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Kosovo (Serbia)¹

No Forcible Return of Minorities to Kosovo

Following the end of the conflict in Kosovo in July 1999, an estimated 235,000 Serbs, Roma and members of other minority communities fled Kosovo as members of the ethnic Albanian community returned. Many Serbs left fearing revenge, others fled as their fears turned into reality. Although the majority fled to Serbia where they remain in internal displacement, others left for European Union (EU) and Council of Europe member states.

Five years later, in March 2004, another 4,200 persons – including Serbs, Roma and Ashkali - were displaced after three days of inter-ethnic violence which left 19 dead, and almost 900 people seriously injured. Over half have not returned; many again fled to other parts of Europe.

Some of those who fled Kosovo were recognised as refugees under the 1951 Convention on Refugees; others are residing irregularly after a rejection of their asylum claim, some are still awaiting determination of their status, but the majority were provided with some form of temporary protection.

While many – recognised refugees and displaced persons – may chose to voluntarily return to Kosovo as soon as conditions for their return in safety and dignity have been met, Amnesty International is extremely concerned that, even before a resolution on the future status of Kosovo has been considered by the UN Security Council (UNSC), some EU and Council of Europe member states are making preparations to forcibly return to Kosovo persons who Amnesty International considers remain in need of temporary protection as well as others whose claims for refugee status should be considered. Amnesty International is particularly concerned that many of these people are members of minority communities.

Amnesty International therefore urges states to refrain from the forcible return of persons currently enjoying temporary protection status, for whom there is a continued international protection need. States should facilitate voluntary repatriation when conditions for return in safety and dignity prevail in Kosovo.

Amnesty International's recommendations:

- All states must ensure that the ending of temporary protection status (as in the ending of any other form of refugee status) is based on an independent, impartial evaluation of the human rights situation in Kosovo, in accordance with the cessation clauses of the Refugee Convention. If temporary protection status is to be ended, Amnesty

¹ At the time of publication, Kosovo remains part of Serbia under UN SC Resolution 1244/99.

International considers that the objective situation in Kosovo must have changed in a way that is fundamental, stable and durable.

- Amnesty International considers that before refugees and internally displaced persons (IDPs) from minority communities are encouraged to voluntarily return in accordance with international standards and the provisions of the Status Settlement, conditions must be improved to ensure that they may return in safety and in dignity. Measures should be taken to improve security, freedom of movement, access to courts and implementation of decisions with regard to property, and to end impunity for war crimes against members of minority communities.
- All states, in ending the provision of temporary protection for any group of persons, should ensure that any individual may be able to challenge the decision to apply a cessation of protection in his or her case. Any ongoing protection needs must be clearly assessed in order for *non-refoulement* obligations to be met.

1. The final status of Kosovo

Following talks throughout 2006 in which the Serbian and Albanian parties failed to reach any agreement, on 26 March 2007 Martti Ahtisaari, the Special Envoy of the UN Secretary-General on Kosovo's Future Status (UNOSEK) published the final version of his Comprehensive Proposal for the Kosovo Status Settlement (Status Settlement).

The document envisages the "independence" of Kosovo (which at the time of writing remains part of Serbia) under the supervision of the international community. Pending a resolution by the UNSC the current United Nations Interim Administration Mission in Kosovo (UNMIK) will be replaced, transferring limited responsibilities to an international civilian representative and an EU presence. Responsibilities for the majority of government functions will be finally transferred to the current Provisional Institutions of Self Government (PISG), which will become the government of Kosovo. This transfer is anticipated to take place over 120 days following a resolution by the UNSC.

With regard to the return of refugees Martti Ahtisaari has proposed that "all refugees and internally displaced persons from Kosovo shall have the right to return and reclaim their property and personal possessions in accordance with international law."² Indeed in the Annex to his report on the Status Settlement he emphasises that such returns should be based on a "voluntary and informed decision".³

² Article 4, Comprehensive Proposal for the Kosovo Status Settlement, March 2007.

³ Report of the Special Envoy of the Secretary-General on Kosovo's Future status, Annexe: Main provisions of the Comprehensive Proposal for the Kosovo Status Settlement, Section II; under international law requirements for voluntary repatriation include conditions of physical, legal and

Under the Status Settlement Kosovo is required to “take all measures necessary to facilitate and to create an atmosphere conducive to the safe and dignified return of refugees, based on their free and informed decisions, including efforts to promote and protect their freedom of movement and freedom from intimidation.” The Kosovo authorities will be assisted in this by United Nations High Commissioner for Refugees, “who will assist the competent authorities in extending protection and assistance to returnees”.

2. Security and freedom of movement

*If they open a corridor to a third country, then we will go and we will work and we will sign to promise that we will go back to Kosovo when things improve.*⁴

To date, neither UNMIK nor the current PISG have been able to guarantee a safe and secure environment to which members of minority communities may return in safety and in dignity.

On 9 March 2007, in his report to the Security Council, the UN Secretary-General (UN SG), while acknowledging an apparent decline in reported inter-ethnic crimes, expressed strong concerns about the possibility of destabilising or inter-ethnic violence that might arise in the “charged atmosphere” of the talks on the final status of Kosovo; he also feared “sudden and confrontational action” or “unilateral initiatives” by the Serbian community north of the Ibar.⁵

While UNMIK report that the number of ethnically motivated crimes has decreased, the police assess the “security situation as stable but fragile”. Increased freedom of movement has reduced the need for escorts for minority travel, yet in November and December 2006, the mining of a railway line between Fushë Kosovë/Kosovo Polje⁶ and Mitrovicë/a, the stoning of a bus carrying Serbs to Shtërpcë/Štrpce, a roadblock detaining a bus of Kosovo Serbs and the attack on a Serb resident of Klinë/a confirmed the fragile nature of Kosovo’s security.⁷

material safety, see *UNHCR Voluntary Repatriation Handbook*, 1996. These requirements have been further elaborated in UNHCR ExCom Conclusions. Conclusion No. 18 (XXXI) and Conclusion No. 40 (XXXVI) on voluntary repatriation, as well as Conclusion No. 74 (XLV) paragraphs (y), (z) and (aa),) ExCom Conclusion No. 101 (LV) – 2004 – *Conclusion on Legal Safety Issues in the Context of Voluntary Repatriation of Refugees* is of particular relevance as it sets out the requirements regarded as necessary to ensure a sustainable return under the legal safety requirement, including amnesty laws or declarations, effective nationality, registration and documentation, family unity, housing, land and property rights, rebuilding and supporting basic administrative and judicial infrastructure and rule of law.

⁴ Amnesty International interview with M.S., Romani refugee in Macedonia, November 2006.

⁵ S/2007/134, Report of the Secretary-General on the United Nations Interim Mission in Kosovo, 9 March 2007.

⁶ Amnesty International uses “Pristina” and “Kosovo” throughout this report; all other place names are given in Albanian, then in Serbian.

⁷ S/2007/134, Report of the Secretary-General on the United Nations Interim Mission in Kosovo, paras. 43-47.

