as 2001 came to a close, due to the decision of the then-transitional Department of Health and Social Welfare to discontinue sharing global statistics on SAS beneficiary numbers.

⁵² The RAE Community Advocates are part of a pilot project instituted by the OSCE in October 2000 that trains selected members of the Roma, Ashkaelia and Egyptian communities to become Community Advocates. As Community Advocates they are trained in the functioning of basic democratic institutions and in practical human rights awareness so that they can serve as a liaison between their communities and the majority population, and so that they can transfer such skills to other members of their communities.

problems with local doctors seeking transport to the minority enclaves.⁵³ In general, the overall question of how minorities may be served by medical staff of the majority community, either within minority communities or at healthcare facilities in majority areas, has not been addressed in a comprehensive and coordinated manner by UNMIK or healthcare providers.

84. The ever-recurrent issues of a lack of freedom of movement and security impede members of minority communities from seeking proper healthcare in majority areas. It becomes even more evident when in need of **secondary and tertiary care**: the hospital in Mitrovicë/Mitrovica north remains the nearest accessible location within Kosovo – either by train or by KFOR escort. Additionally, some members of minority communities (e.g. the Roma and Turkish) do not feel comfortable in seeking health care in the Mitrovicë/Mitrovica hospital: they fear mistreatment because their first language is not Serbian.
85. Although the international community has attempted to supplement the healthcare system in Kosovo for members of minority communities, much needs to be done to ensure that, when the international community reduces its presence, **that there is an integrated healthcare system in Kosovo that is able to serve members of minority communities**. For example, Roma, Ashkaelia and Egyptians living in Plemetin/Plemetina Camp have access to the Kosovo Albanian ambulanta in Obiliq/Obilić town only because the NGO managing the camp (Italian Consortium of Solidarity) provides transportation whenever needed. Solutions such as this are far from being sustainable. The capacity of ambulantas which serve mixed communities should be increased in terms of facilities so that they are better able to serve minorities living in these areas. This increase in capacity can have a positive spill-over effect, for example, in the Kosovo Serb ambulanta in Plemetina village, that could also serve Babin Most and Obiliq/Obilić town. Further, KFOR should have a concrete plan for the gradual hand-over of security measures related to access to KPS. At the same time and most importantly, all health facilities must be, and must also be perceived to be, accessible to all communities, and minority communities should not be provided with an unsustainable parallel system of healthcare, whilst the main problem of discrimination in the main health care system remains unaddressed.
86. Finally, members of the Roma, Ashkaeli and Egyptian communities in Prizren have complained of being charged **high fees** for healthcare services and medicines despite their right to such services and medications at no charge as part of the healthcare system in Kosovo.⁵⁴ An awareness campaign on the right to health services will target this minority community living in Prizren municipality.

Equal Access to Public Services

87. Access to public services such as sewage, water, electricity and telephone service still remains as another problem for members of Kosovo's minority communities. Additionally, many minority villages have limited means of public transport, and often no post office. Further, unsanitary living conditions are a problem in some villages where there is no sewage system, and raw sewage is discharged directly into rivers. Also, public waste collection continues to be a problem in minority villages, as well as the quality of the drinking water.⁵⁵
88. There is often a problem in the areas where minority community members live in **the maintenance of telephone systems**. For example, phone lines and telephone poles are old and often in a state of decay or disrepair, and network coverage for mobile telephones is inadequate. Minority consumers are often caught in the middle of disputes between two companies operating in the same area, due to the parallel systems that exist in some areas for telephone services. In the northern part of Mitrovicë/Mitrovica region, for example, only a few Kosovo Albanian customers are connected to the Kosovar PTK system in Mitrovicë/Mitrovica south. The rest of the network, as of the end of March 2002, is covered by PTT and is therefore run by the telecommunications authority in Serbia proper. It is still unclear if, when and how minority communities living in Mitrovicë/Mitrovica north will have access to the Kosovo telephone service.
89. In some villages, members of minority communities complain that their phone line has been cut after receiving a warning to pay a bill that they never received. Others in such areas as Gracanica/Gracanice and Obiliq/Obilić complain of overestimated bills, arbitrary cuts in service and the lack of a transparent billing process generally.

⁵³ In wintertime Kosovo Serb doctors refused to be transported by KFOR trucks from Mitrovicë/Mitrovica to enclaves in Skenderaj/Srbica and Vushtri/Vučitrn, resulting in a discontinuance of access to health care and medications.

⁵⁴ UNMIK Department of Environment and Spatial Planning Administrative Instruction 9/2000.

⁵⁵ For example, the water system is not working properly in the minority areas of Skenderaj/Srbica and Vushtri/Vučitrn resulting in most of the population having to obtain water from private wells where the quality of the water can be questionable due to the lack of a sewage system or septic tanks.

90. The complaints of minority community members on electrical service are similar to those with the telephones. There are frequent complaints that the **billing procedures of KEK, the Kosovo electric company, are arbitrary and lacking in transparency.** A recurrent complaint is that because of security concerns, KEK meter-readers cannot access minority houses and flats to take meter readings. Instead, KEK uses a variety of methods of assessment of electricity consumption, depending on the municipality. For example, in Fushe Kosovë/Kosovo Polje, KEK designated three categories of charges for electrical consumption: 20 Euros for low consumption, 35 Euro for normal consumption, and 50 Euros for high consumption. This was based solely on an estimation of the size of the house or flat, not on actual consumption.

HOUSING AND PROPERTY

91. To be able to securely remain in and return to Kosovo, minorities must be able to realise their property rights.⁵⁶ The effective realisation of property rights requires positive actions by the authorities. In order to evaluate whether property rights have been respected, the substance of the right must be recognised, and people must have the **ability to exercise** the right. Second, the authorities have a **positive obligation to respect** and protect property rights, with a particular obligation to protect the right to one's home. Moreover, under this principle falls an **obligation for the state authorities to undertake positive steps to remedy** any violation of rights.
92. The key to property rights for minorities in Kosovo is **access.** The three primary aspects of access are: **awareness of legal rights, physical access** to relevant adjudicative and executive bodies (i.e. freedom of movement), and, finally, once physical access is gained, whether these bodies can provide **effective realisation of these rights.** Should any of these aspects be missing, the authorities have a duty to take positive steps to remedy a violation.

Housing and Property Directorate

93. A key obstacle to return and the protection of minorities often is their **access to their residential property.** The Housing and Property Claims Commission (HPCC) and Directorate (HPD) were established⁵⁷ to facilitate the restoration and confirmation of residential property rights, which have been lost through discrimination or force or which remain unclear due to informal, unregistered transactions.⁵⁸ Under their mandate, the HPD and HPCC possess the authority to evict illegal occupants and restore property to the holder of the property right (whether owners, possessors, or occupancy right holders). As many minority residences especially in mixed and urban areas are illegally occupied, the HPD and HPCC are vital to the ability of minorities to return to their homes. Two main obstacles to the effective protection of minorities' property rights that are addressed here are minority awareness of and physical access to the HPD and HPCC, and the effective operation of these bodies.
94. **Minority communities' level of awareness of the HPD mechanism** varies greatly but overall is inadequate. Within the Pejë/Peć region, awareness of HPD amongst the minority communities is severely limited, especially amongst the Roma/Ashkaeli/Egyptian (RAE) and Bosniak communities, the former of which had very little awareness of the mechanism. In Prizren region, where HPD does not have a permanent presence, awareness amongst minority communities is limited.
95. This lack of knowledge and awareness is connected largely to the **level of physical presence and resources available to offices.** During the reporting period, HPD had four offices in Kosovo: Prishtinë/Prishtina, Mitrovicë/Mitrovica, Pejë/Peć and Gjiļan/Gnjilane. Only one under-resourced office continued during the period to service both the Pejë/Peć and Prizren region as well as internally displaced persons (IDPs) in Montenegro. With a severe lack of resources, HPD mobile teams are extremely rare in the Pejë/Peć region⁵⁹, and no sustained public information campaign or other outreach has occurred. As a result, minority communities do not lodge

⁵⁶ Property rights are a bundle of rights including the right to own, dispose of and use property. They are recognised under international human rights instruments directly applicable in Kosovo. See for further details, the OSCE reports on the Property Situation, January 2001 and February 2002.

⁵⁷ UNMIK Regulation 1999/23, "On the Establishment of the Housing and Property Directorate and the Housing and Property Claims Commission", promulgated 15 November 1999. See also UNMIK Regulation 2000/60: "On Residential Property Claims and the Rules of Procedure and Evidence of the Housing and Property Director and the Housing and Property Claims Commission", promulgated 31 October 2000, and UNMIK Regulation 2000/60-Clarification, "Clarification by the Special Representative of the Secretary-General of UNMIK Regulation 2000/60 of 31 October 2000 On Residential Property Claims and the Rules of Procedure and Evidence of the Housing and Property Directorate and the Housing and Property Claims Commission," issued on 12 April 2001.

⁵⁸ Section 1.2, UNMIK Regulation 1999/23.

⁵⁹ As only one vehicle is available.

claims. To cite only one illustrative example of problems created by a lack of information and access during the period, in Pejë/Peć municipality, a Bosniak, unaware of the HPD mechanism, attempted to repossess his house, which was illegally occupied, through informal means. Once he finally repossessed the house he found that the illegal occupant had severely damaged the residence and left large unpaid utility bills, from which he has no clear legal protection. Numerous similar cases have been reported in other regions, such as a recent case of an Ashkaelia in south Mitrovicë/Mitrovica. A greater awareness of HPD exists amongst minorities in Gjiçan/Gnjilane, Prishtinë/Priştina and Mitrovicë/Mitrovica regions. HPD's presence and attention to the Pejë/Peć and Prizren regions is inadequate, resulting in deprivation of minorities' property rights.⁶⁰ It is imperative that appropriate resources are allocated to ensure that this situation is addressed.

96. Limited resources affect not only awareness of rights, but also **physical access** to realising these rights. Generally, minorities do not enjoy full freedom of movement in Kosovo and the lack of HPD resources severely limits the agency's ability to access minorities living in enclaves, who require servicing by HPD mobile teams as they cannot travel to HPD offices located in major, largely Kosovo Albanian city centres. While Mitrovicë/Mitrovica's HPD office is located in an area accessible by all ethnicities, the Prishtinë/Priştina office is not necessarily accessible to all ethnicities. Neither a satellite office nor adequate mobile teams exist to service enclaves in the remaining three regions. Minorities in the Prizren region have no office in the area to access. Thus, unless able to travel to Pejë/Peć town, minorities residing within both Prizren and the Pejë/Peć regions have severely limited physical access to HPD, as the Pejë/Peć office possesses only one vehicle.⁶¹ This office is also designated to service IDPs in Montenegro, but this has been placed on "hold" indefinitely due to budgetary constraints.⁶²
97. **Outside Kosovo, IDPs in Serbia proper appeared to possess only basic knowledge, if any, of the responsibility of HPD to administer occupied property or how to access mechanisms to legally recover and physically repossess property.** Some progress was made during the period in enhancing minority IDP and refugee access to HPD, namely through enhanced HPD activities outside of Kosovo. During the period, HPD began to participate in some UNHCR-organised Go-and-see Visits (IDPs visiting Kosovo) and Go-and-Inform Visits (international and local organisations visiting IDPs and refugees in Serbia proper, Montenegro and FYROM), in an attempt to disseminate more information to displaced minorities about property rights in Kosovo. HPD has also positioned teams in Serbia proper. HPD has taken 6950 claims in Kosovo, and 6726 outside of Kosovo⁶³. The taking of claims outside Kosovo represents 49% of the total claims, only six months after it began (the first office outside Kosovo opened in November 2002). A large number of claims came from Gračanica/Gračanice and Mitrovicë/Mitrovica, but other HPD operations in other areas of Kosovo went down dramatically when some of the vehicles were taken for use in Serbia proper.⁶⁴
98. Although HPD offices within Serbia proper appear to provide reasonable access to displaced Kosovo minorities, the **lack of presence in Montenegro** severely limits the ability of IDPs from Pejë/Peć region especially, to exercise their right to file claims and to return to their homes.⁶⁵ HPD also still has not established any presence in FYROM in order to provide access for the refugee caseload, mostly Roma, Ashkaelia and Egyptian, displaced there. Overall, physical access to HPD for minorities inside and outside Kosovo is inadequate and prevents them from filing timely claims, and interferes with minorities' ability to exercise their property rights. It is imperative that appropriate resources are allocated to ensure that this situation is addressed.
99. For those minorities that have physical access, moreover, the HPD mechanism is ineffective due to the **HPD's and HPCC's overall inability to fully implement their mandates** in a reasonably expeditious manner, as a result of resource and operational constraints. First, HPD announced in January 2002, that due to lack of resources, all inventory cases would be halted. In early 2002, half of HPD's international legal staff had their contracts terminated due to lack of resources, thus delaying case processing. Thus, when claims are filed, most are not acted upon, e.g. by placing property under HPD administration or the HPCC issuing eviction orders that are executed. Numerous cases exist in all regions affecting all ethnicities. For example, HPD carried out seven

⁶⁰ Minority claimants who do not file their claims by the deadline of 31 December 2002 will have lost their ability to exercise their property rights using the HPD mechanism.

⁶¹ Norwegian Refugee Council recounted a recent instance where the Head of Office drove HPD Pejë/Peć staff to Prizren region enclaves to collect claims.

⁶² According to HPD Pejë/Peć, 8 March 2002.

⁶³ Source HPD, as of mid April 2002.

⁶⁴ Source HPD.

⁶⁵ IDPs from Pejë/Peć region constitute about 70% of the IDPs in Montenegro, and 26.5% of the total illegal occupancies, with approximately 15,000 residences illegally occupied. The figure is based on IDPs both inside and outside Kosovo. Of these 15,000, HPD estimates that 5,000 will be resolved through the sale of the residences, still leaving 10,000 cases of illegal occupation in the Pejë/Peć region.

evictions in the Ashkaelia section of Vushtrri/Vučitrn town in April 2002. All the evictions took place on properties occupied by Kosovo Albanians whose homes had been reconstructed in villages outside the town. On the date of their execution, three of the occupiers had voluntarily left the property. The remainder had to be instructed to leave the property by HPD. UNMIK Police, KPS, and KFOR accompanied the HPD. The agency believes that the community will accept the demonstration of resolve and the need for further evictions will decrease as illegal occupiers will comply voluntarily after having seen the authorities execute the orders. HPD provided documents to the press, demonstrating the transparency of the eviction and their compliance with rule of law principles.

100. The lack of performance by the authorities responsible for guaranteeing property rights can **impede minority returns, especially to mixed and urban areas**. It must be acknowledged that insecurity is the first and foremost obstacle to return, and resolution of property claims would not necessarily lead to return opportunities. But lack of effective resolution of property disputes or illegal occupations can certainly impede any progress towards a solution. In many locations it has been noted that areas with high rates of illegal occupation of minority property by the majority can create a relatively more hostile attitude towards minorities, and particularly towards their return. Illegal occupation can be a critical factor in determining the attitudes of the majority towards the minority, since the existence of the minority and their return threatens to compromise the interests of the majority who are occupying their property. Thus, property disputes and illegal occupation can in many instances themselves generate enhanced hostilities towards minorities and exacerbate security problems⁶⁶. Prolonged failure to clarify and to enforce property rights can also have an impact on whether minorities remain in Kosovo. For example, Kosovo Serbs displaced internally within Gjiilan/Gnjilane region and in Fushe Kosovo/Kosovo Polje have also stated that these problems have encouraged deprived property right holders to sell the property to illegal occupiers.
101. In February 2002 HPD Gjiilan/Gnjilane admitted its widespread failure and inability to protect properties under its administration in minority areas⁶⁷ from vandalism, burglary, and other damage. Due to their vulnerable position, minorities experience these violations of their rights more consistently. Failure to provide an effective remedy for such a situation and to protect property rights of those affected results in the inability of rights holders to exercise their rights, and constitutes unlawful interference in the realisation of them by the State.
102. Moreover, minorities have **limited access to the humanitarian accommodation scheme** administered by HPD designed to utilise abandoned housing for those with a documented humanitarian need for shelter. The awareness and ability of minorities to participate in this scheme is limited. For instance, the HPD Pejë/Peć office has no knowledge of any minorities applying for this programme. Even if minorities attempted to utilise it, most properties falling under the scheme are located in majority-dominated areas which most of the time raises security concerns. This makes it virtually impossible to allocate humanitarian housing to minorities, unless the permits are for residences already occupied by minorities, as has occurred in Lipjan/Lipljan. The effect produces a situation of discrimination, since minorities effectively do not enjoy on an equal basis the right to an alternative, interim remedy to the deprivation of their property rights.
103. When HPD has made efforts to use the humanitarian allocation scheme for minorities, it has faced specific difficulties. For example, in Vushtrri/Vučitrn, the houses of approximately 100 Ashkaelia families who are displaced (mostly in Serbia proper) are occupied. In order to create conditions to allow a number of Ashkaelia families to return, in April 2002 HPD evicted the Albanian occupants from 13 houses, and since the property right was not yet determined, the HPD decided to use the humanitarian accommodation scheme to assign occupancy rights to the presumed owners, the Ashkaelia returnees. This initiative proved to be difficult, since the Ashkaelia were required to return during a limited time period after the de-occupation to ensure access to the properties (and to avoid allocation to other families under the scheme). This case highlights the very complex aspects of minority access to the humanitarian scheme, since many minorities who may benefit may be displaced, and the necessary creation of all of the material and security conditions for their safe return may not precisely coincide

⁶⁶ This has emerged as a particular problem for Roma, Ashkaelia and Egyptians. The section on RAE in the chapter on the situation of specific minority communities describes this problem in detail.

⁶⁷ Specifically, the RAE area of Hogosht/Ogoste in Kamenicë/Kamenica, the Roma area of Abdullah Presheva Mahala in Gjiilan/Gnjilane and the ethnic Croat village of Letnicë/Letnica in Viti/Vitina. In some cases HPD actually evicted illegal occupants (Abdullah Presheva and Letnicë/Letnica). However, HPD acknowledges its general incapacity to protect efficiently properties placed under its administration. In Letnicë/Letnica, abandoned housing have been occupied after HPD placed them under its administration (after January 2002). In Hogosht/Ogoste, Roma vacated properties have been damaged and/or occupied recently, although they have been under HPD investigation/administration for months. In Abdullah Presheva, following the eviction of its illegal occupant in March 2002, a property under HPD administration was set on fire. These examples show clearly that although HPD placed properties under its administration and evicted illegal occupants, HPD failed to protect the same properties from damages and break-ins. Evicting and placing under HPD jurisdiction properties is necessary but not sufficient. Authorities must ensure that properties are safe from re-occupation, damages and trespass.

with the operational constraints of the scheme. The use of the humanitarian allocation scheme to allow IDPs access to their homes is welcomed in the sense of providing a creative solution to a difficult problem, but ultimately it is an inferior substitute to an expeditious determination of property rights.

