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UNHCR Position on the Continued International Protection Needs of Individuals from Kosovo (March 2005)

I. Introduction

1. The Office of the United Nations High Commissioner for Refugees (UNHCR) has been mandated by the United Nations Security Council Resolution 1244 (1999)¹ to supervise the safe and free return of all refugees and displaced persons to their homes. In exercising this function, UNHCR has during the last five years supported the creation of conditions permitting sustainable return and regularly issued position papers that assess developments and protection needs of ethnic groups and other categories in Kosovo.

2. The purpose of this paper is to update UNHCR's position on the continued international protection needs of individuals from Kosovo in light of the prevailing complex conditions since August 2004.² The paper first assesses the current situation of ethnic minorities by analyzing empirical data and observations, which come from recently published authoritative reports issued by the UN, international NGOs and UNHCR's monitoring activities in Kosovo. Second, it enumerates the ethnic minority groups and other protection categories with a continuing need of international protection. And, third, it highlights important humanitarian needs of individuals from Kosovo that should be considered before taking a decision on possible return to Kosovo.

II. Situation of Ethnic Minorities

A. Security

1. Overall security environment

3. Since the inter-ethnic violence in March 2004, and particularly in the second half of the year, the overall situation in Kosovo has improved. Renewed and effective engagement of the Provisional Institutions of Self-Government (PISG) to implement Kosovo Standards, particularly in areas related to the situation of ethnic minorities, has led to the creation of new windows of opportunity for return in various municipalities. The security situation has improved if measured by the declining trend in serious crimes against members of minority communities. There has been no reported ethnically based killing since a 16-year old Kosovo Serb died on 6 June 2004 in Gracanica in a drive-by-shooting. Furthermore the elections for the Kosovo Assembly on 23 October 2004 took place in a peaceful manner and were judged to be free and fair. Likewise, no security incidents occurred during the visit of the Serb President Tadic to Kosovo on 13 February 2005. There has also been some progress in prosecuting those responsible for the March

violence.³ It should be noted, however, that the decrease in the number of serious crimes against members of minority communities may also be closely related to the fact that freedom of movement of ethnic minorities and thus contacts with majority populations have significantly dropped after the March 2004 events.

4. Nonetheless, the security environment in Kosovo remains highly fragile and volatile. Minorities continue to suffer ethnically motivated incidents in which minority transports are stoned; member of minorities attacked⁴, harassed⁵ or intimidated; property and possessions of minorities looted⁶, destroyed or illegally occupied⁷; grave sites of minorities vandalized⁸; and hate graffiti painted on municipal buildings⁹. Many of these incidents remain unreported as the victims fear reprisals from the perpetrators from the majority community.

5. The risk that the fragility and volatility of the current situation may translate during 2005 into renewed violence cannot be excluded.¹⁰ If serious inter-ethnic violence were to erupt in one area, it could, as was the case in March 2004, have a “snowball effect” and rapidly spread throughout Kosovo.¹¹ Should that occur, violence is likely to affect once again ethnic minorities.

2. Insecurity – Real and Perceived

6. Members of ethnic minorities continue to perceive the current situation as insecure and dangerous. This is due to a number of factors, including that the March 2004 events seriously destroyed their confidence in law-enforcement authorities and exacerbated their mistrust of the majority population. Perpetrators are still rarely brought to justice and incidents such as those described above are continuing. Therefore the enhanced security measures and initiatives by UNMIK and KFOR¹² have not been able to significantly alter that perception.

7. The strong feeling of insecurity and the concrete security incidents have had a major impact on voluntary repatriation movements. In 2004, return movements of ethnic minorities decreased by almost 50 per cent as compared to 2003.¹³ Most of the (few) return movements took place to mono-ethnic rural areas or areas where returnees belong to the majority population. The constraints in relation to return perspectives are also illustrated by the situation of the ethnic minority communities that were forcibly displaced during the inter-ethnic violence in March 2004: one year later, more than half of the IDPs have still not returned to their home communities on security grounds, although their reconstructed houses offer better living conditions than the provisional IDP shelters.

B. Freedom of Movement

8. Freedom of movement, particularly of Kosovo Serbs and Albanians in a minority position, is extremely limited¹⁴ due to insecurity – real and perceived, as described above.

9. Furthermore, while some ethnic minority communities travel on specially-provided transport, or with military escort, usually from one minority area to another, other communities have virtually no access to public transport and thus suffer from limited opportunities for a normal life and sustainable livelihoods.

