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Out of Limbo? Addressing the Plight of Kosovo Roma Refugees in Macedonia

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INTRODUCTION

The plight of Kosovo Roma refugees in Macedonia—dramatically demonstrated by their protest occupation of a border area between Greece and Macedonia from May until August this year—highlights the gap between international refugee law on the one hand, and the reality for refugees in Europe today on the other. This Human Rights Watch briefing paper analyzes the Macedonia refugee crisis in light of international refugee law and points towards possible solutions that can be found in these relevant international standards.

Between May 19 and August 9, 2003, 700 Roma expelled from Kosovo to Macedonia in 1999 were occupying an area in the immediate vicinity of the Macedonian-Greek border, near the village of Medzitlija, in an attempt to awaken broader attention to their desperate situation. They demanded resettlement to a member state of the European Union (E.U.) or another Western country, believing that their return to Kosovo was not a realistic option in the foreseeable future, and claiming that four years of refuge in Macedonia had brought only utter misery and hopelessness. The refugees moved to the border area after the United Nations High Commissioner for Refugees (UNHCR) closed their camp, proposing to help them move elsewhere in Macedonia. On August 9, exhausted and frustrated by the lack of visible achievements after eighty days of protest, the Roma abandoned Medzitlija and, in smaller groups, moved into several other locations. The biggest group, consisting of some 300 persons, went to a transit center in Kumanovo; some 100 Roma went to a smaller collective center in Katlanovo; and others moved into private accommodations in and around Skopje.[1] On August 28, those from the Kumanovo transit center moved into private accommodations in Skopje.[2]

While the immediate Medzitlija crisis has passed, a viable long-term solution for the Kosovo Roma refugees in Macedonia continues to elude the Macedonian government and relevant international actors. Attempts to find common ground between the various parties involved—the Roma refugees themselves, the Macedonian government, the UNHCR, and European Union member states—have proven arduous and mostly unsuccessful.

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[1] Human Rights Watch telephone interview with Elizabeta Ramova, senior assistant on Roma issues, Organization for Security and Cooperation in Europe Spillover Monitor Mission to Skopje, August 28, 2003.

[2] Human Rights Watch telephone interview with Christos Theodoropoulos, deputy representative, UNHCR Office in Skopje, August 29, 2003.

Human Rights Watch believes that a solution to the refugee crisis, while not simple, is possible, if the major governmental and intergovernmental actors involved adhere to the options and guidelines offered by international refugee law and show a far greater determination to use the political and financial tools at their disposal.

First, Western governments with resettlement policy, working with the UNHCR, should give serious consideration to accepting individuals who have particularly dim prospects for safe voluntary return to Kosovo and for legal, social, and cultural integration and protection in Macedonia. At the same time, and so long as conditions for safe return to Kosovo are not in place, the Macedonian government, assisted by international institutions, should considerably strengthen efforts to recognize the status of Roma refugees, and enable them to enjoy their rights under the Convention relating to the Status of Refugees (Refugee Convention) as well as other human rights treaties.

BACKGROUND: THE PLIGHT OF THE KOSOVO ROMA REFUGEES

Macedonia is currently hosting some 2,500 Roma refugees from Kosovo.[3] Most of them either stayed in Kosovo during the March-June 1999 NATO bombing campaign or returned to their homes after having fled the country during the bombardment. In July 1999, however, local Albanian extremists forced them to leave their homes and, soon afterwards, Kosovo. Many Kosovo Albanians believe that local Roma collaborated with the regime of the former Serbian and Yugoslav president Slobodan Milosevic, and blame some of them for complicity in war crimes during the 1998-99 armed conflict between government forces and Albanian rebels in the province.

While an estimated 50,000 Kosovo Roma found refuge in Serbia and Montenegro,[4] some 6,000 initially went to Macedonia.[5] The number has dwindled to 2,500 because

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[3] Human Rights Watch interview with Blagoja Stojkovski, head of the Asylum and Illegal Immigration Department in the Ministry of Interior of the Republic of Macedonia, Skopje, November 18, 2003.

[4] United Nations High Commissioner for Refugees, "Background Info: Federal Republic of Yugoslavia" [online], http://www.unhcr.ch/cgi-bin/texis/vtx/balkans-country?country=yugoslavia, (retrieved August 4, 2003).

[5] Human Rights Watch interview with Dzavit Berisa, Skopje, July 28, 2003. At the time of the interview, Berisa acted as head of the Kosovo Roma refugees' informal documentation and information center in Skopje.

some Roma were resettled to third countries or relocated to Serbia and Montenegro, and a small number voluntarily repatriated to Kosovo.[6]

The Roma entered Macedonia in September 1999, after spending two months as internally displaced persons in Kosovo. From September to December 1999, they stayed in a refugee camp in the village of Stenkovac. In December, they dispersed: some went to Shuto Orizari, a suburb of the Macedonian capital, Skopje, and found accommodation in private houses owned by local Roma; others moved to small camps near Skopje; a third group went to refugee camps in southern Macedonia. The second group eventually moved into the former military barracks near Katlanovo; in June 2000, the third group moved to a collective center built by the Macedonian government in Shuto Orizari, where ninety percent of the inhabitants are Macedonians or Kosovars of Romani ethnicity.[7]

Some seven hundred of the Kosovo Roma lived in the Shuto Orizari refugee camp before its closure earlier this year. Between three and four hundred refugees currently live in the camp near Katlanovo,[8] and the remainder (some 1,500 people) took up private accommodation in Shuto Orizari or other municipalities in Macedonia.

The Macedonian government granted the Kosovo Roma refugees Temporary Humanitarian Assisted Person (THAP) status. Individuals with THAP status were not eligible to apply for asylum according to Macedonian law, and their status was subject to review by the government approximately every six months. Roma refugees with THAP status were not permitted to work and as a result were wholly dependent on humanitarian assistance.

Because of the poor health and sanitary conditions in the Shuto Orizari camp, the government and UNHCR decided at the beginning of 2003 to close it down. In the

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[6] Notwithstanding these limited spontaneous returns, international observers agree that conditions in Kosovo will not permit Kosovo Roma to return home safely in the foreseeable future. See below "No Conditions for Safe Return to Kosovo."

[7] Human Rights Watch interview with Dzavit Berisa, Skopje, July 28, 2003; Human Rights Watch interview with Erduan Iseni, mayor of Shuto Orizari, Shuto Orizari, July 29, 2003.

[8] UNHCR estimates the number to "some 300." UNHCR FYR Macedonia, *Information Update*, No. 33, August 4, 2003. The refugee representatives from Katlanovo told Human Rights Watch that 400 persons inhabit the Katlanovo refugee camp. Human Rights Watch interview with Zejnel Berisa, Katlanovo, July 29, 2003; Human Rights Watch telephone interview with Adus Avdo, Katlanovo, December 5, 2003.

early months of 2003, according to Roma refugees interviewed by Human Rights Watch and the Budapest-based European Roma Rights Center (ERRC), UNHCR had progressively withdrawn a number of basic services from the camp, including food aid and schooling.[9] The UNHCR office in Skopje claims, however, that there was no reduction of assistance before the closing of the camp.[10] In any event, in the weeks preceding the closure of the camp, UNHCR officials advised the Roma—to no avail—to move out of the collective center into private accommodation, and offered financial and logistical assistance to those who would accept this option.[11] UNHCR claims that the reason the Roma rejected the UNHCR offer of private accommodation assistance was that they harbored "unrealistic" expectations of resettling in third countries.[12]

While acknowledging that they were hoping for resettlement, the Roma interviewed by Human Rights Watch enumerated a series of other reasons why they could not accept the private accommodation alternative. They said that UNHCR-provided financial aid would not suffice for finding a decent and long-term housing solution. They knew that the well-being and prospects of those Roma refugees who had lived in private accommodation were, if anything, inferior to that of the refugees in the Shuto Orizari camp. If dispersed to private homes, the former camp residents were afraid that they would become easier to deport should the Macedonian government decide to send them back to Kosovo. Most importantly, the four-year experience of living as refugees in Macedonia led them to believe that they had no future in the country. Moving into private accommodation only looked like a continuation of an unacceptable status quo.

