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# Serbia and Montenegro (Kosovo)

## The legacy of past human rights abuses

### Introduction

Since the United Nations Security Council Resolution (UNSCR) 1244/1999 of 10 June 1999, Kosovo, while officially remaining part of Serbia and Montenegro, has been administered by the UN Interim Mission in Kosovo (UNMIK)<sup>1</sup> with the international military force in Kosovo (KFOR) led by the North Atlantic Treaty Organization (NATO) remaining the sole official military force.

On 17 to 19 March 2004 violence erupted in Kosovo after reports that three Albanian children had drowned after four of them had jumped into the river Ibar near the northern town of Mitrovica/Mitrovicë on 16 March. The fourth boy, who had survived, reportedly claimed that they had been attacked by Serbs and jumped into the river to escape, although the claim that they were attacked by Serbs remained unconfirmed. The previous day in Čaglavica/Çagllavicë near the capital Priština/Prishtinë an 18-year-old Serb was seriously injured in a drive-by shooting, believed to have been perpetrated by Albanians, and resulting in road-blocks by Serbs in protest.

Following reports of the drowning of the three boys, large crowds of Albanians and Serbs gathered on 17 March in Mitrovica/Mitrovicë – which has been the scene of violent inter-ethnic clashes in the past – on either side of the bridge over the river Ibar which divides the town between the predominantly Serbian north and Albanian south. Violence broke out, including grenades thrown at KFOR soldiers, and reportedly seven people were killed and hundreds wounded. The wounded included 11 French KFOR troops attempting to keep order reportedly by using rubber bullets and stun-grenades. The situation appeared to have calmed by the evening of 17 March when a curfew of 7pm local time was imposed on the town. In the

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<sup>1</sup> UNMIK Regulation 2001/19 'On a Constitutional Framework for Provisional Self-Government in Kosovo', promulgated by the Special Representative of the (UN) Secretary-General (SRSG) for Kosovo on 15 May 2001 initiated the first steps towards handing governmental power to local inhabitants. It allowed for the formation of the Kosovo Assembly, the Provisional Institution of Self-Government (PISG), which met for the first time on 4 March 2002. However, under Article 8.1 of the regulation, most executive governmental powers remained reserved exclusively for the SRSG. These included: the protection of minority communities; the power to dissolve the Assembly and call new elections; setting the budget; control over monetary policy; control and authority over border customs; appointing and removing judges; deciding on assignment of international judges and prosecutors; exercising powers and responsibilities of an international nature in the legal field; authority over law enforcement institutions and the correctional service; control and authority over the Kosovo Protection Corps (manned in the main by demilitarized ex-members of the Kosovo Liberation Army); concluding and overseeing agreements with states and international organizations in all matters within the scope of UNSCR 1244 (1999). In addition, the regulation gave the SRSG power of decision in consultation with or cooperation with the PISG over a number of other governmental functions including: external relations; control over cross-border/boundary transit of goods (including animals); authority to administer public, state and socially-owned property; and administrative control and authority over railways, frequency management and civil aviation functions.

meantime, violence had spread to a number of places throughout Kosovo including the capital Priština/Prishtinë and almost every major town.

The authorities estimated the violence involved some 51,000 people in 33 violent incidents throughout Kosovo – predominantly involving Albanians attacking Serb enclaves and communities, but also involving Albanians attacking other minorities, notably the Ashkali community in Vučitrn/Vushtrri. There were also reports of Albanians forced to flee the Serb majority areas of N. Mitrovica/Mitrovicë and Leposavić/Leposaviq. The inter-ethnic violence resulted in at least 19 dead - 11 Albanians and eight Serbs - and over 900 civilians injured of whom 22 were seriously injured; over 100 international and domestic police officers and 61 KFOR troops were also injured. In addition the violence resulted in over 4,000 internally displaced people and widespread destruction of houses and Serbian churches. There were also serious allegations of complicity by Albanian members of the Kosovo Police Service (the domestic police force which while being multi-ethnic is predominantly Albanian reflecting the make-up of the population of Kosovo as a whole) in inter-ethnic attacks in Vučitrn/Vushtrri, and elsewhere: allegations which, Amnesty International is informed, are currently being investigated by the authorities.

On 18 March a joint statement by the Provisional Institution of Self-Government, Kosovo political leaders, the UN Special Representative of the Secretary General, the European Union presidency and the QUINT (a body comprising France, Germany, Italy, UK and USA) called for the violence to stop, and stated that police investigations to identify and locate the perpetrators were being conducted. NATO confirmed that it was to send extra troops to supplement the 17,000 KFOR members already stationed there and some 3,500 extra troops were deployed.

The continuing uncertainty over the question of the ‘final status’ of Kosovo has contributed to inter-ethnic tensions which, as noted below, have risen in the last year.

**However, Amnesty International believes that a major factor in the recurrence of ethnic violence in Kosovo has been the failure of the UNMIK as well as the authorities in Serbia and Montenegro to seriously address the legacy of human rights violations and abuses in Kosovo, including in particular the continuing impunity for the perpetrators of inter-ethnic violence, and a continuing failure to resolve the fate of those who “disappeared” and were abducted during, and following, the conflict in 1999.**

## **The legacy**

### **Amnesty International’s concerns**

Amnesty International is extremely concerned at the lack of progress made in the last four years by the Serbian authorities in bringing to justice those suspected of the “disappearance”

of ethnic Albanians in Kosovo when the province was administered by Serbia.<sup>2</sup> The organization is also extremely concerned at the lack of progress by UNMIK in bringing to justice those responsible for the abduction of some 1,200 Serbs, Roma and members of other minority communities.

Amnesty International considers that the continued suffering of the relatives of the "disappeared" in being denied the knowledge of the fate of their loved one amounts to a violation of their right under Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) and Article 7 of the International Covenant on Civil and Political Rights (ICCPR) not to be subjected to torture or to inhuman or degrading treatment.

Amnesty International is also seriously concerned about:

- the apparent failure by the authorities to adequately investigate and bring prosecutions in relation to many ethnically motivated murders and the ensuing impunity this affords to the perpetrators;
- incidents of arbitrary arrest and unlawful detention by personnel from the international military force in Kosovo (KFOR);
- allegations of ill-treatment of detainees by KFOR personnel, as well as other violations of their rights while in detention;
- discriminatory practices against minorities, *inter alia* with regards to inadequate protection against physical attacks from non-state actors as well as with regards to access to employment, medical care and education; and
- the trafficking into, within and from Kosovo of women and girls for forced prostitution.

## **1. War crimes**

Although as noted below, there has been an apparent reluctance on the part of the authorities to investigate abductions of Serbs and Roma and bring perpetrators to justice, there have been arrests and trials of Serbian and to a lesser extent Albanian war criminals. Many of the Serb defendants were initially tried and sentenced by panels with a majority of ethnic Albanian judges, but, due to doubts about the partiality of the courts, were subsequently re-tried by international or mixed international and Albanian panels (see below).

In 2002 the United Nations Interim Mission in Kosovo (UNMIK) arrested and charged a number of former Kosovo Liberation Army (KLA) members for crimes committed in 1998 and 1999, prompting widespread protests by ethnic Albanians. In December 2002 four leading former KLA members, including Daut Haradinaj, (brother of leading Kosovo politician Ramush Haradinaj) were sentenced to between three and 15 years' imprisonment for the unlawful detention and murder of four Albanians in June 1999. In January 2003 the Tribunal secretly indicted four ex-KLA members, Fatmir Limaj, Haradin Bala, Isak Musliu

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<sup>2</sup> See *Serbia and Montenegro: Amnesty International's concerns and Serbia and Montenegro's commitments to the Council of Europe*, AI Index: EUR 70/002/2004, 3 March 2004.

and Agim Murtezi for crimes against humanity and violations of the laws or customs of war in connection with the murder and torture of Serbs and Albanians perceived as collaborating with Serbs in the Lapušnik/Llapushnik prison camp and elsewhere in Kosovo in 1998. The indictment was made public after the arrest by KFOR of Bala, Musliu and Murtezi in February. They were transferred to the Hague. It transpired that Agim Murtezi was not the person referred to in the indictment and he was released on 28 February. Limaj, a senior aide to leading Kosovo politician Hashim Thaci, was allowed to fly to Austria with Thaci despite the indictment. However, he was detained in Slovenia and extradited to the Hague in early March.

