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Situation of longstanding refugees and displaced persons in South East Europe

Report

Committee on Migration, Refugees and Population

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Summary

Twelve years after the war in Bosnia and Herzegovina and Croatia, and eight years after the armed conflict in Kosovo, over half a million refugees and displaced people still remain in the region. The figure represents the most vulnerable persons, including elderly people without family support, traumatised survivors of atrocities, sick and disabled persons, single mothers, national minorities or persons in need of witness-protection. They have been neglected in recent years as a result of a lack of local resources and humanitarian aid.

The Assembly insists that providing an adequate response to the needs of refugees, returnees and Internally displaced persons (IDPs) and enacting a government strategy to find durable solutions for their voluntary and sustainable return or local integration should be much higher on the political agenda in all countries of the region.

The governments should set out clear legal and institutional frameworks and provide the necessary financial resources; implement the international human rights instruments to avoid statelessness and grant special protection, including for members of national minorities; undertake administrative, judicial and police reforms to facilitate local integration and voluntary return in safety and dignity; simplify and speed up the process of status determination; support free legal aid and assistance provided by Ombudspersons and local non-governmental organisations; use the criteria of vulnerability for priority assistance; find lasting solutions for people in the collective centres; and give priority to economic revival, reconstruction and mine clearance in the return areas.

The Assembly calls on the member states, the Council of Europe and the Council of Europe Development Bank to fully support this process, and on the European Union to maintain the political momentum in the region with a clear European integration perspective.

A. Draft recommendation

1. The Parliamentary Assembly has been following the humanitarian situation of refugees and displaced persons in South East Europe since the very beginning of the armed conflict in the region. The Assembly refers in particular to its Recommendation 1588 (2003) on population displacement in South-eastern Europe; and Recommendation 1633 (2003) on forced returns of Roma from the former Federal Republic of Yugoslavia, including Kosovo, to Serbia and Montenegro from Council of Europe member states.
2. Twelve years after the war in Bosnia and Herzegovina and Croatia, and eight years after the armed conflict in Kosovo, too many refugees and internally displaced people still remain in the region – 120 000 refugees and 383 000 internally displaced persons (IDPs) – in total more than half a million displaced people. Croatia has 2 500 refugees and 4 000 IDPs; after re-registration Bosnia and Herzegovina has 10 000 refugees and 135 000 IDPs; Serbia has the largest number, with 98 500 refugees and 207 000 IDPs; Kosovo has 21 000 IDPs; Montenegro has 6 900 refugees and 16 200 IDPs; and “the former Yugoslav Republic of Macedonia” has 2 000 refugees, mostly ethnic minorities from Kosovo (Roma, Ashkali and Egyptian).
3. These figures often represent the most vulnerable persons, including elderly people without family support, traumatised survivors of atrocities, sick and disabled persons, single mothers, national minorities or persons in need of witness-protection, some of whom still remain in collective centres, and most of whom have been neglected in recent years as a result of a lack of local resources and humanitarian aid.
4. The Assembly insists that providing an adequate response to the needs of refugees, returnees and IDPs and enacting a government strategy to find durable solutions for their voluntary and sustainable return or local integration should be much higher on the political agenda in all countries of the region. In order to achieve these goals, the governments should set out clear legal and institutional frameworks and necessary financial resources. The criteria for priority assistance should be based on vulnerability.
5. It is of concern that some returnees and IDPs still fail to regularize their status due to the lack of valid documents. The lack of status precludes them from access to their socio-economic rights.
6. Although *de jure* statelessness has generally been avoided through the application of the continuation of republican citizenship (under the former Socialist Federal Republic of Yugoslavia - SFRY), the exclusive application of this rule does not provide a reasonable solution for numerous former SFRY citizens who were living in other Republics than that in which they had been registered to hold republican citizenship.
7. The major impediment to integration is the fact that the acquisition of rights is generally based on the right to reside in a certain territory (status of residence). The Assembly is concerned that such legal frameworks which apply to most countries in the region do not take into account the specific vulnerable situation of refugees, returnees and IDPs.
8. Concerning refugees, the Assembly reiterates the importance to secure the conditions for their sustainable return or local integration in the area of displacement by transferring social security and pension rights, reconstructing damaged property, constructing alternative accommodation, executing rights of repossession and fair compensation of former occupancy/tenancy rights.
9. The Assembly therefore welcomes the regional co-operation between Croatia, Bosnia and Herzegovina, Serbia and Montenegro in the framework of the Sarajevo Process and urges the respective governments to rapidly resolve the two outstanding issues concerning Croatia - finding a fair settlement for the holders of terminated occupancy / tenancy rights and (con)validation of working years (pension rights) spent in formerly occupied territories - and to adopt a Regional implementation Matrix.
10. In the absence of a binding international protection system, the responsibility for IDPs rests upon the governments in the region, which must ensure that IDPs have equal rights compared to other citizens. In Serbia and Montenegro, IDPs from Kosovo face numerous difficulties in exercising their basic civil, economic and social rights, including access to personal documents, property rights, health care, welfare assistance, adequate accommodation, and employment. Without the special protection measures in place, IDPs do not have access to social services and sink deeper into poverty and exclusion. The Assembly insists that this vulnerable population should not be held hostage to future political settlements.

11. The situation of displaced Roma remains a particular concern, especially in the light of many readmission agreements which have been signed recently with European Union member states. Most returnees face the situation of secondary displacement upon return. The Assembly therefore reiterates its concern that the readmission agreements do not clearly define the conditions for the reception of returned persons; they do not put any responsibility on the receiving state with regard to the reintegration of returnees; and they lack accompanying assistance programmes or funding towards durable integration.

12. It is crucial for the whole region to address the deep-rooted patterns of discrimination against members of ethnic minorities, which seriously undermine sustainable returns. The “minority returns” are particularly fragile in rural areas as a result of real and perceived security issues and discrimination, severe damage to property, lack of infrastructure and the inability to make a living from agriculture because of land repossession difficulties or the presence of mine fields.

13. The Parliamentary Assembly therefore recommends to the Committee of Ministers :

13.1. to urge the governments of Croatia, Bosnia and Herzegovina, Serbia, UNMIK and the Provisional Institutions of Self-Government (PISG) in Kosovo, the governments of Montenegro and “the former Yugoslav Republic of Macedonia” :

13.1.1. to implement the relevant international human rights instruments, and in particular the 1951 Convention relating to the Status of Refugees and the 1967 Protocol; the UN Guiding Principles on Internal Displacement and Recommendation of the Committee of Ministers on internally displaced persons (Rec(2006)6); the 1954 Convention relating to the Status of Stateless Persons, the 1961 Convention on the Reduction of Statelessness, the 1997 European Convention on Nationality and the 2006 Council of Europe Convention on the avoidance of Statelessness in relation to State Succession;

13.1.2. to enact the national action plans for durable solution of refugees, returnees and internally displaced persons, by setting out a clear legal and institutional framework and by providing the necessary financial resources;

13.1.3. to simplify and speed up the process of status determination with a view to facilitate local integration;

13.1.4. to use the criteria for priority assistance which is based on vulnerability;

13.1.5. to find lasting solutions for the most vulnerable groups of people who are accommodated in the collective centres;

13.1.6. to facilitate access of refugees, IDPs and returnees to information on their rights under domestic law and to fully support, including financially, free legal aid and assistance provided by Ombudspersons and local non-governmental organisations;

13.1.7. to build capacities and undertake administrative, judicial and police reforms to facilitate local integration and voluntary return in safety and dignity, particularly with a view to guaranteeing equal rights and addressing the specific needs of minority populations;

13.1.8. to pursue the process of reconciliation far more vigorously, especially in the areas of return, by fostering a political and cultural climate of respect, tolerance and non-discrimination and by prosecuting perpetrators of war crimes and inter-ethnic violence;

13.1.9. to fully implement the provisions of the Council of Europe Framework Convention for the Protection of National Minorities, including the employment of persons belonging to minority populations in the public administration, the judiciary and the police, particularly in areas where there are minority returns;

13.1.10. to support returns and local resettlement through provision of adequate housing solutions, including reconstruction of damaged property, construction of alternative accommodation, execution of rights of repossession and fair compensation of former occupancy/tenancy rights;

13.1.11. to give priority to economic revival, reconstruction of infrastructure and mine clearance in the return areas;

13.1.12. to fully engage in bilateral and regional co-operation to resolve the outstanding issues related to refugees and IDPs;

13.2. to call on the Office of the High Representative (OHR) to contribute vigorously to the process of reconciliation in Bosnia and Herzegovina (BiH) by speeding up consensus building among BiH parties;

13.3. with a view to strengthening political and economic stability in the region, to urge the member states of the Council of Europe :

13.3.1. to continue to support the process of voluntary return and local integration with financial assistance and expertise;

13.3.2. to make voluntary contributions for the specific programmes of the Council of Europe which aim to strengthen the protection of human rights, the rule of law and democracy in the region;

13.3.3. in the framework of readmission agreements to refrain from large scale returns of failed Kosovar asylum seekers until the conditions for their voluntary return in safety and dignity are achieved;

13.4. to urge the European Union :

13.4.1. to maintain the political momentum in the region with a clear European integration perspective;

13.4.2. to continue to support the process of voluntary return and local integration with financial assistance and expertise;

13.4.3. to financially support the specific programmes of the Council of Europe which aim to strengthen the protection of human rights, the rule of law and democracy in the region;

13.5. to call on UNHCR and OSCE:

13.5.1. to maintain their regional and field presence in order to fulfil their advocacy and monitoring role, to further assist building local capacities and to raise awareness for the most pressing issues and needs among the donor/international community in the region.

