



Analysis of the Situation of Internally Displaced Persons from Kosovo in Serbia and Montenegro: Law and Practice

**A Legal Analysis prepared by
the IDP Interagency Working Group**

Belgrade, October 2004

“The Security Council Reaffirms the right of all refugees and displaced persons to return to their homes in safety.”

Resolution 1244 (1999) adopted by the UN Security Council at its 4011th meeting - 10 June 1999

“Internally displaced persons shall enjoy, in full equality, the same rights and freedoms under international and domestic law as do other persons in their country. They shall not be discriminated against in the enjoyment of any rights and freedoms on the ground that they are internally displaced.”

Guiding Principles on Internal Displacement
Principle 1

List of Acronyms

CAP	Cash Assistance Program
CC	Collective centre
CCK	Co-ordination Centre for Kosovo
COE	Council of Europe
DRC	Danish Refugee Council
ICCPR	International Covenant on Civil and Political Rights
ICRC	International Committee of the Red Cross
IDP	Internally displaced persons
IFRC	International Federation of the Red Cross and Red Crescent Societies
IHL	International humanitarian law
JMBG	Personal Identification Number
KFOR	Kosovo Force (NATO-led international force)
MCDP	Montenegrin Commissariat for Displaced Persons
MHMR	Ministry of Human and Minority Rights
NATO	North Atlantic Treaty Organization
NRC	Norwegian Refugee Council
OHCHR	Office of the United Nations High Commissioner for Human Rights
OSCE	Organization for Security and Cooperation in Europe
SCG	Serbia and Montenegro
UN	United Nations
UNDP	United Nations Development Programme
UNGP	United Nations Guiding Principles on Internal Displacement
UNHCR	United Nations High Commissioner for Refugees
UNMIK	United Nations Interim Administration Mission in Kosovo

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UN OCHA United Nations Office for the Coordination of Humanitarian Affairs

Executive Summary (including Findings & Recommendations)

Executive Summary

This report is addressed to the Council of Ministers of the State Union of Serbia and Montenegro and to the Governments of the Republic of Serbia and the Republic of Montenegro. It is a review and analysis of the legislative and institutional framework concerning the situation of internally displaced persons (IDPs) in Serbia and Montenegro (not including the situation in Kosovo). Using the needs of IDPs as a starting point, the aim of this study is twofold: to identify gaps in the system and to recommend solutions.

In 2002, the IDP Working Group (WG) was established by United Nations agencies with the joint chairmanship of UN OCHA and UNHCR. Initial members included UNDP and OHCHR as well as the non-UN members IFRC, NRC, DRC and Group 484. Later in the process OSCE joined the WG. The Working Group brought together international, regional and local organisations that had long been assisting refugees, IDPs and other vulnerable persons particularly affected by the conflict in the region. It provided a forum for sharing experiences and coordinating strategies and programmes for beneficiaries. The present study is a collaborative initiative by the Working Group. The Working Group bases their analysis and findings on the previous research and experience of its member organisations as documented in their publications cited throughout.

The past fifteen years have been difficult years of conflict, post-conflict instability, strife and change for the peoples of the former Socialist Federal Republic of Yugoslavia. Already challenged with new political, social and economic realities, the State Union and Republics' governments have also had to assist the hundreds of thousands of refugees and IDPs who have sought refuge within its borders. The country has hosted more than a quarter of a million IDPs since 1999. There is no immediate end in sight because of continuing instability in the region, as illustrated by the recent violence triggered by events in Kosovo on 17 March 2004.

Across society, IDPs are not the only vulnerable group. Thus policy and institutional responses to the plight of IDPs will often be part of broader strategies, such as with Serbia's *Poverty Reduction Strategy Paper*. However, IDPs remain citizens of Serbia and Montenegro with all of the rights and duties that attach to citizenship. Unfortunately, these citizens are not always being treated equally, contrary to the Constitutional Charter of Serbia and Montenegro, the constitutions of each Republic and international laws.

Five years after the last major displacement in the region, many IDPs are still looking for food and non-food basics on a daily basis. Many IDP families also have family members who are missing, a situation which only compounds their economic, social and emotional vulnerability. Other practical obstacles IDPs most commonly encounter include:

- Securing basic documents required to access social and humanitarian assistance;

- Moving freely within their country;
- Finding suitable and stable basic accommodation; and,
- Working and collecting pensions.

The IDP community itself is comprised of other communities who share the common situation of displacement and the concerns listed above. This study delves into the additional concerns of three particular IDP communities: the Roma, rejected asylum seekers returned from Western European countries and the IDPs recently displaced after March 17, 2004.

The Governments have already undertaken many efforts to address the needs of their vulnerable citizenry, including IDPs. Strong human rights principles entrenched in the constitutions. The creation of ministries and institutions dedicated to the promotion and protection of these rights go even further. This illustrates the Governments' commitment to building an equitable society governed by Rule of Law. This study builds on these advancements. The Working Group hopes that the overview and analysis of the legal framework and the situation on the ground will stimulate a review of laws, policies and practices at the State Union, Republican and municipal levels.

The study is divided into five chapters. The first chapter contains background information on the study, displacement and the present day problems of the IDPs. An overview of the relevant international and domestic legal framework follows in the second chapter. Chapter three is divided thematically into sections each addressing a key IDP concern. Chapter four examines the challenges of particular IDP communities and chapter five section sets out conclusions. There follows a bibliography and nine annexes cited in support.

IDPs are innocent victims of the armed conflict who deserve and are in need of assistance. Governments, too, stand to gain in efforts to stabilize and improve the standard of living for its IDP citizens. These benefits include:

- increased social stability;
- strengthened political and social institutions;
- increased tax revenues as IDPs move from recipients of assistance to contributing members of the economy; and,
- recognition for their progress from other States and regional and international organisations.

The Working Group reiterates its continued cooperation and support in assisting the Governments in addressing and solving the needs of IDP communities.

Findings and Recommendations

LEGAL FRAMEWORK

Overall, there is a solid human rights legal framework at all levels of government. National minorities, among the most vulnerable IDP communities, also benefit from additional legal protection in Serbia. There have been various efforts at the State Union and Republic levels to address the general needs or situation of IDPs. However, there is no comprehensive long term strategy that offers IDPs real solutions.

Recommendation 1

The Working Group recommends that the authorities implement the policy commitments made in favour of the improvement of the plight of IDPs. Mechanisms might include:

- Amending existing legislation so that strategies for poverty reduction, IDPs, refugees and Roma are coordinated and cited where appropriate in relevant laws and institutions.
- Creating small units in key ministries with the mandate of interpreting and applying the laws of that ministry to better serve the IDP community.
- Fully integrating vulnerability criteria for benefits to IDPs as part of the existing social service safety nets. Benefits would need to be awarded on the basis of the same criteria as between IDPs and the non-IDP population.

CITIZENSHIP

Montenegro views IDPs as Serbian citizens and outside the scope of responsibility of its government. Montenegro has also introduced legislation that, taken in conjunction with the residency system for IDPs, effectively disqualifies IDPs from ever obtaining Montenegrin citizenship. Consequently, IDPs are disenfranchised politically, economically and socially. Yet, IDPs are citizens of Serbia and of Serbia and Montenegro as set out in Article 8 of the Constitutional Charter of the State Union of Serbia and Montenegro .

DOCUMENTATION

Problems arise from prohibitive administrative costs, long delays, overly bureaucratic procedures and lack of cooperation between municipalities and the authorities. The lack of personal documentation interferes with the right to education, employment, health and freedom of movement. It also limits IDPs' access to fundamental social institutions and humanitarian aid. Yet, IDPs are entitled to the same access to documents as all other citizens of Serbia and Montenegro.

Recommendation 2

The Working Group recommends that the authorities should consider simplifying the procedure of obtaining Personal Identification Numbers (JMBG) at police stations located in IDPs' place of temporary residence, where the police could process requests *ex officio*.

Recommendation 3

The Working Group recommends that registry offices administering dislocated registry books should provide documents by mail and should not require the issuance of a power of attorney when not envisaged by the law.

Recommendation 4

The Working Group recommends that the authorities should consider amending and simplifying administrative procedures in the process of reconstructing registry books and the process of subsequent registration into registry books. Indeed, this may include amending laws on administrative procedures to include simplified procedures

for the registration of non-registered persons, such as a provision allowing identity to be proven by the sworn testimony of two witnesses.

Recommendation 5

The Working Group recommends that the authorities in Serbia and in Montenegro, acting particularly at the municipal level, consider revising regulations and administrative orders to reduce administrative fees related to access to documentation for IDPs.

Recommendation 6

The Working Group recommends that the authorities of Serbia and of Montenegro consider promoting inter-municipal cooperation in the provision of documents. This might be achieved by:

- holding policy meetings with high-level municipal administrators to encourage a spirit of cooperation and to enlist their assistance in streamlining procedures for cooperation;
- organizing capacity training at the municipal level; and,
- making amendments to the appropriate regulatory procedures.

Recommendation 7

The Working Group recommends that the authorities of Serbia and of Montenegro review the procedures at the municipal level for obtaining personal documentation by IDPs in the place of their temporary residence. These procedures should comply with the responsibility in the *United Nations Guiding Principles on Internal Displacement* about the issuance of documents without unreasonable barriers and obstacles.

FREEDOM OF MOVEMENT

The change of practice following the July 2003 correspondence between Serbia's Deputy Prime Minister's Office and the Minister of the Interior's Office has resulted in the simplification of the system of registration of residence for IDPs. However, the remaining proof of property requirements may still impede IDPs in changing the registration for their permanent places of residence.

Recommendation 8

The Working Group recommends that the authorities in Serbia continue to demonstrate flexibility in reviewing the policy and procedure for registering permanent residences for IDPs, taking into consideration their precarious economic and property situation.

ACCOMMODATION

The collective centres originally built for refugees have, inadequately, served as a temporary solution to the accommodation needs of some of the IDP population. The authorities of Serbia and of Montenegro have proceeded in the closing of CCs without having created and implemented viable long-term solutions to the accommodation needs of IDP citizens.

Recommendation 9

The Working Group recommends that the authorities of Serbia and of Montenegro take into account the long-term accommodation needs of the most vulnerable groups of the IDP population, such as women heads of households and the elderly. It recommends that the authorities submit project proposals to international donors on addressing accommodation needs.

EMPLOYMENT

The right to employment is a right of all citizens. The Republic of Montenegro's laws discriminate in their impact against the IDP population by creating financial disincentives for employers to hire IDPs and blocking access to the employment market. In the Republic of Serbia, IDPs have access to the employment market, but in practice they are disadvantaged in the competition for scarce jobs. Many lack Work Booklets that remained in Kosovo and cannot prove their qualifications and work experience. With few other options, many IDPs resort to "grey market" employment which costs governments in lost revenues.

Recommendation 10

The Working Group recommends that the authorities of the Republic of Montenegro consider amending the *Decree on Employment of Non-resident Physical Persons* and the *Law on Employment*. This could simplify procedures for IDPs seeking employment and remove the levy on employers who hire non-residents who are citizens of the State Union of Serbia and Montenegro in order to ensure and promote IDPs' legal access to employment. Such amends would be in line with the Constitutional Charter of the State Union of Serbia and Montenegro.

Recommendation 11

The Working Group recommends that the authorities of Serbia and of Montenegro consider amending administrative procedural laws to simplify the procedure in reclaiming or reconstructing Work Booklets. This initiative might be combined with consultations and training of municipal employees on inter-municipal cooperation.

Recommendation 12

The Working Group recommends that the authorities of Serbia and the of Montenegro consider adopting "affirmative action" measures in favour of IDPs in order to counteract prevailing discriminatory attitudes and to facilitate IDPs' access to housing, labor market and education.

PENSIONS

Many IDPs are not receiving their pension benefits. This is a serious and pressing situation. Though the problem seems to be systemic, it is the Working Group's view that the difficulties are only administrative in nature and might easily be solved with greater political interest and support.

Recommendation 13

The Working Group recommends that the authorities consult with the competent pension authorities with a view to determining why so many IDPs are not receiving their pension benefits, identifying the underlying reasons and fashioning appropriate solutions.

HEALTH

In Montenegro, IDPs have access to medical services. However, but they face a number of practical obstacles in the area of refunds for medications, rehabilitation after illness. They face problems in obtaining referrals for medical treatment in Serbia unavailable in Montenegro, although citizens of Montenegro can receive such referrals. Many of these problems stem from lack of documentation. Further, IDPs' medical files are often not as well maintained and followed up.

Recommendation 14

The Working Group recommends that the authorities of Serbia reconsider the system of extra documentation for IDP access to health care services in light of the serious documentation difficulties of this population and in light of international standards and the Constitutional Charter of the State Union of Serbia and Montenegro.

Recommendation 15

The Government of Montenegro should amend its legislation in order to ensure that IDPs have equal access to health service as citizens and to establish referral system to provide equal treatment of IDPs as citizens.

ROMA

Roma IDPs represent one of the most vulnerable categories of IDPs. They often face discrimination in accessing many of the most basic rights of citizens. The State Union's policy, the *Draft Strategy for the Integration and Empowerment of the Roma*, is not automatically accepted at the level of the Governments of the Republic. Further, the effectiveness of the State Union Roma Strategy is weakened by its isolation – no legislative amendments have integrated this approach into the legal systems as a whole.

Recommendation 16

The Working Group recommends that in order to improve access to documentation, the authorities of Serbia undertake a process of registering Roma IDPs who have not been able to register as IDPs for lack of basic documentation.

Recommendation 17

The Working Group recommends that the Council of Ministers of the State Union and the Government of the Republic of Serbia approve the *Draft Strategy for the Integration and Empowerment of the Roma* and begin implementing its

recommendations and conclusions. It also recommends that they adopt and integrate the *Strategy's* policy approach into the broader legal system and institutions.

Recommendation 18

The Working Group recommends that the competent authorities at the Republic levels promote awareness of the specific problems of Roma IDPs (as outlined, for example, in the *Draft Strategy for the Integration and Empowerment of the Roma*), by training staff at the municipal level to address the specific needs of Roma and other minority IDPs.

REJECTED ASYLUM SEEKERS FORCIBLY RETURNED FROM WESTERN EUROPE

Asylum seekers who fled Kosovo and sought refuge in other European countries are being forcibly returned to Serbia and Montenegro (not including Kosovo) directly into a situation of secondary displacement. The Working Group attaches in Annexe 7 the Recommendation of the Parliamentary Assembly of the Council of Europe and in Annexe 8 UNHCR document on the Possibility of Applying the Internal Flight or Relocation Alternative within Serbia and Montenegro to Certain Persons originating from Kosovo and Annexe 9 UNHCR Position on the Continued International Protection Needs of Individuals from Kosovo. The Working Group urges the Council of Ministers of Serbia and Montenegro, and the Governments of the Republic of Serbia and the Republic of Montenegro to read and consider these documents.

MARCH 17, 2004 NEWCOMERS

The Serbian Commissariat for Refugees has issued two consecutive 45-day temporary certificates for the IDPs who fled Kosovo following the events of March 17, 2004. To date, there has been no official statement by the Government of the Republic of Serbia about the next steps in addressing the needs of this IDP community.

Recommendation 19

The Working Group recommends that the Government of the Republic of Serbia consider regularizing the legal status of these IDPs who fled Kosovo after the events of March 17. The Government should consider recognizing the status of these IDPs for the duration of their actual displacement.

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Chapter I: Background

Purpose of the Study

This study is a review and analysis of the legislative and institutional framework and its implementation with respect to the situation of internally displaced persons (IDPs) in Serbia and Montenegro. More precisely, the study examines the needs of IDPs in Serbia and Montenegro¹ except for those residing in the United Nations administered province of Kosovo. Nor will the return process to Kosovo be examined though of course it will be referenced from time to time as it impacts on the situation of IDPs in Serbia and Montenegro.

The Inter-agency Working Group of IDPs is the producer of this study. The Working Group was established in 2002 by the joint leadership of the United Nations Office for the Coordination of Humanitarian Affairs (UN OCHA) and the United Nations High Commissioner for Refugees (UNHCR). Initial members include the United Nations Development Programme (UNDP) and the Office of the United Nations High Commissioner for Human Rights (OHCHR), as well as the non-UN organisations of , the International Federation of the Red Cross and Red Crescent Societies (IFRC), Organization for Security and Co-operation in Europe, Mission to Serbia and Montenegro, the Norwegian Refugee Council (NRC), the Danish Refugee Council (DRC) and Group 484.² The Working Group brings together international, regional and local organisations that had long been assisting refugees, IDPs and other vulnerable persons particularly affected by the conflict in the region. It provided a forum for sharing experiences and coordinating strategies and programmes for beneficiaries. The present study is the result of collaborative effort. The Working Group base their analysis and findings on previous research and experience of its member organisations as documented in their publications cited throughout.

Using the most pressing needs of IDPs as a starting point, the aim of this study is twofold: to identify gaps in the legal system and to recommend solutions. The study also examines the extent to which domestic laws conform to international norm on the treatment of IDPs. The objective is to provide authorities with a comprehensive document that can act as a tool to better assess the strengths and weaknesses of their laws and policies in tackling the important issue of IDPs.

The study is divided into five chapters. Chapter I provides background of the history of displacement in Serbia and Montenegro and a description of the problems most frequently encountered by IDPs in getting on with the business of living and

¹ The State Union of Serbia and Montenegro will be variously referred to as “Serbia and Montenegro”, the “State Union” or “SCG” throughout the study. Unless otherwise indicated, for the purposes of this study, these references will not include Kosovo.

² For more information on the structure, mandate and activities of each organisation, consult websites at <http://ochaonline.un.org> www.undp.org, www.ohchr.org, www.ifrc.org, www.nrc.no and www.grupa484.org.yu, www.osce.org/sim, www.drc.dk

surviving. Chapter II describes the general legal framework on IDPs in the State Union, the Republic of Serbia and the Republic of Montenegro. This chapter includes a description of the legislative, institutional and policy frameworks as well as a picture of the applicable international laws and standards. Chapter III is divided into sections, each on a thematic discussion on a problem commonly encountered by IDPs. Chapter IV outlines the problems faced by particular IDP communities and Chapter V sets forth summary conclusions. Recommendations appear throughout the study. A summary listing of all recommendations is found in the Executive Summary.

Overview of History and Problems Encountered by IDPs

The violent armed conflicts of the 1990s in the former Socialist Federal Republic of Yugoslavia (SFRY) caused tens of thousands of persons to flee for their lives to other parts of their country and to other parts of the world. Many fled between 1991 and 1995 at a time of great instability in the region. The signing of the Dayton Agreement at the end of 1995 brought more stability; however, a few years later, the violence in Kosovo intensified. The conflict between Serbian security forces and Kosovo-Albanian forces started towards the end of 1998 and reached its culmination with the North Atlantic Treaty Organisation (NATO) bombing campaign against the former FRY, which lasted from 24 March 1999 to 11 June 1999.

The fighting ended with the signing of the Kumanovo military technical agreement and, on 10 June 1999, United Nations Security Council Resolution 1244³ was adopted, establishing Kosovo as an international protectorate. On 12 June 1999, the NATO-led international force "Kosovo Force" (KFOR) entered Kosovo as a peace-enforcement force under a United Nations mandate. KFOR was entrusted with establishing and maintaining security in Kosovo and, as a part of its duties, creating a secure environment that would allow refugees and displaced persons to return home in safety.⁴ A Serbian security forces withdrew from the Province and international peacekeepers moved in, Kosovo Albanians that fled the conflict returned to Kosovo *en masse* while large parts of the non-ethnic Albanian population were forced to flee to escape violence. Many of the IDPs in Serbia and Montenegro today are ethnic Serbs and Roma who fled Kosovo in 1999 after the United Nations assumed responsibility for the Province under the mandate of the United Nations Interim Mission in Kosovo (UNMIK).⁵

Five years after the conflict in Kosovo ended, the number of IDPs from Kosovo in Serbia and Montenegro remains high: 233,938 persons. Of these, 205,391 are in Serbia and 18,019 are in Montenegro. Approximately 20,000 Roma are registered as IDPs,⁶ though it is widely recognised that the number of Roma IDPs is much higher, with estimates ranging from 40,000 to 50,000 persons.⁷ In Serbia, a large

³ See S/RES/1244 (1999), 10 June 1999.

⁴ UN Security Council Resolution 1244, S/RES/1244 at paras. 9(c) and 11(k). Also, KFOR sets out its history and mandate at www.nato.int/kfor.

⁵ Global IDP Project (Norwegian Refugee Council), *Profile of Internal Displacement: Yugoslavia (Federal Republic of) – Compilation of the information available in the Global IDP Database of the Norwegian Refugee Council*, December 2002 at pp. 10 and 11 citing UNHCR 2001.

⁶ Figures taken from registration in spring 2000 and in 2001 during the IDP census in Serbia and Montenegro.

⁷ As large numbers of Roma tend to avoid any contact with state authorities, it is difficult to come up with a solid number. Estimates are based on the number of Roma who used to live

majority of IDPs is concentrated in the central and southern parts of the Republic, while in Montenegro, IDPs are clustered in the municipalities of Podgorica, Bar and Berane.⁸

Since 1999, less than 2% of IDPs have returned to Kosovo. According to a recent UNHCR report, 7,531 persons have returned to Kosovo, of whom 4,115 were Kosovo Serbs, 734 were Roma, 358 were Bosniacs, 109 were Goranians, 426 were ethnic Albanians, and 1,789 were "others".⁹ Ongoing registration data demonstrate that the number of departures from Kosovo of non-Albanians to other parts of Serbia has steadily declined through 2001 and 2002 and practically came to halt by the end of 2002 with only 10 registered departures in December 2002.¹⁰ It is estimated that another 277 persons (93 families) fled Kosovo following the events of 17 March 2004.¹¹ Whether these families join the ranks of the IDPs currently residing in Serbia or whether they return to their homes in Kosovo is not yet known.

Much has been written over the years about the plight of refugees and IDPs in Serbia and Montenegro.¹² As Kosovo IDPs now mark five years living in displacement, their lives are still characterised by the daily struggle to survive and a lack of real choice concerning the future. Given the continuing unstable security situation in Kosovo, return has been a realistic option for only a very few, mainly those from the few Serb-majority municipalities or rural areas in eastern Kosovo around the Gjilan/Gnjilane region.

In addition to basic survival needs, major problems faced in displacement include recognition of citizenship, documentation and freedom of movement. IDPs temporarily residing in different parts of Serbia and Montenegro are in need of basic identity documents (such as birth certificates or citizenship certificates) that can only be issued from dislocated registry books.¹³ Many IDPs, especially Roma, have never been registered in these records. They now need to be registered in order to be able to exercise their legal rights, yet there is no mechanism in place to assist them. In Serbia, addressing these problems has been made more difficult due to the lack of a clear government policy.

Throughout the five years since the IDPs from Kosovo arrived in Serbia and Montenegro, their legal rights related to citizenship, accommodation, employment, pension, freedom of movement, health care, and education have at times been unclear, neglected and unresolved. This study will examine each of these topics

in Kosovo and on numbers provided by Roma NGOs. According to the 1991 census, 44,307 persons declared themselves to be Roma in Kosovo. However, as it was difficult to have access to all parts of Kosovo, the estimates were that there were about 46,000 Roma in Kosovo. In the 2002 research study conducted by the Ministry for Human and Minority Rights together with the Centre for Ethnicity Research, *Roma Settlement, Living Conditions and Possibilities for the Integration of Roma in Serbia*, 2002, it was estimated that there were 46,238 Roma IDPs in Serbia (at p. 14).

⁸ Annexe 4 "Influx of IDPs from Kosovo" in FR Yugoslavia (as at 1 March 2001), UNHCR.

⁹ UNHCR Representation in Serbia and Montenegro, *Press Clippings*, 08/09/2003.

¹⁰ Annexe 4 "Influx of IDPs from Kosovo to other parts of Serbia during 2001, 2002", UNHCR BO Belgrade, IDP Registration Database, January 2003.

¹¹ The source is UNHCR internal data.

¹² Though much of the literature addresses refugees primarily, treating the situation of IDPs analogously by applying the same strategies applied to the refugee community. See the Bibliography of sources cited and some further reading on refugees and IDPs.