On 17 January 2003 the trial began of Rrustem Mustafa (ex-KLA commander 'Remi'), Nazif Mehmeti, Latif Gashi and Naim Kadriu for war crimes connected with the illegal confinement, torture and murder of suspected ethnic Albanian 'collaborators'. On 8 February 11 people, including four members of the Kosovo Protection Corps (an official body made up of former KLA members) and four members of the Kosovo Police Service, were charged in connection with the murder of an Albanian family, seen as 'collaborators', in August 2001.

The arrests, transfers and trials provoked mass protests by tens of thousands of Kosovo Albanians who saw the detainees as 'freedom fighters', as well as attacks on UNMIK vehicles and property. Seemingly undeterred, the administration continued to arrest and try leading ex-KLA members for war crimes and murder.

Trials and re-trials of Serbs who had previously been convicted of war crimes or genocide by panels with a majority of ethnic Albanian judges also continued. On 3 February 2003 the former mayor of Orahovac/Rahovec, Andjelko Kolasinac, was sentenced by the Prizren international court to eight years' imprisonment for war crimes against the Kosovo Albanians in 1999. He had previously been sentenced to five years in 2001 but the Kosovo Supreme Court had ordered a re-trial. On 30 May 2003 the Gnjilane/Gjilan international court acquitted former Kosovo police chief Momčilo Trajković of war crimes but sentenced him to three years and four months' imprisonment on lesser charges. His previous sentence of 20 years for war crimes had similarly been revoked by the Supreme Court. On 26 June 2003 the international court in Peć/Pejë sentenced Veselin Besović to seven years' imprisonment for war crimes against civilians in 1999.

## **1.1 Failure to investigate "disappearances" and abductions**

Amnesty International is extremely concerned at the lack of progress made in the last four years by the Kosovo authorities in bringing to justice those responsible for the abduction of some 1,200 Serbs, Roma and members of other minority communities believed to have been carried out by the KLA or other ethnic Albanians.

Article 14 of the *Declaration on the Protection of All Persons from Enforced Disappearance*, resolution 47/133 passed by the UN General Assembly on 18 December 1992 states:

*“Any person alleged to have perpetrated an act of enforced disappearance in a particular State shall, when the facts disclosed by an official investigation so warrant, be brought before the competent civil authorities of that State for the purpose of prosecution and trial unless he has been extradited to another State wishing to exercise jurisdiction in accordance with the relevant international agreements in force. All States should take any lawful and appropriate action available to them to bring to justice all persons presumed responsible for an act of enforced disappearance, who are found to be within their jurisdiction or under their control, to justice.”*

However, investigations of “disappearances” and abductions - especially the investigation of individual cases - have been given low priority by the UNMIK Police, and were considered, until 2003, to be outside of the mandate of the Central Criminal Investigative Unit (CCIU) which was charged with the investigation of crimes which took place up to the entry of KFOR into Kosovo in July 1999, (thus excluding the majority of the abductions of Serbs and Roma - and some “disappearances” of ethnic Albanians – which took place after the entry of KFOR into Kosovo). In 2003<sup>3</sup> such cases were moved within the remit of the CCIU but without any additional capacity given to it to resolve the huge backlog.

In April 2003, Amnesty International released a report *“Serbia and Montenegro (Kosovo): “Prisoners in our own Homes”. AI’s concerns for the Human Rights of Minorities in Kosovo/Kosova”*, (AI Index EUR 70/010/2003), in which the organization urged that sufficient resources - including trained personnel – should be made available to UNMIK Police to strengthen the CCIU in order to ensure the prompt, impartial and thorough investigation of both ongoing and outstanding ethnically motivated crimes, including “disappearances” and abductions.<sup>4</sup>

On 23 May 2003, UNMIK Police announced the creation of “a special squad to re-examine unsolved murders that occurred years before”, which was “expect[ed] to make progress in some of the still-unsolved crimes committed during 1999 and 2000.”<sup>5</sup> On 3 September 2003 Barry Fletcher, then UNMIK police spokesperson, informed Amnesty International that the squad would address murder cases mainly from 2000-2001, and not for “disappearances and abductions” which took place mainly in 1999, and that there was still a need for facilities for adequate forensic investigations, DNA analysis, a centralized database and connection with Interpol.

### **1.1.1 Intimidation and assassination of witnesses**

In addition to the lack of policing resources dedicated to the investigation of “disappearances” and abductions, the climate of impunity in Kosovo also results from the reluctance of ethnic Albanians to provide information to police investigations, where the perpetrator is believed to

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<sup>3</sup> Exact date unknown.

<sup>4</sup> The second chapter of the report focuses on impunity for abuses of human rights of minorities in Kosovo, including the continuing impunity for those responsible for the abduction of Serbs, Roma and members of other minority communities.

<sup>5</sup> UNMIK Police Briefing Notes, 20 May 2003.

be another ethnic Albanian. In part, this is due to the lack of a comprehensive witnesses and victims protection program and a climate of fear. On 4 January Tahir Zemaj was murdered in his car along with his son and cousin by gunmen. He was a key witness in a trial of four ex-KLA members - one of whom is the brother of a leading politician - sentenced in December 2002 for unlawful detention and murder. On 15 April 2003 gunmen similarly shot dead another witness in the trial, Ilir Selmanaj, along with a relative. Both incidents occurred in Peć/Pejë. Although the murder of Tahir Zemaj and son and cousin occurred in the presence of some 40 people.

### **1.1.2 The Office for Missing Persons and Forensics**

Overall responsibility “for all aspects of investigations into missing persons” lies with the UNMIK Office for Missing Persons and Forensics (OMPF), now located within the UNMIK Department of Justice. The OFMP also has “overall supervisory and coordination responsibility for the CivPol Missing Persons Unit (MPU) dealing with the historically missing persons”.<sup>6</sup>

The OMPF’s current priority is the exhumation and examination of grave sites, and the return of positively identified bodies to their families for burial, (as well as the reburial of unidentified bodies). Following the return of the identified body to the family for burial, the case is then considered closed, and responsibility for any further investigation passes to the Central Criminal Investigation Unit (CCIU) within UNMIK police.

Although the lack of adequate facilities in the office of the medical examiner may have delayed the process of post-mortem forensic analysis, Amnesty International considers that following the establishing of the OMPF, some progress is now being made in the exhumation and identification process – in contrast with the investigative process, which remains to be seriously addressed by UNMIK Police. The identification process has been aided by DNA analysis by the International Commission on Missing Persons (ICMP).

According to the OMPF on 4 February 2004, 5,041 persons are recorded as missing on their Consolidated List of Missing Persons. Of these, 1,391 cases have been closed. In the majority of these cases, closure indicates that the body has been returned to the family for burial, although in a few cases, the person has been found alive, or the case was found to be a duplicate. These cases include mortal remains exhumed in both Serbia and in Kosovo. OMPF reported that a total of 643 mortal remains and 246 incomplete bodies had by February 2004 been exhumed of which 442 bodies and 177 incomplete bodies had been exhumed in 2003. Of the total exhumed, there were 488 cases of identification of mortal remains of which 452 had been returned to the families with the remaining 36 awaiting return.

