



**UNHCR's Concerns with the Designation of
Bosnia and Herzegovina
as a Safe Country of Origin**

July 2003

1. INTRODUCTION

1. Seven and a half 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. Close to one million former refugees and IDPs have returned to their pre-war homes and municipalities in BiH, out of an estimated 2.2 million persons forcibly displaced during the war. As of May 2003, these returns significantly include some 411,000 so-called minority returns, in addition to the 543,000 so-called majority returns of persons who returned to municipalities where their own constituent people of Bosnia and Herzegovina (BiH) are in a numeric majority. A major factor contributing to this was the property repossession process, which has reached a 82 per cent implementation rate by the end of May 2003.

2. However, this general progress has made more apparent the plight of those for whom return in safety and dignity remains problematic. A large number of persons remain displaced within the region and in need of a durable solution. These include some 125,000 refugees from BiH who are in neighbouring Serbia and Montenegro and Croatia and some 45,000 refugees outside the region, as well as some 350,000 IDPs who remain displaced within BiH.¹

3. This report analyses the safety conditions for returnees in BiH, highlights the continued international protection needs of some categories of persons from BiH and outlines why IDPs cannot find a proper solution in BiH today. These issues need to be taken into account when assessing whether BiH could be considered a safe country of origin.

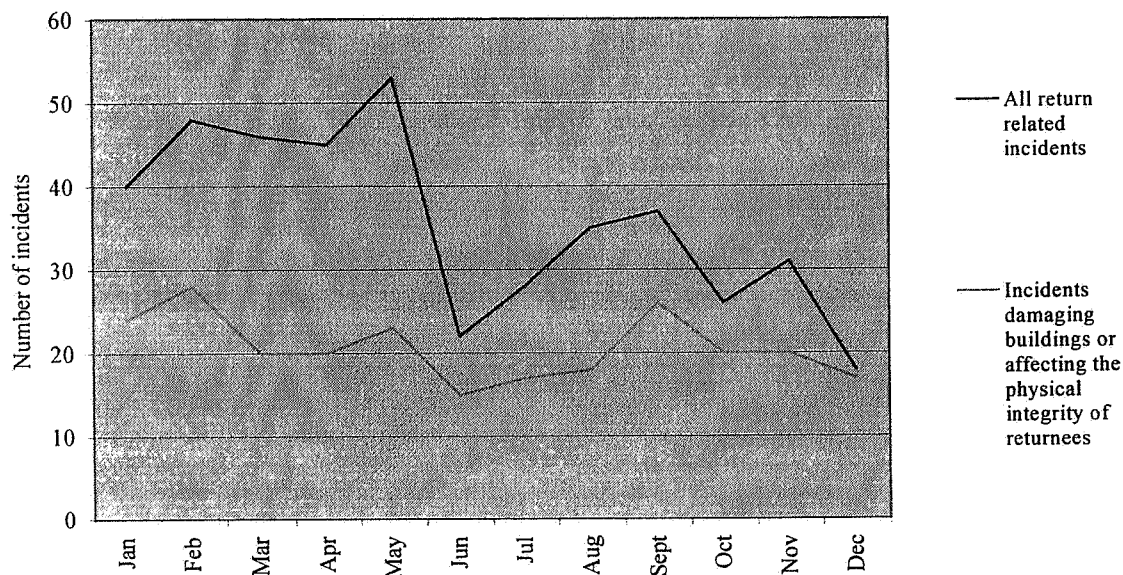
2. SAFETY OF RETURNEES

Security incidents

4. Throughout 2002, some 430 security incidents related to return or directed against "minority" returnees were reported, based on information from UNHCR field offices, offices of the Organisation for Security and Co-operation in Europe (OSCE), the International Police Task Force (IPTF) and the United Nations Mission in Bosnia and Herzegovina (UNMIBH). This represents an average of 35 return-related incidents per month (see chart below). Return-related incidents are reported from across BiH, but the most serious incidents took place in Cantons 7 (Herzegovina-Neretva) and 9 (Sarajevo), and the Eastern Republika Srpska (RS). The locations with the highest number of cases reported are Zvornik, Bijeljina and Bratunac in the RS, and the Cantons of Mostar and Sarajevo.

¹ It is assumed that the remaining BiH refugee and IDP population has found a durable solution.

Return-Related Security Incidents in 2002 by Month



5. The table above shows that, while the total number of return-related incidents decreased in the second half of 2002, the number of incidents resulting in damage to buildings or affecting the physical integrity of returnees remained relatively constant throughout the year. Mainly, the type of incidents that decreased can be considered of a less serious nature, such as cases of verbal and written harassment and cases of damage to graveyards.

6. Physical violence against returnees resulting in death was reported in one case in 2002: three members of the same family were killed and another seriously injured on 24 December 2002 by a religious fanatic. Around 70 incidents involving physical violence and fights between members of different constituent groups were reported in 2002, on average four per month. The highest number of incidents of physical violence took place in Eastern RS and Cantons 7 (Herzegovina-Neretva) and 9 (Sarajevo).

