BOSNIA-HERZEGOVINA
All the way home
Safe "minority returns" as a just remedy and for a secure future

FOREWORD

Imagine that you had been forced to flee your home at a moment's notice - for no other reason than your nationality or religious affiliation. A lifetime of memories, associations, and commitments left behind. Torn from your place in the world in a cruel instant. Imagine that you then suddenly found yourself in a foreign country - unfamiliar with the language; uncertain as to your prospects for employment, education or any kind of viable future. Imagine that many other unluckier members of your community were left behind - some of them killed on the spot or tortured in detention camps, some of them simply recorded as "missing".

Then one day - several long and painful years later - the most powerful nations of the world persuade the warring parties in your homeland to agree to a document that guarantees what you already feel inside: you have the right to go home. And not only the right to return in safety to that homeland - but to go back to the very community from which you had been so brutally and unlawfully expelled. To reclaim your very own place in the world again. And if you are fortunate enough to find it still standing and habitable, to live once more in the house at the centre of that world, and if it has been destroyed, to be compensated for it.

The powerful nations declare that they will use all necessary political and military resources to implement this guarantee of a safe return to the community from which you fled. And yet, more than two years after the agreement, little has changed on the ground in your community that would allow you to return there without endangering yourself or your family. That right to reclaim your very own place in the world again - that promise to undo the most basic wrong done to you and your community - remains a virtual fiction.

Nevertheless, the countries where you, your family and your neighbours have been waiting for that moment of return now decide that you must go back anyway. Perhaps not to that house at the centre of your world; perhaps not even to the town you once called home. But another uncertain departure suddenly stares you in the face. A hasty return to your country - but not to the place of which you dream. Instead, to a stranger's house, one owned by someone who you know longs to return to it as much as you long to return to your own. Another day without work; without adequate accommodation; without the prospect of hope. Home may be only a short distance away but it is still unsafe even to visit it. Is this what you had been told was your future? Is this what the great powers had promised? Is this undoing the wrong? What kind of "agreement" was this? Is this what they mean by "justice"? Is this what they mean by "peace"?

INTRODUCTION AND RECOMMENDATIONS

Mass expulsion was among the many appalling human rights violations which characterized the 1992-95 conflict in Bosnia-Herzegovina. The General Framework Agreement for Peace in Bosnia-Herzegovina (Peace Agreement, also known as the Dayton Agreement) which brought the conflict to a stop explicitly seeks to right the wrongs of mass expulsion, by guaranteeing the right of all refugees and displaced persons "freely to return to their homes of origin". On the basis of principles in international law as it applies to issues including mass expulsion, Amnesty International expressly supports this objective of the Peace Agreement.

Yet the realisation of this aspect of the Peace Agreement is being undermined by the authorities inside Bosnia-Herzegovina and the international community. The security and practical situation on the ground in Bosnia-Herzegovina has not improved sufficiently to allow return of refugees and displaced persons to areas where their national group is now in a minority, but authorities inside the country are not taking the necessary steps to bring about real improvements. At the same time, certain countries hosting refugees from Bosnia-Herzegovina are rushing to end temporary protection, on the grounds that refugees can be returned to areas where their nationality is now in the majority, regardless of where they originate. They are flouting the international guarantee in the Peace Agreement of free return to one's own home community.

In so doing, those host countries and the Bosnia-Herzegovina authorities are creating the conditions in which the results of mass expulsion will be made concrete and lasting. If this happens, far from having been remedied, the human rights violation of mass expulsion will have been allowed to persist. Moreover, a Bosnia-Herzegovina where there is no redress for such a human rights violation faces the prospect of being a country of continuing tension and insecurity, and fertile ground for future violations of fundamental human rights.

Amnesty International is making the following recommendations:

- **The authorities in Bosnia-Herzegovina should 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.**

- **The authorities in Bosnia-Herzegovina, in particular in Republika Srpska, 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.**

- **Authorities in Bosnia-Herzegovina should immediately end the administrative obstructions to the return of refugees and displaced people to their original communities.**

- **Countries hosting refugees from Bosnia-Herzegovina should recognize that enabling safe "minority returns" - the return of people to their pre-war homes who would now be a minority in relation to the authorities who now control the area - will be a difficult and slow procedure that should 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.**

- **Host countries should ensure that refugees are not subject in any way to pressure or duress to "voluntarily" return, and all refugees from Bosnia-Herzegovina should have access to an individual procedure to determine their status;**

- **Countries hosting refugees from Bosnia-Herzegovina should ensure that their repatriation plans and policies will not lead to relocation which is not fully voluntary, which for practical reasons means that host countries should not repatriate, or promote the repatriation of, any refugee who is unable to return in safety to their pre-war home.**

- **International monitors and other international organizations engaged in Bosnia-Herzegovina should compile up-to-date, comprehensive, independent and impartial assessments of the human rights situation which reflects the widely varying human rights situation between different areas of the country. Such information should be made available not only to governments hosting Bosnian refugees but also to refugees themselves who are considering voluntary repatriation.**

- **International organizations engaged in the return of refugees to and displaced people within Bosnia-Herzegovina should ensure that the criteria for successful minority return are based on durable safety which does not depend on an international security presence, and no one should be encouraged or put under duress to return "voluntarily" to an area where they will now be a minority, especially to achieve quotas and deadlines.**

The following gives the background to Amnesty International's concerns about the current obstacles to minority return in Bosnia-Herzegovina, and the organization's objections to involuntary return to "majority" areas, including the ending of temporary protection for refugees.

I. AT STAKE: A TERRIBLE WRONG NEVER PUT RIGHT

More than two million people were forced into flight during the conflict in Bosnia-Herzegovina, many of them as part of a deliberate policy by armed forces of one nationality to rid disputed territories of people of other nationalities.[1] The effort was largely successful. Over 95 percent of the original Bosniac (Bosnian Muslim) and Bosnian Croat population was expelled from or fled the area which is now the Republika Srpska. Approximately 90 percent of the original Serb population left the area which is now the Federation of Bosnia-Herzegovina (Federation), many of them after the General Framework Agreement for Peace in Bosnia-Herzegovina (Peace Agreement) had been signed, as the suburbs of Sarajevo were transferred to Federation control in February 1996. Within the Federation, in six of the 10 Federation Cantons the minority population (Bosniac, Bosnian Croat or Bosnian Serb, as opposed to the Bosniac or Bosnian Croat authorities who administer the area) represents less than 10 per cent of the total, and within the remaining Cantons local regions show an equal degree of ethnic separation.[2]

Although according to the United Nations High Commissioner for Refugees (UNHCR), over 200,000 refugees repatriated to Bosnia-Herzegovina and a roughly equal number of displaced people within Bosnia-Herzegovina returned to their own homes from the time the Peace Agreement was signed in December 1995 until the end of 1997, these population movements have had almost no impact on changing the war's enforced ethnic homogeneity. Over 90 per cent of the people who have returned to their homes are from areas where their nationality is now in the majority. This phenomenon is not simply a matter of individual choice of destination, it also is a result of the fact that it is still not safe for many people to return to their pre-war homes, or due to administrative obstacles to their return.

More than one million displaced people and refugees remain who originate from areas where their nationality is now different from that which administers the area. Most of them are

[1]This document updates the concerns articulated in the March 1997 document *Bosnia-Herzegovina: Who's living in my house* (AI Index: EUR 63/01/97), and incorporates and expands upon the recommendations regarding return of refugees and displaced people for 1998 in the December 1997 Amnesty International document *Bosnia-Herzegovina: Righting the Wrongs* (AI Index: EUR 63/28/97).

[2]The statistics in this paragraph are cited in "Return, Relocation and Property Rights: a discussion paper", Commission for Real Property Claims of Displaced Persons and Refugees/UNHCR, December 1997, the figures were gathered from statistics on municipal registration provided by the relevant authorities.

victims of programs of mass expulsion, sometimes described as "ethnic cleansing", which combined torture including rape, deliberate and arbitrary killings and arbitrary detention as means to remove them from the territories where they lived, either by detention and removal or by forcing them to flee.[3] This human rights violation of mass expulsion will not be remedied as long as these victims are not able to return safely to their home communities.

Right to Return: More than the Peace Agreement

The Peace Agreement articulates the rights of refugees and displaced persons on the basis of a vision of a multi-ethnic Bosnia-Herzegovina. It is constructed so as not to give way to the brutal reality of ethnic division and is intended to undo the process of "ethnic cleansing." It states at Annex 7:

> All refugees and displaced persons have the right freely to return to their homes of origin... 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.[4]

International human rights and refugee law and the Peace Agreement support the rights of refugees and the displaced not to be returned until they can be returned in safety and dignity and to their own homes. 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. Other international organizations

[3]The United Nations Commission of Experts defined the term "ethnic cleansing" as "rendering an area ethnically homogenous by using force or intimidation to remove from a given area persons from another ethnic or religious group." *Final report of the United Nations Commission of Experts established pursuant to Security Council Resolution 780 (1992): Annex IV, the Policy of Ethnic Cleansing,* S/1994/674/Add.2 (Vol. I), 28 December 1994, at paragraph 2.

[4]General Framework Agreement for Peace in Bosnia-Herzegovina, initialled in Dayton, USA on 22 November 1995 and signed in Paris, France on 14 December 1995, Annex 7, Agreement on Refugees and Displaced Persons. Chapter 1, Article 1, paragraph 1.