On 26 June 2002, following extensive lobbying by the Coordination Council of Kosovo Albanian Associations of Families of Missing and Kidnapped Persons, the Kosovo Assembly agreed to create a Kosovo Parliamentary Commission on Missing and Kidnapped Persons. The commission, formed in October 2002, was set up to: propose legislation to

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<sup>6</sup> UNMIK Pillar 1, *Police and Justice, Presentation Paper*, Fourth Quarter, November 2002. CivPol (or CIVPOL) is the international police force in Kosovo.

parliament; to coordinate pressure on behalf of the presidency, parliament and the government; and to advise a Governmental Commission on Missing Persons, which was set up in 2003. It is uncertain at this stage what the mandate and powers of this body will be, but it is thought that it may coordinate pressure on the Serbian authorities.

On 19 April 2003 representatives of the Association of Families of Missing and Kidnapped Kosovo Serbs attended a meeting of the Kosovo Parliamentary Commission for Missing and Kidnapped Persons at the invitation of Flora Brovina. Randjel Nojkić, the Commission's deputy head and a member of the Serb *Povratak* coalition, stated: "For the first time ever, Kosovo Serbs and ethnic Albanians discussed this problem together. For the first time ever, Priština heard the other side of the story, the Serbian side."

Amnesty International considers that the continued suffering of the relatives of the "disappeared" in being denied the knowledge of the fate of their loved one amounts to a violation of their right under Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) not to be subjected to torture or to inhuman or degrading treatment.

**Amnesty International continues to be concerned about:**

- **the fate of some 3,000 ethnic Albanians believed to have been arrested by Serb police and paramilitary forces between 1998 and July 1999;**
- **the failure of the authorities to open investigations that will lead to bringing the perpetrators to justice;**
- **the lack of progress made in opening investigations into the estimated 1,200 cases of missing Serbs, Roma and members of other minority groups, believed to have been abducted by the Kosovo Liberation Army, and other members of the ethnic Albanian community.**

## **1.2 Failure to investigate ethnically motivated killings**

Amnesty International is concerned that a number of investigations of human rights abuses committed against ethnic minorities in Kosovo may have fallen short of requirements established in international standards concerning thoroughness, promptness and impartiality. UNMIK Police reported a success rate in resolving murders of between 57 per cent and 67 per cent,<sup>7</sup> yet on closer examination these figures only applied to what UNMIK Police described as ordinary, rather than ethnically motivated, murders. A spokesperson for UNMIK police attributed their failure to bring the perpetrators of ethnically motivated crimes to justice to a reluctance on the part of witnesses to come forward, fearing retribution.<sup>8</sup> They also claimed that such crimes generated more complex enquiries, "because they are planned and directed -

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<sup>7</sup> In February 2003 UNMIK police reported that they, "... are now solving more than 80% of murders..", *UNMIK Police Briefing Notes*, 18 February 2003.

<sup>8</sup> See above witness intimidation.

possibly by terrorist groups, extremist and violent groups and no-one takes credit for them”.<sup>9</sup> However, UNMIK police also informed Amnesty International in March 2002 that no systematic analysis of ethnically motivated crimes, assessing how many of these incidents had resulted in successful prosecutions of the perpetrators, was being conducted.<sup>10</sup>

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

### 1.2.1 The Niš Express bombing

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

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<sup>9</sup> Although some ethnically motivated crimes, such as the series of attacks on the Serb community that took place during February 2001, may fall into this category, AI believes that they are not representative of the majority of such incidents. See *OSCE/UNHCR Eighth Minorities Assessment*, pp. 3-4.

<sup>10</sup> UNMIK police spokespersons also asserted that because the police force was up and running ahead of the judicial system, the lack of capacity within the detention and court systems had undermined the development of law and order. In particular, the spokespersons reported that the police would fail to gain the confidence of the public, if sufficient capacity for pre-trial detention was not available, particularly in cases where they had compelling evidence of threats made against the victims of such crimes. Interview, UNMIK police spokespersons, Priština/Prishtinë, March 2002.

<sup>11</sup> *Ex officio* Registration No. 8/01/I, concerning the right to life of V.S. and V.N., 29 January 2002; similar observations were made by the Ombudsperson in: *Ex officio* Registration No. 8/01/II, Concerning the right to life of R.C., 29 January 2002; *Ex officio* Registration No. 8/01/IV, Concerning the right to life of S.B., 29 January 2002; *Ex officio* Registration No. 8/01/V, Concerning the right to life of S.A., 29 January 2002.

a grenade attack on the market place in Kosovo Polje/Fushe ë Kosovës left two Serbs dead and 47 wounded.

Avdi Behluli, Qele Gashi, Jusuf Veliu and Florim Ejupi were arrested by UNMIK Police, and subsequently detained on the order of the investigating judge at Priština/Prishtinë District Court on 23 March 2001 in connection with the bombing. They subsequently appealed against their detention on 28 March at Priština/Prishtinë District Court. The court, consisting of a panel of international judges, ordered the investigative detention of Florim Ejupi for one month – on the basis of comparison of the DNA found on a cigarette-butt at the detonation site with DNA in a German police database – and the immediate release of Avdi Behluli, Qele Gashi and Jusuf Veliu. In violation of the court order, Avdi Behluli, Qele Gashi, Jusuf Veliu - along with Florim Ejupi - were subsequently detained on the order of the SRSJ at the Bondsteel Detention Facility (BDF) without charge or trial.<sup>12</sup> Florim Ejupi escaped from BDF on 14 May, allegedly using a wire-cutter hidden in a spinach pie, although it has been subsequently alleged that US forces were complicit in the escape. Following a review of the case by the Supreme Court on 18 December 2001 the three men were released. No one has yet been brought to justice for this crime.

Although Amnesty International has no position on the guilt or innocence of any of the detained men, the organization has serious concerns about the failure to bring those responsible for the Podujevo bus-bombing to justice. Amnesty International is concerned that UNMIK Police was frustrated in its ability to conduct a thorough and impartial investigation, in the light of allegations made by UNMIK police officers that they were obstructed in their investigations by US KFOR personnel.<sup>13</sup> It has also been alleged that despite the severity of the attack, and its effects on both Serb community and potential returnees,<sup>14</sup> insufficient resources were deployed to the investigation, particularly in its later stages. The organization is also concerned about the failure of KFOR and other unknown players to reveal evidence<sup>15</sup>

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<sup>12</sup> The three suspects were detained, initially under Executive Orders, until 20 September 2001, when their continued detention was authorized by a Detention Review Commission (DRC) established – in connection with this one case under UNMIK Regulation 2001/18 – for a three-month period to review detentions authorized by the SRSJ. The violation of the detention rights of detainees held in administrative detention authorized by the SRSJ under Executive Orders, (on the basis of UNMIK Regulation 199/1 and UNSCR 1244/99), was highlighted by Amnesty International, the OSCE and the UN Special Representative of the Commission on Human Rights; Amnesty International also expressed concerns about the DRC to the SRSJ.

<sup>13</sup> In a statement to the UK newspaper, *The Times*, on 14 May 2002, the former head of the UNMIK Regional Crimes Squad alleged that, despite being technically in charge of the investigation, information had been withheld by KFOR, and that attempts to interview the suspects were obstructed both before and after their transfer to the BDF. This was confirmed by AI in conversation with a former CIVPOL officer who wishes to remain anonymous. *The Times* also reported that a lead investigator was removed from his post for speaking to the press about the case in August, which subsequently became the responsibility of a single detective. Amnesty International has not been able to confirm this.

