



**Tenth Assessment of the Situation of Ethnic Minorities in Kosovo**  
(Period covering May 2002 to December 2002)

March 2003

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## GLOSSARY

ABC	Advisory Board on Communities
AoK	Assembly of Kosovo
CCK	Coordination Center for Kosovo and Metohia
CEC	Central Election Commission
CoE	Council of Europe
CSW	Centre for Social Work
DJA	Department of Judicial Administration
DOJ	Department of Justice
ECHR	European Convention on Human Rights
fYROM	Former Yugoslav Republic of Macedonia
HPCC	Housing and Property Claims Commission
HPD	Housing and Property Directorate
ICRC	International Committee of the Red Cross
IDP	Internally Displaced Persons
IOM	International Organisation for Migration
IPWGHR	Inter-Pillar Working Group on Human Rights
JIS	Judicial Integration Section
KCA	Kosovo Cadastral Agency
KCB	Kosovo Consolidated Budget
KEK	Kosovo Energy Corporation
KFOR	Kosovo Force
KFOR MNB	KFOR Multi-National Brigade
KJPC	Kosovo Judicial and Prosecutorial Council
KPS	Kosovo Police Service
KPC	Kosovo Protection Corps
LCO	Local Community Officer
LWG	Local Working Group
MCO	Municipal Cadastre Office
MESP	Ministry of Environment and Spatial Planning
MEST	Ministry of Education, Science and Technology
MHC	Municipal Housing Committee
MLSW	Ministry of Labour and Social Welfare
MPS	Ministry of Public Services
MWG	Municipal Working Group
OCA	Office of Community Affairs
OCHA	UN Office for the Coordination of Humanitarian Affairs
OHCHR	UN Office of the High Commissioner for Human Rights
OLA	SRSG Office of the Legal Advisor
OPM	Office of the Prime Minister
ORC	SRSG Office for Returns and Communities
OSCE	Organization for Security and Co-operation in Europe
PISG	Provisional Institutions of Self-Government
PTK	Post Telecom Kosovo
RAE	Roma/Ashkaelia/Egyptian
RIG	Regional Implementation Group
RWG	Regional Working Group
SGA	Specific Geographical Areas (UNMIK Regulation 2001/17)
SPU	Special Police Unit
SRSG	Special Representative of the Secretary-General

UN SCR  
UNHCR  
UNICEF  
UNMA  
UNMIK  
WHO

United Nations Security Council Resolution  
United Nations High Commissioner for Refugees  
United Nations Children's Fund  
UNMIK Municipal Administrator  
United Nations Interim Administration Mission in Kosovo  
World Health Organisation

## **EXECUTIVE SUMMARY**

This report is the tenth in a series of Assessments of the situation of ethnic minorities in Kosovo, conducted jointly by the OSCE and the UNHCR. This tenth Assessment provides an update on the conclusions and recommendations put forward by the last Assessment. It covers the period of time from May to December 2002. Acknowledging the significant developments in the legal framework and decision-making processes in Kosovo during the reporting period, the report also includes discussions on developments which have affected the situation of minority communities in Kosovo.

The ninth Assessment published in April 2002 identified and scrutinised key areas of concern for the situation of ethnic minorities in Kosovo: security and freedom of movement, access to essential services, participation in political and civil structures, incentives to inter-ethnic dialogue, and patterns of the return process. At the time, the Assessment noted the positive trends of increased security and mobility of minorities in Kosovo, but remained critical of the slow and inconsistent progress in guaranteeing minorities stable access to the judicial system and other services and a protective framework for their property rights. The Assessment also included an insight into the parallel structures existing in the northern Kosovo Serb-dominated municipalities. These were seen as a detrimental factor for the integration and inter-action of minorities with the majority population, and also as a significant deterrent to the efforts of the United Nations Interim Administration Mission in Kosovo (UNMIK) and the Provisional Institutions of Self-Government (PISG) towards ensuring sustainable institutions and structures for all communities throughout Kosovo.

The present report describes the movements in these areas over the reporting period and assesses to what extent the recommendations put forward in the ninth Assessment have been implemented and what effect such actions have had on the conditions of minority communities within Kosovo and the returns process. Recognising and promoting the right of every individual, regardless of ethnic or other status, to return to their homes, the Assessment aims to assist UNMIK and the PISG with recommendations on how to further develop conditions for sustainable return. To this aim, the report creates a teleological link between the situation of ethnic minorities in Kosovo and the returns process. Accordingly, it analyses the effect that each development or setback of the policies and practices has on encouraging or discouraging returnees to restart their lives in the communities they were forced or induced to leave. As displaced persons are given a free and informed choice to return, the factors influencing them concern the progress achieved in the areas addressed by this report: security, freedom of movement, property, essential services, participation in civil and political structures, and inter-ethnic dialogue.

The report attempts to provide an objective overview of the security situation and freedom of movement in every area of Kosovo where minority communities are present. The Assessment notes that during the reporting period a limited increase in the level of security in some areas for minority communities was observed. The gradual decrease in ethnically motivated crime, the removal of KFOR checkpoints and the adoption of more flexible and less intrusive security arrangements, the increased participation of minority members in the Kosovo Police Service (KPS) and the judiciary represent signals that the situation of minority communities gives some grounds for encouragement. The Assessment finds, however, that minority communities continue to face varying degrees of harassment, intimidation and provocation, as well as limited freedom of movement.

With respect to access to justice, the Assessment examines the progress made in integrating the judiciary, including minority employment in the courts, as well as the level of physical access that minorities have to courts and detention facilities. It also discusses parallel structures. The report finds positive signs. Some progress has been made in integrating minorities into the judiciary and weakening the parallel court system during the reporting period. Still, the Assessment found that many minorities lack confidence in the UNMIK judicial system.

This Assessment examines issues of discrimination pertaining to minority communities in Kosovo, in the particular areas of access to education, employment, social services and health care. It finds that, whether direct or indirect, intentional or unintentional, discrimination continues to represent a significant obstacle to the ability of minorities to live reasonable lives in Kosovo. While the Advisory Board on Communities (ABC), which was established prior to the release of the last Assessment, has begun to examine issues of discrimination at a high policy level, the report finds that discrimination has not been adequately addressed at lower levels. Access to education, social services and health care has not consistently improved for minorities throughout Kosovo. Access to public sector employment has seen measured improvement during the reporting period, but an affirmative action policy, approved in principle, has yet to be implemented and overall levels of minority employment at central and municipal levels remain unsatisfactory. It is hoped that the promulgation and subsequent implementation of the new Administrative Direction implementing UNMIK Regulation 2001/36 will improve this situation. In highlighting some of the results of efforts made to recognise, eliminate and provide effective remedies against discrimination, the report identifies the draft Omnibus Anti-discrimination Law as a key step in combating discrimination as a general phenomenon, relevant for both minority communities and the majority population. The expediency of considering and adopting this Law by the PISG and UNMIK is an essential element for the promotion and enforcement of anti-discriminatory practices in Kosovo.

From the perspective of access to property rights, this Assessment again analyses the level of effective realisation of property rights enjoyed by minority communities as well as the impact of this on the ability of minorities to return sustainably. Access to property and realisation of property rights are assessed through a threefold test: awareness of legal rights, physical access to relevant adjudicative and executive bodies, and, once access is gained, the ability of the relevant organs to effectively guarantee the enjoyment of such rights. To do so, the report assesses the effectiveness of the Housing and Property Directorate (HPD) and Housing and Property Claims Commission (HPCC) mechanisms, the access of minority communities to cadastre services and reconstruction assistance, as well as the implementation of UNMIK Regulation 2001/17. The report finds that the level of access to property rights in these areas remains inadequate, despite some progress since the last Assessment. In particular, the report finds that despite encouraging trends, the operation of the HPD and HPCC requires continued attention to ensure effective protection of minority's property rights. Problems for minority communities continue in gaining access to cadastre services in relation to both the provision of and physical access to municipal services and the lack of a fully functioning and complete cadastre. The report also finds that UNMIK Regulation 2001/17 does not appear to have had a significant impact on sales of minority property, and that the implementation of it has proven problematic. Problems related to sales and access of agricultural land are also highlighted. With regards to reconstruction, the report concludes that minorities' access to such assistance appears to have improved, but that the protection of minorities' property rights depended upon the utilisation of the mechanisms in the UNMIK Housing Reconstruction Guidelines 2002. When not utilised, either within the Municipal Housing Committee or return process-related structures, property rights were endangered. Within the chapter, the new return process structures also are examined.

After the political deadlock that followed the November 2001 Kosovo wide Elections, this reporting period witnessed the launch and the manifestation of Kosovo wide provisional institutions on the political arena. At this point, some positive signals of engagement of the local political structures have been noted in inter-ethnic dialogue, though the full engagement of all political entities and structures will require much effort and support of the international community. In this vein, the report also highlights that as confidence-building encompasses a fundamental qualitative change in the political and social relations between ethnic groups, it requires active involvement and support from all possible actors, including all levels of the PISG, all local communities, the IDPs and potential returnees themselves, UNMIK, as well as involved international and local NGOS and the donor community. The report scrutinises the results of the October 2002 Municipal Elections and the potential effects that the new proportions of minorities in the municipal assemblies may have on the situation of minority communities in Kosovo. Confidence and tolerance building exercises are addressed in the context of efforts invested by both the international community and local NGOs towards achieving a strong civil society in Kosovo, which is then expected to undertake a major role in ensuring a system of checks and balances for the local political arena.

Considering the overall situation described in this report, the changes noted during the reporting period are not yet fundamental enough to conclude that conditions would exist for large scale return of ethnic minorities in the near future, underscoring the continuing need for international protection for members of ethnic communities, in particular Kosovo Serbs, Roma, Ashkaelia and Egyptians.

## **RECOMMENDATIONS**

### **Security and freedom of movement**

The ninth Assessment put forward a set of recommendations regarding security and freedom of movement. Progress on implementing these recommendations should continue.

- As this Assessment documents that limitations on freedom of movement for minority communities are many times based on perceptions as well as on the actual security situation, the UNMIK Community Police Unit should be further involved in confidence-building initiatives in all minority communities, in parallel with awareness raising campaigns with regard to their mandate, functions and benefits for the community.

### **Justice**

- The ongoing efforts by UNMIK to dismantle the parallel structures in the northern municipalities of Kosovo should be continued, in co-operation with the relevant Belgrade authorities. This relates to (1) parallel criminal proceedings as they create a risk of double jeopardy and can impact the fairness of trials and (2) parallel civil proceedings as they create an environment of legal uncertainty and prevent the integration of minorities into the judiciary.
- A public information campaign informing the members of minority communities about judicial integration and the establishment of the new courts would be welcome as a step toward encouraging these citizens to use and rely on the new courts. Such campaign could be organised by Pillar I, Pillar III, and/or any non-governmental organisation.
- The OSCE reiterates its recommendation that, in the future, cases should not be allotted on grounds of ethnicity. All sensitive cases involving judges and defendants of different ethnicities should be closely monitored by the OSCE and any judge displaying bias or discrimination should be disciplined through the Kosovo Judicial and Prosecutorial Council.

### **Education**

- The Ministry of Education, Science and Technology (MEST) should, in co-operation with KFOR, UNMIK Police and KPS, develop a comprehensive plan to improve equal access to education to all community members in Kosovo. This plan should also provide security for minority students, which should also include secure bus transportation.
- UNMIK and MEST should organise and implement a plan to provide for minority language education in accordance with international human rights standards.
- International governmental and non-governmental organisations have had some success in organising projects, which provide remedial education for members of the Kosovo RAE communities. UNMIK and MEST should study the “best practices” of these projects to duplicate and implement them Kosovo wide, in cooperation with international experts and NGOs.

### **Employment**

- The Ministry of Public Services must ensure the implementation of the Administrative Direction 2003/2 on the implementation of UNMIK Regulation 2001/36 on Kosovo Civil Service, and place a particular emphasis on the provisions enabling Community Proportional Representation (an affirmative action plan). Such a plan should include training for all civil servants on the scope of the A.D, in particular on the provisions relating to affirmative action. Further, an efficient internal system to monitor implementation will be crucial.
- In light of this new A.D, all hiring practices should be internally re-evaluated once the policies and procedures are established at all levels, as that will ensure fair hiring practices throughout the Kosovo Civil Service.

- The Omnibus Anti-discrimination Law should be approved by the Office of the Prime Minister (OPM), enacted by the Assembly and then implemented by the PISG. The implementation and enforcement mechanisms within the draft Law would provide effective remedies for members of all communities, for all forms of discrimination, in particular in cases of employment discrimination.
- The OPM, in co-operation with the Ministry of Public Services, should implement a Kosovo wide minority employment outreach programme to attract qualified candidates from minority communities.

### **Social services**

- The Ministry of Labour and Social Welfare should develop a comprehensive policy to further strengthen measures providing co-operation and flow of information between Centres for Social Work (CSWs) employees working in majority and minority areas. Initiatives such as regular information sharing meetings and common training sessions should be implemented by the CSWs Directors and supported by the Ministry of Labour and Social Welfare.
- Sustainable outreach strategies, entirely run by the CSWs employees, should be developed with particular attention to those homebound minorities living either in urban or in remote rural areas.
- The CSWs should provide proportional allocation of social protection officers to areas where inhabited by minority communities.

### **Healthcare**

- The Ministry of Health must take action towards the implementation of an integrated healthcare system, able to serve majority and minority communities alike, supporting those facilities already serving mixed communities and duplicating best existing practices. Coordinated efforts and the dialogue between the Ministry of Health, UNMIK and the Ministry of Health in Belgrade should lead to a sustainable solution to the ongoing presence of parallel healthcare systems in Kosovo.
- The Ministry of Health should promptly issue the “Charter of Patients Rights”, currently under draft form, which includes a provision on access to healthcare without discrimination.
- The Ministry of Health must continue its efforts in raising awareness about available healthcare services among minority communities, with a special focus on Kosovo RAE communities.

### **Housing and property rights**

The ninth Assessment put forward a set of recommendations regarding housing and property rights as they relate to minority communities. The follow-up on those recommendations, conducted by the OSCE, has shown that there has been no significant development on some of the areas touched upon by the last Assessment. Therefore, the OSCE would not restate those recommendations.

- Previous recommendations regarding resource-allocation to HPD/HPCC, increased awareness raising activities and enhanced case-management remain valid and should be addressed with priority.
- The HPD should open an office in Skopje (FYROM) to better facilitate access of minority claimants displaced outside of Kosovo.
- Every municipality should have staff in appropriate positions trained on the mechanisms and competencies of HPD mechanisms. This person should act as a contact person for the HPD within the local self-government body.
- The complementary legislation required to implement UNMIK Regulation 2002/22, creating the immovable property rights register, should be passed by the Assembly and approved by

UNMIK promptly. Work towards making the cadastre fully functional should continue to be a priority of UNMIK and the PISG.

- Municipal officials and law enforcement officials should take appropriate action to remedy and prevent illegal construction and illegal use of agricultural and residential land of minority property right holders.

### **Return-related Reconstruction**

- Future Housing Reconstruction Guidelines should be enacted in the form of Administrative Directions. The Ministry of Environment and Spatial Planning (MESP) should draft laws to present to the Kosovo Assembly outlining non-discriminatory allocation criteria, transparent selection processes, and mechanisms providing accountability and the right to appeal.
- Future forms of the Guidelines should not only assess a community's overall vulnerability as criteria for reconstruction assistance, but also provide for mechanisms addressing individual assessments of vulnerability.
- NGOs operating as Municipal Housing Committees' (MHC) implementing partners, should be held accountable by both the MHCs and MESP for their conduct toward minorities. Future forms of the Guidelines should establish appropriate mechanisms accordingly. Every municipality should appoint a representative to take part in the evaluation/assessment process of the NGO and to report any irregularities to the MHC respectively to the MESP.
- The ongoing turn-over of responsibility to municipalities from UNMIK should be accompanied by the establishment of an effective interim monitoring mechanism, such as monthly reporting, to create an acceptable level of accountability of the relevant Directorates and the MHCs toward both UNMIK and MESP.
- Municipalities and the implementing partners should ensure that those who receive reconstruction assistance vacate the properties which they illegally occupy thereby enabling others to return from displacement. The HPD/HPCC and the courts should be actively involved in remedying illegal occupation.
- Municipalities and implementing partners have to ensure that property rights are confirmed prior to reconstruction. The HPD should be actively involved in this confirmation process.
- UNMIK, specifically the Office for Return and Communities, should continue its efforts to ensure coherence, transparency, and consistency in decision- and policy-making structures pertaining to returns at municipal and regional level.

### **Return**

- The International Community and the PISG should continue to develop solutions for returnees of all ethnicities. They also should continue to strengthen all structures which have been established to respond to returnee needs.
- Activities related to inter-ethnic dialogue and tolerance-building are key to the creation of conditions for return. Given the influence of the PISG on local attitudes, it is strongly recommended that they intensify their active involvement in such activities throughout Kosovo.
- The PISG should increase their engagement in the return process. At the same time, UNMIK should lend strong support to all return-related activities carried out by the PISG, including those related to political dialogue and consensus building.
- The central PISG and UNMIK should encourage municipalities to actively participate in the return planning process and in the implementation of return projects.
- The PISG, UNMIK, donors and other relevant actors should ensure the efficient functioning of the MWGs, as they are main co-ordinating bodies and discussion forums for minority returns.

- Coordinated efforts should be made to disseminate timely and accurate information to IDPs as developed through the UNMIK/UNHCR Information framework for IDPs. The responsibility of the Kosovo media in promoting inter-ethnic dialogue should be fully recognised.

## **SECTION 1: SECURITY AND FREEDOM OF MOVEMENT FOR MINORITIES IN KOSOVO**

### **I. GENERAL ASSESSMENT**

The reporting period saw a continued reduction in the level of ethnically motivated crimes, particularly violent crimes, committed against members of minority communities. These figures should be seen in the context of decreasing levels of serious crime in Kosovo generally.

During the period KFOR has continued its “unfixing” strategy whereby the number of KFOR personnel assigned to “fixed” tasks – such as guarding threatened patrimonial sites or providing static vehicle check-points – has been reduced. Throughout the reporting period there has been a continuation of the policy of discharging these “fixed” troops in order to render them available for more flexible, responsive and less intrusive security operations. The “unfixing” strategy also applies to reducing permanent protection for vehicle convoys. Although KFOR bus or convoy escorts continue in certain areas, such as in the Pejë/Peć and Prizren regions respectively, the general trend is for KFOR to reduce its close protection for vehicle convoys, and to provide route security only.<sup>1</sup> The above policy has been developed as part of a security transition strategy mutually agreed and implemented with UNMIK Police. The transition strategy aims to decrease KFOR’s profile in the civilian community, and continues the process of transferring defined KFOR security tasks to the civil authorities. UNMIK Police is gradually reducing its escort service, with Kosovo Police Service (KPS) taking over where escorts are still deemed necessary.

Both KFOR and UNMIK Police are aware that any change in security measures may cause nervousness amongst minority communities. Consequently the changes appear to have been gradual, proportional and have been combined with an effort to increase the involvement of UNMIK Police and the KPS in providing security through effective policing and confidence building. In this context, there has also been increased emphasis on the provision of mixed ethnicity KPS patrols, and the first police station to be run entirely by KPS is now operational in Gračanica/Gračanicë. Decisions on the operational aspects of the implementation of the security strategy have been devolved to the KFOR Multi-National Brigades (MNBs) and UNMIK Police Regional command. The police and KFOR have therefore been able to vary the implementation of the transition strategy in response to localised security conditions, albeit within the overall framework of the move from martial to civil security.

Kosovo Serb political leaders have voiced strong opposition to the removal of KFOR fixed security measures, most recently in the context of the bomb attacks that damaged two Serb Orthodox Churches in Istog/Istok municipality during the night of 17 November, shortly after the removal of the KFOR fixed protection. However, amongst many members of the minority communities themselves, there appears to be a general understanding of the rationale behind the revised security measures, and a developing acceptance that their security is not being compromised by the new approach.

Notwithstanding the stabilisation of the security situation, the fear of harassment, intimidation and provocation remains part of everyday experience for members of minority communities throughout Kosovo. Members of minority groups, whether living in mixed communities or moving outside their own enclaves can become targets for grenade attacks, arson or physical

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<sup>1</sup> Route security includes checking the route in advance for threats, carrying out surveillance of the route at strategic points and having rapid reaction units available to respond at short notice to incidents along the route.

assault in particular against the Kosovo Serbs, Roma, Egyptians and in many cases, the Kosovo Ashkaelia throughout Kosovo. UNHCR surveys have revealed that harassment and assaults in many cases are linked to the issue of property, and are intended either to prevent returns or to force the minority members still living in the respective area to sell their property.<sup>2</sup> Assaults on minority groups may also arise out of competition for already limited economical resources in the surrounding community. With the exception of Kosovo Bosniaks in Mitrovicë/Mitrovica, the general security situation for both Kosovo Bosniak and Kosovo Gorani communities has stabilised with no serious ethnically motivated acts of violence against them reported since 2001.

In all regions, except Mitrovicë/Mitrovica, there are instances where members of the minority communities are able to use public transportation, i.e. bus or railway. The so-called privately run Kosovo Gorani shuttle from Dragash/Dragaš to Belgrade, transiting a number of Kosovo Albanian majority municipalities, attracts also Kosovo Serb passengers, and has so far not faced any security problems.

Freedom of movement varies widely, both within individual municipalities as well as between different ethnic communities. In some cases there has been an increase in reported security incidents, such as stone throwing (against pedestrians or moving vehicles), verbal harassment and even physical assault when the minority community now travel outside their area of habitation, village or municipality. In some cases, a firm response from UNMIK Police or KPS has stopped the violence.

Both minor and serious incidents go unreported, as the victims do not want to upset the delicate relations they have slowly established with the majority population. This reluctance to report incidents is exacerbated by a lack of faith in law enforcement agencies, especially the ability and/or willingness of these agencies to provide protection to the victims in case of reprisals.<sup>3</sup> A survey undertaken by UNHCR in October 2002 on the perception of the Kosovo RAE minorities with regard to their security situation revealed a tendency to not report incidents of harassment and intimidation to the police.<sup>4</sup> Furthermore, even when minorities report security incidents to law enforcement authorities those authorities do not always perform an adequate investigation.<sup>5</sup> As a result of the dynamic noted above, the police's ability to be a deterrent is impaired.

With regard to the minority communities' confidence in the KPS, the OSCE and UNCHR found that it depends directly on their involvement with the minority communities, and their proactiveness in visiting minority residents and following up on their complaints, rather than on the ethnic composition of the force. The presence of KPS officers drawn from minority communities does not, in itself, guarantee an improvement in the security situation for those communities, nor a more effective follow up of reported incidents. However, the minority

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<sup>2</sup> Update on the Situation of Roma, Ashkaelia, Egyptian, Bosniak and Gorani in Kosovo, UNHCR Kosovo, January 2003 (hereafter UNHCR Update January 2003).

<sup>3</sup> In Klinë/Klina, for example, a family remained silent when known perpetrators looted their house in September. More recently a male member of the same family was severely beaten by the same perpetrators. Neither of these incidents was reported to the police.

<sup>4</sup> This tendency is particularly prevalent among the approximately 400 Kosovo RAE residing in Zitkovac/Zitkovc and Chesmin Lug camps in northern Mitrovicë/Mitrovica, where there are frequent unreported incidents ranging from beatings to thefts.

<sup>5</sup> For example, in one case in the Plemetin/Plemetina collective shelter in Obiliq/Obilić in September, a Kosovo Serb and three Kosovo Ashkaelia were allegedly assaulted by Kosovo Energy Corporation (KEK) security guards near the power plant. The police improperly filed the report of the incident and, as a result, a proper investigation was not carried out.

communities appear to prefer dealing with ethnically mixed KPS patrols rather than patrols composed entirely of Kosovo Albanians.

