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POLICY PAPER ON THE REPATRIATION OF KOSOVAR ALBANIANS

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A massive humanitarian effort since the end of the conflict has assisted over 850,000 Kosovars who have returned to the territory to begin rebuilding their lives. This year alone, upwards of 82,000 persons who had sought protection abroad¹ had returned in organised repatriation movements by the end of September. Although the vast majority (over 73,000) came back voluntarily rather than face expulsion, more than 9,000 have been forcibly returned.

In addition to these formal arrangements, a number of refugees have returned independently by vehicle or commercial flights at an average daily rate of between sixty and seventy persons since June 2000, according to rough estimates provided by the UNMIK Border Police. The large number of returnees has an inevitable impact on all aspects of society, including 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 summer, however, shelter possibilities are now largely exhausted. The approach of another potentially harsh Balkan winter moves UNMIK therefore to call urgently on host-country governments to consider either decelerating or temporarily suspending forced and induced repatriations. In particular, persons who are known to lack accommodation upon arrival should not be returned to Kosovo during the winter months, when construction work is impossible.

UNMIK therefore strongly recommends a strategy of phased and co-ordinated returns to resume next spring. Optimal information-sharing regarding the number and profile of returnees, alongside greater investments on the part of sending countries in the key areas of need, would help to create the requisite conditions for a smooth transition and reintegration into Kosovo. To avoid an uncontrolled mass return from Western Europe, governments should continue to give priority to voluntary returns, by providing the necessary incentives for these to proceed at a manageable, yet steady pace, when conditions again become favourable after the winter.

¹ Previous estimates had pointed to approximately 250,000 refugees from Kosovo living in non-neighbouring countries.

One of the greatest challenges currently facing UNMIK revolves around the issue of return to the territory. A fundamental principle underlying international law holds that repatriates should be able to return home in dignity and safety. 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.

Beyond adherence to these precepts, the prevailing conditions in Kosovo² argue forcibly in favour of guaranteeing that all repatriation programmes be designed as co-ordinated, phased and orderly movements, in order to take full account of three major concerns:

- ensuring adequate accommodation for all returnees;
- avoiding the return of members of vulnerable groups for whom assistance is currently unavailable; and
- eschewing any precipitate actions that might trigger an undesirable and unmanageable mass influx of returnees, which would subsequently overload Kosovo's social assistance network and public services, which are still under rehabilitation.

Sensitivity on the part of sending countries to these considerations ought to create conditions conducive to a return in dignity, but the prevailing climate of insecurity would also necessitate a phased and co-ordinated approach to return. The continued hostility and ethnic violence in much of Kosovo, as well as the potential for renewed conflict elsewhere in the region, suggest that returns require careful planning and co-ordination between hosting countries and UNMIK.

While UNMIK recognises the principle that those Kosovar Albanians who are no longer in need of international protection (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, developments during the forced repatriations over the past several months warrant some attention.

In the first instance, 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.

UNMIK is also concerned at the recurrent forcible repatriation of members of ethnic minorities, in particular the deportations of Roma/Ashkali families and individuals.

² 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 paper, *Kosovo Albanians in Asylum Countries: Recommendations as regards return* (March 2000). The position taken by UNHCR is fully supported by UNMIK, which urges adherence to the principles outlined therein.

In view of continued killings of members of the Roma/Ashkali 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).

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 minority 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.

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.³

1. AVOIDANCE OF UNCONTROLLED MASS RETURN

Mass returns within a short period of time 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.

Economy and Employment

Kosovo has undergone ten years of limited investment and poor maintenance of its industries, utilities and infrastructure. During this time, Kosovar Albanians were significantly marginalised from employment, education and training opportunities. The 1998-1999 conflict inflicted some further damage on the already ailing economy, bringing all activity to a brief but virtual standstill.

For example, around fifty percent of Kosovo's farm assets were lost or destroyed. Damage on this scale is particularly devastating in a region where seventy percent of the population is rural and agricultural production therefore generates a primary source of income.

Despite the challenging circumstances, Kosovars have made fervent attempts to restart their economy. Much of the progress seen thus far can be attributed to remittances from the diaspora. For the immediate future, Kosovo's economic recovery will largely depend on generous support from the international community, as well as from the income and private investment channelled to the territory by Kosovars living abroad.

³ See the sixth *OSCE/UNHCR Assessment of the Situation of Ethnic Minorities in Kosovo*, October 2000.

