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**GROUPES ET INDIVIDUS PARTICULIERS:  
EXODES MASSIFS ET PERSONNES DÉPLACÉES**

**Rapport du Représentant du Secrétaire général pour les droits de l'homme  
des personnes déplacées dans leur propre pays, Walter Kälin**

**Additif**

**MISSION EN BOSNIE-HERZÉGOVINE\***

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\* Le résumé du présent rapport est distribué dans toutes les langues officielles. Le rapport proprement dit, qui figure en annexe au document, est distribué uniquement dans la langue dans laquelle il a été présenté.

## Résumé

À l'invitation du Gouvernement bosniaque, le Représentant du Secrétaire général pour les droits de l'homme des personnes déplacées dans leur propre pays, Walter Kälin, a effectué une mission officielle en Bosnie-Herzégovine du 9 au 15 juin 2005. L'objectif de cette visite était d'évaluer la situation des personnes déplacées dans le pays, en s'attachant à déceler les problèmes et à trouver des solutions durables aux questions non réglées. Le Représentant a fait part de ses premières impressions dans un communiqué de presse publié à la fin de sa mission, l'ensemble de ses constatations étant exposé dans le présent rapport.

Pendant son séjour, le Représentant a rencontré le Premier Ministre de l'État de Bosnie-Herzégovine, le Ministre d'État des droits de l'homme et des réfugiés, des hauts responsables du Ministère des affaires étrangères, les Ministres des réfugiés et des personnes déplacées des deux entités, des représentants des autorités cantonales et municipales, des représentants d'organismes des Nations Unies, d'organisations intergouvernementales et d'organisations non gouvernementales. Outre Sarajevo, le Représentant s'est rendu à Tuzla, Zvornik, Bratunac, Srebrenica, Mostar, Stolac, Livno, Drvar, Prijedor et Banja Luka. Partout, il s'est entretenu avec des personnes déplacées afin qu'elles l'informent elles-mêmes de leurs principaux sujets de préoccupation.

Le Représentant a constaté que les principaux obstacles à un retour durable des populations déplacées étaient l'insécurité physique, la lenteur de la restitution de leurs biens aux propriétaires d'origine et de la reconstruction des bâtiments, ainsi que le contexte économique, social et politique qui décourageait tout retour et toute réintégration. Si le Représentant reconnaît que les menaces qui pesaient sur la vie et l'intégrité physique des personnes déplacées et des rapatriés se sont considérablement réduites, il s'inquiète toutefois de l'insuffisance de la protection accordée à certains groupes vulnérables particulièrement exposés aux risques d'agressions, comme les victimes et les témoins de crimes de guerre, ainsi que les minorités ethniques comme les Roms. Les mines antipersonnel continuent de mettre en péril la sécurité des rapatriés et les empêchent de se consacrer à l'agriculture. Le Représentant félicite le Gouvernement et la communauté internationale d'avoir restitué une grande partie des biens immobiliers occupés à leurs propriétaires d'origine. Toutefois, il a observé que beaucoup restait à faire pour résoudre les litiges fonciers, reconstruire les maisons et les raccorder aux réseaux d'eau et d'électricité et remettre sur pied les infrastructures. Pour les rapatriés appartenant à des minorités, ces procédures sont souvent plus longues et reportées sans raison. Les femmes, en particulier celles qui sont chefs de famille, et les victimes traumatisées des crimes de guerre se retrouvent souvent en position défavorable.

Le principal défi d'aujourd'hui est de créer des conditions propices au retour des personnes déplacées, alors qu'on assiste à un ralentissement des retours et qu'il semblerait que de nombreux rapatriés aient vendu les biens immobiliers qui leur avaient été restitués et aient choisi de demeurer dans leur communauté d'accueil plutôt que de réintégrer leur communauté d'origine. Si l'ensemble de la population est touchée par certains problèmes économiques, comme le chômage élevé, les personnes déplacées et les rapatriés doivent faire face à des difficultés particulières, leurs droits fondamentaux étant souvent bafoués. Des pratiques discriminatoires dans l'accès des rapatriés issus de minorités aux emplois du secteur public comme du secteur privé violent le droit au travail. Le droit à l'éducation est bafoué par la persistance, dans certaines régions, d'écoles pratiquant la ségrégation. La non-application des lois, la réticence des autorités policières de certaines régions à enquêter sur d'éventuels incidents, les carences

et l'engorgement de la justice et l'impunité dont continuent de jouir les auteurs de crimes commis pendant ou juste après la guerre sont autant de difficultés pour les personnes qui souhaitent revenir dans leur région d'origine. Le recours provocateur de certaines autorités locales à des symboles nationaux et religieux ne fait qu'aggraver le sentiment qu'ont les rapatriés issus de minorités de ne pas être les bienvenus. L'absence de règles uniformes concernant les pensions et l'assurance maladie et la non-application des dispositions légales en la matière dans les deux entités portent atteinte aux droits à la sécurité sociale et à la santé.

Le Représentant demande aux autorités nationales et locales de s'acquitter de leur obligation de créer un environnement favorable à un retour durable en respectant et en appliquant pleinement les garanties pertinentes en matière de droits de l'homme. Il faudrait trouver sans délai des solutions durables pour les personnes qui vivent encore dans des conditions déplorables dans des centres collectifs. Le Représentant prie instamment la communauté internationale à continuer à soutenir le processus actuel de rapatriement et à fournir des moyens supplémentaires pour soulager la détresse des groupes vulnérables, comme les personnes traumatisées ou handicapées, les personnes âgées sans soutien familial, les femmes chefs de famille et les Roms, afin de leur permettre de jouir pleinement de leurs droits fondamentaux.

**Annex**

**REPORT OF THE REPRESENTATIVE OF THE SECRETARY-GENERAL  
ON THE HUMAN RIGHTS OF INTERNALLY DISPLACED PERSONS,  
WALTER KÄLIN, ON HIS MISSION TO BOSNIA AND HERZEGOVINA**

