

SECURING DURABLE SOLUTIONS FOR DISPLACED PERSONS IN GEORGIA: THE EXPERIENCE IN BOSNIA AND HERZEGOVINA

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CONFLICT AND MIGRATION: THE GEORGIAN-ABKHAZIAN CASE IN A EUROPEAN CONTEXT

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On behalf of UNHCR, I would like to thank the Heinrich Boell Foundation, the Center for Citizen Peace-building of the University of California, Irvine, and Conciliation Resources for the invitation to participate in this conference, and to commend them for this initiative promoting the search for solutions to the long-standing displacement situation resulting from the Georgia-Abkhazia conflict.

Such cases of "frozen conflict", where major hostilities have long ceased and, yet, peace nonetheless remains elusive, all too easily fade from international attention, even though the conflict and its enduring human consequences, including the plight of the people it displaced, is far from resolved.

More than half of the world's 11.4 million refugees and 26 million internally displaced persons (IDPs) uprooted as a result of armed conflict and violence are trapped in situations of protracted displacement.¹ For years, and sometimes decades, they face an uncertain future with no clear solution in sight. They often also confront obstacles in accessing basic services, securing livelihoods, and enjoying their rights. Ensuring protection for displaced persons ultimately is about ensuring they can attain a durable solution.

Securing solutions for displaced persons also is essential to peace-building and preventing further conflict. Unresolved problems of displacement upset national stability and can also undermine regional stability, threatening further conflict and displacement. At the same time, durable solutions, in particular return, cannot be achieved for displaced persons without security and conflict resolution. The United Nations Peace-building Commission recently has highlighted as a lesson learned that resolving displacement and achieving lasting peace are inextricably linked.²

As this conference considers how best to address this link in the Georgia-Abkhazia conflict, the experience in Bosnia and Herzegovina (BiH) may offer insights. Of course, every situation of displacement is unique and context-specific, such that direct comparisons are difficult. However, certain universal principles do apply; most notably, the right of refugees and of internally displaced persons to voluntary return in safety and dignity to their area of origin or to find a solution elsewhere, which for IDPs would mean integrating elsewhere in their country. The case of BiH sheds important light on what supporting realization of these rights and resolving displacement crises requires in practice.

Bosnia and Herzegovina

The 1992-1995 conflict in BiH resulted in some 200,000 deaths and the displacement of 2.2 million persons -- almost half of the country's population -- 1.2 million of whom became refugees, while approximately one million were internally displaced.

Conflicts typically lead people to flee their homes and even country in an effort to escape the violence. In the case of BiH, however, the displacement of whole communities was not simply a side effect of the conflict but a deliberate strategy aimed at altering the demographic character of disputed territory; the odious expression "ethnic cleansing" was coined in the BiH conflict to describe this phenomenon.

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¹ UNHCR, Statistics on Protracted Refugee Situations, as of February 2008; Internal Displacement Monitoring Centre, *Internal Displacement: Global Overview of Trends and Developments in 2007* (Norwegian Refugee Council, April 2008), p. 8.

² United Nations Peacebuilding Commission, Working Group on Lessons Learned, 'Comparative Lessons from Addressing Internal Displacement in Peacebuilding,' 13 March 2008, Chair's Summary, doc. WGLL/2008/9.

When the war ended in December 1995, resolving the situation of refugees and displaced persons was a high priority. The Dayton Peace Agreement (DPA) devotes an entire Annex (VII) to this goal. At the time, it was widely expected that many, if not most, refugees and IDPs, would return to their place of origin within a short period of time. Driving this aim was the moral and political imperative to reverse “ethnic cleansing”. Annex VII accordingly placed particular emphasis on the right of all refugees and displaced persons ‘freely to return to their homes of origin’. Indeed, it stressed that ‘[t]he *early* return of refugees and displaced persons is an important objective of the settlement of the conflict’.³

In the thirteen years since the signing of the DPA, more than a million people -- almost half of those uprooted -- have exercised their right to return.⁴ The highest number of returns occurred in the two years immediately following the conflict. Overwhelmingly, these were “majority returns”, that is, displaced persons returning to an area where their ethnic group was in the local majority and occupied key positions of authority. For the first four years following the war, there were hardly any “minority returns”. Insecurity, including direct attacks on minority returnees, remained a significant problem. A major practical obstacle to return and a further source of tension and conflict was the fact that the homes of many displaced persons were occupied, often by other displaced persons, in many cases of a different ethnicity, and whose own homes were occupied or destroyed. Due to the destruction wrought by the war and its aftermath, many other displaced persons simply no longer had a home to return to.⁵

However, from 2000-2002, the rate of returns, in particular minority returns, markedly increased. Concerted international and national efforts in four key areas account for this progress:

(i) Freedom of movement:

To begin with, there was a need to promote and protect exercise of the right to freedom of movement, to practically enable the physical possibility of return. International efforts were instrumental in this regard. Particularly key were the internationally-escorted buses across the Inter-Entity Boundary Line and the creation, at international insistence, of common license plates enabling individuals to travel free of visible indication of their place of residence, on the basis of which they were being targeted for attack.