<sup>14</sup> UNHCR attribute the decline in returns during 2001 to this and other incidents at around the same time, *UNHCR/OSCE Ninth Minorities Assessment*, May 2002, p.45-6.

<sup>15</sup> Evidence, including NATO intelligence, was provided to the DRC (see above) which, following *in camera* proceedings held in the absence of detainees and their counsel, authorized the men's continued detention. However, following a review of the case by the Supreme Court – which was not provided with access to the evidence presented to the DRC – on 18 December, the three men were released without charge.

to either the District Court or the Supreme Court. In September 2003 the Kosovo Ombudsperson opened an investigation into the killings. As the Ombudsperson's Office has no jurisdiction over KFOR (see above) the investigations concentrated on UNMIK Police findings. On 18 September 2003, in reply to a request from the Ombudsperson's Office, UNMIK Police Commissioner Stefan Feller replied:

*"The investigation of the Nis Express bombing has continued since the incident occurred in February 2001. An intensive case review was recently undertaken that has produced considerable movement in the investigation. An international arrest warrant has been issued for a key suspect in the case and a high profile fugitive search is ongoing.*

*UNMIK remains committed to bringing to justice those responsible for this crime. Although the investigation is covert by nature, especially as suspects are at large, be assured that all leads and information are being closely followed. As this case remains a continuing investigation it is not possible to provide you with copies of the police reports."*

No further information on this case has been made available.

Other racist attacks on minorities which have resulted in killings are referred to in section 4 below.

**Amnesty International is calling:**

- **for an independent inquiry to be established into the failure of UNMIK police to bring the perpetrators of the Niš Express bombing to justice, and into allegations that the UNMIK police investigation was obstructed by KFOR;**
- **on UNMIK police to do its utmost to bring perpetrators of ethnically motivated killing to justice and thus end the continuing impunity for such crimes.**

## **2. Arbitrary arrest and unlawful detention**

Amnesty International is seriously concerned at incidents of arbitrary arrest and unlawful detention in Kosovo by Kosovo Force (KFOR) personnel from the international military force in Kosovo in blatant contravention of domestic and international laws and standards. The organization is further concerned at allegations of ill-treatment of detainees by KFOR personnel, as well as the denial of their rights while in detention. Amnesty International's concerns are amplified by the fact that the UN Mission in Kosovo (UNMIK), which administers Kosovo under UN Security Council Resolution 1244/99, is charged with the protection and promotion of human rights and the rule of law in the province.

The organization raised its concerns about arbitrary arrest and detention by KFOR following a wave of violence in Mitrovica/ë, in February 2000 (see Amnesty International, *Federal Republic of Yugoslavia (Kosovo): Setting the standard? UNMIK and KFOR's*

*response to the violence in Mitrovica*, AI Index: EUR 70/13/00, March 2000). On 6 June 2002 the organization sent an 18-page memorandum to KFOR detailing its concerns and urging a full and impartial investigation into the unlawful arrest and alleged ill-treatment by KFOR personnel of three men arrested in December 2001. In July 2002 three more men were unlawfully arrested by KFOR and held in detention for between 43 and 51 days without being brought before a judicial body to authorize their detention.

On 10 October 2003 Amnesty International sent another 18-page memorandum to the North Atlantic Treaty Organization (NATO), individual governments of NATO, and the UN Department of Peace Keeping Operations (DPKO) detailing its concerns at instances in which international peacekeeping forces led by NATO in Kosovo (and in Bosnia-Herzegovina) had failed to adhere to international human rights law and standards when detaining suspects. The memorandum specifically addressed the lack of legal basis for KFOR detentions and in this context the continued existence of COMKFOR (KFOR commander) Detention Directive 42 (see below).

In the memorandum,<sup>16</sup> Amnesty International noted that KFOR troops are not subject to control by civilian bodies *in situ*, even though in Kosovo KFOR is the sole official armed force - i.e. it is the army - and the UN Interim Mission in Kosovo (UNMIK) is the (temporary) government. Indeed the civilian executive authority, UNMIK, does not appear to have either legal jurisdiction or mandate to conduct investigations into KFOR activities. UN Security Council Resolution 1244/99 of 10 June 1999 under which Kosovo is - until resolution of its final status - placed under UN control is ambiguous as to the question of the power relationship between the international civilian presence (UNMIK) and the international security presence (KFOR), and calls on the two to “coordinate closely”. Instead, civilian democratic control over KFOR is exerted by the respective governments of troop-contributing countries who have responsibility for, *and only for*, their respective national contingents. This means that civilian democratic control over KFOR and SFOR troops is divided up between a number of national governments who only have control over their own troops. An additional factor is that these troops are operating outside of their respective national territories, and thus distanced from their democratic overseers. This removal from the area of operation (i.e. Kosovo), combined with the multiplication and fragmentation of civilian democratic control over KFOR, has, in Amnesty International’s experience, led to a lack of accountability for human rights violations. An additional factor is the absence of a centralized body initiating prompt, thorough and impartial investigations into all allegations of human rights violations by KFOR troops, and ensuring that appropriate remedial measures are taken. The lack of accountability is further compounded by the fact that institutions such as the Ombudspersons’ Office in Kosovo - specifically set up to defend the rights of citizen - does not have any remit over actions by KFOR members.

NATO is not itself a party to international human rights treaties: state officials must ensure their participating forces’ compliance with international law. NATO does not have a mechanism either to enforce compliance of a common set of standards, or to ensure a

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<sup>16</sup> See Amnesty International: *The apparent lack of accountability of international peace-keeping forces in Kosovo and Bosnia-Herzegovina*, AIU Index: EUR 05/002/2004, April 2004.

common interpretation of such standards. These remain the responsibility of each state member, and results in inconsistencies in the application of rules. Amnesty International is calling on NATO to publicly commit itself to abide by the highest standards of international human rights law, and to ensure a common interpretation of such standards.

The structural weakness, combined with the general immunity from prosecution (unless explicitly waived), which is enjoyed by all members of the international community<sup>17</sup>, has contributed to the lack of accountability for human rights violations committed by KFOR troops. Under UNMIK Regulation 2000/47 the UN Secretary-General has “the right and the duty to waive immunity [from prosecution] of any UNMIK personnel in any case where, in his opinion, the immunity would impede the course of justice and can be waived without prejudice to the interests of UNMIK”,<sup>18</sup> this is not the case for KFOR personnel. Section 6.2 of the same regulation states: “Requests to waive jurisdiction over KFOR personnel shall be referred to the respective commander of the national element of such personnel for consideration.” Thus, not even the UN Secretary-General has a mandate to waive immunity for KFOR personnel even though they are operating under the aegis of the UN in what is effectively a UN state.

Furthermore, Section 2.4 of the regulation regarding the ‘Status of KFOR and its Personnel’ states:

“KFOR personnel other than [locally recruited KFOR personnel]... shall be immune from jurisdiction before courts in Kosovo in respect of any administrative, civil or criminal act committed by them in the territory of Kosovo. Such personnel shall be subject to the **exclusive** [emphasis added] jurisdiction of their respective sending States; and immune from any form of arrest or detention other than by persons acting on behalf of their respective sending States.”

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<sup>17</sup> Both UNMIK and KFOR personnel are covered by UNMIK Regulation 2000/47 *On the status, privileges and immunities of KFOR and UNMIK and their personnel in Kosovo*, 18 August 2000 (see below for differences between UNMIK and KFOR personnel). Under Annex 1A, Appendix B (3), of the General Framework Agreement, members of SFOR are covered by the provision of the Convention on the Privileges and Immunities of the U.N. regarding experts on mission. Article VI, Section 22, provides for “(a) immunity from personal arrest or detention and from seizure of personal baggage; (b) and in respect to words spoken or written and acts done by them in the course of the performance of their mission, immunity from legal process of every kind.” Article V, Section 20, states: “The Secretary-General [of the United Nations] shall have the right and the duty to waive the immunity of any official in any case where, in his opinion, the immunity would impede the course of justice and can be waived without prejudice to the interests of the United Nations. In the case of the Secretary-General, the Security Council shall have the right to waive immunity.”

