Human Rights Priorities for 2001

Human Rights Steering Board Recommendations to the Human Rights Task Force

This document forms part of the yearly review process of the activities and actions of the international community in Bosnia and Herzegovina. This document identifies the five main human rights priorities set by the international community (OHR, OSCE, UNMiBH, UNHCR and OHCHR) for the year 2001:

I. Return of refugees and displaced persons
II. Reform of Police and Judiciary
III. Capacity Building of Domestic Human Rights Institutions
IV. Personal Integrity of Officials
V. Respect by Bosnia and Herzegovina of International Treaty Obligations

Under each priority a short summary of the current state of affairs is presented and an action plan suggested. This document is neither an exhaustive list of human rights issues, nor does it fully cover each agencies' individual priority activities for 2001.

Introduction

While the overall human rights situation is improving in Bosnia and Herzegovina, sustainable and credible reforms are severely hindered by the weakness of domestic mechanisms to enforce the rule of law. Renewed focus must be given to ensuring that there is a domestic framework to protect human rights based on legislative reforms, institutional capacity, and personal responsibility. The development of this framework is well underway, but this difficult task will require continued international support and monitoring in 2001 and beyond.

Respect for the rule of law in Bosnia and Herzegovina continues to be generally poor, resulting in numerous violations of human rights. In 2000, particular violations of property rights continued on a large scale, and the economic and social rights were generally not respected or promoted by local authorities. Reasons for this unsatisfactory situation include slow changes in the political environment and political obstructionism of local leadership, a complicated legal framework, and the fragmentation of the country as a whole. Corruption and organized crime continue to plague the society.

In the general context of the international community, emphasis must be given to the role of domestic institutions and local officials. International actors must ensure that 2001 is spent strengthening the capacities of institutions to protect human rights, and ensuring that individuals who violate human rights are not allowed to hold public office. More effective ways to coordinate and co-operate between various actors – political, economic, legal, human rights – must be put in place. It is vitally important to ensure that human rights expertise is included in any reforms from the beginning.

I. RETURN OF REFUGEES AND DISPLACED PERSONS

Annex 7 of the Dayton Peace Agreement enshrines the right of all those displaced during the war to return to their pre-war homes. According to the results of the re-registration of displaced persons, conducted by the BiH authorities with the support of UNHCR at the end of 2000, a total of 518,252 persons in Bosnia and Herzegovina have registered and applied for DP status. In particular, some 231,732 persons have applied in Republika Srpska, 263,375 in the Federation of BiH, and 23,145 persons in the Brcko District of BiH. These figures, compared with the numbers of displaced persons in BiH in 1996 (approximately 845,000), indicate that significant progress has been made with returns. During the year 2000, more than 52,000 displaced persons and 16,000 BiH refugees, most of whom are minorities, were able to return.

However, it should be noted that this figure includes all those former refugees from BiH who have since returned from abroad, but who have been unable to return to their places of origin, so further adding to the problem of internal displacement.

The Return and Reconstruction Task Force (RRTF), co-chaired by OHR and UNHCR, has been set up as the mechanism to deal with the different aspects of the return of displaced persons and refugees, namely the problem of destroyed and occupied homes, security incidents and sustainability of return. An inter-agency approach is adopted in order to overcome the remaining obstacles to return. In particular, while international funds for reconstruction are disbursed according to the priorities indicated by the RRTF, a Property Law Implementation Plan (PLIP) has been developed through the collaborative efforts of OHR, UNHCR, OSCE, UNMIBH and CRPC to deal with the issue of return to contested property.

The international community has also been co-ordinating its responses to minority-return-related security incidents that continue to block the return of displaced persons and refugees to certain areas, notably Eastern Republika Srpska and Canton 10 of the Federation.

Significant deterrents to return remain in place, however, following property repossession. These include the deliberate withholding of employment opportunities to minority returnees (employment discrimination), fragmented and discriminatory education systems, continuing prevention of the realisation of returnees' pension rights, denial of access to health care in the place of return, and the manner in which publicly-owned utility companies in many areas continue to deny minority returnees access to services such as electricity, gas, and tele-communications.

1. Property repossession (administrative process / implementation, collective centres, alternative accommodation) – The amended property laws, which harmonized the laws between the two Entities, have now been in place since October 1999. Despite the enabling legal framework, strong pressure and resources put into monitoring and assisting the local authorities responsible for implementing the laws, the progress continues to be dissatisfactory. As of December 2000, some 20 % of the total number of claims submitted to local housing authorities had been resolved.