Further, in January 2007, the non-governmental organization (NGO) Civil Rights Project – Kosovo (CRP-K) reported: “Despite an increase of security, the access to services and freedom of movement is not on a satisfactory level.”⁸

Roland Kather, Commander of the NATO-led Kosovo Force (KFOR), stated in November 2006 in the newspaper of German Bundeswehr (army): “The situation in Kosovo is calm but not stable and it is unpredictable”. Subsequently on 3 April 2007 the German newspaper *Sueddeutsche Zeitung* reported that the German army had sent some 550 additional soldiers of the Operational Reserve Forces to Kosovo. The German Minister of Defence reportedly stated “We fear that the situation during the status settlement process will become more dangerous in Kosovo”.⁹

In addition, the implementation of the Status Settlement may cause further displacement. UNHCR in Serbia was reportedly in 2006 already making contingency plans for the displacement of up to 50,000 Serbs into southern Serbia. In Serbian communities many dissatisfied by the provisions of the Status Settlement have already placed their houses on the market. Elsewhere Serbs have reportedly been exhuming the bodies of their loved ones for reburial in Serbia.¹⁰

Further, the creation of new Serbian municipalities, as proposed in the Status Settlement may – in areas with a population of mixed ethnicity – cause the displacement of Kosovo Albanians who consider themselves at risk in the new municipalities.

While uncertainty remains over the future status of Kosovo, the security situation in Kosovo remains precarious. While the motives behind recently reported attacks on lives and property remain to be determined in criminal investigations, Amnesty International is concerned that members of minority communities would be at risk of serious human rights abuses at the hands of non-state actors if members of the majority community were again to resort to violence in the heightened tension around the outcome of proposals around final status of Kosovo.

Amnesty International concludes that many members of minority communities continue to remain in need of international protection. The organization wishes to ensure that governments refrain from the forcible return of members of minority communities. These include Serbs, Roma, and Albanians originating from areas where they are a minority. The

⁸ CRP-K Monthly Report, January 2007.

⁹ *Aktuell – Zeitschrift der Bundeswehr*, 23 November 2006, www.bundesregierung.de.

¹⁰ Reuters, “Serbs dig up their dead in Kosovo”, 29 March 2007; Agence France Presse, “Fearing the future, Serbs take their dead out of Kosovo”, 26 March 2007.

organization also has concerns relating to the forcible return of Ashkali (Ashkalia) and Egyptians (see below).

3. Provisions of the Status Settlement

The Status Settlement, 26 March 2007

Article 4: Rights of Refugees¹¹ and Internally Displaced Persons

4.1 All refugees and internally displaced persons from Kosovo shall have the right to return and reclaim their property and personal possessions in accordance with domestic and international law. Each individual shall have the right to make a free and informed decision on his/her place of return.

4.2 Kosovo shall take all measures necessary to facilitate and to create an atmosphere conducive to the safe and dignified return of refugees and displaced persons, based upon their free and informed decisions, including efforts to promote and protect their freedom of movement and freedom from intimidation.

4.3 Kosovo shall cooperate fully with the United Nations High Commissioner for Refugees, who will assist the competent authorities in extending protection and assistance to returnees, and who will, *inter alia*, undertake periodic assessments and issue public reports on the conditions of return and the situation of the internally displaced within Kosovo, and shall also extend the cooperation to other organizations involved in the return process.

3.1 “The right to return and ... the right to reclaim their property” (Article 4.1)

The return of internally displaced persons remains a critical element in the implementation of resolution 1244 (1999). The number of sustainable returns continues to be very low. Although structures for the return of internally displaced persons are in place and despite the role played by international organizations, complicated return procedures, the lack of economic prospects, difficulties associated with freedom of movement and security-related concerns were mentioned as defining reasons why returns remained limited. Opposing points

¹¹ In response to an inquiry from Amnesty International on the meaning of the term “refugee” as set out in Article 4, UNOSK informed the organization that they had “drafted the provision with the idea of the term “refugees” being interpreted liberally and in a way consistent with its current usage/application in Kosovo today.”, E-mail to Amnesty International from UNOSK, 10 May 2007. Amnesty International therefore interprets the term “refugee” to apply to all persons seeking international protection, including recognized refugees and other persons currently under, or seeking, any form of international protection status (including [but not limited to] temporary protection status).

of view exist on whether a solution to the status of Kosovo would facilitate or hinder the returns process.¹²

The provisions of the Status Settlement reflect the right to return as set out in international standards including Article 12 (4) of the International Covenant on Civil and Political Rights (ICCPR) and Article 5 (d) ii of the Convention on the Elimination of Discrimination (CERD). They also reflect, by implication, the *non-refoulement* obligations of the Refugee Convention, and its provisions relating to a well-founded fear of persecution.¹³

According to UNHCR some 1,608 minority persons returned to Kosovo in 2006, of whom 593 were Serbs; this was the lowest figure recorded since 2000. In April 2006 the Pristina Office of the UNHCR estimated that some 12,400 people from minority communities had returned to Kosovo between 2000 and 2006. These reportedly included some 5,782 Serbs, 1,318 Roma, 3,133 Ashkali and Egyptians, 1,056 Bosniaks, 355 Gorani and 574 Albanians (returning to areas where they are in the minority). UNHCR estimate that these returnees comprise only 6 per cent of the displaced and refugee population.¹⁴

UNMIK and NGOs report that many returnees, or attempted returnees, have been unable to safeguard or realise the right to their property, or to receive compensation for damage to their property. This may be attributed in part to the massive backlog of outstanding and potential cases of illegal occupation of residential and non-residential property, including widespread illegal construction of property, and in part due to the absence of affordable legal assistance. As of February 2007 some 47,105 property related cases remained unresolved.¹⁵

¹² *Report of the Security Council mission on the Kosovo issue*, 4 May 2007, (S/2007/256), para. 58.

¹³ ICCPR Article 12 (4) 4. No one shall be arbitrarily deprived of the right to enter his own country; CERD Article 5, In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights: ... (d) Other civil rights, in particular: (ii) The right to leave any country, including one's own, and to return to one's country;

¹⁴ Specific Groups and Individuals: Mass Exoduses and Displaced Persons, *Report of the Representative of the Secretary-General on the Human Rights of Displaced Persons*, Walter Kälin, Addendum, Mission to Serbia and Montenegro, E/CN.4/2006/71/Add.5, 9 January 2006. UNHCR figures quoted at para.9.

¹⁵ S/2007/134, para.30; statistics disaggregated by ethnicity were not made available. As noted above the ExCom Conclusion on legal safety issues in Vol Repat para h: (h) *Recognizes* that, in principle, all returning refugees should have the right to have restored to them or be compensated for any housing, land or property of which they were deprived in an illegal, discriminatory or arbitrary manner before or during exile; *notes*, therefore, the potential need for fair and effective restitution mechanisms, which also take into account the situation of secondary occupants of refugees' property; and also *notes* that where property cannot be restored, returning refugees should be justly and adequately compensated by the country of origin.