<sup>18</sup> UNMIK Regulation 2000/47, *On the status, privileges and immunities of KFOR and UNMIK and their personnel in Kosovo* section 6.1, 18 August 2000. The Kosovo Ombudsperson opined that this regulation “is incompatible with recognised international standards” in particular Articles 6, 8, 15 and Article 1 of Protocol 1 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR). See Ombudsperson Institution in Kosovo, *Special report No. 1 on the incompatibility with recognized international standards of UNMIK Regulation No. 2000/47 on the Status, Privileges and Immunities of KFOR and UNMIK and Their Personnel in Kosovo (18 August 2000) and on the implementation of the above REGULATION*, 26 April 2001.

This seeks to prevent courts of any state (other than the relevant contributing state) from exercising jurisdiction, and thereby preventing courts in Kosovo, foreign courts (other than those of the relevant contributing state), and courts exercising universal jurisdiction, such as the International Criminal Tribunal for the former Yugoslavia (the Tribunal) and the International Criminal Court (ICC), from exercising jurisdiction. However, Amnesty International believes that in cases of genocide, crimes against humanity and war crimes, courts exercising universal jurisdiction such as the Tribunal and the ICC do have primacy.<sup>19</sup> However, the ICC or the Tribunal are not likely to exercise jurisdiction over crimes and other human rights violations allegedly committed by KFOR troops. Thus, in a case in which, for example, there is sufficient admissible evidence to prosecute but the national courts of the relevant contributing state are not able to take the case up, there will be no court able to exercise jurisdiction.

To Amnesty International's knowledge the only case where an alleged human rights violation either by KFOR or SFOR troops in the course of their duty has been brought before a national judiciary of a respective sending state has been in the United Kingdom (UK). On 7 April 2004 the UK High Court ruled in civil proceedings that the UK government should pay compensation to Mohamet and Skender Bici for damages caused when in 1999 UK KFOR troops opened fire on the car in which they were travelling in an incident in which two other passengers in the car, Fahri Bici and Avni Dudi, were killed. An investigation by the UK Royal Military Police into the incident had cleared the three soldiers responsible for opening fire.

However, the presiding judge ruled that the soldiers had deliberately and unjustifiably caused the injuries. The judge reportedly reached the "clear conclusion" on the evidence, including that of witnesses and "extremely powerful" forensic findings, that the soldiers were not being threatened with being shot when they opened fire, and there were no reasonable grounds for them to believe that they were. He reportedly stated that: "The British army can justifiably be proud of the operation it carried out in Kosovo. But soldiers are human; from time to time the mistakes are inevitable. In this case the fall from the army's usual high standards led to tragic consequences for the victims and their families... The Queen's uniform is not a licence to commit wrongdoing ... The army should be held accountable for such shortcomings." (See UK daily *The Guardian*, 8 April 2004.) Amnesty International believes that the court ruling indicates a failure by the UK military authorities to adequately investigate the incident in question, and illustrates the defects in the NATO system of investigating allegations of human rights abuses committed by its troops.

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<sup>19</sup> This is consistent with Article 19 of the Draft Relationship Agreement between the [International Criminal] Court and the United Nations which states: "If the Court seeks to exercise its jurisdiction over a person who is alleged to be criminally responsible for a crime within the jurisdiction of the Court and if, in the circumstances, such person enjoys, according to the relevant rules of international law, any privileges and immunities as are necessary for the independent exercise of his or her work for the United Nations, the United Nations undertakes to cooperate fully with the Court and to take all necessary measures to allow the Court to exercise its jurisdiction, in particular by waiving any such privileges and immunities." [www.un.org/law/icc/asp/1stsession/report/english/part\\_ii\\_g\\_e.pdf](http://www.un.org/law/icc/asp/1stsession/report/english/part_ii_g_e.pdf)

## 2.1 The lack of legal basis for KFOR detentions

Amnesty International believes that there is no legal basis for the continuation of such KFOR detentions. The organization has also repeatedly expressed its view that the detention of people by KFOR without review by any judicial body violates national and international laws and standards. Amnesty International understands from previous correspondence with both KFOR and the Special Representative of the (UN) Secretary General (SRSG) that KFOR considers that their authority to arrest derives from UNSC resolution 1244/99, which at Para. 9(d) charges the international security presence in Kosovo with responsibility for “ensuring public safety and order until the international civilian presence can take responsibility for this task”. Amnesty International believes that, given the progress made by UNMIK in establishing the rule of law in Kosovo over the past three years - and in particular, the existence of a fully-functioning international (UN CIVPOL) and domestic (KPS) police service - this justification is no longer applicable. In this period, Kosovo has seen the development of a comprehensive body of applicable law and UNMIK Regulations with regard to arrest and detention and the establishment of a functioning judicial system, and Memoranda of Understanding have been signed between KFOR and CIVPOL, within each of the KFOR Multi-National Brigade (MNB) Boundaries. Under these Memoranda, investigative primacy, including the power of arrest and detention, has been transferred from KFOR to CIVPOL in each of the KFOR Multi-National Brigade areas.

In addition, Amnesty International considers that any detentions carried out on the basis of UNSC resolution 1244/99 which fail to guarantee detainees’ rights set out under applicable law and in international standards are unlawful.

### 2.1.1 COMKFOR Detention Directive 42

Furthermore, Amnesty International is concerned that COMKFOR Detention Directive 42 (9 October 2001) allows COMKFOR and section level KFOR commanders of MNBs to authorize detentions which are outside of the rule of law and violate international human rights which, under UN SC 1244/99, KFOR is charged to protect and promote. Specifically COMKFOR Directive 42 allows COMKFOR to authorize detentions for long periods without judicial authorization or any recourse to judicial review. Section 2 (e) of this directive states: “I [COMKFOR] will continue to use the authority to detain but only in cases where it is absolutely necessary. It must be noted that this authority to detain is a *military* decision, not a *judicial* one.” [Emphasis added]

The directive in Section 5 (b) also allows MNB commanders to detain people for up to 72 hours on their own authority even without recourse to COMKFOR approval which is needed for detention after this initial 72-hour period.

This raises a number of concerns, especially as the Organization for Security and Cooperation In Europe (OSCE) reported in 2002, on the basis of information received from KFOR, that an average of 10 persons per month were held under the authority of MNB

Commanders' authority.<sup>20</sup> In May 2003 the OSCE reported that although there had been a "general decrease in the number of persons held by KFOR held in US KFOR's Bondsteel camp [where KFOR detainees are held]", KFOR detentions continued. The OSCE re-iterated its concerns that such detentions were illegal.<sup>21</sup>

Detention by COMKFOR can initially be for up to 30 days but can be extended by COMKFOR. As highlighted above, under point 2 (e), COMKFOR's authority to detain is military not judicial. In fact Directive 42 gives COMKFOR powers to, if he so wishes, arbitrarily detain people without any recourse. There is no mention of judicial oversight or the possibility of detainees challenging the legality of their detention. On the contrary, point 5 (c) (8) states: "Once COMKFOR has detained a person, no one may release that person during the ordered detention period without the written approval of COMKFOR." COMKFOR is assisted by a Detention Review Panel whose members are designated by COMKFOR and which is chaired by KFOR LEGAD [the KFOR legal advisory body]. This panel reviews all detention requests and makes recommendations to COMKFOR (point 5 (c) (3)). KFOR LEGAD also carries out its own recommendations independent of the panel recommendation (point 5 (c) (4)). But these are recommendations. Authority rests with COMKFOR who operates outside judicial scrutiny. Point 7 (k) in the section dealing with 'Rules for detention and treatment of detainees' states: "Detainees may submit petitions regarding their detention." However, these petitions can only be submitted to COMKFOR – the very person who authorized detention - not to an independent judicial body.

