

Bosnien og Hercegovina (79)

183

14/2-05



**Update on Conditions for Return to
Bosnia and Herzegovina**

January 2005



1. INTRODUCTION

Nearly nine years after the signing of the Dayton Peace Agreement (GFAP), it is uncontested that real and tangible progress on the return of Bosnian refugees and internally displaced persons (IDPs) has been made. Over one million former refugees and IDPs have returned to their pre-war homes and municipalities in Bosnia and Herzegovina (BiH), out of an estimated 2.2 million persons forcibly displaced during the war. Significantly, as of the end of December 2004, these returns include some 448,405 so-called minority returns, in addition to the 556,988 so-called majority returns of persons who have returned to municipalities where their group is in a numeric majority. A major factor contributing to this was the property repossession process, which reached an overall 93 per cent implementation rate by the end 2004.

However, this general progress has made the plight of those for whom return in safety and dignity remains problematic more apparent and serves as a powerful reminder that a strictly individualized approach is still necessary when assessing a particular asylum claim. Such a case-by-case approach can not yet be replaced by a general assumption of safety based on high return numbers. A large number of persons remain displaced within the region and continue to be in need of a durable solution. These include some 100,000 refugees from BiH who are in neighbouring Serbia and Montenegro and in Croatia, an estimated 50,000 refugees from BiH who benefited from "temporary protection" in European Union countries, as well as some 309,240 displaced persons who remain displaced within BiH (as at 31 December 2004).¹ BiH itself hosts still a large number of IDPs and refugees from the region, particularly from Croatia. In this regard, a re-registration exercise of IDPs and refugees from Croatia is currently ongoing in BiH and is expected to provide more reliable statistics by end Spring 2005.

This report analyzes the safety conditions for returnees to BiH, highlights the continued international protection needs of some categories of persons from BiH and outlines why some refugees and IDPs cannot find a durable solution in BiH today, thus resulting in some new asylum applications still being lodged, particularly in Western Europe. Similarly, the report argues that the concept of internal flight alternative within BiH is neither relevant nor reasonable. The report is an update of UNHCR's assessment dated July 2003, entitled "*UNHCR's Concerns with the Designation of Bosnia and Herzegovina as a Safe Country of Origin*", bringing to the fore issues which need to be duly taken into account when assessing whether BiH could be considered a safe country of origin.

¹ It is assumed that the remaining BiH refugee and IDP population (out of the estimated 2.2 million forcibly displaced during the war) has found a durable solution.

2. CONTINUED PROTECTION NEEDS

2.1 Categories of Persons Requiring Special Attention when Determining their Continued Need for International Protection

There continue to exist some groups of persons whose safety and well-being in BiH can clearly not yet be guaranteed and whose continuing needs for international protection should thus be considered.

War Crimes Witnesses Testifying before the ICTY

Special attention must be paid to witnesses testifying before the International Criminal Tribunal for the former Yugoslavia (ICTY), because of the number of suspected and/or indicted war criminals still at large and the fact that a fully functional witness protection programme is not yet in place in BiH. For example, in 2002, ICTY witnesses were on at least two occasions the target of violence. In two separate incidents, the house of an ICTY witness was damaged by explosives and a war crime witness found an explosive device under his car. In May 2004, the brother of a war crimes suspect allegedly in the process of providing information on the former Bosnian Serb leader Radovan Karadzic and his network to the ICTY, was mistakenly killed in a raid by the Republika Srpska (RS) police. It is being argued² that the informer was targeted in order to silence him before he was able to say more. Increasing numbers of cases have become known where war crimes witnesses have been threatened and in several instances they were reported to have withdrawn their statements.³ As an indication for the prominence with which war crimes suspects still move around BiH with impunity, it was revealed in December 2004 that the RS Army had until summer 2004 been harboring and protecting prime war crimes suspect Ratko Mladic, despite repeated and public pleas to collaborate with the ICTY and apprehend war criminals.⁴ In December 2004, a witness to a local war crimes trial in Zenica who had recently made two statements was killed by an unknown perpetrator in Teslic.⁵ This situation of intimidation and harassment of trial witnesses may be further exacerbated when cases begin to be transferred from the ICTY to domestic courts.⁶

Some initiatives have, in the meantime, been taken to establish a legislative and administrative framework for witness protection in BiH.⁷ The new War Crimes Chamber

² See Article by the IWPR, in the *Bosnia Daily* of 6 May, page 6.

