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Bosnia-Herzegovina

‘Who’s living in my house?’  
Obstacles to the safe return of refugees and internally displaced people

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## INTRODUCTION

*“The foundation for a lasting peace in Bosnia and Herzegovina will not lie in an infrastructure of factories and bridges and other economic needs — the country had this five years ago, but it did nothing to prevent the outbreak of war. The foundation for a lasting peace will lie in the demonstrated respect for human rights by all the parties to the conflict.”*

Elisabeth Rehn, United Nations (UN) Special Rapporteur on the situation of human rights in Former Yugoslavia[1]

More than two million people from Bosnia-Herzegovina became refugees or were internally displaced during the conflict which began in 1992. Of these only some 250,000 [2] have been able to return, almost exclusively to areas where they were members of the majority nationality, since 14 December 1995, when the parties to the conflict signed the peace agreement, the General Framework Agreement, in Paris, France.[3]

Most of those who have returned are Bosnian Muslim refugees who spontaneously returned to present Muslim-majority areas in the Federation of Bosnia and Herzegovina (the Federation) rather than to their homes in the Bosnian Serb-controlled entity, the Republika Srpska (RS). More people have been displaced since the agreement was signed. Some 60,000 Bosnian Serbs fled or were forced to leave the suburbs of Sarajevo when these were transferred from the RS to the Federation between February and April 1996. Less than 1,000 of these were reported to have returned to their homes by mid-1996.

Most of the people who were forced to flee their homes have been unable to return. Around half of them are refugees receiving temporary protection in European host countries and other republics of former Yugoslavia; the remainder are internally displaced. They have been unable to return because their safety cannot be guaranteed and almost all of the perpetrators of the gross abuses during the conflict have so far escaped justice.

The parties to the peace agreement — the Republic of Bosnia and Herzegovina, the Federation, and the RS (the latter two partly or fully represented by the Republics of Croatia and Serbia) — recognized the right of refugees and displaced people to return to their homes of origin and undertook to ensure they could return without risk of harassment, intimidation, persecution or discrimination.[4] These undertakings have not been honoured. The peace agreement created mandates for the military Implementation Force (IFOR) — succeeded in December 1996 by the smaller Stabilization Force (SFOR) — led by the North Atlantic Treaty Organization (NATO), the

Organization for Security and Co-operation in Europe (OSCE), which provided human rights monitors and organization and monitoring of the elections, and a High Representative of the international community who was charged with overseeing and coordinating the implementation of the civilian aspects of the peace agreement.

More than one year into the implementation of the peace agreement, key objectives in the field of human rights remain unfulfilled. Continuing human rights violations in Bosnia-Herzegovina deny people the right to return to their homes and have caused more people to flee.

The world's media has focussed on the repeated violent confrontations between Muslims trying to visit or return to their homes in the RS, such as those around the villages of Dugidio, Mahala, Jušići and others in 1996. The deliberate destruction of houses to which Muslims were to return in the RS and Bosnian Croat-controlled areas of the Federation, and the evictions of non-Croats from west Mostar also gained attention. However, little publicity is given to allegations of ill-treatment or other human rights abuses which are received daily by international bodies such as the UN, the International Police Task Force (IPTF) and others involved in monitoring human rights in the country. The reports include incidents of detention without charge or trial, ill-treatment, threats, violence or obstruction aimed at preventing people from returning to their homes or causing others to flee. In many cases the police or the military were directly responsible, and in most cases they appeared to condone or encourage the abuses and failed to offer the victims adequate protection.

Freedom of movement was to be established under the peace agreement, as was the right of refugees and displaced persons to return to their homes. Very limited progress has been made towards this. People can travel through or make short visits to some areas controlled by opposing nationalities. When displaced people attempt to travel in large groups, or make lengthy visits, they have often met threats, violence or arrests without charge or trial. In addition, many refugees and internally displaced people have no homes to return to because their housing has been destroyed, planted with mines, or occupied by others. Houses which were being repaired have been vandalized, burned or even had explosives placed in them to prevent the permanent return of their occupants. There have been minor successes, but overall IFOR peacekeeping troops and international organizations have had limited effect in ensuring that people are able to return to their homes.

The holding of national elections in September 1996 is no indication that it is safe for refugees and displaced people to return. Under the peace agreement the parties committed themselves to holding "free, fair and democratic elections" within nine months, provided the OSCE, which was mandated to organize the elections, certified that the conditions would be met.[5]

Non-governmental organizations monitoring the election process severely criticized the OSCE's decision to certify the elections, because of the absence of freedom of movement, manipulation of voter registrations and human rights violations, as well as lack of opposition access to the media and other factors which called into question the validity of the elections.[6] RS authorities were responsible for the most blatant abuse of the electoral process, by forcing displaced Bosnian Serbs to register in selected electoral districts within the RS, rather than their home towns, on pain of losing access to humanitarian aid. This was the main reason for the OSCE's decision to postpone local elections, which are now scheduled for July 1997.

Progress towards creating conditions of durable safety for the return of refugees and displaced persons has been further undermined by the lack of action by the international community to ensure that war crimes suspects indicted by the International Criminal Tribunal for the former Yugoslavia (the Tribunal) who remain at liberty in the former Yugoslavia are detained and brought to justice. Likewise, between 18,000 and 25,000 people remain unaccounted for following the war; many of these are "missing" or "disappeared" and only a minute proportion

of these cases have been resolved.[7] Most of the relatives of these people are displaced persons or refugees who have particular fears for their security if they were to return.

The lack of progress in implementing the peace agreement is also due to the lack of cooperation on the part of the parties to the agreement, the weaknesses in the agreement itself and in the mandates which it created for international organizations, and the failure of the international community to ensure that many aspects of the mandates were carried out, through the timely establishment of the field operations.[8]

These are among the issues which need to be addressed by the parties to the peace agreement before the spirit and letter of its human rights provisions can be properly implemented. The international community likewise bears an enormous responsibility, both to force the parties to adhere properly to their human rights obligations under the peace agreement and to act itself through its extensive presence of military peacekeepers and civilian staff. The international community, particularly states hosting refugees from the former Yugoslavia, should put pressure on the parties to create the necessary conditions of durable safety to allow for refugees and displaced people to return to their homes. In the meantime, they should continue to provide effective and durable protection to refugees. Instead, several European states which hosted refugees from Bosnia-Herzegovina are now preparing to force them to return.

Effective human rights monitoring of the situation in Bosnia-Herzegovina is vital to determine whether the conditions are durably safe. One aspect of that is widespread awareness of human rights and an active lobby dedicated to their promotion and protection. The international community must therefore work to ensure that the national human rights institutions are properly funded. It is also vital that local non-governmental human rights organizations are encouraged at this early stage of the consolidation of human rights protection in Bosnia-Herzegovina, particularly as ultimately it is the responsibility of the parties to stop human rights abuses and guarantee the safe return of refugees. It will be the task of the citizens of Bosnia-Herzegovina in the years to come to ensure that all returnees are integrated fully into society.

### **Forced into flight: deliberate policies of population displacement**

The armed conflict in Bosnia-Herzegovina was characterized by gross human rights abuses as armed forces led by one nationality attempted to force other nationalities out of the disputed territory. Bosnian Serb and Yugoslav National Army (JNA) forces (early in the conflict) were responsible for most abuses, but Bosnian Croat forces, the Croatian Army which fought with them, and to a lesser extent, forces of the mainly Muslim Bosnian Army also perpetrated abuses. While there were both regional and chronological variations in the pattern of events, analysis of the abuses reveals deliberate policies of killing, physically expelling or causing “unwanted” civilian populations to leave.

The early months of the war, from April 1992, saw the creation of most of today’s refugees and displaced people. Some of those people were taken away at gunpoint, but most fled to escape the gross human rights abuses which were being perpetrated around them.[9] Many of those who left were forced to sign documents transferring their property to the municipality. Early in the conflict the Bosnian Serb forces, Serbian paramilitaries and the JNA units that became the Bosnian Serb Army (VRS) typically used overwhelming military force to crush resistance and round up the civilian population. Tens of thousands of people were detained in concentration camps and mass prison compounds where torture and deliberate and arbitrary killings were everyday occurrences. Thousands of these detainees are still “missing”. Many of those who survived detention were not allowed to return to their homes, but were handed over in prisoner exchanges. Civilians were often detained as hostages to be traded for prisoners of war or the bodies of dead soldiers.

Many of those who were not detained were forced to cross the front lines, often having to pass through minefields and sometimes being shot at or being robbed and assaulted by soldiers.

During the Muslim-Croat conflict in 1993 and early 1994, Muslims in Bosnian Croat-controlled west Mostar were frequently made to cross the lines into the Muslim-controlled east part of the town. Thousands of Muslim men detained by Bosnian Croat forces during this part of the conflict were unable to return to their home areas upon release or exchange.[10] The Muslim-dominated armed forces which were formed into the Army of Bosnia-Herzegovina were responsible for forcible expulsions of Serbs in some areas, notably in the Konjic area in early and mid-1992.

All sides mobilized minorities to perform forced labour, often in dangerous situations such as trench-digging close to front lines or in minefields.[11] Some of these people were effectively in detention.

Thousands of women were raped or sexually abused as part of the pattern of abuses aimed at expelling civilian populations. The stigma attached to such abuses and the fear of women who survived the experience resulted in a reluctance to testify. As a consequence, these abuses have undoubtedly been under-reported. The incidence of mass rape which occurred in Bosnia-Herzegovina had a harrowing effect on many refugee women. These women should not be obliged to return to communities where those responsible for rapes have not been brought to justice. There have been almost no arrests, let alone trials, of the perpetrators of these abuses.[12] The incidence of male rape is also under-reported because of the stigmatization which results from such violations.

The large waves of expulsions and departures in the early months of the war were followed by a continual haemorrhage of the remaining minorities particularly from the Bosnian Serb-controlled region of northwest Bosnia. In many areas, members of minority nationalities had been reduced to a residual core long before the cease-fire of October 1995.

Despite the bitter memories most victims must have of their expulsion or flight, many refugees and displaced people are determined to return. Their greatest concern appears to be the security and the political situation in their home areas. The presence of suspected perpetrators of gross human rights abuses (particularly where they still hold positions of power or authority) is a key factor influencing whether or not people wish to return. Other considerations include the current status of the housing which they have left (including whether possession can be recovered or whether the property can be repaired) and the political propaganda to which they are subjected about the issue of return. The desire to return was reflected by the signing of a joint document in Sarajevo in October 1996 by several different groups from all parts of Bosnia-Herzegovina and of differing nationalities, under the name of the "Coalition for Return". Despite many differences they agreed on the common aim of getting back to their homes.

