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# OPERATIONAL GUIDANCE NOTE

## KOSOVO

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### 1. Introduction

- 1.1** This document evaluates the general, political and human rights situation in Kosovo and provides guidance on the nature and handling of the most common types of claims received from nationals/residents of that country, including whether claims are or are not likely to justify the granting of asylum, Humanitarian Protection or Discretionary Leave. Case owners must refer to the relevant Asylum Instructions for further details of the policy on these areas.
- 1.2** This guidance must also be read in conjunction with any COI Service Kosovo Country of Origin Information published on the Horizon intranet site. The material is also published externally on the Home Office internet site at:
- [http://www.homeoffice.gov.uk/rds/country\\_reports.html](http://www.homeoffice.gov.uk/rds/country_reports.html)
- 1.3** Claims should be considered on an individual basis, but taking full account of the guidance contained in this document. In considering claims where the main applicant has dependent family members who are a part of his/her claim, account must be taken of the situation of all the dependent family members included in the claim in accordance with the Asylum Instruction on Article 8 ECHR. If, following consideration, a claim is to be refused, case owners should consider whether it can be certified as clearly unfounded under the case by case certification power in section 94(2) of the Nationality Immigration and Asylum Act

2002. A claim will be clearly unfounded if it is so clearly without substance that it is bound to fail.

### **Source documents**

**1.4** A full list of source documents cited in footnotes is at the end of this note.

## **2. Country assessment**

- 2.1** Kosovo has a population of approximately 2.2 million. Since June 1999 Kosovo has been under the administrative control of the United Nations Interim Administration Mission in Kosovo (UNMIK). Multiparty elections held in November 2007 for the Kosovo Assembly generally reflected the will of the voters.
- 2.2** During 2007, negotiations aimed at settling Kosovo's status were held under the auspices of the UN. On 17 February 2008, the Kosovan Assembly announced Kosovo's independence from Serbia, and proclaimed the Republic of Kosovo. By agreement under the Ahtisaari Plan (the UN plan for "supervised independence"), UNMIK will withdraw from Kosovo and the Government of Kosovo will assume control over a period of months in 2008, with assistance from an EU mission.<sup>1</sup> In the slow move to independence, power will move from UNMIK to Kosovan Government institutions that have been operational as Provisional Institutions of Self-Government (PISGs).<sup>2</sup>
- 2.3** UNMIK and the PISGs generally respected the human rights of residents in 2007; however, there were problems in some areas. These included cases of politically and ethnically motivated violence; lengthy pre-trial detention and lack of judicial due process; corruption and government interference in the judiciary; societal violence, abuse, and discrimination against minority communities; corruption in the PISG; violence and discrimination against women; trafficking in persons, particularly girls and women for sexual exploitation.<sup>3</sup>
- 2.4** Despite reports of discrimination and abuse towards ethnic minority communities, government leaders have made a number of efforts to reach out to minority communities to enforce minority rights. Minority communities showed increasing confidence in the institution of the ombudsperson putting forward some 25% of complaints most of which related to property issues, reconstruction of houses and discrimination in the professional field. The ombudsperson facilitated the confirmation and enforcement of rights in more than one third of these cases.<sup>4</sup>
- 2.5** Local security forces included the Kosovo Protection Corps (KPC), a civilian emergency response organisation, and the Kosovo Police Service (KPS), a local police force that functions under the authority of the Special Representative of the Secretary General (SRSG) and supervision of UNMIK police. UNMIK maintains executive authority over the police but continued to transfer police authority and functions to the KPS. An international commissioner of police directed both UNMIK police and the KPS.<sup>5</sup>
- 2.6** In the area of promotion and enforcement of human rights, the human rights advisory panel (the body tasked with examining complaints from individuals claiming to be the victim of a human rights violation by UNMIK) was not yet operational and the Human Rights Oversight Committee (the advisory body to the Special Representative of the Secretary General

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<sup>1</sup> COIS Kosovo Key Documents March 2008 Section 2, Foreign and Commonwealth Office (FCO) Country Profile Kosovo (21 February 2008), and US State Department, Country Reports on Human Rights Practices for 2007, Serbia (includes Kosovo), published 11 March 2008,

<sup>2</sup> US State Department, Country Reports on Human Rights Practices for 2007, Serbia (includes Kosovo), published 11 March 2008

<sup>3</sup> USSD 2008 (Kosovo Introduction)

<sup>4</sup> EC report Kosovo 2007 p.21

<sup>5</sup> USSD 2008 (Section 1)

(SRSG) on human rights matters) had not met since 2004. Complaints against human rights violations by the PISG were dealt with by the local judicial system. Human rights units were reportedly established in all ministries and fully operational in all but five ministries. Their task was to monitor, in liaison with the Office for Good Governance, the implementation of best practices regarding the respect of human and minority rights, as well as in the area of non-discrimination. Overall, it was reported that little progress had been made in the promotion and enforcement of human rights.<sup>6</sup>

- 2.7** Amnesty International has expressed its concerns about Kosovo's current administration, highlighting a perceived failure of UNMIK to tackle crimes committed during the 1999 war, and the Kosovan Government to fully consult all of the population upon a new Constitution.<sup>7</sup> Likewise, Human Rights Watch produced a report in February 2008 that highlighted ongoing human rights concerns.<sup>8</sup> However, there were developments in the case of Kosovo Albanian Kosovo Protection Corps (KPC) officers (Selim Krasniqi, Bedri Zyberaj, Xhavit Elshani, Isuf Gashi, and Islam Gashi), arrested for alleged involvement in war crimes committed against Kosovo Albanian civilians in the Drenovac Detention Camp in Prizren in 1998. Selim Krasniqi was apprehended on 24 November 2007 and was in detention awaiting trial at year's end. On 19 April 2007, UNMIK Police arrested Osman Zyberaj, who was accused of the 2005 murder of Hasan Rrustemi and attempted murder of Nezim Rrustemi, both witnesses in the then-ongoing war crimes trial against Krasniqi. On 17 July 2007, an international prosecutor indicted Zyberaj and another suspect, Shygeri Shala.<sup>9</sup>

### **3. Main categories of claims**

- 3.1** This Section sets out the main types of asylum claim, human rights claim and Humanitarian Protection claim (whether explicit or implied) made by those entitled to reside in Kosovo. It also contains any common claims that may raise issues covered by the Asylum Instructions on Discretionary Leave. Where appropriate it provides guidance on whether or not an individual making a claim is likely to face a real risk of persecution, unlawful killing or torture or inhuman or degrading treatment/ punishment. It also provides guidance on whether or not sufficiency of protection is available in cases where the threat comes from a non-state actor; and whether or not internal relocation is an option. The law and policies on persecution, Humanitarian Protection, sufficiency of protection and internal relocation are set out in the relevant Asylum Instructions, but how these affect particular categories of claim are set out in the instructions below.
- 3.2** Each claim should be assessed to determine whether there are reasonable grounds for believing that the applicant would, if returned, face persecution for a Convention reason - i.e. due to their race, religion, nationality, membership of a particular social group or political opinion. The approach set out in *Karanakaran* should be followed when deciding how much weight to be given to the material provided in support of the claim (see the Asylum Instructions on Considering The Asylum Claim).
- 3.3** If the applicant does not qualify for asylum, consideration should be given as to whether a grant of Humanitarian Protection is appropriate. If the applicant qualifies for neither asylum nor Humanitarian Protection, consideration should be given as to whether he/she qualifies for Discretionary Leave, either on the basis of the particular categories detailed in Section 4 or on their individual circumstances.
- 3.4** This guidance is **not** designed to cover issues of credibility. Case owners will need to consider credibility issues based on all the information available to them. (For guidance on credibility see para 11 of the Asylum Instructions on Considering the Asylum Claim)

<sup>6</sup> EC report Kosovo 2007 p.14

<sup>7</sup> Amnesty International 'Justice failed in Kosovo' dated 30 January 2008 and 'Kosovo (Serbia): The Constitution needs full consultation' dated 13 February 2008

<sup>8</sup> Human Rights Watch 'Kosovo: Build New State on Rule of Law' dated 15 February 2008

<sup>9</sup> USSD 2008 (Kosovo Section 1)

- 3.5** All Asylum Instructions can be accessed on the Horizon intranet site. The instructions are also published externally on the Home Office internet site at:  
<http://ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumpolicyinstructions/>

