

Serbica y Montenegro (21)
Kosovo



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**UNHCR Position on the Continued International Protection Needs of
Individuals from Kosovo
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Introduction

1. This paper is an update of UNHCR's position on the continued international protection needs of individuals from Kosovo as outlined in the position paper of January 2003, followed by the recent position paper, issued in light of the renewed inter-ethnic confrontations, dated 30 March 2004. The primary focus of this paper is on the continued need for international protection of minority groups originating from Kosovo. In addition, although the vast majority of Kosovo Albanians have been able to return to Kosovo without individual protection problems, there are a few selected groups of Kosovo Albanians who may have protection concerns as described in this paper. UNHCR will update its position as the situation evolves.
2. Five years after the NATO intervention, the situation in Kosovo continues to be complex, and the security of minority communities remains a serious concern. The year 2003 brought an increased acceptance at some levels of Kosovo society of a multi-ethnic Kosovo as a basis for discussions on the future status of Kosovo, particularly in relation to achieving independence. This understanding seemed initially to benefit some of the minority communities, leading to increased freedom of movement, access to basic services and a relaxation of security arrangements provided by the security agencies, i.e. the Kosovo Force (KFOR), the United Nations Civil Police and the Kosovo Police Service. However, this did not stop members of minority communities from being regular targets of inter-ethnic harassment and violence from verbal assault, stone-throwing and systematic theft to physical assault, grenade attacks and killings. Moreover, the latter part of 2003 saw an increase in serious crimes committed against the Serb minority community compared to the year 2002. In an environment where inter-ethnic crime is not systematically investigated and rarely solved, a strong sense prevails that there is impunity and the rule of law is inefficient. This is further exacerbated by the fact that many less serious inter-ethnic crimes go unreported as the victims fear reprisals from the perpetrator or from the majority community with which the victim may have reached a level of fragile tolerance. Each serious security incident targeting minorities has been followed by a surge in property transactions and departures out of Kosovo.
3. A further and extremely serious confirmation of the fragile security situation for minority communities came with the March 2004 eruption of mass demonstrations leading to inter-ethnic violence and civil unrest of a scale not witnessed since 1999. The violence rapidly spread to all regions of Kosovo resulting in displacement among all minority communities. Notably, the violence systematically targeted mainly members of minority communities who had not been displaced over the past five years, although returnees also came under direct attack. The Kosovo Serbs were the

primary target of this inter-ethnic violence. Equally, various serious security incidents affected Roma, Ashkaelia and Egyptian communities. This particularly concerned Vushtrri/Vucitrn town, where the entire Ashkaelia neighbourhood was systematically attacked, houses burned and looted. Likewise, some Albanian communities and families in a minority situation in the northern municipalities suffered security incidents. Finally, whereas Bosniaks and Gorani were not directly targeted, some felt sufficiently at risk to opt for precautionary self-evacuation, or were evacuated by police to safer places.

4. The law enforcement authorities and political leadership did not manage to stop the violence early on and the three days of violence left according to initial information 19 civilians killed and more than 950 civilians injured – both killed and injured were of various ethnicities.¹ Approximately 730 houses belonging to minorities were damaged or destroyed, as well as 36 churches, monasteries, religious sites and public buildings catering to minorities.² By 23 March, a total of more than 4,100 Serb, Roma, Ashkaelia, Egyptian and Albanian minority community members had been displaced as result of the unrest.

5. These developments clearly demonstrate that non-ethnic Albanians originating from Kosovo continue to face security threats which place their lives and fundamental freedoms at risk. The situation of members of the minority communities, and henceforth the level of risk which may affect them depend on a variety of factors as outlined below and in the more detailed June 2004 Update.³ Kosovo Serbs and Roma are particularly vulnerable in terms of their security, but Ashkaelia and Egyptians also continue to face very serious security threats.

6. UNHCR therefore maintains its position that members of the Serb, Roma, Ashkaelia and Egyptian communities should continue to benefit from international protection in countries of asylum. Return of these minorities should take place on a strictly voluntary basis, deriving from fully informed individual decisions. Along with Kosovo Albanians originating from areas where they now are in a minority situation, they should not be forced or compelled to return to Kosovo. There are also certain categories of the population, whether belonging to the majority or minority communities, who may face serious protection related problems, including physical danger, were they to return home at this stage. This category also includes members of Bosniak and Gorani communities.

