

REFUGEE WOMEN AND DOMESTIC VIOLENCE:

COUNTRY STUDIES

KOSOVO

A report by

Refugee Women's Resource Project

Asylum Aid

**Edition 3
September 2002**

CONTENTS

Acknowledgements	4
Explanatory note	5
KOSOVO	7
1. Introduction.....	7
1.1 Political background.....	7
1.2 UNMIK – mandate and progress	8
1.3 Human rights practice	10
1.3.1 Legacy of the conflict and UNMIK’s administration.....	10
1.3.2 The situation of minorities	13
1.4 Kosovo and international legal instruments	15
1.5 Women’s human rights	15
1.5.1 Trafficking	16
2. Domestic violence	19
2.1 A background to violence against women.....	19
2.2 Prevalence data.....	21
3. Domestic violence and the law	25
3.1 The legal system in Kosovo	25
3.2 The law relating to domestic violence	25
4. The reality of seeking protection.....	26
4.1 The police and security forces	26
4.2 The judicial and legal system.....	28
4.2.1 The independence of the judiciary	28
4.2.2 Gender inequality in the judicial system.....	28
4.2.3 The criminal justice system and victims of sexual violence.....	28
4.2.4 Forensic and medical legal services for victims of sexual violence	29
4.2.5 Biased attitudes in the judiciary and lack of victim advocacy	30
4.2.6 Cases of intra-familiar (domestic) violence)	31
4.3 Other support services.....	36
4.3.1 The role of NGOs.....	36
4.3.2 Lack of UNMIK and donor support for services	37
4.3.3 Regional conference on violence against women.....	38
5. The situation of separated or divorced women.....	40
5.1 Poverty and economic insecurity after the conflict	40
5.1.1 High unemployment and lack of social assistance.....	40
5.2 Greater economic insecurity for women	41
5.3 Property rights after divorce.....	44
5.4 Access to health services	46
5.4.1 Mental health services	49
5.4.2 Vulnerability of women and trauma survivors	51
5.5 Education.....	53
5.6 Returns and ‘internal flight’	56
5.6.1 UNHCR Guidelines on returns to Kosovo.....	56
6. Case law.....	58
6.1 United Kingdom	58
Bibliography	60
Appendix A.....	63
Home Office Country Assessment April 2002	63

Acknowledgements

This edition of the report was written by Clare Palmer, Researcher at Asylum Aid's Refugee Women's Resource Project (RWRP), with the assistance of Bethany Collier, other Asylum Aid staff and members of the RWRP Advisory Committee. It is an addition to the previous reports of September 2001 and March 2002.

We would particularly like to thank Elizabeth Dubicka, Alasdair Mackenzie and Steve Symonds for their support and assistance. We also gratefully acknowledge the help of RWRP volunteer Kau Belleh.

We are very grateful to the following for providing information and commentary on the report: Sheri Laizer, Professor Shahrzad Mojab, Nazaneen Rashid, Sawsan Salim, Stephanie Schwandner-Sievers and Moni Shrestha.

The RWRP and Asylum Aid are funded by the Community Fund, the Joseph Rowntree Charitable Trust, Womankind Worldwide, Association of London Government, the Nuffield Foundation, Clifford Chance, Doughty Street Chambers, Two Garden Court Chambers, 11 King's Bench Walk Chambers and many charitable trusts. We apologise for not mentioning all funders and supporters individually and gratefully acknowledge the support of them all.

© Asylum Aid 2002. Excerpts from this report may be copied for use in presenting and assessing asylum claims, and also in related activities, when its authorship should be acknowledged.

The report is available online at www.asylumaid.org.uk

Refugee Women's Resource Project
Asylum Aid
28 Commercial Street
London E1 6LS

Tel: 020 7377 5123

Fax: 020 7247 7789

Email: rwrp@asylumaid.org.uk

**COMMUNITY
FUND**
Lottery money making a difference

Explanatory note

This publication is the third edition of the report *Refugee Women and Domestic Violence: Country Studies*, published by RWRP in September 2001 and March 2002. Those reports examined the situation in 7 countries – Albania, Bosnia & Herzegovina, China, Colombia, Democratic Republic of Congo, Iran and Pakistan – and also included an introduction, which outlined the aims and objectives of the report and an overview of the issue of domestic violence in the context of refugee and asylum law.

This is the report on Kosovo only. The full report contains country studies on Iraqi Kurdistan and Kosovo as well as updates on 4 of the 7 previous country reports. Information to update the remaining three could not be accessed in the time available. It is intended that the updates be inserted (as Appendix B or C) after the appropriate initial report.

For ease of reference, sections of the reports which may be particularly useful have been highlighted in bold.

Copies of the first two editions of the report, and the remainder of edition 3, can be obtained from RWRP at the address on the previous page at £10 each. Alternatively, the reports can be downloaded from our website.

Refugee Women's Resource Project
March 2002

KOSOVO

1. Introduction

1.1 Political background

Kosovo¹ previously enjoyed a degree of autonomy as a province of Yugoslavia. In 1989 Slobodan Milosevic imposed direct rule from Belgrade, and the repression that followed created growing resentment among Kosovo's ethnic Albanian majority who account for well over 80% of its two million inhabitants.

A police crackdown in 1998 triggered an uprising among the ethnic Albanians. Further acts of brutality against Albanian civilians led to a NATO military campaign that forced the withdrawal of Yugoslav and Serbian forces from the province.²

The United Nations Interim Administration in Kosovo (UNMIK) has been governing the province since June 1999, pursuant to U.N. Security Council Resolution 1244. This resolution recognized the continuing sovereignty of the Federal Republic of Yugoslavia (Yugoslavia) over Kosovo but called for "substantial autonomy and meaningful self-administration." Security has been provided by a NATO-led peacekeeping force, known as K-FOR.

UNMIK is currently in the process of transferring powers to the new government of Kosovo.

General elections were held in November 2001, but an agreement by the three main parties, which are all ethnic Albanian, on the choice of President and Prime Minister and the structure of a coalition government was not reached until February 2002.

These decisions were ratified and the remaining members of the government were elected in March 2002 and officially sworn in on 12 June. Ibrahim Rugova, head of the Democratic League of Kosovo (LDK) was elected President, and Dr. Bajram Rexhepi of the Democratic Party of Kosovo (PDK) was elected Prime Minister.³

The largest number of the 120 seats in the Assembly are held by the LDK. The PDK, which grew from the ranks of the Kosovo Liberation Army, came second in the elections. The third most significant party is the Alliance for the Future of Kosovo (AAK). 10 seats were reserved for Serbs; they won an

¹ Note on place names: in the sources quoted, in general Albanian names are used, sometimes with their Serbian equivalents. RWRP uses Albanian place names except in the case of Kosovo (Albanian: Kosova) as Kosovo is the spelling used by United Nations.

² For detailed information on recent political events, see for example *Europa World Year Book 2001, Volume II, Yugoslavia*, London, Europa Publications

³ UNMIK (2002a), *Kosovo Provisional Self- Government Formed*, at <http://www.unmikonline.org/press/2002/press/pr699.htm>

additional 12. Another 10 were reserved for the other ethnic minorities, mostly Roma, Turks and Bosniaks, in addition to the 2 that they won.

1.2 UNMIK – mandate and progress

The following is taken from UNMIK's website:

UNMIK was born on 10 June 1999 when the Security Council in [resolution 1244](#) authorized the Secretary-General to establish in the war-ravaged province of Kosovo an interim civilian administration led by the United Nations under which its people could progressively enjoy substantial autonomy.

In particular, resolution 1244 has called upon UNMIK to:

- perform basic civilian administrative functions;*
- promote the establishment of substantial autonomy and self-government in Kosovo;*
- facilitate a political process to determine Kosovo's future status;*
- coordinate humanitarian and disaster relief of all international agencies;*
- support the reconstruction of key infrastructure;*
- maintain civil law and order;*
- promote human rights; and*
- assure the safe and unimpeded return of all refugees and displaced persons to their homes in Kosovo.*

Working closely with Kosovo's leaders and people, the mission performs the whole spectrum of essential administrative functions and services covering such areas as health and education, banking and finance, post and telecommunications, and law and order. In January 2000, Joint Interim Administrative Departments were created; in October 2000, local elections took place in Kosovo's 30 Municipalities; in May 2001, the new Constitutional Framework of Kosovo was adopted. Province-wide elections will take place in November 2001.⁴

The head of the United Nations Mission in Kosovo is currently Special Representative of the Secretary General (SRSG) Michael Steiner, appointed in February 2002.

Steiner claimed there was “*much to be proud of*” on the third anniversary of UNMIK and KFOR's arrival in Kosovo, as well as acknowledging much work remains to be done “*to ensure security and human rights for all minorities*”⁵.

The International Crisis Group (ICG), in its report of June 2002, comments that UNMIK control is far from complete, and in fact in certain areas, notably north Mitrovica, UNMIK has failed to establish the rule of law and many

⁴ UNMIK, *Main Tasks: Kosovo*, at <http://www.unmikonline.org/intro.htm>

⁵ Steiner, Michael (12/6/02), *SRSG statement to press on 3rd Anniversary of UNMIK & KFOR's arrival* UNMIK Press release UNMIK/PR/753, available at <http://www.unmikonline.org/press/2002/pressr/pr753.htm>

aspects of the administration are controlled by Serbia.⁶ Mitrovica, in the north of Kosovo, has a minority Serb population of 12,000 among its 100,000 inhabitants, and has been a flashpoint for confrontation ever since UNMIK and KFOR entered Kosovo in June 1999, according to their report:

On 8 April 2002, UNMIK police officers came under grenade and sniper attack in north Mitrovica. Many international officials see this as merely the latest episode in a cycle of violence that has gripped the city since the UN assumed responsibility for Kosovo in June 1999, but “not an extraordinary incident”. Indeed some UNMIK representatives argue that the situation in Mitrovica is slowly improving. The number and intensity of violent incidents have declined, and UNMIK opened a community office in the north of the city in 2002.

While there has been an incremental improvement, the attack against the police – the worst violence against UNMIK personnel since the inception of the mission – clearly indicates that only five months before the municipal elections, UNMIK and KFOR have not fulfilled their mandate in the city. They have not established a safe and secure environment, the rule of law or a meaningful civil administration. While provisional institutions of self-government are being built elsewhere in Kosovo, including in the neighbouring Serb-dominated municipalities of Zubin Potok, Zvecan and Leposavic, north Mitrovica defies UNMIK’s efforts. Belgrade’s writ extends to this part of the city – parallel institutions still function, and their staff report to and are funded by Belgrade.

Many maintain that Kosovo’s final constitutional status has to be decided before the Mitrovica problem can be resolved. However, the events in the North signal that the fight to determine the final status of Kosovo is underway, and its battleground is Mitrovica. The goal of the Albanians is to unify Kosovo, while Belgrade uses every available means to maintain its grip on the North with the intention of partitioning the province.

Such a partition, brought about through violence and the threat of violence, would have an extremely destabilising impact on Kosovo and the wider region. While ICG has argued that the time is ripe to initiate final status discussions, UNMIK’s failure to establish its authority in the North firmly could foreclose options for final status by staking out a de facto partition.

⁶ According to Stephanie Schwander-Sievers, this paragraph focusses the problem too much on a single area - Mitrovica - only, and looks only at the Serb and not the Albanian parallel structures which exist elsewhere. Schwandner-Sievers is Nash Fellow for Albanian Studies at the School of Slavonic and East European Studies, University College London and runs the Albanian Studies Programme. She is a social anthropologist with a fieldwork track record of more than ten years both in Albania and Kosovo, and has researched and published on Albanian local politics and traditions including a special interest in gender issues and violence.

Steiner acknowledged the problems in Mitrovica in his speech to the new National Assembly in May 2002:

Mitrovica: we all agree that the current situation is unacceptable. The truth is that I have inherited this situation. I agree that the situation cannot stay at it is and I share your frustration about the situation in Mitrovica and in the north.

...

I accept in reality we have not yet achieved what we want to achieve in Mitrovica. It took us 44 years to reunite Germany – we never gave up and we achieved it in the end.

We will achieve it here, and it will take much less time than in Germany. And I would like to stress one thing here: there will be no partition of Kosovo and no return to the status quo ante of 1999.⁷

1.3 Human rights practice

1.3.1 Legacy of the conflict and UNMIK's administration

We highlight below some features of the current administration in Kosovo that may be too readily overlooked. These concerns are raised by the United Nations Development Group (UNDG) in its comprehensive study of Kosovo carried out in 2001. On human rights, the report noted:

There are a number of human rights issues which remain of concern in Kosovo despite the Peace settlement. There are the well-documented cases of serious human rights abuses being continually monitored and addressed such as enforced disappearances, international crimes against humanity, prisoners, use of landmines, burning of houses and property, and treatment of detainees. There are some additional development concerns to be addressed such as the rights of minority ethnic groups and of women, policing, organized crime, food issues, property disputes and the legal system.

....

The political vacuum left behind by the recent conflict situation has been a tremendous breeding ground for organized crime. This issue significantly cuts across such social development sectors as gender, population, health and education. Trafficking of women and children, for example, is a growing problem in the region as well as is a number of other issues regarding the safety of individuals and their property.

The past ten years in particular have called to question the legitimacy and impartiality of institutions of government, authority and upholding of the law. There is little confidence in existing structures, for example, for adequately addressing legitimate disputes and seeking effective remedies, and such a system is desperately needed. Related to this is the need for a truly independent and fair legal system, especially

⁷ Steiner, Michael (9/5/02), *Address to the Kosovo Assembly*, UNMIK Press Release UNMIK/PR/732, available at <http://www.unmikonline.org/press/2002/pressr/pr732.htm>

regarding property disputes, and the means to resolve issues according to genuine merit. Similarly, although a new police force will inevitably be young and inexperienced, it is important for such institutions of power and authority to regain the trust of the Kosovo people that was lost owing to rights abuses under the previous regime. Women remain especially vulnerable to human rights violations in terms of domestic violence, prostitution and vulnerability to eviction from their homes.⁸

The Kosovo Ombudsperson, in his Second Annual Report of July 2002 which covers the first complete year of activity of the Ombudsperson Institution in Kosovo, is critical of the human rights record of UNMIK, detailing various failures to uphold human rights standards:

The human rights situation in Kosovo is distinct from the human rights situation in other parts of post-conflict Yugoslavia, in part due to the unique role of the United Nations Mission in Kosovo (UNMIK) as the surrogate state. As the state, however, UNMIK is not structured according to democratic principles, does not function in accordance with the rule of law, and does not respect important international human rights norms. The people of Kosovo are therefore deprived of protection of their basic rights and freedoms three years after the end of the conflict by the very entity set up to guarantee them.

On its establishment as the surrogate state in Kosovo, in 1999, UNMIK gave no cognizance to one of the founding principles of democracy, the separation of governmental powers. Amongst the earliest actions of the Special Representative of the Secretary-General of the United Nations (SRSG) was the promulgation of an UNMIK Regulation vesting total executive and legislative powers in himself. In the same Regulation, he also accorded himself administrative authority over the judiciary. The SRSG can and does act outside the bounds of judicial control to restrict or deny fundamental human rights to individuals in Kosovo. For example, he has exercised this power to remove individuals from electoral lists (See p. 18) and to override the decision of international judges and international prosecutors to release certain individuals from detention (See pp. 11-15). The effects of the failure of the SRSG to respect the principle of the separation of powers continues to have extremely negative ramifications for the rule of law and human rights in the territory.

