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**Promotion et protection de tous les droits de l'homme,
civils, politiques, économiques, sociaux et culturels,
y compris le droit au développement**

Rapport soumis par le Représentant du Secrétaire général pour les droits de l'homme des personnes déplacées dans leur propre pays, Walter Kälin

Additif*

**Visite faisant suite à la mission effectuée en 2005
en ex-Serbie-Monténégro (y compris le Kosovo)**

* Le résumé du présent rapport est distribué dans toutes les langues officielles. Le rapport proprement dit est joint en annexe au résumé, et il est distribué dans la langue originale seulement.

Résumé

Le présent rapport renferme les constatations et les conclusions formulées par le Représentant du Secrétaire général pour les droits de l'homme des personnes déplacées dans leur propre pays à l'issue d'une visite qu'il a effectuée du 28 juin au 4 juillet 2009 dans le cadre du suivi de sa mission de 2005 en Serbie-Monténégro. La mission, qui a conduit le Représentant à Belgrade, Prishtinë/Priština et dans plusieurs autres localités, s'est déroulée dans le plein respect de la résolution 1244 du Conseil de sécurité, et toute référence au Kosovo, à son territoire, à ses institutions ou à sa population, doit être interprétée comme s'inscrivant dans le cadre de la politique de stricte neutralité observée par l'ONU s'agissant du statut du Kosovo. Le Représentant remercie les autorités et ses autres interlocuteurs de l'appui efficace qu'ils lui ont accordé et de la possibilité qui lui a été donnée d'engager un dialogue ouvert et constructif.

Le Représentant conclut dans son rapport que le Gouvernement serbe a réalisé des progrès notables dans la mise en œuvre de ses recommandations. Le cadre institutionnel régissant les questions relatives aux personnes déplacées dans leur propre pays a été renforcé et les responsabilités ont été définies. Plusieurs initiatives positives ont été prises dans le but d'améliorer les conditions de vie des personnes déplacées. Ces initiatives permettront aussi à ces personnes d'opérer plus aisément un retour durable si elles le souhaitent. Le Représentant encourage vivement les autorités à redoubler d'efforts pour proposer de nouvelles solutions décentes aux habitants des centres d'hébergement collectif. Il recommande par ailleurs aux autorités serbes d'organiser, en étroite coopération avec le HCR, une campagne d'enregistrement axée sur les besoins dans le but de déterminer, à des fins opérationnelles, le nombre de personnes déplacées toujours en quête d'une solution durable et ayant besoin d'une assistance spécifique.

Le Représentant note avec regrets dans son rapport que le nombre de retours vers le Kosovo et à l'intérieur du Kosovo même est demeuré peu élevé, alors qu'une forte proportion de la population déplacée semble encore désireuse d'exercer son droit au retour. Dans leur immense majorité, les rapatriés potentiels sont de souche ethnique serbe, mais il se trouve également encore des Albanais du Kosovo qui espèrent pouvoir regagner le nord du Kosovo. La sécurité et la liberté de circulation des communautés minoritaires au Kosovo se sont améliorées, même si des difficultés subsistent. Des pratiques discriminatoires bien établies, un manque d'accès à l'emploi et aux moyens de subsistance et un nombre d'écoles insuffisant pour les minorités sont aujourd'hui les principaux obstacles à un retour durable.

Saluant la volonté constamment affirmée des autorités du Kosovo de permettre les retours de personnes déplacées quelle que soit leur origine ethnique, le Représentant les exhorte à prendre de nouvelles mesures pour respecter les obligations découlant des Principes directeurs et à faire en sorte que les autorités locales, en particulier les municipalités, facilitent activement la réinsertion des rapatriés. En outre, le Ministère des communautés et des retours du Kosovo doit de toute urgence être développé et doté des ressources et des compétences nécessaires pour lui permettre de jouer son rôle.

Dans son rapport, le Représentant exhorte en outre le Gouvernement serbe à trouver les moyens d'engager avec les autorités du Kosovo un dialogue technique dans le but de résoudre les problèmes engendrés par les déplacements de populations. La communauté internationale doit contribuer aux efforts en faveur du retour des personnes déplacées en veillant à ce que les actuels projets de création d'emplois et de sources de revenus ciblent en priorité les rapatriés et toutes les communautés qui souhaiteront en bénéficier.

La restitution des logements, des terres et des biens abandonnés par les personnes déplacées ou, à tout le moins, l'indemnisation suffisante de ces mêmes personnes, demeure une difficulté. Les mécanismes de restitution mis en place par la communauté internationale ont, dans une certaine mesure, mis le processus de restitution à l'abri des déficiences graves que présente le système judiciaire et administratif du Kosovo. Pourtant, de nombreuses affaires relatives aux biens des personnes déplacées attendent d'être jugées par la justice du Kosovo, qui ne dispose pas encore des capacités nécessaires pour faire face à un tel volume de travail et qui doit donc être renforcée à titre prioritaire. La police et les autorités municipales du Kosovo doivent aussi redoubler d'efforts pour protéger les biens des personnes déplacées, conformément à leurs obligations internationales. Le Représentant appelle l'EULEX et les autres acteurs concernés à porter une attention particulière à la façon dont les tribunaux, la police et les autres autorités compétentes traitent les affaires de restitution des logements, terres et autres biens des personnes déplacées dans le but d'éviter de nouveaux dénis de justice et de protéger les droits de l'homme de ces personnes.

Les Roms, les Ashkalis et les Égyptiens déplacés vivent toujours dans une grande précarité, tant au Kosovo qu'à l'extérieur du Kosovo. Le Représentant craint que l'absence de pièces d'identité et d'autres documents empêche ces personnes déplacées de jouir de leurs droits dans les mêmes conditions que les autres. Il se félicite des efforts faits par la Serbie pour élaborer une loi sur la reconnaissance du statut de la personne devant la loi et modifier la loi sur la résidence, et réclame l'adoption et la mise en application rapides de ces instruments dans le but de mettre un terme à l'invisibilité juridique d'une frange importante de la population du pays, dont font partie de nombreuses personnes déplacées. Des problèmes comparables se posent également au Kosovo, et le Représentant encourage les autorités du Kosovo à s'attacher sérieusement à délivrer des pièces d'identité à ces personnes et à régulariser leur situation, notamment en matière de titres de propriété foncière.

Le Représentant souligne avec préoccupation dans son rapport que la situation des Roms déplacés exposés à des déchets toxiques contenant du plomb dans le nord de Mitrovica/Mitrovicë n'a toujours pas été réglée, et que les enfants en particulier sont encore exposés à de graves risques pour leur santé et leur intégrité physique. Le Représentant appelle l'ensemble des acteurs concernés à coopérer avec pragmatisme et en étroite concertation avec la communauté des personnes déplacées en vue d'organiser immédiatement l'évacuation humanitaire de ces personnes, de fermer le site de Osterode/Çesmin Lug/Çesmin Llugë, d'apporter des solutions durables et de dispenser dans les meilleurs délais tous les soins médicaux requis aux personnes évacuées.