One case which illustrates many of Amnesty International's concerns as set out in this document is that of Nenad Vrlji...ak, his wife and three children, Bosnian Croats from Breza (Federation) near Sarajevo. 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 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 are now living there (although Drvar is not their pre-war home). 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. Looters have stripped the house bare, and Nenad Vrlji...ak feels uncomfortable that he also will have to loot nearby homes in order to make the house habitable for his family.

Unhappy about his situation, 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 kufi*, (*Going Home*) published by the International Federation of Red Cross and Red Crescent Societies (IFRC), a guidebook for refugees to help them make an informed choice about whether to repatriate. "So far," Nenad Vrlji...ak said, "the *Going Home* booklet is the only assistance we have received." Although the booklet devotes four pages to property issues, in which it briefly describes the procedures for obtaining access to a house occupied by others, and another four pages to the protection of human rights, in which it indicates that the majority of problems concern property issues, it does not give any indication of the extent of the housing problem. The IFRC now plans to publish a *Newsheet (sic) on Population Movement*, intended to complement the *Going Home* booklet and which will provide Bosnian refugees with information on conditions they are likely to encounter should they decide to return.

Nenad Vrlji...ak returned to Bosnia-Herzegovina because he had no alternative as the temporary protection given to him was ended. He also 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. He took the most practical option available to him by going 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 secure. However, by living in someone else's house he is preventing those pre-war occupants from returning to their own home. Nenad Vrlji...ak's experience is not atypical. The Vrlji...ak family's individual situation illustrates the larger issue that unless those who were forced to flee are able to return to their home communities if they so choose, then the multi-ethnic composition of the country will not be restored and there will be no redress for the initial human rights violations which forced these people to flee. In the long term, not providing for the return of refugees and displaced to their home communities could contribute to the destabilization of the country and leave open the potential for future human rights violations.

working in Bosnia-Herzegovina, including the High Representative, the United Nations, and the Organization for Security and Co-operation in Europe (OSCE), are unanimous in the assessment that this right to return to one's home of origin is an essential part of the peace process.[5]

Amnesty International's support for the right to return to one's pre-war home is bolstered by but not exclusively based on the Peace Agreement. As long as territories within Bosnia-Herzegovina remain ethnically exclusive the region will remain unstable, since victims of the war who were forcibly expelled from their homes are likely to dwell upon that injustice. This sentiment was clearly expressed to Amnesty International delegates by numerous displaced people in Bosnia-Herzegovina who see return to their homes of origin as a moral right which extends beyond any formal guarantees given in the Peace Agreement. Some spokespersons within displaced communities stated 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. Experience from other regions has shown that the urge to return home will not dissipate over time, and that future generations are likely to inherit the desire to right perceived wrongs.

II. NO WAY HOME YET: THE RELOCATION GRIDLOCK AS CAUSE AND CONSEQUENCE

For the remaining more than one million displaced people and refugees, the scale of destruction of the housing stock in Bosnia-Herzegovina, as well as the accommodation needs for the estimated 40-50,000 Croatian Serb refugees who live in Republika Srpska, means that their homes are generally not empty and waiting for their return. Most habitable housing in Bosnia-Herzegovina is occupied, if not by its pre-war occupants then by displaced people or (in the Republika Srpska) Croatian Serb refugees.

It is revealing to compare the numbers of displaced people returning to their homes with those of refugees repatriating. According to UNHCR, approximately 55,000 displaced people returned to their own homes in 1997 -- only a third of the 165,000 displaced people who returned to their homes in 1996.[6] In contrast, the numbers of refugees repatriating to Bosnia-Herzegovina increased in 1997 (110,000 people) as compared to 1996 (88,000). However, as many of the cases featured in this document illustrate, repatriation does not necessarily mean return to one's

[5]The High Representative is appointed by the UN Security Council to oversee the implementation of the civilian aspects of the Peace Agreement. For a more detailed explanation of the human rights aspects of the Peace Agreement and the roles of other international organizations in its implementation (as of June 1996), see the Amnesty International document *Bosnia-Herzegovina: the international community's responsibility to ensure human rights* (AI Index: EUR 63/14/96).

[6]Statistics cited in "Return, Relocation and Property Rights: a discussion paper", p. 7.

pre-war community. Although most repatriating refugees wish to return to their pre-war homes (see below), more than half of the refugees repatriating to Bosnia-Herzegovina in 1997 relocated -- that is, they established a residence in an area which was not their pre-war home. Overwhelmingly, they chose to live in an area which is now administered by authorities of their own nationality. According to UNHCR, 70 per cent of the people who repatriated in the second half of 1997 relocated.

In fact, the number of people, whether repatriating refugees or displaced persons, who returned to areas where they are now in a minority is very small (an estimated 35,000 people), and data about them are unreliable. Almost two thirds of these 35,000 people returned to the Sarajevo area, and only approximately 1,200 Bosniacs or Bosnian Croats have returned to the Republika Srpska.[7] Even these figures are hard to verify as they rely on unsystematic and inconsistent municipal registration procedures or the announced intentions of people who are repatriating about their destination. It is likely that many of the 35,000 people may have actually been people who visited but did not necessarily remain in their home of origin.[8]

A study commissioned by the Property Commission and UNHCR identified three patterns of relocation. ***Voluntary relocation*** occurs with the consent of both the individual who is relocating to a new property and the original owner of that property. This implies that it is a truly voluntary decision of both parties, in which the property rights of all involved are respected, and which is supported by legal transactions. ***Passive relocation*** occurs where displacement becomes a *de facto* permanent condition not based on free will, even if the individuals concerned become resigned to remaining in their present location. ***Hostile relocation*** is the deliberate placement of groups of people in housing belonging to other ethnic groups to secure control over territory and prevent minority return.[9] Voluntary relocation is a durable solution, whereas passive relocation and hostile relocation both involve an unresolved situation.

The distinction between passive and hostile relocation is not always entirely clear or meaningful -- in many cases of hostile relocation, where the authorities are trying to prevent the return of other ethnic groups, the individuals concerned do not have a vested interest in living in someone else's house -- they simply have nowhere else to go. Thus,

[7]Statistics cited "Return, Relocation and Property Rights: a discussion paper", p. 7.

[8]"Return, Relocation and Property Rights: a discussion paper", p. 7.

[9]"Return, Relocation and Property Rights: a discussion paper", p. 23.

Most displaced people who are living in private houses with whom Amnesty International spoke do not feel comfortable living in someone else's house, and fear the return of the pre-war inhabitants as it will inevitably mean that they will again be displaced. The 10 members of the extended Plaveti*f* family are Bosniacs originally from Gajevi village near Prnjavor (Republika Srpska) who were expelled from their home in August 1995, after large waves of Croatian Serb refugees and Bosnian Serb displaced people came to the area. "First they sent written notices saying that Muslims and Croats had to leave the area immediately. Our neighbours came and warned us to go, because they said that if they tried to help us they would also be killed. We were forced onto buses like sacks of potatoes, and under military police escort taken out of the area." The family has mixed emotions about returning to Gajevi. Azmina Plaveti*f*'s husband was serving in the Army of Bosnia-Herzegovina and died in the war. She can not imagine living with Bosnian Serbs. However, her mother-in-law Ferida Plaveti*f* said she could imagine returning to their home near Prnjavor, but only if as Bosniacs they would be free and equal citizens in Republika Srpska.

*Ferida Plaveti*f*, her husband Mustafa, and daughter-in-law Azmina, currently living in the Voki*f* house in Sanski Most (Federation).*

Most of the Plaveti*f* family repatriated to Sanski Most (Federation) from a collective centre in Croatia in March 1997. The house and its out-buildings where they are living belongs to the Voki*f* family, Bosnian Serbs who themselves are displaced in Banja Luka (Republika Srpska) and who want to return to Sanski Most but are currently afraid to do so. Ferida Plaveti*f* told Amnesty International that she had nothing against the Voki*f* family which wants to return. "I don't want anything other than what is mine. If they come and treat us as normal human beings, I would welcome them to come here. But if they want to come back, someone needs to think about where we will go."

from their perspective, they have passively relocated. Such is the case of the Vrlji...ak family, the Bosnian Croats described earlier in this document who have moved to Drvar (Federation) because they were threatened when they visited their pre-war community in Breza (Federation). However, hostile relocation policies have been pursued by the officials in Drvar. For example, the Bosnian Croat authorities issued pamphlets urging Bosnian Croats to move to Drvar and other towns which had been taken by Bosnian Croat or Croat armed forces at the end of the war.[10] One Bosnian Croat family from Kakanj (Federation) with whom Amnesty International

[10]See: *House Burnings: obstruction of the right to return in Drvar*, International Crisis Group Report, 9 June 1997.

spoke in November 1996 said that they had been living in a refugee camp in Croatia, and in late 1995 were bussed to Drvar against their will and told to choose a house there.

