

CONTENTS

1.	Introduction	3
2.	Background	4
3.	International Protection Needs	6
3.1	Continued inter-ethnic violence.....	8
4.	Return and reintegration	11
4.1	Voluntary and forcible return.....	11
4.2	Strategy for the Reintegration of Repatriated Persons	13
5.	failure to ensure conditions for sustainable Minority return and reintegration	17
5.1	Widespread and systematic discrimination	17
5.2	Documentation: the right to a legal identity	19
5.3	At risk of statelessness.....	20
5.4	The right to education	23
5.5	The right to health	24
5.6	The right to adequate housing.....	26
5.7	The Right to Employment	28
5.8	Sustainable returns?	29
6.	international criticism	31
7.	Kosovo and the EU.....	33
7.1	Readmission Agreements.....	33
8.	Forcible return to Serbia	38
9.	Conclusions and Recommendations	40
	Endnotes	43

1. INTRODUCTION

“I urgently request the EU to stop deportation”, Shefket; “Those who want to return would be better off jumping from the 10th floor”, F.B.; “We are suffering here, and we don't want the others to suffer”, Nazrim Stola.¹

“The police came without any warning at about 3.30 in the morning. The family opened the door. There were around five policemen. I was put in handcuffs and taken to a minivan and transported to Baden Baden airport. I came just as I was – later on the IOM [International Organization for Migration] gave me 300 euro. At the airport border I was registered and I got 50 euro and they put me in a hotel for two days.” Irfan, a Romani man, forcibly deported from Germany in May 2010; his family, including his wife, remain in Germany.

“Return is not purely a technical administrative act. It means to receive and re-integrate returning people, including families, in dignity and security. I urge the German authorities to prevent any further forced returns to Kosovo, particularly of Roma people, as long as the situation there does not guarantee a safe and sustainable life for returnees.” Thomas Hammarberg, Council of Europe Commissioner for Human Rights, 15 December 2009.

Amnesty International is concerned about the forcible return of members of minority communities to Kosovo from western Europe.² The organization believes that Roma, Ashkali, Egyptians and Serbs, (and Albanians returned to a minority situation) may be at risk of persecution or serious harm. In the light of this, Amnesty International considers that their forcible return may violate the principle of *non-refoulement*.³

These forcible returns are taking place under bilateral readmission agreements concluded between the Kosovo authorities and European Union (EU) member states, and Switzerland. Almost 10,000 Roma are at risk of forcible return to Kosovo from Germany alone.

Amnesty International does not consider that conditions are yet present in Kosovo for the safe and sustainable return of minorities, despite recent measures taken by the government of Kosovo aimed at improving conditions for the reception and reintegration of returnees. The changes on the ground in Kosovo which have followed the unilateral declaration of independence in 2008 are – with respect to minority communities – neither fundamental nor durable. Further, the situation at present and for the longer-term is both unstable and uncertain.⁴ Amnesty International considers that there is a continued need for the international protection of, among others, Roma, Ashkali, Egyptians, Serbs, and Albanians (if returned to a minority situation).

Given that few countries at this time have publicly stated that they intend to return Serbs to Kosovo, this report focuses in particular on the forcible return of Roma, Ashkali and Egyptians, who Amnesty International is particularly concerned may face a real risk of persecution or serious harm upon return. Further, the organization is concerned that some Roma, Ashkali and Egyptians face a real risk of de jure or de facto statelessness, further compounding that risk.

Amnesty International calls on states to respect the principle of *non-refoulement*; urges a moratorium on such forcible returns; and calls for the continued international protection of Roma, Ashkali and Egyptians,⁵ Serbs and Albanians (where they would be returned to a minority situation) and of other vulnerable individuals identified in this report.

In addition Amnesty International recommends that members of these minority groups and other vulnerable individuals who may be entitled to international protection in the EU be given access to a prompt, fair and effective procedure, with full procedural safeguards, to determine their eligibility or otherwise for international protection, including refugee status. The organization is concerned that without an individualised determination of their status, many persons from these groups may be at risk of *refoulement*.

Further, at the present time Amnesty International considers that the Kosovo authorities do not have the financial resources, the capacity or the political will to ensure the sustainable return and reintegration of minority communities.

Irrespective of the continued need for their international protection, the organization considers that the sheer number of Roma and others who may be forcibly returned from EU member states and Switzerland far outweighs the capacity of the Kosovo authorities to ensure conditions for their sustainable return and reintegration.

Unless and until the Kosovo authorities are capable of ensuring the protection, respect and fulfilment of the fundamental human rights of minority communities without discrimination, Amnesty International considers that conditions for their sustainable return and reintegration will remain unfulfilled.

2. BACKGROUND

During and after the 1999 war in Kosovo, thousands of people of all ethnicities fled Kosovo; while many Serbs and Roma fled to Serbia, others sought international protection in EU and Council of Europe member states.⁶ In March 2004, Serbs, Roma and Ashkali were again forced to flee Kosovo as inter-ethnic violence broke out between Albanians and Serbs, which also affected many Roma and Ashkali communities.⁷

Many of those who fled after 1999 were initially allowed to remain in EU member states under domestic laws providing them with a form of temporary protection.⁸

In addition to those who fled Kosovo after 1999, many of those now being forcibly returned had actually fled, or left Kosovo in early 1990s, when war broke out in what was then the Socialist Federal Republic of Yugoslavia (SFRY). Others had left Kosovo in the 1980s, along with thousands of other Yugoslavs from economically deprived areas, seeking work in the EU.

Following Kosovo's unilateral declaration of independence in February 2008, (which was supported by the majority of EU member states), the Kosovo authorities have come under increasing pressure from EU member states to accept returnees. They do not include persons previously granted asylum, but do include those who have been refused asylum under the

1951 Refugee Convention and its 1967 Protocol, and whom the authorities in various EU member states consequently regard as having no right to remain. The vast majority, however, are persons from Kosovo who were provided with some form of temporary protection or leave to remain. This temporary protection status, which was provided to individuals on the basis of their membership of a particular group, without an analysis of their individual claims, is now being withdrawn or rescinded by host governments who now consider it “safe” to return people from these particular groups to Kosovo.

Amnesty International considers that the blanket withdrawal of temporary protection status from a group of people (in this case Roma), without adequate safeguards in place, may deny individuals in need of continued international protection access to a process to determine their individual protection needs. In view of the conditions for Roma, Ashkali and Egyptians in Kosovo and for other vulnerable individuals outlined in this report, Amnesty International considers, therefore, that their forcible return to Kosovo without an adequate opportunity to challenge removal on international protection grounds may be tantamount to *refoulement*.

3. INTERNATIONAL PROTECTION NEEDS

In November 2009, the UN Refugee Agency (UNHCR) issued its most recent assessment to date of the international protection needs of persons from Kosovo under the 1951 Convention and its 1967 Protocol, as well as other relevant international and regional instruments.⁹ In this 2009 document, *UNHCR'S Eligibility Guidelines for Assessing the International Protection Needs of Individuals from Kosovo*,¹⁰ the UNHCR listed those groups who it considered should be eligible for continued international protection as a result of a particular risk of persecution or serious harm in Kosovo, including through cumulative discrimination. These included, in particular, Serbs and Roma, as well as individuals from other ethnic minority groups described below.

UNHCR also recommended that, "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".¹¹ In addition, UNHCR highlighted the protection needs of a number of specific groups, stating: "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 [...]." According to UNHCR, these groups include Serbs and Albanians in minority situations, and Roma:

"Kosovo Serbs and Kosovo Albanians inhabiting areas where they are in the minority, and Kosovo Roma inhabiting any part of Kosovo, continue to face serious restrictions to their freedom of movement and the exercise of fundamental human rights, including serious societal and sometimes administrative discrimination 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.

"The Ashkali and Egyptian minorities, due to their racial and ethnic characteristics, maybe 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. 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".¹²

In addition, UNCHR considers that the following groups may face discrimination, amounting to persecution or serious harm, including on the basis that the Kosovo authorities are unable or unwilling to protect them:

- Persons in ethnically mixed marriages and persons of mixed ethnicity;
- Persons perceived to have been associated with the Serbian authorities after 1990;¹³

- Victims of trafficking and victims of domestic violence; and persons whose claims are based on sexual orientation.¹⁴

In addition to the risk categories identified by UNHCR, Amnesty International considers that the following vulnerable groups may also face a particular risk of persecution or serious harm in Kosovo, including through cumulative discriminatory acts and/or as a result of the inability of the Kosovo authorities to afford them protection or adequate care.

Victims of crimes against humanity and war crimes allegedly committed by the Kosovo Liberation Army. Impunity continues to prevail in Kosovo. Relatively few of the violations of international humanitarian law which took place during the 1998-1999 war have been investigated or prosecuted. The absence of an effective witness protection system and high levels of witness intimidation in Kosovo may result in victims of crimes against humanity and war crimes, and/or witnesses of such crimes being vulnerable to persecution or serious harm, including from private actors, from which Amnesty International considers the Kosovo authorities are unable or unwilling to offer protection. In addition victims of war crimes of sexual violence are likely to face stigmatization within their own communities.¹⁵

*Persons from all communities with Post-Traumatic Stress Disorder, and other serious illnesses which cannot be adequately treated in Kosovo.*¹⁶ The Kosovo authorities, in their 2010 Reintegration Strategy have admitted that some serious diseases cannot be treated in Kosovo;¹⁷ UNHCR have also stated that such persons may be entitled to a complementary form of protection.¹⁸ States should give proper consideration to claimants whose claims for international protection based on medical needs have failed as a result of the high threshold needed to meet the test of persecution or serious harm but whose medical needs are nonetheless critical. In those circumstances, Amnesty International urges states to consider whether indeed removal would be a proportionate and therefore lawful interference with those applicants' right to respect for private life.¹⁹

In these additional categories claims for protection may be made on the basis of the 1951 Refugee Convention²⁰ that they will face persecution, or on the basis of a real risk of serious harm upon return to Kosovo,²¹ or that their removal would otherwise be a violation of their human rights.

Amnesty International considers that anyone whose temporary protection status has been withdrawn and who is facing removal to Kosovo are entitled to a prompt, fair and effective procedure through which such removal can be challenged on asylum or other international protection and/or human rights grounds.²²

On 22 June 2010, the Parliamentary Assembly of the Council of Europe (PACE) adopted a resolution on Kosovo, which called on all Council of Europe member states to "refrain from forcibly returning to Kosovo individuals who might still be in need of international protection according to the relevant United Nations High Commissioner for Refugees guidelines;"²³ In a separate resolution on Roma in Europe, the PACE also called on Council of Europe member states to "take special measures to afford protection to Roma asylum seekers who have fled racist violence, [...] and not to return Roma to Kosovo until the UNHCR has confirmed that the situation there has sufficiently improved in terms of security and access to social rights [AI emphasis]".²⁴

Amnesty International considers that every claim for international protection should be considered on the basis of its individual merits. As the Council of Europe has reported, “As regards Kosovo in particular, the changed situation on the ground due to the unilateral declaration of independence does not eliminate the risk of persecution, serious harm or cumulative discrimination that some groups of people might suffer.”²⁵

3.1 CONTINUED INTER-ETHNIC VIOLENCE

“[T]he situation in Kosovo has been relatively stable, although, as we saw most recently in early July, the potential for instability, especially in northern Kosovo, remains. Insufficient progress towards reconciliation between the communities and the unresolved issues that hamper such reconciliation, coupled with slow economic development, continue to present the risk of social unrest.” Lamberto Zannier, Special Representative of the UN Secretary-General, August 2010.²⁶

On 2 July 2010, a Bosniak doctor was killed and 10 Serbs injured, by an explosive device or devices (thought to be a hand grenade) set off during a demonstration in Mitrovica/ë. On 5 July, Petar Miletic, a Serbian member of the Kosovo Assembly was shot and wounded outside his home in Mitrovica/ë.

Both Serbs and Albanians are vulnerable to such attacks. On 8 September 2010, for example, in the ethnically mixed Kodra e Minatoreve/Mikronaselje district of north Mitrovica, an ethnic Albanian, Hakif Mehmeti, was killed by persons unknown. The following day, 9 September an explosion took place near a student hall of residence in Mitrovica/ë; the target was thought to be a Serbian police officer living nearby.²⁷

While the overall security situation remains relatively calm, inter-ethnic intimidation continues to create a perception of risk to members of minority communities, fuelled by sporadic incidents of violence. The majority of incidents of inter-ethnic violence occur in and around north Mitrovica/ë where assaults on individuals or attacks on property are more frequent than elsewhere in Kosovo. Attacks have also been reported on returning refugees or IDPs: Serbs who voluntarily returned in March 2010 to the village of Žač in Istok/Istog municipality have been subject to continued attacks, including being shot at by automatic weapons. Four returnee families had left by June.

In 2009 a number of incidents were also reported in Gnjilane/Gjilan municipality where a small Serbian community lives in a majority Albanian area: in August an elderly Serb couple, were found shot dead in their house in Parteš near Gnjilane/Gjilan; the motive for the killing of Bogdan and Trajanka Petković remains unknown, the perpetrators have not been brought to justice.

There have also been a number of other incidents in Gnjilane/Gjilan and Uroševac/Ferizaj in which Roma were attacked or have been subject to harassment.

On 13 August 2009, a Roma language television programme (Yekhipe) on Radio Television Kosovo, the state broadcaster, reported a flurry of attacks against Roma by ethnic Albanians in Gnjilane/Gjilan in the last week of July. Initially it was reported that at least four Roma, including a community leader, were allegedly physically assaulted and injured in separate incidents, but by September, according to the UN Secretary General, the number had risen to six.²⁸ According to the Organisation for Security and Cooperation in Europe (OSCE) Mission in Kosovo the victims had reported the assaults to the police and investigations had been opened. Amnesty International has continued to request information on the outcome of these investigations from the Kosovo Police since September 2009, but has not yet been able to establish the outcome.²⁹

On 25 August 2009, 20 Roma families from the Halit Ibishi neighbourhood in Uroševac/Ferizaj submitted a petition to the Uroševac Municipal Community Office saying that the families had been verbally and physically harassed on a number of occasions between 17 and 22 August by “unknown perpetrators.” They sought protection from the Kosovo Police and the municipal authorities. The police reportedly opened an investigation into the allegations.

Publicly reported attacks on Ashkali are rare; however in June 2010 the UN Secretary-General reported that an Ashkali woman was wounded on 7 March, when a bullet was fired into her house in the Prishtinë/Priština region. “According to a community representative, a few weeks before the incident the woman’s family had received a threatening letter asking them to abandon their property”.³⁰

However, as UNHCR noted in the *Eligibility Guidelines*, attacks on Roma communities and assaults on individuals are rarely reported to the authorities as Roma believe that they will not be acted upon, or that they will face reprisals from the perpetrators.³¹ Other minority communities also face occasional attacks.³²

Impunity for the majority of reported ethnically-based crimes continues, irrespective of the ethnicity of the victim or the perpetrator. Crimes are often not reported, and witnesses are reluctant to come forward for fear of retaliation, resulting in few prosecutions.³³ As the OSCE Mission in Kosovo reported at the end of 2009: “[...] in the security and judiciary systems the main shortcomings relate to deficiencies in the classification, investigation and prosecution of ethnically motivated crimes since the sense of impunity among non-majority communities does not contribute to build confidence towards institutions”.³⁴

SERBS

The majority of Serbs who left Kosovo fled to Serbia, where they remain as internally displaced persons (IDPs); others have sought protection in EU member states. Amnesty International, UNHCR in their 2009 *Eligibility Guidelines* and other international organizations (see below) do not consider that conditions for the sustainable return for Serbs currently exist in Kosovo.

Serbs continue to remain at risk even in Serbian enclaves and mixed-ethnicity areas in the south where there are regularly reported outbreaks of inter-ethnic violence or individual incidents which may be ethnically motivated, or attacks on returning refugees (as noted above). In addition Serbs do not enjoy complete freedom of movement, generally living within enclaves and in some cases rarely travelling outside their communities, unless to access, for example, hospitals or secondary and tertiary education in the north.³⁵

The three northern municipalities, North Mitrovica/ë, Zubin Potok and Leposavić/q (and Serbian enclaves in the south) remain effectively under Serbian control, and directly responsible to Belgrade. These municipal authorities do not recognize or implement laws and other measures, such as the Readmission and Reintegration Strategy, introduced by the Kosovo authorities (see below) According to the OSCE none of the four northern municipalities maintain data on returns.³⁶ No measures to ensure the integration of returnees are in place in the north, where more than 600 Serbs, many of them elderly, and Roma, live in IDP camps. Amnesty International is therefore very concerned at a report published by the Swedish Migration Board in June 2009 which - on the basis that Roma continue to suffer

discrimination in Kosovo - suggested that they would be able to make a sustainable return to the Serbian enclaves, supported by the Serbian authorities.³⁷

The majority of EU member states have reportedly informally agreed not to return Serbs to Kosovo, although UNHCR statistics (see Table 1, below) suggest that an increasing number are being forcibly returned. On 3 November 2009, for example, 16 Serbs – mostly from villages near Gnjilane/Gjilan were among a group of 29 persons due to be forcibly returned from Luxembourg on 4 November 2009. However, according to information received by Amnesty International, one Serbian family of five was not returned following an intervention by an Administrative Tribunal.

ETHNIC ALBANIANS, RETURN TO A MINORITY SITUATION

For ethnic Albanians, return to a situation where they are in the minority may have serious security implications. Minority Albanian communities exist in the town of north Mitrovica/ë, where inter-ethnic tensions are high and attacks on ethnic Albanians by Serbs are not uncommon,³⁸ the northern Serbian-run municipalities, and in some of the few Serb-dominated enclaves in the south.

