

FEDERAL REPUBLIC OF YUGOSLAVIA

KOSOVO - Essential Safeguards for an Agreement

The various parties to the conflict in Kosovo are making efforts to reach an agreement in Rambouillet, France ("the agreement"). The final agreement should contain strong provisions to protect human rights and rights under humanitarian law, and impose a duty on the parties concerned to immediately halt their violation. The agreement should also reflect a serious and long-term commitment for the effective protection of human rights in Kosovo and, indeed, in the Federal Republic of Yugoslavia (FRY) as a whole.

Violations of human rights lie at the heart of the current conflict in Kosovo, and have done so ever since it developed during the 1980s. It is therefore essential that the effective protection and promotion of human rights should be the centrepiece of any agreement to be reached on Kosovo. No lasting peace will be achieved without this.

The proposals which have been presented to the parties in Rambouillet are understood to contain some of the building blocks for such an important and historic agreement¹. However, from the information available there appear to be gaps and it seems clear that the draft agreement on Kosovo, now being discussed, needs to be substantively strengthened.

Since the agenda of the negotiations includes government institutions for Kosovo within the FRY, consideration will also have to be given to ways and means of avoiding the establishment of two different human rights regimes: one for Kosovo and another for the FRY. The same standards and human rights protection mechanisms should apply throughout the territory and they should afford the highest possible protection. Amnesty International recommends in this paper essential measures for human rights protection for the short as well as the long term in Kosovo and also lists a series of steps that should be taken as a priority.

¹ This paper refers to some of proposals known to have been presented during the negotiations, although the closed nature of the meeting means that it is impossible to ascertain precisely what the latest proposals are.

AMNESTY INTERNATIONAL'S 16 RECOMMENDATIONS TO THE PARTIES AT RAMBOUILLET

- **The agreement should incorporate human rights and humanitarian law guarantees which are fully consistent with international standards, including regional standards.**
- **The agreement should provide that all security forces and law enforcement personnel, whether national or international, strictly comply with all relevant international human rights and humanitarian law standards concerning law enforcement and criminal justice.**
- **Safeguards for the independence of the judiciary and prosecutors should be strong.**
- **The standards for permissible use of force during arrest and detention by the police should be tightened to meet international standards.**
- **The agreement should provide that all investigations of alleged extrajudicial executions including autopsies are prompt, thorough, independent and impartial and carried out in accordance with international standards.**
- **Monitoring of police operations by international monitors should be a vital component of the agreement. Police internal investigation bodies must investigate police officers' responses to allegations of human rights abuses and include international monitors for these investigations.**
- **The agreement should ensure that recruitment procedures of police in Kosovo provide that the new police force is representative of the various communities in Kosovo.**
- **The agreement should ensure that no amnesties or similar measures will have any legal or practical effect which prevent those responsible for grave human rights violations or violations of humanitarian law from being brought to justice.**
- **The agreement should ensure that all parties and all states contributing personnel to any international military or law enforcement forces fulfil their obligations under international law to search for, arrest and surrender persons indicted by the Tribunal, or for whom provisional arrest warrants have been issued.**

- **The agreement should provide that the victims of human rights violations committed by the authorities and abuses committed by armed groups should receive prompt and effective redress.**
- **The agreement should provide that the Constitutional Court and the Ombudsman apply international human rights standards and that the Constitutional Court has power to determine whether laws in Kosovo are compatible with international human rights standards. Adequate provision should be made to provide salaries and resources to both bodies on a long-term basis.**
- **The agreement should ensure that human rights implementation and verification by civilian bodies and military forces, whether national or international, are coordinated by a single official with full authority to take prompt and effective action.**
- **None of the parties participating in the supervisory body, the Joint Commission, should have the power or authority to block investigations into alleged human rights violations or abuses.**
- **A legal expert (or panel of legal experts) with proven expertise in human rights and humanitarian law should assist the Chair of the Joint Commission in his supervisory task. The respective powers of the Constitutional Court and the Ombudsman on the one hand and the Chair of the Joint Commission on the other should be clearly defined at the outset to ensure that there is no overlap.**
- **The agreement should ensure that asylum-seekers and internally displaced persons may return to their homes in safety and that they are fully compensated for any damage to their homes.**
- **The agreement should require all parties to cooperate fully with relevant international organizations, in particular the ICRC, in promptly providing information about the whereabouts or fate of persons who have “disappeared” or otherwise gone missing.**