¹³ These registry books were removed from Kosovo in June 1999 and brought to numerous locations in central and south Serbia where Kosovo municipalities "in exile" were established. See discussion in Documentation section for listing to dislocated registry offices.

along with a discussion of three particularly vulnerable communities within the IDP population – the Roma, failed refugee claimants returned from Western Europe and the March 17 IDPs. These issues overlap and intertwine and sometimes spring from the same root problem. For this reason, the classifications are used here as only an aid to understanding the nature and scope of the difficulties and thus to facilitate fashioning appropriate solutions. What is needed is a coordinated, multifaceted approach to resolving *all* of these issues. This will permit this part of the citizenry to find greater stability in their daily lives and begin again to contribute to and partake in broader society.

Chapter 2: Legal Framework

International Law

The international legal framework for the protection of IDPs includes international human rights law and international humanitarian law. Refugee law is not directly applicable but, because IDPs suffer similar experiences, this body of law is often useful by way of analogy.¹⁴

Historically, human rights were seen as a matter mainly governed by national law. It later gained protection under international treaties and customs. Today, human rights law is codified in universal and regional, binding and exhortatory instruments. It was conceived of as the body of subjective rights of the individual (and, more recently, of groups) against the State. Human rights are universal: they apply everywhere and to everyone. They are concerned with all aspects of human life and consequently have a growing and significant impact on public opinion and international policies.¹⁵

International humanitarian law (IHL) was developed as a law of international armed conflicts governing inter-state relations for the protection of individuals. IHL is codified in binding international instruments and is applicable in armed conflicts, both those of an international nature and those of a non-international (*i.e.*, internal) nature.¹⁶ Because IHL applies mainly during the period of conflict, the most relevant law to the situation of IDPs in Serbia and Montenegro today is human rights law. Notwithstanding, IHL obligations are on-going and come to the foreground should the region fall into armed conflict again.

Nations are bound by the treaties to which they are parties. Serbia and Montenegro is bound by the treaties to which the former SFRY was a party.¹⁷ Further, these international obligations bind states in their interpretation and application of domestic and constitutional laws. Indeed, article 16 of the Constitutional Charter of the State Union of Serbia and Montenegro gives precedence to ratified international treaties; article 72 of the Constitution of Serbia gives it the authority to deal with other states and institutions internationally; and, article 81 of the Constitution of Montenegro grants Montenegro the authority to ratify international treaties in areas within its competence.

In addition, countries may be bound by the rules and treaties of international and regional organisations to which they belong. Serbia and Montenegro is a member of the United Nations (UN) and of the Council of Europe (COE) and is thus bound by the charters of these organisations.

¹⁴ Deng, Francis M., *Compilation and Analysis of Legal Norms*, Report of the Representative of the Secretary-General submitted pursuant to United Nations Commission on Human Rights Resolution 1995/57, Doc. No. E/CN.4/1996/52/Add.2 at paras. 24-26.

¹⁵ *Op. Cit.* ICRC (M. Sassoli and A.A. Bouvier), *How Does Law Protect in War? Cases, Documents and Teaching Materials on Contemporary Practice in International Humanitarian Law*, Geneva 1999 at p. 263.

¹⁶ *Ibid.* And see [www.icrc.org/web/eng/siteeng0.nsf/html/57JNXM/\\$FILE/What_is_IHL.pdf](http://www.icrc.org/web/eng/siteeng0.nsf/html/57JNXM/$FILE/What_is_IHL.pdf)

¹⁷ Article 63 of the Constitutional Charter of the State Union of Serbia and Montenegro.

Serbia and Montenegro is bound by international human rights law and by IHL by virtue of its ratification of certain treaties and conventions, by virtue of its membership in bodies such as the United Nations and the Council of Europe, by virtue of custom and by virtue of its own constitutions.¹⁸

A recent document produced by the UN represents an important contribution to the protection of IDPs: the *United Nations Guiding Principles on Internal Displacement* (UNGP) was drafted under the responsibility of Mr. Francis Deng, the Representative of the Secretary-General on Internally Displaced Persons.¹⁹ The UNGP is not legally binding. It was created as an instrument to guide states and state actors in their relation to IDPs, as well as inter-state and non-governmental organisations that deal with IDPs. It restates existing laws – including treaty law to which Serbia and Montenegro is a party – and seeks to clarify grey areas and fill in gaps. The UNGP identifies the rights relevant to the protection of IDPs in all phases of displacement. It discusses, *inter alia*, the right to be protected against arbitrary displacement, the right to reside in safety and dignity during displacement, and the right to safe return, or settlement and reintegration.²⁰

Serbia and Montenegro is a party to many of the key human rights documents. Its constitutions acknowledge and respect the binding nature of international law, giving precedence to it in the interpretation of domestic laws. There is no doubt that it is also bound by customary international law and the charters and statutes of the international organisations to which it is a member.

State Union of Serbia and Montenegro

Constitutional and Legislative Framework

The State Union of Serbia and Montenegro was proclaimed on 4 February 2003 and is based on the equality of the two member states, the Republic of Serbia and the Republic of Montenegro. Its highest legal act is the *Constitutional Charter of the State Union of Serbia and Montenegro*. Article 3 entrenches respect for human rights and the preservation and promotion of human dignity, equality and the rule of law into the highest law of the land.

The State Union Constitutional Charter of the State Union of Serbia and Montenegro incorporates the *Charter on Human and Minority Rights and Civil Freedoms* (State Union Human Rights Charter) as a constituent part.²¹ This document acknowledges human rights as the cornerstone of the nation and contains many provisions

¹⁸ Annexe 7 provides a list of the relevant international treaties and conventions to which Serbia and Montenegro is a party. Serbia and Montenegro became a member of the Council of Europe on April 3, 2003.

¹⁹ See Annexe 5 – UN Guiding Principles on Internal Displacement, UN Publication E/CN.4/1998/53/Add.2. Mr. Deng first produced a comprehensive study entitled *Compilation and Analysis of Legal Norms* (E/CN.4/1996/52/Add.2) – a study that examined the extent to which internally displaced persons were covered by international law. As recounted in the preface to the UNGP, the 1996 compilation project concluded that existing law did provide some coverage but there were significant gaps with respect to protection and assistance afforded to IDPs. Subsequently, Mr. Deng was requested to prepare an appropriate normative framework for IDPs and it was this that led to the drafting of the UNGP.

²⁰ Introductory Note to UN Guiding Principles on Internal Displacement, UN Publication E/CN.4/1998/53/Add.2.

²¹ Official Gazette of Serbia and Montenegro, No. 6/03 of 28.02.2003.

particularly relevant to IDPs. It includes, for example, the right of asylum including the right to protection and assistance (article 38), the right to property (article 38), the right to work (article 40), the right to social welfare and social security (article 42), the right to education (article 43), the right to health care (article 45) and article 39 sets out the special protection afforded to the family, mother and child. Chapter III of the State Union Human Rights Charter describes the rights of national minorities and contains provisions on discrimination, forced assimilation, racial, hatred and identity rights.

The *Law on Protection of Rights and Freedoms of National Minorities*²² protects individual and collective rights of persons belonging to national minorities. It is relevant here as it assigns rights to Roma (the Roma are specifically mentioned), an ethnic community particularly affected by internal displacement. This law obliges the authorities to adopt laws and other measures to improve the situation of Roma and prohibits all forms of discrimination towards national minorities.²³

Together, these two constitutional documents and this important piece of legislation clearly illustrate the value the State Union places on human rights and the protection of national minorities within its boundaries.

Institutional Framework

The Ministry most relevant to the protection of IDPs is the Ministry of Human and Minority Rights (MHMR), established by the Constitutional Charter of the State Union of Serbia and Montenegro and mandated with monitoring the implementation of human and minority rights in accordance with domestic and international law. This is a responsibility it shares with the member states.²⁴ The MHMR's offices are responsible for monitoring specific issues for refugees and IDPs and ensuring that the interests of national minorities, especially Roma, are adequately addressed.

It is the Working Group's observation that though the MHMR is functioning, it is severely understaffed and thus cannot cover its entire field of responsibilities. Sadly, it has not to date been very involved in the plight of IDPs. Further, the mandate on refugee and IDPs rights is narrowly confined to monitoring the realization of rights stemming from international, multinational and bilateral agreements. Consequently, the MHMR is not dealing systematically and consistently with monitoring domestic conditions in the field of protection of IDPs. It is concerned only with that aspect of protection that overlaps with the broader focus on general human rights protection or minority rights. For example, Roma IDPs are addressed only fleetingly in a section of the *National Draft Strategy for the Integration and Empowerment of Roma*, discussed *infra*.

Another relevant State Union institution is the Roma National Council, established on 24th May 2003 in accordance with article 19 of the *Law on Protection of Rights and Freedoms of National Minorities*. It is comprised of 35 members, all representatives of the Roma community. All members have a consultative status, and according to article 19, this Council "represents the national minority in the fields of official language use, education, informing in the language of minority and culture. It participates in decisions about issues in these fields and founds institutions in these fields". The law does not, however, define clearly the precise roles of the National

²² Official Gazette No.11 of 27.02.02.

²³ Articles 4(2) and 3(1).

²⁴ Article 45 of the State Union Constitutional Charter of the State Union of Serbia and Montenegro.

Council in these fields, nor is the Council referenced in other laws on, for example, culture or education.

The Roma National Strategy Secretariat was established in April 2003, and is integrated within the MHMR. Indeed, a Memorandum of Understanding was concluded between the MHMR, the Organisation for Security and Cooperation in Europe (OSCE), UNHCR, the Council of Europe (COE), and UN OCHA to support the MHMR in establishing the Roma National Strategy Secretariat.²⁵

Policy Framework

The State Union has produced two policy papers relevant to the situation of IDPs:

- (1) National Draft Strategy for the Integration and Empowerment of Roma;
- and,
- (2) IDP Needs Assessment Report.

The MHMR sought and received international support in developing a comprehensive policy on Roma and the result is the *National Draft Strategy for the Integration and Empowerment of Roma* (Roma National Strategy). Its stated aim is to facilitate the implementation of the *Law on Protection of Rights and Freedoms of National Minorities* and to further Roma's integration and empowerment into the social and economic framework of the State Union. A draft was issued for public comment on December 18, 2002 by the Ministry.²⁶ It highlights the fact that among the Roma, IDPs are the most vulnerable and marginalised community and that, in general, they lack information on their rights and on services available to them. It recommends, *inter alia*, a new registration of displaced Roma in cooperation with Roma NGOs, in order to reach non-registered Roma IDPs, and that outreach programmes be established in settlements to facilitate access to basic services such as education and health care.²⁷

At the time of the writing of this study, the 2002 Roma National Strategy was still a draft. It has been adopted by the Roma National Council after an extensive public debate which involved NGOs, Roma organisations and government ministries. It has not yet been approved by the State authorities, as there are different views on the level of approval required. Some posit that it should be approved by the Council of Ministers of SCG. Others believe it should be approved by the Government of Serbia, while others think that it should be approved by the Parliament of SCG. The Working Group awaits the approval and implementation of this important document.

The *IDP Needs Assessment in Serbia and Montenegro – Final Report* was released in May 2003 by ICRC and was the result of a collaborative effort between the Ministry of Social Affairs of the Republic of Serbia, Ministry of Labour and Social Welfare of the Republic of Montenegro, UNHCR, Red Cross of Serbia and Red Cross of Montenegro. The report's stated objective was to define an IDP caseload that should

²⁵ OSCE, UNHCR, UN OCHA and the COE have undertaken to make initial financing available. In order for the Secretariat to be fully integrated into the Ministry to ensure implementation of the National Strategy and sustain its efforts, the supporting organisations recommend the inclusion of the Secretariat into the regular budget of the Ministry in 2004.

²⁶ With support from the OSCE, UNHCR, UN OCHA and UNHCHR a strategy team was formed consisting of international and national consultants, which was tasked with formulating a strategy in close consultation with the Roma population, representatives and members of the community at large, as well as with the Ministry, line ministries, civil society and international organisations. The Strategy was written in the period between September 16th and December 13th 2002.

²⁷ See Part II "Sectors of the Draft Strategy", 4. "The specific situation of Internally Displaced Persons", pp. 54-58 of the Roma National Strategy.

continue to be assisted after the planned ICRC withdrawal of food and non-food humanitarian assistance to the most vulnerable IDP families. It defined a caseload of 6,000 families that would continue to require assistance after the withdrawal of ICRC's. This report, along with ICRC's subsequent internal needs assessment report entitled *The Vulnerability Assessment of Internally Displaced Persons in Serbia and Montenegro* are valuable tools. They contain a detailed and realistic picture of IDPs' needs and of the interplay between these needs and the existing social infrastructure.

Overall, though the State Union has a good constitutional framework on human rights, the legislative, institutional and policy frameworks addressing IDP needs and protection are not well constructed. In particular, there is no real State Union level activity focused on refugees and IDPs nor is there a comprehensive policy articulated for a "crisis" situation that is five years old. Taken in conjunction with the very narrowly and imprecisely defined responsibilities of State Union institutions established to assist IDPs and refugees, the overall picture is one of short term responses. Consequently, these communities are greatly hindered in accessing, promoting and developing their rights at the level of the State Union.

The Republic of Serbia

Constitutional and Legislative Framework

The Republic of Serbia does not have any specific legal framework for IDPs. IDPs are citizens of Serbia, and the fact that they should enjoy the same rights as all citizens is clear by inference. These rights are listed in the *Constitution of the Republic of Serbia* (Constitution of Serbia).²⁸

Specific laws will be mentioned in the appropriate thematic sections, *infra*, but the *Law on Local Self-Government*, adopted in February 2002²⁹ can be considered an important law in the general discussion about IDPs. It delegates more authority to local communities and provides for opportunities for financing and organisation of local minority communities in various fields such as education and culture. It is thus relevant as it is ultimately local residents and local government that play a lead role in the acceptance, integration or rejection of an IDP community.

Institutional Framework

There are two main agencies responsible for IDPs in Serbia: the Serbian Commissariat for Refugees and the Kosovo Coordination Centre.

The 1992 Serbian *Law on Refugees* establishes the Serbian Commissariat for Refugees and defines its mandate.³⁰ Since 1999, the Commissariat has taken on some responsibility to assist the most vulnerable IDPs and currently, provisions of this law are being applied to IDPs. For example, it administers collective centres (CCs) and issues IDP cards. However, not one provision actually defines the status of IDPs.³¹

²⁸ Official Gazette of the Republic of Serbia 1/1990.

²⁹ *Law on Local Self-government*, Official Gazette No.9 of 26.02.02.

³⁰ Official Gazette of the Republic of Serbia 18/92, 42/02, 45/02, articles 5 and 6.

³¹ Government of Serbia, *National Strategy for Resolving the Problems of Refugees and Internally Displaced Persons*, Belgrade May 2002 at p. 18.

The Kosovo Coordination Centre (CCK) was established by the Government of the FRY and the Government of the Republic of Serbia in the fall of 2001. The CCK is essentially the focal point for resolving issues related to Kosovo and is tasked to coordinate activities concerning IDPs with respect to both humanitarian assistance and return.³² The main task of the CCK includes the coordination of state actors and agencies in resolving the problems of Kosovo with full observance of UN Security Council Resolution 1244, and monitoring the consistent implementation of the joint UNMIK-FRY document signed in November 2001.³³ Aside from the CCK and Commissariat, a number of governmental ministries share some responsibility towards IDPs, including the Ministries of Interior, Labour, Health, Social Affairs and Education.

As IDPs are usually economically vulnerable, it is important to mention the social benefits system in place in Serbia. The Ministry for Social Affairs is the key institution as it provides social assistance benefits in four areas:

- (1) Pensions;
- (2) Disability allowance or DNP;
- (3) Children's allowance; and,
- (4) Family financial support (Materijalno Obezbedjenje Porodice) or MOP

The first three benefits are essentially fixed amounts while the fourth is a calculated on a case by case basis and is relative to the combined family income.³⁴

Policy Framework

In May 2002, the Government of the Republic of Serbia, in cooperation with UNHCR, UN OCHA and UNDP, elaborated and adopted the *National Strategy for Resolving the Problems of Refugees and Internally Displaced Persons* (Refugee and IDP Strategy). Though recognised as a major effort to solve one of the outstanding humanitarian issues confronting the state, the Refugee and IDP Strategy focuses more on refugees than it does on IDPs. For instance, the implementation programme outlined is applicable to refugees, not to IDPs.³⁵ It does, however, advocate for the "continuous informing of IDPs on all relevant issues related to exercising their rights by establishing separate information points in the field and greater engagement of the media, following initiatives and proposals of the Coordinating Centre".³⁶

IDPs are also mentioned in Serbia's recently drafted *Poverty Reduction Strategy Paper for Serbia* (PRSP), which aims at minimizing poverty and enhancing

³² The CCK has a number of sections, which handle administrative, economic development, cultural heritage and return issues.

³³ *Op. Cit.* the Government of Serbia, *National Strategy for Resolving the Problems of Refugees and Internally Displaced Persons*, Belgrade May 2002 at p.10. In November 2001, the head of the CCK, Mr. Nebojsa Covic and UNMIK signed the "Common Document" outlining their future co-operation.

³⁴ As described in ICRC with Ministry of Social Affairs of the Republic of Serbia, Ministry of Labour and Social Welfare of the Republic of Montenegro, Red Cross of Serbia and Red Cross of Montenegro, *IDP Needs Assessment in Serbia and Montenegro*, May 2003 at pp. 15-16.

³⁵ Roma National Strategy at p. 54 and Grupa 484, *Refugees and IDPs in Poverty Reduction Strategy Paper – Ensuring Their Proper Inclusion*, April 2003, at p. 3.

³⁶ See *Refugee and IDP Strategy* at pp.26 and 27.

employment opportunities for vulnerable groups of society. The PRSP was prepared with input from civil society and other actors.³⁷

Both strategies are generally regarded as strong and thorough, having benefited from consultations with civil society, beneficiary communities and various government agencies. The Roma National Strategy, too, will be implemented in the Republic of Serbia. However, the most pronounced criticism is that these strategies are not being adequately coordinated with one another nor implemented into law and are thus losing some of their ability to make a lasting impact.

Some posit that the PRSP and the Refugee and IDP Strategy might be regarded as complementary. In this way, the PRSP might be regarded as a general strategy for the reform of the nation's economy. The Refugee and IDPs Strategy might be seen as complementary to the PRSP, focused more on finding durable solutions for the problems of refugees and IDPs.³⁸

Serbia has taken some steps towards long-term solutions. In November 2003, the Government of Serbia – represented by the Ministry of Social Affairs, the Commissariat, and the CCK – signed a memorandum of understanding with ICRC and the Red Cross of Serbia for the creation of the Cash Assistance Program (CAP). The programme was created by ICRC as part of its phasing out of humanitarian assistance to IDPs in Serbia and Montenegro, as outlined in the *IDP Needs Assessment in Serbia and Montenegro – Final Report*.

CAP provides direct cash assistance to over 6,000 vulnerable IDP families in Serbia. The first year of assistance is being financed by ICRC, but the Government of Serbia has undertaken to provide long-term cash assistance to CAP beneficiaries through its regular social assistance programme (MOP), providing that CAP beneficiaries qualify for MOP. The programme is run on a rolling basis, with approximately 500 persons passing from the CAP into MOP each month.

The Working Group wishes to emphasize that the extent to which CAP beneficiaries will qualify for regular social assistance will depend in large part on their ability to gather the required documentation to illustrate their economic vulnerability. In many cases, this will be problematic for IDP families. This is because many do not have these documents or have great difficulty in obtaining them, as discussed *infra* in the sections on Documentations and Roma. Throughout 2004, 500 CAP beneficiaries will be invited to apply for regular social assistance through the Ministry for Social Affairs.

The signing of the memorandum of understanding has shown good will on the part of the Government of Serbia to find long-term solutions for vulnerable IDP families. It is an important step forward in establishing economic security for its most vulnerable citizens. The extent to which the system is able to absorb the in-flow of IDPs will have to be carefully monitored.

³⁷ The local NGO "Group 484" made extensive comments on the section pertaining to IDPs, discussing the specific hardships that this segment of the population faces.

³⁸ Grupa 484, *Refugees and IDPs in Poverty Reduction Strategy Paper – Ensuring Their Proper Inclusion*, April 2003, at p. 3.

The Republic of Montenegro

Constitutional and Legislative Framework

In 1992, the Government of Montenegro passed the *Decree on Providing Care to Displaced Persons*³⁹ to address the situation of refugees from Croatia, Bosnia and Herzegovina. According to article 2 of this law, displaced persons are citizens of former Yugoslav republics and other persons who were forced, because of their ethnicity, religion, or political affiliation, to flee their place of residence and to “immigrate” to the Republic of Montenegro.⁴⁰

The *Decree on Providing Care to Displaced Persons* thus regulates the influx of citizens from ex-Yugoslav Republics into Montenegro. These persons were called “displaced persons” because at the time Montenegro did not recognise the dissolution of Yugoslavia and the creation of new international borders. *De facto*, however, the newcomers were treated as refugees. This law granted a special status to persons fleeing former Yugoslav republics and Kosovo, but IDPs from Kosovo are not entitled to the same special status as are the other former SFRY refugees.

In 2000, Montenegro's Parliament adopted the resolution *Non-recognition of Federal Decisions*. The resolution, which has the force of law, stipulates:

The Parliament of the Republic of Montenegro shall not recognise and accept any legal or political act, whatsoever, passed by the legislative, executive and judicial authorities of the Federal State without participation of lawful and legal representatives of Montenegro.⁴¹

Thus, for example, neither the State Union's *Law on Protection of Rights and Freedoms of National Minorities* nor its *Roma National Strategy* has been recognized by Montenegro. Nor does Montenegro have its own laws with respect to these issues. Montenegro has announced however, that the Ministry for the Protection of Minorities is preparing a law on minorities. No draft yet is available publicly nor is there news on when the final version will be ready.

The Montenegrin Parliament passed the *Law on the Protector of Human Rights and Freedoms* on 8 July 2003.⁴² This law establishes the Office of the Protector who is entrusted with protecting human rights and freedoms of persons

“[...] as guaranteed by the Constitution, laws, ratified international treaties on human rights, and generally recognised rules of international law, when these are violated by means of enactment, action or failure to act by state

³⁹ Official Gazette of the Republic of Montenegro 20/93, 27/94.

⁴⁰ *Ibid.*, article 2.

⁴¹ Parliament of the Republic of Montenegro, *Resolution on Protection of Montenegro's interests*, Podgorica, July 8 2000.

⁴² Official Gazette of the Republic of Montenegro No.41/03, 10 June 2003.

authorities, authorities of local self-government and public services and other holders of public power".⁴³

Anyone who believes his/her human rights and freedoms to have been violated can contact the Protector by submitting a complaint. As this is a relatively new institution, it is not yet known how the Office of the Protector will function – whether it will be effective in satisfying its mandate, and whether IDPs will benefit from its protection.

Institutional Framework

In accordance with articles 4 and 5 of the *Decree on Providing Care to Displaced Persons*, the Government of Montenegro established the Montenegrin Commissariat for Displaced Persons (MCDP). The MCDP's specific tasks include keeping records of displaced persons, managing aid distribution by other authorities and organisations, attending to accommodation needs, and establishing conditions for return or resettlement.

In 1999, MCDP's authority was extended to include IDPs from Kosovo and currently it makes no distinction between IDPs and refugees with respect to providing assistance. In short, MCDP is the primary governmental institution that deals with IDPs. UNHCR provides the major share of its annual budget.

The Ministry for Labour and Social Welfare provides two major social assistance benefit services:

- (1) Children's allowance; and,
- (2) Family financial support (MOP)

The MOP is calculated and distributed on the basis of the family income. In addition to income qualifications, there are restrictions on possession or use of property for those wishing to apply for MOP.⁴⁴

Policy Framework

Unlike Serbia, Montenegro has not adopted a strategy for the resolution of refugee and IDP issues. Authorities in Montenegro seem committed to the adoption of such a document, but the process has been slow to start. No further information was available during the drafting of this study.

Like Serbia, Montenegro has also signed a memorandum of understanding with ICRC for a Cash Assistance Program (CAP) covering 1,500 families, but the Montenegro CAP does not include an agreement by Montenegro to provide long-term assistance to the most vulnerable IDP families. The CAP in Montenegro, therefore, is more limited in scope, and will provide only short-term assistance. Montenegro's position is that IDPs from Kosovo are not citizens of Montenegro, and therefore its government has no obligation to provide long-term assistance to this community. (See discussion *infra* on Citizenship.)

