

BOSNIA-HERZEGOVINA

Waiting on the doorstep: minority returns to eastern Republika Srpska

Introduction

Over one million refugees from and displaced persons in Bosnia-Herzegovina are still waiting to return to their pre-war homes or for any other form of durable solution almost five years after the armed conflict in the country came to a halt. The plight of these people appears to have been all but overtaken by more recent events and developments in the region of former Yugoslavia, notably the war in Kosovo (Kosova) and the impending political and military crisis in Montenegro in the neighbouring Federal Republic of Yugoslavia. In many ways it seems that those forcibly expelled in Bosnia-Herzegovina during the war nowadays only merit a mention when "lessons learned" from the conflict and its aftermath need to be formulated and applied to other and more newsworthy situations of displacement. The absence of armed conflict and the gradual, though slow, stabilization of the country (to which hundreds of thousands of refugees have returned in the meantime) detracts from the hard truth that for many people the principles enshrined in the General Framework Agreement for Peace in Bosnia-Herzegovina (also known as the Dayton/Paris Peace Agreement) remain rights to which they have access only on paper.

This document describes Amnesty International's current concerns and puts forward recommendations related to the implementation of the right to return in parts of the Republika Srpska, notably the Drina river valley (also known as the Podrinje region) in the east of the entity. At least 200,000 pre-war inhabitants of the eastern part of what is now the Republika Srpska remain displaced in the Federation or live as refugees outside Bosnia-Herzegovina.¹ Before the war many of these people lived in the large to medium-sized towns of Bijeljina, Zvornik, Višegrad and Foča/Srbinje, and in smaller municipalities such as Bratunac, Srebrenica and Vlasenica. The majority of those displaced from this area are of Bosniac origin, although there are also considerable numbers of members of other ethnic groups including large parts of the pre-war Roma community.

¹ This number is a conservative estimate, based on the 1991 population census figures for Bosnia-Herzegovina, minus the estimated numbers of those killed or reported missing and the number for registered returns.

The expulsion of the non-Serb population from this region during the 1992-1995 armed conflict was accompanied by large-scale and widespread human rights violations, which are currently subject to criminal prosecution for war crimes, crimes against humanity and genocide by the International Criminal Tribunal for Former Yugoslavia (Tribunal). The Tribunal's prosecutor has so far issued nine public indictments for violations of international humanitarian law committed in this region, and has started or completed trial proceedings against five of those indicted.²

The prosecution of individuals thought to have ordered or committed human rights violations is a welcome and necessary step towards remedying the suffering of the victims and their relatives. Such measures also contribute to the restoration of the rule of law in the country and can act as a deterrent against further violations of international humanitarian law. Amnesty International has to this end lobbied the authorities of Bosnia-Herzegovina and the international community - in particular those governments supplying troops to the Stabilization Forces (SFOR) - to ensure that those indicted are arrested, so that the Tribunal will be able to carry out its vast task.³

Yet other, equally important, measures need to be carried out fully and diligently to ensure an adequate remedy to the human rights violation of mass forced expulsion that underlay and characterized the nature of the conflict in Bosnia-Herzegovina. This violation also referred to as "ethnic cleansing", led to over two million refugees and displaced persons at the height of the war.

² *Prosecutor v Dragan Nikoli_* (IT-94-2); *Prosecutor v Radovan Karad_i_ and Ratko Mladi_* (IT-95-18); *Prosecutor v Dra_en Erdemovi_* (IT-96-22); *Prosecutor v Dragan Gagovi_*, *Gojko Jankovi_*, *Janko Janji_*, *Radomir Kova_*, *Zoran Vukovi_*, *Dragan Zelenovi_*, *Dragoljub Kunarac and Radovan Stankovi_* (IT-96-23, later split in IT-96-23[Dragoljub Kunarac and Radomir Kova_], IT-96-23/1 [Zoran Vukovi_] IT-96-23/2 [Gojko Jankovi_ , Janko Janji_ , Dragan Zelenovi_ and Radovan Stankovi_]); *Prosecutor v Milorad Krnojelac* (IT-97025); *Prosecutor v Mitar Vasiljevi_* (IT-98-32); *Prosecutor v Radislav Krsti_* (IT-98-33). The indictments against Mitar Vasiljevi_ and Radislav Krsti_ , which were sealed until their arrests, are presumed to contain other suspects. It is further believed that the sealed indictment against _eljko Ra_njatovi_ "Arkan" , the existence of which became publicly known in May 1999, may have included charges for crimes committed in Bijeljina. _eljko Ra_njatovi_ was shot dead in FRY in January 2000. Of those indicted, eight are currently in the Tribunal's custody.

³ See Amnesty International : *Bosnia-Herzegovina: Amnesty International renews calls for IFOR to comply with international law* (AI Index: EUR 63/11/96) April 1996; *Bosnia-Herzegovina: How can they sleep at night? Arrest Now!* (AI Index: EUR 63/22/97) October 1997; *Arrest Karad_i_ and Mladi_ now - Make Kosova's human rights violators stop and think* (AI Index: EUR 70/45/98) July 1998; *Bosnia-Herzegovina: The forgotten of Srebrenica - another snub to justice* (AI Index: EUR 63/04/99) July 1999.

Amnesty International has continuously campaigned for the implementation of the right to return and documented its concerns and recommendations on this human rights issue since 1994.⁴ The organization sees this right as a just and fair remedy to the human rights violation of forcible expulsion, a right based in international law provisions which are binding on the local governments, and in addition create responsibilities for the international community (in particular for governments who witnessed the Peace Agreement).

There have been visible and encouraging signs that, in the fifth year following the signing of the Peace Agreement, minority returns have finally begun in this part of Bosnia-Herzegovina. However, the task ahead remains daunting, considering the numbers of returnees involved, the prospects of diminishing funds for return and reconstruction and the remaining persistent obstruction to return by local officials. Neither will the process be helped by planned large-scale repatriations, as announced by governments, such as Germany (which still hosts some 37,000 Bosnian refugees). Amnesty International fears that these envisaged initiatives do not properly take into account the need for orderly and phased returns. Prospects of reaching any kind of completion of the returns process are rendered even more problematic by the increasingly loudly voiced injunction that the international community phase out its vast presence and financial investment in Bosnia-Herzegovina, leaving full responsibility for the governance of the country to its elected authorities.⁵ Moreover, most international actors, as well as those national officials committed to returns, have repeatedly stated that if there is no significant breakthrough in returns this year, then returns as envisaged by the Peace Agreement may never happen at all. For areas like the eastern Republika Srpska, to which minority returns were virtually impossible in the four years following the end of the war, it may well be too late unless concerted international and local action takes place immediately.

⁴ See Amnesty International : *Bosnia-Herzegovina: Who's living in my house? Obstacles to the safe return of refugees and internally displaced people* (AI Index: EUR 63/01/97), March 1997, and *Bosnia-Herzegovina: All the way home - safe minority returns as a just remedy and for a secure future* (AI Index: EUR 63/02/98) February 1998.

⁵ This message was expressed clearly in the Declaration of the most recent Peace Implementation Council (held in Brussels on 23-24 May 2000). See also USA Ambassador Thomas Miller, interviewed by the Bosnian Serb magazine *Reporter* ("Pomo_ite nama da pomognemo Bosni"), 31 May 2000.

Amnesty International recognizes the enormous challenges in the realization of minority returns in other parts of the country, and notes in particular Mostar, Livno and Drvar municipalities in the Federation where such returns have reportedly been obstructed for years now by local authorities hostile to returns.⁶ This paper is in no way intended to detract from these problematic human rights concerns, and the organization remains committed to monitor the process of minority returns throughout Bosnia-Herzegovina, and indeed in other parts of former Yugoslavia.⁷

Part I of this paper discusses the obstacles which continue to delay and obstruct the minority return process and the roles and responsibilities of the entity and municipal authorities in resolving such difficulties. Special attention is given in part II to the continuing obligations of countries of asylum to provide effective protection for refugees unable or unwilling to return. Part III sets out the international legal standards on which the right to return is based and which are legally binding on the parties to the Peace Agreement as well as creating responsibilities for the international community. Finally, the report presents Amnesty International's recommendations to the Republika Srpska and Federation authorities and to the international community involved in the return process.

Background

The General Framework Agreement for Peace in Bosnia-Herzegovina, signed on 14 December 1995 in France, ended a devastating war which had broken out in the country in April 1992 and marked the closure of a near endless series of negotiation rounds since then. The compromise which settled the territorial dispute between the warring parties consisted of the creation of two separate entities, the Federation of Bosnia-Herzegovina⁸ and the Republika Srpska. The entities, although stopping short of enjoying fully-fledged statehood, are largely autonomous, having separate constitutions, governments, parliaments and police and armed forces. At the same time the country as a whole is ruled by a national government and legislature, comprising representatives of each constitutive nationality (that is, Serbs, Croats and Bosniacs).

⁶ See for example International Crisis Group report : *Reunifying Mostar: Opportunities for progress*, April 2000.

⁷ Upcoming public documents on this issue will focus on political and administrative obstacles faced by Croatian Serb refugees in the Federal Republic of Yugoslavia in exercising their right to sustainable returns to Croatia, and Amnesty International's concerns regarding the imminent repatriation of thousands of Kosovar refugees by host countries in western Europe.

⁸ The Federation had in fact been established through the Washington Agreement which was signed by representatives of the Bosnian Government and the Bosnian Croat *de facto* leadership in March 1994.

The Republika Srpska has been in a protracted political crisis since March 1999, when the High Representative removed the entity's elected President, Nikola Poplašen, for his obstruction in the formation of a new entity government.⁹ No one has resumed presidential functions since then, and a caretaker government, led by the previous Prime Minister, Milorad Dodik, remained in office.

Meanwhile, a long-standing dispute in the (national) Constitutional Court on proposed changes to the (national) Council of Ministers led in January and February 2000 to the departure of its two Serb judges - one of whom was the President of the Court. The continuing obstacles in the functioning of the joint institutions, which is considered vital for the survival of Bosnia-Herzegovina as a state, have resulted in sharp criticism by the international community.

The process of minority returns as a whole has greatly benefited from the amended property legislation implemented by the High Representative in October 1999, with a view to harmonizing such legislation in both entities and facilitating its application in practice. The new legislation is directed towards speeding up the process of the return of property to its pre-war owners by tightening the deadlines for the vacation of property which they have successfully reclaimed. It also adjusts the definition of displaced persons and their right to temporary accommodation to reflect the notion that people who have chosen not to reclaim their own property can no longer be considered to be displaced.

Municipal elections, organized and supervised by the Organization for Security and Co-operation in Europe (OSCE) for the second time since the end of the war, took place on 8 April. The elections resulted in a general gain of votes for the hitherto opposition Social Democratic Party (SDP) in the Federation, while in the Republika Srpska the Serb Democratic Party (SDS) largely held onto power in most municipalities. General and presidential elections are scheduled for November this year.

It should be noted here that, as an a non-political organization, Amnesty International does not take a position on territorial disputes or their settlement. The organization's sole objectives are the protection and promotion of the human rights of individuals, regardless of the political and administrative framework in place in a given country.

⁹ The High Representative, appointed by the UN Security Council, is mandated to supervise the civilian implementation of the Peace Agreement; his powers include the authority to draft and implement legislation and to remove local government officials in cases where they are deemed to obstruct the Peace Agreement.

I. Obstructions and obstacles faced by minority returnees: the role and responsibility of the local and entity authorities

This chapter looks at the most important reasons underlying the delay and prevention of minority returns in eastern Republika Srpska. These can be broadly summed up in three categories. First, there is a lack of political will on the part of the local and entity authorities dealing with the administrative and legal side of the return process. Second, returnees continue to face a possible threat of return-related violence with each serious return attempt, exacerbated by the virtual impunity following previous return-related violence. Third, persisting problems faced by returnees in accessing social and economic rights further undermine the sustainability of returns. The case examples described in this chapter illustrate difficulties faced by returnees, and make it clear that in many cases the different forms of obstruction and discouragement of returns are closely intertwined.

Additionally, other factors play a negative role in the viability of the return process as a whole, most significantly the untimely and frequently involuntary repatriation of Bosnian refugees still remaining in host countries in western Europe. These issues will be discussed below in part II.