Amnesty International also notes the concerns expressed by the UN Special Representative of the Commission on Human Rights, Jose Cutileiro, that arrests and detentions by KFOR, under COMKFOR Detention Directive 42, "may be incompatible with basic human rights principles"; the Special Representative has also questioned the need for KFOR detention practices on the basis that the grounds on which KFOR may arrest under Directive 42 are "adequately covered by existing legislation".<sup>22</sup>

Similar concerns were expressed by the OSCE which recommended that "KFOR cease detentions forthwith and officially renounce its authority in this area".<sup>23</sup> as well as by the Commissioner for Human Rights of the Council of Europe, Alvaro Gil-Robles.<sup>24</sup>

Despite these authoritative pronouncements by international human rights experts, on 26 November 2003 then-NATO Secretary General, Lord Robertson, replied to Amnesty International's memorandum of October 2003. In his reply he stated that he was:

*"content that we are maintaining an acceptable balance between a Force Commander's necessary powers to detain and the essential rights of those detained.*

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<sup>20</sup> OSCE Mission in Kosovo, *Kosovo: Review of the Criminal Justice System*, September 2001 - February 2002, p. 51, footnote 92.

<sup>21</sup> OSCE Mission in Kosovo, *Kosovo: Review of the Criminal Justice System*, March 2002 - April 2003, pp. 33-34.

<sup>22</sup> E/CN.4/2002/41, 8 January 2002, pp. 23-4.

<sup>23</sup> OSCE Mission in Kosovo, *Kosovo: Review of the Criminal Justice System*, March 2002 - April 2003, p. 33.

<sup>24</sup> Council of Europe, Office of the Commissioner for Human Rights, *Op. Cit.*, pp 22-23, paras 88-97.

*On the specific issue of the legality of detention operations carried out by KFOR, I have nothing to add further to my previous correspondence... The relevant procedures remain in place for the exercise of KFOR's powers with regard to detention, including through Directive 42, which places the correct emphasis upon the need for correct treatment, whilst ensuring that detentions are lawful and fully respectful of international law."*

Amnesty International believes that persons detained solely under Directive 42 are victims of arbitrary detention in clear contravention of Article 5 of the ECHR and Article 9 of the ICCPR in that they have not been deprived of their liberty in accordance with procedures prescribed by applicable law, including their right to judicial scrutiny of their detention, and their right to *habeas corpus*. The non-derogable nature of the right to *habeas corpus*, even in times of emergency, has been affirmed by the (UN) Human Rights Committee.<sup>25</sup> Judgments by the European Court of Human Rights make it clear that there must be judicial supervision of detention and respect for the rights of detainees even during emergency situations and armed conflicts.<sup>26</sup>

**Amnesty International is:**

- **calling for KFOR to respect international human rights standards and stop detaining people arbitrarily;**
- **calling on KFOR to immediately turn over to the domestic authorities all those they arrest who are not connected to the NATO-led military mission;**

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<sup>25</sup> See UN Human Rights Committee, *General Comment No. 29: States of Emergency (Article 4)*, which stated: "Safeguards related to derogation, as embodied in article 4 of the Covenant, are based on the principles of legality and the rule of law inherent in the Covenant as a whole. As certain elements of the right to a fair trial are explicitly guaranteed under international humanitarian law during armed conflict, the Committee finds no justification for derogation from these guarantees during other emergency situations. The Committee is of the opinion that the principles of legality and the rule of law require that fundamental requirements of fair trial must be respected during a state of emergency. Only a court of law may try and convict a person for a criminal offence. The presumption of innocence must be respected. In order to protect non-derogable rights, the right to take proceedings before a court to enable the court to decide without delay on the lawfulness of detention, must not be diminished by a State party's decision to derogate from the Covenant". CCPR/C/21/Rev.1/Add. 11, para. 16, 31 August 2001.

<sup>26</sup> In the following two cases, the countries involved had derogated from provisions of the ECHR on the basis of states of emergency. These cases examine measures taken regarding detention in light of their necessity and proportionality. *Brannigan and McBride v. the UK*, Judgment of the European Court of Human Rights, 26 May 1993, in which the Court stated that a period of seven days before bringing a detainee before a court was legitimate in an emergency situation. However, it noted that in Northern Ireland all detainees had the right to *habeas corpus* and access to a lawyer within 48 hours and to a doctor and family, while in *Aksoy v. Turkey*, European Court of Human Rights, 18 December 1996, the Court considered 14 days was too long even in a region suffering armed conflict, especially as there was no right of *habeas corpus* and access to a lawyer, doctor or relative was denied. Similarly in the decision of 29 September 1999 by the Inter-American Commission on Human Rights regarding *Coard et al. v. United States*, the Commission stated that detention for nine to 12 days without access to an independent review of the legality of their detention was too long for the US army to detain persons, even though the US army was engaged in hostilities for some of that time.

- **calling for COMKFOR Detention Directive 42 to be immediately revoked;**
- **calling on KFOR to ensure reparations including paying appropriate compensation to victims of human rights violations committed by KFOR members;**
- **calling on NATO to grant jurisdiction to the Kosovo Ombudsperson's Office to extend its mandate to cover KFOR activities;**
- **calling for UNMIK Regulation 2000/47 'On the Status, Privileges and Immunities for KFOR and UNMIK and their Personnel in Kosovo' to be amended so that the "exclusive jurisdiction of the respective sending States" be ended in cases of alleged human rights violations by KFOR personnel, and that the decision to waive immunity in such a case be taken by the UN rather than by the commanders of the respective national element;**
- **calling on NATO to publicly commit itself to abide by the highest standards of international human rights law, and to ensure a common interpretation and application of such standards;**
- **calling on NATO to establish a centralized transparent procedure whereby allegations of human rights violations by KFOR troops are thoroughly and impartially investigated, to bring alleged perpetrators to justice in accordance with international standards, and to make adequate reparation if the allegations are substantiated;**
- **recommending to the UN that it consider establishing an international independent oversight mechanism - such as an international Ombudsperson - with full authority to investigate or ensure that effective investigations are conducted into allegations that actions by members of UN authorized international operations fall short of international human rights or humanitarian law standards; to monitor the actions taken by troop contributing countries to bring perpetrators to justice or subject them to appropriate disciplinary procedures; and to report and make recommendations to the UN Secretary-General if such actions are deemed insufficient.**

### **3. Police torture/ill-treatment and impunity**

The concerns raised above are amplified by Amnesty International's concerns at the apparent impunity enjoyed by some members of CIVPOL and KFOR suspected of violations of human rights and criminal offences against the civilian population in Kosovo. This was highlighted by the case of an Austrian CIVPOL officer, Martin Almer, suspected, along with three members of the Kosovo Police Service (KPS), of the torture and ill-treatment of an ethnic Albanian detainee, Gezim Curri. Amnesty International is informed that the officer's

immunity from prosecution - enjoyed by all UNMIK personnel under UNMIK Regulation 2000/47<sup>27</sup> - was waived by the UN and he was arrested on 26 February 2002 and subsequently placed in investigative detention. However, he was reportedly subsequently driven by Austrian officers across the border into Macedonia, from where he was flown to Austria. Following an investigation by CIVPOL into the alleged ill-treatment of the detainee and the Austrian police officer's exit from Kosovo, the case file was passed to an international investigative judge who formally indicted the suspect. In June 2002 Amnesty International wrote to the Austrian government who, despite an international arrest warrant, continued to refuse to extradite the officer to face the charges or bring him to justice. According to a report in the Viennese daily *Die Presse* of 6 June 2002, the officer was still working in the Austrian police force. On 7 October 2003 Martin Almer was sentenced *in absentia* to three years' imprisonment, while two former KPS officers, Feriz Thaqi and Isa Olluri, were sentenced to six months for ill-treatment and obtaining a false confession by force.