### **Main categories of claim from Kosovo**

#### **3.6 Ethnic Albanians originating from areas where they constitute an ethnic minority**

- 3.6.1** Some applicants will apply for asylum or make a human rights claim based on ill treatment amounting to persecution at the hands of Serbian civilians because they are from an area of Kosovo in which they form a minority of the population. The majority of claims are from Mitrovica City and Mitrovica Municipality.
- 3.6.2 *Treatment*** There are some parts of Kosovo where Serbs are in the majority and ethnic Albanians may be subject to harassment and persecution. 120,000 remaining ethnic Serbs are mainly located in the three northern municipalities of Leposavic, Zubin Potok, Zvecan; the most southerly municipality of Strpce, and in the northern half of the city of Mitrovica.<sup>10</sup>
- 3.6.3** The UNHCR reiterated their position in June 2006 that Kosovo Albanians originating from areas where they constituted an ethnic minority should continue to benefit from international protection.<sup>11</sup> The UNHCR also reported that 2,816 individuals from ethnic minorities returned to 25 municipalities in Kosovo between March 2005 and May 2006,<sup>12</sup> including ethnic Albanians who returned to areas where they are a minority. However it was also reported, that in Mitrovica ethnic Serbs in the north of the city and ethnic Albanians in the south continued to illegally occupy each others' properties, hindering potential returnees.<sup>13</sup>
- 3.6.4** As of July 2005, the main bridge joining northern and southern Mitrovica was opened for 24-hour traffic. Two-way traffic crossed the bridge at approximately 80 cars per day through August, after which monitoring ceased as traffic became routine. Nevertheless, Serbs crossing the bridge reportedly did not feel safe to move freely in southern Mitrovica, and Albanians likewise did not enjoy freedom of movement in northern Mitrovica.<sup>14</sup>
- 3.6.5 *Sufficiency of Protection.*** Local security forces included the Kosovo Protection Corps (KPC), a civilian emergency response organisation, and the Kosovo Police Service (KPS), a local police force that functions under the authority of the Special Representative of the Secretary General (SRSG) and supervision of UNMIK police. UNMIK maintains executive authority over the police but continued to transfer police authority and functions to the KPS. An international commissioner of police directed both UNMIK police and the KPS. Specialized units on war crimes and ethnically motivated crimes were still primarily staffed by international UN police officers and largely operated independently of the KPS due to the sensitivity of those functions. Units on criminal intelligence and organized crime were operated jointly. Both the international police and the judiciary have broad discretion to intervene in any particular criminal matter.<sup>15</sup> It was reported in 2007 that the KPS generally carried out its tasks in a professional and competent manner, particularly for minor crimes. Overall, some progress was reported in the field of policing.<sup>16</sup>
- 3.6.6** In general there is sufficiency of protection available from UNMIK/KPS for all ethnic Albanians even in areas where they constitute a minority. UNMIK/KPS are able and willing

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<sup>10</sup> COI Kosovo Key Documents dated 18 March 2008, section 2

<sup>11</sup> UNHCR Position Paper (June 2006)

<sup>12</sup> UNHCR position paper (June 2006)

<sup>13</sup> USSD 2008 (Kosovo Section 1)

<sup>14</sup> UNHCR position paper (June 2006)

<sup>15</sup> USSD 2008 (Kosovo Section 1)

<sup>16</sup> EC Report Kosovo 2007 p.46

to provide protection for those that fear persecution and ensure that there is a legal mechanism for the detection, prosecution and punishment of persecutory acts.

**3.6.7 Internal Relocation** UNMIK regulations and the constitutional framework provide for freedom of movement throughout Kosovo; however, inter-ethnic tensions and real and perceived security concerns restricted freedom of movement for some minorities. During 2007 UNMIK and the PISG generally improved freedom of movement for minority communities although sporadic incidents of violence and intimidation targeting minorities continued to limit freedom of movement for ethnic Albanians in northern Kosovo.<sup>17</sup> Despite the restrictions faced by some ethnic Albanians in majority Serb enclaves there is in general freedom of movement for ethnic Albanians in Kosovo and it will not be unduly harsh for an ethnic Albanian to internally relocate within Kosovo, to an area where they will not be in the minority.

### **3.6.8 Caselaw**

**D [2003] UKIAT (00019)** The IAT found that there was no risk of persecution for an ethnic Albanian on return to Northern Mitrovica nor was it unduly harsh to relocate to Pristina.

**3.6.9 Conclusion** Although ethnic Albanians may be subject to high levels of harassment and intimidation in the few areas of Kosovo where they are a minority, sufficiency of protection is provided by UNMIK/KPS. In addition ethnic Albanians in these areas can also internally relocate to areas within Kosovo where they will not be a minority. Due to the availability of sufficiency of protection and the possibility of internal relocation applicants who apply on this basis are unlikely to qualify for a grant of asylum or Humanitarian Protection and such claims are likely to be clearly unfounded.

## **3.7 Those perceived to have been associated with the Serbian regime after 1990**

**3.7.1** Some applicants will apply for asylum or make a human rights claim based on ill treatment amounting to persecution at the hands of ethnic Albanians, operating as individuals or part of organised non-state agents such as offshoots of the KLA or other Albanian nationalist organisations, due to either their or a family members alleged collaboration with the Serb authorities after 1990.

**3.7.2 Treatment** The UNHCR reiterated their position in June 2006 that persons perceived to have been associated with the Serbian regime after 1990 may have a well founded fear of persecution.<sup>18</sup>

**3.7.3 Sufficiency of protection** Local security forces included the Kosovo Protection Corps (KPC), a civilian emergency response organisation, and the Kosovo Police Service (KPS), a local police force that functions under the authority of the Special Representative of the Secretary General (SRSG) and supervision of UNMIK police. UNMIK maintains executive authority over the police but continued to transfer police authority and functions to the KPS. An international commissioner of police directed both UNMIK police and the KPS. Specialized units on war crimes and ethnically motivated crimes were still primarily staffed by international UN police officers and largely operated independently of the KPS due to the sensitivity of those functions. Units on criminal intelligence and organized crime were operated jointly. Both the international police and the judiciary have broad discretion to intervene in any particular criminal matter.<sup>19</sup> It was reported in 2007 that the KPS generally carried out its tasks in a professional and competent manner, particularly for minor crimes. Overall, some progress was reported in the field of policing.<sup>20</sup>

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<sup>17</sup> USSD 2008 (Kosovo Section 2)

<sup>18</sup> UNHCR Position Paper (June 2006)

<sup>19</sup> USSD 2008 (Kosovo Section 1)

<sup>20</sup> EC Report Kosovo 2007 p.46

- 3.7.4** In general there is sufficiency of protection available from UNMIK/KPS for all ethnic Albanians including those who are accused of collaborating with the Serb regime. UNMIK/KPS are able and willing to provide protection for those that fear persecution and ensure that there is a legal mechanism for the detection, prosecution and punishment of persecutory acts.
- 3.7.5 *Internal Relocation*** UNMIK regulations and the constitutional framework provide for freedom of movement throughout Kosovo; however, inter-ethnic tensions and real and perceived security concerns restricted freedom of movement for some minorities.<sup>21</sup> There is in general freedom of movement for ethnic Albanians in Kosovo (outside of the Serb enclaves) and case owners should consider that internal relocation is normally possible to another part of Kosovo, where the applicant's previous, alleged activities are unlikely to be known and hence where there is not a real risk of persecution, notwithstanding UNHCR and UNMIK's reservations about the return of this group to Kosovo at this time. For example, relocation from smaller rural areas to much larger urban communities such as Pristina.
- 3.7.6 *Conclusion*** Ethnic Albanians accused of/or perceived to have collaborated with the Serb authorities may face discrimination and ill-treatment in Kosovo. However, in the majority of cases sufficiency of protection is available and internal relocation is an option, therefore applicants from these categories of claim are unlikely to qualify for asylum or Humanitarian Protection. However, it should be noted that such cases are unlikely to be clearly unfounded.
- 3.7.7** Relatives of those who are accused of/or perceived to have collaborated with the Serb authorities may also face discrimination and ill-treatment in Kosovo, however, in the majority of cases sufficiency of protection is available and internal relocation is an option. Therefore applicants who apply on the basis of a relative's involvement/ or perceived collaboration with the previous Serb regime are unlikely to qualify for asylum or Humanitarian Protection.
- 3.8 *Kosovans of mixed ethnicity and those in ethnically mixed marriages***
- 3.8.1** Some applicants will apply for asylum or make a human rights claim based on ill treatment amounting to persecution at the hands of the general ethnic Albanian population and/or their own minority group due to their mixed ethnicity or involvement in an ethnically mixed marriage.
- 3.8.2 *Treatment.*** People in mixed marriages with people from ethnic minorities or children from such families may face similar difficulties as those groups. Unlike other minority groups, mixed families may be excluded from all communities and may be unable to resort to the relative security of mono-ethnic enclaves.<sup>22</sup> The ability to speak Albanian is likely to be a factor in the degree to which any minority group are able to integrate with the majority community.<sup>23</sup>
- 3.8.3** The UNHCR reiterated their position in June 2006 that persons in ethnically mixed marriages and persons of mixed ethnicity may have a well founded fear of persecution.<sup>24</sup>
- 3.8.4 *Sufficiency of protection*** Local security forces included the Kosovo Protection Corps (KPC), a civilian emergency response organisation, and the Kosovo Police Service (KPS), a local police force that functions under the authority of the Special Representative of the Secretary General (SRSG) and supervision of UNMIK police. UNMIK maintains executive authority over the police but continued to transfer police authority and functions to the KPS.