## **PART I: Human rights violations in Bosnia-Herzegovina**

Evidence gathered by Amnesty International during research visits to Bosnia-Herzegovina in June, October and November 1996 and reports from local and international organizations show there is little respect for human rights in either entity of Bosnia-Herzegovina. In most reports of human rights violations the victims are members of minority nationalities. Many of the violations occurred when displaced people or refugees attempted to visit or return to their former homes or areas. Other violations have been aimed at expelling members of minorities. People considered to be political opponents of the authorities in various areas have also suffered human rights violations.

In many recent reports of violence against minority nationalities, the perpetrators were not uniformed police officers or soldiers. However, there is a pattern of police and local authorities failing to take action to prevent or investigate abuses or to protect those at risk. In some cases, police or other authorities have deliberately encouraged violence against members of minorities.

In addition, there has been no systematic attempt to disarm the large numbers of demobilized soldiers who still possess weapons such as rifles and hand grenades, or symbols of authority such as uniforms. The peace agreement forbids the carrying of arms, except by local

police, with certain restrictions, and by IFOR/SFOR and in the demilitarized Zone of Separation (ZOS) which lies either side of the Inter-Entity Boundary Line (IEBL). Demobilized soldiers have been responsible for abuses, particularly attempts to force members of minorities from their homes, or to prevent them returning.

### **Detention without charge or trial**

Under the terms of the peace agreement, detained non-combatants were to be released, and most civilians who had been detained without charge or trial during the conflict were released in 1996, as were most prisoners of war. However, there have been new cases of arbitrary detention since the agreement was signed. Members of minorities have been detained for periods ranging from several hours' questioning in police stations through to many months' detention without charge on the pretext of investigating war crimes. In some cases, the detainees were offered for exchange and had effectively been arbitrarily detained.

A Bosnian Croat man was detained by Bosnian Serb police or soldiers near Priboj on 7 February 1996. On 26 February a Bosnian Muslim man was detained when he was crossing the IEBL between the towns of eli and Koraj in order to visit his sister who lives in the RS. The Croat man claims that he was forced to sign a blank piece of paper after he was detained which was later produced as a statement of confession to war crimes. Both men are still held in the military prison in Bijeljina. Neither has been charged with any offence, but the RS authorities have reportedly asked for the release of a Bosnian Serb who is detained in Sarajevo and under investigation for war crimes.

Four displaced Serbs were detained on 1 June 1996 by Bosnian Croat police close to the IEBL near Glamo\_. They had driven there from Banja Luka to visit their former homes and workplaces. The men were taken to a police station in Glamo\_ but were kept hidden for 11 days from IPTF officers and IFOR soldiers who sought to visit them. International agencies were only able to get access to them after they had been transferred to a prison in Mostar. The Bosnian Croat police reportedly failed to provide any lawful basis for their arrest. The men were released in a prisoner exchange one month after their arrest.

Sekula Mandi\_, \_edo Vukadin, Radenko Golijanin and Predrag Matkovi\_, all Bosnian Serbs, went "missing" in two separate incidents in July and September in the Federation area south of Sarajevo. International organizations demanded information about Federation police investigations into the cases and about the whereabouts of the detainees. The authorities denied knowledge of their whereabouts until 16 October when they were found to have been in detention and to have been transferred to the Central Prison in Sarajevo. Following their discovery and pressure from international organizations they were finally released on 30 October.

### **'Disappeared' and 'missing'**

Up to 25,000 people are still "disappeared" or "missing" from the time of the conflict. Some may be in detention. Father Tomislav Matanovi\_, a Bosnian Croat and Roman Catholic priest, and his parents were detained by Bosnian Serb police in Prijedor in August 1995. The RS authorities have indicated that they are in detention by offering them for exchange, but have not allowed access to them or provided any details of why they were detained.

A few prisoners whose release was expected at the start of 1996 have "disappeared". At least two Bosnian Serb prisoners of war who were detained by the Bosnian Government in Zenica were seen by other prisoners a few days before the latter were released. The detention of these men has not been acknowledged.

### **Ill-treatment**

Some detainees have been beaten in custody by police or soldiers. Most reports of ill-treatment have come from people detained in the RS although there have also been complaints against the Bosnian Croat and Muslim authorities in the Federation. Seven Bosnian Muslim men who surrendered to IFOR troops in the RS in May 1996 were handed over to RS police by IFOR, as required under the peace agreement. The Bosnian Muslims, known as the “Zvornik seven”, and an eighth man who was detained separately, were beaten in detention in Bijeljina. Amnesty International was concerned not only at the beatings by RS police but also that IFOR failed to seek guarantees that they would not be ill-treated before handing them over.[13]

In one of the worst reported cases of ill-treatment, Hasan Kova\_evi\_, a Bosnian Muslim, died in police custody in Banja Luka on 1 August 1996. A post-mortem examination found he had multiple broken ribs, probably as a result of beatings. Local police initially claimed that Hasan Kova\_evi\_ had sustained these injuries when he jumped out of a window, but later said that they had had to use truncheons to restrain him when he resisted arrest.

### **Forcible expulsions and violent opposition to returns**

Bosnian Serbs, Muslims and Croats who are members of minorities in Bosnia-Herzegovina have been subjected to a variety of abuses aimed at driving them from their homes and localities. Serbs and Croats who remained in the suburbs of Sarajevo after these were transferred to the Federation were subjected to intimidation by gangs of Serbs intent on making them leave for the RS before the transfer. The harassment included setting apartments and houses on fire and beating people in their homes. RS police were reportedly either unwilling to protect the victims or ineffective in doing so. Those who remained in Sarajevo after the transfers have been harassed and beaten and have had only limited protection from Federation police officers.

In May and June 1996, there was a campaign to force Bosnian Muslims out of villages around Tesli\_ in the RS. The campaign began when displaced Muslims attempted to visit their homes in the area, and appeared to be orchestrated by local Bosnian Serb politicians. Grenades were thrown at Muslims' houses and individuals were threatened or beaten by Serbian civilians. Many of the victims sought protection from the local RS police but few received it. As a result, hundreds of Muslims are believed by international organizations to have left the area. Each was required to pay 10 Deutschmarks (US\$16) for permission to leave. The campaign subsided when, following pressure from international organizations in the field, the Tesli\_ police chief was replaced and IPTF presence in the area was extended.

There have been reports of harassment and intimidation of minorities in many areas of the RS. In June 1996, about 30 Bosnian Muslims were forced out of their homes in the Vrbanja suburb of Banja Luka, after a series of individual violent confrontations between Muslims and Serbs living there, many of whom were displaced persons. The evictions followed the return of one Muslim refugee to the area. A number of other Bosnian Muslim families abandoned their homes and sought protection from international organizations. The local chief of police reportedly assured the IPTF that all the families would be reinstated in their homes, but only one family had been reinstated by August. Representatives of UNHCR also repeatedly urged the local authorities to ensure that the Bosnian Muslims would be able to return to their homes. In September, believing that their safety could not be assured in Banja Luka, UNHCR organized the evacuation of Bosnian Muslims evicted from their homes, almost all of whom wanted to leave. The Bosnian Croat-controlled area of west Mostar has been the scene of many violent evictions, many of which were carried out by uniformed men or the civilian or military police. Between January 1996 and January 1997, more than 70 non-Croats were evicted from their homes with violence or threats. Almost all had to seek shelter in Muslim-controlled east Mostar and few were able to return to their homes. The victims included elderly and disabled people, several of whom were literally left in the streets. One of the most disturbing cases was that of Rukija Bejtovi\_, a

71-year-old Muslim woman, who was confined to a wheelchair. She was reportedly taken from her apartment just before 24 December 1996. Two days later it was found to have been taken over by a Bosnian Croat (HVO) soldier who denied all knowledge of Rukija Bejtovi\_. She was found dead 13 days later, apparently having been abandoned in a derelict building. A post-mortem reported that she died of a heart attack.

Throughout 1996, there was a series of incidents in which groups of displaced people attempting to visit their homes were obstructed or attacked by police or by civilians who were not restrained by local police.

Violent confrontations, including human rights violations, occurred around several Muslim villages in the second half of 1996 in the Šapna thumb, a region in the Federation which lies to the west of Zvornik in the RS. Muslims attempted to resettle several villages in the RS, but in the ZOS which lies either side of the IEBL. Tension has been high in the area surrounding these villages and was fuelled by reports that some returning Muslims had brought in arms. IFOR troops confirmed that some of the returning men possessed arms. The RS authorities claimed that the Federation authorities were encouraging Muslims to return to the villages with the military objective of establishing a foothold in RS territory.

Bosnian Serb police are reported to have perpetrated human rights violations during outbreaks of violence in these villages. On 29 August, Bosnian Serb police in Mahala fired shots in the air and then beat a number of Muslims before IFOR and IPTF intervened. After these police officers had been arrested, they were stoned by the crowd before being taken away.

### **Obstacles to the right to return home**

Annex 7 of the peace agreement includes an explicit reference to the rights of refugees and displaced persons to return to their homes and defines their early return as a key objective:

*“The parties shall ensure that refugees and displaced persons are permitted to return in safety, without risk of harassment, intimidation, persecution, or discrimination, particularly on account of their ethnic origin, religious belief, or political opinion.” [14]*

Enormous obstacles and risks face refugees or internally displaced people who wish to return. Would-be returnees may be at risk of violence or intimidation, either from the security forces or from civilians in a situation where the police force is unwilling or unable to provide adequate protection. The extensive minefields and the deliberate sowing of mines in houses pose a physical threat. In most areas, there is no adequate shelter to accommodate returnees and protect them from the harsh winters. Even when no physical risks are involved, the problems in distributing available accommodation, particularly in resolving questions of ownership or tenancy rights, have stood in the way of those who wish to return.

The general policy of the Muslim-led authorities within the Federation is to push for displaced Muslims to go back to their home areas. The Bosnian Croat-led authorities frequently resist the return of displaced Muslims, but do not consistently promote the return of displaced Croats to the RS or to Muslim-controlled areas of the Federation. In the RS the authorities have not promoted the return of displaced Bosnian Serbs. They have openly opposed the return of non-Serbs, and have committed human rights abuses and other acts aimed at discouraging their return. Statements such as the following, by RS President Biljana Plavši\_, send a clear message to would-be returnees while at the same time touching on the real problems of accommodation which affect populations in both entities:

*“It is not our obligation to think about the Bosniac and Croat displaced persons living in the Federation. We have to solve the problem of space of our own Serb displaced persons first. They have been forced to abandon their own property in the Federation, which has belonged to them for centuries. This means that in the near future I cannot see any chance for the return of minorities to the RS. In this sense, Dayton is more theory than anything else.”[15]*

### **The accommodation crisis**

Huge problems are presented by the lack of accommodation. According to UNHCR, some 60 per cent of the housing stock was damaged or destroyed during the conflict.[16] Much of the damage was deliberate and was intended to force out minority populations.

