

NATIONS UNIES
HAUT COMMISSARIAT
POUR LES RÉFUGIÉS



UNITED NATIONS
HIGH COMMISSIONER
FOR REFUGEES

29/3-00

257

March 2000

UNHCR's Background Note on Ethnic Albanians from Kosovo Who are in Continued Need of International Protection

Introduction

Since the withdrawal of Yugoslav forces and the entry of the international military presence, (KFOR) and the UN interim administration mission (UNMIK) into Kosovo in mid-June 1999, the situation for ethnic Albanians inside Kosovo has dramatically improved. The systematic persecution described in earlier UNHCR and OSCE documents no longer prevails.¹ As a result many refugees have availed of the opportunity to return home. Close to 825,000 refugees have returned in total, more than 134,000 of these through organised return under joint UNHCR/IOM auspices.

However, a new pattern of violence, harassment, and discrimination – amounting in many cases to persecution – has emerged. This new cycle of violence brings with it new victims whose protection needs require particular attention. The victims in question are mainly ethnic minorities², but also include certain categories of Kosovo Albanians. In addition there are also certain categories of especially vulnerable persons without protection needs in the strict legal sense but who are nonetheless in a precarious situation as a result of the level of damage to housing, infrastructure, and social services. UNMIK and KFOR have, under difficult circumstances, made substantial progress in fulfilling their responsibilities under Security Council Resolution 1244 but there is still a long way to go. It is therefore critical that governments carefully and individually assess asylum claims by Kosovars in their countries, and that they take into account the realities on the ground in Kosovo when determining their asylum policies in general and in particular any plans for return affecting Kosovo Albanians.

This report deals specifically with the return of ethnic Albanians to areas of Kosovo where they constitute a majority of the population. UNHCR's position on the return of persons to areas of Kosovo where they would constitute an ethnic minority (including the return of Albanians to Serb-dominated areas³) has been clearly stated on a number of occasions and remains unchanged. At present, such returns are neither safe nor sustainable. Persons whose homes are in an area where they would constitute an ethnic minority are unlikely to be able to return to their places of origin and more likely in fact to face return to conditions of internal

¹ For example: UNHCR, *Position Paper on the Treatment of Asylum-seekers from Kosovo in Asylum Countries*, August 1998. UNHCR, *Position Paper on the Treatment of Refugees and Asylum Seekers from Kosovo* (HIWG/98/6/Rev/1), November 1998. OSCE Office for Democratic Institutions and Human Rights, *Kosovo/Kosova - As Seen, As Told*, December 1999.

² Where the term "minority" is used in this document, it describes groups of persons who are numerically in the minority in a specific geographic location as compared to the general population in their immediate vicinity, regardless of their status elsewhere in Kosovo.

³ As per the definition in footnote 2 above, ethnic Albanians constitute a minority in certain locations within Kosovo, including inter alia, the municipalities of Zubin Potok, Zvecan, Leposavic, and Mitrovica (northern), as well as Serb enclaves in other municipalities, such as the Gorazdevac area in Pec Municipality.

displacement and/or a well-founded fear of persecution. On this basis they should under no circumstances be counselled or pressured to return at this time⁴.

In the current climate of violence and impunity, certain Kosovo Albanians could also face serious problems, including physical danger were they to return. With reference to currently available information drawn from reports of violence, harassment, and discrimination, Kosovo Albanians falling into the following categories would appear to be those most at risk of facing a well founded fear of persecution⁵:

- persons or families of mixed ethnic origin
- persons perceived to have been associated with the Serbian regime after 1990
- persons who refused to join or deserted from the Kosovo Liberation Army (KLA/UCK)⁶
- persons who are outspokenly critical of the former KLA or the former self-proclaimed "Provisional Government of Kosovo," and members or supporters of political parties not aligned with the former KLA or the former self-proclaimed "Provisional Government of Kosovo"
- persons who refuse to follow the laws and decrees of the former KLA or the former self-proclaimed "Provisional Government of Kosovo"

These categories are not exhaustive, and there may well be persons and/or groups not specified here who could also face persecution in Kosovo. Thus, Kosovo Albanian asylum-seekers should be given access to status determination procedures and have their claims carefully and individually considered.

Particular care will need to be taken when determining the claims of traumatised individuals, such as victims of torture or particularly egregious forms of violence (for example, ex-detainees, or women who may have suffered sexual violence), or witnesses to crimes against humanity. It should be noted, with respect to traumatised individuals that their past experiences will be extremely relevant in determining their continued protection need.⁷

⁴ See, for example: UNHCR/OSCE, *Preliminary Assessment of the Situation of Ethnic Minorities in Kosovo*, 26 July 1999; UNHCR/OSCE, *Second Assessment of the Situation of Ethnic Minorities in Kosovo*, 6 September 1999; UNHCR/OSCE, *Overview of the Situation of Ethnic Minorities in Kosovo*, 3 November 1999; UNHCR/OSCE, *Assessment of the Situation of Ethnic Minorities in Kosovo*, 11 February.

⁵ This report draws extensively on information contained in OSCE Human Rights reports, UNMIK Police and KFOR produced incident reports as well as information directly obtained by UNHCR in the course of protection related activities undertaken in the field. Sources are not individually cited for each individual incident mentioned.

⁶ The Kosovo Liberation Army generally referred to by its English acronym of KLA is frequently referred to by Kosovo Albanians by its Albanian title *Ushtria Çlirimtare e Kosovës*, or UCK. Hereafter in the body of this report all references to the KLA or former KLA should be understood to refer to the military formation disbanded as of 20 September 1999, encompassing its various constituent parts, for example the Military Police known in Albanian as *Policia Ushtarake* or simply PU.

⁷ Even where cessation of status is warranted (which is not the case at present), *Executive Committee Conclusion 69 (XLIII)* (1992) notes that it should be "recognised that compelling reasons may, for certain individuals, support the continuation of refugee status." The drafters had in mind Article 1(C) 5 (2nd paragraph) of the 1951 Convention and paragraph 136 of the UNHCR *Handbook on Procedures and Criteria for Determining Refugee Status* (Geneva, 1979, re-edited 1992), which arguably would cover such cases as these traumatised individuals.