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<sup>21</sup> USSD 2008 (Kosovo Section 2)

<sup>22</sup> UNHCR Position paper (March 2001)

<sup>23</sup> UNHCR Update January 2003 & UNHCR/OSCE Assessment (May 2002)

<sup>24</sup> UNHCR Position paper (June 2006)

An international commissioner of police directed both UNMIK police and the KPS. Specialized units on war crimes and ethnically motivated crimes were still primarily staffed by international UN police officers and largely operated independently of the KPS due to the sensitivity of those functions. Units on criminal intelligence and organized crime were operated jointly. Both the international police and the judiciary have broad discretion to intervene in any particular criminal matter.<sup>25</sup> It was reported in 2007 that the KPS generally carried out its tasks in a professional and competent manner, particularly for minor crimes. Overall, some progress was reported in the field of policing.<sup>26</sup>

**3.8.5** In general there is sufficiency of protection for Kosovans of mixed ethnicity and those in ethnically mixed marriages. UNMIK/KPS are able and willing to provide protection for those that fear persecution and ensure that there is a legal mechanism for the detection, prosecution and punishment of persecutory acts. In general, an ethnically mixed applicant who speaks Albanian and can physically pass as an Albanian will be less at risk than those who do not speak Albanian and are easily distinguishable as being from a minority group.

**3.8.6 *Internal Relocation*** UNMIK regulations and the constitutional framework provide for freedom of movement throughout Kosovo; however, inter-ethnic tensions and real and perceived security concerns restricted freedom of movement for some minorities.<sup>27</sup> There is in general freedom of movement for ethnic Albanians in Kosovo (outside of the Serb enclaves) and case owners should consider that internal relocation is normally possible, for applicants that can pass as an ethnic Albanian, to another part of Kosovo, where a applicant's ethnic background is unlikely to be known and hence where there is not a real risk of persecution, notwithstanding UNHCR and UNMIK's reservations about the return of this group to Kosovo. For example, relocation from smaller rural areas to much larger urban communities such as Pristina. However, some applicants with mixed ethnicity and/or those in ethnically mixed marriages who are easily distinguishable as a member of a minority group may face limitations on their ability to internally relocate.

### **3.8.7 *Caselaw***

**[2006] UKAIT 00072 KX Serbia and Montenegro (Kosovo) CG** (Mixed marriages-Roma-Albanian – Januzi applied) The IAT found that "Where there is a visible difference in skin colour and the Roma partner speaks no, or accented, Albanian, Roma-Albanian mixed marriages and relationships akin to marriage in Serbia and Montenegro (Kosovo) put both parties at risk. The country background evidence now distinguishes between the risk to Roma and their partners, who remain at risk because they are perceived by the Albanian community as traitors and Serb collaborators, and Ashkaelia and Egyptians whose position is not as serious. Roma-Albanian couples cannot access the protection either of the Roma enclaves or the Albanian community and unless either party will normally be perceived as a member of the other community, the parties to such a relationship are at general risk of persecution or serious harm from individuals in both communities because the risk is from non-state actors and there is, in general, insufficient protection from either Serbia and Montenegro (Kosovo) state bodies or from K-FOR and other NGOs. This determination updates and replaces (in relation to Roma-Albanian relationships) the Tribunal's decisions in FM (IFA–mixed marriage–Albanian–Ashkaelian) Kosovo CG [2004] UKIAT 00013, SK and others (Roma in Kosovo–update) Serbia and Montenegro CG [2005] UKIAT 00023, BS (IFA –mixed ethnicity) Kosovo CG [2002] UKIAT 04254, FD (Kosovo-Roma) Kosovo CG [2004] UKIAT 00214 and AB (Ashkaelia) Kosovo CG [2004] UKIAT 00188."

**[2006] UKAIT 00071 ES Serbia and Montenegro (Kosovo) CG** (Ashkaelians, mixed Ashkaelian ethnicity) "Persons of Ashkaelian ethnicity or mixed Ashkaelian ethnicity do not in general face a real risk of persecution or treatment contrary to Article 3 on return to Kosovo. ii) This decision replaces as current guidance FM (IFA – Mixed Marriage – Albanian – Ashkaelian) Kosovo CG [2004] UKIAT 00081 and AB (Ashkaelia) Serbia and Montenegro CG [2004] UKIAT 00188. It also replaces FD (Kosovo-Roma) CG [2004] UKIAT 00214

<sup>25</sup> USSD 2008 (Kosovo Section 1)

<sup>26</sup> EC Report Kosovo 2007 p.46

<sup>27</sup> USSD 2008 (Kosovo Section 2)



insofar as that decision has any ongoing bearing on the issue of risk to Ashkaelia and persons of mixed ethnicity generally."

**[2003] UKIAT 00013KB (Mixed ethnicity – Roma/Albanian) Kosovo CG:** An applicant of mixed Roma and Albanian ethnicity who spoke Albanian and could pass as Albanian to strangers (ie did not look like he was Roma) was unlikely to be identified as Roma outside his home area.

**[2002] UKIAT 05547AI (Mixed Ethnicity - Albanian/Bosnian) Kosovo CG** The appellant was of mixed Bosniak and Albanian ethnicity. His father was a Kosovan Albanian, he spoke Albanian himself and his whole background indicates that he was a Kosovan Albanian. The IAT found that the appellant could relocate to Pristina in Kosovo and that it would not be unduly harsh or unreasonable to expect him to do so. In Pristina he could seek protection from the KFOR and UNMIK security forces and the risks of persecution to him are below that of a reasonable likelihood.

**3.8.8 Conclusion** Kosovans of mixed ethnicity and/or those in mixed marriages may face discrimination and ill-treatment in Kosovo from either the ethnic Albanian population or from members of their own minority group or sometimes both. However, in the majority of cases applicants will identify with and be accepted as one of the ethnicities that make up their mixed ethnicity and will be treated as such by the other ethnic groups in Kosovo. In most cases language will be the key factor in identifying which group a particular applicant can be identified with.

#### **3.8.9 Those who speak Albanian and can pass as an ethnic Albanian**

In general an applicant of mixed ethnicity who speaks Albanian and can pass as an ethnic Albanian to strangers (looked like an Albanian etc) is unlikely to be identified as being of mixed ethnicity outside of his home area. Therefore, the applicant would be able to internally relocate to another area of Kosovo where his ethnicity would not be known. Applicants from this category of claim are therefore unlikely to qualify for asylum or Humanitarian Protection and are likely to be clearly unfounded.

#### **3.8.10 Those who can not speak Albanian but who can pass as a member of a minority ethnic group**

Those who do not speak Albanian but who can pass as a member of a minority ethnic group are unlikely to be identified as being of mixed ethnicity outside their home area and will be treated in the same way as other members of that minority group. Case owners should assess each claim in line with the relevant section of the OGN and in line with the policy for that particular ethnic group. For example a mixed ethnicity Gorani/Albanian who speaks Gorani and can pass as a Gorani will be treated as a Gorani within Kosovo and so should be assessed in line with the policy advice on Gorani contained in section 3.13 of this OGN.