In April 2009 Albanians seeking to return to the village of Brđani/Kroi i Vitakut in north Mitrovica/ë were prevented from rebuilding their houses by local Serbs, who demonstrated against the return. Many of the Serbs protested that they were also unable to return to their homes in the same village. For 10 days EULEX police and KFOR troops were required to maintain security for the returning Albanians, including through the use of tear gas and stun grenades and against Serb protesters. One Serb man was injured; several Serbs had been injured in similar demonstrations in October 2008. In mid May, the situation was resolved through an agreement to allow Serbs to also rebuild their houses in Brđani/Kroi i Vitakut; a barbed-wire fence was erected between the Serbian and Albanian construction sites, and patrolled by armed EULEX police. However in mid-August and again in early September 2009, violence again broke out between Serbs and Albanian returnees rebuilding their houses; and the EULEX³⁹ police presence was again increased. By June 2010, however, according to the UN Secretary-General, "Careful handling of the reconstruction and returns activities in the inter-ethnic Kroi i Vitakut/Brđjani neighbourhood has so far resulted in a peaceful building season".⁴⁰

4. RETURN AND REINTEGRATION

4.1 VOLUNTARY AND FORCIBLE RETURN

Voluntary repatriation (the free and voluntary return to one's country of origin in safety and dignity) is the solution of choice for a vast majority of refugees. In a returnee situation, this implies the restoration of national protection (to obviate the need for international protection) and, through the reintegration process, the ability to maintain sustainable livelihoods, access basic services and fully reintegrate into communities and countries of origin. UNHCR, Handbook for Repatriation and Reintegration Activities, 2004, p.26.

Voluntary return by members of minority communities to Kosovo has been slow in the 10 years following the armed conflict. In the absence of conditions for sustainable return, UNHCR has, in successive position papers, advised governments to provide continued international protection for certain minorities and vulnerable groups.⁴¹

Up until 2008 the UNMIK Office of Returns and Communities sought to limit the numbers being returned through Memoranda of Understanding concluded with several EU member states. Following the transfer of responsibility for readmissions to the Kosovo authorities UNHCR has reported an increase in the numbers of apparently voluntary returns. In 2008, there were 714 voluntary minority returns; 1,269 returns were reported in 2009, and in the eight months to August 2010, UNHCR reported the total number of voluntary minority returns at 1138 persons (381 families).⁴² These figures exclude some 3,860 reportedly voluntary returns assisted by the International Organization for Migration (IOM), whose statistics are not disaggregated by ethnicity.

Persons who voluntarily return to Kosovo, irrespective of their ethnicity, and including those who have been notified that they have to leave the host country, may be assisted by UNHCR and the Ministry of Returns and Communities⁴³ and their implementing partners, including the UN Development Programme (UNDP), or by the IOM. Those taking part in “assisted returns” may receive financial assistance for the first six months, assistance with accommodation, and in some cases with reconstruction or building of houses and access to income generating programmes. Some assistance may also be given by the sending state.

It is important to distinguish between voluntary “assisted returns” and “spontaneous” voluntary returns, often made by individuals or families without any assistance. While all voluntary returnees are entitled to assistance from UNHCR, in the case of spontaneous returns, and in absence of notification from the sending state or the individual concerned, some individuals may return without the assistance of any local or international agencies.

Voluntary returns should only take place, according to UNHCR, with the “free and informed consent” of the returnee.⁴⁴ Amnesty International is therefore very concerned about reports by returnees, and by the UN Agency for Children (UNICEF), that a number of so-called “voluntary returns” have taken place under threat of forcible return. According to UNICEF some so-called “voluntary” returnees were taken from their place of residence to a police station to sign papers stating that their return is “voluntary”, before being taken to the airport for return to Kosovo.⁴⁵

In the light of the above, the organization is concerned that amongst those whose “voluntary” return took place under such pressure, there may have been people who faced a real risk of persecution or serious harm upon return to Kosovo.

“I was pushed to sign for voluntary return. They threatened that they would pick me up at night and just send me back. So I returned voluntarily, and they gave me six months' rent for a flat in Pristina, but after that nothing. About 30 people came to visit me and tell me information, but there wasn't any support, just people coming to see me. My two children are disabled [speech and hearing], and so I asked for social assistance, but they said I did not fulfil the criteria. Then the children were accepted at a special school in Prizren, but I could not afford to send them. I can't afford to eat”.

N.N., returned from Germany, interviewed by Amnesty International in Fushë Kosovë/Kosovo Polje, June 2010.

Since 2008, UNHCR estimates that 7,021 persons – from both majority ethnic Albanian and minority communities - have been forcibly returned to Kosovo from western Europe: in 2008, some 2,550 persons were returned; in 2009, 2,962 and by 31 August 2010 some 1,923 had been forcibly returned. Around a third of Roma returnees have been forcibly returned.⁴⁶ Figures collated by UNHCR between 2008-2010 show that increasing numbers of Roma, and Serbs, are being forcibly deported.

Forced returns of minority communities, taken from UNHCR, <i>Statistical Overview, Update as at end of August 2010</i> , D/Table: Minority Forced Returns from third countries (mainly Western European) 2008-2010.				
	2008	2009 ⁴⁷	2010 (to 31 August)	Total
Serbs	2	47	23	72
Roma	54	127	217	398
Ashkali ⁴⁸	236	184	52	495
Egyptians	14	9	1	25
Albanians (in a minority situation)	15	19	21	64

These figures, and those quoted below, are based on observations by the Pristina Airport Monitoring Team, an implementing partner of UNHCR, but – according to UNHCR – they must be considered a minimum number.⁴⁹ Given that few returnees (both voluntary and forced) interviewed by Amnesty International had been met at the airport or remembered being “recorded”, the organization suspects that the numbers returned may be much higher.

At the time of writing, there was no comprehensive assistance provided to forcible returnees by the Kosovo government, nor by international organizations or local non governmental organizations (NGOs). While the Kosovo government is responsible for assisting their return and reintegration, as Amnesty International shows below, despite a mechanism for their readmission to Kosovo, measures to ensure the reintegration of forced returnees are lacking, and result in violations of their human rights.

4.2 STRATEGY FOR THE REINTEGRATION OF REPATRIATED PERSONS

“There are no mechanisms and resources to deal with the problems. When they come back from Germany they have 200 euro⁵⁰ in their pocket but no chance for sustainable lives.” Mefail Mustafa, OSCE community officer, June 2010

A *Strategy for the Reintegration of Repatriated Persons* (Strategy) was agreed between UNMIK and the Kosovo government in 2007; an Action Plan and budget for the implementation of the Strategy was agreed in April 2008.⁵¹ According to the Kosovo authorities, the Strategy applies to persons originating from Kosovo living in other countries where they have no legal status or right to remain, the majority of whom will be “involuntarily repatriated”.⁵²

The Strategy sets out the roles and responsibilities of Kosovo government authorities for the reintegration of returnees, including the Ministry of Health, the Ministry of Labour and Social Welfare (MLSW) and the Ministry of Education, and municipalities. It provides guidelines and recommendations on all aspects of reintegration, including initial reception assistance; legal reintegration; transport upon arrival; temporary accommodation; access to civil services and documentation; access to health care, employment, education and social welfare; minority transportation;⁵³ vulnerable groups; social housing and property.

In addition, in 2009, a new Office of Returns and Communities was established within the Office of the Prime Minister, with a coordinating role, including supporting municipal plans for return and reintegration.

Many of those forcibly returned to Kosovo, especially those whose removal from the host country was enforced during early morning police raids, often return with nothing but the clothes they stand up in. According to Bekim Sylja of the Roma and Ashkali Documentation Centre (RADDC), only since January 2010 have returnees been provided with any assistance at Pristina (Slatina) airport. “Project 03”, a private company contracted by the Ministry of Interior provides up to seven days accommodation in small hotels around Pristina airport and/or transport to the returnees’ place of origin. However, on the basis of interviews with returnees and Roma NGOs, not all returnees are met at the airport or provided with information.⁵⁴

Any assistance provided is inconsistent and often on an *ad hoc* basis; for example, Amnesty International spoke to two young Romani men in their early 20s returned on the same plane from Germany in May 2010. While both had been taken involuntarily from their homes by the police in the early hours of the morning, on arriving in Kosovo, one had been given six months’ rent and financial assistance; the other had been given only 350 euro by the International Organization for Migration (IOM), even though his family’s old house in

Plemetina, where he was living, was extremely dilapidated with no doors or windows. Indeed, the majority of Roma and Ashkali returnees interviewed by Amnesty International had received little or no assistance: Faik Berisha, a Roma from Fushë Kosovë/Kosovo Polje, had lived in Germany for eight years. He told Amnesty International that neither he nor any of the 10 members of his family had received any assistance or support. On the other hand, those who are returned from four particular German Länder are provided with some financial aid, food and income generation projects for six months by URA2, a German state-funded reintegration project.

In an interview with Amnesty International in February 2009, the Director of the Department of Immigration and Border Control admitted that, with the exception of his own ministry, other ministries responsible for delivering services and assistance to returnees did not have the funding necessary to discharge those responsibilities. Since that date, it has become apparent that only the readmission element of the Strategy is operational. This was confirmed in an interview in June 2010 with a Ministry of Interior official, who admitted that neither the MLSW nor the Ministry of Local Government, nor the municipal authorities had taken measures to implement their responsibilities under the 2007 Reintegration Strategy.

Florim, an Ashkali man, was returned to Kosovo from Germany in April 2010. He told Amnesty International, *"I lived in Germany for 20 years. All my five children were born there and went to school there. I worked there until we didn't have the right to work because of all the German unemployed. We were granted the 'Duldung'. My wife and children were returned on 17 March 2010, and I stayed, I had some work in construction for a while. Then I decided to return; I came voluntarily. I'm originally from Vushtrri [from where Ashkali were driven out by local ethnic Albanians in 2004], and I still have some land in a village near by but there are no Ashkali there any more.*

As a voluntary returnee, Florim should have received assistance from UNHCR and the Ministry of Returns and Communities. However, Florim told Amnesty International, *"I have been to the Ministry of Returns and Communities and the OSCE, asking them to help me register my children at school. I have received some help for the rent for the house from a German NGO, but that's it, nothing else".*

The lack of coordinated assistance was highlighted in the Ministry of Interior's 2010 Assessment of the Return and Reintegration Strategy. According to this evaluation, the Ministry of Labour and Social Welfare (MLSW), which was assigned with "a central responsibility in admission and initial integration of repatriated persons", had failed to establish a "well planned and sustainable approach", had insufficient funds and failed to provide reception teams at borders. In addition, the MLSW's systems for recording and tracking returnees, in order to ensure they had access to services, was assessed to be "unclear, incompletely transparent and difficult-to-track".⁵⁵ In addition, according to the Ministry of Interior, the Ministry of Local Government Administration and Municipalities, responsible for ensuring the provision of an initial information pack and ensuring access to local services, had adopted what a Ministry of Interior official described as a "haphazard approach", had no budget for reintegration, and had clearly failed to discharge their responsibilities to those forcibly returned.⁵⁶

Nazrim Stola fled to Germany in 1999, and in September 2009 returned "voluntarily", to Fushë Kosovë/Kosovo Polje rather than to his pre-war home in Pristina. According to Nazrim Stola, he had been promised assistance,

but this had been limited to help with the rent for six months and some assistance in getting documentation. He told Amnesty International. "One NGO almost forced me out of the office".

Under the Return and Reintegration Strategy, after readmission has been decided (see below), municipalities are responsible for coordinating with the central authorities in order to prepare for the reintegration of readmitted persons into their respective municipalities without delay.

"Municipal return strategies, if adopted, are not fully implemented. Guidance and support from central authorities remain insufficient and a lack of financial resources persists. There is no synergy between the frameworks put in place for voluntary returns and forced returns. Repatriated persons do not have access to temporary accommodation. Persons in need of medical treatment are not always treated. There is no reintegration monitoring mechanism." European Commission Progress Report on Kosovo, October 2009.⁵⁷

The failure of the municipalities to implement the Strategy for the Reintegration of Repatriated Persons was severely criticized by the Organization for Security and Co-operation in Europe (OSCE) in November 2009. They found that while several municipalities had adopted municipal return strategies, few municipalities had put measures in place to assist returnees. The OSCE reported that "Kosovo's local authorities fall far short of fulfilling their obligations" to persons returning to Kosovo. However, they laid the blame at the door of the government: "The Kosovo government adopted an action plan including a budget for the implementation of the strategy for reintegration of repatriated persons, but took no steps to inform the relevant municipal institutions about their responsibilities. Resources are currently still not available for the integration of repatriated persons."⁵⁸ The OSCE reported that few steps had been taken to implement the Strategy, and that no measures had been undertaken (except by NGOs) to ensure access at a municipal level to procedures required to register civil status or residency. Neither had measures been taken "in key areas of health, education, employment and housing". Furthermore, no budgetary allocations had been made by municipal authorities or any of the referral mechanisms set out in the strategy established.⁵⁹

"The problem is the municipality – they know how many people require assistance, but they do not forward these data to the Ministry and they do not request assistance or resources." M. M., Fushë Kosovë⁶⁰

Interviews with municipal Roma representatives in Fushë Kosovë /Kosovo Polje in June confirmed this concern. "Fushë Kosovë doesn't have a plan, a strategy or funds; even though they signed the agreement with the government, the municipality is unable to deal with [returns]", a municipal observer from an inter-governmental organization told Amnesty International, "The municipality keeps a record of all the [returnees] complaints but they don't do anything; they don't forward requests to the Ministry of Education or Health."

Amnesty International welcomes the fact that in April 2010, following an assessment of the reintegration process by the Ministry of Internal Affairs,⁶¹ a revised Strategy for the Reintegration of Repatriated Persons has been developed. This 2010 Strategy - based on the Ministry's assessment of the previous strategy – acknowledges the failings of the previous period and, based on this analysis, provides more rigorous recommendations and instructions to ministries and responsible municipal authorities.

The 2010 Reintegration Strategy, for example, includes commitments to the effect that: all returned persons will be welcomed and receive information from officials of local institutions, including the Ministry of Labour and Social Welfare (MLSW), at the airport and other border crossing points; returnees are to be provided with latest information and brochures, including an overview of basic services in Kosovo and in their destination municipality. Further, the MLSW is expected to record statistical data on returnees, (including their destination; medical conditions or special needs; need for transport or temporary shelter); this information should then be distributed to relevant institutions, including in their destination municipality.

However, Amnesty International stresses that whether such assistance can be delivered in practice will depend on the capacity of ministries to discharge their responsibilities, and on funding for such assistance – which is not currently available.

5. FAILURE TO ENSURE CONDITIONS FOR SUSTAINABLE MINORITY RETURN AND REINTEGRATION

In 1999 the international community (including the UN Interim Administration mission in Kosovo (UNMIK) and the NATO-led Kosovo Force (KFOR)) was charged with, “Assuring the safe and unimpeded return of all refugees and displaced persons to their homes in Kosovo”.⁶² A decade later, this still remains an unfulfilled aspiration.

The right to return is set out in international standards including Article 12 (4) of the International Covenant on Civil and Political Rights (ICCPR) and Article 5 (d) ii of the International Convention on the Elimination of All Forms of Racial Discrimination (CERD). Although Kosovo is not a party to these treaties, both are incorporated into law applicable in Kosovo.⁶³

In 2008, responsibility for returns was transferred from UNMIK to the government of Kosovo. Yet, despite the introduction of a Return and Reintegration Policy (agreed with UNMIK in November 2007, and subsequently revised in April 2010), and the adoption of a Law on Readmission on 25 June 2010, the Kosovo authorities have failed to guarantee the right to return to Serbs, Roma and other minorities, through their continued failure to ensure conditions for their safe and sustainable return.⁶⁴

In the following sections of this report, Amnesty International demonstrates that, even notwithstanding the fact that Roma, Ashkali and Egyptians, among others, may face a real risk of persecution or serious harm on return to Kosovo, the conditions for their sustainable return are in any event absent. This analysis is based on reports by local and international non governmental organizations (NGOs) and inter-governmental organizations, and interviews with officials and returnees conducted in June 2010.

5.1 WIDESPREAD AND SYSTEMATIC DISCRIMINATION

Both Roma currently living in Kosovo, and Roma returnees in particular, face what the UNHCR has described as “cumulative discriminatory acts”.⁶⁵ The European Court of Human Rights has long held that discrimination may constitute degrading treatment in violation of Article 3 of the European Convention on Human Rights. In particular, the Court has established that if a population was condemned to live under debasing conditions which violated the very notion of respect for the human dignity of its members, such discriminatory treatment amounts to degrading treatment under Article 3 of the Convention.⁶⁶

While the organization is aware that the Kosovo government is not able to guarantee basic social and economic rights to the majority of its citizens, the Roma, Ashkali and Egyptian communities are the most marginalized and disadvantaged in Kosovo. They face widespread and systematic discrimination in access to civil, political, social, economic and cultural

rights. Women and girls in these communities also experience further discrimination on the basis of their gender.

