



**UNHCR'S ELIGIBILITY GUIDELINES FOR
ASSESSING THE INTERNATIONAL
PROTECTION NEEDS OF INDIVIDUALS FROM
KOSOVO**

**United Nations High Commissioner for Refugees (UNHCR)
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NOTE

UNHCR *Eligibility Guidelines* are issued by the Office to assist decision-makers, including UNHCR staff, Governments and private practitioners, in assessing the international protection needs of asylum-seekers. They are authoritative legal interpretations of the refugee criteria in respect of specific groups on the basis of objectively assessed social, political, economic, security, human rights and humanitarian conditions in the country/territory of origin concerned. The pertinent international protection needs are analyzed in detail and recommendations made as to how the applications in question should be decided upon in line with the relevant principles and criteria of refugee law as per, notably, the UNHCR Statute, the 1951 Convention and its 1967 Protocol, and relevant regional instruments such as the Cartagena Declaration, the 1969 OAU Convention and the EU Qualification Directive. The recommendations may also touch upon, as relevant, complementary or subsidiary protection regimes.

UNHCR issues its *Eligibility Guidelines* pursuant to its responsibility to promote the accurate interpretation and application of the above-mentioned refugee criteria as envisaged by Article 8 of its Statute in conjunction with Article 35 of the 1951 Convention and Article II of its 1967 Protocol and based on the expertise it has developed over the years in matters related to eligibility and refugee status determination. It is expected that the positions and guidance contained in the *Guidelines* will be considered carefully by the authorities and the judiciary in reaching decisions on asylum applications. The *Guidelines* are based on rigorous research, factual evidence provided by UNHCR's global network of field offices and information from independent country specialists, researchers and other sources, rigorously reviewed for reliability. The *Guidelines* are posted on UNHCR's Refworld website at <http://www.refworld.org>.

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I. Introduction

These Guidelines¹ contain updated information on the political and security situation in Kosovo, the established legal frameworks, and the current situation of groups at risk of persecution or serious harm,² including minority communities.³ Against this background these Guidelines assess the need for international protection under the 1951 Convention and its 1967 Protocol, as well as other relevant international and regional instruments.⁴

The Statute of the Office of the United Nations High Commissioner for Refugees (UNHCR) entrusts the High Commissioner with responsibility for seeking permanent solutions for the problem of refugees, including through voluntary repatriation. United Nations Security Council Resolution 1244 (SCR 1244) of 1999⁵ calls for the safe and unimpeded return of all refugees and displaced persons to their homes in Kosovo.⁶ Annex 2 of SCR1244 calls on UNHCR to supervise returns to Kosovo. UNHCR has endeavoured since 1999 to contribute to creating conditions for sustainable return and has regularly issued assessments of the international protection needs of persons from Kosovo.

¹ These Guidelines are based on information available through October 2009 and supersede the UN High Commissioner for Refugees (UNHCR), *UNHCR's Position on the Continued International Protection Needs of Individuals from Kosovo*, June 2006, available at <http://www.unhcr.org/refworld/docid/449664ea2.html>

² UNHCR derives its mandate to promote the accurate interpretation and application of refugee criteria from its supervisory responsibility contained in paragraph 8 of its Statute (<http://www.unhcr.org/refworld/docid/3ae6b3628.html>), as contained in General Assembly Resolution 428 (V) of 14 December 2008, in conjunction with Article 35 of the 1951 Convention (<http://www.unhcr.org/refworld/docid/3be01b964.html>) and Article II of its 1967 Protocol (<http://www.unhcr.org/refworld/docid/3ae6b3ae4.html>).

³ UNHCR's monitoring activities are carried out by its five offices in Kosovo located in Gjilan/Gnjilane, Mitrovicë/a, Pejë/Peć, Prishtine/Pristina and Prizren, as well as with UNMIK, EULEX, key stakeholders and the local authorities/communities.

⁴ UNHCR, in the exercise of its supervisory role, has undertaken a number of activities to strengthen the linkages between international refugee law and international human rights law in order to ensure the best possible protection for refugees. UNHCR may thus fulfil a subsidiary function regarding the application of the provisions in human rights treaties that refer either explicitly to refugees or apply to them implicitly. In this respect, UNHCR guidance as it relates to the application of human rights treaties should be afforded due consideration by relevant authorities and should be given substantial weight in determination of asylum, human rights and humanitarian claims. See Volker Turk, "UNHCR's Supervisory Responsibility", *Revue Québécoise de Droit International*, Volume 14.1, 2001. See also Recital 15 of the Qualification Directive, which states that consultations with the UNHCR "may provide valuable guidance for Member States when determining refugee status according to Article 1 of the Geneva Convention".

⁵ UN Security Council, *Security Council Resolution 1244 (1999) [on the deployment of international civil and security presence in Kosovo]*, S/RES/1244, 10 June 1999, available at: <http://www.unhcr.org/refworld/docid/3b00f27216.html>.

⁶ UNHCR activities include facilitation of inter-ethnic dialogue, Go-and-See and Go-and-Inform Visit processes, and engagement in Working Groups, such as the Direct Dialogue Working Group on Return, the Kosovo Standards Implementation Plan and the Strategic Framework for Return. A compilation of UNHCR documents in this respect can be found at <http://www.unhcr.org/refworld/country..UNHCR..SRB...0.html>.

II. Background Information and Developments

A. Political Developments

International negotiations led by UN Special Envoy Martti Ahtisaari began in 2006 to determine the final status of Kosovo, as envisaged under UN Security Council Resolution 1244. In March 2007, the UN Secretary-General (UNSG) Ban Ki-Moon forwarded the Comprehensive Proposal for the Kosovo Status Settlement (CSP) prepared by his Special Envoy to the UN Security Council (UNSC).⁷ The Ahtisaari proposal recommended independence with international supervision.⁸ The CSP envisioned an International Civilian Representative (ICR) to oversee its implementation, with a dual role as the EU Special Representative.⁹ The CSP also envisioned a European Security and Defence Policy (ESDP) Mission to provide “mentoring, monitoring and advice” on rule of law issues.¹⁰

In August 2007, and in the absence of Security Council agreement on the CSP, the UNSG supported a new initiative to reach a settlement on Kosovo’s future status, proposing direct negotiations between the parties, mediated by an EU-US-Russia troika. Direct talks between Pristina and Belgrade started in New York in September 2007. On 10 December 2007, the UNSG forwarded the troika’s report to the UNSC, confirming that the parties had been unable to reach agreement.¹¹

On 17 February 2008, the Assembly of Kosovo declared Kosovo’s independence. As of 15 September 2009, 62 of 192 UN member states had recognised the Republic of Kosovo as an independent state.

On 9 April 2008, the Assembly of Kosovo adopted the Constitution of the Republic of Kosovo (Constitution), which entered into force on 15 June 2008. The Constitution is based on the CSP and provides for the International Civilian Representative as the ultimate supervisory authority.¹² Despite the fact that UNSC Resolution 1244 remains in place, in his 12 June 2008 report to the Security Council, the UNSG acknowledged that the declaration of independence and the entry into force of the Constitution had created a new reality in Kosovo.¹³

According to the UNSG report, the declaration of independence posed significant challenges to the ability of the United Nations Interim Administration Mission in

⁷ UN Security Council, *Letter dated 26 March 2007 from the Secretary-General addressed to the President of the Security Council. Addendum: Comprehensive Proposal for the Kosovo Status Settlement*, S/2007/168/Add.1, 26 March 2007, available at <http://www.unhcr.org/refworld/docid/4a54bc360.html>.

⁸ *Ibid.*

⁹ *Ibid.*

¹⁰ *Ibid.* Article 13.

¹¹ UN Security Council, *Letter dated 10 December 2007 from the Secretary-General to the President of the Security Council: report of the European Union/United States/Russian Federation Troika on Kosovo*, S/2007/723, 10 December 2007, available at: <http://www.unhcr.org/refworld/docid/4a54bc370.html>.

¹² Constitution of the Republic of Kosovo, 15 June 2008, available at: <http://www.unhcr.org/refworld/docid/4ae969d32.html>.

¹³ UN Security Council, *Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo*, S/2008/354, 12 June 2008, available at: <http://www.unhcr.org/refworld/docid/485674f22.html>.

