

# **Human Rights Coordination Centre**

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*HRCC Reports are based on the regular and special reporting of inter-governmental and non-governmental organisations. The aim of the report is to provide a concise analysis of human rights issues and trends in the overall human rights situation in Bosnia and Herzegovina during the period under review. Questions on specific items should be directed to the reporting organisation or to the HRCC. Please send information for inclusion in future reports to fax #387-71-447-420 to the attention of Lene Madsen, Sirpa Rautio, or Eric Fréjabue, or by e-mail to [lene.madsen@ohr.int](mailto:lene.madsen@ohr.int), [sirpa.rautio@ohr.int](mailto:sirpa.rautio@ohr.int), or [eric.frejabue@ohr.int](mailto:eric.frejabue@ohr.int)*

This is the first semi-annual report of the HRCC. It is intended to provide an overview of significant human rights developments from April to September 1999, providing the reader with information on trends, and analyzing developments during the reporting period. It is based on extensive reporting of the OSCE, OHR, UNHCR, and UNMIBH, in addition to other sources. General trends identified include:

- increasing returns and assessment visits over the summer months, including to previously difficult areas
- continued security-related incidents, but predominantly against property, not individuals
- continued obstruction of property law implementation in both the Federation and RS
- on-going interference with the independence and impartiality of the judiciary coupled with legislative efforts to address this problem
- audit of arrest and custody procedures in the Federation reveals problems with record-keeping, and possible violations in ECHR with respect to police understanding of "arrest"
- trafficking of women becomes visible as serious human rights issue
- on-going violation of economic and social rights, particularly in employment and pensions
- serious discrimination in education; some classrooms throughout the country segregated by ethnicity
- increased caseload of the human rights institutions; improving compliance in the Federation
- on-going efforts to establish a legal framework for the operation of Bosnian NGO's
- Stability Pact establishes forum to address regional human rights issues

## **REFUGEES, DISPLACED PERSONS, and the RIGHT TO RETURN**

*[This section focuses on return-related information which is significant from a human rights perspective]*

### **General Overview on Visits/Returns:**

1. Minority returns, in particular to the RS, were slow to start in the spring, but there was an increase in return movements and assessment visits, both assisted and spontaneous, from July 1999 through September, in most cases without incident. An increasing number of displaced persons undertook assessment visits to the Eastern RS during the summer, including to areas where freedom of movement has so far been quite limited. Spontaneous returns (as opposed to organised assessment visits) have increased, and are now carried out routinely throughout most the Federation and also increasingly in the RS. This is a result of improved freedom of movement and indicates increased confidence in the security situation. Nevertheless security in some areas remains an issue. Spontaneous returns of Serb displaced persons and refugees to the Federation increased during the reporting period, apparently due to the deterioration of living conditions in the RS and FRY.

2. Despite some progress, the number of actual returns to pre-war places of origin, when compared to the numbers of displaced, still remains low, as obstruction of minority returns has continued. In some cases the local authorities have openly opposed minority returns. For example, in May the municipal council of **Kotor Varos** (RS) passed a resolution opposing the return of Bosniaks; this was followed by an organized road block by local Serb residents of returning Bosniaks. The main obstacle to returns, in particular to urban areas, however, remains poor implementation of property laws in both Entities [see the following section]. Other methods of obstruction include refusal to register returnees or provide them with personal identification, lack of access to pensions and health care, employment discrimination, and discrimination in the education system.
3. The first minority return to **Pale**, a RS municipality near Sarajevo, took place in September, possibly indicating an opening of returns to the Eastern RS municipalities considered hard-line. Also, returns to Zvornik in the Eastern RS continued.
4. Funding gaps for reconstruction projects are increasingly hampering, or delaying returns, and creating tensions and frustrations. This has been of particular concern in the Zvornik area.

**Security related incidents:**

5. **Special Report by the Ombudsperson:** September 29, the Ombudsperson for BiH issued a report entitled "*Discrimination in the Effective Protection of Human Rights of Returnees in both Entities of Bosnia and Herzegovina.*" The report addresses the issue of discrimination in the effective protection of returnees guaranteed by Articles 3 (prohibition of inhuman treatment) and 8 (respect for private and family life, home and correspondence) of the ECHR, and Article 1, Protocol 1 of the ECHR (peaceful enjoyment of possessions), and Article 26 of the ICCPR (non-discrimination and equal protection before the law). The examination concerns security incidents against returnees from April through September 1999 concluding that the competent authorities in Bosnia have failed to protect the human rights of citizens, and that there has thus been a violation of the above-mentioned rights. Finally the Ombudsperson concludes that both Entities are in breach of their obligations under Article 1 of Annex 6 of the Dayton Agreement, which commits the Entities to providing "the highest level of human rights protection." [For a full copy of the report please contact the Ombudsperson directly. Web-site listed in para 102, below].
6. Violence targeting returnees and/or their property has continued during the reporting period and remains an obstacle to return in many areas of the country. However, compared to the situation in previous years, the number of incidents overall is decreasing, and in particular, in most of the urban areas, security is not a major obstacle. Security continues to be an issue particularly in the Bosnian-Croat controlled municipalities in Western part of the country, as well as in some parts of the RS, as returnees and/or their property have continued to be targets of violent attacks. Local police have often failed to prevent the attacks, and the perpetrators of crimes have in numerous instances not been arrested or prosecuted. A common constraint in these municipalities is that the local police remains predominantly comprised of the representatives of the majority ethnic group [see Policing Section, below].
7. Serious security incidents against minority Bosniak returnees were reported in **Prozor-Rama** (Fed) in April, when numerous houses were set alight and the Islamic Centre in the town centre was damaged by a hand grenade. Unfinished houses of Bosniak returnees were also damaged in **Vitez** (Fed) and **Slatina** village in **Jablanica** municipality (Fed), also in April. In May, following ongoing returns to **Novi Grad** and **Prijedor** in north-western RS, two serious return related incidents took place in Novi Grad; a house was blown up in Gornji Agici on May 9, and a second incident occurred on May 16, when a rocket was fired in the direction of a number of Bosniak returnee houses in **Suhaca** village, resulting in substantial material damage to the properties.
8. In late June, a serious incident took place in the village of **Tarevci** in **Modrica** municipality (RS),

where previously peaceful house cleaning visits were targets of violent protests. The incident included rock throwing and the throwing of a hand grenade, injuring eight people. Local police response was inadequate. The incident led to a setback to the returns to Modrica, returns only resuming in August. In **Drvar**, tensions were rising when on July 3, the Canton 10 Minister of Interior issued an instruction to all police stations, informing them to expel all returnees (overwhelmingly Serbs) who fail to register with the local authorities and obtain their ID cards. The situation remained tense and in early July, a series of violent incidents occurred in which Serb returnees were targeted, after it was alleged that a Serb man had raped a Croat woman. The violence in Drvar continued in August, when three elderly Bosnian Serb returnee men were beaten by Bosnian Croat displaced persons on August 22. Although the local police were on the scene at the time of the incident, the suspects were permitted to leave the site while the victims were taken to the police station to provide statements.

9. Several security incidents were reported in **Gacko**, in Eastern RS, in September, following the return of Bosniaks to **Kula** village on September 6. On September 7, grenades were launched and exploded, one near a house which served as collective centre for the returnees. A shop frequented by displaced persons was bombed. Another serious security incident took place on September 28 during an assessment visit to **Ilici**, a village in the Croat controlled south-west Mostar municipality. An explosive device that had been planted inside a damaged house exploded causing minor injuries to a policeman and an SFOR soldier. Two unexploded mines containing 14 kilos of explosives were discovered a few meters away from where the returnees had gathered.

