

BOSNIA-HERZEGOVINA

Righting the wrongs: recommendations regarding return of refugees and displaced people for 1998

As the authorities in Bosnia-Herzegovina and governments of countries which host refugees from Bosnia-Herzegovina meet to discuss plans for repatriation and return of refugees and displaced people in 1998, it is necessary also to evaluate the experiences of 1997. The questions in such an evaluation cannot only focus on why fewer than expected people repatriated to Bosnia-Herzegovina and what can be done to encourage more returns. It is also necessary to consider whether those who have repatriated to the country and/or those who returned to their own homes are safe, and whether the process has contributed to ensuring that *everyone* in Bosnia-Herzegovina is safe and that their human rights are, and will be, respected.

The vast majority of people who have been able to return to their original homes in Bosnia-Herzegovina have been from areas where their nationality now administers the area, so-called "majority returns." However, many of those who repatriated to Bosnia-Herzegovina in 1997 -- according to some estimates more than 50 per cent -- were not able to return to their original homes and are now displaced within Bosnia-Herzegovina. The immediate security of their home environment is not the only obstacle preventing these people from going home: in many cases, their house is destroyed or there is another displaced family, who themselves have nowhere to go, living in it. Large scale return without genuinely satisfactory resolution of these and other related issues creates considerable tension in an already delicate peace, and eventually could lead to an extremely volatile situation conducive to further human rights violations. Furthermore, for the more than one million remaining displaced people and refugees who originate from areas where their nationality is now different from that which administers the area, the human rights violation which caused them to flee their homes, mass expulsion (or as it is more commonly known, "ethnic cleansing"), is perpetuated as long as they are not able to safely return to their homes.

Lack of progress in these so-called "minority returns" has encouraged some commentators to argue that it is impossible to enforce a peace agreement based on co-existence when the people of the country themselves do not want to live together. These commentators instead recommend that the international community accept the partition of Bosnia-Herzegovina into areas dominated by one nationality. Such arguments are most frequently voiced in countries whose internal political interests include the withdrawal of their military or civilian personnel from the region, or countries which are looking for an easy solution for ending protection for refugees who cannot yet return safely to their homes. These arguments ignore the strong conviction held by displaced people and refugees that return to their home community is a moral right which extends beyond the guarantee given in the General Framework Agreement for Peace in Bosnia-Herzegovina (Peace Agreement), and the repeated statements by some spokespersons within displaced communities that if they are not able to return to their homes peacefully they will do so in the long-term by retaking the area by force. They also ignore progress which has been made in implementing the Peace Agreement, and the indications that, despite statements made by some leaders that the animosity created by the war cannot be undone, many ordinary people are willing to look beyond national differences, as demonstrated by the popularity of the United Nations High Commissioner for Refugees (UNHCR) busses which enable many people to visit their home communities, the informal trade which takes place between the entities at numerous meeting points throughout the country, and the joy with which many former neighbours of different nationalities embrace each other when they are reunited.

It is true that some people, because of the trauma they suffered due to the war or for other reasons, will not want to return to their home communities. The Peace Agreement gives people the right not only to reclaim their property and return to their homes, but also to claim compensation in lieu of return. However, the right of people to obtain compensation for their property should not be used as an excuse for failing to improve the human rights situation so that people can return to their own homes in safety if they so choose.