³ See Amnesty International, "*Bosnia-Herzegovina: Shelving justice - war crimes prosecutions in paralysis*", November 2003, AI Index EUR 63/018/2003, p.18-19.

⁴ See Press Conference of the High Representative, Paddy Ashdown, on 16 December 2004, where he announced his decision to remove a number of senior RS police officials from office.

⁵ See local newspaper "*Dnevni Avaz*" of 4 December 2004.

⁶ As part of the ICTY's completion strategy, ICTY is transferring intermediate and lower level cases to BiH. These cases include both cases where indictments have already been issued and confirmed, and cases still under investigation in which no indictment has been issued and where local prosecutors have to complete the investigations and issue indictments. The War Crimes Chamber of the State Court, set to become operational at the start of 2005, will hear cases deferred by the ICTY as well as a small number of cases initiated in BiH but reviewed by the ICTY under what is commonly referred to as the 'Rules of the Road' Agreement (Rome Agreement of 1996). See *Bosnia and Herzegovina: Selected Developments in Transitional Justice*, Report by the ICTJ, October 2004.

⁷ On 24 January 2003, the High Representative issued a decision enacting the *Law on Protection of Witnesses under Threat and Vulnerable Witnesses* (BH O.G. no. 3/03 dated 10 February 2003, entered into force on 1 March 2003).

of the BiH Court, for example, will also include a Victim and Witness Management Section. While this is in itself a positive development and shows acknowledgment that the protection of citizens providing testimony in war crimes trials is the responsibility of domestic institutions, the fact that the Victim and Witness Management Section itself has already been discussing with selected states about the potential relocation of war crimes witnesses and their families to third states, is testimony to the country's accepted lack of ability to ensure the safety of some witnesses, as the implementation of laws that provide for the protection of war crimes witnesses has also been hampered by the lack of financial resources for technical requirements for the courts to provide proper protection.

Severely Traumatized Individuals

Individuals who can invoke "compelling reasons arising out of previous persecution" should continue to benefit from international protection as indicated in Article 1 C(5) and 1 C(6) of the 1951 Convention, since the devastating psychological effects of the trauma suffered should be duly considered.

Refugees who have suffered or whose family has suffered from atrocious forms of persecution including genocide should not be returned. The severe and often continuing nature of the injuries suffered by the persecuted individual should serve as a reason to maintain the protection status of the person concerned until it is voluntarily forfeited. This principle, flowing from the 1951 Convention and based on international humanitarian and proportionality principles, has been recognized in the legislation and jurisprudence of a significant number of states as well as by the UNHCR Executive Committee.⁸ For BiH, this category of persons would include those who are severely traumatized, such as camp survivors, victims or witnesses of genocide, torture or extreme forms of sexual violence, such as systematic rape.

2.2 General Safety Concerns

Overall Concerns

Security is still an important concern for returnees in BiH and continues to constitute an obstacle to return for some returnees. In most return locations, the security situation has steadily improved and many returnee communities report that relations with local residents are good and that the local police are acting professionally. However, as evidenced by the continued presence of over 7,000 international troops under the EU Force (EUFOR) command after the hand-over from NATO's Stabilization Force (SFOR) in December 2004, significant concerns remain. Serious incidents continue to occur in certain areas, including killings and beatings, violence directed against properties as well as incidents of harassment and vandalism of religious premises.

Additionally, a *Law on Witness Protection in the Criminal Procedure* was adopted in the RS. (RS O.G. no. 48/03) on 24 June 2003.

⁸ See *Executive Committee Conclusion No. 79, Para. (e)*.

The presence of suspected war criminals and failure to arrest and prosecute them constitutes an important obstacle to return and affects the sense of security of many returnees. Moreover, it is not only that the local police has often not been able to arrest war criminals, but the continued presence of suspected war criminals in the local administration which hampers trust of the local population and particularly returnees into the justice system.⁹ Despite the efforts made in the context of the decertification process undertaken by the International Police Task Force (IPTF) before the end of 2002 as regards police officers against whom there was evidence of wartime crimes, considering the magnitude of war crimes committed in Bosnia and Herzegovina, and the active role of local administrators in the execution of these crimes, it is unlikely that all war criminals have been removed from local administrative bodies. In cases where officers have been decertified, IDPs and returnees have come across them in other central roles in their former municipalities, either as experts or consultants to the Ministry of Interior, in the judicial systems and other central parts of the local administration, including in schools.¹⁰

For monitoring purposes, UNHCR considers a return-related security incident to be an incident targeting returnees or a member of a minority constituent group in a return area, an incident motivated by the desire to prevent returns or an incident perceived as having the intention to prevent returns.