14. The Parliamentary Assembly further recommends that the Committee of Ministers :

14.1. ensure the continuation of Council of Europe presence and comprehensive activity in the region, *inter alia*, in the field of political co-operation and the monitoring process, in the field of legal co-operation (constitutional reforms, judicial reforms, capacity building, training), human rights, rights of national minorities, protection of Roma, local democracy, social rights, migration and asylum policies, education and tolerance building, respect for cultural heritage and youth activities;

14.2. assist the authorities in the region to enact the national action plans for durable solutions of refugees and IDPs through :

14.2.1. promotion of relevant international human rights standards, and in particular the 1951 Convention relating to the Status of Refugees and the 1967 Protocol; the UN Guiding Principles on Internal Displacement and Recommendation of the Committee of Ministers on internally displaced persons (Rec(2006)6); the 1954 Convention relating to the Status of Stateless Persons, the 1961 Convention on the Reduction of Stateless, the 1997 European Convention on Nationality and the 2006 Council of Europe Convention on the avoidance of Statelessness in relation to State Succession;

14.2.2. monitoring and assistance programmes for the implementation of the Framework Convention for the Protection of National Minorities;

14.2.3. legal expertise on the restitution of property and occupancy/tenancy rights, taking into account the case-law under the European Court of Human Rights.

15. The Assembly invites the Congress of Local and Regional Authorities to follow up its *Resolution 175(2004) on migration flows and social cohesion in South-eastern Europe : the role of local and regional authorities*.

16. The Assembly invites the Commissioner of Human Rights to assist the co-operation of Ombudspersons and National Human Rights Institutions in the region with a view to expanding their capacity, staffing and field presence to further assist refugees, returnees and IDPs to access their rights.

17. The Assembly calls on the Council of Europe Development Bank to step up its co-operation with the countries in the region with a view to financing more projects regarding refugees and IDPs, through loans, the Selective Trust funding and specific grants in co-operation with the UNHCR.

B. Explanatory Memorandum by Mr Dendias, Rapporteur

I. Introduction

1. The Committee on Migration, Refugees and Population has been following the humanitarian situation of refugees and displaced persons in South East Europe since the very beginning of the armed conflict in the region. The Committee has prepared a number of reports and recommendations on the subject, and its delegations have carried out numerous fact-finding visits to the region.

2. The Rapporteur would like to particularly recall recommendations of the Parliamentary Assembly on the missing persons (Recommendation 1685(2004); on forced returns of Roma (Recommendation 1633(2003)); on population displacement (Recommendation 1588(2003); on the situation of refugees and internally displaced persons in the Federal Republic of Yugoslavia (Recommendation 1569(2002)); on the humanitarian situation of returnees to Kosovo (Recommendation 1510(2001)); on the return of refugees and IDPs to Bosnia and Herzegovina (Recommendation 1357(1998) and Croatia (Recommendation 1406(1999).

3. In October 2005, in the framework of the PACE Presidency of the Parliamentary Troika of the Stability Pact for South East-Europe, the Sub-Committee on Migration held a seminar on the situation of refugees and IDPs in the region, in cooperation with the MARRI Centre (Migration, Asylum, Refugees Regional Initiative). Many issues of concern which were raised during the seminar prompted the Committee to undertake a report and to urge the governments in the region to give higher priority to resolving the remaining obstacles.

4. The purpose of this report is therefore to recall the protection and assistance needs of the remaining refugees and IDPs and to look at ways to overcome those obstacles in order to find lasting solutions for either sustainable return or integration in the place of displacement. In this regard, the Rapporteur made a first fact-finding visit to Serbia, Kosovo and Montenegro in June 2006 and to Croatia and Bosnia and Herzegovina in March 2007 (see programmes of the two visits in Appendix I and II).

II. Overview of the situation of refugees and displaced persons

5. Twelve years after the war in Bosnia and Herzegovina and Croatia, and eight years after the armed conflict in Kosovo, far too many refugees and internally displaced people still remain in the region – in total 120 000 refugees and 383 000 displaced persons.

6. According to UNHCR figures¹, Croatia still has 2 500 refugees and 4 000 IDPs; after re-registration Bosnia and Herzegovina has 10 000 refugees and 135 000 IDPs; Serbia has the largest number of 98 500 refugees and 207 000 IDPs, Montenegro 6 900 refugees and 16 200 IDPs and Kosovo 21 000 internally displaced. In “the former Yugoslav Republic of Macedonia”, there are approximately 2 000 refugees, mostly Kosovo ethnic minorities (Roma, Ashkalija and Egyptian), and 725 IDPs (see Appendix III).

7. These figures often represent the most vulnerable persons, including elderly people without family support, traumatised survivors of atrocities, sick and disabled persons, single mothers, national minorities or persons in need of witness-protection who remain in collective centres, most of whom have been neglected in recent years as a result of a lack of local resources and humanitarian aid.

8. While many internally displaced persons were able to return, particularly in Croatia and Bosnia and Herzegovina, it is crucial for the whole region to address the obstacles, including the discrimination and intolerance, which undermine sustainable return. IDPs also find themselves hostage to pending political issues such as political discussions on the status of Kosovo and the electoral balance in Montenegro following its independence.

9. The situation of displaced Roma remains a particular concern, especially in the light of a large number of readmission agreements which have been signed recently with EU member states and which regrettably lack any accompanying assistance programmes or funding towards durable reintegration.

10. The return and access of refugees and IDPs to property, education, social assistance, healthcare and above all employment, should be seen in the general context of economic hardship and high unemployment in most return areas.

¹ UNHCR data of 31st December 2006

11. The “Sarajevo Declaration on Refugee Returns” signed by the governments of Croatia, Bosnia and Herzegovina, Serbia and Montenegro in January 2005 represents an opportunity to resolve the remaining issues and obstacles. The Inter-governmental Task Force – composed of Refugee Commissioners, State Secretaries and Assistant Ministers – has been in charge of preparing the national action plans (Road Maps) which should be integrated in a joint implementation Matrix.

12. While significant progress has been achieved on a number of items, this process is currently stalling due to two outstanding issues that remain open with regard to Croatia: finding a fair settlement for the holders of terminated occupancy/tenancy rights; and (con)validation of working years (pension rights) spent in formerly occupied territories. The respective Governments agreed to consolidate the Regional Matrix only after the resolution of all outstanding issues. The three international partners to the “3x4 Sarajevo process” – OSCE, UNHCR and EU – urge the four Governments to identify a mechanism for addressing these issues so that a solution can be found sooner rather than later. The Joint Implementation Matrix should cover all the outstanding issues and contain sufficient detail on effective implementation mechanisms as well as clear financial commitments.

13. The “internal” Matrixes, which were developed by UNHCR to follow up the implementation of national Road Maps, provide an overview of the issues to be addressed, the problems encountered and the progress made in finding solutions for refugees, returnees and IDPs. The UNHCR matrixes also serve as a monitoring tool for the commitments made by the governments, and they raise awareness for the most pressing issues and needs among the donor/international community in the region.

i. Bosnia and Herzegovina

a. Statistics

14. Approximately one million people were internally displaced in Bosnia and Herzegovina (BiH) at the time of the Dayton Peace Agreement in 1995. A large number of IDPs returned to their place of origin soon after the war. The first comprehensive and official registration of displaced persons was accomplished in 2000 with 556 000 displaced persons (single database). The return process accelerated in 2001-2002 due to a rather successful implementation of legislation with regard to repossession of property and former occupancy/tenancy rights, reconstruction of housing, and increased security measures, which were all conducive to positive decisions to return. In the process of re-registration in 2005, 135 500 individuals received a confirmed status (out of 188 000 requests)².

15. By the end of December 2006, more than one million former refugees and internally displaced persons (DPs) have been registered to have returned to their pre-war homes or other municipalities in Bosnia & Herzegovina (BiH), out of an estimated 2.2 million persons who were forcibly displaced during the war.

16. However, 27 374 refugees from BiH are still residing in Serbia, 5 000 in Montenegro, 22 in “the former Yugoslav Republic of Macedonia” (FYROM) and 2 100 in Croatia.

17. In comparison to pre-war numbers and structure of population, significant number of returns have been registered in the municipalities of Sarajevo, Bugojno, Prijedor, Zvornik, Bijeljina, and the District of Brcko (urban areas attracted more returnees compared to depopulated rural areas). Although the overall number of returnees is decreasing, the percentage of “minority” returns is increasing. This is a sign of an extraordinary hope towards rebuilding tolerance and multiethnic society in Bosnia and Herzegovina and could serve as an example to the neighbouring countries.

b. Status and rights

18. Status and rights of displaced persons and returnees have been regulated by the legal framework laid down in the *Law on Refugees from BiH and Displaced Persons in BiH* (BiH Law), the *Law on Displaced Persons and Returnees in the FBiH and Refugees from BiH* (Federation BiH Law), and the *Law on Displaced Persons, Returnees and Refugees in the Republika Srpska* (RS Law). Two Entity DP laws were harmonized at the beginning of 2005, and contain the same or similar provisions regulating access to rights of DPs and returnees aiming at a harmonized approach to the resolution of the issue of displacement and return.