1. The administrative and political deadlock - lack of resources or deliberate discouragement?

The Republika Srpska administrative and political authorities, in particular the Ministry for Refugees and Displaced Persons, are meant to play a leading role in enabling returns, by implementing and enforcing property legislation and other administrative procedures. On a local level, the municipality offices of the Ministry for Refugees and Displaced Persons (*Odsjek Ministarstva izbjeglih i raseljenih lica*, or OMI), are tasked to deal with applications for the return of property and the execution of their own positive decisions as well as enforcing decisions of the Commission for Real Property Claims of Displaced Persons and Refugees (CRPC, the decisions of which are regarded as final and binding).

The long-standing lack of progress in processing claims in the eastern Republika Srpska, coupled with the low number of actual reinstatements has caused the OMIs to become the focal point of criticism by frustrated returnees and by the international

community for their largely inadequate performance in this respect to date. Local OMI officials who met with Amnesty International were keen to stress the many practical and resource-related problems they face in their work. While there is clearly a lack of legally qualified staff and general office and logistical equipment, their explanation fails to justify satisfactorily the slow pace at which applications are processed and the lack of execution of affirmative decisions. In addition, international human rights monitors have stated that the lack of attention given on the entity level to ensure that the OMIs operate effectively amounts in itself to political obstruction.¹⁰

There are frequent reports by potential returnees which indicate that OMIs have on occasion deliberately and unlawfully delayed reinstatements, given incorrect information or failed to act on applications for the return of property claiming that it is not accompanied by the right documentation. These continuing shortcomings appear to be of a fundamental nature and result in cases being deadlocked for long periods of time, with the clear result - in many cases with apparent deliberate intent - of discouraging prospective returnees.

¹⁰ Office of the High Representative, Human Rights Coordination Centre, *Accession of Bosnia-Herzegovina to the Council of Europe : Progress Review #8*, 19 April 2000.

1.1 Returns on paper

Hana and Musto Potokovi_ are an elderly Bosniac couple from Janja town (Bijeljina municipality), where they owned a farmhouse and several acres of land. They were forcibly expelled from their home in September 1994, along with some 3,000 other non-Serbs. They have been living in Tuzla in the Federation, some 80 kilometres west of Bijeljina ever since, first in collective accommodation and later in privately-rented flats. At the moment their home is one room in the basement of a block of flats. The rent they pay to their landlady _amil Halilovi_ currently lives as a refugee in a weekend house in Budva (Montenegro, Federal Republic of Yugoslavia), along with some 150 other refugees from Janja . He owns a large house in the centre of Janja, which he reclaimed from the OMI in 1999. He went to look at his house several times and was on fairly good terms with the temporary occupant, a Bosnian Serb displaced person. In January 2000 he received a positive decision from the Janja OMI on his property claim. Shortly afterwards, _amil Halilovi_ was called by the OMI. The number of cases in which the OMIs have taken a decision allowing the pre-war inhabitant to regain possession of his or her property varies from municipality to municipality. In general, it appears that the number of positive decisions has increased significantly since the start of 2000.¹¹ Yet one constant in the data is that most decisions are for partially or totally destroyed property which is not currently inhabited. While there have been several large-scale return movements of Bosniac displaced communities¹² to empty and destroyed villages (most of which were mono-ethnic before the war), reinstatements into property in town and village centres are rare.

Where such returns have taken place, they often concern specific cases such as the so-called "floaters" in the town of Bijeljina: Bosniacs or Roma who were evicted or expelled from their homes but nevertheless stayed on during and after the war. It has been recognized both by the international community and by local authorities that the floaters should be prioritized in the procedures reaffirming property rights. Yet even these cases proceed slowly and are riddled with irregularities, in some cases adding to the continued

¹¹ OMIs are now obliged to report on the number of decisions they have reached in property claims on a monthly basis to UNHCR or in property commissions which have been established in many municipalities, consisting of representatives of the Office of the High Representative (OHR), OSCE, UNHCR and local municipal officials.

¹² Amnesty International delegates attended one such return move involving some 400 Bosniac pre-war inhabitants of the villages of Jele_ and Ko_ja Luka in Fo_a/Srbinje municipality in April 2000. The villages are both almost totally destroyed. It appeared that most, if not all, of these potential returnees had received eviction notices from the housing authorities in Sarajevo Canton, where they are currently displaced.

vulnerability of such minority "remainees". Other cases of actual returns include instances where returnees have reportedly "bought out" the temporary occupant, or where the local housing authorities proceeded with evictions on the assumption that the owner was abroad and would likely not regain his property.¹³

Fehim and Fatima Muhi_ are a Bosniac couple who remained in Bijeljina during the war with their adult daughter Nermina, as one of several hundreds of floater families. In 1994 a Bosnian Serb, displaced from Zenica in the Federation and connected with the local special police, moved into their house on the basis of a decision by the municipality authorities which granted him the right to co-occupy the house temporarily. In September 1994, Fehim Muhi_, who had been enrolled in a forced labour brigade (*radna obaveza*), was sent to the front line and some time later was detained in Batkovi_i prison camp near Bijeljina for about 20 days. During his absence, Fatima and Nermina were evicted from the house by the temporary occupant aided by the special police, and went to live with a Bosniac friend who had managed to stay in her house in the centre of town.¹⁴ They learned that the displaced Serb moved his family into the house, and that one of his sons worked for the local police. In July 1999, the Muhi_s claimed their property (the house and land surrounding it as well as four hectares of land outside Bijeljina) back from the local OMI, which issued a decision in February 2000, ordering the temporary occupant to vacate the house within 90 days and to return the land within 15 days. On 18 February they received an additional note from the occupant (but signed and stamped by the OMI) that they could have access to their land but not to the house and additional buildings situated on it.¹⁵

Meanwhile, one of the buildings near the house was partially destroyed in late December 1999, apparently after it had been mined. It had been only partially used by the temporary occupant as a garage and the Muhi_s had got permission to store hay and corn they had harvested from the land they could still use outside Bijeljina. In early January 2000, Fatima and Nermina Muhi_ went to look at the damage to the building, accompanied by a local police officer and an OMI official. They later received a note from the OMI which indicated that the building had collapsed during a snowstorm because it was very old. According to Fatima and Nermina Muhi_, the building had been constructed in 1990 and the walls were made of reinforced concrete. Furthermore, a much older wooden summer kitchen located not far from the building had not been

¹³ See the case of the Srpsko Gora_de/Kopa_i returnees on pages 25-26.

¹⁴ The daughter of the friend is a locally well-known sportswoman (playing in the Republika Srpska national league basketball team), which they suspect is the reason they were allowed to stay on in their house.

¹⁵ The note also stated, incorrectly, that the house was deserted (*napušten*) when the temporary occupant moved in in 1994.

damaged at all in the storm. Fatima Muhi_ has no faith in the police investigation of the incident and her suspicions that the damage was caused on purpose increased after she met the son of the occupant (who is employed by the local police) in the OMI offices after the incident. On that occasion he reportedly said to her: "We'll mine your stable next".

A particularly problematic situation with regard to minority return is that of the displaced Roma community originating from Bijeljina municipality in northeastern Republika Srpska.¹⁶ The pre-war Roma community in Bijeljina numbered around 4,500, of whom only some 250 remained during the war. Many of those who fled or were expelled from the area spent the war as refugees in Germany and have been returning to Bosnia-Herzegovina since 1996 mostly to become displaced in Tuzla Canton, where some 2,000 of them currently live. This group is very keen to return to Bijeljina, where the pre-war Roma community mainly lived in the town centre. The Roma also claim that, apart from the characteristic slowness in processing their applications and non-execution of OMI decisions, in order to regain possession of their property they have been forced to pay sums of between DM 5,000-6,000 to the occupants.

Velaga Besanovi_ is a Rom from Bijeljina, who left Bosnia-Herzegovina at the beginning of the war in 1992 and, along with hundreds of other Roma became a refugee in Berlin in Germany. In May 1997 he decided to return to Bijeljina, after being told by German police that he would be able to return and live in his house within 15 days upon arrival in Bosnia-Herzegovina. However, when he visited his house in Bijeljina the Serb displaced family told him they did not want him to come back. Velaga Besanovi_ lived for a while in Tuzla, paying his rent with the DM 2000 he had received from the German authorities to reconstruct his own house which had been damaged reportedly by previous occupants. Despite a decision by the Bijeljina OMI in October 1999, confirming his ownership of the house and his right to repossession, which he should be able to do within 30 days, he has to date not been able to re-enter his own house. He claims that the Serb occupant, who is himself a displaced person from Kova_i_i, is now renting out part of the house. Velaga Besanovi_ is currently living in a small kitchen of a house in Bijeljina (which belongs to another Roma) together with his son and daughter-in-law and their two children.

1.3 Returns to destroyed villages: the vulnerability of the "house cleaners"

¹⁶ See also European Roma Rights Centre: *Roma unable to return to their homes in Bosnia-Herzegovina*, Snapshot report No. 3, 1999.

As noted above, the larger return movements have been mostly to more distant villages or hamlets which have been totally or partially destroyed. Such initiatives tie in with the notion that "funding follows return" - meaning that potential returnees need to demonstrate their eagerness to return by starting to clear rubble from their destroyed houses and preparing it for reconstruction work. By now relatively large numbers of displaced persons are, almost weekly, travelling to their pre-war villages and in most cases scores of them (usually male heads of household) have stayed near their pre-war homes overnight.

On 1 April, some 400 displaced Bosniacs travelled to their home villages of Jele_ and Ko_ ja Luka in Srbinje/Fo_ a municipality.¹⁷ Some 100 persons - mostly male - reportedly stayed overnight to start massive house cleaning in the totally destroyed villages.¹⁸ Some two weeks afterwards similar large-scale return movements took place to four other villages in Fo_ a/Srbinje municipality, and to the former UN enclave of _epa, which was totally destroyed after it fell to the Bosnian Serb army in July 1995. Both areas had until then seen virtually no returns.¹⁹ In the latest such initiative, 80 Bosniac families reportedly returned to the village of Su_ eska, some 20 miles to the west of Srebrenica town, and have started clearing their houses while awaiting further help in their reconstruction. This move represents the most significant return to date to Srebrenica, where reportedly less than a handful of urban returns had taken place at the time of writing of this report: the most well-known case concerns 86-year-old Ša_ ir Halilovi_ who returned to the centre of Srebrenica in early April and now lives in the summer kitchen of his partially destroyed house. He had been displaced in Tuzla and expected an eviction order to vacate the property he was temporarily occupying. He told friends and relatives, as well as the large number of journalists who have come to visit him that he came back to Srebrenica "to die in his own house".

¹⁷ Such returns are labelled "spontaneous" by UNHCR. However, although most of the returnees were clearly elated to see their pre-war homes again, an additional factor motivating their plans to return appeared to lie the fact that most of them had received eviction notices for the accommodation they were now occupying in Sarajevo Canton or were expecting to receive these soon.

¹⁸ According to an UNHCR spokeswoman during the Joint Press Conference of 4 April 2000. The return to Ko_ ja Luka, although prepared and supervised by local police, IPTF and SFOR, was held up on two occasions as the road to the village was blocked by felled trees and a bridge in the village had been partially destroyed the night before.

¹⁹ On 15 April around 300 people returned to Kratina, Izbišno and Miljevina villages in Srbinje/Fo_ a municipality with 60 people staying overnight (UNHCR spokeswoman at Joint Press Conference of 18 April 2000); According to *Associated Press* ("Bosnia Refugee Returns Are Way Up", 2 May 2000) around 20 Bosniacs returned to _epa at the end of April, with more following in May.

These large-scale return events have been described as major breakthroughs in the returns process to eastern Republika Srpska. However, two months on, reports indicate that such types of returns lack serious prospects of sustainability. The returnees staying overnight are quickly becoming demotivated by the conditions in which they have to live - tent settlements among the ruins of their homes with no electricity, running water, medical service, or even reliable shelter during bad weather conditions. A new kind of dependency on humanitarian aid from UNHCR and other international organizations has been created and some of the returnees are reportedly already considering returning to Sarajevo in mid-June.²⁰

There is no clarity about when and how much funding will become available for reconstruction of houses and infrastructure, upon which such returns are clearly dependent. Some reports have indicated that reconstruction aid may not arrive before August at the soonest, when the return and reconstruction season is more or less winding up for the year. At a funding conference organized by the Stability Pact for Southeastern Europe (Stability Pact - see box below) at the end of March 2000, donor countries pledged to contribute large amounts of money towards reconstruction of houses and infrastructure aimed at enabling the minority return of tens of thousands of refugees and internally displaced persons in Bosnia-Herzegovina. Yet although donor countries pledged approximately US\$239 million to refugee returns for Bosnia-Herzegovina and Croatia (of which US\$180 million is intended for Bosnia-Herzegovina), only approximately US\$ 60 million constitutes "new" pledges (*nota bene*: for both Croatia and Bosnia-Herzegovina). The remainder of the pledged amount is a reaffirmation of previous commitments that are outstanding. Alarming, despite the establishment of the Stability Pact, donor governments' interest in actually living up to these pledges seems to be on the wane. There is a great risk that this might slow down the return process and disrupt the optimistic predictions of actual returns that the international community was hoping for.