I Steps to be taken as priority

Pending the adoption of an agreement and the establishment of structures and institutions envisaged therein to provide more long-term protection, all parties involved in the negotiations should take certain steps to stop human rights violations and abuses as a matter of priority. Measures should immediately be taken:

- to avoid further unlawful killings and to ensure that investigations into any such killings, including autopsies, are conducted by an effective, independent authority and monitored without obstructions by international monitors;
- to protect the integrity and security of individuals, notably during arrest and detention when detainees are most at risk of torture or ill-treatment;
- to end abductions and enforced “disappearances” by all parties and provide clarification of the fate or whereabouts of the victims of such practices;
- to put basic fair trial guarantees in place and establish timetables for the prompt review of trials of political prisoners whose trials fell short of international standards;
- to end impunity for perpetrators of human rights violations;
- to allow full and unhindered access to the International Criminal Tribunal for the former Yugoslavia in all cases involving war crimes, crimes against humanity and other serious violations of international humanitarian law for investigation and, where appropriate, prosecution;
- to allow full and effective access to the Office of the High Commissioner for Human Rights and other international human rights monitors;
- to create the conditions for domestic non-governmental organizations to operate freely and without hindrance;
- to grant full redress to the victims of human rights violations and abuses;
- to allow the unhindered return of displaced persons to their houses, with effective restitution including the necessary means to rebuild houses destroyed as punishment;
- and to create the conditions for effective freedom of the media.

II Human rights provisions in the agreement

The agreement should incorporate human rights and humanitarian law guarantees which are fully consistent with international standards, including regional standards.

The human rights provisions in any such agreement must be strong and include full guarantees for the effective protection and promotion of human rights in Kosovo which are fully consistent with international including European standards. The international human rights standards to which the FRY is a party should form the basis on which the human rights program is built. The agreement should specify that all authorities exercising power in Kosovo are bound to respect and ensure these rights, without distinction of any kind, and in a manner which is non-discriminatory.

These human rights obligations result from the commitment undertaken by the FRY authorities to respect and protect the rights guaranteed in the International Covenant on Civil and Political Rights (ICCPR), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (including the right of individuals to bring complaints to the Committee against Torture), the Convention on the Elimination of all Forms of Racial Discrimination, the Convention on the Rights of the Child, the Convention relating to the Status of Refugees. Furthermore, rights provided in declarations and principles on human rights and criminal justice (as described below in III) and on humanitarian law, notably the four Geneva Conventions of 1949 and the two Additional Protocols thereto, adopted by the United Nations (UN), should also be part of the agreement. It should also include the human rights standards adopted by the Council of Europe, notably the European Convention on Human Rights and Fundamental Freedoms (European Convention on Human Rights) and its Protocols, and by the Organization for Security and Co-operation in Europe (OSCE).

The parties should commit themselves in the agreement to observe and protect these international standards. Indeed anyone holding public office should demonstrate a commitment to respect and ensure them. Parties should also undertake to cooperate fully with international treaty supervisory and human rights bodies, including the UN Commission on Human Rights (and its country specific and thematic Special Rapporteurs and other mechanisms) and the Office of the UN High Commissioner for Human Rights, including its field offices in the area.

Early ratification of the (first) Optional Protocol to the ICCPR - which permits individuals to bring complaints of violations of the ICCPR before the Human Rights Committee - and of the European Convention for the Prevention of Torture should be required from the FRY in the agreement as a contribution to efforts to ensure long-term

human rights protection. Anyone should have the right to apply to both national and international institutions for the protection of these human rights.

Important human rights provisions are already part of the Yugoslav legal system and its Constitutions. Where international human rights standards such as the ICCPR and the European Convention on Human Rights provide a higher degree of protection than that provided in existing national standards, or in new laws to be adopted in Kosovo, the agreement should provide that these higher standards invariably apply. This legal protection of international human rights standards should be guaranteed at the highest level and be reflected in the Kosovo Constitution which the agreement envisages to be drafted. Care should be taken that the agreement creates effective mechanisms to ensure that international human rights standards are accurately incorporated in national laws and that they are fully implemented in practice. The agreement should specify that those human rights from which no derogation can ever be made² should be protected from being suspended under any circumstances. These rights, together with the right to a fair trial, should be given the highest level of constitutional protection, and be incorporated in the new Kosovo Constitution.

III The administration of justice

Applicable standards and commitments

The agreement should provide that all security forces and law enforcement personnel, whether national or international, strictly comply with all relevant international human rights and humanitarian law standards concerning law enforcement and criminal justice.