Developments in 2003

In 2003, 277 return-related incidents were reported, based mainly on information from UNHCR field offices and the European Union Police Mission (EUPM), which took over from the IPTF in January 2003 with a mandate among others to ensure a safe and secure environment for returnees. On average there were 23 incidents per month in 2003, which is lower than the average during the year 2002 (35). The overall decrease in reported security incidents is encouraging but should not be overly relied upon as it coincides with the departure of the IPTF at the end of 2002 (to which citizens used to directly report, a role not taken over by the EUPM), and also with a gradual decrease in monitoring and field presence by UNHCR and others due to the down-sizing of their missions. As a result, returnees may feel inhibited to report incidents of intimidation or harassment to the local police whom they may perceive as being hostile towards returnees and potentially even know from war times. The below numbers should therefore only be interpreted as examples, but cannot provide an exhaustive picture of the overall security situation. Moreover, the security situation varies greatly throughout the country and should always be assessed on a case-by-case basis before considering return.

Of the reported number of incidents in 2003, 38 consisted of assault or other actions affecting the physical integrity of persons, five leading to the death of returnees. There were 54 incidents entailing threats, insults or harassment. Incidents that were clearly intended to intimidate or insult returnees more commonly consisted of graffiti, verbal harassment and attacks on property – including at times with the use of explosives. 103

⁹ ICG, *The continuing challenge of refugee return in Bosnia and Herzegovina*, December 2002.

¹⁰ According to Amnesty International (*Amnesty International Report 2003*), few suspects were brought to justice in proceeding in domestic courts, despite the fact that according to unofficial estimates, some 10,000 potential suspects were listed in local investigation files.

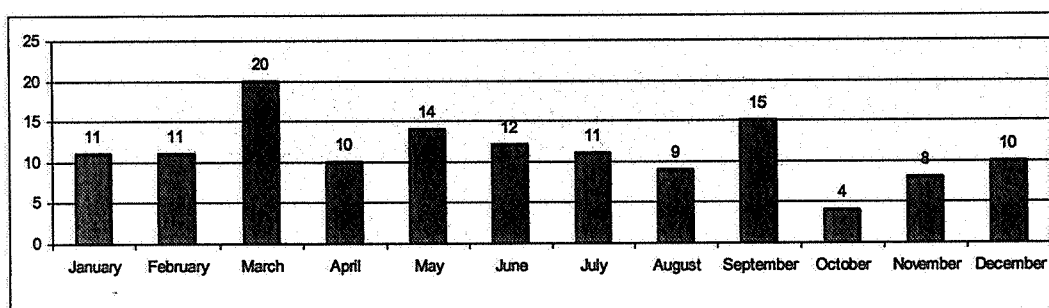
incidents in 2003 were directed against the property of returnees or IDPs. 82 incidents were directed against memorials or religious objects belonging to a “minority” (or non-dominant) constituent people.

Developments in 2004

In 2004, 135 return-related security incidents were reported over the year, 56 in the RS, 73 in the Federation and six in Brcko District. In December 2004, a returnee leader in Teslic was killed by an unknown perpetrator which created fear and anger among the returnee community. Apart from being a returnee leader, the victim was also witness to a cantonal court trial against an individual charged for war crimes.¹¹

In October, an orthodox priest was attacked and seriously injured in Sarajevo. In September, 100 persons were involved in violent demonstrations for and against an orthodox church which was to be constructed on the property of a Bosniak returnee in Bratunac. The returnee himself was injured. In Zvornik, the restaurant of a Bosniak returnee was attacked eight times, including the use of small explosives and hand grenades. Additionally, there were 34 reported incidents targeting religious objects or graveyards between January and December 2004. Posters of persons indicted for war crimes were displayed in Banja Luka as well as throughout the Eastern RS, and hate-inciting graffiti was on several occasions found in the area of Srebrenica, especially during the period preceding the October municipal elections.