Despite the disappointing results in some parts of the country, the PLIP-framework, operational since summer 2000, can be considered as one of the most successful examples of how joint strategies and well coordinated inter-agency action can enable progress to be made despite political obstruction. However, in the most hard line areas even this has proven difficult so far and more needs to be done. Also, this approach has not been as successful when trying to enforce the "positive obligations" of the housing authorities, such as their duty to provide alternative housing/emergency housing or addressing the housing concerns of vulnerable groups such as Roma. The ultimate aim is to reinforce the rule of law and to create a self-sustaining, non-political property repossession process.

Plan of Action: Increase number of property repossession decisions and reinstatements:

- **Laws dealing with property repossession** (Law on Housing Relations, privatization and Laws on Cessation) **must be brought into accord with one another**, amended and implemented to effect a consistent and non-discriminatory system for property repossession;
- The well-functioning structure of RRTF and PLIP, supported by organizations with field staff, needs to be maintained to monitor and guarantee common approach and policy concerning the property law implementation and to co-ordinate return strategies and funding;
- **Establish functioning system of information-exchange** between the housing authorities and the OMIs on repossessions in order to prevent multiple occupancy;
- **Enforcement of all CRPC decisions**, in line with the Laws on the Enforcement of CRPC decisions;
- **Complete expedited issuance of decision and eviction** of multiple occupants;
- **Issuance of decisions in chronological order;**
- **Identification of and (budgetary) provision for alternative accommodation** by local authorities;
- Implementation of all decisions within deadlines specified by law, even if authorities fail to provide alternative accommodation;

- **Transparency of procedures of in revalidation of contract** with respect to unclaimed apartments;
- **Develop Good Governance Project** in co-operation with OSCE Democratization in the area of administrative and financial sectors to provide for accountability of local authorities dealing with property issues (provision of funds in the budget for alternative accommodation, increased efficiency in property implementation).

2. Ensure appropriate responses to minority return related incidents – From 3 August 2000 to 26 January 2001, a total of 112 minority incidents were reported to IPTF throughout BiH. During that period, the incidence of minority violence was almost twice as high in the RS than in the Federation. 74 (66%) incidents were reported in Republika Srpska, particularly in municipalities with higher rates of Bosniak return: Bijeljina (18), Zvornik (7), and Doboj (10). 38 (34%) incidents were reported in the Federation, the majority of which took place in Croat municipalities: Capljina (6), Livno (4), and West Mostar (4). Additionally, the severity of the incidents in the RS have been far greater than in the Federation. While the majority of incidents in the Federation involved verbal harassment and occasional damage to property, the incidents in the RS involved shootings, significant damage to property, use of explosives, physical injuries, and a death. It has been noted that police investigations into the serious incidents in the RS have been poor, and few if any of the perpetrators have been identified or brought to justice.

Plan of Action: Improve effectiveness of response to return-related incidents:

- **Preventive measures**: Local police authorities, particularly in contentious return areas, must be pressed to implement operational plans to increase police presence to guard against possible return related violence. Priority will be given to monitoring the implementation of such plans;
- **Engaging public prosecutors**: Interventions will be made with public prosecutors, who are obliged to request investigations into serious crimes;
- **Criminal Investigations**: Particular attention will paid to instances when local officials attempt to limit sanctions against perpetrators of crimes by initiating minor offense proceedings (instead of criminal proceedings).
- *Demand that law enforcement systems investigate and prosecute and judicial system appropriately punish temporary occupants who loot apartments;*
- **Systematic gathering of Information on occurring** return-related violence **(RRV)** incidents since they have negative impact on the return process. This statistical material should be elaborated and used when dealing with law enforcement officials inefficiently addressing the rule of law problems;
- **Increase field monitoring of LP response to RRV** and property law violations, including looting. Once the re-registration results are officially published establish regional overview of DP and internal refugees chart for property/sustainable return problem areas;
- **Disciplinary action and IC sanctions against police chiefs and police officers;** An increase in the number removals of obstructive or ineffective police officials, de-certifications of police officers and use of non-compliance orders against police officers. More effective use of the Internal Disciplinary Prosecutor and the Disciplinary Commission monitored by the IC including misuse of property;
- **Complaints against public prosecutors and judges;** Use of conduct report forms against individual prosecutors or judges to the appropriate vetting councils;

3. Sustainability of return (employment, health care, pensions, education, utilities, freedom of religion, education) – As repossessions of pre-war homes and returns to these homes take place, it is becoming increasingly apparent that many of the conditions necessary for sustaining such returns have not been met. Indeed, there is evidence that some PLIP beneficiaries have repossessed their homes, only to sell their property and move elsewhere – to areas in which they are of the ethnic majority. The systematic application of such administrative, legal and political obstacles to return as those noted below are significant contributory factors to *abortive* returns.