#### **Visits/Returns to Republika Srpska:**

10. In April, due to the security situation arising from the NATO air-strikes, there were no visits or returns of minorities to the Eastern or South Eastern RS. In May, return of Bosniaks to **Nevesinje** was postponed due to security concerns, partly due to lack of international presence there. In June, a ground breaking return of approximately 60 Bosniaks took place to **Berkovici** and **Nevesinje** (South Eastern RS). Returns of Bosniaks to south eastern RS continued during the reporting period, in particular to **Nevesinje** and **Gacko**, where a serious security incident took place in September.
11. In July, visits to municipalities in the eastern RS increased and hundreds of displaced persons visited municipalities including **Sokolac**, **Visegrad** and **Rogatica**. Large-scale visits were also organised to **Foca/Srbinje**, where so far no minorities have returned due to obstruction by the local authorities and the tense security atmosphere. Returns to **Zvornik**, in the eastern RS, commenced with housecleaning visits in the spring, and returns continued through the reporting period. As of September, there were already 28 return villages in Zvornik municipality, where some return activities were taking place. The local authorities and police continued to co-operate and no major incidents were reported. Spontaneous returns to western RS was a growing trend as of July. Large numbers of Bosniak displaced persons were returning to municipalities including **Prijedor** and **Novi Grad**, which at times caused tensions.
12. On July 13, approximately 300 displaced persons from **Srebrenica** (Eastern RS) marked the 4th anniversary of the fall of the town. For the first time they were able to commemorate the anniversary in the municipality itself. Despite some fears the visit went smoothly and no security incidents were reported.
13. Some progress in minority returns took place in September in the North-Eastern RS. After months of negotiations, the reconstruction of first Bosniak houses started in **Glinje** village, **Ugljevik** municipality and in **Vukosavlje** municipality, a major breakthrough took place when 29 Bosniak families started their return to **Modricki Lug** village.
14. Just over 200 Bosniak and Croat families have returned during the reporting period to RS **Brcko**. Approximately 30 of these have been to Brcko town. There have been a few very minor security incidents, but some doubt as to whether these were specifically return-related.

### Visits>Returns to/within the Federation:

15. The returns to the ethnically mixed Central Bosnia Canton, where the number of minority returns has been relatively high, have been mainly spontaneous, whereas in Herzegovina-Neretva Canton, returns have been rare, although slowly increasing, and organised with the assistance of the international community. In April the Bosniak returns to **Prozor-Rama** started with difficulties, but have nevertheless continued. There have been encouraging signs of Bosnian Croats willing to return to **Bugojno, Konjic** and other Bosniak-administered municipalities.
16. In May, the first return of Serb displaced persons to Stolac took place, without incident, and continued through the reporting period. Serbs have also continued to return to Bosnian Croat-controlled Canton 10 (**Livno, Drvar, Glamoc**) and Bosniak-controlled Canton 1 (Una Sana). While the returns to Canton 1 continued to take place without serious difficulties from human rights perspective, the returns to Canton 10 continued to be obstructed by the authorities.
17. During the reporting period, the situation of the approximately 20 Bosnian Serb returnees to the village of **Tiskovac** (Bihac Municipality), has not been ameliorated, despite the signing of an agreement on borders between Croatia and Bosnia, on July 30. The freedom of movement of the returnees continues to be blocked, resulting in their inability to provision themselves with food and other necessities. The returnees have not been able to acquire personal identification, and live without security, due to the lack of access of both the local police and IPTF to the area.

### Urban Returns:

18. (The following information is based on information provided by UNHCR on returns to four urban centres in BiH: Sarajevo, Tuzla, Banja Luka and Mostar. It is not exhaustive, but is meant to highlight various issues faced by returnees attempting to return to urban areas, as previous reporting has tended to focus return to rural areas.)
19. **Urban Minority Returns April - September:** It is difficult to estimate actual numbers of minority returns which have taken place to urban areas, in part because not all returnees register their residence, and in part because many end up staying with friends or family pending return of their property. The following statistics are UNHCR estimates, as of August 31, 1999.

Minority Returns: Dayton - April 1999				Minority Returns: April - August 1999		
	Bosniaks	Croats	Serbs	Bosniaks	Croats	Serbs
<b>Sarajevo</b>	—	18,957	10,315	—	384	1092
<b>Tuzla</b>	—	107	287	—	9	45
<b>Banja Luka</b>	571	130	—	85	—	—
<b>Mostar</b>	520	244	963	172	12	92

20. **Urban Returns through Reconstruction and Property Implementation:** Unlike in rural areas, returns to urban areas are generally not reconstruction-led, but rather facilitated either by returnees' staying with friends and family, or by property law implementation. An increase in returns to urban areas thus requires strict implementation of property laws. This is still not in evidence in most of the Federation, and in the RS the implementation has only barely commenced.
21. Some evictions have been taking place in **Sarajevo**, but overall the attitude of the Cantonal Government is obstructionist and there has been open pressure by the Ministry of Justice on the courts to stop evictions. The Sarajevo municipalities range in their co-operativeness on property return, Ilidza, Ilijas, and Hadzici being relative co-operative, while Novo Sarajevo, Novi Grad, and Vogosca are generally uncooperative. Stari Grad has not been active on property return.

22. In **Tuzla** municipality the municipal authorities are generally co-operative in facilitating minority returns. The Tuzla Housing Department is taking a leading role in the development of the Tuzla-Bijelina axis, a property mechanism to facilitate the return of displaced persons to these municipalities. The implementation of property laws in cases of multiple occupancy has been greatly facilitated during the reporting period by the establishment of Double Occupancy Commissions (DOC's), comprised jointly of local authority representatives and international representatives.
23. In **Banja Luka**, the local authorities have not made any efforts to facilitate minority returns and return to occupied property is thus still an extremely slow process. In 1999, there have been some thirty evictions/reinstatements in Banja Luka. The vast majority of returns take place discreetly to relatives and friends, and the statistics available do not correspond with the actual returns. Reconstruction of new housing has very limited significance in facilitating minority returns.
24. There has been virtually no return to **Mostar** through property law implementation, although some through reconstruction. In Mostar, decisions on claims for repossession of socially-owned property have been issued in less than 2% of cases. Enforcement of decisions and reinstatement of claimants is not being ensured by the authorities. Local authorities refuse to take action on multiple occupancy cases, and have yet to address the "post-Dayton eviction" cases. A Double Occupancy Commission has been established, but has not yet resulted in reinstatements despite the issuance of 14 decisions.
25. **Security and Urban Returns:** Generally, security is not an issue in Sarajevo and Tuzla. No cases of violence or harassment have been reported recently. In Banja Luka there has been a tremendous improvement of the security situation since 1996, but individual circumstances, as well as the political climate, dictate returnees' security considerations. In Mostar, security considerations still play a significant role.

#### **Returns to the Federal Republic of Yugoslavia:**

26. During and following the NATO air-strikes on FRY in March and April of 1999, some 68,000 refugees from Kosovo, Sandzak, and other areas of FRY arrived in Bosnia, bringing the total at the height of the influx to approximately 112,000 refugees. This placed tremendous strain on the already difficult housing situation in Bosnia. As at June 1999, approximately 5,000 refugees were accommodated in collective accommodation through UNHCR, while the remainder found alternate solutions either staying with friends and family, or renting accommodation privately. By the end of September, approximately 1,500 refugees remained in collective accommodation in Bosnia, while approximately 41,000 have repatriated.

## **PROPERTY**

#### **Legislative Developments:**

27. In the past six months the legislative development phase of property reform has been largely concluded. Although several issues remain to be addressed, the emphasis is moving from the establishment of a legislative framework towards pursuing effective implementation throughout the country. Legislative developments during the reporting period include:
28. On **April 1**, the High Representative extended the deadline for claiming socially-owned apartments in the Federation until July 4, 1999. On **June 15**, the High Representative issued a Decision extending the deadline for claiming socially owned apartments in the Republika Srpska to 19 December 1999.
29. On **April 13**, the High Representative cancelled all permanent occupancy rights created between April 1, 1992 and February 7, 1998 in the Federation and April 1, 1992 and December 19, 1998 in the RS. People who acquired an apartment during or since the conflict are now

treated as temporary occupants under the claims procedure. In a number of municipalities, new permanent occupancy rights continue to be created.