Kosovo (UNMIK¹⁴) to exercise its administrative authority pursuant to SCR 1244. The UNSG argued for reconfiguration of the international civil presence in Kosovo.¹⁵ In July 2008, the UNSG instructed UNMIK to cooperate with the EU to enable the latter to assume an enhanced operational role in Kosovo in the area of the rule of law under a “UN umbrella”.¹⁶

These developments aggravated the already unsettled environment and inter-ethnic tensions. The majority of ethnic Serbs reacted negatively to the Unilateral Declaration of Independence (UDI) and following that event, daily demonstrations continued for months in Kosovo Serb areas, especially in Northern Kosovo, under the banner “Kosovo is Serbia”. The UDI also triggered a wave of resignations by Kosovo Serb officials from Kosovo institutions, particularly from the Kosovo Police Service (KPS) and municipal entities.¹⁷

On 8 October 2008, following a request from the Government of Serbia, the UN General Assembly passed a resolution requesting an advisory opinion of the International Court of Justice on the legality of the declaration of independence by Kosovo.¹⁸

In Northern Kosovo, with its majority Kosovo Serb population, ethnic segregation has become entrenched through the establishment of parallel administrative institutions.¹⁹ Kosovo Serbs boycotted elections organized by UNMIK and the Provisional Institutions of Self-Government (PISG) in November 2007. Instead, they participated in municipal elections under Serbian law on 11 May 2008. The Special Representative of the Secretary-General of the United Nations (SRSG) declared the Serbian elections in Kosovo illegal. Nevertheless, following these elections, Serb parallel municipal assemblies and executive councils were constituted and commenced their activities.²⁰ In

¹⁴ For further information on UNMIK see <http://www.unmikonline.org/>. The International Civilian Office (ICO) has also set up an office in Kosovo to supervise the implementation of the Settlement plan.

¹⁵ See above footnote 13

¹⁶ See above footnote 13, Sec. IV, para. 15 which states “The European Union will perform an enhanced operational role in the area of the rule of law under the framework of resolution 1244 (1999) and the overall authority of the United Nations.”

¹⁷ As of the 30 June 2009 deadline, however, 317 of the 325 Kosovo Serb police officers returned to work. United Nations Security Council, *Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo*, S/2009/497, 30 September 2009, available at: <http://www.unhcr.org/refworld/docid/4acb51cdd.html>.

¹⁸ UN General Assembly, *Request for an advisory opinion of the International Court of Justice on whether the unilateral declaration of independence of Kosovo is in accordance with international law : resolution / adopted by the General Assembly*, A/RES/63/3, 8 October 2008, <http://www.unhcr.org/refworld/docid/48f3527e2.html>. Public hearings will be held on the case as of 1 December 2009; see: International Court of Justice, Press Release No. 2009/27, and 29 July 2009, available at: <http://www.icj-cij.org/docket/files/141/15349.pdf?PHPSESSID=1236fb303e320cd9f910052fd7d9d226>.

¹⁹ Organization for Security and Co-Operation in Europe (OSCE) Mission in Kosovo, *Background Report: Human Rights, Ethnic Relations and Democracy in Kosovo (Summer 2007 – Summer 2008)*, 25 September 2008, p. 3, available at: http://www.osce.org/documents/mik/2008/09/32879_en.pdf.

²⁰ The following parallel assemblies have been constituted and are functioning: Northern Mitrovicë/a, Leposaviq/Leposavic, Zubin Potok, Zveçan/Zvecan, Skenderaj/Srbica, Fushë Kosovë/Kosovo Polje, Lipjan/Lipljan, Obiliq/Obilić (in Plemetin/Plemetina), Pristina (in Graçanicë/ Gračanica), Prizren (in Zhupa valley), Rahovec/Orahovac, Dragash/Dragaš, Shtërpce/Štrpce, Gjilan/Gnjilane (held in Šilovo/Shillovë), Kamenica/Kamenice (in Ranillug/Ranilug), Viti/Vitina, Ferizaj/Uroševac (in Babush i Serbëve/Srbski Babuš), Novobërdë/Novo Brdo (in Bostan/Bostane), Klinë/Klina, (in Dresnik/Drnsnik), Istog/Istok and Pejë/Peć.

addition, the new Assembly of the Community of Municipalities of the Autonomous Province of Kosovo and Metohija was also established.²¹ In certain locations, the parallel institutions contest the legitimacy of the Kosovo authorities and have reportedly caused tensions.²²

After initial objections by the Government of Serbia to the deployment of the EU Rule of Law Mission (EULEX²³) in the absence of an amended Security Council resolution, the UNSG proposed a compromise known as the “six-point plan” that was accepted by the Belgrade authorities.²⁴ The EULEX mission was deployed in early December 2008. It is configured as a technical mission, which monitors, mentors and advises the Kosovo government while retaining limited executive powers.

B. Human Rights Situation

It is reported that effective human rights remedies and protections in Kosovo are at the worst ineffective and at best inconsistent.²⁵ While the authorities have made efforts to ensure respect for human rights, significant problems remain.²⁶ Respect for minority rights continues to be the most significant human rights issue in Kosovo in the post independence era.²⁷ Restrictions on freedom of movement and exclusion from the

²¹ See above footnote 19, pp 9-10.

²² In Shtërpce/Štrpce municipality, parallel institutions occupied the cadastral office in the municipal building on 1 September 2008. In October, the parallel structures occupied eight offices in the municipal building.

²³ EULEX aims to promote and monitor the rule of law, security and public order. <http://www.eulex-kosovo.eu/>. All web links used in this paper have been accessed 30 October 2009, unless otherwise indicated.

²⁴ See above footnote 13, Annex I.

²⁵ Minority Rights Group International, *Filling the Vacuum: Ensuring Protection and Legal Remedies for Minorities in Kosovo*, 26 May 2009, available at: <http://www.unhcr.org/refworld/docid/4a1ce86f2.html>.

²⁶ According to the US Department of State, the most serious of these were:

deaths and injuries from unexploded ordnance or landmines; corruption and government interference in security forces and the judiciary; lengthy pre-trial detention and lack of judicial due process; cases of politically and ethnically motivated violence; societal antipathy against Serbs and the Serbian Orthodox Church; lack of progress in returning internally displaced persons to their homes; government corruption; violence and discrimination against women; trafficking in persons, particularly girls and women for sexual exploitation; societal violence, abuse, and discrimination against minority communities; societal discrimination against persons with disabilities; abuse and discrimination against homosexuals; and child labour in the informal sector.

See: US Department of State, *2008 Country Reports on Human Rights Practices - Kosovo*, 25 February 2009, available at: <http://www.unhcr.org/refworld/docid/49a8f17bac.html>. See also UK Home Office, *Country of Origin Information Key Documents: Kosovo*, and 6 August 2008, available at: <http://www.unhcr.org/refworld/docid/489c49092.html>.

²⁷ See Human Rights Watch, *A Human Rights Agenda for New Kosovo*, No. 1, February 2008, available at: <http://www.hrw.org/en/reports/2008/02/14/human-rights-agenda-new-kosovo>; Amnesty International, *Kosovo: Amnesty International Calls for the Government to Respect and Ensure the Right to Freedom of Expression*, 12 June 2009, available at: <http://www.amnesty.org/en/library/asset/EUR70/008/2009/en/17bfda28-ea36-4910-9451-b1f270aa46c2/eur700082009eng.html>; Amnesty International, *Report 2009 – Serbia*, 28 May 2009, available at: <http://report2009.amnesty.org/en/regions/europe-central-asia/serbia>; Freedom House, *Freedom in the World 2009 - Kosovo*, 16 July 2009, available at: <http://www.unhcr.org/refworld/docid/4a6452a8c.html>; Ombudsperson Institution in Kosovo, *Eighth Annual Report 2007-2008*, 21 July 2008, available at: <http://www.ombudspersonkosovo.org/?cid=2.74>.

political, social and economic realms affect Bosniaks, Croats, Gorani, Roma, Ashkali and Egyptians, and Turks as well as Kosovo Serbs and Kosovo Albanians living outside areas where they are the majority.²⁸ The European Commission has highlighted the lack of capacity to fully implement and harmonize human rights standards in Kosovo for the benefit of all its inhabitants including ethnic minorities.²⁹

According to the Ombudsperson for Kosovo:

“While human rights violations are raised and may also be discussed in the media, the mechanisms in place still do not have the power to actually prevent or remedy human rights violations. At the same time, the majority of the population is not fully aware of their rights and thus often do not even complain, because they have become used to the situation as it is or believe that nobody can help them anyway. Under such circumstances, the actual protection of human rights depends more on fate and on the actual circumstances of each individual case than it normally should.”³⁰

C. *Situation of Minority Communities*³¹

Kosovo Albanians make up the overwhelming majority of the population of Kosovo.³² The main minority groups are Kosovo Serbs, Roma, Bosniaks, Turks, Gorani, Ashkali, Egyptians, and Croats. This paper uses the term ‘minority communities’ to refer to Kosovo Serbs living south of the Ibar River, Kosovo Albanians living north of the Ibar River, and Roma, Bosniaks, Turks, Goirani, Ashkali, Egyptians and Croats throughout Kosovo.

²⁸ Minority Rights Group International, *Filling the Vacuum: Ensuring Protection and Legal Remedies for Minorities in Kosovo*, 26 May 2009, available at: <http://www.unhcr.org/refworld/docid/4a1ce86f2.html>.