#### **4. Discrimination against minorities**

The continuing impunity, and the failure to bring the perpetrators to justice, continue to threaten the rights of minorities in Kosovo, and the rights of minorities from Kosovo currently living as internally displaced persons (IDPs) in Serbia and Montenegro who wish to return to their pre-war homes.

UNMIK has guaranteed the rights set out in the Council of Europe's Framework Convention for the Protection of National Minorities (Framework Convention). Furthermore, in May 2003 UNMIK requested to the Council of Europe that Kosovo report to the Advisory Committee of the Framework Convention (as "an interested party" rather than as a State Party as final status of Kosovo is still undecided) but in February 2004 had yet to receive a decision from the Council of Europe on this. In early February 2004 a Standards Implementation Plan to implement the benchmarks, by which Kosovo's progress towards a democratic and tolerant society is to be measured, was awaiting approval from the Provisional Institutions of Self-Government (PISG). This plan has explicit reference to the Framework Convention and obliges not only reporting to the Framework Convention's Advisory Committee but also implementation of the Committee's recommendations.<sup>28</sup>

However, although there was some improvement in the security situation in the province, attacks against minorities and against minority properties have continued and appeared to escalate in 2003. In January 2003 KFOR reversed the decision taken in late 2002 to remove protection from Orthodox churches and monasteries against attacks by ethnic Albanians. In June 2003 a Serb family, 80-year-old Slobodan Stolić, his 78-year-old wife Radmila and 55-year-old son Ljubinko were brutally murdered in Obilić/Obiliq and their house burnt in what was seen as a racist attack to intimidate remaining Serbs into leaving the

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<sup>27</sup> Section 6.1 of UNMIK Regulation 2000/47 provides that the UN Secretary-General may waive the immunity of any UNMIK personnel in any case where, in his opinion, the immunity would impede the course of justice.

<sup>28</sup> Information from James E. Rodehaver, Minority Advisor in UNMIK's Office of Returns and Communities.

area. In June 2003 KFOR announced that the security situation in Uroševac/Ferizaj had deteriorated with arson attacks on minority properties and an explosion in the yard of an Orthodox church. On 13 August, the day the new Special Representative of the Secretary General, Harri Holkeri, arrived in Kosovo, a gun attack on a swimming party in the Serb enclave of Goraždevac/Gorazhdvec near Peć/Pejë killed two Serb youths and wounded several others. Grenade attacks on houses are reported, and the stoning of vehicles, perceived as belonging to minorities, widespread.

Perpetrators of ethnically motivated attacks are rarely brought to justice. According to UNHCR, the failure to investigate ethnically motivated crimes has contributed to a reported lack of confidence in both law enforcement and the judiciary amongst minority communities, often resulting in the under-reporting of small-scale incidents – even in areas where the overall situation of minorities has improved. Under-reporting is also motivated by the fear of exacerbating tensions or inviting retaliatory attacks, as well as a perceived lack of response by law enforcement agencies. In September 2002, for example, one Serb and three Ashkali residents of the Plemetina/Plemetin Temporary Community Shelter were reportedly attacked by security guards from the nearby *Korporata Energjetike e Kosovës* (KEK) power station, yet according to UNHCR no proper investigation has ever been conducted. In other cases where Kosovo Serbs have been attacked – for example, in cases of stone throwing – UNHCR has observed that although KPS attend, they have rarely taken any effective measures to apprehend the perpetrators. Similarly, if perpetrators have been arrested by KFOR and handed over to UNMIK police, cases were seldom investigated.<sup>29</sup>

Minorities also faced discrimination in access to employment, medical care and education (see *Serbia and Montenegro (Kosovo/Kosova): Amnesty International's concerns for the human rights of minorities in Kosovo/Kosova*, AI Index: EUR 70/010/2003).

Daily intimidation of minority communities restricts their freedom of movement. The fear of travelling outside guarded enclaves contributes to feelings of imprisonment and exclusion. Such restriction results in indirect discrimination, preventing minority access to basic rights and services such as housing, education and medical treatment.<sup>30</sup>

Loss of freedom of movement for members of minority communities is the direct consequence of the continuing impunity enjoyed by perpetrators of ethnically motivated attacks. Although many have not been physically attacked themselves, they experience harassment and constant fear of attack.

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<sup>29</sup> UNHCR Kosovo, *Update on the Situation of Roma, Ashkaelia, Egyptian, Bosniak and Gorani in Kosovo*, January 2003.

<sup>30</sup> The situation regarding education and medical treatment for minority Serbs is complicated by the parallel structures in Serb enclaves and municipalities where Serbs are the majority. These parallel structures are supported by the Serbian state which offers salaries to teachers and medical staff double that offered in Serbia proper. In addition Serbian teaching staff in these structures can receive payment from the relevant Kosovo ministry, although in such cases the Serbian state often reduces the 'double funding' figure: either way Kosovo Serb teachers and medical staff earn considerably more than either their counterparts in Serbia or Kosovo Albanians. This is to compensate them for working in Kosovo and to encourage them to stay in their posts. See OSCE Mission in Kosovo, Department of Human Rights and Law, *Parallel Structures in Kosovo*, October 2003.

The right to freedom of movement is guaranteed under international and regional human rights laws incorporated into applicable law in Kosovo. The Constitutional Framework provides for all communities the right to “[e]njoy unhindered contacts among themselves and with members of their respective communities within and outside of Kosovo”.

In Kosovo private individuals and groups, not states or governments, are responsible for the attacks, abuse and harassment. However, it is the state’s duty of “due diligence” to guarantee minority groups their right to freedom of movement. UNMIK and the Provisional Institutions of Self-Government (PISG) need to counter the climate of fear. Those who contravene UNMIK Regulation 2000/4 – On the Prohibition against Inciting to National, Racial, Religious or Ethnic Hatred, Discord or Intolerance – can be imprisoned for up to five years (eight years for officials). However, only one person is known by Amnesty International to have been arrested under this law. Legislation on minorities, envisaged in the Constitutional Framework, has yet to be introduced.