The Stability Pact for Southeastern Europe aims to create an environment for peace, democracy, respect for human rights and economic prosperity with a view to achieving stability throughout the region. It was adopted in Cologne, Germany on 10 June 1999 and endorsed on 30 July 1999 in Sarajevo by the European Union and the participating countries (Albania, Bosnia-Herzegovina, Bulgaria, Croatia, Hungary, Romania, Slovenia and the Former Yugoslav Republic of Macedonia), as well as other supporting governments, and international organizations.

²⁰ *Dani* : "Povratak ubijenog sela", 6 May 2000, *Dnevni Avaz*: "Povratnici tvrde da su prevareni", 30 May 2000; also see below in Chapter III for Amnesty International's criteria on sustainability of returns.

The Stability Pact's objectives include the safe and free return of all refugees to their homes, and it has been working towards this goal across all its working tables. The Humanitarian Issues Working Group (HIWG), chaired by UNHCR, is designated to act as the task force on the return of refugees and displaced persons. At a funding conference in Brussels on 29-30 March 2000, 48 projects, mainly reconstruction of houses and infrastructure, were put forward to enable the minority return of 32,000 refugees and displaced persons in Bosnia-Herzegovina. These projects were budgeted at approximately US\$55,600,000. The UNHCR called for urgent additional funding "to honour the commitments made by the countries of the region to increase substantially the number of returns. Stability in the region cannot fully be achieved unless the problems of forced displacement are solved" (Statement made by the Assistant High Commissioner for Refugees to the Regional Funding Conference for South-East Europe, Brussels, 29 March 2000.)

The focus of this engagement is on identified groups of refugees and displaced persons who have chosen return as their preferred solution and the assistance foreseen is not merely intended to facilitate physical return but also reintegration. Furthermore, the Stability Pact assistance project will almost exclusively focus on returns to villages in rural areas; returns to urban areas are seen as being dependant on implementation of property laws.

It is also obvious that such returns will never be durable solutions without reintegration of the returnees in the local municipality and, apart from police patrols (under the constant supervision of IPTF), there are apparently few steps taken to initiate this.

In addition, areas like _epa are reportedly still heavily mined, as may be the case for other more distant villages. An acute funding problem appears to have arisen for mine clearing operations throughout the country. UNHCR's mine clearing programme expired at the end of 1999, and other demining activities have effectively been suspended since the beginning of the year.²¹ Apart from presenting a direct security threat, the presence of mined areas further undermines the sustainability of returns as it limits the ability of returnees to work on their land.

A disturbing case of obstruction, as well as potential destruction of evidence of war crimes by local authorities is Sultanovi_i village to the south of Zvornik, which used to have a majority Bosniac population before the war. House-cleaning (that is, the clearing of rubbish from the interior of partially destroyed houses as a first step to reconstruction) has been taking place in the village since late 1999. In late September 1999 the Zvornik municipal authorities started to dump city rubbish (including slaughterhouse remains and medical waste) on a patch of land in the village, on which

²¹ According to the Mine Action Centre (MAC), an estimated one million mines remain hidden in Bosnia-Herzegovina. UNHCR has stated that so far in 2000, 16 people have been killed and 10 injured in 19 mine accidents. (*Reuters*, "Bosnia demining lacks funds as risks increase", 4 June 2000).

two Bosniac returnees were repairing their half-destroyed houses. In effect, Sultanovići has been Zvornik municipality's main rubbish tip, with a reported disposal of some 30 to 35 truckloads a day.

Moreover, the rubbish dump is covering four mass grave sites that have been officially recognized by the International Criminal Tribunal for Former Yugoslavia (Tribunal) and which are thought to contain some 360 bodies. The graves are presumed to be secondary graves used by the Bosnian Serb army and Serb paramilitaries to re-bury the victims of mass executions of Bosniac men and boys from Srebrenica, who had originally been buried nearer to the former UN enclave. Apart from clearly obstructing the preparations for return by the original Bosnian inhabitants of the village, the burning of the rubbish appears to have caused acidic residue to seep into the soil, causing concern that it may further destroy the mortal remains buried underneath. Therefore, criminal evidence which could be used in trials before the Tribunal is at risk of being destroyed. The Zvornik municipal authorities had apparently agreed to halt the dumping in June and to remove the rubbish currently there.²² However, at the time of writing of this report, although the dumping reportedly stopped on 6 June, the authorities have still not cleared the rubbish which continues to contaminate the evidence at the crime scene.

1.4 The disinformation factor and the scope for political manipulation

²² Human Rights Co-ordination Centre Quarterly Report, February - May 15, 2000.

In general, displaced persons throughout the country have been easy prey for political manipulation and have been used to justify official action and inaction whenever contentious situations relating to minority returns have arisen. Authorities and political leaders in both entities of Bosnia-Herzegovina have mobilized whole communities of displaced persons and implicitly instructed them to block minority returns by confronting returnees, often with violence.²³ In some cases the High Representative has, in the wake of such incidents, dismissed local officials for their role in this obstruction, although it has proven difficult in practice to effectively remove certain individuals from any position of power in their local community.

Apart from extreme cases where those in positions of legitimate power have deliberately incited displaced persons to commit acts that amount to criminal behaviour, more subtle forms of manipulation are occurring. The displaced population in Republika Srpska numbers, according to UNHCR statistics, some 343,000 persons.²⁴ Of these, 5,629 are accommodated in 54 collective centres²⁵ throughout the entity, the majority of them in eastern Republika Srpska. These collective centres also accommodate many of the approximately 60,000 Serbs who fled the formerly Serb-held Sarajevo suburbs during and after their reunion with Sarajevo city and the Federation in late 1995 and early 1996.

Many, if not most local and national authorities, leaders of displaced persons organizations and most of the Republika Srpska media have continuously voiced the opinion that the overwhelming majority of these displaced persons do not want to return, as they are not interested in living in a multi-ethnic Bosnia-Herzegovina. This assumption is used time and again as an explanation for the difficulties hampering the return of the pre-war non-Serb population. For example, surveys conducted in collective centres by Republika Srpska refugee authorities are frequently quoted as confirmation of this view.²⁶

However, such a generalization of the situation may oversimplify the opinions and wishes of this displaced population. A survey conducted by the CRPC on behalf of UNHCR, displays a more nuanced picture. Interviews conducted with a cross-section of

²³ See in particular : *Bosnia-Herzegovina: All the Way Home update - Drvar, Derventa and other recent cases of violence linked to minority return*, AI Index: EUR 63/08/98, April 1998.

²⁴ See: Humanitarian Issues Working Group, *Update on durable solutions for refugees and displaced persons in the context of the Peace Agreement*, 8 December 1999.

²⁵ See, UNHCR in Bosnia-Herzegovina: *2000 UNHCR Assistance programme in Bosnia-Herzegovina, Collective Centres Status as at 31 March 2000*.

²⁶ For example, Amnesty International representatives were told by an official of the Commission for Refugees in Višegrad that "99.9% of displaced Serbs have simply no interest in going back".

3,000 displaced persons in both entities, as well as Bosnian refugees in the Republic of Croatia and the Federal Republic of Yugoslavia, showed that 34% of respondents currently living in the Republika Srpska, and 36 % of all Bosnian Serb displaced persons wished to return to their pre-war homes²⁷.

²⁷ CRPC/UNHCR Sarajevo, *Return, Local Integration & Property Rights, November 1999. Executive Summary and Conclusions*, November 1999. Respondents were asked how they wanted to exercise their property rights and which factors determined their preferences.

Amnesty International representatives talked to displaced persons now living in collective centres in several towns in eastern Republika Srpska, and gained the distinct impression that, at the very least, the displaced community is not unanimous in its lack of interest in returning to live among another nationality.²⁸

Furthermore, it should be remembered that the right to return, like all human rights is an *individual's* right. In other words, it is not the views of the majority of citizens which would determine whether or not an individual should exercise this right.

Another factor influencing displaced people's decisions to remain in the Republika Srpska, rather than return to pre-war homes in the Federation appears to be the large numbers of new flats that are being built in many municipalities. By law, local authorities are obliged to provide alternative accommodation for displaced persons who have left the property they occupied in order for the pre-war owner or tenancy right holder to return, if they cannot yet return to their own homes. Yet the massive construction of new houses and apartment buildings, often on contested land,²⁹ is clearly in many cases not targeted towards this aim. For example, the allocation of newly constructed flats by the OMIs appears to be based on criteria, which are not aimed at freeing up housing space for the returning pre-war population. From instructions from the central Ministry for Refugees and Displaced Persons it is clear that only inhabitants of collective centres who expressed no desire to return will be eligible for allocation³⁰.

Further legal issues are posed by the widespread practice of allocation of formerly socially-owned land plots to Serb displaced persons' organizations to be used as building sites for new flats and houses. In a number of cases, notable in the municipalities of Srpsko Gora_de/Kopa_i and in Preljevo suburb in Višegrad, pre-war Bosniac inhabitants are claiming to own or have rights to this land which is now being used for building work without having been expropriated in accordance with the law. While such transactions could be illegal in themselves, they also amount to serious obstruction of the return process.

²⁸ In two cases, delegates met with displaced families who were imminently planning to return to their pre-war homes in Had_i_i in Sarajevo Canton and to Konji_municipality in Hercegovina_ko-Neretvanski Canton.

²⁹ In many cases, land which was previously owned by the state, is now contested by individuals claiming that it belonged to them or their families prior to World War II or to various nationalization operations which took place when the country was part of the former Yugoslavia.

³⁰ Interview with OMI representative in Višegrad, March 2000.

This practice has a country-wide dimension and has been so clearly aimed at obstructing the returns of pre-war inhabitants, that the High Representative issued a special decision on the allocation of formerly *socially-owned* land at the end of April.³¹

One of the crucial factors underlying people's ability to make a genuinely voluntary decision on how to use their right to return under the Peace Agreement is the availability of objective and up-to-date information outlining their choices and emphasizing their stake in their own future. Participatory information campaigns involving local authorities as well as the accessible mass media channels, and, most importantly civil society actors (like local non-governmental organizations) should be initiated to battle the culture of dependency that has been inevitably created by the long years that displaced persons have spent in collective accommodation. Such campaigns should necessarily include background information on the obligations that representatives of all authorities in Bosnia-Herzegovina took upon themselves (and are bound to uphold) when they signed the Peace Agreement.

Political leaders and government officials who openly undermine these obligations³² should be held accountable for their conduct. A country-wide discussion should be stimulated, based on objective and factual information and supported and resourced by the international community as one way to engage individual participation in this issue.

³¹ The High Representative's Decision on state-owned real property, 27 April 2000. Under the decision, state-owned property, including *socially-owned* property, may not be disposed of, allotted, transferred, sold or given for use or rent by the Federation and RS authorities. Exemptions from this decision may only be granted by the High Representative in cases where the authorities can prove that the transfer of such property is non-discriminatory and in the best interests of the public.

³² See the case of Sead Gruhonji_ on page 22.

A useful example of such initiatives is the recent contest launched by UNHCR and supported by the Federation and Republika Srpska Education Ministries, which aims to promote reconciliation and tolerance among school children in the whole of the country as part of creating an environment in which sustainable returns can take place.³³ It has been recognized over and over again that the fear of intimidation and discrimination against returnee children in schools has been an important factor in decisions by displaced persons and refugees not to return to their pre-war communities where their ethnic group now constitutes a minority.³⁴ Amnesty International recommends that further such initiatives touching the grassroots level of society are explored, and that non-governmental organizations which have been working towards ethnic reconciliation and reintegration of returnees are encouraged to play a leading role in them.