30. On **April 13**, the High Representative imposed a decision allowing individuals whose occupancy rights were cancelled by a court decision to reclaim their properties through the administrative process. On **April 21**, the Federation Parliament adopted a similar *Amendment to the Law on Housing Relations*.
31. On **May 25**, the High Representative suspended the powers of municipal authorities in both Entities to reallocate or dispose of socially owned property (other than apartments) which had been used on April 6, 1992 for residential, religious or cultural purposes, or for private agricultural or business activities.
32. On **July 2**, the High Representative issued a number of decisions in an effort to close loopholes in the property laws, as well as to address other obstacles to implementation of the property legislation. These included: the restriction of the definition in the *Law on Cessation of Application of the Law on Abandoned Apartments* to state that all people who left their apartments between April 30, 1991 and April 4, 1998 were presumed to be refugees or displaced persons, regardless of their actual reasons for leaving; property never formally declared abandoned could now be claimed through the administrative process; the right to alternative accommodation was restricted so that a person with a real possibility to return to his or her former home, or who voluntarily disposed of it, is not entitled to alternative accommodation and must vacate the property they temporarily occupy within 15 days; and pre-war contracts on sale of military apartments may be recognised, under a new administrative procedure.

#### **Overview of Implementation:**

33. Under strong pressure and following active intervention the international community, the reform of the laws to implement Annex 7 of the Dayton Agreement, has progressed. However, the Entities have performed very poorly on implementation. Despite some important local breakthroughs, a lack of will by local authorities throughout the country to accept minority return to pre-war homes, including both private and socially-owned property, is still apparent. This continues to be evidenced by slow progress, ethnically discriminatory application of legislation, and open obstruction in implementation of the property laws.
34. While registration of property claims is now largely complete in the Federation, and is progressing in the Republika Sprska, progress on rendering decisions on those claims is lagging significantly behind, and implementation of decisions, including evictions of current occupants, is barely occurring at all outside of Sarajevo Canton. There is a clear lack of will on the part of the authorities to tackle multiple occupancy and other forms of misallocation of housing stocks. Political intervention in handling of property cases, in a manner which undermines the law, has been specifically observed in some cases, and is suggested in others. This problem is evident in varying degrees throughout the country.
35. While the shortage of accommodation to offer displaced persons remains a difficult issue inhibiting returns, there is little sign of local authorities making efforts to maximise their use of housing stocks in a manner consistent with the letter and spirit of the law. In both Entities, slow progress in restoration of property rights and return is achieved only through constant pressure and supervision by international organisations, and in many places, particularly in Herzegovina in Western Bosnia and parts of Republika Sprska, international pressure is openly resisted. While progress made in minority returns to pre-war homes and recognition of valid property rights continues to have a political and social significance which justifies the extensive international efforts, there is little sign of a self-sustaining return process developing. Similarly, it is clear that authorities throughout BiH to date have been incapable and unwilling to engage in consistent and objective application of the laws in all or most cases.

### **Implementation in the RS:**

36. A claims process has been established by the central organ of the Ministry for Refugees and Displaced Persons (MRDP) in Banja Luka, and instructions issued for the establishment of processes throughout the Republika Srpska. However, the claims process and structures have not been established in all municipalities, and in many where they have been established, they are still not effectively operative or accessible to claimants. Furthermore, reports continue of political and bureaucratic obstruction, including restricted office hours, under-staffing of offices, lack of funding for the posting of decisions, refusal to accept power of attorney claims, and generally slow processing of claims. Some obstructions, such as the charging of fees, have been reduced following the intervention of international organisations, but still appear in individual cases.
37. Lack of legal clarity regarding the competence of different organs in the RS administrative structure has also been an obstacle in the claims process. Claims for privately-owned business premises, for example, are not effectively dealt with, as uncertainty and debate prevail about whether the MRDP or the Ministry for Urbanism is responsible for receiving and deciding them. The government has made inadequate efforts to resolve these fundamental issues which deprive the process of effectiveness.
38. An important obstacle to the claims process is a lack of trained staff and acute shortage of material and financial resources at municipal level. This has made it difficult for many refugees and displaced persons to register their claims for socially-owned apartments within the original six months deadline. The High Representative was thus obliged to issue a decision extending the deadline for six months, until December 19, 1999. For the time being, the RS does not appear to have the resources to undertake the work required to implement its property law.
39. Important legislative changes are required in order to achieve implementation in the RS. Amendments are required in order to harmonize the RS law with the laws in the Federation, to strengthen rules with respect to eviction, and to reduce possibilities for obstruction. In addition an instruction is required for the implementation of these changes.

### **Military Apartments:**

40. Pursuant to the new provisions for repossession of military apartments introduced in the July 2 amendments, the Federation Ministry for Defence issued an instruction on repossession and purchase of military apartments on July 9. The civilian authorities are responsible for administering military apartments that were abandoned and for dealing with claims for military apartments. The military housing authorities will have the possibility to present evidence relating to the eligibility of a claimant to repossess the apartment. Effectively, a procedure is now in place that implements the Human Rights Chamber decisions on military apartments. Military authorities in the RS have intervened directly with the competent civilian authorities to stop evictions and in some cases uniformed military personnel have blocked evictions. The international community objected; stating that interference by military authorities in the civilian process of rule of law is not acceptable, that the military authorities must respect the authority of the civilian police in the execution of decisions taken by civilian bodies, and that military personnel must not be present at evictions. This position was subsequently recognised in an instruction from the Ministry of Defence.

### **Evictions:**

41. A major barrier to implementation of property legislation, which has been particularly evident during this reporting period is the non-execution of eviction orders. Local police contribute to this problem by non-attendance or inaction at evictions, in violation of their obligations under the law to render assistance at evictions following a request from the local housing authority, and to intervene in response to criminal obstruction of the eviction. Guidelines, establishing the legal framework and the duties of the law enforcement officials with regard to evictions in the

Federation, were issued by international organisations to enhance the effectiveness of evictions. These, combined with training, have been a contributing factor to the recent success in executing scheduled evictions, particularly in Sarajevo Canton. Guidelines for the RS police have yet to be finalised.

## RULE OF LAW

### Overview:

42. **Assessment of the Judicial System:** There are serious issues relating both to the independence and impartiality of the Bosnian judicial system, as well as to the quality of justice dispensed by the courts. Judicial independence in Bosnia is compromised by a number of issues, including: overt political influence, particularly on return-related matters; insufficient funding for courts, which compels judges to request funding from local authorities or to approach private sources; and political interference in the appointment and dismissal of judges. Other institutional issues include the lack of a unified court system in Canton 6 and Canton 7, resulting in separate Bosniak and Croat judicial systems; the lack of security for judicial personnel; shortages of judges in some areas; shortages of equipment and legal resources; and serious backlogs in some courts. Qualitatively, there is a neglect of the ECHR in all of the courts; and the lack of a legislative base for inter-entity judicial co-operation.
43. **Political Interference with Work of the Judiciary:** There is still considerable and widespread interference by the executive branch with the judicial process. This was clearly highlighted in September of 1999 when the Bosniak member of the Presidency, Mr. Alija Izetbegovic, instructed responsible officers to refuse to issue eviction orders for refugees who illegally occupy properties and do not have alternative accommodation. This is the most high-level example of political interference in the work of the judiciary over the last six months.
44. **Legislative Developments:** There have been significant legislative developments since April with respect to enhancing the independence and impartiality of the judiciary. In June, judges and prosecutors in both entities adopted identical *Codes of Ethics*; and in July, two laws, *the Law on Amendments to the Law on the Supreme Court* and *the Law on Amendments to the Law on the Federation Prosecutor's Office*, which expand the jurisdiction of the Federation Supreme Court and enhance the powers of the Federation prosecutor, were imposed by the High Representative. These laws are intended to address inter-cantonal and organized crime, and particularly crimes which prevent the return of refugees. Judicial selection laws, which will ensure reduction of political influence in the judicial selection process and hence enhance the independence of the judiciary, are under review. The *Law on Judicial and Prosecutorial Service* in the Federation and the *Law on Courts and Judicial Service* in the RS have been largely drafted by Bosnian nationals.

