

OHR RRTF Report July 1997

RRTF: Report July 1997

Update

“Reconstruction and Return Task Force”

July 1997

3. Political and Legal Context

3.1. General context

The general remarks made in the April 1997 report (i.e. the need for transition to a democratic society, the rule of law, means of communication, economic regeneration, social and institutional normalisation to establish conditions more conducive to return) remain valid. Since then, a new IPTF policy of permission for police checkpoints, enforced by UN IPTF and SFOR, has been introduced. The effects of this policy on actual return are still difficult to ascertain. Intra-Federation return to homes of origin seems to be gaining some momentum, at least, in Central Bosnia, also due to local political efforts and arrangements, relative socio-economic normalisation compared to last year and the passage of time since the war in that area. The creation of conditions favourable to the return of original inhabitants still can only be achieved by concentrated deliberate efforts of international and local actors, in an arduous ongoing process.

3.2. Laws on abandoned property, privatisation laws

The April RRTF report described legal deficiencies in property laws and their often arbitrary implementation as the main single administrative obstacle to return. While both the Federation of Bosnia and Herzegovina and the Republika Srpska agreed in July 1996 to bring their laws relating to property into compliance with the Peace Agreement, the objectionable laws remain unchanged and are still enforced. This effectively impedes hundreds of thousands of displaced persons and refugees from returning to their pre-war homes. As a result, the Political Declaration of the Ministerial Meeting of Sintra made it clear that international support for housing reconstruction should be conditional upon the fulfilment of the obligation to amend existing property laws.

On 29 May 1997, the OHR transmitted drafts with necessary amendments to the Presidents and Prime Ministers of both Entities. To date, no response has been received from the Entity authorities, and consideration of the proposed legislation by the respective parliaments has not yet begun. The OHR will convene a meeting with the relevant Federation authorities to demand urgent action; the same will apply for the Republika Srpska when the political situation allows. In operational terms, the Sintra declaration linking housing reconstruction to the amendment of the property laws requires that donors take two concrete steps:

1. intervene with the relevant authorities themselves to indicate that their support for housing reconstruction will be linked to the necessary legislative changes; and
2. review all proposed housing reconstruction projects to ensure that they are consistent with the right to return.

Donors should ensure that reconstruction funds are spent only on housing in which original owners and occupants will have the right to return (as set forth in the Code of Practice mentioned under 3.4.). Municipalities which are

enabling the return of original owners and occupants (in particular under the “Open Cities” initiative) should benefit from that policy. Those whose administrative practices in enforcing property legislation exclude the exercise of the right to return should not be targeted.

Furthermore, the OHR has reviewed property privatisation laws to ensure that pre-war occupancy right holders have priority in the privatisation process.

In January 1997, the OHR submitted an amendment to Article 8 of the Law on the Basis for Sale of Apartments subject to Occupancy Rights to the Federation authorities. Since that date, the OHR has intervened repeatedly with Federation authorities to ensure that the law is adopted only with this necessary amendment. Despite these efforts, the Federation Assembly House of Representatives, on 11 June 1997, adopted the law without the required amendment. In the next stage of the legislative process, the law will be presented for adoption by the House of Peoples. The OHR will continue to advocate for amendment.

In June 1997, the OHR revised the draft Republika Srpska Law on the Purchase and Lease of Apartments under the Regime of Occupancy Rights and Housing Relations including Privately-Owned Property subject to Occupancy Rights and submitted the amended version to the Minister of Housing Affairs as well as to the President of Parliament of Republika Srpska. On 26 June 1997, the Draft law was presented at the National Assembly for a first reading and referred to the Legal Commission. The Legal Commission agreed to take the amendments requested by the OHR into consideration and present them to the National Assembly for discussion.