Even when the authorities do not actively obstruct the return of minorities, the passive relocation of a sizeable number of people into a community can cumulatively prevent their return. Such is the case in Sanski Most (Federation), where the Plavetić family (described above) lives in a house owned by the Bosnian Serb Vokić family, who themselves are displaced and want to return home but are afraid to do so. Sanski Most's pre-war population was approximately 60,000, with 46 per cent Bosniacs and approximately 42 per cent Bosnian Serbs. In Sanski Most, the local authorities have openly invited refugees and displaced people whose pre-war home was not Sanski Most to settle there, regardless of the fact that the area changed hands several times during the war and much of the housing has been destroyed. As of December 1997, the population was estimated to be approximately 45,000, almost all of whom are Bosniacs. According to UNHCR, in 1996 and 1997, 13.3 per cent of all refugees who repatriated to Bosnia-Herzegovina went to Sanski Most, making it the most popular destination for Bosniacs. As of December 1997, the population was estimated to be approximately 45,000, all but several thousand of whom were Bosniacs. When Amnesty International delegates visited the municipal office where shelter is allocated in Sanski Most in October 1997, they met a number of frustrated Bosniacs who had relocated to Sanski Most but could not resolve their housing needs because there was no vacant housing available. As Bosnian Serbs, even if the Vokić family felt it was safe enough for them to return to their home town, there would be nowhere for them to go in Sanski Most since their house is occupied and there is very little chance they, as well as the Plavetić family now living in their house, could obtain alternative housing.

The international community's position on relocation is clearly reflected in the statement of Sadako Ogata, the UN High Commissioner for Refugees: "UNHCR strongly opposes relocation that is enforced or politically manipulated," and " ... insists that relocation must be voluntary and to either newly constructed property or to existing accommodation fully respecting existing property rights."[11] The Peace Implementation Council "finds it unacceptable that because of continued obstruction, large numbers of returning refugees and displaced persons are being relocated against their will to places other than their original homes. Return to the place of origin is an essential part of the return process."[12] The Reconstruction and Return Task Force (RRTF), comprised of international governmental and non-governmental agencies, has stated that it "is adamant that relocation must not be allowed to undermine minority return", and

[11] "Statement by Mrs. Sadako Ogata at the Humanitarian Issues Working Group of the Peace Implementation Council," Geneva, 17 December 1997.

[12] Bonn Peace Implementation Conference 1997, "Bosnia and Herzegovina 1998: Self Sustaining Structures", 10 December 1997, at III(1)(c).

"advises that new housing is only to be acceptable if accommodating secondary movements of displaced persons, when necessary because of the return of original inhabitants to occupied housing space."[13] The European Union has also supported this position, stating to the Humanitarian Issues Working Group (HIWG) of the Peace Implementation Council that "[it] agrees with UNHCR that relocation can be supported on the condition that it is strictly voluntary."[14]

Currently, inadequate or defective property legislation in both entities of Bosnia-Herzegovina and the absence of other legal mechanisms (see below) have meant that truly voluntary relocation is occurring only informally, through private agents or arrangements between individuals. Such transactions are inevitably subject to manipulation. While the international community has confirmed that such property exchanges are taking place, it has noted through the RRTF that it would not be desirable or practical for the international community to become involved in them, at least in 1998. The RRTF additionally notes that "the practice of exchange and sale as an effect of forced displacement will, however, remain problematic until full compliance with the [Peace Agreement], giving freedom of movement and real freedom to dispose over one's property without the current constraints, will provide for a genuinely free and true property market."[15] In other words, the opinion of the RRTF is that the decision to dispose of property through sale or exchange is not really freely made if it is undertaken when the alternative choice to return to one's pre-war home is not viable.

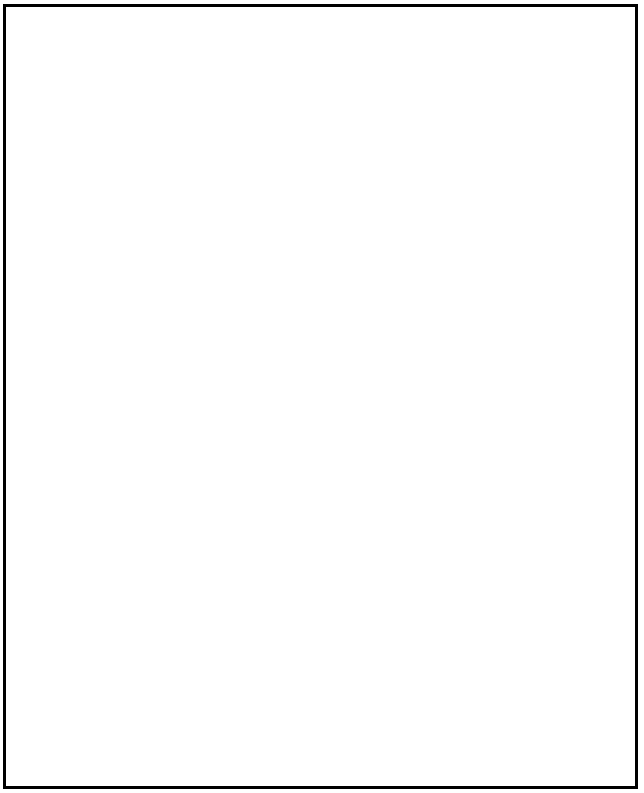
[13]"Outlook for 1998: Resources, repatriation and minority return", Reconstruction and Return Task Force (RRTF), December 1997, which can be obtained via the Internet at the web-site for the Office of the High Representative: http://www.ohr.int. As of December 1997, the members of the RRTF were UNHCR, the European Commission including the European Community Humanitarian Office, the German Federal Commissioner for Refugee Return and Related Reconstruction, the Commission for Real Property Claims of Displaced Persons and Refugees, the World Bank, the International Management Group, the United States Government, and the Office of the High Representative.

[14]"Declaration au nom de l'Union Européenne," [in French], Statement by the European Union delegation at the HIWG, 17 December 1997.

[15]"Outlook for 1998: Resources, repatriation and minority return", RRTF, p. 38.

In the Tuzla-Podrinje area, the crisis in accommodation is so critical that UNHCR is envisaging that new collective centres for refugees may have to be opened or existing ones expanded in 1998. These expanded numbers are not only a result of the repatriation of refugees from abroad but also because of expiring contracts with the owners of private housing who agreed to accommodate displaced people for two and one half years, many of which were agreed following the expulsion of tens of thousands of Bosniacs from Srebrenica (Republika Srpska) in July 1995. As a result of the termination of these contracts the municipality will need to provide shelter for more than 3,400 people. In the village of Lipnica, outside of Tuzla (Federation), a primary school is now the home for displaced people, most from Srebrenica. As of November 1997, the municipal authorities expected that because of the expiry of contracts for private accommodation for displaced people, the Lipnica primary school could return to its "full housing capacity" of around 400 people. The displaced people who have been living in such centres for as many as up to six years, however, are not eager to share their often already cramped space, and international personnel working with them expect tensions.

Kada Mihanovi*f* is an 85-year-old woman from Poznanovi*f* i village (Republika Srpska) near Srebrenica who had been displaced in the area before she was expelled in 1995. She reports that 22 members of her extended family either died during the conflict or are now among the "missing". She, her daughter-in-law, and three grandchildren were privately accommodated in Tuzla until 15 March 1997 when the contract with the owners of the house expired; since then the family has been living in the Lipnica school, sharing with 10 other people a converted classroom, smoky from the make-shift wood burning stove which heats their room and serves as their cooking facilities. Kada Mihanovi*f* and her family were allocated a house in Kalesija (Federation) which had been built for displaced people, but once she arrived, she found that other displaced people from Srebrenica who had been living in the area had broken into the nearly-completed houses and the local authorities refused to dislodge the squatters. Returned to the collective centre, she told Amnesty International she would like to go home. "Now, I only want to go somewhere if I can say it is mine, because then no one will have the right to tell me to leave."



Kada Mihanovif, 85-years-old

Building new housing has obvious implications for relocation. To ensure that international support for the construction of new housing underlines the voluntary character of relocation, the RRTF has been given the task of producing a code of conduct for the building of new housing. It will also help to ensure coordination regarding international donations to finance the construction. Moreover, it will help to ensure that the building of new accommodation is directed towards minority return, for example by ensuring that support for new construction be primarily to areas accepting minority return projects.

Some new housing will be built to try to resolve the situation of accommodation gridlock. Called "buffer accommodation", new, short-term accommodation will be built for people returning to their home areas but who are unable to immediately return to their homes because they are damaged or are being occupied by others. In some cases it will be used to provide accommodation to displaced people who have been dislodged as a result of the repatriation or return of the rightful owner or occupant. The length of such temporary accommodation is envisaged as being between two and six months, during which time a more durable housing arrangement is to be identified by the authorities.

Yet even with the best intentions, housing allocation can be manipulated or abused. Buffer accommodation may be able to temporarily solve the needs of some, but bearing in mind that issues relating to housing constitute the majority of the cases handled by both the Federation Ombudsmen and the Bosnia-Herzegovina Ombudsperson, including non-implementation of official decisions (see below), the risk for manipulation is high.

The factors behind "passive" and "hostile relocation"

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 expressed to Amnesty International as preconditions to return amount to respect for their basic human rights: to personal security, to freely be able to express their national affiliation or religious beliefs, to be free from discrimination in seeking employment and enjoying other rights, and for their children to receive an adequate education.

Violence, and the fear of violence

The experiences of the relatively small numbers of people who have returned to their own homes indicate that the fear that the conditions for their safety have not yet been met is arguably justified. Many of the small numbers of Bosniacs and Bosnian Croats who have returned to the Republika Srpska, 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 they fear 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 war-time military or civilian personalities responsible for their initial flight who remain at large, sometimes in positions of authority.