104. While on paper the law provides adequate protection of property rights, an under-resourced mechanism has deprived minorities in particular of effective protection of their property rights. **Residential property rights in Kosovo, therefore, are not effectively realised.** The inability of HPD and HPCC to act, and the failure of HPD and relevant authorities to execute their decisions, moreover, constitutes a violation of due process⁶⁸, as the HPD/HPCC have taken over the function of the courts for the cases within its mandate.⁶⁹ According to the European Court of Human Rights, such "inertia of the competent...authorities", including the delay of enforcement of a judgement, engages the responsibility of the authorities.⁷⁰ UNMIK (and the Kosovo Assembly), therefore, are obliged to ensure the HPD and HPCC (and enforcement authorities) function properly.

Cadastre

105. **There is no functioning cadastre in Kosovo.** In addition to this core issue, several other factors hamper minority access to property records. For example in the Roma community there was a common perception that property records were of little value. Many members of the community did not register their properties with the cadastre or keep property records in their homes. Additionally, those who used the cadastre have complained that the fees charged by the cadastre for copies of records were beyond their means. In Pejë/Peć the municipality has a policy for waiving the fees for persons with low income, but the policy has not been publicised. Additionally, there is no province-wide regulation governing the fees cadastre may set, and the issue is left to the municipalities themselves. In Pejë/Peć, for instance, the municipality has not yet regulated the setting of cadastre fees.

106. Minorities also have **difficulty physically accessing cadastre records.** The majority of the records were moved to Serbia proper after the conflict by the former regime. This is a primary reason why there is no functioning cadastre in Kosovo, which affects the entire population of the province. Furthermore, there does not seem to be a single municipality where there is a sustainable solution providing minorities that do not enjoy freedom of movement access to the cadastre records that remain. Several municipalities have provided ad hoc and temporary means to obtain these records, but none have been institutionalised.

Illegal Construction

107. Illegal seizure of property and construction upon it is a problem which affects both majority and minority populations of Kosovo, however, it presents specific problems for minorities in two principal ways. First, restricted freedom of movement means that many minorities are denied the opportunity to physically access their property in order to become aware of any illegal construction (and may be physically unable to inform the authorities in the case that they do become aware of illegal construction). This problem is even more pronounced for property owners displaced outside of Kosovo. Second, minorities are not adequately protected from discrimination due to gaps in the law. These facts leave minorities particularly vulnerable.
108. One major gap in the law involves **administrative decisions on the part of the municipality.** This affects minorities, as well as the population as a whole, in two ways. First, the lack of independent judicial review of administrative decisions means individuals have no remedy from a municipality's unlawful interference with their property rights. Second, an individual is unable to protect his or her property rights against trespass without obtaining a final and binding administrative order from the municipality.
109. Regarding the first, **UNMIK Regulation 2000/53**⁷¹ mandates the municipalities to promulgate instructions to regulate construction in their respective boundaries. The regulation empowers the municipalities to issue both building permits and demolition orders. To comply with relevant human rights standards, the regulating process instituted by the municipalities must provide adequate due process to protect the property rights of individuals. A key component of due process is independent judicial review of administrative decisions. The fundamental defect in the regulation is the apparent lack of an administrative appeals process throughout Kosovo. Until a uniform procedure for administrative appeals is instituted, there is no possibility of ensuring that municipal decisions affecting the property rights of minorities comply with the applicable law and are not discriminatory.

⁶⁸ See Article 6 ECHR.

⁶⁹ See UNMIK Regulation 1999/23.

⁷⁰ *Scollo v. Italy*, 1995 Series A No. 315C; and *Hornsby v. Greece*, Judgement of March 1997.

⁷¹ "On construction in Kosovo", also known as Rexhep Luci regulation on construction.

110. Second, a member of a minority may inform the municipality that someone is illegally building on his or her property. Under UNMIK Regulation 2000/53, the municipality may deny an applicant a building permit if it has "reasonable grounds" to believe the person(s) have no legal right to use the land.⁷² However, there is **no mechanism to bring a final resolution to such disputes** and without such, it is doubtful the minority could obtain a final, binding, and enforceable order to protect his or her property rights.

111. If minorities do not discover the illegal construction on their residential, commercial or agricultural property and obtain injunctive relief whilst the construction is taking place, the **property can be lost without compensation**. Given the security situation and lack of rule of law in Kosovo, it is unlikely that the police or courts would compel a majority population family to leave the home or pay compensation for the land they had usurped. The longer such claims remain open, the greater the risk to the property rights of minorities.

Reconstruction

112. Previous assessments have highlighted various problems that minorities have faced in accessing reconstruction assistance. Minorities have not received reconstruction assistance in proportion to their need or with due attention to their particular predicament of displacement. This situation creates particular hardships for large numbers of minorities displaced within Kosovo who due to lack of reconstruction assistance remain unable to solve their problem of displacement. Minorities' lack of economic resources, freedom of movement, and their under-representation in municipal structures present obstacles to their receiving reconstruction aid, and the first two factors are precisely the ones which make minorities particularly needy when it comes to reconstruction assistance.

113. In general, minority communities are well-informed about reconstruction assistance, and the mechanisms through which to acquire such assistance, with the notable exception of IDPs outside of Kosovo who have virtually no access to information. The primary source of the problems faced by minorities in Kosovo to access reconstruction is not lack of information. Instead, problems are derived from three main factors: the UNMIK guidelines that govern reconstruction allocation; the functioning of the Municipal Housing Committees; and in some cases the actual implementation by international NGOs. These problems, combined, amount to a systemic deficiency which can produce a discriminatory effect on minority applicants for reconstruction. Moreover, minorities have no effective remedies against discrimination since there is not a sufficient oversight or enforcement mechanism and no effective mechanism to contest their exclusion.

114. The UNMIK Guidelines for Housing Reconstruction stipulated a set-aside percentage of 5-10% in 2000. In 2001, the guidelines did not stipulate a minority set-aside *per se*, but stated that 10% must be set aside as a contingency fund for vulnerable returnees while another 5% should be set aside for valid claims following the public posting of the beneficiary list (which could benefit any vulnerable person).⁷³ Results achieved were, however, quite low. In 2000, the actual allocation of available reconstruction assistance to minorities was in the region of 2%. In 2001, minorities received about 4.2% of the total.⁷⁴

115. Municipal Housing Commissions (MHCs), the ultimate conduit of reconstruction benefits, play a decisive role in the accessibility of such assistance. Six MHCs did provide the mandated 5-10% of aid mandated for minority communities, indeed in all six cases providing more than the target.⁷⁵ The remaining fell far short, for example: Ferizaj/Uroševac (where no houses were reconstructed for minorities); Lipjan/Lipljan (where only 1%, constituting 2 families, benefited), and Prizren municipality (where only 1 house out of 142 was reconstructed for a minority). In Rahovec/Orahovac, only 3.4% went to Serbs, Ashkaelia and Egyptian beneficiaries. Where minority houses have been reconstructed, most **MHCs have failed to provide minorities an allocation of aid proportional to their vulnerability or need**. The actual proportion of Category IV and V⁷⁶ houses reconstructed within the minority communities is far less than that of the

⁷² Section 3.1, UNMIK Regulation 2000/53.

⁷³ Some individual donors of reconstruction, such as EAR, provided instructions to their implementing partners on minority allocation which were more favourable to minorities than the UNMIK guidelines.

⁷⁴ 4.2% represents 360 minority beneficiaries out of a total of 8,543 houses reconstructed in 2001.

⁷⁵ These were Kamenicë/Kamenica, Viti/Vitina and Novo Bërdë/Novo Brdo in the Gjiilan/Gnjilane region, Zvečan/Zvečan in the Mitrovicë/Mitrovica region, Istog/Istok in the Pejë/Peć region, and Fushe Kosovë/Kosovo Polje in the Prishtinë/Prishtina region.

⁷⁶ Houses are categorised by UNHCR according to levels of damages. Category IV corresponds to serious (40-60 %) requiring major repair/reconstruction while category V designates destroyed houses (60-100%), which require full reconstruction.

majority communities, who possess better access to and greater financial resources as well as full freedom of movement in the current Kosovo context.

116. Lack of access appears to result in part from the **lack of adequate representation of minorities in the MHCs**. To date, representation of minority interests in many municipalities has largely been left to the UNMIK Local Communities Officer (LCO), who normally sits on the MHC. The advocacy role of the LCO could be strengthened, however, with more strategic co-operation between the LCO and other organisations who work in minority communities. International involvement in the MHCs has not always ensured minority access. For example, in April/May 2001, the Obiliq/Obilić MHC, composed of Kosovo Albanians and UNMIK international staff, refused to increase the number of houses for minorities. Some MHCs, such as those in Pejë/Peć and Klinë/Klina have included minority communities' representatives, as suggested in Article 2.3.1 of the 2001 Housing Reconstruction Guidelines, but this does not appear to have resulted in any improvement of minorities' access to assistance.
117. Yet indeed, adequate representation and advocacy adds little value when **the mechanism itself is not effective**. Fundamentally, there is a lack of accountability and transparency in the distribution of assistance, which produces discriminatory effects. The lack of accountability and transparency often even prejudices the majority community, since in many cases it has been noted that the designated beneficiaries of housing units are not the most vulnerable applicants, whilst extremely vulnerable Albanian families do not receive assistance. The Housing Reconstruction Guidelines, which are not legally binding, do not mandate an oversight/enforcement mechanism to ensure that municipalities are not discriminating, except the possible withholding and withdrawal of future aid. MHC members may not wish to provide assistance to minorities unless it is mandated, as is seen in Pejë/Peć. No required allocation for minorities is established by the 2002 Housing Reconstruction Guidelines, and municipalities may designate a quota or target indiscriminately, or may not do so at all. For example, in Pejë/Peć, the MHC Chair has stated that the allocation of aid for minorities will be halved to 3.5% this year, providing no legitimate reason. That some municipalities did not allocate any assistance to minorities in 2001 is also illustrative of this point. Furthermore, no formal appeal mechanism to question these decisions exists for reconstruction aid.⁷⁷
118. In addition to the MHC, NGOs exercise wide discretion, which can result either in special attention to minorities, or to inattention to or marginalisation of them. If an NGO refuses to include a minority community into their beneficiary assessment, as European Perspective did with the Kosovo Serb community in Fushë Kosovë/Kosovo Polje⁷⁸, then the minority community is not included in the list for consideration by the MHC (unless the LCO puts the applicant forward) and possesses no option for appeal. No formalised mechanism exists for UNMIK to hold NGOs accountable or ensure sufficient transparency.
119. It also should be noted that other provisions of the Guidelines impede the ability of minorities from equally realising their property rights. **Roma, Ashkaelia and Egyptians have particular difficulty taking advantage of reconstruction aid** due to their lack of documentation establishing their property rights.
120. In sum, the lack of accountability and transparency, and the absence of binding guidelines which ensure minority inclusion have resulted in the **unjustified denial of reconstruction to minorities and other vulnerable individuals** by MHCs and implementing NGOs, who both act as agents of the state⁷⁹. Minority awareness is high, yet access and an effective mechanism are absent, thus making it questionable whether minorities are being guaranteed their right to housing as well as their right to due process. Any failure of a MHC to ensure that minorities receive an equitable and proportional share of construction aid without an objective and reasonable justification translates into discrimination in relation to the right to return home and violates UNMIK Regulations.⁸⁰ UNMIK and the PISG⁸¹ are obliged to remedy this unlawful interference with the rights of minorities.

⁷⁷ Implementing partners, moreover, often fail to include minorities, and lack any accountability to potential beneficiaries.

⁷⁸ The implementing partner, European Perspective refused to include Kosovo Serbs even if two names were proposed. The representative argued that he did not want to break down houses for minorities into different ethnic groups. Thus, four houses were rebuilt for Ashkaelia community at the same time.

⁷⁹ See note 52.

⁸⁰ Section 2, Paragraph 1, UNMIK Regulation 2000/45 "On self - government of municipalities in Kosovo" and Section 2, UNMIK Regulation 1999/1 "On the authority of the interim administration in Kosovo" obliging municipal bodies and officials undertaking public duties to refrain from discrimination and to ensure that all inhabitants enjoy all rights and privileges without distinction.

121. One of the reasons often cited by UNMIK for their resistance to the establishment of set-aside quotas or targets for minorities is that the scale of minority damage is unknown.⁸² Some officials have inferred, thus, that minority damage is not significant in scale. Organisations involved in return issues have ardently advocated for a comprehensive minority damage assessment to be performed, but resource limitations have been cited. However, in February 2002, the UNMIK Housing Directorate (then in Pillar IV) completed a damage assessment in a limited number of selected minority locations. Combined with the results of a previous assessment performed in mid 2001, UNMIK has thus far assessed damage to housing, roads, water systems, electricity, health and education facilities in a total of 48 minority areas comprising of at least 82 minority village or semi-urban neighbourhood locations.⁸³ This effort constitutes a very important step towards bringing to light the overall levels of damage and destruction in minority areas and potential resource requirements for meeting the reconstruction needs not only of minorities still in their places of origin, but also for the return of minorities who are displaced within and outside of Kosovo.
122. Finally, it should be noted that the size of the overall reconstruction programme⁸⁴ is grossly insufficient if one takes into account the reconstruction needs of minority refugees and IDPs, and the orientation of the programme has not yet been adapted to the needs and realities of the minority return and reintegration process.

UNMIK Regulation 2001/17⁸⁵ "On the registration of contracts for the sale of real property in specific geographical areas of Kosovo"

123. During 2001, UNMIK passed a new law to prevent the strategic purchases of minority property by members of the majority. The term "strategic purchase" (or "strategic sale") refers to a strategy aimed at driving out members of minority communities in certain areas of Kosovo by purchasing their property, often using threats and intimidation, or in some cases simply an inducement through the offering of a price much higher than the market value. Regulation 2001/17 empowers the SRSG to designate special geographic areas of Kosovo in which "all contracts for the sale of residential property located in the designated area shall be registered with the Municipal Administrator prior to court verification."⁸⁶ The UNMIK Municipal Administrator is then under a duty to examine the terms and circumstances of the deal to determine whether it is indicative of a strategic purchase or an induced sale. If it does not bear the traits of such a transaction, the UNMIK Municipal Administrator will register the contract. This contract may then be presented to a court for verification, which is required for the contract to be given legal effect in a future cadastre system.
124. Many concerns exist about the human rights implications of any restriction of property sales between members of different ethnic groups.⁸⁷ The regulation itself effectively violates individual rights of both the minority and the majority to engage in transactions of private property. It is a stop-gap measure which was seen by its proponents to be necessary due to the fact that the authorities have been unable to address the fundamental causes (namely, insecurity and impunity), behind the phenomenon of strategic purchases and

⁸¹ Reconstruction now falls under the responsibility of the Housing and Construction Division of the Ministry of Environment and Spatial Planning.

⁸² The scale and scope of damage during the conflict period of March – June 1999, which mostly affected Kosovo Albanian housing was established through a Kosovo-wide damage assessment, and formed the basis for the development of the UNMIK Reconstruction Programmes of 2000 and 2001.

⁸³ These assessments were performed at the request of the JCR Steering Committee, in relation to minority return planning. Resources to conduct the assessment were provided by the European Agency for Reconstruction (EAR).

⁸⁴ The 2002 programme is not expected to exceed a total of 4,000 housing units to be distributed Kosovo-wide, and indeed as of the writing of this report, donors had only made commitments for a total of approximately 2,700 units. Indeed, some municipalities will be excluded altogether from the 2002 programme, with the implication for minorities, including returnees, in those municipalities who will have no possibility even to apply for aid – and would have to rely upon the special design and funding of separate projects under the rubric of return and reintegration.

⁸⁵ UNMIK/REG/2001/17; 22 August 2001.

⁸⁶ On 22 August 2001, the SRSG signed UNMIK Regulation 2001/17 "On the registration of contracts for the sale of real property in specific geographical areas of Kosovo". On 19 October 2001, almost two months later, Administrative Direction 2001/16 was endorsed, designating specific areas in Prishtinë/Prishtina, Fushe Kosovë/Kosovo Polje, Lipjan/Lipljan, Obiliq/Obilić, Pejë/Peć, Rahovec/Orahovac, and Dragash/Dragaš municipalities. On 28 February 2002, under Administrative Direction 2002/4, the SRSG designated further specific geographical areas in the municipalities of Gjiilan/Gnjilane, Novobërdë/Novo Brdo, Kamenicë/Kamenica and Viti/Vitina. The issuance of these directions allowed the regulation to become operational in the respective municipalities. The list of specific geographical areas designated in the four municipalities corresponds *de facto* to the list of minorities' areas in these municipalities. The location of the property is the main criteria to register sales of real estate according to UNMIK Regulation 2001/17.

⁸⁷ An analysis of the rights aspects of the Regulation can be found in Special Report No. 5 of the Ombudsperson Institution in Kosovo dated 29 October 2001.

induced sales which place pressure on minorities to leave Kosovo. But notwithstanding the legitimate and serious problems created for minorities subject to pressures to sell property, the particular impact of the regulation on the individual minority owner is the de facto creation of an obstacle to the exercise of a personal decision to depart Kosovo,⁸⁸ which in turn compromises the right to choose one's place residence and the right to seek asylum. The curtailing of an individual's ability to depart Kosovo has the potential to have a particularly detrimental effect on those minorities who face insecurity or threats to their person or livelihood assets and who wish to leave a generally hostile environment in order to improve their circumstances and safeguard their rights.⁸⁹ In addition to the problematic nature of the regulation from a human rights perspective, the major concern we address below is the improper application of the regulation, resulting in a **lack of uniformity and arbitrariness in implementation** manifested both by the courts and the municipalities during the reporting period.