Since the establishment of the United Nations regime in Kosovo, UNMIK has both perpetuated and created obstacles to the full protection of human rights, issuing Regulations granting themselves and the international military presence (KFOR) total immunity from legal process in Kosovo, removing decision-making authority over important civil rights from the courts and

⁸ United Nations Development Group (2001), *Kosovo Common Assessment*, p 35, Prishtine, Kosovo, available at http://www.kosovo.undp.org/mainframe/publications/Kos_Com_Ass_publicat.pdf

placing it in administrative bodies under the direct control of UNMIK, and pursuing similar courses of action that serve to eliminate or severely restrict the rights of individuals from Kosovo. The applicable law is often unclear, with UNMIK Regulations and subsidiary legal acts declared as the supreme law of the land, prevailing over any domestic laws in force. Whatever law a court in Kosovo may apply is of little importance, however, as UNMIK will choose whether or not to permit the execution of any resulting judgment. It has refused to do so, for instance, in a case relating to a job recruitment conducted under direct UNMIK control and authority (see pp. 20-21).

Lack of Respect for the Rule of Law

Residents of Kosovo must overcome a number of obstacles in order to exercise their human rights and fundamental freedoms. One of the foremost of these obstacles is the lack of legal protection prevailing in the province, stemming in large part from the inaccessibility and the lack of clarity in the applicable law.

*An early UNMIK Regulation provided that all UNMIK Regulations would be published in English, Albanian and Serbian. Three years later, important UNMIK Regulations remain in English only, although efforts have been made to accelerate translations into Albanian and Serbian. Delays in publishing laws considered by UNMIK to be in force remain a problem, even in the event that publication on the internet can be considered adequate where a large proportion of the population does not have access to computer services. **As noted above, the complex structure of the applicable law causes confusion in the population and the courts. The confusion is exacerbated by the inclusion in many UNMIK Regulations of a provision declaring that the new Regulation supersedes 'any existing law with which it is inconsistent', often in Regulations that are written in quite general terms. Administrative Directives are used as tools for repairing gaps in UNMIK Regulations, leaving the applicable law unclear even to those intended to implement it. International standards governing lawfulness thus continue to be flouted, as the 'applicable law' remains inaccessible and unforeseeable and fails to protect individuals against arbitrary action by the state.***

Certain categories of human rights complaints have been entirely removed from the jurisdiction of the courts and placed under the control of administrative authorities operating under UNMIK control. Their decisions cannot be appealed to any judicial body. In some circumstances, however, UNMIK and KFOR have at least nominally recognised that individuals who have suffered an injury caused by UNMIK or KFOR should be able to ask for compensation or damages. The response has been to establish various types of 'commissions' or 'claims offices' under the auspices of UNMIK and/or KFOR, through which individuals may theoretically claim such damages or

compensation. However, virtually no information is publicly available about the existence, mechanisms or procedures of these commissions or claims offices. To date, no information has been publicised about the number of claims settled or compensation or damages awarded by any of them.

Individuals in Kosovo have been detained without any judicial decision or control, either by the SRSG or by the Commander of KFOR, both of whom exercise total power in this regard. Recommendations by the Ombudsperson and others that the legal regime governing detentions be returned to judicial authority and control, in accordance with all relevant international human rights standards, have been ignored (see pp. 11-15). In any event, Regulation 2000/38 does not permit the Ombudsperson to exercise any authority to address KFOR regarding their parallel unlawful practices in this regard.

Kosovo has one of the highest concentrations of military and police personnel in the world, some estimates placing the figure as high as one soldier or police officer for every forty residents of Kosovo. Extensive international resources have been dedicated to the recruitment and training of local police and a large number of international police remain on the United Nations payroll as well. However, this vast international presence has failed to investigate or to prosecute serious crimes, from murder to organised criminal activity (See pp. 22-24).⁹

1.3.2 The situation of minorities

The US State Department notes in its report for 2001:

Although the high level of retaliatory anti-Serb violence that followed Yugoslavia's 1999 withdrawal dropped significantly, ethnically motivated violence and crime continued to affect minorities. Serbs, Roma, and other minorities were victims of murder, kidnaping, assault, and property crimes, especially arson. Observers attributed the drop in violent crime to increased CIVPOL and KPS efficiency, the lessening of tensions with the passage of time, and the fact that Serbs and Roma drastically restricted their movements (see Section 2.d.).

Serbs and Roma who did not leave when Yugoslav forces withdrew lived primarily in enclaves, except for the Serbs in the north of the province, where Serbs and Albanians effectively partitioned Mitrovica. Serbs lived largely in the northern Kosovo municipalities of Leposavic/Leposaviq, Zubin Potok, and Zvecan, in the northern part of Mitrovica, and in scattered enclaves under KFOR protection elsewhere. KFOR and UNMIK provided security to these enclaves, settlements, and camps, and escorted minority members who left their residence

⁹ Ombudsperson Institution in Kosovo (2002), *Second Annual Report, 2001-2002*, Kosovo, available at <http://www.ombudspersonkosovo.org/doc/spec%20reps/Final%202%20Annual%20Report%202002%2010-07-02%20English.doc>

areas as well as convoys of private Serb vehicles. The UNHCR transferred responsibility to UNMIK for providing buses to transport Serbs in larger numbers between enclaves and into Serbia to take care of personal business (see Section 1.f.).

In April 2000, the Interim Administrative Council (IAC) endorsed a Declaration and Platform for Joint Action, under which key Albanian Kosovar leaders visited those areas where local Albanians and Roma were trying to establish more cooperative interethnic relations, thus encouraging a climate conducive to the return of those who fled the province earlier. Nonetheless little progress was made in resettlement of Roma, Ashkali, and Egyptians; Roma continued to experience difficulty in obtaining freedom of movement (see Section 1.f.).

In Mitrovica Serb and Albanian Kosovars harassed each other and restricted each other's freedom of movement (see Section 2.d.). After Serbian forces withdrew in 1999, many ethnic Serbs from throughout Kosovo fled to Mitrovica and occupied homes, including those belonging to ethnic Albanians in the northern part of that town. Ethnic Albanians who sought to return to their homes in the north were subject to violence and intimidation by ethnic Serbs, and about 1,500 who live in the northern section of town reported repeated harassment. Serbs in the northern part of the city continued to seize Albanian property resulting in numerous illegal house occupations. At the same time, ethnic Serbs, including some who owned property there, were unable to move freely in the southern part of the town without similar harassment from ethnic Albanians.¹⁰

The report by the Kosovo Ombudsperson notes:

The situation of residents of Kosovo who are not of Albanian ethnicity remains very difficult. Many, in particular Serbs and Roma remain isolated in ghettos and face great danger should they venture out of those ghettos without armed international escorts. Their extremely restricted freedom of movement has serious repercussions on all aspects of normal life – access to employment, medical care, schools, and public services generally. The provision of public utilities (electricity, water, etc.) to these ghettos is at a much lower standard than to the rest of the population.

With respect to the return of those displaced in connection with the conflict, and in particular members of non-Albanian communities forced to leave Kosovo at its conclusion, the physical and economic security situation still renders sustained returns a distant goal. In the meantime, internally displaced persons in Serbia proper are living in dire conditions that are exacerbated by their uncertain legal status.

¹⁰ US Department of State (2002), *Country Reports on Human Rights Practices 2001: Yugoslavia*, Bureau of Democracy, Human Rights and Labor, available at <http://www.state.gov/g/drl/rls/hrrpt/2001/eur/8369.htm#ks>

1.4 Kosovo and international legal instruments

As it is not yet an independent state, Kosovo is unable to sign international treaties. However UNMIK Regulation 1999/24 binds government officials to abide by the provisions of international human rights law and conventions.

1.5 Women's human rights

The United Nations Development Programme notes the following inequalities for women in Kosovo in its 2001 report:

The Kosovo Constitutional Framework proclaims that all inhabitants of Kosovo enjoy internationally accepted standards of human rights in full equality and without any form of discrimination, and that all tenets described in the international Convention for Elimination of All Types of Discrimination against Women are also observed in Kosovo. In practice, however, various types of gender-based inequality and discrimination against women do exist.

Analysis summarized in Chapter 1(see Fig.1.6) shows that although Kosovan women enjoy a longer estimated life expectancy at birth, they are in general less active in the economy and on average attain lower levels of education. In addition, Kosovan women are less equally represented in the judicial system and other areas of public and private sector activity. No women, for example, were appointed as Ministers when the new government was formed in 2002.

This situation is in part explained by some elements of traditional Kosovo's life that dictate a woman's primary responsibilities should center around the raising of children and other family-oriented and domestic activities. In order to lessen levels of discrimination against women and create an environment that provides equal opportunities for development for both men and women, several measures should be taken in cooperation with both the international community and Kosovan society. These include:

- *Education campaigns to promote the concept of gender equality and raise awareness of latent and overt forms of discrimination against women;*
- *Training designed to mainstream gender equality principles into institutional capacity building;*
- *Gender review of all major policy and planning documents;*
- *Additional affirmative action programs, such as ongoing recruitment of women into the local police force and a minimum 33% quota for women representation in local and parliamentary elections;*
- *Introduction of policies designed to increase the involvement of women in all fields and levels of educational, technological, and cultural endeavor; and*
- *Professional training for women to assume positions of leadership and management.*

The US State Department report gives the following information on women's status:

Women traditionally do not share status equal to men, and relatively few women obtain upper level management positions in commerce or government, although there is no legal restriction on their doing so. Traditional patriarchal ideas of gender roles, which hold that women should be subservient to the male members of their families, continued to subject women to discrimination. In some rural areas, women often have little effective right to control property and children. Women widowed by the war risked losing custody of their children due to an Albanian custom requiring children to be given to the deceased father's family. While legally women and men have equal rights to inherit property, it is customary that family property passes to men only. Particularly in rural areas, when a man dies, his widow often is returned to her birth family and his family assumes his land, leaving the widow without property.

.....

*UNMIK Regulation 1999/24 binds government officials to abide by the provisions of international human rights law and conventions, but that requirement has not yet benefited women's lives in rural areas.*¹¹

1.5.1 Trafficking

The US State Department notes:

Regulation 2001/4 specifically prohibits trafficking in persons and trafficking was a serious and growing problem. The province was mainly a destination point, but also a transit point for women and girls trafficked for the purpose of prostitution. Police and the IOM agree that although there is little data, the problem is probably large.

The majority of trafficked women were from Moldova, Ukraine, Bulgaria, and Romania, and to a lesser extent from Kazakhstan, Belarus, and Albania. Security authorities also reported that women and girls were smuggled through Kosovo to Macedonia, Albania, and Italy. There were several kidnappings and disappearances of young women who subsequently were not located. Some local sources believed that these women were the victims of traffickers in some cases, although there is no clear evidence that this was the case. Traffickers into the province are reportedly linked to organized crime, rather than with employment agencies or marriage brokers. Evidence suggested that trafficking in women was an example of a coordinated effort between ethnic Serbs and Albanians, like other areas of organized crime. Women were recruited to work in cleaning jobs and are abducted and forced into prostitution. Trafficked victims work in Kosovo's sex industry, primarily in brothels and nightclubs. While some women were aware that they would enter the sex industry, they were not aware that they effectively would be imprisoned and unable to earn money. Trafficking victims reported that they were subject to physical violence, rape, denial of access to health care, and confiscation of their

¹¹ US Department of State (2002), op. cit.

passports. According to the IOM, the presence of a large international community has contributed to the increase in the number of brothels that are involved in trafficking, but women rescued from the brothels often report that the majority of their clientele was local.

Since nothing in the applicable law, as defined by UNMIK Regulation 1999/24, provided an effective legal framework under which to address trafficking, during the year a Kosovar/international working group drafted a Regulation on the Prohibition of Trafficking in Persons in Kosovo, making the offense a crime punishable by from 2 to 20 years in prison, and providing for victim assistance. UNMIK promulgated the Regulation, 2001/4, in January.

UNMIK actively investigates cases of trafficking and UNMIK police raided several brothels and nightclubs throughout the year all over Kosovo. However, to date, lack of a witness protection program and inadequate training for judicial personnel resulted in only a few convictions under the regulation. In addition because prostitution is punishable under provincial law, women often were afraid to report their traffickers due to fear of arrest. During the year, four CIVPOL officers were arrested for complicity in trafficking or prostitution during the year; all were expelled or voluntarily returned home. In July a man in Prizren with arrests for trafficking prior to the promulgation of the regulation was arrested for continuing to operate a brothel where trafficked women worked; he was convicted under the regulation and sentenced to prison. In October police detained five persons entering Kosovo near Podujevo/Podujeve: three trafficked women were accompanied by their captors, a Serb and an Albanian. The Trafficking and Prostitution Investigations Unit (TPIU) has registered 1,028 foreign women who have been questioned at least once by police. According to the TPIU, there were 52 charges of trafficking against suspects during the year. As of October, according to the OSCE's Legal Systems Monitoring Unit, 21 cases were in some stage of court proceedings. Of these trials were held in 8, with sentences ranging from 5 months to 6 years.

The OSCE has been involved in integrating trafficking into other work on organized crime and in gathering data, working on legislative review and data-gathering initiatives within the framework of the Stability Pact Trafficking Task Force. The IOM launched an awareness campaign directed at UNMIK, KFOR, and local men who purchase the services of women who were most likely to be trafficking victims, and ran an information campaign targeted at potential trafficking victims in Kosovo, using print and broadcast media. The IOM also offers free office skills courses at their employment assistance office, which approximately 300 women have attended, including 170 minorities.

UNMIK does not provide any official residency status to victims. Those who do not accept assistance from IOM generally are released, but if they continue to work as prostitutes, they are subject to rearrest, short

jail sentences, and deportation. Some women who were trafficked have been jailed or made the subject of deportation orders by local judges. According to the police, when a woman is picked up in a raid, she is assumed to be a victims and is offered shelter and repatriation assistance. If she accepts, she is transferred to IOM. If she refuses, she is generally released if this is a first contact. Prostitutes who are not trafficking victims are also allowed to go with a warning if this is their first contact with the police. Prostitution is, however, a misdemeanor (subject to a 30-day sentence), and local judges have sentenced women, including those who were trafficked but refused repatriation, to jail. Moreover, judges have issued deportation orders against some women for lack of proper documentation.

2. Domestic violence

2.1 A background to violence against women

The United Nations Development Group's 2001 report notes:

Violence against women is widespread in Kosovo. According to a recent UNIFEM assessment, 23 per cent of women reported domestic violence. Rape in Kosovo during the war, trafficking, sexual slavery and prostitution are serious issues affecting women.