7. Around 190 incidents involved damage to homes and religious buildings, physical threats, violent intimidation and group violence. In view of the violent means used by the perpetrators (explosive devices, fire arms, arson), it should be noted that it is only by chance that many of these incidents have not affected the physical integrity of the returnees.

8. Around 90 cases involving violence during religious ceremonies or of damage to religious sites were reported (20% of all incidents related to ethnicity or return). The areas with the highest number of such reported incidents are the Eastern RS and Cantons 4 (Zenica-Doboj) and 7 (Herzegovina-Neretva), while the locations with the highest number of such cases were Zvornik, Bijeljina, Prijedor and Doboj in the RS, and Mostar and

Sarajevo in the Federation of BiH. Jewish facilities were also targeted in the part of Sarajevo located in the Federation of BiH. The high number of violent acts targeting religious facilities is sadly illustrative of the divisions engendered by the war, and of the will of certain individuals or groups to maintain these divisions and discourage return.

9. Incidents related to the implementation of property laws (around 75 cases) represent almost 20% of the reported return-related incidents. The implementation of the property law led to violent acts primarily in Brcko district and in Eastern RS. Both temporary occupants and legal owners trying to repossess their property committed acts of violence and intimidation. In half of the cases, the legal owner was the person harassing or attacking, while in the other half of the cases the temporary occupant was the perpetrator of the incident. In five cases, the heads of the housing offices dealing with property repossession were the targets of violence and intimidation, including one instance where the perpetrators were local police officers. Legal owners tend to engage in verbal harassment, while illegal occupants tend to damage and loot houses they have temporarily occupied.

Return-Related Security Incidents in 2002 by Type of Violence

Type of Violence	
Verbal harassment	32%
Written harassment	7%
Physical threat/violent intimidation	6%
Assault/physical aggression	10%
Fight	2%
Group violence/offensive demonstration	5%
Damage to house	15%
Damage to religious site	17%
Other damage to property	6%

10. From January to May 2003, there were a total of 155 incidents affecting returnees, IDPs and other persons of concern to UNHCR. There were 19 incidents in January, 19 in February, 37 in March, 26 in April, and 56 in May. On average, there were 31 incidents per month in this period, which is slightly lower than the average during the year of 2002. Because of pending investigations it is not clear how many of these incidents were return-related or ethnically motivated.

11. Out of the total number of incidents, 26 consisted of assault. Six of these incidents caused the death of returnees, although there were not always indications of an ethnic background to the incident. 25 incidents consisted of threats, insults or harassment. 60 incidents were directed against returnees' or IDPs' properties. 44 incidents were directed against memorials or religious objects belonging to a minority constituent people. The

clear increase in incidents since the beginning of the year could be linked to an increase in return-related activities during spring and early summer.

12. Of particular concern both in 2002 and 2003 are reports about ill-treatment by the local police of returnees and of members of the Roma communities. Inadequate investigations or reluctance to investigate return-related incidents have also resulted in lack of follow-up action or closure of these cases. In certain instances, serious negligence and mishandling during the examinations have cast serious doubts on the ability and willingness of the police to identify and arrest the suspects. Prosecutors have also on several occasions been reluctant to act upon a case. The number of perpetrators convicted is low, and the sentences imposed are often lenient in spite of the seriousness of the crimes.

13. The recruitment of 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, 8.6% of the local police force are minority returnees, and there have been many difficulties in retaining them due to the salary differences across entities. It is hoped that the European Union Police Mission (EUPM) will continue to exert efforts in ensuring the recruitment of "minority" police officers and in securing the safety of returnees, despite their limited mandate and means.

Mine accidents

14. From 1996 to November 2002, 1,423 persons were victims of mine accidents (out of which 480 were fatal accidents). In 2002, 72 mine accidents were reported, 18 of which involved IDPs or returnees.² According to ICRC, a total of 27 persons were victims of fatal mine incidents in the first four months of 2003, 14 of whom were returnees.

15. 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. BiH is the most heavily mined country in South Eastern Europe. The first systematic survey, conducted in 2001 by the BiH Mine Action Centre, indicated that 670,000 mines and 650,000 unexploded ordinances (UXOs) remain in roughly 10,000 sites. 12 per cent of these explosive devices are located in zones of everyday use, reconstruction and economic activities.

16. However, the low resources allocated to demining activities negatively impacted 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 2002, UNHCR submitted an updated list of priority return areas for demining to the BiH Mine Action Centre.

² International Committee of the Red Cross (ICRC) Database.

3. CATEGORIES OF PERSONS REQUIRING SPECIAL ATTENTION WHEN DETERMINING THEIR CONTINUED NEED FOR INTERNATIONAL PROTECTION

17. When assessing the continued need for international protection of individuals from BiH, special attention should be paid to witnesses testifying before the International Criminal Tribunal for the former Yugoslavia (ICTY), because of the number of war criminals still at large and the fact that a fully functional witness protection programme is not yet in place³. Individuals who can invoke compelling reasons out of their past persecution should also continue to benefit from international protection, as the devastating psychological effects of the trauma suffered should be duly considered.

