

Public **perception** of the Kosovo **Specialist Court**

Risks and opportunities



Colophon

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PAX is a Dutch civil society organization that brings together people who have the courage to stand for peace, working to build dignified, democratic and peaceful societies around the globe. In Kosovo, PAX's programme includes transitional justice and dealing with the past, as well as a long-standing commitment to promoting good relations between communities in the north.

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Centre for Peace and Tolerance (CPT) is a non-profit, non-governmental organization, founded with the aim of supporting the strengthening of capacities of local institutions in Kosovo Serb-dominated municipalities and advocating transparent and cost-effective local governance. CPT strongly advocates for creating sound and effective Kosovo Serb representation at all levels of governance, and active participation of Kosovo Serbs in the political and social life in Kosovo.

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Integra is committed to contributing to the recovery and development of Kosovo and the region. Integra's work is guided by the principles of good governance and full enjoyment of human rights, regardless of ethnicity, race, religion, gender, sexual orientation and political belonging, which are essential to building a democratic and tolerant Kosovo, fully integrated in the European community.

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About Impunity Watch

Impunity Watch is a Netherlands-based international non-profit organization seeking to promote accountability for atrocities in countries emerging from a violent past. IW conducts research into the root causes of impunity and obstacles to its reduction that includes the voices of affected communities to produce research-based policy advice on processes intended to encourage truth, justice, reparations and the non-recurrence of violence.

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Executive summary

The Kosovo Specialist Chambers and Specialist Prosecutor's Office for Kosovo (hereafter, "Kosovo Specialist Court") is a "hybrid court" intended to adjudicate war crimes cases against individuals associated with the mainly ethnic Albanian Kosovo Liberation Army (KLA) in the period 1998-2000. It is part of the judicial system of Kosovo but has its seat in The Hague, and is staffed with international judges and prosecutors. The establishment of this court should be understood in light of the broader context of dealing with the past in Kosovo, in which several other national and international attempts to address war crimes have fallen short of expectations. While its work may provide a measure of justice for victims and a direct form of accountability for perpetrators, the Court's impact could be severely circumscribed by the political and social dynamics within Kosovo and limited public understanding of its purpose and scope. These factors may contribute not only to undermining the Court's potential positive societal impact, but may also exert a destabilizing effect on Kosovo.

From April 2017, a three-month public perception study was conducted in Kosovo with the aim of better understanding the key challenges facing the Kosovo Specialist Court. This document summarizes that research, and offers recommendations to address potential risks arising from the Court's work and capitalize on opportunities to strengthen its positive societal impact.

The research identified several key challenges related to public perception:

- ◆ Public awareness of the Kosovo Specialist Court is low, with 60.4% of ethnic Albanians and 59.2% of ethnic Serbs believing they do not receive enough information about the Court.
- ◆ Misinformation about the Kosovo Specialist Court is widespread, with (for example) 35.4% of ethnic Albanians and 18.9% of ethnic Serbs who consider themselves well-informed about the Court incorrectly believing it will prosecute crimes related to corruption and state capture.
- ◆ Ethnic Albanians overwhelmingly view the Court's mandate to prosecute war crimes and crimes against humanity mainly associated with the KLA as unfair, with 76.4% holding that belief.
- ◆ While a majority (69%) of Serbs in Kosovo believe it is unlikely or very unlikely that the Kosovo Specialist Court can bring justice to those who committed serious war crimes, a majority (60%) of ethnic Albanians believe it is likely or very likely that the Specialist Court can accomplish this.

- ◆ Among ethnic Albanians, a majority (51%) are willing to protest if KLA fighters are indicted by the Kosovo Specialist Court, and 36% are willing to act to prevent prosecution of members of the KLA.
- ◆ Public confidence in witness protection is low, with the majority of ethnic Serbs (82.1%) and nearly half of ethnic Albanians (48.8%) believing it is not safe for witnesses to testify at the Kosovo Specialist Court.

The research also found that, these challenges notwithstanding, majorities of Albanians (64.8%) and Serbs (53.2%) in Kosovo believe it is important to deal with all crimes committed, or crimes suffered by all civilians, during and in the aftermath of the 1998-99 Kosovo war.

The public perception research makes it clear that public awareness of the Kosovo Specialist Court's purpose, mandate and scope is low, a situation that has enabled misinformation to spread, thereby increasing the likelihood of a "shock" effect when the first indictments are issued, and decreasing the likelihood of social acceptance of the Court's work in the long-term. Moreover, in the current context and given previous international and domestic efforts to deal with war crimes that fell short of expectations, many in the ethnic Albanian community view the Kosovo Specialist Court's jurisdiction as selective and partial, while many in the ethnic Serb community are skeptical that it can deliver justice in relation to long-neglected war crimes cases in which the victims were mainly Serbs. There is thus a risk that, if the Court's work results in successful prosecution of KLA members, ethnic Albanian perceptions of anti-Albanian bias in the pursuit of war crimes cases may increase. On the other hand, should the Court prove unable to secure at least some convictions, the disillusionment of ethnic Serbs with Kosovo's institutions may increase. Both outcomes would have adverse effects on the already tense relations between the Albanian and Serb communities, on efforts to achieve reconciliation, and on Kosovo's political and social stability.

The report concludes with recommendations to key stakeholders intended to address some of the risks identified by the public perception survey. The recommendations aim to strengthen the prospect of the Kosovo Specialist Court's work delivering a positive societal impact, and include (but are not limited to):

- ◆ The Kosovo Specialist Chambers and Specialist Prosecutor's Office, the Government of Kosovo, key EU and international stakeholders, and Kosovan civil society should cooperate in the development and implementation of an **effective, evidence-based and targeted programme of public information and dialogue**, to address information gaps, counter misinformation, and encourage all stakeholders to use consistent language regarding the Court, in order to mitigate the risk of misinterpretation and confusion, and to generate broad social acceptance of the process and its outcomes.
- ◆ Messaging should be **tailored specifically to members of Kosovo's diverse communities**, for example: stressing the Court's role in ensuring that "no one is above the law" in targeted messaging to Albanians, and promoting the principle of individual accountability for war crimes and crimes against humanity committed against civilians in targeted messaging to Serbs and other minorities.

- ◆ The Kosovo Specialist Chambers and Specialist Prosecutor's Office should establish a **meaningful presence in Kosovan public life**, reaching beyond a limited public communication strategy to achieve visibility, credibility, and two-way communication enabling institutions and officials of the Court to positively influence narratives in Kosovan society that actively promote understanding and acceptance of the Court's work in a broader context.

- ◆ The Government of Kosovo should invest political, bureaucratic and financial resources in promoting a **national framework for dealing with the wartime past** that mitigates perceptions of selectivity and unfairness by framing the Kosovo Specialist Court in relation to complementary local, national and regional efforts to deal with Kosovo's wartime past, especially (but not limited to) completion of a National Strategy on Transitional Justice and in the context of discussions around the proposed Commission on Truth and Reconciliation. ◆

Background

The Kosovo Specialist Chambers and Specialist Prosecutor's Office, widely referred to as the "Kosovo Specialist Court¹," is a "hybrid court" established in 2016 within Kosovo's judicial system, located in The Hague, and staffed with international judges and prosecutors. It is intended to adjudicate war crimes cases against individuals associated with the mainly ethnic Albanian Kosovo Liberation Army (KLA), which occurred in the period 1998-2000, and which were notably raised in a 2012 Council of Europe report produced by Swiss politician Dick Marty. The establishment of the Kosovo Specialist Court should be understood in light of the broader context of dealing with the past in Kosovo, in which several other international and domestic efforts to address war crimes (including the work of the International Criminal Tribunal for the former Yugoslavia or ICTY, as well as criminal investigations by UNMIK, the EU Rule of Law Mission in Kosovo and Kosovo's judiciary) fell short of expectations. Many of the challenges that the Kosovo Specialist Court is likely to face relate to these previous failures to deliver expected justice to all victims and affected communities, and more generally, to the lack of serious investment in resolving inter-ethnic and inter-state issues inhibiting peace and reconciliation in Kosovo and the wider region, especially those associated with the legacy of the 1998-99 war.