### Specific Developments:

45. **The Brcko Award:** The issuing in March of the Brcko Award, followed by the Annex on August 18 marks the conclusion of prolonged political controversy and the beginning of an intensive phase of judicial and legal reform. The Award declared Brcko a neutral, multi-ethnic, de-militarized district, under international supervision. The Annex elaborates the operationalization of the District, in areas ranging from the penal system, law enforcement, customs service, taxation, and voting. The establishment of the district promotes opportunities for the development of a model for the protection of human rights in BiH, by promoting integration in all spheres of life.
46. **Compromised Justice in the Livno Municipal Prosecutor's Office:** In July, 1999, the Judicial System Assessment Programme (JSAP) conducted an inspection of the Livno Municipal Prosecutor's Office which covers **Drvar, Glamoc, Livno, and Bosanko Grahavo**. This



investigation followed serious professional concern about the performance of that office, particularly in relation to a double homicide of an elderly Serb couple and riots in Drvar municipality, both in April 1998. JSAP inspected over 100 case files and found that the criminal justice system has consistently failed to apply fundamental judicial principles in both minority-related and other cases. Problems identified included: delays at every stage; an inability to handle repeat-offenders and notorious suspects; poor communications and record keeping; a pattern of discrimination against minorities; and neglect of the European Convention on Human Rights. JSAP's recommendations included: appointment of a qualified prosecutor for Drvar and Bosansko Grahovo; a probation period for the Drvar/Livno MPO; increased representation of minorities in the judicial and prosecutorial system in Canton 10; and improvements in court security, through the establishment of judicial police in Canton 10.

47. **Cantonal Court in Mostar:** After over three years of ethnically divided courts in **Mostar** (Federation), the establishment of an inter-ethnic cantonal court is underway. After the July 23 Cantonal Assembly session, 18 judges were appointed to the court: 7 Bosniak; 7 Bosnian Croats; and 4 "others." The first President of the Court was elected on July 27<sup>th</sup>. The joint Cantonal Court is not yet operational. Golubovic will likely be the first case heard.

## POLICING

### Policing in the Context of Return:

48. To assess the compliance of law enforcement officials with democratic policing principles, internationally accepted human rights, and in particular the right to return, UNMIBH Human Rights has carried out a number of operations targeting the systemic and institutional problems which enable the commission of human rights violations by law enforcement personnel.
49. **Review of Canton 6 Police:** In May 1999, the UNMIBH Human Rights Office conducted a comprehensive and exhaustive review of the Canton 6 Ministry of Interior and all 12 police administrations in Central Bosnia Canton. The operational review demonstrated the absence of an honest and positive programme to transform the police from a communist and/or nationalist war-time police force to a democratic law enforcement agency, and found that the police is held hostage by national politics. As a direct result, the police force has not been ethnically integrated. Bosniac and Bosnian-Croat police were divided into two separate structures with parallel chains of command and opposed political agendas, which has led to substantial disempowerment and inertia.
50. On the basis of the review, UNMIBH produced the "*Three-Point Plan for Canton 6*," which formulates a plan to unify Ministry structures, insulate the police from politics, and increase their professionalism. A principal measure of this plan is the appointment of a Cantonal Police Commissioner to oversee day-to-day policing functions and to effectively manage the Ministry of the Interior. This Commissioner will manage the operations of the Cantonal police, while being politically accountable to the Cantonal Minister of Interior and his Deputy. Since the issuance of the report, the Canton 6 Minister of Interior has taken steps to unify the Ministry, in particular, by relocating the Bosnian-Croat Ministry offices from Vitez to the Official Ministry building in Travnik. For further information regarding the review of Canton 6 police, please see the UNMIBH Report, entitled "*From Joint to Unified Policing: Continuing Police Development in Central Bosnia*," released in September, 1999.
51. **Review of Stolac Police:** As a result of the 1998 audit of the Stolac police administration, UNMIBH concluded that there was no functional police in Stolac (Canton 7). From February to May 1999, the entire police force was placed on a three month probation, during which a number of significant steps were taken, including removal and disarming of surplus officers, enhancement of integration of minority officers. Further, progress was made towards a unified chain of command, although considerable further efforts are necessary.

52. Stolac is emblematic of civilian law enforcement agencies in Canton 7. The failures in Stolac stem directly from and are sustained by the continuing failure of Cantonal authorities to put in place a positive and effective programme for integration of all Cantonal institutions. On May 12, UNMIBH submitted to the Cantonal Minister a *100 Day Agenda for Action*. During those 100 Days, the Cantonal Minister made several steps to integrate and professionalize the Canton 7 police; and the Stolac police made considerable progress in unifying the chain of command as well as in integrating its legal/administrative department (now led by a Bosniak). There is presently a positive climate among staff. Consequently the security situation for minority returnees has dramatically improved. During the return season in 1999, no serious return related violence has occurred compared with 1998, when UNMIBH recorded over 70 incidents of return-related violence in Stolac.
53. However, numerous requirements of the 100 Day Agenda for Action have not been met. For example, the budget has not been integrated; several Ministry departments have not established common office locations and the chain of command of these departments has not been integrated; and the Minister of Interior has failed to provide UNMIBH with personnel lists and inventories of Ministry assets, including premises, vehicles, communications equipment and weapons registries.
54. **Review of Canton 7 Police:** UNMIBH conducted reviews of the Konjic police administration in July. In Konjic, the UNMIBH Human Rights Office found that the police administration generally functions professionally, although there are shortcomings in the structure, chain-of-command, and level of unification. In addition, the location and staffing of four Konjic police stations has been found to be inappropriate. For further information, please consult the UNMIBH Report, *"Building Civilian Law Enforcement in Stolac and throughout Herzegovina-Neretva Canton, December - May 1999."*

#### **Arrest and Custody Procedures**

55. On June 1, the UNMIBH Human Rights Office began a project to examine arrest and custody procedures used by the Federation police, focusing on the record-keeping systems used to document arrest and police custody and to improve current practice to meet ECHR standards for those deprived of their liberty. Between June 1 and 4, UNMIBH carried out a micro-audit of 97 police stations in each canton of the Federation. Three key problems were identified with the current system. First, the term "arrest" is not understood by the Federation police in a way which ensures consistency with human rights protections provided under the ECHR. Second, record keeping currently used by the Federation police is not unified and is thus inadequate for assessing whether police practices are in accordance with domestic and international human rights standards. Third, the Federation police lack understanding of the importance of using appropriate record-keeping systems not only to prevent human rights violations, but also to protect against unfounded allegations of police misconduct. Following the micro-audit, UNMIBH met with the Federation Minister of Interior to discuss the findings of the report, and subsequently established a working group to design a uniform and standardised record-keeping system on arrest and police custody for use by all Federation police. The working group, comprised of Ministry officials and UNMIBH staff, has met on a weekly basis since late August. Following the micro-audit in the Federation, a similar audit was carried out in the RS between August 16 and 19. The results are presently being finalized.

#### **Trafficking in Women:**

56. Trafficking of persons for the purpose of forced prostitution has emerged as a major human rights concern in BiH since the spring of 1999. Incidents investigated include arrests of 20 women in café bars in **Busovaca**, **Vitez**, and **Novi Travnik** on July 11, and their subsequent conviction under Herzeg-Bosna laws (which UNMIBH considers to be invalid). The main focus of

the local police until recently has been on the offences committed *by* the women and not on the criminal offences committed *against* the women; women have been arrested with scant evidence; and there have been a number of procedural errors (including lack of interpreters), which have resulted in women being fined or imprisoned without fair hearing. Additionally, the deportations from the cantons or across the IEHL have been carried out in a manner which puts the women at further risk of abuses.

57. On August 2, the UN IPTF Commissioner demanded the immediate suspension of any deportation proceedings until further notice, and that appropriate criminal proceedings be initiated against individuals involved in trafficking foreign persons. On August 30, the IPTF Commissioner issued an interim directive regarding police operations against premises where it is suspected that procurement of prostitutes is organized. The directive instructed, *inter alia*, that IPTF is given at least 24 hours notice before the beginning of an operation; that arrangements must be made to ensure appropriate custody facilities and presence of interpreters; and that the owners, employers and all employees are interviewed and/or interrogated. The directive also states that persons involved in prostitution may be victims of trafficking and must be treated as potential victims and that any deportation of foreign nationals must only take place with consultation with the IPTF. Local authorities at the state level have been made aware of the seriousness of this issue by the international community, and have indicated their willingness and readiness to take measures to address it.
58. On July 19, a café bar owner from the “Arizona Market” near Brcko was convicted for procuring persons for the purpose of prostitution and sentenced to three years imprisonment. In addition, seven arrests have been made against additional owners of other café bars at the same market. Of these, another owner was convicted on the same charge on September 30, and sentenced to eight months imprisonment.