For example, Amnesty International has been working closely for the past several years with the Tuzla-based *Zemlja Djece (Land of Children)*, a Bosnian non-governmental organization which administers a network of youth centres in the region. *Zemlja Djece* was started in November 1995 by the Swiss non-governmental organization *Terre des Hommes*, but is now entirely staffed and run by local coordinators and teachers. The ethos of the organization emphasizes the need to provide a diverse programme of social, educational, cultural, and recreational activities to children from all communities in Bosnian society, and has also dedicated itself to providing essential psychological support and counselling to children who have experienced a variety of traumas during the 1992-95 conflict. Many of the children targeted by the organization are themselves displaced persons from Srebrenica, and more recently, returnees from other European countries.

Amnesty International has run a range of different human rights awareness workshops and activities in a number of the *Zemlja Djece* centres - where staff and young people participating in such programmes have frequently exhibited the kind of fresh, imaginative thinking about the future of their society which is so often lacking in official circles in the country. And yet, this dynamism and potential at community level too often goes unrecognized and untapped by the international community in its efforts at post-war social reconstruction - with organizations like *Zemlja Djece* left in a state of perpetual uncertainty about their future as they seek funding to continue and expand their invaluable work.

³³ UNHCR press statement "UNHCR launches BiH-Wide Confidence Building Project "Together", 16 May 2000.

³⁴ For instance in the UNHCR/UNHCHR study *Daunting Prospects. Minority Women: Obstacles to their return and integration*, April 2000.

2. Return-related violence : the effects of impunity

Amnesty International is concerned that return-related incidents of violence against life and property continue to be reported. Amnesty International applauds the efforts undertaken by the local police force to provide extensive and very visible protection in accompanying return initiatives and patrolling return locations. In addition, the close cooperation between the International Police Task Force (IPTF) and the Republika Srpska police force, as well as the increasingly active role of SFOR in the return process should be noted. However, with few exceptions, there appears to be continued impunity for the perpetrators of the majority of ethnically-motivated and anti-return attacks which have occurred over the last year. Amnesty International is also worried by what appears to be complacency in parts of the international community, notably the IPTF, as evidenced in their lack of follow-up in these cases.

While the number of reported return-related violent incidents in the whole of Bosnia-Herzegovina has decreased in relation to previous years, the fact remains that most of them are not resolved and only in rare cases do local and national officials condemn such incidents publicly.

The Ombudsperson of Bosnia-Herzegovina concluded in one of her special reports that the violence directed against returnees and the failure of the authorities to effectively investigate those responsible for orchestrating violent incidents constituted inhuman treatment and is therefore a violation of the European Convention for the Protection of Human Rights and Fundamental Freedoms.³⁵

The lasting effects of impunity for these attacks cannot be underestimated. In the case of Srebrenica, which has seen virtually no returns to the centre of town, the attack on one of the Bosniac councillors in October last year, which to date has not been resolved,³⁶ is cited over and over again by the Bosniac councillors as the main reason why they are reluctant to settle permanently in the town. While international monitors have raised questions as to the credibility of these fears and suspect that other motives underlie some councillors' decision not to move back permanently, the symbolic impact of the attack will last as long as it is followed by apparent inaction.

2.1 Violence as a reaction to the increase in returns and reinstatements

³⁵ Human Rights Ombudsperson for Bosnia-Herzegovina, *Special Report On Discrimination in the Effective Protection of Human Rights of Returnees in Both Entities of Bosnia-Herzegovina*, No. 3275/99, 29 September 1999.

³⁶ See the entry for Bosnia-Herzegovina in *Amnesty International Report 2000*, AI Index: POL 10/01/2000, June 2000.

Incidents of violence increased in Janja and Bijeljina in the north of the entity at the end of February and the beginning of March this year. This development appears to be clearly connected to the increase in numbers of Bosniacs returning, and also to the fact that the OMI started issuing positive decisions in property claims. According to local residents in Janja interviewed by Amnesty International, there were some 10 incidents, involving 30 petrol bombs thrown at Bosniac returnee houses between January and March 2000. In Bijeljina, several incidents were also reported, including the repeated throwing of explosive devices at the home of one returnee in the centre of town.³⁷ To date, no one has been prosecuted for any of these incidents.

Sead Gruhonji_ is one of around 100 so-called Janja "floaters", the non-Serb inhabitants of the town who remained living there (usually by sharing friends' houses, or living in outbuildings or garages) after having been evicted from their homes at some point during the war. Sead Gruhonji_ had to leave his house at the end of 1995, and had been trying to regain possession of it since 1996. He finally moved back into his house in January 1999. He recalled that, on the day he moved back in, a crowd of 200 displaced persons was standing outside, shouting insults at him and at the SFOR unit who accompanied him back to his house.

³⁷ *Onasa news agency*: "UN condemns incidents targeting Muslims in northeast Bosnia", 29 February 2000; *Agence France Presse*: "Explosive device activated in front of Bosnian Muslim's home", 28 February 2000.

Sead Gruhonji_ recalls that the violent incidents in 2000 started around the opening of the election campaign at the beginning of the year, and that both the town council representative of the Serb Radical Party (*Srpska Radikalna Stranka*, SRS),³⁸ and the town's mayor addressed the displaced population in Janja on local TV, stating that they did not have to leave the houses they were currently occupying and that they could use violence to defend what they could consider as their property.

On the night of 29 February 2000, unknown persons threw three petrol bombs into the glass porch of Sead Gruhonji_'s house, presumably from the driveway belonging to his neighbours on the right. Two other explosives were thrown at his car in his yard but they did not ignite, and another one was thrown at a shack next to the house (which Sead Gruhonji_ assumes the attackers thought belonged to him). At the time of the attack, apart from Sead Gruhonji_, his mother, his heavily pregnant wife and an uncle, were staying in the house. No one was injured, although a piece of shrapnel from one of the bombs burst through three doors and landed in his mother's bedroom just a metre from her head. The police inspected the house and the yard the next day, but did not question any of the neighbours (including the ones whose driveway the perpetrators had probably used). No one has been prosecuted in connection with the attack to date.

³⁸ The SRS was banned from participating in the municipal elections of 8 April by the OSCE in October 1999, as they had not struck Nikola Poplašen (among others) from their candidate list.

It appears that there were other events which may have motivated the violence against Bosniacs during that period. Bosnian Serb independent media reported that the violence was connected to an incident in early February in which a displaced Serb youth hitch-hiking from Janja to Bijeljina was abducted by three Bosniac men who had given him a lift in their car. The abductors drove on to Tuzla where they took the boy from the car to an abandoned house where they severely ill-treated him before releasing him.³⁹ The three men who had been involved in the ill-treatment were apparently immediately arrested and trial proceedings concerning them continue.⁴⁰

2.2 Special protection needs of vulnerable categories of returnees

Due consideration should be given to the fact that many pre-war inhabitants of large parts of the eastern Republika Srpska are still considerably traumatized by having been victimized by, or having witnessed gross human rights violations committed during the war by the Bosnian Serb army and Serb paramilitaries. Instances of renewed violence, albeit not personally directed against them, may have a retraumatizing effect; such persons will need a redoubling of efforts to reassure them that they will be able to live in their pre-war community without fear for their safety.

In addition, the specific protection needs of female returnees should be taken into account. A large number of women who are single heads of families are potential returnees to certain parts of the eastern Republika Srpska (Srebrenica, Bratunac and Vlasenica). In a recently published study, compiled by UNHCR and the Office of the United Nations High Commissioner for Human Rights (OHCHR), special attention is given to the particular problems faced by women in minority returns. The study found that the issue of personal security and security of property is of key importance in women's decision to return to an area where their nationality is now in the minority, particularly in the light of the fact that many of them are single heads of households following the death or "disappearance" of their husbands during the war. It recommends that local police forces improve the investigation and prosecution of the perpetrators of ethnically motivated violence, and that the composition of the police forces is multi-ethnic and gender balanced.⁴¹

³⁹ According to *Nezavisne novine* of 10 March 2000, the victim was punched repeatedly in the face by all three abductors and at some point lost consciousness. They then forced him to jump out of the window from the first floor of the house.

⁴⁰ Interview with IPTF Tuzla human rights officers.

⁴¹ See *Dauting Prospects. Minority Women: Obstacles to their return and integration*, UNHCR and UNHCHR, April 2000. This study is based on, among other, interviews with 42 women displaced in or returning to both the Federation and the Republika Srpska.

In an incident which took place on 11 May, a crowd of Bosnian Serbs threw stones at four buses carrying some 200 Bosniac pre-war female residents of Bratunac who had come to attend a commemoration ceremony. While the incident took place in the presence of both SFOR and large numbers of local police, who attempted to disperse and restrain the assailants, around 10 women and a bus driver were reportedly injured,⁴² as well as four police officers. A group of over 20 demonstrators was immediately arrested and a week later some 29 persons were charged with disturbing the peace and public order, disorderly conduct and disturbing the police in the execution of their duties. Among those charged were allegedly also two persons who had organized and instigated the incident, but who nevertheless have not been charged with more serious offences. At the time of writing of this report, none of those charged has been tried.

The sparse returns that have taken place to Srebrenica have not been without security-related problems either. One of the houses used to accommodate the Bosniac Srebrenica councillors was reportedly burgled in the beginning of May, despite the fact that local police maintain a round-the-clock presence near the house.⁴³ More seriously, in the first two weeks of June there were arson attacks on three Bosniac houses in the town.⁴⁴

2.3 The impact of delays in the legal process on returnees' safety

In many cases, the fact that returnees continue to face obstruction in regaining legal access to their property, renders them more vulnerable to violence against life and property.

⁴² Representatives of a local non-governmental organization supporting the relatives of those missing from Srebrenica and _epa who had been on one of the buses reported that some 50 women had been injured, of whom 11 had to seek medical treatment.

⁴³ According to a statement by an UNMIBH spokesman, 4 May 2000.

⁴⁴ *Reuters*: "UN condemns arson attacks on Srebrenica houses", 15 June 2000; *Dnevni Avaz*: "Zapaljene tri bošnja_ke ku_e u Srebrenici", 14 June 2000.

On 11 March 2000, around 50 Bosniacs returned more or less spontaneously to Srpsko Gora_de/Kopa_i municipality and installed themselves in the only two houses which had been vacated there.⁴⁵ Prior to the return, they had been part of a group of displaced Bosniacs from Srpsko Gora_de/Kopa_i municipality who had camped on the Inter Ethnic Boundary Line (IEBL) for over five months, expressing their frustration at still being unable to go to their homes less than a kilometre away. Technically the only return in the legal sense on 11 May concerned the one of D_evad_osovi_, who had been a refugee in Germany for over four years. He had claimed his property back in 1999 and received a positive decision in December 1999, when he happened to be in Germany to visit relatives. He suspects that his absence may have led the OMI officials in Srpsko Gora_de/Kopa_i to believe that he had no interest in returning there as he had left the country and told Amnesty International representatives that, when he came to pick up his keys at the OMI, he was met with surprise.⁴⁶ The house is about 300 metres up from the main road connecting Gora_de (Federation) to Višegrad (RS). The _osovi_ family - whose son remains in Gora_de where he goes to school - took some 20 other Bosniac returnees into their house when they moved in, in the expectation that these people would be able to work on their land and regain their property soon and that their very presence in the municipality would move things forward.

With some delay this tactic has worked. Another two evictions were carried out on 29 May (although one of them only partially), and a second returnee family officially moved back that day, following persistent pressure from UNHCR on the Srpsko Gora_de/Kopa_i OMI (some UNHCR staff all but co-located in the OMI office for over a month to provide administrative assistance in the processing of claims). At the time of writing of this report a further series of evictions was scheduled to take place in June, and the UN Mission to Bosnia-Herzegovina has taken urgent measures to speed up property legislation implementation in the municipality.⁴⁷

⁴⁵ The pre-war Gora_de municipality is one of several that was split between two entities by the Peace Agreement. Kopa_i used to be a suburb of Gora_de town and is now located in the RS and called Srpsko Gora_de.

⁴⁶ The temporary occupant is a Serb from Gora_de who is apparently waiting for his own house to be reconstructed in the Gora_de suburb of Vitkovi_i.