Deliberate damage to housing continues to be reported. In October and November 1996 Bosnian Serbs started to deliberately damage and destroy houses in several parts of the RS which Muslims had been repairing or planned to visit, on a scale not seen since the armed conflict ended. UNHCR was particularly disturbed to find that 96 houses destroyed around the Prijedor area of the RS on 24 October belonged to Muslims who had applied to visit their homes and whose names had been submitted to the authorities by the UN.[17] Bosnian Croats also destroyed or damaged houses to discourage the return of Muslims to \_apljina, Stolac and other areas and, on a smaller scale, Bosnian Muslims damaged or destroyed Croat houses in Bugojno.

International and local efforts to rebuild housing and infrastructure are making enormous financial demands which have only been partly answered by commitments of funds. Little habitable accommodation remains unused and there is simply not enough accommodation available for large-scale returns in the near future. UNHCR officers working in the Tuzla area have stated that any substantial influx of returning refugees or displaced people would necessitate reopening collective centres in the area to provide shelter.

Further pressure on the availability of housing comes from demobilized soldiers, who feel they are entitled to property in return for their sacrifices, and serving soldiers, paramilitaries and others who carry out violent evictions or harassment to acquire better accommodation. Displaced people, who are most likely to be in temporary occupation of others' property, are obviously reluctant to leave unless they can return to their own homes. There have also been reports of members of minorities being harassed by displaced persons seeking to take over accommodation. Returning refugees are often viewed unsympathetically by many who remained throughout the war, particularly by those in Sarajevo, who see the refugees as having escaped the hardships of war and having supposedly been able to earn substantial amounts of money abroad. Displaced people who are evicted from temporary accommodation by returning refugees are likely to take over the accommodation of members of minorities in the area. As members of minorities have received least sympathy from the authorities and least physical protection from the police, they are most at risk of eviction when refugees or displaced people return to their area.

The peace agreement established a Commission for Displaced Persons and Refugees[18], known as the Property Commission, to consider claims from people who lost their houses, and to rule on property title in disputed cases. However, the Commission has limited capacity to process the hundreds of thousands of potential claims and it has no power to enforce execution. The Property Commission was inaugurated in March 1996 and began to receive claims in November 1996, with the target of initially processing 3,000 claims per month for the first three months. Although refugees and displaced persons have been designated as priority claimants, claims will initially be solicited from displaced persons inside Bosnia-Herzegovina and only later from refugees. The Commission has decided that the return of property in its current state will be its highest priority and acknowledges that compensation in place of the return of property will only be realistic when the international community and the states sponsoring the peace agreement provide adequate funds for reconstruction.

This means that the many thousands of people whose homes were deliberately damaged or destroyed as a result of their nationality, religion, ethnicity or political opinions will have to wait until funds are available before pursuing their rights to compensation. For many, this amounts to homelessness as, without compensation, they cannot afford to rebuild their homes.

It is apparent that the Property Commission will be unable to make a significant impact on the housing problems of potential returnees in the short term. Its effectiveness in the medium and long term depends upon it being adequately resourced and receiving the full cooperation of the parties to the peace agreement. There is scant evidence of this to date.

### **The pilot projects**

While the negotiations on the peace agreement were proceeding in Dayton, USA, the Bosnian and Croatian Presidents signed an agreement providing for the return of agreed numbers of displaced people to four towns within the Federation — Travnik, Jajce, Bugojno and Stolac. The people selected to return were Muslims or Croats who had been displaced during the 1993 to 1994 war between the Muslim and Croat forces. The projected return of 100 Croat families to Travnik and 200 Muslim families to Jajce was completed in June and September 1996 and the target numbers were exceeded, with 200 and 202 families returning respectively.

The pilot project was less successful in Bugojno. During 1996, there were reports of harassment aimed at forcing Croats out and discouraging returns. Between the end of June and late August, the Federation Ombudspersons [19] verified at least eight cases of explosives being placed in Croat houses, vehicles or churches and two cases of arson. Several Croats were beaten and some received death threats. Most of the perpetrators were civilians of unknown identity, but the police reportedly failed to take concerted action to protect the Bosnian Croat minority and were accused by the Federation Ombudspersons of encouraging the violence by their passivity. Two hundred Croatian families were due to return to Bugojno. By mid-January 1997, 148 families had returned.

Worst of all is the situation in Stolac. By December 1996, not a single Muslim family had resettled there. For a time Muslims were able to travel to the town on a bus provided by UNHCR and were able to carry out repairs to their houses, but the Croatian authorities placed numerous obstacles in the way of the project, including allowing explosives to be placed in some of the houses, and refused to provide proper guarantees for the returnees' safety. The project has been suspended several times.

### **The risk of prosecution**

Another obstacle for refugees and displaced people seeking to return is the possibility of prosecution on false charges of alleged war crimes, or for desertion from the armed forces.

The parties to the peace agreement undertook to enact legislation to ensure that any returning refugee or displaced person charged with an offence would enjoy an amnesty, provided the crime was not a serious violation of international humanitarian law or a common crime unrelated to the conflict.[20] The agreement also stated: "In no case shall charges for crimes be imposed for political or other inappropriate reasons or to circumvent the application of the amnesty." However, in several cases, charges of war crimes have been brought without substantial evidence against the individuals concerned. The release of several of them in prisoner exchanges reinforces the argument that their detention was arbitrary and either designed to discourage minorities from exercising their freedom of movement, or to procure the release of others by taking hostages.

The authorities of the Federation, the Republic of Bosnia and Herzegovina and the RS have enacted legislation which provides amnesty for certain offences. However, the scope and effectiveness of this legislation is limited, most notably in the RS where the Law on Amnesty specifically excludes the crimes of "Refusing to answer call-up and avoiding military service" and

“Voluntary abandonment and desertion from the armed forces”. [21] People who fled or remain abroad to escape or avoid military service can be prosecuted for these offences. As of January 1997, there is no provision for conscientious objectors under the laws in the RS.

The Law on Amnesty in the Federation applies only to acts committed before 14 December 1995, the day the peace agreement was signed, but the state of war in the Republic of Bosnia and Herzegovina was not officially lifted until 22 December 1995. After the October 1995 cease-fire, some soldiers reportedly deserted the Army of Bosnia and Herzegovina and they could be prosecuted for being absent between 14 and 22 December 1995.

Conscientious objectors who deserted or left the country to escape military service may avoid prosecution in the Federation under the amnesty law but they could be conscripted or mobilized upon return to the country. A new Law on Defence which was passed in 1996 provides for alternative service for conscientious objectors in the Federation. However, the alternative service is not purely civilian in nature and it is punitive in length — twice the duration of normal military service. Furthermore, conscientious objectors must apply for alternative service within 90 days of becoming eligible for military service, which would preclude most refugees and displaced people currently of military age.

Exact figures for the numbers of men who have sought to avoid military service are not available. However, some indication of the scale can be gained from reports that 1,000 men were sentenced to up to five years’ imprisonment by the military court in Banja Luka between January and August 1993. [22] The Bosnian Serb Army was reported to have suffered acute desertion problems during the last months of the conflict, when paramilitaries from Serbia, the Tigrovi (Tigers), were deployed in northwest Bosnia to physically punish and return deserters to the front.

### **Freedom of movement**

Freedom of movement was highlighted as one of the key objectives of the peace agreement, but one year later, few of the hundreds of thousands of people who were forcibly expelled from the areas they lived in before the agreement was signed or of the thousands who have been expelled since have been able to return to their homes. Where there have been improvements, these have been in the ability to travel or to make short visits to their home areas.

Thousands of daily crossings of the IEBL have been recorded in recent months, but most occur on the transit routes through the RS to Croatia in the north, or a short cut through the area known as the “anvil” in the west. Scheduled bus services linking the entities, for example between Banja Luka and Zenica and between the Federation and RS areas of Sarajevo, were established with much difficulty by UNHCR. These services have enabled small numbers of displaced people to visit their former homes. Displaced people have also crossed the IEBL by car although few have dared to go far using licence plates from another entity and have preferred foreign registrations or no plates at all. Most such visits have been short and a negligible number of people appear to have returned permanently.

On 13 October 1996, a group of around 250 displaced Bosnian Serbs attempted to visit their home town of Drvar in the Bosnian Croat-controlled Tomislavgrad Canton. The visit was not organized or mediated by UNHCR. The authorities in Drvar reportedly refused permission 30 times, whereupon the group decided to proceed without official agreement (which in any case is not mandatory under the peace agreement). The convoy of buses was stopped after it had crossed the IEBL by the local police chief who claimed that he could not guarantee the group’s security. The convoy continued, but was blocked from entering Drvar by a hostile crowd. After five hours the group abandoned the attempted visit and returned to the RS.

There have been similar problems in many parts of the Federation from where Bosnian Muslims and Croats fled during the Muslim-Croat conflict of 1993 to 1994.

Group visits have been successfully organized by UNHCR, IFOR/SFOR, local authorities hosting displaced persons, or at the behest of displaced persons themselves. However, such visits

have been highly politicized by the authorities in both entities and have frequently resembled demonstrations rather than the visits to graveyards and homes. They have often been met by counter-demonstrations organized by the authorities in the areas being visited. Both displaced persons and populations in the receiving areas appear to have been manipulated. On the one hand, the authorities in the Muslim-controlled areas have appeared to want to force the issue of the return of displaced persons and to highlight their declared policy of maintaining a unitary, united state. On the other hand, the Bosnian Serb authorities, which oppose the idea of a unitary state and regard the RS as a territory which should be populated exclusively by Serbs, have sought to oppose any returns to the RS and the return of displaced Serbs to areas within the Federation.

### **Justice and the truth**

The mass human rights abuses which have occurred in Bosnia-Herzegovina in the past four years have left few families untouched. One of the most important considerations for victims and their relatives in coming to terms with what has happened is establishing the truth and ensuring that those responsible for abuses are removed from positions of authority and brought to justice.

Many refugees and displaced people would have to return to areas where the perpetrators of abuses are still at liberty and, in some cases, in positions of authority. Many refugees and displaced people, particularly Bosnian Muslims, state that they would never be prepared to return to areas under RS control. However, others are willing to return if people suspected of genocide, other crimes against humanity or war crimes are removed from power and brought to justice. This has been borne out in interviews conducted by Amnesty International with many displaced persons and refugees. One elderly man from the Vlasenica area, interviewed in Tuzla in June 1996, was initially forced to flee to Srebrenica in 1992 and from there to Tuzla in July 1995 when Srebrenica fell. Nine members of his family were killed, including his wife and two sons. He thinks of nothing but returning to his home. When asked what would constitute the necessary safety to return, he replied that it would depend on who was in control.