One case which contains elements of many of Amnesty International's concerns is that of Nenad Vrlji_ak, his wife and three children, Bosnian Croats from Breza near Sarajevo in the Federation of Bosnia-Herzegovina (Federation). They were refugees in Germany who repatriated in October 1997 when their temporary protection ended. They wanted to return to their pre-war home, but when they arrived there the Bosniac (Bosnian Muslim) family now living in their house told Nenad Vrlji_ak to leave immediately. Later, a former soldier in the neighbourhood who is now reportedly employed in the municipality told Nenad Vrlji_ak that if he saw him in town several hours later, he would personally kill him. After this threat, Nenad Vrlji_ak decided to go with his family to Drvar (Federation) because his parents, who lived in Vareš (Federation) before the war, are now living there. Drvar is currently under the administration of Bosnian Croats, but more than 90 per cent of its pre-war population comprised Bosnian Serbs, who are now among the most vociferous in their desire to return. In Drvar, the Bosnian Croat authorities told Nenad Vrlji_ak that he would be able to obtain permission to live in a house which before the war served as housing for a local factory's workers, who would have been predominantly Bosnian Serbs. Nenad Vrlji_ak told Amnesty International that he feels deceived by the German and Bosnian authorities: "I went to seminars and briefings in Germany, and wanted, as an electrician, to rebuild my country. I believed what they told me, but now I found out it is not true." For example, he said that he was promised that a variety of assistance would be available to him if necessary, and repeatedly referred to a booklet, *Povratak ku_i*, (*Going Home*) published by the International Federation of Red Cross and Red Crescent Societies, a guidebook for refugees to help them make an informed choice about whether to repatriate. Although the booklet devotes four pages to property issues and another four pages to the protection of human rights, it does not indicate that the vast majority of cases actually handled by the institutions established to protect human rights concern cases of people who are not able to get access to their property. "So far," he said, "the *Going Home* booklet is the only assistance we have received."

Nenad Vrlji_ak returned to Bosnia-Herzegovina because he had no alternative as his international protection was ended, but also because he believed that the conditions in Bosnia-Herzegovina would enable him to return to his home and contribute to the reconstruction of his country. He was unable to return to his pre-war home not only for fear for his family's physical safety, but also because there was another displaced family living in his house. The only practical option available to him was to go to an area where the authorities would be sympathetic to him and provide him with accommodation in an environment where he and his family would be able to be secure. However, by living in someone else's house he is preventing those pre-war occupants from being able to return to their own homes. This phenomenon is widespread throughout the country. In the long term, it not only could contribute to the destabilization of the country and leave open the

potential for future human rights violations, but it also perpetuates the initial human rights violation of mass-expulsion for all the people who remain displaced who are connected to the Vrlji_ak family's individual situation, and the more than one million other displaced people and refugees from Bosnia-Herzegovina who are in a similar situation.

It is clear that facilitating the process of minority returns will require considerable commitment and resources. It is most important that authorities within Bosnia-Herzegovina, who have committed themselves to upholding international human rights standards, end their opposition to co-existence with people of a different nationality. However, countries hosting refugees from Bosnia-Herzegovina also share responsibility. Until the human rights of all Bosnian citizens are respected in both entities of Bosnia-Herzegovina, countries hosting Bosnian refugees who cannot return to their original homes should continue to offer protection. The international community, which opposed the forcible division of Bosnia-Herzegovina into areas where only a single nationality is safe, should not now support the policy of ethnic exclusivity by sending refugees back to an area which is not their original home. The international community and countries who wish to rid themselves of a perceived refugee burden should instead focus their efforts towards improving the human rights situation in both entities of Bosnia-Herzegovina so that all citizens will be safe to freely choose where they want to live without regard to the nationality which now administers the area.

Amnesty International's Recommendations

The authorities in Bosnia-Herzegovina must translate the rhetoric of support for the return of displaced people and refugees to their original homes into improvements in the security environment for members of minorities. Attacks on members of minorities should not be allowed to continue with impunity.

Most of the displaced people with whom Amnesty International delegates in Bosnia-Herzegovina spoke in October and November 1997 want to return to their own homes. However, what many people want as preconditions before they feel that they can return amounts to respect for their basic human rights: the right to their personal security, the right to freely be able to express their national affiliation or religious beliefs, the right to be free from discrimination in seeking employment and enjoying other rights, and the ability of their children to receive an adequate education.