² Data from the Ministry for Human Rights and Refugees, Bosnia and Herzegovina

19. However, in practice returnees still face difficulties in enjoyment of range of rights due to the BiH constitutional setup, consequently fragmented legal framework regulating specific rights, (e.g. social welfare or health insurance), various practices and lack of funds (e.g. in social welfare area). Access to and the scope of rights in some cases discourage the return since they may be more generous in places of displacement. The harmonisation of returnee rights should include access to employment, social protection, health protection and education.

c. Return, reconstruction and local integration

20. Following the transfer of competences from the international community, "BiH Strategy for Implementation of Annex 7 of the Dayton Peace Agreement" was the first joint framework document developed by the Ministry for Human Rights and Refugees at the State level in cooperation with the two Ministries at Entity level (Federation of BH and Republika Srpska) and other domestic partners in Bosnia and Herzegovina (2003-2004). It outlines the necessary actions and reforms with a view to achieve the following strategic goals : to complete the process of return of refugees from BiH and displaced persons (DPs) in BiH; to complete the process of reconstruction of housing units for the needs of return; to accomplish the property return and occupancy rights repossession; and finally, to create conditions for sustainable return.

21. Some 445 000 homes in BiH have been partially or totally destroyed during the war (37% of pre-war housing stock). In addition 14 000 housing units have been devastated after signing of the Dayton Peace Agreement³.

22. With a view to reconstruct 50 000 housing units in BiH, the Return Fund has been established at the State level in accordance with the BiH Law on Amendments to the Law on Refugees from BiH and displaced persons in BiH. The total budget needed was estimated at 900 million BAM⁴. The fund was created with investments from the government institutions (including loans) and international donors. NGOs and returnees themselves also contributed towards reconstruction costs. Reconstruction is implemented through four regional centers in Sarajevo, Banja Luka, Tuzla and Mostar.

23. Consensus on priority areas was finally reached and 42 municipalities were selected for reconstruction either through joint projects or through project "Sutra II" funds (European co-funding). Today, 58% of damaged housing has been reconstructed and approximately € 300 million is still needed to complete the reconstruction process.

24. The process of repossession of property and former tenancy rights has been almost completed in Bosnia and Herzegovina. A small number of cases (up to 5%) are still pending, mainly due to lack of enforcement in some municipalities.

25. Following the accession to the Council of Europe Development Bank (CEB), BiH benefited from € 40 million loans (preferential rates) which are used for primary healthcare, school facilities and investments in small and medium enterprises (SMEs). In 2004, in cooperation with UNHCR, the CEB also granted a donation of \$ 300 000 to enable most vulnerable DPs living in collective centres to find durable solutions through repossession of their land and property and subsequent provision of permanent accommodation. In 2005 and 2006 an additional amount of \$ 1 million has been approved for the remaining 8 000 DPs in collective centres.

26. Demining is still a problem with the remaining 3.5% of the territory without mine clearance. Such situation holds serious risks for returnees in rural areas (living of agriculture and forestry) and creates further difficulties with fragmentation of arable land. Budget is lacking to complete mine clearance. Lack of electricity, poor infrastructure and high unemployment seriously undermine sustainability of returns. Regrettably, many returnees take a decision to leave again.

27. Finally Roma return has not been adequately addressed so far since the selection criteria for assistance (priority cases) was based on a number of documents (ID, proof of residence, property, employment records, etc.), which most Roma did not have. The situation is currently being redressed by the Department for Roma in the State Ministry for Human Rights and Refugees.

³ Information on the situation in the field of return of refugees from BiH, displaced persons in BiH and returnees and realisation of "BiH Strategy for Implementation of Annex 7 of the Dayton Peace Agreement" (focus on period from 1 January 2003), Ministry for Human Rights and Refugees, Bosnia and Herzegovina, www.mhrr.org.ba

⁴ Approximately € 450 million.

ii. Croatia

a. Statistics

28. By the end of December 2006, a total of 383 000 returnees were registered by the Directorate for the Displaced, Returnees and Refugees (ODPR) in Croatia and UNHCR, out of which 128 400 were ethnic Serbs. Currently there are more than 80 000 registered refugees from Croatia who are in Serbia (71 000), Bosnia and Herzegovina (7 200) and Montenegro (1 900). Internally displaced persons in Croatia amount to less than 4 000.

29. Since the end of the conflict in 1995 around 30% of the displaced population have returned to their places of origin in Croatia. However, only 60% of those returns can be considered sustainable, while 40% of the returnees are either commuters, moving back and forth between Croatia, Serbia and Bosnia and Herzegovina, or have taken a decision to leave again.

b. Status and rights

30. Such pattern reflects the difficulties some “minority” returnees have in regaining their property, their residence, and Croatian citizenship, which are necessary to access healthcare (beyond primary healthcare) and economic means for survival (jobs, loans, etc.).

31. In the past some refugees failed to regularize their status due to the lack of either valid travel documents or proof of medical insurance⁵. UNHCR believes that it should also be taken into consideration that refugees, especially those whose citizenship cannot be easily established, do not always have proper documents. UNHCR suggested that for refugees without travel documents, any other official document, including a valid Refugee registration card, can be used to verify the identity of the person for the purpose of issuing the residence permit in Croatia.

32. Although *de jure* statelessness has generally been avoided through the application of the continuation of the republican citizenship (under the former Socialist Federal Republic of Yugoslavia - SFRY), the exclusive application of this rule did not and will not provide a reasonable solution for numerous former SFRY citizens who were living in other Republics than that in which they had been registered to hold republican citizenship. Over the years, Croatian authorities recognized this importance as this is crucial in the context of the refugee voluntary return to the former habitual residences and their effective reintegration⁶.

33. Croatia is party to the 1954 Convention relating to the Status of Stateless Persons (since 8 October 1991) but regrettably not yet party to the 1961 Convention on the Reduction of Statelessness. The need for accession to the 1961 Convention was raised by UNHCR Representation in Croatia at various forums with the Croatian Government, including the most recent visit of the Assistant High Commissioner for Refugees, Mrs. Erika Feller (February 2007).

34. The mechanism foreseen in Art 47 of the Law on Foreigners should be applied to all persons who had a registered domicile in Croatia on 8 October 1991 and who, due to such a link, have a manifest intention to return and stay in Croatia. In this respect, the mechanism should not be limited to persons who have applied for Housing Care Programme. It should also be open to persons who applied for other types of

⁵ As regards medical insurance, UNHCR drew attention of the Ministry of Interior, that once the permanently residing foreigner status is issued, returnees can be granted Returnee Status, which includes humanitarian assistance and health insurance. Therefore, UNHCR recommends excluding from the health insurance requirement, at least those returnees who have applied for Returnee Status and for whom the ODPR can confirm that this status would be granted, in case a permanent residing foreigner status is issued.

⁶ Overview of the evolving citizenship related regulation in the Republic of Croatia :

- a) article 79 of the abolished Law on Movement and Stay of Foreigners (1991)
- b) Basic Principles of the 1998 Programme on Return
- c) separate Instructions issued by the Ministry of Interior in April 2000
- d) transitional provision (Article 115) of the current Law on Foreigners, whose deadline expired on 30 June 2005
- e) current open ended mechanism of the Law on Foreigners (Articles 37 and 47) under which the affected returnees would be able to legalize their stay/status upon return as they have genuine and effective links (in particular the link of habitual residence) with Croatia (reference is made to the Article 18 of the European Convention on nationality).

housing related assistance (e.g. reconstruction/repair) or repossession of property, as well as those who cannot apply for any of these programs but nevertheless, have expressed a genuine willingness to return⁷.

35. The Ministry of Interior has recently announced that those returnees who do not yet have a place to which to return (i.e. former tenancy right holders and owners whose properties have been destroyed or are temporarily occupied), and who are temporarily accommodated in collective centres in Croatia, are entitled to regulate their status under the new mechanism. Persons who have to stay for an interim period with host families should be also included, since they are in a similar situation.

36. Minority rights, which are guaranteed under the Constitutional law on national minorities (2002), still have to be implemented on the ground. The Rapporteur recalls recommendations made by the Committee of Ministers in respect of Croatia⁸ : namely the guarantees regarding participation of minorities in the state administrative and judicial bodies; to make sure that the government's commitment to resolve the outstanding return-related issues is also felt at the local level; to improve effectiveness and the capacity of the judicial system to protect the minority rights contained in the Framework Convention; to remove undue obstacles contained in the citizenship procedure and to address the human rights concerns of persons whose citizenship status has not been clarified.