The refugees continued to live in the Shuto Orizari camp until mid-May 2003, although the camp had been officially closed on March 31. From that date, they did not have any address at which they formally resided. As a consequence, they could not extend their

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[9] ERRC Letter to European Commission President Romano Prodi concerning Human Rights Emergency in Macedonia, May 22, 2003, available at http://groups.yahoo.com/group/balkanhr/message/5523.

[10] Human Rights Watch telephone interview with Christos Theodoropoulos, UNHCR Office in Skopje deputy representative, August 29, 2003.

[11] UNHCR FYR Macedonia, *Information Update*, No. 1, May 20, 2003. According to UNHCR, "[e]ach average family of six to seven persons is being offered around 15,000 MKD [(Macedonian dinars)] in addition to the monthly food and hygienic parcels. For those above 18 years UNHCR is offering 2,000 MKD whilst for those below 18 are being offered 1,500 MKD per month. In addition to this amount 600 MKD for the additional food are being offered. Also UNHCR is providing free transport for the students to the schools." Ibid.

[12] UNHCR FYR Macedonia, *Information Update*, No. 1, May 20, 2003.

formal THAP status and their residence in the country became illegal under Macedonian law.[13]

On May 19, approximately 700 Kosovo Roma—including around 350 children—traveled from the Shuto Orizari camp to the Medzitlija border crossing, some 210 kilometers south of Skopje.[14]

Upon arrival to Medzitlija, the Roma set up a tent settlement a hundred meters away from the Macedonian border post. They informed the border police that they intended to leave Macedonia and request asylum in Western countries. Macedonian border officials did not permit the Roma to cross the border because the Roma had no visas to enter Greece.

On May 27, the government of Macedonia advised the Roma to return to Skopje to re-register and undertook to accept their individual applications for refugee status in the country, in anticipation of the enactment into law of the then draft Law on Asylum.[15] On June 3, a press release by the then-Greek Presidency of the European Union (E.U.) "strongly encouraged" the Roma to accept the offer from the Macedonian government.[16] At a June 12 meeting with twenty-two refugees, representatives of the E.U. Presidency, the Office of the E.U. Special Representative, the European Commission Delegation to Macedonia, the OSCE, and UNHCR all stated that admission to Greece and the E.U. would not be allowed.[17]

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[13] Macedonia has treated the refugees from Kosovo as persons in need of temporary protection in a situation of large-scale influx. THAP status requires extension every six months, with the precondition that the applicant provide an address in Macedonia. The previously extended six-month period expired on March 31, 2003, and without a new address the Shuto Orizari Roma could not request re-registration.

[14] About two thirds of the refugees who came from Shuto Orizari to Medzitlija refer to themselves as "Ashkalija" or "Egyptians." Prior to the war, most declared themselves Egyptians; the term "Ashkalija" became widespread after the NATO war. Ashkalija/Egyptians from Kosovo use the Albanian language in private communication and have scant knowledge of Romani. Non-Ashkalija/non-Egyptian Roma master the Romani language and speak good Serbian rather than Albanian. Despite such differences, most of the Ashkalija/Egyptians believe, however, that—along with the non-Ashkalija and non-Egyptian Roma—they make up part of a greater Romani ethnicity. For reasons of simplicity, this report employs the single term "Roma" to refer to both Ashkalija/Egyptians and non-Ashkalija and non-Egyptian Roma.

[15] UNHCR FYR Macedonia, *Information Update*, No. 6, May 27, 2003; the parliament enacted the law on asylum on July 16, 2003, and the law entered into force on August 2.

[16] UNHCR FYR Macedonia, *Information Update*, No. 11, June 3, 2003.

[17] UNHCR FYR Macedonia, *Information Update*, No. 20, June 16, 2003.

For almost three months some 700 Roma refugees lingered at the border crossing, exposed to an average temperature far exceeding 30 degrees Celsius (86 degrees Fahrenheit), and hoping in vain that Western governments would take their grievances seriously. At the end of July, when Human Rights Watch visited Medzitlija, the health of several refugees had seriously deteriorated as a result of exhaustion and unhygienic conditions.[18] A team of doctors from the nearby city of Bitola was permanently present at the site, but one of them complained to Human Right Watch that the conditions for work in a narrow tent were extremely poor.[19]

SOLUTIONS

In 1950 the U.N. General Assembly created the U.N.'s refugee agency, UNHCR. In UNHCR's Statute, adopted as a resolution by the General Assembly, the agency was mandated to provide international protection to, and to seek permanent solutions for, refugees.[20] UNHCR's Statute and subsequent Conclusions adopted by its Executive Committee[21] have identified voluntary repatriation, full integration of refugees into their countries of asylum, and resettlement to a third country as the three permanent solutions for refugees. In pursuing its mandate to find permanent solutions for refugees, UNHCR's preferred goal is voluntary return of refugees, in conditions of safety and dignity, to their home country.[22] UNHCR also promotes legal, social, and economic integration of refugees into their asylum countries.[23] Resettlement is used as a priority solution for refugees whose legal or physical security in a country of asylum cannot be guaranteed.[24] Resettlement is also used by UNHCR for individual refugees who do not

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[18] Eight-month-old Afrima Ramadani, twelve-year-old Ramadan Belani, and seventy-year-old Zecir Belani had to be hospitalized in the nearby city of Bitola, because of their aggravated health condition in the last week of July.

[19] Human Rights Watch interview with N.N., Medzitlija, July 26, 2003.

[20] See General Assembly Resolution 428 (V), December 1950.

[21] The Executive Committee of the High Commissioner's Program ("ExCom") is UNHCR's governing body. Since 1975, ExCom has passed a series of Conclusions at its annual meetings. The Conclusions are intended to guide states in their treatment of refugees and asylum seekers and in their interpretation of existing international refugee law. While the Conclusions are not legally binding, they do constitute a body of soft international refugee law. They are adopted by consensus by the ExCom member states, are broadly representative of the views of the international community, and carry persuasive authority.

[22] See UNHCR, Handbook on Resettlement, July 1997, ch. 2, p. 1.

[23] Ibid., pp. 4-5.

[24] Ibid., p. 5.

have an opportunity for legal, social, and economic integration into their asylum country and cannot return home within the foreseeable future.[25]

In the case of the Roma refugees in Macedonia, the country of origin is formally Serbia and Montenegro (formerly "the Federal Republic of Yugoslavia"). According to the Serbian constitution, Kosovo is an autonomous province within the Republic of Serbia. United Nations Security Council Resolution 1244, adopted after the end of the NATO war in 1999, avoids making explicit reference to the relation between Kosovo and Serbia, and only mentions Kosovo's "substantial autonomy within the Federal Republic of Yugoslavia," as well as "the commitment of all Member States to the sovereignty and territorial integrity of the Federal Republic of Yugoslavia."[26]

Under international law and practice, return to one's country of origin generally contemplates return to one's original home within that country—in this case, the province of Kosovo, within Serbia and Montenegro.[27] As detailed below, however, return to Kosovo proper is not an option for most Kosovo Roma in Macedonia. In most cases, their property in Kosovo was destroyed when they were expelled, and there remains a very high safety risk for Roma returnees.

It may be appropriate to expect refugees to return to other parts of their country of origin—in this case, parts of Serbia and Montenegro other than Kosovo. For such expectations to arise, however, relocation to another part of the country must be a

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[25] Ibid., ch. 4, p. 31.

[26] U.N. Security Council Resolution 1244 (1999), June 10, 1999 [online], http://daccess-ods.un.org/TMP/3682805.html, (retrieved August 4, 2003), preamble and para. 10.