C. Access to Basic Services and Employment

10. Ethnic minorities continue to face serious obstacles in accessing essential services in the area of health, education, justice and public administration.¹⁵ This is first of all a direct result of the above illustrated limitations to freedom of movement. Second, ethnic minorities continue to suffer from discriminatory behavior of public servants. And, third, the public services sector continues to present serious structural problems that negatively impact on the availability of services. For instance, while numerous donors have engaged in the construction or rehabilitation of infrastructure in the area of health and education, the massive population shift from rural to urban areas over the past years has seriously increased demand on already stretched urban resources. In contrast, in rural areas, the decline in population has seen infrastructure close due to decreased demand, resulting in reduced access for those who remain.¹⁶

11. A particular case in point is the mental health sector which remains very inadequate and unable to cope with levels of demand¹⁷. Despite continued efforts by the Ministry of Health, NGOs and donor support, large numbers of socially dependent and chronically mentally ill people are unable to receive adequate treatment in Kosovo¹⁸

12. The problems with freedom of movement have also impacted on the ability of minorities to engage in income generating activities. Apart from an unemployment rate of over 50 percent, access to work places is difficult and risky for minorities, while many owners and/or users of agricultural land are prevented from working on it.¹⁹ These constraints significantly prevent many families from meeting basic subsistence needs.

D. Summary

13. Since the inter-ethnic violence in March 2004, the overall security situation has improved if measured by the declining trend in serious crimes against members of minority communities but the situation remains very complex and certain ethnic minorities are particularly vulnerable to physical assaults, harassment and intimidation, and property related crimes. Security concerns – real and perceived – have seriously limited their freedom of movement and thus their access to essential services and employment opportunities. In the current volatile context, a serious ethnically motivated crime against an ethnic community may spark, like in March 2004, a downward spiral towards inter-ethnic violence and civil unrest and lead to other serious ethnically motivated crimes. Kosovo Serbs, Roma, as well as Albanians in a minority situation would be the communities most likely to be affected. In addition Ashkaelia and Egyptians as well as Bosniak and Goranis may be targeted, even if on a more individual basis.

III. Policy Recommendations and Conclusions

1. Ethnic Minorities at Risk

14. Against the described developments and constraints for ethnic minorities UNHCR is concerned in particular for Kosovo Serb and Roma communities as well as for ethnic Albanians in a minority situation. Therefore, the Office maintains and reiterates its position that members of these groups should continue to benefit from international protection in countries of asylum under the 1951 Convention or complementary forms of protection depending on the circumstances of claims. For these groups and individuals return should only take place on a strictly voluntary basis in safety and dignity in a co-ordinated and gradual manner. Such return to be sustainable needs to be supported by re-integration assistance.

15. With regard to Ashkaelia, Egyptian as well as Bosniak and Gorani communities these groups appear to be better tolerated in spite of a single but very serious incident against the Ashkaelian community in Vushtrri/Vucitrn during the March 2004 attacks. In light of that incident, the August 2004 advice from UNHCR included the Ashkaelia and Egyptian communities among those with a continuing general need for international protection. However, in light of the developments since then, UNHCR's position is currently that these groups may have individual valid claims for continued international protection which would need to be assessed in a comprehensive procedure.

2. Other Groups at Risk.

16. In the current complex situation of Kosovo, others groups not detailed above may have a well-founded fear of being persecuted for Convention related reasons. Under these categories may thus fall Kosovo Albanians belonging to the majority population and members of all ethnic minority groups, including those that UNHCR has not mentioned under the above "ethnic minorities at risk". Examples for these categories may include but are not limited to the following:

- Persons in ethnically mixed marriages and persons of mixed ethnicity;
- Persons perceived to have been associated with the Serbian regime after 1990;²⁰ and
- Victims of trafficking.²¹

17. Furthermore asylum-seekers from Kosovo who do not qualify for Convention refugee status may still be protected against return if *non-refoulement* obligations under international or regional human rights law apply. This is the case for example, if their return to Kosovo exposes them to a real risk of torture or inhuman and degrading treatment and therefore the non-refoulement provision of art 3 CAT or obligations under Art. 3 ECHR do apply.

3. Humanitarian Categories

18. Individuals in a particularly vulnerable situation may have special needs that should be taken into account in the context of return and particularly bearing in mind the inadequate standards of health care and social welfare institutions. The following is a non-exhaustive list of persons falling under this category:

- Chronically or otherwise severely-ill persons whose condition requires specialized medical intervention of a type not yet available in Kosovo;
- Persons with severe and chronic mental illness (including post-traumatic stress disorders) whose condition requires specialized medical intervention of a type not yet available or rarely available in Kosovo;
- Severely handicapped persons (including their caregivers) whose well-being depends on a specialized support system not yet available in Kosovo;
- Unaccompanied elderly persons who have no relatives or any other form of community support in Kosovo; and
- 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.