#### **3.8.11 Those who can not speak Albanian and who can not pass as a member of a minority ethnic group**

A few applicants of mixed ethnicity or those in mixed marriages, especially mixed marriages between Roma and Albanians, who do not speak Albanian and who are not able to pass or be accepted as a member of either community are likely to face difficulties in Kosovo and may not be able to find sufficient protection from UNMIK/ KPS. Therefore, in some cases a grant of asylum may be appropriate. All cases are unlikely to be clearly unfounded.

### **3.9 Ethnic Minority Groups (overview)**

**3.9.1** Most applicants will make an asylum or human rights claim based on ill treatment amounting to persecution at the hands of the ethnic Albanian population due to their ethnicity.

**3.9.2 Treatment** Ethnic Albanians make up approximately 90% of the population of Kosovo. The remaining 10% are made up of various minorities including ethnic Serbs, Roma, Ashkaelia, Egyptians, Bosniaks, Gorani, Croats and Turks. Following the war, there was a very high

level of violence directed at Serbs, Roma and other ethnic minorities, who were seen as having collaborated with the Yugoslav oppression. Most of the perpetrators were ethnic Albanians seeking revenge or pursuing the aim of a wholly Albanian state. Large numbers of the Serbs and Roma communities fled from Kosovo. Those who remained are mostly (but not exclusively) concentrated in mono-ethnic areas.<sup>28</sup>

- 3.9.3** While country information points to an overall improvement in the security situation in Kosovo, discrimination against ethnic minorities still exists. In its 2007 report, the USSD reported that official and societal discrimination persisted against ethnic Serb, Roma, Ashkaelia, and Egyptian communities with respect to employment, social services, language use, freedom of movement, the right to return, and other basic rights, although reports of such discrimination had declined compared to 2006. The human rights ombudsperson in its July 2007 report came to a similar conclusion noting that ethnic discrimination was a prevalent and constant problem, particularly in the areas of health care and employment.<sup>29</sup>
- 3.9.4** According to the UNHCR., members of ethnic minorities continued to suffer from 'low scale' ethnically motivated security incidents such as physical and verbal assaults/threats, arson, stoning, intimidation, harassment, looting, and "high-scale" incidents such as shootings and murders. Many of these incidents were unreported, as the victims feared reprisals from the perpetrators of the majority community.<sup>30</sup> The European Commission also advised that minority communities, especially the Kosovo Serb Community, still saw their freedom of movement being restricted for security concerns.<sup>31</sup>
- 3.9.5** However, the situation for ethnic minorities in Kosovo has progressively improved. The number of members of minorities working at the central Institutions of Provisional Self-Government (PISG) and in the Kosovo Protection Corps (KPC) has increased; freedom of movement has generally progressed; a number of important steps have been taken to reinforce the protection of property rights; and an Inter-Ministerial Commission to monitor minorities' access to public services has been established.<sup>32</sup> After the November 2007 elections, there were 24 ethnic minority members in the 120-seat Kosovo Assembly, including 10 Kosovo Serbs and 14 members of other groups, including ethnic Turks, Bosniaks, Gorani, Roma, Ashkaelia, and Egyptians.<sup>33</sup> Prime Minister Hashim Thaçi vowed to protect the rights of all minorities as Kosovo prepared to declare independence from Serbia and it was also reported that Thaçi would establish a new government office for minorities.<sup>34</sup>
- 3.9.6** In 2007 there were new developments in the cases of several persons detained on suspicion of organizing or leading the 2004 riots and of burning a hospital, school, and a number of Serbian homes and vehicles. On 5 July 2007, an international judge confirmed the indictments against three of those accused. Proceedings against the remaining two defendants were delayed pending confirmation of their ages at the time the crime was committed. In December 2006 police arrested Zlyhaje Avdullahu for crimes committed in March 2004 when he was allegedly part of a Kosovo Albanian mob that broke into, looted, and burned Kosovo Serb homes and attacked Kosovo Serbs. On August 14 2007, the international pretrial judge extended alternative detention measures against Avdullahu for one month. At the end of 2007, the case was awaiting trial.<sup>35</sup>

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<sup>28</sup> Europa 2005 p.537

<sup>29</sup> USSD 2007 (Kosovo Section 5)

<sup>30</sup> UNHCR position paper (June 2006)

<sup>31</sup> EC report Kosovo 2007 p.21

<sup>32</sup> UNHCR position paper (June 2006)

<sup>33</sup> USSD 2008 (Kosovo Section 3)

<sup>34</sup> COIS Key Documents Kosovo 18 March 2008 Section 2 and BBCNews 'Kosovo vows to protect minorities' dated 15 February 2008

<sup>35</sup> USSD 2008 (Kosovo Section 5)

**3.9.7 Conclusion.** Different ethnic minorities in different areas may be subject to differing levels of risk. Therefore the information above must be read in conjunction with information below that is specific to the minority group in question.

### **3.10 Kosovan Serbs**

**3.10.1** Some applicants will apply for asylum or make a human rights claim based on ill treatment amounting to persecution at the hands of the ethnic Albanian population due to their Serb ethnicity.

**3.10.2 Treatment.** The 120,000 remaining ethnic Serbs are mainly located in the three northern municipalities of Leposavic, Zubin Potok, Zvecan; the most southerly municipality of Strpce, and in the northern half of the city of Mitrovice. Many Serbs left other parts of Kosovo after the March 2004 riots, in which 7 Serbs were killed.<sup>36</sup>

**3.10.3** During 2007 there were regular reports of Kosovo Albanians destroying private property belonging to Kosovo Serbs; some of which may have been attempts to force them to sell their property. An UNMIK regulation preventing the wholesale buy-out of many Kosovo Serb communities in an effort to prevent the intimidation of minority property owners in certain areas was rarely enforced. There were also reports that Kosovo Serbs had difficulty accessing their property, which was sometimes occupied or used by Kosovo Albanians. For example, several Serbs holding decisions in their favour from the Kosovo Property Agency were not able to access their property in Klina without assistance from the international community and political pressure from senior PISG politicians.<sup>37</sup>

**3.10.4** Official and societal discrimination persisted against minorities, including ethnic Serbs in 2007, with respect to employment, social services, language use, freedom of movement, the right to return, and other basic rights, although reports of such discrimination declined compared to 2006.<sup>38</sup>

**3.10.5** In September 2007, UNMIK police reported 457 cases of interethnic crime of which 342 involved Serbs as victims or suspects. Rock-throwing and other forms of intimidation continued to affect Kosovo Serbs when travelling outside Serb majority areas. There were multiple reports of violence against Kosovo Serbs during the year, which was usually investigated by the international police unit, a unit composed of UN international police officers within the KPS that reports directly to the police commissioner, who is also an international staff member.<sup>39</sup>

**3.10.6** In 2007 there were new developments in the cases of several persons detained on suspicion of organizing or leading the 2004 riots and of burning a hospital, school, and a number of Serbian homes and vehicles. On 5 July 2007, an international judge confirmed the indictments against three of those accused. Proceedings against the remaining two defendants were delayed pending confirmation of their ages at the time the crime was committed. In December 2006 police arrested Zlyhaje Avdullahu for crimes committed in March 2004 when he was allegedly part of a Kosovo Albanian mob that broke into, looted, and burned Kosovo Serb homes and attacked Kosovo Serbs. On 14 August 2007, the international pre-trial judge extended alternative detention measures against Avdullahu for one month. At the end of 2007, the case was awaiting trial.<sup>40</sup>

**3.10.7 Sufficiency of Protection** Local security forces included the Kosovo Protection Corps (KPC), a civilian emergency response organisation, and the Kosovo Police Service (KPS), a local police force that functions under the authority of the Special Representative of the

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<sup>36</sup> COI Kosovo Key Documents dated 18 March 2008, section 2

<sup>37</sup> USSD 2008 (Kosovo Section 5)

<sup>38</sup> USSD 2008 (Kosovo Section 5)

<sup>39</sup> USSD 2008 (Kosovo Section 5)

<sup>40</sup> USSD 2008 (Kosovo Section 5)

Secretary General (SRSG) and supervision of UNMIK police. UNMIK maintains executive authority over the police but continued to transfer police authority and functions to the KPS. An international commissioner of police directed both UNMIK police and the KPS. Specialized units on war crimes and ethnically motivated crimes were still primarily staffed by international UN police officers and largely operated independently of the KPS due to the sensitivity of those functions. Units on criminal intelligence and organized crime were operated jointly. Both the international police and the judiciary have broad discretion to intervene in any particular criminal matter.<sup>41</sup>

**3.10.8** It was reported in 2007 that the KPS generally carried out its tasks in a professional and competent manner, particularly for minor crimes. Overall, some progress was reported in the field of policing.<sup>42</sup> There was no significant change in the percentage of members of minority communities in the KPS. It was reported that members of ethnic minorities comprised approximately 16 per cent of the KPS's 7,200 officers at the end of 2007; 10 percent of KPS officers were Kosovo Serbs. Women accounted for over 13.5 percent of KPS officers.<sup>43</sup>

**3.10.9** There is sufficiency of protection for Kosovan Serbs within Serb enclaves or when UNMIK/KPS are able and willing to provide protection for those that fear persecution and ensure that there is a legal mechanism for the detection, prosecution and punishment of persecutory acts.