[27] People who flee their homes as a result of war are entitled to return to their home areas and property, a right known as the "right to return." The right to return to one's former place of residence is related to the right to return to one's home country. This latter right is expressly recognized in the Universal Declaration of Human Rights and international human rights conventions. The right to return to one's place of origin within one's country, or at least the obligation of states not to impede the return of people to their places of origin, is implied. For example, article 12 of the International Covenant on Civil and Political Rights (ICCPR) recognizes the right to choose freely one's own place of residence, which incorporates the right to return to one's home area. International Covenant on Civil and Political Rights (ICCPR), G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force Mar. 23, 1976, article 12. Macedonia ratified the ICCPR in September 1991. In some cases, the right to return to one's former place of residence is also supported by the right to family reunification and to protection for the family. Recognizing these various rights, the U.N. Sub-Commission on the Promotion and Protection of Human Rights has reaffirmed "the right of all refugees ... and internally displaced persons to return to their homes and places of habitual residence in their country and/or place of origin, should they so wish." See Sub-Commission on the Promotion and Protection of Human Rights, Housing and Property Restitution in the Context of the Return of Refugees and Internally Displaced Persons, Resolution 1998/26.

"reasonable" solution, where the refugee will enjoy respect for his civil and political rights and be able to satisfy his basic social, cultural, and economic needs, without facing "undue hardship."[28] As detailed below, conditions for Roma in Serbia and Montenegro do not currently meet this standard.

For the time being, therefore, the only two practical options for the Roma refugees in Macedonia appear to be resettlement to third countries or integration in Macedonia, the latter under the condition that the government and the relevant international agencies effect a significant qualitative improvement in the legal, economic, and social situation of the affected Roma.

NO CONDITIONS FOR SAFE RETURN TO KOSOVO

The Kosovo Roma refugees have shown a strong preference for return to their homes in Kosovo as a solution in the long run.[29] However, forcible return of refugees to any territory where they may potentially face persecution violates international standards that require any such returns to be voluntary, on the basis of accurate information about conditions in the potential country of return, and without negative push factors, such as reductions in humanitarian relief supplies. Finally all such voluntary returns should take place in conditions of safety and dignity, which necessitates careful human rights monitoring and protection.[30] On July 1, 2003, leading Kosovo Albanian politicians publicly called on all displaced persons from Kosovo, now residing in Serbia,

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[28] See Guidelines on International Protection: Internal Flight or Relocation Alternative, HCR/GIP/04, July 23, 2003, p. 3.

[29] Roma Appeal For Collective Return to Kosovo and Metohija, addressed to the United Nations (U.N.) Secretary General, U.N. Administrator in Kosovo, President of the Serbian Government's Coordination Center for Kosovo and Metohija, President of Serbia and Montenegro, UNHCR Headquarters in Geneva, and the Government of the Republic of Serbia, March 28, 2003.

[30] See UNHCR, *Handbook on Voluntary Repatriation*, 1996, pp. 10-12. The Handbook states that voluntary returns require that "the positive pull-factors in the country of origin are an overriding element in the refugees' decision to return rather than possible push-factors in the host country or negative pull-factors, such as threats to property, in the home country." Also, returns should "take place in conditions of safety, dignity and security." This standard necessitates return "which takes place under conditions of legal safety. . .physical security. . .and material security. . . .[Returnees should be] treated with respect and full acceptance by their national authorities, including the full restoration of their rights." Although the Handbook is not binding international law, it provides a set of guidelines derived from international law by which the behavior of UNHCR and governments during repatriation may be judged. It is also based on several ExCom Conclusions, such as ExCom Conclusion No. 18 (1980), ExCom Conclusion No. 40 (1985), ExCom Conclusion No. 74 (1994), which reflect international human rights norms as well as interpretations of the Refugee Convention.

Montenegro, and Macedonia to return to their homes.[31] Neutral observers agree, however, that conditions for safe return of non-ethnic Albanians presently do not exist. The numbers are telling enough: since the end of the 1999 war only about 8,400 minority members (about half of them Serbs and another half Roma) have returned,[32] out of 230,000 who had left Kosovo.[33]

In its "Position on the Continued Protection Needs of Individuals from Kosovo" of January 2003, UNHCR reported that progress with the return of Roma to Kosovo, "remains minimal and is often characterised by secondary displacement and relocation to a few already overcrowded locations."[34] UNHCR further reported that "[Roma, Ashkalija and Egyptian] communities continue to face serious protection problems. The problems include grenade attacks and physical harassment, in addition to acute discrimination and marginalisation."[35] The report concludes that "non-Albanian persons originally from Kosovo continue to face security threats which place their lives and fundamental freedoms at risk and fuel on-going departure from the province."[36]

In its "Update on the Situation of Roma, Ashkaelia, Egyptian, Bosniak and Gorani In Kosovo," from January 2003, UNHCR highlighted some two dozen recent incidents of violence and threats against Roma in Kosovo, including the following:

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[31] "Kosovske vlasti pozvale raseljene da se vrate kucama" ("Kosovo Authorities Invited the Displaced to Return to Their Homes"), *B92* (Belgrade) website, July 1, 2003.

[32] "UNHCR briefing notes: Kosovo, Sri Lanka, Colombia," (statement by a UNHCR spokesperson), October 7, 2003, available at http://wwww.reliefweb.int/w/rwb.nsf/

0/7453b68344c0c2a9c1256db800442ddf?OpenDocument (retrieved October 23, 2003).

[33] The estimated figure of 230,000 non-Albanian refugees from Kosovo comes from United Nations High Commissioner for Refugees,"Background Info: Federal Republic of Yugoslavia – Kosovo" [online], http://www.unhcr.ch/cgi-bin/texis/vtx/balkans-country?country=kosovo&display=background (retrieved August 4, 2003).

[34] United Nations High Commissioner for Refugees, "UNHCR Position on the Continued Protection Needs of Individuals from Kosovo," January 2003 [online], http://www.unhcr.ch/cgi-bin/texis/vtx/home/opendoc.pdf?tbl=SUBSITES&id=3e2d5ad34 (retrieved August 4, 2003), para. 12.

[35] Ibid., para. 10.

[36] Ibid., para. 3.

- In September 2002, an Ashkalija resident from Urosevac was seriously injured during an assault by a group of Albanian youths while traveling through Obilic, allegedly in revenge for war actions;
- In September 2002, security guards near the KEK power plant in Obilic beat three Ashkalija and a Kosovo Serb from the Plemetin;
- On September 27, 2002, a grenade was thrown into the home of a Romani resident in Gnjilane;
- On September 1, 2002, an explosive device was thrown into a home occupied by Roma in Urosevac;
- On September 11, 2002, a grenade attack in Abdullah Presheva Street in Gnjilane caused damage to the house of a Roma returnee family, injuring one person;
- In August 2002, following the departure of the Kosovo Albanian illegal occupant from a Romani house in Urosevac, the house was set on fire;
- On April 16, 2002, an Ashkalija family in Vucitrn, was targeted in a grenade attack, following the return of a group of Ashkalija internally displaced persons from Serbia;
- Two Roma/Ashkalija families from the Kristali neighborhood in Pec were warned by Kosovo Albanians not to return to the town.[37]

RESETTLEMENT IN SERBIA IS NOT A SOLUTION

As mentioned above, the Kosovo Roma in Macedonia could in principle be returned to a part of their country of origin—Serbia and Montenegro—other than Kosovo, if conditions in that part of the country made such resettlement "reasonable." In July 2003 UNHCR issued guidelines stating governments' legal obligations with regard to relocation alternatives for refugees in their country of origin. In UNHCR's guidelines, the agency condemned the use of internal relocation to deny access to refugee status determination. Instead, the agency suggested that the question of whether or not an individual could find a place of safety within a country should be analyzed when determining whether an individual has a well-founded fear of persecution.

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[37] UNHCR, "Update on the Situation of Roma, Ashkaelia, Egyptian, Bosniak and Gorani In Kosovo," January 2003, located at www.reliefweb.int/library/documents/2003/unhcr-bal-01jan.pdf (retrieved October 1, 2003), pp. 4 and 6.