One continuing problem is that of encouraging increased Kosovo Serb participation in the KPS; the Kosovo Serb KPS officers are often well respected by their colleagues and by the majority community, but may lack the respect of their own community. This is particularly apparent in the Mitrovicë/Mitrovica region, where there is a continued resistance to the KPS amongst the Kosovo Serb community, and a desire to maintain the parallel structure or to introduce Serb police from Serbia proper.<sup>6</sup> In contrast, one good example of trust across ethnic lines is the Kosovo Serb KPS officer in Rahovec/Orahovac, who carries out normal functions, including patrolling majority areas. Similarly, Kosovo Albanian KPS continue to patrol the enclaves in the Prizren area without problems. Again, mixed Kosovo Serb and Bosniak KPS patrols have been well received by the Kosovo Albanian villagers in the three Albanian minority villages in the Leposavić/Leposaviq municipality.

However, any lack of confidence in the police should not be seen solely as mistrust in KPS effectiveness, but in the law enforcement mechanisms as a whole. This applies in particular to the Kosovo Serb minority communities in Pejë/Peć, which have been targeted in a number of security incidents despite the conspicuous presence of UNMIK Police and/or KFOR.

As reported in the last Assessment, there still seems to be a divergence between the actual security situation and the perceived situation in some areas. The following sections will examine in more detail the situation and the perceptions of the different minority/enclave areas of Kosovo.

## **II. REGIONAL OVERVIEW**

### **Prizren region**

With the exception of Velika Hoca/Hoca e Madhe in the Rahovec/Orahovac municipality (where static protection for the Serb enclave is still in place) all checkpoint installations in the Prizren region have been removed as part of KFOR's ongoing "unfixing" strategy. This strategy has been accompanied by a continuing public information campaign, which emphasises the 'normalisation' of the security environment and the continuing transition of security responsibilities to the police. Freedom of movement is dependent on the circumstances of the particular community under consideration, with, for example, the Kosovo Turk community in Prizren town being almost completely integrated, whereas both the Kosovo Serb and Kosovo RAE communities in Rahovec/Orahovac are confined to enclaves.

#### *Prizren town and rural*

In addition to the majority Kosovo Albanian population, Prizren area contains members of the Kosovo Turkish, Serb, RAE and Bosniak minority groups.

Community Police Officers visit the minority villages in the Prizren area on a systematic basis and regularly meet with the village leaders to assess community needs. Members of ethnic minority communities are strongly represented in KPS patrols in these areas, particularly in the area covered by Recane/Recan sub-station (populated by a Kosovo Bosniak community) and mixed KPS patrols are commonplace. KPS officers of all ethnicities are fully integrated into all police functions, including the conduct of investigations. In Prizren town itself, fewer mixed patrols operate, although all KPS officers of all minority groups, Kosovo Serbs excepted, are

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<sup>6</sup> For further information on parallel structures, see OSCE's "Background Report: Parallel Security Structures in North Mitrovicë/ Mitrovica" of 31 May 2002.

fully integrated into other areas of police work. The recruitment and deployment of minority KPS officers in Prizren is contributing towards the increasing outreach of the KPS to the communities, and is assisting in encouraging a climate of confidence amongst those minority groups.

The security situation for members of the Kosovo Bosniak community in Prizren town has continued to improve during the reporting period. Equally, the Kosovo Turk inhabitants of Prizren town appear to be relatively well integrated into the majority community and their concerns over security relate to the general crime rate rather than to any ethnically motivated incidents. The Kosovo Turkish community sees the presence of Kosovo Turkish KPS officers as a positive and confidence-boosting development. Members of the Kosovo RAE community in Prizren town also stated that their overall security situation has improved. However, the presence of Kosovo RAE officers in the KPS was not perceived as being a major factor in guaranteeing their security, and the community continues to view the presence of KFOR and UNMIK Police as crucial.

The Kosovo Bosniak communities in the Zhupa Valley near Prizren also describe their overall security situation as having improved. The presence of Kosovo Bosniak police officers in the police sub-station at Recane/Recan in the Zhupa Valley has increased minority confidence in the safety and security of that location. It has also provided reassurance that the police will effectively investigate criminal acts committed against them. There is, nonetheless, reluctance amongst members of the Kosovo Bosniak community in the Zhupa Valley to move in areas dominated by the Kosovo Albanian community, particularly if they do not speak the Albanian language.

#### *Dragash/Dragaš*

The majority of the Kosovo Gorani population in the Prizren region lives in Dragash/Dragaš municipality. The ability of the Kosovo Gorani population to move freely, is similar to that of the Kosovo Bosniaks in the Zhupa Valley, namely that those who speak Albanian are willing to travel throughout Kosovo, whereas options are more limited for those who can only communicate in Serbo-Croat. The Kosovo Gorani community is critical of the failure of UNMIK Police to solve crimes affecting the local population.<sup>7</sup> Community Police Officers operate in the Kosovo Gorani community, and approximately half the KPS officers stationed in Dragash/Dragaš are of Kosovo Gorani ethnicity. However, the hierarchically structured nature of the Gorani community means the crimes are often not reported by the victims directly, but are reported via interlocutors, thereby increasing the potential for miscommunication and reducing the effectiveness of any follow up by the police.

#### *Rahovec/Orahovac*

The reporting period has seen repeated arson attacks on Kosovo Serb-owned houses in the Rahovec/Orahovac municipality. Although these houses were not inhabited at the time of the attacks, the repeated pattern of incidents does little to increase the Kosovo Serb community's perception of security. It also reduces the community's confidence in the effectiveness of UNMIK Police or of KPS as guarantors of their security. However, the Kosovo Serb community appears reluctant to co-operate with police investigations, arising in part from the fact that only one Kosovo Serb police officer is stationed at Rahovec/Orahovac. The police have therefore expressed the intention to transfer more Kosovo Serb police officers from outside the area to

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<sup>7</sup> An ongoing security concern for the Kosovo Gorani community arises from the cross-border theft of cattle, hay and firewood. Furthermore, following an armed robbery on 24 December 2002, and the murder of a Kosovo Gorani male on 31 December 2002, Gorani political representatives in the Dragash/Dragaš region organised a series of demonstrations to voice their concerns over the security situation.

undertake mixed patrols with Kosovo Albanian KPS in Rahovec/Orahovac and thereby to raise confidence in the impartiality and effectiveness of the police force.

Nonetheless, although the security situation in Rahovec/Orahovac has improved, and the police are working to improve confidence levels the Serb community's current perception of its own security continues to be dominated by fears of past events. In view of this underlying fear the prevailing view of the Kosovo Serb community in Rahovec/Orahovac is that only KFOR can provide a safe and secure environment.

In the rural areas of Rahovec/Orahovac municipality, the Kosovo RAE population is able to move relatively freely and without security problems. In Lower Rahovec/Orahovac, however, the Kosovo RAE community continues to experience harassment.

### **Pejë/Peć region**

On 10 October 2002, a bus, escorted by KFOR and carrying a group of Kosovo Serb pensioners from the organised return village of Osojane/Osojan, was attacked and pelted with stones and Molotov cocktails on arrival at the Pejë/Peć Municipal Building. The pensioners were intending to register for a new Kosovo pension scheme. A crowd of several hundred Kosovo Albanians (who had been attending political rallies in Pejë/Peć on the same day) gathered around the municipal building while the pensioners were inside and had to be forcibly dispersed by KFOR and UNMIK Police.<sup>8</sup> The pensioners were eventually able to return to Osojane/Osojan under escort.

Freedom of movement, in particular for the Kosovo Serb community, remains problematic, and minority members express the belief that their safety can only be guaranteed by constant KFOR protection, both in their villages, and when moving outside. This belief was reinforced by the high-profile incidents recorded above, but must also be set in the context of the general increase in high profile (non-ethnically motivated) violent crime in the Pejë/Peć region.

Although the security situation for the Kosovo RAE communities has stabilised during the reporting period, they still continued to be subjected to harassment and assault, such as organised cattle theft, robberies, extortion, sexual abuse, arson, and beatings. Many of these incidents go unreported, as the victims are afraid of reprisals and do not want to disrupt the fragile relations they have managed to establish with the majority population. There are indeed instances where reported harassment has led to further reprisals, indicating a climate of impunity for violations against these minority communities.

However, whilst the Kosovo Serbs in Pejë/Peć region are strictly limited to their own community and require KFOR escort for any travels outside their community, the Kosovo Bosniaks in the region (and to some extent the Kosovo RAE) seem to have returned to their normal patterns of movement and travel. These communities have traditionally maintained closer links, both socially and economically, to Montenegro and hence do not feel adversely affected by not being able to comfortably travel to other parts of Kosovo. The fluency of Albanian language is still an important factor for freedom of movement inside as well as outside the region.

### *Osojane/Osojan Valley, Bica/Biqë and Grabac/Grapc*

The Pejë/Peć region has two main areas of organised returns for Kosovo Serbs: the Osojane/Osojan Valley in Istog/Istok municipality and the adjacent villages of Bica/Biqë and Grabac/Grapc in Klinë/Klina municipality. Security in all of these areas is stable, but highly

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<sup>8</sup> Spanish SPU dispersed the crowd.

dependent on the presence of KFOR. Although one KFOR checkpoint has been removed, KFOR checkpoints remain in place at either end of the Osojane/Osojan Valley, and KFOR patrols operate round the clock.

Unlike in the Osojane/Osojan valley, there are no fixed KFOR checkpoints in Bica/Biqë or Grabac/Grapc. However, KFOR maintains a permanent presence in Bica/Biqë and Grabac/Grapc because of their close proximity to Kosovo Albanian settlements and the Kosovo Serb community's consequent fear of attack.

UNMIK Police and KPS also patrol these villages several times a day, but do not maintain police sub-stations in any of them. However, UNMIK Police and KPS man a temporary "container" office in Bica/Biqë daily from 0900-1200 hrs. Although members of the minority communities generally appear to believe that UNMIK Police and KPS are responsive to their requests for assistance, they believe that, on occasions the police lack both the resources and determination to provide effective security or guarantees of freedom of movement.

#### *Gorazdevac/Gorazhdevc*

The Kosovo Serb enclave of Gorazdevac/Gorazhdevc remains protected by KFOR checkpoints and KFOR conducts regular patrols. However, on 29 August, despite the presence of UNMIK Police and the subsequent intervention of KFOR, a group of six Kosovo Serbs came under prolonged small-arms fire whilst cutting wood. This incident causes particular concern, given its serious nature, and the inability of the KFOR and UNMIK Police to provide effective protection or deterrence. Villagers have also suffered persistent harassment in the form of stone throwing and have also reported illegal trespassing on their agricultural land.

### **Gjilan/Gnjilane Region**

#### *Gjilan/Gnjilane town*

The number of reported attacks directed at minorities in Gjilan/Gnjilane town has decreased during the reporting period. However, serious incidents continue to occur. In one case a Kosovo Roma woman was injured when a grenade was thrown at her house. Also, unexploded hand grenades were found in a house of a returnee, and an ordinance exploded at the same house a few months later.

Instances of low-level harassment, provocation and abuse continue to occur, but reported cases also appear to have decreased. The Kosovo Serb population in Gjilan/Gnjilane town admits that there has been improvement in their overall security situation, especially with the freedom of movement and the shopping initiatives.<sup>9</sup> However, they have also complained to OSCE that they are seeing few police patrols pass through their area, and that, in any event, they are reluctant to report crimes to the Kosovo Albanian KPS officers operating from Gjilan/Gnjilane police station.

Most of the Kosovo Serb pedestrian movement in Gjilan/Gnjilane town takes place on the Prishtinë/Priština road. Kosovo Serb families living on the outskirts of the town are mainly moving on the shopping days – Tuesdays and Thursdays. Vehicle movement, even with Yugoslav registration plates, is quite free in town, especially during daylight hours when YU plated cars travel to neighboring municipalities or to Serbia proper. Most Kosovo Serbs in Gjilan/Gnjilane have registered with KS registration plates and that has facilitated increased free movement.

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<sup>9</sup> These shopping initiatives are organised by UNHCR. Kosovo Serb inhabitants from minority areas surrounding Gjilan/Gnjilane are taken by bus to Gjilan/Gnjilane town in market days. KFOR is not providing escorts, but has an increased presence in the town during these events.

Moreover, the local Kosovo Serb population in town has started to use the Kosovo Albanian-run taxi services to get around town and to travel to nearby villages, especially Silovo/Shillovë.

In the immediate vicinity of Gjilan/Gnjilane, the Kosovo Serb inhabitants of villages such as Gornji Makres/Makresh i Epërm state that the security situation has improved. They are able and willing to travel to neighbouring Kosovo Serb villages, to Serbia proper, and also to make escorted shopping trips to Gjilan/Gnjilane town. In the mixed village of Gornji Livoc/Livoçi i Epërm, Kosovo Serbs and Kosovo Albanians have established informal and also formal dialogue and co-operation and are working jointly on a water supply project, with no reported problems.

However, members of the more isolated minority communities, such as Paralovo/Parllovë, remain reluctant to leave their villages and also more frequently report being subject to incidents of low-level harassment. A unique situation affects the mixed village of Cërnicë/Cernica, whose inhabitants have suffered a series of security incidents and fatal attacks, with movement only taking place during daylight hours, and even then with great caution.

In other minority settlements, the villagers appear satisfied with the levels of police presence and their interaction with the communities. The Gjilan/Gnjilane Community Policing Unit regularly visits minority areas in the region, and has created a special team that deals with minority issues. This team has, amongst other initiatives, launched a Neighbourhood Watch Project in the Kosovo Roma District in Gjilan/Gnjilane town and has implemented an awareness-raising project aimed at introducing Kosovo Serb schoolchildren to the work of the police. However, the Kosovo Serb community continues to express dissatisfaction at the lack of police results in investigating crimes committed against them.

#### *Novoberdë/Novo Brdo*

No major security incidents occurred in Novoberdë/Novo Brdo over the course of the reporting period, and, although a degree of inter-ethnic tension was apparent in early November 2002 following the Kosovo Serb success in the local municipal assembly elections, the municipality remains calm. KFOR appears to have gained the trust of the minority community, and the concerns raised by the community relate primarily to access to public services rather than with regard to physical security. However, the reduction in the visible KFOR security presence has reduced the perception of safety for villagers in places like Bostane/Bostan and Jasenovik/Jasenovik. Travel outside the minority villages has increased slightly, but still tends to be limited to essential trips only, predominantly to Gjilan/Gnjilane or Gračanica/Gračanicë. Private vehicles are used for shorter trips, as well as UNHCR buses for longer journeys. In many cases the buses are the only alternative, as the population of Novoberdë/Novo Brdo tends to be poor and not in possession of personal vehicles. Despite the increased movement outside the villages, a fear of low-level intimidation remains, and the decision to make each trip depends on taking a calculated risk.

Minority groups appear satisfied with police presence in the villages, although there is discontent over outstanding cases that remain unsolved. KPS operates mixed ethnicity patrols in the minority areas, and villagers reported no difficulty in communicating or dealing with those patrols. However, police patrols in minority villages are vehicle-borne, and villagers report that police officers rarely stop to interact informally with the population. As the villages are not connected to the telephone network, and mobile phone coverage is also poor, contacting the police is difficult. The Kosovo Serb population in Bostane/Bostan also reported that the closure of the police sub-station in Novoberdë/Novo Brdo had reduced their feeling of security. However, at the end of the reporting period, a permanent police presence was being maintained by virtue of the police "Reporting Office" in Novoberdë/Novo Brdo.

### *Kamenicë/Kamenica*

In Kamenicë/Kamenica town itself, the Kosovo Serb population tends to remain within the Kosovo Serb part of town, largely through fear of abuse and intimidation. However, Kosovo Serbs do frequent the ethnically mixed market and a number of Kosovo Albanian owned shops adjacent to the Kosovo Serb area.

Minority communities in the wider Kamenicë/Kamenica municipality remain isolated, although there is a limited degree of freedom of movement. Kosovo Serb inhabitants of the majority of the villages in the municipality are able to travel to Kamenicë/Kamenica town, to Gjilan/Gnjilane town, and to Serbia proper. Travel is mainly carried out during daylight using unescorted private car or public transport, although KFOR informed the OSCE that it still provides daily escorts for school buses travelling between Kamenicë/Kamenica and a number of nearby villages.

Generally the inhabitants of small communities, or those who live on the edges of minority villages are the most vulnerable to intimidation and harassment. However, within the villages, the minority communities feel relatively secure and are able to work in their fields.

However, the Kosovo Serb village of Kololec/Kolloleq, which is surrounded by Kosovo Albanian settlements, provides a notable exception. Levels of intimidation and harassment are high, and the inhabitants of Kololec/Kolloleq are prevented by fear from either farming in their fields or travelling outside their village. Also the neighbouring Kosovo Serb village of Carakovce/Çarakovc, previously inhabited by 47 Kosovo Serb families in the year 2000, was finally abandoned by the last inhabitant in October 2002. The departing families cited the lack of physical security as the prime reason for their departure, with particular concern being raised at the low police presence in the area.<sup>10</sup> Similar departures are also reported in Kololec/Kolloleq. Migration in this area is facilitated by its proximity to the Administrative Boundary Line with Serbia proper.<sup>11</sup>

Despite the high levels of intimidation, the only major security incident during the reporting period involved a hand grenade attack on a Kosovo Serb house in Kololec/Kolloleq on 27 June 2002. The attack caused minor injuries to the owner of the property and forms part of series of attacks on the same property, with hand-grenade attacks also having occurred on 12 and 13 September 2002. On 22 November 2002, in the most recent attack, a Molotov cocktail was thrown onto a pile of firewood outside the same property.

### *Viti/Vitina*

Kosovo Serbs and Kosovo Croats are travelling outside their villages more frequently, but continue to be subject to verbal abuse, harassment and intimidation. In particular the buses transporting Kosovo Serb schoolchildren are occasionally stoned by Kosovo Albanian juveniles. In relation to these incidents, KFOR has initiated a preventative awareness-raising campaign, aimed at the parents of the juveniles involved.

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<sup>10</sup> It has to be noted, though, that the young people from this village have been departing for decades due to an economic depression in the area, and most of the remaining young people left in 1999, leaving their elderly parents behind.

<sup>11</sup> The Serb villagers are concerned about their subsistence, because they are no longer receiving food and social assistance. However, concerns over physical security were also cited, as the villagers do not feel safe cultivating their fields and have also had their cattle stolen.

In Viti/Vitina town itself, even though the security situation has not improved significantly, members of the minority communities are demonstrating increased determination to exercise their freedom of movement. As a reflection of this determination, the community leaders of the minority villages around Viti/Vitina requested that their weekly meetings with KFOR and UNMIK Police take place in Viti/Vitina rather than the Kosovo Serb village of Vrbovac/Vrbovac.

The Kosovo Croatian minority, who inhabit a number of mixed ethnicity villages in the Viti/Vitina area, report no significant change to the security situation. Although low-level intimidation and provocation still occur, they interact with their Kosovo Albanian neighbours and are able to move freely both within their villages and into Viti/Vitina.

In the Kosovo Serb village of Klokot/Klllokot, however, there has been a series of violent incidents affecting members of the community. These include the destruction or damage of several Kosovo Serb-owned houses as a result of a series of explosions on 31 July 2002, together with a landmine explosion on 15 October 2002, which killed a 43 year old Kosovo Serb female. In addition, on 11 November 2002, another landmine was discovered in a field close to where the fatal explosion occurred.

The minority community's general perception of the KPS is poor in the Viti/Vitina area. This arises from the fact that the KPS officers in this area are primarily Kosovo Albanian and they are also perceived as inexperienced and therefore less effective. In addition, Kosovo Serbs and Kosovo Croats telephoning Viti/Vitina Police Station have stated to OSCE that on several occasions the Kosovo Albanian KPS officer taking the call has refused to speak Serbo-Croatian and has hung up. As a result, crimes are often reported to KFOR rather than to the police, and many low-level incidents are not reported at all.

However, police patrols do pass through minority areas several times during the day, and respond to call-outs when contacted. Police officers generally interact well with the local population, although in the villages of Mogila/Mogila and Letnica/Letnicë the inhabitants report that the police simply drive through without communicating with the population. The Kosovo Serb community believes that the removal of KFOR static security checkpoints has not in itself raised the levels of security threat but the removal of the checkpoints has reduced a visible sign of protection and has therefore reduced Kosovo Serb confidence in their safety.

#### *Ferizaj/Uroševac*

There is a large Kosovo Ashkaelia population living in several neighbourhoods in Ferizaj/Uroševac town, and in the village of Dubravë/Dubrava. This community has made a great deal of progress in their integration into the municipal structures. The population of Kosovo Roma, concentrated in two neighbourhoods in Ferizaj/Uroševac town, has significantly declined since the conflict and those members of the Kosovo Roma community who do not speak Albanian are targeted and intimidated. However, whilst the security problems for the Kosovo RAE are relatively minor, the Kosovo Serb community in Ferizaj/Uroševac are permanently protected by KFOR and individuals are unable and unwilling to move without being escorted, as they become subject of harassment. However, members of the Kosovo Serb community are able to travel, without escort, to Štrpce/Shtërpçë and also participate in shopping trips to Gjilan/Gnjilane.

Members of the Kosovo Bosniak and Gorani communities are unwilling to speak their language (Serbo-Croatian) in public and therefore those family members which are not fluent in Albanian

remain unable to access basic services, including healthcare.<sup>12</sup> These Kosovo Bosniak and Gorani tend to travel to the Kosovo Gorani majority areas in Dragash, using private vehicles.

#### *Štrpce/Shtërpçë*

The Štrpce/Shtërpçë municipality has an approximately 70% Kosovo Serb and 30% Kosovo Albanian population. There is also a small Kosovo Roma population. Members of the Kosovo Albanian minority in Štrpce/Shtërpçë have few security problems and are able to move freely through the Kosovo Serb areas. Although the Kosovo Serb community resisted the return of 26 Kosovo Albanian IDPs to the village of Bitanja e Ultë/Donja Bitinja in May 2002, there have been no violent incidents following the return.

The Kosovo Serb inhabitants of Štrpce/Shtërpçë are still reluctant to travel privately outside the enclave, and KFOR continues to receive requests for escorts. KFOR ceased providing escorts to Kosovo Serb convoys from Štrpce/Shtërpçë in July 2002, and thus, the Kosovo Serbs began venturing out of the enclave for private trips in or out of Kosovo.<sup>13</sup>

#### **Mitrovicë/Mitrovica region**

Security concerns for minorities remain high in several locations, but generally the situation is calm with a low level of incidents reported. Initial fears amongst ethnic minority communities at the removal of static KFOR checkpoints seem to have been allayed. In Mitrovicë/Mitrovica town, KFOR has downscaled security measures in the ‘confidence zone’,<sup>14</sup> lifting the curfew on 10 December 2002, and reducing its three checkpoints to one on each side of the Ibar Bridge. KPS now patrol the remainder of the confidence zone. Also during this reporting period, KPS officers were deployed to northern Mitrovicë/Mitrovica for the first time.

In some areas, such as Gojbulë/Gojbulja (Vushtri/Vučitrn municipality) KFOR believes the new ‘unfixing’ strategy has actually improved the security situation for minorities, as mobile patrols are able to cover ground in detail and react to any incident on the spot. As a general rule KFOR and UNMIK Police appear to have discussed the security measures with the minority communities. KFOR and UNMIK Police attend minority community meetings to discuss security, freedom of movement, and other topics. In addition to the removal of static checkpoints, generally KFOR has implemented a low-visibility strategy, stopping or reducing high-profile escorts.