Overview of Current Situation

When KFOR and UNMIK first entered Kosovo, they faced a territory devastated by widespread damage, both physical and social. About thirty percent of the province's housing units were uninhabitable, more than fifty percent of its agricultural assets were reportedly lost, key parts of the telecommunications system were destroyed, and both public and personal property had been looted extensively. The economy was at a standstill, there was massive unemployment, most state and social institutions had virtually collapsed, and almost all state officials, by and large Kosovo Serbs, had left their positions in utilities, industry, and civil administration, often taking archives and technical documents with them. There was extensive contamination by landmines and unexploded ordnance. Much of the population was traumatised, and over half had been uprooted during the conflict. To this was added an enormous population movement: the majority of the approximately 900,000 Kosovars who had fled the province to neighbouring countries during the bombing campaign spontaneously returned soon after the withdrawal of Yugoslav forces.⁸

Progress has been made in a number of key areas: the emergency humanitarian needs have been met, many schools and health facilities have been reconstructed, public utilities and communications are improving, a customs service has been put in place, public workers are being paid, and other components of the civil administration are taking shape⁹. However, there is still much to be done, and investments with a long-term perspective are needed to adequately address the sheer magnitude of the tasks ahead.

Developments in a number of key areas are particularly relevant when assessing the potential need for continued international protection for certain categories of Kosovo Albanians both within the context of return plans currently being formulated and with respect to future asylum claims. Contextual information in this regard is set out below.

Political Situation and Parallel Authorities

Under Security Council Resolution 1244, all state authority in Kosovo is vested in UNMIK, with KFOR assuming an overriding role in matters of security. In the initial stages of the mission the involvement of the local population in the official administration was limited to their participation in various advisory bodies, the highest being the Kosovo Transitional Council (KTC). However, parallel self-proclaimed civil and military structures also laid claim to and in fact exercised authority in all areas of the province, despite their lack of legitimacy.

The parallel parliament and government of Ibrahim Rugova, elected "President of Kosovo" by an unofficial Albanian electorate in 1992 and 1998, was still in existence, although it remained largely behind the scenes¹⁰. Meanwhile, it was the self-proclaimed "Provisional Government of Kosovo",¹¹ under Hasim Thaci, the former political leader of the KLA which wholeheartedly embarked on the exercise of parallel authority.

⁸ General information of this nature has been widely documented. See for instance European Commission and World Bank, *Towards Stability and Prosperity: A Program for Reconstruction and Recovery in Kosovo*, 3 November 1999 and *Report of the Secretary General on the United Nations Interim Administration Mission in Kosovo*, 12 July 1999.

⁹ For more information on the current situation, see UNHCR's *Kosovo Repatriation Information Package*.

¹⁰ International Crisis Group, *Who's Who in Kosovo*, 31 August 1999.

¹¹ Also referred to as the "Interim Government of Kosovo."

The "Provisional Government of Kosovo" was established in exile on 2 April 1999, ostensibly along the lines of the agreement signed at the Rambouillet peace talks in February 1999 between the three main Kosovo Albanian groupings who participated: Mr. Thaci's KLA, Mr. Rugova's Democratic League of Kosovo (LDK¹²), and a coalition called the United Democratic Movement (LBD¹³), led by Mr. Rexhep Qosja. However, the "Provisional Government" formed in April was boycotted by the LDK on the grounds that it represented only a narrow and unbalanced range of interests. Nonetheless, upon the withdrawal of Yugoslav forces in June 1999, the "Provisional Government of Kosovo" was quick to establish administrative structures in most of Kosovo's municipalities, drawing extensively on the power and prestige of the KLA. Due to its speed and the strength of its local networks, the "Provisional Government of Kosovo" was able to establish itself to such a degree as to constitute competition to the UNMIK system which at the time was being put into place at a pace matching the deployment of international staff.¹⁴

The power of the parallel structures varied in different locations, as did the extent to which they co-ordinated with each other or followed centralised directives. As was previously the case with the KLA as a military formation, it was not always clear whether self-proclaimed authorities in a given location were following instructions from their central leadership or from local leaders. Centrally, the "Provisional Government of Kosovo" issued decrees concerning such issues as employment, commerce, property, taxation, personal documentation, citizenship, political parties, and defence. These decrees were published in an "official" gazette, and some appear to have been effectively enforced – in particular those on taxation – by the "Provisional Government's" Ministry of Public Order (MRP¹⁵) and/or by the KLA.

The KLA was officially disbanded on 20 September 1999, giving rise to the Party for a Progressive and Democratic Kosovo (PPDK), a political party headed by Mr. Thaci. Simultaneously many former KLA fighters were absorbed into the newly formed Kosovo Protection Corps (KPC/TMK¹⁶), a civil emergency service agency headed by former KLA commander, Agim Ceku. Once fully constituted this body will have 3,000 full time members and additional 2,000 reservists at its disposal. Although by agreement with KFOR and by subsequent UNMIK regulation¹⁷, the KPC has no role in law enforcement or the maintenance of law and order, there are continued reports of illegal policing, as well as other illegal activities carried out by persons claiming to represent the KPC, carrying provisional KPC identification cards¹⁸, or wearing provisional KPC uniforms.

Whilst some parallel activities would appear to be genuine attempts to improve law and order and support UNMIK efforts albeit in an irregular manner, others involve serious human rights abuses and substantially undermine the authority of the official organs charged with law and order. For instance, in December 1999, members of the provisional KPC handed over to

¹² *Lidhja Demokratike te Kosoves*, hereinafter referred to as LDK.

¹³ *Levizja e Bashkuar Demokratike*, hereinafter referred to as LBD.

¹⁴ International Crisis Group, *Who's Who in Kosovo*, 31 August 1999. International Crisis Group, *Waiting for UNMIK: Local Administration in Kosovo*, 18 October 1999.

¹⁵ *Ministra e Rendit Publik*.