Even where houses have been rebuilt, as in the village of Frashër/ Svinjare, from where the Serbian population was displaced in March 2004, few have returned citing fear for their security and lack of freedom of movement. Some 33 of the 137 households initially returned but, according to a study by the NGO the Humanitarian Law Centre (HLC), only three households remained by June 2006; reportedly others visit in order to work their land, returning to the northern municipalities at night.¹⁶

Elsewhere, as in Mitrovicë/a, where houses and apartments are being rebuilt in the Roma *mahala* for the return of the Roma, Ashkali and Egyptian families, a lack of funding and a flawed consultation process has resulted in the construction to date, of insufficient housing to accommodate the estimated pre-war population of 8,000 persons.¹⁷

“I wanted to go back; I had four houses, but now the Albanians are living in those houses and the municipality is now all Albanian”. [B., Romani refugee in Macedonia]

In January 2007, the NGO and UNHCR implementing partner Civil Rights Programme – Kosovo (CRP-K), which works with voluntary returnees, expressed concerns about the slowness of the civil registration process – the responsibility of municipal authorities – and in particular that some members of the Romani community, who often do not possess the necessary documents for civil registration, may remain stateless.¹⁸

In February 2007, the same organization reported, “The minorities, living in isolated areas still face restricted freedom of movement, and consequently lack the access to administrative institutions, including courts, municipal assemblies, health and social services, and enterprises from which they request to obtain documents. Therefore, the need for legal assistance remains and hence, the role of CRP-K in providing free legal assistance and advice to the most

¹⁶ For their initial forced displacement, see *Serbia and Montenegro (Kosovo/Kosova) The March Violence: KFOR and UNMIK’s failure to protect the rights of the minority communities*, AI Index: EUR 70/16/2004, July 2004; Humanitarian Law Centre, interview with returns officer, Mitrovica/ë municipality, in *Ethnic Communities in Kosovo in 2006*, HLC, February 2007.

¹⁷ Skender Gushani, Association for Protecting Roma Rights, E-mail to “Letter from representative of Roma camps in Kosovo” [originally sent to international actors in Kosovo], posted on 24 April 2007 on Romano_Liloro@googlegroups.com.

¹⁸ UNHCR ExCom Conclusion on legal safety issues in the context of voluntary repatriation of refugees (No. 101 (LV) -2004)... (k) *Notes* the importance of ensuring nationality; and *urges* countries of origin to ensure that there is no exclusion of returning refugees from nationality and that statelessness is thus avoided; and *recalls* in this context Conclusion No. 78 (XLVI) on the prevention and reduction of statelessness and the protection of stateless persons;

(l) *Notes* also the importance of providing under national law for the recognition of the civil status of returning refugees and changes thereto, including as a result of births, deaths, adoptions, marriage and divorce, as well as of documentation or registration proving that status, issued by the competent bodies in the country of asylum or elsewhere, taking into account the special situation of returning refugee women who may not have documentation proving their civil status or who may face difficulties securing recognition of documentation issued by the authorities of the country of asylum.

vulnerable groups of the society is of a crucial importance.” In particular, they noted, “The RAE [Roma, Ashkali and Egyptian] communities remain the most vulnerable and marginalized groups ... The lack of personal documents, such as birth certificates, identification cards or registered residence further contributes to the exclusion of RAE from the society. Failure to register a child at birth prevents enrolment in school and inclusion in the social welfare system. Lack of personal documents, influences their access to education, healthcare, social welfare, employment and participation in elections.”¹⁹

3.2 “An atmosphere conducive to the safe and dignified return of refugees and displaced persons”, (Article 4.2, Status Settlement).

*On our way to Mitrovica our buses are often stoned. Those attacks if anything have intensified of late. You watch as youths gather together and get ready to throw stones. Such things are unpleasant to see and go through, it's not easy at all. Though you know that the stones can't kill you, you don't feel good about being totally powerless while someone is trying to hit you. S.V., Serb returnee to Osojane/Osojan.*²⁰

Perpetrators of ethnically motivated attacks are only occasionally brought to justice. Most attacks involve Albanian youths stoning buses carrying Serb passengers by, as described above. In some cases, grenades or other explosive devices are thrown at buses or houses, and Orthodox churches are looted and vandalized.

On 26 August 2006, nine people were reportedly injured in a grenade attack on a café in north Mitrovicë/a. A 16-year-old ethnic Albanian was detained, although a witness to the attack reportedly identified a 40-year-old man as the perpetrator. Proceedings opened in November. In September 2006 four members of a Serb family who had returned to Klinë/Klina in 2005 were injured when an explosive device was thrown at their apartment. Other returnees have been subjected to ethnically motivated bombings, armed attacks, and physical and verbal attacks.

In February 2007, the Belgrade-based NGO Humanitarian Law Centre (HLC) published a report on the situation for ethnic communities in Kosovo. Based on interviews with some 262 individuals and representatives of municipal and government authorities, the HLC found that no major progress had been made in freedom of movement and integration for Serbs and Roma. Although there had been improvements for other minority communities living in Kosovo, the rights of all minorities continued to be violated on a “daily basis”.²¹

¹⁹ CRP-K Monthly Report, February 2007.

²⁰ Humanitarian Law Centre, *Ethnic Communities in Kosovo in 2006*, February 2007.

²¹ *Ibid.*

On 14 March 2007 KFOR reported, “The period was also marked by events and reports that did not augur well for inter-ethnic harmony. These include the vandalism of the Orthodox Church of St. John the Baptist in the centre of Pejë/Peć, which involved broken glasses and the writing of graffiti on the church walls. The breaking of a window of St. Nicholas church in Pristina and the vandalism at a Serbian graveyard in Obiliq/ć by juveniles, coupled with the initial position of the Municipality of Pejë/Peć to stop the construction of a gate and a wall around the Peć Patriarchate were also seen as negative signals for inter-ethnic coexistence.”²² At the end of the same month a mortar attack on the Orthodox monastery in Dečan/Dečani was widely condemned.²³

Although these continuing incidents appear to target predominantly the Serbian community, Romani and Ashkali NGOs also continue to emphasise concerns for their own security in the context of the international community’s failure to provide a safe and secure environment for return.²⁴

The funeral of an Ashkali male shot dead by unknown individuals outside his home took place on 9 May 2007, reportedly attended by Ashkali from across Kosovo. Community leaders expressed concerns that the Ashkali – “the only minority community that supports independence” – continued to suffer from insecurity, discrimination and unemployment. They reportedly requested that the Kosovo Police Service (KPS), KFOR and UNMIK protect their community against further violent attacks and warned that similar incidents could lead to a mass exodus of Ashkalis from Kosovo.²⁵

In addition to ongoing ethnically motivated attacks, impunity for past inter-ethnic violence - including war crimes, and in particular impunity for “disappearances” and abductions and continued impunity for perpetrators of the ethnic violence of March 2004, continues to provide a massive barrier to minority return.

In their Opinion on UNMIK’s implementation of the Framework Convention for the Protection of National Minorities (Framework Convention), the Council of Europe’s Advisory Committee on the Framework Convention noted that “the implementation of practically all of the principles of the framework convention is made extremely difficult by the fact that inter-ethnic violence has seriously eroded trust between communities”. They noted that the perceived impunity of perpetrators of violent crime against Serbs, Roma and

²² KFOR Weekly CIMIC Report # 1205, 14 March 2007, retrieved at <http://www.nato.int/kfor/cimic/reports/2007/r1215.pdf>.

²³ See “SRSG condemns concern at apparent attack on Decan/Dečani monastery”, UNMIK Press Release 1663, 31 March. A suspect had reportedly been identified, but not arrested, by May.

²⁴ See for example, *Izjava Bajrama Halitija Predsednika Centralnog Ofisa Roma I Èlana Svetskog Parlamenta Roma Zadužen Za Pitanja Roma Sa Kosova i Metohije Povodom Dolaska Delegacije Saveta Bezbednosti Ujedinjenih Nacija Na Kosmetu*, 27 April 2007.