Roma, in particular, face additional discrimination on the basis of their association with Kosovo Serbs. Largely Serbian-speaking (or speaking a version of Romanes close to Serbian), and often living in Serbian area of Kosovo, they are still considered, including by some government officials, to be allied with the Serbian community.⁶⁷

According to the UN Development Programme, the Roma, Ashkali and Egyptian community are twice as likely as other ethnic groups to be amongst the 15 per cent of Kosovo's population who live in extreme poverty. A 2009 study published by Kosovo Foundation for Open Society (KFOS) found that - based on family income - that each individual in these communities lives on less than 0.71 euro a day (21.37 euro per month).⁶⁸ Few Roma are able to enjoy basic civil and political rights, including the right to political participation. They and other non-Serb minority communities were excluded from the 2007 talks on the final status of Kosovo and from consultations on the constitution in 2008.⁶⁹

Neither are they able to enjoy freedom of movement, few moving beyond the communities or enclaves in which they live. While relatively few ethnically-based attacks are reported on these communities, as the Advisory Committee on the Framework Convention for the Protection Of National Minorities reported, "While perceptions and fears contribute to the limitation of the exercise of the right to freedom of movement of persons belonging to some minority communities, persisting interethnic tensions, shortcomings in the investigation of ethnically and religiously motivated crime and language barriers constitute serious obstacles for persons belonging to certain minority communities to move freely."⁷⁰

Roma, Ashkali and Egyptians are also denied fundamental economic, social and cultural rights as set out in the International Convention on Economic, Social and Cultural Rights (see below under the sections on: the right to education (Art 10, ICESCR), including adult education; the right to the highest attainable standard of health (Art 12, ICESCR); the right to adequate housing (Art 11, ICESCR); and the right to work (Art 6, ICESCR) and the International Convention on the Elimination of All Forms of Racial Discrimination.⁷¹

While provisions in international and regional law and standards, including on non-discrimination, are incorporated into domestic law, they are not applied in practice. The 2004 Anti-Discrimination Law (ADL) has not yet been fully implemented, there is a lack of enforcement, and it provides no adequate right to redress or reparations. Further, despite the adoption in 2006 of the Law on Languages, which aimed to support the public use of minority languages and prohibited discrimination based on language, non-Albanian communities, including Roma, face difficulties obtaining services in their own language.⁷²

Measures to address discrimination against Roma Ashkali and Egyptians are set out in a *Strategy for the Integration of Roma, Ashkali and Egyptians Communities in the Republic of Kosovo, 2009 – 2015*, published in December 2008. In December 2009, an Action Plan on Implementation of that Strategy was approved by the Kosovo Assembly, and in early June 2010 an inter-ministerial working group was approved by the Prime Minister, but an inter-agency committee to monitor and implement the Strategy had not been put in place. Financial commitments towards implementation of this plan have been made by the Soros

Foundation in Kosovo (KFOS, contributing 1.2 million euro) and through the EU Instrument for Pre-Accession Assistance (IPA).⁷³ However measures set out in the Strategy – phased over five years – are yet to be taken.⁷⁴

The Advisory Committee on The Framework Convention for The Protection of National Minorities concluded in their June 2010 opinion: “The overall situation of the Roma, Ashkali and Egyptians raises deep concern. Persons belonging to these groups are affected to a much greater extent by poverty and social exclusion than persons belonging to other communities. Many of them continue to face discrimination in access to the labour market, housing and education, and are often confronted with prejudices and hostility. Difficulties in obtaining identity and other documents hinder their access to certain public services and property. The poor quality of education has resulted in high drop-out rates and low [school] attendance of children belonging to these minority communities.”⁷⁵

5.2 DOCUMENTATION: THE RIGHT TO A LEGAL IDENTITY

“I had three years in the Faculty, but my diploma and all my documents were destroyed in the war; there’s no chance to get them back”, Florim told Amnesty International. He had returned voluntarily to Kosovo on 17 March 2010, readmitted on the basis of his Yugoslav passport. In June 2010, he remained without documents that would allow him access to services and employment. He told Amnesty International that he had asked the OSCE and the [Office] for Refugees and Communities for assistance with documentation, but “nobody was interested to help me”. According to the Ministry of Interior returnees should be provided with documentation within 10 days.

In the absence of documentation, returnees are prevented from, for example, returning to and repossessing their homes, or land. They are also denied access to basic rights, including employment, social assistance, health care and education. Unregistered children are not allowed to attend school. As a result, as UNHCR has stated, “UNHCR estimations and other surveys suggest a significant percentage of the Kosovo Roma population face serious restrictions on the exercise of their fundamental human rights and access to social benefits.”⁷⁶

Amnesty International considers that the discrimination faced by persons without documentation may indeed reach the threshold of persecution or serious harm when it results in the denial of legal identity and the concomitant denial of access to basic rights.

“Many repatriated persons lived for ten years or more in foreign countries before their request for asylum was rejected. Many births and marriages occurred and were registered in other countries. If repatriated persons fail to provide foreign documents to certify these developments [sic] they will not be able to register their children or marriages after arrival in Kosovo. This issue should be addressed during the negotiation of bilateral agreements with applicant countries.” 2010 Readmission Strategy

Amnesty International’s research has identified a possibly unintended, albeit serious consequence of the way in which forcible returns to Kosovo are being enforced. Without notice and often in the early hours of the morning enforced removals result in returnees often having little time to find or collect personal documents, including for example, birth certificates or other documents, which may assist them in obtaining documentation when they arrive in Kosovo.

A significant percentage of the Roma, Ashakli and Egyptian population already resident in Kosovo do not have such documents, and remain without recognition of their legal status. In 2008 approximately 30 to 40 per cent of the current Roma, Ashakli and Egyptian population did not have civil status registration (of births, marriages or deaths) or registration as habitual residents of Kosovo. Following an ongoing programme to provide Roma with free legal advice and assistance with registration, funded since 2007 by UNHCR and others including the Norwegian Refugee Council, and implemented by the Civil Rights Program – Kosovo (CRP-K), as of April 2010, an estimated 20 per cent remained without documentation.⁷⁷

UNICEF has reported, in its study published in July 2010, that the percentage of returnees who do not possess such personal documentation is higher than amongst the resident population.⁷⁸ The documentation sought by the Minister of Interior in order to establish whether an individual has a right to citizenship (see below), does not automatically confer citizenship or the right to residency. These documents have to be obtained by the individual themselves. While in theory, access to such documentation should be facilitated by municipalities, in practice this is not always the case. Further, despite a government recommendation that municipalities waive or reduce the fees due to obtain the documentation required to prove citizenship and residency in such cases, few municipalities have done so.

In 2009, the OSCE found that in only seven municipalities were municipal civil registration centres or municipal civil status officers able to provide information to returnees on how and where to register their civil status and residency. Some had, however, established cooperation with UNHCR/CRP-K, who then provided assistance with completing the necessary forms, procuring documents and in some cases locating witnesses to attest to the identity of those without any personal documents.⁷⁹

Amnesty International emphasizes that, given the possible numbers of forced returnees, and that many of those forced to return either do not have documentation (apart from that required to prove they have the legal right to live in Kosovo), the authorities – including at a municipal level, and in particular the Municipal Offices for Civil Registration – will need to develop their capacity and devote increased resources to ensure that all returnees are immediately provided with “civil status documents [which] serve as a precondition for access to other municipal services.”⁸⁰

Amnesty International is concerned that without access to such documentation, returnees may effectively be rendered stateless.

5.3 AT RISK OF STATELESSNESS

Amnesty International is concerned that many of the Roma, Ashkali and Egyptians who EU member states seek to return to from Kosovo may be at risk of de jure or de facto statelessness.⁸¹

The Law on Readmission sets out procedures for establishing whether persons whose readmission to Kosovo is requested by sending states originate from Kosovo, or whether they otherwise have a legitimate claim to citizenship. This is defined in the 2008 Law on Citizenship, which recognizes the right to citizenship of those registered with the civil authorities or with proof of habitual residence in Kosovo as of January 1998.

The Law on Readmission was drafted on the recommendation of the European Commission, and with their approval, and subsequently adopted by the Kosovo Assembly in June 2010, incorporating the basic principles of the 2007 Readmission Policy into law.⁸² Article 3 of the 2010 Law on Readmission provides that:

“1. The competent authority shall readmit to its territory a citizen who does not fulfil or no longer fulfils the requirements for entry or residence applicable on the territory of the requesting State.

2. Proof of citizenship will be verified or can be reasonably assumed when he or she holds the citizenship or is eligible to acquire the citizenship of the Republic of Kosovo in accordance with Article 28 and 29 of the Law on Citizenship”.⁸³

Procedures for establishing the right to citizenship include checking identity documents (including birth certificates, identity cards, UNMIK travel documents, driving licenses etc) against civil registration records, municipal records or other databases. If a person's identity cannot be confirmed from these sources, the Kosovo Police (part of the Ministry of Interior) will conduct a “community verification”, visiting the person's stated place of habitual residence in Kosovo, in order to establish if he or she is known in that community. According to the Ministry of Interior, this process should take at most 28 days; however Amnesty International is aware of cases reported by local NGOs in which it has taken more than a year to establish such information.⁸⁴

In the case of persons who left Kosovo before January 1998, it is possible that even this procedure may fail to establish their right to citizenship. UNHCR estimated in 2006 that 10,000 of the 35 to 40,000 of Roma, Ashkali and Egyptians in Kosovo lacked documents confirming their civil status and recognised place of residence.⁸⁵ Similarly large numbers of displaced Roma from Kosovo currently living in Serbia do not have documentation which would allow them to claim citizenship of Kosovo.⁸⁶ The situation is further complicated in that following the armed conflict in Kosovo, the Serbian authorities transferred documents and information from local government centres in Kosovo to parallel registry offices situated in Serbia. For example all personal records for people from Ferizaj/Uroševac and Peja/Peć were transferred to Leskovac in southern Serbia. Roma returned to Kosovo would therefore have to be able to travel to Serbia to obtain their pre-war documentation; they would also be required to pay a fee for such documentation.⁸⁷

Given the historical lack of registration by Roma, Ashkali and Egyptians already noted above, Amnesty International is concerned that the Law on Readmission is inadequate in preventing persons originating from Kosovo from being at risk of statelessness.⁸⁸

According to the Ministry of Interior, a numbers of requests for readmission have been turned down because the authorities were not able to establish the person's right to citizenship or residence in Kosovo in 1989. Although these numbers remain small (according to the Ministry of Interior, three cases out of more than 200 requests processed between January and June 2010), without a legal right to remain in the sending state, and refused readmission to Kosovo, Amnesty International is concerned that in such cases, people will be rendered stateless. The Ministry of Interior also told Amnesty International that some states are forcibly returning people to Kosovo, without the prior agreement of the Kosovo authorities;

if their eligibility to enter Kosovo has not previously been established, these persons may also be vulnerable to statelessness.⁸⁹

Amnesty International is also aware of a case in which, having been accepted for readmission, a family was subsequently refused entry to Kosovo. On 12 October 2009, a Romani family was forcibly returned to Kosovo from the Netherlands, but were refused entry at Kosovo (Slatina) Airport, provided with overnight accommodation and then flown back to the Netherlands. Prior to their deportation, the Dutch authorities had approached the Kosovo Department for Border Management Asylum and Migration, and been informed that the family's origin from Kosovo had been verified, and that the Kosovo Ministry of Internal Affairs did not have any objection to their return. However, according to the Netherlands Office for Deportations and Returns, border officials refused the family entry on the basis of the father's birth certificate, which stated that he was born in Croatia (then a republic of the SFRY), although he and his family had lived until 2001 in Peja/Peć, Kosovo. The family have subsequently applied for asylum in the Netherlands on the grounds of statelessness.

Amnesty International is also concerned that the Readmission Agreement signed between Kosovo and with Germany, (discussed further below) provides for the forced return of persons who are considered to have revoked their citizenship of Kosovo, and who have no other citizenship.⁹⁰ Amnesty International considers that in such cases, there is a burden of responsibility on the sending state to take steps to receive assurances from the Kosovo authorities that the individual concerned is a citizen of Kosovo or is entitled to such citizenship, before they are returned; otherwise they should be provided with continued international protection.

Given that local NGOs have reported that in some cases it may take up to a year to establish a person's right to residency, Amnesty International considers that the Ministry of Interior should adopt a more thorough and expeditious procedure to ensure that persons' claims to originate from Kosovo are not rejected.

Amnesty International is concerned that many of those who either seek to return voluntarily, or are forcibly returned, may be unable to prove their right to residency prior to 1998, and may therefore be vulnerable to *de facto* statelessness. The risk of statelessness results from both the Law on Readmission and the procedures thereto, and may amount to severe cumulative discrimination amounting to persecution when persons without documents are denied basic rights. The organization therefore considers that if a risk of statelessness arises states should not seek to return those at such risk to Kosovo.

As the Council of Europe's Commissioner for Human Rights wrote in August 2010: "States should also refrain from policies that worsen the situation. Western European states should stop forcibly returning Roma to Kosovo. A recent UNICEF report indicates that 38% of the Roma returned from Germany are stateless. The situation is even worse for children: 42% of those who have lived, and often also were born, abroad during or after the war are not registered today [...]. The right to a nationality is a basic human right, enshrined in the Universal Declaration of Human Rights. It amounts to a "right to have rights". This right – for everyone – must be enforced with much more energy and determination than has been the case so far."⁹¹

5.4 THE RIGHT TO EDUCATION

They gave me a week to leave, so we went to Switzerland, and then the Swiss returned our family to Kosovo. A Swiss organization said they would help us, but they didn't, so we live in a friend's house. All the children are still not able to go to school; my wife and I got our documents in 2008, but it was difficult for the children, because they were born in Germany. My 17-year-old daughter still has just her German documents.⁹² They said she could be registered within a month. The other children have documents now, and they can go to school.' Besim Ayolli, an Ashkali man who lived in Germany from 1993 until he was returned in 2007.

The Reintegration Strategy envisages measures to be undertaken by the Ministry of Education, Science and Technology (MEST) and municipal Departments of Education to ensure access to education for children forcibly returned from EU member states. These include "the organisation of language courses, training for teachers, additional number of teachers for repatriated students, and a number supporting staff in schools, equipments [sic] for schools and transport for students".⁹³

However, as the OSCE reported in September 2009, "However, to date no concrete steps have been taken to implement reintegration measures in this field", (nor had any further) progress been made by June 2010. Indeed the OSCE found that most municipalities were not even aware of the government's policy on the reintegration of returnees into the educational system, and none had received specific instructions on procedures to be adopted, or made any specific financial provision or plans. Thus none of the elements identified in the 2007 Strategy had been implemented. Some municipalities, on an ad hoc basis, have provided free books and other materials. In Gjakovë/Dakovica municipality additional classes have been established in local schools to accommodate returnee children. However, according to information received by Amnesty International, this appears to have resulted in the effective educational segregation of Romani children.⁹⁴

According to a report by UNICEF Germany, between 42-50 per cent of Roma who are legally obliged to leave Germany are children, almost two-thirds of them born and educated in Germany.⁹⁵ UNICEF found that even if they have the necessary documents, relatively few children returned to Kosovo are able to continue their education. According to Verena Knaus, co-author of the report, "Of the 66 children that we personally interviewed that were of school age, only 17 still attended school once they were back in Kosovo. This means that three out of four drop out of school. The main reason for that is the poverty of the family - that they just simply cannot afford the materials, the clothes, the transport costs."⁹⁶

These barriers to education are experienced by the majority of Roma, Ashkali and Egyptian children in Kosovo. In 2009 OSCE found that Roma children have been largely excluded from the educational system and face considerable obstacles in integration, including through a marked failure, except in Prizren and Gjakovë/Dakovica, by the municipal education and social welfare authorities to take measures to encourage their children's attendance. Catch-up or homework classes, for example, are generally provided not by the authorities, but by international and local NGOs. Only in the Serbian municipalities are Roma classes provided, and first grade students reportedly receive free text books from the Serbian Ministry of Education. In addition, girls in particular, are not enrolled in schools. Despite this, class sizes are extremely large in municipalities like Fushë Kosovë/Kosovo Polije which

have high numbers of returnees.⁹⁷ However, the drop-out rate is extremely high, and few continue into secondary education.

In June 2010 Amnesty International delegates met a 20-year old man, Luli Arapi, who was living in a block of social housing for (Serbian-speaking) Roma IDPs in Plemetina. He had just been forcibly returned from Germany. He had previously received notice that he would be deported, but like many others he was surprised to be woken by the police at night and given only ten minutes to get dressed and gather his belongings. He was clearly unprepared for his deportation, and indeed seemed totally confused and traumatized when Amnesty International talked to him. He could not speak Serbian or Albanian, and had only a basic grasp of Romanes, and was unable to communicate even with his older brother, who had been forcibly returned several years previously. Luli Arapi was two years old when his family left Kosovo. His family had been granted a "Duldung" [temporary leave to remain] and lived in Baden-Württemberg. Luli Arapi was given six months assistance with the rent of the flat, a grant of 300 euro, and 50 euro for his urgent needs—as he had only been given 10 minutes to pack his belongings. No one had offered him assistance in learning Romanes, or any other language spoken in Kosovo.

To date, no assistance has been provided by the Kosovo authorities to children or adults unable to speak languages spoken in Kosovo. Reportedly URA2, a German government funded project, reportedly offers financial support for language courses, but this scheme only applies to returnees returned from four German Länder. Under the 2010 Reintegration Strategy, it is envisaged that returnees will be provided with "mother-tongue" language lessons. However, there is no provision for returnees to continue in higher education.

5.5 THE RIGHT TO HEALTH

"I wonder how people [Roma] can pay for medicine." Head of UNHCR Office, Pristina, June 2010

In its consideration of measures to improve the health of Roma, Ashkali and Egyptians in Kosovo, the Strategy for the Integration of Roma, Ashkali and Egyptian Communities states: "[It] should be pointed out that the health system in Kosovo is still in transition .and not all diseases can be treated adequately. Further, since there does not exist a (obligatory) health insurance, people have to pay for a number of services, treatments or drugs. World Health Organisation (WHO) published a list with 'essential drugs' that in general should be available free of charge. However, in Kosovo most of these 'essential drugs' are not available anymore in public pharmacies, but only in private pharmacies or with pharmaceutical wholesale dealer who sell these drugs. Therefore, many of the 'essential drugs' are not affordable anymore for people with average or below-average income as the vast majority of the Roma, Ashkali and Egyptians. During 2008, the Ministry has managed to increase the budget for drugs, and by the end of 2008 70% of drugs and essential material will be available to public institutions. As Roma, Ashkali and Egyptians in Kosovo are generally poorer than other minority groups and the majority population, these out-of-pocket payments and the payment for 'essential drugs' affect this group disproportionately."⁹⁸

Amnesty International is concerned at reports that people with immediate medical care needs – some of whom were reportedly receiving treatment in hospital prior to their enforced removal - have been subjected to forcible return. In a number of such cases, persons forcibly returned have been taken straight to hospital, as they required immediate medical care.⁹⁹

To date, provisions of the 2007 Reintegration Strategy with regard to guaranteeing the right of access to even minimum standards of health-care have not been implemented by the Ministry of Health, including provisions for the reception of returnees. Measures have now been set out in the revised Reintegration Strategy, calling for the presence of medical teams at the airport and other borders to provide immediate medical assistance.¹⁰⁰ Amnesty International considers no one in such a condition should be returned.