37. The Rapporteur also calls for more transparency with regard to war crime indictments, since misuse of the said indictments in public remains a serious obstacle to the return of Serb refugees to Croatia. In October 1996, as part of the Agreement on Normalization of Relations between Croatia and Serbia, the Law on General Amnesty was adopted in Croatia. The Law grants amnesty, regardless of citizenship, ethnicity, domicile/residence or present whereabouts, for "all acts committed in connection with armed conflicts, with the exception of the gravest violations of humanitarian law characterized as war crimes, or crimes against humanity". Over 24,000 individuals have been amnestied so far. However, there is no available data on the number of persons who were sentenced in absentia. A procedure has been set up by the Government of Croatia, based on its Conclusion of 14 September 2000, authorizing the Ministry of Justice and respective courts to verify data on criminal records of refugees. Maintaining transparency through the 'optional criminal check-up' (requests made through UNHCR to ODPR) would enable all refugees to make a free and well-informed decision in the context of their voluntary repatriation.

c. Return and local integration

38. The rights of Croatian Serb refugees to return to Croatia and officially reclaim their properties were first recognised in 1998, when the Croatian Parliament adopted the "Return Programme". It institutionalised an administrative repossession scheme, which was executed through Municipal Housing Commissions. With the adoption of the 2002 Amendments to the Law on Areas of Special State Concern (LASSC), the Government centralised the repossession process at the ministerial level.

39. Nearly twelve years after the temporary takeover⁹, repossession of private residential properties is almost completed. However, the official statistics do not include occupied properties which are currently subject to a court procedure or houses whose owners did not apply for repossession¹⁰. In some cases, delays in proceedings have been observed, particularly in execution of court verdicts awarding possession to the owner¹¹.

40. Owners, whose properties were fraudulently sold to State Agency for Real Estate Transactions (APN), still encounter numerous obstacles in regaining their property. Some progress has been made in

⁷ Based on application for voluntary repatriation filed with UNHCR and shared with ODPR, application for reconstruction of residential property, application for property repossession, or application for Housing Care inside or outside of the Areas of Special State Concern.

⁸ Resolution ResCMN(2005)5 on the implementation of the Framework Convention for the Protection of National Minorities by Croatia; and the Second Opinion of the Advisory Committee

⁹ After the liberation of occupied territories in Croatia in 1995 (Operation "Storm"), more than 19 000 private properties belonging to Croatian Serbs were left vacant. These properties became the responsibility of the State under the Law on Temporary Takeover and Administration of Specified Property, which was adopted the same year. The abandoned property was then offered as housing to Bosnian Croat refugees and Croat IDPs.

¹⁰ OSCE Background Report on Property Repossession in Croatia, 27 April 2006

¹¹ In cases *Radanović and Kunić v. Croatia*, the European Court of Human Rights found that an excessive court delay in a property-related dispute violated not only the applicants' right to a hearing within reasonable time but also the property right as such. The ECHR also found that compensation for the use of private properties taken over by the State was, irrespective of its amount, inadequate as it did not cover the period prior to 1 November 2002.

regard to the question of unsolicited investments by temporary users, whereby the State should compensate for the investments instead of the owner.

41. Repossession does not always result in the permanent and sustainable return of a property's legitimate owner. An OSCE field survey has shown that on average only 25% of the properties returned are inhabited by the owners. The figure is lowest for the Dalmatian hinterland (15%). Around half of the houses remain empty or are used only seasonally. In 30-40% of cases, the owners sell their houses to the State Agency for Real Estate Transactions (APN), and decide to settle permanently in their place of displacement, usually in Serbia, Montenegro, or Bosnia and Herzegovina. The sold houses are then allocated to ex-temporary users, mainly Bosnian Croats as housing care programme¹².

42. In rural areas, the low rate of sustainability after repossession is due to various factors, including real and perceived security issues and discrimination, severe damage to property, lack of infrastructure (electricity and water supply) or inability to subsist from agriculture (difficulties to repossess land; or persistence of mine fields).

43. Return to urban centres – where most people were occupancy/tenancy right holders – has been extremely slow. Although the Croatian Government has done a lot in terms of concrete planning and budget allocation to address the housing needs of applicants inside and outside the area of special state concerns¹³, the implementation remains too slow and the quality of the allocated housing is often not acceptable. 8 699 applications were pending at the end of 2006 and more than 11 500 persons could not yet return due to the lack of housing care solution. On overall, UNHCR estimates some 30 000 cases of former tenancy right holders who have not found durable solutions.

44. Durable solutions must be also found for the most vulnerable people in collective centres. The Rapporteur welcomes the references on local integration prospects for this “forgotten” group which were included in the Croatian Road Map (the Sarajevo process). UNHCR proposed to undertake a joint case-by-case management with ODP.

45. The Rapporteur concludes that persisting efforts to advance legal and socio-economic conditions for return and local integration have benefited from the recent momentum created by Croatia's aspiration to join the EU¹⁴ and from the multilateral negotiations initiated by the Sarajevo Process. Notwithstanding the progress made so far, significant work remains to be done, as is also acknowledged in the 2006 EC Progress report :

“there are also still real obstacles to the sustainable return of Serb refugees, such as enduring hostility in certain localities, and remaining housing concerns, mainly those involving former tenancy rights holders. Serbs, including those who remained in Croatia during the war, face major difficulties regarding access to employment, especially in the war affected areas. Discrimination continues in access to employment, particularly in the public sector. A comprehensive anti-discrimination strategy has yet to be developed and implemented.”

iii. Serbia

a. Statistics

46. According to the UNHCR data from December 2006, there are 98 500 refugees and 206 859 internally displaced persons in the territory of Serbia, making it the first host country with the largest number of refugees and IDPs in Europe today.

47. Following the latest refugee census in 2005, the official statistics provided by the Commissariat for Refugees in March 2006, show that out of 141 680 applications for registration of refugee status, 104 246

¹² OSCE Background Report on Property Repossession in Croatia, 27 April 2006

¹³ Areas most heavily affected by the 1991-1995 war

¹⁴ The short term priorities listed in the Accession Partnership with Croatia (Council Decision of 20 February 2006) include *inter alia* the implementation of the Constitutional Law on National Minorities; the completion of the process of refugee return including all cases of repossession, reconstruction and housing care for the former occupancy/tenancy rights holders; regional cooperation to implement the Sarajevo Declaration; efforts aimed at reconciliation of citizens in the region; full cooperation with ICTY; and more generally judicial reform; and implementation of a strategy for preventing and combating corruption and organised crime.

had their refugee status confirmed. 73.47% originated from Croatia; 26.38% from Bosnia and Herzegovina; and 0.15% from other republics of former Yugoslavia.

48. The number of refugees has been reduced by more than two-thirds since 1996 (551 000 refugees registered) as a result of the return process to Croatia and Bosnia and Herzegovina, local integration in Serbia, or relocation to third countries (approximately 50 000 refugees from the territory of former Yugoslavia have resettled, mainly in the USA or Canada).

49. However, the decrease in the number of refugees does not necessarily mean that durable solutions have been found. Difficult economic situations particularly in return areas in Croatia and Bosnia and Herzegovina and cases of discrimination against minority members have hampered the return process. In addition, the fact that persons have not registered as refugees may indicate that they simply became part of the local poor population.

50. According to UNHCR data, Serbia hosts 206 859 internally displaced persons from Kosovo: the majority of whom are Serbs (68%), followed by Roma (12%) and Montenegrins (8%). However, many Roma are thought not to have registered as IDPs. The exact figure is pending the Governments' decision to organise a new census of displaced persons.

b. Status and rights

51. The refugees from Croatia and Bosnia and Herzegovina who were granted refugee status under the Law on Refugees of 1992 enjoy the following rights in Serbia: the right to work (if obtaining work booklets subject to the possession of a refugee card), the right to medical care, access to collective centres, a subsidised monthly pass for public transportation, the right to open an account with most domestic banks, and the right to education. A refugee card also serves as an identity document on the territory of Serbia and for crossing the state border with Bosnia and Herzegovina.

52. It is of concern that de-registration of refugees, following the last census, does not allow for a transition period until refugees could reach a durable solution. For example, the refugee status of people who had their houses in Croatia reconstructed, even though they could not for different reasons use them, has been revoked. Cancellation of refugee status primarily affects elderly refugees who lose their right to free health care in Serbia because they have a Croatian ID and a registered residence in Croatia. If they renounce their Croatian ID, they will no longer be entitled to reconstruction assistance and will lose many other rights in Croatia.

53. De-registration also makes access to citizenship difficult or impossible. In addition, persons who are no longer refugees but have not obtained citizenship face problems with identification.

54. It is important to highlight that the legal integration of refugees in Serbia has been improved through amendments that simplified the procedure for obtaining citizenship under the 2004 Law on Citizenship (Article 23). While a dual citizenship agreement with Bosnia and Herzegovina was signed in 2003¹⁵, such agreement is still pending with Croatia.

55. The major impediment to the integration of refugees and IDPs in Serbia is the fact that the acquisition of rights is currently based on the right to reside in a certain territory (status of residence). Freedom of movement is tied to property ownership under current laws. The legal framework does not take into account the specific vulnerable situation of refugees and IDPs. People who do not have a legal basis to possess or rent property are not able to register permanent or temporary residence.

56. Some local authorities try to use such regulations to hinder the access of refugees and IDPs to social welfare. According to the OSCE, certain municipalities request a six-month residence prior to accepting applications for social welfare assistance. The living conditions and access to rights of refugees and IDPs therefore vary significantly depending on the location of displacement. Compared to municipalities in southern and south-eastern Serbia which are heavily affected by poverty, wealthiest municipalities in Vojvodina have shown the most positive results for integration and support for refugees and IDPs.

