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BRIEFING NOTE ON THE REPATRIATION OF KOSOVAR ALBANIANS

During the year 2000 alone, IOM reported that it had assisted 87,264 persons to return to Kosovo in organised movements. According to figures provided by the UNMIK Border Police, approximately 12,500 individuals were forcibly repatriated during the same period. The number of spontaneous returns is unknown, but it appears reasonable to conclude far in excess of 100,000 Kosovars came back to the province over the year, swelling the habitually resident population by around five percent.

In short, a massive humanitarian effort since the end of the conflict in 1999 has assisted well over three-quarters of a million Kosovars who have returned to the territory to begin rebuilding their lives. The large number of returnees' has an inevitable impact on all aspects of society, including housing, social assistance, the provision of health care, policing and, in particular, education.

Despite the limited absorption capacity and shattered infrastructure in Kosovo, those ethnic Albanians who have returned thus far have generally managed to find accommodation, whether in their original homes or with friends and relatives. In view of the large number of returns over the past year, however, shelter possibilities are now largely exhausted. Future returnees, especially those who have been long-term residents abroad, will find prospects for resettlement in the province far more daunting.

UNMIK therefore continues strongly to recommend a strategy of phased and co-ordinated returns. In view of the diminishing resources available to assist in reintegration efforts for these latter returnees, host countries should be aware of the difficulties that will inevitably arise in absorbing those who arrive without accommodation and the protection afforded by the traditional social safety net. Greater investments on the part of sending countries in key areas of need would help to create the requisite conditions for the smooth integration of such long-time expatriates and their children into a country many of them have not seen in years, if ever.

Governments are therefore urged, consistent with all previous UNMIK appeals with regard to return policy, to continue to give priority to voluntary returns. By providing the necessary incentives for repatriation to proceed at a manageable, yet steady pace, the likelihood is greater that the returnees may arrive home in dignity and safety, in accordance with the principles of international refugee law. In view of its humanitarian and human rights mandate under Security Council Resolution 1244, UNMIK bears ultimate responsibility for ensuring adherence to this basic standard in

all organised repatriation movements. International instruments signed by the sending countries likewise commit them to protect these rights.

Beyond adherence to these precepts, the prevailing conditions in Kosovo argue forcefully in favour of guaranteeing that all repatriation programmes be designed as co-ordinated, phased and orderly movements, in order to take full account of two major concerns:

- ensuring adequate accommodation for all returnees;
- avoiding the return of members of vulnerable groups for whom assistance is currently unavailable.

While UNMIK recognises the principle that those Kosovar Albanians who are no longer in need of international protection¹ (which emphatically does not include those originating from North Mitrovica) may return to the territory, the forced return of persons belonging to ethnic minorities and the consignment to Kosovo of persons not originating from there are entirely different matters. Although this paper focuses on the repatriation of Kosovar Albanians, experience of forced repatriations over the past several months warrants some attention.

In the first instance, UNMIK is deeply concerned at the recurrent forcible repatriation of members of ethnic minorities², in particular the deportations of Roma/Ashkalija families and individuals. In view of continued killings of members of the Roma/Ashkalija community in Kosovo, the time does not appear ripe to launch the forced returns of such vulnerable individuals. Furthermore, the forced return of individuals at risk, such as members of ethnic minorities, potentially violates Article 33 of the 1951 Refugee Convention. In addition, according to the jurisprudence of the European Court of Human Rights, such forced returns could constitute a violation of Articles 2 and 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR).

As for persons not originating from the province, it is essential to recall that UNMIK enjoys a mandate limited to the territory of Kosovo and does not hold any jurisdiction over Serbia, Montenegro, Albania, Macedonia or Bosnia. Nonetheless, some governments have consigned rejected asylum-seekers originating from these places to Kosovo. In view of the constraints of UNMIK's mandate, the deportation of such persons to Kosovo does not constitute an acceptable solution for these individuals.

Further, the fundamental protection enshrined in the ECHR—that people at serious risk of death or suffering inhuman or degrading treatment must not be forcibly returned—extends to all persons, including ex-offenders. It is of great concern that the forcible repatriation of ex-offenders, who may be at risk of suffering death or degrading treatment (including ex-offenders belonging to non-Albanian ethnic communities), has been carried out, presumably on the erroneous assumption that this group does not enjoy protection under this basic tenet of human rights.