3.3. The Commission for Real Property Claims of Displaced Persons and Refugees

The Commission began registering claims in November 1996 in three regional offices in Sarajevo, Mostar and Lukavica. Since that date, over 25,000 people registered claims with the Commission. As at end of July 1997, the Commission will have rendered approximately 2,500 individual decisions. In June 1997, a further three regional offices began operations in Brcko, and an office is being developed in Montenegro in conjunction with UNHCR. The Commission has been discussing the registration of claims from refugees in host countries, and expects an office in Berlin to begin operating shortly.

The Commission has a number of special projects under development. These include working on minority return cases in Brcko in conjunction with the Deputy High Representative and Supervisor for Brcko, and providing title determination services for housing reconstruction projects. For the coming months, the Commission is considering to take an active role in return programmes to Open Cities, and is discussing with development banks the possibility of assisting in the provision of individual housing reconstruction loans.

Against its 1997 appeal of US\$ 6.3 million, the Commission has received US\$ 1,782,107 in pledges, of which only US\$ 1,214,965 has been paid. The funding shortage has made it necessary to delay the expansion of operations. However the Commission’s decision-making procedures are working effectively, and need only the injection of further resources in order to achieve a dramatic increase in output.

3.4. Code of Practice

The Commission for Real Property Claims of Displaced Persons and Refugees, together with the OHR, has developed further the Code of Practice published as [annex 2](#) of the [April RRTF Report](#).

This modified Code of Practice ([Annex 3](#)) sets out basic principles and procedures to be followed by reconstruction agencies to ensure that reconstruction projects, and the return of refugees and displaced persons to repaired housing units, take place on a sound legal basis. The principles and procedures will ensure that all internationally funded reconstruction activities are in accordance with [Annex 7](#) of the Peace Agreement. Donors are encouraged to apply this Code of Practice as a package of conditions on all funding allocated to housing reconstruction works in Bosnia and Herzegovina.

3.5. Administrative obstacles to return

The April RRTF report highlighted security and human rights in the return context. A special report by the Ombudsperson for Bosnia and Herzegovina of 2 July 1997 (Special Report No. 504/97) points to continuing deficiencies in this regard.

This update report wishes to draw attention to the extent to which local administrative practices also act as an impediment to return. A recent study by UNHCR ("Registration of Repatriates in the Federation of Bosnia and Herzegovina and Entitlement to Food Assistance and Medical Care", UNHCR May 1997) is recommended as a revealing document, in this respect. Apart from registration practices, the levy of so-called war-taxes, often in exorbitant amounts and in an arbitrary fashion, from returnees as well as displaced persons wanting to leave the current municipalities acts as a further impediment to return. In the Republika Srpska, the presentation of a "voluntary contribution booklet", documenting contributions to the war effort during the years of absence, and payment of alleged arrears are often demanded from returnees. Transit and entry visas are illegally levied by Republika Srpska authorities. Access to personal documents needed for the reintegration of returnees into their municipalities (status documents, pension and bank accounts, property contracts and others) is still made impossible to many displaced persons and returnees. The repeated abuse of humanitarian aid as a means of political influence discourages potential returnees.

In a co-operative effort under the auspices of the Human Rights' Co-ordination Centre (HRCC), OHR, UNHCR, OSCE and UNMIBH have scrutinised the practice of war-taxes, based on war-time Entity (Republika Srpska) or municipal (Federation) legislation. Further efforts will be needed to ensure the removal of this obstacle to return. The OHR has also repeatedly addressed the government of the Republika Srpska on the illegality of transit visas. The issue of documents has been raised both by the OHR and within the Bosnia-Herzegovina Council of Ministers.

The OHR, in consultation with UNHCR, presented objections against a draft law on refugees and displaced persons, brought before the Assembly of the Republika Srpska at its session on 26 June 1997. The draft was partly not in conformity with constitutional provisions as well as other outstanding legislative measures on citizenship, property as well as obligations under Annex 7 of the Peace Agreement. Necessary amendments are being negotiated with the ministry in charge.