The parties to the peace agreement have made little effort to identify and bring to justice perpetrators from their own side. In contrast, they have actively collected testimony and investigated evidence when the victims are believed to be from their side. The RS and Bosnian Croat authorities, in particular, and their sponsoring governments in Croatia and the Federal Republic of Yugoslavia (FRY), have failed to cooperate fully with the Tribunal.

To date, 74 individuals have been indicted for genocide, other crimes against humanity, grave breaches of the Geneva Conventions and other serious violations of humanitarian law committed in Bosnia-Herzegovina, of which 66 are still at large. Many of the indictments, including those against former Bosnian Serb civilian leader Radovan Karadžić, former military commander Ratko Mladić and former Bosnian Croat leader Dario Kordić, have cited genocide among the charges. It is significant that IFOR/SFOR has made no concerted efforts to secure the arrest of anyone indicted by the Tribunal, despite being obliged to do so by international humanitarian law.[23] Efforts by representatives of the international community in Bosnia-Herzegovina to secure the withdrawal of Radovan Karadžić from public office, as required by the peace agreement, were initially hesitant and subject to manipulation by the Bosnian Serb leadership.

Until the individuals suspected of perpetrating or ordering gross human rights abuses are brought to justice in accordance with international standards of fair trial, their presence will continue to deter displaced persons and refugees from returning.

## **PART II: The protection of refugees in host states**

The conflict in Bosnia-Herzegovina and the range of abuses which stemmed from the conflict forced more than two million people to flee their homes and seek protection abroad or in other

parts of the country. Many of the human rights violations and abuses which characterized the conflict continue today and frustrate the desire of refugees and the internally displaced to return home. They also demonstrate that, despite the peace agreement, for many of the refugees it is not yet safe to return to Bosnia-Herzegovina.

### **The history of temporary protection**

In 1992, when the mass exodus of refugees and displaced people was at its height, the host states, mostly European, offered various forms of protection to refugees from former Yugoslavia. Few countries have allowed refugees to seek refugee status within the meaning of the UN Refugee Convention, as amended by its 1967 Protocol.[24] Instead, most countries have provided them with various forms of temporary protection status. In some countries, Bosnian refugees have been treated as immigrants and their status determined under national immigration laws, with the intention of eventually returning them to Bosnia-Herzegovina. Other countries have granted varying numbers of refugees permission to remain on humanitarian grounds.

In most cases, those fleeing were subject to a general decision by host states that they were entitled to protection on a temporary basis only, and it was deemed unnecessary to allow for decisions on individual cases. Temporary protection was intended to last as long as the conflict made it impossible for refugees to return home or until other measures were taken to permanently resettle those forced to flee. Amnesty International is concerned that temporary protection measures should not be used by host states to avoid their obligations to asylum-seekers or to undermine refugees' right to effective and durable protection.

UNHCR, in its Comprehensive Response to the Humanitarian Crisis in Former Yugoslavia, published on 21 January 1993, stated that: "...many of the persons benefiting from temporary protection may also qualify as refugees under the 1951 Convention", and that:

*"UNHCR's approval of measures to suspend asylum procedures where necessary during the period of temporary protection does not of course preclude the admission of persons enjoying temporary protection to asylum procedures".[25]*

Most refugees received protection on the basis that they had a temporary need. Now, at the time when host states are planning to return them, concerns arise about the standard used to ensure that no refugee is forcibly returned to a situation where they may continue to be at risk of serious human rights violations.

Bosnian refugees who received temporary protection in host states after fleeing from human rights violations have the right not to be returned to Bosnia-Herzegovina until they have had access to a fair and satisfactory asylum procedure to establish if they are still at risk of serious human rights violations. This stems directly from the fundamental principle of non-refoulement which is outlined in Article 33(1) of the UN Refugee Convention. It is a norm of customary international law and may not be derogated from. In addition, most host states are parties to the UN Refugee Convention, yet many are refusing to fully recognize or respect the rights of Bosnian refugees on the basis that since they were temporarily protected they do not accrue the protection afforded under the UN Refugee Convention.

### **Durable safety: what does it mean and who decides?**

European and other host states should not return refugees to Bosnia-Herzegovina by ending temporary protection when it is not demonstrably safe for them to return. As the continuing human rights abuses against minorities in Bosnia-Herzegovina demonstrate, refugees would be at risk of serious human rights violations if they were forcibly returned to minority areas.

Continuing human rights violations against minority populations in both entities and the failure to establish effective international or local systems of protection, means that if host states

were to return sizeable numbers of refugees to majority areas, there is a risk that members of minority populations in those areas will suffer further human rights abuses, and displacement. There is also the risk of human rights abuses against majority returnees by local populations of displaced persons due to the property issue and as “punishment” for the perceived evasion of military duties during the conflict. Finally, large scale returns of refugees could have a serious destabilizing effect on the country which could place both the returnees and those internally displaced at personal risk, in addition to creating the more generalized risk of further conflict between the parties. Returning refugees to majority areas and not to their original homes (given that there is little likelihood of them ever returning to their original homes) will breach the guarantee outlined in Annex 7 of the peace agreement and would reinforce the division of the country and thereby increase the difficulties in returns to minority areas over the long term.

Amnesty International believes that temporary protection should not be ended for refugees until the conditions in the country of origin are demonstrated to have substantially and durably improved to the point where there is no risk of serious human rights violations against returnees.[26] This position is supported by analogy with the standards for cessation in the UN Refugee Convention and the Executive Committee of UNHCR (EXCOM) conclusions.

EXCOM has concluded that refugee status may only end when:

*“...a change of circumstances in a country is of such a profound and enduring nature that refugees from that country no longer require international protection, and can no longer continue to refuse to avail themselves of the protection of their country, provided that it is recognized that compelling reasons may, for certain individuals, support the continuation of refugee status”.[27]*

EXCOM further elaborates the phrase “change of circumstances in a country is of such a profound and enduring nature”, by stating that the assessment of the relevant adjudicating authorities of “ceased circumstances”, must include an assessment of:

*“...the fundamental character of the changes in the country of nationality or origin, including the general human rights situation, as well as the particular cause of fear of persecution, in order to make sure in an objective and verifiable way that the situation which justified the granting of refugee status has ceased to exist...”*

EXCOM concludes by noting that the essential factor of this assessment is the “fundamental, stable and durable character of changes”.

The human rights situation in much of Bosnia-Herzegovina, one year after the peace agreement was signed, does not demonstrate fundamental, stable and durable changes.

In the light of the German Government’s decision to repatriate refugees from 1 October 1996 and the statements by other host states that temporary protection will end for Bosnian refugees at various times throughout 1997, in addition to the promotion by UNHCR of “durable solutions” through return during a two year “consolidation period”, (which will continue until the withdrawal of SFOR in 1998), it is likely that 1997 will see the return of tens of thousands of refugees to Bosnia-Herzegovina, despite the fact that conditions in the country are not durably safe. The regional approach to “durable solutions” proposed by UNHCR includes the, initially voluntary, relocation of refugees, to new geographical areas in Bosnia-Herzegovina [28], despite the fact that such relocation would breach Annex 7 of the peace agreement and could mean that refugees might never be able to return to their homes. This position of UNHCR represents a substantial weakening in their position on the protection of refugees less than one year earlier, when they introduced the benchmarks for pre-requisites to return. UNCHR also notes at several points in the durable solutions framework proposed for returns to Bosnia- Herzegovina that the

return of some categories, especially minorities, hinges on removing the formidable political obstacles to return.

UNHCR have stated that those refugees who can reasonably be expected to return to their homes of origin, “subject to verification by the host State of individual circumstances which may impede safe return”, are:

- Bosnian Muslims originating from currently Bosnia-administered areas of the Federation;
- Bosnian Croats originating from currently Croat-administered areas of the Federation;
- Bosnian Serbs originating from the RS (with the exception of draft evaders and deserters, until such time as they are covered by an adequate amnesty)[29];

and that until March 1997, all returns should be on a strictly voluntary basis. UNHCR has emphasised that even within the three categories of refugees it believes can return to Bosnia-Herzegovina, “there may be individuals ... who have a well-founded fear of persecution in the situation prevailing today in Bosnia and Herzegovina within the terms of the 1951 Convention or have acute humanitarian needs”. [30] Such individuals must be given “access to existing appeal procedures, to verify individual circumstances which could impede safe return”. UNHCR has stated that after March 1997, although ideally all returns should continue to be voluntary, the return of persons falling in the three categories listed above “need not necessarily be voluntary” provided that a procedure exists to verify individual circumstances which could impede safe return.

According to UNHCR, refugees who cannot return to Bosnia-Herzegovina and who require continued international protection “for the time being” include:

- People originating from areas where they would no longer be in the majority upon return, until such time as the political and security obstacles to return have been cleared. UNHCR furthermore believes that these people should not be compelled to return to other areas from where they did not originate;
- Couples in mixed marriages, particularly where the head of the family, upon return, would be in a minority — although other individual circumstances may create the presumption that mixed couples or people of mixed origins should not be compelled to return;
- Special humanitarian cases with compelling reasons arising out of previous persecution, by analogy with Article 1C of the UN Refugee Convention. This category would include ex-detainees and victims of extreme violence and trauma;
- Continued international protection may also exceptionally be extended to citizens of the Republics of the former Socialist Federal Republic of Yugoslavia whose nationality status remains unresolved.[31]

UNHCR has stated that any returns of the above categories should only be of a strictly voluntary nature.

Amnesty International believes that anyone who expresses a wish not to return, because of fear of suffering serious human rights violations or abuses, should have access to a fair and satisfactory individual asylum procedure in the host state. This procedure should also identify special categories of persons who cannot reasonably be expected to return where compelling reasons exist, for example, ex-detainees, victims of extreme violence and trauma, and particular attention should be paid to rape victims.[32]

### **Investigation and monitoring of human rights situation**

Effective human rights monitoring of the situation in Bosnia-Herzegovina is vital to determine whether the conditions in Bosnia-Herzegovina are durably safe to permit return. However,

reporting and monitoring human rights violations by UNHCR and other international bodies continues to be inadequate. In order to determine whether conditions are durably safe, it is essential that the OSCE Mission in Bosnia-Herzegovina, in collaboration with UNHCR and other international bodies, investigate fully the human rights situation relevant to refugees and displaced persons and publish frequent, comprehensive reports.