²⁹ According to the European Commission:

As regards the promotion and enforcement of human rights, in December 2008, the government approved the strategy and the action plan on human rights for the period 2009-2011. However, the mechanisms to ensure their implementation are not yet in place. Some municipal human rights units are not operational, in particular in Kosovo Serb majority municipalities, which are reluctant to cooperate with the central authorities. The Ombudsman office has only limited oversight as regards Serbian parallel structures. The human rights units at the central level (e.g. Ministry of Justice, Ministry of Public Administration) mandated to implement the Ombudsman’s recommendations are not yet fully operational. Overall, there has been some progress in this area, notably the adoption of the human rights strategy and action plan. However, the institutional framework for the observance of international human rights norms in Kosovo needs to be significantly strengthened.

European Commission, *Commission Staff Working Document: Kosovo Under UNSCR 1244/99 2009 Progress Report*, SEC(2009) 1340, 14 October 2009, available at: <http://www.unhcr.org/refworld/docid/4adc2a002.html>.

³⁰ Ombudsperson Institution in Kosovo, *Eighth Annual Report 2007-2008*, 21 July 2008, p. 36., available at: <http://www.ombudspersonkosovo.org/?cid=2.74>.

³¹ For a report on the situation within each region of Kosovo concerning security, employment, use of languages, anti-discrimination, return of displaced persons from 2007-2008, see Humanitarian Law Centre, *Ethnic Communities in Kosovo in 2007 and 2008*, available at: http://www.hlc-rcd.org/uploads/editor/file/etnicke_zajednice_2007-2008.pdf.

³² UK Home Office, *Country of Origin Information Key Documents: Kosovo*, 27 October 2009, available at: <http://www.unhcr.org/refworld/docid/4ae801732.html>.

Since the March 2004 attacks, which targeted Kosovo Serbs, Roma and Ashkali there have not been serious incidents of violence reported against minorities on that scale.³³ Nevertheless, the overall situation of minorities has not significantly improved since the issuance of UNHCR's June 2006 position. According to the Ombudsperson for Kosovo:

“It is clear that, for the most part, the situation faced by Kosovo's minority communities has not improved substantially since the last reporting period [2006-2007]. There are also no indicators to show that this will happen in the near future.”³⁴

The UNSG, in his 30 September 2009 report on UNMIK to the Security Council, stated that:

“during the reporting period [1 June to 15 September 2009], there was a concern over the growing number of security-related incidents affecting minority communities that require appropriate follow-up and action by the Kosovo authorities.”³⁵

The situation of Kosovo Roma remains problematic. The Council of Europe's Committee of Experts on Roma and Travellers, citing the fragile security situation, urges that any asylum claims lodged by Roma should be carefully considered.³⁶ In September 2009, there were reports of Kosovo Albanians attacking and injuring several Kosovo Roma.³⁷

³³ The violence that took place between 17 and 18 March 2004 left 20 dead, over 500 houses and 42 Serbian Orthodox churches and monasteries were destroyed, 3,800 Serbs were displaced and an estimated 50,000 individuals were involved. Human Rights Watch, *Failure to Protect: Anti-Minority Violence in Kosovo, March 2004*, 26 July 2004, available at: <http://www.unhcr.org/refworld/docid/412ecc8b4.html>.

³⁴ See above footnote 30, p. 46.

³⁵ See above footnote 17.

³⁶ Council of Europe, Committee of Experts on Roma and Travellers, *Updated Opinion of MG-S-ROM on the Return of Roma to Kosovo and South Eastern Europe*, MG-S-ROM (2009)3, 6 May 2009, available at: <http://www.coe.int/T/DG3/Romatravellers/documentation/mgsrom/Abridged%20Report%2027th%20Meeting.pdf>.

³⁷ At least four Kosovo Roma were injured in an attack near Gnjilane, while more than 20 families complained to the Uroševac local authorities that they had been physically and verbally harassed on several occasions. “These incidents underscore how vulnerable the Roma in Kosovo remain,” the statement added. The statement, issued 7 September 2009, concludes that “over the last decade, the Kosovo and international authorities have routinely failed to protect minority communities from violence and intimidation.”; See Human Rights Watch, *Kosovo: Investigate Attacks on Roma*, 7 September 2009, available at: <http://www.unhcr.org/refworld/docid/4aae3ed81a.html>; and Amnesty International, *Kosovo: Investigate Attacks on Roma*, 7 September 2009, available at: <http://www.unhcr.org/refworld/docid/4ac06ef9c.html>.

1. Security Environment

With much of the population segregated into ethnically homogenous communities, incidents of targeted ethnic violence on a large scale have decreased since the last major outbreaks in March 2004. Nevertheless, ethnically-motivated security incidents and threats reportedly continue and involve harassment: attacks against religious and cultural sites (mainly Serbian Orthodox), vandalism, burglaries, thefts, looting, unlawful property occupations and assaults.³⁸

Events following the UDI have further polarized the already difficult relations between Kosovo Albanians and Kosovo Serbs.³⁹ According to UNHCR's observations, corroborated by the Kosovo Police Service (KPS) reports, the majority of security incidents with ethnic undertones affect the Kosovo Serb community, particularly in integrated areas.⁴⁰ Kosovo Serbs, Kosovo Roma and Kosovo Albanians living in the North tend to remain within their enclaves.⁴¹

Acts of violence and ill-treatment targeted at minority communities and their property continue to be a serious problem since the UDI.⁴² It is reported that a number of allegedly ethnically-motivated incidents investigated by the KPS are unsolved and others are believed to go unreported.⁴³ In addition to sporadic shootings and murders,

³⁸ See above footnote 26 and also Human Rights Watch, *Kosovo: Build New State on Rule of Law*, 15 February 2008, available at: <http://www.unhcr.org/refworld/docid/47b96a061a.html>.

³⁹ Balkan Insight, *Up to 20 Injured in Kosovo Serb Clashes*, 11 May 2009, available at: <http://www.balkaninsight.com/en/main/news/18775/>. On 2 January 2009, in Mitrovicë/a two explosions destroyed cars in the Kosovo Serb area of the town followed by reprisals by Kosovo Serbs directed against Kosovo Albanian property; see: Reuters, *Violence erupts again in divided Kosovo town*, 2 January 2009, available at: <http://www.reuters.com/article/latestCrisis/idUSL3442607>.

⁴⁰ Violent clashes between ethnic Serbs and Albanians occurred in the city of Mitrovica on 3 September 2009, though there were no reported injuries. See Balkan Insight, *Violent clash in Mitrovica*, 4 September 2009, available at: <http://www.balkaninsight.com/en/main/news/21999/?C=M%252525252525252525253BO>.

⁴¹ The 2008 Human Rights Report on Kosovo issued by US Department of State indicates that "societal violence decreased marginally, but tensions between ethnic communities remained high, especially following the February 17 declaration of independence." The UN Committee on Economic, Social and Cultural Rights, in November 2008 expressed concern that the "population of Kosovo remains deeply divided along ethnic lines, as reflected by recurring incidents of inter-ethnic violence and a climate of intolerance among ethnic communities in Kosovo." See above footnote 26. See UN Committee on Economic, Social and Cultural Rights (CESCR), *Consideration of reports submitted by States parties under articles 16 and 17 of the Covenant [on Economic, Social and Cultural Rights]: concluding observations of the Committee on Economic, Social and Cultural Rights : document submitted by the United Nations Interim Administration Mission in Kosovo (UNMIK)*, E/C.12/UNK/CO/1, 1 December 2008, available at: <http://www.unhcr.org/refworld/docid/493f94890.html>.

⁴² See above footnote 26, according to which societal violence has increased. While according to the US Department of State, *2009 Report on International Religious Freedom - Kosovo*, 26 October 2009, available at: <http://www.unhcr.org/refworld/docid/4ae8612d91.html>, the level of societal violence has only marginally decreased.

⁴³ The US Department of State, in its 2008 Human Rights Report on Kosovo, reported that: [i]n April 2007 a KPS-led raid in the Serb-majority municipality of Shterpce/Strpce, conducted solely by ethnic Albanian police officers, resulted in injuries to several Kosovo Serb suspects and credible allegations of excessive use of force and inappropriate behaviour. As a result, the KPS launched an investigation of 11 officers. The KPS issued formal disciplinary letters to five of the officers and cleared the remaining six officers of wrongdoing. Following this incident, KPS implemented a new requirement that at least one KPS officer who belongs to the ethnic group targeted by a police operation participate in the planning of it. Additionally, new guidelines require that an officer who speaks the language of the suspects must be present at all times to translate.

members of minority communities continue to suffer from ethnically based incidents such as physical and verbal assaults or threats, arson, stoning, intimidation, harassment, and looting. Law enforcement, when ill-treatment and violence have an ethnic dimension, is considered by many observers as unable or unwilling to assert itself.⁴⁴ Law enforcement personnel in ethnically mixed areas are overwhelmingly representative of the majority ethnicity, contributing to perceptions of impunity and indifference when minority communities are victimised.⁴⁵ Kosovo Serbs are reportedly reluctant to report incidents to Kosovo Albanian KPS officers. Similarly, Kosovo Roma may not report crimes to the local police, either due to lack of confidence in law enforcement or fear of reprisals from the perpetrators.⁴⁶ The lack of judicial remedies for Kosovo Roma is further compounded by their reluctance to rely on the judicial system to seek justice and remedies for alleged crimes perpetrated against them.⁴⁷ KPS has encountered significant difficulties in gaining the trust of these communities. These problems are aggravated by a lack of confidence in the judiciary.⁴⁸ This contributes to under-reporting of incidents, and a consequent underestimation of risks faced by minorities.