Violence against women must be addressed in the context of women's human rights rather than merely as a welfare issue. Awareness raising and education on the issue are fundamental to bring attitudinal changes in society. But equally important are stricter laws, legal procedures must be revised, and police, health care staff and judges need training on how to deal with violence against women as a violation of human rights. A regulation on 'Trafficking in Women' is needed¹², shelters for women are required, and women's groups working against violence and trafficking in women, need capacity building support.

The UNIFEM assessment referred to above was carried out by Rachel Wareham, who gives the following background on the issue:

"It is impossible to write about any type of violence in Kosovo without reference to the war and conflict of the past years. Kosovo was, in fact, a place of which few people outside of former Yugoslavia had knowledge until the massacres in Drenica in 1998. Since then news and media coverage has tended to concentrate on issues of ethnic violence and has generally been unable to take into account complexity or diversity.

Since the arrival of the UN in 1999, emphasis by outsiders has been on reconciliation. The massacres, rapes, forced expulsions, random killings of civilians so well documented by OSCE and others, are now being pushed to the back of many minds and displaced by current crimes. Kosovar Albanians are being predominantly blamed for inciting ethnic violence whilst at the same time Kosovar Albanians in northern Mitrovica catalogue numerous occasions when the KFOR has failed to protect them against Serbian attackers. Despite the impression in the media of one-sided (Kosovar Albanian led) violence, post conflict violence has led to deaths of almost equal numbers of Albanians and Serbs in Kosovo. And, many killings are not inter-ethnic, but amongst people of the same ethnicity.

The researcher's analysis is that in Kosovo Albanian culture, in common with many traditional societies, the meaning and legitimacy for violence are regulated. Unmeditated violence is equated with loss of

¹² Note: this was promulgated in 2001 as UNMIK Regulation 2001/4

control which is equated with loss of power whereas restraint is connected with moral authority. Men who lack restraint either verbally or physically (for example through public displays of drunkenness) lose status in the community. Premeditated violence is accepted when it is related to retribution, which is considered an expression of justice, not to be taken lightly. Reconciliation between men is valued highly.

*Traditionally Kosovo society was constructed in ways which appear to have minimized the amount of physical mistreatment men used towards women because structural control ensured women were very constrained. **Women gained status, moral authority, and respect as mothers. Women could lose all of these through any public act which discloses independence or scorn for their natal and later, marital family. But the combination of ethnic cleansing, war, and then the governance of Kosovo by an international force has fractured a tight-knit society. Times such as after a war, when structures are weakened and traditions and communities have been disrupted, are likely to see an increase in physical violence against women, as women move into roles previously closed to them.***¹³

The US State Department in its report for 2001 notes:

Violence against women, including rape and a high level of domestic violence, remained a serious and persistent problem. Applicable criminal law, as defined by UNMIK regulation, is incomplete in addressing both domestic violence and sexual crimes. There are no governmental agencies dedicated to coping with family violence. Several domestic and international NGO's pursued activities to assist women, but they were constrained by a tradition of silence about domestic violence, sexual abuse, and rape. In Kosovo's traditionally male-dominated society, domestic abuse of women is culturally acceptable. Credible sources reported that violence against women increased in the post-conflict period. Few victims of spousal abuse ever file complaints with the authorities. The Kosovo Police Service School, charged with training the KPS, included segments on domestic violence and rape in its curriculum. In October UNMIK commended six KPS officers for their part in preventing a gang rape and arresting its would-be perpetrators.

Rape is underreported significantly due to the cultural stigma attached to victims and their families. Tradition prevents much discussion of the topic of rape among ethnic Albanians, since the act is seen as dishonoring the entire family. The frequent use of rape by Yugoslav and Serbian forces and the KLA in the summer of 1999 has heightened the profile of rape as a form of war crime (see

¹³ Wareham, Rachel (2000), *No Safe Place: An Assessment of Violence Against Women in Kosovo*, UNIFEM, pp 24-25

*Section 1.c.), but few individual women have come forward publicly. During the year, police registered over 103 rapes and rape attempts in the province, an increase in the number of reported cases over the previous year. However, there is credible anecdotal evidence, supported by customary practice, that rape is underreported significantly.*¹⁴

The International Crisis Group published a report in September 2002 on the state of the justice system in Kosovo. The report did not provide a gendered analysis of the situation. However, almost in passing, in a section describing progress made by UNMIK in prosecuting crimes, it noted:

*All major offences, with the exception of rape, dramatically declined in 2002.*¹⁵

This perhaps illustrates both the way in which general improvements in the rule of law and levels of crime do not necessarily mean improvements for women, and also the low priority that violence against women is given by the authorities in Kosovo.

2.2 Prevalence data

The information below is taken from the report by Rachel Wareham mentioned above.

Significant findings which can be clearly extrapolated from the responses:

***OF THE WOMEN WHO DISCLOSED PHYSICAL VIOLENCE
BY A PARTNER OR FAMILY MEMBER:***

1. PREVALENCE OF DOMESTIC VIOLENCE:

23 per cent of all 213 women who completed questionnaires disclosed they had experienced physical violence by a partner or other family member.

18 per cent of all women who completed questionnaires reported rape by a partner (husband or boy friend) or family member such as uncle, cousin, nephew.

The data indicates that disclosure rates of domestic violence are very similar to those in other studies in Western Europe and North America.

It should be kept in mind that in many countries and places, under reporting of domestic violence is common. It reflects fears such as of reprisals, publicity, damage to a woman's reputation, lack of trust in institutions and authorities.

2. OCCURRENCE OF VIOLENCE BY AGE GROUP:

¹⁴ US Department of State (2002), op. cit.

¹⁵ International Crisis Group (2002), *Finding the Balance: the Scales of Justice in Kosovo*, ICG Balkans Report No. 134, Pristina/Brussels, ICG, p 6, available at <http://www.crisisweb.org/projects/showreport.cfm?reportid=772>

The average age of the total sample who completed questionnaires was 28.5 years.

25 per cent of the total sample were between 35 and 54 years old.

The sample was biased towards older women most likely to be married.

The average age of women who reported experiencing domestic violence (23 per cent of the total sample) was 32 years.

42 per cent of the women who disclosed experiencing violence were between 35 and 54 years old.

The data indicates that mature women are most likely to report experiencing domestic violence.

3. MARITAL STATUS:

Of all women who disclosed experiencing violence (23 per cent of the total sample), 40 per cent were married and 40 per cent were single (unmarried, widowed, separated, divorced), the remainder 20 per cent did not respond.

The data indicates no obvious relationship between marital status and vulnerability to violence, in fact both married and single women appear to be equally vulnerable.

4. RURAL/URBAN DIFFERENCES:

Of all women who disclosed experiencing violence (23 per cent of the total sample), 65 per cent were from urban areas.

Whereas 49 per cent of the total sample were from urban areas.

The data indicates that violence appears to be more prevalent in urban society.

5. FAMILY MEMBERS:

Of all women who disclosed experiencing violence (23 per cent of the total sample), 50 per cent of all urban women and 14 per cent of all rural women were maltreated by a family member other than their partner (husband or boy friend). This included fathers, uncles, nephews, brothers. In a few cases perpetrators were females such as mother in laws, mothers.

The data indicates that there are higher levels of violence by family members other than a husband, in urban communities.

6. FIRST INCIDENCE OF VIOLENCE:

Of all women who disclosed experiencing violence, 44 per cent of women experienced violence for the first time in 1998 or 1999. 2 per cent of women experienced violence for the first time in 2000. 2 per cent did not respond to this question.

The remaining 54 per cent had first experienced domestic violence from 1980 to 1998.

The data indicates that a connection can be made between the increase in conflict in Kosovo in 1998, and a rise in domestic violence.

The findings indicate that domestic violence is not a new phenomenon in Kosovo but that it appears to have increased since the conflict.

Possible explanations for this are: increased acceptability of violence as a way to solve problems, the break down of tight family and social structures, a general rise in instability and uncertainty, the increased sense of powerlessness amongst the community, decreased income in many families as workers sending back remittances from abroad are returned by governments, general levels of unemployment, increased inequalities in society.

7. RAPE BY KNOWN MEN:

18 per cent of the whole sample of 213 respondents reported rape by known Albanian men: 53 per cent of women who had been raped by partner (husband or boy friend) or family member, were married, and 26 per cent were single, 21 per cent were widowed or separated (it is not clear from this category if the rape/s took place before widowhood or separation or after).

Rape by a husband is currently exempt from legal prosecution under laws of Federal Republic of Yugoslavia, and laws of Serbia, and laws of the Autonomous Province of Kosovo. It is interesting therefore that women disclosed rape by their husbands and boy friends, and this contradicts the general belief that women in Kosovo do not understand forced sexual activity by husband or boy friend as 'rape'.

8. ALCOHOL & VIOLENCE:

Of all women who disclosed experiencing violence (23 per cent of the total sample), 51 per cent reported that their abusers had an alcohol problem; of these 72 per cent are urban men.

The data indicates that alcoholism is a contributing factor in violence.

9. CHILDREN & MISTREATMENT:

35 per cent of women who experienced domestic violence (23 per cent of the total sample) violence said that children in their family are also subjected to physical mistreatment, whereas 53 per cent of women said children in their families were exposed to no physical or emotional mistreatment. The remaining 12 per cent did not respond to this question.

The data indicates that violence against children and against women do not always occur together.

10. WHERE WOMEN GO FOR HELP:

Of all women who disclosed experiencing violence (23 per cent of the total sample), 54 per cent of urban and 7 per cent of rural women had not talked with anyone about the violence.

The data indicates that urban women are less likely to seek support.

Of all women who disclosed experiencing violence, 12 per cent of women had not sought help related to the violence. 32 per cent of women had sought help from their family, whereas only 9 per cent

sought help from a friend. Those approached in the family included father and brothers. It is assumed from discussions that in cases where the father or brother/s are the abusers, no one is approached. There was no significant response concerning help from institutions, local groups, international organizations. The data indicates that women are most likely to seek help related to the problem of violence from family members.

37 per cent of women had not talked with anyone explicitly about their experience of violence. 40 per cent of all women had talked with a friend about the problem, 14 per cent had talked with family members, the remaining 9 per cent did not reply to the question.

It seems, if this figure is compared with the one in the above paragraph, that women do not associate 'talking' with 'helping'.

The data indicates that women are most likely to talk explicitly with a friend.

Of all women in the total sample 49 per cent of women would use a place for help if it existed, 33 per cent maybe would use a place, 14 per cent would definitely not, the remaining 4 % did not reply to the question.

It seems therefore that services would be used if they were developed in a culturally sensitive and user-friendly manner which requires wide consultation with women."¹⁶

In the light of these findings we feel that careful consideration should be given to the issue of women's safety within the home, and an assumption ought not to be made that a woman could return to her family for protection.

Karina Vasilevska, a local activist working on a campaign to set up a shelter in the Mitrovica region, notes:

Starting with January 2002 there have been over 40 domestic violence and 5 sexual assault cases reported to the Police Stations in Vushtrri/Vucitrn, Skenderaj/Srbica and South Mitrovica/Kosovska Mitrovica. The numbers in reality are much higher because the proper reporting system was not introduced until later this year and oftentimes gender based violence cases are reported as assault cases or are unreported because of the cultural attitudes within society and the police. In comparison "Jeta e Gruas", a woman's human rights NGO in Skenderaj/Srbica, deals with an average of 4 – 6 domestic violence cases per week. Center for Protection of Women and Children served around 2150 cases of domestic violence Kosovo wide in 2001.

Many of the women, victims of gender-based violence, are afraid to acknowledge their status, as there is no safe place, where they and their children can go afterwards.¹⁷

¹⁶ Wareham, Rachel (2000), op. cit., pp 33-35

¹⁷ Vasilevska, Karina (2002), paper entitled *Project: Shelter for Women who are Victims of Gender Based Violence in Mitrovica/Kosovska Mitrovica Region*, available from RWRP

3. Domestic violence and the law

3.1 The legal system in Kosovo

The judicial system is defined by UNMIK Regulation 1999/24. This Regulation recognizes four sources of legislation in force in Kosovo:

- Laws observed in Kosovo prior to March 1989
- Laws passed in Kosovo between March 1989 and December 1999, in cases where they fill a legislative gaps in laws set prior to March 1989, and are consistent with human rights standards
- New UNMIK Regulations promulgated by the SRSG since 1999
- Other international standards providing for and protecting basic human rights.¹⁸

3.2 The law relating to domestic violence

It appears that currently offences of domestic violence are charged under general laws covering crimes such as physical assaults. A 2002 report by the Organisation for Security and Co-operation in Europe (OSCE) on the criminal justice system in Kosovo indicates that perpetrators of acts of domestic violence involving physical assaults may be charged under minor offence law with “endangering the security.” They note that other charges such as “second degree” light bodily injury where a weapon is used, which requires a public prosecution, or “grave bodily injury” would be more appropriate in such cases.

Rape by a husband is currently exempt from legal prosecution under laws of Federal Republic of Yugoslavia, and laws of Serbia, and laws of the Autonomous Province of Kosovo.¹⁹

According to a UNMIK press release of November 2000, UNMIK, OSCE, Kosovo women's groups, lawyers and professors from the Kosovo Faculty of Law have been involved in drafting a Regulation on the Prohibition against Domestic Violence.²⁰ **However, it appears that this regulation has not yet been promulgated, as it does not feature on the complete list of regulations on UNMIK's website which is updated up to August 2002.²¹ The proceedings of the conference on violence against women held in July 2002 (see Section 4) confirm this lack of progress, as they include a recommendation that this regulation, along with other laws, be enforced.**

See Section 4 for information on the adequacy, or otherwise, of current legal remedies.

¹⁸ Source: UNMIK Regulation 1999/24, *On the Law Applicable in Kosovo*, available at <http://www.unmikonline.org/regulations/1999/reg24-99.htm>

¹⁹ Wareham, Rachel (2000), op. cit., pp 33-35, and Organisation for Security and Co-operation in Europe (OSCE) Mission in Kosovo, Department of Human Rights and Rule of Law (2002), *Kosovo, Review of the Criminal Justice System, September 2001-February 2002*, pp 19-20, available at <http://www.osce.org/kosovo/documents/reports/justice/>

²⁰ UNMIK (24/11/00) *International Day to Oppose Violence Against Women*, UNMIK Press Release UNMIK/PR/24, available at <http://www.unmikonline.org/press/2000/pressr/pr24.htm>

²¹ See UNMIK Official Gazette at <http://www.unmikonline.org/regulations/index.htm>

4. The reality of seeking protection

4.1 The police and security forces

The Organisation for Security and Co-operation in Europe (OSCE) makes 6-monthly reports on the criminal justice system in Kosovo. In its April 2002 report it notes with concern the response of the police to complaints of rape:

Sexual Violence

OSCE welcomes any initiative to create a specialised police investigation response to sexual violence cases. Over the course of the previous LSMS²² reports, OSCE has highlighted the need for coherent policy regarding the treatment of rape victims. The need for a consistent police response and protocol is highlighted by the example of a memorandum attached to a regionally-based protocol written to investigators by the Gjilan/Gnjilane Regional "Criminal Investigations Division, (CID)" dated 31 October 2001. The memorandum states: "It is been my observation that very few of the reported rapes are in fact actually that. Most of them, it seems, are afterthoughts of the women who had consensual sex and now must face her family. As you know, in this culture, premarital sex is forbidden, bringing shame to the women and fear of reprisal from her family. We, as Impartial Investigators, must investigate each case and come to a conclusion as to what, if any, crime has been committed and report the facts of the case. This may not satisfy the victim or her family but that is an issue we cannot be concerned with." The attached protocol goes on to instruct investigators to provide rape exams and collection of forensic evidence only "if the investigator believes, that in fact a rape has occurred" and states that "if the investigators feels that this is not a forcible, true rape case, he will advise the victim and the family of his beliefs and explain why he believes this."