When the Kosovo Specialist Court's work commences, it will have the potential to provide a measure of justice for victims and a direct form of accountability for perpetrators. More broadly, the Court's work may foster meaningful dialogue about the historical facts of the wartime period, and eventually wider recognition and acceptance of a common historical record by members of the ethnic Albanian majority and ethnic Serb minority in Kosovo; generate greater respect for the rule of law, by ending the impunity enjoyed by alleged perpetrators; deter future incidents of mass violence and violations of human rights; and contribute to creation of an enabling environment for reconciliation among divided communities. These effects are known collectively as *positive societal impact*, and they often constitute a central if not primary justification for the establishment of international and hybrid judicial mechanisms like the Kosovo Specialist Court².

PAX, the Centre for Peace and Tolerance (CPT), Impunity Watch, and Integra co-implemented the research and analysis in this report to contribute to increasing the positive societal impact of the Kosovo Specialist Court and reducing the risks posed by its work to inter-communal relations and stability. Based on the analysis and recommendations outlined in this report, PAX, CPT, Impunity Watch and Integra will organize an initial round of national and intra-communal dialogue activities in late 2017, complementing the public communication activities of the Kosovo Specialist Court, Government of Kosovo, and other key international stakeholders,

¹ While the Kosovo Specialist Chambers and Specialist Prosecutor's Office are discrete institutions, this report applies the terminology in common use in Kosovo, referring to the "Kosovo Specialist Court" as a single entity.

² See Impunity Watch's 2013 Policy Brief Enhancing the Societal Impact of International Criminal Tribunals

and seeking to deepen and sustain the engagement of Kosovo's diverse communities with the Court and its work.

This report is intended to serve as a companion to the 2017 PAX and Impunity Watch report, *Assessing the Potential Impact of the Kosovo Specialist Court*, written by Gëzim Visoka, which provides a more expansive analysis of the Court's background, scope, and possible effects. ♦

Methodology

A household survey conducted in April 2017 produced a quantitative, comprehensive and detailed portrait of public perception of the Kosovo Specialist Court in Kosovo. The household survey instrument included questions on general opinion of the Court; knowledge of the purpose and scope of the Court, including common misperceptions; perception of the relevant historical record; attitudes on fairness, legitimacy, and likely effects of the Court; variation in approval based on potential indictees; knowledge and attitudes relevant to related transitional justice issues; and correlations between knowledge and attitudes relevant to the Specialist Court and related transitional justice issues and other key variables. The survey sample included 1356 people over the age of 18, of both sexes and from all municipalities and regions of Kosovo, covering both urban and rural areas; the sample included 853 ethnic Albanians, 402 ethnic Serbs and 101 members of other ethnic communities (Turkish, Bosnian, Gorani, Roma, Ashkali, and Egyptian). The sample is representative of households in Kosovo, providing for a +/- 2.66% margin of error at a 95% confidence interval.

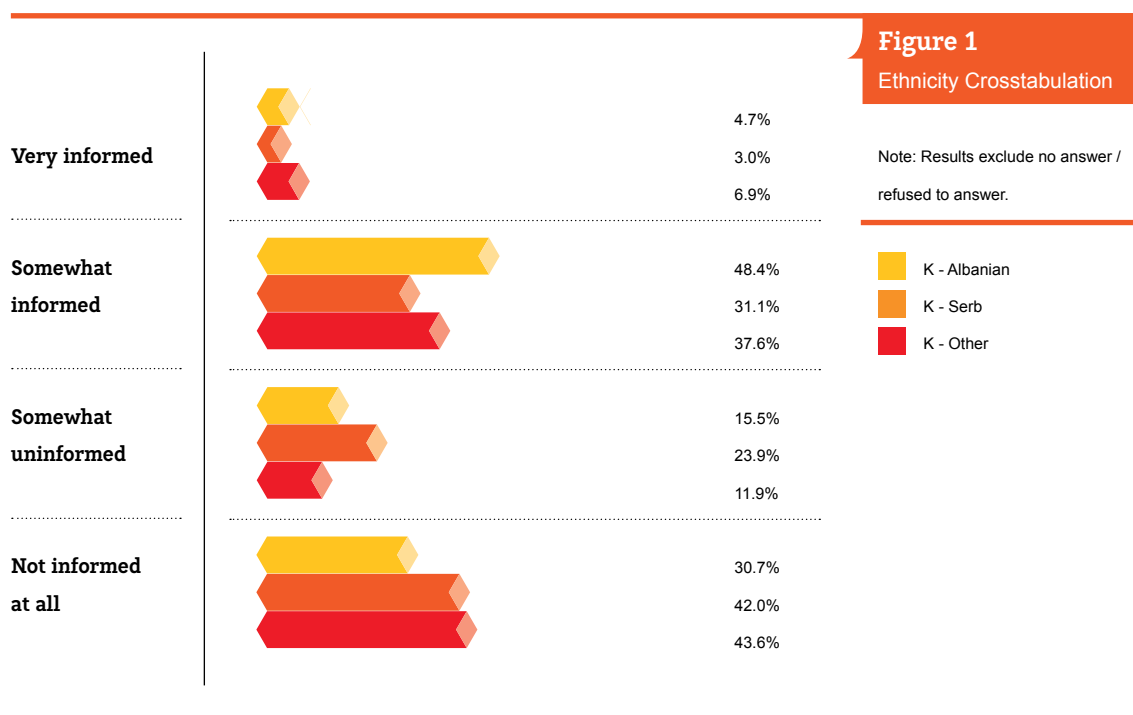
Results of the public perception survey served as the basis for a series of 8 mono-ethnic focus group discussions conducted by CPT and Integra in May and June 2017, intended to produce deeper insights on public attitudes and test responsiveness of ethnic Albanian and ethnic Serb respondents to varied messaging on the Court's work. The focus group questionnaire included elaboration on the household survey and facilitated dialogue about different messages regarding the purpose, impact and meaning of the Court's work that might strengthen positive societal impact. ♦

Key findings

Public awareness of the Kosovo Specialist Court's mandate is low

The household survey found that 30.7% of ethnic Albanians consider themselves not informed at all about the Kosovo Specialist Court, and 4.7% consider themselves very informed. Among ethnic Serbs, 42% consider themselves not informed at all, while 3% consider themselves very informed. 60.4% of ethnic Albanians, and 59.2% of ethnic Serbs, do not believe they receive enough information about the establishment and role of the Specialist Court.

How informed do you consider yourself to be about the Kosovo Specialist Court?