#### *Mitrovicë/Mitrovica*

Mitrovicë/Mitrovica municipality contains 49 villages. The town itself and two of the villages are ethnically mixed, while the remainder is Kosovo Albanian. Since 1999 the town has been divided along the Ibar River. To the south, the population is predominantly Kosovo Albanian, while to the north the majority of the population is Kosovo Serb, but there are also other communities such as Kosovo Albanians, Kosovo Bosniaks and Kosovo Roma. The remaining Kosovo Albanians live in the Three Towers, Gushac/Gusavac, Suhodolli i Ulët/Donji Suvi Do and Bosnia Mahala (Kosovo Bosnian/Albanian). Most of the Kosovo Roma community who previously lived in the

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<sup>12</sup> There is only one private health clinic in Ferizaj/ Urosevac town that will accept non-Albanian speaking patients and whom Gorani and Bosniaks will trust.

<sup>13</sup> A random 24-hour count by KFOR has revealed Kosovo Serbs travelling without an escort to Kaçanik/Kaçanik, Ferizaj/Uroševac, Gjilan/Gnjilane, and other places. Only the bus line between and Štrpce/Shtërpçë and Belgrade through Gate 3 remains escorted, while all other movements, to Serbia through Gate 5, to Hani i Elezit/Djeneral Jankovic and Skopje, to Gjilan/ Gnjilane are now protected only by area security.

<sup>14</sup> The ‘confidence zone’ is the strip between northern and southern Mitrovicë/Mitrovica, which has been strictly controlled by KFOR.

south now live in the Chesmin Lug collective centre in the north of the town or the Roma Warehouse in Leposavić/Leposaviq. There are also Kosovo Turks on both sides of the river. Lack of security and freedom of movement remains a major obstacle to the establishment of normal life in the town. KFOR checkpoints on the main road through Suhodolli i Ulët/Donji Suvi Do were dismantled between 18-28 November, and KFOR continues to carry out foot patrols in the area.<sup>15</sup>

#### *Svinjar/Svinjarë*

The security situation for the Kosovo Serbs in Svinjare/Svinjarë has remained unchanged over the reporting period and is described by the police as being calm. The police facilities in Svinjare/Svinjarë are basic and lacking amenities, and the decision has been taken to close the facility in the near future and to provide security through mobile patrols. KFOR reports good cooperation with UNMIK Police following the removal of the KFOR static checkpoint in November 2002. KFOR continues to conduct patrols day and night. The community appears to have understood and accepted the rationale behind the new security arrangements, and remains satisfied that it is being offered adequate security protection. UNMIK Police and KFOR continue to provide escorts for buses taking the Kosovo Serb children from Svinjare/Svinjarë to school in northern Mitrovicë/Mitrovica.

#### *Vushtrri/Vučitrn*

In Vushtrri/Vučitrn the majority population are Kosovo Albanian, with Kosovo Serb and Kosovo Ashkaelia minority areas. The municipality consists of 66 villages, of which 61 are Kosovo Albanian and 5 are Kosovo Serb. The small Kosovo Ashkaelia community is concentrated near the centre of the town. The remaining Kosovo Serbs live in the five enclaves of Gojbulë/Gojbulja, Priluzhë/Priluzje, Miraqë/Miroce, Sllatinë/Slatina, Gracë/Grace and in the mixed village of Banjskë/Banjska. A series of reports of harassment and assaults on members of the Kosovo Serb community have been made during last eight months.<sup>16</sup> The Kosovo Ashkaelia community considers their security situation to be poor and report not having seen any improvement in the situation in the past six months even though the level of awareness of KFOR and UNMIK Police activity has increased.<sup>17</sup> KPS officers conduct patrols, but the ability of deploying mixed KPS patrols is hampered by a shortage of Kosovo Serb KPS officers and a complete lack of Kosovo Ashkaelia KPS officers.

The KFOR checkpoint in Gojbulë/Gojbulja (Kosovo Serb village) has been removed. The village is easily accessible by Kosovo Albanians living nearby and incidents such as theft and damage to property, as well as beatings of the Kosovo Serb minority, continue to occur on the periphery of the village. The bus service provided by the Danish Refugee Council from Gojbulë/Gojbulja to Vushtrri/Vučitrn, continuing onwards to northern Mitrovicë/Mitrovica is also regularly stoned by Kosovo Albanians, allegedly following the return of a number of hard-line Kosovo Albanians to their homes in the town. Mobile patrols have been put in place by KFOR to secure the bus route, and KFOR have recently arrested two Kosovo Albanians for throwing stones at the bus. UNMIK

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<sup>15</sup> In the weeks leading up to the checkpoint removal, 150 Kosovo Serbs erected unofficial roadblocks in Upper Gornji Suvi Do/Suhodolli i Eprëm in protest of alleged harassment of a Kosovo Serb woman by Kosovo Albanians. However, although tensions were high at the time of this incident, KFOR communicated with the inhabitants to explain the new security arrangements, the KFOR checkpoints were dismantled and the situation in Suhodolli i Ulët/Donji Suvi Do is now calm.

<sup>16</sup> November alone saw the burning of crops, theft of cows, illegal wood cutting, illegal extraction of sand, as well as two assaults. The Kosovo Serb community alleges that Kosovo Albanians perpetrated all these incidents.

<sup>17</sup> This minority community reports persistent harassment from Kosovo Albanians, such as verbal abuse, physical abuse, stone and firecracker or grenade throwing.

Police and KFOR also continue to provide escorts for school buses from Gojbulë/Gojbulja travelling to and from Vushtrri/Vučitrn.

The security situation for the sizeable Kosovo Serb population in Priluzhë/Priluzje, the largest enclave settlement in the municipality, remains stable, although there has been a marked increase in the number of reported crimes in the village during recent months. The inhabitants of Priluzhë/Priluzje are critical of the police (who operate from a sub-station staffed by UNMIK Police and Kosovo Serb KPS officers) for failing to curb the increasing crime rate. Their relationship with the police has further deteriorated following an incident on 31 October 2002, where two individuals arrested during a raid on a bar were able to escape following physical intervention by the bar's customers. There is also a small Kosovo Roma village within the enclave. KFOR checkpoints continue to control access to the village and residents of Priluzhë/Priluzje complain of their isolation and lack of freedom of movement, and continue to request KFOR/police bus and train escorts for travel outside the enclave.<sup>18</sup>

The static checkpoint between Miraqë/Miroce (Kosovo Serb-dominated village) and Vido was removed in the spring 2002. Although the security situation is gradually improving, the 10 elderly inhabitants have expressed concern over their security when accessing their fields. They also complain of criminal activity such as illegal logging. Although KFOR and UNMIK Police undertake joint patrols in this area, the mountainous terrain renders the provision of security more difficult. Sixteen Kosovo Serb elderly inhabitants remain in Sllatinë/Slatina, which is linked to Banjskë/Banjska (see below). KFOR reports low-level but persistent harassment perpetrated by local Kosovo Albanians against this community and continued KFOR presence remains essential to ensure the safety of these individuals. Continuing low-level security incidents are also reported by the Kosovo Serb community in Gracë/Grace, and KFOR continues to keep a static checkpoint and conducts foot patrols. The Kosovo Serb minority in Banjskë/Banjska remains protected by a KFOR checkpoint on the main road, as well as by mobile patrols. There have been few recent incidents against the community. Encouraged by the security situation, Kosovo Serb farmers have begun, in September 2002, working in the fields located on the periphery of their community for the first time in three years. Mixed KPS patrols in the village have been positively received.

#### *Skenderaj/Srbica*

The remaining Kosovo Serbs in this municipality live in the villages of Banja/Banjë and Suvo Grlo/Suvogërrll, and in the Monastery in Device. The most pressing concern for the inhabitants of Banja/Banjë is the ongoing reduction in KFOR escorts for vehicles travelling through Rudnik/Rudnik and Skenderaj/Srbica town. The mixed KPS patrols covering Banja/Banjë and Suvo Grlo/Suvogërrll are staffed with Kosovo Serb officers from the Zubin Potok station and Kosovo Albanian officers from Skenderaj/Srbica station. The Kosovo Serb inhabitants of Banja/Banjë and Suvo Grlo/Suvogërrll appear reluctant to trust the Kosovo Albanian members of KPS, and also raise concerns that cases are not followed up effectively.

#### *Leposavić/Leposaviq*

Leposavić/Leposaviq consists of 72 villages, of which 69 are Kosovo Serb and 3 Kosovo Albanian. The Kosovo Albanians live in Bistricë/Bistrica, Kushtovë/Kušutovo and Cerajë/Ceranja. This municipality hosts also a number of Kosovo Roma who are living as IDPs, around 200 of them in the 'Roma Warehouse'. Ensuring security for ethnic minorities is hindered by poor terrain, but given the isolated nature of these minority communities, few security problems have arisen within the communities themselves. Even the inhabitants of the Roma Warehouse, located in the centre of Leposavić/Leposaviq town rarely report on security

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<sup>18</sup> The Kosovo Roma have access to the multi-ethnic train with twice daily runs to Zvečan/Zvečan.

problems, but rather on being unable to practice their religion. KFOR's security presence is therefore being reduced as part of the normalisation process. However, the Kosovo Albanian inhabitants require KFOR security escorts to move to Mitrovicë/Mitrovica town.

#### *Zvečan/Zveçan*

Zvečan/Zveçan consists of 45 settlements, of which Kosovo Albanians inhabit 3. In addition, more than 180 Kosovo Roma live in camp in the village of Zitkovac/Zitkovc. There are few ethnically motivated incidents in this village, although the Kosovo Roma consistently report – but not necessarily to the police – about harassment ranging from minor thefts to beatings and avoid leaving the camp unless absolutely necessary. The remaining Kosovo Albanians live in Boletin/Boljetin, Lipa/Lipë and Zaza/Zahë. There have been no significant changes in the security situation in this area in the last six months, with few ethnically motivated incidents occurring.

The first Kosovo Serb KPS officers were deployed to Zvečan/Zveçan police station in November 2002. The static checkpoint between Boletin/Boljetin (Kosovo Albanian) and Lipa/Lipë (Kosovo Serb) was removed in mid-November, raising concern of the Kosovo Albanian inhabitants of Boletin/Boljetin who fear criminal activity from Kosovo Serbs, particularly after dark. However, there have been no major incidents for five or six months prior to the removal of the checkpoint. The more pressing issue is the lack of freedom of movement, especially for children and students wishing to access education services.

#### *Zubin Potok*

Zubin Potok municipality consists of 64 villages, of which Kosovo Serbs inhabit 63 and Kosovo Albanians one. The remaining Kosovo Albanians live in Cabrë/Cabra but there are also some other Kosovo Serb IDPs and some other refugees from Croatia living in this municipality. The security situation in Çaber/Cabra (Kosovo Albanian) has improved over the past six months, with good interaction between the local community and UNMIK Police and KFOR. The static checkpoint has been removed and replaced with mobile police patrols, which include Kosovo Albanian KPS officers. Freedom of movement remains a concern, and police, if requested, still provide transport for those who wish to travel to Zubin Potok.

### **Prishtinë/Priština Region**

#### *Fushë Kosovë/Kosovo Polje*

The level of ethnically motivated incidents directed at the minority Kosovo Serb and Kosovo Roma populations in the Fushë Kosovë/Kosovo Polje municipality remains low. Although isolated incidents do occur, for example the attack on an elderly Kosovo Serb male by Kosovo Albanians on 22 October 2002, the reporting period has seen the maintenance of a stable security situation for minority groups.<sup>19</sup> In the village of Bresje/Bresje, the number of Kosovo Serb families continues to decrease, with those departing citing security concerns as one contributing factor, but also complaining about poor infrastructure and access to services. The last remaining static KFOR checkpoints in Fushë Kosovë/Kosovo Polje municipality were removed in July 2002, and were replaced by KFOR foot patrols.<sup>20</sup> The KPS have been also carrying out mixed patrols in Fushë Kosovë/Kosovo Polje for over 12 months. The mixed patrols operate effectively, although the Kosovo Serb population remains less willing to deal with Kosovo Albanian KPS.

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<sup>19</sup> One recurring concern, affecting mainly members of the Kosovo Serb community, but affecting Kosovo Albanians to a lesser degree, is the alleged theft of livestock. As yet, however, notwithstanding increased surveillance and security by both KFOR and UNMIK Police, no perpetrators have been detected.

<sup>20</sup> The minority communities were initially wary of the reduction in KFOR's fixed presence, but since there has been no increase in ethnically motivated incidents following the implementation of the new measures, the minority population have gradually accepted the change.

Kosovo Serb KPS officers, however, report acceptable levels of co-operation from the Kosovo Albanian community.

#### *Obiliq/Obilić*

Although the security situation for the Kosovo RAE minority in Obiliq/Obilić remains stable, low-level harassment is a recurring problem. The issue of harassment, particularly within schools, is being addressed by KPS and UNMIK Police Community Policing Officers in co-operation with NGOs and the school administrators. The security situation for the Kosovo Ashkaelia and Kosovo Roma inhabiting Plemetin/Plemetina village and camp in Obiliq/Obilić municipality remains stable, but the general bleak economic and social outlook for these communities continues to be a cause of primary tensions both within the communities and between them and the majority population.

#### *Prishtinë/Priština*

Gracanica/Gračanice contains the largest concentration of Kosovo Serbs in the Prishtinë/Priština municipality. The security situation for the population of Gracanica/Gračanice (populated by 98% Kosovo Serb and 2% Kosovo Roma) has remained stable during the reporting period, with ethnically motivated incidents being both infrequent and low-level. The static KFOR checkpoints protecting Gracanica/Gračanice village itself were removed before the beginning of the reporting period, and the alternative security and policing measures provided by KFOR, UNMIK Police and KPS appear to be effective. Mixed KPS patrols have operated successfully in Gracanica/Gračanice throughout the reporting period. As of 1 November 2002, command of the Gracanica/Gračanice Police station was transferred from UNMIK Police to the KPS, under the guidance of an UNMIK Police Executive Adviser. The police station itself was relocated from Gracanica/Gračanice village to the neighbouring Kosovo Albanian settlement of Hajvali/Ajvalija. The Kosovo RAE population of Gracanica/Gračanice appears willing and able to access the new police station and the initiative is seen as laying the groundwork for further transfers of command in other appropriate locations.

#### *Lipjan/Lipljan*

The security situation for the minority population in Lipjan/Lipljan municipality has remained stable throughout the reporting period, with no serious incidents of ethnic violence being reported against members of minority groups. As part of its unfixing strategy, KFOR has removed static vehicle checkpoints (both in Lipjan/Lipljan town and in minority villages throughout the municipality) and relies instead on mobile patrols to provide security, with good support from UNMIK Police and KPS. Members of the Kosovo Serb, RAE and Bosniak communities are represented amongst the KPS officers operating from Lipjan/Lipljan police station, with 28 of the KPS officers being Kosovo Serb. The presence of minority KPS officers has, according to UNMIK Police, encouraged members of the communities (particularly the Kosovo Serb community) to begin to report crimes and to develop an increased willingness to seek police assistance.

Members of the Kosovo Serb community in Lipjan/Lipljan still fear harassment and intimidation and generally avoid using main roads when walking between the areas inhabited by Kosovo Serb population. Interaction between the Kosovo Serb and Kosovo Albanian communities remains limited. However, since September 2002, the Kosovo Serb community in Lipjan/Lipljan town has, under KFOR protection, been able to make use of the Kosovo Albanian shops in the town on Saturday mornings. This initiative was developed in consultation with community leaders and with local shopkeepers. KFOR continues to provide bus escorts for Kosovo Serb factory workers from Lipjan/Lipljan travelling to and from work in Fushë Kosovë/Kosovo Polje, as well as for

buses travelling to Serbia proper via Gate 3. The increased use of KS registration plates has also increased freedom of movement for the inhabitants of Lipjan/Lipljan municipality.

Lipjan/Lipljan municipality also houses a significant Kosovo RAE community, both in Lipjan/Lipljan town itself and also throughout other villages in the municipality such as Magurë/Magura, Dobrotin/Dobrotin and Dobraja e Vogël/Mala Dobranja. Low level harassment of this community continues, particularly for the Kosovo Roma who only speak Serbo-Croatian.

The Kosovo Croat population in the mixed village of Janjevë/Janjevo remains able to move relatively freely throughout Kosovo and its members are able to use Serbo-Croatian language in its dealings with the majority population.

#### *Shtime/Štimlje*

Of particular concern remains the situation of the small Kosovo Serb minority in Shtime/Štimlje.<sup>21</sup> Although no serious incidents have been documented over the reporting period, the community is composed primarily of elderly people who fear harassment and intimidation and are, therefore, severely limited in their freedom of movement. While it appears that reported cases of harassment against the Kosovo Serb population are being investigated and followed up thoroughly, it also should be noted that the efforts by municipal officials have had a positive impact on the security situation in this municipality. On another note, KFOR provides bi-monthly bus transport for shopping trips to Lipjan/Lipljan.

### **III. THE MINORITY RETURN PROCESS FROM A SECURITY PERSPECTIVE**

An analysis of the UNHCR minority return statistics shows that the level of physical security and freedom of movement varies depending on the minority concerned and the location of the minority and are key factors affecting the pace of return. The 2,741 recorded minority returns to place of origin in 2002 exceeded the yearly returns reported thus far. In contrast to the year 2000 when 1,906 persons returned to their place of origin, nearly all of them Kosovo Serbs returning to mono-ethnic enclaves, the returns in 2002 have been more diversified in terms of ethnicity and regions.

However, these statistical data may be somewhat misleading in that they suggest improvements in the environment greater than have actually taken place. The increase in returns for 2002 must be seen within the context of an overall downward trend in returns, most significantly amongst Kosovo Serbs, witnessed in the previous year. Many factors contributed to this decrease, including violent attacks against the minority communities in 2000 and 2001 and the instability created in the region by the conflicts in fYROM and southern Serbia. Another determining factor was the saturation of the mono-ethnic enclaves, where large numbers of IDPs had sought refuge, over and above returnees going back home. Kosovo Serb families displaced from these locations have continued to return. These returns are encouraged by the security provided by such concentrations of Kosovo Serbs. It should be noted that these Kosovo Serb mono-ethnic communities of return were mono-ethnic villages or separate Kosovo Serb parts of ethnically mixed villages or towns in the pre-conflict period.

Thus, continued and justified concerns about security, the preference to return to areas with a concentration of Serb families, and the felt need for security surveillance by KFOR, UNMIK Police or KPS explain why the majority of Kosovo Serb returns occur to mono-ethnic areas,

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<sup>21</sup> This municipality is within the area of responsibility of the Lipjan/Lipljan police station, which has established a sub-station to serve it.

rather than to mixed ones. Security conditions therefore can safely be said to determine the location and the pace of return.<sup>22</sup>

Such a pattern was seen in the Pejë/Peć region, where the pre-conflict demographic distribution was one in which most Kosovo Serb communities were relatively separate both physically and in terms of interaction with other ethnic communities. As returns have occurred in the region, the returning Serb population has reproduced the pre-conflict pattern of Serb settlement, by returning to mono-ethnic enclaves or villages.<sup>23</sup> In the well-known return to the Osojan/Osojane valley in Istog/Istok municipality, the returnees have remained isolated, replicating the pre-conflict situation. This isolation also has resulted in heavy reliance on KFOR security and escorts<sup>24</sup>. Such security arrangements limit the returnees' freedom of movement and access to basic services, as well as employment opportunities outside the village. Security concerns of the returnees were reinforced when pensioners from the village were attacked in Pejë/Peć town in October 2002.<sup>25</sup>

In contrast is the return to the two nearby mono-ethnic villages of Bica/Biqë and Grapç/Grabac in Klinë/Klina municipality. Immediately after the return, the returnees' determination to establish contacts with neighbouring Albanian villages was facilitated by KFOR's less stringent security controls. The initial positive interaction has tended to deteriorate. Not only did contact diminish, but also security-related situations occurred.<sup>26</sup>

Concerning non-Serb returns, Kosovo Roma, Ashkaelia and Egyptians returns have been mostly to mixed communities throughout Kosovo. Examples include the Kosovo Ashkaelia returns to Magura, Mala Dobraja and Prishtinë/Priština town within the Prishtinë/Priština region. Non-Serb returns to ethnically distinct areas within mixed communities have also taken place, as is the case, for instance in all five municipalities of the Pejë/Peć region. Returns to ethnically mixed areas required intensified policing by KPS and UNMIK police. Despite lengthy and intensive preparations, as well as the encouraging involvement of local officials, the returns have faced security incidents targeting both the residing minority community as well as the returnees. A good example of this is the return of Ashkaelia to Vushtrri/Vučitrn town, where a series of serious incidents took place in 2002.<sup>27</sup>

The continued security challenges present in all returns have highlighted the need to prioritise confidence-building and inter-ethnic dialogue in order to create minimum levels of stability before returns take place. In the absence of such dialogue the security conditions and freedom of movement remain problematic. Heavy reliance on KFOR and UNMIK Police is then necessary, as occurred in Osojan/Osojane. Such returns, unless followed by intense reconciliation efforts, leave the community vulnerable to violence or harassment as soon as the international military or police forces are reduced below a certain level.

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<sup>22</sup> Strong push-factors, such as harsh conditions in displacement (deteriorating living conditions, decrease or cut of humanitarian assistance as well as hosting fatigue expressed by the hosting community) or, in some cases being forced to return from Western European countries, are quoted by the returnees of all ethnicities, rather than improvements in the general conditions, including security and freedom of movement, in Kosovo.

<sup>23</sup> 175 out of 177 persons returned to such villages.

<sup>24</sup> For a more detailed description of the first returns to Osojane, please refer to the OSCE/UNHCR joint Ninth Assessment of the Situation of Ethnic Minorities in Kosovo.

<sup>25</sup> For a more detailed discussion of the incident, please see section on Pejë/Peć region above.

<sup>26</sup> Threatening situations such as a firing of a gun outside the village by unknown perpetrators and verbal assaults have taken place.

<sup>27</sup> For example, after their return, returnees were harassed by Kosovo Albanians and properties damaged in May 2002 shortly following their return. See also section on Vushtrri/Vučitrn.

When security issues remain unresolved, then the return movements have little chance of being sustainable. In another example, the spontaneous return of the first group of 26 Kosovo Albanians to their mono-ethnic but deserted village Donja Bitinja/Bitanja e Ultë in the Kosovo Serb majority Štrpce/Shtërpçë municipality met with initially strong opposition by the inhabitants of the neighbouring Serb village of the same name. Concerns for the security of both communities led the Polish-Ukrainian KFOR to temporarily impose restrictions on movements in and around the village.<sup>28</sup> The international organisations intervened to allow the Kosovo Albanian IDPs to exercise their right to return. As a result KFOR agreed to maintain security arrangements that were effective but less restrictive. Simultaneously the returnees took the initiative to engage in dialogue with the Kosovo Serbs.<sup>29</sup> The close co-operation between civilian and military organisations had two important results. First, it allowed for a ground-breaking return. Second, despite initial concerns regarding the protection of the rights of the spontaneous returnees by KFOR in this case, the situation led to US KFOR's initiative to establish the common KFOR 'Guidelines for Procedures on Return of Refugees and Displaced Persons to the Gjilan/Gnjilane Area of Operations'.

During 2002, some Western European governments determined that security conditions had improved in Kosovo to the extent that large-scale forced returns of non-Serb ethnic minorities could commence in the spring of 2003. In response to these beliefs, UNHCR undertook a survey into the likely impact of such returns on non-Serb minority communities. The survey focused on the absorption capacity of established communities and on relations between minority and majority populations in locations where returns were on-going. In addition it looked at areas likely to undergo threats to the security and freedom of movement of returnees and the residual minority population. The survey concluded that returns to communities which are void of minorities since 1999 and only inhabited by majority groups are not viable return locations unless they are carefully prepared by inter-ethnic dialogue facilitation before the return occurs. The generalisation remains valid though there are exceptions, like the above mentioned return of Kosovo Albanians to Donja Bitinja/Bitanja e Ultë.

In conclusion, unplanned, even small scale returns to deserted areas or to areas inhabited only by the majority population would most likely result in secondary displacement into concentrated areas where already larger numbers of IDPs reside.