The draft agreement envisages the creation of new institutions to strengthen the administration of justice while acknowledging that existing officers and officials would remain in place for the interim period. It will take time to create these new institutions. It is therefore important that current and future police and court officials should, in their own language, be fully informed about and be trained to apply forthwith basic safeguards to protect persons from arbitrary arrest and detention as provided in Article 9 of ICCPR and Article 5 of the European Convention on Human Rights and other international law enforcement and criminal justice standards. In particular, no one in custody should be

²As specified in Article 4 (2) ICCPR, these are the right to life, the freedom from torture, the freedom from slavery, the right not to be imprisoned for failing to meet a contractual obligation, the prohibition of retroactive punishment, the right to recognition as a person before the law, and the freedom of thought, conscience and religion. See also Article 15 of the European Convention on Human Rights.

held in incommunicado detention, and prompt access to a judge and to a lawyer of his or her choice should be effectively guaranteed.

The agreement should require that the parties grant the International Committee of the Red Cross (ICRC) full and unhindered access to all the prisoners the ICRC has requested to visit and the places where they are kept, regardless of the party in charge of detention. All law enforcement personnel should be obliged to extend their full cooperation to the newly established Constitutional Court and institution of the Ombudsman, as well as to any existing and new international monitoring bodies that may be established in connection with the agreement. Respecting human rights should be made one of the key responsibilities for all communal and other police units operating in Kosovo.

Three international standards are particularly important to be immediately incorporated in the training of current and all future law enforcement personnel and should be promptly made available in Albanian and Serbian. These are:

- the UN Code of Conduct for Law Enforcement Officials (and the Commentary thereto)
- the UN Basic Principles on the use of Force and Firearms by Law Enforcement Officials, and
- the UN Body of Principles for the Protection of All persons under Any Form of Detention or Imprisonment

Training of judges and law enforcement personnel should also incorporate the jurisprudence of the European Court and the Commission of Human Rights, particularly in relation to the right not to be tortured, the prohibition of arbitrary detention and the right to fair trial.

The agreement should also provide that judges, prosecutors and relevant authorities be made to observe and be trained to apply other important international standards, which should also be made available in the languages spoken in Albanian and Serbian:

- the UN Basic Principles on the Independence of the Judiciary
- the UN Guidelines on the Role of Prosecutors and
- the UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions

Independence and appointment of judges and prosecutors

Safeguards for the independence of the judiciary and prosecutors should be strong.

An independent body such as a judicial service commission should be responsible for appointing all judges, rather than political bodies such as the President and the Assembly. Where the agreement provides that judges of the Constitutional Court are to be nominated by the Committee of Ministers of the Council of Europe, that Committee should also make those appointments. In order to preserve their independence from the police, prosecutors should not be appointed by a body with such close links to the police as the proposed Criminal Justice Administration, a new body planned to be in charge of coordinating communal police units.

The use of force by law enforcement personnel

The standards for permissible use of force during arrest and detention by the police should be tightened to meet international standards.

Police should only be authorized to use force “when strictly necessary” and the “intentional lethal use of firearms” by law enforcement officials may only be resorted to “when strictly unavoidable in order to protect life”³. To reinforce responsibility and accountability, all police personnel, including those involved in crowd control, should be clearly identifiable by number, if name is not possible. The use of weapons should be subject to tight control and detailed records should be kept of weapons handed out and returned. Senior officers should supervise their use by individual officers, study reports of incidents where armed force was used, assess their compatibility with international standards, and ensure that lessons learned are incorporated.

Those in charge of training law enforcement personnel in crowd control should include in their training package the Code of Conduct for Law Enforcement Officials and its Commentary and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, as well as jurisprudence under the European Convention on Human Rights concerning the protection of the right to life. They should also incorporate the teaching of practical skills including mediation and conflict resolution. This training package should be developed in close consultation with the UN, especially the Office of

³Article 3 Code of Conduct for Law Enforcement Officials and Principle 9 of the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. Articles 2 and 5 of the European Convention on Human Rights, as interpreted by the European Court of Human Rights, impose similarly strict requirements.

the High Commissioner for Human Rights, as well as domestic non-governmental organizations.

Police recruitment

The agreement should ensure that recruitment procedures of police in Kosovo provide that the new police force is representative of the various communities in Kosovo.

Persons with criminal records and those indicted by the International Criminal Tribunal for the former Yugoslavia should be excluded from service. An independent body, including both local police officers with a high degree of experience and professionalism and international members, should be established to define procedures for the vetting and recruitment of the new police force.