²⁵ KFOR Weekly CIMIC Report # 1214, 16 May 2007. The killing is being investigated by the

others was a particularly serious problem and should be addressed as a high priority.²⁶ Amnesty International notes that the same perceptions of impunity also exist within the Albanian community; in Kaçanik/Kacanik and Shtime/Stimlje “go and see visits” by returning Serbs were prevented by the authorities who suspected some of the potential returnees of war crimes.

Amnesty International has repeatedly noted the impunity enjoyed by the majority of persons suspected of violations of international humanitarian law.²⁷ In July 2006 the UN Human Rights Committee (HRC) in their consideration of UNMIK’s report to the HRC concluded that: “UNMIK, in cooperation with the PISG, should investigate all outstanding cases of war crimes, crimes against humanity and ethnically motivated crimes committed before and after 1999, including where the perpetrators may have been Kosovo Albanians, ensure that the perpetrators of such crimes are brought to justice and that victims are adequately compensated. It should provide effective witness protection programmes, including by means of witness relocation, and extend full cooperation to ICTY [International Criminal Tribunal for the former Yugoslavia] prosecutors.”²⁸

As far as Amnesty International is aware, no such measures have been taken. Furthermore, even where suspects have been arrested and charged, in the absence of a comprehensive witness protection programme, serious charges may not be prosecuted. For example, in November 2006, KFOR Civil-Military Co-operation (CIMIC) reported, “In Viti/Vitina, the Kosovo Serb victim of the attempted murder in Letnicë/a village on 9 November informed CA [Civilian Affairs] that he had decided to leave Kosovo with his family for good as a result of persistent threats of negative consequences if he did not withdraw his charges against a Kosovo Albanian suspect for the crime.”²⁹

In the absence of concerted measures to address impunity for war crimes and other serious crimes against members of minority communities, Amnesty International considers that the authorities have failed to create an atmosphere conducive to their return in safety and in dignity.

²⁶ Advisory Committee On The Framework Convention For The Protection Of National Minorities, *Opinion*, p. 5

²⁷ Less than 50 prosecutions for war crimes have taken place since 1999, the majority of them against Serbs, Human Rights Watch, *Not on the Agenda: The Continuing Failure to Address Accountability in Kosovo Post-March 2004*, Volume 18, No. 4 (D), May 2006.

²⁸ CCPR/C/UNK/CO1, Concluding observations of the Human Rights Committee, Advance non edited version, Kosovo (Republic of Serbia).

²⁹ KFOR Weekly CIMIC Report # 1190, 29 November 2006. Amnesty International also notes the suspected murder in Montenegro in February of Kujtim Berisha, displaced from Kosovo, reportedly believed to be a witness in the trial of former KLA leader and former prime minister Ramush Haradinaj at the International Criminal Tribunal for the former Yugoslavia.

3.3 “..... based on their free and informed decisions” (Article 4. 2, Status Settlement).

In March 2007 the UN Secretary General reported that some 3,598 persons had been forcibly returned to Kosovo in 2006 and warned that that some 90,000 persons remained “subject to deportation to Kosovo”.³⁰ Amnesty International has sought clarification on the status of these persons from UNMIK Office for Returns, Communities and Minorities (ORCM)³¹, but no further details are available.

Both international law and the Status Settlement call for the voluntary repatriation of refugees and IDPs. UNMIK state that their “policy on repatriation is based on international human rights standards and the recommendations of UNHCR”, and that “It has been the consistent policy of UNMIK not to accept the repatriation of persons who remain in need of international protection according to UNHCR”.³²

However, several EU governments have already adopted a policy of forcible return, including in some instances, of persons who have to date received some form of temporary protection. Council of Europe member states including Macedonia and Montenegro are making preparations to do the same, including to return Romani persons who UNHCR consider to remain in need of international protection.

Voluntary returnees are met at Pristina airport by International Office for Migration (IOM) staff and members of an “Airport Monitoring Team”, who reportedly compile statistics on returnees. Forcibly returned persons are not provided with any assistance by UNHCR (see below); and it appears that UNMIK ORCM and the IOM have discontinued their support.³³

Previously in 2006, following notification by returning states, returnees might have been met by a local NGO, and provided with transportation from the airport by the IOM; this service has since been discontinued, as – it appears – has the option of three nights’ accommodation in a hotel at Vushtrri/Vučitrn (also used as a detention centre for irregular migrants).

Amnesty International is concerned that without assistance those who are forcibly returned to Kosovo may well be forced into internal displacement or again seek to leave Kosovo. The organization is also concerned that the uncoordinated and forcible return of both refugees

³⁰ S/2007/134, Report of the Secretary-General on the United Nations Interim Mission in Kosovo, 9 March 2007.

³¹ Previously, UNMIK Office for Returns and Communities (ORC).

³² E-mail to Amnesty International from UNMIK ORCM.

³³ Karsten Luethke, *Perspektiven bei einer Rückkehr in das Kosovo, insbesondere für Angehörige ethnischer Minderheiten* (Perspectives in case of return to Kosovo, especially for members of ethnic minority communities), February 2007. Although Karsten Luethke is a former staff member of UNMIK ORCM in charge of returns from Germany, the article does not reflect the position of UNMIK or any other organization.

from majority and minority ethnic groups will result in further destabilization of an already tense situation.

3.4 “UNHCR, [who] will assist the competent authorities in extending protection and assistance to returnees... and undertake periodic assessments and issue public reports on the conditions of return”, (Article 4.3, Status Settlement).

To date, UNHCR has not updated its June 2006 position on the continued international protection needs of individuals from Kosovo, and according to UNHCR officials in Pristina will not do so until after the UNSC Resolution on the status of Kosovo has been considered.³⁴ Amnesty International is concerned that in the absence of a clear and updated assessment of the conditions for return, governments will continue to plan to forcibly return persons to Kosovo irrespective of the conditions on the ground. UNHCR’s position remains as set out in June 2006:

Groups at Risk: Kosovo Serbs, Roma and Albanians in a minority situation

24. Given the present fragile security situation in Kosovo and serious ongoing limitations to the fundamental human rights of Kosovo Serbs, Roma and Albanians in a minority situation, UNHCR maintains its position that persons in these groups continue to be at risk of persecution, and that those minorities having sought asylum abroad should be considered as falling under the provisions of Article 1 A (2) of the 1951 Convention and the 1967 Protocol relating to the Status of Refugees. Where a State feels unable to grant refugee status under the law, but the individual is not excluded from international protection, a complementary form of protection should be granted. The return of individuals belonging to these groups should only take place on a strictly voluntary basis. Individuals who express a wish to return voluntarily should be able to do so freely and with the full knowledge of the current situation in Kosovo.

25. On the other hand, UNHCR, in consideration of positive security developments which have taken place in the past year in Kosovo, no longer considers that the Ashkaelia and Egyptian minorities in general [AI emphasis], are in need of international protection. Therefore, asylum claims originating from among these ethnic communities should be assessed individually based on Art. 1 A (2) of the 1951 Convention and the 1967 protocol. Nonetheless, under the current political and socioeconomic circumstances, the return of persons from these two groups, found not in need of international protection should be approached in a phased manner, due to the limited absorption capacity of Kosovo, in order

³⁴ Amnesty International telephone conversation with Head of Protection, UNHCR Pristina.

not to bring about politically and socially destabilizing factors at a time when negotiations on the future status of Kosovo are under way.