Lack of sustainability of return, may in some cases lead to reversal of returns. With respect to employment, the effect of **Article 143 of the Federation Labour Law**, which eradicates the waiting list system, has done little if anything to enhance human rights. It does not proceed from a need to address examples of discrimination, nor does it make any attempt to provide an effective system of enforcement. Though the RS analogue provision appears to be framed in more acceptable terms, it remains to be seen whether it provides any rights to individuals that are anything more than illusory. On a more positive note, the creation of a legal framework to combat employment discrimination (which was an example of good co-operation between human rights experts and other actors) was accomplished and provides for platform for further measures to establish the rule of law. This achievement has now to be followed up by effective monitoring of implementation and an effective employment strategy. It remains uncertain whether the **privatisation** process in BiH will facilitate ethnic re-integration, or will serve primarily to further solidify the ethnic division of the country. Aside from any economic consequences of such divisions, failure to apply the anti-discriminatory provisions of both Labour Laws will necessarily impact on the composition of the workforce, and militate against ethnically mixed workforces.

Access to **pensions** and health care continue to be problematic despite the March 2000 Agreement on Respective Rights and Obligations Regarding the Implementation of the Pension and Invalidity Insurance. Of particular concern is the fact that the current health insurance structure does not allow pensioners who return to their pre-war Entity to access health care there. Moreover, through a variety of means, public utility companies in both Entities continue to deter minority return from taking place by obstructing returnees' access to essential public services – most crucially electricity and gas supplies, but also telephone reconnections.

Primary, secondary and tertiary **Education** systems in BiH are also effectively entrenched along ethnic lines. Eradication of all aspects of ethnic segregation can only be achieved over the long term through continuous pressure from the international community and increased involvement of civil society in the education system – provided sufficient political will exists on the part of the national and local authorities. Under the Federation constitution, education is within cantonal competence, except where the municipality has a different majority ethnic population from the canton as a whole, when it is a municipal competence. In the Republika Srpska, however, education is an Entity responsibility.

Plan of Action: Sustainability of Return:

Access to utilities:

- **Collection of information** should be ensured through the UNHCR Legal Aid Centers and the Offices of the Ombudsmen;
- **Exchange of information** with and between the Entity Ministries is to be promoted;

Employment:

- **Execution of audits in a selected sample of companies** to assess their personnel policies and detect any discriminatory acts. The following actions are required: 1. To obtain funds to hire professional auditors (assistance from OHR-Anti Fraud Department) or identify the implementing agencies within the international community, 2. To acquire permission to execute audits from the relevant authorities and companies and 3. To oversee the project, and 4. To evaluate the results;
- **Engage donors and OHR-Economic Department in discussion about the use of conditionality of investments** to promote "fair employment principles" and hiring of returnees before investing;
- **Make public the IC position and expectations** regarding returnee hiring, through for example the issuance of Press Releases;
- **Monitor the work of commissions** for implementation of relevant labor law articles (Federation 143 and RS 152);

Pensions:

- **Assess the implementation of the Agreement** on Respective Rights and Obligations Regarding the Implementation of the Pension and Invalidity Insurance and its impact on pension

delivery across IEBL and between Federation pension funds' areas of competence;
- **Review the current legal framework** and develop a policy together with Economics dep. to ensure the delivery of pensions to the individual's place of residence;
- **Work with OHR Economics Department to establish a mechanism of transferring funds**, in this case pensions, across IEBL.

Health:

- **Assess the problem of access to health** for various categories of the population;
- **Review the current legal framework** and develop a policy to ensure health coverage regardless of one's entity/canton residence or pension fund location;
- **Establish a mechanism of transfer of funds** from one's health institute (where health contributions are collected) to any healthcare facility in BiH.
- To ensure that the municipalities implement the health care legislation on the basis of equity in provision.