**3.10.10 *Internal Relocation*** UNMIK regulations and the constitutional framework provide for freedom of movement throughout Kosovo; however, inter-ethnic tensions and real and perceived security concerns restricted freedom of movement for some minorities.<sup>44</sup> Freedom of movement for Serbs outside of Serb enclaves is severely restricted and therefore internal relocation for Kosovan Serbs within Kosovo is not an option. In addition due to the precarious position of IDPs within Serbia proper internal relocation for Kosovan Serbs, to other parts of Serbia, is also not an option.

**3.10.11 *Conclusion*** Incidences of harassment and intimidation against Serbs do still occur in Kosovo however these do not generally meet the threshold to qualify for asylum. Those subject to abuses who are resident in enclaves can seek protection from UNMIK/ the KPS which ensure that there is a legal mechanism for the detection, prosecution and punishment of persecutory acts, for all ethnic groups including Serbs. However, for ethnic Serbs living in predominantly ethnic Albanian areas the cumulative effect of severe harassment and intimidation, together with often-extreme limitations upon freedom of movement may reach the threshold required to qualify for a grant of asylum. Cases from this category of claim are unlikely to be clearly unfounded.

### **3.11 Roma, Ashkaelia and Egyptians (RAE)**

**3.11.1** Many applicants will apply for asylum or make a human rights claim based on ill treatment amounting to persecution at the hands of the ethnic Albanian population due to their Roma, Ashkaelia or Egyptian ethnicity.

**3.11.2 *Treatment*** Although usually categorised together, Roma are distinct from the groups known as Ashkaelia or Egyptians. 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. 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.<sup>45</sup>

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<sup>41</sup> USSD 2008 (Kosovo Section 1)

<sup>42</sup> EC Report Kosovo 2007 p.46

<sup>43</sup> EC report Kosovo 2007 p.46 and USSD 2007 (Section 1)

<sup>44</sup> USSD 2008 (Kosovo Section 2)

<sup>45</sup> UNHCR/OSCE Assessment (May 2002) p.58 (footnote)

- 3.11.3** Roma throughout Kosovo were subject to pervasive social and economic discrimination in 2007 and often lacked access to basic hygiene, medical care, and education and were heavily dependent on humanitarian aid. Although there were some successful efforts to resettle Roma, Ashkaelia, and Egyptians in the homes they occupied prior to the 1999 conflict in Vushtrri, security concerns remained.<sup>46</sup>
- 3.11.4** It was reported that as of September 2007, 37 Roma families (144 persons) remained at the lead-polluted Cesmin Lug camp for IDPs. In 2005 UNMIK began a donor funding campaign to rebuild the original Roma settlement in southern Mitrovica, destroyed in 1999 by Kosovo Albanians. Reconstruction of the neighbourhood began in May 2006. Returns to the neighbourhood started in March and by year's end 320 out of an expected 438 persons had returned. The reconstruction of two additional apartment buildings was completed and 24 families returned to them by the year's end.<sup>47</sup>
- 3.11.5** The Ashkaelia are Albanian-speaking (although many can also communicate in the 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 but differentiate themselves from Ashkaelia by claiming to have originated from Egypt.<sup>48</sup>
- 3.11.6** It should be noted that, on the local community level, Kosovan 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.<sup>49</sup>
- 3.11.7** The security position for Roma, Ashkaelia and Egyptian (RAE) communities varies according to perceptions of the majority population, locality and language issues. The ability to speak fluent Albanian is likely to be a factor in the degree to which RAE are able to integrate with the majority community.<sup>50</sup> It was reported that in 2007 security concerns restricted freedom of movement in practice for some ethnic minorities, however, during the year UNMIK and the PISG generally improved protection of these rights for minority communities.<sup>51</sup>
- 3.11.8** In June 2007 the OSCE reported that minority returns to homes they occupied prior to the 1999 conflict were scarce despite the development of comprehensive returns mechanisms and strategies by the international community and the PISG. OSCE said that the fact that returns remained a priority eight years after the conflict reflected the reality that all mechanisms and strategies developed were not successful in providing adequate protection of the rights of returnees.<sup>52</sup> However, it was reported that approximately 35 families (94 people) belonging to the RAE communities returned to Gjakove during 2007, and faced no security related problems.<sup>53</sup> The BBC also reported on 15 February 2008 that Prime Minister Hashim Thaçi had vowed to protect the rights of all minorities as Kosovo prepared to declare independence from Serbia and that he was establishing a new government office for minorities.<sup>54</sup>

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<sup>46</sup> USSD 2008 (Kosovo Section 5)

<sup>47</sup> USSD 2008 (Kosovo Section 2)

<sup>48</sup> UNHCR/OSCE Assessment (May 2002) p.58 (footnote)

<sup>49</sup> UNHCR/OSCE Assessment (May 2002) p.58 (footnote)

<sup>50</sup> UNHCR/OSCE Assessment (May 2002) p.58 & UNHCR Update January 2003

<sup>51</sup> USSD 2008 (Kosovo Section 2)

<sup>52</sup> OSCE report 'Eight years after: Minority returns and housing and property restitution in Kosovo' dated June 2007

<sup>53</sup> OSCE Municipality Profiles Gjakove (April 2008)

<sup>54</sup> COIS Key Documents Kosovo 18 March 2008 Section 2 and BBCNews 'Kosovo vows to protect minorities' dated 15 February 2008

- 3.11.9** Positive developments within the inter-ethnic environment have had a particular impact on members of the Ashkaelia and Egyptian communities within Kosovo and they are no longer among those groups considered to be at risk by the UNHCR who have said that members of the Ashkaelia or Egyptian communities can be returned to Kosovo if circumstances permit.<sup>55</sup>
- 3.11.10 Sufficiency of Protection** Local security forces included the Kosovo Protection Corps (KPC), a civilian emergency response organisation, and the Kosovo Police Service (KPS), a local police force that functions under the authority of the Special Representative of the Secretary General (SRSG) and supervision of UNMIK police. UNMIK maintains executive authority over the police but continued to transfer police authority and functions to the KPS. An international commissioner of police directed both UNMIK police and the KPS. Specialized units on war crimes and ethnically motivated crimes were still primarily staffed by international UN police officers and largely operated independently of the KPS due to the sensitivity of those functions. Units on criminal intelligence and organized crime were operated jointly. Both the international police and the judiciary have broad discretion to intervene in any particular criminal matter.<sup>56</sup>
- 3.11.11** It was reported in 2007 that the KPS generally carried out its tasks in a professional and competent manner, particularly for minor crimes. Overall, some progress was reported in the field of policing.<sup>57</sup> There was no significant change in the percentage of members of minority communities in the KPS. It was reported that members of ethnic minorities comprised approximately 16 per cent of the KPS's 7,200 officers at the end of 2007; 10 percent of KPS officers were Kosovo Serbs. Women accounted for over 13.5 percent of KPS officers.<sup>58</sup>
- 3.11.12** In general, there is sufficiency protection for all Roma, Ashkaelia and Egyptians in Kosovo, in that UNMIK/KPS maintain a presence and ensure protection of enclaves with checkpoints. Furthermore, UNMIK and the KPS ensure that there is a legal mechanism for the detection, prosecution and punishment of persecutory acts, for all ethnic groups including all groups of RAE.
- 3.11.13 Internal Relocation** UNMIK regulations and the constitutional framework provide for freedom of movement throughout Kosovo. Inter-ethnic tensions and real and perceived security concerns restricted freedom of movement for some minorities.<sup>59</sup> However during 2007 UNMIK and the PISG generally improved protection of these rights for minority communities.<sup>60</sup>
- 3.11.14** In general it would not be unduly harsh for any RAE who can speak Albanian and who is held to be indistinguishable from ethnic Albanians to internally relocate to another part of Kosovo where their ethnic background may not be known. The IAT found in **KB [2003]** (see below) that an applicant of mixed Roma and Albanian ethnicity who spoke Albanian and could pass as an Albanian to strangers (ie did not look like he was Roma) was unlikely to be identified as Roma outside his home area.
- 3.11.15** Internal relocation may also be an option for RAE who are not indistinguishable from ethnic Albanians. The IAT found in **FD [2004]** (see below) that internal relocation to a Roma enclave is an option for Roma who are concerned about the security situation. Whereas an Ashkaelia or an Egyptian who can not pass as an ethnic Albanian can internally relocate to the Gjakove Municipality where the RAE population numbers around 8,600 and where according to the OSCE RAE do not face any security concerns.