Le Représentant note que les membres de la communauté minoritaire qui sont renvoyés de force au Kosovo par des pays tiers sont confrontés aux mêmes problèmes de réinsertion que les autres rapatriés. La sécurité s'est dans l'ensemble améliorée mais les relations interethniques demeurent tendues. Les pratiques discriminatoires omniprésentes et l'absence d'aide à la réinsertion font qu'à leur retour, ces personnes risquent de devenir des personnes déplacées, ce qui alimente un cercle vicieux d'émigration clandestine et de renvoi forcé. Le Représentant recommande aux autorités du Kosovo de prendre, avec l'appui des États qui renvoient des demandeurs d'asile déboutés et d'autres personnes issues des communautés minoritaires du Kosovo, des mesures énergiques propres à offrir à ces personnes de réelles perspectives de réinsertion. Tant que ces mesures ne seront pas en place et que la discrimination demeurera omniprésente, les gouvernements devraient s'abstenir de renvoyer de force des membres de communautés minoritaires vers le Kosovo et leur accorder un statut dans le pays d'accueil, en attendant que la situation au Kosovo leur permette d'y retourner en toute sécurité.

Annexe

Report of the Representative of the Secretary-General on the human rights of internally displaced persons, Walter Kälin

Follow-up visit of 28 June–4 July 2009 to the mission to Serbia and Montenegro (including Kosovo) in 2005

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I. Introduction

1. This report details the findings of a visit (28 June to 4 July 2009) the Representative undertook to follow-up on the mission he conducted in 2005 to then Serbia and Montenegro.¹ The Representative commenced his follow-up visit in Belgrade, moved from there to Smederevo and Kraljevo before continuing to Kosovo, where he visited Prishtinë/Priština, Mitrovica/Mitrovicë, Štrpce/Shtërpçë and Ferizaj/Uroševac.²

2. The Representative underscores that he conducted the mission in full respect of Security Council Resolution 1244. Any reference to Kosovo, whether to the territory, institutions or population, shall be understood in line with the United Nations policy of strict neutrality on the status of Kosovo.

3. The purpose of the visit was to assess to what extent the recommendations the Representative made pursuant to his 2005 mission have been implemented and what remains to be done. The Representative also looked at the impact the unilateral declaration of independence, pronounced by the Kosovo Assembly on 17 February 2008, had on the situation of persons who were internally displaced from and within Kosovo in 1999 and thereafter. In this context, he would like to recall that according to the United Nations Guiding Principles on Internal Displacement, internally displaced persons (IDPs) 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 generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border”.

4. During the course of the visit, the Representative had the opportunity to meet with the Assistant Minister of Foreign Affairs, the Assistant Ministers for Kosovo and Metohija, the State Secretary of the Ministry for Human and Minority Rights, the Serbian Commissioner for Refugees and other senior officials in the Government of Serbia. In Kosovo, the Representative had consultations with the Special Representative of the Secretary-General in Kosovo, the President of Kosovo, the Deputy Prime Minister, the Minister for Communities and Return, the Minister for Labour and Social Welfare and other senior officials. The Representative also appreciated the opportunity to speak with other representatives of the international community, civil society and internally displaced communities as well as the Serbian Ombudsperson and the Kosovo Ombudsperson during the course of his visit. The Representative would like to thank all his interlocutors for having taken the time to share their perspectives with the Representative.

II. Assistance and protection of internally displaced persons

A. Assistance and protection outside Kosovo

5. Following his 2005 visit, the Representative recommended that appropriate offices and organs be clearly mandated to provide for the assistance and protection of the human rights of the IDPs and to provide them with the appropriate powers and budgets. The

¹ See E/CN.4/2006/71/Add.5.

² In light of the small number of internally displaced persons remaining in Montenegro, the Representative did not seek to re-visit that country.

Representative specifically suggested to give the Commissioner for Refugees the mandate and adequate funds to assist and protect all IDPs, as well as the adequate funds.³

6. Positively, the Government of Serbia has since extended the mandate of the Serbian Commissioner for Refugees to cover the IDP population as well. The Commissioner has started a series of activities to assist and protect IDPs, while being in the process of elaborating a comprehensive IDP policy. According to the Serbian Commissioner's own figures, which are calculated on the basis of registration figures dating back several years, there are currently more than 210,000 internally displaced persons in Serbia. The vast majority (75%) are of Serb ethnicity, about 10% are Roma and the remainder belongs to a total of 29 different minority groups.

7. The Government lacks reliable figures on how many of those who suffered internal displacement in 1999 and thereafter have already found a durable solution and no longer need specific assistance and also how many have since moved to other countries. The lack of a needs-based figure for operational purposes complicates assistance planning and may also undermine donor support for activities aimed at assisting IDPs and facilitating durable solutions for them.

8. More than a decade after the major wave of displacement, IDPs are still lagging behind the resident population in respect of key socio-economic indicators. According to the latest Living Standards Measurement Survey,⁴ IDPs are still more likely to depend on social welfare than the resident population. They are less likely to own their living space or go to university, although at least non-Roma IDP children seem to be integrated well in the school system. IDPs are more likely to be unemployed or hold a precarious employment in the informal sector, occasional seasonal jobs or other short-term employment. The current economic crisis has caused additional problems. During his visit to Kraljevo municipality, where 16.5% of inhabitants are IDPs from Kosovo, the Representative was for instance informed that the unemployment rate had shot up to 25%, which has resulted in increasing competition for employment and certain tensions between IDPs and the resident population.

9. Following his 2005 mission, the Representative recommended that Serbia should facilitate and proactively support IDPs who want to participate in society and its economic life.⁵ It is therefore very positive that various Government institutions have established programmes to help IDPs improve their living conditions and escape situations of dependency. The National Employment Agency, for example, provides IDPs with preferential access to programmes designed to foster employment, although the number of IDPs among the beneficiaries has so far been quite low. Particularly interesting is a scheme by the Serbian Commissioner for Refugees to provide matching grants to municipalities that devise and fund local action plans to improve the living conditions of IDPs and refugees. By July 2009, 58 municipalities had already received a total of 80 millions RSD to implement their plans; 40 more local action plans were in planning.

10. The Representative was also impressed by an UNHCR-administered programme that provides IDPs with a grant to purchase a village house of their choice as well as training and supplies to start livelihood activities such as small-scale farming or food processing. From 2008 up to August 2009, 100 families had already benefitted from the programme, which has received substantial support from the Divac Foundation and various governmental authorities. It would be important to expand this very successful programme or start similar new initiatives to improve the situation of IDPs in Serbia.

³ E/CN.4/2006/71/Add.5, paras. 68 and 76 (b).

⁴ See United Nations Development Programme (UNDP), *Social and Economic Position of IDPs in Serbia: Analysis based on IDP Living Standards Measurement Survey (2008)*.

⁵ E/CN.4/2006/71/Add.5, para. 76 (d).