(ii) Security:

Under the DPA, the parties to the conflict committed themselves to ensure that refugees and displaced persons could ‘return in safety, without risk of harassment, intimidation, persecution or discrimination’ and to ‘take all necessary steps...that would hinder or impede...safe and voluntary return’. The DPA specified a number of such measures including the prevention and suppression of any incitement of ethnic hostility and the prosecution, dismissal or transfer, as appropriate, of any persons in the military, paramilitary, police force and public service, responsible for serious violations of the basic rights of persons belonging to ethnic or minority groups.⁶

Actual implementation of these commitments in the end required the robust direct engagement of the international community. Most notably, in late 1997 the Office of the High Representative – an international body established to oversee implementation of the DPA – was vested with wide-ranging authority, including to: dismiss public officials and bar them from holding office in the future; fine or ban political parties; revoke legislation; and remove other obstacles to implementation of the DPA. The OHR’s increasing use of these so-called “Bonn Powers” beginning in late 1999 was instrumental in removing public officials, including members of the police force, who were blocking minority returns and inciting or condoning violence.

In addition, the arrest of a number of individuals suspected of having committed war crimes, the patrolling by international peacekeeping and police forces, insistence on increased minority representation in the police forces, and sustained protection monitoring by international agencies

³ Article 1 (1) of Annex VII of the General Framework Agreement for Peace, (Dayton Peace Agreement), 14 December 1995, [italics added].

⁴ According to Government statistics, 578,572 IDPs and 446,744 former refugees are reported to have returned during the period from 1996 to end March 2008. Of these, 559,379 are majority returns, while 465,937 are minority returns.

⁵ Some 445,000 housing units were partially or completely destroyed during the war; an additional 14,000 were destroyed in the violence that followed the signing of the Dayton Peace Agreement. In total, this amounted to 37% of the pre-war housing assets of BiH. Source: UNHCR, 2007.

⁶ Article I (2) and (3) of Annex VII, Dayton Peace Agreement.

and NGOs, further contributed to an improved security environment and greater freedom of movement within the country.

(iii) Property Repossession:

Article I(1) of Annex VII of the DPA affirmed that '[a]ll refugees and displaced persons have the right freely to return to their homes of origin. They shall have 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.' The DPA created binding obligations on the domestic authorities to ensure these rights as well as specific mechanisms to assist with the task, most notably a Commission for Real Property Claims of Refugees and Displaced Persons (CRPC).

In practice, however, political resistance coupled with an array of complicated legal and administrative barriers stood in the way of implementation. Overcoming these obstacles and establishing a legal and administrative claims process for the repossession of property was a complex, labour-intensive and expensive process, requiring the concerted effort of a number of international, regional, state and local actors.⁷ By the end of 1999, these efforts coalesced into a Property Law Implementation Plan (PLIP) to resolve all outstanding property repossession claims by refugees and displaced persons. In this domain as well, the OHR was instrumental in encouraging – and where necessary, directly imposing – domestic implementation of the property laws allowing for restitution. Reinforcing this, the International Police Task Force (IPTF) was an important tool for enforcing evictions, while UNHCR and the Organization for Security and Cooperation in Europe (OSCE) played an essential role in advocacy and monitoring implementation of the process. Of the more than 200,000 property claims lodged, 93 percent were confirmed and implemented by mid-2005.⁸ Indeed, BiH is considered the first example of a successfully implemented large-scale process of property restitution in the aftermath of conflict and a model, both positive and with lessons learned, for other conflicts in which property and land disputes feature prominently.⁹

(iv) Reconstruction:

At the same time, extensive housing reconstruction got underway, with support from the international community. To date, more than 260,000 houses have been reconstructed at a cost of some \$2.6 billion Euros.

The combined effect of efforts in these four areas – freedom of movement, security, property restitution, and reconstruction – was key to unblocking the deadlock in minority returns, with progress in particular in the period from 2000-2002.