¹ United Nations, Security Council, "Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo", S/2004/348, 30 April 2004, para. 3.

² Ibid, para. 3. A later report corrects these initial figures to 20 deaths and a total of 935 homes, apartments and public buildings damaged or destroyed. According to the report, the initial reporting was incomplete. See further United Nations, Security Council, "Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo", S/2004/613, 30 July 2004, paras. 24 and 7 respectively.

³ For more detailed background information on the current situation of ethnic minorities in Kosovo, see the attached UNHCR, "Update on the Roma, Ashkaelia, Egyptian, Serb, Bosniak, Gorani and Albanian communities in a minority situation in Kosovo", June 2004. The report is available on UNHCR's website www.unhcr.ch.

I. Ethnic Minority Communities

A. Kosovo Serbs

7. The past year has witnessed an increase in serious ethnically-motivated crimes against the Kosovo Serbs, ranging from shootings, grenade attacks and use of explosives to arson and physical assault. During the inter-ethnic violence of March 2004, Kosovo Serbs were attacked, physically assaulted by aggressive crowds in their homes, from which they were forced out as these houses or flats were set on fire. Many had to be evacuated by KFOR, some from burning houses. Widespread looting and pillaging followed the arson and continued unabated for three days. Eight of the 19 persons killed⁴ were Kosovo Serbs, several hundreds of the injured as well, and the vast majority of the destroyed or damaged houses belonged to the Serb community. Over 3,400 persons or 82 per cent of the newly displaced were Kosovo Serbs who sought temporary safety in KFOR camps, public buildings and private accommodation.

8 The continued looting and attempts to destroy houses, churches, monasteries, religious institutions and public services that belonged to the Serb population for days following the departure of the displaced, sends a strong message of denial of the right to return, including and especially for those who had never before felt the need to leave Kosovo. This has adversely affected the Serb communities as a whole, halting or delaying voluntary return to Kosovo and prompting some departures of the remaining population. It is noteworthy that at the time of writing this report, vandalism and looting of damaged houses continues in many areas and is a source of serious concern. It underscores and maintains the Kosovo Serbs in a constant state of fear. This is exacerbated by continuing violent incidents targeting individual Kosovo Serbs. In the most serious incident since the March events, a 16-year old Kosovo Serb was killed on 6 June 2004, in a drive-by-shooting.

9. During past years, KFOR has gradually and in total significantly decreased its troops. It has moved away from fixed positions at entrances or in minority communities towards providing 'area security', leaving minority communities more vulnerable to attack. At the same time, the UN Civilian Police has turned over responsibilities to the Kosovo Police Service. With each security-related incident during the past year, the KFOR 'unfixing' strategy came temporarily to a halt. But as a result of the civil unrest in March 2004, reinforced security measures have been put in place in many locations. Entrances to mono-ethnic Serb villages are manned by 24-hour KFOR checkpoints in many places, some with stringent checks before allowing entry. The provision of escorts has been re-instated for particularly isolated Serb communities across Kosovo; however, the demand for escorts clearly outnumbers the possibilities of the security agencies, whether provided by KFOR or UN CIVPOL.⁵ Whereas the relative reinforcement of KFOR presence in Kosovo immediately after the riots provided some reassurance to affected communities, the early progressive

⁴ A later report corrects these initial figures to 20 deaths, see further United Nations, Security Council, "Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo", S/2004/613, 30 July 2004, para. 24.

⁵ United Nations Security Council, Report of the Secretary-General on the United Nations interim Administration Mission in Kosovo, S/2004/613, 30 July 2004, para. 31.

withdrawal of these forces, and subsequent 'unfixing' of security measures put in place following the violence, is now fast dissipating this confidence in a safer environment.