The OSCE Mission is charged with monitoring the human rights situation in Bosnia-Herzegovina, while the High Representative has overall responsibility for implementation of the civilian aspects of the peace agreement. Although some information in OSCE Mission reports is included in the daily briefings by the Office of the High Representative, the OSCE Mission has not issued detailed reports concerning human rights violations and the information the mission publishes about its human rights protection and promotion activities is neither adequate nor comprehensive. OSCE monitors have to date been hampered by lack of sufficient personnel to undertake these vital functions and have been diverted from human rights investigation and monitoring since mid-1996, having been directed to concentrate on the national elections in September 1996. OSCE monitors should now ensure that information is gathered that forms the basis of human rights reports. These reports should be disseminated to displaced persons and refugees on a regular basis to allow a would-be returnee to form an assessment of the human rights situation over time.

Since March 1996, UNHCR has published several Repatriation Information Reports (RIR), each covering an individual municipality in Bosnia-Herzegovina. Although these reports contain accurate factual information of practical interest to Bosnians, the reports do not attempt to represent an assessment of the human rights situation. This point is made in the Introduction to the Reports, which states:

*“The General RIR is not a human rights report... This report should not be relied on for assessing the validity of asylum applications and determining whether individuals have a well-founded fear of persecution.”*

It is essential that the High Representative, in close cooperation with UNHCR, the OSCE and other international bodies, ensures that the international organizations involved in monitoring human rights fully investigate the human rights situation in Bosnia-Herzegovina and publishes frequent, comprehensive and timely reports on this subject, so that the international community has the information necessary to determine whether conditions of durable safety exist in the country. The monitoring bodies should also monitor compliance with the provisions of Annex 7 of the peace agreement, guaranteeing the right to return, and of Annex 6, which guarantees freedom of movement.

If these organizations, due to the limits of their mandates or their political affiliations, are not able to collect and issue such information, then it is of fundamental importance that an independent and impartial mechanism be established to collect and disseminate assessments of the human rights situation.

### **Countries of asylum: pressure to send refugees home**

Refugees from the former Yugoslavia are to be found throughout the world, but the majority of those who fled from Bosnia-Herzegovina received temporary protection in European countries. Since the peace agreement was signed, several of these countries have sought to end temporary protection and return refugees to Bosnia-Herzegovina, despite continuing human rights abuses.

### **Germany**

Germany demonstrated generosity to Bosnian refugees by affording them protection when many of their partners in Europe did not. However, it has been the first European country to decide to

proceed with a program of forcible repatriation. Bosnian refugees were originally granted temporary protection in Germany by decisions of the Federal government, in consultation with the federal states of Germany (the Länder), based upon Article 54 of the Aliens Act. This included a ban on deportation to Bosnia-Herzegovina.

Of the 320,000 Bosnian refugees who fled to Germany, approximately 15,000 have received formal temporary protection. Most Bosnian refugees in Germany have the status of illegal immigrants, but their stay has been “tolerated” (“Duldung”) because of the situation in Bosnia-Herzegovina.

Approximately 32,000 Bosnian refugees applied for asylum in Germany. From mid-1993, the federal office for asylum claims halted all applications, after only 2,000 applications had been processed. In August 1996, the Federal Administrative Court in Berlin decided that Bosnian refugees could only be granted refugee status in Germany if at the time of their flight they could not receive protection anywhere in what are now the two entities of Bosnia-Herzegovina. This is an extraordinary ruling given that, when most refugees fled, the shape of the entities was not defined and the situation in Bosnia-Herzegovina was so unstable that no area of the country was safe. In addition, the only route available for many refugees was flight through Croatia.

Following this ruling, in September 1996 the federal office for asylum applications recommenced hearing asylum claims. It is likely that most applications will be rejected on the basis of the Federal Administrative Court’s ruling.

The “toleration” of Bosnian refugees with illegal status was due to end on 31 March 1996, but was extended to 30 September 1996 because of continuing human rights violations in Bosnia-Herzegovina. At a conference on 19 September, the interior ministers of the Federal government and the Länder decided that “toleration” would end on 1 October. The conference resolution favoured voluntary returns, but stated that refugees would be forcibly returned if necessary. Some Länder began forcible repatriations from 1 October 1996, others plan not to do so before 1 April 1997. The conference decided that the first phase of any repatriation programs should only involve refugees whose home areas in Bosnia-Herzegovina were assessed as safe, and made reference to a list UNHCR had drawn up in June 1996 of 22 areas that should be targeted for reconstruction.[33] However, UNHCR had neither made nor intended any statement on the safety of these areas to be used in this manner. Before the conference UNHCR had called upon the German authorities not to end temporary protection, and after the decision to do so, UNHCR stated: “...the conditions in Bosnia do not permit forced returns at this moment”.[34]

The first category of refugees to be repatriated by Germany is single adults and families without children; the second category is families with children, persons suffering traumatic disorders receiving medical treatment in Germany, people over 65 years of age and witnesses to the Tribunal. The second category will not be returned until the summer of 1997.

Many Bosnian refugees have now received orders to leave Germany, including refugees from areas other than the 22 identified on the UNHCR list. Some refugees have appealed against the orders, but many are now being forcibly repatriated. To formalize the decision to return Bosnian refugees, Germany and Bosnia-Herzegovina signed a Repatriation Agreement on 20 November 1996. UNHCR was not a party to this agreement despite the fact that Repatriation Agreements are usually of a tripartite nature with UNHCR involvement. According to the German Interior Minister, between 70,000 and 90,000 refugees would be repatriated by 30 June 1997.[35] In October 1996, German police started to forcibly return small numbers of Bosnian refugees. Many of those initially returned had committed criminal offences in Germany, although some were relatively minor offences. Some of those returned in November and December were Muslims from the RS, including former inmates of detention camps, who clearly have no possibility of returning to their homes. Those returned arrived in Sarajevo with little money or social assistance and some had no relatives in Bosnia-Herzegovina.

Temporary protection is being revoked by the German authorities without reference to international standards for the protection of refugees. In returning refugees against their will to Bosnia-Herzegovina, Germany risks breaching the fundamental principle of non-refoulement which prohibits returning anyone to a country where they face serious human rights violations. The absence of adequate burden-sharing among host states and European partners is no excuse for prematurely ending protection for refugees.

### **Austria**

There are approximately 80,000 Bosnian refugees in Austria, about 55,000 of whom have work permits and temporary residence permits, according to the Austrian Minister for the Interior. Approximately 16,000 refugees are dependent on Federal assistance and are also entitled to temporary residence permits. In January 1996, the Minister for the Interior stated that there should be no pressure on Bosnian refugees to return as this could impede the consolidation of the peace agreement.

Bosnian refugees have been granted temporary protection in Austria under the 1993 Residence Act in combination with decrees which were issued intermittently throughout the conflict in Bosnia-Herzegovina. The latest decree, issued on 28 June 1996, extends temporary protection until 31 August 1997 for the following categories of Bosnian refugees:

- Bosnians forced to flee Bosnia-Herzegovina due to the armed conflict, who entered Austria before 1 July 1993;
- Bosnian refugees who sought protection in Austria between 1 July 1993 and 15 December 1995, who did not present themselves to Austrian border authorities for “reasonable reasons”, but did present themselves to the Austrian authorities “without delay” after their entry;
- Bosnian refugees who entered Austria between 15 December 1995 and 28 June 1996 and presented themselves to Austrian border authorities and were allowed to enter by the border authorities;
- Bosnian refugees seeking protection in Austria after 28 June 1996 can only apply for temporary protection by presenting themselves at the border and being allowed to enter by the border authorities after a declaration of consent by the Minister of the Interior.

This decree differentiates between refugees who fled Bosnia-Herzegovina at different times. The generous policy of providing Bosnian refugees temporary protection applied to most refugees who fled before 1 July 1993, but Bosnian refugees who arrived in Austria after that date have been dependent on differing interpretations of “reasonable reasons” and “without delay” by different Austrian authorities, factors which have no relevance to the prohibition of refoulement. Some of those who arrived after July 1993 have neither received temporary residence permits under the Residence Act, nor been granted asylum under Austrian asylum law. Additionally, refugees arriving after 15 December 1995 are only granted temporary protection if they entered Austria with valid travel documents, with visas and with the permission of the border authorities. Most refugees could not fulfil all these requirements.

### **Denmark**

Temporary protection in Denmark was granted by providing temporary residence permits to refugees from the former Yugoslavia, including Bosnian refugees, under the Yugoslavia Act [36] which was passed on 28 November 1992. The legislation was intended to afford protection to refugees who had fled to Denmark until the conflict in former Yugoslavia ended and refugees could return home.

The Yugoslavia Act covered those who fled Bosnia and sought asylum in Denmark and those identified by UNHCR as being in specific need of protection. Both categories were given six-month temporary residence permits, which could be extended periodically until it was safe to return. The Yugoslavia Act allowed the Danish authorities to postpone asylum applications for up to two years, which they subsequently did.

On 30 June 1993, the Danish authorities introduced visa requirements for Bosnian refugees, arguing that most Bosnian refugees arrived in Denmark via third countries and that they should receive protection in those countries.[37] The authorities also established a foreign mission in Zagreb which issued entry permits to selected refugees.

The postponed asylum hearings began on 1 November 1994, by when approximately 19,000 Bosnian refugees had obtained temporary permits to reside in Denmark. By 5 July 1996, more than 17,000 of these refugees were recognized as refugees; approximately 4,500 within the terms of the UN Refugee Convention and the remainder under the Danish concept of a *de facto* refugee.

On 18 January 1995, the Danish parliament voted to amend the 1983 Aliens Act by granting a residence permit to Bosnians resident in Denmark for two years under the provisions of the Yugoslavia Act if their asylum applications failed. The permit can be withdrawn within a three-year period if the need for protection ceases. The exceptions to this rule include refugees affected by the “first country of asylum” rule and those who committed a criminal offence.[38] Denmark has introduced a generous financial package of measures for refugees, whether or not they have been officially recognized as such, who wish to return voluntarily to Bosnia-Herzegovina and will permit them to return to Denmark within six months should they so choose.

The Danish authorities have, for the most part, treated Bosnian refugees generously. In response to the German authorities’ decision to end temporary protection, the Danish authorities have stated that they have no intention of following suit, arguing that to return refugees now “...would be defying the fragile peace which is emerging” in a country where “the conditions are not yet stable”.[39]

### **Norway**

Approximately 20,000 refugees from former Yugoslavia fled to Norway, of whom around 12,000 were Bosnian refugees. Bosnian refugees were collectively granted temporary protection in Norway from October 1992, under Article 8 of the Immigration Act. This was in the form of 12-month residence permits which were to be periodically renewed until it was safe for them to return to Bosnia-Herzegovina.