The experiences of the small numbers of people who have returned to their own homes indicate that the fear that these conditions have not yet been met is in many cases justified. Many of the small numbers of Bosniacs and Bosnian Croats who have returned to the Republika Srpska (RS), as well as the small numbers of these now-minorities who remained throughout the war, are afraid even to call each other by name in the street. With little chance of gaining employment or otherwise participating in civil society, they maintain a hidden existence staying clear of the authorities and others who may attack them. Some of these people, as well as minorities who have returned to their homes in the Federation told Amnesty International that they are not afraid of their former neighbours, but of the displaced people from other areas now living in their home

communities, and of the authorities responsible for their initial flight who remain at large, sometimes in positions of leadership.

Some displaced people who cannot yet return to their own homes have channelled their frustration into pressure groups such as the Coalition for Return, which accepts as a principle that returns to original homes must be made possible for all. However, in 1997, most assaults on minorities were committed by other displaced people, although such attacks were rarely fully investigated nor those responsible brought to justice.

In March 1997, a group of displaced people from Srebrenica (RS) attacked two elderly Serbs who were attempting to visit a Serbian Orthodox cemetery near Visoko (Federation). Dragging the elderly couple out of their car, the group beat them with sticks and stones; the 80-year-old man died in hospital five days later as a result of the injuries he had sustained. Although charges have been submitted against 15 suspects, none are in custody, and several attempts to open the trial have failed, most recently in October 1997 with only two of the suspects appearing in court. Other murders of returning refugees have taken place in other areas of the country, including the murder of a 27-year-old Bosniac who was shot dead while repairing his house on 30 November 1997 in Rakovo Noga (Federation), a village near the Inter-Entity Boundary Line about 20 kilometres north-east of Sarajevo; the suspect is believed to have crossed into the Federation from the RS. Other unresolved murders of Bosnian Croat returnees have taken place in Travnik (Federation). In other cases, violent mobs have attacked people who have returned to their own homes, such as in Jajce at the beginning of August 1997 when several hundred Bosniacs were forcibly expelled from their villages and one Bosniac returnee in another village in the area was shot dead. Although the chief and deputy chief of police have been dismissed for inadequate and at times deliberately negligent response to the violence which led to the expulsions, no one has been brought to justice for the murder of the Bosniac returnee. Although the expelled Bosniacs from the villages near Jajce have now returned, again, to their homes, they and other Bosniacs in the municipality are still afraid to leave their homes at night, and say that it is only the presence of the United Nations International Police Task Force and the Stabilization Force (SFOR) that makes them feel secure.

The authorities in Bosnia-Herzegovina, in particular in RS, should fully comply with the International Criminal Tribunal for the former Yugoslavia (Tribunal) by arresting and transferring those suspects who have been indicted by it. SFOR and its successor should not wait for the national authorities to make arrests, but should live up to its obligations to seek out and arrest those who have been indicted by the Tribunal.

Refugees and displaced people considering return to their own communities are afraid of those responsible for war crimes and crimes against humanity who remain at large, in some cases in positions of authority, in their home communities. Amnesty International has long called for SFOR to exercise its obligation to seek out and arrest those indicted by the Tribunal, noting that their continued presence and exercise of authority undermines the peace process and delays the ability of refugees and displaced people to return to their homes. An SFOR source told an Amnesty International delegate that the situation in Prijedor (RS), one of the areas where there has been

particular obstruction to implementing the Peace Agreement, has "unfrozen" in its authorities' willingness to cooperate with the international community since July 1997, when SFOR troops arrested one suspect indicted by the Tribunal and shot dead another. After that time many of the other publicly indicted suspects who had been openly living in the community, as well as other local leaders who had also been in positions of authority during the war, disappeared from public life.