Most ethnic Albanian focus group participants indicated that they were aware of the existence of the Court, but had insufficient information to express a concrete opinion about its mandate or scope of work. Generally, participants were aware that the Court's mandate concerned war crimes, the KLA, and the Martyr report. Several participants noted that the lack of information available in the media and elsewhere is probably deliberate: Kosovo's politicians know that accurate information about the Court's mandate and likely indictees will incite negative reactions from citizens if such information is more accessible.

“A media conference of actors involved, or a debate, a round table, is not enough. It is necessary to go to the municipalities if needed in more remote areas, the actors (MPs, councilors, the Prime Minister, etc.) to converse with citizens, the same way they are going asking for votes, and inform the public what is it about so that the citizens are informed.” (ethnic Albanian female)

“We heard only fragments of the whole story. It was more like flash news then investigative journalism.” (ethnic Serb female)

In the ethnic Serb focus groups, even participants who believed themselves to be familiar with the mandate of the Kosovo Specialist Court realized they had misconceptions when presented with the relevant facts; almost all of these respondents, for example, believed that the mandate of the Court was to prosecute all alleged KLA crimes, not only those outlined in the Martyr report. Respondents stated that KLA crimes were widely covered in the Serbian-language media, but that there was very little discussion of the fact that only individuals (rather than the KLA itself) will be prosecuted for those crimes.

Misinformation about the Kosovo Specialist Court is widespread

Among respondents considering themselves informed about the Kosovo Specialist Court, 91% of ethnic Serbs and 65% of ethnic Albanians understand that the Court will prosecute alleged war crimes and crimes against humanity committed by members of the KLA.

However, the prevalence of misinformation across self-described well-informed respondents in both communities is reflective of a generally low level of public understanding.

“We have no detailed information on what it will deal with, except for war crimes, and in details we have no information about how long the process will last.” (ethnic Albanian male)

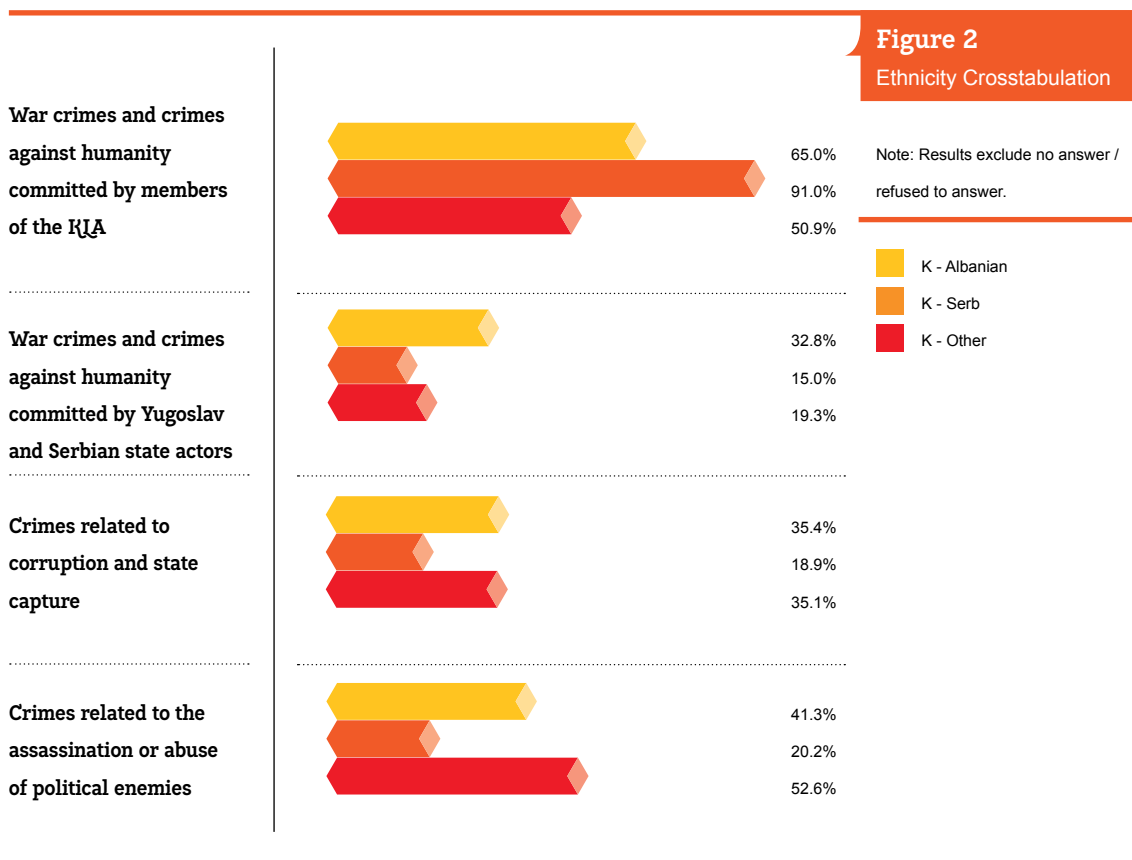
35.4% of ethnic Albanians and 18.9% of ethnic Serbs who consider themselves well-informed about the Kosovo Specialist Court incorrectly believe it will prosecute crimes related to corruption and economic crimes. It is worth noting that, in several ethnic Albanian focus groups, participants expressed the conviction that the Kosovo Specialist Court would be “a good thing” for Kosovo because it would “cleanse the political scene” and usher in a new generation of politicians uncompromised by widespread corrupt practices.

“We do not know whether it is being established for war crimes or corruption; if it is for corruption it would be okay, let it punish those who deserve it. But if it deals exclusively with the war then it is another thing.” (ethnic Albanian male)

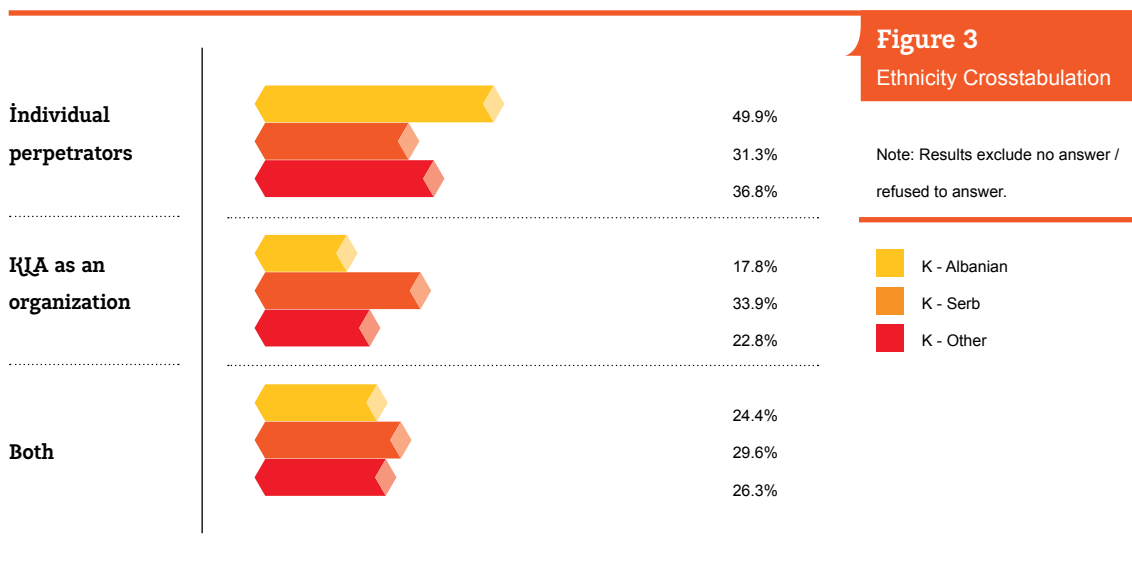
“If it is advertised as being against corruption, people will say it’s okay. It’s misinformation in order to deceive the people.” (ethnic Albanian male)

Nearly half (49.6%) of ethnic Albanians and 44.6% of ethnic Serbs who consider themselves well-informed about the Kosovo Specialist Court incorrectly believe its mandate includes prosecuting all those who committed war crimes and crimes against humanity in the period 1998-2000, regardless of their ethnicity. Similarly, 32.8% of ethnic Albanians and 15% of ethnic Serbs who consider themselves well-informed incorrectly believe the Court will prosecute war crimes and crimes against humanity committed by Yugoslav and Serbian state actors. In fact, since the

What kind of crimes do you think will be covered by the Kosovo Specialist Court?