Neither have provisions been made to ensure that healthcare is available, affordable and accessible as required by the Committee on Social, Economic and Cultural Rights (CESCR) in their General Comment 14 on the Right to Health.¹⁰¹

According to the 2007 Readmission Strategy, Chapter 3.2 on Access to Health Care,“(r)epatriated persons shall be exempt from charges for medical services until their full reintegration”. However, interviews with returnees and UNHCR, as well as reports by OSCE suggest that in practice this is not the case.¹⁰² Amnesty International was informed by several returnees that the medicines or treatments they or their family member required were either not available in Kosovo, or that they were unable to afford them. Two returnees told Amnesty International that they had not been able to get assistance from the authorities for their physically disabled children, or afford the costs of such assistance as was offered.

The CESCR has stated, “The Committee interprets the right to health, as defined in article 12.1, as an inclusive right extending not only to timely and appropriate health care but also to the underlying determinants of health, such as access to safe and potable water and adequate sanitation, an adequate supply of safe food, nutrition and housing, healthy occupational and environmental conditions, and access to health-related education and information, including on sexual and reproductive health.”¹⁰³ Amnesty International does not consider these conditions exist for Roma and Ashkali in Kosovo.

In the most invidious case of the violation to the right to health, some of the 700 Roma and Ashkali who remain displaced in camps in northern Mitrovica/ë are denied the right to health, as they live or have lived in refugee camps lying on lead-contaminated land, which has caused deaths, congenital diseases and long-term damage to the health of both adults and children, more than a third of whom were estimated by the World Health Organization (WHO) to have excessive levels of lead in their blood.

The continuing failure of the Kosovo authorities and the international community¹⁰⁴ (with the notable exception of the WHO and small international NGOs) over 11 years to address the dire situation of this relatively small group of displaced persons and to secure funding for the rebuilding of the Roma mahala (neighbourhood) in south Mitrovica/ë (from where the group originates) is indicative of the lack of political will and capacity to guarantee the rights of the Romani community. While the foundation stones for new houses to be built in the mahala were laid in May 2010, there has been no progress in ensuring that the affected population receives adequate medical treatment, or is provided with temporary alternative accommodation where their health will no longer be at risk.¹⁰⁵

Amnesty International is concerned that in the absence of other accommodation for forced returnees, some have moved into the lead-contaminated camps. According to information received by Amnesty International from international NGOs and a Swiss government delegation, some Roma who had been forcibly returned to Kosovo in 2009, were reportedly living in the lead-contaminated camps in Mitrovica, replacing displaced Roma who had

moved out. In July 2010, according to another NGO working in the camps, over the previous three months seven Romani families (numbering 35 individuals) deported from Germany had also moved into the lead-contaminated camps.¹⁰⁶

5.6 THE RIGHT TO ADEQUATE HOUSING¹⁰⁷

Many returnees, from all ethnicities, are unable to return to their pre-war homes. In 2008 according to the OSCE, some 29,000 claims for property restitution or return remained to be decided by the Property Claims Commission. There were also approximately 11,000 “decided but non-implemented claims”, where the authorities had failed to implement decisions relating to the illegal occupation or expropriation of property. In June 2008 the Kosovo Property Agency was taken over by the EU International Civilian Representative, but the number of undecided cases had not reduced by June 2009. A backlog of 20,000 compensation claims arising from the destruction of property in 1999 and 2000 against UNMIK, KFOR or the Kosovo authorities, remain before Kosovo courts.

Roma, Ashkali and Egyptians face particular difficulties in establishing title to property, which was often handed down within families without any associated documentation, or sold to them without adequate documentation, and are thus often unable to gain access to their homes on their return. Few are able to regain their pre-war property, either because they do not have adequate documentation to prove ownership, or because their property was destroyed during the 1999 war or in March 2004, or it is illegally occupied by others, or because they face some other form of discrimination.¹⁰⁸ Thus returnees often have to move in with other family members, leading to massive overcrowding.¹⁰⁹

Voluntary returnees who are unable to access their pre-war property may be eligible funding for reconstruction of their property, or more recently, to build new houses. A UNDP programme, for example – assisting local municipalities – and implemented with the Dutch Refugee Council - supports voluntary returnees who own land to rebuild their houses (with a package per family of up to up to 14,400 euro with 1,500 euro for furniture, financial assistance for six months access to income-generation projects).

For those who do not own land, according to UNDP, as a result of pressure from international donors, some municipalities have taken measures to secure land on which Roma may live.¹¹⁰ For example in Gjakove/Djakovica, land has been legalized for construction near the existing Roma settlement at Kolonia with the assistance of Caritas at a cost of 3.4 euro million. This has so far provided land for 140 Romani families, who had returned voluntarily. According to UNDP building social housing for returnees would be more affordable if other municipalities would agree to provide the land for social housing.

However, forced returnees, like Irfan, a Roma returned from Germany in May 2010, have no such assistance. He had left Kosovo with his family in 1992 when he was five, and had lived in Germany, had received vocational training and had been working until his forced return. When Amnesty International met him, he had moved in with some neighbours, and was attempting to make his family's former dilapidated home in Plemetina habitable. He had cleared rubble from the building, but with no money to replace the doors and windows and repair the roof, he asked Amnesty International, “What am I supposed to do?”.¹¹¹

Assistance with reconstruction or building is currently only available to voluntary returnees through the Ministry of Communities and Returns and UNHCR (who oppose forced return, and therefore do not support forced returnees). They are therefore not eligible for assistance by UNHCR and its implementing partners. However, even for voluntary returns, funding for such reconstruction projects is limited, as few international donors continue to provide such assistance.

The Ministry of Environment and Social Planning [MESP] is charged with overall responsibility for the provision of housing for forced returnees. As of April 2010 the ministry had no funding for the construction of social or other housing for forced returnees, but had applied to the European Commission for a project to establish housing needs.¹¹² Further, no municipality had yet identified a budget for the provision of housing to returnees; a draft Law on Special Social Housing, enabling both municipalities and government authorities to convert property for use as housing, adopted in February 2010, makes no specific provisions for returnees.¹¹³

The seriousness of this situation has to be seen in the context of the unfulfilled need for adequate housing across Kosovo, and across all communities. At the time of writing Kosovo has no legal framework on the provision of social housing. As of April 2010 a Housing Strategy for 2010-2014, allowing for the reconstruction of houses of persons without property and without the financial resources to buy land or reconstruction materials, remained to be approved.¹¹⁴

"Do not return more people if you want to get rid of the IDP camps. Return people once the state becomes stronger", Ashkali returnee.

Because of the reasons outlined above, and in some cases because returnees fear to resettle in their pre-war homes, according to UNHCR, only between 30-40 per cent of forced returnees are able to return to their place of origin.¹¹⁵ The most recently published statistics, reported by the OSCE in 2009, state that in Istog/k municipality between 70 and 80 per cent of Roma, Ashkali and Egyptians were unable to return to destroyed or damaged homes: "repatriated persons found themselves homeless, and only upon intervention of KFOR and the municipal community officer were temporarily accommodated in an informal camp in Djurkoc/Djurakovac".¹¹⁶

Although Roma make up less than two per cent of the population of Kosovo (estimates vary between 35,000 to 40,000), they already comprise up to 18 per cent of internally displaced persons (IDPs) within Kosovo. There are no statistics on the numbers of persons who are forcibly or voluntarily returned to internal displacement, but according to both local and international NGOs as many as 80 per cent of persons forcibly returned to Kosovo are unable to, or do not choose to return to their place of origin. The majority move to established communities, moving in with relatives, but not all are able to do so.

As of April 2010 there were 41 Temporary Collective Centres providing accommodation for 1,050 families (4,503 individuals);¹¹⁷ the majority of whom were Roma, Ashkali and Egyptian. The 2010 Reintegration Strategy acknowledges that "the conditions of residence in these TCC's do not fulfil the minimal standards for residence and are being characterised by

lack of space, lack of maintenance and as a result of this, the facilities are being damaged. [...] even the hygienic conditions are low and there is a huge lack of water and heating, etc.” and that “Government’s budgetary funds are limited and make impossible to ensure shelter for those groups of people who can not afford [housing] by themselves”.

It is clear that Kosovo alone does not have the capacity to provide adequate housing to forcibly returned persons. Without international assistance returnees cannot be guaranteed the right to adequate housing.¹¹⁸

5.7 THE RIGHT TO EMPLOYMENT

“The unemployment rate in Kosovo is very high. Therefore, repatriation will make this situation even more serious”. *Reintegration Strategy*, 2010, p. 14.

“About 45 per cent of people in Kosovo are not employed – here in Fushë Kosovë it’s about 99.5 per cent, and it’s getting worse because of people returning. They return a five to 10 member family, and then there are another five to 10 people with no work and no assistance. What are they thinking of? There are 736 families here, 564 of them are IDPS from other parts of Kosovo, and maybe they should [look after them] first.” Bekim Sylja, Roma and Ashkali Documentation Centre, June 2010.

According to the UNDP 45 per cent of the total working-age population in Kosovo are unemployed; the rate is higher for women and for minorities. Some sources estimate Roma unemployment at over 90 per cent: UNICEF in their recent report stated that in the capital Pristinë/Prishtina “Roma [un]employment may be nudging 100%”. Further, UNICEF in their study of families forcibly or otherwise returned from Germany has estimated, while the average income for Romani families already living in Kosovo is 120 euro a month, in families who had been returned they found it was 88 euro.¹¹⁹

In June 2010 Ferdana, a Romani woman working for the NGO Balkan Sunflowers, told Amnesty International that no Romani women in Fushë Kosovë/Kosovo Polje had a job, even those who had finished secondary school. According to a local Roma representative, Qerim Gara, “It’s a catastrophe. Before the war, there was about 70 per cent employment. Now, there are around 5-6,000 people in Fushë Kosovë, and only about 30 of them are working”.¹²⁰

Before 1999, many Roma and Ashkali worked in state industries; in theory former employees in such industries are eligible to return to their jobs, or to receive a pension. In practice, and with the passage of time and privatization of former state companies, this is not the case. The Kosovo Energy Corporation (KEK) power stations near the Roma settlements at Obiliq/Oblić and Plemetina, for example, formerly employed a large percentage of Roma and Ashkali; despite measures taken in 2003 to enable persons previously employed in socially-owned enterprises to reclaim their former jobs on privatization, in 2009 only three out of 7,654 (0.04%) of employees were from these communities.¹²¹ Further, despite ethnic quotas, few Roma, Ashkali and Egyptians are employed in local or municipal government.¹²²

“We try and get some daily labour, but all of the [state] companies have been sold and there is no economy. Some [Roma] do criminal acts just to survive. We might have freedom of movement, but – simply – we need to fill our stomachs”, Halil Cerimi, interviewed by Amnesty International, June 2010.

While some Roma are able to survive by collecting and re-selling or recycling or re-using scrap and the contents of garbage cans, and others may find occasional work as a day-labourer, there are no real prospects of employment. Even those who return voluntarily are only sometimes assisted in employment through income generating projects.¹²³ Such assistance may provide returnees with income for a short period, but fail to provide sustainable or long-term employment.

According to the Reintegration Strategy, the Ministry of Labour and Social Welfare has reportedly established “policies and measures through which it will be able provide appropriate services to repatriated persons through employment services and vocational training”. Municipalities are required to identify potential donors and design appropriate projects that repatriated persons will benefit, especially with regards to the creation of employment opportunities”.¹²⁴ However, as of April 2010 such measures remained to be implemented and, according to the Ministry of Interior’s 2010 Assessment of the Reintegration Strategy only one municipal project had been identified, funded by a Swiss donor, and implemented by the IOM.¹²⁵

For those with sufficient documentation, and who fulfil the criteria, the only regular source of income is social benefits. According to UNHCR, such social welfare benefits “are insufficient to ensure an adequate standard of living for recipients.”¹²⁶ The standard monthly payment ranges from 40 euro per month for a single individual to 80 euro for a family of seven persons.¹²⁷ Amnesty International has not been able to establish the percentage of returnees in receipt of social benefits.

In the absence of an overall social policy, including on employment and social assistance, Kosovo is assisted by the European Commission under a European Partnership agreement which makes provision for the prioritization of funding for the improvement of social and economic rights, including the implementation of “strategies and action plans relevant to integration of Roma, including returnees”.¹²⁸ In their Kosovo Study, the EC proposes that specific assistance will be provided to “help efforts to include minority communities in social protection and inclusion measures”.¹²⁹ However, the organization has been unable to identify any current employment programmes which are specifically designed to address the employment needs of forced returnees.

5.8 SUSTAINABLE RETURNS?

In the absence of any effective mechanisms for the monitoring of forced returns, information on the sustainability of such returns is not available. According to UNHCR, as of April 2009, 7,490 Roma, Ashkali and Egyptians had returned to Kosovo since January 2000, but “an unknown number” had subsequently left Kosovo “due to economic reasons”.¹³⁰ In June 2010, UNHCR Pristina suggested that up to 70 per cent of Roma returnees may have already left Kosovo. According to the Roma and Ashkali Documentation Centre, at least 50 per cent of forcibly returned Roma immediately leave Kosovo moving to Serbia, Montenegro or Western European countries.¹³¹

Because of their historic association with the Serbian community, many Roma, in particular, move to the Serbian north of Kosovo, or into Serbia proper. Anecdotal evidence suggests that other returnees often attempt, and sometimes succeed in returning to the EU, often to the very EU member state from which they were forcibly removed. As the Project on Ethnic

Relations conducted by the OSCE Office for Democratic Institutions and Human Rights has concluded, “policies of forced return by the host countries are ineffective and unsustainable as many of those returned by force leave the country shortly after their return”.¹³²

6. INTERNATIONAL CRITICISM

Kosovo's lack of capacity, political will and resources for reintegration have become a subject of repeated and increasing concern, and criticism, by international human rights organizations and institutions.

On 9 July 2009, in a report on his visit to Kosovo, the Council of Europe Commissioner for Human Rights, Thomas Hammarberg, appealed to European governments to avoid forced returns of minorities to Kosovo and to regulate the status of those in their host country until conditions for their return improved. The Commissioner stated that: "The economic and social situation is still a major obstacle to a sustainable return process. While security issues have improved, the situation in Kosovo remains tense with inter-ethnic violence occurring sporadically."¹³³

On 20 June, in a statement to mark World Refugee Day, the Head of the OSCE Mission in Kosovo, Ambassador Werner Altmayer, stressed that "The return and reintegration of displaced persons must be treated as a matter of priority." He called on the government and municipal authorities for an increased commitment to and implementation of return-related projects, and described the sustainable return and reintegration of displaced persons from Kosovo as a "major human rights challenge".¹³⁴

Following a visit to Kosovo, in a public statement on 7 July 2009, Walter Kälin, Representative of the United Nations Secretary-General on the Human Rights of Internally Displaced Persons stated that: "Persons who were internally displaced from and within Kosovo still face serious obstacles to return and local integration". He identified "entrenched patterns of discrimination, lack of access to employment and livelihoods, too few schools for minorities and difficulties in repossessing property and having houses reconstructed [are] among the chief obstacles to return".¹³⁵ In the report which followed his visit Walter Kälin emphasized, "[whilst] robust measures to provide such persons with real reintegration perspectives ... are not in place and discrimination remains pervasive, Governments should avoid the forced return of minorities to Kosovo and regulate the status of those in their host country until conditions in Kosovo permit their safe return."¹³⁶

On 15 July, in an interview with the German newspaper Frankfurter Rundschau, Thomas Hammarberg reiterated his position, stating: "What our countries tend to forget is that the refugees will be back soon if there is no integration in the country of origin." He again called on EU governments not to forcibly return minorities to Kosovo, stating: "Kosovo does not yet have the capacity to readmit a large number of returnees".¹³⁷ The Council of Europe's position was subsequently set out by the Council of Europe's Committee of Experts on Roma and Travellers.¹³⁸

In December 2009, the Roma and Ashkali Documentation Centre (RADC, a local NGO) published a report, based on interviews with returnees, which described "the precarious circumstances and living conditions of RAE [Romani, Ashkali and Egyptian] returnees" and identified "the lack of a well coordinated system offering sustainable assistance, which might more effectively address the problems of repatriation".¹³⁹

Again in December 2009, Thomas Hammarberg, the Council of Europe Commissioner for Human Rights, in a letter to the Chancellor of Germany, stressed that Kosovo lacked the infrastructure to allow refugees' sustainable reintegration: "Return is not purely a technical administrative act. It means to receive and re-integrate returning people, including families, in dignity and security. I urge the German authorities to prevent any further forced returns to Kosovo, particularly of Roma people, as long as the situation there does not guarantee a safe and sustainable life for returnees." Subsequently interviewed by German media DeutscheWelle in April 2010 he stated that, "A quick deportation from European countries now to Kosovo is irresponsible."¹⁴⁰ The Commissioner also expressed similar concerns June 2010.¹⁴¹

Also in April 2010, the UN Secretary General in his report to the Security Council on the UN Mission in Kosovo stated: "Continuing forced returns from host countries may negatively impact the ability of Kosovo authorities to support sustainable returns and may exacerbate existing tensions". He added that only 19 municipalities had adopted returns strategies in 2009, and that only four municipalities in Kosovo "are currently in the process of developing their returns strategies for 2010".¹⁴²

"As regards the process of reintegration of returnees, more resolute measures are needed to address their security concerns, and increased efforts must be made in areas such as employment, housing, education and, access to property, to ensure adequate conditions for safe and sustainable returns. Persons belonging to minority communities, who have been forcibly returned, are in a particularly vulnerable situation given the difficult socio-economic conditions they live in, often without access to healthcare and social services, employment and education. Notwithstanding the responsibility for the decision to implement forced returns lies with the governments of states from where persons have been returned, the authorities in Kosovo should address more vigorously the needs of those concerned considering their vulnerable situation." Advisory Committee on The Framework Convention For The Protection Of National Minorities, 31 May 2010.¹⁴³

These concerns were also reflected in a Resolution on Kosovo adopted by the Parliamentary Assembly of the Council of Europe (PACE) on 22 June 2010 which called on the Kosovo authorities, amongst other things, to "[create] the socio-economic conditions for the full integration of individuals from minority communities in society, including displaced persons and returnees".¹⁴⁴

Most recently, in July 2010, the UN Agency for Children (UNICEF), published a report highly critical of the forcible return of Romani children from Germany to Kosovo, which focussed both on the manner of their removal from Germany, and the problems faced by children in re-integration, with a particular focus on their access to education.¹⁴⁵ The study confirms that the Kosovo authorities to date are unable to ensure adequate housing, healthcare or education for children forcibly returned to Kosovo. More than 70 per cent of those children interviewed by UNICEF had not attended school since their forced return to Kosovo.