Some displaced people who cannot yet return to their own homes have channelled their frustration into pressure groups such as the Coalition for Return, a multi-ethnic pressure group which lobbies for the creation of an appropriate climate and conditions for return, and 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 many cases, the attacks were brought on simply by the presence of someone who visited or expressed interest in return. In March 1997 a group of displaced people from Srebrenica (Republika Srpska) 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 the investigative hearings into the case has been marked with delays and irregularities. For example, hearings have had to be adjourned because the suspects did not appear in court.

Killings of returning refugees and displaced persons have taken place in other areas of the country, including that 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 northeast of Sarajevo. Investigators have reported that the suspect is believed to have crossed into the Federation from the Republika Srpska, but there has been little progress due to the lack of cooperation between the police forces in the two entities. Other unresolved killings of Bosnian Croat returnees have taken place in Travnik (Federation). In one case a Bosnian Croat died as a result of wounds he received during an altercation he and another Bosnian Croat had with two Bosniacs; the Bosniac suspected of being responsible for the fatal injuries was reportedly released by the police without explanation after less than one day.

One particularly difficult area where attacks have been committed to discourage people from returning is Stolac (Federation), a town controlled by Bosnian Croats. Although 100 Bosniac families signed up for a pilot project which begun in 1996, as of January 1998 only 76 families had been able to return to the town. Among the more recent reports of violence in Stolac are press reports, confirmed by the United Nations, concerning three Bosniac women who were assaulted while visiting the town on 17 January 1998. Two of the women were

attacked by two men, one of whom was armed with a pistol, when they tried to visit a house where one of the women used to live. The third woman was attacked by three men while visiting a friend. Another woman was reportedly injured on 21 January 1998 when a bus carrying Bosniacs who wished to visit their homes was stoned in Prenj village, near Stolac. On 30 January 1998 explosives damaged the house of a Bosniac returnee who was out of the house celebrating the Islamic Bajram holiday at the time. That particular house had also been the subject of arson attacks even while being reconstructed. Investigations have been initiated into all these cases by local police but so far nobody has been identified as being responsible for any of the attacks.

In some areas returns are tolerated when they appear to be isolated cases but are opposed when the number of returnees reaches a critical number which threatens to change the ethnic balance in a community, or even part of a community. Such opposition has the propensity to turn violent, such as in Jajce (Federation) 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 the inadequate, and at times deliberately negligent, response to the violence which led to the expulsions, no one has been brought to justice for the killing of the Bosniac returnee. Although the expelled Bosniacs from the villages near Jajce were able to return, again, to their homes, mines, newly laid in their absence, were then found in some of their homes. When some of the returned villagers spoke to Amnesty International in November 1997, they stated that they still did not trust the local authorities and were still afraid to go into Jajce town, and that it was only the joint Bosniac/Bosnian Croat police patrols and presence of the United Nations International Police Task Force (IPTF) and the Stabilization Force (SFOR) that makes them feel secure.

Adem and Sadeta Trtak are retired Bosniacs who returned to Jajce town in 1997 from Switzerland. Although the family is grateful to Switzerland for helping them, they told Amnesty International that they only repatriated because they were afraid that if they waited they would not have the financial means to be able to repair their home (the Swiss authorities told them that although their protection could be extended to 1998, they would only receive financial assistance to reconstruct their house if they repatriated in 1997). Before the war they had lived in a socially-owned apartment now inhabited by Bosnian Croat displaced people; the Trtaks are currently living in the apartment owned by their daughter and her family, who themselves are refugees in Switzerland and according to the Swiss repatriation plan will have to return in April 1998. Adem Trtak was frequently harassed when he first returned, and during the demonstrations that led to the expulsions from villages surrounding

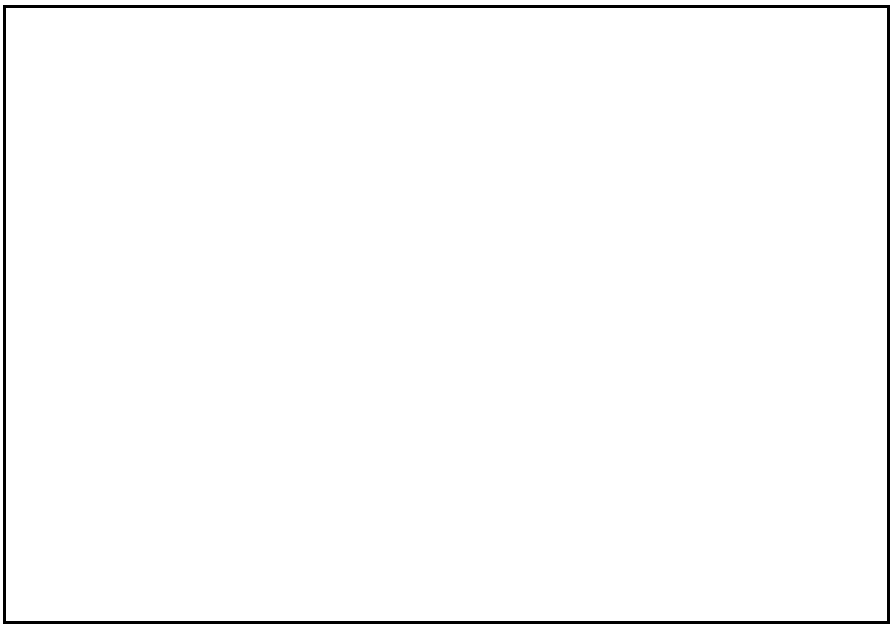
Adem Trtak, Bosniac who returned to Jajce (Federation) from Switzerland.

Jajce in August 1997, Adem Trtak said he barricaded himself in the flat as a gang of young men shouted "no more Turks" beneath his window. He described that night as one of the worst of his life, and said that he paced back and forth all night ready to protect himself with an axe if necessary. Although he told Amnesty International that he felt safe now, he says that he still avoids leaving the apartment, particularly at night, and under no circumstances will visit his own apartment in fear of the displaced Bosnian Croats who live there. He still keeps an axe by the front door. Adem Trtak said that he would like the international community to stay as long as possible, and that he feels reassured when he hears the SFOR helicopters fly over because he thinks that it is because of them that he is safe.

The villages near Drvar (Federation) are another area where the return of minorities in isolated cases has been tolerated, but where return in greater numbers has been met with violent resistance. In early October 1997, 50 or 60 Bosnian Croat men moved into Martin-Brod village, near Drvar (Federation) shortly before 15 Bosnian Serb families were due to return to their homes there. Some of them had been given temporary residency permits which were dated 6 October, the day before the scheduled return of the Bosnian Serbs. Approximately 27 Bosnian Serbs returned to the village on 7 October, but with a local official present, the Bosnian Croats began to ransack the Bosnian Serbs' houses, throwing their belongings into the streets. An 80-year-old woman was threatened with rape by one of the men. To prevent violence against the Bosnian Serbs, SFOR sealed off the village and representatives of international organizations intervened with local authorities; the situation was eventually resolved when Bosniac police from the neighbouring Canton began patrols in the town and most of the Bosnian Croats left the village.

Deliberate destruction of the housing stock

In some areas, houses of returnees or potential returnees are deliberately destroyed to prevent the return of people who will now be minorities. Much publicity was given to the destruction of Bosnian Serb homes in villages near Drvar (Federation) on 2-3 May 1997, when 25 houses were deliberately burned and at least twice as many more prepared for arson attacks. In other parts of the country throughout 1997, however, the destruction of single or several houses in an area sent a clear message to those thinking of returning to their homes that their efforts to reconstruct them can be thwarted in a single act of violence. According to the OSCE, five Bosniac houses under reconstruction were vandalized on 3 November 1997 in the Dizdaruša suburb of Br...ko, which is under international administration but which is currently inhabited primarily by Bosnian Serbs. Several more houses were reportedly damaged on 7 November, and on 14 November explosives destroyed another Bosniac house. Three Bosnian Croat houses



Scores of Bosnian Serb houses were deliberately burned or prepared for arson attacks in villages near Drvar (Federation).

were also deliberately destroyed by anti-tank mines and a rocket launcher on 16 August in Lug village near Bugojno (Federation); although three suspects observed at the scene of the crime were arrested, they were released after 20 days. International organizations have protested the authorities justifications that there was insufficient evidence to prosecute the suspects, noting that there was an abundance of evidence available about the destruction.