125. In Gjiilan/Gnjilane region, the publication of the UNMIK Regulation 2001/17 in August 2001 created confusion, and as a result the Gjiilan/Gnjilane Court stopped registering inter-ethnic sales although no specific geographical areas had yet been designated and therefore the Regulation should not yet have been put into practice. Eventually, the UNMIK Municipal Administrator officially rectified the mistake by informing the Court, which thereafter started again to register inter-ethnic sales. OSCE explained the mechanism to local communities, in particular to minorities. In Viti/Vitina, a similar situation arose in September 2001 when the UNMIK Municipal Administrator decided to register inter-ethnic sales, arbitrarily, since the SRSG had not designated any specific area; indeed, the administration went one step further and arbitrarily imposed minimum prices for each minority property to be sold.⁹⁰ Similarly to Viti/Vitina, UNMIK Municipal Administrators in Prizren and Shtime/Štimlje instituted their own versions of the regulation, even though the towns were not designated by the SRSG. These municipalities have no legal basis to impose a condition on registration of contracts.
126. In Mitrovicë/Mitrovica, Vushtri/Vučitrn, and Gjiilan/Gnjilane, the municipal courts ceased to verify contracts for the inter-ethnic sale of property after the Regulation was passed, but prior to the SRSG designating any geographic areas where the registration is required. The judges in Mitrovicë/Mitrovica stated they had received instructions from the Department of Justice to cease verification of inter-ethnic contracts until further notice. Eventually the UNMIK Municipal Administrators were able to convince the courts to resume the verification of contracts pending an SRSG designation. The misinterpretation of the statute by these courts temporarily curtailed individual property rights without a legal basis.
127. The SRSG designated Pejë/Peć, Fushë Kosovë/Kosovo Polje, and Obiliq/Obilić as areas that require contracts for the inter-ethnic sale of property to be registered. Through the Administrative Direction 2001/16 of 19 October 2001, in Pejë/Peć only nine contracts had been submitted to the UNMIK Municipal Administrator by the 7 March 2002, while the court president commented that "a lot" of interethnic sales had taken place. In Fushë Kosovë/Kosovo Polje and Obiliq/Obilić, numbers concerning the departure of Kosovo Serbs indicates a greater number of properties were exchanged than contracts submitted for registration. It is possible that the courts are unaware, or choosing not to follow the regulation's directives. It is also possible that individuals are participating in so-called "informal transactions" outside the state system.
128. Another illustrative example is the case of the Serb-inhabited villages of Prishtinë/Priština Rural North. After 19 October 2001, when the Administrative Direction was endorsed designating these villages as subject to the regulation, inter-ethnic sales should have been reviewed and analysed by the UNMIK Municipal Administrator prior to court verification. However, between late October 2001 and the end of March 2002, Kosovo Serb houses were sold to Kosovo Albanians in the villages of Devet Jugovica, Besinje and Lebane, with the Serbs departing to Serbia proper. Many of these transactions appeared to bear the characteristics of "strategic purchase", with Kosovo Albanians initially purchasing houses located strategically in the central areas of the village for very good prices, sparking further sales (at lower prices) of neighbouring Serbs, prompted by the breaking of the mono-ethnic "enclave" which had provided the perception of local security for Serb inhabitants. In the previous reporting period, the Serb population figures in the Prishtinë/Priština Rural North villages were stable, with little indication of intentions to sell and leave Kosovo. The trend of inter-ethnic sales in Prishtinë/Priština Rural North was first noted in Devet Jugovica, where around 20 properties were sold in mid and late 2001 (before and after the promulgation of the regulation). More recently, sales have increased in Besinje and Lebane. These types of sales may often increase tensions within the community (between families who wish to sell and the larger community

⁸⁸ By restricting the right to dispose of one's property (Article 1, para. 1, ECHR)

⁸⁹ Art. 12 of ICCPR; Art. 2 Protocol 4 of ECHR; Principle 14 of Guiding Principles on Internal Displacement.

⁹⁰ Depending on the location and the shape of the property.

who do not wish them to do so⁹¹), and in many cases the larger community questions why the Regulation is not enforced. In the case of Prishtinë/Priština Rural North, the community at large has not expressed a common interest – that is, most families are beginning to consider selling. According to the UNMIK Local Community Officer covering this area, an element of coercion may have played a role in the case of some sales in some villages, while alternatively, the increasing willingness of families as of late to sell may generally reflect the accumulation of experience, and loss of hope, after almost three years of difficult security conditions. These sales took place without review by the UNMIK Municipal Administrator (due to the fact no contract has ever been submitted for authorisation), and it was determined that the transactions were registered by the court, despite the regulation. It is feared that, if the present trend continues, the rural north Serb communities will be irreversibly weakened, and may eventually affect all of the northern villages including Gornja and Donja Brnica, heretofore unaffected by property sales.

129. According to recent statistics cited by UNMIK Pillar II, since the passage of the Regulation, 193 applications for registration of an inter-ethnic sale have been received by UNMIK Municipal Administrators Kosovo-wide, while 25 (13%) of these were rejected (e.g. sales were not authorised for registration). Of the 25 rejected applications, 6 sales were not registered because the sale price offered was well below market value, while 19 sales were not registered on the grounds that sale would significantly compromise minority security in the area. While these figures give a sense of the characteristics of those sales registered, the improper and sometimes arbitrary implementation (or non-implementation) of the regulation makes it difficult to assess the net effects on minorities.

PARTICIPATION IN CIVIL AND POLITICAL STRUCTURES

Participation in electoral processes

130. The Kosovo Assembly elections took place on 17 November 2001 (with 120 seats available for distribution), with, unlike in 2000, participation from all ethnic communities. OSCE was satisfied that no discrimination took place in the party certification of majority and minority parties alike.⁹²
131. The Constitutional Framework provisions guaranteed the **representation of the minority communities in the Assembly** by reserving 20 seats ("set-asides") for them: 10 for Serbs; four for Roma, Ashkaeli and Egyptians (without allocating any number of seats to any one group of them); three for Bosniaks; two for Turks; and one for Gorani. In addition, any certified party could also win seats out of the 100 remaining. The formula chosen for translating votes received into seats also gave the smaller ethnic parties the chance to pick up seats additional to those they won in the set-aside group. The certified distribution of the seats in the Assembly for minority community parties was as follows: Kosovo Serbs 22 (including 10 set-asides); Roma, Ashkaeli and Egyptian five (including four set-asides); Bosniaks four (including three set-asides); Turks three (including two set-asides); and Gorani one (set aside). The degree of over-representation for minority communities can be crudely demonstrated: the main Albanian party – LDK, received 359,851 votes (45.65% of the total votes cast) and 47 seats – a ratio of one seat for 7,635 votes. In contrast, the one Turkish party certified (KDTP) received a total of 7,879 votes (1% of total votes) and three seats – a ratio of one seat for 2,626 votes. The Roma, Ashkaeli and Egyptians might have gained one additional seat had they fought as a coalition rather than three separate parties. The result was 13 non-Serb ethnic community representatives in the Assembly. The electoral system therefore fulfilled its aim: a significant representation of minority community parties in an Assembly otherwise dominated by Kosovo Albanian ethnic majority parties.
132. The **general problems confronting some ethnic communities, relative to electoral participation, related to security and information**. There were very different experiences between communities and sometimes within communities depending on their physical location and political orientation. Kosovo Serbs had fewer informational problems and their relatively low participation inside the province at registration and turn out on Election Day⁹³ was based mainly on internal issues and intra-community disagreements rather than security concerns. Koalicija Povratak (KP), the only Kosovo Serb party competing in the elections, received a total of 89,388 votes (from voters inside and outside of Kosovo) translated into 22 seats (including 10 set-asides).

⁹¹ For example, the sale of a Kosovo Serb property to an Albanian in Staro Gracko/Starograckë (Lipjan/Lipljan) in early 2002 resulted in protest by members of the Kosovo Serb village population, and the Serb seller was reportedly beaten by other community members who resented the sale.

⁹² One party from the Kosovo Turkish community was denied certification for the election on the grounds of falsifying supporting signatures required under the relevant Electoral Rule, but other parties from the majority community were not certified on identical grounds.

⁹³ Despite the overall encouraging participation of the out-of-Kosovo electorate of 57% in Serbia proper and 58% in Montenegro, inside Kosovo the turn out dropped significantly to 47% in non-majority locations. See OSCE report on the Assembly election 2001.

133. Minority communities also participated as **members of electoral bodies**. The Central Election Commission has representatives of the Kosovo Serb, Bosniak and Turkish communities, (but no RAE representative).⁹⁴ The Municipal Election Commissions had a reasonable representation of minorities. Equally, members of minorities were present on the polling station committees.
134. **Minority parties and NGOs were able to observe the electoral process.** OSCE took particular care to ensure that the electoral process and operations inside Kosovo were subject to observation by Kosovo Serb NGOs. No RAE NGOs from Kosovo observed the Assembly elections (which can be attributed both to a lack of experienced personnel as well as in some cases due to fears associated with movement), although three RAE NGOs from Serbia observed the Kosovo elections: "Roma Heart", "Roma New World" and "Pharaohs", with 23 observers. NGOs accredited in Serbia proper participated with relative ease. For example, the Belgrade-based CeSID NGO participated with 962 observers. Political entities sent twice as many observers as NGOs. It should be noted that only three of the minority political parties sent domestic observers: PDASHK, IRDK and Koalicija Povratak.
135. There were, overall, **few open examples of ethnic discrimination in the electoral process.** However, there is evidence that the Bosniak and Gorani parties (Vatan and BSDAK) were reluctant to organise rallies in some villages in the Prizren area (Ljubizda and Skorobishte) because of fear of potential violence from certain Kosovo Albanian groups. On election day in the polling station of Mushnikovo (Prizren municipality), the Kosovo Albanian Polling Station committee refused to issue ballots to Kosovo Serbs coming to vote. Mushnikovo however was an isolated case.
136. **Severe problems with freedom of movement for Kosovo Serbs had little impact on the Assembly Election so far as their participation was concerned.** OSCE established a Special Needs Voting scheme which allowed persons home-bound by fear both to register and vote thus avoiding need for travel into areas where their security might be at risk. Persons displaced from Kosovo currently residing in Serbia and Montenegro were brought into the electoral process by registration teams and polling centres established there and electors had no problems with movement or security. **Lack of freedom of movement was more problematic for the Roma, Ashkaelia and Egyptians.** The three political parties competing for four set-aside seats had a large potential electorate of IDPs and refugees in Serbia, Montenegro, and FYROM. They only had limited access to this electorate out of Kosovo, and outreach in Serbia proper concentrated on Kosovo Serbs. There has been much complaint from RAE leaders that they were effectively ignored in the pre-election process and this reduced the size of their electorate. As far as potential electorate in Western European countries was concerned, the Vatan (Bosniak and Gorani) coalition complained that registration papers were only available in Albanian.
137. **Voter registration is a particular problem for the Roma, Ashkaelia and Egyptian minorities both in and out of Kosovo.** The discrepancy between large numbers of the population and small numbers of the votes shows that many members of the eligible electorate from these communities did not register to vote. In addition to the lack of outreach, another possible reason for their modest engagement with the electoral process is that they have no belief that elections can have a positive impact on their life. This attitude has a deep cultural and historical basis. The RAE community has experience of Kosovo Serb and Kosovo Albanian governance and they widely believe that they have been marginalised by both.

Access to civil and political structures

138. An analysis by municipality indicates the **diversity of circumstances** encountered by the different communities with regard to the ability of minorities to participate in civil and political structures. With the notable exception of civil employment, which is still a major problem, the different communities in general do have an access to and participate, to greater and lesser extents, in civil and political structures.

Appointment to Municipal Assemblies

139. The appointment system to ensure fair representation in the Municipal Assemblies (MA) of ethnic communities who did not participate in the 2000 elections generally **produced positive results** and generated opportunities for minority participation in many municipalities. Almost all minority communities gained representation in municipal structures. For example, in the Prishtinë/Pristina Municipal Assembly there are 51 Albanians and 7 Serbs, 2 RAE, 1 Turk and 1 Bosniak. In Prizren there are 38 Albanians and 1 RAE, 4 Turks and 4 Bosniaks/Gorani in the Municipal Assembly. In the Gjiilan/Gnjilane Municipal Assembly the proportion is 41

⁹⁴ UNMIK Regulation 2000/21, as amended by 2000/65, on the Establishment of the Central Election Commission does not require any distribution of seats to minority communities. It only specifies that the CEC shall have 12 members - three internationals plus nine nationals. The actual method of selection is that the OSCE Head of Mission makes recommendations to the SRSG who then formally appoints all members of the CEC.

Albanians to 6 Serbs, 1 RAE and 1 Turk. In Pejë/Peć there are 40 Albanians and 1 Serb, 2 RAE and 1 Bosniak. In Mitrovicë/Mitrovica there are 41 Albanians and 1 Bosniak and 1 RAE. In total, in all the 30 Municipal Assemblies in Kosovo, the Albanian members are 863, Serbs are 95, RAE 23, Bosniaks/Gorani 14, Turks 4 and Croats 2.

140. Nevertheless, the basis for these appointments was often unclear, and appeared to vary from municipality to municipality. For example, the Kosovo Turks in Mitrovicë/Mitrovica, with a population of 800 were told that they were not large enough to have a representative on the Municipal Assembly. By comparison, the Turks in Gjiilan/Gnjilane were granted a Municipal Assembly member, although their share of the population is even smaller. Roma, Ashkaelia and Bosniaks in Gjakovë/Đakovica also expressed dissatisfaction with the composition of the Municipal Assembly and committees, pointing out that there is not one minority member on the municipal Board of Directors.
141. The situation of Kosovo Serbs and municipalities remains difficult in many areas, with Serbs often expressing deep political opposition to the existence of the municipal organisation in which they are supposedly to participate. Often, where opportunities exist for participation, Kosovo Serbs opt not to participate or engage in municipal structures. In Štrpce/Shtërpce municipality, the majority Serb leaders oppose participation in UNMIK-established municipal structures, and indeed their opposition to the structures has also impacted on the opportunities for Albanians (in the minority) to participate. The Kosovo Serb community protesting forcefully against the increased presence of Kosovo Albanian municipal officials in the municipal building, since the appearance of Kosovo Albanian municipal employees is perceived as a take over of the municipality. In Fushë Kosovë/Kosovo Polje the appointed Kosovo Serb representatives face rejection from the Serb community which opposes their participation. In Rahovec/Orahovac, restricted freedom of movement makes it almost impossible for Kosovo Serbs to participate in the municipal bodies. In locations where Serbs lack opportunities to participate due to freedom of movement, where they are numerically dominant or where they oppose the existing structures, they have often demanded to have separate and exclusively Kosovo Serb administrative structures. (In some cases this demand has been presented as a pre-condition for Kosovo Serbs to participate in the coming Municipal elections of autumn 2002.) In some instances, participation can be disrupted and improving relations soured due to particular incidents affecting majority-minority dialogue and co-operation in municipal structures. For example, in November 2001, a Kosovo Serb, appointed as a member of the Prishtinë/Priština Municipal Assembly, left Kosovo for Serbia proper, after he was forced to abandon his seat following unsubstantiated allegations of his being a war criminal made against him in the press and by Kosovo Albanian colleagues in the Municipal Assembly. In other areas, participation has produced positive results. For example, in Kamenicë/Kamenica municipality there is a Kosovo Serb vice-president of the Municipal Assembly as well as 11 Serb members and one Roma who have been very active and in good co-operation with their Albanian colleagues.
142. Other ethnic groups face substantially less problems in participating in Municipal Assemblies on the whole, generally encountering a better reception from the majority members, as well as facing much less resistance and internal pressure within their own communities with regard to participation. Examples of good co-operation between majority and minority Municipal Assembly members are in Ferizaj/Uroševac, Lipjan/Lipljan, Shtime/Štimlje and Obiliq/Obilić Municipality respectively, where Ashkaelia representatives regularly and actively participate in Municipal Assembly meetings. The Turkish members of the Municipal Assemblies in Gjiilan/Gnjilane and Prishtinë/Priština are also actively working on behalf of their ethnic communities.
143. Of the other main instruments providing for the inclusion of minority communities in the structures of local self-government, the establishment of a **Community Committee and Mediation Committee** is legally required by UNMIK regulation 2000/45.⁹⁵ There is widespread evidence that even where these Committees have been created, they rarely meet and their effectiveness is extremely low. There is little evidence that they have been or could be effective instruments to resolve interethnic disputes or promote inter-ethnic dialogue.⁹⁶ In Gjiilan/Gnjilane they meet once per month with no evidence of any output; in Gjakovë/Đakovica both are established but neither of them have met; in Viti/Vitina Municipality they are still not established. The UNMIK Administrative Direction on

⁹⁵ According to Regulation 2000/45 on the self-government of Municipalities in Kosovo, the Communities Committees shall promote the rights and interests of the communities living in the municipality. To date, 22 Communities Committees were established. The Mediation Committees examine all matters referred to them by the Communities Committees. It carries out investigation as necessary to establish whether the rights of a community or a member of a community have been or would be violated or whether action, which is or would be prejudicial to the interests of a community has been taken or proposed. Similar to the Communities Committees, they are not established in all municipalities. To date, 25 Mediation Committees have been formally set up.

⁹⁶ An exceptional example, that of the Lipjan/Lipljan Mediation Committee and its work to promote dialogue and co-existence between Albanian and Ashkaelia communities, is discussed in the return chapter of this report.

Rules of Procedure for the work of both committees is long expected and may offer possibilities to increase their efficiency. UNMIK Office of Community Affairs' recommendations are to include more Roma, Ashkaelia and Egyptian members in Community Committees and Mediation Committees in Mitrovicë/Mitrovica region; generally more Bosniaks and Roma, Ashkaelia and Egyptian participation is also needed in Pejë/Peć and Prizren regions among other areas in Kosovo.

TOLERANCE, RECONCILIATION AND INTER-ETHNIC DIALOGUE

144. In the eighth minorities assessment it was noted that, despite international efforts to foster inter-ethnic dialogue, Kosovar community leaders amongst both the majority and the minority populations had proven to be "less than willing partners," often practicing an "unacceptable pattern of avoidance." It is still true that most daily interaction between communities, especially between Kosovo Albanian and Kosovo Serb, continues to be very fragile, often clouded by mistrust or outright hostility. But there have recently been initial, albeit tentative, indications that **Kosovo may be heading into a new and more constructive phase of inter-ethnic dialogue.** New opportunities exist, although it still remains to be seen whether these opportunities will be seized upon and translated from rhetoric into action.
145. A key obstacle which continues to undermine inter-ethnic dialogue and confidence-building is the tendency within more extreme sectors of the majority community to exercise negative influence over moderate members of their community to discourage or prevent strengthening of ties with the minority. This tendency sometimes approximates a form of **internal intimidation.** Those who may wish to increase interaction with minorities in areas of common interest (such as economic or trade initiatives, integrated education, or simply renewal of old friendships) often may perceive that they place themselves at risk, even at physical risk, from within their own community. This form of internal sanction exists within the majority Albanian population and is also particularly strong within Kosovo Serb areas where they constitute a majority, particularly north Mitrovica/Mitrovicë. Intra-community intimidation against those who express willingness to consider minority problems, or who express openness to minority return, may often be most prevalent in locations where certain sectors of the majority population have a strong personal interest in maintaining the status quo (for example, if their illegal occupation of minority property would be jeopardised by minority return).
146. In regions that enjoy less fragile relations between the majority and minority, this often reflects a continuation of good relations that existed prior to the conflict. In some areas, notably Prizren, there is a long tradition of mutual acceptance among different communities (and higher levels of pre-conflict integration), and Serbian, Bosniak and Turkish language are spoken without significant problems in some areas. Relations between communities are also highly dependent upon communities' experiences during the conflict period. As could be expected, majority communities less directly affected by atrocities exhibit much greater openness to dialogue on sensitive issues, such as return. Inter-ethnic relations between neighbouring communities are not at all uniform, and can range from the fairly benign to extremely volatile, even within the same region or area.
147. International efforts to promote dialogue have not been limited to promoting co-operation within municipal and civil structures (Municipal Assemblies and other structures) or in the public services arena (mixed schools initiatives). International initiatives have increasingly been geared towards fostering inter-community interaction through more informal means that capitalise on mutual interests that supersede ethnicity or language. Inter-ethnic activities in the area of **culture and sports** have proven to be more successful because they facilitate freedom of movement and may allow minorities to use their own language in a publicly acceptable context. In such an environment, common interest may have a chance to prevail over conflict of interest. In October 2001, in Ferizaj/Uroševac for instance, a "Carnival of Communities" was organised by UNMIK, KFOR and the Municipal Assembly, involving approximately 4,000 people from different ethnic communities. Two mixed Ashkaelia, Roma and Albanian concerts were subsequently successfully performed involving 2,000 persons. During the drafting of this report, in April 2002, a local NGO with support of international agencies organised a concert for Albanian and Serbian youth in Gjiilan/Gnjilane town.
148. Another example of innovation is a video project undertaken by an international NGO⁹⁷, which has sought to reduce barriers between majority Albanian communities and their Serb neighbours who are still displaced outside of Kosovo. Testimonies and verbal messages of members of the two communities were filmed and then exchanged. The objective of such exchanges is not only to reduce mistrust towards the other group, but also to initiate a dialogue on the realities of the atrocities committed during 1999. Such initiatives are needed to help all

⁹⁷ Bergamo per il Kosovo

communities to slowly begin to take initial steps to reconcile themselves with and to overcome the past, to express their personal feelings towards each other in a safe environment, and to begin to better comprehend the humanitarian impact that the conflict had on *all* civilian populations of *all* ethnicities. Initiatives to foster the first steps towards reconciliation and a common historical truth have largely been absent.