In mid-1993, Norway received the highest number of asylum-seekers ever registered in the country, mostly Bosnian refugees who had been prohibited from seeking asylum in Denmark or Sweden by the introduction of visa requirements. In October 1993, Norway introduced visa requirements for Bosnian refugees and the numbers of asylum-seekers dropped significantly. On 8 November 1996, the Norwegian Minister for Justice announced that the 12,000 Bosnian refugees were to be granted humanitarian leave to remain in Norway, stating: “The government has decided that no Bosnian refugees should be forced to leave Norway against their will”.[40]

### **Slovenia**

Temporary protection was granted to Bosnian refugees in Slovenia in 1992. Subsequently, Bosnian refugees were not officially allowed to enter Slovenia, although many refugees continued to enter and were granted temporary protection. This temporary protection was granted only exceptionally and then on restrictive grounds. The first refugees to flee Bosnia-Herzegovina did not benefit from temporary protection except on humanitarian grounds. However, in 1994 and

1995 temporary protection was granted to more refugees, particularly those who fled Srebrenica in July 1995. There are approximately 10,000 Bosnian refugees in Slovenia.

Refugees wishing to apply for refugee status in Slovenia have only three days in which to do so. This restrictive measure effectively denies those fleeing human rights violations the right to seek refugee status within the meaning of the UN Refugee Convention. In particular, the three-day rule may exclude from the refugee determination procedure refugees from former Yugoslavia, including Bosnians, who arrived in Slovenia in 1992 and who may be deemed not to have applied for refugee status within the three days required.

The Slovenian Government planned to start withdrawing protection for Bosnian refugees on 1 June 1996. However, following a public outcry, the authorities extended temporary protection until the end of August 1996 for refugees from the Federation and until the end of 1996 for refugees from the RS. In mid-August 1996, the Slovenian authorities extended protection for all Bosnian refugees until the end of 1996. It is not clear whether this temporary protection will be extended in 1997.

A temporary protection bill which was before the Slovenian parliament in 1996, but was withdrawn following a change of government, may be incorporated into an asylum bill in 1997. If the temporary protection bill becomes law in its present form, refugees will be denied protection in Slovenia and may face refoulement.

### **Sweden**

In 1993, most Bosnian refugees were granted permanent leave to remain in Sweden on humanitarian grounds. Of 125,500 refugees from the former Yugoslavia, around 62,000 have been granted permanent protection in Sweden on humanitarian or family grounds. Few have received political asylum, although many are still awaiting decisions on their asylum applications.

Sweden introduced visa restrictions on Bosnian refugees in July 1993 and in 1994 temporary protection of Bosnian refugees was introduced. In May 1995, the government granted six months' temporary protection to the approximately 5,000 Bosnian refugees with Croatian passports. This temporary protection was ended in November 1995 and the asylum applications of these refugees are being processed by the immigration authorities. None of these refugees have been forcibly returned to Bosnia-Herzegovina or Croatia, but there is no guarantee that they will not be forcibly returned in the future. On 16 February 1996, the government decided that while refugees should not be returned to Bosnia-Herzegovina, Bosnian refugees with dual nationality could be returned to Croatia. Returning Bosnian refugees to Croatia may breach their right under Annex 7 of the peace agreement to return to their homes and could lead to further human rights violations. Croatia has accommodated more than 14,000 Bosnian refugees in houses in the former UN Protected Areas of Croatia. Most of these houses are likely to belong to expelled Croatian Serbs who will therefore be prevented from returning to their homes.

In May 1996, the Swedish Immigration Board transferred a number of typical asylum cases to the government for a policy decision on applications from particular classes of refugees, such as individuals in mixed marriages. The Board referred to internationally-coordinated returns, yet signalled that refugees should be given a clear message that they must leave the country and that the government should take the decision to return them. Sweden has offered generous protection to most Bosnian refugees, but the government's decision of 16 February 1996 and the comments of the Swedish Immigration Board give cause for concern.

### **Switzerland**

Some 25,000 refugees have been granted protection in Switzerland, of whom 4,500 have been granted refugee status under the UN Refugee Convention, mainly during 1991 and 1992.

In 1993, temporary protection was collectively granted to refugees from Bosnia-Herzegovina by decree and this has been extended periodically. In April 1996, the Swiss

authorities decided to end temporary protection for refugees from 31 August 1996. However, in June 1996, after a fresh evaluation of the situation in Bosnia-Herzegovina and after extensive lobbying by refugee groups, the decision was revised. Single people and childless couples (some 8,000 people) will have temporary protection until 30 April 1997 and families (some 13,000 people) until 31 August 1997. These time limits will be reviewed in March 1997, after further evaluation of the situation in Bosnia-Herzegovina.

Deserters and draft evaders in Switzerland, of whom there are around 1,000, will not be affected by this decision and will be allowed to stay until the implementation of satisfactory amnesty laws.

### **Other republics of former Yugoslavia**

There are still an estimated 525,000 Bosnian refugees, most of them Bosnian Serbs, in other republics of the former Yugoslavia. These refugees are entitled to the same level of protection as that afforded to refugees in other host states. Croatia, the Federal Republic of Yugoslavia (Serbia and Montenegro), and the Former Yugoslav Republic of Macedonia are all parties to the UN Refugee Convention and are bound by its provisions, including the fundamental principle of non-refoulement as outlined in Article 33(1) of the UN Refugee Convention.

The FRY received many refugees. The conflict between Croatia and the then Socialist Federal Republic of Yugoslavia (SFRY) led many Serbs to flee Croatia in 1991 and 1992. They were followed by large numbers of Bosnian Serbs in 1992. The flow of refugees into the FRY culminated in a mass exodus in the summer of 1995, when approximately 200,000 Serbs fled the Krajina region after it was retaken by the Croatian Army. By the end of the year there were over 560,000 refugees in the FRY, most of them Serbs from Croatia and Bosnia-Herzegovina.

The FRY authorities have forcibly returned refugees from other republics of former Yugoslavia. In June 1995, some 4,000 male Serbian refugees of military age were forcibly returned from Serbia to Serb-controlled areas of Bosnia-Herzegovina and Croatia to be mobilized into Serbian armed forces. In August 1995, an even larger number of male refugees who had fled the Krajina region after it fell to the Croatian Army were arrested by Serbian police. Many were seized in refugee reception centres. Those returned to Serbian-held areas of Bosnia-Herzegovina were mobilized into Serbian armed forces there. Refugee conscripts were reportedly brutally ill-treated for having "betrayed the Serbian cause".

Thousands of Croats and Hungarians fled Serbia after being threatened or having their property destroyed by Serbian extremists, paramilitaries, and other refugees. Others who fled were individuals and families of mixed nationality who were often regarded with suspicion in their communities because they did not fit with the simplified national categories and loyalties imposed by war. Thousands of young men fled to avoid military service; more than half those drafted in the SFRY in 1991 reportedly evaded call-up, many of them Serbs and Montenegrins. Large numbers of ethnic Albanians, mostly young men, also fled the country to evade military call-up.

As the conflict escalated and spread to Bosnia-Herzegovina, the human rights situation of ethnic minorities in Serbia and Montenegro, particularly of ethnic Albanians in Kosovo province and Slav Muslims from the Sandak region, worsened. While the situation in the Sandak region has improved to some degree, the situation in Kosovo province remains grave. Those who fled from areas other than Bosnia-Herzegovina received temporary protection in host states similar to that afforded refugees from Bosnia-Herzegovina, although in some states this protection has been withdrawn.

In October 1996, Germany and the FRY signed a bi-lateral agreement which envisages the return of refugees from the FRY over a period of two to three years commencing in December 1996. There are currently some 135,000 refugees from the FRY in Germany, most of them ethnic Albanians from Kosovo. There have been cases of ill-treatment of asylum-seekers from Kosovo after they were returned to the FRY, even after guarantees had been purportedly received by the

German authorities from their counterparts in the FRY that there would be no harassment on return. Amir Drugzani, an ethnic Albanian from Slatina in Kosovo province, reportedly decided voluntarily to return to Kosovo on 15 September 1996 after being refused asylum in Germany. According to his account, he was held for several hours at Belgrade airport by police officers who beat him and threatened him with “liquidation”. He subsequently boarded a plane to Priština where he was held by police at the airport for several hours and interrogated about alleged military training he had undergone. He stated that five other ethnic Albanians who travelled with him had been similarly ill-treated.

The peace agreement does not apply to the FRY except in relation to its connections with the RS. [41] Annex 7, guaranteeing the right to return, therefore does not apply to the territory of the FRY. If temporary protection is to be lifted for Bosnian refugees, it should not be automatically lifted for refugees from the FRY unless a separate assessment of durable safety in the FRY is made by independent human rights monitors. Any individual who expresses a wish not to return to the FRY because they fear serious human rights violations or abuses despite an assessment of durable safety should have access to a fair and satisfactory individual asylum procedure in the host state.

### **Croatia**

Many (non-Serb) Croatian refugees who fled the conflict in former Yugoslavia have been returned to Croatia. Fewer than 12,000 of the Croatian Serb refugees have either returned or received permission from the Croatian authorities to return to the country, despite reports that many more have applied.[42] Many of those who have gone back to Croatia have been unable to return to live in their own homes. The Croatian authorities have done little to facilitate their return, but have instead imposed administrative obstacles and failed to answer concerns about the physical security of Croatian Serbs remaining in these areas. The authorities have also failed to protect the remaining Croatian Serbs in the Krajina from repeated harassment including the placing of explosives in houses being renovated for their owners’ return.[43]

There are about 30,000 Croatian Serb refugees in the RS, many of them in the homes of Muslim or Croat refugees and displaced persons. In addition, the Croatian authorities have used the former homes of Croatian Serbs to resettle, apparently on a permanent or semi-permanent basis, some 14,000 Bosnian Croat refugees from the RS. The situation is further complicated by the presence of some 140,000 displaced Croats, of whom some 80,000 come from Eastern Slavonia, the last remaining Serb-controlled area of Croatia, currently under a UN transitional administration.[44] Where habitable, the homes of many of these displaced Croats have been taken over by displaced Croatian Serbs or Bosnian Serb refugees who are unlikely to vacate them unless their own return or permanent resettlement is assured. Yet another difficulty is the presence of smaller numbers of Croats who have moved from Serbia, apparently permanently in some cases, such as those from Kosovo province. The authorities have resettled them in the homes of Croatian Serb refugees or displaced persons in the former UN Protected Areas. Croatia freely granted Croatian citizenship to most Bosnian Croats and some countries of asylum have returned people to Croatia on the basis that they have dual citizenship.