7. KOSOVO AND THE EU

In April 2009 Jacques Barrot, vice-president of the European Commission (EC) publicly announced that Kosovo could join the visa liberalization process, provided Kosovo accepted the associated commitments.¹⁴⁶ These commitments were set out in the EC's October 2009 Kosovo Study, which makes clear the EU's "need" to forcibly return former Yugoslavs to their new states¹⁴⁷: "A number of countries in the region have made substantial progress in the area of freedom of movement. In return for agreements on re-admission, they have been able to benefit from visa facilitation agreements with the EU."¹⁴⁸

The paragraph continues: "Kosovo citizens need to share further in the benefits of EU approximation, including the possibility to travel visa-free in the EU. This is only possible if Kosovo can ensure that relevant reforms are implemented and rules and procedures are respected so as to minimise the associated security risks for EU Member States. The starting point for these reforms is properly functioning readmission arrangements. Kosovo needs to adapt its legislation, strengthen its administrative capacity to process readmission requests and implement an effective reintegration strategy. It also needs to enhance the security of its borders and secure the management of civil registries and the issuance of documents."¹⁴⁹

Under pressure from the EU, with the promise of visa liberalization, Kosovo has reviewed and revised its readmission policy and reintegration strategy. In this context, Amnesty International notes that in all of the organization's interviews with Ministry of Interior officials responsible for returns, officials repeatedly discussed the return and readmission process in the context of the goal of visa liberalization, and longer term aspirations to join the EU.

7.1 READMISSION AGREEMENTS¹⁵⁰

As reiterated throughout this report, Amnesty International considers that Roma, Ashkali and other ethnic minorities should not be returned to Kosovo in violation of the *non-refoulement* principle. In addition, as this report has shown, Kosovo is currently unable to provide conditions for sustainable return and reintegration of people from minority communities and other vulnerable groups.

However, the organization is also fully aware that EU member states and others have, and continue to forcibly return many individuals from such groups under the auspices of bilateral readmission agreements with Kosovo. In this light, and while continuing to oppose such forcible returns, Amnesty International strongly recommends the incorporation of the minimum standards which it considers states must abide by in implementing and enforcing forcible returns into such Readmission agreements.

An initial Readmission Policy, which was agreed between the then Kosovo Provisional Institutions of Self-Government (PISG) and UNMIK in 2007, set out procedures for the return of persons "originating from Kosovo and residing without legal status in host countries".¹⁵¹

In late 2008 the Kosovo Ministry of Interior, Department of Immigration and Border Management (now the Department of Citizenship, Asylum and Migration) took over the processing of readmission. Unlike the Memoranda of Understanding previously concluded between UNMIK and EU member states, the Readmission Policy placed no limits on the number of persons to be returned each year, nor did it exclude the return of persons from ethnic minority groups then considered by UNHCR to be in need of international protection.

¹⁵²

NUMBERS OF RETURNEES

The total numbers of persons to be forcibly returned under Readmission Agreements remains unclear. UN sources have suggested that more than 50,000 may be forcibly returned, but Amnesty International has been unable to verify this information.¹⁵³ In Germany alone, for example, almost 10, 000 Roma are legally obliged to leave the country and are therefore at risk of forcible return. Some 2,000 Roma are expected to be returned from Switzerland.

The precise number of persons already returned to Kosovo under such Readmission Agreements is not known. While some countries make public the number of forcible returns, others do not, or only publish overall figures on all deportations, irrespective of the country of destination, or ethnicity of the returnee.

According to the Kosovo Ministry of Interior, some 4,067 persons were returned through the readmission procedure during 2009. Officials told Amnesty International that some 1,000 requests for readmission had been received between 1 January and 30 April 2010, and that by early June 2010 the identity and origin of some 211 persons had been established, enabling their readmission, of whom 135 were ethnic Albanians, 19 Ashkali, two Egyptians, 52 Roma, two Serbs and one “other”.¹⁵⁴

READMISSION AGREEMENTS WITH EU MEMBER STATES

Negotiations on Bilateral Readmission Agreements started after Kosovo’s unilateral declaration of independence in February 2008 and the transfer of responsibility for return from the UN Interim Administration Mission in Kosovo (UNMIK) to the Kosovo Ministry of Interior. These agreements allow for the forcible return of people originating from Kosovo (or believed to originate from Kosovo), whose temporary protection status or other leave to remain in those countries has been withdrawn. Such returns are made at the request of the sending state, and carried out following confirmation by the Kosovo Ministry of Interior of the individual’s right to citizenship of Kosovo.

To date bilateral agreements with the Kosovo government concerning forced or voluntary readmissions have been (or are being) concluded with EU member states including Austria,¹⁵⁵ Belgium (see also box , below),¹⁵⁶ Denmark, France,¹⁵⁷ Germany (see also box, below), Hungary, the Netherlands,¹⁵⁸ Sweden and other EU states, as well as Switzerland¹⁵⁹ - which is not a member of the EU. Further agreements are being negotiated with other EU member states.

BELGIUM

In September 2009 Amnesty International was able to review a draft agreement between the Kosovo and Belgian authorities. The agreement was eventually signed on 20 October 2009. Whilst it is entitled

“Memorandum of Understanding between the Federal Public Service Interior of the Kingdom of Belgium and Ministry of Internal Affairs of the Republic of Kosovo regarding the voluntary and involuntary return of citizens of the Republic of Kosovo”, Amnesty International considers that, for all intents and purposes, it is a readmission agreement that applies to forcible returns from Belgium to Kosovo. The organization submitted its concerns on the draft agreement to the Belgian government’s *Office des étrangers*.

Amnesty International continues to be concerned that the final text of the agreement contains insufficient safeguards for the protection of human rights, including, in particular, the protection against *refoulement*. For example, whilst referring to the basic human right of “all citizens to leave and to return to their country”, its preamble fails to mention the right to seek and enjoy asylum or other forms of international protection. Further, whilst referring to the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the 1951 Refugee Convention, it fails to refer to its 1967 Protocol; nor does it refer to the principle of *non-refoulement* and omits completely any reference to the European Convention on Human Rights (ECHR) and relevant jurisprudence of the European Court of Human Rights, including, in particular, Article 3 thereto.

Furthermore, the agreement contains no reference to categories of persons considered by UNHCR to be eligible for continued international protection, including for example Roma. Nor does the agreement explicitly ensure that no-one is forcibly removed to Kosovo while awaiting a final determination of his or her eligibility for international protection, including on asylum grounds, and/or on other human rights grounds. Further, the agreement does not enshrine or refer to any safeguards preventing the forcible removal of persons whose temporary protection status had been rescinded; for example, it fails to reiterate that anyone whose protection status has been withdrawn is entitled to challenge his or her removal, if they so wish, on international protection grounds, including asylum and/or other protection grounds and/or on other human rights grounds. In the light of the above, Amnesty International remains concerned that, under the terms of this readmission agreement (a.k.a. the MoU between Belgium and Kosovo), people who may be eligible for international protection or whose removal may otherwise be unlawful under international human rights law may be at risk of being forcibly returned to Kosovo, including in circumstances giving rise to a violation of the principle of *non-refoulement*.

The organization understands that, as of 25 August 2010, 25 people had been returned to Kosovo under the auspices of the MoU between Belgium and Kosovo. Citing non-discrimination as a reason, the Belgian authorities replied to Amnesty International that the statistics produced by *l’Office des étrangers* do not specify the ethnic origin of those returned.

Under such Readmission Agreements, any person originating from Kosovo (or believed to originate from Kosovo), may be returned. Amnesty International is concerned that in the absence of protective measures to prevent individuals and members of groups identified by UNHCR as eligible for continued international protection, from being forcibly returned, there is a danger of such persons being placed at risk of *refoulement*.

Amnesty International considers that readmission agreements do not relieve states party to such agreements from their obligations under relevant international human rights law and standards, including the principle of *non-refoulement*.

Notwithstanding the general human rights obligations, set out, for example, in the Readmission agreement between Germany and Kosovo,¹⁶⁰ and in order to ensure states’ full

compliance with those obligations in the context of the implementation and enforcement of readmission agreements, the organization recommends that the agreements themselves should include explicit references to the contracting parties' relevant human rights obligations, including, in particular, the full observance of the principle of *non-refoulement*.

Furthermore, in order to ensure compliance with the *non-refoulement* principle and with the right to seek and enjoy international protection, including asylum, states must suspend any enforcement action taken pursuant to a readmission agreement if the individuals concerned wish to challenge their removal on international protection, including asylums and/or human rights grounds.

The Council of Europe has also stressed that readmission agreements should "take fully into account the human rights" of persons to be returned. In a resolution adopted in June 2010, the Parliamentary Assembly of the Council of Europe (PACE) resolved that states should "include a provision into readmission agreements which requires that the requesting country, prior to requesting readmission by a third country, verifies that the readmitting third country will grant the person concerned access to minimum social rights. [Amnesty International emphasis] If this cannot be verified, readmission must not take place and the requesting country shall instead give the person concerned access to such rights as long as he or she stays in that country." ¹⁶¹

Amnesty International is concerned that the absence of explicit human rights clauses in readmission agreements contributes to the risk that individuals from Kosovo, who continue to be in need of international protection, (including individuals and members of groups identified by UNHCR as eligible for continued international protection), may be forcibly returned from EU member states and Switzerland in violation of the principle of *non-refoulement*.¹⁶² The organization notes that the burden of responsibility with regard to the prevention of *refoulement* lies with the sending state.

EXAMPLE OF GERMANY

Forcible returns to Kosovo have been taking place for several years. Until 2005 the majority of those forcibly returned were ethnic Albanians. However, in accordance with UNMIK's policy (which for the most part respected UNHCR guidance) Germany refrained from forcibly returning members of ethnic minorities, such as Roma, Ashkali and Egyptians and Serbs. A Memorandum of Understanding (MoU) as of March 2003 and several Agreed Notes¹⁶³ concluded with UNMIK in June 2004, September 2004, April 2005 and January 2006, did not allow for the forcible return of Roma and Serbs, with the exception of Roma who had been convicted of a criminal offence since July 2005. Deportation of Ashkali and Egyptians was agreed from May 2005.¹⁶⁴

The MoU and Agreed Notes no longer applied when the Kosovo government's Readmission Policy came into force on 1 January 2008. However, upon UNMIK's request the forcible return of Roma was generally prohibited.¹⁶⁵ Germany started to seek readmission for members of the Roma minority with the Kosovo government after the Kosovo authorities assumed UNMIK's previous responsibility for readmission in November 2008. In 2009 deportations of Roma to Kosovo started during negotiations of a Bilateral Readmission Agreement with Kosovo, which was finally signed on 14 April 2010 and came into force on 1 September 2010.

The majority of Roma from Kosovo are estimated to have lived in Germany for more than 10 years. An unknown number benefited from a legal provision which had come into force in August 2007. Under this provision

persons living in Germany without a residence permit were given the right to residency if they fulfilled certain criteria,¹⁶⁶ and if they had lived in the country for more than eight years or after six years if they had children. However, it was reported that only a minority qualified under this policy.¹⁶⁷

According to government statistics, on 30 June 2009, there were 12, 539 members of minority groups from Kosovo living in Germany (among them 9, 842 Roma) were legally obliged to leave the country. According to UNICEF about half of those Roma concerned were minors.¹⁶⁸ Some 3,776 persons, the largest group of Kosovo Roma with temporary leave to remain, lived in North Rhine-Westphalia.

In a letter dated 20 April 2010 from the Federal Ministry of Interior, Amnesty International was informed that the forced return of Roma would be carried out “gradually” and that the German government had agreed with the Kosovo government not to request readmission for more than 2,500 persons per year.

In 2009 Germany forcibly returned 541 persons to Kosovo, among them 76 Roma. By 30 May 2010 some 66 Roma had been forcibly returned. Amnesty International was informed by NGOs, including regional Refugee Councils that persons with health problems were amongst those forcibly returned.

As far as Amnesty International is aware, in only a few cases have forcible returns been stopped following appeals. For example, in Göttingen in Lower Saxony in June 2010 the courts decided that in 17 cases Roma could not be forcibly returned, including on grounds of health concerns.¹⁶⁹⁻

In only one Bundesland is there a policy, introduced by decree on 27 May 2010 by the Ministry of Interior of the Bundesland of Saxony-Anhalt (where, as of 30 June 2009 362 Roma were legally obliged to leave), providing for the right to an obligatory individual assessment for Kosovo Roma families and single women. Also on 14 July 2010, the new government in North Rhine-Westphalia announced that it would review its returns policy for minorities from Kosovo with respect to the protection of families and single women.¹⁷⁰

In the face of increased returns, in 2009 some 1,902 asylum claims were issued by people from Kosovo, of which 1,400 constituted first-time applications. Between January and May 2010 some 855 applications were filed, 605 of them first-time claims. According to information made available to Amnesty International the majority were made by Kosovo Roma applicants. In 2009 in only 0.6 per cent of the decisions taken by the Federal Office for Migration and Refugees were the applicants granted refugee status, while some 4.2 per cent received subsidiary protection.¹⁷¹ The statistics for the first five months in 2010 indicate similar figures.

8. FORCIBLE RETURN TO SERBIA

Member States should not create a secondary displacement by sending Kosovo Roma to other parts of South Eastern Europe, particularly given the limited resources presently available for successful integration of new returnees. New returns to this region would jeopardize the current authorities' efforts to integrate the domestic Roma population and Kosovo Roma asylum seekers and refugees already present on their territory.
Council of Europe, Updated Opinion of MG-S-ROM on the Return of Roma to Kosovo and South Eastern Europe, 1 July 2009.

In considering the possibility of an internal flight or relocation alternative in Serbia, UNHCR stated in November 2009 that "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 who can assist or support them, and/or have skills and qualifications which would enable them to find employment in the present market". However, according to UNHCR, "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".¹⁷²

On 1 January 2008 a readmission agreement signed between the European Community and Serbia entered into force.¹⁷³ It set out the conditions for the forced return of individuals to Serbia who either originate from Serbia or who have transited via Serbia to the EU. It is estimated that the agreement will affect between 50,000 to 100,000 people from Serbia residing in the EU, and including rejected asylum-seekers and refugees, most of them Roma.

Many of those returned to Serbia by EU member states, under various bilateral agreements signed before the 2008 readmission agreement, originated from Kosovo. According to the NGO Grupa 484, for example, around 40 per cent of those returned to Serbia in 2007 originated from Kosovo, the majority of whom were Roma; in 2008 some 67 per cent of those returned were Roma; over 1,000 persons returned "voluntarily", and a further 600 were forcibly returned; some 3,324 persons were returned in the first seven months of 2009.¹⁷⁴

In an interview conducted by Amnesty International in February 2010 with the Serbian Commissariat for Refugees, the Deputy Commissioner stated that Serbia did not have the capacity or resources to address the reintegration needs of persons being returned. Despite the development of a The Strategy of Returnees' Reintegration Based On The Readmission Agreement¹⁷⁵ no specific government funding had been allocated to the Commissariat to enable them to assist returnees or facilitate reintegration, nor had Serbia yet received European Commission assistance under the pre-accession process. Assistance to persons returned under the readmission agreement thus is conducted on an ad hoc basis.¹⁷⁶ This was confirmed in interviews with UNHCR Belgrade, domestic NGOs and Roma IDPs.

Serbia already hosts more than 97,700 refugees from Croatia and Bosnia and Herzegovina, and 210,146 Serb and Roma IDPs from Kosovo (January 2010 statistics). The Serbian Commissariat for Refugees has no specific mandate in relation to IDPs, nor is there any

definition in law of IDPs and the duties of the state for their protection and assistance. This violates Principle 3 (2) 2, of the UN Guiding Principles on Internal Displacement, which states, “National authorities have the primary duty and responsibility to provide protection and humanitarian assistance to IDPs within their jurisdiction”.

In practice the Serbian Commissariat for Refugees provides little assistance to existing IDPs, issuing IDP cards and administering a diminishing number of increasingly dilapidated collective IDP accommodation centres.¹⁷⁷

Many Roma originating from Serbia are returned to a situation of displacement; Roma originating from Kosovo who are returned to Serbia would almost certainly be so. As such there is a need to assess their eligibility for continued international protection as the likelihood is that on return they would become internally displaced persons (IDPs). Furthermore, IDPs from Kosovo, who have been returned to Serbia from other countries, are not issued with IDP cards which often results in problems of access to assistance or basic services, including to health, social assistance, employment, and education.¹⁷⁸

9. CONCLUSIONS AND RECOMMENDATIONS

Amnesty International considers that acceptable conditions for the return – forcible or otherwise - of people hailing from minority communities (or who are otherwise vulnerable for the reasons identified in this report) do not exist at the present time in Kosovo. The organization does not consider that conditions have, as of yet, sufficiently changed on the grounds in Kosovo so as to provide a fundamental (major, profound and stable) and durable change in circumstances. The situation at present and for the longer-term is consequently both unstable and uncertain.

In the light of this, Amnesty International considers that there is a continued need for the international protection of, among others, Roma, Ashkali, Egyptians, Serbs, and Albanians (if returned to a minority situation) and of other vulnerable individuals.

Decisions by EU member states and Switzerland to withdraw or otherwise cease temporary international protection for Roma and other minorities are premature, and their forcible return may amount to violation of the principle of *non-refoulement*.

Moreover, Amnesty International considers that the Kosovo authorities currently do not have the capacity, the political will and the resources to ensure the reintegration and sustainable return of individuals from minority communities or who are otherwise vulnerable.

In addition, those who are subject to forcible return are denied the assistance and support which is made available, through the Ministry of Returns and Communities, UNHCR and their implementing partners to voluntary returnees. Furthermore, in the absence of measures to ensure their reintegration in Kosovo, forced returnees may be subject to further violations of their rights, including the denial of social and economic rights.¹⁷⁹

Amnesty International considers that all those who are forcibly returned – once all their claims have been ultimately and properly assessed – are entitled to return in safety and in dignity, and with respect for human rights. They too, should be entitled to a sustainable return and should also have access to assistance ensuring their economic and social rights.