⁴³ Swiss Agency for Development and Cooperation (SDC) / Network of Humanitarian Legal Offices, *Free bulletin for assistance to Refugees and Internally Displaced Persons* No. 25, September 2003, at pp. 5 and 6.

⁴⁴ As described in ICRC with Ministry of Social Affairs of the Republic of Serbia, Ministry of Labour and Social Welfare of the Republic of Montenegro, Red Cross of Serbia and Red Cross of Montenegro, *IDP Needs Assessment in Serbia and Montenegro*, May 2003 at p. 17.

There is no legal or policy framework in Montenegro to address the concerns and needs of IDPs. Indeed, they are excluded from the one law enacted for displaced persons.⁴⁵ Further, denied access to the support, services and opportunities normally extended to citizens, IDPs in Montenegro have been neglected because of the gaps in the legal system.

Findings

Overall, there is a solid human rights legal framework at all levels of government. National minorities, among the most vulnerable IDP communities, also benefit from additional legal protection in Serbia. There have been various efforts at the State Union and Republic levels to address the general needs or situation of IDPs. However, there is no comprehensive long-term strategy that offers IDPs real solutions.

Recommendation 1

The Working Group recommends that the authorities implement the policy commitments made in favour of the improvement of the plight of IDPs. Mechanisms might include:

- Amending existing legislation so that strategies for poverty reduction, IDPs, refugees and Roma are coordinated and cited where appropriate in relevant laws and institutions.
- Creating small units in key ministries with the mandate of interpreting and applying the laws of that ministry to better serve the IDP community.
- Fully integrating vulnerability criteria for benefits to IDPs as part of the existing social service safety nets. Benefits would need to be awarded on the basis of the same criteria as between IDPs and the non-IDP population.

⁴⁵ Per the definition of displaced person in article 2 of the *Decree on Providing Care to Displaced Persons*.

Chapter III: Problems Facing Internally Displaced Persons

IDPs in Serbia and Montenegro are voiceless for the most part. Their presence is hidden in statistics about refugees, the homeless, the sick and the impoverished. Most of the problems they face daily are documented only in testimonials from IDPs themselves given to aid agencies and set out in the field reports from international, regional and local organisations working with them. The picture of obstacles IDPs often confront emerges quite clearly from their many stories with recurring themes. However, the responses of the authorities do not come through quite so clearly, their actions are no so transparent. On what basis was the request for a document denied? Why does one ministry deal with IDPs and another not? Why are IDPs excluded from some assistance programmes? Why are IDPs subjected to more procedural requirement in accessing health services than other citizens? Does the problem lie in the implementation of the law or in the way officials interpret that law? The questions go on. The lack of clarity in the system limited the analysis that could be undertaken in the present study. Though the Working Group might identify the problem, it might not be able to explain why it occurred. That will be a job for the authorities.

Thus, the objective of this chapter is to bring to the Governments' attention the real and most pressing problems of IDPs, in the hope that the Governments themselves might examine these problems from their perspectives and assists in fashioning appropriate solutions.

Most IDP problems are intertwined. For lack of a birth certificate, the IDP could not obtain an identity care and for lack of an identity card, the IDP could not access housing and employment without which she became homeless. The problems are also linked partially at their root: as the target of discrimination, an IDP finds many doors to the basics of life closed to him. IDPs in Serbia and Montenegro are exposed systematically to discrimination – direct and indirect – regarding, above all, registering their residence and obtaining personal documents, without which they have difficulties accessing other rights.

ONE: Citizenship

IDPs have many of the same protection needs as refugees.⁴⁶ However, their situation differs markedly from that of refugees. Unlike refugees, they are citizens of the country in which they are displaced, and therefore the primary responsibility for their protection lies with the State. This is the case for IDPs from Kosovo who fled to Serbia and Montenegro and who should continue to enjoy all the rights of citizenship.⁴⁷ Montenegro's citizenship law, however, bars IDPs from obtaining Montenegrin citizenship and, in practice, the Montenegrin Government views and treats IDPs as citizens of Serbia, even though some are of Montenegrin heritage.

⁴⁶ "Internally displaced persons are persons who have been forced to flee their homes because of armed conflict, violence, violations of human rights, natural or human-made disasters, and who have not crossed an internationally recognised state border." *Op. Cit.*, Introduction to the UNGP, UN Publication E/CN.4.1998/53/Add.2 (Annexe 5).

⁴⁷ In accordance with article 8 of the State Union Constitution: "A citizen of the Member State is also a citizen of Serbia and Montenegro."

Until the beginning of 2003, citizenship was determined by the federal Ministry of the Interior. Following the adoption of the Constitutional Charter of the State Union of Serbia and Montenegro in February 2003, citizenship was transferred from the federal level to the two Republican Ministries of the Interior. The law in force in Montenegro is the 1999 *Montenegrin Citizenship Law* and this law gives primacy to internal Republic citizenship over State Union citizenship. It requires 10 years of continuous permanent residency to obtain citizenship.⁴⁸ It thus effectively bars refugees from SFRY and IDPs from Kosovo from obtaining Montenegrin citizenship. This is because IDPs and refugees are only given *temporary* residency cards through the MCDP. It therefore becomes impossible for them to meet the permanent residency requirement for citizenship. Such a requirement does not conform with article 8 of the Constitutional Charter of the State Union of Serbia and Montenegro.

Moreover, in practice, the Montenegrin Ministry of Interior is not implementing any law on citizenship. This is because the Montenegrin law was never enforced and the federal law was amended without the participation of Montenegrin members of Parliament, in accordance with the *Non-recognition of Federal Decisions* Parliamentary Resolution. Therefore, in March 2001, the Montenegrin Ministry of Interior stopped processing all applications for citizenship, including those filed by refugees and IDPs from former Yugoslav Republics currently residing in Montenegro.

Without Montenegrin citizenship, IDPs have limited access to important political rights, which in turn prevents them from formally establishing residence in Montenegrin municipalities and exercising voting rights.⁴⁹ The Working Group refers to the right to vote without unreasonable restrictions as set out in article 25 of the *International Covenant for Civil and Political Rights* (ICCPR). Serbia and Montenegro is a party to the ICCPR.⁵⁰

As non-Montenegrin citizens, IDPs face discriminatory treatment potentially in areas of employment and tax obligations. Further, the interpretation that IDPs are only citizens of Serbia has meant that IDPs are not registered by the Ministry of Interior, but by the MCDP, and other ministries assume little or no responsibility towards them. Also, Montenegrin citizenship is a prerequisite to accessing social services. In Montenegro, under existing social and child welfare law, "all citizens are entitled to social services", but because IDPs are not considered citizens, they do not benefit from these laws.⁵¹

More than five years after their displacement from Kosovo, IDPs' ability to become self-sufficient and possibly integrate into Montenegrin society is hampered by an inadequate legal and policy framework. The Government of Montenegro's approach to IDPs means that their rights and obligations are not specially addressed. Indeed, the entire IDP community is envisaged within a framework that does not recognise that they are citizens of the country – an omission that greatly weakens the exercise of right that stem from citizenship. It also impedes the self-sufficiency of IDPs in Montenegro.

⁴⁸ Article 9 of the *Montenegrin Law on Citizenship* of 1999.

⁴⁹ "While IDPs are being accorded social rights and limited benefits in Montenegro, there is no willingness to extend political rights out of concern for the ethnic balance and political stability of Montenegro." Briefing Note, UNHCR, 18 July 2002 (COE 16 October 2002, para. 208).

⁵⁰ Official Gazette 7/71 (ratified and entry into force 27.04.92).

⁵¹ As described in ICRC with Ministry of Social Affairs of the Republic of Serbia, Ministry of Labour and Social Welfare of the Republic of Montenegro, Red Cross of Serbia and Red Cross of Montenegro, *IDP Needs Assessment in Serbia and Montenegro – Final Report*, May 2003 at p. 17.

Findings

Montenegro views IDPs as Serbian citizens and outside the scope of responsibility of its government. Montenegro has also introduced legislation, the *Montenegrin Citizenship Law*, that, taken in conjunction with the residency system for IDPs, effectively disqualifies IDPs from ever obtaining Montenegrin citizenship. Consequently, IDPs are disenfranchised politically, economically and socially. Yet, IDPs are citizens of Serbia and of Serbia and Montenegro as set out in article 8 of the Constitutional Charter of the State Union of Serbia and Montenegro .

TWO: Documentation

Many IDPs cannot obtain or replace basic documents that they need to prove their legal standing and to access basic social services. There are numerous, often linked reasons why IDPs find themselves without documents years after their initial displacement. Some obstacles stem from the system in place (e.g., overly bureaucratic procedures, distant registry offices, *inter alia*) and others from unlawful practices used in processing claims for IDPs. These are examined in turn below.

A citizen without basic identity documents is a marginalized citizen, incapable of exercising rights and fulfilling duties, benefiting from services and participating in society politically, economically and socially. For this reason, most citizens of the State Union of Serbia and Montenegro hold several forms of documentation. The following table⁵² lists the key basic documents and their purpose.

<i>Type of Document</i>	<i>General Purpose</i>
Birth Certificate	Registration for school Obtaining citizenship card Key to many other documents
ID Card (Licna karta)	Proof of residency Access to services Proof of identity
Marriage License	Proof of marriage Legal rights of married persons
Work Booklet	Proof of work history and qualifications Obtaining new employment Registering at Bureau of Unemployment Claiming pension
Death Certificate	Proof of death Family's access to administer estate

In addition to these documents, an IDP must also obtain an IDP card if he/she wishes to have his/her status recognized legally and in order to gain access to humanitarian aid, including admission to CCs or other housing programmes. An IDP requires

⁵² Based on table from UNHCR, *A Survey to the Issues Affecting Roma Documentation and a Call to Action*, Belgrade July 2002, at p. 14.

other basic personal identity documents – such as a birth certificate and identity card – in order to apply for an IDP card.

Without proper identification, IDP beneficiaries of CAP and other IDPs will not be able to access regular social services which require proof of identity, income and property ownership as demonstrated with personal documents.

Dislocated Registry Offices

In June 1999, Serbian authorities moved registry books (which include proof of birth, marriage, death and citizenship) from Kosovo to different locations in central and southern Serbia where Kosovo administrative offices “in exile” were established. Seven such offices exist and are often referred to as “dislocated registry offices”.⁵³ For an IDP from Kosovo living in Serbia and Montenegro to obtain documents, she must apply to the corresponding dislocated registry office, not at the registry office in the place where she actually resides.

For many IDPs, especially for those living further away in Montenegro, to travel to these dislocated offices imposes a hardship. Most IDPs live on the margins of economic existence and as a result, the travel costs associated with such a trip – requiring an overnight stay in some cases – are so high so as to be simply economically unfeasible.⁵⁴ The Danish Refugee Council (DRC) has noted that very often it is the elderly who face the greatest hardship in obtaining documents because their limited income and advanced age make travel difficult. In one case reported to the DRC, an IDP from G. Milanovac was told to come to a dislocated registry office at a certain time when her document would be prepared. She traveled 150 km only to find that the document was not ready. This happened three times, after which she simply gave up.

Individuals who do not have a Personal Identification Number (JMBG) or who did not have their residence registered in Kosovo must go to a dislocated police office to obtain such a number. It is impossible for IDPs to submit requests for determining their JMBG at the location where they have temporary residence. The JMBG is a basic piece of identity document, and not having it complicated obtaining many other documents.

Recommendation 2

The Working Group recommends that the authorities consider simplifying the procedure of obtaining Personal Identification Numbers (JMBG) at police stations

⁵³ The displacement was provided for in the Serbian *Law on Registry Books*: “Maintenance of the Registry Books for the territory of the Autonomous Province of Kosovo-Metohija shall be provided by administrative authorities of:

- Nis for municipalities of Pristina, Podujevo, Glogovac, Obilic, Lipljan and Kovoso Polje;
- Kregujevac for municipalities of Pec, Istok and Klina;
- Kraljevo for municipalities of Kosovska Mitrovica, Srbica, Zubin Potok, Vucitrn, Zvecan and Leposavic;
- Krusevac for municipalities of Prizren, Orahovac, Suva Reka and Gora;
- Jagodina for municipalities of Djakovica and Decani;
- Vranje for municipalities of Gnjilane, Vitina, Kosovska Kamenica and Novo Brdo;
- Leskovac for municipalities of Urosevac, Kacanik, Stimlje and Strcpe.”

⁵⁴ International NGOs which provide legal assistance to IDPs, such as the Norwegian Refugee Council and the Danish Refugee Council, know of many cases in which IDPs have failed to obtain new documents because the travel costs have been prohibitive. See Norwegian Refugee Council, Civil Rights Projects, *IDP Documentation Problems*.

located in IDPs' place of temporary residence, where the police could process requests *ex officio*.

Powers of Attorney

In Serbia, some dislocated registry offices currently require IDPs to provide a power of attorney to a third party who seeks to obtain a document on their behalf. For instance, IDPs had to authorize on **an individual basis a representative of the Norwegian Refugee Council (NRC)** with a power of attorney to obtain documents from municipalities in Serbia where relevant registry books are located.

This practice is contrary to the procedure laid down in the *Law on Registry Books* which gives public access to registry books.⁵⁵ Indeed, this law is followed at all registry offices except for some dislocated registry offices; that is, in the registry offices that deal only with IDPs. In addition to being administratively more complicated, the power of attorney procedure attracts fees and must be notarised, all of which entails a financial burden for IDP households.

Recommendation 3

The Working Group recommends that registry offices administering dislocated registry books should provide documents by mail and should not require the issuance of a power of attorney when not envisaged by the law.

UNMIK & Republic of Serbia Cooperation

A broad set of problems arise because five years after the establishment of a UN international protectorate in Kosovo, there is still no agreement on the mutual recognition of documents between Serbian authorities and the United Nations Interim Administration Mission in Kosovo (UNMIK).⁵⁶ This lack of administrative cooperation and coordination has caused a wide array of practical obstacles for IDPs and can have long-lasting and serious consequences. Two case studies recorded by NRC Belgrade illustrate the real-life impact of this administrative problem.

Case 1: FJ owned a driver's licence issued by Serbian authorities in Kosovo before the international intervention there. He fled Kosovo for Serbia and lost his driver's licence along the way. Rather than requiring him to pass a new driving test in Serbia,⁵⁷ Serbian authorities asked that he provide a notarised certificate from Kosovo confirming his original driver's licence.

⁵⁵ See article 35: "Excerpts from birth registries and certificates related to particular facts entered into birth registries shall be issued at the personal request of the party interested. Issuance of excerpts and certificates shall not be done only in case of evident abuse." While having registry books public is unusual by European standards, the explanation for this practice is to be found in the large number of Serbian citizens who have been living abroad as guest workers for the past two generations. Authorities created public registry books in order to facilitate the provision of documents to citizens living abroad, which was a tacit way of supporting the export of labour.

⁵⁶ Agreements on recognition of documents are usually drawn up between states and they refer to all the documents issued by the governmental institutions and bodies (for example, excerpts from registry books).

⁵⁷ Passing a driver's exam costs hundreds of Euros because the driver must by law go to a certified drivers' school, attend a determined number of class and driving hours, and then take a test. If the citizen fails the test, she must re-enroll in the school. The main costs are not the test itself, but the driving school costs. A person with a foreign licence can go to a

FJ went to Pristina to obtain the notarised certificate document, but was rejected. He was told that he would have to register his residency in Kosovo (in Urosevac, his native town), obtain an UNMIK personal identification document, and then apply to Pristina again to obtain an UNMIK-issued driver's licence based on his old licence issued by Serbian authorities.

After some months, FJ completed these steps, traveling to Kosovo as necessary. He finally went to the dislocated Kosovo police office in Leskovac in order to obtain a Serbian drivers licence. Police held onto his UNMIK drivers licence pending a decision from the Ministry of Justice. The decision came back negative.

In short, Serbian authorities did not recognize the legitimacy of the UNMIK driver's licence. Further, authorities in Pristina have, until recently,⁵⁸ refused to issue a certificate confirming driver's licences previously issued by Serbian authorities.

Case 2: A and B were married in 2001 in Dragas, Kosovo a few months before fleeing to Switzerland where they applied for political asylum. Towards the end of 2002, they abandoned their asylum claim and moved to Belgrade.

Upon arrival in Serbia, B went to the dislocated police office in Krusevac (the dislocated office responsible for Dragas) to obtain a personal identification document. She could not obtain it under her married name because her UNMIK-issued marriage certificate was not recognised. Instead, the document was issued under her maiden name.

The couple's daughter was born in September 2003 in Zvezdara, Serbia. On the hospital release form, the child's mother was identified with her maiden name, as it appears on her personal document. B's husband, A, went to the municipal registry office for Zvezdara to register the birth of their daughter, but was rejected with the explanation that he needed a marriage certificate from the registry office in Krusevac. He was informed that without approval from the Ministry of State and Local-Self Government, UNMIK certificates could not be approved. The Zvezdara authorities advised him that his daughter could otherwise be registered as a child born out of wedlock. He refused the offer.

Upon the couple's request, NRC intervened and requested the daughter's registration under the family name, as a child born in wedlock. The Zvezdara authorities denied the request, stating, in accordance with a decision from the Ministry of State and Local-Self Government: "[...] this body has found that the child was born out of wedlock [because it] could not take into account a marriage certificate notarised by UNMIK." This decision is under appeal.

In sum, Serbian authorities in Belgrade refused to accept as legitimate a marriage certificate from UNMIK. Consequently, the couple's child was considered born out of wedlock by Serbian authorities.

local police station and obtain a local licence. This is not true, however, of UNMIK issued driver's licences.

⁵⁸ In December 2003, the Department for Issuing Driver's Licences in Pristina began issuing these certificates on a non-transparent *ad hoc* basis. Clients are required to appear personally, which is simply dangerous for non-Albanians.

The Working Group reminds the authorities of their obligations under the *Convention on the Rights of the Child*, article 3(1) of which reads:

In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration. [Emphasis added.]

The Zvezdara authorities' decision does not seem to take into consideration the best interest of the infant child, nor the constitutional provisions that extend special protection to the family (article 39 of the Constitutional Charter of the State Union of Serbia and Montenegro and article 29 of the Constitution of Serbia).

The Working Group recognizes that an agreement on the mutual recognition of documents is a delicate political issue to be navigated by state representatives and through diplomatic channels. However, the lack of such an agreement is currently causing havoc in the lives of many IDPs. Though the situation has certainly been improved with the change of position regarding de-registration of IDPs after Mr. Covic's letter,⁵⁹ IDPs continue to bear the brunt of this administrative impasse in other areas of their lives.

Bureaucracy

Some obstacles to obtaining documentation originate in how the system itself operates. As a starting point, the administrative procedures for obtaining personal documents in both Republics are often very complicated and time-consuming. The heavily bureaucratic system in Serbia is a challenge for the most educated and informed citizen. It is even more difficult for those who are not fluent in the local language or who have never been registered or who have suffered the misfortune of displacement and a concomitant loss of documents.⁶⁰ There exists, for example, a process of subsequent registration and rebuilding of registry books in cases where documents have been destroyed. NGOs involved in legal counseling, such as NRC, recount cases where IDPs in this situation have remained without documents for four years.⁶¹

IDPs who have *never* been registered have to perform a very time-consuming and complicated procedure of "subsequent registration". This is often the case for Roma IDPs. IDPs who need to be subsequently registered very often do not have all the required underlying documents. In some cases, the dislocated registry offices appear to use the situation to justify delays in issuing the registry book excerpts.

In sum, the Government could alleviate the hardship caused by these administrative complications by simplifying the process of subsequent registration by, for example, demonstrating some flexibility when IDPs do not have all the required documentation. High costs associated with requesting a document can also effectively prevent IDPs from obtaining the document and, subsequently, bar access to many basic services.

⁵⁹ See discussion, *infra*, in section on Freedom of Movement.

⁶⁰ Some public records were destroyed in the violence of 1999 and an unknown number remain in Kosovo.

⁶¹ Norwegian Refugee Council, Civil Rights Project, *IDP Documentation Problems*. UNHCR field offices note an additional problem. In cases where registry books have been destroyed and must be reconstructed, the often time consuming procedure means that IDPs must wait for a long time to be issued a document that is only valid for a short period, perhaps a matter of months.

Until June 2003, the average price for a document was 30 Serbian dinars, but the new *Law on Administrative Tax*⁶² increased the tax eight fold, with the new average price for a document costing 60 dinars for municipal documents and between 210 and 310 dinars for other documents.⁶³

Recommendation 4

The Working Group recommends that the authorities consider amending and simplifying administrative procedures in the process of reconstructing registry books and the process of subsequent registration into registry books. Indeed, this may include amending laws on administrative procedures to include simplified procedures for the registration of non-registered persons, such as a provision allowing identity to be proven by the sworn testimony of two witnesses.

Recommendation 5

The Working Group recommends that the authorities in Serbia and in Montenegro, acting particularly at the municipal level, consider revising regulations and administrative orders to reduce administrative fees related to access to documentation for IDPs.

Long Processing and Waiting Times

Another barrier IDPs commonly face is the excessively long waiting and processing times associated with obtaining documents. The average queuing times in some dislocated registry offices is long. More specifically, the average processing time for requested documents is 10 to 15 days.⁶⁴ As a result of these types of delays, registry offices often fail to issue excerpts from registry books and decisions on registration requests within the prescribed deadlines.⁶⁵ Part of the underlying problem may lie in understaffed and poorly equipped offices. Registry clerks face an enormous workload while their salaries are limited.⁶⁶ For example, in June 2002, an office in Nis with 10 staff serving six Kosovo municipalities received a daily average of 1,200 applications. In another instance, the registry office of Bujanovac relies on obsolete office equipment and has no computers. Many entries in that office were found to be incorrect or missing.

On the whole, the Working Group finds that the legal framework surrounding registration and documentation in Serbia is adequate. However, the machinery to implement the laws is weak and the IDP population so particularly dependent on this part of the state apparatus at this time. Elements within the Governments' control, such as inadequate inter-municipal cooperation and overly bureaucratic procedures, are partly to blame. It is also true that access to documentation for IDPs is often hampered not by laws but by registry office practices that fail to comply with existing laws (such as requiring powers of attorney). Lack of funding leading to understaffing and outdated modes of operation is an underlying cause. Clearly though, the absence of policy imperatives requiring compliance with the laws is a major part of

⁶² Official Gazette of the Republic of Serbia No. 43/03, June 2003.

⁶³ Humanitarian Centre For Integration and Tolerance, Novi Sad, October 2003.

⁶⁴ See Norwegian Refugee Council, *Some experiences of NRC/CRP offices related to the cooperation with the dislocated registry offices*, at p.3.

⁶⁵ See *Law on Administrative Procedure*, Articles 161 and 208 for statutory deadlines. See also Draft Assessment Report on IDP Documentation Working Group, April 2003, UNHCR.

⁶⁶ NRC/CRP has highlighted the deficiency of working conditions of dislocated registry offices. See Norwegian Refugee Council Civil Rights Project, *IDP Documentation problems*.

the problem. This causes hardship for the IDP population, who are highly dependent on this machinery.

Findings

In brief, the Working Group recalls that access to documents is a prerequisite to the enjoyment of the right of each person to be recognized as a person before the law. Problems arise from prohibitive administrative costs, long delays, overly bureaucratic procedures and lack of cooperation between municipalities and the authorities. The lack of personal documentation interferes with the right to education, employment, health and freedom of movement. It also limits IDPs' access to fundamental social institutions and humanitarian aid. Yet, IDPs are entitled to the same access to documents as all other citizens of Serbia and Montenegro.

In fashioning solutions to these problems, Governments should recall that they have a positive obligation at international law to respect every person's right to be recognized as a person before the law.⁶⁷ Though international law at present does not explicitly require states to provide personal identification, documentation and registration, governments are encouraged to consider the UN's analysis of this issue. The thrust of the UN position is that the issuing of basic documents by the relevant authorities gives effect to this human right. Such documents include passports, personal identification documents, birth certificates and marriage certificates.⁶⁸

Recommendation 6

The Working Group recommends that the authorities of Serbia and of Montenegro consider promoting inter-municipal cooperation in the provision of documents. This might be achieved by:

- holding policy meetings with high-level municipal administrators to encourage a spirit of cooperation and to enlist their assistance in streamlining procedures for cooperation;
- organizing capacity training at the municipal level; and,
- making amendments to the appropriate regulatory procedures.