Fundamentally, the agency explained that in order for internal relocation to be applied, the relocation must be reasonable for the person concerned given the claimant's personal profile and given the country's particular political, ethnic, religious, and other makeup. Internal relocation would only be reasonable if the individual in the context of the country concerned could "lead a relatively normal life without facing undue hardship."[38]

Human Rights Watch believes that the legal, social, and economic status of Roma in Serbia would make internal relocation there unreasonable for most of the Roma currently living in Macedonia. By the Serbia and Montenegro government's own acknowledgment, living conditions for displaced Roma in Serbia are "extremely poor."[39] Many Roma live in illegal settlements without access to electricity, drinking water, or to a sewage system. Local governments occasionally evict the Roma from the settlements without providing any alternative accommodation.[40] Unable to supply proof of their present place of residence, many of the Roma cannot register themselves as displaced persons. Although most of the 50,000 Kosovo Roma who fled to Serbia and Montenegro live in Serbia, only an estimated 19,000 are registered as displaced persons.[41] Without an ability to register as displaced persons, unregistered Roma do not have medical insurance and depend on the goodwill of doctors for care and treatment.[42] A large majority of the children of Kosovo Roma in Serbia do not attend schools, because of their unregulated status as internally displaced persons, lack of knowledge of the Serbian language, poverty, or harassment in schools.[43] Roma receive little or no assistance from the state and depend on non-governmental and international relief and goodwill.[44] In short, the situation of the displaced Kosovo Roma in Serbia is, at best, equal to that of the Kosovo Roma refugees in Macedonia, if not worse.

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[38] See Guidelines on International Protection: Internal Flight or Relocation Alternative, HCR/GIP/04, July 23, 2003, p. 3.

[39] Ministry of Human and Minority Rights [of Serbia and Montenegro], *Draft Strategy for the Integration of the Roma* (Belgrade, 2002), p. 54.

[40] Ibid.

[41] Minority Rights Center, *Abuses of Roma Rights in Serbia* (Belgrade, June 2003), p. 43. Serbian Ministry of Human and Minority Rights [of Serbia and Montenegro], *Draft Strategy for the Integration of the Roma* (Belgrade, 2002), p. 54.

[42] "Human Rights Concerns in the Federal Republic of Yugoslavia," *A Human Rights Watch Briefing Paper* [online], http://www.hrw.org/backgrounder/eca/yugo-bck0711.htm, July 2002.

[43] Human Rights Watch interview with Milica Simic, director of the Center for the Rights of the Child, Belgrade, May 28, 2003.

[44] Ministry of Human and Minority Rights [of Serbia and Montenegro], *Draft Strategy for the Integration of the Roma* (Belgrade, 2002), p. 54.

INTEGRATION IN MACEDONIA VERSUS THIRD-COUNTRY RESETTLMENT

Given the limited prospects for return to Kosovo in the foreseeable future, most Kosovo Roma in Macedonia favor resettlement in third countries over other options for solving their problems. Most E.U. member states, however, appear to be unwilling to accept the Roma refugees. It is true that, during the Medzitlija crisis, E.U. bodies and member states were careful not to explicitly exclude, as a matter of principle, resettlement as a solution for some of the Kosovo Roma.[45] However, a number of international officials in Skopje, speaking on condition of anonymity to Human Rights Watch during and after the Medzitlija crisis, agreed that opposition on the part of most E.U. member states to accepting Kosovo Roma from Macedonia was palpable.[46] A UNHCR official in Skopje told Human Rights Watch that E.U. countries with resettlement policy did not regard the Kosovo Roma in Macedonia as a priority group: resettling members of refugee groups in some other regions of the world was determined to be a more urgent task.[47] Another international official pointed at governments' concern that resettlement of any number of Kosovo Roma from Macedonia would encourage tens of thousands of Roma displaced in other parts of former Yugoslavia to also seek resettlement.[48] In any event, the only instance of resettlement of a major group of Kosovo Roma took place between July and September 2002, when 310 Roma were transferred to the United States, as a consequence of the armed conflict in Macedonia in the previous year;[49] less than two dozen in total were

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[45] The June 3, 2003 statement by the Greek Presidency of the E.U., advising Roma to accept the offer from the Macedonian government and return from Medzitlija to Skopje, was of limited scope insofar as it only addressed the immediate problem in Medzitlija, and avoided suggesting long-term solutions. See above, text accompanying footnote 17.

[46] Exceptionally, the representatives from Sweden and Norway were reportedly open to considering resettlement of the Roma to their respective countries. The director of the Macedonian Helsinki Committee told Human Rights Watch that this openness was discernable at the meetings that the Committee organized with diplomatic representatives in Skopje. Human Rights Watch telephone interview with Mirjana Najcevska, director, Macedonian Helsinki Committee, July 30, 2003.

[47] Human Rights Watch telephone interview with a UNHCR official in Skopje, November 4, 2003.

[48] Human Rights Watch telephone interview with an international official in Skopje who requested anonymity, October 8, 2003.

[49] The 310 Roma left Macedonia in summer 2002, but UNHCR had referred them for resettlement a year earlier, during the armed conflict in Macedonia between the government forces and Albanian rebels. The agency assessed that the circumstances at the time warranted resettlement, because it was unclear whether the conflict would escalate, and the security situation for Roma was precarious. Human Rights Watch telephone interview with a UNHCR official in Skopje, November 4, 2003

resettled between 2000 and 2003 to Norway, Sweden, Canada, Australia, and the Netherlands.[50]

Of the three forms of durable solutions to refugee crises, resettlement is referred to by UNHCR as "a last resort, when neither voluntary repatriation nor local integration is possible, when it is in the best interests of the refugees and where appropriate."[51] The agency is careful to note that despite this description of resettlement as a last resort, it "should not be interpreted to mean that. . .resettlement is the least valuable or needed. . . For many refugees, resettlement is, in fact, the best—or perhaps, only—alternative."[52] Even so, there is no obligation under international law for a third state to accept refugees under a resettlement program.

The UNHCR Executive Committee has repeatedly called on governments in a position to assist to admit refugees through resettlement, in the context of international burden-sharing.[53] The Executive Committee has specified that in situations of mass influx of persons, resettlement should be considered. Conclusion no. 22 (1981) on Protection of Asylum-Seekers in Situations of Large-Scale Influx states that "a mass influx may place unduly heavy burdens on certain countries;....States shall, within the framework of international solidarity and burden-sharing, take all necessary measures to assist, at their request, States which have admitted asylum seekers in large-scale influx situations."[54] The Conclusion further recommends "the provision for asylum seekers of resettlement possibilities in a cultural environment appropriate for their well-being" when "voluntary repatriation or local settlement cannot be envisaged."[55]

UNHCR promotes resettlement as a durable solution when there is a lack of opportunities for refugees to either return to the country of origin or establish

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[50] Human Rights Watch telephone interview with a UNHCR official in Skopje, November 4, 2003; Human Rights Watch telephone interview with a representative of the International Organization for Migration (IOM) office in Skopje, November 4, 2003.

[51] UNHCR Executive Committee Conclusion No. 67 (XLII) - 1991, "Resettlement as an Instrument of Protection," para. (g).

[52] See UNHCR Handbook on Resettlement, ch. 1, p. 1.

[53] UNHCR ExCom Conclusion No. 67 (XLII) - 1991, "Resettlement as an Instrument of Protection," para. (a). See also ExCom Conclusion Nos. 68 (1992); 71 (1993); No. 77 (1995); No. 79 (1996); No. 81 (1997); No. 85 (1998).

[54] UNHCR ExCom Conclusion no. 22 (1981) on Protection of Asylum-Seekers in Situations of Large-Scale Influx, chapter IV, para. 1.

[55] Ibid., para. 4.

themselves in the country of refuge "in a manner appropriate to their cultural, social, religious or educational backgrounds."[56] Another key point is that resettlement should be used when countries of refuge are coping with a protracted refugee situation.[57] The UNHCR Resettlement Handbook stipulates that after two years of failure to achieve either local settlement or voluntary repatriation it can be said that a refugee lacks a durable solution.[58]

The Kosovo Roma refugees in Macedonia have been unable for more than four years now to settle in Macedonia in a manner appropriate to their cultural, social, and educational background, and neither integration nor voluntary return can, for many, be envisaged in the foreseeable future.

Most Roma refugees in Macedonia owned property in Kosovo, had regular employment, and attended schools. At a recent roundtable discussion in Skopje, the OSCE Adviser on Roma and Sinti Issues noted that the level of education of Kosovo Roma refugees was generally above the average of other Roma communities in Europe. Kosovo Roma refugees interviewed by Human Rights Watch stated that they owned houses in Kosovo, and most worked either as artisans or as employees in state-run enterprises.[59] During the four years of refuge in Macedonia, however, their housing, educational, and employment situation deteriorated to such an extent that it became incompatible with their background and, in some cases, violative of fundamental economic, social, and cultural rights.