While recognising the continued protection needs of Serb, Roma and Albanians (where they are in a minority), Amnesty International is concerned at UNHCR's current position on Ashkali and Egyptians. Although until recently there appeared to be no immediate threats to the safety and security of the Ashkali and Egyptian population within Kosovo, the organization is concerned that any deterioration in the security situation may impact on this community.³⁵

These concerns are based on the events of March 2004 when the entire Ashkali population of some 260 people was removed from Vučitrn/Vushtrri by the KPS and subsequently taken to a French KFOR base after their houses were attacked and burned by Kosovo Albanians; both Amnesty International and Human Rights Watch at the time noted credible allegations of complicity in the attacks by the KPS.³⁶ Following interventions by the Ombudsperson, Amnesty International and other bodies, the Ashkali were provided with travel documents which enabled them to leave Kosovo and seek protection (including both temporary protection and refugee status) in Germany, Finland and other EU countries and internal displacement in the Sandžak area of Serbia and Montenegro. The numbers of those who have returned voluntarily is reportedly low.

Although the UNHCR June 2006 position appears to rescind UNCHR's previous comprehensive presumption against the forcible return of Ashkali and Egyptians set out in 2005, Amnesty International notes that UNHCR considers asylum claims from persons within these groups should be individually assessed. Further, UNMIK has stated that, "UNHCR has recommended that the repatriation and return of Ashkali and Egyptians be considered in a phased manner. Accordingly, UNMIK will continue individual screenings of these groups. In assessing the individual possibilities of the potential Ashkali/Egyptian returnees, UNMIK will look at the housing situation as well. Individual screenings are conducted pursuant to agreements reached with governments."³⁷ Such screenings have, in the past, prevented the forcible return of individual Ashkali persons to Kosovo, where UNMIK ORCM has considered there is no possibility of sustainable return.³⁸

³⁵ See page 9. Romani NGOs have previously stated that the lack of reported incidents of interethnic violence were due in part to low levels of reporting due to a lack of trust in the authorities. See also, Weekly CIMIC report, 02-09 May 2007, retrieved at <http://www.nato.int/kfor/cimic/reports/2007/r1213b.pdf>

³⁶ Up to 60 KPS officers were subject to investigations following the incidents of March 2004, but none were prosecuted, see for example, *Amnesty International, Serbia and Montenegro (Kosovo/Kosova) The March Violence: KFOR and UNMIK's failure to protect the rights of the minority communities*, AI Index EUR 70/16/2004, July 2004; Human Rights Watch, *Not on the Agenda*, op.cit.

³⁷ E-mail to Amnesty International from UNMIK ORCM, 26 March 2007.

³⁸ Amnesty International interview with Protection Officer, UNMIK ORCM, April 2006.

Amnesty International is concerned that some states – including Germany – may have already forcibly returned Ashkali and Egyptian persons to Kosovo.³⁹ In the absence of any further guidelines from UNHCR, Amnesty International considers that until the status proceedings are concluded, and the provisions of Article 4 of the Status Agreement implemented, governments should continue to respect UNHCR's 2006 position and UNMIK's current position, to ensure that no Ashkali and Egyptian persons are forcibly returned to Kosovo, without conducting an individual assessment to ensure that persons in need are provided with international protection. Where this is determined not to be the case, they should be enabled to make a safe and sustainable voluntary return based on an individual assessment, including an individual screening as set out by UNMIK ORCM.⁴⁰

4. Sustainable return to Kosovo

In his most recent report to the Security Council the UNSG presented a negative prospect for returns. In addition to a failing economy, uncertainty about the future status and security, he noted a funding shortfall of €15.4 million affecting some 18 programmes of planned returns.

“Do the municipal authorities have the resources for return? In Uroševac/Ferizaj more than sixty two houses were burned down... Where can one find so much money? ... ought the Serbs to live another seven years in the hope that some day they will be able to return?”⁴¹

To date, competencies for returns have not yet been transferred to the Kosovo authorities. In November 2006, Slaviša Petković the PISG Minister for Returns and Communities resigned, following allegations of improper management of the Ministries budget. An acting minister, Branislav Grbić was appointed, and has since begun to restructure the ministry in order to take over competencies for the returns process. Staff have recently been appointed to the Directorate of Border Management, Asylum and Migration in the Ministry of Interior to take responsibility for repatriation. Concerns also remain about the failure of many municipal authorities to move beyond political support to practical implementation of the Municipal Return Strategies.

According to UNMIK, as of March 2007, “The issue of social assistance to the vulnerable sections of returnees is being accorded utmost priority by UNMIK as well as the Provisional Institutions of Self Government, who for some months now have been engaged

³⁹ Information from Amnesty International.

⁴⁰ “UNHCR has recommended that the repatriation and return of Ashkali and Egyptians be considered in a phased manner. Accordingly, UNMIK will continue individual screenings of these groups. In assessing the individual possibilities of the potential Ashkali/Egyptian returnees, UNMIK will look at the housing situation as well. Individual screenings are conducted pursuant to agreements reached with governments,” UNMIK ORCM e-mail to Amnesty International, 26 March 2007.

⁴¹ Z.C., Serb IDP from Ferizaj/Uroševac, quoted in HLC, *Ethnic Communities in Kosovo*.

in an effort to organize adequate responses to the social needs of the deportees in the framework of a comprehensive Migration Policy, which will also address issues of Repatriation.”

UNMIK is currently developing a Reintegration Strategy in close cooperation with the Ministry of Local Government and Administration, the Ministry of Internal Affairs, the Ministry for Labour and Social Welfare, Ministry of Education, Ministry of Health, Ministry of Environment and Spatial Planning, Municipalities, representatives of civil society and international actors, including UNHCR and the International Organisation for Migration. The Strategy will seek to ensure that persons forcibly repatriated to Kosovo should have adequate access to information, civil documentation, assistance and social services, in order to be able to reintegrate in their places of origin and to rebuild their lives.”⁴²

Amnesty International is concerned that unless EU and Council of Europe member states agree a programme of phased and voluntary returns, possibly in the context of the donor conference planned for later in 2007, the Kosovo authorities will be completely overwhelmed by the forced return (and reintegration) of the 90,000 persons identified by the UN SG.

5. EU and Council of Europe member states – policies and practice

5.1 EU member states

In a recent resolution on the future of Kosovo and the role of the EU, the European Parliament, “[Stressed] that additional efforts are needed to support the further return of refugees and displaced persons throughout Kosovo; underlines that the key to sustainable return is work opportunities and that sustainable economic development must now become a priority; underlines that non-Serb and non-Albanian refugees, such as Roma and Ashkali, need special attention, including the Roma internall (sic) displaced persons living in the camps in Kosovska Mitrovica”.⁴³

Since 1999, on the basis of a Memorandum of Understanding (MoU) signed with UNMIK, the German government has forcibly returned ethnic Albanians; under another subsequent MoU, signed in 2004, Germany has forcibly returned both ethnic Albanians and members of minority communities and although the current MoU (updated by Agreed Notes) precludes

⁴² E-mail to Amnesty International from UNMIK ORCM, 26 March 2007.

⁴³ REPORT on the future of Kosovo and the role of the EU, (2006/2267(INI)) Committee on Foreign Affairs, 15 March 2007. See footnote 17 for the failure of the authorities to provide adequate housing for the majority of persons still living in the camps.

the return of Serbs and Roma, exceptions have been made. In 2005 for example, UNMIK agreed to accept the return of a limited number of Romani persons serving prison sentences of less than two years. They also returned persons suffering from Post Traumatic Stress Disorder (PTSD, see below, p. 23-24) in opposition to UNHCR's pre-2006 position which held that such persons should not forcibly be returned. Since June 2006, the revision of UNHCR's position (which fails to define persons suffering from PTSD as in need of international protection) the German authorities have continued to forcibly return traumatised persons unopposed, despite the absence of care for them in Kosovo.