Ample time is needed for Kosovo's recovery to have a positive impact on the labour market. Although UNMIK is making efforts to foster economic growth and generate employment, current estimates point to an unemployment rate as high as sixty-five percent. Many repatriates are therefore returning to a situation of potentially prolonged unemployment, hampering their own personal efforts to rebuild their homes and communities.

Social Welfare and Public Services

In view of the prevailing circumstances outlined above, it is unsurprising that social assistance continues to be in high demand. A regulated social assistance system has been introduced and aims to target up to 50,000 families from vulnerable groups. Initially this scheme is only open to families where there is no one in the household capable of work. If sufficient funds become available, it will be extended to other vulnerable families unable to find employment. The Centres for Social Work (CSWs) have also assumed responsibility for the selection of around 250,000 remaining beneficiaries for food aid.⁴ With these further reductions in food assistance, targeting the most needy will be a priority.

Clearly, Kosovo's system of humanitarian assistance and social welfare is in a critical period of transition. The twenty-seven Centres for Social Work, situated in twenty-five municipalities, are crucial for the success of both the new social assistance scheme and delivery of social services to the whole population. Sufficient time is required for the CSWs to develop capacity, introduce the new social assistance scheme and deal with a backlog of outstanding social problems. Mass returns over a short period could overburden the present fragile structure, thus derailing the delicate transition from a UN-implemented emergency relief programme to a locally based, more permanent future social welfare system.

Any immediate mass movements into Kosovo would likewise strain the capacities of the public utilities sector at a time when the electricity and water supplies are beginning to recover after years of neglect. Enormous investments have already been made in the repair and upgrade of Kosovo's utilities. Returns should therefore be phased in such a way that these achievements are not reversed and improvements can continue at their present pace.

Security and Justice System

Despite pledges from various governments, the international police force at UNMIK's disposal remains woefully understaffed. Of the authorised strength of over 4,700 officers, only 3,983 had been deployed as of the end of August. This situation, combined with the absence of a fully functioning judicial system, has given rise to a general climate of impunity and lawlessness in many parts of Kosovo, with alarmingly high rates of common as well as ethnic crime.

⁴ For those who continue to receive assistance, the monthly food basket per person will (most likely) comprise: 12 kg of flour; 2 kg pulses; 1 litre of oil; and 1 kg of rice. Sugar and salt will be distributed whenever available. The number of recipients is currently under evaluation, and will be modified according to the findings of the joint WFP/FAO crop assessment.

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 border from Serbia, which could reach massive proportions in the event of further hostilities, would require a total reassessment not only of Kosovo's absorptive capacity, but also the appropriateness of repatriating people into a potentially explosive security situation.

The situation for members of ethnic communities in a minority situation within a particular location 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 the minority communities.

Housing Reconstruction and Accommodation

Returnees find it very difficult to access any property they may have had if, as is usually the case, the structure has been damaged or occupied. Their access to reconstruction assistance, as well as to an effective means of protecting their property rights, remains limited in the present circumstances.

Sole responsibility both for the determination of occupancy rights, which will allow the eviction of illegal tenants, and for the allocation of vacant housing has been given to the Housing and Property Directorate (HPD). Heavily under-resourced, this agency will not become fully functional until some time in 2001 under present budgetary constraints. Prospects for returnees to recover legal access to their property or to benefit from vacant accommodation are therefore currently minimal.

According to recent assessments, an estimated 83,000 residential units are in need of essential repairs or reconstruction. The historical local capacity of Kosovo to construct no more than 7,000 housing units per year offers some indication of the enormity of the task. The import of construction materials is hampered by the territory's landlocked position and mountainous terrain, as well as by the current limitations of Kosovo's transport infrastructure.

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, could possibly be overburdened.⁵ 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.

While UNMIK continues to provide temporary community shelters (TCS) for those with no alternative accommodation, space is limited and the conditions are not always suitable for a normal family life. The TCS network has undergone consolidation,

⁵ By the end of this year, 35,000 families are expected to remain in inadequate housing, half of whom comprise extremely vulnerable cases.

with forty-four shelters available for those whose homes have been destroyed. Some 4,000 people are currently living in these shelters, but the numbers will increase as winter approaches. At full capacity these shelters will be able to house 7,500 persons.