The Kosovo Specialist Court has a mandate to prosecute crimes that relate to the 2011 Martyr Report, which mainly describes alleged crimes associated with the Kosovo Liberation Army. Do you believe the Kosovo Specialist Court will be focused on individual perpetrators, the KLA as an organization, or both?



Court's mandate only covers crimes identified in Marty report, it is unlikely to prosecute anyone not directly associated with the KLA.

Finally, 33.9% of ethnic Serbs and 17.8% of ethnic Albanians who consider themselves well-informed about the Kosovo Specialist Court incorrectly believe it will prosecute the KLA as an organization, while 29.6% of ethnic Serbs and 24.4% of ethnic Albanians incorrectly believe it will prosecute both individual perpetrators and the KLA as an organization. In fact, the Kosovo Specialist Court is not mandated to investigate or prosecute the KLA as an organization, or its conduct during the war.

"This should show the true purity of the KLA to the world Individuals who have committed crimes will respond individually." (ethnic Albanian male)

"In general, they are penalizing the KLA." (ethnic Albanian female)

"I cannot recall any statement of the Specialist Court spokesman or anyone who has been professionally connected with the Court. I have come across only statements of politicians, who have a vested interest in portraying the situation in line with their interests." (ethnic Serb male)

Ethnic Albanians in Kosovo overwhelmingly perceive the Kosovo Specialist Court as unfair

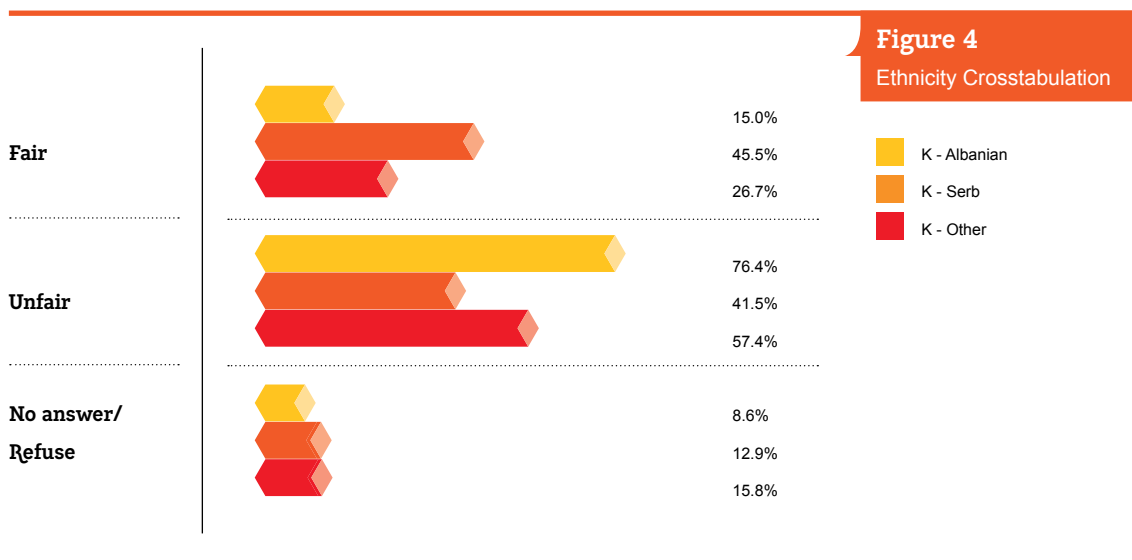
Among ethnic Albanians, 76.4% believe it is unfair that the Kosovo Specialist Court will prosecute war crimes and crimes against humanity described in the Marty report, which mainly covers crimes associated with the KLA³; 15.0% see this arrangement as fair, and 6% offered no answer or refused to answer. The survey noted that the perception of unfairness is much greater among ethnic Albanian respondents in Ferizaj / Uroševac, Pejë / Peć and Mitrovicë / Mitrovica regions; among better-educated respondents; and among 45-54-year-olds.

In the focus groups, ethnic Albanian respondents described perceiving the Kosovo Specialist Court as unfair because it focuses exclusively on alleged Albanian perpetrators associated with the KLA, because that focus on KLA crimes stains the record of a just war that was conducted in defense of civilians, and because of the scope of crimes committed in Kosovo by Serbia and Serb forces for which there has been no clear legal consequence. For those ethnic Albanian participants aware of the link between the mandate of the Kosovo Specialist Court and the Marty report, the widely-held belief that Marty himself was biased against the KLA and Albanians undermined confidence in the likely fairness of the Court. Participants expressed concern that ethnic Albanians from Kosovo could not apply for positions with the Court, while citizens of Serbia could do so.

Ethnic Albanian participants were broadly in agreement that the Assembly of Kosovo's legislation establishing the Kosovo Specialist Court was adopted under pressure from abroad. Indeed, 77.6% of ethnic Albanians surveyed agree that pressure from Kosovo's international allies is a reason for the Court's establishment, while 23% agreed that pressure from the Serbian government is a

³ Note that, in the survey, this question was posed after basic information about the mandate of the Kosovo Specialist Court was presented to respondents.

The Kosovo Specialist Court will only prosecute war crimes and crimes against humanity described in the Martyr Report, which mainly covers alleged crimes associated with the Kosovo Liberation Army. How do you see this arrangement?



reason. Ethnic Albanian respondents in the focus groups viewed this apparent imposition of the Court by outside powers as unfair. It is worth noting that 28% of ethnic Albanians surveyed agreed that the inability or unwillingness of the Kosovo judiciary, the ICTY, the UN Mission in Kosovo (UNMIK), and the EU Rule of Law Mission in Kosovo (EULEX) to properly prosecute high-ranking former KLA figures is a reason for the establishment of the Kosovo Specialist Court.

“I think most [alleged KLA perpetrators] have been tried in The Hague and came out not guilty, I do not believe they needed to establish a Special Court.” (ethnic Albanian female)

“It is a bad thing, it is biased; let it be the same for Albanians as well as for Serbs.”
(ethnic Albanian male)

“The image of Kosovo will be ruined, the KLA will be slandered, it is an insult to us.”
(ethnic Albanian male)

“The state of Kosovo did not want to set up the Specialist Court, and were obliged by the EU. It is a condition for the EU accession, for obtaining visas.” (ethnic Albanian female)

“We ourselves have brought the issues here because we have not been able to provide an impartial or independent judicial system.” (ethnic Albanian male)

By comparison, 45.5% of Serb respondents view the mandate of the Kosovo Specialist Court as fair, 41.5% as unfair, and 12.9% offered no answer or refused to answer. The general impression of participants in the ethnic Serb focus groups was that the ethnic Albanian majority was forced by the international community to establish the Kosovo Specialist Court, and that the impetus for this initiative was not a genuine desire to see justice done, but rather the need of Kosovo’s international allies to “clean the hands” of political clients who emerged from the KLA and now hold positions of power.