These views, expressed by UNMIK police investigators, are alarming. Such a written policy implies that police investigators should start from the presumption that a rape allegation is false and that a forensic exam is not necessary to determine, in part, the truth of the allegation. The creation of a specialised police investigation unit and a coherent, centralised police policy on sexual violence may assist in ensuring that such prejudices do not influence the conduct of police towards possible victims of sexual violence.

Although OSCE welcomes the creation of the Special Victims/Domestic Violence Unit to assist in the provision of a sensitive response to such victims, the Unit has been hampered by a lack of resources and interference from regional command structures. Enhanced political support, resources and staffing of this Unit to work

²² Legal Systems Monitoring System, part of the Department of Human Rights and Rule of Law of the Organisation for Security and Co-operation in Europe (OSCE)

closely with specialised sexual violence investigators is also needed to improve law enforcement's response to victims.

The lack of a standardised police policy concerning rape victims and specialised expertise within the police is one part of the broader issue of overall failure to respond to issues of sexual violence. In order to address holistically the needs of sexual violence victims, the OSCE Victim Advocacy and Support Section initiated a Working Group, which involves UNMIK Police Special Victims/ Domestic Violence Unit, KPSS, DOJ, the Forensic Institute, and the newly created Medical Examiners Office among others.²³

The US State Department notes sexual and other assaults by police and security forces, which may have an influence on a woman considering reporting domestic violence:

There were sporadic but unspecified reports of the use of excessive force by KFOR and CIVPOL²⁴ during arrests. Some of the CIVPOL forces sexually assaulted women. In July CIVPOL arrested a member of the international police corps for sexual assault, and in August a CIVPOL officer stationed in Mitrovica was arrested on allegations of sexual assault. Four CIVPOL officers also have been arrested for complicity in trafficking or prostitution during the year; all were expelled or voluntarily returned home (see Section 6.f.). In September 2000, military authorities disciplined nine members of a KFOR unit, including four officers, following an investigation into allegations of excessive force, beating of suspects, and sexual assault on women at checkpoints and while on patrol.

Rachel Wareham also notes problems with international forces:

Cases are cited where KFOR, UN, CIVPOL and other internationally run institutions failed to offer adequate protection to women:

'There was a case in upper Malishevë, and I've been to try and help the children. Before the war the man beat his wife so badly and hung her up so that her feet went black. Earlier he had been beaten in prison in Serbia and he was repeating what was done to him. She left after he first beat her, but then was convinced by a committee in the community to return because of the children. He was arrested by KFOR because he badly beat his sister and his mother. But all they did was disarm him and then let him go. We were surprised.' Activist, Liria Women's Group, Gjilan.

²³ Organisation for Security and Co-operation in Europe (OSCE) Mission in Kosovo, Department of Human Rights and Rule of Law (2002), *Kosovo, Review of the Criminal Justice System, September 2001-February 2002*, pp 19-20, available at <http://www.osce.org/kosovo/documents/reports/justice/>

²⁴ UNMIK's multinational, civilian police corps

‘Two months ago the troops changed. And since then there’s been no cooperation, either with UN Police or KFOR. We had one case when a woman was being badly abused at home, and she left the kids with us (for safe keeping). We informed CIVPOL, no one came. Its like this in most cases, they don’t respond. They just write on pieces of paper.’ KPC, Vushtrri.²⁵

4.2 The judicial and legal system

4.2.1 The independence of the judiciary

The US State Department notes:

The law provided for an independent judiciary; however, the legacy of ethnic conflict and Yugoslav oppression was an obstacle to judicial independence, and some judges and prosecutors reportedly were subject to outside pressure, particularly in cases with an ethnic element.²⁶

4.2.2 Gender inequality in the judicial system

The United Nations Development Group’s 2002 report states on the judicial system:

The Kosovan judicial system is characterized by a lack of gender equality. Women staff only 19% of Kosovo’s courts and public attorney offices, and only 6.7% in Kosovo’s Chamber of Lawyers. Women head only three criminal and one municipal court [Norma, 2001]. In smaller communities, where at times there are no women in judicial positions, the percentage of women judges and prosecutors is lower than in larger centers.²⁷

4.2.3 The criminal justice system and victims of sexual violence

In the section on rape and other sexually related offences in their report of September 2001, OSCE notes ongoing concerns on the treatment of victims of sexual violence, which have not been addressed:

LSMS continues to monitor sexual violence cases and a whole chapter has been dedicated to this topic in the previous LSMS review of the criminal justice system.²⁸ Unfortunately, there have not been any substantial positive developments since then. Instead, the issues identified at that time as major problems at police or court level have still dominated the approach of the judiciary to the sexual violence offences and its victims.

²⁵ Wareham, Rachel (2000), op. cit. p 41

²⁶ US Department of State (2002), op. cit.

²⁷ United Nations Development Programme (UNDP) (2002), *Human Development Report – Kosovo 2002: Building Bridges to a Better Future*, p 40, Prishtine, Kosovo, available at www.kosovo.undp.org

²⁸ See Organisation for Security and Co-operation in Europe (OSCE) Mission in Kosovo, Department of Human Rights and Rule of Law (2001a), *Kosovo, Review of the Criminal Justice System, September 2000 – February 2001*, available at <http://www.osce.org/kosovo/documents/reports/justice/>

...

Whereas in many areas of the criminal justice system developments have been documented, particular concerns related to this area of sexual violence have not been addressed.

4.2.4 Forensic and medical legal services for victims of sexual violence

OSCE highlights the lack of effectiveness of forensic services for victims of sexual violence, which have a serious effect on a victim's ability to obtain protection:

Forensic Analysis in Cases of Sexual Violence

LSMS continues to have serious concerns over the conduct of forensic examinations of victims of sexual assault and domestic violence currently being carried out by the Prishtinë/Priština Institute of Forensic Medicine. The lack of proper forensic evidence in rape and other sexual assault cases compromises the ability of the police and courts to investigate and prosecute cases, thus impacting directly on the victims' ability to obtain an effective legal protection.

Apart from the low quality of the forensic reports, LSMS is also concerned with examples of forensic examinations that are simply not carried out. Normally, forensic doctors are obliged to work from 0800 to 1700hrs, Monday to Friday. However it has become standard practice for the majority of doctors at the Forensic Institute to cease work at 1300hrs. In response to concerns raised by OSCE, ADoJ and UNMIK Police over the institute's failure to provide timely examinations of rape and other assault victims, a "call-out" roster was established in May 2001, enabling forensic doctors to be contacted outside "normal" working hours.

However, the call-out system does not function effectively as illustrated in a number of cases, where forensic doctors have refused to respond to police "call-outs" to examine victims. As a result, investigations and prosecutions in rape cases have been compromised through the inability of the police to obtain adequate forensic evidence. At the same time, the psychological state of the victim, as well as the victim's willingness to co-operate with the police in pursuing a prosecution, is undoubtedly affected by the indifference shown by forensic doctors during her initial exposure to the investigative and judicial process. On 9 July 2001, in a memorandum addressed to the Supreme, District and Municipal Courts, ADoJ, UNMIK Police and the OSCE, the Forensic Institute stated that the examination of rape victims should be conducted "within 24 hours", and that "one of the forensic experts shall always be available to conduct this kind of examination." However, despite this explicit commitment, forensic doctors continue to refuse to co-operate in the examination of rape victims.

On three occasions (25 March, 5 April and 6 July 2001) the Prishtinë/Priština Regional Serious Crime Squad (RSCS) escorted rape complainants to the Forensic Institute to request a forensic

examination. In all these instances, the “on-call” doctor was not present or reachable, and even when reachable he refused to perform the evaluation. Consequently no forensic examination took place.

On 10 July 2001 at 0930hrs UNMIK police escorted a rape complainant to the Prishtinë/Priština Forensic Institute. The forensic doctors were in a staff meeting. They were informed of the presence of the victim, but did not break off the meeting in order to attend to her. The victim was therefore forced to wait 90 minutes before being examined. The examination, when it finally took place, lasted no more than 5 minutes. The examining doctor, on completing the examination, reportedly stated to the police that she had not been raped and therefore there was no point in writing a report. Only after an argument between the police and the forensic pathologist, the latter agreed to prepare a report.

On 22 August 2001, having been refused treatment the previous evening by the Department of Gynaecology at Prishtinë/Priština Hospital, a rape complainant was taken to the Forensic Institute by UNMIK Police. According to police, the doctor was uncooperative and, without carrying out a forensic examination of any kind, ordered that the victim be admitted to the neuro-psychiatric Clinic in Prishtinë/Priština. The Police Officers asked to speak to the doctor in charge of the Forensic Unit, who, on arrival, refused to assist in any way. The victim was not properly examined until 27 August, by which time the value of the forensic evidence obtained was minimal.

The OSCE is currently involved in a capacity building project at the forensic institute. This project intends to promote the development of effective sexual assault examination procedures, which are in compliance with international standards and norms. The maintenance of such standards depends on the long-term development of the personal and professional integrity of the forensic doctors working at the institute. However, it will also depend on the establishment of effective internal control and disciplinary mechanisms to address the continuing failure to provide an appropriate and effective forensic service.

4.2.5 Biased attitudes in the judiciary and lack of victim advocacy

In the same report, OSCE note the following:

Whereas the issue of improper forensic analysis and evidence gathering has also a logistical dimension and the shortcomings might arise from precarious infrastructure and resources of police investigators and forensic teams, the biased attitude of some of the judges and prosecutors towards sexual violence victims and the lack of victim advocacy are purely substantive aspects of the manner in which the justice system is administered in Kosovo at this time.

Conduct suggesting bias [against] victims of sexual offences at all levels of the judiciary has been identified previously, but significant improvements have not been identified. Instead, LSMS has observed that victims of sexual offences may still face irony, sarcasm or lack of consideration from the prosecutors, defence counsels or judges' part. Rape trials often remain imbued with ironical remarks on how the victim felt during the sexual intercourse, in which "position" was she raped, how hard did she scream, etc. In some cases, prejudices and preconceived opinions about rape cases have been openly expressed during court hearings by either judges from the panel or other principals. Often it appears that rapes are still perceived as fabricated cases, which the victims use in order to pressure a marriage. Another prejudice often illustrated through the prosecution of these cases is that as long as the victim's virginity was not intact at the time of the sexual abuse, than the guilt of the defendant is somehow mitigated and sometimes even excused. In almost all rape cases monitored by LSMS, judges have asked the victim whether she was a virgin at the time of the rape, whether she had a boyfriend and if so how many of them.

One of the most disturbing examples was the reaction of a judge from Prishtinë/Priština who, upon the request of the victim in a rape case to withdraw the charges brought against the defendants, shouted in open court: "I knew from the very beginning that this was not a rape!" Such a reaction indicates that the judge ruled on the case with the preconceived idea that the victim's allegations were not true and that was only a matter of time before she came to admit it.

Greater efforts should be made to change this mentality, even if it means initiating disciplinary actions. The creation of the JIU within ADoJ may also, by surveying and investigating the conduct of the judges and prosecutors, provide the latter with an impetus for voluntarily adjusting their attitudes through self-discipline. Where self-discipline does not work out, swift investigations and disciplinary actions should be undertaken. However, this is yet to be seen.²⁹

4.2.6 Cases of intra-familial (domestic) violence)

OSCE's LSMS monitored cases of intra-familial violence in 2000. They noted the following problems:

The outcome in the cases monitored by LSMS is that victims of violence within the family, both women and children, are left without a remedy or protection, in that the criminal conduct against them remains either completely unpunished or inadequately punished. Consequently, victims are often placed in the position where it is necessary to return to homes in which criminal conduct is further perpetrated against them.

²⁹ Organisation for Security and Co-operation in Europe (OSCE) Mission in Kosovo, Department of Human Rights and Rule of Law (2001b), *Kosovo, Review of the Criminal Justice System, March 2001 – August 2001*, pp 62-65, available at <http://www.osce.org/kosovo/documents/reports/justice/>

A fair judicial response to these cases requires urgent development of social services and support mechanisms to ensure that the victims' rights are protected and structures are in place to sustain women's welfare in cases of family break-up. It appears that one of the most severe problems in the conduct of these cases presently is that the state administered agency which is supposed to provide assistance in cases involving intrafamilial violence and child protection, the Centres for Social Work under the Department of Health and Social Welfare, does not adequately function in this regard.

.....

(a) The law and prosecutions

Unlike the cases of sexual violence described in the last section, these cases involve criminal conduct within the family. Due to a complicated combination of many factors, including traditional bias against women, violence in the family is often not perceived as criminal, although the same acts between strangers would clearly constitute a criminal offence. There are three manifestations of this problem. First, the law may fail to criminalise acts between family members, for example the applicable law does not criminalise rape within the marital relationship. Second, the law may fail to criminalise such acts adequately. Third, the police, the prosecutors', and the courts' may fail to charge such acts under the law or may treat cases charged differently because they involve violence within families.

The inadequacies in the domestic law, such as the lack of legal mechanisms for the protection of victims from violence, have been identified and are being addressed by a working group on legislative review.

Due to the fact that the applicable law inadequately addresses this issue, it is difficult to identify cases of intentional undercharging of such offences. However, in one case, in December 2000, a husband admitted to the police that he had, in a drunken state, taken his wife by the hair and threw her out of the house where he stabbed her in the waist with a "butterfly" knife. He admitted that he thought his wife might be dead and he returned to the house. The next day he voluntarily went to UNMIK police to report the incident. The file was handed from the district court to the municipal court, as the district court public prosecutor refused to charge the husband with attempted murder. The public prosecutor of the municipal court, at the end of February 2001, requested an investigation based on the charge of "endangering the security." It would appear that, at least, a charge of "second degree" light bodily injury where a weapon is used, which requires a public prosecution, or "grave bodily injury" would be more appropriate in such a case.

In the cases monitored by LSMS, the primary problem is not the classification of the offence but that the courts and police are unable to

handle the multifaceted aspects of intra-familial violence. The lack of functioning social services severely impacts the ability of the courts and the police to effectively and appropriately investigate, prosecute and sentence perpetrators of intra-familial violence.

(b) Cases

In cases of domestic violence, women face the extremely difficult choice between dissolving the classically defined family unit or continuing to live with violence. Due to family or community pressure as well as insecurity, women may recant their statements or request that prosecutions be dropped. As there are no special employment programs for these women and a lack of social assistance and housing, women who desire to leave their husbands may understandably hesitate. There are very few shelters for women and children who are subject to domestic violence.