¹⁶ The Kosovo Protection Corps is commonly known by its English acronym KPC but also frequently referred to by its Albanian name, *Trupat Mbrojtese te Kosoves*, or simply TMK.

¹⁷ UNMIK Regulation No. 1999/8 (20 September 1999) On the Establishment of the Kosovo Protection Corps.

¹⁸ On formal disbanding of the KLA in September 1999 up to 20,000 demobilised fighters were issued with identification as such. Such ID was commonly referred to as Provision KPC identification on the basis that membership of the KPC would be drawn largely from this group pending the implementation of formal selection procedures. An exception to this provisional status was General Ceku, clearly identified as the unquestioned head of the KPC in formation. Confirmation of membership of the KPC and formal swearing in procedures commenced in January 2000. It should be noted that while the bulk of KPC members will be drawn from the ranks of the former KLA, it is not intended that this new body be exclusively Kosovo Albanian in its make up. Some 10% of membership is reserved for ethnic minorities and up to 100 applications have been received from Muslim Slavs and Roma. At the time of writing, no Kosovo Serbs were known to have applied.

UNMIK Police in Mitrovica a number of Kosovo Albanians whom they claimed were involved in criminal activity. The men, who were subsequently released by UNMIK Police, all required medical treatment as a result of the reported beatings they had received during detention, during which time they stated that they had been forced to make confessions. It was reported that additional "suspects" who had been "arrested" by the KPC along with this group remained in illegal detention. On 22 December 1999 in Kacanik, a boy reported to UNMIK Police that an alleged KPC member had "arrested" him, accused him of stealing, and forced a hand grenade into his mouth, threatening to pull the pin if he did not confess. In the last week of January 2000, it was reported that an individual sustained head injuries and bruises from rifle butts when he was severely beaten at KPC headquarters in the municipality of Pec/PejN. The victim had been accused in a publication written by a former KLA member, and his only "offence" had been to challenge the author.

Persons claiming to represent the former KLA, KPC, or MRP are repeatedly referred to in cases involving harassment and violence against minorities¹⁹. By way of example, on 11 February, two members of the KPC and three others were arrested by UNMIK Police in connection with the killing of an ethnic Gorani. Of most significance to this report, however, is the allegation that they have also perpetrated harassment and violence against certain categories of Albanians, as described in the following section ("Examples of categories that may be in need of international protection"). It should be noted that the agents of this harassment and violence frequently hold themselves out as the state authority, and victims are subsequently unwilling to speak openly about their experiences making it very difficult for the legitimate authorities to investigate and follow up appropriately. KFOR and UNMIK Police have conducted searches of some KLA, KPC, and MRP premises, and have effected arrests of members of these organisations where clear evidence of wrongdoing can be established. The reluctance of key witnesses to come forward combined with failings in the judicial system hamper efforts in this regard, the net result being that such irregular and illegal activities continue.

Reputable human rights organisations have documented a number of cases in the field involving KPC members which have not been brought to justice for one reason or another and have commented on the fact that this represents a threat to certain individuals and sectors of society and more generally threatens to undermine what fragile stability has been achieved to date through the combined efforts of local and international actors. UNHCR in the course of its own fieldwork has taken note of a number of cases directly affecting persons of our concern. For instance, an article published by a provisional KPC member in the local media in early January 2000, accusing named individuals (a mix of minorities and Kosovo Albanians, many of them Catholic) of collaboration with the previous Serb regime and stating that they would suffer the fate they deserved, was considered to have compromised the security of persons known to UNHCR and classified as protection cases. The author of the article was nonetheless conditionally sworn in as a KPC member holding a senior regional position in the Information Department. Internal disciplinary measures within the KPC should deal firmly with incidents of this type but observers have expressed doubts that such measures are in fact being used to the full to tackle this problem.

On 15 December 1999, the LDK, the LBD, and the PPDK agreed to disband all self-proclaimed parallel structures and to co-operate instead in a Joint Interim Administrative Structure (JIAS) under the auspices of UNMIK. The JIAS is comprised of nineteen departments and around ten independent agencies, each to be co-directed by an UNMIK

¹⁹ Refer to Assessment of the Situation of Ethnic Minorities in Kosovo, published by UNHCR and OSCE on 11 February 2000.

international staff member and a local person.²⁰ The departments and agencies will cover all aspects of local administration. Municipal administrative boards headed by the UNMIK Municipal Administrators will govern locally. An Interim Administrative Council (IAC) will define policy and recommend regulations or amendments to current law. The IAC is composed of a member of each of the four Kosovo parties above, the seat of the Serb National Council remaining vacant thus far, four international members, and two observers (one local and two international). The Special Representative of the Secretary General (SRSG) will serve as executive and legislative chair, with the right to veto all council decisions. In a simultaneous initiative, the KTC has been expanded to include a broader representative base and will continue to serve as the highest advisory body of Kosovo representatives to UNMIK.

Under the JIAS agreement, Mr. Thaci's "Provisional Government of Kosovo," and Mr. Rugova's "Republic of Kosovo" officially ceased to exist as of 1 February 2000. However, even if this agreement is fully respected, it would be premature to assume that all parallel structures will cease to exercise authority in Kosovo. It has to be noted that throughout the month of February cases of the type outlined above continue to be reported. Moreover, the former parallel structures now subsumed under UNMIK will have considerable influence, and may attempt to further their own agendas through the JIAS. The success of the JIAS will largely depend on UNMIK's ability to adequately supervise the departments, agencies, and municipal administrations and ensure that this experiment in power sharing in anticipation of future municipal elections is carried out in a transparent and fair-minded way.

Security and Policing

Policing in Kosovo is currently being carried out by a combination of KFOR troops, UNMIK civilian police, and a small but gradually incremental number of local Kosovo Police Service (KPS) officers. Responsibility for public safety and order, initially resting entirely on KFOR, is now gradually being handed over to UNMIK Police, as the number of civilian police deployed increases. Similarly local policing strength will gain in importance as more officers graduate from the police school, established and managed by the Institution Building component of UNMIK (led by OSCE) in co-operation with UNMIK Police.