**(9-15 June 2005)**

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## Introduction

1. Following an invitation by the Government of Bosnia and Herzegovina dated 13 December 2004, the Representative of the Secretary-General on the human rights of internally displaced persons (the Representative) conducted an official mission to Bosnia and Herzegovina from 9 to 15 June 2005 in pursuance of his mandate to engage in coordinated international advocacy and action for improving protection and respect of the human rights of internally displaced persons (IDPs) through dialogue with Governments as well as non-governmental organizations (NGOs) and other relevant actors (Commission resolution 2004/55, para. 24).
2. The mission was undertaken as part of a visit to the region including missions to Croatia and Serbia and Montenegro, including Kosovo.<sup>1</sup> This allowed the Representative to assess the situation in each of the countries visited in the regional context. He presented his regional findings to the General Assembly in his report to the sixtieth session (A/60/338). The present report focuses on the situation in Bosnia and Herzegovina alone. It looks at the present situation of IDPs as well as future challenges that may arise for the protection of the rights of IDPs.
3. The main objectives of the mission were (i) to assess the situation of displacement in Bosnia and Herzegovina; (ii) to assist the national authorities to fulfil, in accordance with their human rights obligations, their responsibility to protect and assist the displaced and to find durable solutions for them; and (iii) to give advice to United Nations specialized agencies, donors, and other actors involved on how best to address their protection needs.
4. The Representative visited Sarajevo, Tuzla, Zvornik, Bratunac, Srebrenica, Mostar, Stolac, Livno, Drvar, Prijedor and Banja Luka. He met with the Prime Minister of Bosnia and Herzegovina, the State Minister for Human Rights and Refugees, senior officials of the Ministry for Foreign Affairs, the Ministers for Refugees and Displaced Persons of the two entities, cantonal and municipal government officials, and representatives of international agencies and NGOs as well as organizations of displaced persons and returnees. He also visited several collective centres for displaced persons and some communities of returnees.
5. The Representative would like to express his gratitude for and recognition of the full cooperation of the authorities of Bosnia and Herzegovina at all levels, entity, canton and municipality, for their willingness to receive him and the open and constructive nature of the meetings. He also would like to thank the United Nations Country Team, in particular the Office of the United Nations High Commissioner for Refugees (UNHCR), the Office of the United Nations High Commissioner for Human Rights (OHCHR), the United Nations Children's Fund (UNICEF) and the United Nations Development Programme (UNDP), for the extraordinary logistical support and the high quality of briefings. The Representative was also deeply impressed with the information provided to him by members of civil society, and expresses his thanks to the members of the aid community and the NGOs with whom he met. Finally, he would like to thank the IDPs who were ready to share their experiences with him.
6. The Representative's conclusions and recommendations in this report are informed by the Guiding Principles on Internal Displacement (E/CN.4/1998/53/Add.2) (the Guiding Principles). The Representative observes that IDPs in Bosnia and Herzegovina remain entitled, as citizens of their country, to enjoy the protection of all guarantees of international human rights

and humanitarian law subscribed to by the State or applicable on the basis of international customary law. They do not lose, as a consequence of their being displaced, the rights of the population at large. At the same time, they have specific needs distinct from those of the non-displaced population which need to be addressed by specific protection and assistance measures. These rights are reflected and detailed in the Guiding Principles, which form the basic international framework for the protection of IDPs. The primary duty and responsibility to provide such protection lies with the national authorities, and IDPs have the right to request and receive such protection and assistance from their Governments (principle 3). As stressed in the Representative's report to the Commission on Human Rights in 2005,<sup>2</sup> protection must not be limited to securing the survival and physical security of IDPs but relates to all relevant guarantees, including civil and political as well as economic, social and cultural rights, attributed to them by international human rights and humanitarian law. In this regard, Bosnia and Herzegovina has an obligation to prevent any violations of these rights from occurring or from recurring; to stop them while they are being committed; and to ensure reparation to and full rehabilitation of victims.

## **I. CONTEXT OF INTERNAL DISPLACEMENT IN BOSNIA AND HERZEGOVINA**

### **A. General observations**

7. Bosnia and Herzegovina consists of two entities, the Federation of Bosnia and Herzegovina and the Republika Srpska. The Federation is administratively subdivided into 10 cantons. Cantons are divided into 84 municipalities. The Republika Srpska is administratively organized into 63 municipalities. The Brčko District has been established as a single administrative unit of local self-government existing under the sovereignty of Bosnia and Herzegovina, in accordance with the Final Award of the Arbitral Tribunal for Dispute over Inter-Entity Boundary in the Brčko Area of 5 March 1999. The capital of Bosnia and Herzegovina is Sarajevo. The official languages are Bosnian, Croatian and Serbian.

8. Bosnia and Herzegovina has a total area of 51,209.2 km<sup>2</sup>. According to the 1991 census, the population totalled 4,377,000 inhabitants, consisting of Bosniaks (43.5 per cent), Serbs (31.2 per cent), Croats (17.4 per cent), Yugoslavs (5.5 per cent) and others (2.4 per cent). The category of "others" was understood to include members of 17 national minorities, including a substantial number of Roma. The Government estimates that, as at March 2001, the total population had dropped to approximately 3,364,000 inhabitants with 48.3 per cent Bosniaks, 34.1 per cent Serbs, 15.3 per cent Croats and 2.3 per cent "others".<sup>3</sup>

9. The State of Bosnia and Herzegovina was internationally recognized on 6 April 1992. This event triggered an armed conflict between the main ethnic groups with the involvement of the neighbouring States. On 14 December 1995, the Republic of Bosnia and Herzegovina, the Republic of Croatia and the Federal Republic of Yugoslavia (Serbia and Montenegro) signed the General Framework Agreement for Peace in Bosnia and Herzegovina and the Annexes thereto (Dayton Peace Agreement) as a result of efforts of the international community to end the armed conflict. Annex 4 to the Dayton Peace Agreement contains the Constitution of Bosnia and Herzegovina, Annex 6 addresses the issue of human rights protection and Annex 7 deals with questions related to the rights of refugees and IDPs, recognizing their "right to freely return to their homes of origin" as well as their "right to have restored to them property of which they

were deprived in the course of hostilities since 1991 and to be compensated for any property that cannot be restored to them”. According to Annex 10, the High Representative in Bosnia and Herzegovina is the final authority regarding the implementation of the civilian aspects of the Dayton Peace Agreement.

10. Annex 6 to the Dayton Peace Agreement obliges Bosnia and Herzegovina to respect all major international human rights instruments, as enumerated in Annex I to the national Constitution. These international human rights instruments have priority over all other laws. In accordance with these obligations, the Constitution of Bosnia and Herzegovina contains a detailed catalogue of human rights. Its article II, paragraph 2, stipulates that the rights and freedoms set forth in the Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols shall apply directly in Bosnia and Herzegovina. Annex 6 established the Commission on Human Rights, the Office of the Human Rights Ombudsman, which unfortunately lacks the independence originally envisaged,<sup>4</sup> and the Human Rights Chamber, and entrusted them with the task of monitoring the implementation of these human rights obligations. The Human Rights Chamber was closed in December 2003; cases already registered were taken over by the Special Human Rights Commission within the Constitutional Court of Bosnia and Herzegovina. Other human rights bodies include the Commission on Human Rights of the national Parliament, the Federation of Bosnia and Herzegovina and Republic of Srpska Ombudsmen and the Commission on the Protection of Human Rights under the Presidency of the Republic.

11. In line with its international human rights obligations, Bosnia and Herzegovina has recently had its initial reports under the Convention on the Rights of the Child, the International Covenant on Economic, Social and Cultural Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment considered by the respective committees, all of which expressed concern about the situation of IDPs and/or returnees. Bosnia and Herzegovina also recognizes the competence of the Committee against Torture, the Human Rights Committee and the Committee on the Elimination of Discrimination against Women to receive and consider communications from individuals subject to its jurisdiction who claim to be victims of a violation by the State, although no such communications have yet been examined by the committees. Within the framework of the special procedures of the Commission on Human Rights, the Special Rapporteur on the situation of human rights in Bosnia and Herzegovina, the Republic of Croatia and the Federal Republic of Yugoslavia reported in 2001 that the return of refugees and displaced persons continued to be the main concern in Bosnia and Herzegovina, with major obstacles to sustainable return being a lack of security in some parts of the country, obstructions in property law implementation, lack of basic utilities and employment opportunities, difficulties with regard to pensions and health care, discrimination and a weak judiciary lacking independence.<sup>5</sup>

## **B. History of displacement and return**

12. The 1992-1995 conflict in Bosnia and Herzegovina induced large-scale involuntary displacement. A large number of persons were displaced by the Bosniak-Croat conflict lasting from April 1993 to March 1994. In all parts of Bosnia and Herzegovina, forced displacement was deliberately used by the warring parties to create ethnically homogeneous areas, which constitutes a crime against humanity now commonly referred to as “ethnic cleansing”. At the end of the conflict in 1995, more than 2.2 million persons, i.e. almost half of the country’s

inhabitants, had been uprooted. Approximately 1 million had become internally displaced, while 1.2 million had fled across the border, seeking asylum in the neighbouring countries (Croatia, Serbia and Montenegro) and other host States. Most persons fled from one entity to the other, while those members of minority groups remaining within their entity sought refuge in areas where their group constituted the majority. Between 1996 and 1999, an additional 200,000 were displaced, among them 80,000 persons, most of them Serbs, following the transfer of territories between the Republika Srpska and the Federation of Bosnia and Herzegovina.