As a result of the lack of functioning social welfare institutions, the courts and the police have been playing inappropriate roles in these cases. KPS and international police officers as well as judges have been mediating cases involving domestic violence, either facilitating a reconciliation between the parties or admonishing the husband because the wife recants her statement. The roles of judge and police in dealing with these issues must be clearly defined. In none of the cases monitored have victims had a representative to protect their interests.

Minor Offences Court

The Pec/Peje municipal court of minor offences charged a husband with a minor offence for beating his wife. At the trial, the wife could barely walk into the courtroom and her face and hands were severely bruised as a result of the incident. The incident involved the husband coming home in the early morning drunk, beating his wife and threatening her with a knife which awoke their four children (two year old twins, and a six and nine year old). The husband slapped the nine-year old daughter in the mouth and sent her to the bathroom and she was so frightened that she wet her pants. After this, he threw the wife out of the house by her hair. The husband drove the wife around in his car at high speeds and then threw her out of the car and threatened to run her over. The wife stayed out all night with no clothes on until she returned home the next morning.

The husband admitted to beating the wife but denied beating her in the car. In his defence, he alleged that she had engaged in an extra-marital affair while they were living in Germany. The wife stated on a number of occasions that she could no longer live with her husband and that they had had "problems" over the past ten years. The wife requested custody of the children, but she stated she needed a place to live and some assistance to do this. At the time of the trial, the four children were living with the husband. The judge found the husband guilty and sentenced him to 30 days imprisonment although the judge expressed

concerns about the welfare of the children as they were staying with the father.

No further steps to resolve these issues ensued. LSMS observed that the KPS officer involved in the case was attempting to facilitate a reconciliation between the wife and her husband.

On appeal the High Court of Minor Offences modified the sentence to a fine of 400 DM (or thirteen days in prison in case of default) on the basis that the defendant, husband, lived with the victim, wife and they had four children and that the records reflected that the husband and wife had indeed reconciled. In the appeal, the defendant stated that he was back with his wife and that he would not repeat the offence. The trial testimony of the wife stating that she no longer wanted to live with her husband and that she was concerned about where she and her children would live appear not to have been known or taken into account by the appeal court. Within two months of this decision, the wife again reported to the police that her husband had beaten her while drunk and this had resulted in a fracture of her arm. A medical report confirmed the wife's serious injury. The husband was again charged under the minor offences law and was sentenced to forty days imprisonment. The wife has expressed her desire to the police to get a divorce.

Municipal court

A case in Prizren involves allegations by a wife that her husband has repeatedly mistreated her and beat their three children (aged three, six, and eight) with a belt. The first arrest of the husband was on 11 July 2000, four days after an incident when he punched his wife until she was unconscious and beat his children with a belt leaving injury marks all over their bodies. The husband was charged with "light bodily injury," but the charges were dropped as a result of the judge "admonishing" the husband. The wife apparently requested that her husband be released.

On 23 October 2000, the wife stated to UNMIK police that in the middle of the night, her husband had forced her to leave her home naked using a knife and had threatened to kill her. She also stated that this type of abuse had been occurring over the ten years of their marriage. The husband was re-arrested for the assault on his wife. On 31 October 2000, the wife went to the police and stated that she had forgiven her husband and requested that he be released from custody. On the same day, the husband was heard by an investigating judge. He confessed that he had beaten his wife and forced her to leave the apartment. He further explained that he was punishing his wife for speaking on the street with other men. There was no order of pre-trial detention.

According to the police, the wife withdrew her accusations because pressure from her family, including her brother who had told the victim

that she should obey her husband and not leave the house or speak to men on the street. Allegedly, the father of the victim supported the position that the victim should withdraw the accusation and allegedly a cousin of her husband had threatened her.

On 1 December 2000, the husband was found guilty of “endangering the security” and was sentenced by the municipal court to eight months imprisonment with a conditional release. The verdict of the court does not mention the previous charges against the husband when he was admonished.

District court

A case in the Pec/Peje district court involved a brother charged with the attempted murder of his sister after shooting her in the neck/shoulder at close range. The motive of the attack, testified to by the brother, was the fact that she had not married her fiancé, but had married another young man. He claimed that the action taken against his sister was his right under custom.

The sister/victim was informed that she did not have to testify by law, but she agreed to testify. However, she could not speak so the judge read her testimony from the investigation hearing into the record. She had stated that she did not want her brother to be punished by the court. The medical report of the victim stated that the injuries to her shoulder are permanent and that she will be unable to use her arm.

The only other person to testify was the victim's husband, who had been the victim in a related case tried in the same court. In this separate incident, the alleged fiancée of the girl and his brothers were charged with grave bodily injury and weapons possession after they had severely beaten the young husband. As a result of the incident, the husband spent approximately one month in the hospital. During those proceedings, the presiding judge asked the husband to reconcile with the defendant in open court. As a result, the defendants were only convicted of light bodily injury and some for weapons possession but they were given suspended sentences.

The brother who shot his sister in the connected case was found guilty of grave bodily injury and sentenced to six months imprisonment (including time in pre-trial detention).

He was released pending appeal. LSMS was informed that the President of the court had stated that the case was decided in this manner because it was a family issue and that the prosecutor and defence counsel had agreed on the sentence before the trial.³⁰

³⁰ Organisation for Security and Co-operation in Europe (OSCE) Mission in Kosovo, Department of Human Rights and Rule of Law (2001a) op. cit., pp 69-73

4.3 Other support services

4.3.1 The role of NGOs

Rachel Wareham notes in her report 'No Safe Place: an Assessment of Violence against Women in Kosovo' mentioned above:

"Kosovo women's groups have long been aware of the problem of violence against women by known men, particularly family members. The past external insecurity created by state violations meant that their work has tended to prioritize welfare and immediate physical needs. This has usually been combined with a long-term development approach expressed in action to tackle one of the key contributors to vulnerability – denial of education for girls. The situation has now changed and local groups no longer work under threat of arrest. However, they are now limited by new factors. For example, they are misconceived (along with certain state institutions) as agencies who implement donor's programs and 'do aid'. The 'post-conflict' environment in Kosovo which has led to a dramatically increased presence of various agencies, researchers, INGOs³¹, journalists has placed new and heightened demands on local groups which mean they have to increasingly look outwards and this affects their ability to concentrate on community based work."³²

The Centre for the Protection of Women and Children (CPWC) was set up in 1993 and provides support services and temporary accommodation to women who have experienced domestic violence and other women needing support. The main office is in Prishtine, and it has also opened nine field offices in Mitrovice, Skenderaj, Peje, Deçan, Gjakove, Rahovec, Malisheve, Suhareke and Kaçanik. Its only shelter, however, is in Prishtine. Its main activities are the provision of legal advice and representation and temporary shelter to women experiencing violence, psychological and social support, and health services and health education.

In 2001 CPWC provided assistance to 3072 women who had suffered violence, a 32% increase compared to the year 2000. Of these, 65% were cases of domestic violence, 16% serious crimes, 9% trafficking, 7% rape and 3% incest. 184 women were provided with temporary shelter during the year (a total of 600 nights of accommodation).

Beside the 184 accommodated cases at its shelter, CPWC offered legal protection to 483 other cases of domestic and other violence (kidnapping, rape, physical assaults, trafficking, prostitution etc). Out of all cases that were in need of direct assistance CPWC referred for social protection 1.922 cases, and offered legal protection to 667 cases (women and children).³³

Local activist Karina Vasilevska notes:

³¹ International Non-Governmental Organisations

³² Wareham, Rachel (2000) op. cit., p 18

³³ All the above information on CPWC comes from their website at <http://www.cpwc-gmqf.org/ENGLISH.htm>

There are currently only two shelters for gender based violence victims: in Prishtine/Pristina (run by Center for Protection of Women and Children) and Gjakove/Djakovica (run by a local NGO). They accept cases from all of Kosovo and are currently filled up to their capacity.³⁴

4.3.2 Lack of UNMIK and donor support for services

A 2002 report on gender-based violence (GBV) in Kosovo by the Reproductive Health for Refugees Consortium noted that although some support services exist, co-ordination and funding is insufficient:

UNMIK's DHSW [Department for Health and Social Work] has made little effort to work with the network of government-operated centers for social work around the issue of domestic violence or sexual assault.... Furthermore, UNICEF's nurse triage pilot program has not been comprehensively adopted by the DHSW, such that there is no government-based policy or plan to continue the triage services. And although the DHSW made a significant contribution to the "Rapid Response Pack to Cases of Domestic Violence" with its domestic violence protocol, the implementation of the protocol continues to be irregular and not well coordinated. Most co-ordination, in fact, is voluntary – based on the initiative of dedicated local and international organisations that have a priori embraced the issues of GBV. The government supports no multiagency or cross-sectoral coordination, which results in, on the one hand, limited local and national capacity for a comprehensive response to GBV and, on the other, an inevitable duplication of services.

Other limitations in GBV response include the province-wide lack of services for sexual assault survivors. Virtually all programming targets domestic violence or trafficking survivors, and only a limited amount of community education has focused on sexual violence. The culture of silence surrounding sexual violence remains, even though the local and international communities have introduced prevention and response activities to address other forms of GBV, and even though CIVPOL police reports suggest that sexual violence is an ongoing problem.

Relative to sexual violence, the issue of countertrafficking is well publicized and internationally supported, but programmatic funding remains erratic. IOM and the Prishtine-based shelter for trafficked victims have had difficulties securing financial support to continue their shelter. In all of Kosovo, only two other shelters exist for non-trafficked GBV survivors, with the capacity to serve a total of seventeen women and children. Although these shelters serve as models, they are not sufficient to serve the needs of a population of two million.

³⁴ Vasilevska, Karina (2002), op. cit.

*Nor do current services sufficiently address the needs of minority groups or men. Several of the activities listed above include minorities in their client population, but because many programs are run by Kosovar Albanians, the likelihood of segregated minority populations – Serbs and Roma – being able to access services is slim.*³⁵

4.3.3 Regional conference on violence against women

In June – July 2002 a 3-day conference was held in Prishtine which was attended by NGOs, politicians, activists, donors and practitioners in various fields, entitled “Regional Conference on Violence against Women and Children in Kosova”.³⁶ The conference aimed to identify the position of women’s human rights in Kosovo within the framework of international conventions on human rights, to bring together women’s main concerns and to make recommendations to government, institutions and the media on how to introduce institutional changes in favour of reducing violence against women. Five panel discussions were held, one of which focussed on domestic violence. The panel noted the increasing level of domestic violence in Kosovo and its great impact on women, the family and society.

Among the panel’s many recommendations the following were directly related towards remedying the current lack of legal protection for women:

- *Institutions and social authorities, such as: police, judiciary, social and health services, media and religious institutions should increase their responsibilities and be more effective in the implementation of laws, in order to protect the victims of domestic violence and bring justice for them.*
- *UNMIK and other governing structures of Kosova should support professionally and financially the governmental and non-governmental [sic] bodies dealing with issues of domestic violence.*
- *Immediate acknowledgment of the domestic violence as a crime, by adopting the Criminal Code, Criminal Procedure Code and Draft Regulation on the Protection against Domestic Violence.*
- *Law enforcement agency should adopt measures for the promotion and protection of domestic violence victims by ensuring full investigations and prosecution of perpetrators of violence.*
- *Measures should be taken, in order to enable the competent authorities of law enforcement to execute the law and provide full and adequate access to the justice system for the victims [sic]*
- *Initiation of working groups by the responsible departments on the reformation of respective laws dealing directly with the position of women and children, such as: the law on marriage and family, inheritance law, law on property relations, with an emphasis on the*

³⁵ Reproductive Health for Refugees Consortium, *If Not Now, When? Addressing Gender-based Violence in Refugee, Internally Displaced, and Post-Conflict Settings: A Global Overview*, New York, pp 97-98, available at http://www.rhrc.org/resources/gbv/wc_gbvcontents.html

³⁶ For the full report, see Centre for Protection of Women and Children’s website at <http://www.cpwc-qmgf.org/conference.htm>

proper access for the victims of domestic violence, having in mind the traditional position of the victim in society;

- *Institutional attainment of free legal assistance.*³⁷

³⁷ CONVENTION OF THE REGIONAL CONFERENCE, "Violence against women and children in Kosova", June-July 2002, report at Centre for Protection of Women and Children's website at <http://www.cpsc-qmgf.org/Recommandations.doc>

5. The situation of separated or divorced women

5.1 Poverty and economic insecurity after the conflict

The US State Department notes:

A long history of targeted asset-stripping and mismanagement by Yugoslav Federal and Serbian authorities left the economy in poor condition even before armed conflict resulted in the massive destruction of property and economic enterprises.

*Key industries before the conflict that have been closed include mining, metallurgy, and related manufacturing enterprises. The construction sector became the strongest economic sector in the post-conflict period. The agrarian sector improved but did not reach prewar levels. Unemployment among the predominantly ethnic Albanian population was estimated at 62 percent. Unemployment rates were much higher among Serb and other ethnic communities, although some Serbs continued to receive stipends or pensions from Yugoslavia. International organizations and donors continued their programs to improve the infrastructure and provide a regulatory climate conducive to enterprise and investment. However, the instability of the region, coupled with the destruction of property records, a still weak legal and regulatory framework, and uncertainty about Kosovo's future status, caused private capital investment to lag. The privatization of state enterprises stalled pending the resolution of significant property issues. Domestic energy generation capacity was estimated at approximately 50 percent of demand, and energy import arrangements remained uncertain. Remittances from abroad and foreign aid were important sources of national income. Significant criminal economic activity took place, especially in the fuel sector, and smuggling was widespread. International financial institutions estimated per capita gross domestic product at less than \$750 (1,500 DM), an increase over the immediate post-conflict period.*³⁸

A more recent assessment of gross domestic product (GDP) was carried out by UNDG for their 2002 report. There is a great discrepancy between that of men and of women. Depending on which method of calculation is used, GDP was either \$428 for women and \$1400 for men, or \$1248 for women and \$4200 for men (if adjusted for the local cost of living). When men's and women's GDPs were amalgamated and combined with other factors to produce a Human Development Index, Kosovo ranked either after Vietnam and Indonesia or after Turkey.³⁹

5.1.1 High unemployment and lack of social assistance

The 2002 report by the Kosovo Ombudsperson states:

³⁸ US Department of State (2002), op. cit.