149. Bringing together majority and minority communities around common economic interests is one of the most effective ways to strengthen confidence between communities and enhance recognition of common problems and mutual interests. Unfortunately, this strategy has been under-utilised by the international community. Most economic and community development projects have not sufficiently incorporated inter-ethnic objectives, and very few donors have adopted the use of conditionalities (e.g. channelling funding towards municipalities who adopt constructive policies towards minorities, prioritising funding of projects which benefit both majority and minority communities and which foster interaction, or conditioning funding upon inclusion of a certain percentage of minority beneficiaries or minority project staff).
150. International efforts to foster dialogue are very important, but the central catalytic actors in the process should be the provisional governmental institutions and local civil society, due to their unique potential to transform the inter-ethnic environment and reduce social barriers. Individual leaders and organisations have been taking increasing bold steps to speak out in favour of tolerance. The role of Kosovar leaders is of tremendous importance, because these leaders are in the best position to transmit credible messages that are understood by the public. Positive statements made by leaders, followed by concrete actions, can have a powerful impact on marginalising negative messages from more extreme sectors of society.
151. Until very recently, many initiatives at the municipal level to foster dialogue and strengthen co-operation on some of the more sensitive minority issues failed to materialise due to the fact that municipal leaders insisted to take their cues from central level rather than risk undertaking "pioneering" efforts. This was particularly true with regard to the issue of minority return, where the pattern of avoidance was highly evidenced. In 2001, prior to the elections, no local officials wanted to be perceived as the first to engage in discussions on or endorse return, and most municipal officials preferred to abstain from participating in discussions, citing the need for decisions to be taken in Prishtinë/Priština. Yet prior to the November 2001 elections, the central level was largely silent on minority issues and return, which constituted an obstacle to progress on the local level.
152. Since the formation of the Provisional Institutions of Self-Government (PISG), there has been an **increasing proliferation of public statements** transmitted via media sources from the central level expressing the need to address minority concerns. The coalition agreement signed to form the PISG constituted a first public announcement regarding the responsibility of the government to address minority concerns.⁹⁸ The Prime Minister has made numerous public and private statements indicating his commitment to the integration and return of minorities.⁹⁹ In addition, prominent Kosovo Albanian and Kosovo Serb political or social figures have been seen on Kosovar television debating majority-minority issues and discussing the atrocities committed within the context of the conflict which constitute the chief barrier to relations. A weekly television programme is also being aired on RTK, consisting of roundtable discussions hosted by a prominent Kosovo Albanian human rights activist with different minority community representatives (Bosniaks, Turks, Ashkaelia, etc.). Several conferences addressing minority integration have been held with the participation of prominent Kosovar leaders of all ethnicities, and given wide publicity in print and television media. Such highly visible exchanges were largely if not entirely absent during previous periods. While it is not entirely clear how these exchanges will be translated into positive action to produce change, it is clear that there is a new dynamic that did not exist before.
153. The Kosovar civil society sector should not be overlooked as key protagonists in the promotion of tolerance and reconciliation. Unfortunately, most Kosovar **NGOs and civil society organisations** have not yet chosen to tackle difficult inter-ethnic problems, but there are important exceptions, which should serve as models. Perhaps one of the most important initiatives for inter-ethnic co-operation and dialogue initiatives has been the formation and consolidation of the *Committee for Understanding, Tolerance and Co-existence*, a multi-ethnic committee created on 2 May 2001 as a result of an initiative of the Council for Defence of Human Rights and Freedoms, a Kosovo Albanian human rights organisation. The Committee, which has a multi-ethnic membership, undertakes

⁹⁸ "The Government will adopt policies that favour the integration of all the communities, in particular with respect to employment in the public sector, education, health, culture and language rights. The Government shall also give full attention to the promotion of a stable and secure society with full freedom of movement for all communities. The right of refugees and displaced persons to return to their homes and the re-installment of property to its legal owners will be upheld." Agreement on the President and Government of Kosovo, 28 February 2002, section II, paragraph (8).

⁹⁹ See return chapter for a more expanded discussion.

initiatives to promote inter-ethnic dialogue Kosovo-wide, with the aim of building confidence and helping to create conditions for return of displaced persons regardless of their ethnicity. Visits were made to different communities throughout Kosovo, primarily RAE, Serb and Bosniak, to meet with minority community leaders and villagers. For example, the Committee established contact with the Serb community of Obiliq/Obilić, building a co-operative relationship with two local Serb NGOs, and in the same municipality CDHRF supported the establishment of a local Serbian-language radio station in Crkvena Vodica/Cërkvena Vodic. The Committee was particularly active in its outreach to RAE communities, making frequent community visits (in particular, Vushtrri/Vučitrn, Lipjan/Lipljan, Fushë Kosovë/Kosovo Polje, Gjiilan/Gnjilane and Ferizaj/Uroševac), participating in events organised by RAE communities, as well as undertaking mediation and advocacy activities in majority communities emphasising tolerance, integration and the right to return. The Committee has mobilised the information it has collected on the situation in minority communities by calling attention of the Albanian-majority authorities to problems, and lobbying for solutions. In the case of Vushtrri/Vučitrn, for example, such advocacy resulted in the passage of a resolution by the Municipal Assembly endorsing the return of displaced Ashkaelia to the municipality.

154. Another example of ground-breaking inter-ethnic co-operation was seen in early March, when six Kosovar humanitarian civil society organisations representing various ethnic groups, principally Kosovo Albanians and Kosovo Serbs, signed a Framework Agreement to form an *inter-ethnic NGO consortium*.¹⁰⁰ The consortium plans to co-operate in joint humanitarian activities, projects in the health and agricultural sectors, inter-ethnic youth activities, and social welfare services to vulnerable groups. Such civil society initiatives, while still uncommon in Kosovo, are a very strong indicator that some sectors of society are increasingly willing to publicly co-operate on an inter-ethnic basis for the benefit of all Kosovo communities.
155. Inter-ethnic co-operation between women in Kosovo is demonstrated by the growth and consolidation during the period of six *Local Women's Councils (LWC)* which were created in 2001 in all of Kosovo's regions, composed of women of all ethnicities.¹⁰¹ In 2001, each council was responsible for ensuring that 20% of the seats in each council was filled by minority women, and in fact, by early 2002, five of the six councils, when autonomously determining their composition, exceeded this percentage.¹⁰² In Mitrovicë/Mitrovica, the boards of the respective women's councils of the north (Serb) and south (Albanian) recently took a step forward and met jointly in the UNMIK confidence zone, and began to discuss the difficult challenge of becoming a joint entity. Other boards are already functioning inter-ethnically. Many of the projects funded are projects developed by one ethnic group, but increasingly, projects have been funded which include women of more than one ethnicity and with an inter-ethnic co-operation component. The advances made by women in the LWCs point to a slow but steady change in the social climate, which increasingly allows for open-minded members of the majority and the minority communities to reach out to each other and begin to co-operate in areas of common interest.
156. The growth of initiatives during the period point to the fact that tolerance amongst individual members of the majority community may be higher than that which the population feels safe and confident to publicly express. **Communities and individuals need to be empowered to express tolerance, free from fear.** The positive achievements of a small number of civil society groups with limited resources can only be multiplied if their message is transmitted on a larger scale through the media. Dialogue and confidence-building initiatives must be given strong support and encouragement, not only by the international community but, more importantly, by the Kosovar Provisional Institutions of Self-Government, the media, and leaders of all ethnic groups.

RETURN

157. The period of September 2001-March 2002 marked the **first organised returns** of Kosovo Serbs to Kosovo, facilitated by UNHCR, UNMIK, KFOR and other partners. The first organised returns were accompanied by the emergence of a consensus within the international community that the minority return issue had received inadequate attention and priority to date. There was increasing acknowledgement among international actors and Kosovar leaders alike of the linkage between respect for minority rights (including return) and the maintenance of

¹⁰⁰ The consortium is made up of Mother Teresa Society, Dora e Ndhimes, the Prizren branch of the Red Cross of Kosova, Kosovo and Metohija Red Cross, Simonida and Sveti Nikola. The initiative was supported by WFP and CARE.

¹⁰¹ The women's councils were created by the Kosovo Women's Initiative (KWI), a UNHCR project funded by the U.S. Government. Kosovo Albanians, Serbs, Roma, Ashkaelia, Egyptians, Bosniaks and Turks participate in LWCs. The LWCs perform the function of an umbrella agency, managing and approving funding of projects designed and implemented by Kosovar women in micro-credit, women's rights, women's/children's education, psychosocial support, reconciliation, and women's participation.

¹⁰² In Gnjilane, for example, 40% of the council members are from minority communities, while in Prishtinë/Prishtina, the women's councils have achieved 27% minority representation.

a durable peace in Kosovo and in the region. There was a noticeable qualitative shift in the political rhetoric during the period, specifically, an increasing tendency towards openness in discussing the minority situation and increased references made to the causal link between respect for minority rights and European integration. While, prior to the Kosovo-wide elections of November 2001, the public and/or political discussion of the right to return was largely debated only amongst international actors, Kosovar leaders and opinion makers from the majority community demonstrated an increasing willingness in the post-election environment to publicly acknowledge the need for minority stabilisation, integration and minority return.

158. As interest and commitment has clearly intensified (particularly within UNMIK, KFOR and the highest echelons of the newly-elected Kosovo Albanian leadership) to address as a priority the situation of minorities and the problem of minority displacement and return, it becomes increasingly important to ensure that policies and practices related to return of minorities to Kosovo are firmly grounded in a **human rights framework**. The modalities of return planning and implementation, while adapted to the realities of Kosovo, must uphold fundamental humanitarian principles of voluntary return and reintegration through the application of a rights-based approach.

The human rights framework for return

159. The right of internally displaced persons (IDPs) and refugees to voluntarily return to their place of origin is firmly grounded in international law instruments.¹⁰³ The **right of IDPs and refugees for a free and informed choice to return in a safe and secure environment** is explicitly established in UN Security Council Resolution 1244, specifically entrusting UNMIK as the international civilian authority with the responsibility of "assuring the safe and unimpeded return of all refugees and displaced persons to their homes in Kosovo". KFOR is mandated with establishing a "secure environment" in which such return can take place, while UNHCR is designated as the entity responsible for supervision of the safe and free return of all refugees and IDPs. The right to return is also guaranteed in the Constitutional Framework for Provisional Self-Government in Kosovo, which confers upon the "competent institutions and organs in Kosovo [to] take all measures necessary to facilitate the safe return of refugees and displaced persons to Kosovo..." [Chapter 3.4]. The right to return is intrinsically linked with the right to equal protection before the law, the right to liberty of movement, the freedom to choose one's residence, and the right to property. The realisation of these rights cannot take place without minimum guarantees of returnees' most basic right to life and to physical security. But also inextricably linked to the right to return is the entitlement of returnees to enjoy civil, political, economic, social and cultural rights on a non-discriminatory basis, such as the right to use one's language, the right to work, and the right to housing, education, health care, and social benefits. It is only when these rights are guaranteed that IDPs and refugees have the possibility of a free and informed choice on whether to return or not.
160. Promotion (or in other words, active encouragement) of the voluntary return of IDPs and refugees requires that the conditions in the territory of return change substantially enough as to be conducive to safe and dignified return and sustainable reintegration. In the context of Kosovo, it is especially important to emphasise that the right to return is inalienable, and can be subject neither to negotiation nor to a veto of the majority community. Nonetheless, it must be appreciated that **the rights and guarantees afforded to returnees can only be achieved by addressing the root causes of insecurity, discrimination and alienation between ethnic groups**. In the Kosovo context, creating safe and sustainable conditions requires a meaningful process of dialogue and confidence-building measures grounded upon a political commitment to such processes by Kosovo's majority and minority communities and their leaders. Creating conditions for return cannot be viewed as primarily an exercise of physical protection through the allocation of military or police assets to "ensure" security. Such an approach, necessary to "ensure" immediate physical security in the absence of a fundamental change in social and political conditions, simply cannot sustain a significant return process for the over 200,000 minorities displaced outside of Kosovo. Such an approach to return will naturally limit return to what is possible as dictated by the numerical equation of soldiers and returnees, enabling only small numbers to return without clear prospects for their quality of life or their future within Kosovo society.
161. Furthermore, establishment of basic pre-conditions for return through ensuring *local* security within circumscribed minority areas is not sufficient to justify declaring that adequate conditions for return exist. Establishing local security (i.e. returnee security within their homes and neighbourhoods), primarily through military protection and through preventive behaviour of returnees who self-limit their mobility to a well-defined area of safety, will not be

¹⁰³ The right to return is enshrined in the Article 13 (2) of the Universal Declaration of Human Rights and in various binding international human rights instruments including the International Covenant on Civil and Political Rights [Article 12 (2) and (4)], the International Convention on the Elimination of all Forms of Racial Discrimination [Article 5(d)(ii)], and in regional human rights instruments. The European Convention on Human Rights [Protocol 4 Article 2] guarantees the right to liberty of movement and the freedom to choose one's residence within one's state territory.

sufficient to create a "pull factor"¹⁰⁴ which will persuade significant numbers of IDPs and refugees to return to Kosovo. Incentives for larger numbers of persons to return, spontaneously or organised, can only be created by fundamentally transforming the relationship between Kosovo's majority and minority communities, from which the necessary improvements in security and freedom of movement will follow. It is with this in mind that it becomes evident that **achievements in improving conditions for return cannot simply be measured, during the preliminary phase of a return process, in the numbers of returnees to Kosovo, but rather in the quality of "first returns"**. There is a worrying tendency to assess progress in the earliest stages of the return process by using quantitative benchmarks. This tendency, which not incidentally is often accompanied by the politicisation of return, or lack of return, in many contexts, is ultimately a hallmark of an unsustainable approach to resolving the problem of displacement.

162. Following a two-year period with only very small numbers of spontaneous minority returns, the period covered in this report witnessed the implementation of several small-scale organised return projects, initiating a nascent phase of facilitated minority return to Kosovo. Parallel to actual return developments, significant and positive institutional and political changes also took place, namely the November 2001 elections which ensured the creation of provisional institutions of self-government and the formation of a Kosovo Assembly as well as the establishment of an UNMIK office with competence over the return issue. These political and institutional developments, if mobilised within a human rights framework, may strengthen the prospects for a future return process. Yet it is clear that despite some limited yet significant improvements in the localised security situation of many minority communities in Kosovo during the previous periods, as well as the results of the first returns and other political and institutional developments, **the international community has not yet been witness to changes that are meaningful enough to conclude that conditions exist for large-scale return of minorities in the near future**. The only guarantee for accelerating successes which might allow for such conditions to emerge may be found only in the prioritisation of a political and societal dialogue aimed at achieving consensus between the majority and the minority on the return issue, resulting in action on the part of government and society to transform the social, political and security environment.

Spontaneous return trends and ongoing departures

163. While the second half of 2001 marked the first organised Serb returns to Kosovo, indeed a comparative review of return patterns points to **an actual reduction of overall numbers of returns in 2001 as compared to 2000**. Reduced numbers of return can be attributed to a significant reduction in spontaneous return.¹⁰⁵

164. **Kosovo Serb spontaneous returns in 2000 numbered a little over 1,800 persons, while spontaneous return of Serbs to Kosovo in 2001 reached only a little more than 500 persons.**¹⁰⁶ These downward trends might be explained by several factors. Perhaps most importantly, the *relatively* larger numbers of return in 2000 largely reflected return to large enclaves (such as Gorazdevac) by IDPs who had fled temporarily during the height of violence against minorities in summer and fall of 1999; thus, the returns in 2000 were not necessarily return motivated by a fundamental change in the environment. Thus, those who had the opportunity to return to their homes in a select few enclaves had already returned in 2000. Furthermore, the late winter of 2001 was marked by the Niš Express bombing which resulted in the death of 11 Serbs, dealing a massive blow to minority confidence and marking the height of a period of upsurge in violence against minorities precisely before the opening of spring.¹⁰⁷ the season when refugees and IDPs may be considering the prospects for return. Certain regions, in particular Gjiilan/Gnjilane, also experienced instability related to the conflicts in FYROM and Southern Serbia proper during the first half of the year, reducing confidence and return opportunities. But perhaps most significantly, the situation in 2001 increasingly consolidated the reasoned perception amongst IDPs and refugees that, notwithstanding marginal and relative improvements in local security in their immediate places of origin, the overall situation did not warrant the belief that, upon return, their families would enjoy any positive long-term perspective or future in Kosovo. The example of Slivovë/Slivovo in Prishtinë/Priština rural south clearly

¹⁰⁴ In this context, pull factors are those factors in the place of origin which encourage an individual decision to return, such as an improvement of security, or the availability of material or economic opportunities in the place of return. These are distinguishable from push factors, which are negative factors in the place of refuge, which may induce return, such as lack of shelter or material assistance in displacement. Refugees and IDPs thus may be induced to return due to push factors, even if the conditions in security, socio-economic or material conditions in the place of return are inadequate or unsustainable.

¹⁰⁵ When referring to trends in return, it must always be borne in mind that the overall numbers referenced continue to be so low as to be of relative insignificance when placed in perspective of the over 200,000 IDPs and refugees.

¹⁰⁶ It should be noted that over half of those spontaneous returns of Kosovo Serbs in 2000 were to fortified enclaves (such as Gračanica, Upper Rahovec/Orahovac, Gorazdevac, etc.) by IDPs who, after a brief period of refuge outside of Kosovo, returned to the largest enclaves. Spontaneous returns in 2001, in contrast, took place to a wider variety of locations but in smaller numbers, pointing to the fact that the generalised situation outside of the fortified enclaves is still largely prohibitive of return for the vast majority of displaced persons.

¹⁰⁷ Trends in ethnically-motivated violence during the period referred to are reviewed in the 7th Minorities Assessment which covers the period October 2000 – February 2001.