⁴⁷ On 8 June the UN Mission to Bosnia-Herzegovina (UNMIBH) announced that, in view of the complete failure of the Srpsko Gora_de/Kopa_i OMI to implement property legislation, it would undertake a 60-day Housing Action Plan in the municipality during June and July. The measures envisaged in this plan include the issuing of 140 repossession orders and 80 eviction orders on priority cases (including cases of misuse of property by police officers and double occupancy cases), and the setting up of an effective system of communication and cooperation between the authorities of Srpsko Gora_de/Kopa_i and Federation Gora_de.

The returnees living in the _osovi_ house have not met with any direct violence, presumably because the house is slightly removed from the main road. However, another group of around 25 returnees sharing another house vacated in March⁴⁸, near the entrance of the town and on the main road had a hand-made explosive device thrown into its yard in the early evening of 11 March - the day they moved in. The house, which is located mere metres away from the police station, was then under the surveillance of several local police officers. In the evening of 27 March a stone was thrown into a window on the first floor of the house, into a small room where seven people were sleeping at the time. Investigations were opened into both incidents which so far have not resulted in any prosecutions.

2.4 Arrests and prosecutions for war crimes - a vital condition for minority returns

⁴⁸ The owner of the house has reportedly not yet returned to Srpsko Gora_de/Kopa_i but has given other displaced villagers permission to use his house for the time being.

Many potential returnees with whom Amnesty International spoke, in particular displaced women from Bratunac and Srebrenica municipality, stressed that they consider the arrests and trials of those suspected of having committed war crimes and other human rights violations during the war as an absolute precondition for their return. It is not coincidental that the tentative opening up of large areas of the Drina valley for return movements has been preceded and accompanied by public exhumations of mass graves and reburial of the bodies they contained – thought to be the victims of war crimes – and an increase in the number of arrests of suspects indicted by the Tribunal.⁴⁹ Amnesty International welcomes the bringing to justice of people reasonably suspected of having committed human rights violations or violations of international humanitarian law. Amnesty International believes that such measures advance the process of reconciliation by establishing individual responsibility as opposed to collective guilt for the abuses carried out during the war in Bosnia-Herzegovina.

The Tribunal's Prosecutor has repeatedly stated that she does not have the resources to prosecute all those reasonably suspected of being responsible for violations of international humanitarian law, and as a result she will focus on those suspects who are accused of having exerted command responsibility for these violations. This is one of several reasons why Amnesty International believes it to be of the highest importance

⁴⁹SFOR has so far carried out three arrests in Foča/Srbinje: Milorad Krnojelac (who was secretly indicted) in June 1998, Radomir Kovač in August 1999 and Zoran Vuković in December 1999. One other suspect, Dragan Gagović was shot dead by SFOR in an arrest attempt in January 1999. One (secretly indicted) suspect, Mitar Vasiljević has been arrested so far in Višegrad in January 2000.

that national courts in Bosnia-Herzegovina complement the work of the Tribunal by bringing to justice those thought to be responsible for human rights violations, regardless of their nationality or political function, in trials which meet international standards of fairness.

Amnesty International recognizes that many such trials which have taken place in a politically and emotionally charged atmosphere have failed to meet international fair trial standards and the dictates of national law. The organization underscores the overwhelming need for justice to be done and seen to be done on the local, as well as the international level, and the importance of such domestic prosecutions for the development of the rule of law.

II. The continued need for international protection and action by intergovernmental organizations

Three years of forcible returns

It is recognized that considerable numbers of persons are as yet unable to return to their homes because of their vulnerability, or that they may never be in a position to do so because of the trauma they suffered during the war. UNHCR has, in its latest update on refugees who are in continuing need of international protection, identified the following categories:

- 1) Persons originating from areas where they would no longer be in the majority upon return;

2) Humanitarian cases (ex-camp or prison detainees, victims or witnesses of violence, including sexual violence, witnesses testifying before the Tribunal, severely traumatized persons and individuals in need of special care);

3) Persons of mixed ethnicity or in mixed marriages;

4) Potentially stateless persons;

5) Other specific categories (these continue to include leaders of the DNZ, also known as "Abdi_ supporters", deserters and draft evaders - pending further information on the implementation of amnesty laws in both entities - and members of the Roma community).⁵⁰

UNHCR has operated on the basis of these categories since 1997. Yet there have been many cases of premature and involuntary repatriation of persons who would fall into one or more of these categories, notably the large-scale deportations which took place in Germany in 1998, and which continued (though in lesser numbers) through 1999.⁵¹ The majority of those returning from asylum countries are persons of non-Serb ethnicity who before the war lived in what is now Republika Srpska.

While such actions by host countries are clearly contrary to the spirit and the obligations underlying the Peace Agreement, on the whole they have not been scrutinized rigorously by the international community, most probably because their effects are not immediately visible on the ground. Although UNHCR and the International Organization for Migration (IOM) in general monitor repatriation and deportations announced to them by governments, it appears that there is no consistent and detailed follow-up research on what happens to these people after they reach the country. One thing which is overtly clear is that the majority of persons returning from host countries (whether of their own free will or not) almost immediately relocate to the Federation and hence turn from refugees into internally displaced persons.

⁵⁰ UNHCR, Categories of persons from Bosnia-Herzegovina who are in continued need of international protection, February 2000.

⁵¹ See for example *AND*: "Germany: Deportations of Bosnian "sharply criticized", 17 July 1998. Massive deportations took place in Berlin in July 1998, and Berlin-based refugee organizations expressed concern that on one occasion (involving Bosniac refugees originating from the Bijeljina and Zvornik. areas), traumatized persons had been forced to leave the country. According to UNHCR, a total of around 3,400 persons were deported from Germany in the period from 1998 to now.

UNHCR and other organizations, including Amnesty International,⁵² have stressed repeatedly the potentially disastrous consequences of involuntary and untimely returns in terms of the undermining effect they have on the fragile process of minority returns (and indeed on return as a whole). In addition the untimely repatriation of persons who are unable to return to their homes is causing major humanitarian problems, and leads to a situation in which many displaced persons eventually give up on their right to return to their pre-war homes.

⁵² Amnesty International, *All the way home: Safe minority returns as a just remedy and for a secure future*, AI Index: EUR 63/02/98, February 1998; *Concerns in Europe* July-December 1998, AI Index: EUR 01/01/99, March 1999.

For those refugees whose pre-war homes are now situated in Republika Srpska, in particular in the Podrinje valley, and who fled Bosnia-Herzegovina in large numbers from 1992-1995, it means that, almost without exception, upon repatriation or deportation to their country they will relocate to Tuzla or Sarajevo Cantons, being the closest to their pre-war communities. There are clear signs indicating that the "absorption" capacity for returning refugees in these cantons is running out fast. Tuzla Canton received an estimated 22,166 repatriates from Germany alone in the period from July 1998 to August 1999.⁵³ Tuzla town currently accommodates nearly 40,000 displaced persons, and it is reported that police carry out three evictions a day.⁵⁴ Sarajevo Canton is hosting over 61,000 displaced persons alone from eastern Republika Srpska, the majority of whom apparently wish to return.⁵⁵ As returns to Sarajevo city and its suburbs are considered to be a crucial parameter for assessing the success of minority returns overall, evictions of temporary occupants of housing belonging to minority owners are reportedly happening on a relatively large scale.⁵⁶ The Sarajevo housing authorities are expecting problems in the imminent vacation of some 20,000 housing units which should allow the return of their pre-war inhabitants, and which are now occupied by displaced persons including those from eastern Republika Srpska.⁵⁷

To send more refugees back to this situation, especially those who clearly will not be able to regain possession of their pre-war property soon (and hence will join the thousands of displaced in waiting), is an imprudent step. It undermines the huge and expensive efforts undertaken by the international community and those local authorities truly committed to minority returns.

A disturbing example of one such return was the forcible deportation of 56 Bosnian Roma, who had been living in two camp settlements near Rome, by the Italian authorities during the night of 2 March this year, which was reported by the Italian non-governmental organization Arci solidarietà Lazio (Arci).⁵⁸ A large number of state

⁵³ Statistics quoted in UNHCR : *Refugees Repatriating to Tuzla Canton - Bosnia-Herzegovina*, January 2000.

⁵⁴ *Oslobodjenje* "Tuzla - ko opstruira dvosmjerni povratak?" 31 May 2000.

⁵⁵ *Oslobodjenje* "Vlada ne pristaje na šatorska naselja", 16 May 2000.

⁵⁶ *Oslobodjenje* "Provedba imovinskih zakona u kantonu Sarajevo". Unofficial estimates for the number of evictions carried out in Sarajevo in March were around 170.

⁵⁷ *Oslobodjenje* "Još 164 osobe gube pravo na stan?", 16 May 2000, quoting Sarajevo Canton Ministry for Housing statistics.

⁵⁸ Arci Solidarietà Lazio: "Report on the deportation and forced repatriation of Bosnian Roma from the Roman campsite of Tor de' Cenci", March 2000. See also European Roma Rights Centre: *Roma Rights Nr 1*,

and municipal police officers reportedly evacuated the camp site of Tor de' Cenci near Rome and took some 114 of its inhabitants for questioning to Rome's main police station (*Questura*). Eventually, 32 people from this group were taken to Fiumicino airport where they were deported together with another group of 26 Roma who had been rounded up after a raid at the smaller camp site Casilino 700. All deportees were immediately flown to Sarajevo in a plane leased by the Italian Interior Ministry.

2000, snapshots from around Europe: Police raids and deportations in Italy.

The Roma reportedly all originated from Vlasenica municipality in eastern Republika Srpska.⁵⁹ Several of them were interviewed later in Bosnia-Herzegovina by a partner organization of Arci, the Italian Consortium of Solidarity (ICS), and alleged that the Italian police had used excessive force during the raid at the Tor de' Cenci. Police officers entering the camp apparently smashed the windows and doors of several caravans, and later pushed and pulled people - including elderly people and children - inside buses taking them to the *Questura*. Those rounded up but later released stated to Arci social workers that no one was allowed to collect any of their belongings. One 14-year-old boy was reportedly slapped in the face by a police officer.

These deportations may have violated Italian law regulating immigration procedures, as three, allegedly unaccompanied, minors were deported, as well as two pregnant women. In addition, only four of the deportees had been handed a written deportation order by the police.⁶⁰ At least two minors were separated from their parents as identification proceedings (carried out by the police assisted by consul of the Bosnian embassy who issued travel documents to those who did not possess them) were carried out in an extremely summary manner. Apart from possibly violating domestic law, the deportations were clearly contrary to the provisions on the right to return in the Peace Agreement and to UNHCR's guidelines on extended international protection for certain categories of refugees.

ICS members of staff later found out that a group of 29 Roma (who had been among those deported from the above-mentioned campsites) had, upon arrival in Bosnia-Herzegovina, travelled to Vlasenica (Republika Srpska) to see their houses. While there, they were attacked and beaten up by a group of five local Serbs who told them to return to the Federation. One man in the group, SH,⁶¹ allegedly sustained serious injuries.

The group left Vlasenica the same day and went to Kladanj (Federation) where they moved into two rooms of a house belonging to a relative of one of the members of the group. However, most of them have since been forced to leave this house and as the Federation authorities have made no moves to accommodate them elsewhere, are

⁵⁹ According to the report by Arci Solidarietà Lazio, some members of the group had been in Italy since the 1980s, and others came after armed conflict broke out in 1992.

⁶⁰ Article 19 (2) (a) of Decree No 286 of 1998, which regulates immigration procedures (*Disciplina dell'immigrazione e norme sulla condizione dello straniero*), prohibits the expulsion of aliens under 18 years old unless they choose to follow an expelled parent or legal guardian; Article 19 (2) (d) rules out the deportation of pregnant women. Article 13 (3) and (7) stipulate that deportations can only be carried out legally if based on a written order which must be communicated to the deportee in a language they understand.

⁶¹ The full name of this victim is known to Amnesty International.

currently homeless. The remainder of the total group of deportees is believed to have moved to Ilijaš village near Sarajevo, where they are staying with relatives and friends.

Extremely vulnerable individuals and their neglected needs

Some of the most difficult cases of repatriated or deported persons who have nowhere to go end up in so-called transit centres.⁶² Although set up to accommodate people for periods from a couple of days to three months at the maximum, many displaced persons have in fact been living in transit centres for over two years now.⁶³ Quite apart from this, it is obvious that many of the centre's "inhabitants" are in need of expert medical or psychological help. The people Amnesty International spoke to in one transit centre included several elderly people who were, according to the centre's director, mentally unstable, as well as an ex-detainee who said he had been severely tortured in a prison camp near Bijeljina during the war and appeared traumatized by his experiences.