Education:

- **Joint monitoring exercises** regarding textbooks improvement and implementation of the 10 May 2000 Inter-Entity Education Agreement and;
- **Collection of information** regarding minority pupils and teachers are to be carried out in 2001;
- **Increase the visibility of education issues** at the level of OHR's political structure;
- **Prepare a modern legal education framework for Primary and Secondary education** based on EU standards;
- **Pursue the adoption of a modern legal framework for Higher Education;**
- **Support the modernisation and rationalisation of the present system** on the basis of the Bologna Declaration, making use of regional development opportunities provided by the Stability Pact as well as EU development and co-operation instruments.

II. REFORM OF JUDICIARY AND POLICE

The protection of the rights of the citizens requires a well functioning judiciary, respect for the Rule of Law and effective non-discriminatory law enforcement structures. Administrative officials responsible for return and property issues cannot ignore claims of minority returnee populations in order to accommodate strong nationalist sentiments. Nevertheless, in cases where police, prosecutors and judges ignore crimes against minorities, disciplinary measures must be taken in order to ensure discriminatory practices do not prevail.

1. Internal structure and control mechanisms (de-politicisation and internal discipline) – Recent legislation has led to the establishment of Judicial Review Commissions, which are tasked with comprehensively reviewing the conduct of serving judges and prosecutors, as well as with monitoring the appointments of judges and prosecutors. Additionally, comprehensive assessments of the judicial system have identified structural and procedural weaknesses. An Independent Judicial Commission (IJC) has been established to monitor the functioning of the Commissions, and to oversee the implementation of structural judicial reform.

UNMIBH/IPTF will continue to press for structural reforms of police institutions. Recognising the need to insulate police officials from political pressures, UNMIBH/IPTF has worked with local authorities to establish Police Commissioner posts. Unification of police administrations in the Federation, as in Mostar and Gornji Vakuf, will also continue.

In monitoring local police conduct, UNMIBH/IPTF has found that internal control mechanisms within respective Ministries of Interior often fail to punish officers who violate work obligations. The failure of such systems represent a barrier to the development of democratic law enforcement agencies. Furthermore, it has been determined that basic police functions, such as arrest and search procedures, do not comply with international human rights standards.

Plan of Action: Accelerate internal restructuring and reform measures to improve the effectiveness of judicial and police officials in the performance of their duties:

- **Legislative reform**, unacceptable delays in the legal system in relation to every stage of the legal process (from the initial police investigation, filing of charges to court hearings) should be addressed by revision of the RS and Federation criminal codes and criminal procedures. The failure of the legal system to deal with cases expeditiously has a direct impact on return-related violence cases. This will require a coherent and consolidated approach to the issue and should be a priority for judicial reform. Reforming court procedures, promoting the creation of uniform procedural court guidelines, books of rules etc, strengthening the role of the public prosecutor, reducing the role and function of the investigative judge in conjunction with the training of judges, prosecutors and lawyers through Council of Europe, Domestic Training Board and IJC;
- In view of the conclusions and recommendations contained in JSAP's final thematic reports, **accelerate reform of the court system and criminal and civil procedure** through the efforts of the IJC, with particular attention to improving the performance of judges and prosecutors, reducing delay and inefficiency in the court system, and advancing criminal and civil procedure reform;
- **Establish training institutes** to provide, among other things, practical training for incoming and sitting judges and prosecutors and comprehensive, continuing legal education for lawyers. From a human rights standpoint, the training institutes should provide training in judicial administration and case management, in order to improve judicial economy and to reduce delays and inefficiency within the judicial system.

Plan of Action: Reform of police institutions

- **Promote de-politicisation of the police** by supporting the creation of police commissioner posts within each ministry of the interior;
- **Press local police authorities to unify ethnically divided police administrations;**
- **Press local authorities to improve and strengthen internal control mechanisms;**
- **Press local authorities to reform arrest and custody procedures, and search procedures.**
- **Continue working with local police officials in the Federation and the RS to reform and improve arrest and custody procedures**

2. Education and Training – During 2000, support for the establishment of training institutes continued, and judicial training legislation is currently pending. Given the substandard performance of the criminal justice system in BiH, the establishment of training institutes should be a priority in 2001. Ideally, the training institutes should provide, among other things, practical training for incoming and sitting judges and prosecutors and comprehensive, continuing legal education for lawyers. Within the context of its police standards and training programme, UNMIBH intends to provide advanced human rights training to police officers.

Plan of Action: Improve training:

- **Judicial administration**. From a human rights standpoint, the judicial training institutes will provide training in judicial administration and case management, in order to improve judicial economy and to reduce delays and inefficiency within the judicial system;
- **Seminars/training for judges, prosecutors and police**. IC to support and encourage initiatives of Council of Europe, Domestic Training Board, UNMIBH and the Independent Judicial Commission. Training sessions should be specifically focused on the issue of return related investigations and proceedings.