13. Since 1995, more than 566,000 IDPs have returned to their places of origin, in addition to more than 441,000 refugees. No gender-disaggregated data are available to indicate how many displaced or returnees are women, which prevents a gender analysis of the return process.<sup>6</sup> Up to May 2005, UNHCR recorded some 450,000 minority returns (270,304 in the Federation of Bosnia and Herzegovina, 159,307 in the Republika Srpska and 21,382 in the Brčko District), concluding that almost half of all returns were to minority areas. The other returnees went back to municipalities where their ethnic group constitutes the numeric majority. While exact figures are not available, it is clear that the actual number of persons who are now living in their former homes is lower than these return figures suggest, as a considerable number of returnees felt compelled to leave again due to inadequate or adverse conditions. The Representative saw several areas of return where families had found it difficult to live and where reconstructed or repaired houses stood empty or where the population consisted mainly of elderly persons. In other areas returnees had sold their houses to local people and left again.

14. During the four years following the war, hardly any minority returns took place, as many IDPs and refugees were unable or unwilling to return to places governed by the same authorities who had caused them to flee. The displaced were not only fearful of returning to areas where their group had been the minority, but also to places where the ethnic composition of the population had changed. Also, contrary to Annex 7 to the Dayton Peace Agreement, political institutions at entity, cantonal or municipal level refrained from supporting minority returns or even opposed them actively with the aim of maintaining or continuing “ethnic cleansing”. Although substantial financial aid to assist and sustain returns was available at the time due to the international community’s focus on return, the political will to use it was missing.

15. For many years, property-related problems have been one of the main obstacles to return. While Annex 7 to the Dayton Peace Agreement grants refugees and IDPs “the right to have restored to them property of which they were deprived in the course of hostilities since 1991 and to be compensated for any property that cannot be restored to them”,<sup>7</sup> the implementation of this right was difficult. In order to solve property disputes, Annex 7 established the Commission for Real Property Claims of Displaced Persons and Refugees.<sup>8</sup> This body had the task of deciding, in a final and binding manner, any claims for real property where the property had not voluntarily been sold or otherwise transferred during the war. The Commission, which started to render decisions in 1997, was quite efficient in solving disputes and identifying the rightful owners. However, there was no mechanism to implement its decisions. Nor did the Commission address the issue of secondary occupants and their eviction, or the laws in both entities, as well as the attitudes of local authorities who made it difficult to recover property in practice. The Human Rights Chamber, established by Annex 6 and empowered to decide claims of human rights violations, decided in many cases that the non-implementation of the Commission’s decisions violated the right to property as enshrined in article 1 of Protocol No. 1

to the Convention for the Protection of Human Rights and Fundamental Freedoms. However, these decisions were not implemented, either.

16. From 1999 onwards, when the High Representative started to impose amendments to the property laws of the two entities, the political situation improved in certain areas, allowing for an acceleration of the return process as well as a significant increase in minority returns. Relevant international actors concentrated their efforts on property repossession through the Property Law Implementation Plan of 2000, and local authorities became increasingly involved. Returnees themselves were also an important driving force, generating pressure on politicians. Considerable progress in solving property issues was made in 2003, and by the end of 2004, 93 per cent of property claims lodged by pre-war owners had been resolved.<sup>9</sup> Returns peaked in 2002 with over 100,000 people returning to areas where their group constituted a numerical minority.<sup>10</sup> This positive return record can largely be attributed to the determination of the international community to overcome political obstruction by nationalist forces, coupled with a successful property repossession process and a more favourable attitude towards returnees on the part of relevant authorities at the different levels of the State. Today, according to the Federation of Bosnia and Herzegovina Ministry for Refugees and Displaced Persons, return is no longer considered a political issue but rather a technical matter. However, in some parts of the country, a certain resistance to return continues at local levels of government, and minority returns slowed down during 2003 and 2004. In addition, even where return is undertaken, it is often not sustainable.

17. During the reregistration carried out in 2005, some 185,000 persons registered as IDPs, two thirds less than the number reached during the previous reregistration exercise in 2000. The decrease in registered IDPs is partly due to some 210,000 recorded additional returns, and to the fact that some 120,000 people decided not to reregister as displaced persons for various reasons, such as successful integration or emigration, while some were unaware of, or confused by, the requisite procedures, or did not feel it was of value to them.

18. In addition to its IDPs, Bosnia and Herzegovina hosts some 11,000 refugees, mostly from Croatia (around 8,000) and Serbia and Montenegro including Kosovo (around 3,000), together with a few hundred asylum-seekers.

## **II. RESPONSES TO INTERNAL DISPLACEMENT**

### **A. Domestic responses**

19. At the State level, the Law on Refugees from Bosnia and Herzegovina and Displaced Persons in Bosnia and Herzegovina<sup>11</sup> sets out the general principles regulating the acquisition and cessation of the status of refugee or displaced person as well as these persons' rights, including the right to recover their property. The State establishes a framework requiring the entities to pass their own laws which need to be consistent with State law and each other. However, while laws on property restitution exist at the entity level,<sup>12</sup> the State has never passed such a law.

20. According to the Federation of Bosnia and Herzegovina Law on Displaced-Expelled Persons and Repatriates, holding IDP status entitles a person to a number of rights and benefits, such as accommodation, food, social reintegration and psychological support, health care,

education for children and youth and other essentials.<sup>13</sup> In practice, however, only accommodation and basic health care are provided. In the Republika Srpska, the Law on Displaced Persons, Returnees and Refugees regulates legal IDP status and its cessation, as well as rights and entitlements to certain benefits, such as cash assistance, basic health care, elementary education, unemployment benefit, loans to start income-generation projects as well as temporary basic accommodation, provided IDPs cannot cover expenses themselves. It specifically stresses that “responsible authorities shall issue to displaced persons and returnees all documents necessary for the exercise of their legal rights”.<sup>14</sup> According to both laws, IDP status including its entitlements ceases upon return to a person’s pre-war place of residence, “when a safe and dignified return to her/his former place of residence is possible, but a displaced person has not returned there, or when this person voluntarily decided to permanently settle in another place”.<sup>15</sup>

21. There is no law at the State level concerning the protection of victims of war crimes and crimes against humanity, most of whom remain displaced. Instead, their protection is regulated by entity laws, with the consequence that their rights differ from one entity to another. In the Federation of Bosnia and Herzegovina, for example, the Law on the Basis of Social Welfare, Protection of Civilian Victims of War and Protection of Families with Children does not include women who were raped in the categories of persons eligible for such status. The Republika Srpska Law on the Protection of Civilian Victims of War grants wider protection to civilian victims of war, i.e. persons who suffered bodily harm as a result of ill-treatment, rape, deprivation of freedom and forced labour and who suffered harm over at least 60 per cent of their bodies.<sup>16</sup> However, the deadline to apply for victim status was set for 2000 when returns were still comparatively low.