57. In the absence of a binding international protection system, the responsibility for IDPs rests upon the government of Serbia which must ensure that IDPs have equal rights as other citizens. In practice, IDPs face numerous difficulties in exercising their basic civil, economic and social rights, including access to personal documents, property rights, health care and social welfare assistance, adequate accommodation, etc.

¹⁵ Signed by the State Union of Serbia and Montenegro

Without special protection measures in place, IDPs do not have access to social services, and sink deeper into poverty and exclusion.

58. UNHCR and its partners¹⁶ have produced a "legal gap analysis"¹⁷ within the framework of the "UN Guiding Principles on Internal Displacement" and shared the document with the relevant Ministries of the former State Union of Serbia and Montenegro in December 2004 and in November 2005 (update). The Gap Analysis remains highly relevant for the newly elected Governments in Serbia and Montenegro to establish - as a matter of priority - a plan of action to achieve durable solutions for IDPs.

c. Local integration

59. The difficult economic situation and political instability are reflected in the state policy toward people who fled from wars in Croatia and Bosnia and Herzegovina and conflicts in Kosovo. International isolation, wars and massive population movements have caused the overall impoverishment of society, institutional exhaustion and a decline in the quality of social services. People's needs for social assistance, health care and education exceed the level of services the country is capable to provide.

60. In addition, local integration of internally displaced persons from Kosovo remains a highly sensitive political issue in the course of the political negotiation talks on the Kosovo status. The Implementation Programme for the National Strategy for Resolving Problems of Refugees and Internally Displaced Persons of 2002 focuses only on refugees, whereas the only option envisaged for IDPs is the return to Kosovo. The Coordination Centre for Kosovo and Metohija has a clear mandate for returns. Institutionally, the Serbian Commissariat for Refugees, established by the 1992 Law on Refugees, is responsible for refugees and has no general mandate to address the situation of IDPs in a comprehensive manner.

61. Due to the position of the Serbian government that the freedom to choose between return and integration may only become an option after conditions for the return to Kosovo are created and not before, IDPs have been waiting for more than eight years without any possibility to permanently resolve their status. They can neither return nor integrate.

62. Since the Serbian government considers the presence of IDPs temporary, little effort has been made to provide them with adequate accommodation. The collective centres originally built for refugees have, inadequately, served as a temporary solution to the accommodation needs of some of the IDP population.

63. The gradual closure of 280 collective centres remains one of the most sensitive programmes in Serbia. In response to downscaling of international humanitarian aid and lack of funding for maintenance of collective centres, the Serbian authorities have developed a strategy to reduce the dependency of refugees by developing self-sufficiency either through housing and self-reliance programmes or by facilitating voluntary return.

64. Various models of material assistance for refugees leaving the collective centres are provided thanks to financial support of donors and loans from the Council of Europe Development Bank¹⁸.

65. In contrast to the government programme which facilitates local integration of refugees through rent-free or subsidised housing or cash grants, IDPs do not benefit from such programmes and are usually simply relocated to collective centres which still remain open. There are also some 1 700 IDPs living in illegally-occupied buildings or in makeshift dwellings, most of them in Belgrade and Kraljevo. IDPs living in these conditions are clearly among the most vulnerable and only benefit from ad hoc assistance.

66. Thanks to the efforts of UNHCR, refugees and IDPs are included as particularly vulnerable groups in the Poverty Reduction Strategy, which the Government of Serbia adopted in October 2003 with a view to seek specific loans from the World Bank and the international financing institutions (IFIs).

d. Readmission agreements

67. It is of concern that a large number¹⁹ of asylum seekers who fled Kosovo and sought refuge in other European countries are today being returned to Serbia (forced or voluntary returns) directly into a situation of secondary displacement. The Rapporteur recalls the position of the Parliamentary Assembly in its

¹⁶ UNDP, UNOCHA, OHCHR, OSCE, ICRC, NRC, DRDC, IFRC and Group 484

¹⁷ "Analysis of the situation of IDPs from Kosovo in Serbia and Montenegro : Law and Practice"

¹⁸ The Council of Europe Development Bank has pledged a 20 million euro loan that will mainly be used for building apartments and purchasing small farms.

¹⁹ estimated to 50 000 to 100 000; PACE Doc 9990;

Recommendation 1633(2003) on forced returns of Roma from the Council of Europe member states²⁰, particularly related to the conditions in which forced returns take place and the situation in which rejected asylum seekers (mainly Roma) find themselves upon their return. Regrettably, readmission agreements do not clearly define the conditions for the reception of returned persons; they do not put any responsibility on the receiving state with regard to the reintegration of returnees; and they lack any accompanying assistance programmes or funding towards reintegration.

iv. Montenegro

68. The new status of Montenegro as an independent state and the dissolution process with Serbia have multi-fold repercussions on the status of internally displaced persons (IDPs) in Montenegro.

a. Statistics

69. In addition to 6 900 refugees from Croatia and Bosnia and Herzegovina, the Republic of Montenegro hosts around 16 200 persons originally from Kosovo²¹, who fled in the course of 1999 and were granted status of internally displaced persons (IDPs) by the Montenegrin Commissariat for Displaced Persons. The majority of IDPs declare themselves of Montenegrin or Serb origin, and 17% (around 4,500 persons) are of Roma, Ashkali or Egyptian ethnicity.

70. The prevailing overall security situation in Kosovo, lack of freedom of movement and inadequate conditions for a sustainable reintegration affect IDPs decision to return as their safety and dignity remain to be secured in their places of origin. It seems that the IDP population is waiting for the outcome of the Kosovo status talks and that no substantial movements can be expected before the final status is defined. In this event, apart from some Roma, Ashkali or Egyptian families, substantial return of IDPs is nevertheless unlikely to be expected. Creating conditions for local integration in the place of displacement in Montenegro seems therefore crucial.

b. Status and rights

71. The human rights situation of individuals originating from Kosovo remains of concern, in particular for Roma, Ashkali and Egyptians minorities, which represent the most marginalized, destitute and vulnerable segment of the Kosovo population in Montenegro.

72. Under the current legal and institutional framework, the full enjoyment of their rights, including access to civil registration, employment, Montenegrin citizenship, documentation, and property/ownership rights are seriously reduced, due to the fact that permanent residence, an essential requirement for access to rights in Montenegro, is not granted to displaced persons from Kosovo.

c. Legal framework

73. Until now, the existing legislation in Montenegro treated individuals from Kosovo as “displaced”²² and not as Serbian citizens (neither as IDPs), which prevented them from exercising their Serbian citizenship rights in Montenegro. The legislation was intended to address the specific situation of citizens from the former Yugoslavia who left their homes based on persecution grounds due to the armed conflict in the former Yugoslavia, and it has been applied since 1999 also to IDPs from Kosovo. This regime however does not provide for adequate protection, and the legal framework to be applied to displaced persons from Kosovo in the future has not yet been determined by the Montenegrin authorities.

74. At present, access to permanent residence is not granted to displaced persons from Kosovo. This fact has prevented this group from accessing among others rights, to Montenegrin citizenship, whereas permanent residence is a pre-requisite. The draft Montenegro Citizenship Law has indeed incorporated provisions for the facilitation of naturalization of persons with “lawful and habitual residence” in Montenegro as opposed to “permanent residence”, in line with Article 6 of the 1997 European Convention on Nationality. However, the Montenegro Citizenship Law would require once enacted, further development through secondary legislation, in particular to implement the provisions relating to acquisition (and regularization) of “habitual and lawful residence”.

²⁰ PACE Recommendation 1633(2003) on forced returns of Roma from the former Federal Republic of Yugoslavia, including Kosovo, to Serbia and Montenegro from Council of Europe member states, Rapporteur : Mr Einarsson

²¹ This figure is based on the last IDP re-registration carried out in 2003, and on more recent statistical data gathered by UNHCR in June 2006.

²² 1992 Decree on Displaced Persons of Montenegro, Article 2: “Persons considered as displaced persons are citizens of the former Yugoslav Republics and other persons who had to leave their homes because of persecution based on nationality, religious, political grounds and fled to the Republic of Montenegro”.

75. It is regrettable that the by-laws required for the implementation of the new Law on Asylum have not been adopted yet. Once the Law on Asylum is enacted, a single legal regime should regulate the situation of all persons in need of international protection.

76. In other words, the Government of Montenegro should grant or extend refugee recognition in accordance with the 1951 Refugee Convention relating to the Status of Refugees and its 1967 Protocol, to individuals from Kosovo currently in displacement in the territory of Montenegro. It should also regularize their residence status and facilitate access to permanent residence/lawful and habitual residence. In particular, it should adopt administrative procedures which facilitate access to permanent/lawful and habitual residence for those living in informal settlements. Finally it should, accord full enjoyment of basic social and economic rights and to afford a treatment as favourable as possible to these individuals, and in any event no less favourable than that accorded to non-Kosovo Serbian citizens.