“Serbian media are presenting this as a success for Serbian diplomacy.” (ethnic Serb male)

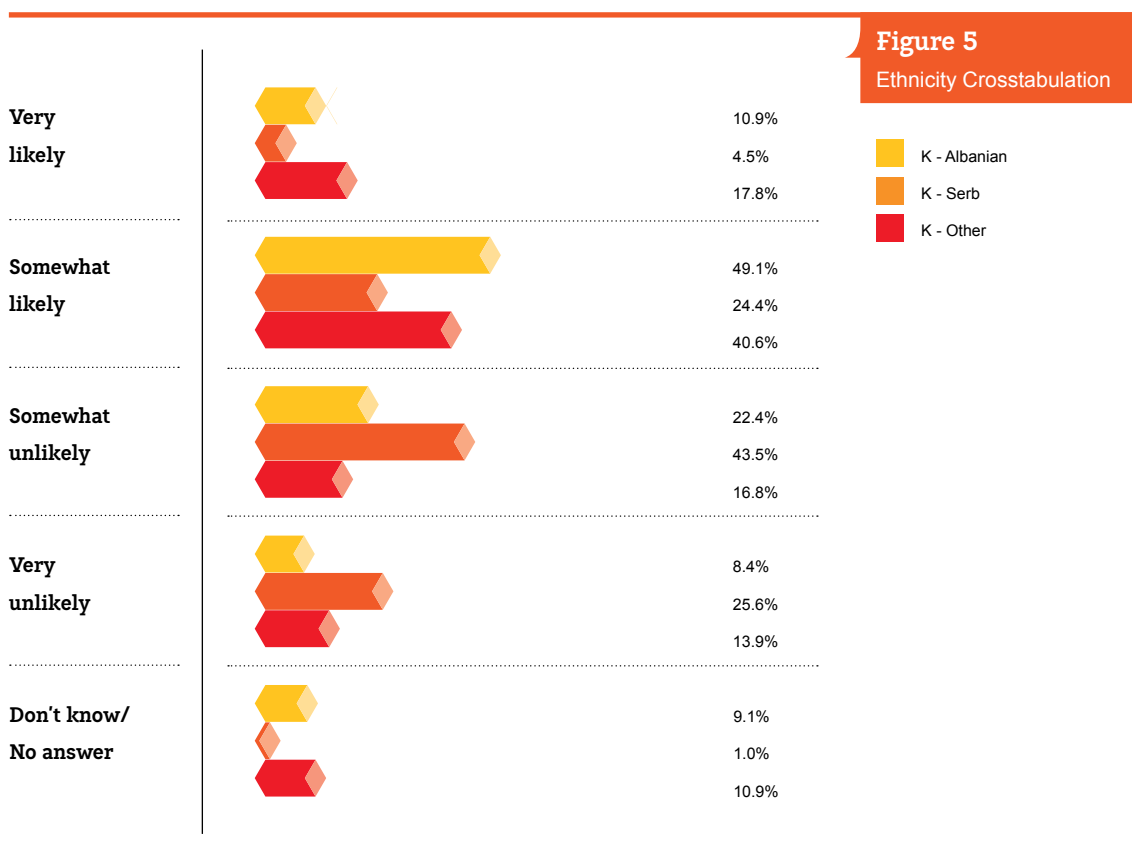
“[Albanians] truly believe that KLA fighters did not kill civilians and children. They are indoctrinated and brainwashed with the stories of heroes and KLA doings during and after the war.” (ethnic Serb female)

Serbs in Kosovo are skeptical that the Kosovo Specialist Court can bring justice to those who committed serious war crimes

A majority (69%) of ethnic Serbs say it is unlikely to very unlikely that the Kosovo Specialist Court can bring justice to those who committed serious war crimes in 1998-2000. Ethnic Serbs are particularly skeptical that alleged perpetrators can be given a fair trial in a court that operates outside of Kosovo with international judges and prosecutors, with 67.4% saying this is not possible (versus 42.2% of ethnic Albanians).

Most ethnic Serb participants mentioned that the Kosovo Specialist Court was established because none of the previous institutions set-up to deal with war crimes (including the ICTY, EULEX, and Kosovo domestic courts) have been able to achieve justice for Serb victims. As

How likely or unlikely, in your opinion, is the Kosovo Specialist Court to bring to justice those who committed serious war crimes in the period 1998-2000?



a result of this pattern of failure, ethnic Serbs lost faith in the judicial system in Kosovo—both its local and international components—which they perceive as influenced by corruption, lack of capacity, and inability to reform. That loss of faith extends to the Kosovo Specialist Court, which is not viewed as fundamentally different from previous failed judicial exercises related to war crimes.

“We believe that the Court will start with cases of ‘small fishes’. But to tackle serious perpetrators who are declared as war heroes is not possible or will end with symbolic punishment.” (ethnic Serb male)

“Better not to have the Court at all then to attain the partial justice or selective justice.” (ethnic Serb female)

In stark contrast, 60% of ethnic Albanians believe it is likely or very likely that the Kosovo Specialist Court can bring justice to those who committed serious war crimes. Similar to ethnic Serb focus group participants, ethnic Albanian participants who expressed skepticism about the Kosovo Specialist Court bringing justice for war crimes pointed to the experiences of UNMIK and EULEX, which proved unable to make noteworthy progress on war crimes.

Willingness to protest Kosovo Specialist Court indictments is high among ethnic Albanians

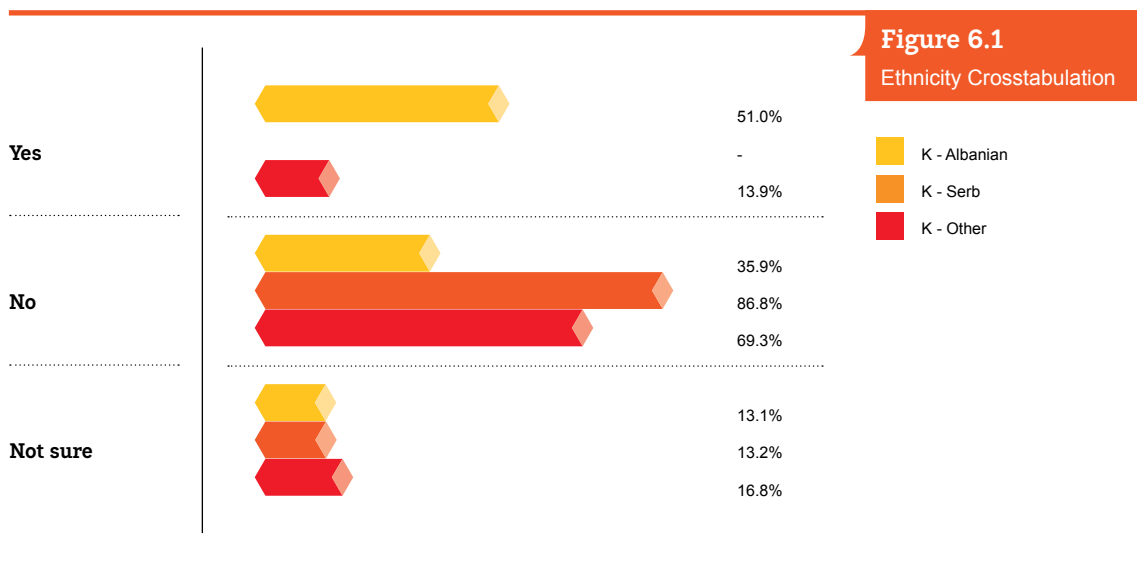
More than half (51%) of ethnic Albanians are willing to protest if KLA fighters are indicted by the Kosovo Specialist Court. In the event that Serb officials in Kosovo, or officials of the Republic of Serbia, claim that the Kosovo Specialist Court proves the KLA was a terrorist organization and its campaign illegitimate, the proportion of ethnic Albanians willing to protest jumps to 64.4%. A similar proportion of ethnic Albanian respondents (64.7%) are willing to protest if they consider verdicts against KLA members to be unfair. Willingness to protest is much higher in Ferizaj / Uroševac and Mitrovicë / Mitrovica than in other regions, and significantly higher among males and the youngest (18-25) cohort.