Monitoring of police operations by international monitors should be a vital component of the agreement. Police internal investigation bodies must investigate police officers' responses to allegations of human rights violations or abuses and include international monitors for these investigations.

The Agreement should ensure that police internal investigation bodies include within their remit the investigation of instances where police officers are alleged to have perpetrated violations directly or are alleged to have failed to prevent or stop violations or abuses by others. These bodies should have the authority to institute disciplinary proceedings, in accordance with international standards of fair process, and refer the matter to the judiciary if there is evidence of a crime.

Police internal bodies investigating allegations of human rights abuses should be staffed by officers with the proper qualifications and be representative of the national communities. They should include international monitors with the authority to have full access to relevant persons, sites, documents and any other evidence, at any time and without prior authorization, and provide advice as appropriate to the investigation body. These international monitors should also have the authority to report flaws in any investigation to the Agreement's supervisory bodies for corrective action.

Investigations into alleged extrajudicial executions including autopsies

The agreement should provide that all investigations of alleged extrajudicial executions including autopsies are prompt, thorough, independent and impartial and carried out in accordance with international standards.

The UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions and the UN Manual on these Principles contain several provisions which are especially relevant in the Kosovo context. They stipulate that in specific circumstances, which include cases of complaint by the family of the victim, the authorities shall enable investigations through an independent commission of inquiry. This could include fully independent local or international forensic experts. These principles also provide that the family of the deceased has the right to insist that a medical or other qualified representative be present at the autopsy. In view of the controversy about a series of alleged extrajudicial killings which have caused great international concern, and the manner in which autopsies have been conducted, the agreement should provide that these principles are implemented in Kosovo.

Amnesty and impunity

The agreement should ensure that no amnesties or similar measures will have any legal or practical effect which prevent those responsible for grave human rights violations or violations of humanitarian law from being brought to justice.

Where an amnesty is provided as part of the agreement, it should not apply to anyone against whom substantive evidence exists that he or she has committed violations of human rights or of international humanitarian law, including war crimes and crimes against humanity. Any trials for such offences must be held in accordance with international standards for fair trial as described in this document. It is crucial that impunity for human rights violations should be ended. The authorities should commit themselves to ensuring that the perpetrators of human rights violations and abuses are speedily brought to justice.

There should be no bar to prosecuting anyone for criminal acts, including if committed for political purposes, provided the laws are consistent with international standards and trials meet international law and standards. UN and other reports have analysed in detail past trials of political prisoners and concluded that they fell far short of international standards for fair trial - including by admitting evidence extracted under torture or duress. However, recommendations made by UN and other experts have not been implemented. No trials of political prisoners should take place before such standards have been put in place, and a timetable should be set to review those convicted for having committed politically motivated offences, so that they can be promptly released in cases where trials failed to meet international standards.

Cooperation with the International Criminal Tribunal for the former Yugoslavia (the Tribunal)

The agreement should ensure that all parties and all states contributing personnel to any international military or law enforcement forces fulfil their obligations under international law to search for, arrest and surrender persons indicted by the Tribunal, or for whom provisional arrest warrants have been issued.

The President and Prosecutor of the Tribunal have repeatedly expressed concern at the lack of cooperation given to the Tribunal by the Yugoslav authorities. These concerns have been reflected in a series of UN Security Council resolutions and Presidential Statements.⁴ On 17 November 1998 the Security Council “deplored” the Federal Republic of Yugoslavia’s continued failure to cooperate with the Tribunal, condemned it for failing to execute the Tribunal’s arrest warrants and affirmed that states may not invoke domestic law as justification for failure to perform binding obligations under international law.⁵ On 18 January 1999 the Tribunal’s Prosecutor was denied access by the FRY authorities to visit Kosovo in connection with alleged crimes falling within the Tribunal’s jurisdiction. The agreement should incorporate full and effective cooperation with the Tribunal by all parties as one its fundamental tenets.

No details of the peacekeeping force have been made public, except that the force is likely to be led by the North Atlantic Treaty Organization and will be around 30,000 strong. Should such a force be established as now being discussed, human rights protection and promotion should be built into the planning of its program and its implementation. The mandate of the force should include a chapter on reporting of human rights violations which are observed by the force and cooperation with human rights and humanitarian organizations. The mandate should explicitly state that human rights violations and abuses observed by mission members or allegations or other information received by them should be reported in a timely manner to other relevant organizations. Attention should be given to defining efficient channels for this at the outset of the deployment.