77. In the context of State succession, due consideration should be given to prevent and avoid statelessness. Access to Montenegro citizenship should be granted to individuals who are in displacement from Kosovo and who have or would become stateless as a result of the state succession. Adequate legislative reform and procedures should be introduced by the Government of Montenegro to allow and facilitate the confirmation or establishment of citizenship of individuals from Kosovo. In particular, to allow the use of additional evidence other than formal identity documents to prove the individual's genuine link with the state. It is also important to determine or clarify the relevant legislation concerning identity documents issued by the Socialist Federal Republic of Yugoslavia (SFRY), Federal Republic of Yugoslavia (FRY), Serbia and Montenegro and for the mutual recognition of documents by UNMIK and Montenegrin authorities.

78. Roma, Askhaelia and Egyptians from Kosovo living in informal settlements in Montenegro, many of whom are undocumented or unregistered as residents in Montenegro, should be given particular attention in order to prevent cases of statelessness. This concerns mainly individuals who are unable to establish or confirm their citizenship, personal identity or have never been registered in Kosovo or lack personal documents. It also should be noted that some of the registry books have been destroyed, lost or dislocated during the conflict in Kosovo creating an additional obstacle for these minorities to prove their identity or citizenship.

79. In view of the above, the Rapporteur strongly supports the pledge of UNHCR upon the Government of Montenegro to sign and ratify relevant international human rights instruments, in particular: the 1951 Convention relating to the Status of Refugees, the 1967 Protocol relating to the Status of Refugees, the 1954 Convention relating to the Status of Stateless Persons, the 1961 Convention on the Reduction of Stateless, the 1997 European Convention on Nationality and the newly adopted Council of Europe Convention on the avoidance of Statelessness in relation to State Succession.

v. Kosovo

80. Eight years after the end of the armed conflict, 225 000 IDPs from Kosovo still remain caught between uncertain return prospects and the lack of local integration alternative. The total number of non-Albanian returnees to Kosovo remains very low as only approximately 14 000 minority returns have been recorded since 1999. In comparison, over 800 000 Kosovo Albanian refugees returned to Kosovo shortly after June 1999.

a. Prospects for return and integration

81. While refraining from any political analysis of the current situation in Kosovo which has been already undertaken by the Political Affairs Committee in September 2006²³ and January 2007, the Rapporteur reiterates the position of UNHCR²⁴ :

82. "Given the present fragile security situation in Kosovo and serious ongoing limitations to the fundamental rights of Kosovo Serbs, Roma and Albanians in a minority situation, UNHCR maintains its position that persons in these groups continue to be at risk of persecution, and that those minorities having sought asylum abroad should be considered as falling under the provisions of Article 1A (2) of the 1951 Convention and the 1967 Protocol relating to the Status of Refugees. Where a State feels unable to grant refugee status under the law, but the individual is not excluded from international protection, a complementary form of protection should be granted. The return of individuals belonging to these groups should only take place on a strictly voluntary basis. Individuals who express a wish to return voluntarily should be able to do so freely and with the full knowledge of the current situation in Kosovo."

²³ Doc. 11018, "Current situation in Kosovo", 18 September 2006, Rapporteur : Lord Russell-Johnston (United Kingdom, ALDE)

²⁴ Position paper on the continued international protection needs of individuals from Kosovo ; June 2006, paragraph 24

83. During his visit to Kosovo in June 2006, the Rapporteur observed that due to the prevailing environment of real or perceived insecurity, limited freedom of movement and inadequate conditions for sustainable reintegration in Kosovo, the situation is still not conducive to returns. Modest improvements achieved from 2002 to 2003, witnessed a set-back in March 2004. Since then, Serb minority communities in Kosovo have faced a loss of confidence and have increased their reliance on parallel structures established by the Serbian government, which further isolated these communities from the Kosovo administrative and legal system. Such a situation is likely to encourage more individuals of the Serb minority to move to areas in Kosovo where they constitute a majority or to leave Kosovo, depending on the outcome of the negotiations on the Kosovo status.

84. The Rapporteur refers also to the report of the Chair of the MG-S-ROM and the Council of Europe Coordinator for Roma²⁵, which outlines the particular socio-economic conditions of Roma, Ashkali and Egyptian (RAE) who are internally displaced within Kosovo and those who are in the process of return. It is estimated²⁶ that 30 000 Roma, Ashkali and Egyptians currently live in Kosovo, out of 150 000 prior to the conflict.

85. Their socio-economic situation, and particularly of those who are in displacement, has to be seen against the background of the general economic situation of the overall population. Kosovo has an estimated unemployment rate of 50-60% with youth unemployment reaching 70%, the highest in South East Europe.

86. Although there is no coordinated reintegration plan or strategy for Roma, Ashkali and Egyptian returnees, there are nevertheless a few positive examples of how, with the necessary funding, returnees could be resettled and reintegrated. For example, cases of returnees from Serbia in Giljane, Abdulla Presheva, and Viti.

87. Nonetheless, any large scale return of Roma, Ashkali and Egyptians to Kosovo without proper preparation of the infrastructure to receive them and a proper programme to support their reintegration would only exacerbate the very fragile political and economic situation in Kosovo. The MG-S-ROM report cautions against a large scale forced return from Western European countries in line with the concerns expressed by UNHCR²⁷.

b. Status and rights

88. The Rapporteur reiterates the position of UNHCR that all rights of IDPs including the right to life and personal security and to freely and voluntarily choose their place of residence must be safeguarded. Options for a durable solution – whether in the form of return or integration in a place of displacement – should be provided to internally displaced persons based on the following considerations :

- uphold the right to return : it is important to highlight that the right to return constitutes a right, not an obligation.
- voluntary and individual choice : the decision to settle in a place other than home (including internal displacement within Kosovo) must be truly voluntary, free from any manipulation or coercion; the decision must be also individual, and must not derive from undue forms of pressure, manipulation or push factors including financial and other incentives.
- access to full and objective information : IDPs from Kosovo must be able to access objective information on local conditions for return in order to make a free and informed choice.
- alternative durable solutions : achieving durable solution in place of displacement should not infringe on the property rights of IDPs in their place of origin.

89. The issue of tenancy and protection of property rights is still fragile in Kosovo. It affects mostly the displaced persons. The majority of IDPs had property (homes, agricultural land, commercial properties), which they can not use for several reasons : they cannot physically access their property because of fear and threats from the current occupiers; they have no means to initiate a procedure before the court due to

²⁵ Council of Europe, document MG-S-ROM (2006)3

²⁶ population data and ethnic breakdown of the population in Kosovo, prior and after the conflict, are disputed given that population censuses were politicised and subject of boycotts.

²⁷ UNHCR Position paper on the continued international protection needs of individuals from Kosovo ; June 2006

poverty; they are unable to visit Kosovo as “go and see” visits are organised only to certain towns; they are not acquainted with new regulations; local courts are backlogged with a large number of files; authorisations and property contracts are sometimes forged.

90. Progress in the reconstruction of Albanian homes has not ended the widespread illegal occupation. An estimated third of all evictions of temporary occupants are followed by either immediate re-occupation or looting.

c. Minority protection

91. The prospect of a new political status has heightened the uncertainty over the future protection of minorities. The Rapporteur underlines that greater efforts are needed to strengthen the rule of law and to improve the security situation in Kosovo. In terms of confidence building measures, it is necessary to prosecute perpetrators of inter-ethnic violence²⁸ and in the medium term it is necessary to reach an agreement on inter-ethnic structures conducive to dialogue and joint action, particularly at the municipal level (municipal assemblies). It is also essential to resume systematic monitoring of the human rights situation of returnees and populations in a minority situation who are at risk of displacement and to reinforce the institution of Human Rights Ombudsman in Kosovo.

92. In view of the above, the Rapporteur welcomes the opinion of the Advisory Committee on the implementation of the Framework Convention for the Protection of National Minorities in Kosovo²⁹ which calls for greater involvement of minorities (and not only Serb minority) in the design, implementation and evaluation of policies, practices and legislation. This is of relevance also to discussions relating to the status of Kosovo, in which representatives of all minority communities must be given a meaningful role going beyond a formal consultation, in order to ensure that the outcome takes into account their concerns.

vi. “the former Yugoslav Republic of Macedonia”

a. Statistics

93. According to the UNHCR data from October 2006, only 28 persons are currently recognised under the provision of the 1951 Geneva Convention; 1 186 persons still remain under humanitarian protection status; while 395 persons have received the negative decision to their asylum request, following the implementation of the 2003 Law on Asylum and Temporary Protection. In total there are 1 928 persons who fled Kosovo in 1999 and who benefit from UNHCR assistance. They are of Roma, Askalija, Egyptian (RAE), Gorani and Serb ethnic-minority origin.

94. Since June 2003, the Macedonian Government has taken over responsibility for internally displaced persons, who account to 725.

b. Status and rights

95. The Government of “the former Yugoslav Republic of Macedonia” has made progress in the reform of its asylum system towards closer conformity with international standards. UNHCR assisted the Government during the drafting process of the Law on Asylum and Temporary Protection which was adopted in July 2003.

96. The Law on Asylum and Temporary Protection provides for clear institutional responsibilities : Section for Asylum of the Ministry of Internal Affairs is in charge of refugee status determination; and the Ministry of Labour is responsible for the care and integration of refugees and asylum seekers. The 2003 Law also defines the role of UNHCR in the asylum procedure through an instruction to all relevant bodies to cooperate with UNHCR at all stages of the procedure.