As the chart of security incidents as reported by UNHCR in BiH in 2004 shows below, the situation continues to be volatile and highly responsive to external factors, such as the security incidents in BiH coinciding with the violence in Kosovo in March 2004 as well as the campaign prior to the municipal elections in BiH in October 2004.



It remains a significant concern that the local police are often reported to be slow in responding to incidents affecting returnees and that few return related incidents result in adequate sentences or even identification of the perpetrators. In certain instances, serious negligence and mishandling during the examinations have cast serious doubts on the ability and willingness of the local police to identify and arrest suspects. Prosecutors have also on several occasions been reluctant to act upon cases, as was the case in the Eastern RS in March 2004, when hateful messages and posters of Radovan Karadzic were driven around

¹¹ See above part 2.1. and local newspaper “Dnevni Avaz” of 4 December 2004.

in open vans and no investigation related to Article 390 of the RS Criminal Code (inciting or promoting national, racial or religious hatred) was being launched. The number of perpetrators convicted remains extremely low, and the sentences imposed are often lenient in spite of the seriousness of the crimes. Additionally, local authorities often do not sufficiently condemn return-related incidents and if so, their statements are frequently the result of strong encouragement from international organizations.

The recruitment of additional "minority police officers" still needs to be actively pursued and the proper conditions for them to fulfil their duties need to be put in place. In Srebrenica, for instance, less than 10% of the local police force are 'minority officers' and it has been very difficult to retain them due to the salary differences in force across Entities. It is hoped that the European Union Police Mission (EUPM) despite its limited mandate will continue to exert efforts in ensuring the recruitment of "minority police officers" within the context of a transparent police reform process and in securing the safety of returnees.

Other Concerns: Mine Accidents

Land mines are still a significant barrier to the reconstruction of the country, the safe return of IDPs and refugees and the development of economic activity in BiH, which remains the most heavily mined country in South Eastern Europe. According to figures provided by the BiH Mine Action Centre in 2003, 670,000 mines and 650,000 unexploded ordnance (UXOs) remain in roughly 10,000 sites. Twelve (12) per cent of these explosive devices are located in zones of everyday use, reconstruction and economic activities. Low resources allocated to demining activities negatively impact the possibility for the safe return of IDPs and the creation of job opportunities. At the current speed of demining (currently almost totally funded by international donors), it is estimated by the BiH Mine Action Centre that it will take around 10 years to demine these priority areas, excluding the clearance of UXOs.

In 2003, a total of 54 persons were victims of mine accidents, out of whom 9 were children, 19 were returnees and 5 were IDPs.¹² During 2004, a total of 41 mine accidents were reported by the ICRC, 18 of which involved returnees. Two 10-year-old boys were killed in an UXO explosion in a return area near Mostar when playing outside in October 2004.

3. ASYLUM-SEEKERS WHO LEFT BIH AFTER THE WAR

Nine years after the end of the war, there continue to be asylum applications made by citizens of BiH throughout the European Union. UNHCR statistics show a general decline in these applications which is overall in accordance with the developments in the country.¹³ The main countries of asylum continue to include France, Sweden, Germany, Switzerland and Austria.

¹² International Committee of the Red Cross (ICRC) Database.

¹³ See UNHCR, *Asylum Levels and Trends in Industrialized Countries, Third Quarter 2004*, 15 November 2004.

The number of deportations to BiH has increased in the past three years. According to the BiH State Border Service (SBS), 3,398 persons were deported from European countries during the year 2003, nearly double the number of deportations in 2002 (1,716 persons). Another 2,199 persons were deported to BiH in 2004. The highest number of deportations came from Sweden (611), Germany (465), Croatia (411) and Denmark (165). While the percentage among the deportees who appear to have gone through an asylum procedure is limited, some are persons whose temporary protection status ceased, and others are rejected asylum-seekers who left BiH after the war.

UNHCR has observed that among the deportees are former IDPs in BiH who were seemingly not able to return to their homes of origin because of their continuing protection needs and who decided to seek asylum abroad. This is prompted by the fact that, with the relatively late implementation of the property laws, many IDPs in recent years had to vacate the properties they were temporarily occupying to allow the return of the original property right holder. This, coupled with the lack of appropriate alternative solutions, may have led some of the evictees who fear to return to their pre-war place of residence or who do not have habitable property to return to deciding to seek durable solutions abroad.¹⁴

UNHCR remains concerned that such cases are summarily dismissed, on the presumption of the overall improved conditions in BiH, and without proper consideration of the individual claim. As some of these new asylum-seekers might have been unable to return to their area of origin because of concerns for their safety, past persecution or severe trauma, or fear of persecution by non-state agents (such as war criminals still at large), there is a continuing need for a case-by-case assessment of their claims.