Clearly, the physical occupation of the houses of departed refugees in both Croatia and Bosnia-Herzegovina and the poor precedent which the Croatian authorities have set in the case of the Croatian Serb refugees demonstrate how the ability of refugees to return home is dependent upon the authorities in Croatia as well as in Bosnia-Herzegovina creating conditions of durable safety.

### **Pressure on UNHCR**

Since the peace agreement was signed, it would seem that certain host states have been increasingly anxious for UNHCR to indicate that it is safe for Bosnian refugees to be returned to

Bosnia-Herzegovina, thus providing the platform for the ending of temporary protection. UNHCR has introduced a second plan for repatriating refugees, which includes guidelines for repatriation to Bosnia-Herzegovina of certain categories of refugees.[45]

Under Annex 7 of the peace agreement, UNHCR drew up a Repatriation Plan in January 1996, which provided for an end to temporary protection of refugees once three benchmarks were reached. These benchmarks were:

- the implementation of the military provisions of the peace agreement;
- the proclamation of an amnesty as foreseen in Annex 7;
- the establishment and functioning of mechanisms for the protection of human rights.[46]

While compliance with each of the three benchmarks could not of itself demonstrate that conditions in Bosnia-Herzegovina were durably safe and that returning refugees were not at risk of human rights violations, they did provide a standard for return in safety and dignity. UNHCR has now proposed that refugees can be reasonably expected to return to majority areas of Bosnia-Herzegovina, despite the fact that the parties to the peace agreement have not complied with the requirement of the peace agreement for the establishment and functioning of mechanisms for the protection of human rights. The 1996 Repatriation Plan had made clear that the ending of temporary protection must be a coordinated, multilateral approach. However, certain European governments are of the view that groups of refugees could be returned to majority areas in Bosnia-Herzegovina and that relocation could be a possibility. Now, with the Humanitarian Issues working group December 1996 “Plan for Durable Solutions for Bosnia-Herzegovina” guidelines, states have available a reference to govern who may “reasonably be expected to return”, those who “need not necessarily be voluntary” returns, those who need continued protection “for the time being” and those who may only be returned on a strictly “voluntary” basis and for whom other durable solutions should be promoted. Amnesty International remains concerned that refugees not be required to return home or to relocate while the conditions in the country are not yet demonstrably safe to allow for such returns.

## **RECOMMENDATIONS**

When refugees began to flee the former Yugoslavia in 1991, they were able to get some form of protection in other, mainly European, countries, either as UN Convention refugees or through temporary protection programs. Host countries are now developing programs for the return of refugees to Bosnia-Herzegovina. Although the situation there is not yet stable enough for refugees to return without risk of facing serious human rights violations, some host states seem anxious to get their return programs underway. Amnesty International has concerns about the safety of refugees once they are returned to Bosnia-Herzegovina. The recent “Plan for Durable Solutions for Bosnia-Herzegovina” indicates that it is safe for some refugees to return or relocate. In light of the continued risk to those who might be forced to return or relocate prematurely to Bosnia-Herzegovina, Amnesty International makes the following recommendations.

1. Amnesty International urges the international community and the parties to the peace agreement to implement the “15-Point Program” for human rights in international peace-keeping operations (see Appendix I).
2. The parties to the peace agreement should take measures to halt the systematic human rights violations which are still occurring in Bosnia-Herzegovina and the international community should put pressure on them to do so.
3. The international community should take immediate steps to address the issues of justice and truth in relation to the human rights abuses that occurred in Bosnia-Herzegovina. Individuals charged with war crimes or other crimes under international law on the basis of substantial evidence should be tried in accordance with international standards of fair trial. False charges of

war crimes should never be used to detain an individual with the intention of discouraging members of minorities or political opponents to return or remain.

4. The High Representative and the International Police Task Force, in cooperation with other members of the Human Rights Task Force, should ensure effective investigation and monitoring of human rights and should issue frequent and comprehensive reports to enable refugees and internally displaced persons to make informed decisions about when it is safe to return home.
5. The international community should insist that the parties to the peace agreement end their opposition to the return of refugees and internally displaced persons and cease any actions that might dissuade those who want to return.
6. Parties to the peace agreement should fully implement the guarantees of Annex 7 that refugees and displaced persons can exercise their right to return.
7. There should be no return of refugees to Bosnia-Herzegovina until independent and impartial assessments are made that returnees will not be at risk of serious human rights violations after their return.
8. Parties to the peace agreement should guarantee effective protection of those who wish to return and should allow independent, experienced and impartial human rights monitors to have ongoing and full access to both entities.
9. UNHCR's mandate and operations in the region should be firmly re-established with protection as its priority activity in host states and countries of origin.
10. Temporary protection schemes should not be used to deny asylum-seekers access to a determination of the substance of their claim to protection under the UN Refugee Convention. All those who do not wish to return voluntarily should be given the opportunity to have their individual asylum claims assessed in a fair and satisfactory procedure to determine if they are at risk of serious human rights violations if returned.
11. Host states should pay particular attention to assessing the safety of return for those individuals who come from areas where they are in the minority and for those individuals in, or resulting from, mixed marriages, given that effective mechanisms for the protection of their human rights have not yet been established. Also, particular attention should be paid to the protection concerns of draft evaders, deserters and conscientious objectors to military service.

## **APPENDIX 1**

### **Amnesty International's 15-Point Program for Implementing Human Rights in International Peace-keeping Operations**

**1. The political role of the international community.** The UN and its Member States should give early, consistent and vigorous attention to human rights concerns when designing and implementing peace settlements and should plan for a continued human rights program in the post-peace-keeping phase. The international community must be prepared to publicly condemn human rights violations during and after the settlement process and to ensure that recommendations for institutional reform are fully and promptly implemented. Human rights protection measures should be kept under review, strengthened as necessary and properly evaluated at the end of the operation.

**2. No international 'silent witnesses'.** All international field personnel, including those engaged in military, civilian and humanitarian operations, should report through explicit and proper channels any human rights violations they may witness or serious allegations they receive. The

UN should take appropriate steps, including preventive measures, to address any violations reported.

**3. Human rights chapters in peace agreements.** Peace agreements should include a detailed and comprehensive list of international human rights laws and standards to be guaranteed in the transitional and post-settlement phase, as well as providing for specific and effective oversight mechanisms. Peace settlements should require eventual ratification of any human rights treaties and adherence to any international systems of human rights protection to which the state concerned is not yet a party.

**4. Effective and independent human rights verification.** A specialized international civilian human rights monitoring component should be part of all peace-keeping operations. These components should have adequate resources and staff with human rights expertise. Their mandates should include human rights verification, institution building, legislative reform, education and training. Monitors should be trained and should operate under consistent guidelines and in conformity with international standards. Human rights components should be explicitly and structurally independent from the political considerations of the operation and on-going negotiations relating to the settlement and their decision-making mechanisms must not be constructed so as to permit parties to the conflict to obstruct investigations. Effective human rights mechanisms, such as advisers or independent jurists, should also be established in less comprehensive peace settlements and should have an oversight role in matters such as the release of prisoners and the guarantee of rights to freedom of speech and assembly.

**5. Ensuring peace with justice.** Peace settlements should provide for impartial investigation of past abuses, processes aimed at establishing the truth and measures to ensure that any perpetrators of human rights violations are brought to justice. Individual responsibility for human rights violations, past and present, must be made explicit and sweeping pre-conviction amnesties should not be part of peace settlements.

**6. On-site human rights monitoring.** Human rights monitors should be mandated to carry out investigations and verify compliance with human rights obligations and to take corrective action in respect of violations. They should have broad access to all sectors of society and relevant institutions and the full protection of those who are in contact with them must be assured. Peace-building measures, such as institutional and legislative reform and education and training, must complement but never replace the verification role.

**7. Frequent and public reporting.** To guarantee the effectiveness, security and credibility of international human rights personnel there must be frequent comprehensive public reports of their activities and findings which should be broadly disseminated nationally as well as internationally.

**8. International civilian police monitors.** Civilian police monitors should monitor, supervise and train national police and security forces and verify their adherence to international human rights and criminal justice standards. Police monitors should cooperate fully with any human rights component or mechanisms and should themselves be trained in and fully respect international human rights and criminal justice standards at all times. There should be full public reporting of their activities.

**9. Long-term measures for human rights protection.** Human rights components in peace-keeping operations should assist in the establishment of permanent, independent and effective national institutions for the long-term protection of human rights and the reinstatement of the rule of law, including an independent judiciary and fair criminal justice system. Other mechanisms, such as ombudsmen or national commissions, may be encouraged to reinforce respect for human rights. Such mechanisms must be impartial, independent, and competent with the necessary powers and resources to be effective. They should conform to international guidelines and must never be a substitute for a fair and independent judicial system. While

national institutions are being constituted, consideration should be given to establishing an interim relationship with relevant international tribunals.

**10. Human rights education and advisory assistance programs.** Public education and training on human rights standards and complaints procedures should be provided to all sectors, particularly the judiciary, lawyers and law enforcement officials. Other technical assistance programs should be provided, including drafting legislation in conformity with international standards and support for national human rights NGOs. Such programs should not be a substitute for human rights verification by a specialized monitoring component.

**11. The protection of refugees, internally displaced persons and returnees.** Refugee repatriation programs should include an effective monitoring and protection aspect for as long as necessary. International refugee law and protection standards must be adhered to at all times, including the principles of non-refoulement, the right to seek asylum and repatriation only on a voluntary basis with international supervision.

**12. The gender dimension.** Measures should be taken to guarantee consideration and respect for the particular needs of women in armed conflict situations. Peace-keeping personnel should receive information on local cultural traditions and should respect the inherent rights and dignity of women at all times. Human rights components should include experts in the area of violence against women, including rape and sexual abuse.

**13. Adherence of international peace-keeping forces to human rights and humanitarian law standards.** The UN should declare its formal adherence to international humanitarian law and human rights and criminal justice standards, including in relation to the detention of prisoners and the use of force. The UN should ensure all troops participating in international peace-keeping operations are fully trained in those standards and understand their obligation to adhere to them. There should be specific mechanisms at the international level for monitoring, investigating and reporting on any violations of international norms by peace-keeping personnel and to ensure that personnel responsible for serious violations are brought to justice in accordance with international standards.

**14. Prosecution of war crimes and attacks on international peace-keeping personnel.** The investigation and prosecution of violations of humanitarian and human rights law or attacks against international peace-keeping personnel should be undertaken by appropriate national authorities or under international jurisdiction. Any international mechanisms must conform to international fair trial standards and the creation of a permanent institution for the prosecution of international crimes should be encouraged.

