OHR Reconstruction and Return

RRTF: Report December 1997

Outlook for 1998

“Resources, repatriation and minority return”

December 1997

5. Political and Legal Context

5.1. General Context

The political climate for minority returns to certain areas in the Federation continues to improve, as a result of targeted political interventions (such as in Central Bosnia), changes in the composition of local governments following the municipal elections (such as in Drvar), and economic incentives provided by the international community (e.g. through the Open Cities programme). Particularly since the municipal elections, new political winds are blowing in the north-western Republika Srpska as well, which foretell greater openness to minority return. The results of upcoming Presidential elections in the Republika Srpska could alter this picture dramatically, however. Still, widespread political obstructionism continues to block minority returns on any significant scale and mandate a forceful international effort to broker returns. The resistance of the authorities is shifting away from overt obstructionism, to more subtle means of preventing return, notably delays in the passage of vital property legislation and maintenance of key administrative obstacles to return.

The security climate is improving overall in Bosnia and Herzegovina, with regional exceptions. Police restructuring

and retraining under the UN IPTF aegis are beginning to have an impact on returns, as evidenced in the Central Bosnia Canton. The new check-point policy of UN IPTF has helped facilitate freedom of movement. Police complicity in human rights violations remains a serious problem, however, as does the absence of a genuinely independent judiciary. SFOR's presence remains a stabilising factor and will be required throughout the coming year.

The land mine problem persists. Continued international support for land mine clearance will be required in 1998, in order to have an impact on returns. The needs still outstrip the capacities of the local authorities and international resources, raising questions about criteria for prioritisation: humanitarian, economic, political, and military (see also "a secure environment for return", Annex 3).

5.2. Relations with Local Authorities and Civil Society Groups

The RRTF needs to integrate local authorities and refugee and displaced person associations more closely in its work The responsibility for Annex 7 implementation lies ultimately with the local authorities. Moreover, as resistance to return is becoming more subtle and sophisticated, relations with local authorities become valuable channels of communication and influence. Minimal co-operation between the authorities responsible for reconstruction and return, both within and between Entities, presents another problem which the RRTF is keen to address.

The RRTF will strengthen its ties with the local authorities at all levels in 1998, through regular liaison work by the Chair on matters of pure information exchange, and through referral of matters requiring political / legal intervention to competent forums and actors (Federation Forum,

interventions by UNHCR and OHR etc.).

Liaison with refugees and displaced persons associations will be co-ordinated by UNHCR and the OHR, using its contacts particularly with the Coalition for Return, working together or each within their individual mandate.

5.3. Property legislation, allocation mechanisms, privatisation laws

Existing laws in the Federation and the Republika Srpska undermine the property rights of refugees and displaced persons in a way which blocks their right to return and violates Annex 7 of the GFAP and the right to property enshrined in Protocol 1 of the European Convention on Human Rights. The issue is complicated by several factors. Firstly, the necessity of harmonising the property laws in both Entities. Progress in the Federation has been slow and has been under threat of sanctions from the PIC; in the Republika Srpska, the required steps are still far from being taken. Secondly legislation effecting the property privatisation process has been adopted in both Entities. Unless the property laws are amended in a satisfactory manner before these laws are applied, the rights of thousands of returnees will be extinguished. Thirdly, once appropriate property legislation has been adopted, the authorities must implement it consistently and in accordance with the rule of law. An efficient allocation mechanism would support this process. The RRTF has developed a draft mechanism for allocation of reconstructed socially-owned property to provide guidance for donors and reconstruction agents (see Annex 4). Governments financing reconstruction of socially owned apartments are encouraged to adopt this mechanism. The RRTF will also elaborate a Code of Conduct on new and second destination housing. For Sarajevo, a more ambitious effort has been launched by the RRTF as part of a comprehensive approach to returns. A Sarajevo Housing Committee (SHC) will be set up to

manage the allocation of repaired apartments and contribute to the reduction of multiple occupancy. The SHC will include international and local members, including relevant cantonal and municipal authorities. (See Annex 5 for complete terms of reference). Housing allocation commissions could be established in other locations in 1998, in both Entities.

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

The CRPC received over 50,000 general claims for return of property in 1997. Decisions were made on about one tenth of these properties throughout Bosnia and Herzegovina. This work will increase further in scale and importance in 1998. The high turnout at the CRPC's newly-opened Berlin office confirms the importance attached by refugees in host countries to property rights. The CRPC has provided active and direct support to reconstruction and return programmes in 1997. It has offered reconstruction agencies a specialist service for checking property rights to private houses. A similar process has been started recently for apartments. This allows reconstruction agencies to ensure that housing units are being repaired for the benefit of the original owners and occupants, and that projects are proceeding on a sound legal basis. The CRPC needs the support of the international community and concerned governments in 1998, to continue and expand its work. If this support is forthcoming, the CRPC is immediately able and prepared to offer its resources and expertise to assist reconstruction and return initiatives throughout Bosnia and Herzegovina in the next year.