## RIGHT TO A FAIR TRIAL

### International War Crimes Tribunal:

59. Within the last six months three Serbs have been arrested and transferred to the ICTY while Croatia has extradited one indicted war criminal to the Tribunal. Despite strong protest of RS officials regarding the arrests of Radoslav Brdjanin and General Momir Talic, their arrest sparked verbal protests only, and did not result in demonstrations or attacks on internationals. This is a significant improvement over the 9 January 1999 failed attempt to arrest Dragan Gagovic in Foca, which resulted in his death, and subsequently lead a crowd to attack the IPTF station in Foca.
60. **Brdjanin Arrest:** On July 6 in Banja Luka, SFOR troops arrested Radoslav Brdjanin, who, at the time of his arrest was a member of the Bosnian Republika Srpska (RS) National Assembly. Brdjanin is the most senior Serb politician to be arrested in connection with atrocities carried out during the war. Previously he was a member of the inner-circle of the hard-line Serb Democratic Party, founded by former Bosnian Serb leader and war crimes suspect Radovan Karadzic. Brdjanin is charged with personal and command responsibility for crimes against humanity. More specifically, as the President of the “Autonomous Region of Krajina” Crisis Staff, he is allegedly responsible, with others, for the ethnic cleansing operations in the Sanski Most and Prijedor regions in 1992.
61. **Talic Arrest:** On August 25, Austrian Police arrested General Momir Talic, the Bosnian Serbs’ military chief of staff. Reportedly Talic is the highest-ranking Serb official ever to stand trial before the ICTY. Talic was secretly indicted in March 1999 along with former Bosnian Serb Deputy Prime Minister Radislav Brdjanin for planning and leading a bloody 1992 purge of more than 100,000 Muslims and Croats from northwest Bosnia during the Bosnian war. It is likely that Brdjanin and Talic will be tried together.

62. **Kovac Arrest:** On the 2th of August, SFOR troops arrested Radomir Kovac, a Bosnian Serb paramilitary commander, in his home in Foca (Eastern RS). Kovac is charged with gang rape, torture and enslavement. The case is of major significance from a legal and human rights perspective as it is the first time that sexual assault has been diligently investigated for the purpose of prosecution under the rubric of torture and enslavement a crime against humanity.

#### **Domestic War Crimes Trials:**

63. The International Community continues to monitor war crimes proceedings being conducted before domestic courts. The majority of war crimes trials continue to be carried out before courts in Bosniak dominated areas within the Federation. Despite the slow progress of reform in the legal system, at least in Sarajevo the courts seem to be gaining more experience, including observing the Rules of the Road procedures, and in general avoiding procedural errors. In part this may be explained by international presence, and in part by the fact that the Federation Supreme Court in a number of cases has granted the defendant a re-trial.
64. Prominent cases ongoing during the reporting period include the case of **Goran Vasic**, a Serb, found guilty in April by the Sarajevo Cantonal Court of war crimes and sentenced to ten years imprisonment. Among other counts Mr. Vasic was charged with the killing of Hakija Turajlic, the Deputy Prime Minister of Bosnia, in 1993. The High Court originally acquitted him of this count. However, in a 4 September decision the Federation Supreme Court annulled the verdict and returned it to the High Court for a retrial. The first hearing was held on October 25.
65. In the case of the **Zvornik 7**, in which 3 Bosniaks were at first instance convicted of killing four Serb wood-cutters, the RS Supreme Court issued a verdict in June, ordering a retrial at the first instance court, the District Court in Bijeljina. The international community was disappointed in the reasoning, which neglected to detail the extensive violations of human rights standards throughout the investigation. Following the Supreme Court decision the three defendants were released by the RS authorities and transferred to the Federation on the condition that they attend the retrial, which has been postponed. Technically speaking this is not a war crime trial but has nevertheless attracted wide attention domestically and internationally.
66. Other on-going prominent cases include: A Mostar-based trial where three Bosniak men are accused of murdering a Serb family of four (**Golubevic**, including two children) in Konjic in 1992. The defendants have been in detention since mid-January 1999 but due to problems with the establishment of a functional and joint Cantonal High Court in Herzegovina-Neretva Canton [see para 47, above] this case has been post-poned.
67. The retrial of **Ibrahim Djedovic** is commencing before the Sarajevo High Court. Djedovic was originally sentenced to ten years of imprisonment. In May the Federation Supreme Court upheld the part of the first instance verdict which acquitted Djedovic of war crimes against prisoners of war and annulled the remainder of the verdict, sending it back to the High Court for a retrial.

## **ECONOMIC AND SOCIAL RIGHTS**

68. **Discrimination in Employment:** Discrimination on the basis of ethnicity, political opinion, and gender remains endemic in Bosnia, and has been highlighted by the Human Rights Chamber as "one of the most severe problems for the return of refugees and displaced persons." There is a continuing failure to rehire members of ethnic and political minorities who were dismissed during the war; ongoing exclusion of women in favour of de-mobilized soldiers; and extensive discrimination against teachers from minority ethnic groups. Remedying past discrimination cases has proven very difficult, as many are reluctant to approach judicial bodies for fear of retaliation or lack of confidence in the court system to render a fair verdict. A major obstacle to addressing discrimination in employment is the weakness of the rule of law, the non-application or abusive application of the law, and the paralysis of legal remedies which are either inaccessible, inefficient, or politicized."

69. Discrimination in employment is endemic, and perpetuated by the continued strength of the nationalist political parties which in turn control most aspects of economic life in Bosnia. Coupled with the inefficiency and lack of independence of the administrative and legal systems [see paras 42-45, above], abuses of employment rights are persistent. During the reporting period, approaches to solutions have involved both efforts at legislative reform, institution-building, advocacy, public education, and lobbying.
70. On July 8, the Human Rights Chamber issued a precedent-setting decision with respect to employment discrimination, in *Zahirovic v. BiH and FBiH*. The Bosniak plaintiff was released from his employment during the war, and placed on a "waiting list." After the war, other individuals were hired, while he remained on this list. The Chamber stressed that "the prohibition of discrimination is a central objective of the General Framework Peace Agreement," and that the continued placement of a minority individual dismissed during the war, on a waiting list after the war, constituted employment discrimination. A high fine was imposed on the Federation, in addition to the reinstatement of the plaintiff. The principles of this decision are applicable in countless other cases of employment discrimination.
71. On October 5, after two years of heated debates, a new *Federation Labour Law* was adopted. This law introduces an anti-discrimination provision (Article 5) and provides for financial compensation of those placed on waiting lists during the war (Article 143). Although Article 143 usefully dissolves the obsolete waiting list system, there are serious concerns that companies will be unable to meet the financial burden imposed by the new law, and that it will not achieve the desired compensatory result. Significantly, the Federation government has established a *Commission for the Application of Labour Legislation*, which will discuss to work on amendments to the labour law.
72. The *Republika Srpska Labour Law* is essentially the pre-war Yugoslavian labour law, with several amendments, and contains no provision prohibiting discrimination in employment. The law contains discriminatory provisions, including prioritization of employment of war-disabled soldiers and family of RS soldiers killed in service (Article 8). The law urgently requires amendment and harmonization with the *Federation Labour Law*, but the RS has rejected offers from the International Labour Organization (ILO) to assist in this process.
73. Further approaches to the issue of employment discrimination include the development of *Fair Employment Principles* based on a similar approach used in South Africa and Northern Ireland, regarding hiring, promotion, disciplinary and dismissal procedures, which will be disseminated throughout Bosnia; as well as an "Audit" mechanism, whereby employment practices including discrimination will be drawn to the attention of donors and potential investors, as incentive to encourage equitable employment policies.
74. **Discriminatory Access to Pensions:** Many Bosnians continue to experience serious difficulties in accessing pensions to which they are entitled, due to the fragmentation of the pension system into ethnically-based funds during and following the war. Deprivation of pension benefits also implies deprivation of other basic rights such as access to health care. A recent example of discrimination in access to pensions is the May 7 Instruction, issued by the Director of the Sarajevo Pension Fund, which contains a provision obstructing the right of returnees to obtain their pensions. Among a number of other documents, the instruction requires the claimant to submit a certificate issued by the Municipal Housing Office "proving that [he/she] has returned to his/her apartment which he/she abandoned during the war, and the date of his/her return." [See Property Section, above, which details the near impossibility of meeting this requirement.] This follows a similar instruction issued by the same body in December 1998, and subsequently condemned by OHR and other agencies.
75. Currently there are three separate funds which do not co-operate or share an integrated method of assessment or payment of pension entitlements. Within the Federation, efforts have been taken to abolish parallel institutions. Thus, on August 26, the Federation Government approved the *Law on the Organization of Pension and Invalid Fund*, which aims at merging the