The policing units on the ground in Kosovo are generally doing excellent work under very difficult conditions. KFOR and UNMIK Police co-operate closely, conducting joint operations, and drawing on each other's assets. However, most KFOR troops are neither trained nor experienced in law enforcement, and commanders would like to turn over policing tasks to UNMIK Police as soon as possible. UNMIK Police, in turn, is facing serious difficulties in bringing their number of personnel beyond 2,000 – out of the 4,718 officers authorised. As at 17 March 2000, there were only 2,546 UNMIK Police personnel in the mission area, including 198 border police deployed at international border crossings and at Pristina airport²¹. The UNMIK Police's limited resources are further stretched by the multiple non-policing tasks they are required to carry out in the absence of other appropriate personnel. Such tasks include guarding official buildings and detention facilities and providing escorts for large money transfers within Kosovo. The lack of equipment and logistical support for UNMIK Police also continues to hamper many crucial policing functions, particularly in the areas of forensic analysis and information management systems. The lack of contributions by

²⁰ In addition to the parties named above, a place is reserved in the JIAS for a fourth partner, the Serb National Council, if and when it agrees to join.

²¹ UNMIK Police, Daily Situation Report, 17 March, 2000.

UN member states has been a serious impediment to ground-level law enforcement in Kosovo to date.

It has so far only been possible for UNMIK Police to assume full law enforcement authority in the regions of Pristina and Prizren²². Even in these regions, KFOR troops continue to provide support²³. UNMIK Police have assumed full investigative authority (but not full law enforcement authority) in Mitrovica, Gnjilane, and Urosevac.

The negative impact of insufficient numbers of trained police – especially in a territory just emerging from a brutal conflict – have been obvious. Despite the best efforts of both KFOR and UNMIK Police, they have been unable to prevent numerous attacks on minorities and on the categories of Albanians described below, and a climate of impunity and lawlessness reigns in many parts of the province. According to KFOR, there have been 470 murders, 192 kidnappings, 1,400 incidents of arson, and 1,143 incidents of looting reported to KFOR and/or UNMIK Police between 19 June 1999 and 5 February 2000. In many areas, the local population is unwilling to report crimes to KFOR or UNMIK Police because they have little faith that doing so will yield any positive results and at the same time they fear the possibility of reprisals being taken against them. The fact that many people opt or feel obliged to try to solve their problems through parallel structures is a measure of the obstacles faced by KFOR and UNMIK Police. This deficiency in policing is a serious obstacle to the ability of the legitimate authorities in Kosovo to fully protect the rights of all residents.

Judiciary²⁴

The establishment of a fully functioning judicial system, in accordance with internationally recognised standards continues to be one of UNMIK's most difficult – and most important – tasks. In mid-June 1999, there were no courts operational and very few qualified judges or prosecutors. Furthermore, the climate of revenge fuelled by grievances over human rights abuses suffered in the past by the majority population is such that finding impartial judicial personnel has been a major challenge. From this starting point, UNMIK worked hard to put together an emergency judicial system, capable of responding to the urgent needs of the populace such needs being punctuated by ethnic and political motivated violence and unacceptably high levels of criminal activity.²⁵

The first judges and prosecutors were provisionally appointed by the SRSG for three month terms in June 1999, following recommendations of a council of local and international legal experts, the Joint Advisory Council (JAC)²⁶. Over the following months, a total of fifty-five judges and prosecutors were provisionally appointed on the basis of JAC recommendations, although all seven of the Serbs appointed subsequently resigned citing harassment and attacks against them. In September 1999, the SRSG established, by regulation, a system for the appointment and removal of judicial personnel, based on advice of a new council of experts, the Advisory Judicial Commission (AJC), which replaced the JAC²⁷. The AJC began

²² UN Interim Administration in Kosovo, Status Report, 13 January, 2000

²³ UNMIK Police Commissioner, *Action Plan for UNMIK Police/KFOR Joint Operations*, 10 December 1999.

²⁴ Complementary information on the judicial system can be found in *A Fragile Peace: Laying the Foundations for Justice in Kosovo*, Lawyers Committee for Human Rights, October 1999

²⁵ OSCE Mission in Kosovo, *Kosovo/Kosova - As Seen, As Told - Part II*, December 1999, page 12.

²⁶ The JAC was established by UNMIK Emergency Decree No. 1999/1 (28 June 1999) to advise the SRSG on matters related to the provisional appointment of judges, prosecutors, and other judicial personnel. It was composed of three international and four local experts. (The local members included two Kosovo Albanians, one Serb, and one Slavic Muslim.)

²⁷ The AJC was established by UNMIK Regulation 1999/7 (7 September 1999) with the mandate to advise the SRSG on appointments of judges and prosecutors as well as on complaints against them. They were also given the mandate to advise the SRSG on other issues related to the judicial system upon request.

functioning on 27 October 1999 and made its first recommendations during December 1999. Based on these recommendations, the SRSG announced on 29 December 1999, the appointment of some 387 judges, prosecutors and lay judges province-wide. However, a number of the new appointees – mainly ethnic minorities – did not attend the swearing in ceremonies held during January 2000 and it is not clear at this time whether or not they will serve in their posts. A dispute over appointments in the Mitrovica District in particular remains to be resolved. The Serb community there had protested at what they perceived to be their under-representation within the judiciary. The eruption of violence in Mitrovica during February prompted the SRSG to move to introduce international judges and prosecutors as part of a series of special measures designed to calm the situation and restore law and order on a sustainable basis. While these measures are to be welcomed in the context of efforts to restore and maintain stability in the Mitrovica area, UNHCR and other organisations voiced concern that similar measures are equally justified elsewhere in the province, and urged that further action be taken in this regard.

Provisional district courts and prosecutors' offices were set up in Pristina, Prizren, Mitrovica, and Pec between June and September 1999²⁸ followed by Gnjilane at a later stage. Emergency mobile judiciary units attached to the Pristina District Court covered initial pre-trial reviews of criminal cases in areas not otherwise covered by the courts, and one such unit remains in operation²⁹. An Ad Hoc Court of Final Appeals and an Ad Hoc Office of the Public Prosecutor were established in September 1999 to entertain appeals from district court rulings.