22. Established in 2000, the State Ministry for Human Rights and Refugees is responsible for the coordination of inter-entity return activities. Each entity has its own IDP-related ministry: the Ministry for Refugees and Displaced Persons in the Republika Srpska and the Ministry for Refugees and Displaced Persons in the Federation. To encourage dialogue between State and entity ministries, the State Commission for Refugees and Displaced Persons was created in February 2000. Its mandate is to receive and decide claims for real property in cases where the property has not voluntarily been sold or otherwise transferred since 1 April 1992, and where the claimant does not now enjoy possession of that property. Claims may be for return or just compensation in lieu of return. As regards claims for compensation, the required mechanisms have not been set up as donors feared that compensation in lieu of return would consolidate “ethnic cleansing”.

23. The main task of the State Commission for Refugees and Displaced Persons is the examination and approval of return and reconstruction projects prepared by the entities and their sub-units (municipalities as well as cantons in the Federation of Bosnia and Herzegovina) and collected by the State Ministry for Human Rights and Refugees. It also authorizes and supervises the financial support of approved reconstruction and return projects through the Return Fund. The Return Fund was established in 2000 with the aim of supporting the sustainability of return. It ensures that both domestic and external financial aid allocated to the return process are concentrated in one single institution. It became operational in late 2004 after the State, the entities and the Brčko District made their financial contributions.

24. At the entity level, the Federation of Bosnia and Herzegovina Ministry for Refugees and Displaced Persons is responsible for return projects approved by the State Commission for Refugees and Displaced Persons. Each of the 10 cantons in the Federation of Bosnia and Herzegovina has a ministry responsible for return, although this task is in most cases combined with competencies in other areas. The role of cantonal ministries in both the reconstruction of housing and the implementation of sustainability measures is largely an administrative one, limited to the procurement and delivery of materials for repairs and reconstruction carried out by returnees themselves. In the Republika Srpska, the centralized authority responsible for refugees and IDPs is the Ministry for Refugees and Displaced Persons.

25. Most of the 164 municipalities of Bosnia and Herzegovina have departments for refugees and IDPs. Since 2003, municipalities have had the main responsibility for beneficiary selection and technical implementation of reconstruction projects. In 2003, four Regional Centres for the return process were established in Sarajevo, Banja Luka, Tuzla and Mostar under the State Ministry for Human Rights and Refugees. They are responsible for supervising the implementation of the return and reconstruction process at the municipal level.

26. In January 2003, the State and the entities adopted the "Strategy of Bosnia and Herzegovina for the Implementation of Annex 7" to the Dayton Peace Agreement which had been prepared by the Ministry for Human Rights and Refugees. As the first joint framework document at the country level since the Agreement, the strategy is the most comprehensive orientation for the sector of refugee and IDP returns and has been endorsed by the international community. The strategy outlines the necessary actions and reforms for the full realization of Annex 7, such as capacity-building for a transfer of responsibilities to domestic institutions. Its goals, envisaged to be achieved by the end of 2006 (although at the time of writing, the deadline seems likely to be extended), are: (a) completion of the return process of IDPs and refugees; (b) completion of the reconstruction of housing units for returnees; (c) realization of property and occupancy rights and repossession; and (d) securing conditions for sustainable return and reintegration. As affirmed by Parliament, the right to return cannot, however, be limited to a specific deadline.<sup>17</sup> Actions and reforms to be undertaken include the harmonization of entity laws with the State law on refugees from Bosnia and Herzegovina and IDPs, as well as the harmonization of regulations in the fields of education, health, pension and disability insurance, allocation of socially owned property and the application of property laws. The strategy further envisages structural and organizational reforms to the institutional framework dealing with return. The main change would be the planned reduction of the institutional layers responsible for return from four to two, so that only the State and the municipalities would deal with return issues, eliminating the involvement of the entities and cantons.

## **B. International responses**

27. As signatories to Annex 7, the entities as well as the Republic of Bosnia and Herzegovina are the main parties responsible for the realization of these obligations. To facilitate their efforts, the Dayton Peace Agreement provides for a strong international presence, comprising a civilian office headed by the High Representative as well as a NATO-led military force. Further support for the strengthening of local capacities is envisaged by the 2003 European Union and UNDP joint Sustainable Transfer to Return-related Authorities (SUTRA) initiative which focuses on return, reconstruction and area-based development. UNHCR has significantly contributed to

successful returns and local capacity-building, and together with UNICEF, which is monitoring and addressing the situation of IDP children and their families, supports legal aid projects for IDPs and returnees.

28. At the regional level, the Ministerial Declaration signed in Sarajevo on 31 January 2005 by Bosnia and Herzegovina, Croatia and Serbia and Montenegro contains a framework for “just and durable solutions to the refugee and IDP situation”. The signatories committed to solving the remaining displacement by the end of 2006, facilitate returns or local integration of refugees and IDPs in their countries without discrimination and in accordance with the individual decisions of those concerned, and provide assistance and support to refugees and IDPs in cooperation with UNHCR, the European Union and the OSCE.

### **III. PROTECTION NEEDS OF INTERNALLY DISPLACED PERSONS DURING DISPLACEMENT**

29. Displaced persons suffer mainly from problems concerning their economic and social rights (see guiding principles 18 and 19, para. 1). They are disproportionately affected by the general problems of the population. For example, while the whole country struggles to cope with the economic depression resulting from the effects of war and the transition to a market-led economy, IDPs constitute around 45 per cent of the extremely poor in the Federation of Bosnia and Herzegovina, and 21 per cent in the Republika Srpska.<sup>18</sup> Within the displaced population, vulnerable groups such as female heads of households, disabled persons, victims of torture and severely traumatized individuals, elderly persons without family support, unaccompanied children and the Roma are again particularly affected and often live under extremely adverse conditions.