11. Recalling his recommendation to find dignified solutions for IDPs in collective centres as a matter of priority,⁶ the Representative notes that IDPs living in collective centers continue to be among the most vulnerable IDPs. According to official figures, there were still 4419 IDPs in Government-supported collective centers in June 2009, compared to 7408 persons in 2005. Even more problematic, there are a number of former collective centers, where IDPs have stayed on even though the centre is no longer receiving Government support. Most collective centers are in a terrible physical state. Having lived for often more than a decade an institutionalized dependency situation, many tenants are unable to take care of their own life. Social problems are rife in the centers. In this context, the Representative underscores that IDPs have the right to an adequate standard of living according to the Guiding Principles as well as the International Covenant on Economic, Social and Cultural Rights to which Serbia is a party. The Representative applauds the fact that the Serbian Commissioner for Refugees has initiated a programme to help IDPs who would like to leave collective centers with materials to build their own homes but considers that many may be too vulnerable to benefit from this initiative.

12. The Representative would like to re-emphasize his conviction that efforts to help improve living conditions at the site of their displacement do not undermine return perspectives. Allowing IDPs to rebuild a normal life empowers IDPs, gives them the energy to envisage a new life and the capital to invest upon return. The accuracy of this argument is borne out by the facts: although tenants of collective centers would seem to have the greatest incentive to leave their dreadful situation and return to Kosovo, they make up only a small minority of those who signed up in 2009 for the envisaged organized voluntary return programme to Kosovo.⁷ Instead, the majority of declared return candidates appear to be persons who have managed to resume a normal life and now feel prepared to attempt a return to Kosovo.

B. Assistance and protection in Kosovo

13. According to UNHCR, close to 20,000 persons remained displaced within Kosovo at the end of August 2009. More than half (10,349) are of Serb ethnicity. There are also 7,573 Albanians who were displaced from Serb majority areas, namely Mitrovica/a and Gjilan/Gnjilane Regions. The rest of the IDP population within Kosovo is made up of following minority groups: 720 Ashkalis, 676 Roma, 313 Egyptians, while the remaining 106 are Bosniaks, Goranis, Turks, Croats and others.⁸

14. The Serbian Commissioner for Refugees maintains 17 collective centres in Kosovo for IDPs who are in the majority of Serb ethnicity. Like other collective centres, the centres are generally not in a good physical state and most of the inhabitants are particularly vulnerable persons. The difficult situation is exacerbated by the fact that a number of collective centres receive hardly any support from the municipal authorities. The Representative spoke for with inhabitants of a collective centre in Štrpce/Shtërpçë, who indicated that their centre was only provided four hours of electricity per day, making it impossible to cook at regular hours or keep the place heated in winter. The Representative also visited the “Branko Radičević” Collective Centre in north Mitrovica/Mitrovicë.

⁶ E/CN.4/2006/71/Add.5, para. 69.

⁷ See para. 18 below.

⁸ There are three self-identified groups in Kosovo: Roma, Ashkali and Egyptians (the latter two groups largely speaking Albanian) which largely live together and experience similar problems and treatment.

15. The Representative also had the opportunity to visit a collective center of Kosovo Albanians displaced from north Mitrovica/Mitrovicë. They also appeared to be in need of specific assistance to improve their current living condition. Many still maintained a wish to return, but were not prepared to return under current conditions.

III. Return of internally displaced persons to and in Kosovo

A. Returns affected and returns envisaged

16. Returns of IDPs to and within Kosovo remain disappointingly low. Between 2000 and May 2009, UNHCR registered 11,776 IDPs who had returned from outside Kosovo, while 2676 persons returned from displacement within Kosovo. It is uncertain how many of these returns have proven to be sustainable and resulted in durable solutions. Even some high-level Kosovo authorities, with whom the Representative conferred, acknowledged that many of those who initially returned may have left soon thereafter.

17. Returns of Kosovo-Albanians to Serb-majority areas in Kosovo have not fared much better than Serb returns. In the period of 2000–2006, UNHCR registered no more than 674 returns. The numbers have further dwindled: Only 106 Kosovo-Albanian returns were registered between 2007 and June 2009. The Representative was encouraged to meet with several Kosovo Albanian families who had managed to return to Northern Mitrovica/Mitrovicë, albeit to zones in close proximity of majority Albanian areas. However, such cases are the exception and not the rule.

18. Although many IDPs have made a conscious choice to integrate locally at the site of their displacement, settle elsewhere in the country or migrate to third countries, it cannot be concluded that the low number of returns results from a general unwillingness among IDPs to return. The latest Living Standards Measurement Survey found that 56.4% of non-Roma and 20.5% of Roma IDPs wished to return.⁹ At the time of the Representative's visit UNHCR, in cooperation with the Government of Serbia and the Kosovo authorities, had launched a programme to register persons interested in returning to Kosovo and refer these cases to the authorities for their follow-up. By the end of August 2009, 4563 internally displaced persons had registered to return to or within Kosovo under present conditions. This indicates that even after the unilateral declaration of independence, there is still a section of the IDP population willing to return. The Representative considers that this programme is an important test case for the willingness of authorities including at the municipal level and communities in Kosovo to re-integrate the displaced.

19. In order for such a programme to succeed and result in a considerable number of sustainable returns, it is important that the Government of Serbia, notwithstanding the vexed political situation, finds pragmatic ways to cooperate with the Kosovo authorities at a technical level. At the same time, the Kosovo authorities have to proactively support the return and reintegration process on the basis of established principles permitting a voluntary and sustainable return within 60 days.

20. Following his 2005 visit the Representative pointed out that many IDPs lack appropriate information and encouraged more "go and see" visits.¹⁰ The Representative appreciates that UNHCR in cooperation with municipalities, non-governmental organizations and the international security presence continues to organize "go and see" as

⁹ UNDP, *Social and Economic Position of IDPs in Serbia* (2008), p. 19.

¹⁰ E/CN.4/2006/71/Add.5, para. 73.

well as “go and inform” visits that help displaced persons make an informed decision on what durable solution they would like to pursue.

B. Obstacles to sustainable returns

21. Ethnic tension, persistent social discrimination and a failure to turn the Kosovo authorities’ stated commitment to allow returns into adequate support for returnees on the ground are at this point the chief obstacles to sustainable returns. The Representative underscores in this context that the 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.¹¹

22. Compared to the situation in 2005, the security situation for minorities has improved and returnees enjoy greater freedom of movement. However, challenges remain and an international security presence in Kosovo remains necessary to protect returnees and minority populations generally. There are still considerable levels of fear among minority communities, who limit their day-to-day engagement with the majority population, especially in areas heavily affected by atrocities that occurred during the armed conflict and subsequent reprisals. It is difficult to quantify the level of insecurity since the Kosovo Police lacks the capacity to collect and collate data relating to the ethnicity of victims of crime and the Kosovo Police has no policy of recording crimes that are likely to be ethnically motivated.¹² Concurring with the view of the Special Rapporteur on Freedom of Religion or Belief, the Representative considers it important to continue monitoring religious or ethnic tensions with particular vigilance to prevent large-scale violence against minority communities as they took place in March 2004.¹³

23. At this point, the situation in Mitrovica/Mitrovicë appears to be particularly volatile. One exemplary study, conducted by a non-governmental organization using Kosovo Police data, found that 32 out of 42 potentially ethnically motivated incidents reported throughout Kosovo in December 2008 and January 2009 took place in Mitrovica/Mitrovicë.¹⁴ During the course of 2009, violent protests and related security incidents, requiring the intervention of the international security presence, repeatedly occurred in the northern suburb of Kroi i Vitakut/Brdjani, where former Kosovo Albanian residents started rebuilding their houses, which had been destroyed in 1999, despite opposition by local Serbs. Full freedom of movement in Northern Kosovo for returnees has not been restored as a first basic step towards achieving their social and economic reintegration.