**15. Continued promotion and protection of human rights in the post-settlement phase.** Effective international human rights monitoring and assistance should be continued for as long as necessary, until it is clear that the government concerned is implementing international human rights guarantees effectively. The UN's human rights bodies should develop a more effective and comprehensive role in the post-settlement phase.

#### ENDNOTES

<sup>1</sup> Report to the UN Commission on Human Rights, 14 March 1996

<sup>2</sup> United Nations High Commissioner for Refugees (UNHCR) Information Notes on Bosnia-Herzegovina and other republics — August/September 1996. The figures are described as “guestimates”.

<sup>3</sup> The text of the peace agreement is available at: <http://www.ohr.int/gfa/gfa-home.htm>

<sup>4</sup> Annex 7, Agreement on Refugees and Displaced Persons, General Framework Agreement

<sup>5</sup> General Framework Agreement, Annex 3, Article 4, paragraph 4

<sup>6</sup> See *Why the Bosnian elections must be postponed*, International Crisis Group Report 14, 14 August 1996, and *Conditions for free and fair political campaigning are still lacking in Bosnia and Herzegovina*, press release by the International Helsinki Federation for Human Rights, Sarajevo and Vienna, 29 August 1996

<sup>7</sup> The higher figure is the estimate of the UN Expert on missing persons, Manfred Nowak, the lower is the number of tracing requests processed by the International Committee of the Red Cross.

<sup>8</sup> For more information on Amnesty International's concerns in this respect, see *Bosnia-Herzegovina: The international community's responsibility to ensure human rights*, AI Index: EUR 63/14/96, June 1996

<sup>9</sup> See *Bosnia-Herzegovina: Gross abuses of basic human rights*, AI Index: EUR 63/01/92, October 1992

<sup>10</sup> See *Central and southwest Bosnia-Herzegovina: Civilian population trapped in a cycle of violence*, AI Index: EUR 63/01/94, January 1994

<sup>11</sup> In this context, members of minorities can be taken to be anyone not belonging to the nationality which dominates the authorities in the area concerned, whether they reside in, are visiting, or passing through the area.

<sup>12</sup> See *Bosnia-Herzegovina: Rape and sexual abuse by armed forces*, AI Index: EUR 63/01/93, January 1993

<sup>13</sup> See *Bosnia-Herzegovina: The international community's responsibility to ensure human rights*, AI Index: EUR 63/14/96, June 1996

<sup>14</sup> General Framework Agreement, Annex 7, Art. I, Para. 2

<sup>15</sup> Statement at meeting with senior UNHCR officials in Sarajevo, September 1996

<sup>16</sup> Humanitarian Issues Working Group (HIWG), Document HLWM/96/1

<sup>17</sup> Reuters, 6 November 1996, quoting UNHCR spokesperson, Kris Janowsky

<sup>18</sup> General Framework Agreement, Annex 7, Chapter 2

<sup>19</sup> The Ombudspersons were appointed with OSCE (then CSCE) assistance under the constitution of the Federation established in Washington in March 1994. The three Ombudspersons are a Bosnian Muslim, Serb and Croat.

<sup>20</sup> General Framework Agreement, Annex 7, Art. VI

<sup>21</sup> Articles 214 and 217 of the Criminal Code of the former Socialist Federal Republic of Yugoslavia

<sup>22</sup> Tanjug news agency report, 3 October 1993, BBC Monitoring Service, Summary of World Broadcasts, EE/1811

<sup>23</sup> See *The duty to search for war crimes suspects: An open letter to IFOR commanders and contributing governments*, AI Index EUR: 63/08/96, *Amnesty International renews calls for IFOR to comply with international law*, AI Index: EUR 63/11/96, April 1996, and *Bosnia-Herzegovina: The international community's responsibility to ensure human rights*, AI Index: EUR 63/14/96, June 1996

<sup>24</sup> Article 1A(2) of the Convention defines a refugee as someone who:

“...owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.”

<sup>25</sup> Informal meeting on Temporary Protection, Background Note at paragraph 15

<sup>26</sup> This standard is supported by Conclusion No. 69 of the Executive Committee of UNHCR in relation to the cessation of refugee status under Article 1C (5) and (6) of the UN Refugee Convention. Amnesty International believes that if temporary protection is to be ended for Bosnian refugees, the decision to end protection must be closely linked to the manner in which protection can end under the UN Refugee Convention, which is by virtue of the cessation clauses in Article 1C

<sup>27</sup> EXCOM Conclusion No. 69, reaffirmed EXCOM Conclusion No. 65

<sup>28</sup> HIWG/96/6, Geneva, 16 December 1996, at paragraph 35

<sup>29</sup> HIWG/96/6, Geneva, 16 December 1996, at paragraph 32

<sup>30</sup> *Ibid*

<sup>31</sup> HIWG/96/6, Geneva, 16 December 1996, at paragraph 34

<sup>32</sup> See para. 136, *Handbook on Procedures and Criteria for Determining Refugee Status*, UNHCR, Geneva January 1992

<sup>33</sup> As announced at the Peace Implementation Conference in Florence in June 1996

<sup>34</sup> *Reuters*, 20 September 1996, quote by UNHCR spokesperson Christiane Berthiaume, who “*profoundly regretted the unilateral decision*” of the German authorities

<sup>35</sup> Interior Minister Manfred Kanther, *Reuters*, 20 November 1996

<sup>36</sup> Act No. 933

<sup>37</sup> This is the so-called “safe third country” concept prevalent in European state practice which states use to return asylum-seekers to one or more “safe” countries through which they passed. Many asylum-seekers have been “bounced” from one country to another while states argue over who should hear their asylum applications. Many never receive a proper hearing of their application, face rejection and deportation, including *refoulement* to their country of origin, on purely procedural grounds

<sup>38</sup> Amnesty International points out that there is no derogation permitted to the principle of *non-refoulement* as found in Article 33(1) of the UN Refugee Convention and Article 3(1) of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment is an absolute principle. In relation to those found guilty of a criminal offence in a host state, while Article 33(2) of the UN Refugee Convention allows for the removal of a refugee where “...*having been convicted by a final judgement of a particularly serious crime, constitutes a danger to the community of that country*”. Amnesty International believes that no one should be returned to a country where they face serious human rights violations whether in the country of origin or in the host state. Those who have committed a criminal offence can be tried, convicted and sentenced in the host state.

<sup>39</sup> *Reuters*, 20 September 1996, quoting Danish Interior Minister Birte Weiss

<sup>40</sup> *Reuters*, 8 November 1996

<sup>41</sup> The FRY represented the RS at the Dayton peace conference.

<sup>42</sup> *Further Report in the Situation of Human Rights in Croatia Pursuant to Security Council Resolution 1019 (1995)*, UN Doc: S/1996/691, 23 August 1996; 9,253 were reported to have received official permission. More were aged 60 or over.

<sup>43</sup> See *Concerns in Europe*, AI Index: EUR 01/02/96, August 1996

<sup>44</sup> UNHCR (January 1997) and Croatian office for refugees and displaced people (August 1996)

<sup>45</sup> Humanitarian Issues Working Group, HIWG/96/6, Geneva, 16 December 1996

<sup>46</sup> This Repatriation Plan is discussed in Amnesty International’s report: *Bosnia-Herzegovina: The international community’s responsibility to ensure human rights*. AI Index: EUR 63/14/96, June 1996.

**KEYWORDS:** REFUGEES1 / DISPLACED PEOPLE1 / MINORITIES1 / FORCED EVICTION1 / HOUSE DESTRUCTION1 / DETENTION WITHOUT TRIAL1 / REFOULEMENT1 / PEACE-KEEPING1 / IMPUNITY / DISAPPEARANCES / HARASSMENT / DEATH IN CUSTODY / TORTURE / ILL-TREATMENT / SEXUAL ASSAULT / CONFESSIONS / CRIMES AGAINST HUMANITY / POLITICALLY MOTIVATED CRIMINAL CHARGES / WOMEN / RELIGIOUS OFFICIALS —CATHOLIC / RELIGIOUS GROUPS — ISLAMIC / CONSCIENTIOUS OBJECTORS / AGED / DISABLED PEOPLE / POLICE / ARMED CIVILIANS / ARMED CONFLICT / ANTI-PERSONNEL MINES / SECOND GOVERNMENTS / INTERNATIONAL TRIBUNALS / AMNESTIES / UNHCR / OSCE / FRG / AUSTRIA / DENMARK / NORWAY / SLOVENIA / SWEDEN / SWITZERLAND / FEDERAL REPUBLIC OF YUGOSLAVIA /

captions

Front cover photograph: Selim Ornanovi\_ returns to his village after four years as an asylum-seeker. Like many other returnees, he has nowhere to live because his house has been destroyed. According to UNHCR, some 60 per cent of the housing stock was damaged or destroyed during the conflict. Much of the damage was deliberate and intended to force out minority populations.

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Nikolina and Selena Djurdjevi\_ (top) are from a family of displaced Bosnian Serbs who are now living in tents (above) in Banja Luka. Their house in Drvar is occupied by Bosnian Croat refugees displaced by the Bosnian Army in 1993, who became refugees in Croatia. In 1995, they were forcibly relocated by the Croatian authorities to Drvar.

A Bosnian Serb refugee contemplates his fate in Kišnica refugee camp, Kosovo Province, Serbia.  
© Melanie Friend

Many Bosnian Serbs fled the suburbs of Sarajevo to an uncertain future when the suburbs were transferred from the RS to the Federation in early 1996. © Robbie King/Camera Press

A Bosnian Muslim who was an asylum-seeker in London, United Kingdom, for four years, returns to his destroyed home in a village near Ključ. He is one of thousands of people whose homes have been deliberately damaged or destroyed. The village was occupied by Bosnian Serbs, before being retaken by the Bosnian Army. © Howard Davies

Bosnian Croat refugees from the Serb-controlled Banja Luka region flee across the Sava river to Croatia, September 1995 © AP

Spionica settlement for displaced people, in the Tuzla region, was built with funds from the Swedish Government. © Heldur Netocny/Panos Pictures

Asylum-seekers from Bosnia-Herzegovina in Copenhagen, the Danish capital. Denmark has introduced a generous financial package of measures for refugees who wish to return voluntarily to Bosnia-Herzegovina. © UNHCR

Bosnian Muslim refugees gathering wood in the mountains north of Ljubljana, the Slovenian capital. There are around 10,000 Bosnian refugees in Slovenia. © Billie Rafaeli

Daily life in Rešnik refugee camp in Zagreb, the capital of Croatia © Billie Rafaeli