Unsatisfactory Accommodation Conditions in Macedonia

Kosovo Roma refugees interviewed by Human Rights Watch in Medzitlija, in the private accommodations in Shuto Orizari, and in Katlanovo consistently described their current and past living conditions in Macedonia as dreadful. The camp in Shuto Orizari was

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[56] See, for example, UNHCR Resettlement Handbook (revised edition, July 2002), para. 4.9., and Standing Committee of the UNHCR Executive Committee, "Resettlement: an instrument of protection and a durable solution," EC/46/SC/CRP.32 [online], http://www.unhcr.ch/cgi-bin/texis/vtx/home (retrieved August 4, 2003), para. 16.

[57] *See* UNHCR Ex-Com Conclusion no. 90 (LII) (2001) on International Protection, para. (k).

[58] UNHCR Resettlement Handbook (revised edition, July 2002), para. 4.9.4.

[59] Human Rights Watch interview with Ramadan Ali, Shuto Orizari, July 29, 2003; Human Rights Watch interview with Zejnel Berisa, Katlanovo, July 29, 2003; Human Rights Watch interview with Adus Avdo, Katlanovo, July 29, 2003; Human Rights Watch interview with Fatmir Kruezi, Shuto Orizari, July 29, 2003; Human Rights Watch interview with Muharem Gasnjani, Medzitlija, July 26, 2003.

based in the immediate vicinity of a trash dump. The inhabitants of the camp lived in makeshift shacks. Several families shared one bathroom located in a sheet-metal container. There was no sewage system in the camp. The camp was not paved, so rains regularly left the entire camp covered in mud.

The Roma housed in Shuto Orizari say, however, that the conditions in the camp were nevertheless preferable to those in private accommodation.[60] Multi-member Kosovo Roma families who live in private accommodation can afford to rent only small, suffocating rooms, in small houses owned by destitute indigenous Roma.[61] The owners apparently usually sublet a room for a few months, in order to earn some money, and subsequently insist that the Kosovo Roma tenants leave. Most Kosovo Roma living in private accommodation have had no choice but to move from one house to another during the three or four years of living in the municipality. For example, the family of Ramadan Ali, interviewed by Human Rights Watch, has stayed in more than ten houses in Shuto Orizari since the end of 1999.[62] In a May 30 letter to European Commission President Romano Prodi and E.U. heads of state, Roma refugees from Kosovo described the private accommodation available to them as "frequently in windowless basements, where refugees live seven or eight or ten to a room. We are aware of people who have been evicted from such housing with no notice."[63]

A specific problem reported by the Kosovo Ashkalija/Egyptians is that few home owners are willing to rent them housing space. Many ethnic Macedonians are unwilling to do so because of the widespread anti-Roma stereotypes; an average ethnic Albanian sees Kosovo Roma as being Serbian collaborators during the Kosovo crisis; finally, there are rising tensions between Macedonian Roma and Macedonian Albanians, which tend to render native Macedonian Roma unfriendly towards Ashkalija/Egyptians because of

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[60] Human Rights Watch interview with Ramadan Ali, Shuto Orizari, July 29, 2003; Human Rights Watch interview with Fatmir Kruezi, Shuto Orizari, July 29, 2003.

[61] Since the second half of 2002, UNHCR has been providing each elderly member of a Kosovo Roma family with an equivalent of 40 Euro, and each child with 35 Euro, but the 200 Euro an average family receives is barely sufficient to cover the rent and utilities in substandard private accommodation (varying from 100 to 150 Euro). At the same time, the government has until recently prohibited legal employment of the Roma, so they have been unable to have any supplementary source of income.

[62] Human Rights Watch interview with Ramadan Ali, Shuto Orizari, July 29, 2003

[63] Petition by Kosovo Roma in Macedonia to European Commission President Romano Prodi and to Prime Ministers of European Union Member States, May 30, 2003, available at http://www.balkanaegypter.de/aktuelles%20dosierer.htm.

their use of the Albanian language. As a result, few Ashkalija among Kosovo Roma have lived in private accommodation in Shuto Orizari.[64]

Roma in the collective center near Katlanovo live in slightly better housing conditions than those in private accommodation or in the former Shuto Orizari camp. The Katlanovo camp consists of clapboard barracks. The camp is clean; bathrooms are used by one or, exceptionally, by two families; during wintertime the bathrooms are heated; in contrast to those living in private accommodation, the inhabitants of the Katlanovo camp do not have to pay for any utilities. However, the rooms are too small (sixteen square meters) for multi-member families to live therein. Also, each time a camp resident wants to leave the camp, he or she has to ask for permission on the previous day and must return by 8 pm. While this does not impose a substantial limit on the movements of the Roma, it is not clear why such restrictions are warranted. According to the ICCPR,[65] everyone (including non-citizens)[66] lawfully within Macedonia should have the right to liberty of movement and freedom to choose his residence within that territory.[67] This right to freedom of movement can only be restricted as "provided by law" if "necessary to protect national security, public order, public health, or morals, or the rights and freedoms of others."[68] The Kosovo Roma, as non-citizens with permission (in the form of their THAP status) to be present in Macedonia must be guaranteed freedom of movement. While their freedom of movement rights may be curtailed for the reasons cited above, it is not at all evident that the free movement of the Roma would pose a security, public order, or public health threat. The restriction on their freedom of movement, coupled with the fact that the camp is surrounded by barbed wire, makes the inhabitants feel as if they are living "in a prison."[69]

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[64] Human Rights Watch interview with Erduan Iseni, mayor of Shuto Orizari, Shuto Orizari, July 29, 2003; Human Rights Watch interview with Fatmir Kruezi, Shuto Orizari, July 29, 2003.

[65] While the Refugee Convention does contain a provision on the right to freedom of movement for refugees, this right has been better elaborated upon and is more protective in the ICCPR, which is complementary to the Refugee Convention on this subject, and to which Macedonia is a party.

[66] The Human Rights Committee has recognized that the ICCPR must apply "without discrimination between citizens and aliens." The term "aliens" includes asylum seekers and refugees. The Committee further notes that, "Aliens have the full right to liberty and security of the person....They have the right to liberty of movement and free choice of residence....These rights of aliens may be qualified only by such limitations as may be lawfully imposed under the Covenant." See "The Position of Aliens Under the Covenant," CCPR General Comment 15, 1986 para. 2.

[67] See ICCPR, Article 12(1).

[68] See ICCPR, Article 12(3).

[69] Human Rights Watch interview with Zejnel Berisa, Katlanovo, July 29, 2003; Human Rights Watch interview with Adus Avdo, Katlanovo, July 29, 2003.

Education: Lost Generations of Kosovo Roma Children

Most Roma refugee children in Macedonia either do not attend school or do so irregularly.[70] A study conducted by the United Nations Children Fund (UNICEF) showed that most of the parents (69.9%) believed the future of their children lies in their education.[71] However, harassment by non-Roma students and poverty that makes it difficult for parents to buy clothes and books have prevented their children from building such a future.[72]

Before the UNHCR shut down the refugee camp in Shuto Orizari, the Roma refugee children attended the first four grades of primary education in a UNICEF-run school in the camp. Both Macedonian and Albanian language courses were available. The children above that age, however, faced serious difficulties attending school. Some forty or fifty Albanian-speaking Roma (Ashkalija/Egyptians) initially attended a Shuto Orizari Albanian-language school called 26.juli. But local Albanian children verbally abused, threatened, and occasionally beat the Roma, and after one such incident in 2001, Roma parents pulled their children out of the school.[73] Other Roma enrolled their children into the Braca Ramiz school, where the Macedonian language is in use. According to interviews with Human Rights Watch, teasing and harassment in Braca Ramiz were also frequent.[74]

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[70] An August 2002 assessment by the UNICEF showed that 18.34 percent of the Kosovo Roma children in Macedonia between age of seven and fourteen never attended school; 29.06 percent have dropped out; and 8.66 percent attended irregularly. UNICEF, *Assessment of Irregular School Attendance and Dropout Among Refugee Children in Macedonia*, August 2002, p. 6.