The majority of the remaining publicly-indicted suspects at large are Bosnian Serbs, who refuse to recognize the authority of the Tribunal. Although there is little chance that any of them will be able to be brought to trial unless the international community exercises its responsibility to arrest them, SFOR has not made any further arrests since July 1997. In fact according to recent press reports, SFOR issued orders in July 1997 *not* to arrest a Bosnian Croat who had already made known to SFOR his willingness to voluntarily surrender, and refused to escort a Tribunal official who wanted to make the arrest.

Authorities in Bosnia-Herzegovina should immediately end the administrative obstructions to the return of refugees and displaced people to their original communities. In particular in the RS they should pass or amend amnesty laws covering conscientious objectors, and throughout the country they should bring property legislation into accordance with human rights standards and the Peace Agreement, end the practices of "war taxes", and simplify the procedures for municipal registration.

Despite two years' of pressure from the international community, the authorities in Bosnia-Herzegovina have done little to bring laws regulating the use of abandoned property into accordance with the European Convention on Human Rights and its Protocols (ECHR) and the Peace Agreement. Although in the Federation some progress has been made, if these laws are not revised, recently-passed legislation which will begin to be enforced in March 1998 will give current occupants the right to purchase socially-owned apartments, and displaced people and refugees who before the war lived in those apartments may permanently lose their right to their pre-war homes. Furthermore, the vast majority of cases handled by both the Federation Ombudsmen and the Bosnia-Herzegovina Human Rights Ombudsperson involve property issues. Many of the cases which are the subject of their concern show that even when applicants are legally entitled to be reinstated to their housing, the authorities fail to act upon court or other administrative decisions. National minorities are not the only ones affected, members of majorities have also found themselves homeless because authorities refuse to evict the current occupants or otherwise act on court orders.

In addition, RS authorities have still not amended amnesty laws to free from criminal responsibility those who fled or remained abroad to escape or avoid military service. In many areas throughout the country retroactive taxation or other fees to pay for time spent outside the country (so-called "war taxes") have not fully been eliminated. Obstruction in municipal registration in many areas continues to impede the ability of individuals to derive social and economic rights such as health care and education. Other legislation has not been fully harmonized with human rights standards in accordance with the recommendations of the international community.

Host countries should ensure that all refugees from Bosnia-Herzegovina have access to an individual procedure and should not end international protection for any refugee who is unable to return to their pre-war home. Host countries should also ensure that refugees still in need of protection are not subject in any way to pressure or duress to “voluntarily” return. In determining those categories of people who are unable to return to their homes or are otherwise in continuing need of international protection, UNHCR’s categories of people in need of international protection should be followed as a minimum standard. However, these categories do not take into account additional categories of people who have had particular difficulty returning to their original homes, for example those whose pre-war residence was socially owned housing, and due attention should also be given to them.

Although a considerable number of citizens of Bosnia-Herzegovina are still outside its borders, the scale of destruction of the housing stock in Bosnia-Herzegovina means that their homes are generally not empty and waiting for their return. Most inhabitable housing in Bosnia-Herzegovina is occupied, if not by its pre-war occupants then by displaced people or, in particular in the RS, Croatian Serb refugees.

Amnesty International is concerned that some host countries, in particular Germany and Switzerland, have chosen to ignore UNHCR’s recommendations articulated in its *Repatriation and Return Operation 1997* (April 1997) regarding the categories of people in need of continuing protection. The organization is gravely concerned that Germany has forcibly repatriated people who originate from areas where they would no longer be in the majority upon return and who are unable to return to their homes. Osman and Emina Lizalo and their adult son Mehmet originally from Dubrave village near Bosanska Gradiška (RS) were forcibly deported from Kleve, Germany, on 15 September 1997, although their "toleration" to stay ("*duldung*") did not expire until 2 October 1997. According to Osman Lizalo, "[The police] came to our house at 5:30 in the morning, and told us to pack our belongings and that we had to leave in 20 minutes. We showed them our documents and told them that we would go voluntarily in two days." It made no difference; the family was taken to the airport and Mehmet Lizalo, who had been legally employed, was made to pay 1,700 German Marks for the travel expenses for himself and his parents. The Lizalo family is now living with another son, his wife and that couple’s infant son in two small rooms in Bosanski Petrovac (Federation). Although Emina Lizalo is terrified by the thought of returning to Dubrave village, their current living arrangements cannot be permanent and Osman Lizalo returned to his home on a visit to investigate whether return to their pre-war home was even practically possible. He visited his pre-war house which, in 1993 when his family was forced to flee, he had left to the caretaking of a Bosnian Serb neighbour on the understanding that the family would return when it was safe. When Osman Lizalo visited in October 1997, the neighbour, who is now living in the house, said that under no circumstances could the Lizalo family come back now.