What is true for Kosovo Serbs in the South is also true for Kosovo Albanians in the North where Kosovo Serb officers dominate the KPS, and the judiciary is not fully functional.⁴⁹

2. Freedom of Movement

Freedom of movement continues to be an issue affecting the Kosovo Serb and Kosovo Roma communities as well as Kosovo Albanians living in the North. Despite efforts by KPS and NATO's Kosovo Force (KFOR) to increase security measures in areas or enclaves inhabited by minority communities, members of such communities are said to

See above footnote 26. UNHCR field monitoring has confirmed this incident.

⁴⁴ See OSCE, Department of Human Rights and Rule of Law, *Kosovo Review of the Criminal Justice System 1999-2005, Reforms and Residual Concerns*, March 2006, p. 68, available at: http://www.osce.org/documents/mik/2009/09/39346_en.pdf.

⁴⁵ For example, in Pejë/Peć, out of 952 KPS police officers, 114 are from minorities, including 15 Roma/Ashkali/Egyptians, and seven Serbs, and in Prizren the ethnic balance in the local law enforcement agencies is still not proportionate to the Serb minority. Prizren region has six municipalities with regional KPS HQ located in Prizren town. The region has 854 KPS officers of whom two are Serb and there are no officers of other minorities.

⁴⁶ For example, in the Abdullah Presheva neighbourhood in Gjilan/Gjilane, Kosovo Roma have been the victims of repeated attacks in 2009, allegedly carried out by Kosovo Albanians. Most have gone unreported, according to the Deputy Mayor of Gnjilane; see OCSE Field Report, 7 August 2009. See Amnesty International, *Kosovo: Investigate Attacks on Roma*, 7 September 2009, available at: <http://www.unhcr.org/refworld/docid/4ac06ef9c.html>.

⁴⁷ See above footnote 38; Amnesty International, *Kosovo: Investigate Attacks on Roma*, 7 September 2009, available at: <http://www.amnesty.org/en/for-media/press-releases/kosovo-investigate-attacks-roma-20090907>.

⁴⁸ See above footnote 30, p. 46; OSCE, *Four Years Later: Follow up of March 2004 Riots Cases before the Kosovo Criminal Justice System*, July 2008, available at: http://www.osce.org/documents/mik/2008/07/32022_en.pdf; OSCE, *Different Communities before the Kosovo Justice System: A preliminary statistical overview of punishments and trial outcomes in district, municipal, and minor offences courts*, December 2008, available at: http://www.osce.org/documents/mik/2008/12/35302_en.pdf.

⁴⁹ Security incidents against Albanian minorities have been reported, for instance, near the main bridge in Mitrovicë/a, in the course of identity checks by Serb bridge-watchers, often involving intimidation and physical assault.

be reluctant to move beyond these enclaves due to security related fears.⁵⁰ Kosovo Serbs and other minority communities have been the target of threats and violence when travelling outside locations where they represent the majority. This has also affected Kosovo Serb and other minority communities' free exercise of religious rights and access to education.⁵¹

The European Commission reports "limited progress can be reported in the area of free movement of persons. Alignment with European standards remains at an early stage. The free movement of persons throughout Kosovo is not fully ensured."⁵²

Kosovo Albanians who live in Kosovo Serb majority areas in the North have also been targeted. A majority of Kosovo Albanians in the North are reluctant to move outside their locations without police protection.

Public transportation services for minority groups are still organized on a "humanitarian basis" in certain locations.⁵³ The continuation of these bus lines is a strong indication that freedom of movement continues to be restricted for isolated Kosovo Serbs, Kosovo Roma and Kosovo Albanians living in the North. Even travel between North and South Mitrovicë/a has proven difficult.⁵⁴

3. Access to Social Services and Employment

Despite the promulgation of detailed implementing instruments,⁵⁵ the application and enforcement of the Anti-Discrimination Law has fallen short of expectations, and ethnic

⁵⁰ UNDP survey with the communities in Kosovo indicated that the major concern for the Kosovo Serb community remains security. UNDP Kosovo, UNDP, *Early warning report*, No. 23, December 2008, pp. 4-6, available at: http://www.kosovo.undp.org/repository/docs/Fast_Facts_23_EnglishFINAL.pdf.

⁵¹ The US Department of State 2008 report on the situation of human rights in Kosovo related that, "security concerns continued to affect the Kosovo Serb community and its freedom to worship. Some Kosovo Serbs asserted that they were unable to travel freely to practice their faith"; See above footnote 26.

⁵² See above footnote 29, p. 28.

⁵³ See OSCE Mission in Kosovo, *Humanitarian Minority Bus Transportation in Kosovo after Transfer to Kosovo Institutions, Monitoring Findings*, June 2008, available at: http://www.osce.org/documents/mik/2008/07/32250_en.pdf. The Ministry of Transport and Communications assumed the responsibility for managing these services and has contracted out routes to various providers. The Ministry of Transport and Communications divided the humanitarian bus service into 14 lots, comprising 25 routes (including 7 new routes). The Ministry signed contracts with eight service providers, which started operating on their assigned routes on 16 August 2008. See UN Security Council, *Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo*, S/2008/692, 24 November 2008, available at: <http://www.unhcr.org/refworld/docid/492e79152.html>.

⁵⁴ The Kosovo Roma, Ashkali, and Egyptian returnees in Roma Mahalla, in South Mitrovicë/a, continue to exercise caution with respect to their movement and principally travel by "alternative" routes. The school transport service for Roma, Ashkali, and Egyptian returnee children, who formerly commuted to north Mitrovicë/a to attend school, has effectively remained non-operational since 17 February 2008 as a result of the reluctance on the part of the organizer of this service to continue to operate it due to potential safety/security concerns.

⁵⁵ According to the Anti-Discrimination Law passed on 19 September 2004, all persons living in Kosovo, including minorities, must have equal and non-discriminatory access to basic services provided by the Kosovo authorities. The law specifically prohibits discrimination on the basis of race, gender, ethnic origin, disability, or language; however, violence and discrimination against women, persons with disabilities, and ethnic minorities persisted. See above footnote 26. The Law on The Protection and Promotion of the Rights of Communities and their Members in the Republic of Kosovo was approved by the Assembly on 13 March 2008 and promulgated on 15 June 2008. Although work has started on a comprehensive strategy by the Ministry of Communities and Return

discrimination remains a concern raised by members of minority communities in areas such as employment, health, education, right to property and access to police services and courts.

Inadequate application of the *Law on the Use of Languages* adopted by the Assembly of Kosovo⁵⁶ causes difficulties for minority communities seeking to obtain services in their own languages. A 2008 OSCE report called on municipalities to make greater effort to comply with the Law, noting that a lack of adequate resources, both human and financial, has hindered access to minorities' language rights.⁵⁷ Kosovo institutions have yet to take appropriate measures in order to prevent violations related to the Law on the Use of Languages and the Anti-discrimination Law.⁵⁸

There are reports of a lack of accountability on the part of central and local authorities, which has worsened the unequal treatment of vulnerable groups and underprivileged persons with respect to social services and employment access.⁵⁹ Kosovo Roma, in particular, continue to be subject to pervasive social and economic discrimination.⁶⁰

The social protection system falls short of providing adequate, uniform support. The system is inefficient and financially strained, and the Ministry of Labour and Social Welfare has limited capacity to monitor the provision of services. There are few adequately trained professional social workers in Kosovo.⁶¹ Social welfare benefits "are insufficient to ensure an adequate standard of living for recipients."⁶²

The lack of employment opportunities affects minorities disproportionately. Aside from employment in the parallel institutions, Kosovo Serbs and Roma have particular difficulties accessing employment or otherwise engaging in economic activity in Kosovo, and have markedly lower employment rates.⁶³

Since the UDI, segregation of the Kosovo Serb and Kosovo Roma communities from the majority Kosovo Albanian population has continued through the strengthening of

(MCR), it has not yet been finalized. The yearly plan envisioned by the law is still to be completed by the Community Consultative Council. *Law No. 03/L-047 on the Protection and Promotion of the Rights of Communities and Their Members in Kosovo*, No. 03/L-047, 13 March 2008, available at: <http://www.unhcr.org/refworld/docid/4ae96cdc2.html>.

⁵⁶ *Law No. 02/L-37 on the Use of Languages*, No. 02/L-37, 26 July 2006, available at: <http://www.unhcr.org/refworld/docid/4ae96d832.html>.