24. These continuing security problems noted, the most serious challenge lies at this point in ensuring that returnees are protected from discrimination and can enjoy their economic, social and cultural rights on the basis of equality and non-discrimination. A dire economic situation in Kosovo characterized by extremely high levels of unemployment,¹⁵

¹¹ See Guiding Principle 28.

¹² European Union Rule of Law Mission in Kosovo (EULEX), *Programme Report* (July 2009), 26. It is worth noting that UNMIK had a policy on recording potentially ethnically motivated incidents. The criteria and procedures for reporting on these incidents were last reviewed and reissued by UNMIK on 27 October 2006.

¹³ See A/64/149, para. 49.

¹⁴ Humanitarian Law Centre, *Security Situation in Mitrovicë/Mitrovica during the period December 2008 and January 2009* (2009).

¹⁵ 44.9% of the population in Kosovo were unemployed according to the latest official figures available to the Representative. See Statistical Office of Kosovo, *Labour Market Statistics 2007* (January 2009), available at <http://www.ks-gov.net/ESK/eng/>. The Representative regrets that this many other

coupled with entrenched patterns of social discrimination, mean that it is often virtually impossible for returnees of a minority community to find a job or attract enough customers to sustain a small business.

25. Legislation in place indeed gives minority communities the right to public education at all levels in one of the official languages of their choice, i.e. in Albanian or Serbian. Yet, outside enclaves with a Serb majority, there are also hardly any primary and secondary schools which provide education in Serbian. Few potential returnees would accept that their children are taught in Albanian. A study conducted by the Organisation for Security and Co-operation in Europe (OSCE) has found that Kosovo Serb displaced families with school aged children deem lack of access to school facilities at their place of origin a major obstacle to return, second only to lack of job opportunities.¹⁶ As a result, most returns have been directed towards majority Serb-enclaves.

26. Sustainability problems of this nature could only be addressed if larger groups of IDPs would return to the same place at the same time, in particular areas where Serbs were at one point a sizable minority. However, high-level interlocutors told the Representative that organized return programmes focused on specific locations would likely to be resisted as “population engineering” by the majority population, which is a subject of concern.

27. In meetings with the Representative, the Kosovo authorities consistently expressed a commitment to allow and facilitate returns regardless of ethnicity. Yet, the reality at the level of a number of municipalities, which have been assigned a lead role in the reintegration of returnees, does not necessarily mirror this commitment. The Representative was apprised of cases in which the municipal authorities outrightly discriminated against returnees, obstructing e.g. the provision of basic services (sewage, water, electricity etc.) to returnee houses. A number of municipalities and public enterprises fail to provide information in Serbian and other minority languages even though this would be required by law.¹⁷ The Kosovo Ministry of Local Government needs to urgently improve its oversight of the municipalities’ reintegration work in these respects.

28. Responsibility for returns among the Kosovo authorities at the central level has been placed in the hands of the Kosovo Ministry for Communities and Returns. However, the Ministry has been largely marginalized. It lacks an adequate budget and the competences necessary to effectively fulfil its important mandate. For instance, each municipality has been assigned a municipal reintegration officer. Yet, there are no formal reporting lines between these officials and the Ministry for Communities and Returns, although the Ministry has taken the positive step to proactively establish five regional directorates with focal points for municipal actors.

29. The Government of Serbia, through its Ministry for Kosovo and Metohija of the Government of Serbia, has invested considerable resources to sustain the remaining Serb communities in Kosovo. In the past, the Government focused on providing support through parallel political and administrative structures, while discouraging the local Serb population from engaging with the Kosovo institutions. The Kosovo authorities refuse to recognize these institutions, which means in practice for instance that documents issued by Serb municipalities or for that matter also the dislocated municipalities outside Kosovo are not recognized. This creates serious bureaucratic obstacles for the minority population in Kosovo, including returnees.

relevant official statistics are not disaggregated by ethnicity.

¹⁶ OSCE, Kosovo non-majority communities within the primary and secondary educational systems (April 2009).

¹⁷ Cf. also OSCE, Implementation of the Law on the Use of Languages by Kosovo Municipalities (June 2008).

30. The parallel administrative structures in Kosovo have been widely criticized as inefficient and lacking transparency in their handling of public funds. The Representative was therefore interested to learn that the current Government of Serbia has adopted a more pragmatic approach towards supporting the minority population in Kosovo. The Ministry's new strategy places greater emphasis on providing direct support to returnees and the resident minority population. In parallel, the Serb population in Kosovo, despite serious misgivings over the political developments, seems to increasingly adopt a more pragmatic approach to dealing with the Kosovo authorities in regards of documentation issues and other administrative matters.

31. The Representative underlines that all IDPs have the right to make an informed and voluntary choice whether they would like to return to their place of origin, integrate locally where they are or settle elsewhere in the country.¹⁸

IV. Resolution of housing, land and property issues

32. Regardless of whether they choose to return to their home or not, all IDPs have a right to restitution of their property or, where this is not possible, appropriate compensation.¹⁹ In practice, it has proven very difficult for persons who were internally displaced from or within Kosovo to realize this right. The Representative also finds that the authorities in Kosovo do too little to comply with their obligation under the Guiding Principles to protect property and possessions by internally displaced persons against destruction and arbitrary and illegal appropriation, occupation or use.²⁰

33. During the later stage of the Kosovo conflict and in its aftermath,, Serbs and other minorities who were being driven out or fleeing from Kosovo had to leave their housing, land and property behind. The housing, land and property left behind was very often destroyed, illegally occupied or in some cases also expropriated without due process or adequate compensation. The latest Living Standards Measurement Survey suggests that a majority of IDP households (61.6%) had houses or apartments in Kosovo; almost half of all households (44.1%) also possessed land.²¹ Among internally displaced survey participants, only 3.2% of those who have land in Kosovo could use it, 48.3% did not consider it safe to use their land and 39.5% reported that their land was used by other persons without their authorization.²² Many Kosovo Albanians driven out of Northern Kosovo are living through a similar experience.

A. Cases before the Housing Property Directorate and Kosovo Property Agency

34. The justice system in Kosovo would not have had the capacity to handle a large number of restitution cases. There are also persistent allegations of widespread corruption and self-interested interference by influential figures in the judicial process, especially in cases relating to property. Against this backdrop, the international community set up a Housing and Property Directorate (HPD) under international control to deal with residential

¹⁸ This right emanates from the right to freedom of movement and residence guaranteed by Article 13 (1) of the Universal Declaration of Human Rights, article 12 of the International Covenant on Civil and Political Rights and is also implicit in Guiding Principle 28.

¹⁹ Cf. Guiding Principles on Internal Displacement, 29.2.

²⁰ Guiding Principle 21.

²¹ UNDP, *Social and Economic Position of IDPs in Serbia* (2008), p. 19.