³⁹ United Nations Development Programme (UNDP) (2002), op. cit., p 25

*Unemployment in Kosovo stands at 65%. The inadequate system of job security and the lack of protection against age discrimination in employment creates an imbalance with the rigid social assistance scheme established by UNMIK. **Both the international administration and the newly established local governmental bodies, the main form of public employment, provide only short term contracts. The relevant UNMIK Regulation on labour law specifically excludes these entities from the operation of the law, leaving the employees without any protection. Individuals over a certain age, but well below the statutory retirement age of 65, are often told that they are ‘too old’ for a given job. Others have been forcibly retired from their jobs at the age of 60. At the same time, the UNMIK social assistance regime generally considers that any household with a member between the ages of 18 and 65 is presumed to be ineligible for assistance, because that family member should be working. If a household has small children, when the youngest has a fifth birthday, the family is considered to no longer require social assistance. Families living in isolated communities, often with disabled members, will be considered ineligible for assistance if they own a car. There is extremely limited public transportation in Kosovo and the very few doctors do not normally make house calls.***⁴⁰

5.2 Greater economic insecurity for women

A divorced or separated woman would be particularly vulnerable due to gender-based discrimination in the economy and society. The UNDP's 2002 report states:

*As a result of disruptions caused by the conflict, as well as due to the still transitional nature of the post-conflict period, the high unemployment rate has become a major social and economic problem. Various sources estimate the current unemployment rate at about 50-55%, down from a high of 74% in the second half of 1999. This represents more than half of the able-bodied population (about 600 thousand inhabitants, or more than 25% of the overall population). **The unemployed - of which a large portion are female and/or young adults - are largely excluded from the benefits of development and reforms.***⁴¹

The same report notes that certain groups are “**excluded from the first stage of economic recovery in Kosovo**”, including “**Single-headed households, particularly widows and other single mothers who have no educational or professional training, and are therefore not qualified for formal employment.**”⁴²

The report goes on to note:

⁴⁰ Ombudsperson Institution in Kosovo (2002), op. cit.

⁴¹ UNDP (2002), op. cit. p 70

⁴² UNDP (2002), op. cit. p 71

In addition to ethnic-related differences in economic participation, Kosovo's economy is also characterized by significant gender-based inequalities. Efforts to increase gender empowerment and equality are linked closely to issues of an economic nature, especially to income. For a variety of reasons, involving cultural traditions and overall social development, women are under-represented in Kosovo's economy.

Women occupy only an estimated 30% of all jobs in the marketplace. Economic participation levels are lowest for women in rural areas, where they comprise some 21% of the rural workforce. Representation in urban areas is higher at 37% of the overall urban workforce (see Table 4.3).

The economic sectors with the highest levels of women participation in the workforce are in the education and health-care sectors, at 21.0% and 22.8%, respectively (see Table 4.4). Although statistics are not available, the percentage of Kosovan women in international organizations is also significant. Women have the lowest percentage of workforce participation in agriculture (3.9%) and tourism (1.7%).

A discrepancy also exists between the proven potential of Kosovan women as successful entrepreneurs, and their actual economic involvement. According to official data, out of 19,227 private businesses registered as of September 2000, only 1,348 (or 7.2%) of them are owned by women. Interestingly, however, a majority of business-owners in the retail sector are women at roughly 63%. Also, several women's business associations have been formed. Nevertheless, despite some success stories, and the support of several international organizations, additional technical, financial and institutional support is needed if current levels of gender-based inequalities in the economy are to be reduced. Increased support for family businesses is of particular importance, especially in most rural areas where current economic opportunities for Kosovan women can be expanded considerably.⁴³

The UNDG's report notes:

According to statistics from the period before 1989 the labour force participation of Kosovo women was low ranging from 20 to 21 per cent in the 1970s to 23 per cent in 1988. This is in striking contrast to women's labour force participation in other centrally planned economies, estimated in 1988 at 45-61 per cent, outstanding by international standards. More recently, unemployment rates have been estimated at 74.4 per cent (RIINVEST, 1999), and according to a recent UNIFEM assessment,¹² the unemployment rate is higher amongst women than men. Job opportunities for women are limited

⁴³ UNDP (2002), op. cit. p 73

and traditional, though many women are now starting their own businesses.

Inequalities persist in access to economic opportunities and productive resources in terms of education and training, skills development, access to credit and markets and ownership of property and assets, which makes it difficult for women to enter and maintain continuity in the workforce.⁴⁴

The Helsinki Committee's report Women 2000 states:

2.2. Women and the Labour Market

Apart from successful businesses, women earn the most money when employed by the UN or NGOs. However, the income a woman earns only partly determines how much decision-making power she has over the income she generates in a strongly family-oriented society, where other family members, especially husbands, participate in decisions about how the family income is used.

An almost equal number of women over the age of 30 (48.4%) as under the age of 30 (51.6%) were engaged in paid employment outside the home. However, unmarried women demonstrated greater autonomy in decision-making than their married counterparts.

...

Often women themselves consider that having a job is a priority for men since they are the breadwinners; therefore women would not seek jobs when so many men are apparently unemployed. As such they are likely not [to be] conscious of discrimination. Discussions with various entrepreneurs within the above mentioned survey indicated that this "male priority" was indeed an issue. One Peja businessman queried, "why hire women when there are so many men that can work?" Another put it bluntly, saying "the way to help the women with work is to help the man so that he has a job. For men it is more important to work than for women."

At the same time, job discrimination against women occurs frequently because of their potential to become pregnant.

Regarding the principle of "equal pay for equal work", a preliminary translation of the 1984 Yugoslavian Labour Act makes no mention of wage equity. Local sources have stated that there was a government-established pay scale that guaranteed wage equity. However, although the equality of women and men was guaranteed under the Constitution and international conventions of Yugoslavia, there was not specific law to promise wage equity.

...

⁴⁴ United Nations Development Group (2001), *Kosovo Common Assessment*, p 54, Prishtine, Kosovo, available at http://www.kosovo.undp.org/mainframe/publications/Kos_Com_Ass_publicat.pdf

Another equally important consideration is the degree to which women exercise decision-making power over the income that they earn. In Kosovo, family members strongly influence how married and unmarried women spend their income, with the exception of small personal purchases.

....

It is socially and culturally accepted that women work mainly at home and it is not uncommon for husbands or in-laws (women usually live with the husband's family) to object to women working outside of the home.⁴⁵

5.3 Property rights after divorce

The Helsinki Committee's report Women 2000 states:

2.3. Women and Property Rights

Legally, under former Yugoslav law, women were allowed to own anything that men could own, including real estate and cars. However, more respect is given to traditional customs where, outside of cities, in practice property is owned mainly by men, with an estimated 10% or less owned by women

...

Women are entitled to inherit land, own property and assets and exercise control over these assets. Nevertheless, in practice the situation is more complicated. As law expert Professor Gani Oruci observed, "the laws in terms of words are good but they are not applied because there are no instruments and mechanisms to implement and control them. So custom and traditional law is used." In terms of the land ownership of women, there was a fundamental gap in different women's understanding of the question. Some women responded that they owned land but when probed they conceded that it was family land and would pass to their brothers. Other women said that they did not own land, despite having previously discussed their agricultural activities on their family farm. Again, when queried further they explained that it was, or in the future would become, their brother's land. Married and widowed women spoke about land in terms of their husband's property. While legally women and men are equally entitled and guaranteed to inherit land/property, it is customary that family property passes to men only. "When women were asked why they would not demand their inheritance rights the answers were manifold but interlinked. They explained that they did not really need the land because they were living on (or once married would live on) their husband's property, that to demand the land would cause rifts in their family and they would not be able to return to their families in case of difficulties and that the land was actually so minimal that to split it up would give her very little at remarkable social risk." (From Women at Work Report by UNIFEM, P. 76) Thus, according to customary law, the sons in a family inherit the property of the parents, as their sisters are married off and after marriage they live with their husband's families. In

⁴⁵ International Helsinki Federation for Human Rights (2000), op. cit, p 510

urban areas, particularly Prishtina, things are changing and it is common for a family to buy property for their daughters, or to open a business in a daughter's name, and also for young couples to live in their own apartment rather than sharing the apartment with the husband's parents.

Public debate about this issue is beginning to take place. In particular, women war widows who were left single with children are questioning their right to inherit their husband's land so that they can continue to parent their children. For example, the group DRITA, an NGO in Prishtina, raises this issue in discussions with women. "If a woman is widowed, particularly if young, it increases her vulnerability as her children are considered wards of the husband's family. Activists working with young widows in Prishtina report an alarming level of evictions."² This issue is very complex because not only land and property, but also children are all treated as if they are owned by the husband's family, and widows are not eligible to inherit ownership from their husbands. Often the only other alternative for widows who leave their in-laws willingly or not is for the widows to be returned to their birth families to perhaps remarry later, leaving the children with the deceased husband's family, at which time the children will have been orphaned by the deceased parent and abandoned by their mother.

...
Under the Yugoslav civil law, which is not currently upheld by the new legal structures, spouses had equal rights to property acquired during the marriage. But in practice, it is commonly accepted that the husbands and not the wives inherit property from their families.

Property owned by a woman's birth family is inherited by her brothers, whereas the property owned by a woman's marital family is inherited by her husband and his brothers, [or her sons]. When a man dies, his widow is often returned to her birth family, and his family again assumes his land. His male children, however, are eligible to inherit his property. Of course there are exceptions to these traditions, mostly in urban areas.

In only one percent of divorce cases is the property distributed equitably between husband and wife. In many cases of divorce, where the wife experienced abuse or violence, she settles for just having her freedom, and does not pursue property ownership.⁴⁶

The Inter-Agency Sub-Group on Poverty in Kosovo, consisting of UN agencies, NGOs and UNMIK, produced a report in 2000 in which it describes some of the problems for female-headed households and also notes the dearth of information on their situation:

Women in the Post-Conflict Situation

⁴⁶ International Helsinki Federation for Human Rights (2000), op. cit.

There is very little information available on women in general and on poor women in particular, including female-headed households.

*Sources that do speak about women in society do so in a sketchy manner. Since the conflict, concerns have been raised about the situation of war widows in relation to inheritance of their husbands' property. But the reality is that there were widows before the conflict and those widows face the same problems in relation to their right of access to their husbands' property. Women's rights to their husbands' property is formally a legal issue but in practice the expression of these rights is culturally determined. For example, in the Albanian culture, land belongs to the clans and an outsider cannot claim it. **Thus, when a man dies his land is inherited by his eldest son (even if the son is a minor) or by his brothers in the absence of a son as the wife is viewed as an outsider to the family.** This is typical of the Balkans (Mitterauer 1999). If the widow decides to stay with her in-laws (it is not uncommon in rural areas for a young widow to remarry one of her husband's brothers) her husband's land will be cultivated by one of the family members and she will receive the harvest. But if she moves out of her in-laws family she loses entitlement to her husband's property.*

Although the typical Kosovo Albanian extended family is tight knit and self-supporting there are also widows from poor households for whom the question of inheritance and being absorbed in the larger extended family is not an option. In addition, Serb and Roma widows who have remained in the province are mainly isolated and are at risk of physical insecurity.

According to two sources (EWD 1999, Holland et al 1999), there are unknown numbers of widows who remain in Macedonian and Albanian camps. They are uncertain about coming back to Kosovo, as they may not have male relatives alive to repair their houses or to earn a living for them. In the patriarchal Muslim culture of the Albanian society, women do not take part in decision-making. The majority of rural women have few income generating skills because they have never worked outside the house. These women now face the responsibility of fending for themselves and their children while acquiring skills necessary for employment. There are also elderly widows who have been living in camps as their sons are abroad and they do not have male members to support their return to Kosovo.⁴⁷

5.4 Access to health services

The UNDP in Kosovo has instituted a Hospitals Reconstruction Project (duration: 1/11/2001-30/11/2002) in order to address some of the inadequacies of the healthcare system. They note the following problems:

⁴⁷ Inter-Agency Sub-Group on Poverty (2000), *Qualitative Poverty Assessment, Kosovo: Review of Secondary Materials*, Care International UK, available at http://www.reliefweb.int/hcic/updates/secondary_data.pdf

The health sector in Kosovo has suffered from not only the physical destruction of violent conflict but from long-term under-investment in staff development and maintenance of physical infrastructure and equipment.

Currently each municipality has one health centre (health houses) to oversee a network of ambulanta (small primary health care services in the villages) and pharmacies. However, each Centre's diagnostic capabilities are limited and many cases must be referred to hospitals. There are 308 ambulanta in Kosovo, some 200 of which are operative. They suffer from old equipment (20 – 30 years), poor maintenance, and in some cases, lack of spare equipment parts. The physical infrastructure, even that which did not suffer from war damage, of health care provision in Kosovo is in extreme need of renovation. The second central area of concern to the rehabilitation strategy for the health sector is the dearth of qualified health care providers within the public system. Providing 2 million as a reference population, there are 78 physicians per 10,000 inhabitants – this is in comparison to approximately 300 or more in the majority of European countries, and 133 in the medium human development countries. Primary health care physicians are even scarcer at 38.75 per 10,000 inhabitants. For the past 10 years, Health Care Professionals have had little access to facilities for updating knowledge or changes in medical technology and effective practice.⁴⁸

The UNDP's 2002 report notes:

In theory all Kosovans have free access to healthcare services; however, in practice this is often not the case. According to recent surveys [WB, 2001], the most common barrier to health-care access is the cost of the service: about 28% of those surveyed reported having had a medical problem at some time for which they did not seek treatment because they could not afford health-care. The same survey has shown that the most expensive item of expenditure for patients is pharmaceuticals required for treatment, as well as general expenses and "gifts" for medical personnel.⁴⁹

The UNDG report also comments on the poor state of health provision, particularly for women:

There is no other territory in Europe today where the health and well being of the population is more threatened than in Kosovo. In recent years the province has suffered a nearly complete breakdown in its public health infrastructure, which is partly reflected in the health status of the Kosovo people. Basic health indicators are among the worst in Europe. Kosovo has, for example, among the highest fertility rates in Europe, but also accounts for Europe's highest levels of maternal and

⁴⁸ United Nations Development Programme, 23/7/02, *Project Summary, Hospitals Reconstruction Project* at http://www.kosovo.undp.org/projects/projects_main.htm

⁴⁹ UNDP (2002), op. cit. p 89

infant mortality, both of which may have been aggravated by the refugee crisis.

Over the past decade there has been a progressive decrease in the economic status of Kosovo, which has led to decreased funding in the health sector. This decreased funding has led to a deterioration of the infrastructure of the health sector and to progressively lower salaries, in real terms, for health workers. In addition, there were ten years of exclusion of the majority of the Albanian population, both patients and providers, from the health care system, and the development of parallel systems of service provision and health care worker training.

Kosovo's health care system was based on the Semashko socialist model, dominated by large institutions and dependent on vertical organisation of services. It was criticised for being excessively bureaucratic, inefficient, and centralised as well as being relatively non-responsive to consumer or patient demand. For this reason, local capacity to design and manage programmes is limited. Kosovo's health care professionals, most of whom were forced out of the public health service over the past decade, suffer a gap in technical training and professional capacity.

The system has been dominated by doctors, with less emphasis on nursing and other key paramedical cadres. It relied on financing through a combination of social insurance, tax revenues, and, to a limited degree, out-of-pocket payments. Primary care was organised around specialist polyclinics. General practice was not comprehensive or well developed as a profession. Hospital capacity as measured by total number of beds was low by regional or European averages, but hospitals were felt to be large and relatively inefficient, with somewhat low utilisation and long lengths of stay. Specialist services were in two tiers, one for outpatient services and the other for hospital services, without good interaction between the two. Public health interventions were vertically organised and not well integrated with primary care services.

.....

Health of Women in Kosovo

Women's status remains very poor in Kosovo. One recent indication of the sex ratio at birth (1.15 according to a UNFPA/IOM study)¹⁰ may be too high for natural population equilibrium. It suggests a possible boy preference leading to selective abortion practices.