168. As highlighted in previous reports, return developments can only be fully understood by assessing spontaneous return trends in relation to **trends of ongoing displacement**. Small-scale but steady departures of minorities continued throughout the period, with trends differing by area and ethnic group, but with levels of departures generally constant over time. The scale of departures from specific areas continued to reflect the different levels of stability or instability within existing minority communities in Kosovo and related levels of minority confidence. Ongoing departures reinforce the above-mentioned fact that local improvements in security have not been accompanied by significant enough general improvements to stabilise and normalise daily life in existing communities. The following analysis of return and departure among the Kosovo Serb and RAE populations in the Prishtinë/Prishtina Region during the period May 2001 to March 2002 illustrates general trends.¹¹⁰
169. In **Prishtinë/Prishtina region, Kosovo Serbs** departed Kosovo in larger numbers than they returned. During the period May 2001 to March 2002, more than 500 persons departed, while about 385 persons returned. While Kosovo Serb departures outnumbered returns from a quantitative perspective, the numbers alone do not tell the whole story. Particularly vulnerable Kosovo Serb communities, especially those in semi-urban and ethnically mixed areas such as Lipjan/Lipljan and Fushë Kosovë/Kosovo Polje experienced large outflows and very few if any returns.¹¹¹ This phenomenon in specific semi-urban and mixed areas is explained by the fact that Serbs tended to be scattered in mixed neighbourhoods and therefore more exposed to threat and the impact of restricted freedom of movement, combined with the fact that Kosovo Serbs in Fushë Kosovë/Kosovo Polje tended to own strategically important properties on the main thoroughfares (resulting in high levels of property sales to Kosovo Albanians). Return and departure in rural areas varied, depending on the level of isolation and the particular security situation, with the most isolated and rural villages often experiencing more departures, and less isolated and more stable villages receiving more returns.¹¹² This is simply explained by the fact that the most rural and isolated of Kosovo Serb communities, while often experiencing security threats or low-level intimidation ranging from the occasional to the unremitting, tended to enjoy the least amount of freedom of movement and less access to services and goods than larger and less isolated minority communities, translating into greater push factors to depart than pull factors to return. In contrast to the rural areas, the larger, fortified semi-urban minority enclaves such as Gračanica/Gračaničë received many more spontaneous returns than new departures.¹¹³ **The contrasting return and departure trends in different types of areas inhabited by Kosovo Serbs tended to support the consolidation of the "enclavisation" of minority life in Kosovo.** Many smaller, rural minority communities or semi-urban communities in more mixed areas tended to experience drops in their minority population ranging from small to highly significant, while the population of larger mono-ethnic enclaves (whether semi-urban or rural) tended to remain more stable.
170. Trends also emerge when analysing the reasons cited by **Kosovo Serbs** for spontaneous return to Kosovo or departure to Serbia proper. In the Prishtinë/Prishtina region, 35 families who returned spontaneously between December 2001 and March 2002 were interviewed. Of these families, approximately 70% cited the lack of income and poor material and living conditions in Serbia as the principal reason for return to Kosovo. The remaining families cited various individual reasons for return, including in a few cases having secured a job in Kosovo, wanting to protect property from occupation, or needing to take care of elderly relatives who had remained. Only one family interviewed cited that return was prompted by a pull factor: due to confidence in an improvement of security situation in Kosovo. Of the families interviewed during this limited period, 30% returned to their own house, while over 50% returned initially to a relative's house (or in a few cases an empty flat belonging to another family or to a public premises such as a school or collective centre) due to the inability to

¹¹⁰ This period, representing almost one year, is assessed in lieu of the limited period covered by this report, since it is difficult to adequately analyse movement trends in a shorter period, due to factors such as seasonal variations.

¹¹¹ In the semi-urban area of Fushë Kosovë/Kosovo Polje municipality, 67 Kosovo Serb families (over 300 persons) were recorded as having departed, while for the same urban area only 1 family returned. In fact, the only Serb return recorded was short-lived as the household sold their property and departed again to Serbia proper. In Lipjan/Lipljan town, 22 Kosovo Serb families departed while 5 families returned during the same period.

¹¹² For example, 21 persons departed the small isolated village of Staro Gracko/Starograckë (Lipjan/Lipljan) during the period representing about 5% of the village population, while only 3 persons returned. In contrast, Plemetina village (Obiliq/Obilić) which is a larger village which has enjoyed relatively more stability has received 28 returnees but only had 1 departure. Another example of a larger and more stable village is the case of Babin Most/Babi Most (Obiliq/Obilić), which received 33 returnees (one or two households almost every month during the period). Yet even despite the decrease in security incidents, incremental improvements in mobility enjoyed in Babin Most, and some improvements in contact between Albanians and Serbs in the area (including some commerce) still 19 persons departed for Serbia after selling their property. These sales, of properties located a bit outside of the village and therefore more isolated, demonstrate that even improvements are highly localised, and minorities living outside the immediate "area of security" of a village may feel more vulnerable. Very good prices offered for these houses was likely also a contributing factor.

¹¹³ Gračanica/Gračaničë received over 40 returnees, while a few more than 10 persons departed. It should be noted that spontaneous returns of Kosovo Serbs to the larger, semi-urban minority enclaves sometimes consisted of return to internal displacement as opposed to return to the place of origin, due to prohibitive security conditions, insufficient freedom of movement and access to services/goods, property occupation and other factors in the village or neighbourhood of origin.

return to their own village or house due to security concerns or property occupation. During the same period, 27 families departing the Prishtinë/Priština region for Serbia or elsewhere were interviewed. While *immediate* insecurity (fear of attack in and around the home) was no longer cited as the compelling factor prompting departure, the lack of generalised improvements in freedom of movement and the lack of safe access to town centres and urban areas, effectively prohibiting employment and other benchmarks of integration, constituted the underlying reason behind all departures. Approximately 50% of the families sold their properties before departing.

171. Trends in Kosovo Roma and Ashkaelia return and departure in the Prishtinë/Priština region differed substantially from that of the Kosovo Serbs in the same region. During the period May 2001 to March 2002, a total of about 225 persons departed the region while almost 500 returned (of which 63% were Ashkaelia) mostly from FYROM. The ratio between returns and departures heavily favoured return from the quantitative perspective. Qualitatively, returns of RAE to Prishtinë/Priština region from FYROM tended to have one primary characteristic: most Roma and Ashkaelia families tended to return into displacement (usually with hosting relatives in a house, village or town other than the place of origin), due to the fact that their own villages or neighbourhoods were deserted, security conditions did not exist, their properties were destroyed, they could not access reconstruction assistance in the foreseeable future, or their own properties were occupied by displaced Albanians, Serbs or even other displaced RAE families. Return into internal displacement to a very limited number of locations contributed to the further over-burdening of existing communities. Patterns of Roma return differed from Ashkaelia return. Roma tended to return to the Kosovo Serb villages of Prishtinë/Priština rural south only¹¹⁴ into very overburdened Roma communities. Kosovo Roma return most often occurred into displacement.¹¹⁵ Ashkaelia return was limited almost entirely to Fushë Kosovë/Kosovo Polje¹¹⁶, also usually into displacement in host family arrangements, contributing to further saturation of the community. A second trend seen, most commonly amongst Serb-speaking Roma, was that of refugee families returning for a transitory period and departing again after a period of only a few weeks. In 2001, of 15 Roma families who returned to Gracanica/Graçanicë, only 1 family remained while the other 14 departed again for FYROM or Serbia. The extremely limited absorption capacity of hosting communities, inadequate living conditions and occupation of returnees' homes by other Roma IDPs contributed to this phenomenon. New departures of long-time RAE community members from the Prishtinë/Priština region were not noted.
172. Virtually no returns of members of the Kosovo Bosniak minority to Kosovo were recorded during the period, except for a few individual or exceptional cases (including a few cases of forced return/deportation). Although the overall security situation for Bosniaks has stabilised considerably and mobility and confidence continues to slowly improve, ongoing individual departures continue on a very slow but steady basis from Bosniak communities in many regions. The most significant departures during the period occurred in the Podgor area (Prizren region), where approximately 20 Bosniak families left the village of Grncare/Granqar during a three-month period. Most Bosniaks displaced outside of Kosovo since 1999 have found refuge in Montenegro or Bosnia & Herzegovina, but new departures appear to be largely destined for other European asylum countries. The primary reasons for departure are not direct security threats per se, but rather a function of the inability of Bosniaks to confidently use their own language in public outside their very small communities without facing a security risk, which effectively creates social and economic isolation, pressure to assimilate, and an environment of discrimination. There are no significant indications of aspirations amongst Bosniak IDPs and refugees to return to Kosovo in the foreseeable future.
173. No significant progress was made on laying the groundwork for returns of displaced Kosovo Albanians where they constitute a minority. There was, however, a notable increase in expression of aspirations to return among Kosovo Albanians displaced from majority Kosovo Serb areas, demonstrated by increasing demands to the international community to facilitate return and reconstruction, requests to visit villages of origin, and attempts to exercise freedom of movement. Realistic potential for return of Albanians to the northern parts of Mitrovicë/Mitrovica municipality remained extremely remote, hindered by the tense political environment and ever-present uncertainty about the security situation. Pointing to this is the fact that none of the Albanian families forcibly evicted from apartments in North Mitrovicë/Mitrovica in 2000 and 2001 (which KFOR and UNMIK Police were unable to prevent) have been able to reclaim or re-inhabit their properties to date. Another indicator is the fact that a few Go-and-See Visits of Kosovo Albanians to their villages of origin within northern

¹¹⁴ About 130 Roma refugees (over 70% of the total who returned) went to Gracanica/Graçanicë, Preoce/Preoc, Lapje Selo/Lapje Sellë and Caglavica.

¹¹⁵ This includes both return to displacement within the same actual village of origin (but not to one's own house or property), or to a different village or region than the place of origin.

¹¹⁶ 166 Ashkaelia returns were recorded to Fushë Kosova/Kosovo Polje (53% of the total) while the remainder of returnees went to various locations in Prishtinë/Priština, Lipjan/Lipljan, Shtime/Štimlje and Podujevë/Podujevo.

Mitrovicë/Mitrovica which were organised by UNMIK and KFOR at the request of the Albanian IDPs generated protests, roadblocks from Serbs in the north, highlighting the potential for violent backlash. The situation in north Mitrovicë/Mitrovica remains fundamentally unstable, and risks to remaining (mostly housebound) non-Serb minorities continue to be ever-present. The scenario is generally less dramatic in the other Serb-dominated municipalities of the north, outside of northern Mitrovicë/Mitrovica. The Kosovo Albanian enclaves in the majority Serb municipalities of Leposavić/Leposaviq, Zubin Potok and Zvečan/Zveçan continued to receive small and incremental spontaneous returns of Albanian IDPs from the south. Indeed, return is expected to increase in part due to the establishment of a new school, ambulanta, shop, UNMIK community office and a mini-bus shuttle which will connect the three principal Albanian villages in Leposavić/Leposaviq. Unlike in north Mitrovicë/Mitrovica, the low-key and gradual small-scale return of non-Serbs in these other northern areas is not as strongly obstructed by the same political obstacles, although conditions for more significant numbers of ethnic Albanian returns are still tenuous.

174. No tangible progress was made on the return of Kosovo Albanians displaced from their homes in majority-Serb municipality of Štrpce/Shtërpçë. However, Albanian access to the municipality saw slight improvements toward the end of the period following the highly contentious incidents surrounding the issue of lack of access of the Albanian Municipal Assembly members to the municipal building in Štrpce/Shtërpçë town in January and February. The recent development of Kosovo Albanians accessing and working in the municipal building, if sustained, will mark a first step towards increasing interaction with the Serb population. The situation continues to be quite fragile, and confidence-building measures must bear fruit before the contentious issue of return will realistically be able to be added to the agenda.

Organised return

175. Work to support the creation of conditions for return and to co-ordinate organised return initiatives for displaced Kosovo Serbs during the second half of 2001 continued to be co-ordinated under the auspices of the Joint Committee on the Return of Kosovo Serbs (JCR) structures.¹¹⁷ Regional and Local Working Groups (RWG/LWG) in each of the five regions and various municipalities continued to function under the chairmanship of UNHCR, with the active participation of UNMIK structures, KFOR, OSCE, NGOs and local community and political leaders representing the Serb communities. Co-ordination of RAE return issues continued to take place separately from the JCR process and RWG/LWG structures, with efforts taking place in a parallel fashion until the end of 2001. UNHCR, with the support of KFOR, continued to organise Go-and-See Visits of minority IDPs and refugees outside of Kosovo to visit their places of origin in order to assess first-hand the security and material situations in Kosovo. Go-and-Inform visits of UNHCR, UNMIK, and other organisations' staff to meet with refugees and IDPs in Serbia, Montenegro, and FYROM were also undertaken during the reporting period. A number of Go-and-See Visits of Serb and Ashkalia IDPs/refugees were organised to many municipalities including Prishtinë/Priština, Gjiļan/Gnjilane, Vushtrri/Vučitrn, Pejë/Peć, Klinë/Klina, Istog/Istok, and Prizren among others. The visits received increasing media coverage, in many cases coverage which could be said to be neutral, while in other cases it tended to be inflammatory towards the concept of minority return, or in a few cases towards individual IDPs or refugees included in the visits. At the local level, Go-and-See Visits were conducted without serious security incidents, and indeed in some cases producing spontaneous contacts between minority IDPs/refugees and their former Kosovo Albanian neighbours. During the period, the Go-and-See and Go-and-Inform modalities continued to be the primary tool for combating the lack of information (or misinformation) among the IDP/refugee population, helping them to make informed choices about their future.
176. Year-long inter-agency efforts through the JCR and other parallel processes produced four small-scale organised returns to Kosovo during the second half of 2001, resulting in the actual return of a little over 175 persons. Each of these returns differed substantially in its planning parameters, its approach and in character, these differences clearly reflecting variations in levels of inter-ethnic dialogue and confidence between minority and majority, and different security environments. The different mechanisms of establishing a secure environment are reflective of different constraints, risks and realities on the ground.
177. The return generating the most political interest and general debate was the return of Kosovo Serbs to the Osojane Valley in Istog/Istok municipality. The return of a group of IDPs representing more than 65 families¹¹⁸

¹¹⁷ The JCR (Joint Committee on the Return of Kosovo Serbs) and the RAE Platform for Joint Action processes which existed as the primary fora for co-ordinating issues related to minority return in 2000 and 2001 are discussed in detail in the 7th Minorities Assessment covering the period October 2000–February 2001. The JCR process was functional until December 2001 through the Regional and Local Working Groups and the central Steering Committee. The successor co-ordination structure under the auspices of the UNMIK Office of Returns and Communities (ORC) which was created in December 2001 is discussed later in the chapter.

¹¹⁸ 130 IDPs returned to Osojane in the fall of 2001, mostly heads of families representing complete families whose members remained in Serbia during the winter months. As the project developed and with the end of winter, more family members arrived and as of the writing of

to four hamlets in the Osojane Valley took place during the August/September period, into an area which suffered massive property destruction after the flight of the entire Serb population in the summer of 1999 and had been deserted since then. The return to an empty and destroyed area required a large-scale reconstruction effort; reconstruction assistance was provided for 55 households.¹¹⁹ KFOR undertook a highly resource-intensive exercise to seal and secure the valley to ensure returnee security. Pre-return discussions were undertaken between the international community, Albanian leadership at the central and municipal levels as well as surrounding communities, but the environment did not exist for dialogue and confidence-building between the Serb returnees and the Albanians prior to the return. Infrastructure and community development projects were implemented in the Albanian communities immediately neighbouring Osojane in order to try to balance attention to majority community needs (for this reason, termed "balancing projects"). Although one peaceful public demonstration occurred in Istog/k to protest against the return, security remained stable. However, the relations between returnees and the majority population remained virtually "untested" given the security mechanisms which, while necessary to ensure immediate security during the early phases of return, did have the unfortunate side-effect of entrenching separation between the returnee community and the Albanian population. Reducing barriers by normalising preventive security measures, by ensuring the delivery of municipal services to the returnee community, and by enhancing inter-ethnic contact through dialogue, economic interaction and returnee participation in municipal structures remain perhaps the most important challenges in the consolidation of the return process. The pre-return and immediate post-return phases of the Osojane Valley return were co-ordinated by UNHCR. With the consolidation of the returnee group and attention on the priority issues of reintegration, the UNMIK Regional Office assumed the lead co-ordination function, in particular, overseeing reconstruction, infrastructure recovery and municipal services issues, while UNHCR continued to support the return process with particular attention to humanitarian needs and co-ordination with IDPs in Serbia. During early 2002, UNMIK, UNHCR and KFOR along with a range of partners began planning for a second phase of return to Osojane, given high levels of interest amongst Osojane IDPs in Serbia to return to their community.

178. The two organised return projects of Kosovo Serbs in the Gjilan/Gnjilane region differed substantially in character from the Osojane return. Returns of Kosovo Serbs were facilitated to the twin villages of **Gornji Makres and Makresh i Ultë** (Gjilan/Gnjilane) as well as to the village of **Ljestar/Leshtar** (Kamenicë/Kamenica). The main planning parameter in both return locations was the simultaneous return of both Albanian and Serb IDPs, made possible through a process of pre-return dialogue and confidence-building supported by UNMIK municipal officers, UNHCR and other agencies. By October, a total of 13 Serb IDP households had returned to Gornji Makres and were assisted with reconstruction or house repair assistance. Simultaneous to the facilitated return of the Serb families, 10 Albanian IDP families displaced within the region simultaneously returned and were also assisted to rebuild their damaged or destroyed properties in neighbouring Makresh i Ultë.¹²⁰ In Ljestar/Leshtar, 13 Serb IDP families returned during the summer and autumn months, while 22 Albanian IDP families also returned during the same period; both Albanian and Serb households were assisted with housing reconstruction or repair assistance.¹²¹ Security mechanisms put into place in both return locations were discreet (increased patrols and risk reduction through enhancing area security by KFOR and UNMIK Police/KPS, as opposed to static or highly visible presence), with emphasis placed on creating a secure environment and preventing incidents through fostering co-existence. This was possible due to a relatively less volatile inter-ethnic environment and the particular historical experience between ethnic groups in the areas of return. UNHCR took the lead in overseeing the return process overall, while UNMIK, KFOR, OSCE, NGOs and other actors focused on their respective areas of responsibility.
179. The fourth significant organised return during the reporting period was the return of nine Ashkaelia families (56 persons) displaced in the Plemetina camp in Obiliq/Obilić municipality (with exception of one family displaced in Fushë Kosovë/Kosovo Polje) to their neighbourhood in **Vranjevac/Kodra e Trimave** (urban Prishtinë/Priština). After expressions of confidence by IDP families in the possibilities for safe return and requesting assistance for reintegration, the international community assisted the IDPs to re-establish contact with their former Albanian neighbours and municipal authorities. Reconstruction assistance was obtained from the annual Reconstruction Programme, through the Municipal Housing Committee, and the project was also allocated additional municipal

this assessment, a little over 200 returnees were in Osojane. Fifty-five families benefited from reconstruction assistance, while a residual number of returnees representing complete families and already present in the return location are awaiting reconstruction assistance in 2002. The first phase of return will be complemented by a second phase, with return of more IDP families in 2002, the size of which depends on available funding for necessary projects.

¹¹⁹ Housing reconstruction was funded by EAR (implemented by Movimundo) and by bilateral donations of the German and French governments (implemented by THW). The Danish Government through DANIDA funded the electricity rehabilitation project (implemented by WPP in co-operation with THW).

¹²⁰ Housing repair for the Makresh project was funded by US Government/BPRM (implemented by ARC).