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<sup>28</sup> Restrictions ranged from a complete ban on movements to limited escorts.

<sup>29</sup> The Kosovo Albanian returnees impressed upon the Serb inhabitants opposing their return that both communities would benefit from the return. Subsequently the Kosovo Albanian return to Donja Bitinja/Bitanja e Ultë proved to be an incentive for beginning discussions about minority return to Ferizaj/Uroševac, where the returnees to Donja Bitinja/Bitanja e Ultë had been displaced, as well as for the first Serb returns to Zhupa valley.

## **SECTION 2: ACCESS TO JUSTICE**

Access to the justice system, including criminal and civil justice, is a special type of access to essential services. Minorities need to be able to physically access courts and need to be ensured that their cases are being dealt with in a fair and effective manner. In order to help ensure access and fairness, members of minority communities must also be represented professionally in the courts. Since the last Assessment, the UNMIK Department of Justice (DOJ) has taken some steps toward integrating minorities into the judiciary and concomitantly weakening the parallel court system.<sup>30</sup> At the same time, many minorities are still showing a lack of confidence in the UNMIK justice system.

### **I. JUDICIAL INTEGRATION/EMPLOYMENT IN COURTS**

After many diplomatic and technical difficulties, UNMIK has proved successful in hiring a substantial number of judges and prosecutors from minority communities into the UNMIK judiciary. A large part of the “Joint UNMIK – Yugoslav Document” (the Common Document), which was signed on 5 November 2001, focuses on integration of minorities into the judiciary, and confirms the commitment of UNMIK towards furthering the multi-ethnicity of the judiciary by employing more Kosovo Serb judges and prosecutors, thus addressing deep-seeded concerns of ethnic bias. According to the document, UNMIK also agreed to “create and staff a new unit of the DOJ that will be responsible for furthering efforts in this area.” Consequently, the Judicial Integration Section (JIS) was created within DOJ, with three primary aims: 1) integrating minority judges and prosecutors into the courts; 2) facilitating access to courts for minorities in enclaves; and 3) following up cases in the courts in which minorities are involved.

The process of judicial integration has been slow, due mostly to diplomatic disagreements between UNMIK and Republic of Serbia. In the process of implementation of the Common Document, it became clear that some key issues still needed resolution, such as whether newly recruited Kosovo Serb judges and prosecutors would be able to maintain their insurance and social security benefits from Republic of Serbia. On 9 July 2002, a Joint Declaration<sup>31</sup> was signed between the Minister of Justice of the Republic of Serbia and UNMIK Deputy SRSB for Police and Justice, to further facilitate the recruitment of Kosovo Serb prosecutors and judges. According to this agreement, the Housing and Property Directorate (HPD) would use its best endeavours to resolve all property claims submitted by the Kosovo Serb candidates; UNMIK would perform individualised security assessments for each candidate; and UNMIK would ensure that other conditions are met, such as recruitment of court support staff. On its part, the Republic of Serbia committed to preserve social security benefits and pension rights for judges and prosecutors, and to allow them the right to take up former posts in the justice system of the Republic of Serbia in the event they decide to leave Kosovo.

This Joint Declaration did help to facilitate the application process. Vacancy announcements for judges and prosecutors were well received by members of minority communities. Following the application period, the Kosovo Judicial and Prosecutorial Council (KJPC) recommended 42 candidates to the Kosovo Assembly, including 19 Kosovo Albanian, 21 Kosovo Serb (including 7

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<sup>30</sup> “Parallel court system” refers to parallel Serbian courts that continue to operate within the jurisdiction of Kosovo despite the fact that, legally, only UNMIK courts have jurisdiction. (See UNSC Resolution 1244). For further information refer to OSCE’s “Background Report: Parallel Court Activities in North Mitrovicë/Mitrovica” of 31 May 2002.

<sup>31</sup> “Joint Declaration on Recruitment of Judges and Prosecutors of Serb Ethnicity into the Multi-ethnic Justice System in Kosovo”.

IDPs living in Serbia), one (1) Kosovo Bosniak and one (1) Kosovo Gorani candidate. Though the Kosovo Assembly failed to formally approve these judges and prosecutors,<sup>32</sup> many of them were subsequently sworn into office on 12 December 2002 by the Principle Deputy of the SRSG. The new proportions of judges and prosecutors of different ethnicity better reflect the dynamic between the majority and the minority population in Kosovo.<sup>33</sup>

Along with the integration and employment of minority judges and prosecutors, several courts have recently opened in minority communities. UNMIK has established municipal and minor offences courts in Leposavić/Leposaviq and Zubin Potok, all of which officially opened on 13 January 2003. In addition, a Department of the Municipal Court of Ferizaj/Uroševac and a Minor Offences Court is scheduled to open in Štrpce/Shtërpçë at the end of March 2003. This has in turn opened up several vacancies for court support staff. Currently, figures show that there are only 63 minority staff members out of a total 1254 court support staff throughout Kosovo.<sup>34</sup> The Department of Judicial Administration (DJA),<sup>35</sup> with the support of the DOJ, is currently filling several support staff vacancies, and members of minority communities have been encouraged to apply. In November 2002, a list of vacancies was posted, including several positions for the Leposavić/Leposaviq and Zubin Potok courts. Kosovo Serbs in the northern municipalities did raise some concerns with regard to the staff vacancies at the time. For example, the “Joint Declaration” did not cover support staff. Many candidates for these new positions had worked for the parallel courts, and it was not clear whether the Republic of Serbia would continue to pay for pension and social security. In order to respond to these concerns and explain the positions in more detail, the JIS and the DJA organised a series of meetings in northern Kosovo with the potential candidates in November 2002.

As the major push for the integration of judges, prosecutors and support staff is underway, UNMIK remains in charge of ensuring that those who are employed in the courts are able to get to the court safely and work in a safe environment. The Joint Declaration does contain a provision on security for newly recruited judges and prosecutors, stating that UNMIK will provide protection based on individualised threat assessments. The OSCE will closely monitor the implementation of this process. On the other hand, court support staff must also be protected, especially the staff who are travelling from enclaves. In this regard there have been a few minor improvements. One example is from Rahovec/Orahovac, where in the Municipal Court there is only one Kosovo Serb employee – a security guard. Two other Kosovo Serb support staff were hired in March 2001, but could not start working due to the lack of an escort service. The DJA addressed the problem by hiring a Kosovo Serb driver to transport Kosovo Serb staff members to and from work everyday. Because of this, the two who were recruited in 2001 should finally be able to begin work. This being said, all is not remedied. In the same court there are four Kosovo Serb lay judges, who have so far not participated in a single trial. The president of the court told the OSCE that they had been officially invited to sit on a panel but did not respond to the

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<sup>32</sup> At the Kosovo Assembly session of 14 November 2002, the Assembly postponed the discussion on the appointment of judges and prosecutors, as the Committee for Legal Issues had repeatedly and unreasonably requested more biographical data. In order to avoid further and unnecessary delay, the SRSG proceeded to swear them in under his reserved powers.

<sup>33</sup> The total number of judges is currently 326. The gender balance is 81 female judges and 245 male, and out of them, 293 are Kosovo Albanian, 16 are Kosovo Serb and 17 are from other ethnic minorities (Kosovo Turk, Bosniak and Roma). The total number of prosecutors is now 47. Seven (7) prosecutors are female and 40 are male. The ethnic balance is 43 Kosovo Albanian, one (1) Kosovo Serb and three (3) from other ethnic minorities (Kosovo Turk, Bosniak and Roma).

<sup>34</sup> DOJ Weekly Report, 31 January 2003.

<sup>35</sup> The Department operates under the Ministry of Public Services.

invitation because, according to him, they are still uncomfortable and fear the atmosphere to be hostile.<sup>36</sup>

## II. PHYSICAL ACCESS TO COURTS AND DETENTION FACILITIES

One of the greatest problems of public access to justice remains physical access to the courts. Since the last Assessment, the situation has been improving, but it still varies significantly from region to region. Access to the courts in the Mitrovicë/Mitrovica municipality remains the most problematic from a logistical and security point of view. The situation there is unique as the courts are located in the mostly Kosovo Serb inhabited northern part of the municipality. While the Kosovo Serbs have no physical access problems, the Kosovo Albanians do, and still must generally use transport provided by UNMIK Police to get to the courthouse. This can become difficult, as there are only a few transports per day, and some days there is no transportation at all due to security concerns. Besides regular court staff who are picked up and dropped off every day at the same time, there is no routine schedule and people who need to get to the courthouse often have to wait at the police station for hours. For Kosovo Albanians and Bosniaks who live in northern Kosovo it is even more difficult because they first have to go to the south, and then wait for the bus to the north. Kosovo Ashkaelia living in Mitrovicë/Mitrovica apparently do not face problems accessing the courts with respect to security, but then they currently have only two civil matters pending at the courts.

Unlike Mitrovicë/Mitrovica, transportation of minorities to courts in other municipalities is done in an ad hoc fashion, with varying degrees of success. In Vushtrri/Vučitrn, transport to the court for members of the Kosovo Serb enclaves is arranged by request in co-operation with the police. There, court clerks also go to the Kosovo Serb enclaves and perform court administrative work on the spot, such as stamping contracts or performing initial court formalities. The President of the Minor Offences Court in Vushtrri/Vučitrn informed the OSCE that judges occasionally travel to enclaves for hearings and witness interviews; however, this is left to their discretion and no figures are available. Nevertheless, residents of enclaves are becoming more aware of accessible court services and the acceptance of the judicial system seems to be improving. At the other end of the spectrum, Kosovo Serbs in the Skenderaj/Srbica municipality apparently refuse to accept safety measures to access the courts. According to the President of the Municipal Court in Skenderaj/Srbica, last year their court heard only two cases where Kosovo Serbs were involved, and both involved criminal matters. In these cases, though the president made arrangements with the police with respect to security, the defense lawyer argued insufficiency of security and asked that the cases be dismissed. The Court and Prosecution agreed to hear the cases at the court in Mitrovicë/Mitrovica, but the defendants did not follow the summon orders and were convicted in absentia.<sup>37</sup>

The situation of physical access has not changed significantly in the Pejë/Peć region. The OSCE has been informed that Kosovo RAE and Bosniaks in this region have no problem accessing court services, while for residents of Kosovo Serb enclaves KFOR escort is necessary. The OSCE learnt that Kosovo Serb residents of the Osojane/Osojan enclave in Istog/Istok municipality have the option to submit requests to the courts through an UNMIK office. In Gorazdevac/Gorazhdevc, complaints or requests to the court can go through either an UNMIK office, UNMIK Police or by a person with an escort from KFOR (with three days advance notice). Kosovo Serb residents of the Biqë/Bica enclave in Klinë/Klina municipality report having major difficulties arranging

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<sup>36</sup> The OSCE was unable to contact these lay judges.

<sup>37</sup> This case also demonstrates how the argument of insufficient security can be (mis)used as part of a defense strategy to avoid a conviction.

escorts to court. The village leader expressed concern that KFOR has allocated only two (2) days per week to transport residents to Klinë/Klina.

Within the Prizren region, minorities from the municipalities of Prizren and Dragash/Dragaš, including Kosovo Gorani, Turk, Roma, Bosniaks and a very small number of Kosovo Serbs, normally access the courts without problems. The situation of Kosovo Serb minorities living in Rahovec/Orahovac municipality remains the same: they cannot move out of their enclaves without an escort. Nevertheless, Kosovo Serbs there are filing more claims before the Municipal Court in Rahovec/Orahovac, and police appear to be responding well to their requests for escort.

In the Gjilan/Gnjilane region, the largely Kosovo Serb inhabited Štrpce/Shtërpçë municipality falls under jurisdiction of the Municipal Court in Ferizaj/Uroševac. Due to their limited freedom of movement, Kosovo Serbs and Roma are not able to physically access the court and the number of minority cases heard and judged is very small. The OSCE is informed that UNMIK Police does not always provide transportation for suspects and witnesses to hearings and trials, but will enforce court decisions such as arrest warrants if a person does not appear in front of the court. These issues will be addressed once the Department of the Ferizaj/Uroševac Municipal Court and the Minor Offence Court is opened in Štrpce/Shtërpçë. In Prishtinë/Priština region, there still remains access problems for Kosovo Serbs living in Gračanica/Gračanicë. UNMIK is addressing this by organising a court shuttle that will go between Gračanica/Gračanicë and Prishtinë/Priština. Two court liaison officers are being hired who will have offices in Gračanica/ Gračanicë and will assist with legal administration and transport via shuttle.

Like access to courts, access to detention centres by family members of minority detainees remains a widespread problem. The difficulties met by minority families in areas without freedom of movement impact on the detainee's rights to have access to the outside world guaranteed both by the domestic applicable law and international human rights standards. No sustainable protected transport is organised for Kosovo Serb families visiting those detained in Kosovo Albanian areas. Most have to transport themselves or find other ad hoc solutions. The security-related incident on 8 April 2002 in the northern part of Mitrovicë/Mitrovica<sup>38</sup> significantly affected the possibility of visits from Kosovo Albanian families to those detained in the detention centre located in the north part of the town. During the weeks immediately following the incident no escorted transport was organised. Since then the transport of Kosovo Albanian families escorted by Special Police Units (SPU) has been re-established, but only once per week whereas this service was provided twice per week before the incident.

Access of minority lawyers to detention centres is generally good. SPU provides Kosovo Serb lawyers escorted transportation to detention facilities and courts located in majority Kosovo Albanian areas. The access of Kosovo Albanian lawyers to the detention centre of Mitrovicë/Mitrovica is organised by UNMIK Police with departure from the south police station and from the court. The visits to Kosovo Albanian detainees by their defence counsels had only been temporary affected by the incident on 8 April 2002. Despite few complaints, lawyers usually acknowledge having enough time to see their clients, and to prepare the defence. The Criminal Defence Resource Centre (CDRC)<sup>39</sup> also regularly transports minority lawyers, particularly when they do not dispose of sufficient time to request escorted transport to police.

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<sup>38</sup> The incident consisted of a violent clash between Kosovo Serb population and UNMIK Police. See UNMIK/SRSG Press Briefing of 9 April 2002.

<sup>39</sup> An NGO established by the OSCE to provide assistance for local defence counsel in Kosovo.

### III. PARALLEL STRUCTURES

The existence of parallel courts throughout Kosovo continues to effect access to justice by Kosovo Serbs, and problems such as overlapping jurisdiction and double jeopardy have still been documented by the OSCE.<sup>40</sup> One of the intended effects of UNMIK's programme of judicial integration will be the simultaneous dismantling of the parallel courts. The creation of municipal and minor offences courts in Zubin Potok and Leposavić/Leposaviq will strengthen UNMIK's jurisdiction over the northern municipalities, and the phenomenon of parallel courts should begin to taper off. The recruitment of judges, prosecutors and support personnel for these courts will be in direct proportion to the ethnic composition of the population. Accordingly, only Kosovo Serb judges will likely be appointed for these new courts in the north. It is also expected that the integration of Kosovo Serb judges into the courts in Mitrovicë/Mitrovica will weaken the parallel court in Zvečan/Zveçan.

Significant steps have also been taken to dismantle the parallel security structures, most notably the "bridge-watchers", in northern Mitrovicë/Mitrovica.<sup>41</sup> Some of their members were suspected of being involved in a wide variety of issues relating to intimidation and assaults of different ethnic groups and only a very small number of these cases had been effectively investigated and prosecuted. This reporting period saw the first successful prosecutions against leaders or members of these structures for alleged criminal acts committed against KFOR and/or UNMIK, with some investigations still ongoing. On 2 July 2002 a Kosovo Serb, former member of the bridge-watchers, was convicted for having damaged an UNMIK vehicle and sentenced to a suspended sentence of one year. On 10 December 2002 a Kosovo Serb, also a member of the bridge-watchers, was convicted for his participation in an attack of a KFOR vehicle perpetrated by a group of persons which resulted in injuries to soldiers during the night of 27-28 December 2001. The defendant was sentenced to eight (8) months of imprisonment. On 12 December 2002 another Kosovo Serb, leader of one of the divisions of the bridge-watchers, was convicted for the criminal acts of participating as a leader in a gathering that commits violence, in regards to a riot in northern Mitrovicë/Mitrovica that occurred on 21 June 2000. He was also convicted of unlawful possession of a weapon and participating in a gathering that commits violence in relation to another riot that happened on 8 April 2002. Both riots resulted in injuries to several UNMIK police officers and damages to UNMIK property. The defendant was sentenced to a total of 18 (eighteen) months of imprisonment.

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<sup>40</sup> See the legal analysis and Assessment of these issues in the *OSCE /UNHCR Joint Ninth Assessment of the Situation of Ethnic Minorities in Kosovo - September 2001 to April 2002* (hereinafter the Ninth Assessment). Further cases with risk of double jeopardy have been monitored by the OSCE during the current reporting period.

<sup>41</sup> For further information refer to the OSCE's "Background Report: Parallel Security Structures in North Mitrovicë/ Mitrovica " of 31 May 2002.

### **SECTION 3: DISCRIMINATION AND ACCESS TO ESSENTIAL SERVICES**

Discrimination continues to present a significant obstacle to the ability of minorities to live reasonable lives in Kosovo. As explained in the previous Assessment, whether indirect or direct,<sup>42</sup> intentional or unintentional, discrimination prevents minorities from accessing essential services, employment, and education, and it inhibits the creation of conditions for a fair choice regarding return. For the conditions of minorities to be improved, discriminatory practices, particularly those of governmental authorities, must be acknowledged and eliminated, and minorities must be provided with effective remedies to address discrimination. Despite encouraging progress towards these goals at the policy level since the last Assessment, discrimination remains a reality at the practical level, with the recommendations from the previous Assessment generally not having been implemented. Further, effective remedies have yet to be created, and discriminatory practices have not been fully eliminated or ameliorated. Instead, discrimination persists in access to and apportionment of services and is exacerbated by continuous freedom of movement problems and the entrenchment of parallel structures.

However, positive developments have been achieved within the reporting period, especially in terms of political commitment towards addressing pressing minority issues or general discrimination issues at a decision- and policy-making level. An indicative example in this regard is the work performed and the results achieved by the inter-agency high-level working group - the Advisory Board on Communities (ABC) – which was formed in December 2001 to provide policy guidelines, advice and recommendations to the SRSG on minority protection and integration in Kosovo, including effective non-discrimination laws and policies.<sup>43</sup> The ABC has continued to develop policies on minority employment in the public sector through its Working Group on Minority Employment and was involved in promoting the concept of an Omnibus Anti-discrimination Law. The ABC has further provided a forum through which to identify and to formulate effective policies in other areas relevant to situation of minority communities, but it remains to be seen whether such efforts will translate into positive and remedial actions within the relevant ministries and directorates.

The OSCE considers that a further key step in recognising, eliminating, and providing effective remedies against discriminatory practices is the imminent adoption of the Omnibus Anti-discrimination Law, which was originally drafted and proposed by the OSCE as model legislation. The Law has three key functions: (1) to consolidate and strengthen existing discrimination law by conforming it to current international and European anti-discrimination law and standards;<sup>44</sup> (2) to promote uniformity in adjudication of cases involving most forms of discrimination; and (3) to provide effective remedies for victims of most forms of discrimination,

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<sup>42</sup> In this context, direct discrimination could be described as the situation which occurs when an individual or a group is treated less favourably on grounds of ethnicity, whereas indirect discrimination refers to a policy or practice which is designed to be neutral yet *effectively* disadvantages or disproportionately affects a particular individual or group of one ethnicity, perhaps due to the failure to take into account that group's particular circumstances.

<sup>43</sup> The ABC is chaired by the Principal Deputy of the SRSG and the secretariat function is performed by the UNMIK Office of Return and Communities (ORC). Its membership includes the Office of the SRSG and heads or deputy heads of the four UNMIK Pillars, KFOR, UNHCR, UNICEF, OHCHR, WHO, IOM, OCHA, ICRC, and CoE. The international NGO community has observed the meetings through a delegate of the Alliance for Rights and Tolerance (ART).

<sup>44</sup> Such conformity is required by Section 2, UNMIK Regulations 1999/1 as amended, "On the Authority of the Interim Administration in Kosovo," 25 July 1999 and Chapters 3 and 4, UNMIK Regulation 2001/9, "On the Constitutional Framework for Provisional Self-government in Kosovo."

as well as effective, proportionate, and dissuasive sanctions to address violations. Following approval of the concept for such a law by the ABC and the Inter-Pillar Working Group on Human Rights (IPWGHR),<sup>45</sup> it was submitted to the Office of the Prime Minister and the Office of The Legal Advisor to the SRSG for consideration. Currently, the Prime Minister has given priority to the law's finalisation.

## I. EQUAL ACCESS TO EDUCATION

In the area of education, only incremental positive movement (including policy developments) in the creation of an efficient educational system compliant with international human rights standards for minority education has occurred since the last Assessment.<sup>46</sup> Transportation or physical access to schools remains a pressing problem for both students and teachers from minority communities.<sup>47</sup> Despite the recommendations made in the last Assessment, a comprehensive plan to provide secure bus transport for students has still not been produced or implemented by UNMIK and the Ministry of Education, Science and Technology (MEST), in consultation with UNMIK Police, KPS and KFOR. This deficiency means that, due to continued freedom of movement and security obstacles, many minority students remain without secure and reliable physical access to education, with direct impact on segregation of communities as well.<sup>48</sup> With the imminent devolution and decentralisation of the responsibility for such transportation to municipalities, establishing a Kosovo-wide policy/standard may be key to ensuring this provision and assuring potential returnees that their children will enjoy reasonable access to education.<sup>49</sup>

### **Parallel education structure and their effect on the right to education**

Inadequate secure transportation and general security concerns perpetuate the parallel education system established in many Kosovo Serb areas, and discourage involvement in integrative education initiatives. For example, Kosovo Serb parents in Rahovec/Orahovac refused to enrol their children in a successful mixed school initiative<sup>50</sup> allegedly due to security concerns. In an attempt to address the parallel education system and identify solutions for common education standards and integration of communities, the MEST and its counterpart in Belgrade have engaged in discussions, but progress, however, is still not apparent.

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<sup>45</sup>The IPWGHR is the working group of the Human Rights Oversight Committee, established as a high-ranking organ mandated to review UNMIK legislation and practices for compliance with human rights standards. The IPWGHR reviewed and approved the Law as compliant with international human rights standards.

<sup>46</sup> See "The Hague Recommendations Regarding the Educational Rights of National Minorities" delivered October 1996 by a group of international experts at the request of the OSCE High Commissioner on National Minorities. See Footnote 27 of the Ninth Assessment. The right to access to education is also directly guaranteed in Kosovo under Article 2, Protocol 1 of the ECHR through the Constitutional Framework.

<sup>47</sup> For a full analysis of transportation issues, please see Ninth Assessment, paragraphs 45-9.

<sup>48</sup> In the Prizren region, this has resulted in encouraging segregation rather than integration. Due to the continued lack of transportation, officials in the Zhupa Valley and Gora region are considering whether to establish satellite secondary classes for Kosovo Bosniak and Kosovo Gorani students, despite the inferior quality of the facilities.

<sup>49</sup> The planned gradual withdrawal of KFOR as well as the continuing reduction of UNMIK Police also makes it necessary to investigate transferring this responsibility to KPS.

<sup>50</sup> For a fuller discussion of mixed schools initiatives, please see Ninth Assessment, paragraphs 55-8. Conducted in a new facility built between majority and minority neighbourhoods, the initiative currently enjoys the active participation of 392 Albanian, Roma and Egyptian students without utilising stringent security measures, such as escorts.