A combination of low contraceptive prevalence and an average rate of 2.8 children per woman strongly suggests that abortion – which was legal up to 12 weeks of pregnancy, and up to 22 weeks for medical reasons – may be widely used for fertility control. A recent UNFPA/IOM study confirms that abortion is a common, under-reported practice; possibly as high as 50 abortions per 100 deliveries.

A recent UNFPA/IOM survey showed a median statistical result for maternal mortality as high as 509/100,000, which is comparable to that found in Africa and some countries in Asia (e.g. Laos). While this is considered by some to be extremely high, it does indicate that Kosovo ranks in the group of countries in greatest need.

Antenatal care is inadequate. As many as 30% of pregnant women never see a health care worker and only 30% benefit from at least 1-2 antenatal care visits, and only 25% of women in rural areas benefit from basic antenatal care. Home deliveries account for 20% of all births. With a rate of 35/1000 indicated in preliminary studies, infant mortality is the highest in Europe. The same studies give a rate of perinatal mortality (deaths below 1 month and stillbirths) at between 30 and 40/1000 during the same twenty-year period; in some hospitals it much higher.

Maternity wards need rehabilitation to offer safe and acceptable conditions of delivery. The maternity ward at Prizren, accounting for the second highest number of deliveries in Kosovo, requires especially extensive renovation. Provision of basic utilities, such as water, electricity and fuel for heating, is inadequate. Expenses for maintenance and repair of generators and medical equipment remain a major problem in all facilities.⁵⁰

5.4.1 Mental health services

Mental Disability Rights International (MDRI) has recently reported on the state of mental health services in Kosovo. They describe the provision as follows:

Kosovo is divided into 30 municipalities, with Prishtina / Priština as the provincial capital. The existing system of mental health services is centralized, with service delivery occurring almost exclusively in the neuropsychiatric clinic in Prishtina University Hospital and the neuropsychiatric wards throughout Kosovo (in the municipalities of Mitrovica /Kosovska Mitrovica, Peja / Pe., Gjakova / Djakovica, and Prizren / Prizren), for a total of 276 neuro-psychiatric beds. There are also two institutional settings: the "Special Centre" at Shtime / Štimlje (with 285 beds), and the "Elderly Home" in Prishtina (with 165 beds). While the former was established for individuals with developmental disabilities and the latter for elders, both have also become long-term custodial facilities for people with psychiatric disabilities.

....

There has been a significant shortage of qualified mental health professionals to administer the existing system, due in part to the decade of professional marginalization under Serb rule. Psychiatry and neurology had historically been joint disciplines in the former republic of Yugoslavia, with most of the training in neuro-psychiatry taking place in Belgrade or Zagreb. Approximately 40 neuro-psychiatrists in the

⁵⁰ UNDG (2001), op. cit. p 48

Kosovo region specialize in psychiatric disabilities.⁵¹ Approximately 120 medical nurses work in neuro-psychiatry.⁵² There are only five psychologists in the entire Kosovo region. This shortage is largely accounted for by the fact that there has never been a clinical psychology faculty in the region. There are also very few social workers, and most are not trained to work with mental disabilities.

Apart from Shtime (which is technically a “special institution” not part of the mental health system), psychiatric wards of general hospitals provide services to 276 people in Kosovo’s mental health system. In theory, psychiatric wards are supposed to provide assistance to individuals in need of acute psychiatric care. In practice, the majority of people on these wards are referred to as “chronic patients” who need long-term social support.⁵³

MDRI’s report criticises in the strongest terms the facilities for and treatment of people in Kosovo with psychiatric difficulties or mental disabilities. The summary below notes the major issues; further details are available in the full report.

In Kosovo’s social care facilities and psychiatric wards, people are being illegally and improperly detained in institutions in violation of domestic and international law. Once detained, people are deprived of meaningful treatment and habilitation,⁵⁴ and they are subject to physical, sexual and psychological abuse. For the great majority of patients, life in Kosovo’s facilities is one of mind-numbing boredom and inactivity in an environment devoid of privacy and dignity. Despite internationally funded programs to fix up buildings at Shtime, staff is inadequate to provide basic cleanliness or hygiene. Many residents live in filth, surrounded by the smell of urine or feces. Medical and psychiatric care is inadequate and unsafe; a cursory review of medical records at Shtime shows that non-professional staff is authorized to administer powerful psychotropic medications without review by a psychiatrist for months or years.

MDRI received reports from international and Kosovar staff and patients about cases of sexual harassment, exploitation, rape, or other forms of violence at Shtime, Prishtina University Hospital, and the Elderly Home. Institution and UNMIK authorities have been informed

⁵¹ According to the World Health Organization (WHO), there is one neuropsychiatrist per 57,270 inhabitants of Kosovo. With these neuro-psychiatrists dividing their time between the practices of neurology and psychiatry, this translates to one psychiatrist per 114,540 inhabitants, far short of the WHO standard of one psychiatrist per 10,000 inhabitants. (MDRI)

⁵² With these nurses dividing their time between neurology and psychiatry services, WHO estimates that there is one psychiatric nurse per 37,500 inhabitants of Kosovo, significantly short of the WHO standard of one psychiatric nurse per 2,500 inhabitants. (MDRI)

⁵³ Mental Disability Rights International (MDRI) (2002), *Not on the Agenda: Human Rights for People with Mental Disabilities in Kosovo*, Washington, D.C., USA, MDRI p 17-18, available at www.mdri.org/webpages/KosovoReport.pdf

⁵⁴ “Habilitation” is the term used to describe the services needed by people with intellectual disabilities (or developmental disabilities, such as mental retardation) to maintain basic self-care and living skills. (MDRI)

*about cases of abuse at Shtime, yet they have done nothing to remove known abusers from day-to-day contact with former victims. At Prishtina University Hospital, MDRI has received reports about sexual abuse of women by staff. There is no system at any institution MDRI visited to conduct independent investigations of abuses or to protect the privacy or safety of witnesses who may come forward. MDRI has encountered both staff and patients who are afraid to come forward with evidence about abuses they have experienced or observed.*⁵⁵

5.4.2 Vulnerability of women and trauma survivors

MDRI's report highlights severe problems which might face a woman seeking help after domestic violence, or a woman who had been returned to Kosovo who wanted to access psychiatric services:

Kosovo's social care facilities and psychiatric wards are not safe places. In addition to violating the rights of patients, the lack of protections against violence or sexual exploitation undermines the function of psychiatric wards as a safe places to assist people in need of acute mental health care. Given the widespread experience of trauma in the population of Kosovo – due to the history of human rights abuse, the experience of war, and the forced exile of much of the population – the lack of a safe place for people with mental disabilities can be particularly damaging. Individuals who have suffered from trauma can be easily “retraumatized” by the experience of violence or exposure to the risk of violence. Retraumatization can lead to great suffering and to the exacerbation of symptoms of posttraumatic stress. Staff at two psychiatric wards in Kosovo reported to MDRI that they are not equipped to provide specialized protection, counseling, or other services for people who have been subject to trauma.

The lack of protections in the mental health system is particularly serious for women. Women are especially susceptible to physical and sexual abuse within institutions in any country. In Kosovo, the experience of violence and trauma among women is particularly high since women were singled out for abuse and rape during the war. Women's groups in Kosovo also report high rates of domestic violence. Caught between abuse in the family and the risk of violence in psychiatric facilities, women with mental disabilities who experienced trauma may have nowhere to turn.

Following the war, there was a large influx of foreign aid to provide protection for women, trauma assistance, and mental health counseling in the community. While these programs may provide valuable services for the population as a whole, MDRI was not able to identify any community-based trauma programs that are especially designed to reach out to women with mental disabilities. Indeed, UNMIK informational material provided to MDRI states that some major internationally funded trauma programs were intended specifically to

⁵⁵ MDRI (2002), op. cit. pp 8 - 9

exclude women with “mental disorders.” A US psychiatrist who studied trauma programs in Kosovo observed that when the programs were planned, it was almost universally assumed that people diagnosed with major mental disorders would be referred to the public mental health system. Despite this, groups such as the Center for Protection of Women and Children report that they are open to serving women with mental disabilities but they have limited resources to do so.

Unfortunately, the public mental health system has not established linkages to women’s shelters or trauma services in the community and does not assist people in obtaining such services upon discharge. MDRI investigators learned of one particularly troubling case during MDRI’s September 2000 visit to the Prishtina University Hospital psychiatric ward that exemplifies the lack of awareness or attention to trauma issues we observed. MDRI investigators interviewed a sixteen-year-old girl whose entire family (five brothers and sisters and both parents) had been killed during the war. As an orphan, she was put up with friends in her village and moved from home to home. Two weeks before MDRI’s visit, this young woman had been gang raped. Shamed by the rape, she had no place to go and police brought her to the psychiatric facility. The chief technician on the ward informed MDRI investigators that she had received no trauma counseling or assistance. The only treatment she received was a sedative. There were no plans for her return to the community. When MDRI investigators asked whether this woman could be referred to one of the many internationally funded trauma programs in Prishtina, the chief technician on the ward said that he was unaware of any such programs.⁵⁶

The case of the sixteen-year-old girl is not unique. Another woman we interviewed at Prishtina University Psychiatric Hospital in May 2001 was also left without a needed referral to trauma assistance and protection in the community. This woman reported to MDRI that she was on the ward, in part, to escape her abusive husband. While she did not want to remain at the hospital, she said she was afraid to leave the ward to return home. She complained that no one on the psychiatric ward would listen to her tell of her fears about returning to her husband. Each time she returned home she would be beaten again by her husband, her psychiatric symptoms would return, and she would be readmitted to the psychiatric ward. She said that ward staff provided her with no assistance in finding an alternative place to stay or a way to receive help when she left the facility.

⁵⁶ A year later, MDRI investigators inquired about the status of this woman. Staff on the ward described the woman as “one of our success stories” because she had married a man they said was “visiting another patient on the ward.” According to ward staff, she periodically had conflict with this man and his family and had to return to the ward under such circumstances. This case reveals the lack of understanding by ward staff of the complexities -- and possible dangers -- faced by women who leave the institution and return to an unstable family situation. In another case, a mental health worker informed MDRI that he had arranged the marriage of a former patient. This woman later had to be assisted out of her home by police after she was subject to domestic abuse. (MDRI)

In the case below, highlighted by MDRI, a woman whose living situation was unstable due to domestic violence had observed abuse in Prishtina General Hospital. Staff had warned her against speaking out and she did not dare to come forward as she feared that she would be in danger if she was readmitted due to further domestic violence.

In May 2002, another former patient reported to MDRI that she had observed physical and sexual abuse, as well as sexual exploitation of women at Prishtina General Hospital. She is not able to come forward with this information unless she can obtain a safe, independent living arrangement in the community. She reported that she has been threatened by institution staff if she speaks out. This woman reports to MDRI that she is subject to domestic abuse at home and is in danger of being left homeless. Because her unstable living situation could lead her to being returned to the psychiatric institution, she feels she cannot risk upsetting staff at the institution.⁵⁷

Recent Immigration Appeal Tribunal determinations have highlighted the lack of medical facilities in Kosovo and particularly the non-availability of treatment for Post-Traumatic Stress Disorder (see Section 6).

5.5 Education

UNDG's 2001 report comments on the continuing problems in the provision of education:

Reconstruction/ Rehabilitation of Schools

Kosovo remains critically short of classrooms. Assessments done at the end of the war in 1999 indicated that approximately 800 out of an estimated 1,034 schools needed to be completely reconstructed or repaired. At the end of 2000, 213 schools were being repaired or reconstructed by NGOs and international organisations; and 74 schools, not yet funded, have already been identified by the municipalities for priority action in 2001.

Since there are an inadequate number of schools to meet the needs of children in Kosovo, classes have been organised in shifts – with each school providing up to three shifts per day. Nonetheless, classrooms are frequently over-crowded to the extent that some children are forced to remain outside until space becomes available. Information is not yet complete, but a UNICEF assessment of 365 schools found that at least 65 per cent lacked adequate water and sanitation facilities, creating a serious health risk not only for the children themselves but also for the surrounding communities.

School Enrollment

Coverage of pre-school and early childhood education is extremely low. It is estimated that only 2.3% of the pre-school population is in any

⁵⁷ MDRI (2002), op. cit. pp 23 - 24

form of pre-school. Systematic effort and investment is needed in order to rectify this situation, both from a demand as well as a supply point of view. Studies indicate that investment and support to the early childhood education sector dramatically improves children's ability to learn in later years, and may have an effect on later drop-out rates amongst older children and children from ethnic minorities.

According to a recent study conducted by IOM and UNFPA (see figure 10), 91.6% of children aged 7-14 attend primary school (91.0% for girls and 92.2% for boys). However, while attendance is relatively high in the early years of school, a significant percentage of children begin to drop out by the age of 13, especially girls. At the ages of 13 and 14, only 87.8% and 77.5% of girls attend school respectively. Similarly, only 78.1% of boys aged 14 attend school. The reasons for this high drop out rate are complex and as yet not well understood. Due to security concerns, parents appear to be reluctant to send girls to school once they need to travel longer distances to attend higher grades. The additional financial burden of paying for transportation also appears to be a significant reason for the high drop out rates

Reform of the Education System

The education system in Kosovo continues to be rebuilt. Education reform in Kosovo, both in terms of curriculum as well as teaching practices, is urgently required, both to ensure children's right to a quality education as well as to expand the level of participation in the formal school system.

Under the parallel system, most Kosovo-Albanian teachers were excluded from preservice and in-service training, and consequently, teaching skills have eroded considerably. Kosovo-Albanian teachers have been largely isolated from global developments in the field of education, and are therefore, unable to take advantage of new methodologies and practices. In addition, existing teaching practices are overly authoritarian – including the emphasis on out-dated methods such as rote learning – which have been linked to drop out rates from primary to secondary school of as high as 25 per cent.

No formal, unified curriculum exists for Kosovo, and the institutional and legal structure for the education system is under-developed. Kosovo Albanian children continue to be taught under a parallel curriculum while Serbian and Turkish children follow the Belgrade approved curriculum. The situation is particularly difficult for Kosovo Serbs in mixed villages and for Roma and Ashkalia children. Province-wide standards for assessment and evaluation of students are still being developed, with the long-term aim to produce a unified curriculum for Kosovo. While it is clear that the language of instruction in primary education is in the mother tongue, no clear policy has been developed on the use of a second language that could facilitate interethnic relationships.

Children in Kosovo have suffered from trauma as a result of years of conflict and war, and many teachers are not equipped to deal with the consequences of this trauma on learning achievement. With the new exposure of Kosovo youth to outside influences and risks, there is a greater need to focus on life-skills education in the curriculum in particular and the education system in general.

.....

Women and Education

Data is lacking on women's education in Kosovo. Although there are many well-educated women including in the sciences. In general women tend to have lower levels of education than men – 69% of men and only 46% of women reach secondary education level. Evidence suggests that large numbers of teenage women – particularly in rural villages – have never attended or completed secondary school.