Amnesty International therefore calls on EU member states and any other country currently envisaging returning people to Kosovo to:

- Immediately refrain from the forcible return of all persons from minority communities – specifically Serbs and Roma, Ashkali and Egyptians, (and minority Albanians) to Kosovo given the likelihood that they would suffer persecution or serious harm on return; provide them with continued international protection (either through a grant of asylum or subsidiary protection as appropriate);
- Ensure that all persons whose removal to Kosovo is in contemplation be given access to a prompt, fair and effective procedure to determine their eligibility or otherwise for international protection, including on asylum grounds. The individuals concerned must also

be entitled to raise human rights based challenges – other than on international protection grounds – to their removal if they so wish. Any challenge to removal must have suspensive effect and the individuals concerned must be granted legal assistance and representation.

- In addition, partners/children in mixed marriages; persons associated with the Serbian authorities up to 1999; victims of trafficking and domestic violence; victims of violations of international humanitarian law; and persons with chronic medical conditions which may not be treated in Kosovo should have their international protection needs carefully and individually assessed in the light of the fact they may face persecution, including through cumulative discrimination, or serious harm upon return. Any ongoing protection needs must be clearly assessed in order to comply with the principle of non-refoulement.
- No-one at risk of de facto or de jure statelessness should be returned to Kosovo. Their eligibility for international protection should be carefully considered;
- If any persons are deemed not be in need of international protection after a fair and effective asylum determination procedure and the provision of temporary protection has ended, their forcible returns should only be undertaken in a rights-respecting manner, in safety and dignity;
- Ensuring that anyone whose removal to Kosovo is being contemplated is given adequate notice of and information about their right to challenge it;
- To review existing bilateral Readmission Agreements with Kosovo, to ensure that they are in accordance with human rights law and standards, in particular insofar international protection needs are concerned, and ensuring that human rights clauses are explicitly incorporated into such agreements;
- Refrain from taking any measure that could vitiate the consent underlying any decision to return. States should be careful to ensure that any decision to return is indeed truly voluntary – undertaken on the basis of informed and genuine consent;
- UNHCR and their implementing partners should continue to facilitate voluntary return for those members of minority communities who wish to go home.

Amnesty International also urges the European Commission and EU member states to:

- Provide all necessary assistance, including financial assistance, to the Kosovo authorities to ensure the full implementation of the return and reintegration strategy;
- Ensure that those from minority and other vulnerable groups are not forcibly returned to Kosovo before conditions for their voluntary return and reintegration in safety and dignity have been established.

Amnesty International urges the Kosovo government to:

- Immediately ensure that provisions are made at all border crossings, including at Pristina (Slatina) airport, to ensure that any persons who are forcibly returned to Kosovo are provided with adequate reception facilities, so that they may be fully informed of their rights to receive assistance with reintegration in Kosovo; to ensure that the progress of reintegration made by

all returnees is monitored to ensure that they receive all necessary support to ensure access to documentation and other basic rights;

- Take measures to fully discharge its obligations to returnees by ensuring that all relevant Ministries have the capacity and resources needed to implement the 2010 Strategy for the Reintegration of Repatriated Persons, ensuring that conditions for the sustainable return of minority communities, in safety and in dignity, are put in place;
- Provide stronger support for reintegration at municipal levels, and non-discriminatory access to economic, social and cultural rights, such as employment, health and social services, education and adequate housing;
- Implement without further delay, and ensuring the necessary funding and other resources, the 2010 Action Plan for the Strategy for the Integration of Roma, Ashkali and Egyptian Communities;
- Ensure that no persons originating from Kosovo who are forcibly returned are placed in danger of statelessness.

ENDNOTES

¹ Amnesty International interviews with Roma and Ashkali returnees, Kosovo, June 2010.

² In this report Amnesty International uses the name “Kosovo”, as is current United Nations and European Union practice. Place names are given in both Albanian and Serbian.

³ The principle of *non-refoulement* prohibits the expulsion, removal, extradition, deportation or otherwise return of any person in any manner whatsoever to a country or territory where he or she would face a real risk of persecution or serious harm. This principle is outlined in the 1951 Convention relating to the Status of Refugees (the UN Refugee Convention) and in numerous other international instruments. In addition, the principle of *non-refoulement* is widely regarded as a norm of customary international law.

⁴ Kosovo declared unilateral independence from Serbia in February 2008, which as of 1 September 2010 had been recognised by 69 UN member states. However it still remains part of Serbia under UN Security Council Resolution 1244/99. In July 2010 the International Court of Justice, in an advisory opinion, ruled that the declaration of independence was not unlawful under international law.

⁵ While the Roma community is generally Serbian-speaking, and tends to live in Serbian areas and enclaves, the Ashkali generally speak Albanian and live in Albanian areas. However, in practice many communities include both Roma and Ashkali, or those who do not distinguish themselves as belonging to a particular group. Many families are of mixed heritage. The numerically smaller population of Egyptians distinguish themselves from both Roma and Ashkali.

⁶ In March 1999, following the failure of international talks to resolve an internal armed conflict in Kosovo between Serbian forces and ethnic Albanians, NATO commenced a bombing campaign against the then Federal Republic of Yugoslavia, which concluded on 10 June 1999. During this period, more than 677,000 ethnic Albanians fled Kosovo or were internally displaced, returning when Serbian forces left Kosovo under the Kumanova Agreement. Following the return of ethnic Albanians to Kosovo, human rights violations against Serbs, Roma and members of other minority ethnic groups escalated. Many were abducted or killed. The majority of Serbs fled to Serbian enclaves or to Serbia proper. Members of the Kosovo Albanian community burnt Roma houses and forcibly expelled Roma communities, whom they considered to be allies of the Serbs. Thousands of Roma, Ashkali and Egyptians (RAE) fled Kosovo seeking protection from persecution. They also fled to Serbia proper and other countries in the region; others fled to EU member states and Switzerland. During the attacks, several hundred Romani men were abducted by armed men believed to be members of the Kosovo Liberation Army. Those Romani men have not been seen since, and the vast majority of perpetrators have not yet been brought to justice. See Amnesty International, *Burying the Past: Impunity for enforced disappearances and abductions in Kosovo*, Index EUR 70/007/2009, June 2009.

⁷ Amnesty International: *Serbia and Montenegro (Kosovo/Kosova), The March Violence: KFOR and UNMIK's failure to protect the rights of the minority communities*, Index EUR70/016/2004, July 2004, see for example, pp.14-18, 24.

⁸ Temporary Protection (TP) was introduced by many EU member states in the early 1990s as a form of short-term protection for persons fleeing the armed conflicts in Bosnia and Herzegovina and Croatia, and was subsequently applied during the Kosovo crisis. TP often provided a group-based form of protection as an alternative or substitute to the right to seek asylum through individual determinations as required

under the 1951 Refugee Convention. Each government adopted different definitions of TP, including in instruments, statuses awarded, standards of protection and access to basic rights.

⁹ This is the latest position paper in a series issued over the past 10 years by UNHCR outlining the international protection needs of persons from Kosovo. For previous documents, see for example, UN High Commissioner for Refugees, *UNHCR Position on the Continued Protection Needs of Individuals From Kosovo*, 1 April 2002, available at: <http://www.unhcr.org/refworld/docid/3cd108544.html>

¹⁰ UNHCR, *UNHCR'S Eligibility Guidelines for Assessing the International Protection Needs of Individuals from Kosovo*, HCR/EG/09/01, November 2009, hereinafter, *Eligibility Guidelines*, <http://www.unhcr.org/refworld/docid/4af842462.html>

¹¹ UNHCR, *Eligibility Guidelines*, p.17.

¹² UNCHR, *Eligibility Guidelines*, pp.17-18

¹³ UNHCR consider such persons 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”, UNHCR, *Eligibility Guidelines*, p.19.

¹⁴ “Victims of trafficking (and their families) may remain vulnerable to ill-treatment or other retaliation by their traffickers or their associates, from which the authorities may be unable to protect them. In addition, they may face ostracism within their own family or community. The majority of cases of domestic violence are not reported to the authorities, in part because women do not believe their reports will be acted upon”, UNHCR, *Eligibility Guidelines*, p.20.

¹⁵ Amnesty International believes that victims of human rights violations should not be exposed to a situation where their long term needs as victims are not recognized, including their rights to compensation and rehabilitation, even if they are no longer at risk of persecution.

¹⁶ 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 of the European Convention on Human Rights and Fundamental Freedoms. 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>.

¹⁷ “Due to the current circumstances (lack of equipment, inadequate framework) several of tertiary health services (cardio-surgery, oncology, poly trauma-tology [sic], transplantations, mental disorders, etc) may not be offered in Kosovo”, *Reintegration Strategy*, 2010, p. 13. The Kosovo government continues to presume against the return of persons with “mental disabilities”, “The Government of Kosovo must negotiate with the host countries for not returning the persons with mental disabilities. A special provision must be included in the agreements/arrangements of the readmission”, *Reintegration Strategy*, 2010, p. 24. See also Section 5.5. [Persons with mental imparities (sic) and no family care], 2007 *Reintegration Strategy*, p.27.

¹⁸ Such complementary protection may be provided in accordance with Council Directive 2004/83/EC (Qualification Directive) under Article 15(b), UNHCR, Eligibility Guidelines, pp. 23-24. 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, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32004L0083:EN:HTML>

¹⁹ Amnesty International is aware of several cases in which persons in need of medical treatment unavailable in Kosovo have been forcibly returned, including from France and Germany, without first being allowed access to an individual determination of their protection needs. For example, a disabled 15-year old ethnic Albanian boy was forcibly returned to Kosovo from France on 2 May 2010; medical professionals in Kosovo requested on 17 May 2010 that he be allowed to receive medical treatment abroad.

²⁰ The 1951 Convention relating to the Status of Refugees and the 1967 Protocol Relating to the Status of Refugees, <http://www.unhcr.org/3b66c2aa10.html>

²¹ See subsidiary protection, "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, Official Journal L 304, 30/09/2004 P. 0012 – 0023". In order to ensure return in safety and dignity, Amnesty International considers a human rights assessment should be conducted, prior to return, to consider returnees' access to economic, social and cultural rights.

²² Such a process should be accompanied by safeguards including legal aid; adequate legal representation at all stages in the proceedings; independence and impartiality in the decision-making body.

²³ Provisional edition, *The situation in Kosovo and the role of the Council of Europe, Resolution 1739 (2010)*, para.16.1, <http://assembly.coe.int/Mainf.asp?link=/Documents/AdoptedText/ta10/ERES1739.htm>

²⁴ Provisional edition, Resolution 1740 (2010), *The situation of Roma in Europe and relevant activities of the Council of Europe*, , para.15.12, <http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta10/ERES1740.htm>

²⁵ PACE, Political Affairs Committee, Doc. 12281, *The situation in Kosovo and the role of the Council of Europe*, 7 June 2010, para.95.

²⁶ Verbatim record of the UN Security Council, 6367th meeting, Tuesday, 3 August 2010, 3 p.m. New York, S/PV.6367.

²⁷ BBC Monitoring Service, 8 and 9 September 2010.

²⁸ *Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo*, S/2009/497, 30 September 2009, para. 24, <http://daccess-ods.un.org/TMP/8724929.09431458.html>

²⁹ See Amnesty International and Human Rights Watch press release, *Kosovo: Investigate Attacks on Roma*, 7 September 2009, <http://www.amnesty.org/en/for-media/press-releases/kosovo-investigate-attacks-roma-20090907>.

³⁰ *Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo*, S/2010/401, 29 July 2010, p.5.

³¹ UNHCR, *Eligibility Guidelines*, pp. 10-11.

³² On 3 September 2009, for example, according to Radio Television Kosova, an explosive device was thrown at the "Mehmet Akif" private Turkish college in Banulle/Bandulić village in Lipjan/Lipljane municipality. No one was injured.

³³ Amnesty International, *Burying the Past*, op.cit., pp. 34-49. For the under-reporting of inter-ethnic crime, see also International Crisis Group, *The Rule of Law in Independent Kosovo*, *Crisis Group Europe Report N°204*, 19 May 2010, pp. 3,7 &19.

<http://www.crisisgroup.org/~media/Files/europe/balkans/kosovo/204%20The%20rule%20of%20Law%20in%20Independent%20Kosovo.ashx>

³⁴ OSCE Mission in Kosovo, Department of Human Rights and Communities, *Communities Rights Assessment Report*, December 2009, p. 6, see also pp. 10-12. In July 2008, the OSCE reported that only 400 prosecutions had been brought in 1,400 cases reported to the police after the ethnic violence of March 2004. See also <http://www.hrw.org/en/news/2010/07/19/blood-and-justice-kosovo>

³⁵ For a survey of recent incidents, see paras. 21-26, *Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo*, 29 July 2010.

³⁶ OSCE Mission in Kosovo, *Implementation of the Strategy for Reintegration of Repatriated Persons in Kosovo's Municipalities*, 2009, p.8.

³⁷ By July 2009, more than 30 Roma had already been deported, while another 30 approximately were awaiting deportation.

³⁸ For attacks on Albanians in Mitrovica/ë in 2010, see *Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo*, 29 July 2010, op.cit., paras. 21-26.

³⁹ EU-led Police and Justice Mission in Kosovo.

⁴⁰ *Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo*, 29 July 2010, para.19.

⁴¹ For example, "Return of these minorities [Kosovo Serbs, Roma and Albanians] should take place on a strictly voluntary basis, based on fully informed individual decisions.", UNHCR's Position on the Continued International Protection Needs of Individuals from Kosovo*(June 2006), p 2.

⁴² UNHCR, OCM Pristina, *Statistical Overview, Update as at end of August 2010*.

⁴³ The Ministry of Communities and Returns (allocated to the Serbian members of the Kosovo assembly), coordinates the voluntary return of refugees and IDPs, and organizes return projects for minority communities. It does not deal with forcible returns, and is thus not responsible for any aspects of the Return and Reintegration Policy discussed below.

⁴⁴ The Council of the European Union has defined 'voluntary return' as "the assisted or independent departure to the country of return based on the will of the returnee and his/her informed decision to

return”... “carried out in conformity with obligations deriving from applicable international instruments”, 12 October 2005, http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/jha/86570.pdf

⁴⁵ Verena Knaus & Peter Widmann, *Integration unter Vorbehalt. Zur Situation von Kindern kosovarischer Roma, Ashkali und Ägypter in Deutschland und nach ihrer Rückführung in den Kosovo*, Deutsches Komitee für UNICEF e.V., 2010, (hereinafter, UNICEF, *Integration unter Vorbehalt*), http://www.unicef.de/fileadmin/content_media/presse/Roma-Studie_2010/UNICEF-Studie_Roma_2010neu.pdf

⁴⁶ UNHCR, OCM Pristina, *Statistical Overview, Update as at end of June 2010*, Table E: OVERALL RETURNS TO KOSOVO DURING 2008, 2009 AND 2010. Shows Voluntary Returns (Roma) 2962; Forced returns: 1185. This breakdown was not provided in UNHCR's August 2010 overview.

⁴⁷ According to figures provided to Amnesty International by UNHCR, at least 193 persons considered by UNHCR to be in need of continued international protection were forcibly returned to Kosovo in 2009. These included some 47 Serbs, 127 Roma and 19 Albanians (returned to minority situations).

⁴⁸ The larger number of Ashkali and Egyptians being returned in 2008 followed UNHCR's 2006 position paper which (revising their March 2005 position paper) stated, “Positive developments within the inter-ethnic environment have had a particular impact on members of the Ashkaelia and Egyptian communities in Kosovo. UNHCR is therefore no longer including these minorities among those at risk”.[...] “25. On the other hand, UNHCR, in consideration of positive security developments which have taken place in the past year in Kosovo, no longer considers that the Ashkaelia and Egyptian minorities in general, are in need of international protection. Therefore, asylum claims originating from among these ethnic communities should be assessed individually based on Art. 1 A (2) of the 1951 Convention and the 1967 protocol. Nonetheless, under the current political and socioeconomic circumstances, the return of persons from these two groups, found not in need of international protection should be approached in a phased manner, due to the limited absorption capacity of Kosovo, in order not to bring about politically and socially destabilizing factors at a time when negotiations on the future status of Kosovo are under way”, UNHCR's Position on the Continued International Protection Needs of Individuals from Kosovo, June 2006, p. 1, p. 7. <http://www.unhcr.org/refworld/pdfid/449664ea2.pdf>

⁴⁹ Amnesty International interviews with UNHCR (Pristina), February 2009 and June 2010.

⁵⁰ This amount of money varies, dependant on the particular return programme.

⁵¹ UNMIK & Provisional Institutions of Self-Government, Strategy For Reintegration Of Repatriated Persons, Approved by the Government of Kosovo on 10 October 2007.

⁵² Defined as: “Persons with legal status outside the country are these persons who failed to fulfil or are not fulfilling anymore respective conditions for staying in the territories of other countries, as they: Entered illegally; Have exceeded the limit of stay or residence permit has expired; The asylum request has been denied; Residence permit has been cancelled – due to criminal activities or other reasons (persona non grata).” Government of Kosovo, *Strategy for Reintegration of Repatriated Persons (Statgjia per riintegrim)*, April 2010.

⁵³ Because of the continued lack of freedom of movement, many minorities do not use public transport; the Strategy envisages the provision of transport for returnees to their destination in Kosovo.

⁵⁴ No information leaflet was available in June 2010: the OSCE informed Amnesty International that they were then working on a leaflet with the relevant ministries.

⁵⁵ For this and several other major failings, see Government of Kosovo, Ministry of Interior, *“Assessment of the mechanism for reintegration of repatriated persons: Ensuring best possible treatment and respect for human rights to all repatriated persons”*, April 2010 (hereinafter, *Reintegration Assessment*), pp. 12-13, retrieved at http://www.esiweb.org/pdf/schengen_white_list_project-final_assessment_of_mechanism_for_reintegration_of_repatriated_persons.pdf

⁵⁶ *Reintegration Assessment*, p.8.