⁵⁷ OSCE Mission in Kosovo, *Implementation of the Law on the Use of Languages by Kosovo Municipalities*, June 2008, available at: http://www.osce.org/documents/mik/2008/07/32145_en.pdf.

⁵⁸ Humanitarian Law Centre, *Ethnic Communities in Kosovo in 2007 and 2008*, April 2009, available at: http://www.hlc-rdc.org/uploads/editor/file/etnicke_zajednice_2007-2008.pdf.

⁵⁹ See above footnote 30, p. 66.

⁶⁰ See above footnote 38.

⁶¹ Country of Return Information (CRI) Project, *Country Sheet - Kosovo*, January 2009, available at: <http://www.unhcr.org/refworld/docid/49afa13a1c.html>.

⁶² See above footnote 41.

⁶³ According to the European Commission, "the poor availability and reliability of labour market data continued to hamper the analysis of labour market developments. The registered unemployment rate in the first half of 2009 remained very high, estimated at 40%, unchanged compared to 2008. More than 90% of registered persons fall into the category of long-term unemployment." p. 22, available at: <http://www.unhcr.org/refworld/docid/4adc2a002.html>, The United Nations Committee on Economic Social, and Cultural Rights noted with concern that "approximately 45 percent of Kosovars live in poverty, i.e., on less than 1.42 Euro per day, and that around 15 percent live in extreme poverty, i.e. on less than 0.93 Euro per day." See above footnote 41.

parallel institutions.⁶⁴ The Kosovo Serb and Kosovo Roma minority populations rely primarily on these parallel institutions for social and administrative services.

According to the European Commission, “the integration and protection of socially vulnerable groups, in particular abandoned children, returnees and people with disabilities needs to be enhanced.”⁶⁵

4. Civil Documentation

Many Roma in Kosovo remain without civil status registration and/or personal identity documentation. The lack of reporting of home births compounds this problem. Without appropriate documentation, Kosovo Roma, and other minorities in a similar situation, cannot satisfy the requirements for registration. The lack of civil registration prevents enjoyment of other civil and social rights, such as education, health care, employment, property, and social security. This situation may lead to statelessness and exclusion in the political, social and economic spheres. Although it is difficult to estimate the number of persons who are affected by this phenomenon,⁶⁶ UNHCR estimations and other surveys⁶⁷ indicate that a significant percentage of the Kosovo Roma population face serious restrictions on the exercise of their fundamental human rights and access to social benefits.

With respect to registration, the problem for minorities lies in the documentary requirements of the authorities.⁶⁸ Producing the required documentation is a challenge for many applicants. Many Kosovo Roma either never possessed documentation or no longer possess it due to the loss or destruction of their documents. In addition, many of the official records are not available in Kosovo following the removal of civil status registry books to Serbia, or damage to or destruction of the registry books as a result of the 1999 conflict.

5. Education

Official Kosovo curricula in the Serbian and Romany languages have yet to be developed. Education for Kosovo Serbs and Kosovo Roma is still generally accessed through the parallel system in separate schools using the Serbian curricula and textbooks. Some Serb parallel schools in Kosovo have introduced classes in the Romany language.⁶⁹ The lack of education offered in Serbian and Romany languages is

⁶⁴ See above footnote 19, p. 12.

⁶⁵ “On the subject of voluntary returns, the pace of voluntary returns is still very low. The lack of employment opportunities, the lack of confidence in the enforcement of property rights and the continuous perception of security threats are cited as being the main reasons for this. The plans for return of some Kosovo Albanians to northern Mitrovicë/Mitrovica have resulted in clashes between Kosovo Serbs and police forces, NATO's KFOR and EULEX.” See above footnote 29, p. 19.

⁶⁶ A comprehensive census has not been conducted in Kosovo since 1991, and the validity of the census has been called into question by the Kosovo Statistics Office.

⁶⁷ UNICEF, *Every child counts – Birth registration in Kosovo*, available at: http://www.unicef.org/ceecis/UNICEF_Birth_Registration_2009_English.pdf.

⁶⁸ Article 28 of the Law on Citizenship requires civil registration and Article 29 of the law has as its basis civil status registration. Under this law, without either type of registration or the ability to obtain it, some Kosovo residents will be unable to access citizenship. Specifically at risk are those who belong to nomadic, marginalized and/or frequently displaced communities, such as the Roma, Ashkali, and Egyptians. For them, the provisions of the Law on Citizenship create insurmountable hurdles because they are often unable to provide documentation to obtain civil status registration or civil registration.

⁶⁹ See above footnote 30, p. 45.

a contributing factor, along with poverty and issues of freedom of movement, in the significant drop-out rate among members of these communities.⁷⁰

6. Access to Justice

According to the European Commission:

“Access to justice in areas inhabited by non-majority communities and especially in northern Kosovo is not guaranteed. The absence of a functioning judiciary in the north seriously limits access to justice for all communities. There is no Kosovo Serb representative in the district legal aid office based in Mitrovicë/Mitrovica south.”⁷¹

Access to the justice system by Kosovo Serbs, Kosovo Roma and Kosovo Albanians living in the North is problematic in the current circumstances prevailing in Kosovo.⁷² In the North, the official court system and prosecutors’ offices have operated in a “limited capacity or not at all since 21 February 2008.”⁷³ A Kosovo Serb judicial system, connected to the Serbian Ministry of Justice, continues to operate parallel to Kosovo’s legal system.

Kosovo’s legal system is not fully operational.⁷⁴ The judiciary needs strengthening and faces significant challenges in terms of applying new laws and the sheer volume of cases. A number of judges have been criticized for lack of objectivity, and susceptibility to outside influence and pressure. There were also credible reports of corruption in the local judiciary.⁷⁵

⁷⁰ See above footnote 19, p. 12.

⁷¹ See above footnote 29.

⁷² There are three systems of law currently operating in Kosovo at the same time. In the South, the Kosovo courts apply post-UDI Kosovo legislation. It should be noted that when there is no post-UDI legislation covering a specific legal area, Kosovo courts apply UNMIK regulations or laws of SFRY or FRY. In the North, official courts apply UNMIK regulations under the supervision of EULEX (as per the six-point plan), and parallel courts in the North and in other areas apply laws of the FRY and the Socialist Federal Republic of Yugoslavia. When not covered by UNMIK regulations, judges apply either SFRY or FRY laws. Commission of European Communities, *Kosovo (under UNSCR 1244/99) 2008 Progress Report*, Brussels, 5 November 2008, p. 13, available at: http://ec.europa.eu/enlargement/pdf/press_corner/key-documents/reports_nov_2008/kosovo_progress_report_en.pdf.

⁷³ OSCE Mission in Kosovo, *The Mitrovicë/Mitrovica Justice System: Continuing Human Rights Concerns and recent Developments, monthly report – December 2008*, Pristina, p. 2, cited in OSCE Mission in Kosovo, Legal System Monitoring Section, *Monthly report – June 2009*, available at: http://www.osce.org/documents/mik/2009/09/39346_en.pdf.

⁷⁴ For example, the parallel District Court of Mitrovicë/Mitrovica (“Kosovska Mitrovica District Court”) in the Zvečan/Zveqan Municipality, and parallel municipal courts of Leposavić/Leposaviq and Mitrovicë/Mitrovica continue to operate. The parallel municipal court of Mitrovicë/Mitrovica also takes cases from Vushtrri/Vučitrn and Skenderaj/Srbica municipalities and also operates a sub-office in Zubin Potok. Since 20 February 2008, no criminal, civil, and minor offence proceedings have occurred in Zubin Potok and Leposavić/q. Only a minimal number of minor criminal prosecutions have been brought in the area covered by the Mitrovicë/a Municipal and Minor Offences Courts. There have been no civil proceedings conducted by these courts. OSCE Mission in Kosovo, *The Mitrovicë/Mitrovica Justice System: Continuing Human Rights Concerns and recent Developments, monthly report – December 2008*. UNMIK reopened the District Court in Mitrovicë/a in October 2008. However, for the foreseeable future the court will have jurisdiction over serious criminal cases only.

⁷⁵ See above footnote 26; Council of Europe: Commissioner for Human Rights, *Report of the Council of Europe Commissioner for Human Rights’ Special Mission to Kosovo 23 - 27 March 2009*, 2 July 2009, CommDH(2009)23, p. 9, available at: <http://www.unhcr.org/refworld/docid/4a4c766778.html>;

The backlog of court cases continues to be a serious problem. As of the end of 2008, some 195,968 civil cases were still pending.⁷⁶ Currently, there is no legal procedure for enforcement of civil judgements. Furthermore, over 36,000 criminal cases were also pending.⁷⁷

7. Housing, Land and Property

Respect for, and enforcement of, property rights in Kosovo does not conform to international standards and the impact is felt most acutely among minority communities.⁷⁸ A large number of displaced persons belonging to minorities are not able to repossess their property due to the security situation and other obstacles to return. Following the eviction of illegal occupants, the looting and re-occupation of properties are commonplace. In such cases, while the KPS could re-evict without further investigations and court procedures, it often re-initiates investigations and court proceedings instead, further delaying the eviction process.