97. The Law on Asylum and Temporary Protection codifies the important provisions of the 1951 Geneva Convention on the Status of Refugees and its 1967 Protocol. It also grants protection under a regime of *Humanitarian Protection*, which is largely based on the spirit of Article 3 of the European Convention on Human Rights and Fundamental Freedoms (ECHR) and Article 3 of the Convention for the Prevention of Torture and Inhuman Degrading Treatment or Punishment.

²⁸ including “low scale” ethnically motivated security incidents such as physical and verbal assaults, threats, arson, stoning, intimidation, harassment, looting;

²⁹ Council of Europe, document ACFC/OP/I(2005)004

98. Despite the soundness of the 2003 Law, its implementation has encountered considerable problems which raise serious concerns and have adverse impact on refugees and asylum seekers. The problems relate to refugee status determination procedure and its appeals procedure on the one hand, and absence of social care and integration measures on the other hand.

99. Only 28 persons received the refugee status to date, around 1000 people are awaiting decision and 395 persons have received negative decision by the Supreme Court, as the last instance of appeal. Most of the negative decisions were based on a misguided application of the notion of internal flight alternative where the asylum officers argue that many of the asylum seekers from Kosovo can effectively find refuge elsewhere in Kosovo or in other parts of Serbia or in Montenegro.

100. Equally worrisome is the lack of capacity and independence of the Government Appeals Commission and the Supreme Court which have confirmed the first instance decisions without producing any evidence that the merits of appeals were properly evaluated. The appeals process is not transparent. As such, the refugee status determination procedure is currently essentially a single instance procedure contrary to the provisions of the 2003 Law and international standards on asylum.

c. *Forced return versus local integration*

101. Despite the clear mandate under the Law on Asylum and Temporary Protection, the Ministry of Labour and Social Policy have not considered the care, reception and integration of refugees as priority. For example in 2004, the Ministry of Finance had approved 3.1 million USD for assistance to refugees, but these funds were used to assist IDPs instead. This imbalance seems to persist in view of the entrenched prejudice against the Roma who constitute the overwhelming majority of the refugee caseload.

102. UNHCR continues to cover all costs related to refugee assistance. Additionally, UNHCR ensures access to legal advice in cooperation with the network of NGOs, and access to basic healthcare through an agreement with the City of Skopje Red Cross. Although access to primary education is free in "the former Yugoslav Republic of Macedonia", the lack of schools and teachers makes attendance of refugee children difficult in practice. Given the high unemployment rate in the country, none of the refugees and persons under humanitarian protection are self sufficient, with the exception of occasional jobs in the grey economy.

103. In November 2006, the European Roma Rights Center (ERRC) and UNHCR have alerted the Committee that the authorities of "the former Yugoslav Republic of Macedonia" had begun forcible expulsion of the first of approximately 400 rejected asylum seekers from Kosovo. To this regard, Mr Cilevičs, member of the Committee, tabled a *Written Question* to the Committee of Ministers (Doc. 11107, 8. December 2006), asking the Committee of Ministers to take steps to make the authorities fully respect the asylum procedures according to the international standards and, in a wider context, to exert pressures on other member states that have signed readmission agreements with Serbia, Montenegro and UNMIK, to implement paragraph 9i. of the Assembly *Recommendation 1633(2003)*. Mr Cilevičs also asked the Committee of Ministers to follow up its *Resolution ResCMN(2006)9 on the implementation of the Framework Convention for the Protection of National Minorities in Kosovo*.

III. Conclusion

104. The Rapporteur concludes that providing an adequate response to the needs of refugees and IDPs and enacting a government strategy to find durable solutions for sustainable return or local integration should be much higher on the political agenda in all countries of the region.

105. Countries in the region should be committed to implement the relevant international human rights instruments, in particular: the 1951 Convention relating to the Status of Refugees and the 1967 Protocol; the UN Guiding Principles on Internal Displacement; the 1954 Convention relating to the Status of Stateless Persons, the 1961 Convention on the Reduction of Stateless, the 1997 European Convention on Nationality and the newly adopted Council of Europe Convention on the avoidance of Statelessness in relation to State Succession.

106. It is crucial for the whole region to address the deep-rooted patterns of discrimination against members of ethnic minorities, which seriously undermine sustainable returns.

107. The governments should undertake administrative, judicial and police reforms to facilitate local integration and voluntary return in safety and dignity. National and local authorities should simplify and speed up the process of status determination and financially support free legal aid and assistance provided by Ombudspersons and local non-governmental organisations. They should find lasting solutions for people in

the collective centres and give priority to economic revival, reconstruction and mine clearance in the return areas.

108. The Rapporteur calls on the member states, the Council of Europe, and the Council of Europe Development Bank to fully support this process and on the European Union to maintain the political momentum in the region with a clear European integration perspective.

Appendix I: Rapporteur's visit to Serbia, Montenegro and Kosovo

Programme

6 - 9 June 2006

Delegation:

Mr Nikolaos Dendias, MP, Greece

Mr Branko Ruzić, MP, Serbia and Montenegro

Tuesday 6 June

- 8.10 Arrival of Mr Dendias to Belgrade
- 9.30 Briefing with UNHCR, EU representation office, OSCE
- 11.00 Meeting with UNHCR and implementing partners (NGOs)
- 12.30 Departure to Vojvodina (Novi Sad)
- 14.00 Meeting with representatives of the Executive Council of Vojvodina
- 15.40 Meeting with humanitarian association (legal aid to refugees from Croatia and Bosnia and Herzegovina)
- 17.00 Meeting with the Humanitarian Center for integration and tolerance
- 18.00 Visit to the housing project in Sremski Karlovci
- 19.30 Arrival to Belgrade

Wednesday 7 June

- 9.00 Mr Rasim Ljajić, Minister for minorities and human rights
- 10.00 Dr Sanda Rašković-Ivić, Coordination Committee for Kosovo and Metohija
- 11.00 Mr. Dragisa Dabetić, Commissioner for Refugees (Republic of Serbia)
- 12.00 Mr Zoran Šami, Head of the Parliamentary delegation, Assembly of Serbia and Montenegro
- 13.00 Parliamentary Committee on minorities, refugees and displaced persons, Parliament of Serbia
- 16.00 Departure to Kraljevo
- 18.00 Visit of displaced persons from Kosovo (Roma settlement)
- 19.00 Visit of displaced persons from Kosovo (collective center in Kraljevo)

Thursday 8 June

- 6.00 Departure to Kosovska Mitrovica
- 7.30 Meeting with K-FOR (administrative border crossing, Rudnica)
- 9:00 Meeting point at UNMIK/ Mitrovica
 - Briefing at UNHCR Office with UNHCR staff about situation in Kosovska Mitrovica
 - Visit to camps with UNHCR staff
- 12.00 Meeting with Chairman of UAM Mr. Milenković
- 13.30 Meeting with Mitrovica Assembly President Mr. Ibrahim
- 15.00 Departure for Podgorica, Montenegro
- 20.00 Arrival in Podgorica

Friday 9 June

- 9.00 UNHCR, Podgorica, Mrs Robin Ellis
- 10.00 Mr Željko Sofranac, Commissioner for Refugees and Displaced Persons,
Mrs Snežana Miošković, Assistant Minister of Social Welfare and Mr Svetozar Đurović, Assistant
Minister of Interior
- 12.00 Ministry of Foreign Affairs
- 14.00 Meeting with national NGO "HLO" providing legal services to refugees and IDPs
- 15.00 Visit of the Roma camp Konik
- 16.00 Departure to Sutomore
- 16.45 Meeting with IDP Association "Kosmet"
- 17.30 Visit to unofficial refugee collective centre "Partisanski Put"
- 18.30 Departure to Podgorica

Saturday 10 June :

- 6.30 Departure of Mr Dendas

Appendix II: Rapporteur's visit to Croatia, Bosnia and Herzegovina

Programme

Monday 12 March 2007

- 14:35 arrival of Mr Dendiasto Zagreb
16.30-18.30 briefing with Mr Vincent Degert Head of EC Delegation to Republic of Croatia; Mr Todd Becker, Deputy Head of OSCE mission and Mr Jean-Claude Concolato, Head of UNHCR office in Croatia

Tuesday 13 March

- 9:00-10:00 Mr Milivoj Mikulić, Deputy Minister, Office for IDPs, returnees and refugees at the Ministry of the Sea, Tourism, Transportation and Development
10.30-11:30 Mr Žarko Katić, Deputy Minister, Ministry of Interior
12.30-13:30 Mr Milorad Pupovac, Member of the PACE Committee on migration, refugees and population and Chairman of the Committee on Inter-parliamentary Cooperation, Sabor
13:30-16:00 transfer Zagreb-Benkovac
16:00-18:00 field visit to returnees, Benkovac area
18:00-20:00 meeting with NGOs and UNHCR field briefing (Benkovac UNHCR office)

Wednesday 14 March

- 8:30-9:30 Visit to returnees in the field, Benkovac area
9:30-10:30 Meeting with the local authorities (Prefect of Zadar County, Mayor of Benkovac, Head of Regional ODP, Head of County Office for Reconstruction)
11:30-12:15 visit to collective centers at Strmica border
12:30 departure to Bosnia (border crossing Strmica)
16:15-18:00 meeting with representatives of the Croatian Serb refugees, visit to settlements
20:00-22:00 meeting with representatives of the Prijedor City Council