²² *Ibid.*, p. 25.

property claims. Since 2006, when HPD was closed, the implementation of HPD decisions has been the responsibility of the Kosovo Property Agency (KPA). The new agency has also been assigned the mandate to resolve conflict related ownership claims and right of use claims in respect of private immovable property, including agricultural and commercial property, resulting from the 1999 armed conflict. This is a positive development and implements one of the Representative's key recommendations.²³

35. The Representative was informed that all 29160 claims and counterclaims received by the HPD have been decided. They concern an estimated 21,500 properties and were submitted in the overwhelming majority by Serbs and other minorities in Kosovo. The KPA also informed the Representative that almost all HPD decisions have been implemented. However, for the majority of claims this does not mean that property was actually restituted and people regained effective control over their property. In 2,250 cases, there was no physical impediment to repossession by the identified owner. In 5,703 cases, an illegal occupant was evicted and the claimant subsequently handed the keys to repossess the property.²⁴ The KPA has also instituted a property administration programme, in line with the Representative's recommendations. 3,186 residential properties are now being administered by the KPA for the benefit of the owner. In 10,041 cases the property was destroyed resulting in no further implementation activity by the HPD since its mandate is limited to restitution and does not cover compensation or reconstruction. The remainder of HPD claims were dismissed, withdrawn or closed or at the claimant's request or otherwise disposed of.²⁵

36. The Representative is concerned that HPD decisions about residential property in Northern Kosovo have not yet been implemented. At the time of the Representative's visit, there was a lack of cooperation on the part of the parallel political and administrative local authorities. According to information received by the Representative since then, HPD decisions have started to be implemented in Northern Kosovo following the signing in October 2009 of a revised Memorandum of Understanding between the KPA and Kosovo Police.

37. The KPA has in the meanwhile already decided a little more than half of the 40,623 claims to agricultural and commercial land it has received although, EULEX has found that many of those decisions may need to be overturned and reprocessed on account of wrongful property notification.. The KPA has not yet implemented any decisions given that the Supreme Court panel that will hear appeals against KPA decisions remains to be established.²⁶ The work of the KPA has been further complicated by the fact that Serbia ceased its cooperation with the KPA and closed its offices outside Kosovo in June 2008, when the Kosovo Assembly adopted a law transferring UNMIK's responsibility for the KPA to the International Civilian Representative, an institution not recognized by Serbia. The closure of the KPA offices makes it difficult to notify claimants outside Kosovo and verify property documents on the basis of property registry records located outside Kosovo. Even many uncontested property claims can be processed because relevant title documents cannot be obtained outside Kosovo, although other claims can still be verified on the basis of information available in Kosovo. The lack of cooperation also encourages fraud by parties present in Kosovo, who can for instance present forged title documents that are difficult to identify as such without comparison to the official cadastre records. Internally

²³ E/CN.4/2006/71/Add.5, para. 77 (e).

²⁴ On the problem of reoccupation see para. 43 below.

²⁵ Statistics according to Housing and Property Directorate, *Implemented Claims*, available at www.hpdkosovo.org.

²⁶ When this report was finalized, the local judges had not been appointed by local institutions, while EULEX has appointed its judges to the Panel.

displaced persons are particularly affected by these problems. In March 2009, the NGO Praxis reported that 3500 claims had already become dormant since the evidence verification procedure cannot be conducted in Serbia due to the suspension of KPA mission in Serbia.²⁷ In 10,000 additional cases the claimants had been asked to produce additional documents. As result, the claim might become dormant unless the claimant finds other means to prove ownership.

38. In light of this situation, the Representative was encouraged to hear that, following his visit, the KPA concluded a memorandum of understanding with UNHCR, which allow the KPA to operate under the responsibility and umbrella of UNHCR outside Kosovo. This marks an important step forward and shows that, with the necessary political will, pragmatic solutions to resolve IDPs' problems can be found without foregoing positions of principle.

B. Cases before Kosovo courts

39. Property restitution claims not submitted to the HPD or KPA, compensation claims as well as ordinary cases involving property transfers (e.g. inheritance cases) continue to be handled by Kosovo's court system. The courts have accumulated a huge backlog estimated to amount to at least 50,000 cases (property and other), which overwhelms their limited capacity and unduly delays justice. This also has repercussions for the full implementation of HPD decisions since it requires a court decisions to annul fraudulent property transactions found by the HPD and remove them from cadastral records.²⁸

40. Independent observers have also noted serious irregularities in the handling of property-related cases by courts in Kosovo. Courts often recognize ownership on the basis of uncontested possession for a specified period of time (a doctrine known as positive prescription), even though this discriminates against internally-displaced former owners who are usually not aware of or not in a position to contest the occupant's possession. Courts also continue to appoint temporary representatives for absent respondents without following proper procedures.²⁹

41. Many cases are reportedly also decided on the basis of forged or outdated documents. Neither in nor outside Kosovo are there complete and up-to-date cadastral records, not least since many property transactions during the 1990s were conducted without due regard for cadastral registration procedures. Moreover, the cadastral bodies in central Serbia and Kosovo do not cooperate with each other; there is no exchange of records or mutual recognition of documents, so that even once complete records are gradually becoming outdated.

42. EULEX will play a key role in curbing such irregularities and the Representative takes note of the fact that EULEX judges already found in several cases that alleged sales of the property of displaced persons were not proven and confirmed the claims of the original owners. The OSCE also plays a role and contributes to EULEX' work by identifying fraudulent property transactions through its monitoring activities.

²⁷ PRAXIS, *Protection of Rights of Internally Displaced Persons* (March 2009).

²⁸ OSCE, *Fraudulent Property Transaction in the Pejë/Peć Region* (August 2009).

²⁹ See e.g. OSCE, *Litigating Ownership of Immovable Property in Kosovo* (March 2009).

C. Protection of internally displaced person's property by the Kosovo police

43. While the establishment of a functioning Kosovo Police is generally considered an overall success, the Representative received complaints that the local Kosovo Police did not always diligently carry out evictions of illegal occupants and failed to pursue criminal complaints against them as would be required by law.³⁰ This appears to have also affected the implementation of HPD decisions: A number of claimants have reported that they picked up the keys to their property from the KPA only to find that their houses had been reoccupied in the meanwhile. In these situations, the Kosovo Police Service is responsible to provide relief and no further recourse to the KPA is possible.

44. In July 2009, several hundred ethnic Serb police officers in Kosovo, who had quit their posts in an organized protest against the unilateral declaration of independence, reported to duty again. The Representative hopes that the reestablishment of a multiethnic police force will help dispel concerns of ethnic bias and ensure a better protection of property and other rights for all people in Kosovo, including the Serb community.

D. Property of internally displaced persons and the privatization process

45. The Representative was also made aware about problems linked to privatization of former socially owned assets, which can have an impact on IDPs' property rights. Many private property titles emanate from the privatizations of the 1990s, which were implemented after Kosovo's autonomous status had been revoked and many functionaries loyal to the Milošević Regime were installed in public institutions and socially owned enterprises. A large majority of Kosovo-Albanians refused to engage with the state authorities organizing the privatization process at the time. Today many of them perceive the privatizations that took place as having unduly favoured Serbs. As a result, some municipalities have taken steps towards reversing privatizations, which may retroactively deprive a large number of IDPs of their private property rights regardless of whether they actually obtained the property lawfully.