In the light of the difficulties faced by extremely vulnerable individuals upon their return to Bosnia-Herzegovina, UNHCR has urged host countries to extend protection to all such individuals who do not wish to return (with a view to providing them with a permanent legal status in their country). As has been noted above, large parts of this particular group are refugees who originated from Republika Srpska. Those extremely vulnerable individuals who want to return should be provided with accurate information and host countries should become closely involved in the process of their return home in order to ensure that this happens in a safe and dignified manner and that such returnees have access to adequate support networks to make their return sustainable. In the long run, the return of refugees to Bosnia-Herzegovina who have no prospects of finding a durable solution within a reasonable amount of time carries the risk of increased instability and creates the grounds for renewed conflict.⁶⁴

⁶² Returning refugees are as a rule not allowed shelter in collective centres, and therefore one of the few accommodation options open to them are the transit centres. At the end of August 1999, there were nine such centres in operation in the Federation, housing some 530 displaced persons and with a total capacity of 1072 (UNHCR: *Extremely vulnerable individuals, The Need for Continuing International Support in Light of Difficulties to Reintegration Upon Return*, November 1999).

⁶³ Amnesty International interviewed some 30 displaced persons currently living in Svatovac transit centre in Tuzla Canton and in Biserovina transit centre in Gora_de/Podrinje Canton in March. Svatovac centre is situated at the end of a dirt road leading around Lake Modra_ with quite difficult access to the nearest town of Lukavac. In March it hosted nearly 90 people, mostly displaced persons from eastern Republika Srpska. Three people told Amnesty International they had been in Svatovac transit centre since July or August 1997. Another family, who are originally from Srpsko Gora_de/Kopa_i had been staying in Biserovina transit centre since March 1998 when they repatriated from Germany.

⁶⁴ Extremely vulnerable individuals include the elderly, mentally or physically disabled, orphans and female-headed households, victims or witnesses of torture, including sexual violence, extremely traumatised individuals, ex-camp or prison detainees and witnesses testifying before the Tribunal. (UNHCR: *Extremely*

However, the factual situation on the ground does not suggest that host countries are overtly minded to implement UNHCR's recommended policies. Governments have stated that they can no longer pay for the temporary protection for these refugees and argue that these people should now be able to return to their country as armed conflict stopped almost five years ago. The actual problems faced by refugees returning to Bosnia-Herzegovina - which are even more acute in the case of extremely vulnerable individuals - are evidently not given sufficient weight, even though it is obvious that such returns are contrary to the ones envisaged by the Peace Agreement.

vulnerable individuals, The Need for Continuing International Support in Light of Difficulties to Reintegration Upon Return, November 1999).

At the end of April, the Interior Ministries of several German *Länder* announced that they wanted to achieve the full return of the approximately 37,000 refugees from Bosnia-Herzegovina remaining in Germany by the end of the year - as well as any remaining refugees from Kosovo (Kosova). No exceptions would be made for the so-called "hardship" cases (that is, vulnerable individuals) . These plans met with widespread opposition in the German Parliament (*Bundestag*) and 100 members of the main political parties issued an appeal to the Federal Interior Minister asking him to extend special protection at least to those refugees from Bosnia-Herzegovina and Kosovo (Kosova) who were especially vulnerable or traumatized.⁶⁵

On 29 May, UNHCR appealed to the German government to reconsider their decisions regarding a full and final repatriation of all Bosnian refugees during the year 2000. UNHCR estimates that among the remaining Bosnian refugees in Germany, there are some 15,000 "hardship" cases, and expressed its extreme concern that even this group was threatened with forced repatriation. UNHCR offered the German authorities their good services to check individually some 6,000 cases of Bosnian refugees who might be willing and able to return.⁶⁶

⁶⁵ *Reuters*: "Germany ups pressure on Balkans refugees to leave", 20 April 2000; *DDP News Agency*, "German deputies object to deportation of Balkans war refugees", 20 April 2000.

⁶⁶ UNHCR, Berlin: *Bosnien-Rückführung: Appell zum Kurswechsel*, May 2000.

One of the most pressing concerns connected to the imminent repatriation from Germany (and other host countries which are similarly minded), is the situation of traumatized individuals upon return. Medica mondiale, a non-governmental organization based in Germany, which has been running centres for psycho-social help for women in Bosnia-Herzegovina during and since the war, completed an extensive research project at the beginning of this year, collecting information (by *Land*) on government procedures in relation to traumatized refugees from Kosovo (Kosova) and Bosnia-Herzegovina and the experiences of counselling services dealing with cases of such refugees.⁶⁷ One of the concerns stressed by Medica mondiale was the immense pressure that impending deportations have on traumatized refugees, which had led in several cases to suicidal tendencies (which undermined the gains from counselling sessions intended to alleviate the trauma).⁶⁸ The organization also emphasized the lack of adequate medical and psycho-social care available in Bosnia-Herzegovina.⁶⁹

Such concerns are echoed by the UNHCR study on female minority returnees, which recommends that health care personnel dealing with traumatized persons should receive adequate training.⁷⁰

III. International standards

1. *The Right to Return*

The continued displacement of hundreds of thousands of Bosnians cannot be brushed aside as being just a sad and regrettable result of a horrible war. The refugees and displaced persons are actually *still* suffering human rights violations, first and foremost, the violation of their right to return to their homes provided for in international human rights standards and agreements.

⁶⁷ Medica mondiale e.V. : *Zur Situation der Flüchtlinge aus Bosnien-Herzegowina und dem Kosova in Deutschland*, February 2000.

⁶⁸ Several cases mentioned in the report concern women who were subjected to sexual abuse during the war.

⁶⁹ According to Medica mondiale only two centres exist in the whole of the country which specialize in the treatment of women traumatized by the war - both are situated in the Federation.

⁷⁰ UNHCR: *Daunting prospects, minority women: obstacles to their return and integration*, April 2000.

In Annex 7 to the Peace Agreement, it is stated that:

All refugees and displaced persons have the right freely to return to their homes of origin... The early return of refugees and displaced persons is an important objective of the settlement of the conflict in Bosnia-Herzegovina. The Parties confirm that they will accept the return of such persons who have left their territory, including those who have been accorded temporary protection by third countries.⁷¹

⁷¹ General Framework Agreement for Peace in Bosnia-Herzegovina (the Peace Agreement). Annex 7 (Agreement on Refugees and Displaced Persons) Article I (1) The right to return to one's home is also enshrined in the Constitution of Bosnia-Herzegovina.

The Peace Agreement was signed by parties to the conflict, the Republic of Croatia, the Republic of Bosnia-Herzegovina and its two entities (the Federation and Republika Srpska) and the Federal Republic of Yugoslavia. The European Union, France, Germany, the Russian Federation, the United Kingdom and the United States of America initialled (or “witnessed”) the agreement. As an instrument of international law, the Peace Agreement⁷² is a fundamental tool to finding a remedy to the forcible expulsions that were committed on a mass scale in Bosnia-Herzegovina during the war in the early nineties.⁷³ Annex 7 to the Peace Agreement is central to the operations of UNHCR in Bosnia-Herzegovina and guides it in fulfilling its organizational mandate to ensure that refugee rights are protected.

Refugees and displaced persons right to return is also recognized in international human rights law. The right to freedom of movement and residence is guaranteed in Article 13 of the Universal Declaration of Human Rights, and reiterated in Article 12 of the ICCPR⁷⁴:

Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.

Recently, the Security Council has further developed this right to extend it to the right to return to one’s home of origin, in conflicts characterized by mass displacement on the basis of ethnic identity. For both Abkhazia and Kosovo (Kosova), the Security Council affirmed this right to return as including the right to return to one’s home.⁷⁵

⁷² The Peace Agreement has also been endorsed on numerous occasions by the UN Security Council and General Assembly, see *inter alia* GA resolution 54/184 (29 February 2000).

⁷³ If the action of forcible expulsion or displacement is committed as part of a widespread or systematic attack directed against any civilian population it is recognized as an international crime and will be within the jurisdiction of the future International Criminal Court as a crime against humanity (see Article 7(1)(d) of the Rome Statute). Actions constituting “ethnic cleansing” are prohibited under international human rights law. See, for instance, the ICCPR (Article 26), the Convention on the Elimination of All Forms of Racial Discrimination and the International Convention on the Suppression and Punishment of the Crime of Apartheid. It has also been recognized as such by the International Criminal Tribunal for Former Yugoslavia (“the Tribunal”).

⁷⁴ As well as in Protocol No. 4 to the European Convention for the Protection of Human Rights and Fundamental Freedoms.

⁷⁵ Concerning the situation in Abkhazia (Georgia), the Security Council has stressed the unconditional right to return. Quote from Resolution 1225 (1999), reiterated in Resolution 1255 (1999): “[The Security Council] reaffirms the unacceptability of the demographic changes resulting from the conflict and the imprescriptible right of all refugees and displaced persons affected by the conflict to return to their homes in secure conditions in accordance with international law and as set out in the Quadripartite Agreement of 4 April 1994 on the voluntary return of refugees and displaced persons (S/1994/397, annex II), and calls upon the parties to address this issue urgently by agreeing and implementing effective measures to guarantee the security of those

who exercise their unconditional right to return” (emphasis added). Also, in Resolution 1244 (1999) on Kosovo (Kosova), the Security Council reaffirmed the right of all refugees and displaced persons to return to their homes in safety.

During and after the armed conflict in Bosnia-Herzegovina, the right to return to one's home was endorsed by the General Assembly: "[The General Assembly] reaffirms once again *the right of refugees and displaced persons* from the areas of conflict in the territory of the former Yugoslavia *to return voluntarily to their homes* in safety and dignity" (emphasis added).⁷⁶ In a resolution of 29 February 2000, the General Assembly stated that it "[r]eiterates its demand that all parties in Bosnia-Herzegovina immediately create conditions conducive to the voluntary return, in safety and with dignity, of refugees and internally displaced persons to their homes".⁷⁷ The UNHCR has recently said that "the right of refugees to return to their pre-conflict residence is essential to effective peace building".⁷⁸

The right to freedom of residence and movement is still being infringed for hundreds of thousands of Bosnians who cannot return to their homes of origin, half a decade after the war has ended. Amnesty International supports the view that refugees and displaced persons have a right to return to their homes in a situation where an international peace agreement has been agreed upon which clearly, as part of the peace and reconciliation procedure, has as one of its main purposes to provide a remedy to the forcible mass expulsion.⁷⁹

⁷⁶ GA resolution 49/10 (3 November 1994). See also GA resolutions 47/121 (18 December 1992) and 48/88 (20 December 1993). In GA resolution 51/203 (17 December 1996) the General Assembly stated that it "[r]eaffirms once again the right of refugees and displaced persons to return voluntarily to their homes of origin in accordance with the Peace Agreement, in particular annex 7 of the Agreement, and the realization of same in cooperation with the Office of the United Nations High Commissioner for Refugees and host countries, calls upon all parties to immediately establish the conditions necessary for the return of refugees and displaced persons to their homes and for the freedom of movement and communication for all the citizens of Bosnia-Herzegovina".

⁷⁷ GA resolution 54/184 (29 February 2000).

⁷⁸ UNHCR Report: Extremely Vulnerable Individuals: The Need for Continuing International Support in Light of the Difficulties to Reintegration Upon Return, November 1999.

⁷⁹ Ibid.

This right is further endorsed in the Guiding Principles on Internal Displacement⁸⁰, a number of provisions articulating the rights of internally displaced persons which are based in international human rights and international humanitarian law. Principle 14 describes the right to liberty of movement and freedom to choose one's own residence, and principle 28 sets a duty for "competent authorities" to establish conditions and provide the means "which allow internally displaced people to return voluntarily, in safety and in dignity, to their homes or places of habitual residence."