Thursday 15 March

- 09:00-10:00 Meeting with representatives of the Bosniak returnees
10:00-11:00 Meeting with representatives of the Serb DPs (from BiH)
11:00-13:00 field visit to returnees and DPs, Prijedor area, Kozarac
13:00-14:00 transfer to Banja Luka
14:15-16:00 briefing with Mr James Lynch, Head of UNHCR mission in BiH, Mr Pushkar Raj Bhattarai, head of Banja Luka Sub-Office, Mrs Olga Femić, Assistant Programme Officer and Mrs Lejla Ridanović, Sarajevo UNHCR office
16:00-18:15 Meeting with representatives of BiH Government
17:00-18:15 Meeting with representatives of the Government (state and entities) :
Mr Mario Nenadić, Minister asistant, BiH Ministry of Human Rights and Refugees
Mr Drago Vuleta, RS Ministry of Refugees and DPs
Mr Sulejman Alijagić, Federation BiH Ministry of DPs and Refugees
18:30-21:00 transfer from Banja Luka to Zagreb

Friday 16 March :

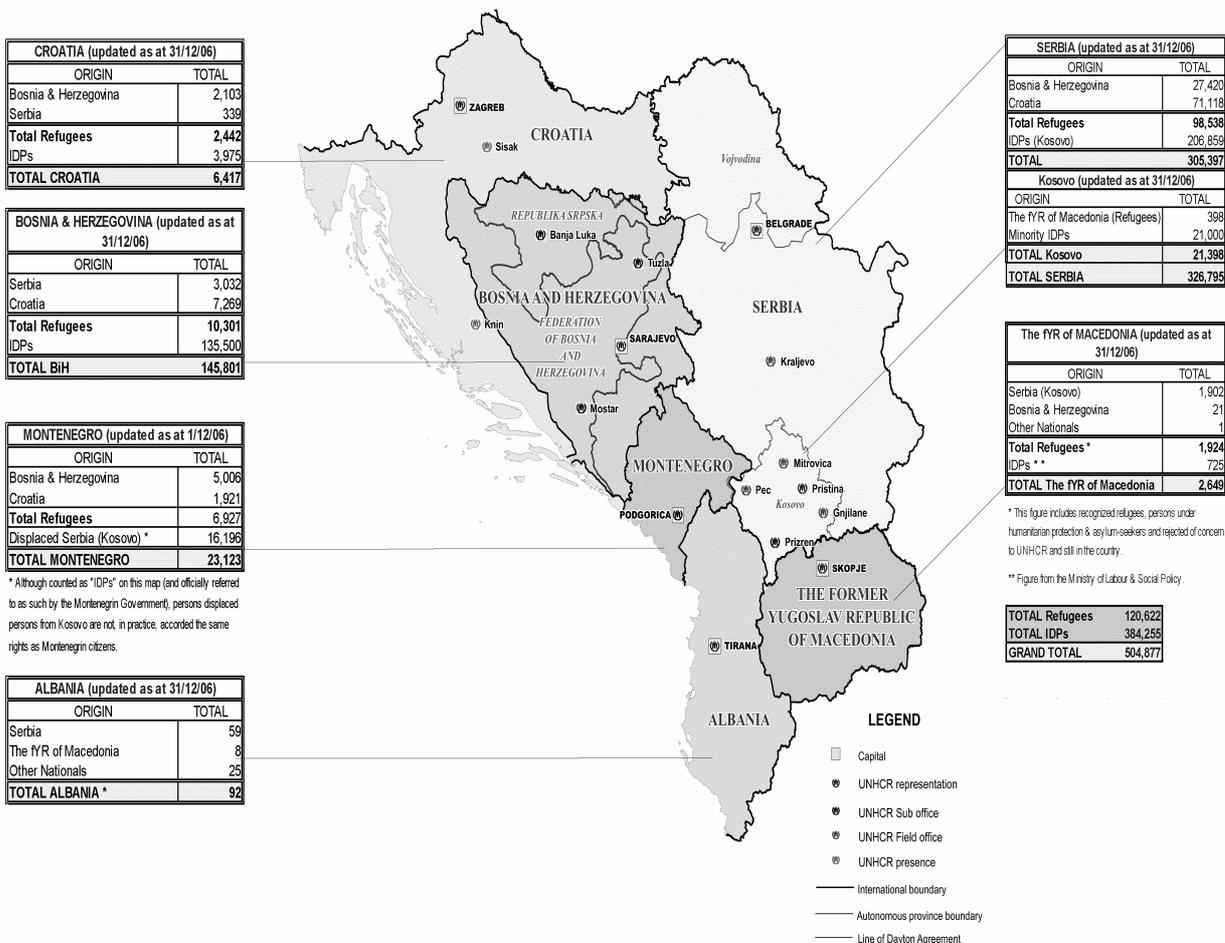
- 9.55am departure of Mr Dendias from Zagreb airport

Appendix III: UNHCR estimate of refugees and displaced persons still seeking solution in South-Eastern Europe



ESTIMATE OF REFUGEES AND DISPLACED PERSONS still seeking solutions in South-Eastern Europe

FICSS in DOS
Field Information and Coordination Support Section
 Division of Operational Services
 Mapping@unhcr.org



Updated to reflect the situation as at 31st December 2006

These statistics are based on information currently available to UNHCR, and should be regarded as estimates only. They do not include refugees/asylum-seekers from countries outside the region. The boundaries and names shown and the designations used on this map do not imply official endorsement or acceptance by the United Nations.

Reporting committee: Committee on Migration, Refugees and Population

Reference to Committee: Doc. 10829, Ref. 3186, 17.3.2006

Draft Recommendation unanimously adopted by the Committee on 11 May 2007

Members of the Committee: Mr Mevlüt Çavuşoğlu (Chairperson), Mr Jean-Guy **Branger** (1st Vice-Chairperson), Mr Doug **Henderson** (2nd Vice-Chairperson), Mr Ibrahim Özal (3rd Vice-Chairperson), Mrs Tina Acketoft, Mr Pedro Agramunt, Mr Küllö Arjakas, Mr Ryszard Bender (alternate: Mr Andrzej **Grzesik**), Mr Akhmed Bilalov, Mr Italo Bocchino, Mrs Olena Bondarenko, Mrs Mimount **Bousakla**, Mr Márton Braun, Lord **Burlison**, Mr Sergej Chelemendik, Mr Christopher **Chope**, Mr Boriss Cilevičs, Mrs Minodora **Cliveti**, Mr Ivica Dačić, Mr Joseph Debono Grech, Mr Taulant **Dedja**, Mr Nikolaos **Dendias**, Mr Karl Donabauer, Mrs Lydie Err, Mr Valeriy Fedorov, Mr Oleksandr Feldman, Mrs Margrét Frimannsdóttir, Mrs Gunn Karin **Gjul**, Mrs Angelika Graf, Mr John **Greenway**, Mr Andrzej **Grzyb**, Mr Ali Riza Gülçiçek, Mr Michael **Hagberg**, Mrs Gultakin Hajiyeva, Mr Jürgen Herrmann, Mr Bernd Heynemann, Mr Ilie **Ilaşcu**, Mrs Iliana Iotova, Mr Tadeusz **Iwiński**, Mr Mustafa Jemilev, Mr Tomáš Jirsa, Mrs Corien W.A. **Jonker**, Mrs Eleonora **Katseli**, Mr Hakki Keskin, Mr Dimitrij **Kovačić**, Mr Andros Kyprianou, Mr Jaako **Laakso**, Mr Geert Lambert, Mr Jean-Marie Le Guen, Mr Massimo Livi Bacci, Mr Younal Loutfi, Mr Jorge Machado, Mr Jean-Pierre Masseret, Mr Giorgio Mele (alternate: Mr Pasquale **Nessa**), Mrs Ana Catarina Mendonça, Mr Morten Messerschmidt (alternate: Mr Morten **Østergaard**), Mr Paschal Mooney, Mr Gebhard **Negele**, Mr Kalevi Olin, Mrs Vera **Oskina**, Mr Grigore Petrenko, Mr Leo Platvoet, Mrs María Josefa **Porteiro Garcia**, Mr Cezar Florin Preda, Mr Dušan Proroković, Mr Gabino **Puche**, Mr Milorad Pupovac, Mr Marc **Reymann**, Mr Alessandro Rossi, Mr Richard Sequens (alternate: Mr Walter **Bartoš**), Mr Samad Seyidov, Mr Luzi Stamm, Mrs Terezija **Stoisits**, Mr Giacomo Stucchi, Mr Vilmos Szabó, Mrs Elene **Tevdoradze**, Mr Tigran Torosyan, Mrs Ruth-Gaby Vermot-Mangold (alternate: Mr Arthur **Loepfe**), Mr Andrej **Zernovski**, Mr Vladimir Zhirinovskiy, Mr Emanuelis **Zingeris**, ZZ..., ZZ..., ZZ....

N.B. The names of the members who took part in the meeting are printed in bold.

Secretaries of the Committee: Mr Lervik, Mr Neville, Ms Karanjac, Ms Kostenko