¹²¹ Housing reconstruction in Ljestar/Leshtar was funded by EAR (implemented by MPDL).

funding for the clearing of debris, marking the first time that a municipality contributed financially to a minority return project.¹²² Dialogue initiatives were facilitated, involving stakeholders ranging from neighbours to the President of the Municipal Assembly. Security planning emphasised low profile security presence initially through enhanced KFOR efforts, later turned over to UNMIK Police and KPS. Efforts to ensure security that were based on prevention and risk-reduction by re-establishment of community links between returnees and the local community have to date been successful, with only a few incidents of harassment reported. Efforts were made to ensure the enrolment of the Ashkaelia returnee children in a neighbourhood Albanian school. Overall co-ordination of the return was performed by UNHCR. The return set the groundwork for present planning of further small-scale returns of Ashkaelia to the neighbourhood from Plemetina camp and from FYROM in 2002. It should be noted that ensuring the sustainable return of less than 10 families (which took over a year of planning and work to achieve), given the present limitations of the Kosovo-wide environment, required an extremely careful planning process involving the active engagement of UNMIK, UNHCR, KFOR, UNMIK Police, NGOs and local leaders.

180. The inter-agency planning activities undertaken in 2001 to enable organised minority returns to take place to Osojane Valley, Gornji Makres/Makresh e Ullë, Ljestar/Leshtar and Vranjevac/Kodra e Trimave brought into focus for the principal agencies and organisations involved some key lessons learned.¹²³ Most importantly, the highly complex, time-consuming, resource-intensive and multi-sectoral nature of facilitating a safe and sustainable return became absolutely evident. It was increasingly understood that, **under prevailing circumstances, which continue for the most part to prohibit spontaneous return, opportunities for replicating return successes are directly proportionate to limited human resources.** Resources and efforts must be mobilised among a multitude of agencies in order to build confidence and create a minimum level of area stability to responsibly allow returns to take place; even the return of a very small number of minority families requires a disproportionately large level of resources, especially human resources. If we compare the social environments of the four organised return locations in 2001, it also becomes evident that, even with a massive commitment of resources, creating an environment which ensures at least some contacts between ethnic groups and no inter-ethnic violence requires a fundamental qualitative change in the political and social relations between Kosovo's ethnic groups. Returns to environments where stringent security measures are required to ensure returnee safety are ultimately much less sustainable. An approach based on ensuring returnee security primarily or exclusively through preventive deployment of military assets ensures that return will only occur in very small numbers as determined by military asset levels. This approach to return also fails to provide guarantees of returnee security when military assets in the region are reduced. For these reasons among others, building tolerance was recognised to be one of the key factors necessary to create safe conditions for returns.
181. The 2001 experience also pointed to some more basic and concrete lessons learned. It became clear that **equal attention had not been paid to all ethnic communities** and their return needs. The RAE communities were particularly affected by unequal attention, and indeed it was noted that opportunities for return in some cases might have been missed due to lack of assistance, especially reconstruction aid. The issue of return of displaced Kosovo Albanians to areas where they constitute a minority were also given insufficient attention, largely due to a prohibitive political and security environment in Serb-majority areas (especially northern Kosovo) which must be addressed with due consideration of the return issue. It was also noted that very little attention had been given to IDPs displaced within Kosovo (including persons who had returned to Kosovo into displacement). Lessons learned also included the conclusion that funding for return initiatives should be secured not only for housing and infrastructure recovery, but also for a range of other activities, particularly the funding of institutions to ensure the implementation of property law and development of economic activities to ensure the economic viability of returnee communities. At the same time, the focus on returns to a few limited locations should not be at the expense of addressing the broad improvement in conditions for minorities that are necessary for large-scale returns. Predictable and stable funding mechanisms adapted to the needs of return processes were found to be required in order to sustain future return processes. Agencies widely agreed that, wherever possible, return planning should include municipal structures and encourage participation of municipal authorities. The role of local civil society organisations, particularly those able to make unique contributions in inter-ethnic dialogue, was also emphasised as a key lesson learned.

¹²² Housing reconstruction in Vranjevac/Kodra e Trimave was funded by SIDA (implemented by Erikshjalpen).

¹²³ These issues were discussed in a lessons learned workshop on minority return planning and implementation co-sponsored by UNHCR and the UNMIK Transitional Department of Finance and Economy on 29 November 2001, which was attended by international agencies, local organisations and minority community representatives.

182. The issue of reconstruction assistance in the context of return deserves special mention. The availability of reconstruction assistance increasingly emerged as a potential obstacle to creating a sustained and more meaningful return process. Also, the reconstruction needs for reintegration of families already returned to internal displacement and host family arrangements were brought more clearly into focus. Existing mechanisms for reconstruction through the UNMIK Reconstruction Programme for Kosovo were found difficult to adapt to the immediate needs of returnees, particularly those returnees coming back to their communities in the second half of the year, after the completion of the beneficiary selection process. Concerns were also expressed from various organisations that the existing reconstruction programme would not be able to accommodate the demands generated by any future large-scale return without an infusion of funding and a reorientation of planning parameters designed around the special dynamics of a minority return process.¹²⁴ The 2001 experience also indicated that minority return projects had higher costs. Higher costs in some instances resulted from higher levels of paid labour support within the context of self-help projects, given the unique situation of minority returnees; after more than two years in displacement, minorities return to a particular situation defined by restricted freedom of movement and very few opportunities for income generation, both which significantly reduce self-reliance capacity. Costs of minority return projects were also found to be higher due to the incorporation of balancing projects as part of a situational approach.¹²⁵ All of the above lessons will need to be considered when designing a suitable reconstruction response in the context of returns for the next several years. One very positive step was the completion of a housing and infrastructure damage assessment in select minority (mostly Serb and RAE) locations in Kosovo.¹²⁶ The damage assessment will serve as an indispensable planning tool for future housing reconstruction and infrastructure rehabilitation projects linked to return processes.

183. The above-mentioned activities to facilitate actual returns to Kosovo, resulting in the four organised return initiatives described, were of tremendous importance in that they gave **impetus to a new process** and brought the issue of return to the fore. These initiatives were undertaken under the auspices of a framework strategy with a two-pronged approach: facilitating wherever possible actual return movements to specific locations, while in a parallel fashion improving the general conditions for return in order to build a foundation for larger-scale return in the future. Unfortunately, the latter was not given enough priority. Fundamental societal or institutional problems that undermine conditions for return, such as lack of inter-ethnic dialogue or lack of implementation of property legislation, continued to be neglected. Crucial institutions such as HPD continued to be grossly under-funded and therefore unable to guarantee property rights, which could benefit thousands of displaced families of all ethnicities. While important return projects were implemented for a limited number of families (at significant cost), other initiatives of a more global nature that could indeed benefit much larger numbers of displaced persons were neglected. However, during the end of the period, important political and institutional developments took place, which will hopefully result in a more systematic and balanced approach to transforming Kosovo-wide conditions, which will favour larger scale return.

Political and institutional developments related to return

184. During the reporting period an acceleration of important political and institutional developments occurred, largely concentrated during the immediate periods preceding and following the Kosovo-wide elections. Several of these developments were of particular importance to the return issue, not the least of which was the 17 November election and the subsequent establishment of Provisional Institutions of Self-Government under the Constitutional Framework established by UNMIK Regulation 2001/9.

185. The 17 November 2001 election was preceded by dialogue between UNMIK and the FRY Government in Belgrade, in an attempt to clarify the uncertainty that prevailed over Kosovo Serb participation in the elections. On 5 November 2001, UNMIK and the FRY Government jointly signed a Common Document reaffirming certain aspects of UN Security Council Resolution 1244, including reiterating the commitment to the return of all IDPs and refugees to Kosovo, and more specifically, UNMIK's intention to establish an office under the direct supervision of the SRSG to act as an "operative, co-ordinating body for the furtherance of the [return] process,

¹²⁴ The levels of reconstruction made available to minority beneficiaries in 2001 illustrate the fact that the Reconstruction Programme as presently funded does not have the response capacity to meet returnee needs. The 2001 programme received funding commitments for approximately 8,500 houses, distributed geographically to specific municipalities. According to the March 2002 report of the Central Housing Committee (Housing and Construction Division, Ministry of Environment and Spatial Planning), 7,465 beneficiary households had been approved by Municipal Housing Committees, of which 316 households were ethnic minorities. An additional 55 houses were allocated to minorities in the Osojane return project. Therefore, of the approved beneficiary households it can be roughly estimated that minorities comprised about 4% of total beneficiaries. The majority of these beneficiaries were minorities who never left Kosovo, as opposed to minorities returning from displacement outside of Kosovo.

¹²⁵ For example, approximately 30% of THW's project budget for the Osojane return was used to fund needed infrastructure and community development projects for neighbouring Albanian communities.

¹²⁶ The damage assessment is discussed in the chapter on reconstruction.

including by suggesting a new plan for returns covering 2002-2003.* The need for such an office to develop UNMIK's strategic policy on returns had been discussed during previous months, and was made a reality in early December 2001, with the creation of the **Office of Returns and Communities (ORC)** within the Office of the SRSG. It should be noted that the ORC is responsible not only for the issue of returns and reintegration of IDPs and refugees, but also is mandated with developing policies and co-ordinating activities to promote co-existence between ethnic communities and stabilise existing minority communities. The creation of the ORC represented a very important step for UNMIK, a concrete indication of increased priority given to efforts to promote and accelerate solutions to the problem of displacement.

186. With the creation of the ORC, return co-ordination mechanisms were restructured to reflect an enhanced leadership role of UNMIK on the return issue. ORC is still preparing a policy paper on returns that will guide the overall process. The Steering Committee of the JCR (chaired by UNHCR) as well as the JCR itself, which existed as the primary central-level fora for return planning in 2000 and 2001, were discontinued in December 2001 and is to be replaced by a **Task Force on Return and Reintegration (TFR)**. It is envisaged that this will be chaired by the SRSG, and will include representation of political and community leaders of all majority and minority ethnic groups of Kosovo. While the anticipated TFR has not yet been convened, Regional and Local Working Groups on Return and Reintegration continued to function, albeit with a restructuring of the local working groups on a municipality-by-municipality basis (Municipal Working Groups). As of March 2002, the five Regional Working Groups were overseeing the work of Municipal Working Groups in 17 municipalities. UNHCR continued to chair the working groups, and co-ordinate local and regional pre-return planning processes in close co-operation with UNMIK, but it is foreseen that UNMIK will assume the chairmanship function in the near future, when resources allow. The Regional and Municipal Working Groups in each region are presently engaging in assessment and planning (including calculating resource requirements) for various return locations for 2002, as security and other conditions allow in specific potential return locations. ORC intends to take the lead in mobilising donor funding for return projects.
187. During the reporting period, UNMIK also began to develop a more robust information outreach policy vis-à-vis minority communities and IDPs, also at least in part as a result of the experience of outreach to IDPs mainly in Serbia in the pre-election period. UNMIK Department of Public Information began to intensify consultations with several agency partners, including UNHCR, to discuss strategies for outreach to IDPs through the mass media in FRY, production of written materials about the situation in Kosovo and other initiatives. Implementation will require attention in the coming months. During the period, UNMIK established three Community Information Centres in Gračanica/Gračanice (Pristinë/Priština), Šilovo/Shilovë (Gjilan/Gnjilane) and north Mitrovicë/Mitrovica. Similar centres are also planned to open in the Prizren and Pejë/Peć regions, in Upper Orahovac/Rahovec and Gorazdevac/Gorazhdëvc respectively. These offices were designed in order to increase information flow between UNMIK and minority communities, and as the centres develop, will hopefully engage in information outreach to minorities displaced outside of Kosovo as well.
188. An important shift in KFOR strategy toward minority return was noted during the reporting period. KFOR's active participation in return planning and implementation, as well as their general experience on the ground in minority communities, prompted analysis of the most appropriate security responses in the context of return. Moving a step beyond an exclusive focus on deployment of military assets to address inadequate security environments, KFOR began to foresee the need to take a more comprehensive, developmental approach to transforming the local environments where inadequate security exists (and not only pursuing the 'containment' of conflict), in order to more fully comply with the mandate to ensure a safe and secure environment under UN Security Council Resolution 1244. In this regard, KFOR increasingly noted the need to ensure that regional security planning is designed to assist minorities and surrounding majority populations to overcome psychological barriers (rather than reinforcing subjective fears and an 'enclave mentality') and complement confidence-building activities. While the majority of contingents in the regions have embraced their responsibilities for enhancing, to the extent possible, freedom of movement, and assisting in the return planning process (by developing security plans and providing support for Go-and-See Visits, for example), there have been some notable exceptions which are also problematic from the human rights perspective. **KFOR MNB (S) in particular continues to place restrictions on free movement for Kosovo Serbs in the Prizren region¹²⁷ which have curtailed a potential increase in normalisation of movement of displaced Serbs to visit their properties and undertake social visits in Zhupa Valley, or to spontaneously return. Often, MNB (S)'s positions on return issues have been seen as incompatible with the overall KFOR strategy of reducing barriers between ethnic groups, in fact, often giving the opposite impression that complete restriction of contacts between minority and majority communities is**

¹²⁷ MNB (S) practices vis-à-vis Kosovo Serb IDP movement between Štrpce/Shtërpce and Prizren municipalities, and restrictions placed upon Serb movement beyond the Sredska/Sredske checkpoint, are detailed under freedom of movement, paragraph 24.

a necessity for preventive security reasons. MNB (S) positions sometimes also give the troubling impression that the majority community should de facto be given a veto on the right to return. However, despite some inconsistencies on the ground, KFOR's overall strategic approach towards return for 2002 and beyond is being developed in a very positive and forward-looking direction. The overarching strategy foresees the need to enhance troop presence in potential areas of return, but also foresees the importance of incrementally reducing presence as confidence is established between communities, in part so as to ensure that security measures do not have a negative impact on inter-ethnic contacts and confidence-building measures. These developments are welcome and it is hoped that this strategic direction will be consistently reflected in the security planning of each Multi-National Brigade.

189. The formation of the Provisional Institutions of Self-Government (PISG), with the participation of all ethnic communities, marks another key development that greatly changes the institutional and political landscape vis-à-vis return. The coalition agreement endorsed by the Kosovo Albanian political parties to form a majority government represented the first formal commitment of the majority Government to adopt policies in favour of minority integration and in particular to "give full attention to the promotion of a stable and secure society with full freedom of movement for all communities. The right of refugees and displaced persons to return to their homes and the re-installment of property to its legal owners will be upheld."¹²⁸ The highest echelons of the Kosovo Albanian political leadership, including the Prime Minister, have made public and private statements in favour of integration, non-discrimination and the need to overcome the enclave situation that presently defines minority life in Kosovo. Given the very-recent formation of the Government, it is still premature to judge whether the positions expressed to date will be translated into policies and practices that indeed deliver positive results. Return is at the top of the political agenda of the Kosovo Serb coalition, *Povratak*; indeed, the name of the coalition means "return".¹²⁹ It remains unclear at this early stage what scope may exist for co-operative and constructive dialogue between the majority and minority coalitions within the PISG on the return issue. The only thing that is clear at this early juncture is that a political consensus is a fundamental necessity if any meaningful progress is to be achieved. The greatest risk to achieving a constructive dialogue is likely to be the politicisation of the process. At this stage, ironically, the liabilities of political obstruction seem as likely to be created by the minority Kosovo Serbs themselves as from the majority Kosovo Albanian leadership. Both the majority and minority coalitions have a large responsibility to ensure that return remains a priority of the Assembly and the Government, and that this humanitarian issue is addressed constructively.
190. While the active engagement of the PISG at the central level on the return issue is still in its most early stages, interaction between the international community and local municipal authorities has been on the agenda for about a year, at least in select municipalities. During the period, increased efforts were made primarily through the Regional and Municipal/Local Working Groups to **engage Kosovo Albanian municipal leadership structures in dialogue on return**, with mixed results. In a number of municipalities (in most municipalities of the Prishtinë/Prishtina, Gjiilan/Gnjilane and Pejë/Peć regions, for example), there has been a very significant increase in the level of willingness amongst municipal leaders to engage, even publicly, in discussions about minority return and to put the issue on the agenda. Members of Municipal Assemblies as well as community leaders in some municipalities have supported the establishment of and are beginning to participate in Municipal Working Groups, and have demonstrated a willingness to engage in return discussions which simply did not exist in the past.¹³⁰ While little progress has yet been seen in attitudes towards return (continued emphasis on conditionalities to return, for example), the fact that Kosovo Albanian leaders are open to discussion and participation, and indeed more open to have their views on return challenged, is indeed a very important first step. It should be noted however, that progress differs greatly by municipality, with leaders in some municipalities still very hesitant to be publicly seen to associate with dialogue on return, or even refusing to acknowledge that minorities have a right to return. One particular case of a positive development within municipal structures, the minorities have a right to return. One particular case of a positive development within municipal structures, the Lipjan/Lipljan Mediation Committee, should be mentioned. In late 2001, the Lipjan/Lipljan Mediation Committee

¹²⁸ Section II, paragraph 8 of the Agreement on the President and Government of Kosovo, 28 February 2002.

¹²⁹ As of the writing of this document, *Povratak* had not yet joined the Government, having taken the position during the first months of 2002 that assumption of the leadership of the Ministry designated for the Kosovo Serb coalition (Agriculture, Forestry and Rural Development) was conditional upon the creation of an additional ministry with competence on return. Such a demand lacks viability, given that the structure of the Government is pre-determined by the Constitutional Framework and considering that minority return falls under the reserved powers of the SRSG. The SRSG offered to create an inter-ministerial post to be filled by a Kosovo Serb within the Office of the Prime Minister to co-ordinate return issues between all Ministries, and has additionally offered the Kosovo Serbs a post of senior adviser on returns within the Office of the SRSG, who would work closely with UNMIK's Office on Returns and Communities. It appears as of the publication of this document that this proposal will be accepted by *Povratak*, and implemented.

¹³⁰ Indeed, in a very hopeful sign of the exercise of positive leadership, in April 2002, the Prime Minister gathered all of the Municipal Assembly presidents together to discuss the sole issue of minority integration and return. The Prime Minister asked for the co-operation of the municipal leaders to support return and to engage in the return planning process, underlining the right of all displaced persons of all ethnicities and in all municipalities of Kosovo to be able to return safely, to integrate in Kosovar society, and to repossess their properties.

and its head (a Kosovo Albanian) took the initiative to undertake a series of visits and discussions with Ashkaelia IDPs from Lipjan/Lipljan displaced outside of the municipality. As a result of dialogue and a petition of Ashkaelia families to be assisted to return to their villages in Lipjan/Lipljan, the Mediation Committee, supported by UNMIK, undertook efforts to obtain a commitment from local political parties and members of the Municipal Assembly to prioritise the return of Ashkaelia to the municipality and to undertake the necessary dialogue with local communities in order to ensure that minority families can realise their right to return. This initiative is still underway, and is not without its challenges and problems, but constitutes a very positive example that other municipal self-governance structures should replicate.