So, what is the situation today? While official return figures record that many refugees and displaced persons have exercised their right to return to their pre-war place of residence, in line with the goals of Annex VII, there is strong evidence suggesting that a significant percentage of persons have not remained in their place of return in the long-term. Many have sold, exchanged or rented their reposessed property and opted to settle elsewhere, often in their place of displacement, in another part of the country or, for many refugees, abroad. For those remaining within the country, the general tendency in the post-war period has been that people continue to choose to live in areas where their ethnic group is in the majority, both in the local population and in the political and civil authorities (e.g. police) of the community. A number of factors underpin this trend, most notably:

Discrimination of minority groups is a major factor hindering their return. Discriminatory policies and practices infuse all aspects of minority returnees' life, including employment, education, access to health care, as well as to pensions and even reconstruction assistance.

The lack of economic opportunities is a major obstacle to sustainable minority return. In addition to the widespread unemployment affecting the whole population, minority returnees often face discrimination in accessing employment opportunities, including in the public service. Those who have returned permanently tend to be older persons returning to rural areas, where they depend upon

⁷ In particular: the Office of the High Representative (OHR), UNHCR, the Organisation for Security and Cooperation in Europe (OSCE), the United Nations Mission in Bosnia and Herzegovina, the CRPC and the state, entity, cantonal and municipal authorities.

⁸ UNHCR, OHR and OSCE, *Statistics: Implementation of the Property Laws in Bosnia and Herzegovina* (September 2006) available at: <http://www.unhcr.ba/protection/plip2005.htm>

⁹ See Charles B. Philpott, 'From the Right to Return to the Return of Rights: Completing Post-War Property Restitution in Bosnia Herzegovina,' *International Journal of Refugee Law* (2006), pp. 30-80.

agriculture for their livelihood as well as remittances from relatives elsewhere in the country or abroad to supplement what are meagre pensions. Younger persons tend to prefer to remain in the urban areas of their displacement, where they have access to better economic opportunities.

Many return areas also lack basic infrastructure, including roads and electrification. Rebuilding war-damaged infrastructure is a resource-intensive endeavour which, even in a country like BiH which benefited from unprecedented levels of international reconstruction support, is a long-term endeavour. For example, only just this month, did a number of returnee communities literally come out of the darkness seven years after their return, with the flick of a switch finally restoring their access to electricity.

Access to public services, including health care and social security, is constrained by a lack of political will to harmonize laws across the two Entities (Federation of Bosnia and Herzegovina; and Republika Srpska) constituting Bosnia and Herzegovina) or to implement harmonized laws that do exist. Compounding this is a scarcity of health care facilities in rural areas. Moreover, throughout the country, effective social protection mechanisms do not exist to ensure that vulnerable persons are taken care of.

The lack of access to unbiased education also is a major factor in families' decisions to return.

While the security situation has improved markedly compared with the years immediately after the conflict, a strong perception of insecurity persists among minority returnees. The ongoing work of the International Criminal Tribunal for the former Yugoslavia and the BiH Court War Crimes Unit in addressing impunity for war crimes and crimes against humanity is essential to making people feel secure, especially in their areas of origin. Bringing to justice individuals identified as alleged war criminals -- many of whom remain at large -- as opposed to applying collective guilt to entire communities for abuses carried out during the war also is critical for reconciliation and confidence-building between communities, where a lot of work still remains to be done.

Finally, aside from the obstacles that actual and potential returnees continue to face in their area of origin, today, thirteen years after the war, there remain some 125,000 officially registered internally displaced persons, who lack a solution. Among these IDPs are many who are extremely vulnerable and unable to return (i.e. the physically or mentally challenged, those severely traumatized by the conflict, the chronically ill, elderly without any source of income or family support). Some 8,500 IDPs still live in temporary collective accommodations, leading an insecure existence often in sub-standard conditions. These people have very much fallen through the cracks of the extensive international and national efforts to support return and reconstruction; they urgently require support.

LESSONS OBSERVED

The experience in BiH, and in other countries around the world, illuminates a number of critical factors for securing durable solutions for displaced persons uprooted by conflict. The following conclusions can be drawn:

1. ***A political settlement to the conflict is a pre-requisite to making the right to safe and dignified return a durable reality.*** Generally, a peace agreement needs to be in place prior to UNHCR supporting an organized return process. Even then, as the experience in BiH highlights, large-scale returns are not automatic, but will take time as the security situation stabilizes¹⁰ and practical obstacles, such as property disputes, are addressed. As noted earlier, it took about 4 years as well as concerted international and national efforts to achieve significant minority returns. At the same time, it must be recognized that in some cases, although not BiH, displaced persons spontaneously may begin to return even in advance of a peace-agreement, especially when a cease-fire is in effect and generally has held for a considerable period of time. When spontaneous return occurs and these returnees require support, their situation needs to be acknowledged and assessed, with accurate information on their numbers and conditions in order to ensure that their protection, assistance and reintegration needs are not neglected. Of course, any support provided to returnees would need to be holistic, also addressing the needs of the broader community.