According to information received by Amnesty International the Ministers of the Interior within the German Länder (federal states) regularly announce their intentions to increase the numbers of returnees – including Serbs and Roma - as soon as possible.⁴⁴ As far as Amnesty International is aware, they have not taken the potential destabilization of Kosovo during the status settlement process into account.

In Denmark, before persons whose applications for asylum have been rejected on the grounds that they were no longer in need of international protection may be returned to Kosovo, their cases are reviewed by UNMIK ORCM. Although no cases involving Serbs or Roma were presented to UNMIK between 28 March and 4 October 2006, UNMIK rejected the authorities' application for return in four cases, concerning eight persons. As far as Amnesty International is aware, these persons had not been provided with any temporary protection status.⁴⁵ However, Amnesty International also understands that persons with a mental illness have been deported since June 2006 following the change in UNHCR's position noted above. Only one Roma, convicted of a criminal offence, is known to have been deported to date.

Amnesty International report that according to UNHCR Sweden, some 228 persons were returned to "Serbia", although no breakdown by ethnicity or figures for Kosovo were available.

In Belgium, a new MOU was negotiated in February 2007 between the Immigration Department of Belgium and UNMIK, be based on UNHCR's 2006 position on forced return of Serb, Roma and Albanian minorities. Belgium has agreed, like Germany, to seek in each individual case the consent of UNMIK ORCM, who retain the power to refuse entry. However, if it can be ascertained that there is a safe internal flight alternative for an individual based on family or social networks elsewhere in "Serbia", they may be accepted. The Belgian authorities will also request the return of persons who have been sentenced to more than two years' imprisonment.

⁴⁴ According to UNHCR Germany, as of January 2007, of 5,000 persons from Kosovo with "tolerated status" (Duldung) in Germany there were 24,000 Roma, 8,200 Ashkali, 1,800 Egyptians and 700 Serbs.

⁴⁵ Rigspolitiet, Udlændingeafdeling, Danmark, 6 October 2006; UNMIK accepted returns in some 90 cases involving 154 persons; some 63 persons were repatriated (48 forcibly), while the remainder disappeared before they could be expelled.

However, some Roma from Kosovo have been granted a residence permit through regularisation or subsidiary protection status, introduced into law in October 2006, which continued the presumption against their removal.⁴⁶

Luxembourg too has committed not to forcibly return members of minority communities, including Serbs, Gorani, Bosniaks, Roma and Ashkali. However, they only enjoy tolerated status on the basis that return is not possible “at this moment”, and it is anticipated that temporary humanitarian protection status will be withdrawn “when return become possible”, reportedly on a case by case basis. Although persons with a serious illness may apply for humanitarian status, on the grounds that the medical treatment required is not available in Kosovo is not possible, in cases of PTSD, this has rarely been granted.

Although repatriations continue, the government intends to regularise some rejected asylum seekers on an individual basis; these persons – for whom the criteria have not been made public – will at first receive a provisional permit which will be renewed only if the applicant finds permanent employment, and is not dependent on public finances for housing.

5.2 Council of Europe member states

In January 2007 the Parliamentary Assembly of the Council of Europe (PACE) called on UNMIK and the PISG to “create conditions for the voluntary return of refugees and displaced persons in safety and dignity and ensuring their sustainable reintegration, through in particular guarantees for their security and the protection of their civil, political, social and economic rights.”⁴⁷

They further resolved to ask the Committee of Ministers to ensure that the Council of Europe, in cooperation with other international actors, including the EU, plays a key role in putting in place measures to ensure the protection of the human rights of all persons in Kosovo, including to: “expand the role of the Council of Europe in Kosovo, in particular as regards ... “the voluntary return in safety and dignity of refugees and displaced persons and their sustainable reintegration”.⁴⁸ However, the PACE failed to reiterate their concerns on forcible return expressed in June 2005.⁴⁹

⁴⁶ Although Austria is reportedly not actively planning a programme of forcible returns in the near future, Amnesty International notes that new applications for asylum from “Serbia” are being decided relatively quickly and most often result in a negative decision. Some 2,154 applications were made in Austria for asylum by Serbian citizens of whom Amnesty International calculate some 1,200 to 1,600 are from Kosovo.

⁴⁷ PACE, *Current situation in Kosovo*, Resolution 1533 (2007), Article 17.2

⁴⁸ PACE, *Current situation in Kosovo*, Recommendation 1780 (2007), Article 3.1 and 3.1.2.

⁴⁹ “In consideration of the fragile socio-economic environment of Kosovo, the volatility of the security situation and the risk of tension flare-ups as status talks approach, the Assembly is concerned at the intention manifested by some CoE member states to increase the number of forced returns of failed

However, the PACE also resolved to, “cooperate with the Office of the United Nations High Commissioner for Refugees (UNHCR), and where applicable with International Organization for Migration (IOM), to find durable solutions for refugees, displaced and stateless persons”, suggesting that viable alternatives outside Kosovo might be considered by member states.

However, Switzerland (a member of Council of Europe) has returned both Serbs and Roma, following individual determinations by the authorities who consider the mono-ethnic enclaves to be safe, even if the right to freedom of movement is not guaranteed.

5.2.1 Serbia

In June 2006, UNHCR estimated that some 207,000 displaced persons from Kosovo remained in Serbia, of whom 6,700 remained in collective centres.

Conditions for many IDPs in Serbia are extremely difficult. Even though some former officials and employees of state owned enterprises continued to be paid their salaries, others – unless they deregister from their Kosovo address and apply for permanent residence in Serbia, are unable to access health insurance, social welfare and education. According to a March 2007 report by the Organization for Security and Co-operation in Europe (OSCE) Mission to Serbia, less than 7 per cent own their own housing,⁵⁰ and many remain in sub-standard temporary accommodation.

Around 40,000 to 45,000 of the IDPs in Serbia are estimated to be Roma, half of whom were not registered due to lack of documents. Local municipalities are often reluctant to accommodate them, hoping that, if they failed to provide shelter, the Roma would leave. Although some Roma remain in official collective centres, these are gradually being closed, and it seems likely that the majority of Roma IDPs from Kosovo living in Serbia will continue to live in unlawful settlements near major cities or towns rather than be provided with shelter and access to services as set out in the Principle 18 of the UN Guiding Principles on Internal Displacement.⁵¹

asylum seekers and other people for Kosovo in the months to come...” PACE Resolution 1453 (2005) *Current Situation in Kosovo*, (12 June 2005) also called on CoE member states to respect UNHCR’s position on the continued international protection needs of people from Kosovo; and to address the humanitarian concerns relating to potential returnees on a case-by-case basis, including their access to housing, education and health. For the resolution in full, see http://assembly.coe.int/Documents/Adopted_Text/ta05/ERES1453.htm

⁵⁰ OSCE, *A Study of Access to Pertaining Rights and (Re)integration of Displaced Persons in Croatia, Bosnia and Herzegovina and Serbia in 2006*, March 2007, p. 19-20.