It is also implicit that any peacekeeping forces of states which are parties to the Geneva Conventions of 1949 have a duty to search for and arrest persons suspected of serious violations of international humanitarian law. The mandate of any such force should reaffirm this duty. The peacekeeping force itself will be committed to respect in full international humanitarian law in its operations.

⁴ Security Council resolutions 1160 (1998), 1199 (1998) and 1203 (1998).

⁵ Security Council resolution 1207 (1998).

Victims and witnesses

The agreement should also provide that the victims of human rights violations and abuses should receive prompt and effective redress.

The parties should undertake that witnesses are given effective protection and that no one is punished for complaining, or giving evidence about human rights violations to, a national or international body or prevented by such means from planning to do so.

National human rights institutions: two new bodies

The Constitutional Court

The Constitutional Court should apply the international human rights standards specified above (under I) and have power to determine whether laws in Kosovo are compatible with international human rights standards. Adequate provision should be made to provide salaries and resources to both bodies on a long-term basis.

The Constitutional Court (which, in the interim would include a majority of members selected from a list prepared by the Committee of Ministers of the Council of Europe) is envisaged to have final jurisdiction over complaints that human rights and the rights of national communities have been violated, after all domestic remedies have been exhausted. Only judges of the highest moral standards and independence should be selected. They should all receive training in human rights and humanitarian law. The Constitutional Court should apply the international human rights standards specified above (under I) and have power to determine whether laws in Kosovo are compatible with the international human rights standards to which the FRY is a party (as listed above), with the European Convention on Human Rights and with the proposed Kosovo Constitution. It should require that domestic remedies should first be exhausted only where these remedies are effective. The Constitutional Court should give priority to allegations of especially severe or systematic violations and those based on alleged discrimination on prohibited grounds.

It is important to ensure that, once the Court is established, its judgments are recognized and executed by all public authorities in Kosovo. Any acts of non-compliance with its judgments should be reported to the central implementation mechanism of the agreement: the Chair of the Joint Commission, envisaged to be the head of the Kosovo Verification Mission (KVM) and, through him, to the Secretary General of the OSCE.

The Ombudsman

The Ombudsman is planned to be a man or woman elected by the Assembly from a list prepared by the President of the European Court of Human Rights, to “monitor the realization of the rights of members of national communities and the protection of human rights and freedoms in Kosovo”. In order to be effective, the Ombudsman should be guaranteed unhindered access to any place where persons are held or are suspected to be held. The human rights standards to be considered by the Ombudsman should include all those included in this document. The agreement should include fixed time limits by which the relevant authorities must respond to requests for information about cases or implement the Ombudsman’s recommendations. Like the Constitutional Court, the Ombudsman should be able to report cases of non-compliance to the Chair of the Joint Commission. In order to be able to operate effectively and independently, the Ombudsman should be guaranteed funding on a stronger footing than envisaged: adequate funding for the Ombudsman and her or his staff should be provided at least for a three-year cycle.

IV International Implementation and Monitoring

The agreement should ensure that human rights implementation and verification by civilian bodies and military forces, whether national or international, are coordinated by a single official with full authority to take prompt and effective action.

Since the two new national human rights institutions are also envisaged to have judicial and other competence over complaints concerning human rights, it is important to ensure that the respective powers of the Constitutional Court and the Ombudsman on the one hand, and the Chair of the Joint Commission (see below) on the other, are clearly defined at the outset to ensure there is no overlap.

The latest reports indicate that the monitoring of enforcement and supervision of implementation of the proposed agreement, including its human rights provisions, is to be carried out by the Kosovo Verification Mission (KVM) established by the OSCE. If this is the case in respect of monitoring the police then Amnesty International recommends that the OSCE works closely with the UN and draws upon its extensive experience in this field, especially in the Civilian Police monitoring operations in Croatia and Bosnia-Herzegovina. Particular attention must be given to monitoring compliance with local law and international policing standards mentioned above.

The Joint Commission

None of the parties participating in the Joint Commission should have the power or authority to block investigations into alleged human rights violations or abuses.

A central coordinating role to monitor and coordinate the implementation of the agreement is planned to be allocated to a Joint Commission. It will consist of the Kosovo President and various national representatives, including of the FRY and Kosovo, as well as international representatives of the KVM. The head of the KVM will be the chair of this all important body, charged with supervising the overall implementation of the agreement, with final authority to resolve disputes, and an obligation by the parties to abide by the Chair's decisions. The Chair should establish clear communication channels for reporting human rights information.