46. A further concern is linked to the ongoing privatization of socially owned enterprises. The Kosovo Trust Agency (KTA) has far-reaching powers to privatize and dispose of assets and the buyers enjoy protection from third party suits. UNMIK regulations have introduced a number of legal safeguards and a special chamber of the Supreme Court on Kosovo Trust Agency Related Matters has the jurisdiction to review KTA decisions. Nevertheless, some observers remain concerned that property that has already been privatized once (e.g. company-owned apartments) could be privatized and transferred a second time to the detriment of the actual owner.³¹ Especially displaced owners, who have a hard time staying abreast of such developments, may be at risk unless transparency and effective judicial control over the process is ensured.

47. IDPs also complained to the Representative about a lack of access to employee share distribution programmes. Under applicable legislation, part of the shares of a socially owned enterprise undergoing privatization will be distributed among those who were registered as employees of the enterprise at the time it was privatized. However, many IDPs were initially not included on the lists of eligible employees since they were not in a position to report to work after 1999. The Special Chamber of the Supreme Court of

³⁰ See also the observation contained in EULEX, *supra* note 12, p. 147.

³¹ See Edward Tawil, *Property Rights in Kosovo: A Haunting Legacy of a Society in Transition*, International Center for Transitional Justice 2009.

Kosovo has since ruled in an important precedent case that this amounts to impermissible discrimination.³² In practice, there still appear to be problems in ensuring that all IDPs are indeed being notified about share distribution programmes and included in eligibility lists.³³

V. Situation of internally displaced Roma

A. Internally displaced Roma outside Kosovo

48. Following his 2005 visit the Representative was concerned about the particularly serious situation of Roma IDPs in Serbia. He noted that Roma and other minorities are marginalized, vulnerable and exposed to discriminatory treatment. He called upon the national and local authorities to ensure that members of these minorities can meaningfully exercise their rights as citizens. The Representative specifically recommended that the Government of Serbia provide particular support in the areas of housing, access to livelihoods, and education to Roma, Ashkali and Egyptian IDPs, in particular those living in irregular settlements.³⁴

49. The Government of Serbia has launched a number of initiatives in favour of Roma under the umbrella of Decade of Roma Inclusion (2005–2015), an initiative of 12 European countries, which was chaired by Serbia in 2008–2009. In April 2009, the Government of Serbia also adopted a Roma National Strategy, even though it remains uncertain to what extent its full implementation will be funded in light of the strained budgetary situation.

50. Despite these notable efforts, Roma, Ashkali and Egyptian IDPs remain in many respects worse off than other IDPs, which also reflects the considerable levels of social discrimination generally experienced by citizens of Roma, Ashkali and Egyptians ethnicity.

51. The latest Living Standards Measurement Survey found that two in five Roma IDPs live in relative poverty, compared to only one in 20 non-Roma IDPs. Roma IDPs suffer from chronic illnesses such as heart problems or diabetes at a considerably younger age than non-Roma IDPs, although it must be noted that displaced Roma report health problems less often than non-Roma. Almost half (49.5%) of all school age Roma IDP children have not attended school. 46.3% have attended primary school and only a very small fraction of Roma IDP children move on to vocational school (1.3%) or high school (0.3%).³⁵

52. Almost a third of all Roma IDPs (32%, compared to 6.9% for non-Roma IDPs) surveyed reported to live in an object not intended for housing. During the course of his follow-up visit, the Representative had the opportunity to meet with Roma IDPs who had spent a decade living in a run-down former school. Another Roma IDP community visited lived under disastrous hygienic condition in self-constructed shacks in a forest at the outskirts of Belgrade. There was no running water, no electricity and no schools accessible to the community's children and people feared to be evicted in the near future without any alternative housing offered to them.

53. The Representative was also informed about an increasing number of forced evictions of Roma in Belgrade, including some IDPs from Kosovo, as municipal authorities

³² See *Vahdet Kollari vs. the Kosovo Trust Agency*, decision of 9 June 2004 concerning the privatization of the "Termosistem" socially owned enterprise, cited in Edward Tawil, id.

³³ See also concluding observations of the Committee on Economic, Social and Cultural Rights on the document submitted by the United Nations Interim Administration in Kosovo (E/C.12/UNK/CO/1), para. 18.

³⁴ E/CN.4/2006/71/Add.5, paras. 71 and 76 (c).

³⁵ See UNDP, op. cit., p. 46.

remove unauthorized informal settlements to clear space for public infrastructure projects. In this respect, the Representative sees a need for the Government, to develop, in close consultation with civil society, international organizations and the Serbian Ombudsman, clear and uniform guidelines that direct municipal and other concerned authorities on how to handle such cases in line with international standards.

54. In his previous report, the Representative recommended to the Government of Serbia to pay attention to the particular difficulties that unregistered members of displaced minorities, amongst them the Roma, have to face when trying to regularize their situation.³⁶ Major steps remain to be taken to implement this recommendation.

55. Many Roma IDPs live in informal settlements or other accommodation without a recognized address and can therefore not register their residence. This means they can not apply for certain social welfare benefits or participate in programmes of the National Employment Agency. Moreover, the Rules of Procedure on Health Insurance now require that Roma IDPs provide registration of temporary residence. This shuts out the most vulnerable from the generous health care benefits the Government provides to IDPs. The rules also run counter to Article 22 of the Law on Health Insurance, which states that persons of Roma ethnicity who due to their traditional way of life do not have a permanent or temporary residence may still be beneficiaries of health care. The Representative was informed that the Minister of Interior is considering amendments to the Law on Permanent and Temporary Residence that may help resolve problems of residence. One good option would be to allow Roma and other persons without a recognized address to register under the address of the social welfare agency in their municipality.

56. Many Roma IDP also lack personal identification documents, including birth certificates, because they lost them during their flight or never had any in the first place. This renders them “legally invisible” and prevents them from accessing a number of rights.³⁷ According to the Guiding Principle, the authorities are under an obligation that emanates from the human right to recognition as a person before the law to issue IDPs with all documents necessary for the enjoyment and exercise of their legal rights, such as passports, personal identification documents, birth certificates and marriage certificates.³⁸ The Minister of Human Rights has submitted a Draft Law on the Recognition of the Person before the Law (also referred to as the Law on Legal Subjectivity) for the consideration of other Ministries. The Draft Law was developed in close cooperation with international organizations and non-governmental experts. If the Law would be adopted along the lines of the original draft, this would mark a large step forward towards bringing many citizens of Roma, Ashkali and Egyptian ethnicity from the margins of society into its fold.

B. Internally displaced Roma in Kosovo

57. The reintegration perspective in Kosovo for Roma, Ashkali and Egyptian who were internally displaced is generally dim, although the Representative was encouraged to meet some families who have managed to return and are actively rebuilding their life with the support of civil society groups and international organizations. Roma, Ashkali and Egyptians in Kosovo, including returnees, are still in a very vulnerable position. There is a widespread prejudice among the majority population that they collaborated with the

³⁶ E/CN.4/2006/71/Add.5, para. 76.

³⁷ Cf. in this regard an illustrative collection of case studies gathered by the non-governmental organisation Praxis: *Legally Invisible Persons in Seven Stories* (November 2008), available at www.praxis.org.rs.