⁵¹ Principle 18: 1. All internally displaced persons have the right to an adequate standard of living.
2. At the minimum, regardless of the circumstances, and without discrimination, competent authorities shall provide internally displaced persons with and ensure safe access to: (a) Essential food and potable

Amnesty International considers it unlikely, given the Serbian authorities rejection of the UNOSEK proposals, that they will forcibly return any persons to Kosovo. However, it should be reiterated that UNHCR's 2006 position statement does not consider that there is an internal protection alternative in Serbia. Amnesty International is opposed to the relocation of minorities to Serbia, including because of the discrimination faced by both Serb and Roma IDPs from Kosovo already in Serbia, who are unable to register, or gain access to documents to enable them to access to the same rights - including the right to adequate housing, education and to health - as refugees from Bosnia and Herzegovina or Croatia.⁵²

5.2.2 Montenegro⁵³

UNHCR in Montenegro reported in December 2006 that some 1,180 persons had returned to Kosovo since 2002, as part of an organized return.

Some 16,196 mainly Roma and Serbs displaced from Kosovo in 1999 remained in Montenegro at the end of 2006; many of the displaced Roma were forced to flee Kosovo after members of their family had been abducted by members of the Kosovo Liberation Army. UNHCR report that a further 2,000 people were still awaiting decisions on "displaced persons status", following the failure by the Bureau for Care of Refugees since 2003 to process their claims. A large number of other persons, predominantly Roma and including the children of displaced person born in Montenegro, remained without any documentation were at risk of statelessness.

Persons displaced from Kosovo have, to date, been unable to gain access to civil, political, economic or social rights – as civil registration had been denied to them, and UNHCR – rather than the Montenegrin authorities – has continued to provide them with accommodation and access to health care and social benefits.

Although in June 2006 Montenegro had been recognised as an independent state, the authorities continued to regard these persons as "displaced" rather than as persons seeking

water; (b) Basic shelter and housing; (c) Appropriate clothing; and (d) Essential medical services and sanitation.

⁵² See for example UNHCR, *Analysis of the Situation of Internally Displaced Persons from Kosovo: Law and Practice*, March 2007.

⁵³ Conditions for Montenegro's accession to the Council of Europe on 11 May 2007, included, "to issue personal documents to refugees and displaced persons and repeal all discriminatory provisions in the fields of labour, education, access to property rights, legal redress and access to citizenship and to health services", Opinion No. 261 (2007), paragraph 19.4.5; "to enact and implement a law on citizenship to prevent statelessness in accordance with the relevant Council of Europe instruments and addressing in particular the situation of displaced persons from Kosovo", Opinion No. 261 (2007), paragraph 19.4.6.

asylum. An Asylum Law was supposed to have been implemented as of January 2006, but as of early 2007 by-laws needed to implement the law had not yet been passed.

The situation is further complicated in that under a readmission agreement signed with other countries in the region, the EU and Canada, Montenegro is obliged to accept the return of persons who had previously registered as displaced or who had transited through Montenegro. However, as persons from Kosovo have not been granted access to a process whereby they may be registered as IDPs since 2003, they are obliged to register as aliens, in violation of Montenegro's obligation under international refugee law to allow all persons seeking asylum access to procedures to determine their status.⁵⁴

Under an MoU with the Montenegrin Ministry of the Interior, UNHCR is to conduct determinations of refugee status for proposal to the Ministry, while the government's Bureau of Care for Refugees would take over responsibility for the housing and social welfare of refugees.

Amnesty International is concerned that this MoU covers only the period up to 25 July 2007, especially as in February 2007 it was reported that the Kosovo authorities had opened discussions with the Ministry of Interior on the return of refugees.

5.2.3 Macedonia

*It would be better to have a normal life; we have been through traumas and stress; some have lost a family member. We have seen strange things; we have received no help, no one has ever asked us about stress and trauma we have gone through.*⁵⁵

The majority of an estimated 2,000 predominantly Roma and Ashkali from Kosovo who remain in Macedonia have been denied refugee status under the 2003 Law of Asylum and Temporary Protection, which ended their former temporary protection status. Only 28 persons have been granted refugee status by the Macedonian authorities under the Law on Asylum.

Amnesty International believes that many Kosovo Roma have been denied refugee status on the basis of decisions that often failed to provide them with an individual determination – particularly in the case of women. In some cases, where appeals had been lodged, decisions made by a commission within the Ministry of the Interior or by the Supreme Court were

⁵⁴ E-mail from UNHCR, Montenegro official to Amnesty International, February 2007.

⁵⁵ Amnesty International interview with B.B., Romani woman refugee from Kosovo, November 2006.

flawed in that they did not refer to the appellant by their correct name or circumstances of their case.⁵⁶

Many of those who have been given temporary protection, extended on an annual basis, fear deportation to Kosovo. The majority have been given temporary status until May 2007, although in November 2006, 25 persons who had been refused any status were awaiting deportation. At the same time, the deportation of one family was prevented after an intervention by UNHCR.

In February, the deputy prime minister of Kosovo announced that government representatives would meet with the Macedonian authorities to discuss arrangement for their return. Amnesty International in April 2007 had expressed concerns in a letter to the Macedonian authorities in relation to cases of persons under temporary protection status who had not been provided with an individual determination of their status that they should not be returned to Kosovo.⁵⁷

*We want to go anywhere where we can live a free life, a life without fear, a decent life for our children... Here it is difficult; when we step from our houses we see garbage... I just wish that I could have shoes that I could shine.*⁵⁸

The refugees are currently denied basic rights including to housing, education and health care by the government, all of which are provided by UNHCR in the absence of Macedonia's willingness to abide by its obligations. However, in interviews with refugees conducted in November 2006, Amnesty International found that although some were willing to voluntarily return to Kosovo, they could not consider such a prospect until their safety and security was guaranteed. An UNHCR official in Macedonia also expressed grave concerns about the prospect of forcible returns, fearing a "vicious reaction" to the returnees and their continued displacement in Kosovo.⁵⁹

5.2.4 Bosnia and Herzegovina

Concerns have been expressed by representatives of Romani refugees from Kosovo who remain in Bosnia and Herzegovina (BiH) about the government's plans to lift their temporary

⁵⁶ Amnesty International interviews with UNHCR Macedonia and lawyers acting in asylum applications, November 2006.

⁵⁷ Amnesty International TG 65/2007.001, April 2007; in May the Committee on the Elimination of Racial Discrimination, in their Concluding observation on the report submitted by Macedonia, recommended "that the Law on Asylum and Temporary Protection be reviewed so as to guarantee a fair and efficient application of procedures for the determination of refugee status based on the merits of the individuals claims submitted", CERD/C/MKD/CO/7, para 11.

⁵⁸ Amnesty International interview with M.A., Romani refugee in Macedonia., November 2006.