⁵⁷ Commission of the European Communities, *Kosovo Under UNSCR 1244/99 2009 Progress Report*, SEC(2009) 1340, 14 October 2009, p.19, http://ec.europa.eu/enlargement/pdf/key_documents/2009/ks_rapport_2009_en.pdf

⁵⁸ OSCE Mission in Kosovo, Background Report, Human Rights, Ethnic Relations and Democracy in Kosovo, (Summer 2007 – Summer 2008).

⁵⁹ OSCE Mission in Kosovo, Department of Human Rights and Communities, *Implementation of the Strategy for the Reintegration of Repatriated Persons in Kosovo's Municipalities*, November 2009.

⁶⁰ Amnesty International interview, June 2010.

⁶¹ Government of Kosovo, Ministry of Interior, *“Assessment of the mechanism for reintegration of repatriated persons: Ensuring best possible treatment and respect for human rights to all repatriated persons”*, April 2010.

⁶² Article 11.k of UNSC 1244/99, which established an international administration in Kosovo, Resolution 1244 (1999), adopted by the Security Council at its 4011th meeting on 10 June 1999, S/RES/1244 (1999), retrieved at <http://daccess-ods.un.org/TMP/6589749.html>; S/1999/779.

⁶³ ICCPR, Article 12 (4): “4. No one shall be arbitrarily deprived of the right to enter his own country.”; CERD, Article 5: “In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights: ... (d) Other civil rights, in particular: (ii) The right to leave any country, including one's own, and to return to one's country.” For the applicability of these treaties in Kosovo, see Article 22 [Direct Applicability of International Agreements and Instruments] *Constitution of the Republic of Kosovo*. <http://www.kushtetutakosoves.info/repository/docs/Constitution.of.the.Republic.of.Kosovo.pdf>

⁶⁴ Government of Kosovo, Ministry of Interior, *Assessment of the Mechanism for Reintegration of Repatriated Persons*, April 2010; Law on Readmission <http://www.assembly-kosova.org/common/docs/ligjet/2010-208.pdf> (site not updated as of 1 September 2010, it remains classified as a draft law).

⁶⁵ “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.” UNHCR, *Eligibility Guidelines*, 2009, p.17.

⁶⁶ The violation of Article 3 ECHR is based on the European Court of Human Rights Grand Chamber Judgment in the case of *Cyprus v. Greece*. See also Minority Rights Group, *European states regularly*

force Roma to return to Kosovo, where they face widespread discrimination, 13 August 2009, <http://www.minorityrights.org/8075/minorities-in-the-news/european-states-regularly-force-roma-to-return-to-kosovo-where-they-face-widespread-discrimination.html>.

⁶⁷ Amnesty International is concerned about casual racist remarks made by government officials and other ethnic Albanians which suggest that the returning Romani community includes “war criminals” who should not be allowed to return to Kosovo. Although the Kosovo authorities’ official position is to encourage Roma returns, Amnesty International notes with particular concern remarks about the Roma’s role in the 1999 conflict made by a government official in an interview with Amnesty International in February 2009. For the official government position, see for example, <http://www.kosovotimes.net/interviews/590-kosovo-institutions-want-the-return-of-all-kosovo-serbs-and-others.html>

⁶⁸ See UNDP Kosovo, Human Development Reports, <http://www.ks.undp.org/?cid=2,142>; Kosovo Foundation for Open Society – KFOS (SOROS), *The Position of Roma, Ashkali And Egyptian Communities In Kosovo*, 2009 p. 21, http://www.kfosweb.info/pdf/The%20Position%20of%20RAE%20Communities%20in%20Kosovo%20Baseline%20Survey_ENG.pdf

⁶⁹ Advisory Committee on The Framework Convention For The Protection Of National Minorities, Second Opinion on Kosovo, adopted on 5 November 2009, ACFC/OP/II(2009)004, 31 May 2010, paras. 252-8, (hereinafter, Second Opinion on Kosovo) http://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/PDF_2nd_OP_Kosovo_en.pdf

⁷⁰ Second Opinion on Kosovo, para.20, pp.6-7.

⁷¹ Although the ICESCR is not amongst the international treaties listed in Article 22 of the Constitution of Kosovo as directly applicable in Kosovo, Article 16. 3 states, “The Republic of Kosovo shall respect international law”. <http://www.kushtetutakosoves.info/repository/docs/Constitution.of.the.Republic.of.Kosovo.pdf> Further, the CESCR in November 2008 considered a document submitted by UNMIK: *Implementation of the International Covenant on Economic, Social And Cultural Rights. Document submitted by the United Nations Interim Administration Mission in Kosovo under articles 16 and 17 of the Covenant, KOSOVO (SERBIA)*, E/C.12/UNK/1, 15 January 2008, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G08/410/38/PDF/G0841038.pdf?OpenElement> . See also *Consideration Of Reports Submitted By States Parties Under Articles 16 And 17 Of The Covenant, Document submitted by the United Nations Interim Administration Mission in Kosovo (UNMIK), Concluding Observations of the Committee on Economic, Social and Cultural Rights*, E/C.12/UNK/CO/1, 1 December 2008, (hereinafter CESCR, *Concluding Comments*), <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G08/456/24/PDF/G0845624.pdf?OpenElement>

⁷² See for example, CESCR, *Concluding Comments*, para. 9: applicability of international standards; para. 12: implementation of ADL; *Second Opinion on Kosovo*, paras. 172-178, pp. 32-33: Law on Languages; para 73, p.15: implementation of ADL.

⁷³ IPA funding is available to both EU candidate and potential candidate countries; one of its objectives is for the “promotion and protection of human rights and fundamental freedoms and enhanced respect for minority rights”.

⁷⁴ Some of the measures identified in this Strategy duplicate those set out in the Reintegration Strategy, for example, in the provision of Albanian language teaching for returnees. Amnesty International urges the respective ministries to ensure that they coordinate their responses in this respect.

⁷⁵ *Second Opinion on Kosovo*, para.18, p.6.

⁷⁶ UNHCR Eligibility Guidelines 2009, p. 14, referencing http://www.unicef.org/ceecis/UNICEF_Birth_Registration_2009_English.pdf.

⁷⁷ Amnesty International interview with UNHCR Pristina, June 2010.

⁷⁸ UNICEF, *Integration unter Vorbehalt*.

⁷⁹ OSCE, *Implementation of the Strategy for Reintegration of Repatriated Persons in Kosovo's Municipalities*, 2009, p.9.

⁸⁰ *Reintegration Strategy 2010*, para.3.1.a.

⁸¹ There are no precise statistics on the number of stateless Roma. The Council of Europe has made the following estimates for South Eastern Europe: Bosnia and Herzegovina: 10,000; Montenegro: 1,500; Serbia: 17,000; Slovenia 4,090 (citizens of former Yugoslavia, many of whom are ethnic Roma), Council of Europe: Commissioner for Human Rights, *Many Roma in Europe are stateless and live outside social protection*, 6 July 2009.

⁸² Amnesty International interview, Kosovo Ministry of Interior, May 2010; email from MoI official, June 2010.

⁸³ The operative paragraphs state: "Article 29, Citizenship according to the Comprehensive Proposal for the Republic of Kosova Status Settlement, 29.1 All persons who on 1 January 1998 were citizens of the Federal Republic of Yugoslavia and on that day were habitually residing in Republic of Kosova shall be citizens of Republic of Kosova and shall be registered as such in the register of citizens irrespective of their current residence or citizenship. 29.2 Provisions of paragraph 1 of this Article apply also to direct descendants of the persons referred to in paragraph 1." [http://eudo-citizenship.eu/NationalDB/docs/KOS%20Law%20on%20Citizenship%20of%20Kosovo%202008%20\(Eng\).pdf](http://eudo-citizenship.eu/NationalDB/docs/KOS%20Law%20on%20Citizenship%20of%20Kosovo%202008%20(Eng).pdf)

⁸⁴ Amnesty International interview, Ministry of Interior, June 2010; information provided by Civil Rights Programme- Kosovo.

⁸⁵ Since 2006, UNHCR has initiated several legal assistance and civil registration programmes, implemented by the NGO Civil Rights Project Kosovo, which between 2006 and 2009 has enabled over 9,000 Roma, Ashkali and Egyptian communities to be registered , UNHCR Kosovo, *Statistical overview*, 30 November 2009.

⁸⁶ "Many IDPs temporarily residing in different parts of Serbia are in need of basic identity documents (such as birth certificates or citizenship certificates) that can only be issued from registry books that were transferred from Kosovo to seven southern municipalities of Serbia in 1999. Many IDPs, especially RAE [Romani, Ashkali and Egyptians], have never been registered in these records", UNHCR and Praxis, *Analysis of the Situation of Internally Displaced Persons from Kosovo in Serbia*, March 2007, pp.11-12, <http://www.unhcr.org/refworld/docid/4704bff72.html>

⁸⁷ See, Praxis, *Information about Work of Administrative Bodies in Serbia Administering Registry Books from Kosovo*, June 2010, http://www.praxis.org.rs/index.php?option=com_content&task=view&id=175&Itemid=73.

⁸⁸ The risk of statelessness is not addressed in the Law on Readmission. The 2008 Law on Citizenship refers to statelessness, addresses the rights to citizenship of children with one stateless parent, see Article 6: *Acquisition of citizenship by birth based on parentage*: 6.1 A child shall acquire the citizenship of Republic of Kosovo by birth if on the day of his/her birth both of his/her parents are citizens of Republic of Kosovo; 6.2 If on the day of the child's birth only one parent is a citizen of Republic of Kosovo, the child shall acquire the citizenship of Republic of Kosovo under the following conditions: a) the child is born in the territory of Republic of Kosovo; b) the child is born outside the territory of Republic of Kosovo and one parent is stateless or has unknown citizenship; c) the child is born outside the territory of Republic of Kosovo and one parent has another citizenship but both parents agree in writing that the child shall acquire the citizenship of Republic of Kosovo. This provision must be exercised prior to the child's fourteenth birthday, http://skupstinakosova.org/common/docs/ligjet/2008_03-L034_en.pdf

⁸⁹ Amnesty International interview, Ministry of Interior officials, June 2010.

⁹⁰ Article 1, Para 2 of the agreement (for full reference, see footnote 158 below), states that persons may be returned if they have been "released" from the citizenship of the readmitting state [Kosovo] after entering the requesting state [Germany], and who have not received any other citizenship or any assurance to receive the citizenship of the requesting state.

⁹¹ Council of Europe, Commissioner for Human Rights, "Stateless Roma: no documents – no rights", 17 August 2010, http://www.coe.int/t/commissioner/News/2010/100817StatelessRoma_en.asp

⁹² Other returnees informed Amnesty International that they had not been given time to collect documents from their children's school relating to their education.

⁹³ See *Reintegration Strategy*, 2010, pp. 18-19.

⁹⁴ Amnesty International is currently investigating these reports.

⁹⁵ UNICEF, *Integration unter Vorbehalt*, p.73. For a series of one-minute videos featuring children returned from Germany to Kosovo, see <http://www.unicef.de/blog/category/kosovo/>

⁹⁶ "New UNICEF report condemns German policy of deporting Roma children", 8 July 2010, <http://www.dw-world.de/dw/article/0,,5775224,00.html>

⁹⁷ OSCE, Education, footnote 58. The [maximum] number of students per teacher is 32. In Fushë Kosovë/Kosovo Polje it was increased to 37, and classes are generally of 45 students.

⁹⁸ Republic of Kosovo, Office of the Prime Minister, *Strategy for the Integration of Roma, Ashkali and Egyptian Communities in the Republic of Kosovo 2009-2015*, December 2008, pp.33-34.

⁹⁹ Amnesty International interview, Ministry of Interior, May 2010.

¹⁰⁰ According to the 2010 Reintegration Strategy, the Ministry for Labour and Social Welfare "shall notify the medical team in order to provide the immediate on-site medical assistance to returned person in

need at the airport and other border crossing points, as well as to arrange other necessary steps. In addition, at the Airport or other borders of the Republic of Kosovo should be present a mobile team of doctors and nurses to help those returned persons having the need for medical care, with close coordination with MLSW officials. In specific cases of returned persons with serious diseases, the Ministry of Health has to be informed in advance by officials of MLSW in order to ensure provision of necessary assistance to these people. The Ministry of Health shall designate points of contact for this issue", *Reintegration Strategy*, 2010, pp.7-8.

¹⁰¹ CESCR, General Comment 14, On the right to highest attainable state of health, 11 August 2000, para 12. [http://www.unhchr.ch/tbs/doc.nsf/\(symbol\)/E.C.12.2000.4.En](http://www.unhchr.ch/tbs/doc.nsf/(symbol)/E.C.12.2000.4.En)

¹⁰² See also OSCE, *Implementation of the Strategy for Reintegration of Repatriated Persons in Kosovo's Municipalities*, 2009, p.10.

¹⁰³ CESCR, General Comment 14, para.11.

¹⁰⁴ On 5 June 2009, the UNMIK Human Rights Advisory Panel declared partially admissible a case brought against UNMIK by 143 displaced Romani, Ashkali and Egyptian, residents of UNMIK-administered camps in northern Mitrovicë/a. The residents alleged they had suffered lead poisoning and other health problems from the Trepçë/Trepča smelter and mining complex, Case no. 26/08: N.M. and 142 others, http://www.unmikonline.org/human_rights/documents/PR/pr-hrap21.pdf

¹⁰⁵ For further information, see for example, OSCE Mission in Kosovo, *Background Report: Lead contamination in Mitrovicë/Mitrovica affecting the Roma community*, http://www.osce.org/documents/mik/2009/02/36378_en.pdf, February 2009; Human Rights Watch, *Kosovo: Poisoned by Lead, A Health and Human Rights Crisis in Mitrovica's Roma Camps*, 23 June 2009, <http://www.hrw.org/en/reports/2009/06/23/kosovo-poisoned-lead>

¹⁰⁶ "During the past three months seven Roma families deported from Germany during this time have moved into Osterode and Cesmin Lug to live with relatives. They are not registered with the camp administrators and perhaps unknown to them.... In order not to call attention to themselves they don't sleep every night in the camps; sometimes they stay in an abandoned building in north Mitrovica", Email from Paul Polansky to Amnesty International, 20 July 2010. On 22 July Paul Polansky forwarded an email, also copied to Thomas Hammarberg, from a representative of the NGO Society for Threatened Peoples living at the camps, suggesting that further families had arrived in the camps.

¹⁰⁷ Few Roma, Ashkali and Egyptians living in Kosovo enjoy the right to adequate housing. For the most recent survey, see for example, KFOS, *The Position of Roma, Ashkali and Egyptian Communities in Kosovo*, pp. 29-30.

¹⁰⁸ In October 2009 NGOs reported allegations of discrimination against Roma applicants for "multi-ethnic" apartments in the predominantly Serbian village of Llapje Sellë/Llapje Selo.

¹⁰⁹ In Gjakova, for example, the Roma and Ashkali Documentation Centre (RADC) interviewed a person belonging to the Egyptian community, who lived together with seven family members in a house of just 20-25m². Another interviewed family from the Ashkali community in Fushë Kosovë shared a 70m² three-room-house with 12 people, RADC, *Helplessness*, 2009, p. 14.

¹¹⁰ Amnesty International interview with Alex Standish, UNDP, June 2010. In April 2010 measures were agreed to allow municipalities to allocate land for construction on a 99-year lease. The project will be

financed by the EU (IPA funds – 3.3 million Euro IPA funding), the government (1.1 million euro) and UNDP (400,000 euro).

¹¹¹ Amnesty International interview, Plemetina, June 2010.

¹¹²“MESP has no donor support on reintegration of repatriated persons. MESP has applied for IPA project which aims to establish a database at the municipal level that would register requests for social housing as well as municipal contracts from the municipal social housing programs and it derives as a requirement from the law on financing public housing approved by the Kosovo Parliament on 15th of April 2010. Furthermore, MESP is currently drafting a new project with intention to be funded by IPF called: “Local Program for Reintegration of Endangered Groups of Population through Assistance in Solving the Housing Issue”. It remains to be seen if these two projects will be approved by the EC as the donor organization in this case”, *Reintegration Assessment*, April 2010, pp. 18-19, para.6.

¹¹³ Law No. 03/L-164, *On Housing Financing Specific Programs*, adopted 25 February 2010, <http://www.assembly-kosova.org/common/docs/ligjet/2010-164-eng.pdf>. Article 11 prioritizes the following beneficiaries: “1.1. families with many children; 1.2. families that have in structure disabled person; 1.3. families where Householder is a housekeeper -woman ; 1.4. divorced husband or wife that is on takes care for the children ; 1.5. children with the status of orphan”.

¹¹⁴ *Reintegration Assessment*, p.18, para.5. Amnesty International has not been able to establish the current status of the Housing Strategy.

¹¹⁵ Amnesty International interview, UNHCR Pristina, June 2010.

¹¹⁶ OSCE, *Implementation of the Strategy for Reintegration of Repatriated Persons in Kosovo's Municipalities*, 2009, p.11, footnotes 50, 51.

¹¹⁷ *Reintegration Assessment*, p.19.

¹¹⁸ See *Reintegration Strategy*, pp. 24-28

¹¹⁹ UNICEF, *Integration unter Vorbehalt*, p. 95, Tabelle 17: Monatliches Durchschnittseinkommen von RAE (KFOS 2009).

¹²⁰ All quotes in this section, Amnesty International interviews, June 2010.

¹²¹ Roma and Ashkali Documentation Centre, *Helplessness*, p. 17. UNMIK Regulation No. 2003/13, amended by Regulation No. 45/2004, provides that “an employee is eligible [for re-employment] if such employee is (...) registered as an employee with the Socially-Owned Enterprise at the time of privatization”. Amnesty International in 2002-4 worked without success to seek the reinstatement of an Ashkali man previously employed in by KEK.

¹²² In 2009, 10 per cent of state employees in Kosovo originated from minority populations, below the 16 per cent government target.

¹²³ Income generating projects for voluntary returnees are provided by international funders, for example UNDP (see above) and Mercy Corps, see <http://www.osce.org/item/30136.html>

¹²⁴ *Reintegration Strategy*, 2010, pp. 14-15.