### **Education in one's mother tongue**

Only limited and unsystematic improvements in access to education in one's mother tongue have occurred since the last Assessment and any progress was dependent upon local initiative. Though the right of every person belonging to a minority community to learn in one's language is clearly enshrined under international human rights instruments as well as in Kosovo's Constitutional Framework,<sup>51</sup> no central level policy directive on this matter has been issued or implemented. This appears to have contributed to differential access to such education throughout Kosovo. For example, the MEST has yet to reply to a request of 12 September 2002 from the Kosovo Roma community in Prizren for education in Romani language, culture and history in the last year of secondary school. However, Roma children in Mitrovicë/Mitrovica who are in kindergarten and pre-school enjoy the opportunity to learn Romani language as part of programmes sponsored by international NGOs. The Kosovo Turkish minority in Prizren town, moreover, can take classes in their language at both primary and secondary school levels. Yet, for those in the Turkish minority at the higher level of education wishing to become teachers, the new Faculty of Education of the University of Prishtinë/Priština does not offer classes in either Turkish or Serbo-Croatian. By not offering such an option the continued availability of education in the Turkish language at the primary and secondary level will be affected.<sup>52</sup>

Indeed, as the situation experienced by the Kosovo Bosniak community in Gjakovë/Đakovica municipality illustrates, the inability of members of a minority community to access education in their mother tongue may eventually result in forced assimilation. At the time of the last Assessment, Kosovo Bosniak parents were reluctant to place their children who did not speak Albanian proficiently into Albanian speaking schools, arguing that their education would be adversely affected. On the other hand, education in Serbo-Croatian was not available either. No progress has been noted during this reporting period. According to the local Kosovo Bosniak representative, no consensus could be reached in order to demand access to education in Serbo-Croatian language, given resource constraints and the small number of pupils affected. Instead, the parents appear to have accepted education in the Albanian language, reasoning that it will improve their children's future prospects in the job market.

Overall, access to education in one's mother tongue remains sporadic throughout Kosovo. The lack of significant improvement at either the policy or practical levels remains and may further hamper minority community children's ability to access education. Furthermore, it will affect associated issues such as conditions for return.

### **Special educational needs of the Kosovo RAE communities**

No comprehensive plan to address the specific educational needs of the RAE communities has been designed by the MEST, as was advocated for in the last Assessment.<sup>53</sup> Instead, meeting the educational needs of the RAE communities remains dependent upon initiatives of international or non-governmental organisations, which only sometimes receive support from the MEST. In the Mitrovicë/Mitrovica region, kindergartens and pre-schools created and operated by international NGOs in Kosovo Roma settlements have increased the number of Kosovo Roma children attending primary school. A two-month summer school for 36 Kosovo Ashkaelia children aged 6-14 years old held in Vushtrri/Vučitrn elicited similar results. Government authorities are involved

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<sup>51</sup> See Chapter 4, Section 4.4 of the Constitutional Framework which states that: Communities and their members shall have the right to "... (b) Receive education in their own language." See footnote 33, Ninth Assessment.

<sup>52</sup> Twenty-three (23) out of 46 Turkish speaking teachers in Kosovo are over 60 years old and about to retire.

<sup>53</sup> For a full analysis of these needs, please see Ninth Assessment, para. 64-8.

in initiating “catch-up” classes for Kosovo RAE children in Prizren town and Suharekë/Suva Reka in order to integrate students into the primary school and the technical secondary school respectively. In addition, after intervention by the OSCE, the UNMIK Office for Development of Education in Prizren placed 17 Kosovo RAE children in school. Despite these commendable efforts, throughout Kosovo, the special education needs of Kosovo RAE children are not being systematically and coherently met by the MEST.

## II. EQUAL ACCESS TO EMPLOYMENT

The previous Assessment focused on the fundamental nature of the right to equal access to employment, as it affects the issue of whether a minority community member may decide to remain or return to Kosovo. It also overlaps with other factors, such as security and freedom of movement, the ability to communicate in the majority language and discriminatory practices.<sup>54</sup> While access to private sector employment is not discussed extensively in this section, minorities’ impaired access to this sector remains of concern. When passed, the Omnibus Anti-discrimination Law is expected to address discrimination in this sector.

A key area of high-level policy focus, though, has been that of access of minorities to employment in the public sector. Although the public sector represents the primary employer of minorities in Kosovo, it currently employs less than one percent of minority communities members.<sup>55</sup> Recent efforts have targeted reversing discriminatory employment practices within the public sector. Specifically, the ABC Working Group on Minority Employment<sup>56</sup> has been assisting the Office of the Prime Minister in the development of an affirmative action programme for the PISG and has encouraged the implementation of the law on the Kosovo Civil Service, UNMIK Regulation 2001/36.<sup>57</sup> Yet, these efforts remain stalled, with only measured improvement in access to employment for minorities at the central and municipal levels.

A recommendation of the previous Assessment was the promotion of affirmative action policies in minority hiring practices by the Ministry of Public Services.<sup>58</sup> In late June 2002, an affirmative action programme for the civil service, “Community Proportional Representation,” which was developed by the Advisory Office on Equal Opportunity and Gender within the Office of the Prime Minister, was approved in principle by the SRSB, the Office of the Prime Minister and the ABC. The programme proposes that ‘representational ranges’ should be established for each community to ensure equal access to public sector employment. When calculated, the ‘representational ranges’ establish the acceptable minimum and maximum percentage of civil service employees for each minority community present within the municipality.<sup>59</sup> Utilising these ranges as a guideline, the programme is designed to trigger internal monitoring mechanisms when hiring levels of a minority community either fail to meet the minimum or exceed the maximum established by the ‘representational range’. Obtaining data to determine the ‘representational ranges’, which are acceptable to all communities, however, has proven to be difficult. This situation has contributed to the stalling of the implementation of the programme.<sup>60</sup> Therefore,

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<sup>54</sup> See paragraphs 69-76 of the Ninth Assessment.

<sup>55</sup> “Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo” (Report of SG on UNMIK), 13 January 2003, para. 33.

<sup>56</sup> The Working Group was established by the ABC and tasked to develop specific recommendations for the PISG and UNMIK on how to improve access to employment for members of minority communities.

<sup>57</sup> Promulgated on 22 December 2001.

<sup>58</sup> See first recommendation under “Employment”, Ninth Assessment.

<sup>59</sup> The ranges are calculated based upon a number of factors, including census figures and election results.

<sup>60</sup> The programme is set to be officially launched through Administrative Direction 2003/02 implementing UNMIK Regulation 2001/36. See the following section for further explanation. It should be noted that the

despite strong central-level support and recognition of the problem, no affirmative action programme is functioning within the PISG.

However, progress toward this end has been made recently through the enactment of Administrative Direction No. 2003/02<sup>61</sup> implementing UNMIK Regulation 2001/36 on the Kosovo Civil Service. Regulation 2001/36 provides the necessary legal framework to prohibit discrimination by or within the civil service,<sup>62</sup> and the Administrative Direction enables the implementation of Community Proportional Representation. It establishes recruitment procedures and terms of employment, as well as a civil service code of conduct and rules for disciplinary proceedings against civil servants. The Administrative Direction is a large step in promoting equal access to employment for members of minority communities within the public sector.

The compliance with guidelines regarding minority employment within the civil service,<sup>63</sup> has increased in some structures of the PISG, such as the MEST (27%) and the Office of the Prime Minister (16.5%). Others, such as the Ministry of Finance and Economy (0% minority staff; 28 of 57 positions filled), are still far from the threshold set in UNMIK Regulation 2001/19<sup>64</sup> for the minimum acceptable level of minority employment at the central level. The Office of Community Affairs (OCA), operating under UNMIK Pillar II on Civil Administration, notes that out of the 3,775 employees of the PISG, only 199 employees are of Kosovo Serb origin, 80 of Bosniak/Muslim Slav origin, 47 are Kosovo Turk and 22 are from Kosovo RAE communities and seven (7) employees are from other ethnic groups. These figures constitute an unsatisfactory participation rate of minority community members in the public employment sector at the central level. They show that there is little evidence that every Ministry, including the pivotal Ministry of Public Services, has heeded the Prime Minister's recommendation in 2002 to implement the 'Community Proportional Representation' programme, or that measures have been implemented to ensure equal access to employment within municipal administrations.

With regard to minority communities' employment in municipal structures, data submitted by 23 municipalities and reported on by the OCA<sup>65</sup> show that in total figures, 3,352 staff employed by different municipalities identified themselves as Kosovo Serbs and 1,014 as members of other communities<sup>66</sup>, while 11,969 employees were Kosovo Albanian.

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Administrative Direction requires an Administrative Instruction issued by the Ministry of Public Services establishing further procedures and criteria of the affirmative action programme for it to be fully implemented (Section 10.3, Administrative Direction).

<sup>61</sup> Signed by the SRSB on 25 January 2003.

<sup>62</sup> Section 2.1, UNMIK Regulation 2001/36 establishes non-discrimination, equitable and multi-ethnic representation, as well as fair and equitable treatment of civil servants as governing principles. The Annex to the Regulation also sets out the Code of Conduct of the Civil Service, which includes the respect of human rights and the rights of communities as well as the unbiased conduct of affairs.

<sup>63</sup> See UNMIK Regulation 2001/9 on a Constitutional Framework for Provisional Self-government in Kosovo, Chapter 4 (4.4): "Communities and their members shall have the right to: (...) (d) Enjoy equal opportunity with respect to employment in public bodies at all levels (...)." See further UNMIK Regulation 2001/36 on the Kosovo Civil Service, Chapter 2 Sec.2.1 (h): "Inclusiveness: recruitment at all levels in the Civil Service shall reflect the multi-ethnic character of Kosovo and the need for equitable representation of all the communities in Kosovo."

<sup>64</sup> Sec.4.2: "Members of the Civil Service shall be recruited from all the communities of Kosovo on the grounds of professional qualification, competence and merit after fair and open competition. The non-majority community representation in the composition of the Civil service at all levels shall be closely proportionate to the representation of non-majority communities in the Assembly."

<sup>65</sup> OCA, Ethnic Profile of Kosovo Consolidated Budget (KCB) Staff within the Municipalities, December 2002.

<sup>66</sup> Other communities include Kosovo Bosniak, Turk, Roma, Ashkaelia, Egyptian, Gorani and Croat.

Although some returning minority community members have found employment within the public sector, security considerations and subsequent restrictions on freedom of movement limits their employment opportunities within both the public sector and, particularly, the private sector. Kosovo Serbs, therefore, have overwhelmingly returned to rural or semi-rural environments where they can do subsistence farming or agriculture, contingent to access to farmland<sup>67</sup>. Those who have found employment did so mostly within the public sector, such as in the local ambulanta, the local school, KPS, UNMIK or through income-generating projects supported by the international community, all of which within the safe parameters of their community or village. In contrast, the Kosovo Roma, Ashkaelia and Egyptian returnees have in many cases returned to urban or semi-urban areas, mostly resorting to their pre-conflict employment sectors, such as in construction and trade<sup>68</sup>. However, neither returnees from these three minority communities, nor Kosovo Serbs have been able to return to publicly-owned enterprises.<sup>69</sup>

### III. EQUAL ACCESS TO SOCIAL SERVICES

The social services system, which was found to be barely functioning at the time of the last Assessment, continues to operate as previously with few noted changes. The Centres for Social Work (CSWs) have continued to lack the ability to provide full services in minority areas, due to the insufficient number of dedicated social protection officers for these areas and the reluctance of the social workers from majority areas to travel to minority areas. Contacts, however, between CSW staff working in majority areas and those operating in enclaves, have increased. In some cases, UNMIK Local Community Officers (LCOs) have facilitated meetings between CSW directors and social workers from enclaves to clarify queries and exchange experiences with colleagues working in the majority areas.<sup>70</sup> Positive examples of co-operation between CSWs located in majority areas and those located in minority areas rely more on individual initiatives of the CSW officers rather than on a co-ordinated strategy implemented at central or local levels. In Rahovec/Orahovac, for instance, the CSW has a sub-office in the so-called 'Serb quarter'. The person in charge of that office, a Kosovo Serb, and the Director of the CSW in Rahovec/Orahovac, a Kosovo Albanian, have been colleagues for some time and meet several times a week to co-ordinate on issues. Similar co-operation exists between CSW staff working in southern and northern Mitrovicë/Mitrovica.

The role of LCOs in providing equal access to social assistance to minorities continues to be crucial. In some municipalities LCOs are still in charge of social assistance monthly payments,<sup>71</sup> which is an unsustainable solution in the long-term. The OSCE received complaints from social workers operating in minority areas about the need for training in social protection issues, and requested more regular visits to sub-offices in minority areas by the municipal CSW director,

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<sup>67</sup> 82% of the Kosovo Serb returns were to rural or semi-rural areas, the exception being mainly in Gjilan/Gnjilane and Prizren regions.

<sup>68</sup> Some Roma, Ashkaelia and Egyptian returnees have benefited from small-scale income-generating projects supported by NGO, but none within the public sector.

<sup>69</sup> Access has been problematic in relation to Post Telecom Kosovo (PTK) and KEK.

<sup>70</sup> In Skenderaj/Srbica, the Kosovo Albanian CSW director met with the Kosovo Serb social worker employed in the Serb villages of Banjë/Banja and Suvo Grlo/Suhogërll.

<sup>71</sup> For instance, in the Kosovo Serb villages of Banjë/Banja and Suvo Grlo/Suhogërll (Skenderaj/Srbica), UNMIK LCO collects the money from the bank in town and hands it over to the Kosovo Serb social worker in the villages, whereas the latter distributes the payments. In Vushtrri/Vucitrn, UNMIK LCO personally distributes the monthly social assistance allowance, visiting all the beneficiaries among minorities within the municipality.

which would enhance team building and information sharing mechanisms among CSW employees.

The previous Assessment discussed ensuring adequate resources for mobile outreach services. The situation has only marginally improved, with three Kosovo Albanian villages in Zvečan/Zveçan, three remote Kosovo Albanian villages in Leposavić/Leposaviq and isolated areas in northern Mitrovicë/Mitrovica<sup>72</sup> continuing to be covered by the CSW located in southern Mitrovicë/Mitrovica. Visits by outreach teams to these areas are irregular resulting in Kosovo Albanians being forced to travel to southern Mitrovicë/Mitrovica to re-register for the social assistance scheme or to collect the monthly social allowance. The situation is particularly difficult for the disabled or elderly who may be unable to visit the CSW. An example where scarcity of resources is affecting the performance of the CSWs is the sub-office in Gračanica/Gračanicë, where three Kosovo Serb employees are assigned one vehicle, consequently being unable to cover both rural and urban areas in the municipality. The situation further deteriorated with the stopping of home visits by a CSW employee to minorities living in Prishtinë/Priština, following the end of escorts by KFOR.<sup>73</sup> Of particular concern is the decreased frequency of visits by CSW mobile teams to Plemetin/Plemetina village and camp. Even in Obiliq/Obilić, where the CSW Director has shown remarkable commitment to supporting minority communities, the CSW employees are reluctant to conduct regular mobile visits, alleging that Kosovo Serb and RAE communities enjoy some freedom of movement compared to a year ago and could, therefore, come themselves to the CSW.

With regard to the re-registration process for the Social Assistance Scheme (SAS), it was previously reported that minorities were effectively exempted from re-application requirements<sup>74</sup> as the CSWs had not yet built capacity to ensure outreach, and minorities were unable to reach the CSW premises due to security issues. The OSCE assessed a general improvement by the CSWs in raising awareness, among beneficiaries, about re-registration requirements. A significant number of minorities appear to be aware of the re-application procedure and CSWs stated that instructions to re-apply are given to those receiving social assistance. However, concern remains over cases of homebound beneficiaries who are unable to rely on home visits by social workers, due to living in minority areas or due to their location being unknown to CSW staff. A positive example where a CSW has developed a well functioning coverage of re-registration cases is in Prizren, where minority members who are unable to visit the CSW premises are visited by mobile teams. Neither of the recommendations in the last Assessment that the Ministry of Labour and Social Welfare (MLSW) monitors the effect of the re-registration requirement or that the indirectly discriminatory practices be removed have been implemented.

A development in the area of access to social welfare is the implementation of the right to use one's language in seeking access to social welfare.<sup>75</sup> The MLSW is in the process of preparing a

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<sup>72</sup> Lipa/Lipë, Boletin/Boljetin and Zhahë/Zaza in Zvečan/Zveçan municipality; Koshutovë/Kosutovo, Bistrica/Bistricë and Ceranja/Cerajë in Leposavić/Leposaviq municipality; Kodra Minatore, Bosnia Mahala, Three towers, Donji Suvi Do/Suhodolli i Ulët in northern Mitrovicë/Mitrovica.

<sup>73</sup> According to the UNMIK LCO, it was proposed that mixed CSW teams would do the home visits to Kosovo Serbs in Prishtinë/Priština but the proposal was rejected by both Kosovo Serb and Kosovo Albanian employees, alleging that the beneficiaries would not feel comfortable with this solution.

<sup>74</sup> Beneficiaries of category I assistance must re-register (and re-qualify) for assistance every six months. The same process is implemented every three months for beneficiaries of category II.

<sup>75</sup> The key provisions of the applicable law which protect the right to use of one's language in seeking access to public services can be found in Sections 9.1, 9.3, and 9.4 of UNMIK Regulation No. 2000/45 On Self-government of Municipalities in Kosovo. These provisions comply with paragraph 2 and 3 of Article 10 of Part III of the European Charter for Regional or Minority Languages, which is incorporated into the

programme to ensure uniform signs for CSWs throughout Kosovo. The availability of signs in the official languages currently differs from office to office. For example, at the CSW in southern Mitrovicë/Mitrovica, signs inside and outside the building are printed in Albanian, Serbo-Croatian, and English. However, in Skenderaj/Srbica the CSW only has signs at the front in Albanian and English, while in Vushtrri/Vučitrn, the Director is reluctant to place any signs on the premises. To allow uniformity in the availability of documents in official languages, all the CSW forms are printed at the central level and then distributed to municipal CSW offices. However, in Prizren, only general informational materials are available in Turkish, and not copies of decisions and other pre-printed documents.<sup>76</sup>

#### IV. EQUAL ACCESS TO HEALTH CARE

The right to adequate health care remains a fundamental issue for minorities who continue to experience problems in accessing health care facilities. In isolated villages across Kosovo, access to pharmacies is still limited but the delivery of drugs has relatively improved. As already highlighted in the previous Assessment, low levels of awareness continue to exist about the right to healthcare services and the list of drugs that are provided free of charge by the Ministry of Health.<sup>77</sup>

The recurrent issues of a lack of freedom of movement and security continue to impede access to healthcare for minorities. In northern Mitrovicë/Mitrovica, Kosovo Albanians access healthcare through alternative solutions to the hospital such as an UNMIK ambulanta where a medical technician is available daily and a general practitioner/paediatrician is available to visit patients weekly. KFOR organises transportation for patients who require hospital treatment. In Svinjare/Svinjarë, a mixed village in southern Mitrovicë/Mitrovica, access to healthcare for the Kosovo Serb community is provided through weekly visits of a doctor escorted from northern Mitrovicë/Mitrovica by KFOR and monthly visits by a doctor from Greek KFOR. The proposed establishment of an ambulanta to serve both ethnic communities has been pending for more than a year. In Osojane/Osojan, Crkolez/Cërkolez,<sup>78</sup> and in Istog/Istok, primary healthcare is provided through ambulantas by a general practitioner together with a number of nurses (who are paid by the Ministry of Health in Belgrade). Where secondary healthcare is necessary, patients are escorted to the hospital in northern Mitrovicë/Mitrovica by Spanish KFOR. The medical equipment available in the two ambulantas is basic with a scarce supply of drugs. In Shtime/Štimlje, the remaining 20 Kosovo Serbs prefer to travel to Gracanica/Graçanicë health house rather than refer to the local one.

Since the last Assessment, it has been observed that initiatives continue towards providing mono-ethnic solutions to the problem of healthcare as opposed to providing an integrated healthcare system in Kosovo capable of serving members of minority communities as recommended.<sup>79</sup> For example, in northern Mitrovicë/Mitrovica healthcare continues to remain under the control of the

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applicable law in Kosovo under paragraph 3.2 (g) of UNMIK Regulation No. 2001/9. The provisions also comply with Article 10(2) of the Framework Convention for the Protection of National Minorities.

<sup>76</sup> Note Section 9.5 of Regulation 2000/45, “The Statute of the Municipality shall make detailed provisions for the use of languages of communities as set out in this Section, taking into consideration the composition of communities in the municipality.” An examination of Statutes from various municipalities reveals a low level of compliance with this provision.

<sup>77</sup> UNMIK Department of Environment and Spatial Planning Administrative Instruction 9/2000.

<sup>78</sup> Osojane is an area of organised returns. Since the start in the summer of 2001, approximately 300 Kosovo Serbs have been registered there. Eighty five (85) Kosovo Serbs live in the enclave of Crkolez/Cërkolez.

<sup>79</sup> See paragraph 85, Ninth Assessment.

Ministry of Health in Belgrade despite the presence of UNMIK healthcare facilities (with doctors receiving two salaries if they visit enclaves in the south). A recurrent issue is the perceived lack of safety felt by the Kosovo Albanian population living in northern municipalities, and by Kosovo Serbs living in the southern municipalities, when being treated by doctors of a different ethnic community.

Particular problems of access to healthcare for Kosovo RAE communities remain an issue. In Mitrovicë/Mitrovica, Kosovo Roma communities reside in camps, which are situated some distance from the nearest ambulanta<sup>80</sup> and even when they do access healthcare, many may not qualify for assistance due to not possessing the required identification documents or medical books. The number of Kosovo RAE referring to hospitals and health houses for assistance continues to be relatively low,<sup>81</sup> even in cases of serious disease. For instance, while conducting a medical examination for the re-schooling of Kosovo Ashkaelia children in Vushtri/Vučitrn, doctors reported that five (5) out of eight (8) children were suffering from contagious diseases. Regarding the particular situation of the Kosovo RAE community residing in Plementin/Plementina<sup>82</sup> camp, which was previously reported as being unsustainable,<sup>83</sup> the situation has partially improved with the establishment of an ambulanta in the camp. The ambulanta offers daily primary health care by nurses, and weekly care from a general practitioner and other specialists. For secondary health care, patients are sent to Obiliq/Obilić Health House or to Prishtinë/Priština Hospital, with transport provided by Obiliq/Obilić Health House Ambulances or the American Refugee Committee (ARC).<sup>84</sup> The LCO in Obiliq/Obilić reported that Kosovo RAE members of Plementin/Plementina camp are more confident about approaching Obiliq/Obilić Health House or the ambulanta in the camp. The previous Assessment recommended that the Ministry of Health ensure information about healthcare through an awareness campaign for the RAE community. However, no such campaign has taken place, while a Charter of Patients Rights, sponsored by the Ministry and including a provision on “care without discrimination”, remains still in draft form.

An additional issue, which was not been covered in the previous Assessment, is the access to health care for disabled persons among minority communities. The problems of the rudimentary form of health care facilities already available are compounded by the lack of ramps, elevators and toilettes for disabled persons.<sup>85</sup> Home visits by doctors are not common practice and disabled persons are required to be accompanied by a family member in case of further referral to a hospital or other healthcare facilities.

An improvement from the previous Assessment is in the use of one’s own language to access healthcare. The Ministry of Health has distributed applicable regulations and an informational circular (6/2002) on the use of languages in healthcare facilities to the Directors of Hospitals and

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<sup>80</sup> Zitkovac camp is about 3 km from the ambulanta in Zvečan/Zveçan; Banjska/Banjskë collective centre is about 15 km from the same ambulanta. The Roma camp in Leposavić/Leposaviq is about 1 km from the municipal ambulanta. In the Roma camp in Mitrovicë/Mitrovica an ambulanta has been recently opened.

<sup>81</sup> This information is based on the information gathered by the OSCE during interviews with different RAE communities, meetings with health officials and other local and international organisations.

<sup>82</sup> Plementin/Plementina camp is inhabited by approximately 150 families, 60% Ashkaelia, 32% Roma and 8% Serbs or smaller groups, grossly. Their living standards are very basic and heavily dependent on external help and support.