Mostar and Sarajevo based funds, and should help address some of the complex technical issues which have prevented people from receiving their entitlement. However, this law does not address inter-Entity pension issues.

76. **Disability and Discrimination:** Discrimination against and amongst disabled persons continues to affect many Bosnians. Some concerns, such as lack of access to educational facilities, relate to all disabled persons. In addition, there is discrimination in favour of war disabled vis a vis the non-war disabled, which results in differential entitlements for the disabled. This will likely be reinforced if the *Law on Basic Protection of Civilian Victims of War and their Families and the Protection of Children* is passed in the Federation, as well as by the draft *Federation Law on Soldiers and their Family Members' Rights* which entails indirect discrimination against the non-combatant and non-war disabled and seeks to give preference to war-disabled persons in employment.
77. Significantly, in this reporting period, national organizations representing the disabled have established a "*BiH Coalition for Equal Opportunities for Disabled Persons*," to develop a co-ordinated approach for strategizing and lobbying for equality on disability issues. This represents a significant step in terms of both advocacy on disability issues, but also in terms of NGO and civil society development [see NGO Section below].
78. **Discrimination in Access to Public Utilities:** Both minorities who stayed during the war as well as minority and majority returnees are discriminated against by electricity companies, receiving bills for electricity consumed during the war, irregular and/or excessive reconnection charges, intimidating tactics in the collection of bills, arbitrary disconnection, and in some cases outright refusal of connection. In extreme cases, electricity has been terminated to an entire building where one person has refused to pay a (usually irregular) fee.
79. Many have also experienced difficulties reconnecting to the telephone system, being charged exorbitant reconnection fees, or being refused connection altogether. The telephone companies have been unwilling to establish a set fee for reconnection. On July 30, the High Representative issued a decision intended to remedy the issue with respect to telephone reconnection, establishing a maximum reconnection fee of 50 DM, but to date this decision is generally not being respected.
80. **Inaccessibility of Personal Records/ Refusal to Issue ID Cards:** Many people face difficulties obtaining copies of their personal records, due to the war-time destruction or relocation of municipal record books documenting births, deaths, marriage, citizenship, and property. Returnees in particular have also experienced difficulties in acquiring new identification documents from local authorities in their place of return, which blocks them from receiving social services and obstructs their freedom of movement. On July 30 the High Representative issued a Decision intended to provide for the issuance of ID's to returnees irrespective of whether the municipal record books are missing (such as in Drvar), but difficulties persist in implementation.

## FREEDOM OF EXPRESSION

81. In recent months in BiH, there have been several defamation and libel suits against the editors of two newspapers, *Dani* and *Slobodna Bosna*, for writing articles which accuse high-ranking officials of fraud and corruption. Although a balance must be struck between freedom of expression and defamation, these recent suits may be an indication of the authorities attempting to silence the press. In particular, during the reporting period, the editor of *Slobodna Bosna*, Senad Avdic was found twice guilty of slander and libel, and in both cases given suspended sentences. Senad Pecanin, of *Dani*, was similarly found guilty. Of particular concern was the uncharacteristic speed with which Avdic and Pecanin were tried, charged, and convicted.
82. In response to cases such as Avdic and Pecanin, on July 30, the High Representative issued a

Decision removing the sanction of imprisonment from the criminal act of defamation. Various acts of defamation, which carried a criminal penalty under the SFRJ Criminal Code, had been carried over into the RS and Federation Criminal Codes. The Decision calls for the Entities to adopt civil remedies for defamation and remove the offence from the Criminal Code. The international community is jointly overseeing the task of drafting appropriate legislation in conjunction with governments, to ensure that the Decision is implemented.

## EDUCATION

83. **Discrimination in Education:** Discrimination throughout the educational system is persistent in Bosnia, evidenced by continuing attempts to perpetuate the segregation of schools; usage of ethnically-defined curricula; politically motivated mistreatment of political or ethnic minority returnee children in the classroom; and discrimination against minority teachers. Hot-spot areas include **Capljina, Stolac, Bugojno, Vitez, Vares, and Velika Kladusa**. Obstruction by local authorities of efforts at integration reached their height immediately prior to the commencement of the school year.
84. Efforts to integrate the education system have been focused on two major areas: textbook review and curricular reform, and both have resulted in significant obstruction by the local authorities as they resist relinquishing an important tool for the perpetuation of ethnic division.
85. The textbook review process, whereby educational authorities are identifying text for either deletion from existing textbooks or annotation by use of a stamp (indicating that a passage may contain material of which the truth has not been established, or that may be offensive or misleading), is proceeding, but only after numerous missed deadlines and much international pressure. This process also involves publication of annexes to foreign textbooks produced in Belgrade and Zagreb, which are used extensively in Serb and Croat areas of the country. The annexes should ensure reference to the country of Bosnia and Herzegovina. To date the Croat educational authorities have provided insufficient material for annexes, while the Serb educational authorities have not complied at all, indicating continued resistance to and obstruction of the educational reform process.
86. The curricular review process, which concerns both the development of a unified, multi-ethnic curriculum, and the overall improvement of educational standards, is also proceeding, albeit slowly. In September 1999, UNESCO published its long-awaited report on this issue, reviewing existing parallel curricula in BiH and proposing alternatives. The initial response from local authorities was critical and not receptive.
87. The international community has joined efforts with civil society representatives to move the issue forward. In September a round-table was held on education which demonstrated a keen interest on the part of teachers' association, student councils, youth organizations, teachers' trade unions, and independent citizens to establish a multi-ethnic and unified education system, based on the development of a renewed framework curriculum [see NGO Section, below].

## GENDER EQUALITY

88. In May 1999, the International Human Rights Law Group (IHR LG), in conjunction with 18 Bosnian NGO's, released a report entitled "*Women's Human Rights in Bosnia and Herzegovina*," which detailed the legal parameters of the protection of women's rights in Bosnia, as well as the present status of women in a variety of fields. The following paragraphs are based on that comprehensive report.
89. **Women in the Economy:** There is inadequate protection for women's full and equal access to employment in all sectors and at all levels, and labour laws tend to promote women's reproductive roles. There are strong protections regarding maternity and health benefits in both Entities, but women have a great deal of difficulty collecting their benefits. The protections

which are offered by the labour laws are often not implemented in practice, in part due to the dysfunctional enforcement mechanisms at all levels of government. A “glass ceiling” phenomenon is evident, whereby women, despite the apparent lack of legal barriers to equality in employment, are underrepresented in management and executive positions. Minority women are particularly discriminated against in employment, and women are impacted by the preferences given in employment to ex-soldiers [see para 68, above].

