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SUMMARY OF UNHCR'S POSITION ON CATEGORIES OF PERSONS FROM BOSNIA AND HERZEGOVINA WHO ARE IN CONTINUED NEED OF INTERNATIONAL PROTECTION

For presentation to the Humanitarian Issues Working Group, 26 June 1998



United Nations High Commissioner for Refugees

Summary of UNHCR's Position on
Categories of Persons from Bosnia and Herzegovina who are in Continued Need of
International Protection¹

1. Introduction

1.1 Bosnia and Herzegovina was the largest refugee-producing country in the region and, at the same time, faces the greatest problem of internal displacement. According to UNHCR's estimates, over 550,000 refugees from Bosnia and Herzegovina are still in need of a durable solution. Outside the region, Germany and Switzerland host the highest numbers. Within Bosnia and Herzegovina, up to 820,000 people remain displaced from their pre-conflict homes, of whom 450,000 are in the Federation of Bosnia and Herzegovina (the Federation) and 366,000 in the Republika Srpska (RS). The country also hosts some 40,000 refugees from Croatia. In the period from March to June 1998, the State authorities registered 306 new arrivals from Kosovo, but there may in fact be up to 4,000 Kosovo Albanians in the country.

1.2 In its 1997 Repatriation and Return Plan,² UNHCR recognized that repatriation of persons to their former place of residence was a possibility where this was within an area where their constituent people was the majority and administered the area (so-called 'majority-return movements'). Such majority returns were subject to verification by the host State that there were not individual circumstances which could impede safe repatriation. However, important political and other barriers still prevented repatriation to minority areas. The development of an effective domestic human rights protection mechanism in Bosnia and Herzegovina, as well as the removal of the political and other barriers to return were considered crucial if minority returns were to be successful and sustainable.

1.3 In planning for 1998, UNHCR had considered that 50,000 minority returns to Bosnia and Herzegovina would constitute a credible breakthrough. This figure was realistic at the time, in view of the renewed commitments and declarations of intent by the authorities. However, despite the massive involvement of the international community, only some 10,000 minority returns are estimated to have occurred in the first five months of 1998, including 4,000 registered returns. This reflects the reality that the fundamental causes of displacement have not been removed.

1.4 UNHCR therefore considers that five main categories of people are in continued need of international protection. Repatriation of these groups should only take place when the individual has decided to return out of her or his own free will and on the basis of an informed choice. The situation of each of the five categories is examined in Sections 2 - 6.

¹ The background document from which this summary is drawn is available from UNHCR Headquarters or UNHCR Sarajevo.

² See UNHCR, *Repatriation and Return Operation 1997* (document HIWG 97/2), pages 3-4.

2. Persons originating from areas where they would no longer be in the majority upon return

2.1 This category includes all persons who would fall within the current minority constituent people in their area of pre-conflict residence. This applies to all three constituent peoples and is not limited to the two Entities. Members of minority constituent peoples who would be likely to experience systematic harassment, discrimination and violations of their rights upon return, continue to be in need of international protection, especially on cumulative grounds. The lifting of temporary protection in respect of this category can therefore only be recommended once the changes to the legal, administrative and social framework in Bosnia and Herzegovina are sufficiently substantial to allow for their safe, dignified and sustainable return. In the absence of changes, repatriation to a minority area, including to a recognised 'Open City', should only take place if the individual has made a free and informed choice as to her or his return.

2.2 Problems include the following: continued threats to the personal safety of returnees; lack of an enabling comprehensive legal framework conducive to safe, dignified and sustainable return, notably in the property, citizenship and amnesty areas; absence of an effective human rights regime; denial of registration and thus access to essential social services; imposition of 'war taxes'; discrimination in the education and employment sectors.

2.3 Recent serious security-related incidents, in Derventa, Doboj, Drvar and Stolac and along UNHCR-run bus lines, demonstrate that the situation remains volatile. A multi-ethnic local police force still needs to be established throughout the RS, while the various Federation police forces where this has been achieved have yet to carry out their duties in accordance with international standards. Police restructuring and reform are essential elements of the security framework along with the establishment of effective and non-discriminatory policing practices.

2.4 While the legal position of owners and occupancy-right holders has improved in the Federation, this does not mean that even if they obtain confirmation of their rights, they can immediately return to their housing units, as the laws lead to delays for the reinstatement into and repossession of property. The RS still needs to pass acceptable property legislation, consistent with international law. Moreover, the authorities of both Entities have so far been reluctant to enforce lawful evictions and to provide alternative accommodation for those lawfully evicted.

2.5 In the absence of appropriate Entity Citizenship Laws, uncertainties remain in the area of citizenship, the regularisation of which is key to the effective exercise of human rights and fundamental freedoms. The RS Amnesty Law is still not in compliance with international law and needs urgent revision to cover some 30,000 prospective returnees. Both Entity authorities need to issue identity cards to returnees without discrimination to enable them to have access to essential social services. They should also rescind the requirement for returnees to provide de-registration papers from other countries. Discriminatory practices in the area of education and employment continue to exist in both Entities, so inhibiting the return of families.