Properties owned by minorities are often the target of security incidents which may be ethnically motivated.⁷⁹ Effective protection is lacking against looting, burglaries of vacant reconstructed properties, and vandalism following the eviction of illegal occupants.⁸⁰

Problems relating to the restoration of property rights are particularly acute for the Kosovo Roma, Ashkali and Egyptians, many of whom do not hold formal title to property. The lack of registered deeds/titles to property is dealt with on a case by case

See also OSCE Mission in Kosovo, *Legal System Development*, available at: <http://www.osce.org/kosovo/13217.html>.

⁷⁶ OSCE Mission in Kosovo, *Legal System Monitoring Section, Monthly report – June 2009*, available at: http://www.osce.org/documents/mik/2009/09/39346_en.pdf.

⁷⁷ Commission of European Communities, *Kosovo (under UNSCR 1244/99) 2008 Progress Report*, Brussels, 5 November 2008, p. 14, available at: http://ec.europa.eu/enlargement/pdf/press_corner/key-documents/reports_nov_2008/kosovo_progress_report_en.pdf.

⁷⁸ According to the Ombudsperson, the protection of property rights is an area in which the weakness of the rule of law in Kosovo is still the most apparent, as there is a general lack of accountability of all competent authorities at central and local level, courts and relevant administrations. This is also an area where the majority of the population lacks complete trust in the authorities and shows disbelief that the situation can be improved on the short run. ...[I]f the anarchy of the illegal constructions and expropriations without compensation continues at this pace for the next ten years, most urban, rural areas and protected zones will be disfigured while unlawful interferences with individual property rights would become widespread.

See above footnote 30, p. 58.

⁷⁹ In Kroi i Vitakut/Brdjani in Northern Mitrovica on 22 June 2009 Kosovo Serbs protested against the building of a controversial road by Kosovo Albanians in a dispute over property rights. Police had to intervene to prevent violence. Balkan Insight, *Kosovo Police Thwart Violence in Mitrovica*, 23 June 2009, available at: <http://www.balkaninsight.com/en/main/news/20446/>; In April and May 2009 there were violent demonstrations by Kosovo Serbs in Northern Mitrovicë/a over the rebuilding of five houses by Kosovo Albanians in a predominantly Serb area, BBC, *Protests in Divided Kosovo Town*, available at: <http://news.bbc.co.uk/2/hi/europe/8029045.stm>.

⁸⁰ In April 2009 unknown persons vandalized properties given to Kosovo Serb returnees near Prizren, in southern Kosovo, Balkan Insight, *Kosovo Serb Returnee's Property Vandalized*, 13 April 2009, available at: <http://www.balkaninsight.com/en/main/news/18125/>.

basis by municipal officials, and in many instances the recognition of property rights depends on the flexibility and goodwill of these officials.⁸¹

Enforcement of property-related decisions is difficult, particularly for minority claimants. Evictions have been followed by post-eviction incidents and frequent re-occupations of property, and the KPS has often failed to evict those who re-occupy properties.⁸² The current repossession rate for illegally occupied properties remains low. Kosovo still lacks an effective mechanism for property restitution and compensation.

Other significant property issues include inadequate protection of tenancy rights,⁸³ and wide-spread irregular government expropriations, without an effective remedy.⁸⁴ These actions may constitute violations of due process and, in cases involving minority community members, some expropriations may be based on ethnicity.

III. Eligibility for International Protection

All claims by asylum-seekers from Kosovo should be considered on the basis of their individual merits according to fair and efficient refugee status determination procedures. Some of the claims lodged by asylum-seekers from Kosovo may give rise to possible exclusion from refugee status. UNHCR considers that groups set out in this section face a particular risk of persecution or serious harm in Kosovo, including through cumulative discriminatory acts. This listing is not to be construed as exhaustive and is based on information available to UNHCR at the time of writing.

A. *Main Groups at Risk*

1. Serbs and Albanians in Minority Situations, and Roma

Kosovo Serbs⁸⁵ and Kosovo Albanians inhabiting areas where they are in the minority,⁸⁶ and Kosovo Roma⁸⁷ inhabiting any part of Kosovo, continue to face serious

⁸¹ The Ministry of Environment and Spatial Planning (MESP) is currently identifying informal settlements and investigating them Kosovo-wide to formulate a strategy for the regularization of these properties with OSCE and UNHABITAT. The goal is for municipalities to include informal settlements when formulating urban development plans or municipal development plans in order to regulate property ownership rights and legalize the rights to use of the property for persons who lived on the property without formal title.

⁸² UNHCR identified 176 post-eviction re-occupation cases. Only six of these cases resulted in successful re-eviction by the KPS. KPS rarely evicts re-occupants, and seldom decides to press criminal charges against re-occupants, and when this is the case the action is often rendered ineffective due to the lengthy court criminal procedure. UNHCR is aware of two cases in Pejë/Peć Municipality where re-occupants were convicted and received a €1,400 fine each in early 2009.

⁸³ Before 1999, many employees of Socially Owned Enterprises (SOEs) were allocated housing units. Due to the privatization process, a number of residents in SOE housing units have been displaced.

⁸⁴ OSCE Mission in Kosovo, *Fraudulent Property Transactions in the Pejë/Peć Region*, August 2009, available at: http://www.osce.org/documents/mik/2009/09/39386_en.pdf; Litigating Ownership of Immovable Property in Kosovo, March 2009, available at: http://www.osce.org/documents/mik/2009/04/37137_en.pdf; *Expropriations in Kosovo*, December 2006, available at: http://www.osce.org/documents/mik/2006/12/22676_en.pdf.

⁸⁵ For the purposes of these guidelines, Serbs in minority situations refer to those not originating from the three northern municipalities and northern Mitrovica/e. See above footnote 26.

⁸⁶ For the purposes of these guidelines, Albanians in minority situations are found north of the Ibar River. See Amnesty International, *Amnesty International Report 2009 - Serbia*, 28 May 2009, available at: <http://www.unhcr.org/refworld/docid/4a1fad446.html>, describing discrimination against both Kosovo Serbs and Kosovo Albanians in areas where they are a minority.

⁸⁷ See above footnote 26.

restrictions to their freedom of movement and the exercise of fundamental human rights, including serious societal and sometimes administrative discrimination⁸⁸ that would limit in particular their ability to exercise their political, social and economic rights. Furthermore, there are reports of threats and physical violence perpetrated against these communities.⁸⁹

The Ashkali and Egyptian minorities, due to their racial and ethnic characteristics, may be confused with Kosovo Roma. Similarly to the Kosovo Roma, the Ashkali and Egyptian minorities often lack identity papers and are therefore placed in difficult circumstances with regard to access to social services, health care and education.⁹⁰ Asylum applications of members from these communities should be assessed carefully in order to evaluate whether there is a need for international protection, based on a risk of persecution grounded on actual or perceived race or nationality.⁹¹

2. Persons in Ethnically Mixed-Marriages and Persons of Mixed Ethnicity

People in mixed marriages and children of mixed parentage may face discrimination amounting to persecution, based on their actual or perceived race or nationality.⁹² Unlike other minority groups, mixed families and persons of mixed origin may be excluded from all communities – including potentially their own extended families and communities in places of origin – and unable to rely on the relative security of their ethnic enclaves. Asylum applications of persons in ethnically mixed marriages or persons of mixed ethnicity should be assessed carefully in order to evaluate whether there is a need for international protection due to cumulative discrimination or other measures amounting to persecution, including for the reason that they do not speak the language of the majority community.⁹³

⁸⁸ Persecution is not limited to acts that cause physical harm. Discriminatory measures that are not of a serious character by themselves may amount to persecution on a cumulative basis, in particular where livelihood is threatened. This can be the case when human rights are restricted, in particular where the consequences are substantially prejudicial to the individual concerned, e.g., serious restrictions on the right to earn one's livelihood or access to available educational facilities and access to justice. Whether or not such measures of discrimination in themselves amount to persecution must be determined in the light of all circumstances. See UNHCR, *Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees*, January 1992, available at: <http://www.unhcr.org/refworld/docid/3ae6b3314.html>. See also above, section II(C).

⁸⁹ See above, section II(C).

⁹⁰ UNICEF, *Ethnic minority communities struggle to break a cycle of poverty in Kosovo*, 29 June 2009, available at: http://www.unicef.org/girlseducation/index_50107.html?q=printme.

⁹¹ See Art. 10(1) of the Qualification Directive.