The presence of those who enjoy impunity for war time abuses

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 fulfil its obligation to seek out and arrest those indicted by the International Criminal Tribunal for the former Yugoslavia (the Tribunal), noting that their continued liberty and exercise of authority undermines the peace process and delays the ability of refugees and displaced people to return to their homes.[16] Prijedor (Republika Srpska), one of the areas where there had been particular obstruction to implementing the Peace Agreement, has now become one of the areas which will be a target for negotiating minority returns in 1998 (as part of a "cluster area", see below). An SFOR source told an Amnesty International delegate that the situation in Prijedor had "unfrozen" in respect to the authorities' willingness to cooperate with the international community after July 1997, when SFOR troops arrested one suspect indicted by

[16]See: *Bosnia-Herzegovina: How can they sleep at night? Arrest Now!* (AI Index: EUR 63/22/97), October 1997; *Bosnia-Herzegovina: the duty to search for war crimes suspects* (AI Index: EUR 63/08/96), 1 March 1996, and *Bosnia-Herzegovina: Amnesty International renews calls for IFOR to comply with international law* (AI Index: EUR 63/11/96), April 1996.

the Tribunal and shot dead another while attempting to arrest him. After that time many of the other publicly-indicted suspects who had been openly living in the Prijedor area, 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 obligations to arrest them, SFOR continues to defend its practice of avoidance, having stated repeatedly that its troops will only make arrests if they encounter indicted suspects in the course of normal duties. 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.[17]

Landmines

Another security threat is posed by the presence of landmines. Although deliberately placed landmines and booby traps which are intended to obstruct the return of displaced persons and refugees are an occasional threat (see above), war-time mine fields present a continuing and very significant problem. According to the United Nations Mine Action Centre, there are approximately 750,000 landmines in approximately 30,000 mined areas in Bosnia-Herzegovina, most of which remain unmarked and continue to pose a threat to civilians.[18] The ICRC estimates that there are between 30 and 35 mine casualties each month in Bosnia-Herzegovina, and that the typical victim is a male farmer. The ICRC fears that these numbers of casualties may increase and the victims will include more returning refugees and displaced persons, who are not privy to local knowledge about the whereabouts of minefields and are not aware of their dangers.[19]

Administrative and practical obstacles

[17]See "Bosnia-Herzegovina: End lip-service to justice -- Arrest Now!", News Service 213/97, (AI Index: EUR 63/27/97), 11 December 1997.

[18]Cited in executive summary, "The Silent Menace: Landmines in Bosnia-Herzegovina," a study published by the ICRC in collaboration with UNHCR, December 1997.

[19]"The Silent Menace: Landmines in Bosnia-Herzegovina."

In regard to the administrative and practical obstacles to minority return, it is difficult to differentiate between when the authorities genuinely do not have the capacity to provide for people within their municipality, and when they are using administrative obstacles to deliberately prevent the return of people to their original communities.

A large part of the accommodation crisis has been a result of property legislation which prevents pre-war owners from gaining access to their homes. Despite two years of pressure from the international community, the authorities in Bosnia-Herzegovina did little to change this legislation. In the Federation, the authorities have breached repeated commitments to adopt or revise laws in accordance with the proposals of the High Representative based on the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) and its Protocols and the Peace Agreement. In the Republika Srpska, the conditions whereby it is possible to regain access to property which has been declared abandoned make it virtually impossible to do so, and the Republika Srpska authorities have ignored the international community's insistence that new legislation be passed. Most recently, the international community has insisted that the Republika Srpska authorities make property legislation a priority for the recently-elected parliament.

If the authorities do not comply with the demands to pass new legislation, the High Representative may be able to use powers given to him by the December 1997 meeting of the Peace Implementation Council to impose a binding decision regarding property legislation, although that does not mean he can ensure its implementation. The vast majority of cases handled by both the Federation Ombudsmen and the Bosnia-Herzegovina Human Rights Ombudsperson involve property issues -- as of the end of January 1998, the Human Rights Ombudsperson had received 23,000 complaints related to property issues.[20] 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 execute court orders. Even intervention at high levels does not always ensure that reinstatements take place. The Human Rights Ombudsperson issued a special report in May 1997 regarding the non-enforcement of judicial eviction orders in Banja Luka (Republika Srpska) after the authorities consistently failed to act on court orders issued in favour of 21 people where the legal decision had been to evict the illegal occupants of their homes. The Ombudsperson found that the failure of the police to assist the judicial authorities in executing the evictions violated the ECHR, in particular the right to have an effective remedy for a human rights violation as well as interference with the right to have final and binding court decisions rendered

[20]Numbers cited in *Rebuilding a multi-ethnic Sarajevo: the need for minority returns*, International Crisis Group Report, 3 February 1998.

operative. Despite her intervention, several of the eviction orders remained unenforced as of February 1998.

Aside from gaining access to housing, displaced persons and repatriating refugees also face other administrative obstacles to return. In many areas, authorities prevent the return of refugees or displaced people by obstructing them from registering as residents of the municipality. In many areas, not being registered in a municipality limits the ability of individuals to derive access to social and economic benefits such as health care, pensions, humanitarian or other social assistance and education. Municipal registration can be obstructed either by an application being "lost" or by insisting that the individual prove that he or she cancelled the registration from his or her last place of residence, even if, as is the case for many returning refugees, municipal registration was not required in that area.

Other administrative obstacles include taxation or other fees levied for time spent outside the country (so-called "war taxes") and which have not fully been eliminated. In addition, Amnesty International notes that the Republika Srpska authorities have still not amended amnesty laws to free from criminal responsibility those who fled or remained abroad to escape or avoid military service, and this legislation could be used to imprison those who fled the Republika Srpska out of a conscientiously-held opposition to military service.

In some cases the obstacle to return arises from "double occupancy", whereby people or families occupy more than one housing unit. In some cases this occurs when the pre-war home is under reconstruction but the entire family cannot yet return, for reasons such as the state of disrepair of the house, schooling for children, or employment for the head of household. In other cases, however, "double occupancy" happens because some of the family may not want to return home to a rural environment from an urban one, or people have taken advantage of reallocation provisions described by UNHCR as "inconsistent and arbitrarily applied" to appropriate more than one housing unit.[21] Problems of the latter variety are prevalent in Sarajevo, where although the housing capacity is actually greater than before the war, authorities state that there is no housing available for people who would be displaced by the return of pre-war occupants to their homes.[22] However, the accommodation needs of the approximately 840,000 displaced people and refugees within Bosnia-Herzegovina are real, and it cannot be presumed that resolving the cases of double occupancy alone will resolve the basic need for a roof over the head of everyone in the country.

[21]*Bosnia and Herzegovina Repatriation and Return Operation 1998*, Humanitarian Issues Working Group, HIWG/97/7, 10 December 1997, p. 24.

[22]For a comprehensive discussion of obstacles to minority return in Sarajevo, including double-occupancy, see *Rebuilding a multi-ethnic Sarajevo: the need for minority returns.* The document also discusses in detail issues related to property legislation in the Federation.

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 the international community's resources. Industry and other elements of the infrastructure which would enable people to be self-sufficient have been damaged by the war. According to a survey carried out by the Swiss Government of beneficiaries of its repatriation incentive program, only 3.2 per cent of respondents (refugees who had repatriated to Bosnia-Herzegovina from Switzerland) had found jobs. Similarly, a survey carried out by the Property Commission found that 95 per cent of the displaced people surveyed reported that no member of the family was in paid employment.

III. RESPONSIBILITIES OF THE INTERNATIONAL COMMUNITY

Beyond "safe": The responsibility to continue to promote safe minority return

Countries hosting refugees from Bosnia-Herzegovina share responsibility in enabling the process of safe minority return.

Of the over 600,000 refugees from Bosnia-Herzegovina without durable or other solutions[23], 43 per cent are in European Union member states, while the majority of the remainder are in Croatia, the Federal Republic of Yugoslavia (which, as it hosts more than 250,000 refugees from Bosnia-Herzegovina and 300,000 from Croatia, has the largest population of refugees without a durable solution in Europe), the former Yugoslav Republic of Macedonia, and Slovenia. UNHCR estimates that of these approximately 600,000 refugees, the "overwhelming majority of prospective returnees originate from areas where they would form part of the minority population upon return."[24]

In 1992, when the mass exodus of refugees and displaced people was at its height, few countries allowed refugees from Bosnia-Herzegovina to seek refugee status within the meaning of the 1951 Convention relating to the Status of Refugees as amended by its 1967 Protocol. In most cases those fleeing were subject to a general decision by host states that they were entitled to protection on a temporary basis only, intended to last as long as the conflict made it impossible for refugees to return home or until other measures were taken to permanently resettle those forced to flee. Amnesty International believes that if temporary protection is to be ended for refugees from Bosnia-Herzegovina, the decision to end it must be closely linked to the manner in which protection can end under the UN Refugee Convention, which is by virtue of the

[23]Durable and other solutions include humanitarian or refugee status, other resident status, resettlement and repatriation.

[24]*Bosnia and Herzegovina Repatriation and Return Operation 1998*, HIWG/97/7, p. 11.

cessation clauses in Article 1C. International standards require that this cessation must take place only when the change of circumstances is of a profound and enduring nature, and that the changes must be of such a fundamental nature that the situation which justified the granting of refugee status has ceased to exist.[25] Because the human rights violation of mass expulsion is being perpetuated as long as its victims are not able to return safely to their homes, the situation which justified the granting of international protection to Bosnian refugees has very clearly not yet ceased to exist.

Furthermore, host countries' interpretations of whether refugees from Bosnia-Herzegovina can return in safety and dignity has the potential to exacerbate the difficulties for displaced people to return to their pre-war homes. The international community is consulted on the multilateral framework for implementation of Annex 7 of the Peace Agreement at periodic meetings of UNHCR-chaired Humanitarian Issues Working Group (HIWG) of the Peace Implementation Council (which itself is composed of all states, international organizations and agencies ensuring effective implementation of the Peace Agreement). At the December 1997 meeting of the HIWG, the international community voiced resounding support to UNHCR's proposal that 1998 be a year of minority return. In order to be successful, this rhetoric of support for minority returns should be translated into patience and continued protection. To ensure that the repatriation of Bosnian refugees contributes to an improving rather than deteriorating human rights situation, countries hosting Bosnian refugees should not repatriate, or promote the repatriation of, any refugee who is unable to return in safety to their pre-war home. The international community, which opposed the forcible division of Bosnia-Herzegovina into areas where only a single nationality is safe, should not now support policies 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.