30. Due to achievements with regard to the rate of return, as well as the start of the closure of camps by international agencies and local authorities some years ago, only several hundred IDPs remain in officially recognized collective centres. However, according to official figures, about 7,300 persons still live in irregular collective centres and ad hoc settlements which were originally provided by local authorities as temporary shelter for those displaced by the conflict. Most of these centres, which remain monitored by UNHCR, are located in the Federation of Bosnia and Herzegovina where some receive limited support from the Federation of Bosnia and Herzegovina Ministry of Refugees and Displaced Persons or the cantons and municipalities concerned. The Representative visited some of these unofficial centres and settlements no longer supported by the Government or the international community and noted with concern the abject poverty and deplorable living conditions of IDPs, which are clearly not in accordance with the right to an adequate standard of living as provided for by guiding principle 18. Unofficial settlements inhabited mainly by Roma have no running water and electricity and are not connected to public services such as waste collection. As a consequence of these conditions, the social isolation of the centres and the high percentage of inhabitants suffering from depression and trauma, an increased level of learning and psychological difficulties among children has been documented by UNICEF, affecting especially those children who have been living there for extended periods of up to 10 years.<sup>19</sup>

31. Almost all inhabitants of collective centres belong to particularly vulnerable groups, such as female-headed households, elderly persons without family support and the disabled, severely traumatized individuals, witnesses in war crime investigation or Roma. Their return

to their places of origin is unlikely for a variety of reasons, mainly: (a) unresolved property repossession processes; (b) delays in reconstruction of their houses, sometimes because they have been unable to submit the required documentation; (c) adverse conditions in communities of origin, such as lack of infrastructure, employment opportunities, access to education and health care; and (d) changes in the ethnic structure of return communities or the still outstanding return of other community members.<sup>20</sup> Special assistance to these groups is necessary, and 10 years after the Dayton Peace Agreement, instituting systematic efforts to find durable solutions for them is a matter of urgency.

32. Many IDPs are suffering from long-term post-traumatic stress disorder (PTSD). PTSD is especially prevalent in households headed by females because the husbands and fathers are missing. The extent of the trauma suffered as well as other difficulties faced by displaced children in the post-war period, including mourning the missing and killed, lack of financial resources and separation from closely related persons, gravely affects their development and health. Particularly difficult is the health situation of the estimated 200,000 camp survivors and an unknown number of victims of sexual violence, who are in need of specific social services and psychological programmes. Bosnia and Herzegovina still lacks adequate medical and psychiatric services to address their continuing suffering. This infringes on the rights of traumatized, sick and disabled IDPs to receive the medical care and attention they require (guiding principle 19, para. 1). While camp survivors and victims of sexual violence have been recognized as victims of torture by the International Criminal Tribunal for the former Yugoslavia,<sup>21</sup> their status does not amount to a legal recognition which would grant them specific rights and protection measures. The absence of an umbrella law at the State level for their protection and the lack of acknowledgement by society and the State of their suffering may lead to re-traumatization. The Representative notes the assurances recently given by a representative of Bosnia and Herzegovina to the Committee against Torture that an umbrella law on their protection would be initiated at the State level in 2006.<sup>22</sup>

#### **IV. PROTECTION NEEDS OF INTERNALLY DISPLACED PERSONS REGARDING RETURN AND OTHER DURABLE SOLUTIONS**

33. In accordance with guiding principle 28, IDPs have the right to choose between return and integration in the area of displacement or another part of the country. Return shall be voluntary and conducted in safety and with dignity. Reintegration shall be facilitated. In Bosnia and Herzegovina, the international community through the Dayton Peace Agreement has clearly prioritized return over local integration in order not to legitimize “ethnic cleansing”. Returnees are entitled, according to guiding principle 29, to be protected against discrimination and to recover their property or to receive compensation for lost property.

34. Experience indicates that the degree of respect for these standards has a direct impact on how successful return is. Successful return of IDPs to their homes and former places of habitual residence is based on three elements: (a) ensuring the safety of life and limb of returnees; (b) returning property to the displaced and reconstruction of their houses; and (c) creating an environment that sustains return, that is, which allows life under adequate conditions in the area of return. In Bosnia and Herzegovina, obstacles preventing IDPs from returning are often due to a lack of respect for their human rights.

### **A. Safety**

35. Thanks to the efforts of the international community and the authorities, general physical security can be considered one of the achievements of the return process. Nevertheless, as the Committee on the Rights of the Child recently stressed, concerns about “violent incidents against returnees and displaced persons and their property, memorials or religious objects” remain.<sup>23</sup> The Representative was informed of a series of acts of intimidation and harassment of witnesses in war crime trials and regrets the absence of a functional witness protection programme. With large numbers of alleged war criminals still enjoying impunity, the protection needs and safety concerns of these persons cannot be underestimated and often pose a decisive obstacle to them upon return to their communities of origin. The domestic criminal justice system persistently failed to take steps to actively prosecute alleged perpetrators. A major factor regarding continuing impunity was the lack of cooperation between the Federation of Bosnia and Herzegovina and Republika Srpska judicial authorities and police forces. The War Crimes Chamber within the Bosnia and Herzegovina State Court has after much delay taken up its work in September 2005, which constitutes an important step towards expediting the prosecution of war criminals. However, the lack of financial and other urgently required resources is a continuing cause for concern, as it may undermine the effectiveness of the Chamber’s operation and impedes the realization of a witness protection programme.

36. In some instances, tensions between local communities and returnees have led to isolated acts of violence, some of them ethnically motivated. The Representative is concerned about the lack of willingness of some local police to investigate incidents against minorities, in particular returnees, and its failure to identify and arrest the perpetrators, in particular when victims were Roma, as well as a weak and overburdened judiciary which fails to prosecute and punish.

37. Landmines pose a significant obstacle to the safety of returnees, to reconstruction efforts and to the development of economic activities in Bosnia and Herzegovina, which remains the most heavily mined country in South-Eastern Europe. As the majority of returns are taking place to rural areas where agriculture and cattle-breeding are essential means of subsistence, IDPs and returnees are particularly heavily affected. From 2003 to 2004, a total of 95 persons were victims of mine accidents, of whom 37 were returnees and 5 were IDPs. The Ministry of Civil Affairs, which is responsible for the implementation of the mine action plan, intends to prioritize mine clearance in return areas. However, at the current rate of mine clearance, which is almost totally funded by international donors, this will take an estimated 10 years.<sup>24</sup> The Representative also received allegations of a deliberate lack of mine clearance efforts in some return areas.

### **B. Property**

38. As indicated above, significant progress has been made in solving disputes over property left behind by IDPs and refugees, and the actual recovery of such property. By December 2004, 93 per cent of property claims lodged by pre-war owners had been resolved. However, some obstacles remain, including problems in the implementation of repossession and reconstruction as well as particular difficulties for vulnerable groups, such as female-headed households and Roma, to assert their property rights and access permits or assistance for reconstruction.

39. Female heads of household, frequently widows of war veterans or of civilian war victims or missing persons, often lack property titles, which prevents them from submitting claims for both repossession and reconstruction of their houses. Some women have lost access to their pre-war property due to divorce or because their husband has abandoned them. Some widows did not formally inherit their late husband's property, making them dependent on the goodwill of parents-in-law to obtain access to their property. A number of war orphans have also not been able to reclaim property, as they are not included in the Property Law Implementation Plan, and institutions with guardianship over these children often failed to claim their rights. The situation of the Roma is particularly problematic. Before the war, a large number of the Roma community lived in settlements which were built on State-owned land and often not recognized by local authorities. As a result, there are few records of these settlements, and no concrete information about the exact location of houses. Today, an estimated 50-70 per cent of Roma reside in informal settlements in a precarious situation as the land could be reallocated by local authorities at any time.<sup>25</sup> Currently, some two thirds of all Bosnian Roma are not registered at a permanent address, which complicates or bars various administrative procedures such as obtaining official documents. The Representative noted with concern cases of forced eviction of Roma communities, such as that in Bisce Polje near Mostar in 2003. A Roma settlement built on State-owned land was reportedly demolished and burnt by the authorities without prior warning and with no alternative accommodation offered.