Further refurbishment, however, is necessary to ensure that these shelters are suitable for the winter. A strict entrance and exit policy is being enforced to ensure that some spaces are available for emergency cases. UNMIK is also identifying additional public buildings, such as disused factories and kindergartens, which can be brought into use as a contingency measure, should the need arise over the winter months. The prospect of increased demand from the returnees now being forcibly repatriated, who are frequently among the most vulnerable cases, could easily overload the remaining TCS capacity.

Secondary displacement resulting from the arrival of returnees from Western Europe, who wish to reclaim their own property or reside with immediate relatives, is also an unavoidable outcome of mass 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.

Health Care

Through the efforts of UNMIK, Kosovo's health services have recovered substantially over the past year, thus far managing to meet the basic needs of the current population. A large, sudden and unco-ordinated return could, however, possibly reverse some of these achievements. Although hospitals did not suffer direct damage during the conflict, they have nevertheless sustained over a decade of poor maintenance and minimal investment. While essential repairs have been completed, inadequate systems for heating, water and sanitation reduce the quality of services and limit overall capacity.

The health services system seems capable of providing satisfactory primary care. However, 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. Patients with chronic or rare diseases, such as hormonal dysfunctions, HIV/AIDS and haemophilia, are unable to find appropriate medication in public health institutions and pharmacies. It is therefore recommended that potential returnees being treated for diseases that require intensive, complicated or sophisticated procedures be given the opportunity to complete their course of

treatment before returning to Kosovo. Persons suffering from chronic illnesses (such as diabetes, heart and lung diseases) should *not* return to Kosovo.

The system of psychiatric services in Kosovo is highly centralised and hospital-focused with almost total lack of community services, other than those associated with conflict trauma. Patients are mostly treated pharmaceutically; 'rehabilitation' is virtually non-existent. However, awareness of alternative systems both in terms of treatment sites and types has risen over the past several months and a strategy for the gradual reform of the system, including increased primary care and community services, has been drawn up. In the interim, however, it cannot be too heavily emphasised that no mental hospital presently exists in Kosovo.

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, particularly rehabilitation including any kind of education, are extremely limited. It remains a social-welfare, as opposed to health-care, oriented centre. It 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.

Education

Since the summer of 1999, approximately 28,000 educational staff and 400,000 students have re-entered the education system at primary, secondary and tertiary levels. Despite many positive developments in the education sector, significant problems remain, particularly as regards educational facilities. The influx of an additional 40,000 school-age returnees so far this year, representing an increase of ten percent in the student population, only exacerbates these difficulties.

According to a physical assessment, some 45 percent of an estimated 1,000 primary school buildings had been totally destroyed or severely damaged. Of a total of 872 committed for repairs, 379 have already been completed, 271 are still under in restoration, while the remaining 148 are being reassessed. In many locations, winterised tents with stoves and emergency lighting have therefore had to substitute for school buildings. In order to compensate for the shortage of facilities, many classes are organised in shifts to allow access to education for the maximum number of students.

The education system needs time to adapt to the needs of the returnee caseload. As the younger generation of Kosovars currently living in western Europe may have had limited exposure to Albanian language instruction, educators will need to formulate special language instruction programmes to ease reintegration into Albanian society. For returnee children who may suffer reverse culture shock after having spent their formative years outside of Kosovo, programmes to address their particular needs will have to be implemented. A system of establishing equivalence between educational documents earned in Western Europe and those issued in Kosovo will also need to be put in place.

2. 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.

UNMIK itself will be in a better position to create the necessary conditions for successful reintegration if sending countries provide advanced information on the projected number of returnees and their profiles, such as final destinations after arrival in Kosovo, skills acquired while living abroad, family size and number of children attending primary or secondary schools. The durability of reintegration efforts will largely depend on preparedness and planning. The countries of asylum should not only strive to phase returns, but should also ensure direct lines of communication with UNMIK, effective information-sharing and full co-ordination.

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.

3. 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 (including 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;

- a moratorium on forced and induced repatriation during the winter months;
- linking funding for reconstruction with a community-based approach in order to promote voluntary return and facilitate the reintegration of returnees into recipient communities, by accommodating existing internally displaced persons as well as new returnees, thereby minimising any negative impact; and
- an increase in funding of the social welfare system, in order to strengthen its ability to meet the increased demands envisaged from the arrival of the returnees.

The gains in Kosovo since the withdrawal of the Yugoslav military and 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 in close co-ordination and collaboration with its staff and partners to guarantee not only the voluntary return of these individuals in dignity and safety at the appropriate time, but also thereby the ultimate success of all our endeavours to build a prosperous, tolerant and multiethnic society in Kosovo.