**Amnesty International is calling for:**

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- **KFOR and UNMIK to renew and strengthen efforts to enable members of minority communities to enjoy freedom of movement, until such time as a security presence is no longer required to guarantee this right;**
- **UNMIK to seek to establish confidence-building measures and a constructive dialogue between majority and minority communities at both political and grass-roots level;**
- **UNMIK Police to enforce the law on racially motivated abuse (UNMIK Regulation 2000/4) and investigate allegations of racist harassment and threats promptly, thoroughly and impartially. Those responsible should be brought to justice or, if minors, subject to appropriate measures in accordance with international human rights standards;**
- **The Kosovo Assembly to adopt laws and enforcement mechanisms to prevent defamation and hate speech, as required under the Constitutional Framework (Article 5.4), and develop initiatives to encourage tolerance between communities and eliminate racism;**
- **UNMIK and the Kosovo Assembly to amend the Constitutional Framework to incorporate the International Covenant on Social and Economic Rights;**
- **The Kosovo Assembly to urgently pass the Draft Omnibus Anti-Discrimination Law and ensure access to effective legal remedies for all those alleging discrimination;**
- **The Kosovo Assembly should pass legislation and implement measures to ensure that all communities enjoy the rights to employment, health care and education guaranteed in the Constitutional Framework.**

## 5. Trafficking in women and girls for forced prostitution<sup>31</sup>

Amnesty International considers that the trafficking<sup>32</sup> of women into forced prostitution is one of the most widespread and pervasive forms of violence against women.<sup>33</sup> Since the deployment in July 1999 of an international peacekeeping force (KFOR) and the establishment of a UN civilian administration (UNMIK), Kosovo has become a major destination country, as well as increasingly a source country, for women and girls trafficked into forced prostitution. Amnesty International notes the repeated remarks of the UN Special Rapporteur on Violence against Women on the association between the growth of trafficking of women and children and post-war militarization, complicity by peace-keeping forces, the impunity enjoyed by perpetrators, and the necessity for means of ensuring the accountability of such forces.<sup>34</sup>

The development of the trafficking of women and girls for forced prostitution into Kosovo was observed by the Special Rapporteur on Violence against Women in her address to the UN Human Rights Commission in April 2001, in which she referred to reports of a “vast increase in trafficking activity” in Bosnia-Herzegovina and Kosovo. She stated:

*“It is absolutely essential that all UN forces are held to the same standards of international human rights law as are nation states..... To do otherwise, creates a climate of impunity in which offences proliferate ... [e]specially where UN is running administrations such as in Kosovo and East Timor we feel it's absolutely essential that some kind of structure be in place to deal with these kinds of issues.”<sup>35</sup>*

Following the arrival of KFOR in July 1999, by late 1999 the United Nations Development Fund for Women (UNIFEM) had reported significant concentrations of organized prostitution, involving trafficked women, in four locations close to major

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<sup>31</sup> For a detailed description of the trafficking of women and girls for forced prostitution in Kosovo, see Amnesty International, “*So does that mean I have rights?*”: *Protecting the human rights of women and girls trafficked for forced prostitution in Kosovo*, (AI index EUR 70/010/2004), 6 May 2004.

<sup>32</sup> For the purposes of this report, Amnesty International uses the definition of trafficking in persons set out in Article 3 of the *UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children*, (the Palermo Protocol), supplementary to the UN Convention against Transnational Organized Crime. Although Kosovo is not a signatory to the Convention or its protocols, representatives of Kosovo were among government ministers from Stability Pact for South-Eastern Europe (SPSEE) countries who signed an “Anti-Trafficking Declaration” in Palermo on 13 December 2000.

<sup>33</sup> Amnesty International uses as its definition of violence against women Article 1 of the *UN Declaration on the Elimination of Violence against Women* (UN GA resolution 48/104, 20 December 1993): “any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such actions, coercion or arbitrary deprivation of liberty, whether occurring in public or private life”.

<sup>34</sup> See for example, E/CN.4/2001/73, p.19, paras. 59 and 60.

<sup>35</sup> *UN peacekeepers fuelling trafficking in women, UN expert warns*, AFP, 9 April 2001

concentrations of KFOR troops, with the military making up the majority of clients, some of whom were allegedly also involved in the trafficking process.<sup>36</sup> KFOR and UNMIK were publicly identified in early 2000 as a causal factor by the International Organization for Migration (IOM), then the lead counter-trafficking agency, which had established a presence in Kosovo in January 2000.<sup>37</sup> In May 2000, Pasquale Lupoli, Chief of Mission, alleged that KFOR troops and UN workers in Kosovo had fed the “mushrooming sex trade in which young girls are being forced into prostitution by criminal gangs”, which he attributed “largely [down] to the international presence there”.<sup>38</sup> However, since then the clientele has changed with over 80 per cent estimated to be Kosovars.

There has now been a marked growth in trafficking in Kosovo: from the 18 establishments identified by UNIFEM in late 1999, 75 or so were listed in the first “Off-Limits List”<sup>39</sup> issued by UNMIK Police in January 2001, and in July 2003, the UNMIK list detailed over 200 bars, restaurants and cafes where trafficked women were suspected to work, by March 2004 the number had fallen slightly to some 180.

In addition to women trafficked into Kosovo from outside, predominantly from Moldova, Bulgaria and Ukraine, increasing numbers of Kosovar Albanians – the majority of them believed to be minors – are being internally trafficked, while non-governmental organizations in European Union (EU) countries report that some Kosovar Albanian women and girls are now being trafficked into EU countries.<sup>40</sup>

The authorities were slow to respond to the situation: indeed it appears that the members of the international community were, initially at least, the main clients and prosecutions for traffickers were rare with low sentences the norm. To specifically address the problem, the Police Trafficking and Prostitution Unit within CIVPOL was formed in October 2000, and in October 2003 UNMIK announced that since its formation it had raided over 2,000 places, rescued 300 trafficked victims and brought 140 charges. However, despite such measures, trafficking of women and girls for forced prostitution remains widespread and allegations of official complicity continue. On 9 June 2003 UNMIK police arrested three Kosovo Albanians and one Pakistani member of the international civilian police force (CIVPOL), whose immunity from prosecution (enjoyed by all UNMIK personnel) was waived, for sexual slavery and prostitution. The three Kosovars were charged with obscene behaviour, rape and other sex crimes, causing injuries and neglectful treatment of minors, while the CIVPOL officer was charged with obscene behaviour and failure to perform official duties.

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<sup>36</sup> 18 premises were identified, including in the Gnjilane/Gjilan area, close to US Camp Bondsteel, serving the US military and local clients; in Prizren, where users included German KFOR soldiers and other internationals; in Pec/Pejë, where residents reported Italian KFOR soldiers as clients; and in Northern Mitrovica, Rachel Wareham, *No Safe Place*, pp. 89, 94-95, UNIFEM 2000.

<sup>37</sup> See also Jane Gronow for UNICEF, *Trafficking in Human Beings in South-eastern Europe*, 15 August 2000, p.84.

<sup>38</sup> *Group launches campaign against forced prostitution in Kosovo*, AFP, 24 May 2000.

<sup>39</sup> This list the places off-duty KFOR soldiers are forbidden to frequent.

<sup>40</sup> IOM Kosovo, Counter-Trafficking Unit, Return and Reintegration Project, *Situation Report*, May 2003.

Even after women and girls have escaped their traffickers or been “rescued” by the police, some were subsequently vulnerable to a further series of violations by law-enforcement, criminal justice and other agencies. Some found themselves arrested and imprisoned for prostitution or immigration status offences, and denied access to the basic rights of detainees. Those who are recognized as victims of trafficking may be denied access to their rights to reparation and redress for the violations they have suffered, and they may not be afforded adequate protection, support and services. Others found that they had little or no protection from their traffickers if they chose to testify in court.

Amnesty International urges that the protection of the rights of the victims of trafficking be adopted in Kosovo by the Provisional Institutions of Self-Government (PISG) and UNMIK in their construction and implementation of a National Plan of Action on Trafficking as required by the Stability Pact for South Eastern Europe Task Force on Trafficking of which Kosovo is a member. The process of constructing such a plan started at a conference held in Priština/Prishtinë on 20-22 October 2003.

**Amnesty International is calling on the Kosovo authorities (UNMIK, KFOR and PISG as relevant) to:**

- **do their utmost to implement all the necessary measures to end the trafficking of women and girls to, from and within Kosovo for forced prostitution;**
- **ensure the protection of victims of trafficking;**
- **implement policies which do not in any way discriminate against the victims of trafficking, and which fully afford them their rights;**
- **ensure that UNMIK and KFOR personnel and others reasonably suspected of violations of human rights violations and criminal offences in connection with trafficking, including the knowing use of the services of trafficked women and girls, are brought to justice.**