90. **Violence Against Women:** Violence against women is not defined in any domestic law nor have there been any official instructions or policy statements regarding the problem by government at any level. In Bosnia, domestic violence against women has increased due to: difficult transitions when women became heads of households, while men went to war, compounded by tensions when the men returned home, often to underemployment or unemployment; forced migration resulting in the loss of community which might otherwise provide a safety-net for the strains on families; and post-traumatic stress not only on those who fought during the war but those who remained behind. Given the lack of legal definition of domestic violence, courts are left to decide what measures to take, if any against perpetrators. Other forms of violence against women include trafficking [discussed in paras 56-58 above].
91. **Education:** As discussed in paragraph 83, above, the educational system in BiH is burdened with difficulties, some of which affect girls differently than they affect boys. There is evidence to suggest that girls are less likely to continue in secondary school. In addition, in BiH, textbooks often present gender stereotyped images of men and women, and there is evidence of sex segregation in fields of education, from secondary education through the university level. Girls tend to be streamed towards economics, textiles, and social sciences, while boys tend to be streamed towards mechanics, civil engineering, agriculture, and forestry. More girls than boys tend to pursue medicine.
92. **Politics and Public Life:** Despite the existence of various international documents and domestic constitutions which protect the rights of women to equal access and full participation in positions of authority and governance, women face numerous problems as they are directly and indirectly obstructed from realizing those rights on equal terms with men. Women are not equally represented in all levels of government, especially in Ministries and other executive offices, and have low participation in legislative bodies. As a result of the deep political, economic, and social changes in BiH, the number of women overall in legislative bodies dramatically decreased immediately after the war in comparison with pre-war participation of women. This has increased somewhat again, due to the OSCE PEC Rules and Regulations which require that at least three women be equally distributed among the top ten candidates of each party. Presently, women comprise 26% of the BiH House of Representatives, but there are no women on the BiH Council of Ministers, or in Entity level Ministerial positions. The percentage is lower if all parliamentarians are included.
93. **Women’s Activism to Protect their Human Rights:** Women from South East Europe used the opportunity presented by the *Stability Pact* [see para 111 and 112, below] to demand an active role in its implementation, in particular with respect to democratization and human rights. Over one hundred prominent women from the region signed an appeal demanding equal and active role for women in development and implementation of the Stability Pact, and put forward their demand to appoint a woman to chair the first Working Table on Democracy and Human Rights. There was wide support, including on the part of the Coordinator of the Stability Pact, for making women’s issues a priority concern for the working table on democratization and human rights, and for including opposition parties and civil society in the process. Gender has now been included in a Task Force, to facilitate further efforts.

## HUMAN RIGHTS INSTITUTIONS

### Progress in the work of the Institutions:



94. Three trends are discernible in the previous six months: Firstly, the Institutions have received significantly more cases; secondly, the Institutions have produced more decisions and reports, but not fast enough to keep up with new cases; and thirdly, a greater percentage of cases registered by the Chamber (no data available from the Ombudsperson) involve property and financial matters.

<b>Cases Registered Human Rights Chamber Ombudsperson</b>			<b>CRPC</b>
April 1999	1888	2903	180,000
October 1999	2795 <b>(+907)</b>	3454 <b>(+551)</b>	225,000 <b>(approx. 45,000)</b>
<b>Cases Completed</b>			
April 1999	177	1031	36,000
October 1999	303 <b>(+126)</b>	1335 <b>(+304)</b>	59,000 <b>(approx 23,000)</b>

**% of Cases Registered involving property matters before the Human Rights Chamber**

April 1999 85%  
 September 1999 90%

**Human Rights Chamber:**

95. With respect to the Human Rights Chamber, there has been increased compliance, especially in the Federation. There has been improvement in the following areas: military housing, where legislative reforms are in place and are being followed-up; civilian housing, where some steps towards reinstatement have been seen, although the concrete results are still limited; compensation awards, where the Federation, but not the RS, has been paying most of its compensation awards; death penalty cases, where decisions have been revoked and the criminal codes altered; and employment discrimination, where there has been one reinstatement. Problems still exist with respect to implementation in cases including: a disappearance case, in which the RS has still not complied with the first Chamber decision; and discrimination on the basis of religion, where the RS has failed to comply with the Islamic Community decision.
96. Two very significant cases, from a human rights perspective, were decided in this reporting period: *Zahirovic vs BiH and FBiH*, a precedent setting decision regarding discrimination in employment [see para 70 above]; and *Islamic Community in BiH vs Republika Srpska*, which addresses discrimination on the basis of religion in the post-war context, specifically, the failure to allow reconstruction of mosques in Banja Luka. At the time of writing neither of these decisions has been complied with. (*Chamber decisions and reports are available from the Secretariat or on the Internet at [www.gwdg.de/~ujvr/hrch/hrch.htm](http://www.gwdg.de/~ujvr/hrch/hrch.htm).*)

**BiH Ombudsperson:**

97. **Length of Proceedings:** During the reporting period the RS was almost exclusively named with respect to length of proceedings cases, under Article 6 of ECHR. The local authorities in the RS complied with the Ombudsperson's recommendations in a few cases within the specified time limit. There appears to be increasing co-operation with the local authorities and the courts in this area, despite some cases where there is not compliance.
98. **Property Issues:** Presently, the main problem concerns the non-enforcement of decisions issued by the Administrative Housing Authorities under the new laws. For the moment the problem seems to be more serious in the Federation, at least considering the number of cases in which a final report has until now been issued. Evictions are not carried out within the time limit given by the Law, due to the difficulty in finding alternative accommodation for the current occupant. The number of cases referred by the Ombudsperson to OHR for further action

remains limited but is expected to increase. A second issue concerns cases in which a decision by the administrative housing authorities has not been issued within the time limit prescribed by the current laws. Nineteen new cases against the Federation were recently referred in this respect to OHR for further action after the expiration of the time-limit given to the local authorities to comply with the Ombudsperson's recommendations. Even if, under the new Laws, the deadlines are objectively difficult to meet (due to lack of staff, for instance), the Ombudsperson's Office, following the Chamber case-law, has no choice but to find violations of the Convention in property related cases and is likely to refer them to OHR for further action.

99. **JNA Flats:** Many Final Reports were issued in this period by the Ombudsperson following the case-law of the Chamber but they remain confidential. The Ombudsperson has for the moment decided not to continue with examination of these cases concerning contract annulment. However, the international community continues to monitor the implementation of relevant provisions imposed by the High Representative Decisions with respect to the already registered and possible new cases.
100. **Special Reports:** Three important Special Reports were issued in this period. The first, "*Special Report on the Right to the Peaceful Enjoyment of Possessions and Discrimination in the Enjoyment of this Right with respect to Article 139 of the Law on Pension and Disability Insurance*," issued May 26, concerns the 50% reduction of pensions of the former JNA soldiers within Article 139 of the Federation *Law on Pension and Disability Insurance*. The amount of the reduction and the fact that this measure affected only the ex-JNA members led the Ombudsperson to find a pattern of discrimination and a violation of property rights under Article 1 of Protocol 1 of the ECHR. OHR together with the Ministry for Social Affairs is currently working on an amendment to Article 139 of the aforementioned law.
101. The second Special Report, "*Special Report on the Right to the Peaceful Enjoyment of Possessions and Discrimination in the Enjoyment of this Right in relation to Changes of Development Plans in Municipalities of Modrica, Derventa and Novi Grad*," issued on May 27, addresses the legality of the practice of taking over land previously used by minorities, in 3 RS Municipalities, following amendments to the local development plans. The Ombudsperson found a pattern of discrimination and a breach of the minorities' property rights, as the practical result of the measures adopted was that the previous users of the land (future minority returnees) will not be able to rebuild their houses on the same land as before the war. The local authorities were requested to ensure that previous users of the land have priority in any future allocation or disposal of the land. The Ombudsperson is currently monitoring the case and following up the process of compliance by the local authorities.
102. The third Special Report, issued on September 29, concerns recent return related incidents in both Entities of BiH and the failure of the competent authorities to effectively protect the returnees. Please see paragraph 5, above, which details this report. (*More information about the work of the Ombudsperson is available at <http://www.ohro.ba/>*)

#### **Commission for Real Property Claims:**

103. By issuing final decisions on the legal entitlement to property (both private property and occupancy rights), the CRPC has provided the competent authorities responsible for implementing the Dayton Agreement with the means to meet their responsibilities. Thus far, 59,028 final and binding decisions have been issued by the CRPC. In each case, CRPC provides notifications containing information on the pre-war right holders to properties which are selected for reconstruction, which has helped ensure that the beneficiaries of the reconstruction assistance are the people with a legal interest in the land and houses identified for repair; and that the projects are conducted on a sound legal basis.
104. Statistics on compliance with CRPC certificates are not available, but field reports indicate that compliance is still quite low. Political obstruction on the part of some officials, and lack of will by some elements in the legal and institutional framework, continue to hinder the efforts of many

displaced persons to return. A critical issue has been the lack of a legal framework for the implementation of CRPC decisions. However, draft laws to ensure more effective implementation of CRPC decisions have been prepared and are presently under review by both Entities. (More information about the work of the CRPC is available at <http://www.crpc.org.ba>.)