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<sup>55</sup> UNHCR Briefing Notes (April 2005)

<sup>56</sup> USSD 2008 (Kosovo Section 1)

<sup>57</sup> EC Report Kosovo 2007 p.46

<sup>58</sup> EC report Kosovo 2007 p.46 and USSD 2007 (Section 1)

<sup>59</sup> USSD 2008 (Kosovo Section 2)

<sup>60</sup> USSD 2008 (Kosovo Section 2)

### 3.11.16 *Caselaw*

**[2006] UKAIT 00071 ES Serbia and Montenegro (Kosovo) CG** (Ashkaelians, mixed Ashkaelian ethnicity) "Persons of Ashkaelian ethnicity or mixed Ashkaelian ethnicity do not in general face a real risk of persecution or treatment contrary to Article 3 on return to Kosovo. ii) This decision replaces as current guidance FM (IFA – Mixed Marriage – Albanian – Ashkaelian) Kosovo CG [2004] UKIAT 00081 and AB (Ashkaelia) Serbia and Montenegro CG [2004] UKIAT 00188. It also replaces FD (Kosovo-Roma) CG [2004] UKIAT 00214 insofar as that decision has any ongoing bearing on the issue of risk to Ashkaelia and persons of mixed ethnicity generally."

**SK (Roma in Kosovo-Update) [2005] UKIAT 00023** The IAT found no evidence to suggest that the political or inter – ethnic landscape has changed to such an extent (since the March 2004 violence) that it can now be said that a Kosovan Roma is at real risk of treatment which amounts to persecution on grounds of ethnicity or which is in breach of Article 3. Also there is a sufficiency of protection from KFOR and KPS. Additionally the ability to speak Albanian means that an individual will be more likely to be re-integrated into the community.

**KB (Mixed ethnicity – Roma/Albanian) Kosovo CG [2003] UKIAT 00013:** An applicant of mixed Roma and Albanian ethnicity who spoke Albanian and could pass as Albanian to strangers (ie did not look like he was Roma) was unlikely to be identified as Roma outside his home area.

**3.11.17 Conclusion** Discrimination and ill-treatment against RAE does occur in Kosovo and those RAE who only speak Serbian or Romani (usually just Roma) are more likely to encounter difficulties than those who speak Albanian (Ashkaelia and the Egyptians). However, the IAT found in **[SK 2005]** (see above) that even considering the ethnic violence of March 2004 it can not be said that a Kosovan Roma is at real risk of treatment which amounts to persecution on grounds of ethnicity or which is in breach of Article 3. The IAT also found in **[SK 2005]** that the ability to speak Albanian means that an individual will be more likely to be re-integrated into the community.

**3.11.18** In the majority of cases sufficiency of protection is available and internal relocation for Ashkaelia and Egyptians within Kosovo in particular to the Gjakove Municipality or for Roma to a Roma enclave is an option. Therefore, applicants from this category of claim are unlikely to qualify for asylum or Humanitarian Protection and applicants who speak Albanian and can pass as an ethnic Albanian are likely to be clearly unfounded.

### 3.12 **Bosniaks**

**3.12.1** Some applicants will apply for asylum or make a human rights claim based on ill treatment amounting to persecution at the hands of the ethnic Albanian population due to their Bosniak ethnicity.

**3.12.2 Treatment** In the aftermath of the Kosovo conflict, Bosniaks were closely associated with Serbs because of their shared language and culture. As a result they suffered violent attacks, harassment and discrimination. The risk of being mistaken for a Serb when using their language has restricted freedom of movement outside their local area and inhibited equal access to social services and economic opportunities.<sup>61</sup>

**3.12.3** Although the Bosniak communities were not directly affected by the March 2004 riots, the communities were unsettled and it increased a migratory flow out of Kosovo. During the violence, in Mitrovica town, families moved away from their homes; some went to the Serb enclave, some left for the northern municipalities, some went from north to south of the city. However, many returned to their homes after the March 2004 riots.<sup>62</sup>

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<sup>61</sup> UNHCR Position Paper (January 2003) p.2

<sup>62</sup> UNHCR/OSCE Assessment (August 2004) p.38 & 46  
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- 3.12.4** The UNHCR position as of March 2005 is that due to the improved security situation Bosniak's are no longer among those groups continuing to be in need of international protection. Although it is still the case that applicants from these groups may still have valid claims for international protection on an individual basis.<sup>63</sup> The UNHCR position paper June 2006 does not refer to Bosniaks as being a group who are at risk in Kosovo<sup>64</sup> and the UNHCR are no longer opposed to the return of Bosniaks to Kosovo if circumstances permit.<sup>65</sup>
- 3.12.5 *Sufficiency of Protection*** Local security forces included the Kosovo Protection Corps (KPC), a civilian emergency response organisation, and the Kosovo Police Service (KPS), a local police force that functions under the authority of the Special Representative of the Secretary General (SRSG) and supervision of UNMIK police. UNMIK maintains executive authority over the police but continued to transfer police authority and functions to the KPS. An international commissioner of police directed both UNMIK police and the KPS. Specialized units on war crimes and ethnically motivated crimes were still primarily staffed by international UN police officers and largely operated independently of the KPS due to the sensitivity of those functions. Units on criminal intelligence and organized crime were operated jointly. Both the international police and the judiciary have broad discretion to intervene in any particular criminal matter.<sup>66</sup>
- 3.12.6** It was reported in 2007 that the KPS generally carried out its tasks in a professional and competent manner, particularly for minor crimes. Overall, some progress was reported in the field of policing.<sup>67</sup> There was no significant change in the percentage of members of minority communities in the KPS. It was reported that members of ethnic minorities comprised approximately 16 per cent of the KPS's 7,200 officers at the end of 2007; 10 percent of KPS officers were Kosovo Serbs. Women accounted for over 13.5 percent of KPS officers.<sup>68</sup>
- 3.12.7** In general, there is sufficiency of protection for Bosniaks in Kosovo. UNMIK/KPS are able and willing to provide protection for those that fear persecution and ensure that there is a legal mechanism for the detection, prosecution and punishment of persecutory acts.
- 3.12.8 *Internal Relocation*** UNMIK regulations and the constitutional framework provide for freedom of movement throughout Kosovo. Inter-ethnic tensions and real and perceived security concerns restricted freedom of movement for some minorities<sup>69</sup> however during 2007 UNMIK and the PISG generally improved protection of these rights for minority communities.<sup>70</sup> Internal relocation is normally possible to another part of Kosovo where there is a large Bosniak community and hence where there is not a real risk of persecution.
- 3.12.9 *Conclusion*** Although Bosniaks may be subject to discrimination and/or harassment in Kosovo this does not generally reach the level of persecution. Considering the sufficiency of protection available and the option of internal relocation, in the majority of cases it is unlikely that a claim based solely on a fear of persecution because of Bosniak ethnicity will qualify for a grant of asylum or Humanitarian Protection and cases from this category of claim are likely to be clearly unfounded.