[71] Ibid., p. 20.

[72] In its April 2001 report on Macedonia, the European Commission against Racism and Intolerance (ECRI) called on the government to make "special efforts" to improve Roma children's access to education, including "special assistance programmes for Roma/Gypsy and other children from extremely poor families who find the costs of textbooks, other school materials and proper school dress prohibitive," and to conduct an investigation "into the role of stereotypes and prejudices of teachers." European Commission against Racism and Intolerance, "Second Report on 'the Former Yugoslav Republic of Macedonia,'" CRI(2001)5, April 3 2001, p. 12. For an overview of barriers to Roma children's enjoyment of the right to education in Macedonia, see "Former Yugoslav Republic of Macedonia," in Save the Children, *Denied a future? The right to education of Roma/Gypsy & Traveller children in Europe* (London: Save the Children Fund, 2001), pp. 270-299.

[73] Human Rights Watch interview with Naser Belani, Medzitlija, July 26, 2003; Human Rights Watch interview with Muharem Gasnjani, Medzitlija, July 26, 2003.

[74] One Roma parent told Human Rights Watch that every day he accompanied his two daughters three kilometers to the Braca Ramiz school, until he decided to withdraw them due to the repeated harassment and occasional beatings they suffered at the school. Human Rights Watch interview with Ramadan Ali, Shuto Orizari, July 29, 2003.

The children from the camp near Katlanovo have met similar difficulties in trying to attend schools. In 2001, the Albanian-speaking Roma children enrolled in schools in the nearby villages with an Albanian majority, but by the second semester almost all of them had quit because of harassment and teasing by Albanian students. Other children enrolled in Macedonian-language schools in Katlanovo (1-4 grade) and Petrovec (5-8 grade). While the harassment they faced was reportedly not as serious as that faced by Roma children in Albanian-speaking schools, other factors—chiefly the lack of books and appropriate clothes—led many to drop out. The leaders of the Roma refugees in Katlanovo assess that, of some 150 children in the camp, only between thirty and forty attended school at the end of the 2002/03 school year.[75] According to a Macedonian government official in charge of education of minorities interviewed by Human Rights Watch, the government lacked funds to materially assist the Roma, but UNICEF provided textbooks for Roma students.[76] A member of the UNICEF office in Macedonia in charge of educational issues confirmed that the organization has provided textbooks for enrolled Roma children at the beginning of every schoolyear.[77] Both officials alleged that many Roma parents were selling the books shortly after receiving them. Roma parents, however, stated that they must provide most books, notepads, and school equipment with their own limited resources.[78] While the accounts on this issue are clearly contradictory, the end result is not disputable: numerous Roma children lack basic educational tools, be it because they never receive them in the first place, or because the dire economic situation of their families forces parents to sell them.

Most Roma parents have been reluctant to raise the issue of the mistreatment of their children with educational authorities, fearing further repercussions. As one parent told Human Rights Watch, "We are trying to avoid any hint of creating problems, because otherwise we might be kicked out even from here."[79] A Macedonian government official in charge of minority education interviewed by Human Rights Watch did not have any

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[75] Human Rights Watch interview with Zejnel Berisa, Katlanovo, July 29, 2003; Human Rights Watch interview with Adus Avdo, Katlanovo, July 29, 2003.

[76] Human Rights Watch interview with Dragan Nedeljkovic, head of Department of Development and Promotion of Education in Language of Minorities in the Government of the Republic of Macedonia, Skopje, November 18, 2003.

[77] Human Rights Watch telephone interview with Andriana Micevska, education programme assistant, UNICEF office in Macedonia, August 29, 2003.

[78] Human Rights Watch interview with Zejnel Berisa, Katlanovo, July 29, 2003; Human Rights Watch interview with Adus Avdo, Katlanovo, July 29, 2003; Human Rights Watch interview with Fatmir Kruezi, Shuto Orizari, July 29, 2003.

[79] Human Rights Watch interview with Ramdan Ali, Shuto Orizari, July 29, 2003.

specific information about mistreatment of Roma children.[80] Overall, Macedonian authorities appear not to have taken adequate measures to protect the Roma children from harassment and ensure their equal access to education.

As a party to the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the Convention on the Rights of the Child (CRC), Macedonia is obliged to provide free and compulsory primary education to all children within its territory; secondary education must be "available and accessible to every child," with the progressive introduction of free secondary education.[81] In interpreting that obligation, the U.N. Committee on Economic, Social and Cultural Rights has emphasized that education "must be accessible to all, especially the most vulnerable groups, in law and fact;" "be within safe physical reach;" and "be affordable to all."[82] The CRC further entitles children to protection from acts of violence and harassment, whether by private actors or state agents.[83]

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[80] Human Rights Watch interview with Dragan Nedeljkovic, head of Department of Development and Promotion of Education in Language of Minorities in the Government of the Republic of Macedonia, Skopje, November 18, 2003. The official emphasized that his department came into existence at the beginning of 2003, following the September 2002 parliamentary elections that resulted in an ethnically mixed government. He could not comment, in this regard, on the performance of the previous government, when education of minorities apparently was not within the competence of any particular office within the government.

[81] In interpreting the meaning of free and compulsory education, the U.N. Committee on Economic, Social and Cultural Rights has said that "neither parents, nor guardians, nor the State are entitled to treat as optional the decision as to whether the child should have access to primary education," and that "[f]ees imposed by the Government, the local authorities or the school, and other direct costs, constitute disincentives to the enjoyment of the right and may jeopardize its realization.... Indirect costs, such as compulsory levies on parents (sometimes portrayed as being voluntary, when in fact they are not), or the obligation to wear a relatively expensive school uniform, can also fall into the same category." U.N. Committee on Economic, Social and Cultural Rights, General Comment 11 (plans of action for primary education), May 10, 1999, paras. 6-7; ICESCR, December 16, 1966, entered into force January 3, 1976, articles 2, 13 (2); and CRC, November 20, 1989, entered into force September 2, 1990, articles 2, 28 (1).

[82] The Committee further states that it "takes note of article 2 of the Convention on the Rights of the Child and article 3 (e) of the UNESCO Convention against Discrimination in Education and confirms that the principle of non-discrimination extends to all persons of school age residing in the territory of a State party, including non-nationals, and irrespective of their legal status." U.N. Committee on Economic, Social and Cultural Rights, General Comment 13 (the right to education), December 8, 1999, paras. 11-14, 34.

[83] "States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child. 2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement." CRC, article 19.

The fact that most Kosovo Roma children have been unable to attend primary schools attests to the failure of the government of Macedonia to deliver on its obligations.[84] The problem is likely to have worsened since the beginning of the new school year (2003-04), given that the Roma from the former collective center in Shuto Orizari, having left the Medzitlija border crossing, moved into private accommodations in Shuto Orizari and other settlements in and around Skopje. As the 2002 UNICEF study shows, children from families living in private accommodation attend school at a significantly lower rate than children living in collective centers.[85]

No Employment for Kosovo Roma

Not a single Kosovo Roma is known to be officially employed in Macedonia. Some of them manage from time to time to find seasonal jobs (for example, construction work and canal digging) in the "black economy." This startling fact is attributable to the high unemployment rate in Macedonia, compounded by discrimination against Roma in employment[86] and, until July 2003, a formal ban on employment for those with THAP status. The inability of the Roma to legally work in Macedonia points to another serious gap in their ability to enjoy legal protection in Macedonia. Temporary protection, of which THAP status is a form, is meant to be applied to persons for a finite and short duration. As UNHCR's head of the Western and Northern European desk stated in

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[84] On the occasion of its most recent review of Macedonia in January 2000, the U.N. Committee on the Rights of the Child said it "remain[ed] concerned that a significant proportion of school-aged children do not attend primary and, notably, secondary school. Specifically, the Committee is concerned at the low proportion of girls in general, and children from the Roma minority in particular, who enroll in educational establishments at all levels, and at the low numbers of children from all minority groups who enroll at the secondary school level." The Committee recommended that the government "pursue its efforts to increase the enrolment levels of all children from minorities in primary and secondary schools, with special attention to girls in general and children from the Roma minority in particular." At a more general level, the Committee was "concerned that children from some minority populations, and the Roma in particular, do not enjoy full respect of their rights," and "encourage[d] the State party to continue its efforts to ensure the equal implementation of the Convention for all children and to make every effort to ensure that the children of minorities are able to benefit fully from the Convention's principles and provisions," recommending that the government "seek technical assistance from UNICEF in this regard." Concluding Observations of the Committee on the Rights of the Child: The Former Yugoslav Republic of Macedonia, February 23, 2000, CRC/C/15/Add.118, paras. 43-44 and 54-55.