³⁸ Guiding Principle 20.

Milošević regime before and during the armed conflict, which further exacerbates historic patterns of social discrimination experienced by members of these minority groups. The Representative was also informed about isolated acts of violence against Roma, Ashkali and Egyptians, including a series of attacks on Roma returnees in Gjilan/Gnjilane that took place in late July and early August 2009. The Representative recalls the obligation of the Kosovo authorities to protect IDPs, without discrimination as to their national, ethnic or social origin, against acts of violence and attacks against their camps or settlements.³⁹ He urges the Kosovo authorities to fulfil their obligation to promptly investigate these cases with due diligence and prosecute all identified perpetrators.

58. There are strong indications that only a minority of displaced Roma, Ashkali and Egyptians plans to return to Kosovo, which is to a large extent a reflection of the dire reintegration perspective. According to the Living Standards Measurement Survey, conducted even before the unilateral declaration of independence, only one in five internally displaced Roma (20.5%) wished to return to Kosovo.⁴⁰ In the period from 2000–June 2009, UNHCR registered returns of only 4515 Roma, Ashkali and Egyptian IDPs. A further 2992 persons voluntarily returned from third countries, namely the former Yugoslav Republic of Macedonia and the Republic of Montenegro. As with regard to other returns, it is uncertain how many returns have proven to be sustainable.

59. Roma IDPs are more affected than other IDPs by a lack of documentation and often face difficulties in obtaining the new personal identification documents issued by the Kosovo authorities, if they are among the estimated 20–30% of Roma whose birth in Kosovo was never formally registered. Fearing that about 10,000 Roma, Ashkali and Egyptians in Kosovo face a risk of statelessness, UNHCR has initiated a campaign of civil registration to prevent statelessness.

60. The lack of documentation also negatively affects displaced Roma's prospect of having their property restituted. Prior to the armed conflict many Roma families lived in *mahalas* or *mahallas* (neighbourhoods) in housing that been handed down in generations without the original title or its inheritance ever being registered. Houses were often built without building permits, a practice largely tolerated by the Yugoslav municipal authorities. The Representative notes complaints from Roma representatives that a lot of traditional Roma land had been designated for public buildings and commercial development. The Kosovo authorities have yet to develop a comprehensive policy to address the question of security of tenure, e.g. through regularising informal settlements, or allocating land on a long-term basis. In practice solutions are negotiated on an ad hoc basis, which often means that returnees end up in social housing instead of being able to return to their place of origin and reclaim the land they traditionally held. The Representative urges the Kosovo authorities to undertake greater efforts to regularize the title to housing, land and property historically held by Roma, Ashkali and Egyptian communities on the basis of a comprehensive policy.

61. During the course of his visit in 2005, the Representative was shocked to see first hand the situation of a group of Roma IDPs, who had been settled on highly contaminated land in Northern Mitrovica/Mitrovicë close to the tailing dams of the former Trepca lead mining and smelting complex. The children in particular suffered from lead poisoning, which has visibly impaired their health and development. Stressing that failure to act immediately was tantamount to a violation of the affected children's rights to have their health and physical integrity protected, the Representative urged that UNMIK and the

³⁹ See Guiding Principles 4 and 10.

⁴⁰ See UNDP, *op. cit.*, p. 19.

Kosovo authorities proceed with a humanitarian evacuation of these IDPs as fast as possible.⁴¹

62. Not enough has been done to implement this recommendation. In 2006, UNMIK closed the contaminated Žitkovac/Zhitkovc and Kablare camps and offered the inhabitants to move to refurbished former military barracks named Osterode. The inhabitants of a third contaminated camp in Česmin Lug/Çesmin Llugë largely refused to move to the Osterode barracks, which are situated only 150m away from the Česmin Lug/Çesmin Llugë camp. At the point, an estimated 150 persons live in Česmin Lug/Çesmin Llugë. A further 500 persons reside in the Osterode barracks, administration of which was handed over from UNMIK to the Kosovo Ministry for Communities and Returns in May 2008. Among these persons are a large number of children.

63. The World Health Organization informed the Representative that levels of lead in the blood were lower in Osterode than in Česmin Lug/Çesmin Llugë thanks to better hygienic conditions. However, even in Osterode they still exceed medically acceptable levels many times and are too high to even begin therapy measures. An evacuation of all inhabitants from the entire area remains therefore urgent to prevent further serious harm and protect the human rights of the inhabitants present in the two settlements. The Representative reiterates that a continued failure to do so amounts to a violation of the right to health and physical integrity of affected children and is concerned that despite recommendations not only by him but also several treaty bodies⁴² such a life-threatening situation remains basically unsolved.

64. In order to provide a durable solution, donors have funded the construction of blocks of flats and the reconstruction of some individual houses in Roma Mahalla (Southern Mitrovica/Mitrovicë), the neighbourhood from where most of the camp residents had been displaced. However, many Roma IDPs who were offered the option of moving back to Roma Mahalla refused the offer or left shortly after their arrival as the needs of the affected IDP population were not adequately addressed. The Representative was particularly disturbed to hear that IDP children who have moved from the contaminated camps to the Roma Mahalla currently do not have access to therapy, even though this would be feasible and urgently needed.

65. Community representatives met by the Representative during the follow-up visit also expressed concern that they would not find jobs in Southern Mitrovica/Mitrovicë, while social welfare benefits currently received from Serbian authorities might not be transferable. In addition, they emphasized that it would need to be ensured that their children can continue their schooling in Serbian and receive medical therapy, both of which is currently only available in Northern Mitrovica/Mitrovicë.

66. The Representative was encouraged to see that the Kosovo authorities attach great importance to resolving the issue and have put forward an urban regulatory plan for the Roma Mahalla to allow for the relocation of the remaining camp residents. UNMIK also reassured him that the situation of IDPs living in the lead contaminated camps in northern Mitrovica/Mitrovicë, is of special concern to the Mission. UNMIK reported that it had stepped up efforts to find a sustainable solution to the issues regarding these camps, including activating a coordination group of United Nations agencies and international donors concerned, and ensuring that IDP communities are treated as equal partners in finding a durable solution to their plight. Most recently on 13 November 2009, UNMIK Regional Office in Mitrovicë/a facilitated a meeting with all the Roma camp leaders from

⁴¹ E/CN.4/2006/71/Add.5, paras. 46 and 77 (a).

⁴² CCPR/C/UNK/CO/1 (2006), para. 14; and E/C.12/UNK/CO/1, para. 29.

Leposavic, Osterode, Cesmin Lug, and Roma Mahalla, to discuss the situation in the camps and to seek their views on relocation options.

67. The Representative calls on all actors to cooperate to resolve the situation without delay, in close consultation with the affected IDP population and without seeking to politicize the matter. IDPs need to be provided with security guarantees, culturally adequate housing, schooling, medical treatment as well as realistic options to rebuild their livelihoods. Alternatives have to be found within Kosovo for persons who are not prepared to return to the Roma Mahalla.