4. THE INTERNAL FLIGHT ALTERNATIVE

An increasing number of asylum countries have started to apply the so-called "internal flight or relocation alternative" (IFA) to asylum-seekers from BiH, be they "new" asylum-seekers who left BiH after the war or persons whose temporary protection status has ceased. The application of the IFA implies that persons who have a well-founded fear of persecution in one place may be able to settle safely in other parts of the country and live a normal life there.

As indicated in UNHCR's Guidelines on the internal flight alternative,¹⁵ the concept should not be used to bypass a comprehensive assessment of the asylum claim. Before it can possibly be considered to expect a refugee whose well-founded fear of persecution has

¹⁴ The Property Law Implementation Plan (PLIP) was conceived in 1999 as a tool for enabling the right to return to one's home, a right enshrined in Annex VII of the GFAP. PLIP in fact helped hundreds of thousands of refugees and IDPs to return home since. Implementation implied, however, that the right to property repossession could ultimately be enforced through the forcible eviction of the current occupant who refuses to vacate the property of another rightful owner. Under the domestic DP legislation, BiH authorities are required to provide often basic accommodation to IDPs who had to vacate the occupied properties but have a genuine need for housing. In practice, such accommodation may be limited to the neediest and is not always adequate in terms of standards.

¹⁵ See *UNHCR Guidelines on International Protection: "Internal Flight or Relocation Alternative" within the Context of Article 1 A(2) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees* (HCR/GIP/03/04) 23 July 2003.

been established for one part of the country of origin to relocate to another, careful analysis as to the *relevance* and to the *reasonableness* of such relocation should be applied.

It is UNHCR's assessment, that in view of the current conditions in BiH, internal flight or relocation may not be an option for many individuals, who instead swell the numbers of IDPs in the country.

For victims of war crimes or for witnesses testifying before local courts or the ICTY, the concept of an "internal flight or relocation alternative" should not in UNHCR's view be considered *relevant*¹⁶. Because of the number of indicted war criminals still at large, insufficiencies of the rule of law system generally and in view of the absence of effective witness protection in particular,¹⁷ a victim or witness of war crimes who is being returned to BiH would be exposed to serious risk of safety even in the area of relocation. While BiH is developing its witness protection system, much more needs to be done on the practical and legal level in order to ensure adequate protection of witnesses testifying in war crimes trials before all courts in the country. Furthermore, it is generally acknowledged, including among those advocating for a better witness protection system in the country, that some witnesses may never be safe inside the country, given that "the small size of BiH sets an objective limit to the usefulness of [witness protection] legislation"¹⁸, and advocating among others for the need to build more effective cooperation on this issue with other states of the former Yugoslavia as well as with governments internationally.¹⁹

For severely traumatized individuals who can invoke compelling reasons out of previous persecution such as camp survivors and other victims of genocide, relocation should equally not be considered *relevant*. Due to the above mentioned small size of BiH and the enforced proximity to any site of previous atrocities, it is unlikely that severely traumatized individuals could live anywhere in BiH without being constantly reminded of their past suffering. Additionally, given the desolate state of the health system in BiH, especially as regards mental health, and the absence of sufficient psycho-social counselling, it would also not be *reasonable* to expect them to relocate as this could cause undue hardship for them.²⁰ Moreover, they may in fact often be compelled to go back to their home areas, i.e., the very area where they have suffered atrocious forms of persecution, because of the poor socio-economic conditions and the limited social protection or relocation assistance available to them.

UNHCR is aware of cases of deportees whose asylum claims have been rejected due to an application of the IFA concept and who are, upon arrival in BiH, refused recognition as displaced persons in the area of their former displacement even if they enjoyed that status before seeking asylum abroad. It should be underlined in this context that the status of a 'displaced person' is often the only opportunity for a vulnerable individual to have access to legal as well as minimum social protection such as emergency accommodation, health

¹⁶ See above Guidelines, Part B.

¹⁷ See Part 2.1. on continued protection needs of certain categories of persons and 2.2. on general security concerns.

¹⁸ See Human Rights Watch, "*Balkans Justice Bulletin: The Trial of Dominik Ilijasevic*", January 2004.