¹⁰ In fact, in the period immediately following the signing of the Dayton Peace Agreement, new bursts of violence broke out in parts of the country, causing new displacement.

2. Peace-building efforts need to integrate attention to the specific needs of displaced persons and returnees. In BiH, the fact that the peace agreement included an Agreement on Refugees and Displaced Persons (Annex VII), with specific obligations upon the parties and with UNHCR mandated to assist the implementation sent a strong signal that resolving the displacement crisis was a top priority. This also has been critical to mobilizing sustained national and international attention to the issue. Failure to tailor peace-building processes and peace agreements to target the specific needs of returnees and the communities receiving them risks reinforcing obstacles to sustainable return and reintegration.¹¹ Specific attention should be given to the differential protection and reintegration needs of particular groups, including women and children.¹² And while resolving conflict-induced displacement is an important element of a peace agreement, solutions to displacement, in particular return, must not become a peace-enforcement factor or instrumentalized as a bargaining chip in the peace process. The right of displaced persons to a solution of their choosing -- whether return, integration in the place of displacement, or resettlement in another part of the country -- is key.

3. Peace agreements are necessary but not sufficient to enable displaced persons to attain a durable solution; minimum conditions also need to be created on the ground. Broadly speaking, three essential conditions must be in place: (i) security, including during and after return; (ii) property restitution or compensation; and (iii) an environment that sustains return or resettlement, including returnees having access without discrimination to basic public services, documentation and employment and income-generating opportunities.¹³ Benchmarks for realizing these conditions have been identified to guide and support solutions-oriented efforts.¹⁴ All three conditions are required and efforts to attain them are best pursued in parallel. Experience shows that 'a phased approach focusing initially on security issues and with other activities relegated to a later phase risks creating a gap between the humanitarian phase and the reconstruction/development phase.'¹⁵ Rather, a development perspective should be integrated at the earliest possible stage of return and recovery. Security is paramount. In the Georgia-Abkhazia conflict, a cautionary example came in May 1998 when armed hostilities re-ignited in the Gali region and virtually all of the houses and communal facilities repaired or rebuilt with international assistance for spontaneous returnees were looted and burnt down, and some 40,000 residents were forced to flee again. Moreover, security and a roof over one's head is not enough. In BiH, improvement in the overall security situation, the successful property restitution process and the large-scale housing reconstruction efforts clearly have been significant enabling factors for return. Yet, these achievements still provide only a partial solution, which now needs to be complemented by a broader range of economic, legal, and social protection measures to support the sustainability of return.

4. Confidence-building at all levels is required to underpin solutions. The process of conflict transformation has many dimensions. What is clear is that the signing of a peace agreement alone is not enough.¹⁶ Confidence-building will be required on many levels, including not only between the parties, but also between returnees and the communities receiving them. In short, an entire network of trust needs to be built. Confidence-building between communities is a particularly critical ingredient for durable return; literally providing returnees the confidence for staying in the long-term. Fundamentally important is a process for reconciliation and addressing injustices committed during the conflict and for coming to terms with, and accounting for, any past injustices at the root of the conflict. In BiH, thirteen years after the signing of the peace agreement, there still is a long way to go before achieving reconciliation and real confidence between communities. In the aftermath of a brutal conflict and "ethnic cleansing", the psychological wounds inevitably run deep and must be allowed time to heal. Expectations, as articulated in the Annex VII of the DPA, for the 'early' return were therefore rather unrealistic. Timetables for return must be set, above all, by the will of the

¹¹ Walter Kaelin, 'Durable Solutions for Internally Displaced Persons: An Essential Dimension of Peacebuilding,' Briefing Paper submitted by the Representative of the Secretary-General on the Human Rights of Internally Displaced Persons to the Peacebuilding Commission, Working Group on Lessons Learned, Meeting of 13 March 2008, p. 9. See also Brookings-Bern Project on Internal Displacement, *Addressing Internal Displacement in Peace Processes, Peace Agreements and Peace-Building* (Washington, DC: Brookings-Bern Project on Internal Displacement, September 2007).

¹² Erin Mooney, 'Protecting and Reintegrating Displaced Women and Children Post-Conflict,' in Muna Ndulo (ed.), *When the Wars End*, (London: University College London Press, 2007).