A Legal expert (or panel of legal experts) with proven expertise in human rights and humanitarian law should assist the Chair in his supervisory task. The respective powers of the Constitutional Court and the Ombudsman on the one hand and the Chair of the Joint Commission on the other should be clearly defined at the outset to ensure that there is no overlap.

In view of the important place which human rights protection has in the agreement and considering the need to speedily remove any obstacles or disagreements that could arise about their effective realisation, Amnesty International proposes that the Joint Commission Chairman's office include a legal expert (or panel of legal experts) with proven expertise in human rights and humanitarian law to assist the Chair in his supervisory task where this affects the effective protection of human rights and humanitarian law. The legal expert(s) could also serve as a central point of advice on the application of these standards in Kosovo, ensure the effective coordination of human rights information between the various national and international bodies dealing with human rights and legal remedies, could follow human rights cases in the courts and other bodies closely and take an active role in ensuring that any obstacles in the effective implementation of the human rights component of the agreement are speedily removed. In order to be effective, the legal expert (or panel) should have the appropriate authority to take such effective action.

The Organization for Security and Co-operation in Europe (OSCE)

Amnesty International has already set out its 10 recommendations for human rights guarantees in the KVM in a document of October 1998⁶. It is particularly important that human rights are now incorporated in the implementation of the mission, that the OSCE, the UN and other organizations involved with human rights monitoring and protection establish mutually supportive relationships including the sharing of all human rights information, and the clear demarcation of respective responsibilities. There should be no silent witnesses among OSCE personnel: clear channels for communicating human rights information should be in place and there should be regular and public reporting.

The Field Offices of the Office of the High Commissioner for Human Rights (OHCHR)

In seeking to establish effective institutions for human rights protection in Kosovo, there should be early consultation with the OHCHR, which has a long established and wide ranging expertise on human rights in the FRY and Kosovo, through its field offices. This would include consultation about the effective integration of human rights provisions in the agreement and seeking OHCHR's advice on the building of effective long-term human rights institutions to promote and protect human rights.

The OHCHR should also continue to play an important role in regularly monitoring and reporting on the human rights situation in Kosovo, including to the UN Secretary General who regularly reports on the human rights situation in Kosovo to the Security Council. The OHCHR could report on the manner in which the judgments and recommendations by the courts and new and existing human rights institutions in Kosovo are implemented by the parties concerned, should continue to advise individuals, bodies and authorities on rights and obligations arising from UN treaties and other human rights standards specified in the agreement, and generally ensure that accurate information is provided to the Commission on human rights' country and thematic rapporteurs.

⁶ *Ten recommendations to the OSCE for human rights guarantees in the Kosovo Verification Mission*, AI Index: EUR 70/86/98, October 1998.

V Refugees, displaced persons and missing persons

The agreement should ensure that asylum-seekers and internally displaced persons return to their homes in safety and that they are fully compensated for any damage to their homes.

The parties to the agreement must recognize that refugees and displaced persons have the right to return freely and safely to their homes of origin. It is essential that the parties be required to facilitate the safe return of displaced persons and refugees to their homes and not do anything to impede or hinder safe and voluntary return. In this regard protection and assistance personnel from the UNHCR and related non-governmental organizations must be granted unimpeded access prior to, during, and after any return of refugees and displaced persons to their homes.

In no regard should the immediate implementation of any agreement be construed as an end to the international protection obligations of those countries where refugees who fled the conflict are seeking protection. A prerequisite to any eventual returns is that the conditions for safety must be durable and that they are part of a coordinated plan to ensure safe return. In such case the UNHCR, in close collaboration with governments and non-governmental organizations in countries of asylum, should be called upon by the parties to construct a repatriation plan in accordance with international standards that allows for the voluntary, peaceful, orderly and phased return of refugees and displaced persons. Any refugee repatriation program should include an effective monitoring and protection aspect for as long as necessary. International law and protection standards must be adhered to at all times, including the principles of non-*refoulement*, the right to seek asylum and repatriation only on a voluntary basis with international supervision.

The lessons learned in the return of displaced persons and refugees under the auspices of the Dayton Accord should be heeded. That is, return in safety and dignity must include fundamental guarantees that the human rights of returnees will be respected and that they are provided adequate means to enable them to return. These means should include restoring their property or compensation for any property which cannot be restored to them. There should never be any denial of the right to return.

The agreement should require all parties to cooperate fully with relevant international organizations, in particular the ICRC, in promptly providing information about the whereabouts or fate of persons who have “disappeared” or otherwise gone missing.