Because of the continued attacks on members of minorities, UNHCR has recommended that continued protection and care be extended in 1998 for people originating from areas where they would no longer be in the majority upon return.

> The need for international protection continues to be premised on the fact that members of the minority ethnic group in a given area frequently experience harassment and discrimination on a daily basis and minority rights are not observed. When minority returns have taken place, acts of wanton destruction, threats, beatings or violent evictions have often occurred. In a few areas, for example, mines have been freshly

[25]For more detail on the nature of protection offered to refugees from Bosnia-Herzegovina, see *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.

> laid with the intent to cause death or serious bodily harm and give a signal that minority returns are not welcome. In other instances, local police have stood by and done nothing to prevent incidents directed against minorities or have refused to accept responsibility to guarantee their safety. Municipal authorities have also refused to register minority returns and have disavowed any responsibility for the possible consequences of return.[26]

UNHCR further believes that "the decision of refugees and displaced persons to repatriate or return to their previous home areas where they would today be a member of a minority group should remain totally voluntary."[27]

According to a survey conducted among refugees from Bosnia-Herzegovina in Germany by UNHCR and the International Organization of Migration, 71 per cent of 14,582 respondents wished to return to their place of origin.[28] Other surveys have supported this finding, although they have found that among displaced persons, Bosniacs and Bosnian Croats have expressed a stronger desire to return than Bosnian Serbs. Nevertheless, according to a survey of 1,545 people[29] conducted by the Commission for Real Property Claims of Displaced Persons and Refugees (Property Commission), a quarter of the people who said they did not want to return to their pre-war homes said they would change their mind and consider returning if their pre-war neighbours also returned to their homes. Almost as many said they would consider returning if the local authorities could guarantee their safety. In fact, 93 per cent of the respondents said that trust in the local authorities was an important factor in choosing where to live.[30] Overall, the conclusion from these various surveys appears to be that the majority of refugees and displaced persons remain strongly attached to their home of origin, and wish to return there on condition that their security would be protected.

[26] *Bosnia and Herzegovina Repatriation and Return Operation 1998*, HIWG/97/7, p.39.

[27] *Bosnia and Herzegovina Repatriation and Return Operation 1998*, HIWG/97/7, p. 39.

[28] Surveys cited in "Return, Relocation and Property Rights: a discussion paper", p. 18.

[29] The participants in the survey included displaced persons in both entities in Bosnia-Herzegovina, as well as Bosnian refugees in Croatia and the Federal Republic of Yugoslavia.

[30] "Return, Relocation and Property Rights: a discussion paper", p. 15-16. Among factors important for return, quality of housing received the highest rating, with 97 per cent of respondents indicating it as an important factor, whereas employment opportunities also received a high rating with 81 per cent of respondents indicating it as important. More people responded that having neighbours of the same ethnic group was not important (56 per cent of respondents) as opposed to those who thought it was important (44 per cent of respondents).

Repatriations contributing to relocation gridlock

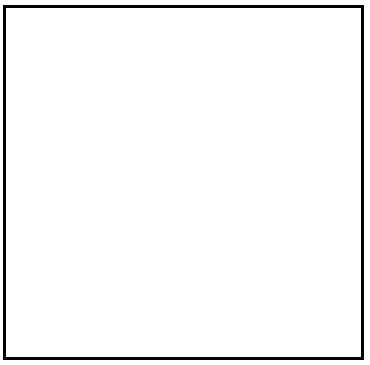
Repatriation of refugees from abroad presents additional difficulties in respect of the relocation gridlock described above. As already noted, in many cases, refugees repatriating from abroad who cannot return to their own homes have been sheltered in housing belonging to people who are themselves displaced or refugees. In other cases, when returning refugees or displaced 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*f*, a 41-year-old Bosniac man originally from Bosanski Šamac (Republika Srpska), 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. Instead, Zahid Dujmonji*f* went to Tuzla (Federation), which is administered primarily by Bosniacs. However, he told Amnesty International that authorities in the Tuzla area were unable or unwilling to provide him alternative accommodation, and that they sent him to a transit centre established by UNHCR. Although such transit centres were established to provide overnight accommodation for refugees repatriating in organized movements before they move on to their prearranged destination, with nowhere else to go, Zahid Dujmonji*f* stayed for almost six months. He still would like to return to Bosanski Šamac, however even if he decides to take the risk, there is a Bosnian Serb family from Jajce (Federation) living in his pre-war house, and they too will have to find somewhere to go.

*Zahid Dujmonji*f

The majority of refugees who repatriated in 1997 relocated instead of returning to their own homes. Unless obstacles to minority return are ended, and conditions for return are safe, then the persistence of this pattern of relocation after repatriation is inevitable. The policies of host countries of asylum must be considered as a contributing factor to these involuntary relocations. UNHCR estimates that 95,000 of the approximately 110,000 refugees who repatriated in 1997 came from Germany. Germany's temporary protection programs for refugees from Bosnia-Herzegovina have effectively ended (with exceptions for elderly persons who do not have any relatives in Bosnia-Herzegovina but have relatives in Germany who are permanent residents and would not be dependent on social assistance, for witnesses summoned by the Tribunal, and for victims of

severe trauma who have medical certificates). In opposition to the opinions of the international community, the German government has stated that involuntary relocation is an adequate solution for people who cannot return to their pre-war homes because it is not safe for them to do so. At the April 1997 HIWG meeting, the German government stated that although UNHCR's plan underlined the right of refugees to return to their pre-war communities,

> ... this does not mean that their stay in the host country is to be prolongated [sic] until they can return to their former homes. The fact that they cannot yet return to their places of origin does not mean, in our view, that they cannot return to Bosnia and Herzegovina as a whole. Germany holds the view that all refugees can return or relocate to majority areas of their respective ethnic groups.[31]



Emina Lizalo, Bosniac from Bosanska Gradiška (Republika Srpska), forcibly repatriated from Germany.

At the December 1997 HIWG meeting, the German authorities reaffirmed this position, although stating that Germany would give "special attention" to certain categories of persons, such as minority returnees from the Republika Srpska, refugees completing training courses, and traumatized people undergoing medical treatment; and said that "Germany will examine each individual case with the view to determine whether protection needs to be extended."[32] Although the decision on how to implement the ending of protection was left to the 16 constituent regional states (*Länder)*, almost all states ordered Bosnians to leave, in many cases accompanied by reductions in social assistance. Among those refugees who were able to extend the period of their protection, many have complained that their "toleration" (*Duldung)* to remain is subject to renewal at short intervals of several months. Furthermore, more than 900 people were forcibly repatriated to Bosnia-Herzegovina during 1997 from Germany, the majority from the North Rhine-Westphalia, Bavaria, Baden-Württemberg, and Berlin *Länder*. More than 100 of them came from areas where they would be ethnic minorities now.

Osman and Emina Lizalo and their adult son Mehmet are Bosniacs originally from Dubrave village near Bosanska Gradiška (Republika Srpska). They were forcibly repatriated 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 German police] came to

[31]"Statement by Dr. Gerold Lehnguth, Director, Federal Ministry of the Interior, Germany", at the HIWG on 23 April 1997.

[32]"Statement by Permanent Representative of Germany Ambassador Wilhelm Höynck" at the HIWG, Geneva, Switzerland, 17 December 1997 [in English].

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 DM 1,700 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 Dubrave on a visit to investigate whether return to their pre-war home was even feasible. 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 repatriated 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, and/or reductions in social assistance meant that they could no longer afford to remain there, and/or because their protection had ended and they feared being forcibly repatriated. Many who have nowhere to go in Bosnia-Herzegovina are trying to seek access to other countries in hopes that they will not be forced to repatriate. However, others repatriated to Bosnia-Herzegovina even though they had nowhere to go, and many of them relocated although they would have preferred to return to their pre-war homes.

The German authorities have admitted that forcible repatriation is a tactic which it employs to "encourage" refugees to leave. On 11 December 1997, the Interior Minister of Bavaria stated "More people will be deported in order to keep up pressure on them to opt for voluntary repatriation ... it is unacceptable if voluntary returns let up. I will make it clear that we are pursuing a strict policy." The Minister also stated "the problem of the Bosnian refugees will be laid to rest in 1998, apart from a small core of humanitarian cases, who should go to the United States."[33]

[33]Cited in "Bavaria Gives Bosnian Refugees ultimatum," Matthias Inverardi, *Reuters* News Agency, 11 December 1997.