Despite these considerable advances however, the courts are limited in their ability to deal fairly and effectively with the cases brought before them. As of mid January 2000, there had been 3,747 persons detained by KFOR or UNMIK Police for serious crimes, but only 271 remained in custody, and only thirty-five trials had been conducted. (All of the trials were conducted in the Prizren District Court, as this was the only court to which lay judges had been appointed prior to January 2000). Currently only criminal cases are being pursued by the courts, and it is not envisaged that civil hearings will commence before the spring of 2000 at the earliest.

In the current climate of lawlessness and impunity judges and prosecutors appear to be under tremendous pressure in certain cases preventing them from complying with their professional obligations. In November 1999 the Chief Prosecutor in Pec was reportedly threatened with death (that he would be "executed in front of UCK headquarters") if he did not release three particular detainees. A number of cases have been blocked by the fact that prosecutors simply fail to review them and pass them to the investigating judges. Whether this is due to external pressure or to their own loyalties or biases, the effect is that certain individuals appear to be shielded from the law, and full investigations and judicial processes are not consistently pursued.

A practical problem that has arisen in prosecuting cases has been the inadmissibility as evidence in criminal proceedings of written witness statements taken or made by KFOR and UNMIK Police officers. Investigating judges currently refuse to admit such statements, insisting instead on oral testimony from the officers who gathered the evidence. The result, given the regular rotations of KFOR and UNMIK Police personnel out of the province, is that

²⁸ Judges and prosecutors were appointed to the courts in Pristina, Prizren, Mitrovica, and Pec, on 30 June 1999, 17 July 1999, 31 August 1999, and 7 September 1999, respectively.

²⁹ The operation of these units began on 2 July 1999.

it is often impossible to obtain vital evidence in a case because the investigating officer is no longer available for oral examination³⁰. It is expected that the SRSG will soon address this issue by introducing a regulation allowing for the admission of written statements taken by the relevant law enforcement agencies, with appropriate safeguards being taken into account as to the weight to be afforded to such evidence.

Lack of material and human resources has also been a major constraint to the functioning of the courts to date. Courts are only recently beginning to receive basic office supplies and equipment, such as photocopying machines, computers, binders, folders, and standard forms. Many courthouses are in a state of disrepair, lacking, among other things, windows, locks, and functioning heating systems. Although these problems are currently being addressed by UNMIK, they have severely hampered the functioning of the courts. Likewise, the insufficient numbers of judicial staff – in particular lay judges – in office prior to January 2000, and the absence of regular salaries for them has been an obvious impediment. Adequate security for judicial personnel and buildings is an additional concern that needs to be addressed.

Disputes and confusion over the applicable law in Kosovo has been an additional obstacle to the functioning of the judicial system. The SRSG's first pronouncement on this question stated that the applicable laws in Kosovo prior to 24 March 1999 – i.e. the laws of FRY and Serbia – would continue to apply insofar as they did not conflict with internationally recognised human rights standards, UNMIK's mandate, or UNMIK regulations.³¹ However, many judges and prosecutors refused to apply Serbian laws, applying instead the laws in place in Kosovo prior to 22 March 1989 – i.e. the laws of FRY and Kosovo. In December 1999, the SRSG issued two new regulations, changing the applicable law to that which was in place in Kosovo prior to 22 March 1989, with the exception of laws in conflict with UNMIK Regulations, the UNMIK mandate, and internationally recognised human rights standards.³² In addition, laws in place after 22 March 1989 may continue to apply to subject matter or situations not otherwise covered, and in criminal proceedings, the defendant shall have the benefit of the most favourable provision in the criminal laws which were in force between 22 March 1989 and 12 December 1999. There has yet to be a comprehensive review and revision of the current applicable law in order to bring it in line with international human rights standards³³. In addition to raising questions of legislative continuity, the issue of applicable law has left law enforcement officials and citizens confused as to which body of law actually applies, leaving open possibilities for arbitrariness in this matter.

The fact that there is still no system in place for the publication and dissemination of official legal acts, including UNMIK regulations, also needs to be addressed. There is no official organ or gazette issued by UNMIK, and to date, regulations have only been made public through press releases and UNMIK News Leaflets. Furthermore, there have been errors in the local language translations of certain regulations, there is confusion over whether or not certain translations are official, and some UNMIK regulations have yet to be translated at all. As of 29 January, official Albanian translations were lacking for twelve regulations, including the two 12 December regulations on the applicable law in Kosovo, and the 22 December

³⁰ OSCE Mission in Kosovo, Human Rights Division, Internal Weekly Report, 11-17 January 2000. Lawyers Committee for Human Rights, *A Fragile Peace: Laying the Foundations for Justice in Kosovo*, October 1999.

³¹ Regulation No. 1999/1 (25 July 1999).

³² UNMIK Regulations 1999/24 and 1999/25.

³³ Amnesty International, *Amnesty International's recommendations to the Special Representative of the Secretary General Dr. Bernard Kouchner*, 3 February 2000.

regulation on the extension of pre-trial detention.³⁴ Official Serbian translations were lacking for four regulations³⁵. By way of example the official translations in Albanian and Serbian of the 15 November 1999 Regulation on the Establishment of the Housing and Property Directorate and Housing and Property Claims Commission was only available as of mid February leaving judges effectively ignorant of the fact that they had limited competency in certain matters relating to housing cases. In contrast, the self-proclaimed "Provisional Government of Kosovo" has published an official gazette of their own (illegitimate) laws, which is readily accessible to the local legal community.

UNMIK Regulation 1999/26 (22 December 1999) allows for the extension, in certain cases, of pre-trial detention beyond the six-month limit imposed by the FRY Code of Criminal Procedure. This was a necessary measure given the backlog of cases and the impending release of a large number of detainees in December 1999. However, the measure has raised concerns regarding the right to trial without undue delay. Of particular concern is the failure of the regulation to provide detainees with the right to challenge a decision to extend their detention, the lack of clarity on the procedure for the review or termination of continued detentions, and the lack of standards or procedure according to which the decision to extend pre-trial detention is to be made³⁶.