41.4% of ethnic Albanian males are willing to protest even if evidence clearly establishes the guilt of an indicted KLA member for the crimes of which he or she is accused. The survey found that one-third (36%) of ethnic Albanians are willing to join with others to prevent the Kosovo Specialist Court, the Government of Kosovo, or anyone else from prosecuting members of the KLA. This indicates that a smaller, though sizeable, proportion of the population is motivated to move beyond protest toward direct action that interferes with the prosecution of KLA members.

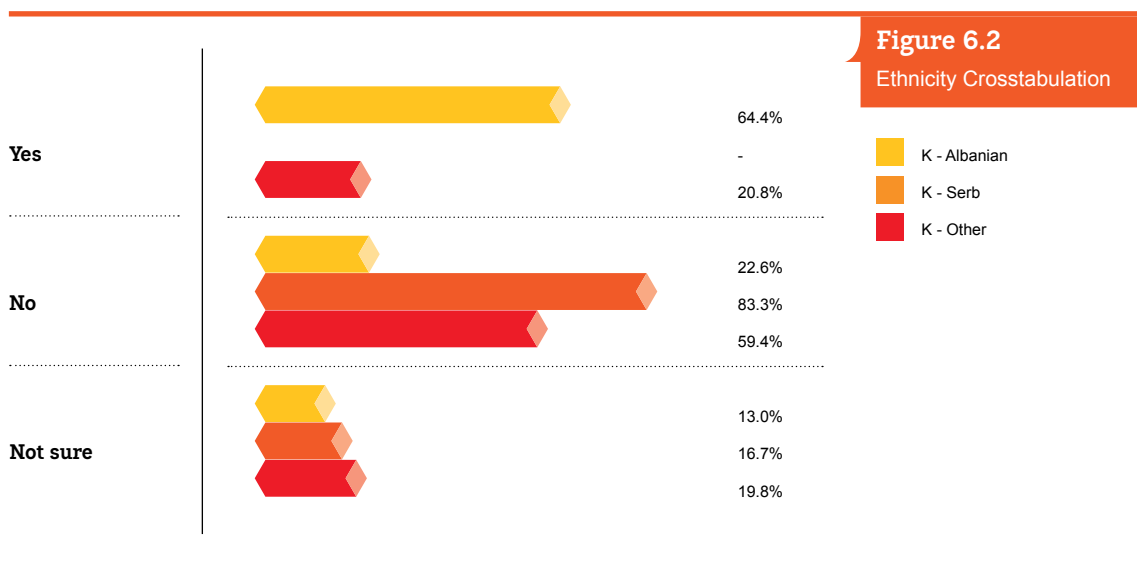
Among ethnic Albanians, 38.9% are less willing to protest if leaders of the international community speak out in favor of the Kosovo Specialist Court and the need to demonstrate that no one is above the law. 37.6% are less willing to protest if former KLA commanders speak out in the same way. 28.6% of ethnic Albanians are less willing to protest if evidence clearly establishing the guilt of KLA members for the crimes of which they are accused is presented (while 32.9% say that unambiguous evidence is not a mitigating factor).

Participants in the ethnic Albanian focus groups expressed strong personal support for protesting, especially if the trials are deemed unfair, but skepticism about whether citizens would mobilize in large numbers to protest. Some participants stated that misinformation was a likely reason for protests.

Would you be ready to protest if former KLA fighters are indicted by the Kosovo Specialist Court?



Would you be ready to protest if Serbian government officials claim that the Kosovo Specialist Court proves the KLA was illegitimate and a terrorist organization?



“Personally, I would not go to the protests. As long as it was approved in the Assembly then why go protest?” (ethnic Albanian male)

“Anything that is in contradiction with the state’s constitution, anyone who stains the KLA or the state—I would definitely go to protest those things.” (ethnic Albanian male)

Serb focus group participants stated that they would not protest following the indictments issued by the Kosovo Specialist Court, but all participants were convinced that Albanians would protest to express solidarity with the “creators of the state,” and that those protests might become

violent. Participants expressed fears that ethnic Albanian political leaders could use hate speech to motivate violent attacks against Serb citizens and properties, in retaliation for the perceived anti-Albanian nature of the indictments. Participants also stated that officials in Belgrade will use the Kosovo Specialist Court indictments and verdicts to score points in their diplomatic struggle against Kosovo's international recognition and for domestic political purposes.

Public confidence in witness protection is low

The majority of ethnic Serbs (82.1%) and nearly half of ethnic Albanians (48.8%) do not believe it is safe for witnesses to testify at the Kosovo Specialist Court.

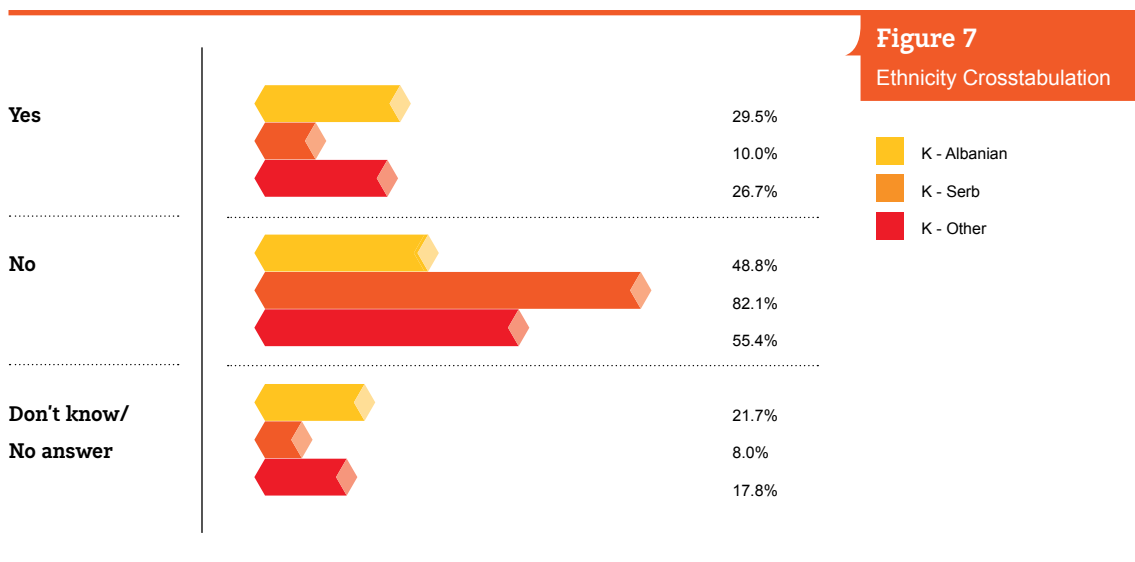
In the ethnic Albanian focus groups, there was broad agreement that, because Kosovo is a small country and citizens are closely connected by familial and social ties, defendants will almost always be able to discover who testified against them. Participants generally expressed the opinion that ethnic Albanian witnesses will hesitate to testify due to two main risks, namely: that they would be labeled traitors, and that they would be exposed to threats or violence by those associated with alleged perpetrators. State institutions are viewed as unable to provide adequate protection for witnesses. Participants also expressed concerns about false (“paid”) testimonies, with Serbia identified as an actor that might influence testimonies. Some participants indicated that, since the Kosovo Specialist Court will “cleanse” the country of corrupt people, witnesses can feel free to express themselves.

