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Report

“Reconstruction and Return Task Force”

April 1997

3. Political and Legal context

3.1. General context

Safe and orderly return requires the establishment of rule of law and the creation of political conditions conducive to return. The political forces of division continue to be strong in Bosnia and Herzegovina, and have obstructed legal and economic iniatives in many sectors, such as the establishment of railway, commercial bus and telecommunication links. Arbitrary police and administrative practices have obstructed freedom of movement and return across ethnic division lines, further reducing the capacity for Bosnia and Herzegovina to cope with mass repatriation.

Transition towards a democratic society, ruled by law, remains a key element in confidence building to overcome the trauma of war. Social and institutional normalisation needs continued international support throughout the stabilisation period. Economic regeneration is critical to enable the socio-political changes required.

These changes will be the most relevant single factor ensuring return and enabling repatriation of refugees. Without a sufficient degree of normalisation creating general conditions conducive to safe return with prospects of a new life in

dignity, sustained repatriation movements will not happen.

3.2. Laws affecting property rights

Existing property laws and their application in practice in effect prevent refugees and displaced persons from exercising their right to “freely return to their homes of origin”, as guaranteed by the Peace Agreement. Their right to the restoration of “property of which they were deprived during the course of hostilities since 1991”, is equally jeopardised.

The Law on Abandoned Apartments applied in the Federation imposes an arbitrary and discriminatory time period in which refugees and displaced persons were required to return and re-occupy their socially owned apartments, with the sanction of permanently losing the occupancy right to their homes of origin. In addition, a proposed Federation Law on the sale of such apartments, if adopted, will make the loss of this property right irreversible by enabling new occupants to buy such apartments declared abandoned. The return of thousands of holders of occupancy rights would be permanently blocked.

The Law on the Use of Abandoned Property of Republika Srpska links return to the voluntary decision of the temporary occupant to vacate the property or to be compensated for his or her own loss of property abandoned during the war. The Law also restricts the original owner’s right to return by conditioning it upon the enactment of similar provisions in the Federation and/or Croatia.

Consequently, these laws must be replaced by new legislation compliant with the Peace Agreement.

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

The role of this Commission in reconstruction and return is to make definite determinations of property title. It is

essential that, to the greatest extent possible, houses are reconstructed for the benefit of their original owners. Institutions engaged in the process of housing reconstruction cannot legitimately repair a dwelling that belongs to one family and then allow another family to live in it, except for a specified and limited period of time. Institutions should not rely solely on local authorities to allocate houses to people.

The process of determining property rights is far from simple, due to the complex legacy of the former Yugoslavia and the effect of the conflict. The Commission is available to perform this service on behalf of reconstruction agencies. By doing so, the Commission offers the capacity to provide a sound legal basis for reconstruction projects. Its present funding constraints have to be overcome. A legal framework for the implementation of the decisions of the Commission is in the process of being drafted within the Office of the High Representative.

3.4. Code of practice

In the light of these legal needs, the RRTF proposes a code of practice which aims to bring programmes funded by international donors within a common legal and policy framework, to ensure that they proceed on a defensible legal basis. Besides reconstruction agencies, this code of practice is directed at municipal authorities in beneficiary communities. A central principle is the requirement of conducting a proper investigation of ownership status or occupancy right for the reconstruction of any housing unit (annex 2).

3.5. Security and human rights

Discrimination against returnees is another restraining factor. Returnees not belonging to the locally dominant ethnic

group may encounter physical and psychological intimidation. The continued harassment of resident minorities as well as repeated house destruction by bombing and arson in areas of potential minority return are main indicators of this fact.

Return also to so-called majority areas can, in some cases, cause tensions between repatriates and those who remained. There is always a danger that the return process will be disrupted by arbitrary administrative measures designed to skim the resources and savings of returnees from abroad.

Specific security as required for an orderly and phased return is not provided within the mandate of SFOR. Such security subsequently depends on the correct conduct of local police and administrative organs. A strong UN IPTF capacity remains important to promote such conduct. Donor interest in repatriation should therefore also be reflected in enhanced support to the UN IPTF mandate. The safety of returnees has to be further ensured by strengthening the capacity of the judiciary and human rights organs and the enforcement of their decisions, as well as through concentrated efforts to secure non-discriminatory practices in various fields such as education, employment, health care and religion.

Many areas to which return can be expected are heavily mined. Currently, 50 mine incidents occur per month, of which 30 are fatal. Targeting of de-mining activities has to be harmonised with return.

3.6. Positive conditionality

In the return context, the allocation of resources for returnee-related economic reconstruction projects should be linked to receptivity to minority returns. This determination must be based on specific information from the field, which is updated regularly. An oversight mechanism is also needed. The RRTF has limited its deliberations on the subject to those instruments or measures which facilitate return of all groups

on a local level.

The process of applying conditionality will be an iterative one, leaving room to re-allocate resources to encourage compliance with the Peace Agreement. Guidelines with criteria for acceptable behaviour with regard to human rights, democracy, rule of law, the respect for and protection of minorities need to be set and their implementation needs to be closely monitored. Input from local and regional actors is of paramount importance.

Back to Index | Continue

Office of the High Representative Reconstruction and Return Task Force