Kosovo's judicial system is still in a nascent stage, and work is under way to correct the problems reported, including the possible appointment of international judges for certain types of cases. However, this will be a long-term and complicated task. Pending such improvements it must be understood that the current judicial system does not guarantee protection for the rights of all Kosovo residents.

Housing and Property Rights

Kosovo has undergone a massive "shuffle" of socially and privately owned housing over the past ten years. The discriminatory application and intent of housing legislation and administrative regulations in Kosovo between 23 March 1989 and 10 June 1999 affected a huge number of Kosovo Albanians. Most Kosovo Albanians living in socially-owned property lost their occupancy rights to this property as a result. Kosovo Albanians who wished to purchase property were forced to do so through irregular transactions, neither officially recognised nor registered. The situation has been further complicated by the numerous forced evictions and illegal occupation of property since 24 March 1999. Between 24 March 1999 and 10 June 1999, this practice mostly affected Kosovo Albanians. Since 10 June 1999, it has affected Kosovars of all ethnicities.

That there is currently no legal mechanism to establish one's property rights in case of dispute poses a serious obstacle to sustainable return. UNMIK Regulation 1999/23 (15 November 1999) on the establishment of the Housing and Property Directorate and the Housing and Property Claims Commission established the legal framework for the restitution of property rights. However, the Housing and Property Directorate is not yet operational, and an additional regulation will be needed to establish the rules of procedure and evidence of the Property Claims Commission.

³⁴ UNMIK Regulations 1999/18-22, 24-27, and 2000/1-3, according to the 29 January UNMIK Regulations Monitoring Sheet.

³⁵ UNMIK Regulations 1999/27, and 2000/1-3, according to the 29 January UNMIK Regulations Monitoring Sheet.

³⁶ Amnesty International, *Amnesty International's recommendations to the Special Representative of the Secretary General Dr. Bernard Kouchner*, 3 February 2000.

Protection Categories

In light of the above contextual information and based on patterns of violence, harassment and discrimination reported by a variety of sources, it is possible to identify categories of Kosovo Albanians who could face serious problems, including physical danger, in Kosovo. Individuals who fall into these categories may be able to establish a well-founded fear of persecution. The categories include, but are not limited to, the following:

Persons and families of mixed ethnic origin

Persons in mixed marriages and persons of mixed ethnicity can face serious protection problems in Kosovo, including harassment and violence, restricted freedom of movement, and discrimination in access to health care, education, public utilities and employment. Often such persons were the victims of similar treatment under the Serbian regime due to their Albanian heritage. They are now targeted due to their non-Albanian heritage.

Language is often a critical factor, and many children of mixed marriages do not speak Albanian fluently. This may be especially true of persons who have spent extended periods of time outside of Kosovo. In the current climate, it is dangerous to speak Serbian, or even to speak Albanian with a Slavic or Roma accent, in public regardless of one's actual ethnicity³⁷.

In addition, regardless of their language abilities, Albanians in mixed marriages may be targeted simply for the act of marrying non-Albanians. The fact that someone is married to or was previously married to a non-Albanian may be common knowledge in their local community or it may be apparent by their surname. Such persons are often perceived as "worse than Serbs" and as such subjected to violent attack, akin to that faced by members of minority groups.

Furthermore, mixed families can have more difficulties than "homogenous" minority families as they frequently end up being excluded from all ethnic communities. This is especially problematic at present, when such vital services as health and education are often provided along the lines of ethnicity.³⁸ So whereas a minority member can usually access some necessary services or do shopping within their own community, a person of mixed ethnicity may not be able to so.

Finally, it should be noted that persons or families of mixed ethnic origin are potentially likely to face protection problems elsewhere in FRY. There have been reports of Serbian police harassing persons from Kosovo who are part or fully Albanian (especially if the individual has an Albanian name), and questioning them about their activities during the conflict.

Among the reported incidents reviewed in preparation for this report the following best exemplify the pattern of harassment, violence, and discrimination against persons or families of mixed ethnic origin. It should be noted that persons of mixed ethnicity or Albanians married to persons of another ethnicity would appear to be singled out for harassment and

³⁷ UN security advises incoming staff not to use Serbo-Croatian or other Slavic languages in public.

³⁸ Although the eventual goal is, of course co-existence and a sustainable multi-ethnic society, UNMIK and other relevant actors have in some areas recognised the current reality that structures separated along ethnic lines are necessary to ensure the provision of basic services to each ethnic community.

intimidation on this basis alone, no suggestion having been noted in any of the cases that they were suspected of complicity with the previous regime on real or perceived grounds:

- One mixed couple in Pristina say that they have faced discrimination and social rejection throughout most of their marriage. The husband is part Albanian, has an Albanian last name but speaks only Serbian. The wife is Serb, and they have two sons. During the conflict, the family sought refuge in Montenegro and since the return of the husband and wife to Kosovo in June, their security situation has steadily deteriorated, to the point where they have prohibited their sons from returning. The couple receives constant telephone threats, they have been robbed, and the wife has experienced physical attack and verbal harassment in the street. The husband requires KFOR escort to travel to work and otherwise the couple is virtually housebound. Their access to basic public services such as health care is limited.
- A mixed family in Gnjilane has reportedly faced harassment since June 1999. The wife is Albanian, the husband is Serb. One son from a previous marriage is fully Albanian; the other is of mixed ethnicity. The husband and the younger son are mainly housebound as a result of harassment. The Albanian son has been harassed at school because of his family situation, and often stays home as a result. The family is regularly threatened both by phone and in person (to the wife and Albanian son when they go out). Their apartment has been subject to a break-in during which the husband was threatened by a group of Albanians.
- A Catholic Albanian widow (the woman's Serb husband died some years ago) and her mixed ethnicity daughters living in Prizren have been subjected to constant harassment including an attempt by an unknown person to search their apartment, unknown men observing and following the daughters on the street and repeated threatening phone calls. The family were particularly alarmed at the murder of their elderly Serb neighbour in late June on which occasion one of the attackers was heard to state that having finished with the murder of the Serb lady there were three more to deal with, these ones being worse than Serbs, presumably in reference to the mixed ethnicity of family members and the treacherous act of having married a Serb. The family was not physically harmed on this occasion thanks to the intervention of a neighbour but have required close security monitoring ever since.
- In Orahovac, the apartment of an Albanian woman who had been married to a Serb, but divorced five years prior was visited by five men between 20 and 30 years old, one of whom was wearing a KPC uniform. The woman was not home, but when her mother answered the door, she was pushed aside, and the men entered the apartment, shouting "where is the Serb." The men searched the apartment and threatened the persons present namely the woman's mother and her six year old mixed ethnicity son.