“They will testify, but then will they live or not?” (ethnic Albanian female)

“I would not have the courage to testify, because I think a lot of things might happen, and I would not feel safe to testify. If it were abroad, I would testify.” (ethnic Albanian female)

There was consensus among participants in the ethnic Serb focus groups that witnesses cannot be made safe. All focus group participants mentioned trials in which KLA commander were acquitted

Do you think that it is safe for witnesses to testify at the Kosovo Specialist Court?



and in which witnesses are perceived to have been either killed or pressured to revise statements.

“Kosovo is very small, everyone knows everyone, and witnesses cannot testify without public knowledge about that.” (ethnic Serb female)

“The sense of insecurity in Kosovo is dominant, and this perception is well-grounded in reality.” (ethnic Serb male)

Kosovo's communities are divided on government support to the defense of indictees

Among ethnic Serbs, 68.7% say that the Government of Kosovo should not provide financial support for the defense of indictees at the Kosovo Specialist Court. 17.2% say Kosovo should provide financial support for the defense of indictees, and 14.2% do not know.

Among ethnic Albanians, 57.7% say the Government of Kosovo should provide financial support for the defense of indictees, while 31.8% oppose this and 10.6% do not know. Some ethnic Albanian focus group participants indicated that they viewed financial support as unfair; some believed the Kosovo Specialist Court itself should pay for the defense costs of defendants. For many, financial support to those found innocent was acceptable, while support to those found guilty was unacceptable.

“They have become rich, they are corrupt, they made money, do we still need to pay for them? That's a big mistake.” (ethnic Albanian male)

TV will be the most important medium of communication for Kosovo Specialist Court processes and trials

Asked what sources of information they will use to follow Kosovo Specialist Court processes and trials, ethnic Albanians say that TV (83%) and online portals (36.7%) will be most important, followed by social media (20.8%), the website of the Kosovo Specialist Court (14.4%) and newspapers (14%). Among ethnic Serbs, TV (58.5%) is most important, followed by newspapers (24.4%), online portals (19.7%), radio (16.4%), and social media (16.2%) (4% view the Kosovo Specialist Court's website as an important source of information).

Participants in the ethnic Albanian focus groups agreed that TV was the most important source of information for most citizens, though several participants noted that most media outlets are aligned with the state or political parties and cannot be trusted. Other relevant sources of information named by participants included the persons who were victims of the alleged cases and witnesses, judges, NGOs, and opposition leaders. Several participants called for those who approved the Kosovo Specialist Court—that is, politicians—to provide information on its purpose and activities; others expressed skepticism about the honesty and reliability of elected officials in this regard. It is worth noting that both the public perception survey and the focus group discussions indicated that ethnic Albanians view ex-KLA commanders, such as President Hashim Thaci, as the most credible voices on issues related to the Kosovo Specialist Court.

“We don’t like to read and want to have the information served on a plate.”

(ethnic Albanian female)

“TV is the best source of information, especially its news editions. The reason why we do not trust politicians is because they are the target of this court and they cannot be very objective in this case.” (ethnic Albanian female)

Most ethnic Serb focus group participants stated that they trust TV, as TV stations (especially on public networks) are seen to present “verified and official” information. Social media and NGO reports are not considered reliable sources of information on the Kosovo Specialist Court, with NGOs in particular seen as compromised by the funding they receive from international donors. Most ethnic Serb respondents stated that they do not entirely trust any politician or anyone who has a vested interest in presenting information about the Court’s mandate and operations; however, legal professionals from the Serbian Ministry of Justice or the Kosovo Specialist Court itself were seen as credible.

Majorities of Albanians and Serbs in Kosovo believe it is important to deal with all war crimes

A majority of Albanians (64.8%) and Serbs (53.2%) in Kosovo say it is important to deal with all crimes committed, or crimes suffered by all civilians, during and in the aftermath of the 1998-99 war.

In the ethnic Albanian focus groups, the perception that Serbian crimes in Kosovo were not adequately addressed after the war was widespread. Many ethnic Albanian participants expressed the opinion that the Kosovo Specialist Court may help to “close the book” on alleged war crimes committed by the KLA, once and for all.

“It is bad that this ethnic division is being established, otherwise justice should prevail for every victim.” (ethnic Albanian female)

The general impression of ethnic Serb focus group participants was that all individuals involved in criminal acts during the war should be prosecuted. Several participants mentioned that, while Serbian politicians and military leaders were indicted by the ICTY, indictments of ethnic Albanian politicians in Kosovo and KLA commanders associated with war crimes were scant. An acute sense of the injustice experienced by ethnic Serb victims was strongly expressed by the majority of participants.

“All high-level politicians and military commanders from the Serbian side have been indicted by the ICTY, while none of the Kosovo Albanians have been indicted.” (ethnic Serb male)

“There is also a need to persecute crimes against the Albanian civilian population committed by the KLA, for individuals accused of collaboration with Serbs.” (ethnic Serb male)

“The resistance of Albanians toward establishment of the Court is to be expected, as it will delegitimize their struggle for independence.” (ethnic Serb female) ♦

Analysis and recommendations

The extent of positive societal impact achieved by any international or hybrid criminal justice mechanism is largely dependent on the perceived legitimacy of that institution in affected communities. Public perception of the legitimacy of international and hybrid courts cannot be separated from the political and social context within which they are established. When the work of such tribunals is perceived as selective or partial, a crisis of public perception (and, by extension, a crisis of legitimacy) can occur. This can, in turn, have an adverse societal impact, and may harm wider processes of transitional justice and relations between communities in conflict.

Regarding the Kosovo Specialist Court, it is necessary to note that public perception is never static, and contingent upon contextual developments; that the Court has yet to issue initial indictments, and that once it becomes operational perception of its performance and impact may shift; and, finally, that the pursuit of criminal justice in divided societies is inherently delicate.

For the time being, the public perception research indicates that positive societal impact may be circumscribed by the political and social dynamics in Kosovo, especially previous experiences with international and domestic efforts to deal with the past that fell short of expectations, and the contentious political context of the Court's establishment; as well as limited public understanding of the Court's purpose and scope.