10. The limited freedom of movement has important consequences for the Serbs who face major constraints on their access to basic services including schools, health services, administrative offices and courts, as well as on their enjoyment of their economic, social and cultural rights. Economic sustainability is further hampered by persistent violations of property rights, such as illegal occupation of residential, commercial and agricultural property as well as destruction of property.

11. All of these factors have seriously and very negatively challenged the sustainability of voluntary returns, including those of the victims of the most recent violence. Whether or not physical harm affects an individual or his family directly, the constant intimidation, the sense that those perpetuating these actions enjoy impunity, the perceived absence and/or limitations of security agencies and the generally unstable security situation that results, contribute to perpetuate an environment in which the perception of not only Serbs, but also of other minority communities that they are under threat is still well-founded.

B. Kosovo Roma, Ashkaelia and Egyptians

12. Up until March 2004, security, freedom of movement and access to basic services continued to improve for members of these three communities. It should be stressed, however, that the situation varied and still varies considerably among these three communities, from one location to another and to some extent depending on the language abilities of the particular communities. Generally, the Serbian-speaking Roma are either living with or are perceived to be closer to the Kosovo Serbs and their security situation is thus in many cases similar to that of the Kosovo Serbs. The Albanian-speaking Ashkaelia and Egyptians, on the other hand, appear to be better tolerated and, relatively-speaking, enjoy greater freedom of movement and a more stable security situation.

13. Nevertheless, the fragile position of all three communities was clearly evidenced by the fact that even in locations where minority returns have taken place with the involvement of the majority population, security incidents still occurred before March 2004. All three communities have encountered various forms of harassment over the last five years from serious threats, physical assault and grenade attacks to verbal abuse, stone-throwing, discrimination and marginalization.

14. A number of individual members of the three communities came under attack in March 2004 but, more importantly, one of the most violent and destructive expulsions of a minority community during those days was that of the Ashkaelia community in Vushtrri/Vucitrn town. The entire community with the exception of three families was systematically attacked by aggressive crowds and, in the end, 65 Ashkaelia families had to be evacuated by KFOR troops. Their houses were subsequently systematically looted and burned down and all 65 families (259 persons) remain in displacement. Although this may be seen by some as a unique and isolated incident, the attack against this community is significant as it occurred where the first organized return movement of Ashkaelia IDPs from Serbia took place in 2002, after which a number of individual returns had since taken place. Therefore, the systematic attack on a partly integrated community (some members of the community remained in

Vushtrri/Vucitrn town during the past five years) and partly returnee community coupled with the scale of the repeated harassment and crime that affect the Ashkaelia and Egyptian communities strongly point to their continued vulnerability and the possibility that they will be targeted in the future.

15. The Roma, Ashkaelia and Egyptians continue to seek safety in large communities, in over-crowded, often informal settlements without appropriate infrastructure. Their difficulties are compounded by property-rights-related problems. The March 2004 events demonstrate that, Vushtrri/Vucitrn being a case in point, the existence of return movements (whether spontaneous, facilitated or organized) does not necessarily or immediately reflect a substantial improvement in their security situation in general. In view of this, all three communities continue to feel threatened for well-founded reasons.

C. Kosovo Bosniaks and Gorani

16. The security situation for Kosovo Bosniaks and Goranis has remained stable, with no serious incidents of violence reported. Incidents of intimidation, harassment and discrimination have continued and there is still a reluctance to use their mother tongue in public (which could be assimilated to Serbian) in areas outside of their immediate neighbourhood. The language factor has continued to restrict freedom of movement throughout Kosovo and hamper equal access to services and self-sufficiency by limiting economic opportunities. This has prompted departures from Kosovo.

17. Whereas the Bosniaks and Goranis were not directly targeted during the turmoil in March 2004, in some locations they felt insecure and opted for precautionary movements. Two families were evacuated by the police from the Bosniak Mahalla in Mitrovice/a North, while several others left on their own initiatives. Living in a Serb neighbourhood in Fushe Kosova/Kosovo Polje and seeing their Serb neighbours being attacked, several Gorani families left their homes as a precautionary measure. No other attacks or self-imposed evacuations have been reported, although the two ethnic communities anxiously followed the unfolding developments. The events have inevitably left the communities with a heightened sense of insecurity and in a state of constant alert.