The continued safety concerns and the political and administrative obstacles to return are some of the reasons why this right to return is not easily implemented. In addition, one of the largest obstacles is the basic lack of accommodation. If people are returned from their countries of asylum prematurely to Bosnia-Herzegovina, whether "voluntarily" or forcibly, they will in practice have little chance of having regained possession of their former home from abroad. In addition to this, a pattern of internal displacement (whether caused by the war or by relocating returnees) has been established. This pattern, coupled with the existence of political and administrative obstacles to return mean that the majority of those returning from abroad will face internal displacement and will be forced to stay in camps, with friends or family or other temporary accommodation, including home of other displaced people, often using their repatriation grants for basic subsistence needs and not for the reconstruction of their homes. The result of this largely uncoordinated approach is that the block that currently stops people from returning to their homes in Bosnia-Herzegovina will be cemented. Any involuntary relocation to a place other than one's home contradicts the purposes of the Peace Agreement, infringes on other people's right to return and perpetuates the policies that were behind the "ethnic cleansing" in Bosnia-Herzegovina.⁸¹

⁸⁰ Developed by the Representative of the Secretary-General on Internally Displaced Persons. Commission on Human Rights 54th Session, UN Doc E/CN.4/1998/53/ADD.2

⁸¹ "Induced repatriations to situations of internal displacement which is not sustainable aggravate existing problems and are increasingly counterproductive for ongoing efforts to implement the GFAP, and specifically to promote minority return opportunities generally. This is widely recognised by OHR, OSCE, SFOR and others concerned. In situations of internal displacement, people are relocating to the homes of others (minorities) and as the option of returning to their own homes does not yet exist, they are not exercising a free choice." (emphasis added) Update of UNHCR's position on categories of persons from Bosnia-Herzegovina who are in continued need of international protection, May 1999.

Amnesty International believes that *sustainable return* is the standard by which returns should be guided. For a return to be sustainable the minimum requirements would be that there has been a durable removal of the causes of flight and a possibility for effective reintegration. The purpose of the Peace Agreement would be rendered worthless if the conditions facing the returnees failed to make it possible for them to lead their lives in the place they choose. This would entail ensuring the returnees access to a wide range of rights on a non-discriminatory basis - as well as ensuring guarantees of safety and security of their persons - such as the rights to housing, health care, education and work.⁸² According to the Peace Agreement, no one shall be compelled to return “to areas lacking in the basic infrastructure necessary to resume a normal life.”⁸³

The Humanitarian Issues Working Group⁸⁴ reaffirmed this in its latest update in 1999 on the situation in Bosnia-Herzegovina: “The viability of most returns remains dependent upon the successful reintegration of the returnees and the peaceful and prosperous enjoyment of their property. Coherent reconstruction and development activities, as well as more focussed support to create an environment conducive to successful reintegration, must follow returns more closely than has been the case to date.”⁸⁵

Most forms of relocation that have occurred in Bosnia-Herzegovina cannot be considered to be durable solutions to the plight of the displaced.⁸⁶ By turning a blind eye

⁸² “Discrimination on the basis of ethnicity, political opinion and gender remains endemic in Bosnia and Herzegovina... Discrimination is perpetuated by the continued strength of the nationalist political parties which control most aspects of economic life in Bosnia-Herzegovina”. Situation of human rights in former Yugoslavia. Report of Mr. Jiri Dienstbier, Special Rapporteur of the Commission on Human Rights in Bosnia-Herzegovina, the Republic of Croatia and the Federal Republic of Yugoslavia. E/CN.4/2000/39. 28 December 1999. “In most cases, returnees find almost no prospect of normal life upon return. Discrimination in employment combined with the overall difficult economic situation in Bosnia-Herzegovina, lack of access to pensions or social protection, inadequate health care and limited educational possibilities all continue to be real obstacles to sustainable returns.” Unofficial update to the Report (E/CN.4/2000/39), 20 March 2000. For a summary of the concerns that face minority returnees, especially extremely vulnerable individuals, see the UNHCR report: *Extremely Vulnerable Individuals: The Need for Continuing International Support in Light of the Difficulties to Reintegration Upon Return*, November 1999.

⁸³ Article I(4).

⁸⁴ This Working Group was established in 1992 under the International Conference on former Yugoslavia (ICFY).

⁸⁵ Humanitarian Issues Working Group, Update on durable solutions for refugees and displaced persons in the context of the Dayton Agreement (HIWG/99/5), 8 December 1999.

⁸⁶ *Voluntary relocation* has been defined as the resettlement of a person in a property where he or she did not previously live, which occurs with the consent both of the relocated person and the original owner of that

or by actively assisting these policies in Bosnia-Herzegovina, the Bosnian authorities and the international community fail to fulfil their obligations under the Peace Agreement and undermine the peace and reconciliation process.

2. The need for international protection

2.1 “Temporary protection”

property. Relocation in Bosnia-Herzegovina has often been less than voluntary. There have been numerous occasions, even in latter years, of so-called *hostile relocation* inside Bosnia-Herzegovina, that is, situations where the local or entity-level authorities have tried to secure territory and actively block return of minorities by placing displaced persons in housing belonging to a minority ethnic group. *Passive relocation* occurs when the displacement becomes a permanent condition not based on the free will of the returnee, including when the individuals concerned become resigned to remaining in their present location.

As a result of the conflict in Bosnia-Herzegovina between 1992 and 1995, around 1.2 million Bosnians sought refuge in other countries, mainly in western Europe and the neighbouring former Yugoslav republics. Many of the Bosnian refugees in western Europe were not granted refugee status in accordance with the 1951 Refugee Convention, but were instead granted “temporary protection”, humanitarian status or some other form of protection or leave to remain.⁸⁷ The grounds behind the use of these temporary protection schemes are manifold: a narrow interpretation of the UN Refugee Convention, governments’ claims of an overburdened domestic asylum system due to a situation of mass influx and an overtly optimistic notion that it would be possible for the refugees to return to their country of origin after a short period of time.

Upon granting a person Convention Refugee status, the common practice in many, if not the majority, of western states has been to provide them with a permanent residence permit or a permanent leave to remain. By using temporary protection instead of applying the Refugee Convention in a full and inclusive manner,⁸⁸ states have effectively robbed refugees of a number of the rights they should have been afforded in accordance with the provisions of the Refugee Convention. Even though there is nothing in the Refugee Convention that guarantees a right to stay permanently in the country of asylum, the parallel systems create discrepancies, especially in relation to decisions in the termination of protection and the requirement for a refugee to go home.

⁸⁷ For a more detailed description of the forms of protection regimes that were used in the context of the influx of Bosnian refugees, see the AI report “*Who’s living in my house?*” (AI Index: EUR 63/01/97) 1997.

⁸⁸ UNHCR stated in 1993 that almost all of those fleeing would have qualified as refugees under the Refugee Convention.

The principles guiding the ending, or the cessation, of refugee status are clear and should be applied restrictively. The change of the situation in the country of origin must be of a profound and enduring nature.⁸⁹ This is further elaborated on in recent guidelines issued by the United Nations High Commissioner for Refugees.⁹⁰ For situations similar to the one in Bosnia-Herzegovina they provide good guidance on which considerations must taken into account before the need for international protection should cease. Important criteria would be, for instance, the existence of a national reconciliation process and its connection to the firm establishment of political changes, economic and political stability and the success of major aspects of a peace process “such as the restoration of land and property rights”. The UNHCR guidelines are clear in instances where the relevant changes have only occurred in part of the territory of the country of origin, as is the case in Bosnia-Herzegovina: “Refugee status can only come to an end if the basis for fear of persecution is removed without the pre-condition that the refugee has to return to specific “safe areas” of the country in order to be free from persecution.”⁹¹

An evaluation must be made of the human rights situation in the country of origin that is impartial, independent and in keeping with the standards set forth in the Refugee Convention before the ending of temporary protection or refugee status. The UNHCR has *not* declared the “ceased circumstances” clause to be applicable for refugees from Bosnia-Herzegovina.⁹²

International refugee law standards provide that those who have been determined to be Convention Refugees should have the right to have their individual claims for protection examined in a fair and satisfactory asylum procedure before the termination of

⁸⁹ The provision has been interpreted by the Executive Committee of the UNHCR to say in its Conclusion 69 (q): “where a change of circumstances in a country of origin 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”. EXCOM’s conclusions, which are adopted by consensus, are regarded as authoritative in the field of refugee rights.

⁹⁰ The Cessation Clauses: guidelines on their application. UNHCR/IOM/17/99/UNHCR/FOM/17/99. February 1999.

⁹¹ The doctrine of the internal flight alternative (or the internal relocation alternative or the internal protection alternative) is something that has been misconstrued to be a salient issue in cases of Bosnian refugees, but it is not intended to be applied in the context of termination of protection or in the context of repatriation programmes. Any involuntary relocation to areas other than the home district contradicts the purposes of the Peace Agreement and infringes the right to return of all displaced Bosnians.

⁹² The UNHCR “declared cessation” for national groups of refugees of 15 countries due to changed circumstances in the country of origin between 1975 and February 1999. UNHCR Cessation Clauses Guidelines February 1999.

their status.⁹³ Amnesty International believes that the same standard should apply for persons with temporary protection status.

2.2 Reasons to retain protection

⁹³ EXCOM Conclusion 69.

Refugees who have been traumatized prior to or during flight are covered by the Refugee Convention if they cannot be expected to return to their country of origin because of “compelling reasons arising out of previous persecution”.⁹⁴ There is an obligation for host states to ensure that persons with these reasons are given access to an individual procedure where their compelling reasons can be identified and a decision on their status made. In UNHCR EXCOM Conclusion 69 (e) *it is recommended that “States seriously consider an appropriate status, preserving previously acquired rights, for persons who have compelling reasons arising out of previous persecution for refusing to re-avail themselves of the protection of their country”*. In line with this, the UNHCR has recently urged the German authorities,⁹⁵ to grant permanent residence permits to the most vulnerable remaining Bosnian refugees and their families (about 15,000 people according to the UNHCR), following the continued pressure from German constituent provinces (“Bundesländer”) to ensure the return of all Bosnians to Bosnia-Herzegovina (see chapter 2 of this report).

Evidently, Bosnians who leave their country now to seek asylum in other countries may also have valid protection concerns. They have the right to have their individual claims for protection assessed in a fair and satisfactory asylum procedure.

3. Voluntary repatriation

3.1 Coordination of returns

⁹⁴ UN Refugee Convention Article 1(C) (5) and (6).

⁹⁵ UNHCR Berlin Press statement 29 May 2000 “Bosnien-Rückführung: Appell zum Kurswechsel” and UNHCR Geneva Press Statement 30 May 2000.

Voluntary repatriation is probably the most coveted durable solution to the plight of refugees. It is the preferred remedy for most individual refugees. International standards exist for the voluntary repatriation of refugees, which regrettably are not followed in many of these operations.⁹⁶ It is vital to recall that host countries and the *countries of origin* are to cooperate in the pursuit of this preferred durable solution and that UNHCR is instructed by EXCOM to begin work early in a refugee outflow situation to pursue voluntary repatriation as a solution.⁹⁷

The repatriation of several hundred thousand refugees and internally displaced persons is a highly complex matter which requires a very cautious approach if it is not going to disrupt or even threaten the very heart of the process. Annex 7 of the Peace Agreement allocates the coordination of responsibility for the repatriation to the UNHCR, which is standard practice for refugee returns in such situations. The UNHCR should in this regard work jointly with governments as well as non-governmental organizations.⁹⁸ Together with the countries of asylum, the UNHCR is to develop a repatriation plan “that will allow for an early, peaceful, orderly, and *phased* return of refugees and displaced persons” (emphasis added).⁹⁹ Furthermore, countries of asylum should “promote the early return of refugees *consistent with international law*” (emphasis added).¹⁰⁰ The coordination of returns has also been recognized by the UN Security Council to be “crucial to lasting peace” in the region.¹⁰¹

3.2 The basic principles of voluntary repatriation

The right of a refugee to return to his or her own country is recognized in international law in, *inter alia*, the Universal Declaration of Human Rights (1948) Article 13 (2), “Everyone has the right to leave any country, including his own, and to return to his

⁹⁶ One of the problems in relation to this is evidently the conflict of interest within the UNHCR which is the agency responsible for the protection of refugees as well as the agency promoting and facilitating voluntary repatriation. See *Amnesty International Report 1999* pp 39-48.

⁹⁷ EXCOM Conclusion 40 (e).

⁹⁸ See *inter alia* EXCOM Conclusions 18, 40 and 74.

⁹⁹ Peace Agreement Annex 7 Article I (5).