The research indicates that public awareness of the Kosovo Specialist Court's purpose, mandate and scope is low. That contributes to the spread of misinformation (including nationalist narratives that promote denial and self-victimization in both ethnic communities), increasing the likelihood of a "shock" effect when the first indictments are issued, and decreasing the likelihood of social acceptance of the Court's work in the long-term.

The research also demonstrates that many in the ethnic Albanian community perceive the Kosovo Specialist Court's mandate as selective and partial, while many in the ethnic Serb community are skeptical that it can deliver justice in relation to long-neglected war crimes cases in which the victims were mainly Serbs. There is thus a risk that, if the Court's work results in the successful prosecution of KLA members, ethnic Albanian perceptions of anti-KLA bias in the pursuit of war crimes cases will increase. On the other hand, if the Court is unable to secure at least some convictions, the disillusionment of ethnic Serbs with Kosovo's institutions will increase. Both outcomes would have adverse effects on the already tense relations between the Albanian and Serb communities, on efforts to achieve reconciliation, and on Kosovo's political and social stability.

The recommendations outlined below are intended to address some of the risks identified by the public perception survey, and strengthen the prospect of the Kosovo Specialist Court's work delivering a positive societal impact. The recommendations focus on the need for (1) an effective, evidence-based and targeted programme of public information and dialogue to address information gaps, counter misinformation, and generate broad social acceptance of the process and its outcomes; and (2) contextualizing the Court's work within a broader framework of local, national and regional efforts to deal with the wartime past, to address the perception that it represents a biased exercise in selective justice and maximize positive societal impact.

In the recommendations, the following terms are used:

- ◆ *key international stakeholders in Kosovo* refers to the EU Special Representative / EU Ambassador in Kosovo, EULEX, embassies of key EU Member States, the United States embassy, and the United Nations system
- ◆ *key institutions of the EU* refers to the EU Special Representative / EU Ambassador in Kosovo, EULEX, the European Commission Directorate-General for Neighborhood and Enlargement Negotiations, the EU High Representative for Foreign Affairs and Security Policy and the European External Action Service, and the European Parliament Committee for Foreign Affairs and the Kosovo Rapporteur.

Recommendations

The Kosovo Specialist Chambers and Specialist Prosecutor's Office, the Government of Kosovo, key international stakeholders in Kosovo, key institutions of the EU, and Kosovan civil society should:

1. Cooperate in the development and implementation of an **effective, evidence-based and targeted programme of public information and dialogue**, involving all key stakeholders and reaching all of Kosovo's diverse communities, to:
 - ◆ address information gaps regarding the rationale for establishment of the Kosovo Specialist Court, its mandate, and the nature of the allegations raised in the Marty report;
 - ◆ proactively counter misinformation, especially myths about the scope and mandate of the Court as described in this report; and,
 - ◆ encourage all stakeholders to use consistent language when explaining the purpose, mandate and legal processes of the Court;
 - ◆ in order to mitigate the risk of misinterpretation and confusion, and to generate broad social acceptance of the process and its outcomes.

2. Inform the development and implementation of public information and dialogue activities with **reliable evidence on public perception**, commencing with a baseline public perception survey and continuing with regular follow-up surveys, in order to regularly revise key messages, map affected communities, and identify potential allies.
3. Utilize **messaging tailored for Albanians** in Kosovo that:
 - ◆ esituates the work of the Court within a broader context of its implications for Kosovo’s democratic, multi-ethnic and European future
 - ◆ eovercomes denial and self-victimization
 - ◆ emainstreams inclusive narratives about wartime past generally
 - ◆ ebuilds broad confidence in and support for the rule of law by stressing the Court’s role in ensuring that “no one is above the law”
 - ◆ eframes the Court in relation to complementary local, national and regional efforts to deal with Kosovo’s wartime past, especially those undertaken by or in relation to Serbia.
4. Utilize **messaging tailored for Serbs** in Kosovo that:
 - ◆ situates the work of the Court within a broader context of its implications for Kosovo’s democratic, multi-ethnic and European future
 - ◆ overcomes denial and self-victimization
 - ◆ mainstreams inclusive narratives about the wartime past generally
 - ◆ manages the expectations of victims and affected communities
 - ◆ promotes the principle of individual accountability for war crimes and crimes against humanity committed against civilians.
5. Focus on clearly explaining how **witness protection measures** at the Kosovo Specialist Court differ from those associated with previous national and international judicial exercises, thereby boosting public confidence and the confidence of witnesses themselves.
6. Promote **victim participation** as a central objective of messaging and engagement.
7. Maximize the reach of public communication activities by using **TV as the main medium**, complemented by direct engagement with citizens through community meetings and other dialogue activities.

8. Incorporate an **exit strategy** from the outset, ensuring that, as the Court winds down its operations, public information and dialogue activities are taken over by civil society, the local legal community, and local media, with adequate funding and capacity.

The Kosovo Specialist Chambers and Specialist Prosecutor’s Office should:

9. Establish a **meaningful presence in Kosovan public life** in support of contributions to the public information and dialogue programme developed and implemented in coordination with other stakeholders, reaching beyond a limited public communication strategy to achieve visibility, credibility, and **two-way communication** enabling institutions and officials of the Kosovo Specialist Court to positively influence narratives in Kosovan society that actively promote understanding and acceptance of the Court’s work in a broader context.
10. Adopt a **framework for ongoing cooperation with Kosovan civil society**, recognizing that such cooperation is a critical success factor and that civil society organizations can act as “gate-openers” to gain access to local leaders and opinion-shapers, and serve as a vital component of an exit strategy that keeps the work of public information and dialogue going after the termination of Court proceedings.

The Government of Kosovo and key international stakeholders in Kosovo should:

11. Prepare a **crisis communication plan**, focusing on clear messaging from international leaders and credible former KLA leaders; and a **security contingency plan**, the existence of and aspects of which should be made public, indicating that relevant security providers are prepared for the possibility of violence, and violence targeting Serb and other minority communities in particular.

The Government of Kosovo, with support from key international stakeholders in Kosovo and key institutions of the EU, should:

12. Invest political, bureaucratic and financial resources in promoting a **national framework for dealing with the wartime past** that mitigates perceptions of selectivity and unfairness by framing the Kosovo Specialist Court in relation to complementary local, national and regional efforts to deal with Kosovo’s wartime past, especially (but not limited to):
 - ◆ completion of a National Strategy on Transitional Justice
 - ◆ discussions around the proposed Commission on Truth and Reconciliation
 - ◆ achievement of meaningful progress on the issue of missing persons

- ◆ initiatives promoting social acceptance of transitional justice and inclusive narratives about the wartime past generally.

13. Ensure that **all parties coordinate in communicating responsibly to citizens**, acknowledging the finding that ex-KLA commanders have the highest credibility to speak to issues around the Court within the ethnic Albanian community, and that there is thus a vital role for ex-KLA commanders to play in speaking responsibly to issues around the Court's work, irrespective of who leads the government to be formed following the June 2017 election.

Serb political leaders in Kosovo, and the Government of Serbia, should:

14. **Exercise responsibility and caution** when commenting on the actions of the Kosovo Specialist Court, especially indictments and verdicts, so as not to unnecessarily politicize the Court's work or contribute to the deterioration of relations between communities in Kosovo or security conditions for Serb communities in Kosovo. ◆

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