[85] While 52.5 percent of the children in collective centers regularly attended school, only 26.3 percent of those in host families did. Likewise, only 5 percent of the children in collective centers never attended school, in contrast to 45 percent of the children in private accommodation. UNICEF, *Assessment of Irregular School Attendance and Dropout Among Refugee Children in Macedonia*, August 2002, p. 10.

[86] Noting a wide discrepancy between the overall unemployment rate and that pertaining to the Roma population, ECRI's April 2001 report on Macedonia made clear that it "believes ... that indirect and direct discrimination frequently play a large part in explaining this phenomenon" and called on the Macedonian authorities to devise mechanisms for effective monitoring of access to employment by minority groups "permit[ting] problems of discrimination to come to light." European Commission against Racism and Intolerance, "Second Report on 'the Former Yugoslav Republic of Macedonia,'" CRI(2001)5, April 3 2001.

1995, "Human dignity demands that after three years, they [refugees with temporary protection] get the right to work and to send their children to school."[87] In fact, the problematic renewals of so-called "temporary" protection for refugees from Kosovo for years at a time prompted E.U. member states to adopt a directive limiting temporary protection to a two-year duration. The Directive was adopted as a response to the Council of the European Union's call on member states to "learn the lessons of their response to the Kosovo crisis."[88] While Macedonia is not a member state of the E.U., these standards are useful guidelines as to the appropriate duration of so-called temporary protection.

Moreover, temporary protection must not be used by governments as a means to avoid their Convention obligations to refugees. To the extent to which the Kosovo Roma are refugees under the Refugee Convention, they should enjoy the right to enter into wage-earning employment, in the same manner and under the most favorable terms as those afforded to other lawfully present non-citizens in Macedonia.[89]

With the most recent legislative changes in Macedonia, legal obstacles for employment of Kosovo Roma in Macedonia have been eliminated. The Law on Asylum and Temporary Protection, adopted in July 2003, authorizes employment for recognized refugees and for persons under temporary protection.[90] However, having been removed from the labor market for four years, and divested of most of their assets and means to launch private enterprises, Roma from Kosovo will continue to find it exceptionally difficult to find any employment. The general unemployment rate in Macedonia is between 30 and 35 percent, and in the municipality of Shuto Orizari, where most Roma live, it is approaching 90 percent.[91]

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[87] UNHCR, "How Long Is Temporary," *Refugees Magazine*, March 1, 1995.

[88] See Council Directive on minimum standards for giving temporary protection in the event of a mass influx of displaced persons, 2001/55/ED, July 20, 2001, para. 6. The two-year limitation of temporary protection is specified in para. 4.

[89] See Refugee Convention, Article 17.

[90] According to the law, recognized refugees and persons under temporary protection have the right to work under the conditions applicable for different categories of foreigners (those with permanent permits and those with temporary ones) in Macedonia. Law on Asylum and Temporary Protection, *Official Gazette of the Republic of Macedonia*, no. 49/2003, July 25, 2003, art. 51 (2) and art. 64.

[91] Human Rights Watch interview with Erduan Iseni, major of Shuto Orizari, Shuto Orizari, July 29, 2003.

Restrictive Asylum Policy Toward Roma

As suggested in the foregoing discussion of employment opportunities for Kosovo Roma refugees in Macedonia, the likelihood for the Kosovo Roma to establish themselves in Macedonia would significantly increase if they had stable legal status in the country, and if their status enabled them to enjoy rights on an equal footing with Macedonian nationals.

Prior to the adoption in July 2003 of the Law on Asylum and Temporary Protection, the authorities used a provision in the Law on Movement and Residence of Foreigners (1992) as a basis for granting asylum in a very limited number of cases—but never to a Kosovo Roma. While the adoption of a new law regulating asylum in Macedonia is a generally welcome development, past practice and certain aspects of the new law raise concerns that Kosovo Roma who decide to apply for asylum may continue to face difficulties establishing appropriate legal status in Macedonia.

In several cases since 1999, Kosovo Roma have left Macedonia for Kosovo or Serbia and then again returned to Macedonia, after which they applied for recognition of refugee status, because they had lost the THAP status originally granted to all those expelled from Kosovo. The competent government commission rejected the applications and the Supreme Court upheld the negative decisions.[92] The basis for decision-making was article 46 of the Law on Movement and Residence of Foreigners, which stipulates that "a stateless person or foreigner who abandoned his country or the country in which he resided in order to avoid persecution on account of his progressive democratic political views and activities, cultural or scientific activities, or his national, racial, or religious belonging, can acquire the status of refugee in the Republic of Macedonia."[93] The government commission and the Supreme Court have held that the Roma applicants' fear of persecution in Kosovo was not well-founded, or that they could return to other parts of the Federal Republic of Yugoslavia (now Serbia and Montenegro).

Human Rights Watch interviewed Dzavit Berisa, a Kosovo Roma whose application for recognition of refugee status in 2002 was refused. Berisa left Kosovo for Macedonia in

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[92] Human Rights Watch is aware of three cases in which Kosovo Roma have applied for refugee status in Macedonia, all of which were rejected.

[93] Law on Movement and Residence of Foreigners, *Official Gazette of the Republic of Macedonia*, no.32/92, entered into force on June 16, 1992, article 46.

September 1999; in April 2001 he returned to Kosovo and worked there as a translator for KFOR. He returned to Macedonia in June 2002, after a series of threatening situations he experienced in Kosovo on account of his ethnicity. The incidents included threats to his life and an attempt to damage his car during a protest of militant Albanians. On the latter occasion, KFOR soldiers protected him. In another incident, when Berisa noticed a car following him, he drove to a nearby KFOR military base where the soldiers offered him protection. The Macedonian Supreme Court reasoned that "in each case in which the applicant requested protection of his physical integrity, he received such protection."[94] The reasoning for the decision indicates that the Supreme Court has set the threshold for recognition of refugee status remarkably high: everything short of direct physical violence appears to be falling short of that threshold.

An additional barrier to recognition of refugee status is the Court's use of the so-called internal flight alternative theory, under which recognition of refugee status is denied if the refugee can relocate to another part of his country of origin.[95] In the Berisa judgment, the Court stated, without elaborating further, that "the fear for [Berisa's] safety has not reached the level of justified fear of persecution that would pertain to the whole territory of his mother country."

The internal flight alternative theory could also pose a significant impediment to recognition of the Kosovo Roma's refugee status under the new Law on Asylum and Temporary Protection. Among the grounds for rejection of an asylum request, the law envisages a situation in which "the persecution is limited only to certain geographic areas in the country...and it is possible to provide efficient protection in another part of the country, except if it cannot be reasonably expected that the person seek protection in that area."[96]

Human Rights Watch notes that the Refugee Convention does not require or even imply that, for refugee status to be recognized, an individual's fear of persecution must exist throughout the entire territory of his or her country of origin. UNHCR has

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[94] Judgment of the Supreme Court of the Republic of Macedonia, U.br. 1833/2002, March 27, 2003.

[95] UNHCR 2002 Global Report states that "the Supreme Court continued rejecting refugee status cases (based on the internal flight alternative, with a very high burden of proof placed on the asylum-seeker)." UNHCR Global Report 2002, p. 386-7.