Persons perceived to have been associated with the Serbian regime after 1990

Since June, there have been a number of reports of Kosovo Albanians being the targets of harassment and violence, apparently as retribution for alleged association or collaboration with the Serbian regime. Such cases are often subject to a wall of silence, the victims having been threatened not to talk to the international community and others with potential knowledge of the cases being fearful to speak and run the risk of being similarly labelled as traitors. There is reason to believe that cases of this type are far more widespread than the number actually reported. Some cases have revealed a degree of involvement on the part of organised structures, as opposed to revenge killings carried out in the heat of the moment, with a number of victims being summoned or forcefully taken to KPC premises for questioning about their activities during the conflict and pre-conflict period. While some

victims have disappeared presumed dead, others have definitely been killed whilst others still have been released but subjected to ongoing harassment.

The grounds upon which a person may be considered a collaborator are not necessarily always based on reality. The simple fact that a person's house was not burned or looted by Serbian or Yugoslav forces, or the fact that a person had done business with Serbs in the past may be enough to place them under suspicion. In the absence of the rule of law, rumours and false accusations can lead to a person being targeted. It is thus entirely possible for a person who had nothing to do with the Serbian regime to fall victim. The current climate of revenge and retribution is fuelled by the local press, which frequently publishes inflammatory and unsubstantiated articles on this topic.

It has been noted that a high number of Catholic Albanians feature in reported cases of harassment as a result of having been accused of collaboration. Although there is no clear cut evidence of Catholic Albanians being persecuted specifically on religious grounds, there may be certain areas within Kosovo where Catholic Albanians are likely to come under suspicion for collaboration, and where they are therefore at risk.

Among the reported incidents reviewed in preparation for this report, the following best exemplify the pattern of harassment and violence against persons perceived to have been associated with the Serbian regime:

- A Kosovo Albanian man in the Prizren area reported having been questioned at the hands of a number of unknown men dressed in black who were apparently enraged by the fact that he had surrendered his weapon to KFOR rather than to the KLA. They beat him severely using wooden and steel sticks, all the while questioning him about his activities during the conflict. On releasing him they reportedly threatened that any reporting of this incident would result in his death at the hands of the KLA.
- A Catholic Albanian family in Klina Municipality reported having been visited by three unknown men, one in civilian clothes, the other two in black uniforms and wearing ski masks. They introduced themselves as members of the KLA "police" and threatened the wife hitting her with a revolver. The family was accused of having done business with Serbian authorities during the war. Three thousand German Marks were stolen from the house and when two international aid workers, tenants of the family, came upon the scene one was also robbed before the perpetrators escaped.
- A Catholic Albanian male in Klina Municipality received a number of anonymous phone calls accusing him of having worked for the Serbian authorities and threatening him with death.
- A Kosovo Albanian man found dead in Klina Municipality in September 1999, with signs of beating, multiple stab wounds, and gun shot wounds had allegedly been summoned by the KLA for questioning about the activities of the Serbs during the war, shortly before his disappearance and death.
- During October 1999, the Catholic Albanian residents of a particular village in Prizren Municipality reported constant intimidation and low level harassment from their Muslim neighbours who accused them of being Serbs and/or collaborators.
- A Kosovo Albanian female in Djakovica reported that her family had been intimidated by KLA "police" apparently because her husband had worked for a state agency during the 1990s.
- A Kosovo Albanian family in Djakovica reported having received threats from four Kosovo Albanian males, presenting themselves as members of the local KLA "police." The head of the family was told he would be killed if he did not present himself at the

local KLA "police" station to answer questions about his work at a local radio station, which was run by Serb authorities.

- In December 1999, KFOR reported the murder of a Kosovo Albanian in Pristina Municipality. The victim had been a judge at the Pristina Municipal Court until March 1999.

Persons who refused to join or deserted from the KLA.

Reports indicate that persons who refused to join the KLA or who deserted during the conflict may face protection concerns in Kosovo, although it is difficult to say whether such persons are targeted specifically for these reasons or because these reasons contribute to the notion that they were somehow associated with the Serbian regime. There are few documented examples of persons being targeted for refusal to join or desertion from the KLA, but as with the previous category, victims are often unwilling to come forward, so it may be that there is a larger pool of unreported cases. The following cases have been noted:

- In October 1999, two Kosovo Albanian men were reportedly abducted in Malisevo by six masked men. The two, who were later released, were accused of having deserted from the KLA during the conflict.
- In December 1999, a case was reported of a student whose university admission was refused on the basis that his father did not fight with the KLA during the conflict.

Persons who are outspokenly critical of the former KLA or "Provisional Government of Kosovo," and members or supporters of political parties not aligned with the former KLA or "Provisional Government of Kosovo"

With official authority vested only in UNMIK, it is difficult to accurately name the category of persons who, in other situations, would fall under the heading of "opposition figures" or "opposition party members." What has been noted, however, is that there is an ongoing struggle between different political factions. This struggle is marked by competitive verbal aggression, intolerance of dissent, and a tendency to meet disapproval or disagreement with threats of or actual violence.