Recommendation 7

The Working Group recommends that the authorities of Serbia and of Montenegro review the procedures at the municipal level for obtaining personal documentation by IDPs in the place of their temporary residence. These procedures should comply with the responsibility in the UNGP about the issuance of documents without unreasonable barriers and obstacles.

⁶⁷ As stipulated in article 16 of the *International Covenant on Civil and Political Rights* and article 6 of the *Universal Declaration*.

⁶⁸ See Deng, Francis M., *Compilation and Analysis of Legal Norms*, Report of the Representative of the Secretary-General submitted pursuant to Commission on Human Rights Resolution 1995/57, Doc. No. E/CN.4/1996/52/Add.2 paras. 258 to 268. See also Principle 20 of the UNGP: "the authorities shall facilitate the issuance of the new documents or the replacement of documents lost in the course of displacement, without imposing unreasonable conditions, such as requiring the return to one's area of habitual residence in order to obtain these or other required documents".

THREE: Freedom of Movement

Until July 2003, IDPs' right to freedom of movement and residence was restricted in both Serbia and Montenegro. The application of laws surrounding permanent and temporary residence had made it impossible for them to transfer their place of residence permanently to the municipality of their choice. Since July 2003, the Government's change in policy has enabled IDPs to change more easily their permanent places of residence. However, few IDPs have been informed of the policy change and so the number benefiting from it is low.

Each Republic has its own *Law on Temporary and Permanent Residence*.⁶⁹ In general, persons who move from one location to another temporarily must register their temporary residence either immediately or within 15 days, depending on the circumstances.⁷⁰ Temporary registration is valid for three months and must be extended upon expiration.

According to Serbia's *Law on Temporary and Permanent Residence*, in order to change the registration for place of permanent residence, one must provide proof of de-registration from the former place of permanent residence. In the case of IDPs from Kosovo, de-registration is executed by the dislocated Police Stations in Southern Serbia – certificates issued by UNMIK are not required for this procedure. There had been reports that some police stations, whether dislocated or in Kosovo, had simply refused to issue de-registration documents to IDPs, without a legally founded explanation, thereby curtailing IDP rights in practice.

On July 1, 2003, Deputy Prime Minister Nebojsa Covic and Head of the State Union CCK, announced that the Ministry of Interior of the Republic of Serbia had changed its de-registration practice with regard to Kosovo IDPs and would henceforth allow IDPs to de-register from their former municipalities in Kosovo.⁷¹ This change of practice would allow IDPs to register, on a permanent basis, in a new municipality in their location of displacement in Serbia.

Early reports following the July 1st 2003 internal instruction indicate that IDPs are being allowed to register permanent residence in Serbia. The Norwegian Refugee Council (NRC) which provides legal assistance to IDPs and the Danish Refugee Council (DRC), which provides humanitarian assistance to IDPs, have confirmed that there have been changes in practice. DRC has confirmed that several persons have de-registered their permanent residence from Kosovo, but has evidence of only one case, thus far, of an IDP who has gone through the entire process, from de-registration to re-registration in Serbia proper. The IDP de-registered from a dislocated Pristina police station located in Niska Banja and re-registered in a central

⁶⁹ See the Official Gazette of the Republic of Serbia 42/77, 25/89, 53/93, 67/93, 48/94, 17/99 and 33/99 and the Official Gazette of the Republic of Montenegro 45/93 and 27/94.

⁷⁰ Per articles 2, 10 and 12 of Serbia's *Law on Temporary and Permanent Residence* and Montenegro's *Law on Temporary and Permanent Residence*.

⁷¹ In the letter dated July 1, 2003, Deputy Prime Minister Nebojsa Covic wrote to Interior Minister Dusan Mihajlovic requesting an explanation as to why the Ministry of Interior does not give "proof of de-registration from the Police Station where the IDPs previously had residence. We kindly ask you to inform us as soon as possible whether there is a legal act supporting the stance of the Ministry of Interior..."

A response was sent from Major-General Svetislav Djurdjevic, Advisor to the Minister, stating that "As of 02 July 2003 the de-registration, change of address and the change of legal residence, issuance and change of ID cards and other personal documents for this category of citizens is dealt with in accordance with the positive legislation and under the same conditions as for other citizens of the Republic of Serbia."

Serbian town. Though he has re-registered in Serbia, he kept his IDP card and considers himself an IDP.

It appears that few IDPs are aware of the change in de-registration. The DRC estimated that their offices in Serbia had less than 20 requests for legal assistance from IDPs who wanted to de-register from Kosovo prior to June 2003. However, the CCK wrote in its 1 July 2003 letter that it had had a large number of such requests. It is the Working Group's belief that acquiring permanent residence in the place of displacement should not affect IDP status, though no government official has clarified the change in practice nor the impact on IDP status to the IDPs themselves.

The Working Group recognizes the Government of Serbia's successful efforts to simplify IDPs' ability to choose a new place of permanent residence. Yet, some difficulties remain. In addition to a de-registration document, IDPs must provide proof of their place of residence in order to obtain new permanent residency in Serbia. All persons must present either a title proving ownership of property in the location where they want to register either permanently or temporarily, or in the event they are renting a property, they must provide a lease agreement with the owner's signature.⁷² This requirement most affects IDPs who reside in unofficial CCs, as they are unable to provide legal proof of their residence.⁷³

To the Working Group's knowledge, in Serbia, temporary residence does not restrict access to rights apart from the right to vote, which may still be exercised at the place of permanent residence, and the ability to realize certain employment related rights such as unemployment benefits.

The Working Group reminds the authorities of their constitutional and international obligations to recognise their citizens' right to move freely within the territory and to choose their place of residence. These rights are entrenched in article 37 of the State Union Charter on Human and Minority Rights and Civil Liberties, article 17 of the Constitution of Serbia and article 28 of the Constitution of Montenegro. The ICCPR, too, guarantees the right to liberty of movement and freedom to choose a residence within the territory.⁷⁴

Findings

The change of practice following the July 2003 correspondence between Serbia's Deputy Prime Minister's Office and the Minister of the Interior's Office has resulted in the simplification of the system of registration of residence for IDPs. However, the remaining proof of property requirements may still impede IDPs in changing the registration for their permanent places of residence.

Recommendation 8

The Working Group recommends that the authorities of Serbia continue to demonstrate flexibility in reviewing the policy and procedure for registering permanent residences for IDPs, taking into consideration their precarious economic and property situation.

⁷² Article 5 of the *Law on Permanent and Temporary Residence* of the Republic of Serbia

⁷³ In Serbia, 17% of IDPs live in CCs while in Montenegro the figure is 2%: the total percentage in Serbia and Montenegro is 13%.

⁷⁴ See article 12 of the ICCPR, echoed in principle 14 of the UNGP.

FOUR: Accommodation

Like refugees, most IDPs in Serbia and Montenegro reside in private accommodation, while some 14,456 (6,2%) are accommodated in collective centres (CCs) and specialised health care institutions.⁷⁵ Over 10,000 IDPs live in CCs in Serbia and 4,193 in Montenegro: 10,852 reside in recognised CCs, 1,753 live in unofficial CCs, which means that they are not officially recognised by the Commissariat and are therefore not eligible to receive government support or humanitarian aid. Indeed, thirteen percent of IDPs do not have a recognised address in Serbia and Montenegro. Most of these IDPs are Roma. In order to receive humanitarian assistance, some IDPs have circumvented the problem of not having an official place of residence by using a neighbour, relative, or friend's address as an official address, while the IDP household in question lives at a different location.⁷⁶

CCs were originally designed to house the refugees who arrived in the early 1990's. The arrival of tens of thousands of IDPs in 1999 put more strain on the CC system and unofficial CCs sprung up as IDPs searched for places to live. The Commissariat made accommodation sites available for these IDPs and the sites were then recognized as official CCs. In contrast, many IDPs entered premises on their own, and some of these sites were not later recognised by the Commissariat and became unofficial CCs.

Unofficial CCs are usually privately owned and a large number are occupied without permission of the owners. IDPs in unofficial CCs must often struggle to remain on the premises, and in some cases have no access to electricity and water. On the whole, conditions are appalling and thoroughly unhygienic.⁷⁷ Unofficial CCs are not included in regular assistance programmes and receive aid on an *ad hoc* basis from UNHCR, ICRC and other organisations; however, this aid is small – mostly non-food items – and infrequent. Only official CCs receive food and some continue to receive three meals daily. A majority of IDPs accommodated in unrecognised CCs are in Belgrade (1,370), Kraljevo (301) and in Montenegro (73).

Beginning in 2002, the Commissariat made it a priority to close CCs. In 2003, approximately 100 CCs were closed, affecting some 4,500 residents.⁷⁸ Refugees eligible for continued accommodation in the CCs were offered solutions such as the UNHCR PIKAP programme which provides assistance in rent or household items to move out of the centres. IDPs are not included in the PIKAP programme. They are without any governmental programme to address their long term needs. They are left with the options of relocating to another CC (ultimately, a short-term solution as all CCs are slated for closure) or fending for themselves within the private sector.

The Working Group recalls that the Governments are bound to provide an adequate standard of living for their citizens as set out in article 11 of the ICESCR, and echoed

⁷⁵ Twenty-four IDPs are housed in specialised institutions, six are hosted in student dormitories and 1,821 are in local Roma settlements in Montenegro.

⁷⁶ Annexe 3, "Collective Accommodation of Refugees and IDPs in Serbia and Montenegro", 1 April 2003, UNHCR BO Belgrade

⁷⁷ See Global IDP Project (Norwegian Refugee Council), *Profile of Internal Displacement: Yugoslavia (Federal Republic of) – Compilation of the information available in the Global IDP Database of the Norwegian Refugee Council*, December 2002 at pp. 83-84 where CCs are described as industrial or prefabricated buildings in poor repair. Families often sleep and eat together in large rooms. In one centre, 15 to 20 persons share 2 showers and 4 lavatories and sewage sits in pools under the buildings.

⁷⁸ As described at <http://www.un.org.yu/agencies/unhcr.htm>

in principle 18 of the UNGP. It refers the Government of Serbia to the articulated main aim of the *National Strategy for Resolving the Problems of Refugees and Internally Displaced Persons* to reduce and gradually close collective centres providing alternative, durable solutions at the same time.⁷⁹ The Working Group also refers to the Government of Serbia's policy in the Refugee and IDP Strategy which recommends the adoption of new legislation in order to implement programmes of durable accommodation as CCs are gradually closed.

Findings

In brief, the collective centres originally built for refugees have, inadequately, served as a temporary solution to the accommodation needs of some of the IDP population. The Governments of the Republics of Serbia and Montenegro have proceeded in the closing of CCs without having created and implemented viable long-term solutions to the accommodation needs of IDP citizens.

Recommendation 9

The Working Group recommends that the authorities of Serbia and of Montenegro take into account the long-term accommodation needs of the most vulnerable groups of the IDP population, such as women heads of households and the elderly. It recommends that the authorities submit project proposals to international donors on addressing accommodation needs.

FIVE: Employment

IDPs in both Republics face huge obstacles in obtaining legal and gainful employment. Indeed, a large percentage of IDPs in Serbia and Montenegro work in the "grey economy" or as day labourers.⁸⁰ This might allow families to survive day to day, but which leaves them in a vulnerable position. They are subject to the varying demand for labour and, if they work in the grey economy, they are at the mercy of those who hire them outside the scope of legal protection. Society as a whole and Governments, too, suffer when so many persons work in the grey market. Employers who hire IDPs as unregistered workers do not pay pension, social and health insurance and their employees do not contribute to income tax. This weakens the governments' ability to fund programmes and services for all citizens, including those most in need. There are a variety of reasons why IDPs cannot find work. Three reasons relating to systemic problems are examined in turn below.

Law as a Disincentive

In Montenegro, the *Law on Employment*⁸¹ governs IDPs' access to the labour market. In May 2003, the Montenegrin Government issued a decree amending this law, entitled *Decree on Employment of Non-resident Physical Persons*.⁸² Article 1 of

⁷⁹ *National Strategy for Resolving the Problems of Refugees and Internally Displaced Persons* at p. 18.

⁸⁰ ICRC, *IDP Needs Assessment in Serbia and Montenegro*, at p. 14: "Fully 54% of IDP households do not have any regular source of income; the majority of these household are living in collective centres. The most common source of income for IDPS is daily labour, which 47% of households rely on. Pensions are the second most common source of income, followed by salaries. The grey market is the primary source of 23% of IDPs."

⁸¹ Official Gazette of the Republic of Montenegro 05/02.

⁸² Official Gazette of the Republic of Montenegro 28/03.

the *Decree* defines a non-resident physical person as a person who “does not have habitual residence or centre of business and livelihood interests on the territory of the Republic of Montenegro”.⁸³ Since neither IDPs nor refugees are permitted to hold a permanent residence permit in Montenegro, as discussed *supra* in the section on freedom of movement, they fall within the scope of the *Decree*. The *Decree* imposes a special tax on employers who hire non-permanent residents of Montenegro in wage-earning activities. Employers who violate the provision are subject to high fines.⁸⁴

In this way, the overall legal scheme surrounding citizenship and residency works together with the employment framework to act as a strong disincentive to Montenegrin employers in the hiring of IDPs and refugees and as a barrier to legal employment for both of these groups.

Recommendation 10

The Working Group recommends that the authorities of the Republic of Montenegro consider amending the *Decree on Employment of Non-resident Physical Persons* and the *Law on Employment*. This could simplify procedures for IDPs seeking employment and remove the levy on employers who hire non-residents who are citizens of the State Union of Serbia and Montenegro in order to ensure and promote IDPs’ legal access to employment. Such amends would be in line with the Constitutional Charter of the State Union of Serbia and Montenegro.

Montenegrin Identity Card

The fact that IDPs in Montenegro are considered by the Montenegrin authorities to be citizens of Serbia has negative repercussions on this community’s access to rights, especially the right to work. Indeed, IDPs in Montenegro cannot enjoy the right to full, legal employment. The situation of one IDP family in the municipality of Danilovgrad, near Podgorica, illustrates the problems encountered by IDPs in Montenegro because they could not obtain an ID card.

Case 3. The family is from Kosovo, where the father worked for 30 years at a transportation company. After fleeing their hometown, the family settled in Montenegro and started making a living from selling eggs produced by their 150 hens. Income generated from this family business covered expenses for accommodation, food, children’s transportation to school, and medicine for their disabled child. In June 2003, state inspectors came to their farm and ordered them to stop their egg production on the grounds that the business activity had to be registered. To register a business requires a Montenegrin ID card and as an IDP, the family is not able to obtain a Montenegrin ID card. The family was forced to stop producing eggs and can no longer cover their basic needs.

It is unclear why IDPs cannot obtain Montenegrin ID cards. Some NGOs posit it is because IDPs have not de-registered from their previous permanent places of residence in Kosovo. At the same time, they cannot register at the employment

⁸³ Moreover, it treats equally persons who come to Montenegro for economic reasons (economic migrants) and IDPs and refugees, who were forced to flee their homes due to persecution or fear of persecution.

⁸⁴ Per article 3 of the *Decree on Employment of Non-resident Physical Persons*. The *Law on Employment* prescribes a procedure that requires a person seeking employment to present a registration card (temporary or permanent) and a working booklet as proof of qualifications.

bureau because they do not have an ID card and are often missing a Work Booklet. However, some IDPs have been able to get work in Montenegro. The problem seems to occur unevenly and arbitrarily.

No Work Booklets

Without Work Booklets, IDPs in both Republics face serious obstacles in obtaining self-sufficiency. A Work Booklet is a personal employment record document, kept by the company of current employment until the termination of employment. It records both education and work experience. This document is important for claiming pensions, obtaining new regular employment (in contrast to unofficial employment), or registering at the Bureau of Unemployment to receive unemployment benefits.⁸⁵ In many cases, Work Booklets have been lost during displacement, destroyed or left behind with former employers in Kosovo.⁸⁶

In Serbia, only those IDPs who were employed in the Kosovo branches of the state companies from Serbia before their displacement have been able to obtain their Work Booklets with valid termination of employment, and thus register at the unemployment bureau and claim unemployment benefits. For the majority of IDPs who were employed in Kosovo-based companies, obtaining Work Booklets has to date proven to be an insurmountable obstacle that has prevented registration at the Unemployment Bureau. This ultimately denies them their right to receive unemployment benefits. To replace a Work Booklet, IDPs require personal documents which have also often been destroyed or lost. In Montenegro the right to register at the unemployment bureau is denied to IDPs from Kosovo in general. This is an important issue of discrimination based on IDP status.⁸⁷

In some instances, IDPs are still officially employed by companies located and registered in Kosovo that are no longer functioning. Workers' employment contracts were never formally terminated when the companies closed, and so the workers are described as employed on paper, though they receive no salary. As a consequence, they are ineligible for assistance from the Unemployment Bureau. Moreover, more often than not, these companies owe workers unpaid salaries for the period before 1999. Another category of IDPs working for "Kosovo-based firms" are those who worked for state-owned companies and still receive a symbolic salary even though they have not been to work in four years.

In one case, an IDP group in Mlandenovac (Komgrap barracks) had been employed by "Ramiz Sadiku", a Pristina company. The IDPs enlisted the aid of NGOs to retrieve their Work Booklets. They were advised that the complete archive of the company had been destroyed.

⁸⁵ See Global IDP Project (Norwegian Refugee Council), *Profile of Internal Displacement: Yugoslavia (Federal Republic of) – Compilation of the information available in the Global IDP Database of the Norwegian Refugee Council*, December 2002 at p. 115 for discussion on Work Booklets.

⁸⁶ Companies hold on to an employee's Work Booklet for safekeeping during the course of employment. The booklet is "closed" when an employee leaves his/her job, the duration of employment is recorded, and the firm returns the booklet to the employee.

⁸⁷ Per the Global IDP Project (Norwegian Refugee Council), *Profile of Internal Displacement: Yugoslavia (Federal Republic of) – Compilation of the information available in the Global IDP Database of the Norwegian Refugee Council*, December 2002 at p. 115.

Recommendation 11

The Working Group recommends that the authorities of Serbia and of Montenegro consider amending administrative regulations and administrative procedural laws to develop a procedure which would enable the reconstruction of Work Booklets. This initiative might be combined with consultations and training of municipal employees on inter-municipal cooperation, and would also require cross-border cooperation between Serbia and Montenegro and Kosovo.

Findings

The Working Group reminds the Governments that they are bound, by domestic and international law, to uphold their citizens' right to work. Article 40 of the State Union Charter on Human Rights guarantees the right to work in accordance with the law and places a positive burden on the state to "create the conditions in which everyone can earn a living by his/her own work". Article 52 of the Montenegrin Constitution guarantees *everyone* the right to work.

As the Constitutional Charter of the state Union of Serbia and Montenegro recognizes and gives precedence to international law adopted by the State Union in treaties, it follows that the right to work must be guaranteed in accordance with relevant international law. Article 23 of the *Universal Declaration of Human Rights* recognizes everyone's "right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment".⁸⁸ The ICESCR recognizes both the right to work and the right to the enjoyment of just and favourable conditions of work.⁸⁹ These provisions are echoed in principles 22 and 23 of the *UNGP*.

The right to employment is a right of all citizens. The Republic of Montenegro's laws discriminate in their impact against the IDP population by creating financial disincentives for employers to hire IDPs and blocking access to the employment market. In the Republic of Serbia, IDPs have access to the employment market, but in practice they are disadvantaged in the competition for scarce jobs. Many lack Work Booklets that remained in Kosovo and cannot prove their qualifications and work experience. With few other options, many IDPs resort to "grey market" employment which costs governments in lost revenues.

In order for Montenegro to fulfill the relevant international human rights obligations, the *Decree* must be amended to explicitly exclude IDPs as a category from its application, and *Law on Employment* must be amended in order to enable IDPs to enjoy their employment rights.

Recommendation 12

The Working Group recommends that the authorities of Serbia and of Montenegro consider adopting "affirmative action" measures in favour of IDPs in order to

⁸⁸ Deng, Francis M., *Compilation and Analysis of Legal Norms*, Report of the Representative of the Secretary-General submitted pursuant to Commission on Human Rights Resolution 1995/57, Doc. No. E/CN.4/1996/52/Add.2 at para. 15 states that although not a treaty, the *Universal Declaration* might be regarded as an authoritative statement of the content of the human rights provisions of the UN Charter and thus a binding treaty commitment. As a member of the UN, Serbia and Montenegro would thus be bound.

⁸⁹ *International Covenant for Economic, Social and Cultural Rights at articles 6 and 7.*

counteract prevailing discriminatory attitudes and to facilitate IDPs' access to housing, labor market and education.

SIX: Pensions

IDPs in the Republic of Serbia and in the Republic of Montenegro cannot access their well-earned pension benefits. This apparently occurs for variety of reasons, including some problems rooted in the pension fund system itself. The heart of the matter appears to result from four factors:

(a) Missing Work Booklets

As documented *supra*, the Work Booklet is a key document that proves length of employment service and qualifications. It is required to claim pension benefits. Those IDPs missing their Work Booklets and who are unable to recover or reconstruct them are consequently unable to prove length of service and pension entitlement.

(b) Employers Failing to Make Contributions

Some new IDP pensioners are increasingly facing the reality that unscrupulous employers did not contribute the necessary pension and insurance payments, which leaves them unable to qualify for their pension rights. These IDPs are the victims of this dereliction of duty and they currently are without legal recourse against their former employers.

(c) Lack of Joint Monetary Policy

Because there is no joint monetary policy between the Republics, IDPs residing in Montenegro must register their residence in Serbia so as to be able to receive their pension.

(d) Non-recognition of M4 Forms

In calculating pension benefits for IDPs without Work Booklets, the Central Pension Fund uses the M4 Form on which employment history can be registered. This work is managed by a special department devoted exclusively to Kosovo IDPs. The creation of this special department is to be commended. The Central Pension Fund's policy is to issue temporary decisions on the basis of the M4 and amounts distributed to date have been very small.⁹⁰ Even for this temporary decision, the IDP must prove some period of employment service. This raises the documentation problems already discussed. Moreover, there is no recognition of the M4 forms between local authorities in Serbia and UNMIK.

Findings

IDPs who became eligible for pension until 1999 receive full pension benefits. However, those who became eligible after 1999 are not receiving full pension benefits, but received temporary pension pending the submission of required documents. This is a serious and pressing situation, having in mind that due to problems in obtaining the necessary documentation IDPs continuously receive the temporary calculation of their pension benefits. Though the problem seems to be systemic, the source of the problem lies within the lack of clearly established procedures and in this context a strong political message.

⁹⁰ The M4 form is used only to make these pension decisions and cannot be used to prove length of employment or qualifications in the search for work, for example.

Recommendation 13

The Working Group recommends that the authorities consult with the competent pension authorities with a view to determining why so many IDPs are not receiving their pension benefits, identifying the underlying reasons and fashioning appropriate solutions.

SEVEN: Health

As citizens of Serbia and Montenegro, IDPs have the right to access all health services within the state health care system free of charge.⁹¹ However, over the last decade, the Governments' ability to provide basic health care to the general population has deteriorated significantly. IDPs, who in general suffer greater health problems than the local population,⁹² feel the effects of this eroded public system more acutely. In view of the particularly vulnerable socio-economic situation IDPs still face difficulties in accessing existing health care structure in view of the obstacles relating to access of documentation and documents (see paragraph 2). For example, IDPs in Serbia, along with other vulnerable persons such as children, the elderly over 65 and social welfare beneficiaries, do not pay the "contribution fee" for medical services or medicines, which is otherwise obligatory. An IDP is only legally recognised as such once she has been registered as an IDP in the municipality of displacement. Further, to access health services, an IDP head of household must present her IDP card and personal identification number (JMBG) to the local social welfare centre, which issues a certificate listing all household members. The IDP health certificate is valid for three months, and IDPs must go to the social welfare centre when the certificate expires in order to prolong its validity. There is no payment or fee for the certificate or its renewal. The foregoing process is thus only open to IDPs who have resolved any documentation issues.⁹³

In both Serbia and Montenegro, regions with large IDP populations have not been given adequate financial means to face the increased health care costs. There is no specific mechanism in place to meet the additional needs linked to large population movements. Consequently, in those regions with a high influx of IDPs relative to the

⁹¹ Article 30 of the Constitution of Serbia entitles each *person* to health care with specific protection extended to pregnant women and the elderly. Article 45 of the State Union Constitution recognises the right to health care for *everyone*. Article 57 of the Constitution of Montenegro guarantees the right to health care for *everyone* and children, expectant mothers and the elderly are entitled to public health care if they have no other option.