18. Individual Bosniaks and Gorani may have a well-founded fear of persecution as members of a minority, in particular when the following factors are taken into account: (i) their past or perceived association with the Serbian regime; (ii) the ethnically volatile or sensitive areas of residence of these communities; (iii) their present or perceived association with the Serb community or alternatively association with the Albanian community;⁶ (iv) the unpredictability of and further potential for inter-ethnic violence targeting the minority communities in Kosovo, which is compounded by the inadequate response mechanisms in place in terms of functioning national protection and rule of law.

⁶ A case in point for the latter example is the fragile security situation in the Bosniak Mahalla in North Mitrovice/a, where during the inter-ethnic violence in mid-March 2004 several Bosniak families departed, on their own or with police assistance, for safety, mostly to South Mitrovice/a, only to return after the end of the violence.

D. Kosovo Albanians

19. Kosovo Albanians in an ethnic minority situation, particularly in the northern municipalities of Kosovo, have continued to be in a very fragile security environment, with a strong KFOR presence needed to ensure their security in these neighbourhoods. The communities have tended to remain static, with very few spontaneous returns, demonstrating the difficult environment. A longstanding series of threats and assaults culminated during the civil unrest in March 2004, forcing more than a hundred persons in central Mitrovica into temporary displacement. Their apartments and houses were immediately either damaged and/or occupied by Kosovo Serbs. Although not attacked, mono-ethnic isolated neighbourhoods or villages in the northern municipalities remained in seclusion without access to supplies or basic services until escorts were arranged by KFOR, while Kosovo Albanian inhabitants in the Serb majority municipality of Shtërpce/Strpce left the villages fearing retaliatory attacks. The violent riots and the tense security environment following these events clearly demonstrate a continued threat to their security and Kosovo Albanians in an ethnic minority situation may face serious protection-related problems.

II. Protection categories applicable to all Kosovo residents (persons originating from Kosovo)

20. While most Kosovo Albanians are able to return without protection difficulties, there are certain categories of Kosovo Albanians who may face serious problems, including physical danger, were they to return home.⁷ In addition to Kosovo Albanians in an ethnic minority situation mentioned above, these include:

- Kosovo Albanians in ethnically mixed marriages and persons of mixed ethnicity and
- Kosovo Albanians perceived to have been associated with the Serbian regime after 1990.

21. Claims from persons, of all ethnicities, who fear persecution because they belong to any of the categories mentioned in this paper, should be carefully considered in order to determine their need for international protection. The recent inter-ethnic violence highlights the persistent and strong resistance in Kosovo to Kosovo Serbs as well as to persons closely associated with this minority or with the Serbian structures, whether past or present.

22. Special attention should also be given to claims from traumatized individuals who are able to invoke compelling reasons for refusing to return, particularly those who have been subjected to very serious persecution as well as victims of torture, survivors of sexual violence, or witnesses to crimes against humanity. As stated in Article 1C(5) and 1C(6) of the 1951 convention Relating to the Status of Refugees, the refugee status that may have been conferred to such persons who are "able to invoke compelling reasons arising out of previous persecution" for refusing to avail themselves of the protection of their country of nationality should not cease given the current circumstances prevailing in Kosovo.⁷

⁷ For further details see UNHCR, *Handbook on Procedures and Criteria for Determining Refugee Status*, 1979 reedited 1992, para. 136; UNHCR, *Guidelines on International*

III. Humanitarian categories

23. 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 currently 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 currently available or rarely available in Kosovo;
- severely handicapped persons (including their caregivers) whose well-being depends on a specialized support system not currently available in Kosovo;
- unaccompanied elderly persons who have no relatives or any other form of societal support in Kosovo;
- separated children without relatives or caregivers in Kosovo, for whom it is found not to be in their best interest to return to Kosovo.

24. In addition, the return of separated children for whom relatives and caregivers have been identified should take place only if this is in their best interest and 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.

IV. Conclusion

25. The overall security situation which existed in Kosovo prior to the March 2004 violence had prompted UNHCR to maintain its position that there is a continued need for international protection for members of minority communities. Albeit to varying degrees depending on the minority concerned and on their location, these persons continued to be severely affected by the curtailment of their freedom of movement, access to essential services and rights as well as by the continued incidence of violence affecting them directly or their community.