VI. Prevention of additional displacement

68. Following his 2005 mission, the Representative called upon Governments concerned to implement forced returns to Kosovo cautiously and to refrain from returning members of threatened communities and particularly vulnerable persons to situations where they risk becoming IDPs without assistance and protection of their rights.⁴³ The Representative considers that this recommendation remains overall valid.

69. In recent years, a number of countries have concluded readmission agreements with the Government of Serbia and/or the Kosovo authorities and consequently the numbers of forced returns have increased. Between January 2007 and May 2008, UNHCR registered 6912 forced returns to Kosovo from third countries (mainly from Western Europe). 1035 cases concerned persons belonging to minority communities.

70. The Representative is concerned that forcibly returned persons belonging to minority communities, like voluntary returnees, do not have much of a reintegration perspective owing to a lack of economic options and persistent patterns of social discrimination. The Kosovo authorities approved a Strategy for the Reintegration Repatriated Persons in October 2007, but observers highlight that this strategy is not implemented in practice. A recent OSCE report finds that few steps have been taken to implement the Strategy's objectives at the local level.⁴⁴ Concrete measures to facilitate the reintegration of repatriated persons in the key areas of health, education, employment and housing are still lacking, and no costs associated with the reintegration of repatriated persons have been included in the respective municipal budgets. There is also a lack of established and functioning referral and co-ordination mechanisms between the central and local level. As a result of these shortcomings, many forced returnees do not receive any meaningful assistance upon their arrival in Kosovo. In certain situations, forced returnees will also not be able to return to their actual home communities due to valid security considerations. Consequently, many forced returnees are at risk of becoming internally displaced persons, especially if they belong to minority communities. Many will immediately seek to re-enter Western Europe, setting in motion a cycle of irregular migration and forced returns that is not helpful to anyone except organized human smuggling rackets. To break this cycle it is important that the Kosovo authorities with the support of states returning rejected asylum seekers and other persons belonging to minority communities, take robust measures to provide such persons with real reintegration perspectives in line with the Strategy already adopted.

⁴³ E/CN.4/2006/71/Add.5, para. 74.

⁴⁴ OSCE, Report on the Implementation of the Strategy for the Reintegration of Repatriated Persons (November 2009).

VII. Conclusions and recommendations

71. On the basis of his follow-up visit, the Representative concludes that the Government of Serbia has made some notable progress in the implementation of his recommendations. The institutional framework to address questions relating to internal displacement, in particular the Office of the Serbian Commissioner for Refugees, has been strengthened and responsibilities clarified; nevertheless additional support is needed. It is very positive that several initiatives have been launched to improve the living conditions of IDPs. This will also enhance their ability to carry out a sustainable return if they so choose. The Representative recommends that this approach will be formally reflected and strengthened in the various IDP-related policy instruments that are currently being finalized. The Representative strongly encourages the authorities to strengthen their existing efforts to provide inhabitants of collective centers with dignified alternative solutions. The Representative also recommends that the Serbian authorities, in close cooperation with UNHCR, carry out a needs-based registration drive to find out, for operational purposes, how many of the more than 200,000 persons who were internally displaced have yet to find a durable solution and retain specific assistance needs.

72. The Representative notes that the number of returns to and within Kosovo has been disappointingly low, even though a considerable part of the IDP population still seems willing to return. The vast majority of potential returnees are IDPs of Serb ethnicity, but there are also some Kosovo Albanians still hoping to return to Northern Kosovo. Security and freedom of movement for minority communities in Kosovo has improved, although challenges remain. Entrenched patterns of discrimination, lack of access to employment and livelihoods and too few schools for minorities are today the chief obstacles to sustainable returns.

73. The Representative appreciates the consistently stated commitment of the Kosovo authorities to allow returns regardless of ethnicity. At the same time, the Kosovo authorities need to take more action to comply with their obligations as also reflected in the Guiding Principles and ensure that the authorities on the ground, especially municipal authorities, actively facilitate the reintegration of returnees. The successful implementation of the programme, under which IDPs (and refugees) from outside Kosovo interested in return have been registered, should become a priority for the authorities at all levels as it is a test case for returns to Kosovo. In addition, the Kosovo Ministry of Communities and Returns needs to be urgently strengthened and provided with the resources and competences necessary to implement its brief. It is important that efforts to facilitate returns fully include the large number of persons still displaced within Kosovo.

74. The Representative calls on the Government of Serbia to find ways to engage with the Kosovo authorities at a technical level to resolve displacement-related challenges. The solution found to enable the KPA to continue its work outside Serbia is an excellent example that it is possible with the necessary political will to find pragmatic solutions without having to forego positions of principle. The international community should assist return efforts by ensuring that existing livelihood and employment projects prioritize returnees as well as communities willing to receive them.

75. The restitution of housing, land and property left behind by IDPs or at least the provision of appropriate compensation remains a challenge. The restitution mechanisms set up by the international community have shielded the restitution process to some extent from the serious deficiencies of the Kosovo justice system and administrative apparatus. However, many other cases relating to IDP property are

pending before Kosovo's courts, which do not yet have the capacity to handle this caseload and need to be strengthened as a matter of priority. The police and municipal authorities in Kosovo also have to increase their efforts to protect IDP property in line with their international obligations. The Representative calls on EULEX and other actors with a relevant mandate to pay particular attention to how housing, land and property cases involving displaced parties are handled by the courts, police and other authorities to prevent further miscarriages of justice and protect the human rights of IDPs.

76. Internally displaced Roma, Ashkali and Egyptians continue to be in a very vulnerable position both in and outside Kosovo. The Representative is concerned that a lack of personal identification and other documents prevents these IDP groups from enjoying their rights on an equal basis. The Representative welcomes efforts in Serbia to draft a Law on the Recognition of the Person before the Law and to amend the Law on Residence. The Representative encourages Government and Parliament to prioritize both legislative projects and adopt and implement them without further delay so as to end the legal invisibility of a significant section of the country's citizens, including many IDPs. There are similar problems in Kosovo and the Representative encourages the Kosovo authorities to make a serious effort to provide this population with documents and regularize their situation, including with regard to land titles.

77. The Representative is very concerned that the situation of Roma IDPs exposed to toxic lead waste in Northern Mitrovica/Mitrovicë has still not been resolved and that children in particular are still exposed to grave risks to their health and physical integrity. All stakeholders have to cooperate in a pragmatic manner and in close consultation with the IDP community concerned to organize the community's immediate humanitarian evacuation, close the Osterode/ Ćesmin Lug/Çesmin Llugë site and provide durable solutions and all necessary medical treatment to the evacuees without further delay.

78. The Representative notes that members of minority community who are being forcibly returned to Kosovo from third countries face the same obstacles to reintegration in Kosovo as other returnees. While the security situation has improved, inter-ethnic relationships remain tense. Due to pervasive patterns of discrimination coupled with a lack of reintegration support, many risk becoming internally displaced persons upon their return. This sets in motion a harmful cycle of irregular migration and forcible return. The Representative recommends that the Kosovo authorities with the support of states returning rejected asylum seekers and other persons from Kosovo belonging to minority communities take robust measures to provide such persons with real reintegration perspectives. As long as they are not in place and discrimination remains pervasive, governments should avoid forced returns of minorities to Kosovo and to regulate the status of those in their host country until conditions in Kosovo permit their safe return.