⁹² Global IDP Project (Norwegian Refugee Council), *Profile of Internal Displacement: Yugoslavia (Federal Republic of) – Compilation of the information available in the Global IDP Database of the Norwegian Refugee Council*, December 2002 at p. 76 citing primarily *Joint Food Needs Assessment Mission – Final Report FRY (ex. Kosovo)* by the WFP and UNHCR (July 2001) and *Multiple Indicator Cluster Survey II – Report for FRY*, UNICEF 2000, for discussion on increased vulnerability and higher incidence of poor health in IDP population as caused by poorer living conditions, poorer diet and higher stress and trauma factors.

⁹³ Instead of a certificate, non-IDP citizens usually hold a health booklet that is valid for a period of six months to one year. IDPs are inconvenienced in that they must renew their certificates at least twice as many times as other citizens. In this sense, there exists a double standard in the provision of health services with respect to IDPs and therefore a form of discrimination.

resident population, per capita spending on health has been severely curtailed. This affects the provision of care to vulnerable groups and contribution payers alike.⁹⁴

Further, IDPs are not systematically registered with the local health authorities. Consequently, health institutions do not always keep appropriate medical records on these patients. When this happens, this discriminatory practice prevents adequate health care follow up and ultimately undermines the quality of health care received.⁹⁵ It may even add to health costs in the long run, especially in emergency departments, as preventative and regular medical interventions are lacking.

IDPs registered in Montenegro face difficulties in obtaining medical services in Serbia for advanced treatments unavailable in Montenegro. The Serbian Health Insurance Fund will not recognize the cost of medical services given to IDPs from Montenegro. Nor will the Montenegrin Health Insurance Fund reimburse Serbia for costs in treating the individual. Consequently, medical institutions in Serbia will not provide services to patients from Montenegro without first receiving payment.

IDPs in Montenegro have access to limited health care services. They have access to basic, life-saving health care; however, they have great difficulty in accessing curative treatments (e.g., spas and specialized institutions for rehabilitation). In many cases, IDPs only have access to curative treatments if they pay for these services themselves.

The Working Groups reminds all Governments of their obligations under domestic and international law with respect to the provision of health care services. Article 45 of the State Union Human Rights Charter recognizes that everyone in Serbia and Montenegro has the right to health protection. Article 12 of the ICESCR describes every person's right to "the enjoyment of the highest attainable standard of physical and mental health".⁹⁶

Findings

In Montenegro, IDPs have access to medical services. However, but they face a number of practical obstacles in the area of refunds for medications, rehabilitation after illness. They face problems in obtaining referrals for medical treatment in Serbia unavailable in Montenegro, although citizens of Montenegro can receive such referrals. Many of these problems stem from lack of documentation. Further, IDPs' medical files are often not as well maintained and followed up.

Recommendation 14

The Working Group recommends that the authorities of Serbia reconsider the system of extra documentation for IDP access to health care services in light of the serious

⁹⁴ *Op. Cit.* Global IDP Project (Norwegian Refugee Council), *Profile of Internal Displacement: Yugoslavia (Federal Republic of) – Compilation of the information available in the Global IDP Database of the Norwegian Refugee Council*, December 2002 at p. 77 citing *Humanitarian Risk Analysis No. 18, Humanitarian Section, Protection and Assistance: Internally Displaced Persons in Serbia and Montenegro*, UN OCHA 26 April 2002 at pp. 16-17.

⁹⁵ *Ibid.*

⁹⁶ Principles 18 and 19 of the UNGP note that IDPs have the right to an adequate standard of living, and at a minimum, regardless of circumstances and without discrimination, competent authorities are to provide IDPs with and ensure safe access to essential medical services and sanitation.

documentation difficulties of this population and in light of international standards and the Constitutional Charter of the State union of Serbia and Montenegro.

Recommendation 15

Government of Montenegro should amend its legislation in order to ensure that IDPs have equal access to health service as citizens and to establish referral system to provide equal treatment of IDPs as citizens.

EIGHT: Education

The influx of IDPs has put extraordinary pressure on the school system in Serbia and Montenegro, already under strain. Notwithstanding this pressure, a very high number of IDP children are fully enrolled in primary schools and attendance rate for children in CCs in 2002 was 92% - only 5% lower than the national average. This is a remarkable achievement for which the authorities should be commended.⁹⁷

For those IDP families who did not send their children to school, they identified the main reason as the parents' lack of funds to provide for proper clothes, school materials and sometimes transportation costs. Further, a 2001 NRC/ICVA IDP survey revealed that 16.5% of respondents cited numerous administrative obstacles to enrolling children into new schools, while 2.6% stated that children were humiliated in various ways, as with attempts, for example, to segregate IDP children from Kosovo into separate classes.⁹⁸

The Working Group would reiterate the need for the authorities of Serbia and of Montenegro to consider adopting "affirmative action" measures in favour of IDPs in order to counteract prevailing discriminatory attitudes and to facilitate IDPs' access to education.

⁹⁷ Global IDP Project (Norwegian Refugee Council), *Profile of Internal Displacement: Yugoslavia (Federal Republic of) – Compilation of the information available in the Global IDP Database of the Norwegian Refugee Council*, December 2002 at 92 citing UN OCHA 26 April 2002, Humanitarian Risk Analysis No. 18, Humanitarian Situation, Protection and Assistance: Internally Displaced Persons in Serbia and Montenegro at p. 13.

⁹⁸ *Ibid.*

Chapter IV: Internally Displaced Persons' Communities

Roma

Certain minority groups within the Kosovo IDP population are more vulnerable than the overall IDP population. These minorities include the Roma, Ashkali, Egyptian and the Gorani communities. In the Kosovo conflict, these communities were viewed with suspicion by all sides, and accusations of collaboration were multiple. Today, many of these IDPs live in truly deplorable conditions, often below the level of human dignity. They frequently live in unofficial settlements, without access to electricity, drinking water and sewage systems. These problems are regularly exacerbated by communication difficulties due to language differences. Further, these communities are frequently confronted with discrimination. Their situation has worsened during the last 10 years of general economic decline.⁹⁹

This section will examine the IDP Roma community in particular. In many respects, the Roma community is the hardest hit even among the other minority IDP communities. Even when not living in displacement, Roma occupy a marginalized position within Serbian and Montenegrin society. For this reason, the magnitude of the Roma IDP problem is very often "hidden", as many of them have not registered with the authorities, but simply mingle with the local Roma population.¹⁰⁰ Consequently they are forgotten and further marginalized. Though Roma IDP face many of the same challenges as the rest of the IDP community – documentation, accommodation, access to health and education – the underlying reasons are often more complex. These include historic antagonism with non-Roma society and deep-rooted discrimination against Roma.¹⁰¹ Therefore, the Working Group will highlight particular problems, underlying reasons and possible solutions.

Documentation

Many Roma remain unregistered as IDPs because they lack basic identification documents such as identity cards. In addition to the same hurdles other IDPs face in obtaining or replacing documents, Roma IDPs' situations are further complicated by a history of non-registration. Many Roma from Kosovo never had documents while living in Kosovo.¹⁰² Oftentimes, generations of a Roma family have no documents.

⁹⁹ *Op. Cit.* Global IDP Project (Norwegian Refugee Council), *Profile of Internal Displacement: Yugoslavia (Federal Republic of) – Compilation of the information available in the Global IDP Database of the Norwegian Refugee Council*, December 2002 at pp. 62-63.

¹⁰⁰ The 2001 Serbian Census places the Roma population in Serbia at 108,000, but the domestic and international estimates are closer to 300,000. See the PRSP at p. 6.

¹⁰¹ See, for example, section 13 of the Roma National Strategy entitled "Discrimination and Related Issues". In particular, see reports listed in footnote 130 at p. 111 of the Roma National Strategy.

¹⁰² The Norwegian Refugee Council estimates that approximately 30-35% of Roma have never been registered at all. Of that number, 60-65% are Ashkaeli. It appears, however, that comprehensive statistics do not exist regarding the actual number or percentage of the Roma in this situation. A survey conducted by Oxfam in Belgrade found that a high percentage of the Roma were missing proper documentation – 39.5% did not have a valid ID card. [*The Roma Livelihood in Belgrade Settlements*. Research by ARGUMENT, commissioned by OXFAM, Belgrade, December 2001.] In addition, 56% of the IDPs did not have an IDP registration card.

This creates a circular problem. In order to obtain personal documents, one must prove that his/her mother was born in Serbia (including Kosovo), but this is impossible if one's parents were not registered. The problem, known as “chronic unregistration”, particularly affects Roma from Kosovo, who experienced greater institutional marginalization than Roma in Serbia.¹⁰³ Roma, often have few, if any, personal documents in part because of their suspicion of and general historic distance from state institutions. As discussed supra in Chapter III in the section on documentation, without registration, a person is ineligible for basic social services and for humanitarian assistance.

Lack of adequate documentation is especially problematic for Roma who live in unofficial CCs. This is because without an address recognised by the municipality, one cannot register for an ID card. Without a general ID card, one cannot obtain an IDP card. Consequently, many Roma IDP do not have access to humanitarian assistance as IDPs.

There are various, inter-related reasons why Roma have so many documentation problems. The Serbian Government's Roma National Strategy lists some, the following of which should be of particular concern to all Governments:

- Complex and cumbersome procedures for obtaining personal documents.
- Conflicting Federal and Republican laws and administrative procedures.
- Lack of trust towards the authorities, and in particular fear of going to a police station to be registered.
- Lack of flexibility of the authorities to adapt to the particular situation of the Roma – partly due to the prejudice that Roma will automatically abuse any measure of administrative clemency.¹⁰⁴

The Roma National Strategy also made specific reference to Roma IDPs. It recommended that a new registration of displaced Roma be carried out in order to reach non-registered IDP Roma. It also called for the creation of outreach services in Roma settlements to facilitate access to state services.¹⁰⁵

Presently, there is no legal mechanism in place for the chronically unregistered to become registered. Some local and international NGOs, including Roma organisations, are assisting Roma obtain documentation in accordance with the system currently in place. The local Minority Rights Centre provides legal aid, assistance and advice. At the international level, the Belgium Red Cross provides assistance to seven unofficial Roma settlements in the municipality of Curakica in Belgrade.¹⁰⁶ However, these efforts are all limited by the reality of “chronic unregistration” and the heavy procedural requirements of the system.

Recommendation 16

The Working Group recommends that in order to improve access to documentation, the authorities of Serbia undertake a process of registering Roma IDPs who have not been able to register as IDPs for lack of basic documentation.

¹⁰³ Interviews with NRC documentation expert Ivanka Kostic, Belgrade.

¹⁰⁴ Roma National Strategy at pp. 60 and 61.

¹⁰⁵ Roma National Strategy at p. 56.

¹⁰⁶ The Curakica Padina settlement is composed of Roma IDPs from Kosovo. Some of them have documents, but very often there are mistakes in their documents, such as misspelled names, or their documents have expired.

Accommodation

A majority of all registered Roma IDPs in Serbia live in Belgrade and are dispersed among 150 Roma settlements, most of them unofficial, and some CCs. The central and southern Serbian municipalities of Pozarevac, Kragujevac, Nis, Bujanovac and Kursumlija also host a large number of Roma IDPs. In Montenegro, a large number of Roma IDPs are densely settled in Podgorica suburb camps and in the municipalities of Niksic, Bar, Tivat and Berane. An unspecified number of Roma IDPs are hosted by relatives who are Montenegrin residents.

According to surveys completed in several Roma settlements, both in Serbia and Montenegro, finding adequate accommodation and living conditions are identified as the most pressing needs. As the state has been closing CCs throughout 2004, and with no other options available to them, many Roma IDPs have moved into existing local Roma communities. These are often themselves already in a precarious status. These communities are usually comprised of makeshift scrap-metal and cardboard shacks, run-down and deserted barracks or storage houses, containers and junk car bodies. The shelters usually lack sanitation facilities, water supply, electricity and heating. The entire communities are usually located within or next to garbage dumps, under bridges or in open fields. Often they occupy premises illegally and therefore exist outside the reach of basic social infrastructure and humanitarian assistance.¹⁰⁷

Health

There is a serious lack of adequate data about the health status of the Roma population. This, in itself, represents a failure in the system. Information outlined below is drawn from reports by Working Group members and based on their work with the Roma community.

A common conclusion is that hygiene and health care standards are low among Roma IDPs. A general knowledge of health and hygiene issues is compounded with limited reliance on the health care system, scant trust in health care providers and little appreciation of their rights in accessing public health care services. For example, Roma children are often not immunized and most Roma women do not visit a gynecologist for regular check ups except for childbirth. In the case of sickness and injury, Roma most often visit primary care physicians, while some treat themselves, and in the majority of cases serious health conditions go untreated when diagnosed. In 80% of cases, a dentist is visited for a tooth extraction only.¹⁰⁸

Serious sanitary and epidemiological concerns arise directly from lack of basic hygiene in the settlements. The inadequate manner of food preservation, unsafe water supply, open sewage and improper waste disposal all create an increased risk for diseases. The presence of rodents, scabies and lice, along with the crowded nature of the communities, facilitates the spread of contagious diseases. Much of the Roma population suffers from so called "poverty diseases" such as malnutrition, lung

¹⁰⁷ *Op. Cit* Global IDP Project (Norwegian Refugee Council), *Profile of Internal Displacement: Yugoslavia (Federal Republic of) – Compilation of the information available in the Global IDP Database of the Norwegian Refugee Council*, December 2002 at p. 83 reporting on UN OCHA, Oxfam and ERRC visits to Roma IDP communities.

¹⁰⁸ *Op. Cit.* Global IDP Project (Norwegian Refugee Council), *Profile of Internal Displacement: Yugoslavia (Federal Republic of) – Compilation of the information available in the Global IDP Database of the Norwegian Refugee Council*, December 2002 at p. 79 citing UNOCHA 26.04.2002 Humanitarian Risk Analysis No. 18, Humanitarian Situation, Protection and Assistance: Internally Displaced Persons in Serbia and Montenegro at pp. 23-24.

and intestinal diseases, skeletal diseases and alcoholism. There has also been a reported rise in Roma children suffering from tuberculosis.¹⁰⁹

Though Roma IDPs in theory have access to public health care, in practice this access is all but denied. This is because of their lack of information about the system, lack of personal documents, language and cultural barriers and overt and subtle discrimination by health care providers.

Education

The majority of Roma IDP children in both Republics are not attending school.¹¹⁰ Even though statistics show that there has been a notable increase in the level of education among the Roma population, the percentage of educated Roma is still low.

Roma IDP children face a wide range of obstacles in their access to education, especially in Montenegro where they do not benefit from the legal status of a national minority. Other obstacles include chronic illnesses, suffocating poverty,¹¹¹ prejudice from local communities, and language and cultural barriers. Further, many of the children's parents have not attended school. Most of the IDP children from Kosovo have either never been to school or had dropped out before completing the fourth year.¹¹²

In Serbia, Roma frequently suffer discrimination and racial segregation in education, despite legal provisions for national minorities.¹¹³ Research conducted by the Minority Rights Centre found that Roma children in many primary schools in Serbia are victims of violence and insults based on ethnicity. Teachers in many schools put Roma children at separate desks, or even in separate classes.¹¹⁴ Though Roma children sometimes suffer harassment by non-Roma peers, including violence and racial slurs, teachers and other schooling authorities reportedly do not always react adequately against this racism. In some cases, schools have refused to enroll Roma children because they lack competence in the Serbian language, and they sometimes instead place them in separate classes and sometimes in schools for children with learning disabilities.¹¹⁵

¹⁰⁹ *Ibid.*

¹¹⁰ Non-governmental sources estimate that around 80% of Roma in Montenegro do not complete primary education.

¹¹¹ The yoke of poverty is heavy and consequently child labour is widespread among the Roma population as school-aged children often work to contribute toward the family income.

¹¹² See Global IDP Project (Norwegian Refugee Council), *Profile of Internal Displacement: Yugoslavia (Federal Republic of) – Compilation of the information available in the Global IDP Database of the Norwegian Refugee Council*, December 2002 at p. 92.

¹¹³ *Law on Protection of Rights and Freedoms of National Minorities*, Article 3 "Prohibition of Discrimination" and Article 4 "Measures ensuring Equality between members of National Minorities and Members of the majority population"

¹¹⁴ Antic, Petar, *Abuses of Roma Rights in Serbia*, Minority Right Centre, Report No.2, June 2003 at p.29

¹¹⁵ Indeed, Roma are often categorically segregated into the special school system aimed at assisting children with mental disabilities. See European Roma Rights Centre with UN OHCHR, Human Rights Field Operation in Serbia and Montenegro, *Memorandum – Protection of Roma Rights in Serbia and Montenegro* April 2003 at. See also Roma National at pp. 91-92.

Finally, a number of Roma children, of families who have fled from Kosovo, have reportedly never been enrolled in schools at all, because they do not have the personal documents needed to do so.¹¹⁶

Reasons

Common threads run through the explanations of why Roma IDPs are vulnerable and marginalized: discrimination, social isolation, and lack of legal protection.

Widespread discrimination against Roma in Serbia and Montenegro has been well documented by various organisations and foreign governments over the last number of years. This undoubtedly affects the ability to gather political momentum to protect this group and, when laws are put in place, undoubtedly affects their observance.¹¹⁷

A shortage of community outreach programmes designed for Roma IDPs (in terms of language, culture, method of communication, etc.) has resulted in an information gap on their rights. Their overall social isolation has made it difficult for them to access humanitarian aid based on their IDP status. Many do not speak Serbian and are uninformed about their rights and the services available to them from governmental, intergovernmental and non-governmental sectors, both local and international.¹¹⁸

As discussed *infra*, in Montenegro, legislators do not recognise the Roma as a national minority,¹¹⁹ although Roma have been given legal status of national minority by the State Union *Law on Protection of Rights and Freedoms of National Minorities* of February 2003. These rights are generally defined as rights to the preservation, development and expression of ethnic, linguistic or other specificities of national minorities.¹²⁰ They include: the right of national affiliation, the right to co-operate with co-nationals in the country and abroad, the right to use one's native language, and the right to use national symbols. Also included are all the other rights and solutions which protect national minorities in areas such as language in public bodies, education and public information in the languages of the national minorities, preservation and protection of the cultural heritage, etc.¹²¹

The provisions aim at institutionalizing the participation of minorities in decision-making on issues relevant to their identity. The National Council for National Minorities (comprised of the representatives of national councils of national

¹¹⁶ European Roma Rights Centre with UN OHCHR, Human Rights Field Operation in Serbia and Montenegro, *Memorandum – Protection of Roma Rights in Serbia and Montenegro* April 2003 at p. 30

¹¹⁷ See, for further discussion on existence and impact of racism in Serbia and Montenegro, European Roma Rights Centre with UN OHCHR, Human Rights Field Operation in Serbia and Montenegro, *Memorandum – Protection of Roma Rights in Serbia and Montenegro* April 2003.

¹¹⁸ See Roma National Strategy at p. 56.

¹¹⁹ As mentioned previously, the Montenegrin government does not recognize some State Union laws, further to its adoption of its 2000 resolution, *Non-recognition of Federal Decisions*.

¹²⁰ Article 19 and articles 13-15 of *Law on Protection of Rights and Freedoms of National Minorities*. See also article 52 of the State Union Human Rights Charter.

¹²¹ See also art. 1(2) of the *Law on Protection of Rights and Freedoms of National Minorities*: "This Law also regulates the protection of national minorities from all forms of discrimination in exercising their civil rights and freedoms, creates instruments that guarantee and protect special rights of minorities to minority self-governance in the fields of education, use of language, media and culture, and establishes institutions for fostering the participation of national minorities in government and in the management of public affairs."

minorities) and the national councils of national minorities are established as partners and consultative bodies of the government with respect to questions of importance to national minorities. The national councils can have certain independent competencies in the fields of education, culture and information.¹²²

Montenegro has not recognized the Federal minority law, nor has it adopted measures of its own aimed at incorporating the protection of the Roma and other national minorities into Republican law and institutions. Montenegro has not acted proactively in de-marginalizing and empowering its Roma and other national minority communities. This, in turn, has a negative affect on the Roma IDP community in Montenegro who are unable to participate in decisions related to their future or contribute to the broader society.

The Working Group reminds the Republican Governments that, under law, they are obliged to ensure access to education for all, and obliged to create conditions for educational opportunities in the respective languages of national minorities. Both Republican constitutions set out that education should be accessible to all persons under the same circumstances and, that basic education is mandatory and free of charge. The constitutions further guarantee the right of national minorities to be educated in their native language.¹²³ With respect to the Republic of Serbia, the *Law on Protection of the Rights and Freedoms of National Minorities* provides similar guarantees. The international community has often reaffirmed the right to education and has adopted various legal instruments aimed to secure this right.¹²⁴ These obligations are not being fully respected in Serbia and Montenegro.

The Working Group does not condone the establishment of parallel and segregated education systems. It does advocate that national minority and Roma children be included in the main stream education system despite any language and cultural barriers, and encourages the governments to break down these barriers.

Findings

Roma IDPs represent one of the most vulnerable categories of IDPs. They often face discrimination in enjoying many of the most basic rights of citizens. The State Union's policy, the *Draft Strategy for the Integration and Empowerment of the Roma*, is not automatically accepted at the level of the Governments of the Republic. Further, the effectiveness of the State Union Roma Strategy is weakened by its isolation – no legislative amendments have integrated this approach into the legal systems as a whole.

Recommendation 17

The Working Group recommends that the Council of Ministers of the State Union of Serbia and Montenegro and the Government of the Republic of Serbia approve the *Draft Strategy for the Integration and Empowerment of the Roma* and begin implementing its recommendations and conclusions. It also recommends that they

¹²² *Op. Cit.* Preface to State Union *Law on Protection of Rights and Freedoms of National Minorities*, www.humanrights.gov.yu/english/dokumenta/index.htm.

¹²³ Articles 32 (4) of Constitution of Serbia and article 68 of Constitution of Montenegro

¹²⁴ See, *inter alia*, article 26 of the *Universal Declaration of Human Rights*, article 28 of the *Convention on the Rights of the Child* (art. 28(1)(e) speaks of the State's obligation to take measures to encourage regular attendance at schools and the reduction of drop-out rates), and principle 23 of the UNGP.

Governments adopt and integrate the *Strategy's* policy approach into the broader legal system and institutions.

Recommendation 18

The Working Group recommends that the competent authorities at the Republic levels promote awareness of the specific problems of Roma IDPs (as outlined, for example, in the *Draft Strategy for the Integration and Empowerment of the Roma*), by training staff at the municipal level to address the specific needs of Roma and other minority IDPs.

Western Europe Returnees

Asylum seekers who fled Kosovo and sought refuge in other European countries are being forcibly returned to Serbia and Montenegro (not including Kosovo) directly into a situation of secondary displacement. The Working Group attaches in Annexe 7 the Recommendation of the Parliamentary Assembly of the Council of Europe, in Annexe 8 UNHCR-The Possibility of Applying the Internal Flight or Relocation Alternative within Serbia and Montenegro to Certain Persons Originating from Kosovo and Belonging to Ethnic Minorities There and Annexe 9 UNHCR - Position on the Continued International Protection Needs of Individuals from Kosovo.

March 17, 2004 Newcomers

A major setback for ethnic reconciliation occurred on March 17th, 2004, after a mass outburst of ethnic violence directed at the non-Albanian population. The violence resulted in the deaths of Albanians and non-Albanians, the destruction of hundreds of non-Albanian homes in Kosovo and the destruction of mosques in Belgrade. Clearly, this has reduced the prospects for return of IDPs to Kosovo.

In addition, approximately 277 persons (93 families) fled Kosovo for Serbia. Of these IDPs, approximately 15% returned to Kosovo in the weeks following their displacement; the rest continue to live in displacement.

The Serbian Commissariat for Refugees issued a 45-day (temporary) certificate for the IDPs who fled Kosovo following March 17, 2004. This temporary certificate provided only access to basic assistance and basic health care and did not represent an IDP registration. Upon the expiration of these temporary certificates, another 45 day temporary certificate was again issued. To date, there has been no official statement by the Government of the Republic of Serbia about the next steps in addressing the needs of this IDP community.

The Working Group acknowledges the problematic situation in Kosovo. These enduring problems highlight the need to find solutions in Serbia and Montenegro for those IDPs who do not wish to return.