19. In addition, the return of separated children for whom relatives and caregivers have been identified should only take place after appropriate advance notification and arrangements have been made by the repatriating State so that there is no gap in the care and protection provided to the child.

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¹ Article 11,(k) and Annex 2, Article 7 of the Security Council Resolution 1244/99 of 10 June 1999

² UNHCR's last position paper was issued on 13 August 2004 and concluded in particular that Serbs, Roma, Ashkaelia and Egyptians as well as Albanians in an ethnic minority situation should continue to benefit from international protection.

³ See Report of the Secretary General on the United Nations Interim Administration Mission in Kosovo, S/2004/907 (17 November 2004) and Human Rights Watch, "Country Summary: Serbia and Montenegro" (January 2005)

⁴ e.g. on 28 March 2005, an elderly Kosovo Serb couple from Cerkulez village in Istog/Istok municipality was severely beaten in area where Kosovo Serbs comprise a small minority (assailants have not been founded as yet).

⁵ e.g. Albanian pupils belonging to the minority population in the municipality of Shterpca have been prevented from attending local schools following harassment by the Serb majority population; see Council for the Defense of Human Rights and Freedoms, "2004 Annual Report on the Situation of the Minority Communities in Kosovo (February 2005)"

⁶ e.g. looting of reconstructed but still unoccupied houses of those displaced in March 2004 has been prevalent in Obiliq/c, Fushe Kosovo/Kosovo Polje, Vushtrri/Vucitrn and Svinjare/Frasher; see Report of the Secretary General on the United Nations Interim Administration Mission in Kosovo, S/2005/88 (15 February 2005), Annex 1 (Technical Assessment of Progress in Implementation of the Standards for Kosovo by the Special Representative of the Secretary General) paragraph 35

⁷ see Report of the Secretary General on the United Nations Interim Administration Mission in Kosovo, S/2005/88 (15 February 2005), Annex 1 (Technical Assessment of Progress in Implementation of the Standards for Kosovo by the Special Representative of the Secretary General) paragraph 3

⁸ e.g. on 17 February 2005 the local Kosovo Serbian community north of Viti/Vitina lodged a complaint regarding the persistent vandalism at several local Kosovo Serbian Orthodox cemeteries in the area

⁹ Report of the Secretary General on the United Nations Interim Administration Mission in Kosovo, S/2005/88 (15 February 2005), paragraph 11

¹⁰ International Crisis Group (ICG), "Kosovo: Towards Final Status", Crisis Group Report No161 (24 January 2005), which illustrates the political, economic and social reasons behind the potential for renewed violence

¹¹ UNDP/USAID, "Early Warning Report Kosovo (report #7)", May-August 2004, paragraph 43

¹² SRSG address to the OSCE Permanent Council on 10 February 2005

¹³ Report of the Secretary General on the United Nations Interim Administration Mission in Kosovo, S/2005/88 (15 February 2005), paragraph 12; it is noteworthy that the return of Kosovo Serbs has dropped by almost 50 percent compared to 2003

¹⁴ Report of the Secretary General on the United Nations Interim Administration Mission in Kosovo, S/2005/88 (15 February 2005), paragraph 10

¹⁵ See for example European Commission for Democracy through Law (Venice Commission), "Opinion on Human Rights in Kosovo" (11 October 2004), CDL-AD (2004)033, paragraph 34

¹⁶ UNICEF, "Situation Analysis of Children and Women in Kosovo" (February 2004)

¹⁷ According to the Medical Foundation for the care of victims of torture, "Mental Health Services in Kosovo" (February 2004), prevailing problems compromising Kosovo's ability to effectively treat mental disorders including Post-Traumatic Stress Disorder (PTSD) include: 1. a general lack of mental health professionals in Kosovo; 2. insufficient financial resources; 3. too few professionals who can assess people with special needs; and 4. inaccessibility of services for those living in rural areas. In particular, it should be noted that mental health services for children have not yet been established

¹⁸ UNMIK (Office of Returns and Communities), Note on the "Availability of Adequate Medical Treatment For Post-Traumatic Stress Disorder (PTSD) in Kosovo" (January 2005); Medical Foundation for the care of victims of torture, "Mental Health Services in Kosovo" (February 2004)

¹⁹ See for example European Commission for Democracy through Law (Venice Commission), "Opinion on Human Rights in Kosovo" (11 October 2004), CDL-AD (2004)033, paragraph 34

²⁰ The inter-ethnic violence in March 2004 highlighted the persistent and strong resistance to in Kosovo to persons closely associated with the Kosovo Serbs or with the Serbian structures, whether past or present.

²¹ See for example UNICEF, "Trafficking in Children in Kosovo" (June 2004) and Human Rights Watch, "Country Summary: Serbia and Montenegro" (January 2005)