191. While positive examples were seen during the period, overall there continued to be an **unfortunate tendency on the part of both the Albanian and the Serb populations to politicise the return issue**. Both communities, where they constitute a majority, continued to use strikingly similar political rhetoric focusing on the unacceptability of return of the other ethnic group until the full realisation of return of the displaced of their own ethnic population. Kosovo Albanians often expressed objection to Serb return until Mitrovica city would be reunited and until Kosovo Albanians would be able to return to the northern part of the city; Kosovo Serbs objected to Albanian return partly on the grounds that Serbs were still unable to safely return to Albanian majority areas, with particular emphasis on Prishtinë/Priština. This rhetoric, which amounts to holding the return of the opposing ethnic group political hostage pending the realisation of the rights of the other, remained a key obstacle. At the same time, the discourse on both sides was marked by conditioning return upon solutions on the sensitive issue of missing persons and detainees, also pointing to a worrying tendency to condition solutions for one humanitarian problem to another compelling, yet separate, humanitarian problem. Three major tendencies characterise the discourse during the period: First, the tendency to recognise return as an absolute right for one's own ethnic group, while viewing return as subject to conditions or limitations for the other ethnic group. Second, the tendency to use displacement and return as a political bargaining chip, as opposed to viewing return as a humanitarian problem to be resolved in order to guarantee respect for fundamental rights. And third, the persistent failure to recognise return as a social process and therefore the tendency to dismiss the importance of confidence-building and inter-ethnic dialogue as an indispensable measure for improving prospects for return. These tendencies pose a major obstacle to significant advances in the return of both Albanians and Serbs to areas where they constitute a minority. Recognition amongst Albanian and Serb leaders alike at all levels of society of the unequivocal right to return for all IDPs and refugees regardless of ethnicity, of the equal importance of realising the return of all ethnic groups, and of ensuring freedom of movement of all ethnic populations in all areas of Kosovo, remains a fundamental pre-condition for progress. This progress will be difficult to achieve so long as local community leaders fail to appreciate the qualitative distinction between turning return into a political issue versus giving political priority to return in order to solve a humanitarian problem.

Outlook for return

192. Based on the above review of return developments during the period, it is clear that the **outlook for return is mixed**. On the one hand, **positive institutional and political developments have taken place** concurrently with the consolidation of the first small-scale and modest, yet groundbreaking, organised return movements. These developments would tend to support the notion that the international community is firmly moving in the right direction in order to meet their obligations to IDPs and refugees under UNSC 1244 and human rights instruments. On the other hand, **the conditions on the ground do not favour the conclusion that significant returns, either spontaneous or organised, will take place in the near future**.
193. Until the necessary political groundwork is laid through the new Provisional Institutions of Self-Government, and until more attention is given to inter-ethnic dialogue and confidence-building as a pre-requisite for return, it will be **very difficult to avoid situations similar to the "Osojane model"**. The Osojane return (notwithstanding its achievements which would have been inconceivable just a year before) is **not a model which will produce sustainable large-scale return and durable reintegration of minorities in Kosovo society if replicated**.¹³¹ It is clear that reaching the turning point towards large-scale minority return will absolutely require an investment of time and resources to create a political breakthrough, specifically, by creating momentum in political dialogue and by consolidating political commitment of the majority as well as the minority to build mutual confidence, to reduce existing barriers between communities, to allow and to accept integration, and by achieving this, to transform the security environment. The international community must seize upon the new political developments together with the PISG at all levels, to ensure that the necessary political foundations for a sustainable return process are laid in 2002. A failure in this effort will potentially delay any substantial return even further. The importance must be

¹³¹ It must of course always be noted that, despite some perceptions, the current situation in Osojane which is characterised by isolation was never conceived as the end state, and indeed security mechanisms need to be slowly transformed, and planning is underway for such.

stressed of the need to address all the major problems faced by minorities, as described in this entire assessment, in order to ensure that the conditions are there for minorities to remain and return.

194. It should be noted that the potential for significant forced returns¹³² of minorities from Western Europe asylum countries during 2002 could have a destabilising effect on many already-fragile minority communities and a detrimental effect on the sustainability of the nascent organised voluntary return process. There is a need to integrate voluntary return movements from third countries into the ongoing return planning processes which are carefully and incrementally being undertaken on behalf of refugees and IDPs within Kosovo and neighbouring territories.

SITUATION OF SPECIFIC MINORITY COMMUNITIES

195. Each ethnic group represented among Kosovo's diverse population is, somewhere in the territory, a minority. While non-Albanians constitute the ethnic minority throughout most of Kosovo, Albanians themselves are a minority in northern Kosovo where ethnic Serbs constitute the majority. All ethnic groups face problems with security and freedom of movement as well as access to services, to varying degrees by ethnicity and by location, and each ethnic community continues to be affected by forced displacement. This chapter attempts to highlight the specific situations of minorities, by ethnic group, indicating the relative degrees of insecurity, specific problems that they continue to face on a daily basis, as well as improvements in their situation.¹³³

Kosovo Serbs

196. Kosovo Serbs constitute a majority in specific municipalities, in Štrpce/Shtërpçë, urban Mitrovicë/Mitrovica north of the Ibar river/River and in the northern municipalities of Zvečan/Zveçan, Leposavić/Leposaviq and Zubin Potok. In most other areas of Kosovo they are in the minority, living in enclaves or in isolation. Kosovo Serbs remain the primary target/targets of ethnically motivated violent attacks. As a result, **physical security remains the overriding issue of concern for those Kosovo Serbs who live in a minority situation**, as it not only affects their lives and fundamental freedoms (such as freedom of movement) but also the enjoyment of a multitude of life-sustaining economic and social rights. The precarious environment that still confronts Kosovo Serbs is underlined by incidents such as the 21 October 2001, shooting of a Kosovo Serb man through the window of his house at night, in Devet Jugovica, causing serious injuries; the firing of five rounds from a pistol towards a group of Kosovo Serb children waiting for public transportation in Plemetin/Plemetina village on 30 January 2002; and the arrest of two Kosovo Albanian males in Viti/Vitina municipality on 27 January 2002 for allegedly attempting to kill a Kosovo Serb male while he was walking home.
197. Kosovo Serbs also continue to suffer **violations of property rights**, which include coercion to sell property, destruction of property and attacks on religious monuments and sites and desecration of cemeteries. On 29 November 2001, in Gjilan/Gnjilane a Kosovo Serb woman was threatened that she would suffer a grenade attack on her store unless she gave up its possession to the perpetrator. Also in Gjilan/Gnjilane, on 11 December 2001, an explosive device was thrown at a house belonging to a Kosovo Serb causing damage to a wall and roof; in the same region on 18 January 2002, a Kosovo Albanian man threatened a Kosovo Serb over a land dispute; in Kamenicë/Kamenica on 3 January 2002, two improvised explosive device attacks were carried out against two different houses and shots were fired at the houses of the victims, the attack caused damage to both houses and a parked motor vehicle on one of the premises. On 9 March 2002, in Novobërdë/Novo Brdo, three individuals robbed a Kosovo Serb farm, severely assaulted the owner and stole his cattle; the 66 year old victim suffered serious injuries and burns, and the forest around his farm was set on fire. In Podujevë/Podujevo on 11 March 2002, in a Kosovo Serb cemetery twelve gravesite head stones were knocked down in an act of desecration. In Štrpce/Shtërpçë on 15 March 2002, Kosovo Albanian perpetrators were arrested on allegations of setting a Kosovo Serb's stable on fire and causing extensive damage to the property. On 7 April 2002, unknown persons set a Kosovo Serbs' house on fire in Rahovec/Orahovac, in what is suspected as arson. On April 22 2002, an abandoned Serb house in Klokot (Viti/Vitina) was leveled by a strong explosion. On 26 April 2002, a hand grenade was thrown at a Kosovo Serb house, causing some damages to the property. On the same day, in Obiliq/Obilić, a Kosovo Serb's barn was set on fire, destroying some hay and tools.

¹³² deportation of rejected asylum-seekers and individuals who benefitted from temporary protection regimes which have been or may be lifted.

¹³³ Population figures by community are discussed in previous minority assessments. General patterns of changes to these population figures due to ongoing departures or returns are outlined in the chapter on return. Since no population census has been performed in Kosovo in the post-conflict period, precise population figures for each ethnic group in Kosovo are not available.

198. Kosovo Serbs suffer harassment, intimidation and humiliation, the most common form of harassment being the recurrent throwing of stones at vehicles transporting Kosovo Serbs. For example: on 9 January 2002, in Kačanik/Kaçanik, a bus in a convoy was pelted with stones breaking a window and causing facial injuries to a Kosovo Serb male passenger; in Lipjan/Lipljan on 5 February 2002, three Kosovo Albanian boys threw stones at a vehicle carrying four Kosovo Serb men causing head injuries to the driver. The prime targets of these incidents are often the elderly and women as demonstrated in September 2001, when reports were received of the harassment of an 81 year old Kosovo Serb woman, a resident of urban Prishtinë/Priština, who regularly had stones thrown at her window, strangers banging her door or shouting a barrage of verbal abuse; as a result, after making several requests to KFOR to provide protection, in sheer exasperation and exhaustion she expressed the desire to leave Kosovo for Serbia proper. In addition, Kosovo Serbs are accosted, insulted, taunted and spat at on the streets as they walk to or from work, school, health centres, shops or other essential public facilities. These ethnically motivated acts demoralise, frustrate and humiliate their victims, and pervasively affect their sense of security whether or not actual physical harm occurs, and engender a reasonable perception that one is under constant threat. This perception in turn further curtails freedom of movement.
199. These factors have contributed significantly to the decision by many Kosovo Serbs to **stay in isolation** in main urban centres where they constitute a minority, concentrate in enclave like locations, or remain in displacement either as IDPs or refugees. Those few who have returned mainly as a result of difficult living conditions in exile are those who are from rural areas, while IDPs displaced from urban centres have had no opportunities to return. Some IDPs have returned into displacement into the enclave like locations in central and northern Kosovo.
200. Notwithstanding the above, **significant advances** in the situation of Kosovo Serb in terms of mobility and accessing services have been noted during the current reporting period. The advances are also attributable to the fact that, like other minorities, Kosovo Serbs after almost three years of living in difficult conditions are taking bold measures to break their isolation, *albeit* at some personal risk. The determination to ameliorate the effects of the situation has increased within the Kosovo Serb population, with variations according to local risk levels and personal perception of risk. To illustrate, an increasing number of Kosovo Serbs in the Prishtinë/Priština region, during the reporting period, have started to drive to nearby towns without KFOR escort which would have been unimaginable previously. This change in perception can arguably be attributed to the growing number of Kosovo Serbs being prepared to run the gauntlet than continue to put up with the constant harassment and intimidation by some elements in the majority population. One example is the reaction of some members of the Kosovo Serb community in Obiliq/Obilić town who, following the killing of a Serb woman near the railway station on 22 February 2002, resolutely continued to walk along the same path where the woman was shot and killed. Similarly, Kosovo Serbs have started to visit local shops and the municipality building in Obiliq/Obilić town and Fushë Kosovë/Kosovo Polje to access services without KFOR escort.
201. **New security measures** (or changes to existing measures) put in place by KFOR have in some areas also indirectly influenced trends in mobility of Kosovo Serbs. In some locations, the dismantling of ubiquitous static checkpoints in favour of more mobile area security measures¹³⁴ led to increased mobility of minorities (due to reduction of barriers), while in other locations, mobility was reduced, either due to the fact that in some locations these measures provoked heightened perception of risk amongst the minority communities, or due to more objective reasons such as the rise of stone-throwing in certain areas concurrent with the removal of static security. On the whole, however, the trend was towards increased mobility. For example, in Gjiilan/Gnjilane town and the Viti/Vitina area, Kosovo Serbs enjoyed incremental increases in mobility concurrent with specific efforts on the part of KFOR to increase area security. Thus, Kosovo Serbs are increasingly seen walking the streets, accessing some shops and public services, and driving motor vehicles with former local Yugoslav registration plates on selected roads. Increased mobility in Gjiilan/Gnjilane has been positively influenced by the facilitation of transport services that bring Kosovo Serbs from surrounding areas into the town for the market day three times a week and the organised shopping trip from Štrpce/Shtërpce. The stimulated growth of inter-ethnic commercial activity is undoubtedly another important contributing factor. Yet even in areas which have experienced relatively greater improvements, such as in the Gjiilan/Gnjilane region, prolonged periods of reduced violence can still be interrupted. For example, on 26 April 2002, a hand grenade was thrown at the house of an elderly Serb woman in the centre of Viti/Vitina town.
202. Despite some advances, which tend to be most significant in certain regions (namely Gjiilan/Gnjilane), **freedom of movement still remains highly limited**, and contingent upon special escort and/or collective transport arrangements, for most Serbs in Kosovo and this impedes full access to social and economic rights, contributing to the high levels of unemployment and dependence on humanitarian assistance. For example, in

¹³⁴ KFOR's strategy is discussed at length in the chapter on security and response of authorities, paragraph 14 and afterwards.

Mushnikovo/Mushnikovë, Prizren region, Kosovo Serbs only have free movement inside their village. In urban areas, those very few Kosovo Serbs who remain continue to live in highly precarious situations, and individuals in ethnically mixed families continue to maintain a very low profile. In general terms Kosovo Serbs cannot independently move or speak their language without risk. In light of the harassment and other acts of intolerance, the depth of the problem is perhaps illustrated when it is considered a measure of progress when a Kosovo Serb visits a local shop and manages to safely purchase goods.

203. The situation for Kosovo Serbs, with limited advances in security, has thus become less uniform and more difficult to generalise, but the fundamental causes of insecurity outlined in previous reports remain unresolved. Therefore, the increase in mobility and cautious access to facilities providing essential services should not be taken as an indication of a substantial improvement in the enjoyment of fundamental human rights and freedoms for the Kosovo Serbs, and in general of minorities.

Kosovo Roma, Ashkaelia and Egyptians¹³⁵

204. The trend noted in the previous reports of advances in the security and freedom of movement situation for Roma, Ashkaelia and Egyptians continued throughout Kosovo. This should be qualified by underlining the fact that the trend is marked by variations between Roma, Ashkaelia and Egyptian communities depending on perceptions of the majority population, locality, and language issues. RAE in general during the reporting period have experienced improved possibilities to move about in communities where they reside and have increased access to public services though they continue to experience adverse living conditions due to historical patterns of discrimination and marginalisation. However, it is important to note that even in areas where inter-ethnic relations appear to have improved, it cannot be discounted that an attack would occur, either from within or outside the location. Notwithstanding, there is a growing trend within the community to develop security perceptions based on the appraisal and evaluation of incidents distinguishing between those that are linked to personal disputes and those that indicate inter-ethnic intolerance. While the overall assessment that the situation of RAE has in general terms improved, valid generalisations about a specific ethnic group remain difficult, since conditions vary widely among locations inhabited by the groups. Some communities have experienced more significant improvements, while other communities continue to experience higher levels of insecurity. Furthermore, assessment of the general situation of RAE must be undertaken against the general background that Roma, Ashkaelia and Egyptians commonly experience discrimination and ostracism based on racial and socio-economic grounds.

205. While there are some indications that RAE who identify themselves more with the Kosovo Albanian community suffer fewer security incidents than those who attempt to assert their own identity, this is not a universal rule. Further, the ability to speak Albanian fluently may mitigate against random attacks, but even then only to a degree, as it will not safeguard against committed assailants who want to cause harm for reasons based on the person's ethnic background. In Prishtinë/Priština region, after months of an absence of serious security incidents in the region and apparent good inter-ethnic communication in Alashi I Vogël/Mali Alas (Lipjan/Lipljan), all of a sudden two houses belonging to Ashkaelia were set on fire and another household suffered a hand grenade attack, leaving four persons injured. The incidents at regular intervals appeared well co-ordinated; the first occurred on Monday 27 August, the second on Wednesday 29 August and the third Friday 30 August 2001; in Gjiilan/Gnjilane, on 4 October 2001, a Kosovo Roma male was found dead on a street with multiple stab wounds; in Gjakovë/Dakovica on 21 December 2001, a Kosovo Albanian was arrested for threatening a Kosovo Egyptian with a pistol; in Ferizaj/Uroševac on 17 January 2002 three Kosovo Albanians assaulted a Kosovo Ashkaelia, and on 23 April 2002 in the same municipality, a 17 year old Ashkaelia boy from FYROM, visiting relatives in

¹³⁵ In this assessment we sometimes refer to Roma, Ashkaelia and Egyptian as "RAE", the amalgamation of three different groups, whenever we are discussing common characteristics they share. However they do identify themselves as separate groups. Ethnic identification as Roma, Ashkaelia or Egyptian is not necessarily determined by easily discernible or distinct characteristics or cultural traits but rather by a process of self-identification. It is not uncommon in Kosovo for individuals to change their ethnic self-identification depending on the pressures of local circumstances, especially when it is necessary in order to distance themselves from other groups to avoid negative associations. In general, however, ethnic Roma clearly identify themselves as Roma and tend to use Romany as their mother tongue, although a large percentage of the Roma population can speak Serbian (and to a lesser extent Albanian) languages. The Ashkaelia are Albanian-speaking (although many can also communicate in Serbian language) and have historically associated themselves with Albanians, living close to that community. Nevertheless, Albanians treat them as separate from the Albanian community. Like the Ashkaelia, the Egyptians speak Albanian language but differentiate themselves from Ashkaelia by claiming to have originated from Egypt. It should be noted that, on the local community level, Albanians do not generally perceive the differences between the three groups, more often viewing Roma, Ashkaelia and Egyptians as one group. It should also be noted that the separations and distinctions between Roma, Ashkaelia and Egyptian vary between regions, and in some regions (Pejë/Peć, for example), the Roma and Egyptian populations live in the same geographic areas, without much distinction between them on a day-to-day basis. In other areas or regions, the distinctions between the groups (including the geographic locations where they tend to live as well as their actual or perceived levels of integration with either the Albanian or Serb population) may be much more pronounced.

Kosovo, was hospitalised for serious injuries after being shot at three times as he entered the Dubrava neighbourhood on foot; in Rahovec/Orahovac on 1 February 2002 a hand grenade was thrown into the garden of a house belonging to a Kosovo Roma. These incidents, some of them ethnically motivated and others perhaps indicative of general crime or related to personal disputes, demonstrate that **though security for the RAE communities as a whole has improved, it is still somewhat precarious** in an environment where the rule of law is being subverted.