Findings

These recent events in Kosovo point to serious failings in promoting a lasting reconciliation between Kosovo's ethnic communities, as well as in establishing a secure environment for all of Kosovo's residents. Further, the success of future

return programmes for Kosovo IDPs currently residing in Serbia and Montenegro appears uncertain. IDPs who would be willing to return to a secure Kosovo are unlikely to feel confident to do so at present.

Recommendation 19

The Working Group recommends that the Government of the Republic of Serbia consider regularizing the legal status of these IDPs who fled Kosovo after the events of March 17. The Government should consider recognizing the status of these IDPs for the duration of their actual displacement.

Chapter V: Conclusion

Five years after the establishment of the international mission in Kosovo, and the displacement of over 230,000 non-Albanians from the Province, Kosovo's IDPs in Serbia and Montenegro still struggle every day to find food, adequate shelter and a place in society. Though citizens of the country in which they are displaced, IDPs are often denied access to the services and franchise normally extended to citizens. They continue to encounter serious legal barriers, most of which relate to obtaining documents, choosing a place of residence, recognizing their employment status, and the enjoyment of other rights possible only with proper documentation. Some progress has been made in developing programmes to addressing economic hardships faced by the most vulnerable IDPs; however, there are many obstacles along the way.

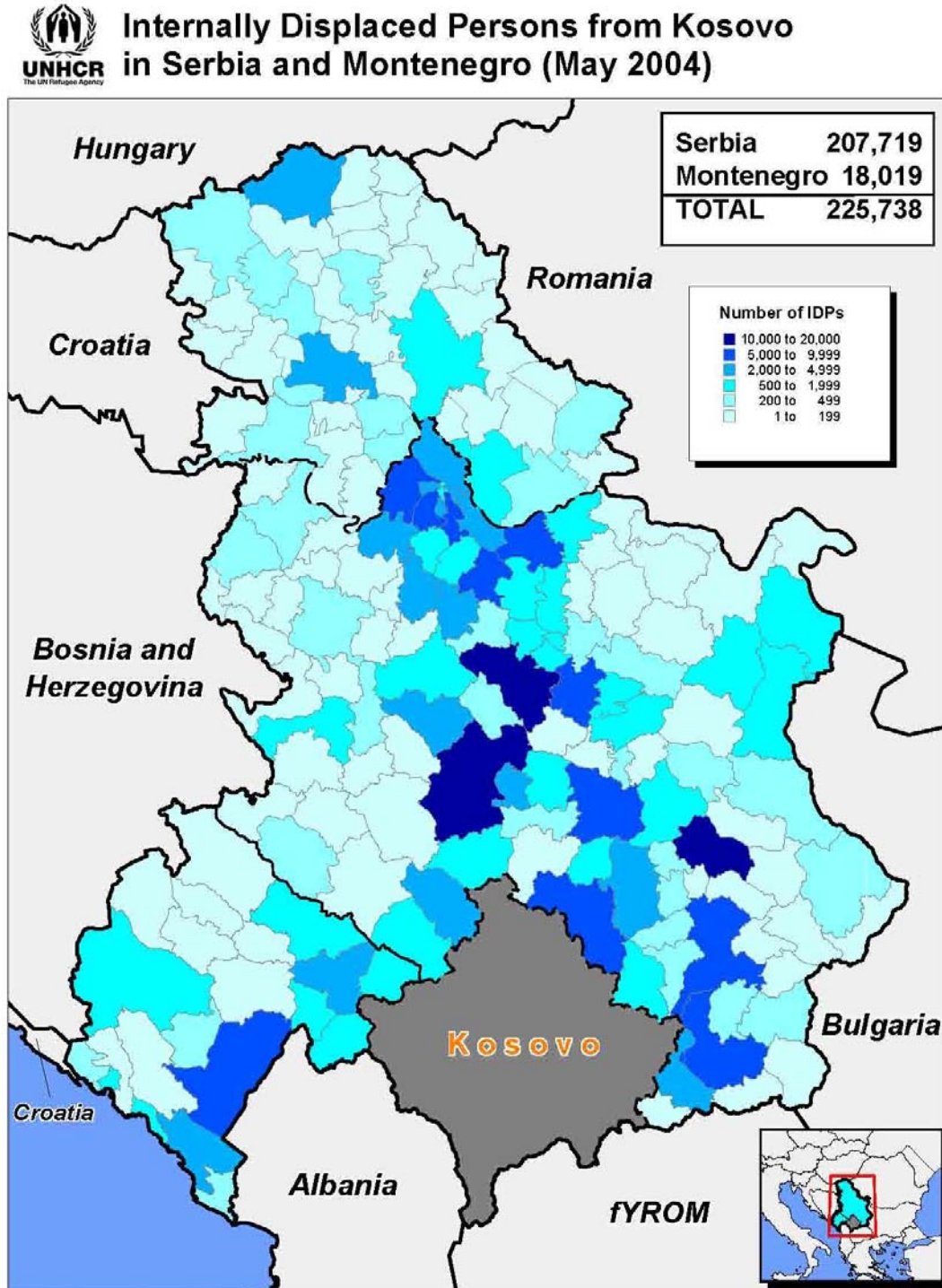
Firstly, the Working Group finds that in practice, discrimination against IDPs – even more pronounced against IDPs from other national minority communities such as Roma IDPs – undermines advances made in establishing programmes or initiatives, such as the Roma National Strategy. Most IDPs find themselves in a vulnerable situation; their displacement has undermined normal coping mechanisms open to others in the wider community. IDPs are largely left unprotected – legal provisions often subject them to greater scrutiny and higher standards, rather than reflecting in substance or application their special vulnerable situation.

Secondly, governments at all levels have repeatedly signaled that return is the only acceptable long-term solution for IDPs. Although many IDPs have expressed the wish to return, few believe, based on the continuing volatile security situation, that they can do this in the foreseeable future in safety and dignity. All levels of government are well aware of the continuing insecurity in Kosovo as highlighted by the events of March 17th, 2004. Yet, none have acknowledged openly that this translates into a protracted stay for the IDPs: no structural policies have yet been adopted to reflect and address this reality. In fact, IDPs' rights have been limited compared to those of other citizens in several crucial areas. For example, in access to health, freedom of movement, and access to employment bureaus.

As a consequence of this reluctance to acknowledge the long-term duration of the displacement, strategies put into place have been short to mid-term in vision. Most initiatives have been undertaken on an *ad hoc* basis. Five years post-displacement, there is still no clear vision or strategy for the community of IDPs. As a further consequence, the "return only" policy has had a negative impact on the type of assistance the international community and local NGOs can bring to bear. These organisations that deal with the protection of IDPs and the promotion of their rights are mainly confined to running programmes compatible with a "return only" policy.

The Working Group urges governments and authorities at all levels to examine the situation of the citizens in Serbia and Montenegro in light of comments made in this study. Such an enquiry is crucial if sustainable, long-term solutions based on the reality of the needs of IDPs and the gaps – including the legal gaps – in the system are to be found. The Working Group members reiterate their willingness to lend their support in implementing solutions.

Annexe 1: IDPs from Kosovo in Serbia and Montenegro (UNHCR, May 2004)



Analysis of the situation of Internally Displaced Persons from Kosovo in Serbia and Montenegro:
Law and Practice

Annexe 2:
Collective Accommodation of Refugees and
IDPs in Serbia and Montenegro
(UNHCR BO Belgrade, 01.04.03)

Appears on following page.

Collective Accommodation of Refugees and IDPs in Serbia and Montenegro
as at 1 April 2003

FO Belgrade

Type of accommodation	Locations	IDPs	Refugees	TOTAL Beneficiaries
Recognized Collective Centres	62	2,847	4,402	7,249
Unrecognized Collective Centres	26	1,370	907	2,277
Specialised Institutions	31	7	558	565
Student Dormitories	8	6	58	64
TOTAL	127	4,230	5,925	10,155

FO Novi Sad

Type of accommodation	Locations	IDPs	Refugees	TOTAL Beneficiaries
Recognized Collective Centres	70	164	3,795	3,959
Unrecognized Collective Centres	18	9	721	730
Specialised Institutions	43		663	663
Student Dormitories	10		188	188
TOTAL	141	173	5,367	5,540

FO Kraljevo

Type of accommodation	Locations	IDPs	Refugees	TOTAL Beneficiaries
Recognized Collective Centres	153	5,559	4,404	9,963
Unrecognized Collective Centres	15	301	119	420
Specialised Institutions	24		345	345
Student Dormitories	19		95	95
TOTAL	211	5,860	4,963	10,823

SERBIA Summary

Type of accommodation	Locations	IDPs	Refugees	TOTAL Beneficiaries
Recognized Collective Centres	285	8,570	12,601	21,171
Unrecognized Collective Centres	59	1,680	1,747	3,427
Specialised Institutions	98	7	1,566	1,573
Student Dormitories	37	6	341	347
TOTAL	479	10,263	16,255	26,518

SO Podgorica

Type of accommodation	Locations	IDPs	Refugees	TOTAL Beneficiaries
Recognized Collective Centres	24	2,282	480	2,762
Unrecognized Collective Centres	3	73	28	101
Specialised Institutions	7	17	93	110
Student Dormitories	5		393	393
Local Settlements	10	1,821	1,670	3,491
TOTAL	49	4,193	2,664	6,857

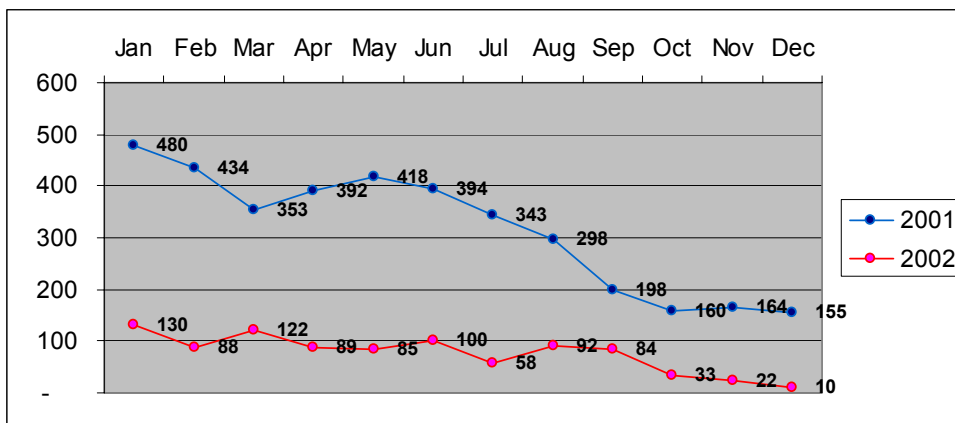
S&M Summary

Type of accommodation	Locations	IDPs	Refugees	TOTAL Beneficiaries
Recognized Collective Centres	309	10,852	13,081	23,933
Unrecognized Collective Centres	62	1,753	1,775	3,528
Specialised Institutions	105	24	1,659	1,683
Student Dormitories	42	6	734	740
Local Settlements (Montenegro)	10	1,821	1,670	3,491
TOTAL	528	14,456	18,919	33,375

Annexe 3: Influx of IDPs from Kosovo to other parts of Serbia in 2001 & 2002 (UNHCR BO Belgrade, IDP Registration Database, January 2003)

UNHCR BO Belgrade, IDP Registration Database, Jan 2003

Month	2001	2002
Jan	480	130
Feb	434	88
Mar	353	122
Apr	392	89
May	418	85
Jun	394	100
Jul	343	58
Aug	298	92
Sep	198	84
Oct	160	33
Nov	164	22
Dec	155	10
TOTAL	3,789	913



Annexe 4: UN Guiding Principles on Internal Displacement Introduction – Scope & Purpose and General Principles

Guiding Principles on Internal Displacement

Foreword to the Guiding Principles by Under-Secretary-General for Humanitarian Affairs Mr. Sergio Vieira de Mello

The humanitarian community is increasingly aware of the crisis of internal displacement which affects over 20 million people world-wide. While responsibility for the protection of IDPs rests first and foremost with national governments and local authorities, it is important for the international community to see how best it can contribute to enhancing the protection of IDPs in conflict and crisis situations. We must also design humanitarian assistance in such a way that it will promote the protection of IDPs.

Within the United Nations system, significant steps have been taken to enhance an effective and timely response to the needs of internally displaced persons (IDPs). The Inter-Agency Standing Committee (IASC) has entrusted me with the responsibility to act as Focal Point within the UN system for issues relating to the internally displaced. In discharging this mandate, I am committed to enhancing the capacity of the United Nations as a whole to respond to situations of internal displacement as well as to promoting strong co-ordination and a clearer division of institutional responsibilities and adequate support to operational agencies.

In this context, I welcome the issuance by the Secretary-General's Special Representative on IDPs of the Guiding Principles on Internal Displacement. These Principles, which are based upon existing international humanitarian law and human rights instruments, are to serve as an international standard to guide governments as well as international humanitarian and development agencies in providing assistance and protection to IDPs.

The IASC fully supports the Guiding Principles and has encouraged its members to share them with their Executive Boards and with their staff, especially those in the field, in order to ensure that the Principles are applied in their activities on behalf of internally displaced persons.

I believe that the Guiding Principles can play a significant role in raising awareness of the needs of IDPs, mobilising support within the humanitarian community and helping field colleagues to find solutions when confronted with the protection and assistance needs of the internally displaced. The Principles will also assist governments in providing for the security and well-being of their displaced populations.

I hope that each of you will work to ensure the widest possible dissemination and application of the Guiding Principles, in order to achieve the much needed improvement in the status and treatment of internally displaced persons.

**Introductory Note
by the Representative of the Secretary-General
on Internally Displaced Persons
Mr. Francis M. Deng**

The international community is confronted with the monumental task of ensuring protection for persons forcibly uprooted from their homes by violent conflicts, gross violations of human rights and other traumatic events, but who remain within the borders of their own countries. Nearly always they suffer from severe deprivation, hardship and discrimination. It is to meet this challenge that the Guiding Principles on Internal Displacement were developed.

The Principles identify the rights and guarantees relevant to the protection of the internally displaced in all phases of displacement. They provide protection against arbitrary displacement, offer a basis for protection and assistance during displacement, and set forth guarantees for safe return, resettlement and reintegration. Although they do not constitute a binding instrument, these Principles reflect and are consistent with international human rights and humanitarian law and analogous refugee law.

The Principles were developed over several years pursuant to the mandate given to me in 1992 by the Commission on Human Rights and reinforced by subsequent resolutions of both the Commission and the General Assembly. Initially I was asked to study the causes and consequences of internal displacement, the status of the internally displaced in international law, the extent to which their needs are being addressed under current institutional arrangements, and ways to improve protection and assistance for them.

Accordingly, developing needed legal and institutional frameworks for the internally displaced and undertaking country missions to engage Governments and others in a dialogue on their behalf have been the main activities of my mandate. In collaboration with a team of international legal experts, I examined the extent to which internally displaced persons receive adequate coverage under international law and produced a "Compilation and Analysis of Legal Norms" (E/CN.4/1996/52/Add.2). The study found that while existing law provides substantial coverage for the internally displaced, there are significant areas in which it fails to provide an adequate basis for their protection and assistance. Subsequently, the Commission and the General Assembly requested me to prepare an appropriate normative framework for the internally displaced. This led to the drafting of the Guiding Principles which both restate existing norms and seek to clarify grey areas and fill in the gaps.

After I presented the Guiding Principles to the Commission in 1998, the Commission adopted a resolution taking note of the Guiding Principles and of my stated intention as the Representative of the Secretary-General to use them in my ongoing dialogue with Governments and all those whose mandates and activities relate to the needs of the internally displaced. The Commission also took note of the decision of the Inter-Agency Standing Committee, which had welcomed the Principles and encouraged its members to share them with their Executive Boards and staff, especially in the field, and to apply them in their activities on behalf of the internally displaced.

The Guiding Principles should provide valuable practical guidance to Governments, other competent authorities, intergovernmental organisations and

NGOs in their work with internally displaced persons. It is my hope that they will be widely circulated and given practical application in the field.

Guiding Principles on Internal Displacement

Introduction - Scope and Purpose

1. These Guiding Principles address the specific needs of internally displaced persons world-wide. They identify rights and guarantees relevant to the protection of persons from forced displacement and to their protection and assistance during displacement as well as during return or resettlement and reintegration.
2. For the purposes of these Principles, internally displaced persons are persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalised violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognised State border.
3. These Principles reflect and are consistent with international human rights law and international humanitarian law. They provide guidance to:
 - (a) The Representative of the Secretary-General on internally displaced persons in carrying out his mandate;
 - (b) States when faced with the phenomenon of internal displacement;
 - (c) All other authorities, groups and persons in their relations with internally displaced persons; and
 - (d) Intergovernmental and non-governmental organisations when addressing internal displacement.
4. These Guiding Principles should be disseminated and applied as widely as possible.

Section I. General Principles

Principle 1

1. Internally displaced persons shall enjoy, in full equality, the same rights and freedoms under international and domestic law as do other persons in their country. They shall not be discriminated against in the enjoyment of any rights and freedoms on the ground that they are internally displaced.
2. These Principles are without prejudice to individual criminal responsibility under international law, in particular relating to genocide, crimes against humanity and war crimes.

Principle 2

1. These Principles shall be observed by all authorities, groups and persons irrespective of their legal status and applied without any adverse distinction. The observance of these Principles shall not affect the legal status of any authorities, groups or persons involved.
2. These Principles shall not be interpreted as restricting, modifying or impairing the provisions of any international human rights or international humanitarian law instrument or rights granted to persons under domestic law. In particular, these Principles are without prejudice to the right to seek and enjoy asylum in other countries.

Principle 3

1. National authorities have the primary duty and responsibility to provide protection and humanitarian assistance to internally displaced persons within their jurisdiction.
2. Internally displaced persons have the right to request and to receive protection and humanitarian assistance from these authorities. They shall not be persecuted or punished for making such a request.

Principle 4

1. These Principles shall be applied without discrimination of any kind, such as race, colour, sex, language, religion or belief, political or other opinion, national, ethnic or social origin, legal or social status, age, disability, property, birth, or on any other similar criteria.
2. Certain internally displaced persons, such as children, especially unaccompanied minors, expectant mothers, mothers with young children, female heads of household, persons with disabilities and elderly persons, shall be entitled to protection and assistance required by their condition and to treatment which takes into account their special needs.

Section II. Principles Relating to Protection From Displacement

Principle 5

All authorities and international actors shall respect and ensure respect for their obligations under international law, including human rights and humanitarian law, in all circumstances, so as to prevent and avoid conditions that might lead to displacement of persons.

Principle 6

1. Every human being shall have the right to be protected against being arbitrarily displaced from his or her home or place of habitual residence.
2. The prohibition of arbitrary displacement includes displacement:
 - (a) When it is based on policies of apartheid, "ethnic cleansing" or similar practices aimed at/or resulting in altering the ethnic, religious or racial composition of the affected population;
 - (b) In situations of armed conflict, unless the security of the civilians involved or imperative military reasons so demand;
 - (c) In cases of large-scale development projects, which are not justified by compelling and overriding public interests;
 - (d) In cases of disasters, unless the safety and health of those affected requires their evacuation; and
 - (e) When it is used as a collective punishment.
3. Displacement shall last no longer than required by the circumstances.

Principle 7

1. Prior to any decision requiring the displacement of persons, the authorities concerned shall ensure that all feasible alternatives are explored in order to avoid displacement altogether. Where no alternatives exist, all measures shall be taken to minimise displacement and its adverse effects.
2. The authorities undertaking such displacement shall ensure, to the greatest practicable extent, that proper accommodation is provided to the displaced persons, that such displacements are effected in satisfactory conditions of safety, nutrition, health and hygiene, and that members of the same family are not separated.
3. If displacement occurs in situations other than during the emergency stages of armed conflicts and disasters, the following guarantees shall be complied with:

- (a) A specific decision shall be taken by a State authority empowered by law to order such measures;
- (b) Adequate measures shall be taken to guarantee to those to be displaced full information on the reasons and procedures for their displacement and, where applicable, on compensation and relocation;
- (c) The free and informed consent of those to be displaced shall be sought;
- (d) The authorities concerned shall endeavour to involve those affected, particularly women, in the planning and management of their relocation;
- (e) Law enforcement measures, where required, shall be carried out by competent legal authorities; and
- (f) The right to an effective remedy, including the review of such decisions by appropriate judicial authorities, shall be respected.

Principle 8

Displacement shall not be carried out in a manner that violates the rights to life, dignity, liberty and security of those affected.

Principle 9

States are under a particular obligation to protect against the displacement of indigenous peoples, minorities, peasants, pastoralists and other groups with a special dependency on and attachment to their lands.

Section III. Principles Relating to Protection During Displacement

Principle 10

1. Every human being has the inherent right to life which shall be protected by law. No one shall be arbitrarily deprived of his or her life. Internally displaced persons shall be protected in particular against:

- (a) Genocide;
- (b) Murder;
- (c) Summary or arbitrary executions; and
- (d) Enforced disappearances, including abduction or unacknowledged detention, threatening or resulting in death.

Threats and incitement to commit any of the foregoing acts shall be prohibited.

2. Attacks or other acts of violence against internally displaced persons who do not or no longer participate in hostilities are prohibited in all circumstances. Internally displaced persons shall be protected, in particular, against:

- (a) Direct or indiscriminate attacks or other acts of violence, including the creation of areas wherein attacks on civilians are permitted;
- (b) Starvation as a method of combat;
- (c) Their use to shield military objectives from attack or to shield, favour or impede military operations;
- (d) Attacks against their camps or settlements; and
- (e) The use of anti-personnel landmines.

Principle 11

1. Every human being has the right to dignity and physical, mental and moral integrity.

2. Internally displaced persons, whether or not their liberty has been restricted, shall be protected in particular against:

- (a) Rape, mutilation, torture, cruel, inhuman or degrading treatment or punishment, and other outrages upon personal dignity, such as acts of gender-specific violence, forced prostitution and any form of indecent assault;

- (b) Slavery or any contemporary form of slavery, such as sale into marriage, sexual exploitation, or forced labour of children; and
 - (c) Acts of violence intended to spread terror among internally displaced persons.
- Threats and incitement to commit any of the foregoing acts shall be prohibited.

Principle 12

1. Every human being has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention.
2. To give effect to this right for internally displaced persons, they shall not be interned in or confined to a camp. If in exceptional circumstances such internment or confinement is absolutely necessary, it shall not last longer than required by the circumstances.
3. Internally displaced persons shall be protected from discriminatory arrest and detention as a result of their displacement.
4. In no case shall internally displaced persons be taken hostage.

Principle 13

1. In no circumstances shall displaced children be recruited nor be required or permitted to take part in hostilities.
2. Internally displaced persons shall be protected against discriminatory practices of recruitment into any armed forces or groups as a result of their displacement. In particular any cruel, inhuman or degrading practices that compel compliance or punish non-compliance with recruitment are prohibited in all circumstances.

Principle 14

1. Every internally displaced person has the right to liberty of movement and freedom to choose his or her residence.
2. In particular, internally displaced persons have the right to move freely in and out of camps or other settlements.

Principle 15

Internally displaced persons have:

- (a) The right to seek safety in another part of the country;
- (b) The right to leave their country;
- (c) The right to seek asylum in another country; and
- (d) The right to be protected against forcible return to or resettlement in any place where their life, safety, liberty and/or health would be at risk.

Principle 16

1. All internally displaced persons have the right to know the fate and whereabouts of missing relatives.
2. The authorities concerned shall endeavour to establish the fate and whereabouts of internally displaced persons reported missing, and co-operate with relevant international organisations engaged in this task. They shall inform the next of kin on the progress of the investigation and notify them of any result.
3. The authorities concerned shall endeavour to collect and identify the mortal remains of those deceased, prevent their despoliation or mutilation, and facilitate the return of those remains to the next of kin or dispose of them respectfully.
4. Grave sites of internally displaced persons should be protected and respected in all circumstances. Internally displaced persons should have the right of access to the grave sites of their deceased relatives.

Principle 17

1. Every human being has the right to respect of his or her family life.

2. To give effect to this right for internally displaced persons, family members who wish to remain together shall be allowed to do so.
3. Families which are separated by displacement should be reunited as quickly as possible. All appropriate steps shall be taken to expedite the reunion of such families, particularly when children are involved. The responsible authorities shall facilitate inquiries made by family members and encourage and co-operate with the work of humanitarian organisations engaged in the task of family reunification.
4. Members of internally displaced families whose personal liberty has been restricted by internment or confinement in camps shall have the right to remain together.