Veton Surroj, publisher of the influential Kosovo newspaper Koha Ditore, became one of the few Kosovo Albanians to speak out publicly against the wave of violence against Serbs when he wrote a commentary in September 1999, stating that, "From having been victims of Europe's worst end-of-century persecution, we are ourselves becoming the persecutors and have allowed the spectre of fascism to reappear..." In response, Kosovapress, the official news agency of the "Provisional Government of Kosovo" described Surroj and his editor-in-chief, Baton Haxhiu, as "pro-Serb vampires," going on to say that, "people like them...should themselves realise that, one day, they too may be the targets of some personal vendetta, which is quite understandable. Therefore, both Veton Surroj and Baton Haxhiu, these ordinary Mafiosi, should not be left unpunished for their criminal acts, since their idiosyncrasies deliver water to arch-criminal Milosevic's mill." This type of response is indicative of the levels of intolerance that exist on the Kosovo Albanian political scene and indeed within the broader population. The dramatic accusations and counter-accusations take on significance when it is recalled that Kosovo has not yet managed to shake free of its violent past, that weapons are widely available, and that violence rather than informed debate is often the order of the day.

The Kosovo political scene is characterised by many fractious parties representing the various sectors of the community. The three parties to the JIAC agreement are generally considered the mainstream political parties representing the Kosovo Albanian majority (PPDK, LDK and LBD). In the lead up to elections to be held at an unspecified date in the future, there is evidence of political competition manifesting itself in the form of violence as opposed to debate. In this context, the LDK appears to have been particularly targeted. The following incidents have been reported:

- In August 1999, the LDK office in Malisevo was vandalised.
- In September 1999, three masked men allegedly beat up a 47-year-old member of the LDK who is also a member of the Mother Teresa Society in Malisevo.
- An LDK office in Decani suffered a grenade attack in October 1999, having been previously attacked in September.
- LDK members in Drenovac have reported their reluctance to assemble due to politically-motivated pressure.
- In November 1999, two masked males threatened a group of LDK members who were preparing for a meeting in Klina Municipality. In a separate incident the Vice-President of the LDK in Klina Town was threatened by a group of unknown Kosovo Albanian males.
- Also in November, Haki Imeri, the leader of the LDK in Srbica, was abducted, transported to the woods, and executed by unknown assailants.
- Again in November, Sinan Gashi, the Vice-President of the LDK in Glogovac was detained by four unknown men claiming to be from the "Ministry of Public Order" (MRP). Having been severely beaten and threatened with a gun he was released and subsequently had to be hospitalised.
- In December 1999, the director of an elementary school in Pristina was reportedly detained by "KLA Police" and advised to leave his position because he did not support the "right" party. The man was released after KFOR intervention.

Persons who refuse to follow the laws and decrees of the former KLA or "Provisional Government of Kosovo"

Individuals may also risk being targeted simply for disobeying laws or directives from self-proclaimed authorities. There appears to be an effective campaign in place to discourage Albanians from buying Serb property, assisting Serbs to sell their property or otherwise doing business with Serbs. A leaflet circulated in Gnjilane and broadcast on the local radio in November appealed to citizens not to buy any type of goods (including houses and apartments) from Serbs, stating that persons who failed to respect this call would be held responsible for their deeds.

The following reported cases indicate the way such appeals have been enforced in practice:

- In September 1999, a Kosovo Albanian man who was assisting an elderly Kosovo Serb to sell her apartment in Pristina was subject to ill treatment by a group of unknown Kosovo Albanian males.
- Also in September, a 58-year-old Kosovo Albanian female was beaten by five men claiming to be from the "Ministry of Public Order" (MRP) and threatened her with death for having bought an apartment from a Kosovo Serb.
- In November 1999, a man caretaking a Serb-owned house was summoned to the office of the self-proclaimed mayor of Suva Reka and told to hand over the house to the "inspector

of police” and to report to the KPC and explain what he had been doing with the Serb house.

- Also in November there was a bomb attack on a Serb owned café bar in Istok managed at the time by a Kosovo Albanian who had previously been warned that he was not to protect Serb property and that the bar would be burnt to the ground.
- In December 1999, unknown perpetrators blew up a Serb-owned house in Vitina. The house was occupied at the time by a displaced Albanian family who was in the process of negotiating its purchase. This was the fourth such incident in Vitina over the previous month in which the target was Serb property purchased or being purchased by Albanians.

In addition there have been a number of reports of Kosovo Albanians having come under attack for having been associated with the distribution of humanitarian aid to minorities.

- In November 1999, the President of the Mother Teresa Society was reportedly picked up from his residence in Glogovac by four unidentified men, driven to Trstenik village, beaten with a wooden club on his back, and kicked in the legs before being released.
- Also in November 1999, a Mother Teresa Society representative in Obilic Municipality was reportedly threatened by two persons to stop distributing humanitarian aid to Roma families. One of the perpetrators may have been wearing a KPC uniform.

A FRY government office in Pristina continues to issue passports, and while people continue to avail of this service to obtain and/or renew their travel documents, there have been a number of reports of harassment and violence against those who do so. Local media coverage has been instrumental in fomenting discord by suggesting that persons who obtain passports from this office are reinforcing the position of the Serbian administration in Kosovo. The clear tone of such reporting is that persons using this service are traitors to the cause of Kosovo.³⁹ It should be noted that FRY passports are the only available travel documents for the majority of Kosovo citizens, with UNMIK issuing special travel documents only on an exceptional and very limited basis. As such the majority of Kosovo Albanians wishing to travel abroad for personal or professional reasons have no option but to resort to this office to obtain or renew travel documents.

Finally it is worth noting that irregular demands to pay “taxes” not based on any legal authority appears to be widespread, with the majority of the population complying in order to avoid serious problems. Those who resist are likely to face reprisals such as a shop in Djakovica, which was attacked with a grenade reportedly after the proprietor had refused to pay a large sum in irregular taxes.

Conclusion

UNHCR urges asylum countries to continue to accept and consider in an appropriate manner claims from Kosovo Albanians, whether those claims are for continued stay in asylum countries, or are presented by those departing the province since mid-June 1999. Deciding on such cases will require attention to the facts and details of the individual claim and the gathering of reliable and up-to-date information regarding the situation in Kosovo, as well as careful analysis, to correctly determine if there are grounds which would justify the granting or continuation of international protection in line with the 1951 Convention.

³⁹ For example, Bota Sot editorial of 6 February 2000.