¹ Notwithstanding positive developments and the efforts of the international community, there remain individual Kosovo Albanians who could face serious problems were they to return at this stage. In this regard, UNMIK refers to the *UNHCR Position on the Continued Protection Needs of Individuals from Kosovo* (March 2001). The position taken by UNHCR is fully supported by UNMIK, which urges adherence to the principles outlined therein.

² See the seventh OSCE/UNHCR *Assessment of the Situation of Ethnic Minorities in Kosovo*, April 2001.

At present, the situation for minority groups remains extremely precarious. Largely confined to very limited enclaves as a result of security problems, members of minority ethnic communities suffer even lower living standards than those of the general population. Their access to health, education and other public services is restricted, so that many remain heavily reliant on humanitarian assistance.

In addition to the frequent outbreaks of ethnic tension and violence that continue to cause great concern for the overall stability of Kosovo, attention must also be given to the highly volatile situation in the region as a whole. Further flight of ethnic Albanians across Kosovo's southeastern boundary with Serbia, which could reach massive proportions in the event of further hostilities, would require a total reassessment not only of the province's absorptive capacity, but also the appropriateness of repatriating people into a potentially explosive security situation.

The situation for members of ethnic communities living in a particular location where they are in the minority remains precarious. They face serious risk of harassment, violence or death, severely restricting their freedom of movement, often limited to small enclaves, while many continue to leave Kosovo. In addition, the return of ethnic Albanians into areas of communal tension can have a severely destabilising effect on these minority communities.

1. ACCOMMODATION

The return of homeless Kosovars without strong family or community ties would be counterproductive to ongoing reconstruction and development efforts, potentially reversing the enormous progress made thus far and further heightening insecurity in the region. The need for a phased and gradual return is therefore in the interests of all who wish to strengthen current efforts to rebuild a stable and prosperous Kosovo.

According to previous assessments, an estimated 83,000 residential units were in need of essential repairs or reconstruction. In spite of substantial progress in efforts to rebuild damaged or destroyed housing during 2000, the grim reality is that the full realisation of this goal cannot be achieved in a single year. It is interesting to consider that Kosovo has historically enjoyed a capacity to construct no more than 7,000 housing units per year. This offers some indication of the enormity of the task ahead.

A further important consideration in determining Kosovo's absorptive capacity for mass return is the recent finding that the host-family system is in many areas saturated. Thousands of persons still remain with host families in Kosovo, including those who reside with friends and relatives. The traditional safety net of extended families and strong community ties, which has played an important role in providing at least initial accommodation for returnees, may now be overburdened. Serious consideration should be given to avoiding the return of persons without access to shelter, which on a large-scale could potentially give rise to widespread and prolonged displacement, as well as to chronic dependence on humanitarian assistance.

Secondary displacement resulting from the arrival of returnees who wish to reclaim their own property or reside with immediate relatives, is also an unavoidable outcome of large-scale returns. Based on the limited accommodation and reconstruction capacity, concerns arise that the introduction of massive numbers of returnees without

shelter may not only have serious negative repercussions on the viability of recovery and reintegration efforts, but also may place additional pressures on the existing population of vulnerable individuals, as well as minority groups.

2. HEALTH CARE

Through the efforts of UNMIK, Kosovo's health services have recovered substantially over the past eighteen months, thus far managing to meet the basic needs of the current population. Although the health services system seems capable of providing satisfactory primary and much secondary care, many conditions requiring complicated treatment or long-term management are beyond current capabilities. The following are examples of conditions that *cannot* be satisfactorily treated in Kosovo:

- cancer (requiring radiotherapy or chemotherapy);
- all heart surgery (including installation of pacemakers);
- intraocular surgery;
- severe and chronic mental illness and psycho-social disorders;
- hormonal dysfunctions; and
- HIV/AIDS.

Only drugs for the treatment of minor conditions and common diseases are readily available in the public sector.³ Patients with chronic or rare diseases requiring complicated and expensive diagnostic and therapeutic interventions, such as hormonal dysfunctions, HIV/AIDS and haemophilia, are unable to find appropriate medication in public health institutions and pharmacies. Furthermore, the limited range of drugs available may necessitate a change in medicinal therapy even for persons with relatively minor conditions.