2.6 The domestic mechanisms needed to ensure national protection are not yet fully effective. The UNMIBH Human Rights Office has recorded a total of 905 human rights cases between 1 January and 3 June 1998. Important progress needs to be achieved in areas such as judicial co-operation between the Entities, judicial reform of the domestic legal framework and functioning of the court system.

2.7 Given these constraints, there may be pressures on persons in this category to return, but to a majority area. UNHCR is gravely preoccupied that the return and peace-consolidation processes are, and may potentially continue to be, seriously undermined by induced repatriation to an area which is not the pre-conflict place of residence but where the returnee will be part of the majority. Article I(1) of Annex 7 of the General Framework Agreement for Peace provides for the right of every refugee or displaced person to return to her/his pre-conflict place of residence. This recognizes that the deliberate placement of groups of people into housing belonging to other national groups in order to secure ethnically-based control over territory and thus prevent minority return (hostile relocation), is unacceptable.³

3. Humanitarian cases: ex-camp or prison detainees; victims or witnesses of violence; witnesses testifying before the International Criminal Tribunal for Former Yugoslavia; severely traumatised persons; individuals in need of special care.

3.1 Ex-camp or prison detainees, victims or witnesses of violence, as well as severely traumatised persons are presumed to have suffered grave persecution, including at the hands of elements of the local population, and cannot reasonably be expected to return to Bosnia and Herzegovina. Many of the persons responsible for their persecution are still at large in Bosnia and Herzegovina, sometimes even holding official positions. Witnesses testifying before the International Criminal Tribunal for Former Yugoslavia should equally be protected. These groups clearly require long-term solutions elsewhere.

3.2 The assessment of medical cases and socially vulnerable persons, such as handicapped persons or the elderly, should not be limited merely to the availability of treatment or special care requirements in Bosnia and Herzegovina. The financial resources of the concerned individuals must be taken into account, which determines whether vulnerable returnees have access to proper treatment and to medical facilities. At this stage, the health insurance system is ineffective and the restructuring of the health care and social service infrastructure is far from complete. The ethnicity of a returnee will also affect her/his access to health care and social services. Provided there are no other protection problems, the possibility of repatriation of individuals in need of special care should be assessed on a case by case basis. Children separated from their families or traditional care-giver must be accorded special care and attention, particularly regarding their legal status and special protection needs.

³ See UNHCR, *A Regional Strategy for Sustainable Return of Those Displaced by Conflict in the Former Yugoslavia*, paras. 7.9 and 7.10 for the circumstances in which relocation is considered acceptable.

4. **Persons of mixed ethnicity or in mixed marriages**

4.1 Many persons in mixed marriages continue to face protection problems and discrimination in accommodation, education and employment following return. The situation is worse where the head of household or person supporting the family is of the 'minority' constituent people in a given location. There are also increased reports with regard to domestic violence against women of the 'minority' constituent people and lack of protection on the part of the authorities. Persons of mixed ethnicity generally face similar problems to minorities, even if one of their parents has the ethnicity of the majority. There are clearly individual exceptions, such as when family members in the majority group are able to support the return, but these cases still remain relatively few in most areas.

5. **Potentially Stateless Persons**

5.1 The combination of the effect of citizenship laws of the other former Republics of Yugoslavia and the lack of adequate Entity Citizenship Laws may leave certain individuals without, or with unclear, citizenship. These individuals may require continued international protection until their citizenship status is regularised.

6. **Other specific protection categories: political and military leaders of the Demokratska Narodna Zajednica (DNZ), also known as "former Abdic supporters"; deserters and draft-evaders of the Bosnian Serb army; minority members of the armed forces; members of the Roma communities.**

6.1 Despite the favourable results of the municipal elections in Velika Kladusa and Cazin, the political and former military leadership of the DNZ, as well as prominent former supporters of Abdic are not assured effective national protection from the authorities, which justifies the need for continued international protection of this group.

6.2 The current RS Law on Amnesty denies amnesty to RS citizens, many of whom may be prosecuted upon return. Deserters and draft-evaders of the Bosnian Serb army, therefore, still need international protection.

6.3 Discrimination against persons who served in the armed forces controlled by a constituent people of which they were not a member continues to occur despite all three amnesty laws granting amnesty to persons who served in the enemy army. UNHCR wishes to repeat its caution that the individual circumstances of each case must be scrutinised carefully to determine whether or not it is safe for the person to repatriate.

6.4 The situation of members of the Roma communities is critical. Members of this group are even less integrated into the post-conflict Bosnian society than they were before, having lost most of their traditional sources of revenue and facing a precarious housing situation. Reportedly, members of the Roma communities are often discriminated against in the enjoyment and the protection of their rights, particularly if they originate from the RS. Serious cases of discrimination require, therefore, continued international protection, on cumulative grounds

7. Conclusion

7.1 Clearly, the non-voluntary repatriation of refugees falling under the aforementioned categories is not appropriate. Nevertheless, given the very individual circumstances of members of the above categories, return is already a possibility. However, numbers are as yet too small to draw any general conclusions. For those in these categories for whom voluntary return may be an option, the key remains access to objective and accurate information. In this regard, UNHCR welcomes the ongoing policy of many host countries to support widespread dissemination of information to refugees and assessment visits to their areas of pre-conflict residence.