<sup>83</sup> See paragraph 85 of the Ninth Assessment.

<sup>84</sup> The international NGO currently supervises the management of the camp.

<sup>85</sup> In Prishtinë/Priština Hospital, for instance, only the emergency and maternity unit have special ramps for wheel chairs.

Health Houses in Kosovo.<sup>86</sup> However, the policy on use of languages has been inconsistently implemented,<sup>87</sup> with Directors giving reasons for not posting signs in all languages, such as the possibility of provoking a security risk to healthcare officials or property damage, a lack of resources and a lack of knowledge of the procedures. Primary health care facilities in Prizren, Dragash/Dragaš and Rahovec/Orahovac are examples of inconsistent implementation of the applicable legislation on the use of languages in public services. In Dragash/Dragaš, informational signs are available in Albanian and Serbian, but drafted documents are available only in Albanian. In Rahovec/Orahovac, healthcare officials just commenced implementation of the use of Serbian in primary health care facilities. In Prizren, the Health Director is supporting efforts of the OSCE to implement the use of Serbian and Turkish in Health Houses, in addition to Albanian, but no positive results have yet been achieved. In Prizren Hospital, while most signs are in Albanian and Serbian, pre-printed documents are only in Albanian. The Director stated that the new supply of documents would be printed in Albanian and Serbian, however, little progress has been made in ensuring the use of Turkish. In Mitrovicë/Mitrovica, there has been little progress in the written communication in primary healthcare facilities both in the northern and southern part of the town.

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<sup>86</sup> UNMIK Regulation 2000/10 On the Establishment of the Administrative Department of Health and Social Welfare states in Section 2(a) that “the Department may make policy recommendations to the Interim Administrative Council through the Deputy Special Representative of the Secretary-General for Civil Administration concerning, inter alia: (a) an overall strategy for the development of non-discriminatory, efficient, transparent and accountable healthcare and social welfare in Kosovo, respectful of human dignity, and addressing the needs of vulnerable groups and other persons within the population who may be at risk.”

<sup>87</sup> The new Mental Health Centre in southern Mitrovicë/Mitrovica will have all written communications including signs and printed forms and informational material in Albanian and Serbian, according to public health officials.

## **SECTION 4: HOUSING AND PROPERTY RIGHTS**

As one of the prerequisites for a sustainable return of minorities to Kosovo, members of these communities must be able to realise their property rights.<sup>88</sup> The effective realisation of property rights requires positive actions by the State (in Kosovo, such positive actions fall within the obligation of UNMIK and its relevant bodies, as well as of the PISG and its sub-entities), which should therefore have implications both at political and budgetary level. Although insufficient realisation of property rights is triggered by issues related to access to property or to the claims mechanisms thereof, authorities have a positive obligation to ensure such access both by legislative reform and by executive/enforcement actions.<sup>89</sup> “Access” can be defined as encompassing three general areas: awareness of legal rights, physical access to relevant adjudicative and executive bodies, and, finally, once physical access is gained, the ability of the appropriate bodies to provide effective realisation of these rights.

### **I. HOUSING AND PROPERTY DIRECTORATE (HPD) AND THE HOUSING AND PROPERTY CLAIMS COMMISSION (HPCC)**

One of the key obstacles to the return process and the protection of minorities is access to their residential property, or their “home”.<sup>90</sup> The Housing and Property Claims Commission (HPCC) and Directorate (HPD) were established to facilitate the restoration and the confirmation of residential property rights, which were either lost through discrimination or force or remained unclear due to informal transactions.<sup>91</sup> Under their mandate, the HPD and HPCC possess the authority to evict illegal occupants and restore property to the rightful holders (whether owners, possessors, or occupancy right holders).

HPD’s and HPCC’s mandate in relation to illegal occupation<sup>92</sup> is particularly critical to the sustainable return of minorities. Within urban areas especially, a significant proportion of displaced minorities’ properties, both houses and apartments, are illegally occupied in part preventing their return. A number of these illegal occupants have not vacated the property even though they have received reconstruction assistance.<sup>93</sup> With their mandate, HPD and HPCC play

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<sup>88</sup> Property rights are a bundle of rights including the right to own, dispose of, and use property. They are recognised under international human rights instruments directly applicable in Kosovo, as well as domestic law applicable in Kosovo. See for further details, the OSCE reports on the Property Situation, January 2001 and February 2002. See also Ninth Assessment, pages 30-38.

<sup>89</sup> See *Airey v. Ireland*, 6289/73, 10 September 1979, para.32-33, *Blentic v. Republika Srpska*, CH/96/17, 5 November 1997, para.25.

<sup>90</sup> See *Kevešević v. Federation of BiH*, CH/97/46, 10 September 1998, para. 42 and *M.J. v. R.S.*, CH/96/28, 7 November 1997, para. 32 which argues that the right to return to one’s home involves the right to property (Article 1, Protocol I, ECHR) and the right to one’s residence/home (Article 8, ECHR). See also *Cyprus v. Turkey* (25781/94), 10 May 2001.

<sup>91</sup>Section 1.2, UNMIK Regulation 1999/23.

<sup>92</sup> It should be noted that some illegal occupations may fall outside the jurisdiction of HPD and HPCC and within the jurisdiction of the regular courts.

<sup>93</sup> Municipalities and the implementing partners are largely unable to ensure that those who receive reconstruction assistance vacate the properties. In the village of Potok/Potok of Podujevë/Podujevo, the village representatives reported to the OSCE that seven beneficiaries of reconstruction have never moved into their reconstructed homes. In Prizren town, many beneficiaries continue to illegally occupy property despite receiving reconstruction aid. Concerns were raised in the Lipjan/Lipljan MWG that eight (8) Kosovo Albanian families receiving reconstruction assistance in Dobraja e Vogël/Mala Dobranja would remain displaced in Plemetin/Plementina and not return.

a crucial role in facilitating the return of minority community members to their homes.<sup>94</sup> Thus, as many minorities suffer from illegal occupation of their residential properties, awareness of, physical accessibility to, and effective operation of the HPD and HPCC are key elements for the effective protection of minorities and their property rights as well as to facilitate their sustainable return.<sup>95</sup>

The OSCE acknowledges the progress in the HPD/HPCC activities since the last Assessment, both in expanding operations and allocating appropriate resources. Despite the clear progress, which has been mostly apparent under the new management of the HPD/HPCC, minority communities' level of awareness of and physical access to the HPD/HPCC mechanism was still inconsistent and in some aspects inadequate.<sup>96</sup> For example, the access of IDPs living outside Kosovo appeared to improve since the last Assessment. A satellite field office and mobile teams have been established in Montenegro to collect claims, and field offices already operating in Belgrade, Niš, and Kraljevo in Serbia proper remained open until December 2002. HPD also undertook a public awareness campaign to inform the public of the extension of the deadline to file claims. Claimants outside Kosovo lodged 15,615 claims (66% of the total claims filed), indicating that those internally displaced outside Kosovo enjoyed improved access and awareness of the mechanism since the last Assessment.<sup>97</sup> Such was the case in Montenegro, where 1,692 of these claims were filed within the last six months of 2002 after operations were established there. Yet, resource limitations may halt this progress elsewhere. The HPD has yet to open an office in FYROM to collect claims from predominantly Kosovo RAE refugees.<sup>98</sup> Thus, while improvements have been made in physical access and awareness of those displaced outside Kosovo, lack of human and physical resources for the HPD still hamper their effective realisation of residential property rights.

Inside Kosovo, the level of awareness of and physical access of minority communities to the HPD/HPCC mechanism did not appear to improve significantly or consistently since the last Assessment. The overall claim intake inside Kosovo represents only 34% (8,053 claims) of the total claims received by HPD/HPCC, indicating that the elements of access remain inadequate and prevent the effective realisation of minority communities', as well as the majority community's, property rights. As for the claims intake mechanisms outside Kosovo, human and physical resources of the HPD/HPCC appears to influence the intake results inside Kosovo as well.<sup>99</sup> Until the very recent opening of the HPD Office in Prizren,<sup>100</sup> the Pejë/Peć HPD regional

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<sup>94</sup> Within the context of eviction after receiving reconstruction assistance, the tri-partite agreement, through which the UNMIK Housing Reconstruction Guidelines 2002 mandates that reconstruction assistance be granted, commits the beneficiary to vacate any property occupied illegally or on a temporary humanitarian basis within one (1) month of completion of the reconstruction. The tri-partite agreement reaffirms HPD/HPCC's authority and states in Article 8, that if the beneficiary fails to vacate, the HPCC may issue an eviction order. If the beneficiary does not take possession of the reconstructed house, Article 8 also authorises HPD to place the reconstructed house under administration and allocate it temporarily until the beneficiary notified the HPD of his/her intention to return.

<sup>95</sup> For an Assessment of the HPD/HPCC operations, see also Ninth Assessment.

<sup>96</sup> During the reporting period, HPD did not open any new offices in Kosovo, but maintained the ones in Prishtinë/Priština, Gjilan/Gnjilane, Mitrovicë/Mitrovica, Pejë/Peć. Until 4 February 2003, when a field office was established in Prizren, the Pejë/Peć office covered Prizren region as well. The HPD has 15 international and 150 national staff members.

<sup>97</sup> At the time of the last Assessment, only 6,726 claims had been collected outside Kosovo.

<sup>98</sup> An agreement between HPD and UNMIK on the operation of such an office is pending.

<sup>99</sup> For example, in Prishtinë/Priština region, which includes a field office in Gračanica/Gračanicë, the intake is the highest in Kosovo (over 3,800 claims, 16% of total claims). Where such resources continued to be insufficient, however, no such progress was seen. Claim intake figures in Pejë/Peć and Prizren regions clearly illustrate this deficiency. As of 14 December 2002, only 178 claims (0,8% of all claims) were

office was responsible for operations in that region as well as within Pejë/Peć region and Montenegro.<sup>101</sup> While the office was provided more vehicles, its staff was cut in half and its Head of Office changed three times since the last Assessment, thereby hampering continuous and effective operations. Such circumstances prevented both the provisioning of HPD mobile teams for and the implementation of an awareness-raising campaign to minority communities.

A Kosovo-wide awareness-raising campaign conducted by the OSCE exposed further aspects influencing levels of awareness of HPD/HPCC mechanisms. Undertaken between 20 and 26 November 2002, the campaign briefed over 175 representatives of the Kosovo RAE, Kosovo Serb and Kosovo Bosniak communities in 15 locations throughout Kosovo<sup>102</sup> on the mandate and function of the HPD/HPCC, as well as on the residential property rights of their community members.<sup>103</sup> While it complemented an extensive HPD public information campaign informing the public of the extension of the deadline to file claims, confusion remained amongst the participants regarding who could file a claim with HPD and where claims could be filed. In addition, the Kosovo RAE community leaders currently residing in collective centres in Leposavić/Leposaviq and Zitkovac/Zitkovc (Zvečan/Zveçan) showed a lack of interest in the HPD/HPCC claims process as the overwhelming majority of their houses (situated in the so-called “Roma Mahala” in Mitrovicë/Mitrovica) had been destroyed.<sup>104</sup> Still, in Mitrovicë/Mitrovica, the briefings did expose the lack of access to HPD of the Kosovo RAE community even in this well-resourced region, and the HPD Head of Office in Mitrovicë/Mitrovica agreed to implement a mobile team operation covering all RAE community sites in his region.

With regard to the effectiveness of the HPD and HPCC in processing claims, the expedience of the process and the enforcement of decisions remain inadequate. Of the total 23,668 claims, only 1,856 claims (8 % of the total claims intake) have been resolved by either HPD or HPCC,<sup>105</sup> and only 621 eviction decisions were enforced against illegal occupants (227 HPD administrative evictions,<sup>106</sup> 254 HPCC-enforced eviction decisions, and 140 voluntary vacations of the illegally occupied property<sup>107</sup>).

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received in the Pejë/Peć region and only 130 claims (0,5% of all claims) had been collected in the Prizren region.

<sup>100</sup> The office was opened on 3 February 2003 after sustained joint efforts by the HPD, the OSCE, and Norwegian Refugee Council to remedy violations in the region.

<sup>101</sup> The absence of an effective HPD presence in the Prizren region affected the level of access of claimant throughout Kosovo. *Ad hoc* attempts to fill this gap meant that HPD resources had to be shifted and operations unnecessarily impeded. Resources from the Prishtinë/Priština region were allocated to Prizren, and, as a result HPD Mitrovicë/Mitrovica region was required to provide coverage of the Gllgovc/Glogovac municipality, normally covered by Prishtinë/Priština region.

<sup>102</sup> This was a joint project of the OSCE Department of Human Rights and Rule of Law and Department of Democratisation. Representatives and leaders were briefed in Gjakovë/Đakovica, Rahovec/Orahovac, Gjilan/Gnjilane, Kamenicë/Kamenica, Mitrovicë/Mitrovica, Vushtrri/Vučitrn, Leposavić/Leposaviq, Zvečan/Zveçan, Prizren, Ferizaj/Uroševac, Gracanica/Gračanicë (Prishtinë/Priština), Štrpce/Shtërpçë, Fushë Kosovë/Kosovo Polje, Plemetin/Plementina (Obiliq/Obilić).

<sup>103</sup> It also attempted to impress upon them the urgent need for members of their communities to secure their property rights by filing a claim.

<sup>104</sup> The OSCE and the UNHCR advocated filing claims independent of the condition of their former house in order to construct the necessary legal evidence to prevent *inter alia* a possible future illegal construction on their land. The recommendations were acknowledged by the HPD.

<sup>105</sup> 1,148 HPCC decisions, 708 HPD decisions.

<sup>106</sup> See UNMIK Regulation 2000/60, Section 12.6.

<sup>107</sup> 123 left prior to an HPD administrative eviction and 14 prior to enforcement of an HPCC eviction.

One aspect of the HPD's operations with a significant impact on the return of minorities is the status of the 4,275 cases of vacant or illegal property, which are still pending for administration by the HPD. Currently, only 2,268 properties are under the HPD administration, and of these, only 771 properties are allocated to displaced or vulnerable families under its temporary humanitarian permit scheme.<sup>108</sup>

Overall, despite progress since the last Assessment, access to and operations of the HPD and HPCC remain inadequate and insufficient to ensure the effective protection of minority's residential property rights and facilitate their return.<sup>109</sup>

Yet, it should be noted that not only do the difficulties with the HPD and HPCC mechanisms create problems for those wishing to return to illegally occupied property. Post-eviction damage and destruction of property as well as harassment are also of concern. Due to a time-lag between when an HPD/CC eviction occurs and the physical repossession of the property by the property right holder, looting and destruction of properties have occurred. In addition, evicted illegal occupants have harassed the returned property right holder. In May 2002 in Vushtrri/Vučitrn, majority community members demanded money for 'protection' while evicted illegal occupants demanded compensation from the returned property right holder for improvements which they had made to the returned properties. Such phenomena highlight the need for increased co-ordination between HPD and HPCC and the police regarding evictions, as well as increased diligence by law enforcement authorities.

## II. CADASTRE

Since the last Assessment, overall access to the cadastre has improved for minority communities.<sup>110</sup> In most areas, new cadastre documents are issued in three languages and the majority of senior Municipal Cadastre Office (MCO) staff is able to communicate in non-Albanian language (Serbo-Croatian or Turkish). Minority communities' physical access to the MCOs in Gjilan/Gnjilane region has reportedly improved, with the MCO in Viti/Vitina hiring a Kosovo Serb employee and the MCO in Kamenicë/Kamenica having a Kosovo Serb director. In Prizren region, Kosovo RAE community members in Rahovec/Orahovac reported enjoying free access to that MCO, while in Mitrovicë/Mitrovica municipality, Kosovo Serb and RAE individuals can access the MCO through a satellite office in the northern part of the city.

Yet, incidents continue to occur where minorities have encountered problems gaining physical access to the cadastre. For example, in Pejë/Peć municipality, the Kosovo RAE community and international organisations acting on their behalf encountered problems in obtaining the correct cadastre maps for the Kosovo RAE area of "Kristali". A similar<sup>111</sup> problem was encountered when cadastre maps were sought for the Kosovo Serb potential returns sites of Sigë/Siga and Brestovik/Brestovik. Minority community members also experienced difficulties in or denial of

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<sup>108</sup> See UNMIK Regulation 2000/60, Section 12.4.

<sup>109</sup> In September 2002, representatives of the Kosovo Bośniak community in Pejë/Peć stated that property concerns, along with unemployment, are the key obstacles to return. One representative, frustrated that the community did not receive promised funds to support returnees, stated that the high level of illegally occupied properties and lack of reconstruction funds to rebuild destroyed houses discouraged the community from returning. HPD/HPCC's relative inability to promptly evict illegal occupants has consequently negatively affected decisions of IDPs to return.

<sup>110</sup> See Ninth Assessment, page 33, paragraph 105-6.

<sup>111</sup> Most MCOs store possession lists as well as records on land and socially-owned property, and copies of building plans. The majority of MCOs have copies of court verified contracts on sale of immovable property. For apartments, however, no registry exists, as the current system does not provide for it.

access to MCOs in multiethnic municipalities, such as Lipjan/Lipljan and Fushë Kosovë/Kosovo Polje.

These problems of physical access are compounded by the continued lack of a fully functioning and complete cadastre, which affects all communities in Kosovo. Though a regulation to establish a fully functional immovable property rights register has been promulgated recently,<sup>112</sup> it cannot be implemented until complementary legislation is passed and the cadastre itself is functional. For instance, some cadastre data for Kosovo remains in Serbia proper. Negotiations between UNMIK, the Co-ordination Centre for Kosovo and Metohija (CCK), and the Governments of Serbia and Montenegro and of the Republic of Serbia are currently ongoing to establish technical co-operation in order to reconstruct the cadastre system in Kosovo, specifically on how to transfer cadastre data for the territory of Kosovo. In addition, as it currently stands, MCOs do not store the same types of documents and records, meaning that they may not have records required to establish property rights. Another problem exposed since the last Assessment is that of the authenticity of cadastre documents and the reliability of cadastre records. The September 2002 arrest of two senior officials of the Prishtinë/Priština MCO for alleged corruption raised doubts about the veracity of property transactions registered in the municipality within the past three years.<sup>113</sup>

### III. ILLEGAL CONSTRUCTION AND USE OF LAND

As noted in the previous Assessment, minorities' lack of freedom of movement and exposure to discrimination makes them particularly vulnerable to the problem of illegal construction and use of land, or illegal interference with their property rights.<sup>114</sup> Minorities are especially vulnerable to illegal use of agricultural land. Such illegal use of land obstructs the ability of these property right holders to return in a sustainable fashion. Since the last Assessment, little progress has been made in remedying the identified gaps in the legal framework, such as the inadequate administrative appeals mechanisms at the municipal and central level and the lack of effective judicial remedies to such interference.<sup>115</sup> Nor has notable progress been observed in preventing the illegal use of agricultural land.

The effect of these gaps was seen in the Pejë/Peć municipality, when the Kosovo RAE community displaced from the "Kristali" area of the Pejë/Peć city attempted to access and reconstruct on their land. Not only were Kosovo RAE property right holders denied construction permits to build on their land, but Kosovo Albanian property right holders were granted construction permits in the same area and illegal construction by the majority community, known to the municipality, continued unregulated. The Kosovo RAE property right holders were denied construction permits by the municipality based on the zoning of the area, while the majority community applicants were granted construction permits within the same zoning. The municipality, based on the zoning designation, refused to consider appeals to its decision. Subsequently, based on a September 2000 Municipal Council decision changing the zoning designation, the municipality, through the UN Municipal Administrator, promised remedial action. To date, however, over 100-inventoried illegal constructions remain unregulated. As this

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<sup>112</sup> UNMIK Regulation 2002/22, On the Promulgation of the Law Adopted by the Assembly of Kosovo on the Establishment of an immovable Property Rights Register, 20 December 2002.

<sup>113</sup> On 8 October 2002, after consulting with the DOJ and Kosovo Cadastre Agency (KCA), the UN Municipal Administrator ordered a freeze on the registration of all property transactions undertaken over the last three years until a KCA-established Audit Commission could verify their legality. The MCO was reopened to the public on 24 October 2002.

<sup>114</sup> See Ninth Assessment, page 33, paragraph 107.

<sup>115</sup> *Ibid*, paragraphs 108-111.

case illustrates, the continued ineffectiveness of administrative remedies negatively affects the ability of minority communities to access their property rights and thus exercise their right to return.

#### **IV. UNMIK REGULATION 2001/17 ON THE REGISTRATION OF CONTRACTS FOR THE SALE OF REAL PROPERTY IN SPECIFIC GEOGRAPHICAL AREAS OF KOSOVO (AND ADMINISTRATIVE DIRECTIONS 2001/16 AND 2002/4)**

The systematic sale of real estate belonging to minorities, be it voluntary or under threat or pressure, has a potential detrimental impact on the living conditions of the respective minority communities and, indirectly, on the right of refugees and displaced persons to return to those communities. As response to this phenomenon, UNMIK enacted Regulation 2001/17.<sup>116</sup> Before and after its promulgation, the Regulation has aroused criticism and speculation.<sup>117</sup> It was feared that it would deter registration of property and therefore lead to clandestine property transactions circumventing the official (court) system. Moreover, it raised concern that the imposed restriction was a violation of the right to freely dispose of one's property, and also that it was discriminatory.

The Regulation, however, does not prohibit sales in general. It orders that such sales be reviewed by another institution outside the courts (namely the UNMA) to determine whether the contract was fairly concluded and whether the sale reflects a systematic buy-out of minority-owned property. In this respect, the Regulation does not intend to serve as an instrument to restrict sale of real property owned by minorities, but, on the contrary, as a necessary tool to protect the legitimate interests of minorities.

However, the need to register a sales contract with the UNMA may generate an unnecessary and burdensome interference with property rights under the ECHR. The European Court found a national expropriation law to be inflexible, stating that the complainants were left "in uncertainty as to the fate of their properties", as the respective law lacked a remedy against the prolonged expropriation procedure and also did not envisage for the possibility to claim compensation. These gaps in the national law were found to subject the applicants to "an individual and excessive burden".<sup>118</sup> Along the line of the European Court's arguments, the OSCE finds that the Regulation, despite an established reconsideration and appeal process, places an excessive burden on the minority property rights holders, while also lacking any possibility to compensate these individuals for the interference with their rights. Such a burden appears to be individual and disproportionate when balanced with the legitimate aim of the Regulation, and the following case study is illustrative in this regard.

The case was initiated on 11 March 2002 by two individuals<sup>119</sup> who requested the UNMA to register a contract on sale in Lipjan/Lipljan. On 28 March 2002, the UNMA refused the registration of the contract on security grounds: *the transaction would endanger the freedom of movement of Kosovo Serbs in Lipjan/Lipljan*. On 5 April 2002, the parties made a request for reconsideration, with the Kosovo Serb prospective seller providing medical reasons for the transaction. He and his wife were old and sick (especially his wife) and he was not able to take

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<sup>116</sup> For a background on the UNMIK Regulation 2001/17, see also the Ninth Assessment.

<sup>117</sup> See also: Norwegian Refugee Council (NRC): UNMIK Regulation 2001/17 – Request for review for compliance with international standards regarding permissible restraints on the voluntary transfer of private residential property, 14 September 2001 and the Ombudsperson Institution in Kosovo – Special Report No. 5, 29 October 2001.

<sup>118</sup> See European Court of Human Rights, Sporrang and Lonroth judgement, A Series no. 52, para. 73.