[96] Law on Asylum and Temporary Protection, *Official Gazette of the Republic of Macedonia*, no. 49/2003, July 25, 2003, art. 29. UNHCR has been critical of the manner in which the internal flight alternative concept was applied in earlier decisions of the Macedonian administrative bodies and the Supreme Court. Human Rights Watch interview with Christos Theodoropoulos, deputy representative, UNHCR Office in Skopje, July 28, 2003.

recommended a three-step analysis for governments to use if they attempt to apply an internal relocation test. The first step requires that the potential area of relocation should be a place where there is no risk of a well-founded fear of persecution and where, given the particular circumstances of the case, the individual could reasonably be expected to establish him/herself and live a normal life.[97] Secondly, the area should be practically, safely, and legally accessible to the individual.[98] Thirdly, the claimant should be able to lead a relatively normal life without facing undue hardship.[99]

The UNHCR guidelines affirm that "in addition to there not being a fear of persecution in the internal flight or relocation alternative, it must be reasonable in all circumstances for the claimant to relocate there. ...Of relevance in making this assessment are factors such as...language abilities, educational, professional and work background and opportunities... .If the situation is such that the claimant will be unable to earn a living or to access accommodation, or where medical care cannot be provided or is clearly inadequate, the area may not be a reasonable alternative. It would be unreasonable, including from a human rights perspective, to expect a person to relocate to face economic destitution or existence below at least an adequate level of subsistence."[100]

As detailed above, the conditions of displaced Kosovo Roma in Serbia in most cases fall far short from the requisite conditions for denial of asylum claims. The Macedonian asylum authorities should refrain from resorting to an internal flight alternative rationale for denying refugee status to Kosovo Roma. Moreover, in order for their status and protection to become fully consonant with international standards, Macedonian authorities must guarantee the Roma rights in accordance with the ICCPR, the ICESCR, and the Refugee Convention. This would include, but not be limited to, the right to work, the right to education, and the right to freedom of movement. Adherence to these standards would also require providing Roma refugees denied these rights with an appropriate remedy under law.

Following the enactment of the Law on Asylum and Temporary Protection (July 2003), the government decided on September 22, 2003 to terminate the status of temporarily

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[97] See UNHCR, Handbook on Procedures and Criteria for Determining Refugee Status, 1979, para. 91.

[98] See UNHCR , "Guidelines on Internal Protection: '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, July 23, 2003, para. 7.

[99] Ibid.

[100] Ibid., paras. 22, 25, and 29.

protected persons for the Kosovo Roma who had arrived in Macedonia in 1999, and called on them to apply, within one month, for refugee status.[101] As of November 17, 2003, applications of 1,281 persons (out of the estimated 2,500 Kosovo Roma residing in Macedonia) have been submitted; those who have not yet applied will apparently have a chance to do so until January 2004, after which the government will treat them as "aliens in no need of international protection."[102] A competent government official told Human Rights Watch in mid-November that most of the Kosovo Roma applicants are not likely to be granted the status of recognized refugees, because they will find it difficult to prove, on an individual basis, a well-founded fear of being prosecuted for reasons of their race or ethnicity. According to the official, the likely outcome for these Roma is that they will be granted the status of "persons under humanitarian protection in Macedonia."[103] As such, they would enjoy more limited rights in Macedonia regarding employment and social security than those recognized as refugees by the Macedonian government, and the period in which they could use state-provided accommodation is shorter (one year, in contrast to two years for those recognized as refugees).[104]

CONCLUSION AND RECOMMENDATIONS

Based on the foregoing analysis of the potential durable settlement options for the Kosovo Roma in Macedonia, Human Rights Watch concludes that return to their country of origin—either Kosovo or other parts of Serbia and Montenegro—is not a viable option consistent with international refugee law. Moreover, conditions for the Kosovo Roma in Macedonia have been so consistently poor for the four years that they

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[101] Human Rights Watch interview with Blagoja Stojkovski, head of the Asylum and Illegal Immigration Department in the Ministry of Interior of the Republic of Macedonia, Skopje, November 18, 2003. As explained to Human Rights Watch, the decision apparently resulted from the fact that four years had passed since the arrival of the Roma to Kosovo, and the new law provides that temporary protection cannot last longer than two years.

[102] Ibid.

[103] Ibid; the Law on Asylum and Temporary Protection defines person under humanitarian protection as "an alien to whom the Republic of Macedonia shall grant the right to asylum on humanitarian grounds and give a permission to remain within its territory because he would be subjected to torture, inhuman or degrading treatment or punishment, in the state of his nationality, or in which, not having a nationality, he has a habitual place of residence." Law on Asylum and Temporary Protection, *Official Gazette of the Republic of Macedonia*, no. 49/2003, July 25, 2003, art. 5.

[104] Articles 58-61 of the Law on Asylum and Temporary Protection regulate the rights of persons under humanitarian protection, and articles 50-58 regulate those of recognized refugees. With respect to the right to work, a Macedonian government representative in charge of asylum issues told Human Rights Watch that persons under humanitarian protection would have the right to work similar to that of persons under temporary protection, that is, under the conditions prescribed for aliens under temporary residence permit. Human Rights Watch interview with Blagoja Stojkovski, head of the Asylum and Illegal Immigration Department in the Ministry of Interior of the Republic of Macedonia, Skopje, November 18, 2003.

have spent there that there are serious questions as to whether they can be locally integrated "in a manner appropriate to their cultural, social, religious or educational backgrounds." Against this backdrop, Human Rights Watch believes that in the absence of immediate substantial steps to improve conditions for Kosovo Roma in Macedonia, resettlement to third countries must be considered as part of any solution expected to conform to international refugee standards. The following recommendations outline steps to be taken by the government of Macedonia and relevant international actors to resolve the situation through a combination of resettlement to third countries and local integration under appropriate conditions.

RECOMMENDATIONS REGARDING REGUGEES' LEGAL STATUS

- The UNHCR should make recommendations for third country resettlement in cases in which Kosovo Roma applicants have poor prospects for local integration in a manner appropriate to their cultural, social, religious or educational backgrounds, as confirmed by the facts available based on the more than four years since their arrival in Macedonia;
- Macedonian authorities should abandon the excessively strict requirements used in assessments of earlier Kosovo Roma asylum claims, for the recognition of well-foundedness of a claimant's fear of persecution in Kosovo;
- Macedonian authorities should only exceptionally apply the "internal flight alternative" rationale to deny asylum claims, when the circumstances of the case clearly so mandate;
- Should Macedonian government, in violation of international refugee law and UNHCR guidelines, refuse to recognize the refugee status of a Kosovo Roma asylum seeker or otherwise fail to provide a durable solution for a Kosovo Roma refugee, the UNHCR should assess whether the individual qualifies for protection under the agency's mandate and is eligible for resettlement, and make recommendations for third country resettlement accordingly.

RECOMMENDATIONS REGARDING ACCOMODATION

- Macedonian authorities should intensify efforts to ensure decent living conditions for Kosovo Roma refugees. The Council of Europe Development Bank, the World Bank, and bilateral donors should extend favorable loans and/or grants to Macedonia for the construction of collective centers for Kosovo Roma refugees that satisfy reasonable living and hygienic standards.

RECOMMENDATIONS REGARDING EDUCATION

- Macedonian educational authorities should ensure that all Roma children, including refugee children, have equal access to safe, accessible, quality schools that foster the development of each child's personality, talents, and abilities, including by identifying and providing assistance to children who have left school or are at a risk of leaving school because of discrimination and harassment by fellow students or others, or inability to pay for school clothes, books, and related costs;

- Macedonian educational authorities should develop and implement written policies to protect Roma students from discrimination, harassment, and other abuse. Such policies should include training of educational staff on the binding nature of non-discrimination norms, the needs of Roma children, procedures for investigating and reporting allegations of discrimination or abuse, and disciplinary procedures for those found to be complicit in anti-Roma discrimination, harassment, or other abuses;

- Refugee families who are denied the right to educate their children must be able to secure a legal remedy to their problem from the government of Macedonia.

RECOMMENDATIONS REGARDING EMPLOYMENT

- Macedonian authorities should undertake measures to ensure full access for Roma, including Kosovo Roma refugees, to employment, and work with international development partners such as the World Bank and the U.N. Development Programme (UNDP) in creating employment opportunities for Kosovo Roma refugees.