There is a huge demand for training and education for women to enable them to join the workforce. During the period 1989-1999 a large number of young women dropped out of schools because of poverty, security reasons and lack of access to education. Illiteracy is still especially prevalent among women.⁵⁸

The UNDP's 2002 report states on gender inequalities in education:

Both the Constitutional Framework and General Curriculum Framework recently formulated for Kosovo clearly affirm that no forms of discrimination, including those on the basis of sex, shall be permitted. Although it is difficult to measure the degree to which active forms of discrimination are contributing to levels of gender inequality in the education sector, based on available statistics it is clear that girls and women do not enjoy the same level of development in the areas of educational achievement, literacy, and employment in the education sector as do boys and men.

Enrolment rates for females aged 7 to 24 in primary, secondary and higher education are almost uniformly lower than for males (see Fig. 3.3.) The enrolment rate in primary schools for girls aged 12 to 14 is particularly lower than the rate for boys - 87% versus 95%. The proportion of girls who enroll in secondary education is also considerably lower than for boys - 54% versus 65%, respectively. The fact that fewer women go on to secondary school or go on to higher education also decreases their opportunities for future employment.

Although the findings of more comprehensive social research are not available, smaller studies [Riinvest, 2001] have shown that especially in rural areas, traditional social expectations are partially the cause for low enrolment and drop-out rates. Often, less importance is placed on the value of secondary and higher education for girls and young women, who are expected instead not to seek employment, but rather

⁵⁸ UNDG (2001), op. cit. p 30

to perform more traditional roles with respect to childcare and other household duties. In addition, especially in the initial months of the post-conflict period, some parents were reluctant to allow their daughters to attend school due to security concerns. Another factor involves the expense of education, which may include books, supplies, room, board, and transportation. Given these costs, some families are forced to make choices between their children, and often place priority on funding the full education of sons over daughters.

There are also considerable gender imbalances in Kosovo in terms of literacy rates (see Fig. 3.4). Although the degree of inequality has decreased considerably over the past several decades - rates of illiteracy increase sharply for women over the age of forty, which are more than twice the rates for men in this same age bracket – ongoing discrepancies for all age groups give cause for concern. There is a strong correlation between illiteracy and school enrolment and drop-out rates.

....

Women are also under-represented in terms of employment in the education sector. Only around one-third of all teaching posts existing in all levels of education are occupied by women. The proportion of women to men is highest in pre-school education where women occupy 56% of posts. It is lowest at the level of higher education, where women occupy only 12% of posts. [KEC, 2000]. Although up-to-date statistics are not available, women are also under-represented in more senior administrative and managerial positions within educational structures.

*Efforts to improve gender equality in the education sector require long-term planning that incorporates both general public awareness-raising programs designed to bring gender-related issues to the attention of policy-makers and the general public, as well as more targeted campaigns to address the causes of these gender imbalances. Additional gender studies are required that offer more comprehensive quantitative and qualitative analysis of these issues.*⁵⁹

5.6 Returns and ‘internal flight’

5.6.1 UNHCR Guidelines on returns to Kosovo

UNHCR notes in its paper ‘UNHCR Position on the Continued Protection Needs of People from Kosovo’⁶⁰, published in April 2002, serious problems, including threats to life and fundamental freedoms, that may face various individuals and groups if they were to be returned. Those vulnerable include, but are not limited to:

- Kosovo Albanians originating from areas where they constitute an ethnic minority

⁵⁹ UNDP (2002), op. cit. pp 59-60

⁶⁰ Full paper available at <http://www.unhcr.ch/cgi-bin/texis/vtx/balkans-country?country=kosovo&display=protection>

- Kosovo Albanians in ethnically mixed marriages and persons of mixed ethnicity
- Kosovo Albanians perceived to have been associated with the Serbian regime after 1990
- Chronically ill persons whose condition requires specialised medical intervention of a type not yet available in Kosovo
- Persons with severe and chronic mental illness whose condition requires specialized medical intervention of a type not yet available in Kosovo
- Severely handicapped persons (including their caregivers) whose wellbeing depends on a specialised support system not yet available in Kosovo
- Unaccompanied elderly persons who have no relatives or any other form of societal support in Kosovo
- Separated children without relatives or caregivers in Kosovo, and for whom it is found not to be in the best interest to return to Kosovo
- Minority groups including Kosovo Serbs, Kosovo Roma, Ashkaelia and Egyptians, Kosovo Bosniaks and Kosovo Gorani

UNHCR also note in the paper that the conditions for internally displaced persons from Kosovo in Serbia and Montenegro lead them to conclude that internal relocation does not offer an adequate or reasonable alternative to international protection.

6. Case law

6.1 United Kingdom ⁶¹

Ylika Bushati [2002] UKIAT 03625

M (01/TH/03623)

Safete Kurshumliu [2002] UKIAT 00857

The Immigration Appeal Tribunal has recently applied the Human Rights Convention in the context of Kosovar Albanian victims of rape. In August, in *Ylika Bushati* [2002] UKIAT 03625 the Tribunal concluded that the removal of a traumatised victim, raped by Serb soldiers in 1999, whose rape had been witnessed by others would constitute a disproportionate interference with her physical and moral integrity (Article 8). Relevant factors were the woman's likely stigmatisation if returned to Kosovo, her psychological vulnerability and the prospect of her having to relocate in Kosovo as a single woman with children. Removal was disproportionate even taking into account that there was "*no strong medical evidence identifying a real risk of retraumatisation (sic).*"

This positive determination draws upon and approves two earlier determinations of the Tribunal concerning rape victims from Kosovo. In *M* (01/TH/03623), the Tribunal concluded that the removal of a deeply traumatised woman, receiving regular and longstanding psychological therapy and in need of continued treatment, would be a disproportionate interference with her physical and moral integrity (Article 8). The Tribunal was impressed by the medical evidence demonstrating the severity of the woman's trauma and the likely detriment in removing her from her current therapy. The inadequacy of psychiatric services, and social stigma faced by rape victims, in Kosovo were further relevant factors.

In *Safete Kurshumliu* [2002] UKIAT 00857, the Tribunal provided an even stronger determination in concluding that the removal of a traumatised rape victim to Kosovo would be contrary to Article 3. She, her husband and their child would be ostracised and shunned and this would constitute inhuman and degrading treatment. This was so even though unlike *M* the woman was not receiving, nor likely to receive, any medical treatment in the UK. A helpful and thorough evaluation of the country evidence, including the stigma and social exclusion resulting from rape, is contained in this Tribunal's determination.

These determinations are all the more forceful for emanating from three differently constituted panels of the Immigration Appeal Tribunal. All place particular weight upon the assessment of the UNHCR identifying victims of sexual violence, who remain traumatised, as having continuing protection needs. Nevertheless, there are important differences of approach in these three determinations. The earliest *M*, which on its facts is arguably the most serious, was seemingly also the mostly grudgingly arrived at; whereas *Kurshumliu* appears least serious on its facts. It may be that the Tribunal preferred to avoid recounting too much of the distressing detail in the latter.

⁶¹ Full text of determinations available at Electronic Immigration Network, www.ein.org.uk

Another explanation, however, may be that any hesitancy on the part of the Tribunal in *M* is due to the fact that, at the time, this was a novel decision. Whatever is the case, however, the Tribunal has been consistently careful to stress the high thresholds involved in Human Rights Convention cases and it is unlikely that any of these women would have succeeded with their appeal without compelling medical evidence.⁶²

Fatmir Topali + Four [2002] UKIAT 03550

The appellant had suffered torture at the hands of Serb police and his wife had been raped by Serbian youths. Both were now suffering from Post-Traumatic Stress Disorder (PTSD) and depression. The Tribunal found that the ill treatment they had suffered was of such severity as to bring them within the category of people from Kosovo in respect of whom UNHCR had urged states to continue to provide international protection. Looking at the totality of the evidence, the Tribunal found that the combination of the lack of proper medical facilities to treat the appellant and his wife together with the past trauma they had suffered, was such that to remove them to Kosovo would be inhumane and would be in breach of their human rights in respect of their physical and moral integrity under Article 8 of the European Convention on Human Rights. The Tribunal therefore allowed the appeal on that basis.⁶³

⁶² Summaries by Steve Symonds, Asylum Aid

⁶³ Summarised by RWRP from *Immigration Law Update Vol. 5 No. 16*, 20 August 2002, Legal Research Unit, Immigration Advisory Service

Bibliography

Centre for the Protection of Women and Children, *CONVENTION OF THE REGIONAL CONFERENCE, "Violence against women and children in Kosovo", June-July 2002*, report at Centre for Protection of Women and Children's website at <http://www.cpwc-qmgf.org/Recommandations.doc>

Country Information and Policy Unit, (2002), *Country Assessment, Kosovo: Section 5B: Human Rights, Specific Groups: Women*, Home Office, Immigration and Nationality Directorate, available at <http://www.ind.homeoffice.gov.uk/default.asp?PageId=2883>

Europa (2002) *World Year Book 2001, Volume II*, London, Europa Publications

Inter-Agency Sub-Group on Poverty (2000), *Qualitative Poverty Assessment, Kosovo: Review of Secondary Materials*, Care International UK, available at http://www.reliefweb.int/hcic/updates/secondary_data.pdf

Mental Disability Rights International (MDRI) (2002), *Not on the Agenda: Human Rights for People with Mental Disabilities in Kosovo*, Washington, D.C., USA, MDRI, available at www.mdri.org/webpages/KosovoReport.pdf

Mertus, Julie A., (2000) *War's Offensive on Women: the Humanitarian Challenge in Bosnia, Kosovo and Afghanistan*, Bloomfield, Connecticut, U.S., Kumarian Press

Moser, Caroline O. N. and Clark, Fiona C., (2001), (eds), *Victims, Perpetrators or Actors? Gender, Armed Conflict and Political Violence*, London, Zed Books

Nikolic-Ristanovic, Vesna (2000), *Women, Violence and War: Wartime Victimization of Refugees in the Balkans*, Budapest, Central European University Press

Ombudsperson Institution in Kosovo (2002), *Second Annual Report, 2001-2002, Kosovo*, available at <http://www.ombudspersonkosovo.org/doc/spec%20reps/Final%202%20Annual%20Report%202002%2010-07-02%20English.doc>

Organisation for Security and Co-operation in Europe (OSCE) Mission in Kosovo, Department of Human Rights and Rule of Law (2002), *Kosovo, Review of the Criminal Justice System, September 2001-February 2002*, available at <http://www.osce.org/kosovo/documents/reports/justice/>

Organisation for Security and Co-operation in Europe (OSCE) Mission in Kosovo, Department of Human Rights and Rule of Law (2001a), *Kosovo, Review of the Criminal Justice System, September 2000 – February 2001*, available at <http://www.osce.org/kosovo/documents/reports/justice/>

Organisation for Security and Co-operation in Europe (OSCE) Mission in Kosovo, Department of Human Rights and Rule of Law (2001b), *Kosovo, Review of the Criminal Justice System, March 2001 – August 2001*, available at <http://www.osce.org/kosovo/documents/reports/justice/>

Ramet, Sabrina P. (1999) (ed.), *Gender Politics in the Western Balkans: Women and Society in Yugoslavia and the Yugoslav Successor States*, Pennsylvania, Pennsylvania University Press

Reproductive Health for Refugees Consortium, *If Not Now, When? Addressing Gender-based Violence in Refugee, Internally Displaced, and Post-Conflict Settings: A Global Overview*, New York, pp 97-98, available at http://www.rhrc.org/resources/gbv/wc_gbvcontents.html

Steiner, Michael (12/6/02), *SRSG statement to press on 3rd Anniversary of UNMIK & KFOR's arrival* UNMIK Press release UNMIK/PR/753, available at <http://www.unmikonline.org/press/2002/pressr/pr753.htm>

Steiner, Michael (9/5/02), *Address to the Kosovo Assembly*, UNMIK Press Release UNMIK/PR/732, available at <http://www.unmikonline.org/press/2002/pressr/pr732.htm>

United Nations Development Group (2001), *Kosovo Common Assessment*, Prishtine, Kosovo, available at http://www.kosovo.undp.org/mainframe/publications/Kos_Com_Ass_publicat.pdf

United Nations Development Programme (UNDP) (2002), *Human Development Report – Kosovo 2002: Building Bridges to a Better Future*, Prishtine, Kosovo, available at www.kosovo.undp.org

United Nations Development Programme, 23/7/02, *Project Summary, Hospitals Reconstruction Project* at http://www.kosovo.undp.org/projects/projects_main.htm

UNMIK Regulation 1999/24, *On the Law Applicable in Kosovo*, available at <http://www.unmikonline.org/regulations/1999/reg24-99.htm>

UNMIK (24/11/00) *International Day to Oppose Violence Against Women*, UNMIK Press Release UNMIK/PR/24, available at <http://www.unmikonline.org/press/2000/pressr/pr24.htm>

UNMIK (2002a), *Kosovo Provisional Self- Government Formed*, at <http://www.unmikonline.org/press/2002/pressr/pr699.htm>

UNMIK, *Main Tasks: Kosovo*, at <http://www.unmikonline.org/intro.htm>

US Department of State (2002), *Country Reports on Human Rights Practices 2001: Yugoslavia*, Bureau of Democracy, Human Rights and Labor, available at <http://www.state.gov/g/drl/rls/hrrpt/2001/eur/8369.htm#ks>

Wareham, Rachel (2000), *No Safe Place: An Assessment of Violence Against Women in Kosovo*, UNIFEM

Appendix A

Home Office Country Assessment April 2002

Women

5.19 The ethnic Albanian community is strongly patriarchal and women are expected to be subservient to men. In rural areas women may have little ability to control their property and children. Women widowed by the war risk losing custody of their children due to an Albanian custom requiring children to be given to the deceased father's family. The widow is often returned to her own family, with her property passing to her husband's family.

5.20 Rape and a high level of domestic violence are serious problems. There is severe stigma attached to rape, which affects the victim's entire family and this leads to under reporting. It is culturally acceptable for men to beat their wives and such crimes also tend to go unreported.

5.21 In major towns, the presence of UNMIK and many NGOs has opened a large number of previously unavailable jobs to women. UNMIK police and the OSCE launched a campaign to recruit women for the Kosovo Police Service, where they make up 17-20% of the force. Women are also increasingly active in political and human rights organisations. Women are legally entitled to equal pay for equal work and are granted maternity leave for 1 year, with an additional 6 months available. There is a wide range of women's initiatives run by various organisations operating in Kosovo. [2] [56] [63]

5.22 UNMIK has determined that one third of candidates for the central elections should be women. Through the Office of Gender Affairs, UNMIK supports women representatives who are not currently in decision-making positions to make them part of the process by which legislation and policy are reviewed. The Office of Gender Affairs is also working to address concerns that women minority groups have insufficient access to employment, education, and medical facilities because of lack of freedom of movement. [109]

5.23 As noted above, Kosovo is a destination and transit point for trafficking of women for prostitution. [2]⁶⁴

⁶⁴ Country Information and Policy Unit, (2002), *Country Assessment, Kosovo: Section 5B: Human Rights, Specific Groups: Women*, Home Office, Immigration and Nationality Directorate, available at <http://www.ind.homeoffice.gov.uk/default.asp?PageId=2883>