<sup>119</sup> A Kosovo Albanian – the buyer- and a Kosovo Serb – the current owner of a property.

care of her anymore. He wanted to leave and join his only son in Serbia proper. They did not have enough money to pay hospital bills and medicine, so the money from the sale was necessary to cover health expenses. On 16 April 2002, although recognising the difficulties of the Kosovo Serb couple, the UNMA rejected the request for reconsideration<sup>120</sup> basing the decision on the security-related opinion of KFOR. On 8 May 2002, the Kosovo Albanian appealed the UNMA's decision to the panel,<sup>121</sup> arguing that the two parties of the transaction had known each other for 30 years and had always had a good relationship, and that many Kosovo Albanians already inhabited the neighborhood. The Kosovo Serb stated to the court panel that the security assessment made in this case was inaccurate, as his property was not located on the road that was used by other members of the Kosovo Serb Community when moving from one part of the municipality to the other.<sup>122</sup> However, the court panel followed the arguments of the UNMA, namely that it was "deemed crucial to preserve the critical street [where the house was located] as a street predominantly inhabited by Serbs to secure the safe access for Serbs from that neighbourhood and the Serbs living further south to the Serb quarter in the northern part of town."<sup>123</sup> On 5 July 2002, the panel rejected the appeal.<sup>124</sup>

The OSCE has documented cases indicating that the Regulation does not serve the purpose originally envisaged. UNMIK representatives of the Prishtinë/Priština, Obiliq/Obilić and Fushë Kosovë/Kosovo Polje municipalities reported also that the Regulation has no significant impact on sales, since all the critical sales took place before the entry into force of the Regulation. For example, in the village of Devet Jugovica/Nënte Jugoviq, 50% of the residential property had already been sold before the enactment the Regulation. In Fushë Kosovë/Kosovo Polje and Obiliq/Obilić, UNHCR statistics related to the departure of Kosovo Serbs show that more properties were exchanged than contracts submitted for registration, thus indicating the use of informal transactions.

An additional concern related to the Regulation stems from its implementation, and, in particular, from the rejections by the SRSG of requests filed by UNMAs from different municipalities in Kosovo to designate additional Specific Geographic Areas (SGA).<sup>125</sup> Several municipalities without SGAs have submitted requests to the SRSG to designate SGAs in their area of responsibility. For instance the municipality of Ferizaj/Uroševac has no SGAs. Since August 2001, the municipality submitted three requests to the SRSG. However, all requests have been declined without explanation despite a significant amount of inter-ethnic property sales that occurred in the Ferizaj/Uroševac municipality.<sup>126</sup> A proposal to include Prishtinë/Priština city under SGA has been submitted three times but all requests have been rejected. The Prizren municipality submitted in September 2001 a proposal but this request was declined as well.

Another phenomenon that is impeding the effective implementation of the Regulation is the lack of available resources for the UNMAs to monitor transactions and to review suspect sales

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<sup>120</sup> The UNAM repeated the same security reasons as in case A.

<sup>121</sup> See Section 7 of UNMIK Regulation 2001/17.

<sup>122</sup> See statement by the Kosovo Serb to the panel during a hearing on 10 June 2002.

<sup>123</sup> See declaration by the UNMA during the above-mentioned hearing.

<sup>124</sup> According to the UNMA of Lipjan/Lipljan, the transaction might have taken place unofficially, as in December municipality representatives noticed that the house was vacant. No verification was conducted.

<sup>125</sup> See further the analysis made in the Ninth Assessment, para 123.

<sup>126</sup> The Office of the Legal Advisor responded three times that the submitted request does not meet the criteria under Section 1.2 lit. (a) and (b). The Ferizaj/Uroševac Municipal Court reported that 536 Kosovo Serb and Montenegrin properties (apartments, land, commercial premises, etc.) have been transferred to Kosovo Albanians - among which 182 were residential properties - since the promulgation of the Regulation.

properly. UNMIK's downsizing has affected the number and kind of employees able to effectively and actively conduct reviews and follow up investigations on rejected property contracts. Moreover, the OSCE is concerned with the poor understanding of the Regulation both by the public and the municipality officials. It is imperative to ensure that the courts, local authorities and the UNMA understand the Regulation fully.

Although agricultural land is not included in the scope of the Regulation, patterns of inter-ethnic sales of agricultural land gave further reasons for concern. The OSCE monitored that not only do such land sales cut off minority farmers from accessing valuable land for agriculture exploitation, but they can also effectively isolate minority communities, as such lands are usually located along the main travel routes in and out of minority communities. As current conditions indicate, some strategic purchasing of minority agricultural lands has already occurred in several areas, suggesting the same pattern and practices that occurred with residential properties. It is noteworthy that agricultural land is an essential economic indicator for the sustainable return of many minority communities, thus scrutiny over inter-ethnic transactions involving such land is of significant importance.

One development in addressing the drawbacks of the Regulation has been the establishment of an ABC Working Group to review it. It has been concluded that there is a need to increase the number of SGAs particularly in urban areas where minority flight has occurred and the returns process has not yet begun. Areas such as Prishtinë/Priština town, which contain a large number of illegally occupied minority residences, present a hostile environment for would-be returnees. Such circumstances create considerable pressure on minority property owners to sell rather than to wait for the HPD process to resolve possession or ownership disputes. The working group also acknowledged that it is vital, in order to ensure proper implementation of the Regulation, that the UNMAs have the ability to monitor, investigate, and follow up on suspect property sales under review or appeal. Therefore, and in light of UNMIK's downsizing, the capabilities of UNMAs to fulfil their responsibilities under this Regulation must not be compromised. The working group also recommended changes that would afford an amendment of the Regulation. This includes a recommendation of an amendment to extend coverage to agricultural land. Such an amendment would serve the same public interests that necessitated the review of residential properties, namely the protection of all communities' property rights, regardless of ethnicity, from coercive or irregular sales tactics.

## **V. RECONSTRUCTION AND RETURN**

The right of the refugees and internally displaced minorities to return and exercise their property rights often depends upon the apportionment of reconstruction assistance. Many minorities' properties have been destroyed both in urban and rural areas either during the conflict or immediately following it, and in some instances destruction has continued throughout the post-conflict period.<sup>127</sup> Indeed, the level of such destruction in villages can be persuasively argued to be inversely linked to the presence of a resident minority community.

As previous Assessments have highlighted, minorities, though generally well informed about the existence of reconstruction assistance and the mechanisms through which to obtain it, have

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<sup>127</sup> For example, the "Roma Mahala" of Mitrovicë/Mitrovica municipality and "Kristali" in the Pejë/Peć were raised following the conflict. In the Vushtrri/Vučitrn, on 10 May 2002 looting and more serious destruction of Kosovo Ashkaelia returnee houses took place.

encountered difficulties in obtaining it.<sup>128</sup> The actual proportion of houses reconstructed within the minority communities remains far less than that of the majority communities, who normally possess better access to and greater financial resources. For instance, throughout the Mitrovicë/Mitrovica region, the overwhelming majority of houses reconstructed were not those belonging to minority beneficiaries. In Deçan/Dečani, prior to this past reconstruction season, 55% of the majority population destroyed houses have been rebuilt compared to 6-7% of those belonging to minority population.

### **Minority Access to Reconstruction Assistance**

Since the last Assessment, though, minorities access to the reconstruction process appeared to improve. Overall, within the Municipal Housing Committees (MHCs), which approve the distribution of the majority of reconstruction assistance, minority communities' interests appear to more consistently be represented by the presence of at least the UNMIK LCO or Municipal Communities Officer as a voting member. Three notable exceptions were the MHCs in Fushë Kosovë/Kosovo Polje, Obiliq/Obilić, and Ferizaj/Uroševac, where no representation of minority communities' interests was ensured. The invariable result of this lack of representation was a diminished allocation of assistance to minority communities. In Ferizaj/Uroševac, the only minorities who received assistance were three (3) Kosovo Ashkaelis (less than a 5% allocation to minorities).<sup>129</sup> Sometimes, though, even when representation was present, minorities did not receive assistance. In Glllogovc/Glogovac, no minorities benefited from reconstruction assistance.

Furthermore, much of the progress in reconstruction assistance to minorities since the last Assessment can be attributed to international, not local, initiatives. For example, as recommended in the last Assessment, the EAR required that 10% of its donated reconstruction assistance be allocated to minority beneficiaries. It also provided an extra fund for minorities. These initiatives forced many MHCs to select minority beneficiaries they might not have otherwise considered, either due to political considerations or vulnerability thresholds.<sup>130</sup> The LCOs' active advocacy of minority beneficiaries also helped in the selection process. Another example is the Prizren region, where many minority members were unaware that they could access reconstruction assistance.<sup>131</sup> Minorities in Prizren benefited from reconstruction assistance mainly through a Swiss Caritas programme, which reconstructed 57 houses for Kosovo Roma in the municipality.

Concerns raised in the last Assessment still remain that minority access to reconstruction assistance is also hindered at times by the insufficient co-operation between the implementing international NGO and municipal authorities such as the MHC. For example, in the Pejë/Peć region, the EAR implementing partner CORDAID at one point appeared to be disqualifying beneficiaries due to lack of cadastre proofs, though alternative proofs are acceptable under the UNMIK Housing Reconstruction Guidelines 2002 (the Guidelines). CORDAID also resisted providing assistance to Kosovo RAE families from the Kristali area of the Pejë/Peć municipality based not on vulnerability issues, but on the assertion that the property status of the families was too vague. Despite five beneficiaries from the area, who possessed property documentation, being approved, CORDAID remained resistant and tried to ignore the decision citing unsubstantiated

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<sup>128</sup> See Ninth Assessment, page 34-36, paragraphs 112-122.

<sup>129</sup> In fact, this MHC met only three (3) times in one year without the Chair informing the UNMIK LCO, a member of the MHC, of the meetings.

<sup>130</sup> In a number of municipalities, such as Skenderaj/Srbica, Deçan/Dečani, Pejë/Peć, and Klinë/Klina, the point threshold for the "social gravity indicator" used to assess vulnerability had to be lowered to meet the 10% EAR quota.

<sup>131</sup> In the Prizren municipality, of the 49 minority cases known to the municipality, only 10 cases were presented by it to the MHC for Assessment.

property and security concerns. The two excluded cases were finally included in the programme.<sup>132</sup>

### **Minority Access and the Application of UNMIK Housing Reconstruction Guidelines**

In addition to the obstacles highlighted in the last Assessment, minorities attempting to obtain reconstruction assistance and the protection of their property rights encountered obstacles due to the lack of legal weight given to the Guidelines governing the reconstruction process.<sup>133</sup> As written, the Guidelines provide a comprehensive system to protect rights to property, due process, and to return to one's home, but do not possess any legally binding authority.

The system was constructed around a single "recommending, co-ordinating, and approving" body within the municipality, in most cases the MHC.<sup>134</sup> As established in the Guidelines, the MHC's membership includes the relevant Directorates of the municipality,<sup>135</sup> such as Urbanism and Cadastre, required for selecting beneficiaries and implementing the reconstruction itself. The Guidelines outline the procedures and structures through which the MHC, as the central body, ensures that basic vulnerability criteria, as well as the procedural, legal, and technical requirements for reconstruction are met. For example, the Guidelines require the MHC, through a Verification Unit and the MCO, to "verify and ensure" that the selected beneficiaries have legal access to the targeted property.<sup>136</sup> Yet, property rights only are investigated once the vulnerability of the beneficiary is established and the MHC approves the beneficiary as eligible to receive reconstruction aid. Such measures promote property rights and the right to return to one's home. The Guidelines also provide mechanisms to prevent corruption. Not only can the UNMA intervene when s/he deems it necessary, but also the procedures have checks and balances, such as the MHC Verification Unit described above. In addition, the Guidelines require three different verification processes when compiling the final beneficiary list.<sup>137</sup> Appeals mechanisms, protecting rights of due process, also exist. For instance, once the final list is posted, complaints regarding the ineligibility of a beneficiary or appeals to be included as a beneficiary can be lodged and must be responded to.<sup>138</sup> In addition, the Guidelines efficiently promote the right to return to one's home by rejecting any 'secondary displacement', including transfers of a house from rural to urban areas. The only 'displacement' permitted when receiving reconstruction aid is within the same village/community.<sup>139</sup> Moreover, the procedures mandate that those displaced either within or outside Kosovo be equally considered for reconstruction aid if they express the desire to return to their place of origin. Selection is to be based purely upon vulnerability.

When the mechanisms outlined in the Guidelines were utilised, they effectively promoted the right to return to one's home and protected property rights and rights of due process, as well as preventing corruption for all communities because of the clearly defined procedures and

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<sup>132</sup> On 18 November 2002, the two beneficiaries' building sites were vandalised.

<sup>133</sup> The Guidelines were issued by the Ministry of Environmental and Spatial Planning, Housing and Reconstruction Division.

<sup>134</sup> In Section 2.3.3, the Guidelines allow the MHC to be by-passed when minority projects are being considered. Such an option must be decided by the UN Administrator, be co-ordinated through the LCO, and the MHC be informed of the process.

<sup>135</sup> See Section 2.3.1, Guidelines.

<sup>136</sup> In fact, the "Guidelines" provide a seven-step process for the MHC Verification Unit to assist the beneficiary in verifying possession, including actions to be taken when cadastre documents are not readily available. Moreover, the "Guidelines" base selection on vulnerability criteria, not upon confirmed property rights.

<sup>137</sup> Section 3.4.1-3, "Guidelines".

<sup>138</sup> Section 3.4.4, "Guidelines".

<sup>139</sup> See Section 2.3, point 2.

structures they established.<sup>140</sup> Still, without an oversight or monitoring mechanism, the potential for misuse or misallocation of reconstruction assistance increases. In Pejë/Peć, where 2002 funding was temporarily withheld due to allegations of corruption and favouritism during the 2001 programme, the UNMIK Municipal Project Officer, who sat on the MHC, indicated to the OSCE that attempts were made again, but thwarted, to include “politically-accepted” beneficiaries.<sup>141</sup>

When the Guidelines are not utilised, rights of minorities to property and due process, as well as the right to return to their home, were jeopardised or even violated, especially in cases of organised returns or minority-targeted projects. In both the Mitrovicë/Mitrovica and Pejë/Peć regions, by-passing of both the MHC and the Guidelines resulted in such negative inferences. In the Pejë/Peć region, this circumvention resulted in a number of property concerns turning into violations of applicable law and international human rights standards during the implementation of the organised return project for Biqë/Bica and Grapç/Grabac in the Klinë/Klina municipality. As allowed under the Guidelines, the UNMIK Regional Administration decided to utilise a returns and reconciliation structure unique to the region, the Returns Implementation Group (RIG). Established as a subsidiary of the Regional Working Group (RWG), the RIG inherited the implementing function of a Municipal Working Group (MWG)<sup>142</sup>, in order to enable the local political aspects of the returns and reconciliation process to be separated from the more technical issues of implementation. A RIG was to be convened for each municipality involved in an organised return project and established five (5) task forces covering technical topics, including one on Reconstruction and Balancing Projects.<sup>143</sup> The incoherence of this structure when implemented precluded the efficient resolution of property issues affecting the return process.

In practice, the lack of definition of the mandate of the RIG and its task forces prevented the establishment of mechanisms to protect the rights of potential beneficiaries, such as those established in the Guidelines, and led to attempts to circumvent the structure when property concerns arose in the Klinë/Klina return project. The framework set up by the RIG failed to ensure property rights confirmation prior to construction, to avoid construction on other people’s land or without proper permits, and it lacked an effective institutional remedy. Moreover, it resulted in illegal construction on municipal land, on socially-owned land, and on other people’s land as well as construction of all 41 houses by the implementing partner Technisches Hilfswerk (THW) without the required municipally-issued permits.<sup>144</sup> Such situations violate UNMIK Regulations 2000/45, 2000/53,<sup>145</sup> 2002/12, the Law on Basic Property Relations, as well as international standards regarding property and due process rights. To date, these violations have not been remedied despite repeated appeals to the UNMIK Regional Administration.

In Mitrovicë/Mitrovica, the lack of an effective central system for analysing property or other return information, such as those provided for in the Guidelines, inhibits the Kosovo Roma

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<sup>140</sup> In Pejë/Peć, Deçan/Deçani, and Gjakovë/Đakovica, the MHCs meticulously went case by case through the implementing partner’s proposed list of beneficiaries. In Ferizaj/Uroševac, a claim was lodged alleging that an approved beneficiary had misrepresented himself. The claim was accepted and the person removed from the beneficiary list. In Klinë/Klina, a family tried to build a house on municipal property. The Directorate of the Cadastre and Reconstruction, however, intervened and the illegal construction was prevented.

<sup>141</sup> A similar dynamic appeared in Klinë/Klina where personal and political favourites were promoted as beneficiaries, but rejected by the MHC.

<sup>142</sup> In some regions, such as Mitrovicë/Mitrovica, these are referred to as Local Working Groups (LWG).

<sup>143</sup> Other topics were Emergency Needs, Security, Income Generating Project and Municipal Services.

<sup>144</sup> As required by Section 2.1, UNMIK Regulation 2000/53 On Construction in Kosovo.

<sup>145</sup> UNMIK Regulation 2000/53, Section 2.1.

displaced from the “Roma Mahala” from receiving reconstruction assistance and exercising their property rights and right to return to their homes. The Kosovo Roma community in the Roma Mahala were forcibly expelled and their homes looted and burned by Kosovo Albanians in June 1999.<sup>146</sup> While attempts have been made to return and reconstruct some homes,<sup>147</sup> the Roma Mahala still remains the largest area of destroyed buildings in Kosovo, with over 650 destroyed houses still remaining.

Currently, only six (6) beneficiaries out of 645 potential beneficiaries living in northern Kosovo RAE camps have been identified by the Local Working Group (LWG) as possessing the appropriate documentation of property rights to receive the reconstruction aid required for them to exercise their right to return. The UNMA’s explanation for such dismal figures is the lack of potential beneficiaries from the area possessing adequate proof of property rights and expressing the desire to return. The cadastre, located in Krusevac, Serbia proper, lists 354 properties in the Mahala. While only twenty-six (26) families of those on the cadastre list have been identified as residing in Kosovo or Serbia and Montenegro, efforts are being made to locate those property right holders displaced elsewhere, though these efforts have yet to yield results. Equally troubling, 80 families residing in the camps in northern Kosovo apparently have expressed their will to return and recover their property. While they may not possess cadastre documents, the documents they do possess may constitute adequate proof of property rights to qualify for reconstruction aid through the procedures outlined in the Guidelines.<sup>148</sup> This avenue, however, appears not to have been considered or discussed within the LWG. Various options on how to approach the situation of the Mahala, though, have been discussed at length in the LWG, including the plans of the municipality for possible secondary displacement. These discussions are still ongoing. Secondary displacement is contrary both to the Guidelines and the UNMIK policy on sustainable returns. While precipitated by an articulated and underlying lack of political will, the property-return situation of the Roma Mahala confirms the deleterious effect of the weak legal status of the Guidelines on the minorities’ access to their property rights as well as the right to return to one’s home.

Within the returns and reconstruction process, the protection of the rights of those wishing to return to their home was dependent upon the presence of appropriate mechanisms, as provided in the Guidelines, to protect these rights, as well as well-managed and coherent structures to utilise these mechanisms. Such a dynamic is evidenced by a situation which arose in Fushë Kosovë/Kosovo Polje. The NGO Erikshjälpen wanted to provide reconstruction assistance to Kosovo Serbs. They proposed the project to the MWG, which rejected it on the grounds that security condition required for sustainable return were not present. Erikshjälpen also approached the MHC, which approved the reconstruction assistance only taking into account socio-economic vulnerability and without taking into consideration security considerations. Regardless of vulnerability or availability, due to the security situation, return and reconstruction was not feasible. The MHC body did not necessarily have the mechanisms to fully evaluate if the situation was appropriate for reconstruction, while the MWG had the mechanisms to do so. Thus, as seen, the presence of a coherent structure with established and comprehensive mechanisms to protect the right of returnees does not exist consistently throughout Kosovo.

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<sup>146</sup> OSCE, “Kosovo/Kosova: As Seen, As Told, Part II”, December 1999, p. 102-3.

<sup>147</sup> In October 2000, the UNHCR attempted to return some of the families to prefabricated houses on their properties in the “Roma Mahala” to provide temporary accommodation while they reconstructed their homes. KFOR, however, vetoed the operation on security grounds at the last minute, and the project was abandoned.

<sup>148</sup> Section 2.3.3, “UNMIK Housing and Reconstruction Guidelines 2002” provides guidance on proving property rights in the absence of cadastre and/or court documents.

## VI. NEW STRUCTURES FOR RETURN

Such coherence and regularisation was being brought to the returns process during the reporting period. Previously, the co-ordination of returns projects and returns issues on the local, municipal and regional levels varied widely. In some cases the Local Working Groups (LWGs) or task forces (TFs) were established for particular return projects, but most included no local officials or representatives of relevant groups. To streamline and enhance co-ordination in return issues, UNMIK established municipal (MWGs) and regional working groups (RWGs) on return during the reporting period, initially to be chaired by UNHCR, but handed over to UNMIK in June 2002.

These Working Groups were established in all five regions by the end of 2002, although most had only met a few times. In some cases, their establishment was delayed by political developments: in Deçan/Dečani for instance, the arrests of former KLA members mid-August provoked a deterioration of the political climate. By the end of the reporting period, there were working groups in almost all municipalities in Kosovo. However, there was no MWG in Podujevë/Podujevo, Prishtinë/Priština region, or in Malishevë/Mališevo, Prizren region, where resistance to returns is particularly strong. In addition, Dragash/Dragaš in Prizren region also lacks an MWG, with the municipal leaders reasoning that there is no need of such a working group since the municipality continues to experience more departures than returns, mainly because of the dire economic situation.

Still, the establishment of MWGs or RWGs does not necessarily reflect a commitment to return in the municipalities and regions concerned. This is clearly indicated in the meetings of the MWGs in Mitrovicë/Mitrovica region, where with exception of Mitrovicë/Mitrovica and Vushtrri/Vučitrn the discussions focus on returns of IDPs in the municipality concerned to their place of origin in other municipalities, rather than returns to their municipalities. Often, meetings are infrequent: as in Prishtinë/Priština and Klinë/Klina Municipalities.

The MWGs were set up as the principal forum for planning and co-ordinating return projects. In addition, they were intended as a vehicle for inter-ethnic dialogue and reconciliation, involving local authorities, elected representatives of both majority and minority ethnic groups, IDPs and prospective returnees. However, in most cases their impact on promotion of reconciliation and returns has been limited. The MWGs' effectiveness largely depends on the participation of representatives of local communities and displaced minorities, and their willingness to disseminate information gathered to community members: this has sometimes been found lacking. In addition, many majority representatives did not attend MWG meetings in the run up to the elections in late October for political reasons, in some cases halting the returns process for several months. In Prizren, the RWG enjoys no participation from local officials. It is crucial that both the political leadership and UNMIK encourage appropriate representation in these structures.

Major changes were also evident at the central level. In May 2002, the emphasis on returns on the highest level in UNMIK resulted in the adoption of a policy paper on return, to guide the overall process. With UNHCR handing over responsibilities to UNMIK to focus more on its supervisory role in the returns process, ORC has taken a lead in co-ordinating returns issues on a central level. The Returns Co-ordination Group, the Taskforce for Return, and the Technical Advisory Board were established in November and December 2002. Composed of international actors and PISG, the Returns Co-ordination Group, chaired by ORC, addresses operational issues and ensures co-ordination between all actors. As seen above, one of its main challenges will be to increase the efficiency and commitment of the Municipal Working Groups.

The Taskforce on Returns is composed of all four UNMIK Pillars, ORC, HPD, UNHCR, KFOR and the PISG, and is chaired by the SRSG. Meeting twice a year, it is expected to ensure consistent implementation of returns policies, including in the municipal and regional working groups. During the fall, ORC also established Regional Returns Units in the field, to work closely with the municipal and regional authorities and promoting coherent policy. In addition, ORC is recruiting personnel for its Belgrade Office. Furthermore, a Technical Advisory Board, chaired by UNHCR, was established in December to provide its expertise to the project development process. Finally, with the release of the jointly ORC and UNHCR produced 'Manual on Sustainable Return', it is expected that greater coherence will be brought to the structures of the returns process.