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<sup>63</sup> UNHCR Position paper (March 2005) p.4

<sup>64</sup> UNHCR position paper (June 2006)

<sup>65</sup> UNHCR Briefing notes (April 2005)

<sup>66</sup> USSD 2007 (Kosovo Section 1)

<sup>67</sup> EC Report Kosovo 2007 p.46

<sup>68</sup> EC report Kosovo 2007 p.46 and USSD 2007 (Section 1)

<sup>69</sup> USSD 2007 (Kosovo Section 2)

<sup>70</sup> USSD 2007 (Kosovo Section 2)



### 3.13 Gorani

- 3.13.1** Most applicants will apply for asylum or make a human rights claim based on ill treatment amounting to persecution at the hands of the ethnic Albanian population due to their Gorani ethnicity.
- 3.13.2 *Treatment*** The Gorani community consists of Muslim Slavs akin to the Bosniaks, and experience similar difficulties. However, the Gorani are a distinct group from Bosniaks, with their own language, though like the Bosniak language this is similar to Serbian. The overall Gorani population is estimated at 10,000 - 12,000, most of whom live in the Gora region of Kosovo, though there are small communities in Pristina and Mitrovica. The Gora region comprises 18 geographically linked villages within Dragash municipality inhabited by Gorani. The region was largely unaffected by the conflict in terms of damage to housing.<sup>71</sup>
- 3.13.3** As with Bosniaks, Gorani have been closely associated with Serbs because of their shared language and culture and have suffered violent attacks, harassment and discrimination. The risk of being mistaken for a Serb when using their language has restricted freedom of movement outside their local area and inhibited equal access to social services and economic opportunities. The level of freedom of movement was affected by their command of the Albanian language, rather than by the actual security situation. While Kosovo Gorani exercised unlimited freedom of movement in the Gora region, the majority of the community was still reluctant to move beyond Prizren town.<sup>72</sup>
- 3.13.4** Both the Kosovo Gorani and the Kosovo Albanians practice the Islamic faith. In Dragash town the attendance at the mosque includes both ethnicities and it seems that the Islamic Community has managed to keep the two ethnic groups together despite the division at the political level. Dragash and particularly the Gora area have been peaceful since 2001<sup>73</sup> and even during and after the March 2004 riots, the Gorani community were unsettled rather than directly targeted.<sup>74</sup>
- 3.13.5** The UNHCR position as of March 2005 is that due to the improved security situation Gorani are no longer among those groups continuing to be in need of international protection. Although it is still the case that applicants from these groups may still have valid claims for international protection on an individual basis.<sup>75</sup> The UNHCR position paper June 2006 does not refer to Gorani as being a group who are at risk in Kosovo<sup>76</sup> and the UNHCR are no longer opposed to the return of Gorani to Kosovo if circumstances permit.<sup>77</sup>
- 3.13.6 *Sufficiency of Protection*** Local security forces included the Kosovo Protection Corps (KPC), a civilian emergency response organisation, and the Kosovo Police Service (KPS), a local police force that functions under the authority of the Special Representative of the Secretary General (SRSG) and supervision of UNMIK police. UNMIK maintains executive authority over the police but continued to transfer police authority and functions to the KPS. An international commissioner of police directed both UNMIK police and the KPS. Specialized units on war crimes and ethnically motivated crimes were still primarily staffed by international UN police officers and largely operated independently of the KPS due to the sensitivity of those functions. Units on criminal intelligence and organized crime were operated jointly. Both the international police and the judiciary have broad discretion to intervene in any particular criminal matter.<sup>78</sup>

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<sup>71</sup> UNHCR/OSCE Assessment (October 2001) p.33

<sup>72</sup> UNHCR Update (January 2003) & UNHCR/OSCE Assessment (October 2001)

<sup>73</sup> OSCE Municipality Profiles Dragash (June 2006)

<sup>74</sup> UNHCR/OSCE Assessment (August 2004)

<sup>75</sup> UNHCR Position paper (March 2005) p.4

<sup>76</sup> UNHCR position paper (June 2006)

<sup>77</sup> UNHCR Briefing notes (April 2005)

<sup>78</sup> USSD 2008 (Kosovo Section 1)

- 3.13.7** It was reported in 2007 that the KPS generally carried out its tasks in a professional and competent manner, particularly for minor crimes. Overall, some progress was reported in the field of policing.<sup>79</sup> There was no significant change in the percentage of members of minority communities in the KPS. It was reported that members of ethnic minorities comprised approximately 16 per cent of the KPS's 7,200 officers at the end of 2007; 10 percent of KPS officers were Kosovo Serbs. Women accounted for over 13.5 percent of KPS officers.<sup>80</sup>
- 3.13.8** In general, there is sufficiency of protection for Gorani within the main Gorani areas of Dragash municipality in Kosovo. UNMIK/KPS are able and willing to provide protection for those that fear persecution and ensure that there is a legal mechanism for the detection, prosecution and punishment of persecutory acts. In addition, 33 out of 76 KPS officers in the Dragash Police Station are Gorani. UNMIK Police assist the local KPS with five international officers, as monitors and advisers.<sup>81</sup>
- 3.13.9 *Internal Relocation*** UNMIK regulations and the constitutional framework provide for freedom of movement throughout Kosovo. Inter-ethnic tensions and real and perceived security concerns restricted freedom of movement for some minorities<sup>82</sup> however during 2007 UNMIK and the PISG generally improved protection of these rights for minority communities.<sup>83</sup> Internal relocation is normally possible to or within the Gora/Dragash region where there is a large Gorani community and hence where there is not a real risk of persecution.

#### **3.13.10 *Caselaw***

**RB (Risk – Ethnicity- Gorani – Sanxdali) Kosovo CG [2004] UKIAT 00037** – The IAT found that the objective evidence fell “well short of demonstrating that there is a consistent pattern of gross, flagrant or mass violations of the human rights of Gorani. Furthermore, there is some indication that within Kosovo the Appellant's home area of Prizren is among the areas where Gorani are safest.” Being an ethnic Gorani did not demonstrate a real risk of serious harm for a Gorani in his home area (the Prizren region).

**B [2003] UKIAT 00105** The IAT considered that the “Gorani community in the Gora region is not at risk sufficient to engage either the Refugee Convention or the Human Rights Convention. Further, there is no reason to suggest that the claimant, as a young male, falls into an exceptional category of risk. It is accepted that his father's involvement with the Serbian army does not, in itself, intensify that risk.”

- 3.13.11 *Conclusion*** Although some Gorani may be subject to discrimination and/or harassment in parts of Kosovo outside of the Dragash region this does not generally reach the level of persecution and in general sufficiency of protection is available through UNMIK/KPS. Within the Gora region of the Dragash municipality Gorani constitute almost the entire population (over 10,000) and do not suffer any difficulties. In addition 33 out of 76 KPS officers in the Dragash Police Station are Gorani.<sup>84</sup> Considering that any harassment suffered is unlikely to reach the level of persecution, that sufficiency of protection is available and that there is an option of internal relocation to or within the Gora region of the Dragash municipality, it is unlikely that a claim based solely on a fear of persecution because of Gorani ethnicity will qualify for a grant of asylum or Humanitarian Protection and such claims are likely to be clearly unfounded.