¹⁹ See Amnesty International, "*Bosnia-Herzegovina: Shelving justice - war crimes prosecutions in paralysis*", November 2003, AI Index EUR 63/018/2003, p.18-19.

²⁰ See above Guidelines (Footnote 15), Part C.

care, and/or other basic entitlements. Permanent residents do not generally enjoy such entitlements as they are considered to have functioning family or other informal social safety nets. Additionally, while the social protection system is not functioning in some areas (due to lack of relevant legislation or lack of necessary funds), it is linked in others to certain periods of residence prior to entitlement which a person who was just recently deported obviously would not fulfil. As a result, these deportees are likely to face undue hardship upon their return. Those who do not have adequate means to sustain themselves are at risk of becoming homeless.

The above problems particularly affect members of the *Roma* communities, as they face a series of difficulties exercising full ownership rights over property in post-war BiH, stemming from a number of causes, ranging from the lack of ownership documents to exclusion from property laws of types of property commonly used by them. This lack of ownership rights causes other problems such as regarding registration for status as a 'displaced person'. While in general the situation regarding repossession of property has dramatically improved, *Roma* continue to face particular problems within the system for realizing repossession of lost property or securing reconstruction assistance because they often lack documentary evidence proving ownership or face institutionalized discrimination, thereby facing additional risk of being left out of the already meagre social protection system.²¹

Moreover, apart from the overall economic hardship and extremely limited possibilities for earning a living, even where displaced person status is re-acquired, displaced persons will often have difficulty accessing the assistance or accommodation due to them as a result of their displaced person status. Collective accommodation that is available today, such as collective centres or transit centres, provides only the most rudimentary living conditions and residents often become stranded. While originally intended to be a temporary solution, many IDPs and deportees have been living there for years due to the lack of funds for reconstruction in certain areas of BiH, insufficient resources in the social welfare system and the limited capacity of medical institutions. Additionally, the Bosnian authorities are in the process of closing most collective accommodation.

It is thus UNHCR's assessment that, in view of the current conditions in BiH, internal flight or relocation may not be relevant for certain categories of individuals and, if relevant, may not be reasonable for others as outlined above. Instead, the danger is rather that if such individuals are returned they will increase the number of IDPs in the country.

5. GENERAL RETURNABILITY CONCERNS

Even when it has been determined that an asylum-seeker may not or may no longer have a valid claim for international protection, governments should take essential humanitarian concerns into account when deciding on whether or when to return a particular individual.

²¹ See *Exercising Property Rights: Obstacles Facing The Roma Community in Post-Conflict BiH*, Report by Paul Prettitore for the ERRC, 2002.

Individual Concerns

The percentage of citizens from BiH who have gone through severe trauma and are suffering from post-traumatic stress disorder is generally claimed to be alarmingly high. As a result and due to the lack of psycho-social counseling available in BiH, the premature return of some individuals is ill-advised, and may result not only in undue hardship and suffering on the part of the individual concerned, but also in disruption and potential disturbance in family and communal life. This concerns in particular mentally unstable or disabled persons whose necessary institutional care can not be guaranteed;²² female heads of household or other particularly vulnerable persons who have gone through particularly traumatizing events;²³ medically dependent persons who require continuous medical attention; and frail or older persons without family support. The return of children should always be carried out in a child-appropriate manner, in line with the best interest of the child, and must not be traumatizing for the child.²⁴ In this regard, it is also important to avoid the undue separation of families when deporting, which is – unfortunately – a frequent practice according to the cases of deportation to BiH monitored by UNHCR at the airport in Sarajevo.

Overall Societal Concerns

According to a study by the Ministry of Civil Affairs' Institute for Health on the state of human rights of citizens in BiH over the last five years, almost 50% of the population that is capable to work is unemployed; 25% of them live in total poverty and at the very edge of existence; between 40-50% of citizens do not have a right to public health care; 18% of citizens live without electricity (mainly returnees and IDPs); and 25% of the population is exposed to explosive devices (mines), radioactive substances and similar dangers.²⁵

While social and economic hardship is rarely accepted as a valid obstacle to return, UNHCR would like to reiterate that apart from the general situation of poverty and unemployment, persons with particular needs do often not fit within the standard categories of beneficiaries as established by the pre-war social protection system. Many returnees or deportees, who are not granted the status of 'displaced person' upon their return, even if they enjoyed that status before their departure, thus lack access to the rights and entitlements of IDPs, which would provide them with at least some form of housing and limited health care. They will also not qualify for any of the other beneficiary status entitlements such as pensioners', war veterans' or other benefits. As a result, they may end up in indefinite stay in collective accommodation – when and if space is available. Others may become homeless. UNHCR itself is contacted on a daily basis by very disturbing cases of individuals who are unable to access health care despite urgent needs, have no

²² See *Health Care in Bosnia and Herzegovina in the context of the return of refugees and displaced persons*, UNHCR, Sarajevo, July 2001.