Principle 18

1. All internally displaced persons have the right to an adequate standard of living.
2. At the minimum, regardless of the circumstances, and without discrimination, competent authorities shall provide internally displaced persons with and ensure safe access to:
 - (a) Essential food and potable water;
 - (b) Basic shelter and housing;
 - (c) Appropriate clothing; and
 - (d) Essential medical services and sanitation.
3. Special efforts should be made to ensure the full participation of women in the planning and distribution of these basic supplies.

Principle 19

1. All wounded and sick internally displaced persons as well as those with disabilities shall receive to the fullest extent practicable and with the least possible delay, the medical care and attention they require, without distinction on any grounds other than medical ones. When necessary, internally displaced persons shall have access to psychological and social services.
2. Special attention should be paid to the health needs of women, including access to female health care providers and services, such as reproductive health care, as well as appropriate counselling for victims of sexual and other abuses.
3. Special attention should also be given to the prevention of contagious and infectious diseases, including AIDS, among internally displaced persons.

Principle 20

1. Every human being has the right to recognition everywhere as a person before the law.
2. To give effect to this right for internally displaced persons, the authorities concerned shall issue to them all documents necessary for the enjoyment and exercise of their legal rights, such as passports, personal identification documents, birth certificates and marriage certificates. In particular, the authorities shall facilitate the issuance of new documents or the replacement of documents lost in the course of displacement, without imposing unreasonable conditions, such as requiring the return to one's area of habitual residence in order to obtain these or other required documents.
3. Women and men shall have equal rights to obtain such necessary documents and shall have the right to have such documentation issued in their own names.

Principle 21

1. No one shall be arbitrarily deprived of property and possessions.
2. The property and possessions of internally displaced persons shall in all circumstances be protected, in particular, against the following acts:
 - (a) Pillage;
 - (b) Direct or indiscriminate attacks or other acts of violence;

- (c) Being used to shield military operations or objectives;
 - (d) Being made the object of reprisal; and
 - (e) Being destroyed or appropriated as a form of collective punishment.
3. Property and possessions left behind by internally displaced persons should be protected against destruction and arbitrary and illegal appropriation, occupation or use.

Principle 22

1. Internally displaced persons, whether or not they are living in camps, shall not be discriminated against as a result of their displacement in the enjoyment of the following rights:

- (a) The rights to freedom of thought, conscience, religion or belief, opinion and expression;
- (b) The right to seek freely opportunities for employment and to participate in economic activities;
- (c) The right to associate freely and participate equally in community affairs;
- (d) The right to vote and to participate in governmental and public affairs, including the right to have access to the means necessary to exercise this right; and
- (e) The right to communicate in a language they understand.

Principle 23

1. Every human being has the right to education.
2. To give effect to this right for internally displaced persons, the authorities concerned shall ensure that such persons, in particular displaced children, receive education which shall be free and compulsory at the primary level. Education should respect their cultural identity, language and religion.
3. Special efforts should be made to ensure the full and equal participation of women and girls in educational programmes.
4. Education and training facilities shall be made available to internally displaced persons, in particular adolescents and women, whether or not living in camps, as soon as conditions permit.

Section IV. Principles Relating to Humanitarian Assistance

Principle 24

1. All humanitarian assistance shall be carried out in accordance with the principles of humanity and impartiality and without discrimination.
2. Humanitarian assistance to internally displaced persons shall not be diverted, in particular for political or military reasons.

Principle 25

1. The primary duty and responsibility for providing humanitarian assistance to internally displaced persons lies with national authorities.
2. International humanitarian organisations and other appropriate actors have the right to offer their services in support of the internally displaced. Such an offer shall not be regarded as an unfriendly act or an interference in a State's internal affairs and shall be considered in good faith. Consent thereto shall not be arbitrarily withheld, particularly when authorities concerned are unable or unwilling to provide the required humanitarian assistance.
3. All authorities concerned shall grant and facilitate the free passage of humanitarian assistance and grant persons engaged in the provision of such assistance rapid and unimpeded access to the internally displaced.

Principle 26

Persons engaged in humanitarian assistance, their transport and supplies shall be respected and protected. They shall not be the object of attack or other acts of violence.

Principle 27

1. International humanitarian organisations and other appropriate actors when providing assistance should give due regard to the protection needs and human rights of internally displaced persons and take appropriate measures in this regard. In so doing, these organisations and actors should respect relevant international standards and codes of conduct.

2. The preceding paragraph is without prejudice to the protection responsibilities of international organisations mandated for this purpose, whose services may be offered or requested by States.

Section V. Principles Relating to Return, Resettlement and Reintegration

Principle 28

1. Competent authorities have the primary duty and responsibility to establish conditions, as well as provide the means, which allow internally displaced persons to return voluntarily, in safety and with dignity, to their homes or places of habitual residence, or to resettle voluntarily in another part of the country. Such authorities shall endeavour to facilitate the reintegration of returned or resettled internally displaced persons.

2. Special efforts should be made to ensure the full participation of internally displaced persons in the planning and management of their return or resettlement and reintegration.

Principle 29

1. Internally displaced persons who have returned to their homes or places of habitual residence or who have resettled in another part of the country shall not be discriminated against as a result of their having been displaced. They shall have the right to participate fully and equally in public affairs at all levels and have equal access to public services.

2. Competent authorities have the duty and responsibility to assist returned and/or resettled internally displaced persons to recover, to the extent possible, their property and possessions which they left behind or were dispossessed of upon their displacement. When recovery of such property and possessions is not possible, competent authorities shall provide or assist these persons in obtaining appropriate compensation or another form of just reparation.

Principle 30

All authorities concerned shall grant and facilitate for international humanitarian organizations and other appropriate actors, in the exercise of their respective mandates, rapid and unimpeded access to internally displaced persons to assist in their return or resettlement and reintegration.

Annexe 5: Domestic Laws and Policies

The State Union of Serbia and Montenegro

Law

Constitutional Charter of the State Union of Serbia and Montenegro

Law on Protection of Rights and Freedoms of National Minorities, Official Gazette No.11 of 27.02.02

Serbia and Montenegro State Union Charter on Human and Minority Rights and Civil Liberties, Official Gazette of Serbia and Montenegro, No. 6/03 as of 28.02.2003

Policy

National Draft Strategy for the Integration and Empowerment of the Roma, Discussion Paper 13 December 2002

ICRC with the Ministry of Social Affairs of the Republic of Serbia, Ministry of Labour and Social Welfare of the Republic of Montenegro, UNHCR, Red Cross of Serbia and Red Cross of Montenegro, *IDP Needs Assessment in Serbia and Montenegro – Final Report*, May 2003

The Republic of Serbia

Law

Constitution of the Republic of Serbia, Official Gazette of the Republic of Serbia 1/1990

Law on Administrative Procedure

Law on Administrative Tax, Official Gazette of the Republic of Serbia No. 43/03, June 2003.

Law on Local Self-Government, Official Gazette No. 9 of 26.02.02.

Law on Refugees, 1992, Official Gazette of the Republic of Serbia 18/92, 42/02, 45/02

Law on Registry Books of the Republic of Serbia, Official Gazette of the Republic of Serbia 15/90, 57/03

Law on Temporary and Permanent Residence of Serbia, Official Gazette of the Republic of Serbia 42/77, 25/89, 53/93, 67/93, 48/94, 17/99 and 33/99

Policy

Government of Serbia, *Poverty Reduction Strategy Paper for Serbia – Executive Study and Activity Matrices*, Belgrade 2003

Government of Serbia, *National Strategy for Resolving the Problems of Refugees and Internally Displaced Persons*, Belgrade May 2002

The Republic of Montenegro

Law

Decree on Employment of Non-resident Physical Persons, Official Gazette of the Republic of Montenegro 28/03

Decree on Providing Care to Displaced Persons, Official Gazette of the Republic of Montenegro 20/93, 27/94

Law on Employment, Official Gazette of the Republic of Montenegro 05/02

Law on Temporary and Permanent Residence of Montenegro, Official Gazette of the Republic of Montenegro 45/93 and 27/94

Montenegrin Citizenship Law, 1999

Non-recognition of Federal Decisions Parliament of the Republic of Montenegro, *Resolution on protection of Montenegro's interests*, Podgorica, July 8 2000

Law on the Protector of Human Rights and Freedoms, Official Gazette of the Republic of Montenegro No. 41/03, 10 June 2003.

Policy

Constitution of the Republic of Montenegro, Official Gazette of the Republic of Montenegro 48/92

Annexe 6: International Instruments to which Serbia and Montenegro is Party

International Treaties and Conventions

Serbia and Montenegro has obligations under these instruments either because they are party to the instrument and/or in accordance with customary international law.

Convention on the Elimination of All Forms of Discrimination Against Women, Official Gazette 11/81, Protocol Official Gazette 13 (entry into force 27.04.92)

Convention on the Rights of the Child, Official Gazette 15/90 (entry into force 04.1996, second entry into force 02.02.91)

European Convention for the Protection of Human Rights and Fundamental Freedoms, Official Gazette 9/2003 (ratified and entry into force 03.03.04)

Protocol No. 1 to the European Convention for the Protection of Human Rights and Fundamental Freedoms (ratified and entry into force 03.03.04)

Framework Convention for the Protection of National Minorities (ratified and entry into force 03.03.04)

International Covenant on Economic, Social and Cultural Rights, Official Gazette 7/71 (ratified and entry into force 27.04.92)

International Covenant on Civil and Political Rights, Official Gazette 7/71 (ratified and entry into force 27.04.92)

International Convention on the Elimination on All Forms of Racial Discrimination, Official Gazette 6/67

Statute of the Council of Europe, Official Gazette 02.2003

Universal Declaration of Human Rights

United Nations Resolutions

United Nations Security Council Resolution 1244 S/RES/1244, 10 June 1999.

Non-binding Documents

United Nations Guiding Principles on Internal Displacement, UN Publication E/CN.4/1998/53/Add.2

Annexe 7:

Parliamentary Assembly of the Council of Europe

Recommendation No. 1633

Parliamentary Assembly
Assemblée parlementaire



Recommendation 1633 (2003)¹

Forced returns of Roma from the former Federal Republic of Yugoslavia, including Kosovo, to Serbia and Montenegro from Council of Europe member states

1. The Parliamentary Assembly refers to its [Recommendation 1569 \(2002\)](#) on the situation of refugees and internally displaced persons in the Federal Republic of Yugoslavia; [Recommendation 1588 \(2003\)](#) on population displacement in South-eastern Europe: trends, problems, solutions; [Recommendation 1348 \(1997\)](#) on the temporary protection of persons forced to flee their country; [Recommendation 1547 \(2002\)](#) on expulsion procedures in conformity with human rights and enforced with respect for safety and dignity; and [Recommendation 1504 \(2001\)](#) on non-expulsion of long-term immigrants.

2. The Assembly notes with concern that the problem of displacement in the Balkans still remains unresolved. At the moment, there are still more than one million displaced persons seeking durable solutions in the region. Of these, half a million are living in Serbia and Montenegro, including Kosovo. This general context of displacement should be taken into account when examining any specific questions concerning returns.

3. Roma constitute a particularly vulnerable group of the displaced population. In Kosovo, their security cannot be guaranteed. In Serbia and Montenegro, their economic and social situation, as well as living conditions, are very precarious. Everywhere in the region the Roma are confronted with a pattern of subtle discrimination on the part of both the local population and the local authorities, who are often reluctant to accept them.

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Law and Practice

4. According to estimates, between 50 000 and 100 000 Roma from Serbia and Montenegro, including Kosovo, who had fled the region during the conflict in the Balkans, are still living in various European countries, with no permanent status. The majority live in Germany (25 000-30 000), the Netherlands (12 000), Belgium (3 000), Switzerland (3 000) and Luxembourg (2 000-3 000). They fall into the category of candidates for return.

5. Forced returns are carried out on the basis of bilateral return agreements concluded between Serbia and Montenegro on the one hand, and various European countries who wish to repatriate the Roma on the other. They started shortly after the democratic changes following the presidential elections in the Federal Republic of Yugoslavia in September 2000. So far, approximately 1 000 Roma have been forcibly returned, mainly from Germany.

6. The main concerns relating to forced returns of Roma can be divided into three areas. The first group of issues calls into question the legitimacy of certain decisions on expulsion taken by the host countries. The second group relates to the conditions in which forced returns take place, and the third to the situation in which forcibly returned Roma find themselves upon their return to Serbia and Montenegro.

7. It is particularly worrying that readmission agreements do not clearly define the conditions for the reception of returned persons and do not put any responsibility on the receiving state with regard to the reintegration of returnees.

8. The Assembly is also concerned by so-called "voluntary returns" which in some cases are so strongly encouraged that they may amount to disguised forced returns.

9. Therefore, the Assembly recommends that the Committee of Ministers:

i. urge the member states of the Council of Europe who are hosting Roma from Serbia and Montenegro, including Kosovo, to ensure:

a. that any decision on a forced return of Roma to Serbia and Montenegro is taken on a case-by-case basis taking into account all relevant circumstances; in particular, humanitarian grounds should be considered as a sufficient justification for granting a residence permit;

b. that every Roma who seeks international protection is given access to fair and effective asylum procedures;

c. that there are no forced returns of Roma originating from Kosovo either to Kosovo or to Serbia and Montenegro, as long as the security situation in Kosovo does not allow for their return;

d. that Roma representatives are given an opportunity to be involved, in an advisory capacity, at an early stage of preparation for a possible forced return of Roma;

e. that forcibly returned Roma are in possession of appropriate documents which will enable them to be recognised as full citizens upon their return;

f. that the procedures for deportation comply with international law and take into account recommendations included in Recommendation 1547;

g. that they contribute financially to the setting-up and implementation of effective reintegration programmes for returning Roma. These programmes should also be supported by funding for the new wider Roma strategy;

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ii. urge the Serb and Montenegrin authorities:

a. to actively seek support and international funding for the setting-up and implementation of reintegration programmes for returning Roma, including financing from the Council of Europe Development Bank;

b. to ensure that Roma representatives are consulted and involved in the setting-up of any reintegration programme concerning the Roma population;

c. to give particular attention to Roma, who constitute the poorest category in the vulnerable population groups in the forthcoming governmental Poverty Reduction Strategy that is assisted by the World Bank;

d. to ensure that relevant ministries in charge of education, housing, employment, social and health care, and most particularly the local and municipal authorities, are properly informed about the readmission process; that relevant authorities should provide targeted plans to ensure that Roma are able to exercise their fundamental rights in these areas, starting with access to appropriate registration and personal documentation;

e. to adopt, in co-operation with non-governmental organisations representing the Roma population, a comprehensive policy to address all aspects of the human rights situation of Roma returned to Serbia and Montenegro and to provide funding to ensure full implementation of the strategy;

f. to adopt and implement, as a matter of priority, binding legal measures with the aim of preventing statelessness of Roma returnees, in particular to ensure that local authorities carry out the procedures necessary to provide them with identity documents. Urgent measures should be taken to improve the access of Roma returnees to public services necessary for the full exercise of their human rights;

g. to facilitate the speedy provision of school attendance certificates to Romani children educated abroad so that they can continue their education in Serbia and Montenegro;

h. to stop the practice of making returning Romani children attend classes they have already successfully completed abroad;

i. to provide extra classes for Romani children to learn the Serbian language;

j. to ensure that no ethnic segregation arises in the provision of schooling for returnee children.

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

i. strengthen its programmes involving the returning Roma population in Serbia and Montenegro;

ii. promote and support activities of Roma civil society;

iii. continue its work on the development of the code of good conduct for expulsion procedures.

11. The Assembly calls on the Council of Europe Development Bank to step up its co-operation with the Serb and Montenegrin authorities, with a view to financing projects for returning Roma.

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12. The Assembly invites the Congress of Local and Regional Authorities of the Council of Europe to step up its programme for the twinning of the municipalities in the regions which are hosting Roma with municipalities in other Council of Europe member states.

1. *Text adopted by the Standing Committee, acting on behalf of the Assembly, on 25 November 2003 (see [Doc. 9990](#), report of the Committee on Migration, Refugees and Population, rapporteur: Mr Einarsson).*

Annexe 8:

The Possibility of Applying of the Internal Flight or Relocation Alternative Within Serbia and Montenegro to Certain Persons Originating from Kosovo - UNHCR



UNHCR

United Nations High Commissioner for Refugees
Haut Commissariat des Nations Unies pour les réfugiés

**The Possibility of Applying the Internal Flight or Relocation Alternative
Within Serbia and Montenegro to Certain Persons Originating from Kosovo
and Belonging to Ethnic Minorities There
August 2004**

A. Introduction

1. The possibility of applying the internal flight or relocation alternative to persons originating from the territory of Kosovo, and returning them to another part of Serbia and Montenegro has increasingly been discussed in asylum countries. This possibility concerns especially persons belonging to ethnic minorities in Kosovo, in particular the Roma, Ashkaelia and Egyptians.

2. In order to assess the possibility of applying the internal flight or relocation alternative in respect of such persons, it would be necessary to assess in the individual case first whether internal relocation is relevant and second whether this is reasonable, as is outlined in UNHCR's Guidelines on International Protection on this issue.¹ The paragraphs which follow address what would seem likely to be the most relevant questions raised in these Guidelines for these particular groups.

3. In UNHCR's view, the implementation of the internal flight or relocation alternative to these minorities would not necessarily, depending on the individual circumstances, be either relevant or reasonable. One of the key considerations is the legal status of those displaced which serves as an obstacle to their accessing basic rights and services. Given this as well as the already over-stretched absorption capacity in a country already hosting over 220,000 IDPs, forced return is likely to lead to further internal displacement rather than a durable solution. Moreover, the application of internal flight or relocation alternative can appear to condone ethnic cleansing and thus contradict the spirit of Security Council Resolution 1244 of 10 June 1999 which emphasises the safe and unimpeded return of all refugees and displaced persons to their homes.

B. The relevance analysis

(i) The legal status of Kosovo Roma, Ashkaelia and Egyptians in Serbia proper and in Montenegro

4. Of particular importance to the relevance analysis in cases of persons from ethnic minorities from Kosovo, it would appear that the question of whether the applicant can legally access other areas in Serbia (apart from Kosovo) or in Montenegro is likely to raise serious concerns.

¹ See UNHCR, "Guidelines on International Protection: the 'Internal Flight or Relocation Alternative' within the context of Article 1A(2) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees", HCR/GIP/03/04, 23 July 2003.

5. In Serbia, access to basic rights and services, such as medical care, employment benefits, pensions, and education are dependent on being registered as a resident or an IDP rather than related to the holding of Serbian and Montenegrin citizenship. Until July 2003, Serbian government policy did not allow IDPs to register as permanent residents in Serbia proper. Although it since then in principle has been possible for IDPs to apply for permanent residency, UNHCR is not aware of cases where this has actually taken place. Moreover, the access of Kosovo Roma, Ashkaelia and Egyptians to documentation in Serbia and Montenegro is hampered by the fact that any official document can only be obtained by approaching the “dislocated municipal registry offices”², mostly located in Southern Serbia, in person. Most key documents, such as birth and marriage certificates, are only valid for a period of six months. Hence already economically and otherwise vulnerable IDPs have to travel several times and on a regular basis to the relevant “dislocated municipal registry offices”. Such requirements put a heavy financial burden on the IDPs, in particular as they have to cover the expenses related to travel and accommodation pending issuance of the document as well as the related document fees. This also applies to the IDPs living in Montenegro. Mostly, the Kosovo Roma, Ashkaelia and Egyptian IDPs fail to request or obtain key personal documents as a result of these requirements. In addition, Kosovo Roma, Ashkaelia and Egyptian IDPs have complained about discriminatory attitudes by some officials of these registry offices and subsequently failed to make the necessary request.

6. In the absence of permanent residency, IDP registration with the Serbian Commissioner for Refugees is a pre-requisite to access all socio-economic rights. **It is important to note that, persons originating from Kosovo who are forcibly returned from third countries to Serbia and Montenegro are not permitted to be registered as IDPs either in Serbia or in Montenegro.** IDPs who do not hold an IDP identification card are consequently deprived of access to basic rights including but not limited to health, employment benefits³, pensions, social insurance, and accommodation. This triggers a subsequent process of legal and socio-economic marginalization.

7. Those from these minority communities who are currently internally displaced are largely unable to successfully integrate or maintain a dignified existence elsewhere in Serbia or in Montenegro. Only an estimated 45% of Roma, Ashkaelia and Egyptians originating from Kosovo, who fled to Serbia and Montenegro following the ethnic violence in 1999, have been registered as IDPs. In many cases the lack of required personal documentation prevented others from registering. Both general marginalization of these minorities as well as the registration system under the Federal Republic of Yugoslavia (FRY), requiring deregistration in previous place of residence before enabling registration in the new place of habitation, resulted in them failing to obtain civil registration or other documentation even before 1999. The subsequent removal of civil registration and other municipal offices from Kosovo along with the withdrawal of FRY troops in 1999 has also impacted on the lack of required personal documentation.

² The registries were transferred to Serbia proper as the FRY forces withdrew from Kosovo in June 1999. These registries have recently been merged with the registry offices of the hosting municipality.

³ See further para 9 in relation to the situation in Montenegro, where non-residents, including registered IDPs are not allowed to work.

8. For the new group of persons fleeing from Kosovo to Serbia proper after the ethnic violence in March 2004, the registration of this caseload has not yet been established, as the authorities assume that the duration of their stay in Serbia is to remain very short. Therefore no IDP documents have been issued to them. Instead, these persons received a temporary right to stay in Serbia for an initial period of 45 days (extendable upon request for another 45 days, through an Instruction issued by the Serbian Commissioner for Refugees).

9. In Montenegro, IDPs from Kosovo are registered as IDPs under the same conditions and encounter similar practical problems as in Serbia proper. However, the problem of access to documents and to rights for all IDPs is further exacerbated by the fact that IDPs originating from Kosovo are *de facto* considered Serbian citizens, not Montenegrin citizens. The Decree of Montenegro on Displaced Persons dated July 1992 regulates the rights and obligations of both refugees and IDPs. It offers very limited access to civil as well as socio-economic rights for both categories. Further, as a rule, they are not able to receive permanent residence permits. As a result, they do not have access to the labour market and they have very limited access to health care. The Decree on Employment of Non-Residents of 2003 further restricts access by IDPs to the grey area of economy, as additional taxes are imposed on employers who hire non-permanent residents of Montenegro.

(ii) Discrimination and the danger of persecution or other serious harm

10. In addition to the problems related to access to legal status and attached rights highlighted above, the Roma, Ashkaelia and Egyptian population generally faces a pattern of discrimination from some representatives of the local authorities and some segments of society. This renders access to health care and services particularly difficult. Moreover, racial segregation in schools is a serious problem. Kosovo IDPs belonging to these ethnic communities face an additional obstacle; many of them do not know the Serbian language, speaking Albanian/Roma only. Therefore the drop out rate is very high resulting in additional marginalization, isolation and puts their future prospect for social integration in jeopardy. In the individual case, such treatment could cumulatively rise to the level of persecution or serious harm and this may therefore rule out return to other parts of Serbia or to Montenegro.

C. The reasonableness analysis

(i) Can the applicant lead a relatively normal life elsewhere in Serbia or in Montenegro without facing undue hardship?

11. Serbia and Montenegro, excluding Kosovo, is currently hosting over 220,000 (IDPs) from Kosovo, in addition to the almost 290,000 refugees from the former Socialist Federal Republic of Yugoslavia (SFRY). The refugees and the IDPs are competing for the same scarce resources, in a context where the economic situation is characterized by high unemployment, a general collapse of the social welfare system and the international assistance to displaced persons, which has been drastically cut back. In the current situation, achieving an adequate standard of living for the displaced constitutes a major challenge.

12. Access to housing constitutes a crucial problem for IDPs in Serbia and Montenegro. Due to lack of capacity and funds, the authorities do not provide housing

to IDPs, except for a very limited number (some 7,000 in Serbia and 1,000 in Montenegro, hosted in collective centres for refugees). This particularly affects the Roma, Ashkaelia and Egyptian IDPs. Most of them have found shelter in improvised illegal settlements and live under extremely harsh conditions (no electricity, no running water, no sanitation, no public services etc.). There are currently 586 illegal Roma, Ashkaelia and Egyptian settlements in Serbia and Montenegro. The current privatization process has further triggered a series of on-going evictions from these settlements. Neither the legal framework in Serbia nor that in Montenegro requires identification of alternative accommodation in case of such evictions. Hence no alternative solution is provided in such cases, giving rise to homelessness, physical injury, health problems, insecurity, the removal of children from school and the loss of employment.