War Crimes Witnesses

18. The presence of alleged war criminals in BiH and the continuing failure to arrest and prosecute them continues to be a concern to returnees. Progress was made within the law enforcement agencies as a result of the de-certification process undertaken by UNMIBH before the end of 2002 as regards police officers against whom there was evidence of wartime crimes. However, war criminals are still reported to be present in various other institutions, including schools.⁴

19. Those who witnessed war crimes may still fear for their security upon return. 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.

Severely Traumatized Individuals

20. Refugees who have suffered, or whose family has suffered, from atrocious forms of persecution should not be expected to repatriate.⁵ For BiH, this category of persons would include those who are severely traumatized, such as victims or witnesses of sexual violence, killing and torture.

21. Persons who have suffered persecution, especially at the hands of the local population, cannot reasonably be expected to re-integrate into society.⁶ Such persons often

³ 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).

⁴ ICG, *The continuing challenge of refugee return in Bosnia and Herzegovina*, December 2002. 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.

⁵ Such an approach would be consistent with the spirit of fundamental humanitarian principles, including those formulated in the 1951 Convention, in relation to situations where a person may have been subjected to very serious persecution in the past and therefore requires continued protection.

⁶ The same problems are encountered by some traumatized IDPs. In 2003, UNHCR Tuzla invited four non-government organisations (Tuzlanska Amica, HMD, Swiss Red Cross and Viva Zene) to jointly undertake a

suffer severe trauma and post-traumatic stress disorder (PTSD) and return can affect their capacity, as well as the capacity of family members, to lead a normal life. These individuals may thus have *bona fide* reasons for not being able to return to their municipalities of origin, while at the same time being confronted with the harsh economic reality that prevents them from pursuing an "internal flight alternative".

22. In view of the fact that psycho-social services in BiH are not adequate for dealing with this kind of trauma, it is therefore recommended that when reviewing their protection needs, humanitarian considerations prevail.

4. NEW ASYLUM-SEEKERS FROM BOSNIA AND HERZEGOVINA

23. It has been observed that some IDPs in BiH who were not able to return to their homes of origin because of their continuing protection needs, have recently sought asylum abroad. In this context, the fact that many IDPs had to vacate the properties they were temporarily occupying to allow the return of the original property rights holders, coupled with the lack of appropriate alternative solutions, should be taken into account.

24. 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 fear of persecution by a non-State agent (such as the war criminals still at large), there is a continuing need for case-by-case assessment of their claims. The personal circumstances of these individuals should be given due consideration when assessing the reasonableness of the internal flight or relocation alternative. This is especially relevant in the BiH context, also in view of the fact that UNHCR has come across cases of returned rejected asylum-seekers who have even been denied the possibility to re-acquire the status of IDPs in their areas of former displacement. As a result, they have often been unable to access emergency accommodation and other basic entitlements enjoyed by IDPs and have consequently faced undue hardship. These problems particularly affect members of the Roma communities, as Roma deportees and returnees often encounter extremely difficult conditions including widespread discrimination in terms of access to housing and employment.

5. CONCLUSION

25. Despite significant progress made in the implementation of the GFAP, specifically of Annex VII, and the presence of SFOR and the European Police Monitoring Mission (EUPM) in the country, individual refugees or IDPs are still not 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,

sample survey of the displaced population from the Podrinje area, Eastern Republika Srpska. The most common reasons given by the 220 individuals who indicated that they wished to remain in the Federation of BiH or are uncertain as to their future, were: poor security (151), fear of reprisals (113) and psychological trauma (84). 7 of the above 220 interviewed persons described particularly severe security/protection problems related to the fact that they were ex-detainees, witnesses of war crimes, or suffered acute trauma.

pensions, utilities and an unbiased education system -, which are not discussed in this update,⁷ continuing concerns over the safety of individual returnees remain.

26. In 2002, security incidents affecting returnees continued and their number actually increased month by month in 2003, showing that there is a greater need to ensure that the rule of law in BiH is fully respected. Throughout 2002, some 430 security incidents related to return or were directed against "minority" returnees. By comparison, more than 150 security incidents affected returnees, IDPs and other persons of concern in the first five months of 2003. During the same period in 2003, there were at least two homicides of returnees in Mostar and Bugojno, as well as other violent attacks against returnees' property. Inadequate investigations or reluctance to investigate return-related incidents resulted in lack of follow-up action or closure of these 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. In addition, the number of mine accidents in return areas has also dramatically increased in 2003.

27. Furthermore, it is underlined that certain categories of persons from BiH might still be in need of international protection. The plight of those who are not able to return because of past persecution and trauma has become more apparent and should be considered from a humanitarian and human rights perspective. With the most prominent war criminals still at large, it is clear that the fear of witnesses of war crimes might indeed be well-founded. Therefore, special attention should be given when determining the continued international protection needs of witnesses of war crimes and of severely traumatised individuals.

28. Against the aforementioned background and in view of the complex internal displacement in BiH, it is particularly important that international protection needs of persons from BiH are assessed on an individual basis and without resorting to safe country of origin designation.

July 2003

⁷ 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*.