## NGO's AND CIVIL SOCIETY

105. **Legal Constraints on Bosnian NGO's:** Bosnian NGO's face a variety of legal constraints which make it difficult for them to organize effectively. In particular, the present legal framework does not allow for NGO's to work in an entity other than that in which they are registered. This effectively means that there is no legal framework for the existence of truly national NGO's. This has created difficulties for the development of national sport organizations and has hampered the establishment of a national level Red Cross Society. In addition, there is no mechanism to facilitate the establishment of umbrella organizations with members in both Entities. International organizations and local NGO's have been actively developing new legislation which would ameliorate this situation, and during the reporting period have finalized a national level *Law on Associations and Foundations* as well as two Entity laws.
106. **NGO Foundation for Bosnia and Herzegovina:** The goal to establish a domestic foundation which will assist in the creation of a sustainable NGO sector in BiH, is underway. Such a foundation is essential in order to ensure that a domestic framework is in place to facilitate civil society development, and to advance work on human rights protection. Within the reporting period, the Foundation has finalized its Statute and Strategy Paper for the first year and has prepared two project proposals for projects to be carried out in cooperation with other domestic NGOs. Due to the problems identified above, the Foundation has been unable to register in Bosnia, and instead has begun a registration process in the Netherlands.
107. **BiH NGO Council:** Despite the legal difficulties outlined above, the BiH NGO Council, the largest local umbrella organization in BiH, has achieved significant progress during the reporting period. This Council has 300 member organizations, split between the Entities. In May for the first time a representative of the BiH NGO Council attended the Donors Conference in Brussels where the needs of the NGO Sector in BiH were identified and discussed. Furthermore, BiH NGO Council has been supported by the Winston Foundation for World Peace which in July allocated funds for its capacity building activities. The Council has joined with three newly established regional fora (Forum of Serb Sarajevo, Vrbasko/Ramski Forum and Hercegovina Forum), and finalized its strategy concerning the cooperation with international NGOs. One of the most important changes is that the Council henceforth focus on the concrete projects in cooperation with its members. Finally, the Council is presently launching an initiative, inspired by the Stability Pact, aiming to link all umbrella organizations in the region.
108. **HCA Youth Network in BiH:** The HCA Youth Network is a project by Helsinki Citizens Assembly offices from Banja Luka and Tuzla which was launched in 1997. The project gathers more than 60 youth organizations, groups and individuals from both entities of BiH and its objective is to assist them to take an active role in democratic processes in BiH. During the period between April and September the network was very active and in addition to its activities it increased its membership from all parts of BiH. In May the network launched monthly bulletins and organized the Spring Cultural Festival "*Bridges of Friendship 1999*" in Mostar. On the 15th of May HCA Youth Network in BiH organized the first training/workshop on non-violent conflict resolution for youth leaders in Laktasi (RS). Furthermore, the network has prepared new strategy for its TNT youth magazine which will focus on visions of youth for the establishment of new society in BiH, the promotion of youth organizations, as well as cooperation with other youth magazines from ex-Yugoslavia. The most recent activity of the network was Summer School on "*Media and Promotion of Youth Organizations*" held in Brcko district.

# POLICY DEVELOPMENTS

## Council of Europe:

109. On May 25<sup>th</sup>, the list of conditions concerning the accession of BiH to the Council of Europe was approved by the Political Affairs Committee and the Committee on Legal Affairs and Human Rights, of the Council of Europe. The main conditions for accession to the CoE, with respect to human rights, are:

- Establishing mechanisms to ensure the full functioning of the Human Rights Institutions
  - Continued revision of legislation to ensure full compliance with the ECHR
  - Full co-operation with the ICTY
  - Adoption of legislation to achieve a professional and independent prosecutorial and judicial system
  - Full cooperation and compliance with Annex 7, including adoption and implementation of property laws
  - Substantial progress on the amendment of textbooks and the creation of an educational system which eradicates ethnic segregation
  - Completion of police certification, establishment of multi-ethnic police, and full compliance with UN-IPTF decisions
1. During the reporting period, numerous accession requirements were not fulfilled. The HRCC has prepared a progress review which details achievements made and areas where compliance remains outstanding. This report is available by contacting the HRCC.

## Stability Pact:

2. Participating states and international organizations gathered in Sarajevo on the 30<sup>th</sup> of July 1999 to endorse the purposes and principles of the **Stability Pact for South Eastern Europe**, initiated by the European Union, and subsequently placed under the auspices of the OSCE. The Stability Pact outlines a comprehensive and coherent approach to the region, promising the states of South Eastern Europe international assistance and eventual integration into European political and economic structures in return for ongoing progress towards democracy, respect for human rights, and regional cooperation.
3. The Stability Pact *Working Table on Democratization and Human Rights* took place in Geneva on the 18<sup>th</sup> & 19<sup>th</sup> of September, where it was agreed that the establishment of four Task Forces would facilitate the work of the Stability Pact on the promotion of Human Rights in the Region. Accordingly, they established task forces addressing the following issues: *Human Rights and National Minorities* (which includes Roma) coordinated by Slovakia; *Good Governance* (which includes Local Government and Human Rights Institutions) coordinated by the CoE; *Gender Equity* coordinated by OSCE; and *Media* coordinated by the UK. *Return* and *Education* issues will be handled by previously existing working groups or projects.

## USEFUL HUMAN RIGHTS DOCUMENTS: APRIL - SEPTEMBER, 1999

HRCC, "Guidelines to the Field, #3: Education Guidelines," September 1, 1999.

HRCC, "Accession of Bosnia and Herzegovina to the Council of Europe: A Progress Review," October 19, 1999.

IHRLG, "Women's Human Rights in Bosnia and Herzegovina," 15 May, 1999.

JSAP, "Thematic Report 2: Inspection of the Municipal Public Prosecutor's Office in Livno, Canton 10, during 5-16 July 1999," Ref: UNMIBH/JSAP/1999/002.

Ombudsperson of Bosnia and Herzegovina, *"No. 3275/99 – Discrimination in the Effective Protection of Human Rights of Returnees in Both Entities of Bosnia and Herzegovina,"* September 29, 1999.

Ombudsperson of Bosnia and Herzegovina, *"No. 2859/99 — Special Report on the Right to the Peaceful Enjoyment of Possessions and Discrimination in the Enjoyment of this Right with respect to Article 139 of the Law on Pension and Disability Insurance,"* May 26, 1999.

Ombudsperson of Bosnia and Herzegovina, *"(B) 655/98 — Special Report on the Right to the Peaceful Enjoyment of Possessions and Discrimination in the Enjoyment of this Right in relation to Changes of Development Plans in Municipalities of Modrica, Derventa and Novi Grad."* May 27, 1999.

OSCE, *"Employment Discrimination in Bosnia and Herzegovina,"* June 24, 1999.

OSCE, *"Falling through the Cracks: The Bosnian Pension System and its Current Problems,"* June 1999.

UNESCO, *"The Curricula of the 'National Subjects' in Bosnia and Herzegovina: A Report to UNESCO,"* August 1999.

UNMIBH, *"Building Civilian Law Enforcement in Stolac and throughout Herzegovina-Neretva Canton,"* June, 1999.

UNMIBH, *"From Joint to Unified Policing: Continuing Police Development in Central Bosnia,"* September, 1999.

UNMIBH, *"Building Civilian Law Enforcement in Stolac and throughout Herzegovina-Neretva Canton, December – May 1999."*

## **Office of the High Representative**