5.5. Administrative and other legal obstacles to return

In its update report of July 1997, the RRTF pointed out various administrative obstacles to return. Registration processes, the arbitrary levy of war taxes, illegal "visas"

for the use of roads, distribution practices of food aid and other measures still pose problems. Through the monitoring capacity of the Human Rights Co-ordination Centre (HRCC), chaired by OHR, further evidence, mostly anecdotal, on such malpractice has been collected and Embassies, particularly of host countries, in Sarajevo briefed. However, deficiencies of local authorities make it difficult to effectively address the issue in a manner that would be available in a system governed by a functioning rule of law. An important element in overcoming administrative obstacles have to be interventions by politicians and other visitors coming to Bosnia and Herzegovina from abroad. NGO help in monitoring will also need to be strengthened. UNHCR, OSCE and OHR will continue to work on these legal impediments to return. In collaboration between EC/CAFAO, OHR and UNHCR, draft legislation concerning customs relief for returning refugees was drawn up, but has not yet been passed by the Bosnia and Herzegovina Council of Ministers or Parliament.

5.6. Relocation

Relocation is a fact. Recent CRPC/UNHCR statistics indicate that, at least, 50% of repatriating refugees relocate, particularly to Bosniak areas of the Federation. It is also a danger to the peace process if it consolidates ethnic separation. Host countries should be particularly aware that involuntary or induced repatriation will lead to relocation, and need to act responsibly towards this phenomenon. Relocation is not a solution to the refugee problem. It can only be an additional motivation to devote all efforts towards so-called minority returns.

Some relocation was to be expected. Rural-urban migration is an integral part of modernisation; labour migration naturally accompanies the transition from a planned to a market economy, as unprofitable enterprises shut down and people must move to where the jobs are. Such demographic changes would have

happened irrespective of the war. The post-war developments encourage their own migratory patterns, because of physical and social infrastructure destruction, land mine, and psychological factors. Relocation is, in part, a transition phenomenon.

Relocation is clearly unacceptable when it takes place as a result of official manipulation. Even where it takes place as a result of individual, informed decision-making it remains problematic. Relocation puts pressure on the existing housing stock, notably in popular return destinations such as cities with economic growth potential. This directly affects minority return. There are only two logical solutions. Either the housing stock will have to be expanded to accommodate more residents and to avoid a race for available housing, with overtones of “first come, first serve”. Or, return to homes of origin has to be vigorously pursued.

The RRTF is adamant that relocation must not be allowed to undermine minority return. It recommends that international grant aid should not be used to support relocation at this stage of the peace process. The RRTF also 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, and to limit such new construction to where it is linked also to minority returns.

(See Annex 6 for a further elaboration of the relocation and property exchange problem).

5.7. Integrated Approach to Minority Return

UNHCR and OHR have been working closely together in 1997 to broker minority return. Other RRTF members have provided valuable support for a joint approach as well. This has helped open up new windows of opportunity in Central Bosnia, the Northwest of Bosnia and Herzegovina as well as in Brcko.

Minority return is not a one time event, but requires a series of planned and well defined activities requiring the participation of a broad range of international as well as local actors. An integrated approach to minority will remain vital in 1998.

During the coming months, a number of co-ordinated preparatory steps will be undertaken to facilitate return movements in spring and summer of 1998. Specific programmes will be presented to the planned donors' conference. A basic ingredient of RRTF work is increased donor co-ordination. Donors will be kept abreast of the evolving situation and recommendations will be forwarded to them on a regular basis on how resource may be allocated in support specific returns initiatives.

In 1998, minority returns are likely to start to empty housing, often significantly destroyed. As housing occupied by displaced persons becomes vacant, proper follow-up must ensure that authorities do not re-allocate housing space to other persons than the original inhabitants wishing to return. Some buffer accommodation will be required in certain areas, particularly where there are large refugee populations, as in the Western Republika Srpska. Such accommodation will require significant investment. Continued legal support to minorities to regain their homes and re-integrate will also be needed. Administrative hindrances will have to be tackled to ensure that documentation is promptly provided to returnees, regularising their status.

A still broader issue are conditions for return which go beyond security, freedom of movement, communications, support to reconstruction. Generally, older people are the first to return. The RRTF members, jointly working with local authorities, will need to activate cultural and youth programmes, support for elderly, disabled and vulnerable cases, psycho-social support. Local capacities will have to be built up, changes to problematic legislation and

administrative practices will have to be negotiated to ensure optimal conditions for return. Employment perspectives, participation in the civil service structure, including police and municipal affairs, and media coverage of minority issues are all elements which contribute to the decision of individuals to return to their place of origin. In particular, non-discriminatory education and cultural acceptance will enhance the propensity of original inhabitants to return to areas where they will not be in a majority situation.

Some municipal assemblies now consist of newly elected, but inexperienced representatives of displaced members of the community. Advice to these municipalities is vital to sustain minority return. Donor support is needed.

The formidable scope of issues which must be addressed to enable and sustain minority return, require a concentrated, focused and well co-ordinated effort, touching on a broad range of subjects. The RRTF members must prove the resolve of the international community to create conditions for displaced persons and refugees to make informed choices on their situation; to return voluntarily and sustainably; in safety and dignity. The joint approach of UNHCR, acting upon its humanitarian and protection mandate, and other RRTF members will be crucial to this challenge also in 1998.

Back to Index | Continue

Office of the High Representative
Reconstruction and Return Task Force