40. Some municipalities have been discriminating between different groups of IDPs concerning the allocation of plots of land, the provision of construction material or compensation for destroyed property, giving preferential treatment and assistance to those belonging to the local majority group. Minority returnees have been and sometimes still are subject to discrimination, as public enterprises frequently refuse to connect their houses to electricity, water and telephone services and fail to repair roads and provide other municipal services in a timely manner. Often, authorities have remained inactive when houses belonging to minority groups such as the Roma had been looted by temporary occupants.

41. Some 50,000 housing units remain destroyed or in need of substantive repairs, and many need to be reconnected to the public water and electricity supplies. Resources for reconstruction are scarce as donors are increasingly directing funds to other priorities. Again, vulnerable groups face the biggest difficulties in having their houses reconstructed. They may only receive part of the building material required or lack the capacity or the resources to do the actual construction work. Vulnerable categories have often been excluded from the process of identifying beneficiaries for reconstruction assistance.

### **C. Adequate economic, social and political conditions**

42. The creation of adequate economic, social and political conditions making return sustainable remains the biggest challenge. The lack of such conditions which, according to the Dayton Peace Agreement and national legislation, authorities are obliged to create is one of the main obstacles to return and has caused the overall rate of returns to slow down. Significant questions as to the long-term sustainability of returns remain. As mentioned above, there are many cases in which returnees have left again after a short while, or where only the elderly, but not families with children, have returned. While living conditions in many return areas are difficult for the resident population too, many returnees face additional, specific difficulties, often caused by insufficient respect for their human rights.

43. As regards the right to work, limited or lack of access to employment is a major factor deterring people from returning. Unemployment affects mainly young people, women and displaced persons, particularly those who lived in rural areas before the war and often lack the education and skills required for formal employment.<sup>26</sup> At the already very high rate of 50 per cent in 2004,<sup>27</sup> unemployment is expected to rise with the continuing process of privatization of State-owned enterprises, which is also the subject of concerns about a lack of transparency. Widespread discrimination based on ethnicity, political affiliation and gender adds to the difficulties for returnees to access the labour market. Discriminatory practices persist mainly in public companies, such as the postal, telephone, electricity and forestry companies, which are directly controlled by cantons in the Federation of Bosnia and Herzegovina and by the entity Government in the Republika Srpska. Recruitment processes are reportedly neither transparent nor merit-based, and complaints about the absence of vacancy announcements by public companies and the municipal administration are common in some areas.<sup>28</sup> There is a strong tendency to employ only members of the dominant ethnic group or political party. Preference is also given to soldiers, disabled war veterans and their families, as well as family members of soldiers killed in action. Returnees are virtually excluded as they do not belong to any of these categories.

44. Although the law (Federation of Bosnia and Herzegovina Labour Law, art. 143 and Republika Srpska Labour Law, art. 152) provides that a former employee who has been unfairly dismissed must be rehired or compensated by the enterprise, in practice no returnees have been able to return to their pre-war jobs or receive compensation on the ground of unfair dismissal.<sup>29</sup> While a complaints procedure with entity and canton commissions exists, there is neither an implementation system for the commissions' decisions nor a monitoring mechanism. In addition, new private owners of former public companies have no legal obligation to rehire or award compensation.

45. While some returnees might get some support from international donors to start small income-generation activities, those requiring financial assistance indicated that the high interest rates of microcredit programmes deter self-employment initiatives. The main employment opportunities for IDPs returning to rural areas would lie in the agricultural sector. However, due to the slow pace of mine clearance, part of the agricultural land still cannot be cultivated. In addition, the lack of a comprehensive agriculture development policy prevents some IDPs from giving up their temporary residences in the cities, where temporary and/or informal employment opportunities are more likely to arise.

46. Problems in the area of the right to education, such as discrimination and ethnic separation, pose another important obstacle to sustainable return. For years after the war, children attending the same school were separated on the basis of ethnicity, and different curricula with strong nationalist content were taught to different groups. As a result, many families have split, with one parent returning and the children staying with the other in the place of displacement to be able to follow the curriculum corresponding to their ethnicity. In other cases, children have returned with their parents but travel long distances to school. Since the authorities stopped financing the bussing of children to other entities at the end of the 2003/04 school year, some parents organize transportation themselves.

47. Although serious efforts have been made to address discrimination and to develop an egalitarian education system with curricula designed at State level, many challenges remain.

In some regions, education is still organized along ethnic lines. For example, some 50 so-called “two schools under one roof”<sup>30</sup> located mainly in parts of Herzegovina use the same facilities but are administratively separate and follow different curricula. Children, teachers and non-teaching staff segregated along ethnic lines attend the same school in shifts or use separate entrances and sections. The Representative found that school segregation perpetuates ethnic tensions into the next generation and delays the process of national reconciliation.

48. Efforts addressing these challenges include the 2002 education reform and an “interim agreement on accommodation of specific needs and rights of returnee children” signed in March 2002 between the entity Ministers of Education. As a result, returnee teachers were hired, and a larger number of schools offer to their minority returnee children separate classes on certain subjects such as language and literature, history, geography and religious instruction. Some schools have introduced the common core curriculum agreed upon by the education ministers in August 2003. As a consequence, certain areas recorded an increase in the number of returnee children attending schools in their places of return. Despite these efforts, marginalized groups of children, including IDPs and returnees as well as children with disabilities, face difficulties in accessing schooling. Of the 4-6 per cent of children not attending school at all, the majority are Roma and displaced children.<sup>31</sup>

49. Access of IDPs and returnees to health care and social security is adversely affected by the lack of harmonization between the relevant legislation and welfare systems of the two entities. By contrast to the single nationwide insurance scheme in existence before the war, at present there are separate health insurance schemes in the Republika Srpska, in Brčko District and in the Federation of Bosnia and Herzegovina, where the operational capacity is delegated to the cantons. One of the difficulties is that coverage cannot be transferred from one entity to another. This poses an obstacle to persons considering return and has turned into a problem for returnees, many of whom have to travel to the other entity to access health care and other social services. As the first major inter-entity agreement prepared and negotiated without the intervention of the international community, the directors of the entities and the Brčko District health insurance funds signed an agreement in 2001 securing for all those insured in one entity, health coverage in another. The implementation of the agreement, however, is reportedly unsatisfactory.<sup>32</sup>

50. As the protection of civilian victims of war is regulated by entity laws which, as described above, differ from one another, the different eligibility criteria for recognition of the status of civilian victim of war may be an obstacle to return for those holding such status in the entity of displacement.