¹²⁵ *Reintegration Assessment*, p.10, para 6.

¹²⁶ UNHCR, *Eligibility Guidelines*, p. 13.

¹²⁷ Kosovo Statistical Office of Kosovo, *Social Welfare Statistics 2009*, June 2010, pp. 11-12; in total 35-38,000 families were in receipt of social benefits in 2009 – no ethnic breakdown of recipients is provided. <http://www.ks-gov.net/ESK/eng/dmdocuments/Social%20Welfare%20Statistics%202009.pdf> According to RADC, “Calculated on an average amount of 50 euro per month, the Kosovo government would have to provide a budget of 500.000 euro per month or 6.0 Million euro per year just for social assistance of returnees – and these costs would not include the provision of accommodation and other issues”, RADC, *Helplessness*, p.15.

¹²⁸ 2008/213/EC: Council Decision of 18 February 2008 on the principles, priorities and conditions contained in the European Partnership with Serbia including Kosovo as defined by United Nations Security Council Resolution 1244 of 10 June 1999 and repealing Decision 2006/56/EC, Official Journal L 080, 19/03/2008 P. 0046 – 0070, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:080:0046:01:EN:HTML>

¹²⁹ “The EU can help Kosovo by associating it with its efforts to promote access to employment for all, improve dialogue with social partners and civil society and better target its employment and social policies. In this regard, the Commission will present a study on “Social Protection and Social Inclusion in Kosovo”, which will help prepare Kosovo for enhanced coordination of social and employment policies. The Commission proposes to associate Kosovo with the Progress programme, which is open to the Western Balkans. It will support Kosovo's participation in regional cooperation efforts on employment and social policies within the framework of the South-East Europe Employment and Social Policy Network and the SEE Health Network. The Commission proposes to engage with the secretariat of the Roma Decade to develop Kosovo's association and help efforts to include minority communities in social protection and inclusion measures.”, COM(2009) 5343, *Communication from the Commission to the European Parliament and the Council, Kosovo - Fulfilling its European Perspective*, 14 October 2009, para.7.4. p.10, http://ec.europa.eu/enlargement/pdf/key_documents/2009/kosovo_study_en.pdf

¹³⁰ Kosovo Government, *Strategy for the Integration of Roma, Ashkali and Egyptians Communities in the Republic of Kosovo, 2009 – 2015*.

¹³¹ Amnesty International interviews with UNHCR and RADC, June 2010.

¹³² Conclusions of the International Round Tables on challenges and prospects of sustainable integration of Kosovo Roma, Ashkali and Egyptians in host countries and in Kosovo itself organised in Vienna in October 2008 and in Pristina in February 2009 by the Project on Ethnic Relations (PER) with the support of the OSCE Office for Democratic Institutions and Human Rights, quoted in *Updated Opinion of MG-S-ROM on the Return of Roma to Kosovo and South Eastern Europe; International Roundtable on Roma, Ashkali, and Egyptians of Kosovo: Challenges and Prospects of Sustainable Integration* at <http://www.per-usa.org/1997-2007/announcements.htm>

¹³³ “Para 162. The return process remains a key challenge for the Kosovo authorities. The Commissioner considers that those persons who wish to return to Kosovo should be supported by the Kosovo authorities and that the return process should be planned, informed and sustainable. The Kosovo authorities must provide a safe environment, housing, education and possibilities to earn a living for those who choose to come back.

Para 163. The Commissioner appeals to governments in Europe to avoid forced returns of minorities to Kosovo and to regulate the status of those in their host country until conditions in Kosovo permit their safe return. In the Commissioner's assessment there is currently no adequate capacity on the part of the authorities to receive and integrate mass returns in Kosovo. The economic and social situation is a major

obstacle to a sustainable return process. While security issues have improved, in the Commissioner's opinion the situation remains tense with inter-ethnic violence occurring sporadically.", *Report of the Council of Europe Commissioner for Human Rights' Special Mission to Kosovo, 23 – 27 March 2009*, CommDH(2009)23, Strasbourg, 2 July 2009, see https://wcd.coe.int/ViewDoc.jsp?id=1466279&Site=CommDH&BackColorInternet=FEC65B&BackColorIntranet=FEC65B&BackColorLogged=FFC679#P468_89578

¹³⁴ The OSCE Mission in Kosovo is responsible for monitoring human rights and rule of law issues in areas affecting the right to return, such as housing and property rights, non-discriminatory access to public services, and employment opportunities, civil registration of communities' members, security and freedom of movement, and access to justice. The OSCE Mission in Kosovo also promotes and monitors the development of policies and procedures aimed at creating conditions for sustainable return.

¹³⁵ UN Office Geneva, *Serious Obstacles Remain For Internally Displaced In Balkans, Warns United Nations Special Representative*, 7 July 2009, http://www.unog.ch/unog/website/news_media.nsf/%28httpNewsByYear_en%29/B1F49E564CFE7319C12575EC00327CF5?OpenDocument

¹³⁶ Report of the Representative of the [UN] Secretary-General on the human rights of internally displaced persons, Walter Kälin, A/HRC/13/21.Add.1, 11 December 2009.

¹³⁷ http://www.fr-online.de/in_und_ausland/politik/aktuell/1836888_Menschenrechtskommissar-Hammarberg-im-Interview-Endstation-Kosovo.html.

¹³⁸ SMG-S-ROM (2009)3, *Updated Opinion of MG-S-ROM on the Return of Roma to Kosovo and South Eastern Europe*; Adopted by the MG-S-ROM at its 27th meeting in Seville, Spain on 26-27 March 2009; Adopted by the CDMG at its 57th meeting in Strasbourg on 28-29 May 2009. The Committee of Ministers' Deputies took note of this updated Opinion on their 1062nd meeting on the 1st July 2009.

¹³⁹ Roma and Ashkali Documentation Centre, *Helplessness - Roma, Ashkalia and Egyptian Forced Returnees in Kosovo*, 3 December 2009, <http://tinyurl.com/yidqo69>.

¹⁴⁰ The Commissioner - CommDH(2009)42 15 December 2009, *Letter from the Council of Europe Commissioner for Human Rights to Mrs. Angela MERKEL, Chancellor of the Federal Republic of Germany, concerning forced returns to Kosovo*, (25 November 2009); "Council of Europe calls deporting refugees back to Kosovo irresponsible", 15 April 2010, www.dw-world.de/dw/article/0,,5469539,00.html

¹⁴¹ "Children victimised when families are forced to return", 9 June 2010; http://commissioner.cws.coe.int/tiki-view_blog_post.php?postId=56

¹⁴² *Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo*, S/2010/169, 6 April 2010, para.25.

¹⁴³ Advisory Committee On The Framework Convention For The Protection Of National Minorities, Second Opinion on Kosovo, adopted on 5 November 2009, 31 May 2010, ACFC/OP/II(2009)004, http://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/PDF_2nd_OP_Kosovo_en.pdf.

¹⁴⁴ Provisional edition, Resolution 1739 (2010), *The situation in Kosovo and the role of the Council of Europe*, para.14.4.3 <http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta10/ERES1739.htm>

¹⁴⁵ Verena Knaus & Peter Widmann, *Integration unter Vorbehalt: Zur Situation von Kindern kosovarischer Roma, Ashkali und Ägypter in Deutschland und nach ihrer Rückführung in den Kosovo*, UNICEF, July 2010.

¹⁴⁶ "Kosovo Can Join Visa Liberalisation", <http://www.balkaninsight.com/en/main/news/18516/>, 29 April 2009.

¹⁴⁷ Five EU member states do not recognize Kosovo as a state; nor is it recognized as such by the UN.

¹⁴⁸ COM(2009) 5343, Communication from the Commission to the European Parliament and the Council, Kosovo - Fulfilling its European Perspective, 14 October 2009, para.6, p.5
http://ec.europa.eu/enlargement/pdf/key_documents/2009/kosovo_study_en.pdf

¹⁴⁹ COM(2009) 5343, Communication from the Commission to the European Parliament and the Council, Kosovo - Fulfilling its European Perspective, 14 October 2009, para.6, pp.5-6

¹⁵⁰ "Readmission agreements reiterate and define the obligation to readmit a country's own citizens and set out the conditions under which state parties to such agreements are obliged to readmit citizens of third countries who have passed through their territory. They facilitate and expedite the enforcement of return decisions in respect of irregular migrants and may also function as an incentive for countries of origin or transit to enhance their migration control. Depending on one's viewpoint, readmission agreements can either be considered an important element in the migration management strategies of Council of Europe member states, or as facilitators of questionable return decisions and part of the criticised "externalising of migration control" of European countries." PACE, Resolution 1741 (2010), Readmission agreements: a mechanism for returning irregular migrants, para.1,
http://assembly.coe.int/ASP/Doc/ATListingDetails_E.asp?ATID=11211

¹⁵¹ UNMIK & PISG, Readmission Policy, 28 November 2007,
www.unhcr.org/refworld/pdfid/49997afb1f.pdf

¹⁵² Based on the "Kosovo Readmission Request: For use by government authorities requesting repatriation of persons from Kosovo without legal status in their territories". States requesting the readmission of individuals to Kosovo are not obliged to provide information as to whether persons to be forcibly returned fall into any of the categories identified by UNHCR as in need of continued international protection. This was based on para s. 4.1 of the UNMIK/PISG Readmission Agreement, which stated "No information on asylum status of the person subject to readmission will be provided to the PISG/Kosovo Authorities, in accordance with European standards and data protection legislation in both Kosovo and host countries". For regional standards, see for example, Ad hoc Committee of Experts on the Legal Aspects of Territorial Asylum, Refugees and Stateless Persons (CAHAR), Twenty guidelines on forced return, (CM(2005)40 final, 9 May 2005). Amnesty International notes that the revised 2010 *Readmission Strategy*, has been amended to state that: Requesting countries should provide as more information as possible on the number of persons to be repatriated, their gender, ethnic background, age group, municipality of origin, medical records, criminal background records, to supply them with civil documents, especially for the children that were born in the requesting countries and for those that attended school., p. 5.

¹⁵³ In March 2007 the UN Secretary General reported that some 3,598 persons had been forcibly returned to Kosovo in 2006 and warned that that some 90,000 persons remained "subject to

deportation to Kosovo”, S/2007/134, *Report of the Secretary-General on the United Nations Interim Mission in Kosovo*, 9 March 2007.

¹⁵⁴ However, according to the Swedish Migration Board between January and June 2010, Sweden returned 306 failed asylum seekers to Kosovo, 31 “with police assistance”; they included Roma and Ashkali. According to the Kosovo Ministry of Interior, persons returned from Sweden included three unaccompanied minors.

¹⁵⁵ At the time of writing, Austria was still negotiating a readmission agreement. On 19 June 2009, in the daily *Die Presse*, Roland Schönbauer, UNHCR spokesperson in Austria, criticized the Austrian government’s decision to consider [Kosovo and Serbia] as “safe third countries”, and pointed out that Roma and other minorities continue to face “difficult human rights situations”, http://diepresse.com/home/politik/innenpolitik/488714/index.do?_vl_backlink=/home/politik/innenpolitik/index.do

¹⁵⁶ Some 70 Kosovo nationals have been deported from Belgium since November 2009 - 25 of whom were returned to Kosovo under a Memorandum of Understanding signed with the Kosovo authorities on 20 October 2009, while 45 were deported to other EU member states under the Dublin-II Regulation, (Council Regulation (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national). Email to Amnesty International from Ministry of Migration and Asylum, 26 August 2010.

¹⁵⁷ Agreement signed 2 December 2009; yet to be ratified.

¹⁵⁸ An agreement was concluded by the Netherlands in 2009, resulting in the resumption of forcible returns of members of ethnic communities. As with other agreements seen by the organization, the agreement does not require the Dutch authorities to provide the Kosovo authorities with details of the ethnicity of the person to be returned. This policy was confirmed by the Dutch Council of State (the highest court with jurisdiction over asylum cases) in an individual case brought by a Roma.

¹⁵⁹ Agreement signed on 3 February 2010, Federal Justice and Police, “Readmission agreement signed with Kosovo” Press Release (Medienmitteilungen, EJPD, 03.02.2010, Eidgenössisches Justiz- und Polizeidepartement, “Rückübernahmeabkommen mit Kosovo unterzeichnet”, http://www.bfm.admin.ch/bfm/de/home/dokumentation/medienmitteilungen/2010/ref_2010-02-03.html. According to information provided to Amnesty International by the Federal Migration Office, the Readmission Agreement will specifically affect some 2,000 Roma [2009 figures], who remain in Switzerland, either with a temporary stay or those who are still in the process of seeking asylum. Roma who voluntarily return will receive financial support; this is not provided to Ashkali and Egyptians, who are considered to have good social networks and the possibility of returning to their own houses.

¹⁶⁰ In the Agreement signed with Germany, Article 15 provides that (1) the application of the Refugee Convention remains unaffected, (2) the obligations of the contracting parties based on other international conventions remain unaffected and (3) the obligations of Germany deriving from its membership in the EU remain unaffected, *Bekanntmachung des Abkommens zwischen der Regierung der Bundesrepublik Deutschland und der Regierung der Republik Kosovo über die Übernahme und Durchbeförderung von Personen (Rückübernahmeabkommen) vom 21. April 2010*, (Notice of the Agreement between the

Government of the Federal Republic of Germany and the Government of the Republic of Kosovo on the acquisition and transit of persons (Readmission Agreement). from 21 April 2010).

¹⁶¹ *Readmission agreements: a mechanism for returning irregular migrants*, PACE Resolution 1741 (2010), para 6.8, <http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta10/ERES1741.htm>

¹⁶² The principle of *non-refoulement* prohibits the expulsion, removal, extradition, deportation or otherwise return of any person in any manner whatsoever to a country or territory where he or she would face a real risk of persecution or serious harm. This principle is outlined in the 1951 Convention relating to the Status of Refugees (the UN Refugee Convention) and in numerous other international instruments. In addition, the principle of *non-refoulement* is widely regarded as a norm of customary international law.

¹⁶³ An initial MoU, as of 17 November 1999, allowed for the forcible return of ethnic Albanians. A second MoU, as of 31 March 2003, allowed for forcible returns of Turks, Bosniaks, Gorani and Torbeshi and – with an individual screening – Ashkali and Egyptians. The forcible return of Ashkali and Egyptians was stopped after the March 2004 inter-ethnic violence, but resumed in May 2005 on the basis of an Agreed Note of April 2005. The terms of the MoU were later changed or updated by several Agreed Notes.

¹⁶⁴ On the basis of the Agreed Note of April 2005, the numbers of Ashkali and Egyptians to be returned were limited and their decision on their deportation was dependant on the results of an individual screening.

¹⁶⁵ Circular by the Federal Mol to the Mol of the Länder as of 17 Dec 2007.

¹⁶⁶ The criteria are described in Article 104a of the Residence Act (Aufenthaltsgesetz). For example, the person concerned has to fulfil the cumulative criteria of: being able to care predominantly for his (and his families!) subsistence without relying on social benefits, the person concerned has to have adequate oral German language skills, has to have adequate living space, children have to fulfil their obligation to attend school and the person concerned should not have a criminal record (with some few exceptions).

¹⁶⁷ UNICEF, *Integration unter Vorbehalt*, p.32, retrieved at http://www.unicef.de/fileadmin/content_media/presse/Roma-Studie_2010/UNICEF-Studie_Roma_2010neu.pdf

¹⁶⁸ UNICEF, *Integration unter Vorbehalt*, p.12.

¹⁶⁹ See also, Göttinger Tageblatt, “Drei jugendliche Roma flüchten ins Kirchenasyl”, 22 June 2010, <http://www.goettinger-tageblatt.de/Nachrichten/Goettingen/Uebersicht/Drei-jugendliche-Roma-fluechten-ins-Kirchenasyl>

¹⁷⁰ On 15 July 2010, following publication the UNICEF report (see above), a motion was placed before the parliament of North Rhine-Westphalia (NRW), by members of the governing parties, raising– amongst other things, that families should not be deported until children has completed their [secondary] education or vocational training, *Entschließungsantrag: NRW wird der schwierigen Situation der Roma und anderer Minderheiten aus dem Kosovo Rechnung tragen* (Motion: Consideration by NRW of the Difficult Situation of Roma and Minorities from Kosovo), Drucksache 15/45, 15 July 2010.

¹⁷¹ Defined in Articles 15-19, the EU 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 (EU qualification directive).

¹⁷² UNHCR, *Eligibility Guidelines*, pp.22-23.

¹⁷³ 22007A1219(03), *Agreement between the European Community and the Republic of Serbia on the readmission of persons residing without authorisation*, Official Journal L 334 , 19/12/2007 P. 0046 – 0064, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:22007A1219%2803%29:EN:HTML>

¹⁷⁴ According to Readmission Office Coordinator Zoran Panjković. most were returned from Germany (60 to 70 per cent) and Switzerland, with around 30 per cent of those returned under the age of 18. Some 67 per cent of those readmitted were Roma. *Glas javnosti*, 5 January 2009 p.6, *Politika* p.7, *Press* p.11, 5 January 2009.

¹⁷⁵ http://www.kirs.gov.rs/docs/Readmission_strategy.pdf

¹⁷⁶ Amnesty International interviews with Ministry of Human Rights and Minorities and UNHCR, Belgrade, February 2009 and February 2010; Grupa 484, *Annual Report 2008*, <http://www.grupa484.org.rs/index.php?lang=english>

¹⁷⁷ Amnesty International viewed such collective centres in Belgrade in February 2010. In January 2002, there were 388 collective centres housing around 26,863 people. As of January 2010 there were 60 collective centres accommodating 1,105 refugees and 3,792 internally displaced persons (including and 17 collective centres housing 105 refugees and 558 IDPs in Serbian areas of Kosovo), http://www.kirs.gov.rs/docs/The_condition_and_the_needs_of_IDPs_in_cc.pdf

¹⁷⁸ Amnesty International recently highlighted its concerns for Roma IDPs from Kosovo in the context of the right to adequate housing in the report *Serbia: Stop the Forced Eviction of Romani Settlements*, published in June 2010, <http://www.amnesty.org/en/library/info/EUR70/003/2010/en>