Coupled with the fact that disruptions to this supply of basic drugs occasionally occur, it is recommended that persons undergoing such treatment in their host countries be supplied with a sufficient quantity of the medication to cover at least the first six months after their return. Potential returnees being treated for diseases that require intensive, complicated or sophisticated procedures should be given the opportunity to complete their course of treatment before returning to Kosovo. Persons suffering from chronic illnesses (such as advanced and complicated heart and lung diseases) should *not* return to Kosovo.

Psychiatric services are very limited, with an almost total lack of community services other than those associated with conflict trauma. Patients are mostly treated pharmaceutically; 'rehabilitation' is virtually non-existent. Despite a high level of awareness of alternative systems both in terms of treatment sites and types, funding for the gradual reform of the system, including increased primary care and community services, has not been adequate. In view of the prevailing circumstances, it cannot be too heavily emphasised that no mental hospital presently exists in Kosovo.

The present ratio of one psychiatrist for every 100,000 inhabitants indicates the extent of the challenge posed. Clinical psychologists are almost non-existent and few psychiatrists have been trained in psychotherapy. The current lack of mental-health structures for chronic psychiatric patients and the mentally disabled compels UNMIK to appeal to the host countries not to return such cases at this time. In any event, it is

³ See the second edition of the *Kosovo Essential Drugs List* (Kosovo Regulatory Authority, June 2000).

imperative that any proposed returnee in such a category be carefully examined on an individual basis before any determination is made.

The Shtime Special Institute for the Severely Mentally Retarded has undergone substantial repairs and rehabilitation. At present, however, this institution cannot accept new patients as facilities for treatment are extremely limited, particularly for rehabilitation including any kind of education. Oriented toward social-welfare, as opposed to health-care, this centre is most definitely not an appropriate facility for patients suffering from chronic mental illness. In short, Kosovo does *not* possess any facilities at present for treating either acute mental health cases or persons who need to be detained or forcibly medicated for mental health reasons.

3. PROMOTION OF VOLUNTARY RETURNS

As part of the overall strategy to maintain a phased and co-ordinated approach to return, governments should continue to give priority to voluntary repatriation. Often, the 'voluntariness' of a return is an indication that the individual has identified a 'solution' in the country of origin. By creating the necessary conditions for return and developing opportunities for reintegration, individuals will have the necessary incentives to repatriate.

With regard to the efforts currently underway to support reintegration, UNMIK would urge host-country governments to give serious consideration to expanding assistance programmes to include a broader category of returnees. Repatriation packages focused on people in vulnerable groups should be extended to cover those who may become 'vulnerable' by virtue of their return to Kosovo, despite their circumstances in the country of asylum.

For instance, a returnee family gainfully employed in a host country might well encounter few, if any, economic opportunities upon initial arrival back in their homeland. As the recovery continues and economic development advances in Kosovo, the jobless rate can of course be expected to decline, but many returnees may face a period of severe hardship due to unemployment. Likewise, even with adequate resources and the highest commitment, housing construction will face logistical constraints that could relegate many returnees to temporary shelter and dependence on humanitarian assistance for an unacceptably long period, if the repatriations are not properly spaced.

4. CONCLUSION

As concrete steps towards ensuring a dignified and safe return of Kosovar Albanians and their successful reintegration, UNMIK strongly recommends that practical modes of implementing any return programme be designed in close collaboration between the countries of asylum and UNMIK, with particular focus on:

- avoiding the return at this time of any person in need of social assistance, in particular those in need of housing or any but the most basic medical treatment (particularly the mentally ill);

- continued emphasis on voluntary and phased returns to allow the planning for and creation of basic, minimum acceptable conditions in the recipient communities; and
- an increase in funding of the social welfare system, in order to strengthen its ability to meet the increased demands arising from the arrival of returnees.

The gains of the past twenty months since the inauguration of international custodianship remain fragile in this climate of protracted political and ethnic tension. The restoration of public infrastructure, utilities and services, after years of neglect and lack of investment, has proved a formidable challenge to UNMIK and the donor community. Every effort must therefore be made to ensure that the pace, scale and timing of repatriation from the countries of asylum are the result of careful deliberation and planning.

UNMIK would therefore like to invite the host countries to work closely with its staff and partners to guarantee the repatriation of only of those individuals who may now return in safety and dignity. Acceptance of such a policy will contribute to the ultimate success of all our endeavours to build a prosperous, tolerant and multiethnic society in Kosovo.