⁹² *Ibid.*

⁹³ For example, where there is a visible difference in skin colour and the Roma partner speaks no or accented Albanian, a mixed marriage or relationship may put both parties at risk. See: *KX (Mixed Marriages - Roma-Albanian - Januzi Applied) Serbia and Montenegro (Kosovo) v. Secretary of State for the Home Department*, CG [2006] UKAIT 00072, UK Asylum and Immigration Tribunal, 20 September 2006, available at: <http://www.unhcr.org/refworld/docid/467f862b2.html>; *SI (Mixed Serb/Roma Parentage) Kosovo v. Secretary of State for the Home Department*, CG [2009] UKAIT 00011, UK Asylum and Immigration Tribunal, 16 March 2009, available at: <http://www.unhcr.org/refworld/docid/49c782aa2.html>.

3. **Persons Perceived to Have Been Associated with the Serbian Authorities After 1990**⁹⁴

Persons suspected of having collaborated with the Serbian authorities after the abolition of Kosovo's autonomous status in 1989 may face discrimination and ill-treatment in Kosovo which may amount to persecution based on actual or perceived political opinion. While in some cases they may find protection from the authorities, a lack of trust in the judiciary and the failure of the administration to ensure that the "rule of law" protects individuals have been cited as major problems, and recourse to law enforcement is frequently unsuccessful.⁹⁵

4. **Victims of Trafficking**⁹⁶

Human trafficking for sexual and other forms of exploitation continues to be a serious problem in Kosovo, affecting women and children in particular.⁹⁷ According to the US Department of State,

"Kosovo is a source, transit, and destination country for women and children trafficked across national borders for the purpose of commercial sexual exploitation. Kosovo women and children are also trafficked within Kosovo for the same purpose. NGOs reported that child trafficking, particularly from Roma communities, for the purpose of forced begging, was an increasing problem."⁹⁸

Kosovo has reportedly achieved limited progress in tackling human trafficking.⁹⁹

Victims of trafficking, and in particular women and children, may be in need of international protection, particularly since they may not be able to rely on effective state protection. They may fear ill-treatment upon return to Kosovo by their traffickers or related elements. Their families may be threatened as well. In addition, victims may face ostracism, discrimination or punishment by their family and/or the local community or other forms of ill-treatment upon return.¹⁰⁰

⁹⁴ The inter-ethnic violence in March 2004 highlighted the persistent and strong resistance in Kosovo to persons closely associated with the Kosovo Serbs or with the Serbian structures, whether past or present.

⁹⁵ See above footnote 30, p. 66.

⁹⁶ See UNHCR, *Guidelines on International Protection: The application of Article 1A(2) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees to victims of trafficking and persons at risk of being trafficked*, HCR/GIP/06/07, 7 April 2006, available at: <http://www.unhcr.org/refworld/docid/443679fa4.html>. On the risk for persons from Kosovo to become victims of trafficking, see e.g. UNICEF, *Trafficking in Children in Kosovo*, June 2004, available at: http://www.unicef.org/kosovo/kosovo_media_pub_prot.009.04.pdf. See also OSCE/ODIHR, *Awareness Raising for Roma Activists on the Issue of Trafficking in Human Beings in South-Eastern Europe*, Warsaw, April 2006, available at: http://www.osce.org/documents/odihr/2006/04/18692_en.pdf.

⁹⁷ See above footnote 29.

⁹⁸ US Department of State, *Trafficking in Persons Report 2009 - Kosovo*, 16 June 2009, available at: <http://www.unhcr.org/refworld/docid/4a4214ad28.html>; See also Human Rights Watch, *A Human Rights Agenda for New Kosovo*, No. 1, February 2008, available at: <http://www.hrw.org/en/reports/2008/02/14/human-rights-agenda-new-kosovo>.

⁹⁹ See above footnote 29.

¹⁰⁰ See above footnote 96. See also Qualification Directive, Article 9(2), which states that acts of persecution can inter alia take the form of "(a) acts of physical or mental violence, including acts of sexual violence" and "(f) acts of a gender-specific or child-specific nature." Article 9(3) further provides that 'gender related aspects might be considered' in relation to a particular social group.

5. Victims of Domestic Violence

While prohibited by law, domestic violence affects women and children in Kosovo and remains a serious problem throughout all communities. According to Kosovo police statistics, 1,077 cases of domestic violence were recorded in 2007. Moreover, reports claim that most cases are not reported to the competent authorities, in part because the authorities are unable and/or unwilling to provide protection.¹⁰¹ As a result, cases of domestic violence are not investigated, and official data is believed to underestimate the scale of the problem. Rape and other forms of sexual and gender-based violence (SGBV)¹⁰² are underreported due to the cultural stigma attached to survivors and their families, and the fact that survivors may not be able to rely on effective state protection.¹⁰³

6. Persons Whose Claims are based on Sexual Orientation

The Constitution of Kosovo prohibits discrimination based on sexual orientation.¹⁰⁴ However, according to reports, there have been a number of cases of discrimination against homosexuals in Kosovo. Victims have been unwilling, in many cases, to present their cases publicly out of fear of further discrimination. Others reportedly make great efforts to hide their sexual orientation in order to avoid being identified as a homosexual. Establishments catering to homosexual clientele, including restaurants, have been targeted once this affiliation has been made public.¹⁰⁵

B. Internal Flight or Relocation Alternative

A detailed analytical framework for assessing the availability of an internal flight alternative or internal relocation alternative (IFA/IRA), is contained in UNHCR's 2003 "Guidelines on International Protection: the "Internal Flight or Relocation Alternative" within the context of Article 1A(2) of the 1951 Convention and/or 1967 Protocol

¹⁰¹ See above footnote 30, p. 73. According to a Human Rights Watch report:

...little is done by the state to protect the victims of domestic violence. In the absence of adequate public funding, support to victims of domestic violence and the provision of safe houses depend upon Kosovo's already stretched women's human rights groups. Most regions and many municipalities lack safe houses. Public awareness of domestic violence remains low.

Human Rights Watch, *A Human Rights Agenda for New Kosovo*, No. 1, February 2008, p. 3, available at: <http://www.hrw.org/en/reports/2008/02/14/human-rights-agenda-new-kosovo>,

¹⁰² UNHCR, *Sexual and Gender-Based Violence Against Refugees, Returnees and Internally Displaced Persons. Guidelines for Prevention and Response*, May 2003, <http://www.unhcr.org/refworld/docid/3edcd0661.html>. See also Qualification Directive, Article 9(2)(a) and (f) and Article 9(3).

¹⁰³ See above footnote 26. See also Los Angeles Times, *Kosovo's women suffer*, 10 March 2008, <http://articles.latimes.com/2008/mar/10/world/fg-women10>.

¹⁰⁴ Constitution of the Republic of Kosovo, 15 June 2008, available at: <http://www.unhcr.org/refworld/docid/4ae969d32.html>.

¹⁰⁵ Institute for War and Peace Reporting, *Gay Kosovars flirt with danger*, 30 May 2003, available at: http://www.iwpr.net/?apc_state=henfbcrl57142&m=t. See also Metro Weekly, *Safe haven: Gay man from Kosovo granted political asylum in the US*, 17 May 2007. See also *Gaykosova* available at: <http://www.gaykosova.org/index.html>. See also above footnote 26.

relating to the Status of Refugees”.¹⁰⁶ As provided in the Guidelines, in order to assess the possibility of applying an IFA/IRA, two main sets of analyses should be undertaken, namely whether internal relocation is (i) relevant and, if so, whether it is (ii) reasonable. The relevance test examines whether the area of relocation is practically, safely, and legally accessible to the individual; whether the agent of persecution is the State or a non-State agent; and whether the claimant would be exposed to a risk of being persecuted or other serious harm upon relocation. The reasonableness test includes an assessment of general safety and security in the area of potential relocation, human rights standards and options for economic survival, in order to evaluate if the individual would be able to live without undue hardship given his or her situation.¹⁰⁷

In assessing a refugee claim in which a well-founded fear of persecution has been established in one part of the country of origin, the determination of whether the proposed internal flight or relocation area is an appropriate alternative in the particular case requires an assessment over time, taking into account not only the circumstances that gave rise to the persecution feared, and that prompted flight, but also whether the proposed relocation area provides a meaningful alternative. The personal circumstances of the applicant and the conditions in the country of origin need to be considered. Persecution by non-State actors, particularly relevant in the Kosovo context, may well give rise to valid claims to refugee status under the 1951 Convention in cases where the State is unwilling or unable to provide protection.

1. Internal Flight or Relocation in Kosovo¹⁰⁸

Kosovo Roma may face the threat of physical violence and other human rights abuses throughout Kosovo based on their race and ethnicity. Many do not possess identity documentation. They are subject to prevalent societal discrimination. The risks are heightened when they travel beyond their places of residence. As a result, relocation within Kosovo would not meet the criteria of the relevance analysis. And as living conditions – already precarious in the regions of origin – would be even more difficult in areas outside their places of residence, the criteria of the reasonableness test would not be satisfied.

Although Kosovo Serbs may find an area for internal relocation where they are in the majority, relocation may not be reasonable given the prevailing security situation, the limited freedom of movement, and shortages of housing and employment. Kosovo Albanians from North of the Ibar River may, generally, find an internal relocation alternative in the South, although the specific circumstances of individuals should be taken into account in assessing the reasonableness of such relocation.