Recently, the Assembly of Bosnia and Herzegovina passed new central customs policy and customs tariff laws, in order to replace the current Entity laws that contravene the Constitution. Decrees, still to be proclaimed by the Council of Ministers, are needed to exempt goods imported by returning refugees for other purposes than their resale, in order not to create further administrative obstacles against return.

3.6. Positive conditionality

The April RRTF report outlined the iterative process needed to apply conditionality, a concept again endorsed by the Sintra Ministerial declaration. The chapters on incentives for minority return (section 4.5) and on the Regional RRTFs (section 5), outline the steps taken so far to put conditionality into practice.

3.7. Repatriation Information Centre

The April RRTF report recommended that all concerned institutions actively collaborate with the Repatriation Information Centre (RIC) (recommendation No. 6).

After further consultations over the last months between SFOR, UNHCR and the Vienna-based International Centre for Migration Policy Development (ICMPD), the RIC was established in Sarajevo. The RIC Steering Board held its first meeting on 28 April. The RIC was technically set up in June and officially opened on 9 July. The RIC is an essentially open system to which users can connect directly via modem. To preserve the integrity of information, different levels of access have been determined. Details of access and information management are further being elaborated within the Steering Board. The RIC's success depends on the will of organisations and governments to provide it with the substantial information needed. In co-operation with Sarajevo-based international organisations

and using declassified SFOR data as well as UNHCR, ICMPD and other input on repatriation policies, the RIC aims to provide a comprehensive data offer to its partners. It will be available to produce information packages on certain topics and/or regions if so requested. UNHCR Repatriation Information Reports are being selectively continued in a different format and made available through the RIC. Project funds are secured until the end of 1997.

3.8. Programmes, performance and capacities of local governments

The Political Declaration of the Ministerial Meeting at Sintra called upon the governments of Bosnia and Herzegovina to improve their performance in the implementation of their obligations under the Peace Agreement.

This update report outlines the fragmentation of administrative competencies between and within the Entities, the meagre budgetary allocations for ministries directly responsible for the provision of durable solutions to returnees and displaced persons and deficiencies in the establishment of effective institutions ([Annex 4](#)).

Local authorities remain overwhelmed by the task of reintegrating returning refugees and providing for displaced persons. Both policies and means are insufficient. The international community will have to remain engaged in the definition of acceptable policy goals in the fields of repatriation and solutions for displaced persons as well as support capacity building to sustain the implementation of sound policies. Should international involvement in the subject matter of refugees and displaced persons be gradually phased out, the promotion of good governance and its monitoring will have to be given special attention throughout the forthcoming period of the peace process.

3.9. Coalition for Return

Regrettably, too often, particularly in the Republika Srpska, the frustrated and sometimes embittered mass of displaced persons, often lacking access to objective information from a variety of sources, is still used for political manipulation by local authorities. In view of this background and the above-mentioned deficiencies in government policies and structures, as well as the notorious distance between citizen and authority resulting from decades of Communist control aggravated by war, the need for affected people themselves to lobby for attention to their plight is even more important. The Coalition for Return, supported by the OHR, has taken on this role.

The Coalition for Return has come to consist of nearly 200 associations of displaced persons and refugees from all parts of Bosnia and Herzegovina, both within the country and abroad. It has established itself as a significant civil society movement giving a political voice to one of the most disenfranchised segments of post-war society. With the opening of its first information and co-ordination office in Sarajevo in May, the Coalition has also strengthened its ability to pursue concrete activities on issues critical to displaced persons and refugees. Regional contacts between displaced persons have continued, and the most recent full gathering of members took place in Travnik on 5/6 July. Members have also travelled to meet with refugee associations in Denmark and Germany, where they participated in a conference of Interior Ministers of the German Länder. Bilateral donations to support the Coalition's information centres and bulletin have been received from the United Kingdom, France and Germany.

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Office of the High Representative Reconstruction and Return Task Force