Although so far the German authorities have been the most draconian in using the tool of forcible repatriation to intimidate others to leave, other countries have also forcibly repatriated people who belong to categories for whom UNHCR has said protection should be extended (see below). Austria forcibly repatriated 90 people to Bosnia-Herzegovina in 1997, including people who would be in minorities should they return to their pre-war communities. Switzerland, as well, has said that "isolated cases of forced repatriation can no longer be excluded," and in 1997 deported 49 people, including some ethnic minorities.[34]

Giving prospective returnees the opportunity for an informed choice

An important component in UNHCR's own criteria for establishing whether a return is voluntary is whether the decision was fully informed, which relies on access to impartial, independent and up-to-date information. Currently, neither the Office of the High Representative nor the other international organizations who are involved in human rights monitoring or investigation prepare publicly available comprehensive, independent and impartial reports on the human rights situation in Bosnia-Herzegovina which would enable a determination of the situation in a particular area of the country. In fact, although the Office of the High Representative is the only coordinating body which has the cross-agency capability of issuing comprehensive periodic reports, its Human Rights Coordination Centre stopped producing its daily and weekly reports in September 1997. The Repatriation Information Centre (RIC), was created by UNHCR to help facilitate repatriation through sharing information between host and Bosnia-Herzegovina authorities and institutions, governmental and non-governmental organizations, and individual refugees and displaced persons. It maintains a database which includes extensive practical information useful to refugees and displaced people considering return to their home communities, and which includes many of the periodic human rights reports issued by international and national organizations. The RIC also, in cooperation with SFOR and its other project partner, the Vienna-based International Centre for Migration Policy Development, produces reports which assess the situation in various municipalities. However, although much of this information is useful, Amnesty International has found that the information provided on the human rights situation in many of the reports published by RIC as of February 1998 is far from comprehensive.

The RIC is planning to make direct access to its database available via the Internet, and is willing to conduct searches on specific subjects upon request for those who do not have Internet access. However, its services have not been made widely available to refugees or displaced people considering return to their pre-war homes, and the RIC has in fact stated that it would not be able to manage a large number of requests from refugees and displaced people considering return. If the RIC is not able to provide refugees with up-to-date, comprehensive,

[34]"Déclaration de la délégation suisse," Statement by the Swiss delegation at the HIWG, Geneva, Switzerland, 17 December 1997 [in French].

independent and impartial information about the human rights situation in their home municipality, then alternative means of ensuring refugees have access to this type of information need to be developed.

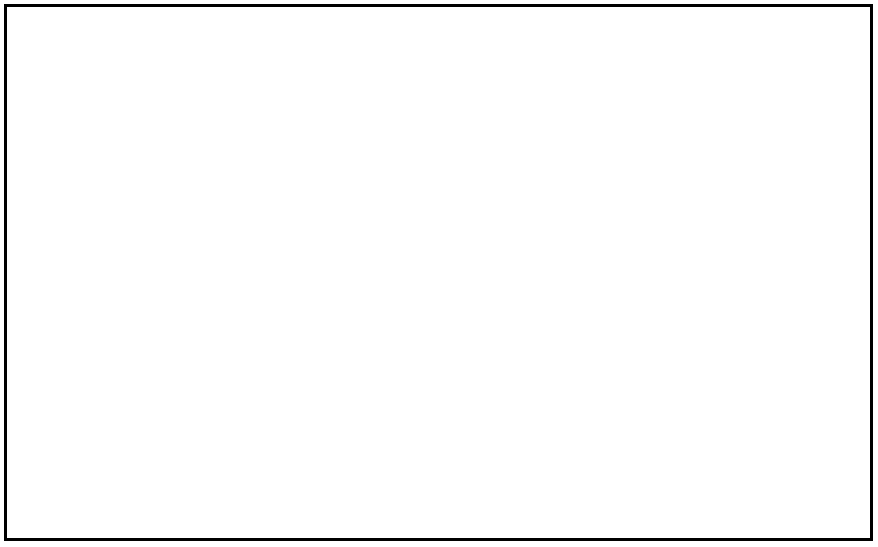
Catalysing minority return: the international community's efforts

One means by which the international community is trying to encourage municipalities to accept minority returns is by granting or denying reconstruction and development assistance. The primary vehicle to encourage minority returns in 1998 will be the "Open Cities" initiative, launched in 1997 to break down political opposition to minority return. Through positive conditionality, municipalities that declare themselves open and demonstrate a genuine and sustained commitment to encourage and support the return of all pre-war residents, irrespective of their ethnicity, as well as their full reintegration into the community, receive financial and development assistance.[35]

Negotiation over specific arrangements is also planned to encourage minority returns, following the model of the Central Bosnia Return Programme, brokered by the Office of the High Representative and other international organizations with authorities in the Canton following the violence in Jajce (Federation) referred to above. Endorsed by the authorities, the first phase of the Central Bosnia Return Programme envisages a phased return of minorities which will affect approximately 4,000 families. The second phase will affect those whose privately-owned homes are currently occupied, and the third phase will see the return of those whose pre-war homes were socially-owned housing. However, experience from the region illustrated by the non-implementation of judicial orders (noted above), demands that these paper promises can only be evaluated once they lead to tangible results.

[35]The criteria for being declared an Open City by UNHCR are:
- confirmation that the local authorities are genuinely committed to consistent and equal support for all members of the population for which they are responsible, as demonstrated by equal rights and opportunities for employment, education and appointment to public office, freedom of movement, respect for human rights;
- confirmation that minority returns will take place without any abuse of these minorities;
- the demonstrated impartiality and involvement of the local police in ensuring that security, law and order prevail for all;
- confirmation that the local authorities are genuinely committed to the removal of mines throughout the municipality; and
- a positive use of the media to prepare the resident community for the return of minorities, promoting reconciliation and inviting minorities to return (as cited in the *Bosnia and Herzegovina Repatriation and Return Operation 1998*, HIWG/97/7, p. 17).

Optimistic that the Central Bosnia Return Programme will produce results, the international community is hoping to replicate the commitment received from authorities in that area by negotiating similar agreements in other targeted areas, known as "cluster areas".[36] The criteria for prioritizing which communities will be included in such "cluster areas" include available housing space (based on pre-war and present demographic figures); the openness of the local authorities to implementing the Peace Agreement; the potential for economic development; and, the political importance of the area in terms of inter-ethnic reconciliation. In order to respond positively to municipalities which unexpectedly become targets for minority return, the RRTF is planning to make financial resources available for flexible deployment to reconstruction and development projects.



Displaced Bosnian Serb Stana Stuper with her six grandchildren and daughter, in the room they all share in a collective centre in Kozarac, near Prijedor (Republika Srpska). Prijedor is targeted to be a "cluster area" in 1998.

It is extremely important to note that given the fact that members of minorities remain vulnerable to human rights violations throughout the country, the decision to return to an area where one will be a member of a minority remains a risky choice and must be fully voluntary. Although the above plans may lead to minority returns in areas where they have not been achieved in the past, UNHCR has emphasized that areas which are in the process of opening to minority returns "should not be considered as safe areas for the non-voluntary repatriation of refugees from abroad", particularly areas which have been declared an "Open City" or areas such as the Central Bosnia Canton where agreements have been brokered regarding minority return.[37]

[36]For details on the concept of cluster areas, see the RRTF document "Outlook for 1998: Resources, repatriation and minority return".

[37]*Bosnia and Herzegovina Repatriation and Return Operation 1998*, HIWG/97/7, p. 1, see also p. 38.

In its planning, UNHCR is relying on SFOR and the IPTF to provide a climate conducive to repatriation and return movements, while recognizing that in the long-term the need is for sustainable security provided by the authorities of Bosnia-Herzegovina. Multi-ethnic police patrols are highlighted as contributing to non-discriminatory policing. However, as most serious security incidents experienced to date have involved minority return movements, UNHCR is relying on SFOR to prevent or contain civilian disturbances relating to minority return movements which could escalate in such a way that the military or para-military forces of the Entities are drawn into renewed confrontation.[38]

Special cases: When even "majority return" must not be forced

While, as noted above, it is important that those responsible for the violations of humanitarian law committed during the war be brought to justice, it is also necessary to give consideration to their victims, and in particular those victims who are willing to testify so that the perpetrators of such abuses will be brought to justice. In keeping with Article 1C of the 1951 Refugee Convention, UNHCR has recommended that ex-detainees and victims or witnesses of extreme violence receive continued protection as special humanitarian cases with compelling reasons for continued international protection arising out of previous persecution, noting that "generally being severely traumatized, many of these persons may never be able to repatriate and reintegrate as this will only aggravate their trauma and alternative solutions should be identified for them".[39] Because of the stigma associated with some of the severe violence victims may have suffered, in particular victims of rape, not all victims may have sought professional help for their trauma. This should be taken into account, particularly when determining criteria for which individuals should benefit from such care.

UNHCR has also recommended that witnesses testifying before the Tribunal be offered continued protection. However, war crimes trials are also being held in other courts, not only in national courts within Bosnia-Herzegovina but also in third countries, for example Germany and Austria. Due consideration should also be given to the protection needs of witnesses testifying before those courts.

In addition to its stated position that "the decision of refugees and displaced persons to repatriate or return to their previous home areas where they would today be a member of a minority group should remain totally voluntary" (see above), in respect of people who might be returned UNHCR also recommends that continued protection and care be offered for the following categories: people of mixed ethnicity or in mixed marriages, people who served in armed forces controlled by an ethnic group of which they were not a member, medically and

[38] *Bosnia and Herzegovina Repatriation and Return Operation 1998*, HIWG/97/7, p. 15.

[39] *Bosnia and Herzegovina Repatriation and Return Operation 1998*, HIWG/97/7, p.39.

socially vulnerable people such as medical cases or handicapped persons and the elderly, and children separated from their families or traditional care-giver. In addition, UNHCR considers that other categories of people are in need of continued protection, such as military and political leaders loyal to rebel-Bosniac Fikret Abdi*f*, as well as members of the Romani communities.