13. At the same time, it has to be stressed that all elderly IDPs in both Serbia and in Montenegro have not received their full pensions for years, leaving this extremely vulnerable category destitute. Having in mind the fact that even the younger IDPs, and particularly marginalized Roma, Ashkaelia and Egyptians, cannot find employment, entire IDP families are barely surviving. Moreover, as noted above, IDPs are not allowed to work in Montenegro, nor will those without an IDP card have access to basic rights and services there.

D. UN Security Council Resolution 1244

14. The forced return of persons to Serbia and Montenegro (excluding Kosovo) on the basis of the internal flight or relocation alternative raises the issue of obligations stemming from United Nations Security Council Resolution 1244 of 10 June 1999, which states that “the main responsibilities of the international civil presence will include ... assuring the safe and unimpeded return of all refugees and displaced persons to their homes in Kosovo” as well as “encourages all Member States and International Organizations to contribute to economic and social reconstruction as well as to the safe return of refugees and displaced persons”. Forced returns to secondary displacement, keeping in mind that applying the internal flight or relocation alternative most likely leads to secondary displacement in Serbia and Montenegro, would hence undermine the responsibilities of the international civil presence in Kosovo and the responsibilities of UN Member states as reflected in the UN Security Council Resolution 1244.

15. The above is particularly relevant as denial of refugee status on the basis of the internal flight or relocation concept may be interpreted as condoning the new ethnic reality on the ground, and hence negatively impact on the safe and unimpeded return to their homes of those minority members who wish to do so.

E. Conclusion

16. In view of the above, in UNHCR’s view, the application of the internal flight or relocation alternative with respect to this caseload from Kosovo may, depending on individual circumstances be neither a relevant nor a reasonable option. The applicants, particularly if they are Roma, Ashkaelia and Egyptians, may not be able to reintegrate legally elsewhere in Serbia or in Montenegro and may face undue hardship as the conditions for legal re-integration and economic survival may not be met. The quality

of life of the minority groups would generally fail to meet the basic norms of civil, political and socio-economic human rights and would place them in a situation of destitution and marginalization based on the serious practical obstacles to obtaining legal residence.

17. In addition, the implementation of the internal flight or relocation alternative is likely to lead to further displacement within the territory of Serbia and Montenegro. Not only would the legal status of persons returned under such conditions be unclear, but they would also compete for survival with the IDPs and refugees already in Serbia and Montenegro in dire situations, further exacerbating the already over-stretched absorption capacity in Serbia and Montenegro.

18. Finally, in UNHCR's view, forced returns to Serbia and Montenegro (excluding Kosovo) on the basis of the internal flight or relocation alternative contradict the spirit of the UN Security Council Resolution 1244, which refer to the safe and unimpeded return of all refugees and internally displaced persons to their homes in Kosovo. Meanwhile, refugees from Kosovo should have the right to seek and enjoy asylum in other countries or to remain in the country of asylum, as also emphasised in the Guiding Principles on Internal Displacement, Principle 2(2). This principle states that the Principles are not to be interpreted as "restricting, modifying or impairing the provisions of any international human rights or international humanitarian law instrument or rights granted to persons under domestic law" and in particular, they are "without prejudice to the right to seek and enjoy asylum in other countries".⁴

UNHCR Geneva
August 2004

⁴ See also paras 31-32 of UNHCR, "Guidelines on International Protection: 'Internal Flight or Relocation Alternative' ... referred to in footnote 1.

Annexe 9:
**UNHCR Position on the Continued International
Protection Needs of Individuals from Kosovo**



UNHCR

United Nations High Commissioner for Refugees
Haut Commissariat des Nations Unies pour les réfugiés

UNHCR Position on the Continued International Protection Needs of Individuals from Kosovo August 2004

Introduction

1. This paper is an update of UNHCR's position on the continued international protection needs of individuals from Kosovo as outlined in the position paper of January 2003, followed by the recent position paper, issued in light of the renewed inter-ethnic confrontations, dated 30 March 2004. The primary focus of this paper is on the continued need for international protection of minority groups originating from Kosovo. In addition, although the vast majority of Kosovo Albanians have been able to return to Kosovo without individual protection problems, there are a few selected groups of Kosovo Albanians who may have protection concerns as described in this paper. UNHCR will update its position as the situation evolves.

2. Five years after the NATO intervention, the situation in Kosovo continues to be complex, and the security of minority communities remains a serious concern. The year 2003 brought an increased acceptance at some levels of Kosovo society of a multi-ethnic Kosovo as a basis for discussions on the future status of Kosovo, particularly in relation to achieving independence. This understanding seemed initially to benefit some of the minority communities, leading to increased freedom of movement, access to basic services and a relaxation of security arrangements provided by the security agencies, i.e. the Kosovo Force (KFOR), the United Nations Civil Police and the Kosovo Police Service. However, this did not stop members of minority communities from being regular targets of inter-ethnic harassment and violence from verbal assault, stone-throwing and systematic theft to physical assault, grenade attacks and killings. Moreover, the latter part of 2003 saw an increase in serious crimes committed against the Serb minority community compared to the year 2002. In an environment where inter-ethnic crime is not systematically investigated and rarely solved, a strong sense prevails that there is impunity and the rule of law is inefficient. This is further exacerbated by the fact that many less serious inter-ethnic crimes go unreported as the victims fear reprisals from the perpetrator or from the majority community with which the victim may have reached a level of fragile tolerance. Each serious security incident targeting minorities has been followed by a surge in property transactions and departures out of Kosovo.

3. A further and extremely serious confirmation of the fragile security situation for minority communities came with the March 2004 eruption of mass demonstrations leading to inter-ethnic violence and civil unrest of a scale not witnessed since 1999. The violence rapidly spread to all regions of Kosovo resulting in displacement among all minority communities. Notably, the violence systematically targeted mainly members of minority communities who had not been displaced over the past five years, although returnees also came under direct attack. The Kosovo Serbs were the

primary target of this inter-ethnic violence. Equally, various serious security incidents affected Roma, Ashkaelia and Egyptian communities. This particularly concerned Vushtrri/Vucitrn town, where the entire Ashkaelia neighbourhood was systematically attacked, houses burned and looted. Likewise, some Albanian communities and families in a minority situation in the northern municipalities suffered security incidents. Finally, whereas Bosniaks and Gorani were not directly targeted, some felt sufficiently at risk to opt for precautionary self-evacuation, or were evacuated by police to safer places.

4. The law enforcement authorities and political leadership did not manage to stop the violence early on and the three days of violence left according to initial information 19 civilians killed and more than 950 civilians injured – both killed and injured were of various ethnicities.¹ Approximately 730 houses belonging to minorities were damaged or destroyed, as well as 36 churches, monasteries, religious sites and public buildings catering to minorities.² By 23 March, a total of more than 4,100 Serb, Roma, Ashkaelia, Egyptian and Albanian minority community members had been displaced as result of the unrest.

5. These developments clearly demonstrate that non-ethnic Albanians originating from Kosovo continue to face security threats which place their lives and fundamental freedoms at risk. The situation of members of the minority communities, and henceforth the level of risk which may affect them depend on a variety of factors as outlined below and in the more detailed June 2004 Update.³ Kosovo Serbs and Roma are particularly vulnerable in terms of their security, but Ashkaelia and Egyptians also continue to face very serious security threats.

6. UNHCR therefore maintains its position that members of the Serb, Roma, Ashkaelia and Egyptian communities should continue to benefit from international protection in countries of asylum. Return of these minorities should take place on a strictly voluntary basis, deriving from fully informed individual decisions. Along with Kosovo Albanians originating from areas where they now are in a minority situation, they should not be forced or compelled to return to Kosovo. There are also certain categories of the population, whether belonging to the majority or minority communities, who may face serious protection related problems, including physical danger, were they to return home at this stage. This category also includes members of Bosniak and Gorani communities.

¹ United Nations, Security Council, “Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo”, S/2004/348, 30 April 2004, para. 3.

² Ibid, para. 3. A later report corrects these initial figures to 20 deaths and a total of 935 homes, apartments and public buildings damaged or destroyed. According to the report, the initial reporting was incomplete. See further United Nations, Security Council, “Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo”, S/2004/613, 30 July 2004, paras. 24 and 7 respectively.

³ For more detailed background information on the current situation of ethnic minorities in Kosovo, see the attached UNHCR, “Update on the Roma, Ashkaelia, Egyptian, Serb, Bosniak, Gorani and Albanian communities in a minority situation in Kosovo”, June 2004. The report is available on UNHCR’s website www.unhcr.org.

I. Ethnic minority communities

A. Kosovo Serbs

7. The past year has witnessed an increase in serious ethnically-motivated crimes against the Kosovo Serbs, ranging from shootings, grenade attacks and use of explosives to arson and physical assault. During the inter-ethnic violence of March 2004, Kosovo Serbs were attacked, physically assaulted by aggressive crowds in their homes, from which they were forced out as these houses or flats were set on fire. Many had to be evacuated by KFOR, some from burning houses. Widespread looting and pillaging followed the arson and continued unabated for three days. Eight of the 19 persons killed⁴ were Kosovo Serbs, several hundreds of the injured as well, and the vast majority of the destroyed or damaged houses belonged to the Serb community. Over 3,400 persons or 82 per cent of the newly displaced were Kosovo Serbs who sought temporary safety in KFOR camps, public buildings and private accommodation.

8. The continued looting and attempts to destroy houses, churches, monasteries, religious institutions and public services that belonged to the Serb population for days following the departure of the displaced, sends a strong message of denial of the right to return, including and especially for those who had never before felt the need to leave Kosovo. This has adversely affected the Serb communities as a whole, halting or delaying voluntary return to Kosovo and prompting some departures of the remaining population. It is noteworthy that at the time of writing this report, vandalism and looting of damaged houses continues in many areas and is a source of serious concern. It underscores and maintains the Kosovo Serbs in a constant state of fear. This is exacerbated by continuing violent incidents targeting individual Kosovo Serbs. In the most serious incident since the March events, a 16-year old Kosovo Serb was killed on 6 June 2004, in a drive-by-shooting.

9. During past years, KFOR has gradually and in total significantly decreased its troops. It has moved away from fixed positions at entrances or in minority communities towards providing 'area security', leaving minority communities more vulnerable to attack. At the same time, the UN Civilian Police has turned over responsibilities to the Kosovo Police Service. With each security-related incident during the past year, the KFOR 'unfixing' strategy came temporarily to a halt. But as a result of the civil unrest in March 2004, reinforced security measures have been put in place in many locations. Entrances to mono-ethnic Serb villages are manned by 24-hour KFOR checkpoints in many places, some with stringent checks before allowing entry. The provision of escorts has been re-instated for particularly isolated Serb communities across Kosovo; however, the demand for escorts clearly outnumbers the possibilities of the security agencies, whether provided by KFOR or UN CIVPOL.⁵ Whereas the relative reinforcement of KFOR presence in Kosovo immediately after the riots provided some reassurance to affected communities, the early progressive

⁴ A later report corrects these initial figures to 20 deaths, see further United Nations, Security Council, "Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo", S/2004/613, 30 July 2004, para. 24.

⁵ United Nations Security Council, Report of the Secretary-General on the United Nations interim Administration Mission in Kosovo, S/2004/613, 30 July 2004, para. 31.

withdrawal of these forces, and subsequent ‘unfixing’ of security measures put in place following the violence, is now fast dissipating this confidence in a safer environment.

10. The limited freedom of movement has important consequences for the Serbs who face major constraints on their access to basic services including schools, health services, administrative offices and courts, as well as on their enjoyment of their economic, social and cultural rights. Economic sustainability is further hampered by persistent violations of property rights, such as illegal occupation of residential, commercial and agricultural property as well as destruction of property.

11. All of these factors have seriously and very negatively challenged the sustainability of voluntary returns, including those of the victims of the most recent violence. Whether or not physical harm affects an individual or his family directly, the constant intimidation, the sense that those perpetuating these actions enjoy impunity, the perceived absence and/or limitations of security agencies and the generally unstable security situation that results, contribute to perpetuate an environment in which the perception of not only Serbs, but also of other minority communities that they are under threat is still well-founded.

B. Kosovo Roma, Ashkaelia and Egyptians

12. Up until March 2004, security, freedom of movement and access to basic services continued to improve for members of these three communities. It should be stressed, however, that the situation varied and still varies considerably among these three communities, from one location to another and to some extent depending on the language abilities of the particular communities. Generally, the Serbian-speaking Roma are either living with or are perceived to be closer to the Kosovo Serbs and their security situation is thus in many cases similar to that of the Kosovo Serbs. The Albanian-speaking Ashkaelia and Egyptians, on the other hand, appear to be better tolerated and, relatively-speaking, enjoy greater freedom of movement and a more stable security situation.

13. Nevertheless, the fragile position of all three communities was clearly evidenced by the fact that even in locations where minority returns have taken place with the involvement of the majority population, security incidents still occurred before March 2004. All three communities have encountered various forms of harassment over the last five years from serious threats, physical assault and grenade attacks to verbal abuse, stone-throwing, discrimination and marginalization.

14. A number of individual members of the three communities came under attack in March 2004 but, more importantly, one of the most violent and destructive expulsions of a minority community during those days was that of the Ashkaelia community in Vushtrri/Vucitrn town. The entire community with the exception of three families was systematically attacked by aggressive crowds and, in the end, 65 Ashkaelia families had to be evacuated by KFOR troops. Their houses were subsequently systematically looted and burned down and all 65 families (259 persons) remain in displacement. Although this may be seen by some as a unique and isolated incident, the attack against this community is significant as it occurred where the first organized return movement of Ashkaelia IDPs from Serbia took place in 2002, after which a number of individual returns had since taken place. Therefore, the systematic attack on a partly integrated community (some members of the community remained in

Vushtrri/Vucitrn town during the past five years) and partly returnee community coupled with the scale of the repeated harassment and crime that affect the Ashkaelia and Egyptian communities strongly point to their continued vulnerability and the possibility that they will be targeted in the future.

15. The Roma, Ashkaelia and Egyptians continue to seek safety in large communities, in over-crowded, often informal settlements without appropriate infrastructure. Their difficulties are compounded by property-rights-related problems. The March 2004 events demonstrate that, Vushtrri/Vucitrn being a case in point, the existence of return movements (whether spontaneous, facilitated or organized) does not necessarily or immediately reflect a substantial improvement in their security situation in general. In view of this, all three communities continue to feel threatened for well-founded reasons.

C. Kosovo Bosniaks and Gorani

16. The security situation for Kosovo Bosniaks and Goranis has remained stable, with no serious incidents of violence reported. Incidents of intimidation, harassment and discrimination have continued and there is still a reluctance to use their mother tongue in public (which could be assimilated to Serbian) in areas outside of their immediate neighbourhood. The language factor has continued to restrict freedom of movement throughout Kosovo and hamper equal access to services and self-sufficiency by limiting economic opportunities. This has prompted departures from Kosovo.

17. Whereas the Bosniaks and Goranis were not directly targeted during the turmoil in March 2004, in some locations they felt insecure and opted for precautionary movements. Two families were evacuated by the police from the Bosniak Mahalla in Mitrovice/a North, while several others left on their own initiatives. Living in a Serb neighbourhood in Fushe Kosova/Kosovo Polje and seeing their Serb neighbours being attacked, several Gorani families left their homes as a precautionary measure. No other attacks or self-imposed evacuations have been reported, although the two ethnic communities anxiously followed the unfolding developments. The events have inevitably left the communities with a heightened sense of insecurity and in a state of constant alert.

18. Individual Bosniaks and Gorani may have a well-founded fear of persecution as members of a minority, in particular when the following factors are taken into account: (i) their past or perceived association with the Serbian regime; (ii) the ethnically volatile or sensitive areas of residence of these communities; (iii) their present or perceived association with the Serb community or alternatively association with the Albanian community;⁶ (iv) the unpredictability of and further potential for inter-ethnic violence targeting the minority communities in Kosovo, which is compounded by the inadequate response mechanisms in place in terms of functioning national protection and rule of law.

⁶ A case in point for the latter example is the fragile security situation in the Bosniak Mahalla in North Mitrovice/a, where during the inter-ethnic violence in mid-March 2004 several Bosniak families departed, on their own or with police assistance, for safety, mostly to South Mitrovice/a, only to return after the end of the violence.

D. Kosovo Albanians

19. Kosovo Albanians in an ethnic minority situation, particularly in the northern municipalities of Kosovo, have continued to be in a very fragile security environment, with a strong KFOR presence needed to ensure their security in these neighbourhoods. The communities have tended to remain static, with very few spontaneous returns, demonstrating the difficult environment. A longstanding series of threats and assaults culminated during the civil unrest in March 2004, forcing more than a hundred persons in central Mitrovica into temporary displacement. Their apartments and houses were immediately either damaged and/or occupied by Kosovo Serbs. Although not attacked, mono-ethnic isolated neighbourhoods or villages in the northern municipalities remained in seclusion without access to supplies or basic services until escorts were arranged by KFOR, while Kosovo Albanian inhabitants in the Serb majority municipality of Shtërpcë/Štrpce left the villages fearing retaliatory attacks. The violent riots and the tense security environment following these events clearly demonstrate a continued threat to their security and Kosovo Albanians in an ethnic minority situation may face serious protection-related problems.

II. Protection categories applicable to all Kosovo residents (persons originating from Kosovo)

20. While most Kosovo Albanians are able to return without protection difficulties, there are certain categories of Kosovo Albanians who may face serious problems, including physical danger, were they to return home. In addition to Kosovo Albanians in an ethnic minority situation mentioned above, these include:

- Kosovo Albanians in ethnically mixed marriages and persons of mixed ethnicity and
- Kosovo Albanians perceived to have been associated with the Serbian regime after 1990.

21. Claims from persons, of all ethnicities, who fear persecution because they belong to any of the categories mentioned in this paper, should be carefully considered in order to determine their need for international protection. The recent inter-ethnic violence highlights the persistent and strong resistance in Kosovo to Kosovo Serbs as well as to persons closely associated with this minority or with the Serbian structures, whether past or present.

22. Special attention should also be given to claims from traumatized individuals who are able to invoke compelling reasons for refusing to return, particularly those who have been subjected to very serious persecution as well as victims of torture, survivors of sexual violence, or witnesses to crimes against humanity. As stated in Article 1C(5) and 1C(6) of the 1951 convention Relating to the Status of Refugees, the refugee status that may have been conferred to such persons who are “able to invoke compelling reasons arising out of previous persecution” for refusing to avail themselves of the protection of their country of nationality should not cease given the current circumstances prevailing in Kosovo.⁷

⁷ For further details see UNHCR, *Handbook on Procedures and Criteria for Determining Refugee Status*, 1979 reedited 1992, para. 136; UNHCR, *Guidelines on International*

III. Humanitarian categories

23. Individuals in a particularly vulnerable situation may have special needs that should be taken into account in the context of return and particularly bearing in mind the inadequate standards of health care and social welfare institutions. The following is a non-exhaustive list of persons falling under this category:

- chronically or otherwise severely-ill persons whose condition requires specialized medical intervention of a type not currently available in Kosovo;
- persons with severe and chronic mental illness (including post-traumatic stress disorders) whose condition requires specialized medical intervention of a type not currently available or rarely available in Kosovo;
- severely handicapped persons (including their caregivers) whose well-being depends on a specialized support system not currently available in Kosovo;
- unaccompanied elderly persons who have no relatives or any other form of societal support in Kosovo;
- separated children without relatives or caregivers in Kosovo, for whom it is found not to be in their best interest to return to Kosovo.

24. In addition, the return of separated children for whom relatives and caregivers have been identified should take place only if this is in their best interest and after appropriate advance notification and arrangements have been made by the repatriating State so that there is no gap in the care and protection provided to the child.

IV. Conclusion

25. The overall security situation which existed in Kosovo prior to the March 2004 violence had prompted UNHCR to maintain its position that there is a continued need for international protection for members of minority communities. Albeit to varying degrees depending on the minority concerned and on their location, these persons continued to be severely affected by the curtailment of their freedom of movement, access to essential services and rights as well as by the continued incidence of violence affecting them directly or their community.

26. The sudden and unexpected surge of inter-ethnic violence in March, its rapid spread to all regions of Kosovo, the seemingly specific and coordinated choice of victims/targets as well as the inadequate and initially slow response of the security agencies, have left all minority communities living in Kosovo with a heightened sense of fear and vulnerability. In addition to further limiting their freedom of movement and access to basic rights and services, these events have led to a substantial deterioration in the way the minorities perceive and experience their security and their continued sustainability. Together with the persistent volatility of the security environment, these factors need to be given due weight when adjudicating asylum claims of persons from Kosovo.

Protection: Cessation of Refugee Status under Article 1C(5) and (6) of the 1951 Convention relating to the Status of Refugees (the “Ceased Circumstances” Clauses), HCR/GIP/03/03, 10 February 2003, paras, 20–21.

27 Considering the above, UNHCR reiterates its position that members of minority groups and other protection categories in Kosovo as outlined above should continue to benefit from international protection in countries of asylum.

- For reasons explained above, it is UNHCR's position that forced or compelled returns of members of Serb, Roma, Ashkaelia, Egyptian and Kosovo Albanian minority communities should not take place. In addition to placing these persons in serious jeopardy, such returns could contribute to further destabilize the situation in Kosovo thus placing this environment at risk of new or increased inter-ethnic violence and renewed displacement. This risk is even higher where individuals may be forcibly returned to displacement into minority communities outside their place of origin.
- It is paramount that the safe, dignified and sustainable return of members of the Serb, Roma, Ashkaelia, Egyptian and Kosovo Albanians in a minority situation as described in this paper takes place on a strictly voluntary basis and in a coordinated and very gradual manner, supported with re-integration assistance. A comprehensive case-by-case assessment should be made in relation to asylum claims made by Bosniaks and Goranis, as indicated in the relevant paragraphs above.
- It is important that those individuals who apply for voluntary repatriation are able to do so freely and with the full knowledge of the current situation in Kosovo. Those persons who had applied for voluntary repatriation prior to the March events should be given the possibility to reassess their application if they so wish.
- UNHCR supports the full and inclusive implementation of Security Council Resolution 1244 of June 1999, which states that "the main responsibilities of the international civil presence will include ... assuring the safe and unimpeded return of all refugees and displaced persons to their homes in Kosovo" (emphasis added). In UNHCR's view, where States forcibly return minorities to situations where they are displaced into communities outside their place of origin, they undermine the spirit of the Resolution.

V. Internal Flight Alternative

UNHCR is of the opinion that the implementation of the concept of internal flight or relocation alternative in Serbia proper and Montenegro towards persons originating from Kosovo and belonging to ethnic minorities would not be a reasonable option in most cases, particularly considering their inability if returned to register as IDPs in Serbia proper or Montenegro and the subsequent problems they can be expected to encounter in accessing basic human rights and services.⁸ Similarly, there are already

⁸ See generally, UNHCR, "Guidelines on International Protection: the 'Internal Flight or Relocation Alternative' within the context of Article 1A(2) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees", HCR/GIP/03/04, 23 July 2003; UNHCR, "The Possibility of Applying the Internal Flight or Relocation Alternative within Serbia and Montenegro to Certain Persons Originating from Kosovo and Belonging to Ethnic Minorities", 13 August 2004. Key elements to be taken into account when considering the application of the internal flight alternative concept during the individual refugee status determination

serious constraints on the absorption capacity.⁹ Moreover, UNHCR is of the view that the implementation of the Internal or Relocation Alternative concept towards this caseload could also raise an issue under the obligations stemming from the United Nations Security Council Resolution 1244 of 10 June 1999 to return refugees and IDPs to their homes in Kosovo.

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process or when considering the lifting of the temporary protection regime are attached as Annex 2 to this position paper.

⁹ Serbia and Montenegro, excluding Kosovo, are already hosting more than 220,000 IDPs in addition to 290,000 refugees.

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NRC- Norwegian Refugee Council

DRC- Danish Refugee Council

IFRC- International Federation of Red Cross and Red Crescent Societies

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