¹⁰⁰ *Ibid.*

¹⁰¹ UN Security Council Resolution 1247 (1999) “[The Security Council] is emphasising that a comprehensive and coordinated return of refugees and displaced persons throughout the region continues to be crucial to lasting peace”.

country”, as well as in the International Covenant on Civil and Political Rights Article 12 (4), “No one shall be arbitrarily deprived of the right to enter his own country”.

The main criteria for repatriation is self-evident. It must be *truly voluntary*. The involuntary repatriation of refugees may constitute a breach of the principle of *non-refoulement*, the right not to be sent back to a country where one might be at risk of human rights violations.¹⁰² A return cannot be voluntary unless the conditions in the country of origin are known to the individual so that he or she can make an *informed decision* on the issue of return.¹⁰³ Therefore, reliable, objective and impartial information of the situation on the ground in the areas of prospective return must be provided to all individual refugees.

The legal status of the refugees in the country of asylum are of vital importance. Refugees who have an uncertain or “lesser” status in the country of asylum might be “pushed” to give up their stay prematurely. Other push-factors limiting a free choice include conditioning repatriation assistance to certain deadlines or conditions, withholding of social benefits in the country of asylum, denying or circumscribing refugees’ other social rights such as the right to work and the right to family reunification and other forms of physical, material or psychological pressure.¹⁰⁴ The possibility to make a free and informed decision on return should be given to all members of a household bearing in mind gender-based concerns.

A failure to uphold these principles in a repatriation programme would result in a breach of the principle of *non-refoulement*, the corner-stone of international refugee protection.

3.3 In safety and with dignity

The manner in which a voluntary repatriation is executed is of vital importance. The Peace Agreement says:

¹⁰² Expressed in Article 33(1) of the Refugee Convention, but also in other human rights instruments such as the UN Convention against Torture, Article 3, and in the case-law of the European Court of Human Rights.

¹⁰³ See also the Peace Agreement Article I(4): “The Parties shall facilitate the flow of information necessary for refugees and displaced persons to make informed judgments about local conditions for return”.

¹⁰⁴ “One of the most important elements in the verification of voluntariness is the legal status of the refugees in the country of asylum. If refugees are legally recognized as such, their rights are protected and if they are allowed to settle, their choice to repatriate is likely to be truly free and voluntary. If however, their rights are not recognized, if they are subjected to pressures and restrictions and confined to closed camps, they may choose to return, but this is not an act of free will”. UNHCR Handbook on Voluntary Repatriation, 1996.

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.¹⁰⁵

The international standard is that voluntary repatriation should take place *in safety and with dignity*.¹⁰⁶ The UNHCR Handbook on Voluntary Repatriation¹⁰⁷ presents some conditions that help to interpret this phrase. “In safety” would entail, among other things, “*legal safety* (such as amnesties or public assurances of personal safety, integrity, non-discrimination and freedom from fear of persecution or punishment upon return), *physical security* (including protection from armed attacks, and mine-free routes and if not mine-free then at least demarcated resettlement sites), and *material security* (access to land or means of livelihood)”¹⁰⁸ (emphasis added). EXCOM Conclusion 40 qualifies this by saying in “absolute safety”.

The concept of dignity is more vague, but some exemplifying, non-exhaustive conditions have been set out by the UNHCR: “In practice, elements must include that refugees are *not* manhandled; that they can return *unconditionally* and that if they are returning spontaneously they can do so *at their own pace*; that they are *not arbitrarily separated from family members*; and that they are *treated with respect and full acceptance* by their national authorities, including the *full restoration of their rights*” (emphasis added).¹⁰⁹

Other conditions include physical safety at all stages during and after their return, special attention that should be given to needs of vulnerable groups, the possibility of bringing movable possessions, respect for school and planting seasons and freedom of movement.

¹⁰⁵ Peace Agreement Annex 7 Article I(2). Article I(3) adds: “The Parties shall take all necessary steps to prevent activities within their territories which would hinder or impede the safe and voluntary return of refugees and displaced persons.”

¹⁰⁶ For the evolution of the standards on voluntary repatriation and return and reintegration, see *inter alia* EXCOM Conclusions 18, 40, 45, 77 and 79. Special safeguards should be put in place to ensure women’s participation in the decision, see EXCOM Conclusion 73.

¹⁰⁷ The Handbook on voluntary repatriation, published in 1996, does not, however, set any clear or acceptable standards for when it is safe to return. For a more elaborate criticism of this aspect of the Handbook, see the Amnesty International report *Human rights have no borders*, pp. 83-94 (AI Index: ACT 34/03/97).

¹⁰⁸ UNHCR Handbook on voluntary repatriation p. 10.

¹⁰⁹ *Ibid.*

The country of asylum and the UNHCR should also seek to facilitate assessment visits to the country of origin. Any assessment visits of shorter or longer term should not deprive the prospective returnees of continued international protection.

The safety of return must be based on human rights standards which give guidance whether or not the human rights situation has improved to a degree that it can be reasonably expected that refugees can return. Currently, there are no clear and comprehensive guidelines drawn up in accordance with human rights standards and based on an independent and impartial process for deciding this. Amnesty International continues to call for a re-examination of this vital issue in international refugee law.¹¹⁰

3.4 The return of the internally displaced

The Guiding Principles on Internal Displacement provide that “[internally displaced persons have] the right to be protected against the forcible return to or resettlement in any place where their *life, safety, liberty and/or health would be at risk*”(emphasis added).¹¹¹ The Peace Agreement obliges its parties not to “compel [the returnees] to remain in or move to situations of *serious danger or insecurity*” (emphasis added).¹¹² Moreover, Amnesty International believes that the obligation of states to protect their citizens against forcible return to areas where they would be at grave risk is a necessary consequence of the individuals right to freedom of movement and choice of residence in their country as guaranteed by Article 12(1) of the ICCPR.

¹¹⁰ Amnesty International report *Human rights have no borders*, p. 94.

¹¹¹ Principle 15 (d).

¹¹² Peace Agreement Annex 7 Article I(4).

Principle 28 of the Guiding Principles on Internal Displacement accordingly obliges “competent authorities” to establish conditions and provide the means “which allow internally displaced people to return voluntarily, *in safety and with dignity*, to their homes or places of habitual residence”(emphasis added). In addition to this, authorities shall endeavour to facilitate the reintegration of returned or resettled internally displaced persons. In the case of Bosnia-Herzegovina, the international community (UNHCR, OSCE, OHR and UNMIBH) have been given a large role in this regard. The same criteria for voluntary return should therefore apply in this regard to the internally displaced persons in Bosnia-Herzegovina as for those who sought refuge abroad. The Peace Agreement’s Annex 7 is a further expression of the safety of return. The parties are obliged to show their commitment to human rights and to create “conditions suitable for return of refugees and displaced persons.”¹¹³

Amnesty International’s conclusions and recommendations

There is clearly a great potential matched by an ardent desire among refugees and the internally displaced for minority returns to the Podrinje region, and the realization of sustainable returns to this part of the country could be the key solution to the achievement of the minority return targets to Sarajevo Canton - which are of enormous symbolic importance to minority returns as a whole.

Yet major problems remain for minority returnees in exercising their human rights in this respect. In particular Amnesty International is concerned about the political and administrative obstruction in the delay and lack of implementation of property legislation. With few urban returns actually happening, the organization fears that no real prospects of sustainable return and integration exist. Furthermore, the impunity with which violent attacks against life and property of returnees are continuing to be committed serves as a major impediment to return and undermines the rule of law in the return areas.

In addition, the lack of objective and accurate information available to refugees and internally displaced persons carries the risk that people may not be able to exercise their right to return based on an informed choice, and in a free and individual manner.

Finally, Amnesty International fears that the international community is not adhering to its obligations under the Peace Agreement by forcibly returning refugees who cannot yet return to their homes in Bosnia-Herzegovina and who upon return become

¹¹³ Peace Agreement Annex 7 Article I(3). These conditions mean that, *inter alia*, “confidence building measures” must be taken against discriminatory domestic legislation, acts of incitement, acts of retribution and persons in authority responsible for the violations of basic rights of ethnic or minority groups as well.

internally displaced. There are also strong indications that governments may not fulfil their pledges to provide in time the funds necessary for sustainable return and reintegration.

Amnesty International's recommendations to the Bosnian authorities and to the international community

- *The Federation and Republika Srpska governments as well as the joint government bodies of Bosnia-Herzegovina should endeavour to fulfil their obligations with regard to the right to return as set out in the Peace Agreement through cooperation in good faith in the interests of reintegration and reconciliation of their citizens.*
- *The Republika Srpska government, notably the Ministry for Refugees and Displaced Persons, should ensure as a matter of urgency that the municipal officers of the Ministry should carry out their duties professionally and expediently and that positive decisions on the return of property (whether issued by themselves or by the CRPC) are executed immediately. The entity authorities should as a priority ensure proper resourcing of the OMIs, including securing additional staffing and equipment.*
- *The Republika Srpska government, in particular the Ministry of Interior Affairs (MUP) should impartially and thoroughly investigate incidents of violence against returnees, regardless of*

their nationality, publish their findings and proceed with due diligence with the criminal prosecution of those responsible. Such incidents should be condemned by the local and entity authorities as violating the human rights belonging to all citizens of the entity and of Bosnia-Herzegovina.

- *Amnesty International notes with approval the recent improved cooperation between the Republika Srpska government and the Tribunal as well as the reported preparation of a law on entity cooperation with the Tribunal which the organization sees as a positive step toward the achievement of justice for all victims of war crimes and the restoration of the rule of law in the entity. Amnesty International encourages the authorities to proceed as a matter of urgency with the adoption and implementation of this legislation. In line with the Republika Srpska's obligation to cooperate with the Tribunal unconditionally, any outstanding arrest warrants that have been handed over to the authorities by the Tribunal should be enforced as soon as possible.*
- *The Stabilization Force (SFOR) should continue to seek out and arrest those indicted by the Tribunal, bearing in mind the importance of prosecutions for violations of international humanitarian law in the eastern Republika Srpska. In particular the arrests of Radovan Karad_i_ and Ratko Mladi_, indicted for their alleged responsibility for, *inter alia*, the atrocities which happened in Srebrenica are a necessary condition for viable minority returns, as well as an important recognition of individual*

responsibility instead of collective guilt for the war crimes that were committed in this part of the Republika Srpska.

- Both the Federation and the Republika Srpska authorities should ensure that displaced persons have access to objective, accurate and up to date information concerning their rights stemming from the Peace Agreement and current national legislation. Authorities in countries still hosting Bosnian refugees should similarly make sure that such information reaches those affected by it.
- Minority returns must be sustainable and should not take place to areas where people are at risk. Both Bosnian entity and national authorities and the international community must ensure that returnees are not discriminated against when trying to enjoy their social and economic rights and that they get sufficient support to return.
Minorities, including Roma, already living in areas now dominated by another ethnic group should receive sufficient support to reclaim their properties.
- Displaced people, often classified as extremely vulnerable individuals, in collective centres and in transit centres should be ensured the same possibilities to fulfil their rights under the Peace Agreement as anyone else. The international community and Bosnian authorities should take into account the special needs of the elderly. Similarly, other categories of extremely vulnerable individuals, notably single female heads of households, should

receive adequate and appropriate assistance for return and reintegration.

- The Federation and Republika Srpska authorities should guarantee everyone's right to express their wish to return. No displaced person should be deprived of any rights or entitlements in the entity in which they currently reside because of an expressed wish to return.*
- Countries still hosting Bosnian refugees should observe voluntary repatriation standards, requiring that refugees' decisions to repatriate should be made freely and based on an informed choice and that there are guarantees that the return will take place in safety and dignity. Bosnian refugees who cannot yet return in safety and with dignity to their homes in eastern Republika Srpska should not be forcibly returned to other parts of Bosnia-Herzegovina.*
- The international community should ensure coordination of donor funding projects and apply a coordinated approach to ensure the achievement of the goals set out in the Peace Agreement. Countries donating aid should refrain from bilateral projects with local authorities which entail building or reconstruction activities that may undermine the process of minority returns.*
- Donor countries should live up to their pledges to render returns sustainable, in particular their commitments made to the*

European Union Stability Pact. This is of great importance in connection with the many spontaneous return movements in the eastern Republika Srpska, which are unprecedented in this part of the country, but are clearly not self-sustainable. Urgent clarification is needed on how and when money promised to fund Stability Pact returns projects (during the March Brussels Conference of the Stability Pact) will be released and also how this will impact on other, earlier funding proposals.