IV. SETTING THE STAKES TOO HIGH: REPATRIATION IN 1998

UNHCR has stated that if minority return movements remain largely blocked, the relocation trend will intensify in 1998, with continued movements to urban areas of the Federation, particularly to Sarajevo and the Una-Sana and Tuzla-Podrinje Cantons.[40] Increased relocation can only render minority returns more difficult. As stated by UNHCR, "Without a concerted push to make [the rights of refugees and displaced persons] a reality, confidence in the peace process will waiver, relocation to majority areas will intensify owing to a lack of other alternatives, and the vision of a multiethnic Bosnia and Herzegovina will give way to the brutal reality of division."[41] Hoping to catalyse progress where there has been little to date, UNHCR has stated that 1998 will be the year of minority returns. UNHCR is hoping that more than 50,000 people will return to their pre-war communities, where they will now be an ethnic minority, between January and June 1998.

That goal should not be pursued as an end in itself, however. As noted above, some of the most serious attacks against members of minorities, including serious human rights violations, have occurred when a critical number of refugees returns to an area. It is dangerous and short-sighted to rely on the presence of SFOR and IPTF to provide a secure environment for minorities. The responsibility for ensuring the safety of all citizens regardless of nationality rests with the national authorities in Bosnia-Herzegovina, not SFOR and IPTF. Until these authorities have proved that they are willing and able to offer durable protection to members of minorities, the risky decision to return must be fully voluntary. Despite the importance of, and the international community's enthusiasm for, minority returns in 1998, displaced people and refugees should not be coerced or induced to return to areas where they may not be safe, and those choosing to return should be fully informed of the risks which face them. The importance of adequate human rights monitoring, and, more importantly, impartial and comprehensive reporting is critical in such a context.

Likewise, the return of minorities to a pre-war community should not have to be "brokered" with municipal authorities by the international community, but should be accepted as a normal part of ensuring that all citizens of Bosnia-Herzegovina are able to choose their place of residence without regard to their nationality, political affiliation, or other status.

[40] *Bosnia and Herzegovina Repatriation and Return Operation 1998*, HIWG/97/7, p. 13.

[41] *Bosnia and Herzegovina Repatriation and Return Operation 1998*, HIWG/97/7, p. 1.

However, as long as minorities remain unsafe and administrative obstacles to their return are placed in their way, the process of encouraging minority return should not be hurried because of deadlines which have been admitted to be ambitious by those setting them. The international community and, in particular, countries impatient to end protection for refugees from Bosnia-Herzegovina should accept the responsibility to ensure that return of minorities takes place in a manner which will ensure their safety.

UNHCR has announced that up to a maximum of 220,000 refugees could repatriate in 1998. However, in the 1998 Repatriation and Return Operation, UNHCR acknowledges that "termination of forms of temporary protection will be a decisive factor [in the timing and pace of refugee movements] as from spring [the second quarter of the year]" and that "the projection for 1998 has not been made with reference to actual or probable absorption capacity and should not be taken to mean that Bosnia and Herzegovina has in place the social and economic infrastructure needed to accommodate such large numbers of returnees from abroad in a relatively short period."[42] UNHCR also states that the projected large number of 220,000 "takes into account policy decisions in certain Western European States which may lead to non-voluntary movements or work to induce voluntary movements in 1998, despite the well-known difficulties which minorities and other groups continue to face."[43]

However, when UNHCR revealed its plans at the meeting of the HIWG in December 1997, Germany stated that "the key issue for Germany is to carry over into 1998 the momentum which the repatriation of refugees to Bosnia and Herzegovina has gathered in [1997]."[44] At the meeting, the German delegation stated that it shared the view held by UNHCR and the Peace Implementation Council that the projected return of over 200,000 people will only be possible if minority returns are enabled. Despite this statement of support, Germany gave no indication that it would change its policies, which have led to the forcible and "spontaneous" return of people who had no choice but to relocate once in Bosnia-Herzegovina.

It is shameful that UNHCR has to make practical plans based on the fact that its principled recommendations will be ignored. Amnesty International is gravely concerned that because of the large numbers of people affected by Germany's stated plans to rid itself of a perceived refugee burden by the end of 1998 without due consideration for the refugees' destinations, the international community may be pushed into hurrying the delicate process of minority returns, which only increases the risks such people face. Additionally, Germany's

[42] *Bosnia and Herzegovina Repatriation and Return Operation 1998*, HIWG/97/7, pages 13 and 8.

[43] *Bosnia and Herzegovina Repatriation and Return Operation 1998*, HIWG/97/7, page 8.

[44] "Statement by Permanent Representative of Germany Ambassador Wilhelm Höynck" at the HIWG, Geneva, Switzerland, 17 December 1997 [in English].

impatience may risk not only perpetuating but also solidifying the results of the original mass expulsions on the basis of national origin. This, in turn, could undermine the peace process, thus risking opening Bosnia-Herzegovina into renewed conflict and additional human rights violations. Amnesty International is concerned that rather than being alarmed by Germany's policies, some other European countries hosting Bosnian refugees have hinted that they may consider following suit.

For example, the Swiss Government stated in June last year that it would press ahead with plans to repatriate thousands of Bosnian refugees even though many of them would not be able to return to their home communities and would have to relocate to an area now administered by their nationality group. At that time the authorities also said that after August 1997 they might expel to Bosnia-Herzegovina those refugees who refused to leave on their own, and as noted above, Switzerland forcibly repatriated 49 people during 1997, including some people who would be in minorities should they return to their pre-war homes. There is no guarantee that these numbers will not increase in 1998. However, it is clear that there is no consensus at the federal level in Switzerland, demonstrated by the differing views of the Foreign Minister, Flavio Cotti, at the time that the Justice Minister announced plans to press ahead with repatriation plans. Mr. Cotti was quoted as stating : "Forcible repatriating people to an area that is not where they come from in a region where they make up the ethnic majority means actively supporting ethnic cleansing and contradicting Dayton, the UNHCR and the community of nations."[45]

Countries hosting refugees from Bosnia-Herzegovina should be prepared to exercise patience in terms of protection towards Bosnian refugees to enable minority return to take place. Refugees who have no viable choice other than repatriation will relocate if the alternative choice is to return to areas where they will not be safe. In the short-term, relocation which is not strictly voluntary exacerbates the administrative difficulties for minorities who wish to return to their own pre-war homes. In the long-term, the frustration of those who want to return home but are not able to do so may lead them to abandon peaceful methods to achieve the legitimate goal of going home; this could threaten the fragile peace in Bosnia-Herzegovina.

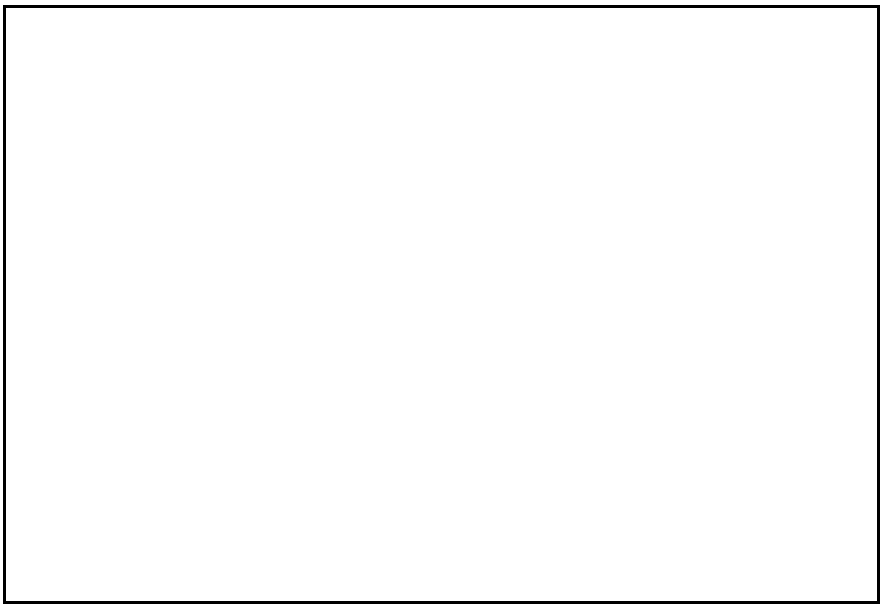
It is not a solution for countries who feel they cannot continue to shoulder the "burden" of refugees to send them to areas where they might be at risk of human rights violations. Equally, it is not a solution for them to pursue policies which may undermine the Peace Agreement by preventing the remedy to the human rights violation of mass expulsion. Returning refugees at a time when it is not likely they will be able to return to their homes, or if their repatriation prevents the return of other people to their own homes, would be to give effect to the intent of the forced mass expulsion which was the tool in a conflict designed to divide a state according to differences in nationality. The international community is reminded of its obligations

[45]"Swiss stick to plan to repatriate Bosnian refugees,"*Reuters* News Agency, 9 June 1997.

to share responsibility for the world's refugees and to ensure that countries which are geographically proximate to a country from which mass numbers of refugees are forced to flee do not bear a disproportionate burden. The international community should ensure that it shares responsibility for extending the international protection that is still needed by those who cannot reasonably be expected to or who cannot return to their homes in the safety and dignity asked for in international refugee law and according to the terms articulated in Annex 7 of the Peace Agreement.

The compensation argument

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, regardless of their nationality, can return to their own homes in safety if they so choose.



A Bosniac woman and her house in the Zone of Separation (Republika Srpska) -- she is determined to return