51. Similarly, the different pension calculation schemes and pension amounts in each entity also adversely affect returns. Following the Agreement on Mutual Rights and Obligations in the Implementation of Pension and Disability Insurance between the entity funds, it became possible for a beneficiary receiving a pension from the fund in his or her place of displacement to continue receiving this pension after return. However, individual return decisions and sustainability are influenced by the difference in pension amounts between entities in conjunction with differences in the cost of living. Further, it is impossible for pensioners collecting their pensions from a fund in one entity to enjoy other related social benefits, the most important being health insurance, in the other entity.<sup>33</sup>

52. Due to discriminatory attitudes and practices by some local authorities, returnees expect or face problems regarding participation in public affairs, which also prevents or complicates returns, particularly of minorities, and subsequent social reintegration. In July 2000, the Constitutional Court of Bosnia and Herzegovina ruled that none of the three main ethnic groups as the constituent peoples of Bosnia and Herzegovina shall be excluded from exercising its rights in the entities and that their members shall be represented at all levels of government and public administration. However, problems remain with the implementation of these principles as well as for those who do not belong to any of the three constituent peoples, the so-called “others” such as the Roma. Returnees often lack information about their rights and how to exercise them. The provocative use of national or religious symbols by some local authorities contributes to creating and maintaining a hostile environment towards minorities. Public institutions are often dominated by nationalist political parties who follow a policy of ethnic homogenization, which leads to favouritism privileging the ethnic majority while neglecting or underrepresenting the interests of vulnerable groups. This discredits public institutions which are perceived by minority returnees as non-transparent and open to corruption. The lack of trust in public institutions is a serious democratic deficit. In some municipalities, minority returnees are indirectly excluded from voting in elections because of the limited information made available to them, or the lack of transportation.<sup>34</sup> Many Roma IDPs are excluded from voting as they lack the required documentation.

53. Specific problems are encountered by some rejected asylum-seekers, persons whose temporary protection status in host States has ceased and other persons returned from countries of asylum in Western and Northern Europe. The Representative was concerned that those who, upon return, do not have the means to sustain themselves and do not have access to durable solutions are at an increased risk of becoming displaced themselves. An increasing number of countries of asylum, mostly in Western Europe, have started applying the “internal flight alternative” to asylum-seekers from Bosnia and Herzegovina, arguing that the latter are not in need of international protection as they can find refuge elsewhere in their country of origin. In view of the conditions described above, however, this ostensible alternative may not be a viable option for many individuals. Given the small size of the country and the continuing impunity, some persons, in particular victims or witnesses of war crimes, may be exposed to a serious risk to their safety even in an area of relocation if returned to Bosnia and Herzegovina. Concerns also include severely traumatized individuals, who are not likely to be able to live anywhere in the country without being constantly reminded of their suffering and past violations and who, in practical terms, would not be in a position to receive the assistance they need, such as specific social services and psychological support, given the poor state of the health system and the absence of sufficient psychosocial counselling.<sup>35</sup> Apart from these problems affecting specific groups, many interlocutors shared with the Representative their concern that the country’s reintegration and absorption capacities would be overburdened should mass returns from abroad take place; indeed, renewed displacement might be the consequence.

## V. CONCLUSIONS AND RECOMMENDATIONS

54. **The Representative is concerned about the deplorable living conditions of IDPs, especially those belonging to particularly vulnerable groups, such as the elderly without family support, traumatized victims, disabled or sick persons, female-headed households and families of missing persons, witnesses in war crimes investigations and trials, or members of the Roma and other minorities, who still live in collective centres,**

**irregular settlements and other forms of temporary shelter, often experience multiple discrimination and are unlikely to be able to return to their original homes.**

**55. The Representative urges national and local authorities, in collaboration with international agencies and donors, to seek durable solutions for these persons, including the creation of adequate housing and appropriate institutional arrangements such as foster families, social housing projects or homes. He urges the international community and donors to support such projects.**

**56. Vulnerable groups of IDPs and returnees are particularly affected by human rights violations. These groups include female-headed households, disabled persons, victims of torture and severely traumatized individuals, elderly persons without family support, unaccompanied children, the Roma and other minorities. Multiple discrimination along ethnic, gender, age, class and other lines results in an accumulation of rights deprivation. The Representative recommends to the authorities that they mainstream the protection needs of vulnerable groups when formulating all policies and measures affecting them and devise specific measures to find durable solutions. The international community should provide additional durable solutions for vulnerable groups among the displaced and returnees and make sure that their rights are not adversely affected as international aid further diminishes.**

**57. Sustainable return in Bosnia and Herzegovina is dependent on: (a) ensuring the safety of life and limb of returnees; (b) property repossession and reconstruction of houses; and (c) a political, social and economic environment that respects human rights and addresses the special needs of returnees. While impressive results have already been achieved, many challenges remain. The Representative recommends that all necessary measures be taken to ensure the effective protection of human rights of displaced persons and returnees, including by implementing his recommendations. He calls upon the international community to ensure that assistance programmes entail a transfer of responsibilities and capacities to national and local stakeholders and that during this process the human rights of displaced persons and returnees are mainstreamed into all relevant parts of the administration. The Representative invites the authorities and the international community to establish a mechanism to closely monitor the return situation and its sustainability by using reliable indicators and disaggregated data.**

**58. Most returnees now enjoy physical security. Concerns remain about the widespread presence of landmines as well as threats against witnesses in war crimes investigations and trials and members of ethnic minority groups. The Representative recommends that the authorities continue, and possibly accelerate, with the support of the international community, the process of mine clearance with a priority on return areas. Law enforcement institutions should take effective measures to ensure that all crimes and acts of violence against IDPs and returnees are properly investigated and prosecuted. A functional witness protection programme should be established.**

**59. Despite the huge progress made in solving property disputes, restitution of houses and reconstruction of buildings, a considerable number of cases remain to be solved. Vulnerable groups and minorities are disproportionately affected by unsolved cases and deficiencies in infrastructure, and they have difficulties accessing aid for reconstruction**

and connection to public services. The Representative recommends that the authorities continue, with the support of the international community, the reconstruction process and reconnection of houses to services in a non-discriminatory manner, and examine carefully unsolved cases of property repossession, in particular where members of vulnerable groups are affected.

60. The unwillingness of local authorities to sufficiently respect, protect and fulfil the human rights of returnees, in particular their economic and social rights, continues to pose a major obstacle to sustainable return. These obstacles often originate in widespread and persistent discrimination along ethnic lines which still penetrates all spheres of public and private life in many regions of the country. Despite recent efforts, non-harmonized laws and regulations at different levels remain and have also hampered return and integration. The Representative recommends that existing legislation be reviewed at all levels in the light of human rights provisions relevant to IDPs and returnees, with support from the international community. A comprehensive policy of non-discrimination, possibly designed with the assistance of the international community, should be adopted to address discrimination in all spheres, particularly education, health, social protection, employment, access to justice, public participation and the media. It should include legislative measures as well as effective mechanisms for redress and compensation, a system monitoring the situation of vulnerable groups, codes of conduct and public campaigns. The participation of all sectors of society, including the private sector, would be essential for the successful implementation of the policy. Legislation should be harmonized and simplified, especially in the areas of pensions and employment, access to health, education, the use of symbols in public institutions and the recognition of the status of civilian victim of war. Human rights training, including on the Guiding Principles on Internal Displacement, should be provided to officials of the Ministry for Human Rights and Refugees and their counterparts in the entities and municipalities. At the same time, measures should be taken to better inform IDPs and returnees of their rights and existing mechanisms with which to seek redress. All IDPs and returnees, in particular the Roma, should be provided with the documents necessary to allow them equal access to administrative procedures. Further, the Representative recommends that the authorities make the necessary budget allocations for the implementation of laws affecting the situation of returnees and displaced persons, especially in the areas of social welfare and health. Municipalities should likewise allocate an adequate budget for return. The Representative invites the authorities to consider accepting the competence of the Committee on the Elimination of Racial Discrimination to examine individual communications, by making the declaration under article 14 of the International Convention on the Elimination of All Forms of Racial Discrimination.