¹³ The authorities are, first and foremost, responsible for creating these conditions. See Principles 28-30 of the *Guiding Principles on Internal Displacement*, UN doc. E/CN.4/1998/53/Add.2

¹⁴ Brookings-Bern Project on Internal Displacement – Georgetown University, *When Internal Displacement Ends – A Framework for Durable Solutions*, Washington, DC: Brookings-Bern Project on Internal Displacement (June 2007).

¹⁵ Kaelin, p. 9.

¹⁶ This, all the more so, in the case of BiH where the peace agreement created a situation, with the de facto partition of the country into two Entities, that gave confidence to each ethnic leader that they had their own place to control; as a consequence, there is little motivation or sense of compelling need among the parties to reconcile.

displaced themselves – in dialogue with the receiving community. Confidence-building between communities, however, can never begin too early; it may be possible even before a formal peace agreement is reached and indeed may help to propel, from the grassroots up, peace-making efforts. The role of civil society and track 2 initiatives such as this meeting are critical.

5. ***Securing durable solutions to displacement is, fundamentally, a humanitarian issue.*** While resolving displacement is contingent upon a political settlement to the conflict, it is essential that displaced persons not be instrumentalized for political aims. This is especially a risk in situations where displacement was a deliberate war strategy and thus was politicized from the outset. The discussion of solutions to displacement likewise risks being clouded, even driven, by political objectives, e.g. if an overwhelming emphasis on returns is linked to questions of political status of disputed territory. Durable solutions for displaced persons must be framed and maintained as strictly a humanitarian issue.

6. ***Supporting the right to return must not preclude alternative solutions for those who so require.*** The Representative of the Secretary-General on the Human Rights of IDPs points out that unless displacement has lasted for a very long period, many IDPs in post-conflict situations often prefer the solution of return.¹⁷ Any return must take place voluntarily based on an informed decision by the persons concerned without coercion of any kind. Moreover, for return to be considered a viable option there is also a need for security, property restitution or reconstruction, and conditions conducive to sustainable return. At the same time, it must be recognized that even when there is lasting peace and conditions have been put in place for sustainable return, not all displaced persons will be able or ready to return. IDPs, like all other citizens or habitual residents of their country, enjoy the rights to liberty of movement and to choice of residence, and thus are entitled to choose whether to return to the place of origin, to integrate locally where they were displaced, or to resettle in another part of the country.

In BiH today, thirteen years after the peace agreement was signed, there remain some 125,000 registered IDPs – or just over ten percent of the 1 million internally displaced by the conflict. Some of these IDPs indicate that they still plan to return, provided that the conditions for sustainable return are put in place. Also among these IDPs, however, are many significant numbers of elderly persons without any family support, the chronically ill, and highly traumatized persons. For many of these extremely vulnerable persons, after upwards of 16 years of living as an IDP, a focus only on return is not realistic. Moreover, addressing the needs of these most vulnerable IDPs requires efforts that go far beyond displacement-specific strategies. Effective social protection policies, including social housing, psycho-social support, and geriatric care, are needed to address the needs of *all* vulnerable persons in the country. Solutions for IDPs therefore also mean finding solutions for other groups of vulnerable persons, with often overlapping concerns.

7. ***Securing durable solutions requires sustained national and international commitment.*** In the thirteen years since the conflict in BiH ended, the overwhelming majority of the 2.2 million people displaced have found a solution, including some 1 million refugees and displaced persons who exercised their right to return. This has been possible only as a result of sustained and concerted national and international efforts. At this stage, BiH is therefore nearing the tail-end of the process of resolving displacement. The focus of efforts now needs to be on enhancing conditions for sustainable return and addressing the situation of the extremely vulnerable people who cannot or choose not to return and who require support. To adjust to these current realities, the Government, in partnership with UNHCR and the broader international community currently is revising the strategy for the implementation of Annex VII of the Dayton Peace Agreement.¹⁸ The experience in BiH underscores that securing solutions for *all* displaced persons is a complex and often lengthy process, requiring a rights-based approach that also is tailored to the differentiated preferences, capacities and vulnerabilities of displaced persons and displacement-affected communities. Sustained and concerted national and international efforts, political will, and resource mobilization then are required to reinforce these efforts to secure durable solutions to displacement and, thus, lasting peace.

¹⁷ Ibid., p. 2.

¹⁸ To give an indication of the areas where there is still work to be done in the implementation of Annex VII of the DPA, in the process underway of revising the Annex VII implementation strategy, working groups were established to address the following ten issues: 1) Reconstruction, Closing of Collective Centres, and Social Housing, 2) Property Repossession, 3) Electrification, 4) Infrastructure, 5) Health, 6) Social Protection, 7) Education, 8) Labour and Employment, 9) Security and De-mining and 10) Compensation.