

RETURN, LOCAL INTEGRATION & PROPERTY RIGHTS

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Executive Summary and Conclusions

The bold terms of Annex 7 of the General Framework Agreement for Peace in Bosnia and Herzegovina ("GFAP") created high expectations for the many persons displaced by the war in Bosnia and Herzegovina. Unfortunately, these expectations remain unrealised for most. Annex 7 of the Dayton Agreement committed the Parties¹ to ensuring the right of refugees and displaced persons to return to their homes of origin. While return was a reality for displaced persons and refugees whose pre-war homes are within an area where their constituent people were the majority and where they administered the area (so-called 'majority returns'), relatively few have actually been able to return to 'minority areas', despite the significant resources allocated by the international community, and the many initiatives that have been launched to facilitate return.² Four years after the GFAP was signed, it is estimated that up to 830,800 people (487,300 in the Federation and 343,500 in Republika Srpska) remain displaced within Bosnia and Herzegovina,³ and 324,100 refugees remain in host countries without durable solutions. Many, if not most, wish to return to the property that they occupied prior to the war. Despite this desire, return has also been made difficult by complicated property laws that have not been implemented, uncertain political will and commitment, and the difficult economic, security and political realities facing those who would now constitute ethnic minorities in their pre-war communities.

The Commission for Real Property Claims of Displaced Persons and Refugees (CRPC) has been asked by the United Nations High Commissioner for Refugees (UNHCR) to conduct a survey on the preferences and intentions of displaced persons and refugees. More than 3,000 interviews were conducted throughout Bosnia and Herzegovina, in Croatia and the Federal Republic of Yugoslavia. Respondents were requested to identify how they would prefer to exercise their property rights, and what factors (be they legal, socio-economic or political) influenced their preferences. The research provides a current snapshot of the intentions of displaced persons and refugees, four years after the signing of the Dayton Agreement. It looks at why so many persons remain without a durable solution, and suggests choice and flexibility in approaches to these problems. Its goal is to ensure that the wishes of the people concerned are known and taken into account.

The research confirms that many, if not most, wish to return to property they occupied prior to the war. The results reveal that approximately 61% of all respondents wish to return to their pre-war property. Within BiH, 76% of respondents currently residing in the Federation and 34% of respondents currently residing in the RS prefer to return to their pre-war property. 76% of all Bosniak, 73% of all Croat, and 36% of all Serb displaced person respondents indicated a preference to return to pre-war property. 54% of refugees in Croatia and 49% of refugees in FRY expressed a desire to return to their pre-war homes. The majority of all respondents (59%) who indicated a preference to return cited the mere fact that "this was their home" as their main motivating factor. The second most prevalent factor cited by those who indicated a preference to return was that their current housing situation was unacceptable.

Security: One of the main barriers to return identified by respondents is personal security and security of their property. The majority (58%) of all respondents who indicated a preference to sell, exchange or lease their properties indicated that they would return if the local authorities guaranteed their safety or if their pre-war neighbours returned.⁴

Economics: Economic factors have also affected preferences to return. 21% of all respondents who indicated a preference to sell, lease or exchange their property indicated that they would return if there were job opportunities available.⁵ 23% of respondents with agricultural land adjoining their pre-war property indicated a preference to settle in an urban location.

Reconstruction: 19% of respondents who indicated a preference to sell, lease or exchange indicated that they would choose to return if their pre-war property was reconstructed. Of the returnees that were interviewed, approximately 61% indicated that they had received international reconstruction assistance.

Legal Framework: Given the difficulties to implement the property laws at the time of the research (i.e. before the High Representative amended the legal property framework through his 27 October 1999 decisions), and the real difficulties that refugees and displaced persons continue to face in asserting their legal rights, respondents were asked about the impact the legal system had had on their preferences regarding the exercise of their property rights. Out of all respondents interviewed, 67% had filed claims with the competent administrative authorities and were awaiting a response. In the instances where administrative authorities issued decisions confirming the right of the respondent to return to pre-war property, 21% of respondents were advised that they would not be able to return until alternative accommodation was located for the current user. A total of 5% indicated that they were unable to return due to destruction of their pre-war property. Of the returnees that were interviewed, 90% indicated that their property remained vacant during the war, and therefore complicated eviction procedures were avoided.

Conclusions

To enhance returns in any meaningful way, and to find durable solutions for a majority of the displaced, property laws must be strictly implemented as a matter of absolute priority. Concrete material support should be provided through a flexible funding mechanism, to assist refugees and displaced persons to exercise their preferences: be this to return or to locally integrate.

Return: This research confirms that the majority of refugees and displaced persons do wish to return to their pre-war homes, despite the many obstacles that have made return so difficult. Initiatives aimed at stimulating return must be invigorated:

- **Regional Approaches:** Meaningful numbers of returns will be possible within Bosnia and Herzegovina and to and from neighbouring countries, only if all governments and competent authorities at all levels are truly committed to allow such returns, and if the return procedures are simplified to allow return movements to take place very shortly after the application has been filed.
- **Overcoming political opposition:** Officials, especially at local levels, must be held accountable for endorsing obstructive action or failing to take action in response to obstructive behaviour. The arrest and punishment of those indicted by the International Criminal Tribunal for Former Yugoslavia would probably be the strongest message to all citizens of Bosnia and Herzegovina of the true commitment by all signatories of the GFAP to implement the provisions of Annex 7, and would greatly facilitate the return in safety and dignity, especially for those returning to 'minority areas'.

- **The implementation of property laws in BiH as amended by the High Representative:** Not only is proper implementation necessary to promote sustainable returns, it is also critical for the broader respect of the rule of law. Obstruction must be tackled head on by the international community, with clear and co-ordinated strategies. While it is understandable that strategies on securing implementation of property laws have focused to date on the 'easy cases', i.e. the double and multiple occupants, additional efforts are also required to solve the more difficult cases. The difficult circumstances of current occupants who do not have access to other accommodation should not operate so as to prevent the rights of property interest holders to return, or to exercise their property interests in other ways.

Local integration: One cannot ignore the conclusion that some displaced persons and refugees do not wish to return, but prefer to integrate into communities or environments of current displacement. New initiatives aimed at easing local integration are therefore called for. These initiatives must not undermine the principle of return in line with GFAP - on the contrary, they would assist those who have chosen not to return to find a durable solution.

- Displaced persons and refugees who wish to integrate into the communities must be provided with adequate information on their rights and on the legal steps involved in property transactions so that they can properly exercise their rights, and so that their interests can be adequately protected.
- Persons and Agencies providing advice must be better equipped to deal with these challenges.
- Changes to the legal and/or regulatory framework in BiH which would create a fair and equitable environment for real estate transactions should be introduced. Flexible schemes should equally be developed and implemented to facilitate this.

Solutions in the context of the Stability Pact for South Eastern Europe: Concrete mid- and long-term strategies and plans for economic reconstruction and development must be worked out by the respective Governments to enhance the sustainability of any of the durable solutions. The Governments concerned should take advantage of the Stability Pact for South Eastern Europe (Working Tables 1 and 2) to submit and obtain the necessary support for such strategies and plans.

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