61. The Representative recommends to the international community that it concentrate its efforts and resources towards the creation of an environment conducive to sustainable return. It could assist with human rights training and human rights-based capacity-building in areas such as administration of justice, employment policies, and the harmonization of the health and education systems.

62. Limited, or lack of, access to the right to education constitutes a major obstacle to return, as IDPs are reluctant to return to areas where their children would face segregation and intolerance and have to attend schools with a curriculum that does not respect the cultural traditions of their own ethnic group. The Representative recommends that

the authorities continue the process of harmonization of the educational system and gradually eliminate the system of “two schools under one roof”. Countrywide educational programmes aimed at creating an environment of tolerance, peace and understanding of diversity should be established.

63. The right to health is undermined by inconsistencies in health insurance schemes between entities, which mainly affect IDPs and returnees who suffered the most acute consequences of the war and who are in need of specific physical and psychological assistance. The Representative recommends that the authorities implement the 2001 agreement between the entities and the Brčko District health insurance funds, to ensure that all those insured by one entity can receive health coverage in another.

Specific resources need to be allocated to assist persons suffering from post-traumatic stress disorder. State-level legislation recognizing the status of victim of torture, creating specific protection measures and granting victims specific entitlements, should be enacted.

64. Discriminatory practices in employment, especially prevalent in the public sector of municipalities, discourage minority returns. Returnees excluded from the formal labour market have to resort to the informal economy or other coping mechanisms. The Representative recommends that the authorities closely review and monitor recruitment practices in the public sector with a view to eliminating discrimination. Disproportionate underrepresentation of one ethnic group in a given public company should be taken as an indication of discrimination unless otherwise demonstrated.

Programmes and initiatives aimed at creating employment opportunities specifically for IDP and female returnees who are heads of household should be created. Such measures might include vocational training for women as well as training for employers on gender equality. Authorities should also take steps towards creating an environment conducive to economic growth and development in return areas, and ensure that the privatization process is conducted in a transparent and accountable manner. Past incidents of discrimination in employment need to be addressed by providing those unfairly made redundant with re-employment or compensation.

65. Mass returns of refugees from abroad, repatriation to areas of unsustainable conditions, evictions of temporary occupants during the property repossession process and the closing of settlements may pose the risk of renewed or multiple displacement.

66. The Representative recommends that the authorities avoid depriving IDPs of their current accommodation without offering an adequate alternative solution. The Sarajevo Declaration should be implemented so as to facilitate sustainable return of internally displaced persons and avoid successive displacement. Further dialogue and collaboration on displacement at the regional level could be facilitated by the international community. The Representative calls upon the authorities to raise concerns related to the sustainability of return with the competent authorities of countries of asylum, with a view to avoiding the displacement of deportees and repatriates once they are returned to Bosnia and Herzegovina. The international community is also called upon to alert asylum States concerned of existing risks and to appeal to them to proceed cautiously with returns to Bosnia and Herzegovina, in particular of persons belonging to ethnic minorities.

### Notes

- <sup>1</sup> See the reports on the Representative's visits to Croatia (E/CN.4/2006/71/Add.3) and Serbia and Montenegro, including Kosovo (E/CN.4/2006/71/Add.3).
- <sup>2</sup> E/CN.4/2005/84.
- <sup>3</sup> All figures are reproduced from the initial report submitted by Bosnia and Herzegovina under the International Covenant on Economic, Social and Cultural Rights (E/1990/5/Add.65).
- <sup>4</sup> See E/C.12/BIH/CO/1.
- <sup>5</sup> E/CN.4/2001/47.
- <sup>6</sup> Norwegian Refugee Council/Global IDP Project, Profile of internal displacement: Bosnia and Herzegovina, Geneva (2005), p. 38.
- <sup>7</sup> Dayton Peace Agreement, Annex 7, article I, paragraph 1 (14 December 1995).
- <sup>8</sup> Originally Commission for Displaced Persons and Refugees.
- <sup>9</sup> For details see the Profile of Internal Displacement: Bosnia and Herzegovina, available in the Global IDP Database of the Norwegian Refugee Council, available at: [www.idpproject.org](http://www.idpproject.org).
- <sup>10</sup> *Functional review of the return sector in BiH, Final Report*, Sarajevo (April 2005), p. 10.
- <sup>11</sup> Law on Refugees from BiH and Displaced Persons in BiH, BiH Official Gazette (23/99, 21/03 and 33/03).
- <sup>12</sup> *Functional review*, op. cit., p. 12.
- <sup>13</sup> Article 11.
- <sup>14</sup> Article 15, Republika Srpska Official Gazette, No. 33/99 (26 November 1999).
- <sup>15</sup> Article 10, Federation of Bosnia and Herzegovina law, article 9, Republika Srpska law.
- <sup>16</sup> Article 2.1.
- <sup>17</sup> Ministry for Human Rights and Refugees, *Bulletin 2004*, Sarajevo (December 2004), p. 6.
- <sup>18</sup> Norwegian Refugee Council, op. cit., p. 5.
- <sup>19</sup> UNICEF briefing note for the Representative (June 2005).
- <sup>20</sup> Ministry for Human Rights and Refugees, *Sustainable return for residents of collective centres and alternative accommodations and for spontaneous return cases: housing stock reconstruction FIP 13503, Feasibility study* (August 2004), p. 4.

- <sup>21</sup> ICTY, *Furundzija* (IT-95-17/1), *Lasva Valley* and *Zejnir Delalic, Zdravko Nucic, Hazim Delic and Esad Landzo*, judgement of the Trial Chamber II 1998 and of the Appeals Chamber 2001, available at: [www.icty.org](http://www.icty.org) and see *Interights Bulletin*, vol. 14, No. 4, 2004, pp. 166-169.
- <sup>22</sup> See CAT/C/BIH/CO/1, para. 8.
- <sup>23</sup> CRC/C/15/Add.260, paras. 25 and 60.
- <sup>24</sup> Norwegian Refugee Council, op. cit., p. 57.
- <sup>25</sup> Ibid., pp. 158-159, 168.
- <sup>26</sup> UNHCR, *Survey on displaced persons in Tuzla canton from the Podrinje area, Eastern Republika Srpska* (June 2003), p. 13.
- <sup>27</sup> UNHCR, *Update*, op. cit., p. 10.
- <sup>28</sup> UNDP/OHCHR, *Consolidated report of the municipality assessment in Bosnia and Herzegovina, Rights-based municipal assessment and planning project (RMAP)*, Sarajevo (April 2004), p. 23.
- <sup>29</sup> UNDP/OHCHR, op. cit., pp. 36-37.
- <sup>30</sup> Norwegian Refugee Council, op. cit., p. 100.
- <sup>31</sup> UNICEF, op. cit. The Committee on the Rights of the Child expressed its concern for the extensive discrimination in access to education towards ethnic and/or national minorities, especially Roma (only 33 per cent attend primary school) (CRC/C/15/Add.260, para. 57).
- <sup>32</sup> Norwegian Refugee Council, op. cit., p. 88 and 90.
- <sup>33</sup> Ibid., p. 112.
- <sup>34</sup> UNDP/OHCHR, op. cit., p. 22.
- <sup>35</sup> UNHCR, *Update*, op. cit. pp. 7-9.

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