## **SECTION 5: ACCESS TO PUBLIC, CIVIL AND POLITICAL STRUCTURES**

### **I. ACCESS TO THE ELECTORAL PROCESS**

In May 2002, the Central Election Commission (CEC) recommended to the SRSG a proportional electoral system for the Municipal Elections to be held in October 2002. The resulting general framework, enshrined in UNMIK Regulation 2002/11, On The Municipal Elections in Kosovo and subsequent CEC Electoral Rules, was favourable to smaller political entities, which generally proved advantageous to political entities from minority communities. The system did not contain any electoral thresholds for winning seats – similar to the system used in the 2000 Municipal Elections – though, unlike the electoral system used in 2001, neither did it contain any positive discriminatory measures, such as set-aside seats for minorities.<sup>149</sup> Consequently, minority parties were required to consider whether coalitions would be advantageous and to raise the degree of their political organisation in order to mobilise their potential voters. A community could only maximise its chances of winning seats in a municipal assembly if only one political entity attempted to gather the vote from the community's electorate.

The electoral framework was flexible with respect to the manner and form with which political entities could participate in the elections. This flexibility was designed to ensure a ballot that was diverse as possible. This led to a rather high degree of political diversity within Kosovo's minority communities but perhaps diminished the significance of each of the entities in the political landscape of Kosovo. The concept of the electoral system started from the prerequisite that many of the non-majority communities are concentrated in specific locations within Kosovo's 30 municipalities and could gain representation if they mobilised their electorate in an effective way. This generally proved to be the case, with some exceptions and caveats discussed below. Nevertheless, for the first time since the conflict, all ethnic communities participated in the municipal electoral process, resulting in 25 political entities from five ethnic communities achieving representation in at least one municipal assembly.<sup>150</sup>

It is worth noting that 2002 saw the appearance of a large and fragmented diversity of Kosovo Serb political entities. This stands in sharp contrast to the Kosovo Assembly Election in 2001, when the Kosovo Serb community united behind only one certified entity—Coalition Return (KP). Thus KP was faced with competition from within the Kosovo Serb community itself. Out of a total of 68 political entities certified to compete in the Municipal Assembly elections in 2002, 31—running in 24 municipalities—were of Serb community origin. Of these, 21 political entities got a total of 94 seats in 18 municipalities. Of these 18 municipalities, eight have only one Kosovo Serb representative. An important point is that almost all the seats for Kosovo Serb representatives were won by votes cast in-person in the municipalities, with only a few votes from Internally Displaced Persons (IDPs) in Serbia and Montenegro. It is noteworthy, however, that KP won its votes mainly from the out-of-Kosovo electorate in Serbia Proper and Montenegro.

Among Kosovo Serb political entities two main types could be distinguished: those that were registered and active both in Serbia proper and in Kosovo, and the others which were established and active only in Kosovo or in some particular region of the province. From a financial standpoint, the political entities acting as local branches of Serbia proper based political parties

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<sup>149</sup> For the AoK a system of set-aside seats to represent the various non-Albanian communities was established, which aimed to guarantee their participation regardless of the level of votes received by entities competing for the seats.

<sup>150</sup> Only the small Croatian community in Kosovo and the Roma community failed to win any seats.

had financial support, while small and locally run political entities based in Kosovo faced significant financial difficulties<sup>151</sup> in mounting an electoral campaign.

With regard to the performance of non-Serbian minority political entities two trends can be identified. Firstly, some of these entities, having participated in at least one of the previous elections, showed considerable improvement in their internal organisation and their ability to mobilise their electorate. The main examples of reasonably cohesive non-Serbian minority political entities are The Kosovo Bosniak coalition 'Vatan'<sup>152</sup> (seven seats throughout Kosovo) and the Turkish Democratic Party of Kosovo (KDTP) which won five seats<sup>153</sup>. This assessment can, to a lesser degree, be applied to the Kosovo Egyptian party – IRDK<sup>154</sup> (four seats) and one of the Kosovo Ashkaelia parties, PDAK<sup>155</sup> which won three seats. Also, the Kosovo Gorani entity - GIG<sup>156</sup> - took two seats in Dragash/Dragaš. Other non-Serb minority political entities suffered from financial difficulties and/or a lack of organisation. In some cases, the community was just too small to support a political entity. The Roma community in particular suffered from these factors, and neither of the two Roma entities contesting the elections won any seats. The electoral performance of the Janjevo/Croatian Citizens' Initiative representing the Kosovo Croatian community is another case in point. Primarily concentrated in the village of Janjevë/Janjevo in Lipjan/Lipljan municipality, there were most likely not enough Croatian voters in Lipjan/Lipljan to ensure representation in the Municipal Assembly, and the entity did not have the financial resources to mobilise support among IDPs in Croatia. It should generally be concluded that, beside the electoral success or failure of non-majority political entities, confusion and internal struggles in particular amongst Kosovo Ashkaelia, Roma and Bosniak communities are still hampering the development of concise community representation. The internal differences could be well illustrated by the case of the two Kosovo Ashkaelia parties (PDASHK, PDAK) that were created after a dispute between Kosovo Ashkaelia political leaders.<sup>157</sup>

Ethnic minorities in general faced structural obstacles in conducting political campaign activities. The profile of the political campaigns and attitudes of voters from non-majority communities were determined by limited financial resources, restricted freedom of movement of small local political entities and the inability to mobilise the out-of-Kosovo electorate. Due to difficult financial situation, the Roma Citizen Initiative (IQRK) could not conduct any campaign activities. This is contrasted by the support the PDAK has received from Ashkaelia Diaspora in Western European countries, which enabled this entity to conduct pre-electoral rallies in Fushe Kosovë/Kosovo Polje and Podujevë/Podujevo municipalities. The election campaign and voters attitude of Kosovo Serb political entities in Kosovo was not very active. The only Serbian political party that carried out political rallies in the central Prishtinë/Pristina region of Kosovo was Movement for Kosovo and Metohija (PKM) led by Mr. Momcilo Trajkovic. Kosovo Serb political entities in Prishtinë/Pristina region did not report any obstacles for certification of their political entities. However, they emphasised that this was due to the OSCE support through transport of political leaders to meetings at the OSCE Department of Election Operations.

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<sup>151</sup> It should be noted that grass-roots political initiatives from the majority community similarly faced considerable financial difficulties.

<sup>152</sup> SDA – Party of Democratic Action + BSD – Bosniak Democratic Party.

<sup>153</sup> Turkish Democratic Party of Kosovo

<sup>154</sup> New Democratic Initiative of Kosovo

<sup>155</sup> Ashkaelia Democratic Party of Kosovo

<sup>156</sup> Citizens Initiative Gora

<sup>157</sup> Instead of accepting a secondary position in the party, the creation of a separate political party and leadership was a consequence. It was also reported that one of these two parties delivered some humanitarian aid items to vulnerable families in Prishtinë/Pristina region short before elections with the possible aim of catching votes. The humanitarian aid distribution has stopped after E-day.

In general, the Voter Service and Registration operation was accessible to all minority communities including IDPs living in Serbia proper and Montenegro where a special voter registration effort was mounted by the OSCE. Voter education and information programs were also accessible by all communities, again including a special voter information campaign for IDPs living outside Kosovo.

## II. ACCESS TO POLITICAL PROCESS

### Central structures

The AoK is comprised of 120 elected Assembly Members, including 20 set-aside seats for minority communities. Out of the 14 different political parties represented, seven are from minority communities. In total, 35 deputies of the AoK represent minority communities.<sup>158</sup> To date, little to no legislation originated from non-majority proposals at the central level. A positive step for the inter-ethnic relations in Kosovo is that the presidency of the Assembly has eight seats, one of them being reserved for a representative of the ethnic communities. The seat is taken on a rotating basis. During 2002, Mr. Haxhi Merxha (PREBK) filled this post and, as of January 2003, Mrs. Nafiye Gas (KDTP) is to take up the position. As a member of the presidency, Mrs. Gas is the highest-ranking female in the AoK, as well as in the PISG, which has no female appointed as a Minister.

The appointments to the PISG of Mr. Goran Bogdanovic as Minister for Agriculture, Forestry and Rural Development, Mr. Nenad Radosavljevic as Advisor on Returns to the office of the SRSG from the Kosovo Serb community, Mr. Milorad Todorovic as Interministerial Coordinator on Returns, and of Mr. Numan Balic from the Kosovo Bosniak community as Minister of Health, should be considered as landmarks in the post-conflict relations of Kosovo's communities. In order to enable the representation of the ethnic minorities in the committees of AoK, the initial number of nine members in each committee was increased to 11 upon lobbying of the OSCE Parliamentary Ad-Hoc committee for Kosovo. The OSCE successfully ensured to place a member of the respective parties in the committees. Another satisfactory result is constituted by the fact that minority representatives chair four of the 17 Assembly Committees. The Committee on the Rights and Interests of Communities is of particular relevance and has the right to review all legislation under discussion by the Assembly, to ensure that legislation does not infringe on the rights and interests of the various ethnic communities. Therefore, this committee is a powerful organ to ensure that discrimination is avoided. Minority community representatives also chair the three committees for Finance and Economy, Health, and Labour and Social Welfare. In order to accommodate all ethnic communities some posts are given on a rotating basis.

However, the responsiveness of prominent and senior representatives in central political structures to their respective constituencies remains an issue of serious concern. Following a review of the institutions of Government authority throughout Kosovo, OSCE finds that the inadequate readiness of the elected officials to accept responsibility towards their electorate and the lack of accountability due to, *inter alia*, the non-functional committees represents a major obstacle for the meaningful participation of non-majority communities in the political processes.

### Municipal structures

Compared with the representation of non-majority members of Municipal Assemblies for the period 2000-2002, which consisted of both elected and appointed deputies, it can be concluded

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<sup>158</sup> Number of representatives per minority political party: KP (Serb), 22, VATAN (Bosnian), 4 KDTP (Turkish), 3 IRDK (Egyptian), 2PDAShK (Ashkaelia), 2 BSDAK (Bosnian) 1, and PREBK (Roma) 1.

that the minority representation in municipal assemblies has dropped for the 2002-2006 mandate. There is therefore a chance that the lower levels of representation of minorities could lead to further disengagement of minority communities in local institutions. The decentralisation or reform of local governance structures may redress the issue, although this will invariably take time to come into reality.

While in the first mandate of the local self-government only five municipalities had a mono-ethnic composition<sup>159</sup>, Kosovo's local self-government is now facing the existence of 13 mono-ethnic assemblies, including two Kosovo Serb mono-ethnic assemblies in the North.<sup>160</sup> In the remaining 17 municipalities of Kosovo, significant changes in the size of the non-majority representation is notable. With the exception of three municipalities north of the river Ibar and two others in South and East Kosovo<sup>161</sup>, all other assemblies face a decline in the representation of minority communities. In total numbers, the representation in the municipal assemblies of Kosovo was reduced from 181 non-majority deputies down to 110 for the 2002-2006 period.<sup>162</sup>

Given the fact that ethnic community representation in the democratically elected bodies of the local self-government has considerably declined as a result of the Municipal Elections 2002, participatory mechanisms for those non-majority communities within the local governance structures become even more important. As the main instrument to give the legitimate concerns of those communities a voice, UNMIK Regulation 2000/45 on Self-government of Municipalities in Kosovo stipulates the establishment in each of Kosovo's Municipal Assemblies of two mandatory Committees: a Communities Committee and a Mediation Committee (hereafter the Committees). The Committees are necessary mechanisms to facilitate the ethnic communities' participation in the political, cultural, social, and economic life of the municipality. Potentially, while ensuring that rights and interests of the communities living in the municipalities are respected, the Committees also boost communities' confidence and encourage them to engage in power sharing with the ethnic majority.

Throughout the term of the 2000-2002 municipal governments, the ability of the Committees to effectively exercise their role has been impaired by a number of factors that included several uncertainties in the political environment (e.g. Kosovo Serb participation). In addition, different interpretations of the wording of the UNMIK Regulation 2000/45 contributed to slow decision-making in the process of establishing the Committees. According to UNMIK Department of Local Administration, the Committees were to develop their own procedures following the general guidelines contained in UNMIK Regulation 2000/45.<sup>163</sup> As a result of this decentralised approach, the effectiveness of these Committees and the consistency of their decision-making varied from municipality to municipality. Where intense co-operation between local authorities and their international counterparts – such as the LCO and UNMA - existed, Committees were functioning and ethnic communities' concerns were effectively brought to the fore. Where these conditions were not in place, Committees were de facto dysfunctional and inhibited meaningful participation of minority communities in the affairs of the municipality.

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<sup>159</sup> Those were Malishevë/Mališevo, Suharekë/Suva Reka, Decan/Decani, Gllgovc/Glogovac and Kacanik/Kaçanik.

<sup>160</sup> Leposavić/Leposaviq and Zvečan/Zveçan

<sup>161</sup> Štrpce/Shtërpçë and Novobërdë/Novo Brdo

<sup>162</sup> In this figure the deputies from Kosovo Serb majority municipalities are included. For a clearer picture of actual deputies representing voters where an ethnic community constitutes a minority aside of their ethnic background the figure is 52 out of a total of 918 seats. In the 2000 elections with subsequent appointments the ratio was 143 out of a total of 1046.

<sup>163</sup> These include the procedures for appointing members of the Committees, whose regulation was left to the municipalities' Statutes. See UNMIK Regulation 2000/45, Section 23.

A further problem at the level of municipal political structures is quality and legitimacy of representatives of minority communities. As appears to be the case among the Kosovo RAE communities in Prizren and Gjilan/Gnjilane, or among the Kosovo Serb communities in Lipjan/Lipljan and Obiliq/Obilić, there is widespread evidence that representatives do not enjoy the full support of their own communities. Many of the local leaders are self-appointed hence lack a democratic mandate deriving from their constituencies. The problem also applies to the Committees.<sup>164</sup> Without the chance to acquire a stake in the system to articulate their distinct concerns and to seek redress, minority communities will continue to remain alienated from mainstream processes and to believe that they cannot influence outcomes.

To address this problem, UNMIK Office of Community Affairs (OCA) drafted an Administrative Direction on Rules of Procedures for Communities Committees in September 2001, but its finalisation is still pending. In the absence of such a procedural scheme for both Committees, the same problems with their formation are likely to occur throughout the process of the implementation of the 2002 Municipal Elections.<sup>165</sup>

So far, by December 2002, both Committees were in place in only seven municipalities.<sup>166</sup> Since Kosovo's municipalities are newly elected and fitted with a four-year mandate, time appears to be more than ripe to issue those Rules of Procedures for both the Communities and the Mediation Committees.

### **III. TOLERANCE, RECONCILIATION AND INTERETHNIC DIALOGUE**

The last Assessment noted an increase, although small, of dialogue opportunities amongst majority and minority community leaders. It has to be concluded that this trend gained momentum throughout the reporting period, moving from individual and rhetorical statements towards a variety of citizen initiatives progressing in the, albeit slow, reestablishment of relations. The International Community continuously highlighted the importance of public statements from representatives within the PISG to clearly address the issue of interethnic relations. As spontaneous initiatives of inter-ethnic dialogue may also include ordinary interaction between citizens, an increasing number of low-level contacts between neighbours, businessmen, customers and shop-owners have been monitored since the spring of 2002.

Pursuant to the UNMIK/UNHCR Information Framework for IDPs and Receiving Communities, a series of public roundtable discussions to publicly advocate improvements of inter-ethnic relations was aired on local radio stations in the Prizren region, beginning in December 2002. The discussions involve various community leaders, NGO activists, youth, women's organisations and politicians to share their views on IDP return to municipalities in Southern Kosovo.<sup>167</sup> Prizren is notable as a centre of multi-ethnicity, and is also known for its vivid media landscape with a

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<sup>164</sup> According to UNMIK Regulation 2000/45, the Municipal Assembly (Section 21) appoints Committees members. Consultations with the grassroots constituencies therefore are not explicitly foreseen.

<sup>165</sup> According to the document issued by the UNMIK Department of Local Administration on 18 October 2002, the process of appointment of members of both Committees had to be carried out between the 25 and the 30 November 2002. At the time of writing, the number of Committees in place is still unknown.

<sup>166</sup> Leposavić/Leposaviq, Vushtri/Vučitrn, Zubin Potok, Pejë/Peć, Istog/Istok, Prizren, and Dragash/Dragaš.

<sup>167</sup> The "Roundtables on Return" discussions will be recorded, distributed and broadcast on other radio and television stations in Prizren region.

high number of outlets for minority communities.<sup>168</sup> A considerable progress in the work towards normalising interethnic relations has been noted in the strengthening of links between different ethnic youth groups. The “Camping on Tolerance Building” project was successfully implemented in September 2002. Youth representatives of the Bridge Association<sup>169</sup> went through workshops on understanding conflict, and the peaceful transformation of conflict.

The levels of dialogue and co-operation of community members within central and municipal governance structures represents an indicator for the progress of reconciliation and furtherance of common goals. Particular emphasis was laid on the role of municipal representatives in the returns process, as these leaders were in the best position to transmit credible messages that are understood by the local public. Positive statements made by leaders, followed by concrete actions on municipal level, have a powerful impact on the perception of minorities by the receiving majority community.

As illustrated in the Vushtrri/Vučitrn municipality with the returns of Kosovo Ashkaelia, for concrete actions on municipal levels to be effective they must be followed up at the village level in the receiving communities. The first steps to create the conditions for this return were taken in March 2001 when a local Ashkaelia NGO initiated discussions with municipal assembly members, KPC, KPS and the receiving community. The Prime Minister visited the community to support inter-ethnic dialogue and the right to return immediately after the first group returned in April 2002. Despite these preparations, both some of the remaining Kosovo Ashkaelia residents and some of the returnees faced serious harassment and intimidation,<sup>170</sup> indicating a need to greater involve the surrounding majority community in reconciliation efforts.

The MWGs are expected to enhance the involvement of local representatives in the returns process. It is hoped that such involvement will send a signal of tolerance and reconciliation to communities to which these local representatives belong. Unfortunately, so far their contribution has been limited, partly as most of the MWGs were established only during the fall of 2002 and partly since the participation elected municipal officials in many cases has irregular, if at all. As pointed out above, the level and quality of local participation in this process in some instances can be seen as a reflection of the priority given such participation by the UNMIK Municipal Administrator or other such officials.<sup>171</sup>

Mutual interests of community members have proven to be a good starting point for initiatives gearing towards community interaction. The increase in interethnic contacts is most visible in

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<sup>168</sup> The Kosovo Bosniak magazines *ALEM* and *SELAM* and the Kosovo Turkish *YENI DONEM* newspaper (delivered Kosovo wide) cover all events and aspects in the municipal, central and local structures. Additionally, Kosovo Bosniak *DJULISTAN*, Kosovo Turkish *TURKCEM*, *BAY* and *SOFRA* magazines cover educational, cultural and scientific topics targeting students in the primary and secondary schools. Three local radio broadcasters are based in the Prizren region, the Kosovo Turkish *YENI DONEM* and two Kosovo Bosniak - *OMEGA-3* and *ASTRA* - broadcasting in their mother tongue. It is worth mentioning that radio *PRIZREN* and *TV Station STP* are multilingual stations broadcasting programs in the Albanian, Serbo-Croatian and Turkish languages.

<sup>169</sup> Bridge Association is a union of four local youth NGOs of different ethnic groups: Albanian, Bosniak, Turkish and Roma.

<sup>170</sup> Some of the incidents that occurred were a 23 April 2002 explosion of a hand-made bomb in the backyard of an Ashkaelia who had never left; after the visit of the Prime Minister, on 20 and 21 May 2002, a group of Kosovo Albanians came to the gate of a house where a returnee was staying and called out their names and attempted to push through the gate with their car, and on 30 November 2002 a returnee was beaten by local employees of the construction company contracted to the returnees' houses.

<sup>171</sup> For instance, such a dynamic can be seen in Podujevë/Podujevo and Prishtinë / Priština.

different areas of mass media. Notable examples are the well-developed multi-ethnic Press Club in the eastern region of Gjilan/Gnjilane, which was set up with the help of OSCE, or the growing co-operation of local Kosovo Albanian and Kosovo Serb radio stations. Public broadcasters from Serbia, Montenegro, Macedonia, Albania and Kosovo agreed to create a Balkans Children TV Network and to produce a joint TV magazine with entries from Kosovo, Macedonia, Montenegro, Serbia and Albania under the theme: "A day in a life of a kid in my region". Another example of innovative activities to foster mutual understanding as a step towards reconciliation is the documentary project *Interweaving Lives* initiated by OSCE in 2002. The film depicts a realistic picture of the current situation of Kosovo Albanian and Kosovo Serb youth aiming at informing both groups about their conditions of life. Small-scale investments in infrastructure, public services or educational facilities were also catalysts for inter-ethnic co-operation and co-ordination. The Small Investments for Minorities Fund (SIMF), provided by the Government of the Netherlands, followed the recommendation of the last Assessment for a shared benefit between minority and majority communities as a mandatory methodology for assistance.

In the framework of enabling minority members to make informed choices and participate in public affairs, OSCE in co-operation with the International Foundation for Electoral Systems Ltd (IFES) conducted a three-month project to assist the non-Serb minorities of Kosovo voice their concerns and to formulate recommendations for the improvement of municipal services. Over 70 meetings were conducted throughout Kosovo with Bosniak, Croat, RAE, Gorani, and Turkish minority groups. Over 800 people took part in discussions and responded to questionnaires about municipal public services and living conditions. The project arrived at its second phase with regional meetings with representatives of minority communities, aiming at receiving feedback on the survey and formulating recommendations for the municipalities, elected or appointed representatives, and relevant international. Meetings in the other regions followed, and a booklet with concerns of minorities is in production at the time of writing, for use by the new Municipal Assemblies after the last elections to guide their work over the coming years.

The civil society sector in Kosovo has widened its role in the interethnic dialogue process and started to assume significant responsibility in establishing key links across ethnic tensions. A prime example of initiatives for inter-ethnic co-operation and dialogue has been the formation and consolidation of the Civil Dialogue Alternative, a multi-ethnic group of civic actors from Kosovo and Serbia proper initiated by the OSCE in 2002.<sup>172</sup> The enlarging circle of representatives from other civic organisations reflects the groundbreaking potential of this project. Prominent activists for peace, tolerance and the involvement of the civil society in public affairs, such as the former Yugoslav Ambassador to the United States and Mayor of Belgrade, Mr. Zivorad Kovacevic, aim at enhancing inter-ethnic confidence and the creation of conditions for return of displaced persons regardless of their ethnicity.

Another important dimension of the civil society sector is the development of NGOs. Whereas a relatively high number of minority local NGOs exists in Kosovo, most of them are still crucially dependent on international NGOs. Only a few of them have the capacity, the motivation and the long-term perspective to be able to survive without the direct assistance of the international agencies. However, there has been a growth of community initiatives towards tolerance and

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<sup>172</sup> The dialogue project, which consists of the Centre for Regionalism from Novi Sad and the Mother Theresa Society from Prishtinë/Priština, institutionalised its multi-ethnic character through the establishment of an Advisory Council of four Kosovo Albanian and four Serbian members in January 2003.

reconciliation. The network of OSCE initiated Community Centres<sup>173</sup> continued the development of a broadly understood civil society and support for ideas and projects developed by local NGOs. Such centres<sup>174</sup> facilitate networking activities among NGOs, provide meeting space and an internet connection, assist in NGO registration, bring potential donors to the centres and offer a great variety of training sessions and workshops.

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<sup>173</sup> In total eight Community Centres provide their services to the communities in isolated or mixed locations. They were once established with international assistance and have now been handed over to local civil society actors.

<sup>174</sup> An indicative example is Mitrovica Initiative for NGOs Support (MINGOS), which emerged from an initiative of the OMiK's Department of Democratisation, or the Community Centre in Fushë Kosovë/Kosovo Polje.