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<sup>79</sup> EC Report Kosovo 2007 p.46

<sup>80</sup> EC report Kosovo 2007 p.46 and USSD 2007 (Section 1)

<sup>81</sup> OSCE Municipality Profiles Dragash (June 2006)

<sup>82</sup> USSD 2008 (Kosovo Section 2)

<sup>83</sup> USSD 2008 (Kosovo Section 2)

<sup>84</sup> OSCE Municipality Profiles Dragash (June 2006)

### 3.14 Prison Conditions

- 3.14.1** Applicants may claim that they cannot return to Kosovo due to the fact that there is a serious risk that they will be imprisoned on return and that prison conditions in Kosovo are so poor as to amount to torture or inhuman treatment or punishment.
- 3.14.2** The guidance in this section is concerned solely with whether prison conditions are such that they breach Article 3 of ECHR and warrant a grant of Humanitarian Protection. If imprisonment would be for a Refugee Convention reason, or in cases where for a Convention reason a prison sentence is extended above the norm, the claim should be considered as a whole but it is not necessary for prison conditions to breach Article 3 in order to justify a grant of asylum.
- 3.14.3** During 2007 UNMIK police corrections officers continued to transfer responsibility for administering Kosovo's prisons to the Kosovo Correctional Service (KCS), under the authority of the PISG. Prisons and detention centres reportedly met international standards; however, there were allegations of abuse and mistreatment of prisoners. UNMIK reported bringing disciplinary proceedings against members of the 1,650-strong KCS during the year. Behaviour resulting in discipline included administrative violations such as repeated tardiness and fraud.<sup>85</sup>
- 3.14.4** UNMIK permitted International Committee of the Red Cross (ICRC) visits and monitoring by the ombudsperson of Kosovo's prisons and detention centres. In February the Ministry of Justice granted the Council for Defence of Human Rights and Freedoms (CDHRF), a local NGO, full access to all prisons, detention centres, and correction centres. CDHRF had previously complained that it was denied access on some occasions. In March, representatives of the Council of Europe's Committee for the Prevention of Torture (CPT) visited prisons and other detention facilities. The delegation was also provided full access to the detention facility on a NATO/KFOR base.<sup>86</sup>
- 3.14.5** Dubrava prison held 1,161 inmates as of July 1, above its total capacity of 1,100. The Dubrava prison and five detention centres operated during the year, and the construction of a new prison facility continued in Lipljan/Lipjan to alleviate crowding.<sup>87</sup>
- 3.14.6 *Conclusion*** Prison conditions in Kosovo have been judged to meet international standards. Therefore even where individual applicants can demonstrate a real risk of imprisonment on return to Kosovo a grant of Humanitarian Protection will not be appropriate.

## 4. Discretionary Leave

- 4.1** Where an application for asylum and Humanitarian Protection falls to be refused there may be compelling reasons for granting Discretionary Leave (DL) to the individual concerned. (See Asylum Instructions on Discretionary Leave) Where the claim includes dependent family members consideration must also be given to the particular situation of those dependants in accordance with the Asylum Instructions on Article 8 ECHR.
- 4.2** With particular reference to Kosovo the types of claim which may raise the issue of whether or not it will be appropriate to grant DL are likely to fall within the following categories. Each case must be considered on its individual merits and membership of one of these groups should *not* imply an automatic grant of DL. There may be other specific circumstances related to the applicant, or dependent family members who are part of the claim, not covered by the categories below which warrant a grant of DL - see the Asylum Instructions on Discretionary Leave and on Article 8 ECHR.

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<sup>85</sup> USSD 2008 (Kosovo Section 1)

<sup>86</sup> USSD 2008 (Kosovo Section 1)

<sup>87</sup> USSD 2008 (Kosovo Section 1)

### **4.3 Minors claiming in their own right**

**4.3.1** Minors claiming in their own right who have not been granted asylum or HP can only be returned where they have family to return to or there are adequate reception, care and support arrangements. At the moment we do not have sufficient information to be satisfied that there are adequate reception, care and support arrangements in place for minors with no family in Kosovo.

**4.3.2** Minors claiming in their own right without a family to return to, or where there are no adequate reception, care and support arrangements, should if they do not qualify for leave on any more favourable grounds be granted Discretionary Leave for a period as set out in the relevant Asylum Instructions.

### **4.4 Medical treatment**

**4.4.1** Applicants may claim they cannot return to Kosovo due to a lack of specific medical treatment. See the IDI on Medical Treatment which sets out in detail the requirements for Article 3 and/or 8 to be engaged.

**4.4.2** The official health care system currently procures only essential drugs needed for common conditions. Consequently, many patients with rare, chronic diseases (e.g. lack of growth hormone, haemophilia, HIV/AIDS) will not be able to find the drugs they need in the public health care institutions or in the state pharmacies. Private pharmacies may be able to import the drugs they need, but they are likely to be expensive and the supply may be uncertain.<sup>88</sup>

#### **Mental Health in Kosovo**

**4.4.3** In August 2003 each region of Kosovo had one hospital psychiatric ward and one community mental health centre CMHC with the exception of Gjilan, which had two Centres.<sup>89</sup> The CMHCs are day centres, which seek to rehabilitate / reintegrate adults and young people who have severe chronic mental illness and are in remission. Acutely ill adults are referred to the hospital psychiatric wards.<sup>90</sup>

**4.4.4** The hospital wards provide treatment for severely chronically and pathologically ill adults whose treatment depends entirely on drugs, which were, however, in very short supply in August 2003.<sup>91</sup> Ethnic minorities are not excluded from treatment. However Serbs do not use the wards in Prishtinë, Gjakovë or Pejë hospital. They go to Mitrovicë North or Belgrade and Kosovan Albanians cannot go to Mitrovicë North and instead use the hospital in Prishtinë.<sup>92</sup>

#### **Post Traumatic Stress Disorder (PTSD) in Kosovo**

**4.4.5** Provision of treatment for PTSD is extremely limited. The few services in the public and NGO sectors which provide some form of treatment for PTSD are overburdened and heavily constrained by limited capacity and resources.<sup>93</sup> According to UNMIK the prevailing problems in Kosovo include a general lack of medical health care professionals, insufficient financial resources, too few professionals who can assess people with special needs and inaccessibility of services for those living in rural areas. In particular mental health services for children have not been established.<sup>94</sup>

**4.4.6** It remains the position of UNMIK that persons suffering from and undergoing treatment for PTSD should not be forcibly returned to Kosovo.<sup>95</sup>

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<sup>88</sup> KIP fact sheet on health care systems (May 2002)

<sup>89</sup> Medical Foundation (January 2004) p.19

<sup>90</sup> Medical Foundation (January 2004) p.25

<sup>91</sup> Medical Foundation (January 2004) p.22

<sup>92</sup> Medical Foundation (January 2004) p.22-23

<sup>93</sup> UNHCR letter (February 2004)

<sup>94</sup> UNMIK letter (July 2005)

<sup>95</sup> UNMIK letter (July 2005)

#### 4.4.7 *Caselaw*

**ZR [2004] UKIAT 00086 ZR:** An individual suffering from severe depression. He did not have any family in Kosovo, but it was found that removal to Kosovo is not reasonably likely to leave him isolated and without support. It is perfectly reasonable to expect him to go to whichever area of Kosovo would offer him the best available treatment facilities. Followed the case of **SP [2003] UKIAT 00017** (see below).

**O [2003] UKIAT 00069:** IAT found that there is adequate treatment for PTSD in Kosovo and the situation is improving all the time. Article 3 is not breached by return.

**SP (Risk – suicide – PTSD – IFA – Medical facilities) Kosovo CG [2003] UKIAT 00017:** This case sets out guidelines for adjudicator's to follow when assessing medical evidence in HR cases when it is alleged that return would lead to real risk of suicide. The IAT find that the mere fact of return to the country of FRY or region of Kosovo does not mean that the appellant will be compelled to revisit the scene of his trauma.

**4.4.8 *Conclusion*** The Article 3 threshold will not be reached in the great majority of medical cases and a grant of Discretionary Leave will not usually be appropriate. Where a case owner considers that the circumstances of the individual applicant and the situation in the country reach the threshold detailed in the IDI on Medical Treatment making removal contrary to Article 3 or 8 a grant of Discretionary Leave to remain will be appropriate. Such cases should always be referred to a Senior Caseworker for consideration prior to a grant of Discretionary Leave.

#### 5. Returns

**5.1** Factors that affect the practicality of return such as the difficulty or otherwise of obtaining a travel document should not be taken into account when considering the merits of an asylum or human rights claim. Where the claim includes dependent family members their situation on return should however be considered in line with the Immigration Rules, in particular paragraph 395C requires the consideration of all relevant factors known to the Secretary of State, and with regard to family members refers also to the factors listed in paragraphs 365-368 of the Immigration Rules.

**5.2** Kosovo nationals may return voluntarily to any region of Kosovo at any time by way of the Voluntary Assisted Return and Reintegration Programme (VARRP) implemented on behalf of the UK Border Agency by the International Organisation for Migration (IOM) and co-funded by the European Refugee Fund. IOM will provide advice and help with obtaining travel documents and booking flights, as well as organising reintegration assistance in Kosovo. The programme was established in 1999, and is open to those awaiting an asylum decision or the outcome of an appeal, as well as failed asylum seekers. Kosovo nationals wishing to avail themselves of this opportunity for assisted return to Kosovo should be put in contact with the IOM offices in London on 0800 783 2332 or [www.iomlondon.org](http://www.iomlondon.org).

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