²³ See *Daunting Prospects: Minority Women: Obstacles to their return and integration*, UNHCR, Sarajevo, April 2000.

²⁴ See in this context *Returns and Separated Children*, Position Paper of Save the Children and the Separated Children in Europe Programme, September 2004.

²⁵ According to a statement by Minister Halilovic, Minister of Civil Affairs of Bosnia and Herzegovina, at an International Conference on the state of human rights in BiH as compared to European standards on 7 December 2004.

housing or income whatsoever, and are thus forced to make a living as best they can through begging.

Other Concerns Regarding Deportations

Governments should take the overall fragile situation in BiH into account before considering deporting individuals to BiH. A sudden “influx” of deportees may unduly destabilize a region which is still recovering from past atrocities and still experiences the above mentioned incidents of ethnically motivated crimes, suspicion and hatred. Some progress in terms of reconciliation has been achieved but, as evidenced for example by the public acknowledgement of the Srebrenica genocide by the RS authorities as recently as in summer 2004,²⁶ the healing process is naturally slow and should not be overestimated.

Governments should therefore phase any returns of rejected asylum-seekers or persons whose protection status has ceased and engage in discussions and negotiations with the relevant ministries in BiH to ensure that deportations are taking place in an orderly fashion that gives due consideration to the impact they will have on the receiving area and ensure that adequate assistance can be provided to the deportees upon their return. Forced or induced returns into situations of renewed internal displacement generally provide few or no prospects for sustainable re-integration.

6. CONCLUSION

Despite significant progress made in the implementation of the GFAP, and specifically of its Annex VII, and the presence of EUFOR and the EUPM in the country, individual refugees or IDPs may still not be in a position to return to their pre-war municipalities. In addition to the wide range of conditions required to make return sustainable, including access to reconstruction assistance, employment, health care, pensions, utilities and an unbiased education system, which are not discussed in this update,²⁷ continuing concerns over the safety of individual returnees remain.

In 2004, security incidents affecting returnees continued to be reported, albeit at a reduced rate, including serious events resulting in death and bodily injury. This shows that there is still a great need to strengthen further the rule of law in BiH and ensure that it is fully respected. Inadequate investigations or reluctance to investigate return-related incidents promptly and fully result in lack of follow-up action or premature closure of cases. Therefore, the number of perpetrators convicted is low and where sentences are imposed, they are often lenient in spite of the seriousness of the crimes committed. In addition, the number of mine accidents in return areas is still acting as a major deterrent to return for many IDPs and deportees.

Furthermore, it must be underlined that certain categories of persons from BiH may still be in need of international protection. The plight of those who are not able to return because

²⁶ The Srebrenica Commission’s final report was submitted to the RS government only in October 2004.

²⁷ For a comprehensive review of the obstacles to return, please see UNHCR’s September 2001 *Update on Categories of Persons from Bosnia and Herzegovina in Need of International Protection*.

of past persecution and trauma has become more apparent in recent years, and should be considered in the context of Article 1 C(5) and 1 C(6) of the 1951 Convention, as well as from a humanitarian and human rights perspective. With the most prominent indicted war criminals still at large and literally thousands of suspected war criminals continuing to lead a life in total impunity throughout BiH, the fear of witnesses of war crimes may indeed be well-founded. Therefore, special attention should be given when determining the continued international protection needs of witnesses in war crimes trials and other particularly vulnerable individuals.

Against the aforementioned background and in view of the complex internal displacement situation in BiH, it is particularly important that the international protection needs of persons from BiH are assessed on an individual basis and without resorting to premature assumptions of overall safety. Additionally, before resorting to deportations governments should consider vital humanitarian needs when returning individuals to BiH, and be concerned with the overall impact on BiH as a country still in recovery.

January 2005