206. A complicated mixture of ethnically-based violence and common criminality exists, making it difficult to draw simple causal connections and distinctions. A trend which has been noted particularly in the Prishtinë/Prishtina region relates to the complex inter-connection between ethnicity and crime motivated by other factors. In various communities in Prishtinë/Prishtina region, threats to Ashkaelia have occurred not directly a result of their ethnicity *per se*, but have rather been triggered by the issue of illegal occupation of the Ashkaelias' property by Albanians. When return of Ashkaelia threaten a Kosovo Albanian occupier, violence may become the instrument to protect the interest. Such violence takes on an inter-ethnic nature because, as a historically marginalised community, RAE are particularly vulnerable to attack. There may be a tendency amongst those with a strong personal interest to reject the right of return and the right of ownership to members of a marginalised or weak minority, a right they would not deny if the competing claimant for the property was a member of their own community and therefore perceived as an "equal". This problem particularly and disproportionately affects RAE because of their widespread displacement from ethnically mixed areas, which has led to large-scale occupation of their properties. While motivations for violence against RAE are increasingly complex, the fundamental causes of insecurity still exist in Kosovo. Objectively the incidents affecting the RAE during the reporting period, whether or not they are related to crime or ethnicity, indicate that the causes of the insecurity such as inter-ethnic tensions, intolerance, crime and impunity are still present in Kosovo. At the same time with regard to the RAE, the effect is compounded by the general discrimination against them by other ethnic groups.
207. Like most minorities, Roma, Ashkaelia and Egyptian communities also have to face **limits to their freedom of movement** (to a greater or lesser extent which varies by community), which adversely affects their ability to exercise social and economic rights especially with regard to full access to employment opportunities, education, health, social services and utilities. The situation is especially difficult as historically the RAE have relied on freedom of movement to earn a livelihood, making confinement to enclave like locations, collective centres or "IDP camps" such as those situated in Plemetin/Plemetina, Mitrovicë/Mitrovica, Zhitkoc/Zitkovac and Leposavić/Leposaviq particularly oppressive. The fact that hundreds of Roma, Ashkaelia and Egyptians continue to live in IDP camp situations, most of them unable to return to their own municipalities, points to the fact that insecurity is still a serious problem for RAE who originate from many municipalities in Kosovo. Outside these enclave locations RAE communities in specific municipalities enjoy varying levels of improvement to their situation. In the five municipalities of the Pejë/Peć region, Roma have experienced modest but steady improvements in security and freedom of movement. However, there are substantial differences between the situation of Roma who speak Albanian and those who can only speak Serb, especially with regard to security and access to education, services and employment opportunities, with the latter facing more serious constraints.
208. The Ashkaelia population seems to have experienced significant improvements in their security situation in the Ferizaj/Uroševac area, but this is not the case with Ashkaelia in the neighbouring municipality of Viti/Vitina where they continue to suffer harassment and intimidation. The distance separating the two municipalities is not vast. At the same time within Ferizaj/Uroševac the security situation of the Roma is precarious in comparison to the Ashkaelia. Similarly, in the Gjiilan/Gnjilane area it has been reported that a number of Roma can move around the town while others cannot. Such variations make it very difficult to generalise.
209. In this context it is important to note that RAE communities in Kosovo are **hosting substantial numbers of IDPs** who have been displaced from their own neighbourhoods/villages. In Pejë/Peć region, for example, most Roma and Egyptian IDPs live with host families, or under temporary shelter due to the fact that their own houses are damaged or destroyed (categories 4 or 5). Furthermore, the majority of these families meet UNHCR extremely vulnerable individual (EVI) criteria. The situation for the Roma and Egyptian communities in the Pejë/Peć region is difficult, with IDPs returning into secondary displacement to live with host families who themselves live in very difficult conditions. The principal obstacle to return to their place of origin in dignity has been the inadequate level of reconstruction assistance.
210. **Another major obstacle to stabilisation of these communities is property disputes.** For example in the Kristall neighbourhood (Pejë/Peć) and Rudesh (Istog/Istok), the Roma communities are in a collective dispute with the municipality over land ownership and rights and as a result, the municipality has put a moratorium on building. In a few other locations (Herec, Prelep, Qerhane), there are property disputes between individual

members of the Roma and Egyptian communities and the municipality or Kosovo Albanian individuals. The failure to adjudicate such disputes creates a large obstacle to return and reintegration of IDPs to their places of origin.

Kosovo Bosniaks

211. The Bosniak community in Kosovo is present in both predominantly Kosovo Albanian and Kosovo Serb areas. The community is **mainly concentrated in the Prizren region** in the town and in enclave like locations such as the Zhupa Valley, Podgor and Gora. Sizeable communities are also to be found in the Pejë/Peć region mainly in Pejë/Peć town, Vitomeriç, Dobrush and Istog/Istok. There are also small residual groups in Prishtinë/Priština city and Mazgit in Prishtinë/Priština region, and in Mitrovicë/Mitrovica north and south of the Ibar river. The community appears to have developed a certain level of tolerant relations with other ethnic communities in Kosovo, including the majority population. In general terms the security situation of Kosovo Bosniaks has improved, however, the community still suffers intimidation, harassment, discrimination and various forms of mistreatment, including serious acts of violence against its members. On 26 December 2001, a Bosniak was fatally assaulted in Mitrovicë/Mitrovica South because he spoke in the Bosniak language which was mistaken for Serbian; in Pejë/Peć on 3 October 2001, a Bosniak was killed by a Kosovo Albanian; and in Istog/Istok on 9 March 2002, a Kosovo Albanian man was arrested for assaulting two Kosovo Bosniak men, one of whom sustained head injuries. On 8 April 2002, a Bosniak man who had been previously reported missing was found murdered with a wire around his neck and his hands cuffed; a Kosovo Albanian suspect was arrested, although it is not clear that the incident was ethnically-motivated. Such violent actions are sporadic and as such give a general sense of security for this ethnic community, notwithstanding that individual incidents may result in bodily harm or fatalities.
212. The Bosniaks have **limited freedom of movement** which largely depends on locality; they move about in enclave-like locations (where they constitute significant numbers) and the areas contiguous to them, while movement further afield and within the main urban centres is restricted, or exercised with caution, for fear of attracting adverse attention or physical attacks. Even in the Prizren and Pejë/Peć regions where they constitute a significant number in the population Bosniak residents exercise free movement with a degree of skepticism, carefully weighing the security implications and planning the time and locations of travel. They are also keenly aware that beyond certain perimeters they can not easily travel without KFOR escort. Some Bosniaks who have begun to exercise more mobility have faced problems, as was the case on 14 April 2002, when a Bosniak travelling in Podujevë/Podujevo municipality was physically assaulted by a Kosovo Albanian, resulting in minor injury to his person and damage to his vehicle.
213. The Bosniak community in all regions in Kosovo has adopted several security-conscious **coping mechanisms** such as a resolute forbearance in the face of harassment, intimidation and humiliation. Bosniaks, like most non-Kosovo Serb minorities, will not always report such mistreatment to the law enforcement authorities, unless very serious, and are extremely hesitant to openly discuss security related problems with outsiders. Bosniaks exercise a measured and discreet use of their language in areas of Pejë/Peć, and in the Prizren urban area they are able to use their language relatively even more freely. For Bosniaks in general, they may feel vulnerable with regard to use of their language to varying degrees depending on the area, and in fact, those few who can communicate in Albanian often use it in public places to avoid drawing attention to themselves, whereas those who cannot speak Albanian refrain from speaking or avoid going to areas where they may not be able to communicate thereby attracting adverse consequences which may affect the security of their person.
214. In a recent fact-gathering exercise in the main areas of residence of the Bosniak community, there was a common acknowledgement by its members that the security situation has stabilised and that **inter-ethnic relations with Kosovo Albanians, though strained, had become less frosty** -an encouraging potential towards a relationship based on tolerance. This apparent advance in inter-ethnic relations seems to be co-related to the community's necessity, in recognition of its real need of security and longer term viability in the territory, to articulate its civic participation in compliance with the opinion of the majority population as dictated by the new political and socio-economic dispensation in Kosovo. Thus, hasty assumptions (on the basis of generalisations derived from local improvements) that inter-ethnic relations between Kosovo Bosniaks and Kosovo Albanians have thawed to the extent that would enable the exercise of full freedom of movement and enjoyment of a high level of personal security in Kosovo are not well-founded. Many more efforts to promote reconciliation and diversity, including tolerance for the use of non-Albanian languages, need to be undertaken.
215. General insecurity, limits in free movement and discriminatory practices, on account of the Bosniaks' ethnic and linguistic background, have **impeded the ability of the community to fully access social, cultural and economic rights**, especially with regard to employment and income generating opportunities, land, social

welfare security, health, education, public services and utilities. This has undermined the ability for its members to remain self-supporting, in turn corroding the will of affected Bosniaks to see their longer term future in Kosovo in conditions which for all intents and purposes confine them to enclave like locations or compel them to take risks with their security by venturing out into risk areas to try and break the isolation and earn a decent livelihood. Bosniaks, even in the areas where they constitute a significant proportion of the population, continue to face discrimination with regard to civic participation, education, health, public administration and employment opportunities in both the public and private sectors. Although their participation in Kosovo political structures, as minorities, is guaranteed under the constitutional framework for provisional institutions for self-government, Bosniaks are still underrepresented in institutions, such as health, education and social services, utilities and public enterprises, particularly at management levels. In addition, they hold a strong perception that there is bureaucratic indifference on the part of the international civil presence in Kosovo to address their grievances and demands, especially with regard to unfair labour practices in the public sectors. Indeed, the most consistent assertions of discrimination are related to retaining employment in the civil service as retrenchment and rationalisation processes are perceived to affect them disproportionately.

216. In the Prizren and Pejë/Peć regions there are also concerns with regard to the **education** of Bosniak children as to whether it conforms to recognised human rights standards, in that the international human right to learn in their own language may not always be respected.¹³⁶ This human right is vital for a minority population to maintain its cultural and linguistic identity. However, some Bosniaks in the region, in order to cope with the security situation and attendant vulnerability, feel obliged to enroll their children in schools where the medium of instruction is the Albanian language. The parents, though reluctant, accept this to avoid adverse inferences or a perception that they are unwilling to integrate. It is worth noting that some Bosniak parents encourage their children to learn Albanian as a second language, a voluntary process which should be supported in education as it promotes tolerance, understanding and friendship between different ethnic groups, as opposed to a process which is tantamount to assimilation.
217. Taking into account the conditions described above, the fair assessment on the situation of Bosniaks is that the progress on security conditions does not assure reasonable safety for the community, as the root causes of fear, restrictions in the full exercise of freedom of movement and impediments to access social and economic rights continue to prevail as there has not yet been a fundamental change in Kosovo in terms of law and order, inter-ethnic integration, mutual understanding and tolerance. As a result, many minorities, Bosniaks included, feel compelled to go into exile primarily in the former Yugoslavia, mainly Bosnia and Herzegovina or the Sandzak. Some have gone to asylum countries further afield. Indeed, many have fallen victim to human smugglers who charge exorbitant fees to facilitate travel to locations outside the region. Indeed, in some areas in Prizren and Pejë/Peć such as Nebregoshtë, Grncare and Nove Selo a significant portion of the population has left. **Displacement is still an ongoing occurrence** in Kosovo even in those regions, such as Prizren and Pejë/Peć where Bosniaks appear to have stable conditions. Returns have not been sustainable. In fact, an increase in the number of Bosniaks forcibly returned in the current environment is neither safe nor sustainable and may actually de-stabilise the fragile and delicate coping strategies, thus leading to the re-emergence of serious security incidents for the community.

Kosovo Gorani

218. **The situation of Kosovo Gorani is similar to that faced by the Bosniaks.** The majority of the Gorani inhabit a clearly defined geographical area, Gorani/Dragash. Kosovo Gorani are also to be found in small groups in Prishtinë/Prishtina and Mitrovicë/Mitrovica (in Kodra Minatoreve/Micronaselje and Bosniak Mahala). The community experiences discriminatory practices and harassment more intensely than Bosniaks, due to the perception by some sectors in the majority population that it maintains close links with the Serb community and shares the same creed. Indeed, most Gorani have friends, relatives and business contacts in Serbia and Montenegro, which are maintained through regular cross boundary travel. To facilitate commercial and social contacts, persons with these links usually retain motor vehicles with FRY registration plates. During the reporting period, the possession of these license plates became an issue of concern and demonstrated the kind of harassment that Gorani sometimes face as a minority.

219. In a **typical incident of harassment**, on 1 October 2001, a Gorani from Suharekë/Suva Reka reported that his vehicle was unjustly impounded by the Kosovo Police Service (KPS) despite having presented them with

¹³⁶ Article 30 of the Convention on the Rights of the Child: "In those states in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practice his or her own religion, or to use his or her own language."

essential lawful documents to support his assertions that everything was above board and he was merely going about his business. The KPS are reported to have discounted his explanations, impounded the motor vehicle and levied DEM 5,000 for towing and impounding the vehicle. As these incidents had become common, demarches were initiated with the authorities by an international legal aid NGO and amicably addressed. It remains an issue of concern for the Gorani that **members of their community face targeted harassment from some members of the Kosovo Police Service.**

220. As a result the community continues to experience a **crisis of confidence with regard to its future viability** in Kosovo, as its members have limited freedom of movement outside the enclave like locations where they live. In addition, they face discrimination in accessing economic opportunities and social services on account of their ethnic background and the associated issue of the language limitations which make it difficult for them to easily communicate with the majority population. These factors have compelled many Gorani to leave Kosovo.

Kosovo Croats

221. Kosovo Croats are mainly concentrated in Janjevë/Janjevo (Lipjan/Lipljan) and Letnicë/Letnica (Viti/Vitina), though there are small groups in other centres such as Prishtinë/Priština City and Mitrovicë/Mitrovia. The population continues to dwindle particularly as young people concerned about their longer term future in Kosovo leave the territory.
222. During 1999, of the 2000 Croats in Janjevë/Janjevo a significant number left as the security situation in Kosovo deteriorated leaving a residual population of less than 300.¹³⁷ However, during the course of 2001, a few returns have occurred, mainly by elderly persons for reasons of family reunification, and by early 2002 there were 340 Croats living in Janjevë/Janjevo village, which is also populated with Albanians and Roma.
223. In Letnicë/Letnica the residual Croat community is comprised of a few more than sixty persons, mostly elderly. This community has to grapple with difficulties associated with being host to a number of ethnic Albanian families who fled to Kosovo from FYROM as a result of the 2001 conflict, who have moved into vacant Croat properties in Letnicë/Letnica and Shashare/Sasare. (It should be noted that the occupancy is not illegal, having been legalised by HPD through humanitarian allocation.) There are no security related problems connected with the hosting of the FYROM caseload, though the community's capacity to cope is limited as the additional population also needs access to firewood and grazing pastures, putting pressure on the natural environment.
224. The Croats living in urban Prishtinë/Priština are mainly those in ethnically mixed families in which one of the spouses is a Kosovo Albanian. They are usually fluent in the Albanian language therefore integrated in mainstream Kosovo Albanian society.
225. In Mitrovicë/Mitrovia there is a small Croat community of about 50 persons living in the northern part of town. They have freedom of movement in the Serb-dominated area and do not face security problems. However, as the Catholic Church is located in the predominantly Kosovo Albanian southern part of Mitrovicë/Mitrovia, they can not attend religious services there due to security concerns. To address this, once a month a priest from Janjevë/Janjevo holds mass in a designated venue in the northern part.
226. The residual population of Croats mainly survives on remittances from relatives living in Croatia. In the reporting period no ethnic tensions were reported in the villages, and in general Croats can speak their language and move about in the enclave like locations where they reside. However, when Croats move out of the village they face the same problems as other non-Albanian minorities in Kosovo, especially as few Croats can communicate using the Albanian language. As a result their freedom of movement and ability to access economic and social services is restricted. The viability of the Croats in Kosovo is uncertain; despite the fact that some small-scale returns have taken place, these have been only of elderly persons. The prospects for more returns are not very encouraging, especially for younger generations due to the general security and freedom of movement constraints that confront minorities in Kosovo.

¹³⁷ Janjevë/Janjevo village had a population of 4000 Croats, 500 Kosovo Albanians and 550 Roma recorded in 1991. In response to tensions associated with the break-up of the former Yugoslavia and the ensuing conflict in Croatia a significant number of the Croats elected to leave Kosovo for Croatia as their socio-economic condition became difficult due to discriminatory practices against them by the previous Serb regime.

Kosovo Albanians¹³⁸

227. Kosovo Albanians living in areas where they constitute an ethnic minority in relation to the surrounding ethnic group have **security and freedom of movement concerns similar to those outlined in this report for non-Albanian minority communities in Kosovo**. Their situation is not dissimilar from that confronting Kosovo Serbs who reside in majority areas. The security and freedom of movement constraints for Kosovo Albanians are especially difficult in Urban Mitrovicë/Mitrovica north of the Ibar river and the northern municipalities of Zvečan/Zveçan, Leposavić/Leposaviq and Zubin Potok where UNMIK is still to fully enforce its authority and the law enforcement authorities have yet to become fully effective. Similarly, Kosovo Albanians also face security related difficulties in Štrpce/Shtërpçë. A significant number of Kosovo Albanians originating from these areas have been displaced into Albanian majority-areas.
228. In **Mitrovicë/Mitrovica north** a number of Kosovo Albanians live in isolated apartments in communities where the population is mainly elderly and live in adverse socio-economic conditions dependent on the support of humanitarian organisations. Security is precarious and freedom of movement very limited. For example on 12 January 2002, a hand grenade was thrown at a house belonging to a Kosovo Albanian in the Bosniak Mahala area and in another incident in Mitrovicë/Mitrovica north on 26 March 2002, Kosovo Serbs assaulted a Kosovo Albanian man after he crossed the bridge into the northern part of the city. On December 16 2001, during Ramadan, KFOR and UNMIK Special Police Units had to provide security to ensure that about 150 Kosovo Albanians could travel to the northern part of Mitrovicë/Mitrovica to visit a Muslim cemetery located in a predominantly Kosovo Serb area. Other attempts for displaced Albanians to visit their homes have been effectively obstructed by the Serb population, through roadblocks and protests with strong undercurrents of potential violence, in expression of clear opposition of any Albanian movement perceived as related to attempts to return.
229. There has been no significant new flight of Kosovo Albanians from the north since March 2001, but the situation of those few Albanian families who still live in northern urban Mitrovicë/Mitrovica remained extremely precarious. The violent upsurge of 8 April 2002 in particular raised the pressure on Albanian minorities considerably.¹³⁹ In such a fundamentally unstable and volatile environment, intimidation of non-Serb minorities can intensify very rapidly, with potential for more serious attacks.
230. In another example, on 22 January 2002, 13 Kosovo Albanian Štrpce/Shtërpçë Municipal Assembly members entered **Štrpce/Shtërpçë** town to assume their duties. However, this was perceived as a provocation by some elements in the Kosovo Serb community who organised a demonstration against their presence. The protest culminated in the blocking of the main access road to the Municipal Assembly Building and the Kosovo Albanian Municipal Assembly members seeking sanctuary from a mob at the Štrpce/Shtërpçë police station. In response, an estimated 150 Kosovo Albanians counter-demonstrated and blocked the main road into the town. To diffuse the situation KFOR and UNMIK police escorted the Kosovo Albanians out of Štrpce/Shtërpçë. The situation was such that the authorities felt compelled to apply stringent freedom of movement restrictions and a stand-off ensued that lasted for several days and led to the suspension of the bus line which runs through Štrpce/Shtërpçë to Zhupa Valley (Prizren) and transports minorities. Such a prohibitive security environment has stymied the prospects of return of displaced Albanians in many locations in the municipality. However, sustained pressure mostly by KFOR has resulted in opening up of access to the municipal building for Kosovo Albanian officials most recently.

Kosovo Turks

231. The Kosovo Turk community in Kosovo is **relatively stable** and during the reporting period did not experience security related incidents. It is worth noting that of all the minorities in the territory, Kosovo Turks are perhaps the group most integrated with the majority population. The main concern for the community continues to be the official recognition and use of the Turkish language, and access to employment and education on the basis of non-discrimination.

¹³⁸ The situation of ethnic Albanians in a minority situation, including problems of displacement of ethnic Albanians from Serb-majority areas, will be covered more comprehensively in the 10th Minorities Assessment.

¹³⁹ Events of 8 April 2002 are described in paragraph 3 (page 4), in the section on security and freedom of movement.