26. The sudden and unexpected surge of inter-ethnic violence in March, its rapid spread to all regions of Kosovo, the seemingly specific and coordinated choice of victims/targets as well as the inadequate and initially slow response of the security agencies, have left all minority communities living in Kosovo with a heightened sense of fear and vulnerability. In addition to further limiting their freedom of movement and access to basic rights and services, these events have led to a substantial deterioration in the way the minorities perceive and experience their security and their continued sustainability. Together with the persistent volatility of the security environment, these factors need to be given due weight when adjudicating asylum claims of persons from Kosovo.

Protection: Cessation of Refugee Status under Article 1C(5) and (6) of the 1951 Convention relating to the Status of Refugees (the "Ceased Circumstances" Clauses), HCR/GIP/03/03, 10 February 2003, paras, 20–21.

27 Considering the above, UNHCR reiterates its position that members of minority groups and other protection categories in Kosovo as outlined above should continue to benefit from international protection in countries of asylum.

- For reasons explained above, it is UNHCR's position that forced or compelled returns of members of Serb, Roma, Ashkaelia, Egyptian and Kosovo Albanian minority communities should not take place. In addition to placing these persons in serious jeopardy, such returns could contribute to further destabilize the situation in Kosovo thus placing this environment at risk of new or increased inter-ethnic violence and renewed displacement. This risk is even higher where individuals may be forcibly returned to displacement into minority communities outside their place of origin.
- It is paramount that the safe, dignified and sustainable return of members of the Serb, Roma, Ashkaelia, Egyptian and Kosovo Albanians in a minority situation as described in this paper takes place on a strictly voluntary basis and in a coordinated and very gradual manner, supported with re-integration assistance. A comprehensive case-by-case assessment should be made in relation to asylum claims made by Bosniaks and Goranis, as indicated in the relevant paragraphs above.
- It is important that those individuals who apply for voluntary repatriation are able to do so freely and with the full knowledge of the current situation in Kosovo. Those persons who had applied for voluntary repatriation prior to the March events should be given the possibility to reassess their application if they so wish.
- UNHCR supports the full and inclusive implementation of Security Council Resolution 1244 of June 1999, which states that "the main responsibilities of the international civil presence will include ... assuring the safe and unimpeded return of all refugees and displaced persons to their homes in Kosovo" (emphasis added). In UNHCR's view, where States forcibly return minorities to situations where they are displaced into communities outside their place of origin, they undermine the spirit of the Resolution.

V. Internal Flight Alternative

UNHCR is of the opinion that the implementation of the concept of internal flight or relocation alternative in Serbia proper and Montenegro towards persons originating from Kosovo and belonging to ethnic minorities would not be a reasonable option in most cases, particularly considering their inability if returned to register as IDPs in Serbia proper or Montenegro and the subsequent problems they can be expected to encounter in accessing basic human rights and services.⁸ Similarly, there are already

⁸ See generally, UNHCR, "Guidelines on International Protection: the 'Internal Flight or Relocation Alternative' within the context of Article 1A(2) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees", HCR/GIP/03/04, 23 July 2003; UNHCR, "The Possibility of Applying the Internal Flight or Relocation Alternative within Serbia and Montenegro to Certain Persons Originating from Kosovo and Belonging to Ethnic Minorities", 13 August 2004. Key elements to be taken into account when considering the application of the internal flight alternative concept during the individual refugee status determination

serious constraints on the absorption capacity.⁹ Moreover, UNHCR is of the view that the implementation of the Internal or Relocation Alternative concept towards this caseload could also raise an issue under the obligations stemming from the United Nations Security Council Resolution 1244 of 10 June 1999 to return refugees and IDPs to their homes in Kosovo.

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process or when considering the lifting of the temporary protection regime are attached as Annex 2 to this position paper.

⁹ Serbia and Montenegro, excluding Kosovo, are already hosting more than 220,000 IDPs in addition to 290,000 refugees.