¹⁰⁶ UNHCR, *Guidelines on International Protection No. 4: Internal Flight or Relocation Alternative Within the Context of Article 1A(2) of the 1951 Convention and/or 1967 Protocol Relating to the Status of Refugees*, HCR/GIP/03/04, 23 July 2003, p. 3, available at: <http://www.unhcr.org/refworld/docid/3f2791a44.html>.

¹⁰⁷ *Ibid.* Article 8(1) of the Qualification Directive also requires an assessment of whether in the relevant “part of the country of origin, there is no well-founded fear of persecution or no real risk of suffering serious harm” and whether “the applicant can ‘reasonably be expected to stay’ in that part of the country.”

¹⁰⁸ For further detail on the conditions in certain regions of Kosovo, please refer above to section II(C) on Minority Communities in Kosovo.

2. Internal Flight or Relocation in Serbia (Excluding Kosovo)

Although physical and legal access to Serbia is possible and persons from Kosovo Serb, Roma, Ashkali and Egyptian communities do not normally face a risk of persecution in Serbia, their relocation to Serbia may not meet the reasonableness test, in particular in the case of Roma, Ashkali and Egyptians, as outlined below.

Serbia (excluding Kosovo) is currently hosting some 206,000 mainly Serbian IDPs from Kosovo and some 86,000 refugees from Croatia, in a socio-economic context characterized by high unemployment and a severely strained social welfare system. Living conditions are particularly difficult for the Roma, Ashkali and Egyptian population. Many Kosovo Roma, Ashkali and Egyptians in Serbia live in illegal settlements and slums made of makeshift huts, corrugated metal containers and other sub-standard shelters, often without electricity, running water, sanitation, or other services. The ongoing privatization process has triggered a series of evictions from Roma settlements, although the legal framework does not require the provision of alternative housing solutions. This results inter alia in homelessness, health problems, insecurity, the removal of children from school, and the loss of livelihoods.

In addition, in Serbia, effective access to certain citizenship rights and services, such as medical care, unemployment benefits, pensions and education, is dependent on registration of residence, which is a pre-condition to obtaining a national identification (ID) card. Mere possession of Serbian citizenship – as evidenced by a passport or citizenship certificate – is insufficient.¹⁰⁹ Although persons from Kosovo are formally permitted to register their residence in Serbia, many – particularly the Kosovo Roma, Ashkali and Egyptians – are unable to do so as they cannot provide proof of a place of residence in Serbia.¹¹⁰ If the individual holds an ID card which does not contain a locally-registered address, the holder will be referred to the municipality identified on the card for health care, enrolment in school, and various other basic public services.

While registration as an internally displaced person (IDP) can provide an alternative means of access to some socio-economic rights, the Serbian Commissioner for Refugees (SCR) has asserted that IDP registration is available only to those who enter Serbia directly from Kosovo, thereby denying IDP status to those who would seek refuge in Serbia after a period spent in another State. Although the SCR has signalled a more flexible approach since the May 2008 elections, field reports indicate that many IDPs remain without documents and/or access to socio-economic rights.¹¹¹

Relocation to Serbia of Kosovo Serbs may meet the reasonableness test in some cases, depending on their individual circumstances. This would be the case if they are able to secure housing and officially to register their residence, have family members in Serbia

¹⁰⁹ For a detailed discussion of this topic and the legal obstacles faced by IDPs in Serbia, see Praxis, *Protection of Rights of Internally Displaced Persons: In Anticipation of a Durable Solution*, March 2009, available at: http://www.praxis.org.rs/index.php?option=com_docman&task=doc_view&gid=136. See also Praxis, *Legally Invisible Persons in Seven Stories: Why Should the Law on the Procedure for Recognition of Persons before the Law be Adopted*, October 2008, available at: http://www.praxis.org.rs/index.php?option=com_docman&task=doc_view&gid=126.

¹¹⁰ Official residence in a legally-recognized property requires the petitioner to demonstrate ownership of the property through cadastral records, or written permission from a landlord who must also demonstrate title through cadastral records. In practice, landlords are often reluctant, due to tax and utilities liabilities, to permit legal registration of their properties.

¹¹¹ UNHCR and Praxis, *Analysis of the Situation of Internally Displaced Persons from Kosovo in Serbia*, March 2007, available at: <http://www.unhcr.org/refworld/docid/4704bff72.html>.

who can assist or support them, and/or have skills and qualifications which would enable them to find employment in the present market.

C. Complementary Forms of Protection

If an asylum-seeker does not meet the refugee criteria under the 1951 Convention and its 1967 Protocol, he or she may nonetheless have a need for a complementary form of protection.¹¹² In this regard, States' obligations under international or regional human rights law apply.¹¹³

In the European Union, if applicants from Kosovo fail to meet the refugee criteria under the 1951 Convention and its 1967 Protocol, they may nevertheless qualify for subsidiary protection in accordance with Council Directive 2004/83/EC (Qualification Directive) under Article 15(b).¹¹⁴

With respect to claims based on medical needs,¹¹⁵ it should be noted that Kosovo Serbs and Roma access primary health care through parallel institutions in Kosovo, and specialized care in Serbia. Kosovo Albanians in the North access health care in the South. Obtaining health care thus requires a degree of freedom of movement. Access to health care is also made difficult by corruption, long travel times, and poor and infrequently running public transportation. Vulnerable persons, such as persons with disabilities, are the most disadvantaged.¹¹⁶

¹¹² The term “complementary forms of protection” is used in these Guidelines to refer to the range of mechanisms which have been adopted by States to complement the protection accorded under the 1951 Convention.

¹¹³ UNHCR, ExCom, *Conclusion on the Provision of International Protection Including through Complementary Forms of Protection*, No. 103 (LVI) – 2005, 7 October 2005, available at: <http://www.unhcr.org/refworld/docid/43576e292.html>. Complementary forms of protection may be sought by citizens of Kosovo under various international instruments including, *inter alia*, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, resolution adopted by the General Assembly, entry into force 10 December 1984, A/RES/39/46, available at: <http://www.unhcr.org/refworld/docid/3b00f2224.html>; Covenant on Civil and Political Rights, *General Assembly resolution 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 March 23, 1976; Council of Europe, *European Convention for the Protection of Human Rights and Fundamental Freedoms*, 4 November 1950, ETS 5, available at: <http://www.unhcr.org/refworld/docid/3ae6b3b04.html>.

¹¹⁴ Articles 2(e) and 15, Council of the European Union, *Council Directive 2004/83/EC of 29 April 2004 on Minimum Standards for the Qualification and Status of Third Country Nationals or Stateless Persons as Refugees or as Persons Who Otherwise Need International Protection and the Content of the Protection Granted*, 2004/83/EC, 19 May 2004, available at: <http://www.unhcr.org/refworld/docid/4157e75e4.html>. Article 15(b) reads: “Serious harm consists of... torture or inhuman or degrading treatment or punishment of an applicant in the country of origin”.

¹¹⁵ The European Court of Human Rights has clarified that complementary or subsidiary protection may be warranted in the absence of sufficient possibilities for the treatment of a serious illness in the country of origin. According to the Court, removal of a seriously ill person to a place where she or he lacks access to appropriate medical care, in exceptional circumstances, may amount to inhuman treatment contrary to Article 3 ECHR, on which Article 15(b) of the EC Qualification Directive is based. See, in particular, *Bensaid v. The United Kingdom*, Appl. No. 44599/98, 33 EHRR 10, 6 February 2001, accessible at: <http://www.unhcr.org/refworld/docid/3deb8a1e4.html>.

¹¹⁶ See above footnote 61, p. 63, citing European Commission Liaison Office to Kosovo (ECLLO), unpublished draft report, *Mental Health and Physical Disabilities. Peer assessment mission on vulnerable groups in Kosovo*, 30/06/2008 -04/07/2008, Melanie Wohlgenannt MD, MPH, Tyrolean Public Health Services, Austria, paragraph three, page 1.

More generally, the public health care system is currently unable to meet all demands placed on it. Medicines available under the official system are mainly those prescribed for common conditions.¹¹⁷ Many patients with rare or chronic diseases (e.g. lack of growth hormone, haemophilia, HIV/AIDS) may not be able to find the treatment they need in the public health care institutions or in state pharmacies. While private pharmacies may import the medicines, they are often expensive and the supply uncertain. In addition to issues regarding the quality of services in general, there are some conditions which cannot be treated in Kosovo.¹¹⁸

¹¹⁷ See above footnote 61, p. 64.

¹¹⁸ These include, in particular, the following:

- Cardiac surgery;
- Cancer treatment (radiotherapy and certain types of chemotherapy);
- Organ transplants;
- Spinal surgery;
- Serious eye disease.

Ibid. p. 55.

IV. Maps

Maps displayed on next two pages

