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**Kosovo Albanians in Asylum Countries:
UNHCR Recommendations as regards Return**

Update, March 2000

Introduction

1. The vast majority of Kosovo Albanians who fled the conflict in Kosovo during 1998-99 have already returned. Most returned independently and spontaneously within weeks of the entry of the international military presence (KFOR), despite knowing that the situation remained fragile and in many ways unsafe.

2. Due to the particular constellation of circumstances prevailing at the time of the massive return in the summer and autumn of 1999, including the precarious security situation, the lack of adequate and available shelter and basic services, and the approaching winter, UNHCR urged States to engage in only voluntary return to Kosovo until the spring of 2000. UNHCR undertook to review its advice in the spring, and this note comprises that review. The note addresses considerations only for persons of Albanian ethnicity from Kosovo.

3. The situation of non-Albanians is covered in UNHCR's position paper issued on 1 October 1999. The safety and living conditions of non-Albanians remain precarious in Kosovo, therefore the position as set out in the October paper remains valid.¹

Return of Kosovo Albanians

4. The withdrawal of Yugoslav forces and the entry of KFOR into Kosovo in mid-June 1999 heralded a significant improvement in the situation for Kosovo Albanians in most parts of Kosovo. The previous situation of systematic discrimination, harassment and persecution no longer prevails.

5. UNMIK and its partners have made progress in the formidable task of re-establishment of civil administration in Kosovo, including developing the economy, rehabilitating and constructing shelter and providing municipal services. Efforts to establish effective policing and a functioning judiciary continue.

6. In these circumstances, most Kosovo Albanians remaining in asylum countries no longer have immediate protection needs and therefore should be able to return home in safety.

Individuals with Protection Needs

7. Notwithstanding these positive changes and the efforts of the international community, there remain individual Kosovo Albanians who could face serious problems, including physical danger, were they to return at this time. Currently available information on Kosovo indicates reports of violence, harassment and discrimination against the following:²

- persons or families of mixed ethnic origin;
- persons associated, or perceived to have been associated, with the Serbian regime after 1990;
- persons who refused to join or deserted from the Kosovo Liberation Army (KLA/UCK);
- persons known to be outspokenly critical of the former KLA or the former self-proclaimed "Provisional Government of Kosovo" and members or supporters of political parties not aligned with the former KLA or the former self-proclaimed "Provisional Government of Kosovo;"
- persons who are known to have refused to follow the laws and decrees of the former KLA or the former self-proclaimed "Provisional Government of Kosovo."

8. Claims from persons who fear persecution because they belong to one of the categories mentioned above should be carefully and individually considered in order to ascertain the need for international protection. Claims not falling in these categories may be considered in accelerated procedures.³

9. The claims of traumatised individuals, such as victims of torture or particularly egregious forms of violence (for example, ex-detainees, or women who may have suffered sexual violence), or witnesses to crimes against humanity, will require special attention, in that their past experiences will be highly relevant in determining their continued protection needs.

10. In addition, the protection needs of persons or families who originate from areas where they would constitute the ethnic minority need to be assessed very carefully. At this stage, UNHCR would advise against the return of Kosovo Albanians to Serb-dominated areas (e.g. the area north of Mitrovica or certain areas in Eastern Kosovo) as it is neither safe nor sustainable.⁴

Vulnerable Groups

11. Individuals in the following particularly vulnerable categories may have special needs which should be taken into account in the context of return in the present circumstances:

- handicapped and ill individuals, or families with handicapped or ill members;

- the unaccompanied elderly;
- unaccompanied minors;
- female-headed households (especially those without relatives in Kosovo).

12. UNHCR considers that persons finding themselves in such vulnerable circumstances currently deserve exemption from forced return and should be allowed to prolong their stay on humanitarian grounds until special and co-ordinated arrangements can be put in place, on a case by case basis, to facilitate their return.

Operational Considerations relating to Return and its Sustainability

13. As noted above, UNMIK and KFOR are working under difficult circumstances to normalize the situation. There is still tension in some parts of Kosovo, and the crime rate is still high. Efforts are continuing to establish effective law enforcement, including an independent judiciary. Despite all efforts, fully functioning legal, judicial, policing and administrative structures are not yet in place. Access to shelter, reconstruction assistance, income and basic services will also continue to be problematic for some time.

14. UNHCR agrees with the views shared with it by State delegations that voluntary return is the preferred modality, and appreciates that most concerned States are promoting voluntary return to Kosovo. Voluntary return is of course preferable in all circumstances, and is always, but particularly so in this context, likely to be more sustainable.

15. Taking into consideration the complexities of the current situation, UNHCR would urge that, whichever modality is used, the return process for Kosovo Albanians who do not have protection needs should be phased,⁵ co-ordinated, orderly and humane⁶ and accomplished in manageable numbers where accommodation arrangements are in place.

UNHCR
March 2000

Endnotes:

¹ UNHCR's position paper, entitled: *Asylum-Seekers from the Federal Republic of Yugoslavia: Particular Groups*, urges states to consider individually and with sympathy and care the claims of non-Albanians from Kosovo, and provides some guidance on assessing claims. For more detailed background information on the current circumstances of non-ethnic Albanians in Kosovo, see the joint UNHCR/OSCE *Preliminary Assessment of the Situation of Ethnic Minorities in Kosovo* (UNHCR/OSCE, 26 July 1999) and subsequent updates: *Second Assessment of the Situation of Ethnic Minorities in Kosovo* of 6 September 1999, *Overview of the Situation of Ethnic Minorities in Kosovo* of 3 November 1999 and *Assessment of the Situation of Ethnic Minorities in Kosovo* of 11 February 2000.

² See UNHCR's *Background Note on Ethnic Albanians from Kosovo Who are in Continued Need of International Protection* (March 2000) for documented examples and descriptions of the difficulties encountered by persons in these categories. See also more generally the OSCE human rights report *Kosovo/Kosova: As Seen, As Told* (Parts 1 and 2, covering the period October 1998 to October 1999); and human rights reports about Kosovo issued by Amnesty International, Human Rights Watch and Lawyers' Committee for Human Rights.

³ It should be recalled that, particularly in volatile and precarious situations such as that currently found in Kosovo, such observed categories can never be exhaustive, and status determiners must be ever mindful of the fact that other "at risk" categories could emerge. The documents referred to in note 2 will be helpful.

⁴ UNHCR is concerned that such persons would have to relocate within Kosovo and would end up in a precarious situation of internal displacement, which would also have the potential to undermine the protection of minorities in Kosovo. See the reports referred to in note 1 for further details regarding minority protection.

⁵ Factors which should be taken in to account in deciding when to return Kosovo Albanians and their pace of return include: i) the availability of adequate shelter for returnees; ii) the accessibility of health, education and social services; iii) access to income-producing employment; and iv) the security situation in the locale of return.

⁶ UNHCR has been concerned in the past by returns which can be termed inhumane: for example, when some returnees have arrived without prior notification to agencies which are expected to assist them; when they have arrived so late as to require travel in unsafe conditions after dark, or when no transport is provided for them; when returnees have no adequate shelter available to them; or when returnees without their own resources or who are particularly vulnerable are left without support.