⁵⁹ Amnesty International interview with UNHCR Macedonia official, November 2006.

admission (protection) status when the current extension ends on 30 June 2007.⁶⁰ According to UNHCR to some 3,057 persons (921 families) from Kosovo remain in BiH under temporary admission status, of whom 61 per cent are Bosniaks, 27 per cent (825) Roma, 7 per cent Albanians and 5 per cent of other or unknown ethnicity.⁶¹ The majority of Roma continue to live in collective centres. Roma living at the Salakovac Reception Centre were reportedly informed on 4 April 2007 in a meeting with representatives of the BiH Ministry of Human Rights and Refugees, the BiH Ministry of Security and UNHCR that their temporary admission status would not be extended beyond the end of June. They were reportedly informed that they would be able to apply for refugee status under the 2003 BiH Law on the Movement and Stay of Aliens and Asylum but, should their applications fail, they would be considered to be unlawfully in the country.⁶² This position was subsequently set out in a letter sent to the Brussels' based European Roma and Travellers Forum by the BiH Minister for Human Rights and Refugees. However, the letter also asserted that the changed security situation in Kosovo no longer precluded the return of Roma, and incorrectly cited UNMIK as supporting the return of Roma to Kosovo (for UNMIK's position, see p. 11, above).⁶³

The organization is aware that other refugees, mainly Bosniaks from Kosovo, may have been able to regularise their status due to the length of time they have been in BiH. However, the authorities reportedly stated to those living at the Salakovac Reception Centre that they would not take into account in applications for naturalization the time that they had lived in collective centres, although reportedly UNHCR are believed to have advocated that such time should be taken into consideration by the authorities. The Roma fear that they will neither be granted citizenship nor will they be granted asylum.

6. Persons in continued need of protection

Amnesty International supports UNCHR's position relating to groups of persons from Kosovo in continued need of international protection, but also continues to be concerned about the protection needs of members of the Ashkali and Egyptian communities.

Amnesty International advises EU and Council of Europe states that the repatriation of the following persons – as set out in the June 2006 UNHCR Position on the Continued International Protection Needs of Individuals from Kosovo – will not be accepted by UNMIK:

- Kosovo Serbs or Roma;
- Kosovo Albanians originating from areas where they constitute a minority, particularly in the northern municipalities of Kosovo, including Mitrovica (North);

⁶⁰ Letter from RC Salakovac Beneficiaries to the BiH authorities, 16 April 2007.

⁶¹ Emails from UNHCR Sarajevo to Amnesty International, May 2007.

⁶² European Roma and Travellers Forum, *Successor States of the former Yugoslavia must assume Responsibility over Refugees*, 10 May 2007.

⁶³ Letter from Safet Halilović, BiH Minister for Human Rights and Refugees, dated 29 May 2007, in response to a letter sent by the European Roma and Travellers Forum.

- Persons in ethnically mixed-marriages and persons of mixed ethnicity;
- Persons perceived to have been associated with the Serbian authorities after 1990;
- Victims of trafficking;
- Unaccompanied elderly persons who have no relatives or any other form of societal support in Kosovo;⁶⁴
- Separated children without relatives or caregivers in Kosovo, and for whom it is found not to be in their best interest to return to Kosovo.

In addition, Amnesty International is also concerned about the return of:

- Persons who have suffered from serious human rights violations or abuses, including women who have suffered rape and other forms of sexual violence; including persons suffering from PTSD (see below) and witnesses to war crimes trials.⁶⁵

6.1 Persons who have suffered from serious human rights abuses, including persons suffering from PTSD

*I can't talk in front of the children, my daughter is 15 and when I watch TV and see women being raped, I cry and she asks me why I am crying and I tell her I am crying for my family and ... even my mother does not know about this, the family does not know.*⁶⁶

Amnesty International is concerned about the forcible return of persons who would be at risk of serious human rights abuses, including physical violence, from non-state actors and where the state would be unable or unwilling to provide effective and durable protection. The organization considers that particular attention should be paid to victims of sexual violence, including rape, as the organization has serious concerns about the problems women with such experiences may face upon return. For ethnic Albanian and Roma women whose trauma stems from being victims of sexual violence, including rape, there is a serious prospect that, in

⁶⁴ “UNMIK urges that the repatriation of the elderly, ill and separated children for whom relatives and caregivers have been identified should only take place after 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 person. It is also UNMIK’s policy, in accordance with the Convention on the Rights of the Child and the European Convention on Human Rights, to prevent separation of families, except when this is in the best interests of the child”, Email to Amnesty International from UNMIK ORCM, as above.

⁶⁵ In this context, the organization notes the possible murder in February of a Romani man living as a refugee in Montenegro who was due to testify as a prosecution witness at the trial of Ramush Haradinaj, former prime minister of Kosovo, indicted by the International Criminal Tribunal for the former Yugoslavia (Tribunal) crimes against humanity and violations of the laws and customs of war, namely the abductions murder detention and other ill-treatment of Serb, Roma and Egyptian civilians. Although the circumstances remain to be investigated, the reported death reportedly caused several other potential witnesses to withdraw from proceedings at the Tribunal.

⁶⁶ Amnesty International interview with B.C., Romani refugee in Macedonia, raped by members of the Kosovo Liberation Army.

addition to the possibility of being re-traumatized by the process of forcible return, they will face serious stigmatization within their own communities where strong notions of shame persist. In some cases they may also be at risk of other human rights abuses. Although some women's NGOs are able to provide assistance and support, Amnesty International believes that there is currently insufficient provision, both with regard to protecting them against social ostracism and attacks on their physical and mental integrity (for example with regard to their physical protection - as witnesses - from perpetrators who are thought to remain at large in certain areas of Kosovo).

For women from minority groups, the risk of re-traumatization or re-victimization is even higher. Furthermore, Amnesty International is aware that members of minority communities continue to face significant problems in accessing both health and social services, making it very difficult for women from minority communities to gain access to support.⁶⁷ In 2006, UNHCR rescinded their previous position on the return of persons diagnosed with PTSD (and other serious illnesses). However, a recent report by the UN Kosovo Team (UNKT) has highlighted the continuing absence of professional and appropriate services to persons with PTSD, in which UNKT report – in the context of the lack of capacity within the Kosovo health services to address to the high level of mental disorders within the current population - that “cases of PTSD and other forms of depression are hardly likely to receive treatment”. Although the Ministry of Health in conjunction with the Danish Refugee Council have drafted a National Plan for Psycho-Trauma, in the absence of donor funding, this remain to be implemented.⁶⁸

The organization is also concerned about the return of women who would be at risk of gender-based violence and discrimination, (including domestic violence, social ostracism after rape as described above or otherwise after transgression of discriminatory social norms), and where there is inadequate protection in terms of access to shelter (domestic violence shelter provision in Kosovo is limited and overcrowded and can provide no more than temporary accommodation), or a failure to implement legal provisions, including protection orders.⁶⁹

⁶⁷ The Ombudsperson in 2005 highlighted particular concerns about the forcible return of people receiving treatment for PTSD. In a note prepared by UNMIK and the PISG Ministry of Health in January 2005, and intended as advice for both governments and NGOs, the ORC state that due to a lack of mental health professionals, Kosovo's ability to treat post-traumatic stress disorder is compromised. The note suggested that persons in host countries receiving treatment for PTSD should conclude that treatment before returning to Kosovo, and assessed that forcible return would lead to a deterioration in that person's condition even if they were able to afford to purchase the necessary medication. See also *Ombudsperson's 5th report*, p. 43, citing cases of forcible return from Finland, including a woman who was eight-months pregnant, and another who was returned whilst still haemorrhaging after a complicated birth involving surgery.

⁶⁸ UNKT, “Initial Observations in Gaps in Health Care Provision in Kosovo”, January 2007, see in particular paras. 6-11.

⁶⁹ Amnesty International has documented cases where women who have been forcibly returned to violent partners have found themselves unable to obtain effective and durable protection by the state,

for example because of collusion between the police and the perpetrator. In one such case, a woman remained in hiding for several months after her return, and has subsequently attempted to seek refugee status elsewhere.