When criticized on their policy towards refugees from Bosnia-Herzegovina, the German authorities frequently point out that a relatively small number of people were forcibly deported while the majority of those leaving Germany had spontaneously repatriated. "Spontaneous",

however, does not necessarily mean voluntary. Many people with whom Amnesty International spoke, in particular those who repatriated from Germany and Switzerland, indicated that they only returned to Bosnia-Herzegovina because the option to remain in their country of asylum was not viable, either because financial assistance offered by the host country in order to repair their houses in Bosnia-Herzegovina and otherwise reintegrate was only offered until a particular deadline, reductions in social assistance meant that they could no longer afford to remain there, and/or because their protection (in Germany "*duldung*") had ended and they feared being forcibly repatriated. Many of them left their host country of asylum even though they had nowhere to go in Bosnia-Herzegovina.

Countries hosting refugees from Bosnia-Herzegovina should recognize that enabling safe "minority returns" will be a difficult and slow procedure that must begin with the voluntary return of internally displaced people within Bosnia-Herzegovina as well as that of Croatian Serb refugees to Croatia. Countries hosting refugees from Bosnia-Herzegovina should not put additional burdens on the infrastructure in Bosnia-Herzegovina by encouraging repatriation of refugees until minority returns are well underway and the situation has been shown to be durably safe.

Because of the accommodation crisis in Bosnia-Herzegovina, simply accommodating and providing for the people now there has required an enormous amount of the authorities' and international communities' resources. Industry and other elements of the infrastructure which would enable people to be self-sufficient have been damaged by the war. It can be difficult to assess when the authorities genuinely do not have the capacity to provide for people within their municipality (although such difficulties do not detract from their responsibility to provide citizens with the rights to which they are entitled), and when they are using administrative obstacles to deliberately prevent the return of people to their original communities. The authorities in some areas, such as Drvar and Sanski Most (Federation), are actively encouraging people who were not the pre-war residents to move there, which whether practically or deliberately, has the effect of preventing the legitimate pre-war residents from returning.

Repatriation of refugees from abroad has increased these difficulties, as even when people are able to get access to their housing and do not themselves have other administrative problems, there is a knock-on effect for the displaced people who were living in it, especially if they themselves are minorities or originate from areas now administered by authorities of another nationality and currently cannot return to their original homes for fear for their safety. For example, Zahid Dujmonji_, a 41-year-old Bosniac man originally from Bosanski Šamac (RS) left his temporary accommodation in Domaljevac town near Orašje (Federation) when the Bosnian Croat family who owned the house where he was living returned from Germany in August 1997. Although he visited Bosanski Šamac inquiring whether he would be able to return to his pre-war home, former friends serving in the Bosnian Serb police force warned him that as a Bosniac, it would not be safe for him there. With nowhere to go, Zahid Dujmonji_ went to Tuzla (Federation) and when Amnesty International met him in October 1997, he had been living in a UNHCR transit centre for 10 weeks. He told Amnesty International that authorities both in the Orašje area and the Tuzla area were unable or unwilling to provide him alternative accommodation. He said that the

authorities might as well arrest him and put him in prison, because at least then he would have a roof over his head.

* * *