III. CAPACITY BUILDING OF DOMESTIC HUMAN RIGHTS INSTITUTIONS AND NGOs

1. Legislative and financial reform (Constitutional Court / Human Rights Chamber, Agents of BiH) – Legislation is now in place regulating the work of the three Ombudsman Institutions in BiH – at the level of the State, the Federation and the RS. In addition, agreements have entered into force concerning the future (to 31 December 2003) of the institutions established under Annex 6 and 7 of the Dayton Peace Agreement (the BiH Ombudsman, the Chamber and the CRPC). Funding, while often precarious for the institutions, has enabled the institutions to perform their mandated tasks.

However, work is required in the following areas in 2001 in order to create a sustainable domestic structure capable of meeting the demands put on these institutions. First, a legislative framework regulating the merger of the Constitutional Court and the Human Rights Chamber, coupled with enough capacity of the new institution to meet the number of individual claims is under development. Second, the position of the Agents of BiH to the Human Rights Chamber, and international bodies must be clarified. Third, under legislation in both entities, the Ombudsmen will face re-appointment. OHR and the OSCE will follow this process closely to ensure that the institutions continue to be led by appropriate individuals. And fourth, neither the Human Rights Agreement (Annex 6) nor the provision regulating the status of international human rights treaties in BiH (Annex 4) have been officially translated and published in the official gazettes of BiH. This should be completed in 2001.

In addition to legislative reform, the sustainability of the institutions must also be ensured. In this respect, State funding for the Annex 6 and 7 Institutions must come up to the "appropriate" level in 2001, required for BiH accession to the Council of Europe and required under the EU roadmap. Some external funding for 2001 has been committed for the institutions, but more is needed in order to offer the level of service presently provided. In addition, 2001 will lead to financial changes in operation of the Entity Ombudsman institutions, which will require changes in entity support.

Plan of Action: Legislative and financial reform relating to Human Rights Institutions

- **Drafting of legislation regarding the merger of the Human Rights Chamber with the BiH Constitutional Court** on the basis of a Report adopted by the Venice Commission in 2000;
- **Promote the co-operation between the Agents and national authorities** through adequate funding, political support and the sustainable integration of the Agents in the governmental structures of BiH;
- **Ensure adequate State funding for Annex 6 and 7 Institutions** of at least KM 600,000 per institution to the BiH Ombudsman, the Human Rights Chamber and the CRPC, as required by CoE accession documents and the European Union "Road Map", and payment of outstanding amounts;
- **Ensure adequate staffing of the Annex 6 and Annex 7 institutions**, and in particular ensure the position of the registrar of the Human Rights Chamber and ensure enough space for the Chamber to carry out its tasks;
- **Ensure adequate funding of Entity Ombudsmen Institutions** by integrating a budget for the institutions in the budget for 2001 of the respective Entity; Accept a necessary minimum structure and outline of the institutions in a MoU with OSCE;
- **Support reappointment** of the RS Ombudsmen currently in office and the appointment of qualified candidates in the Federation;
- **Ensure translation and publication of GFAP (Dayton) in the Official Gazettes of BiH**, in particular with respect to the Human Rights Agreement (Annex 6) and the status of international human rights instruments in BiH (Annex 4).

2. Increasing compliance with decisions and reports of human rights institutions (Human Rights Chamber, Ombuds-institutions) – The year 2000 saw significant increases in the implementation rates of the Human Rights Chamber and the BiH Ombudsman Institutions. For example, implementation of Chamber decisions increased from 33% at the end of 1999 to 70% by the end of 2000. However, this rate must increase to the level of over 90%, rates seen for implementation of decisions of the European Court of Human Rights. Our international

partners have been involved in the success in implementing these decisions, as have the agents of the Federation, RS and BiH governments to the Annex 6 institutions. However, implementation of three important outstanding decision and reports have not been effected, namely the Father Matanovic case, the Mostar "Liska Street" case, and Banja Luka Mosques.

Plan of Action: Increase compliance with decisions of the Human Rights Chamber and reports of the BiH Human Rights Ombudsman and Entity Ombudsmen:

- Obtain implementation rates of over 90% for both decisions of the Human Rights Chamber and the BiH Ombudsman, including through active monitoring by OHR and OSCE of the implementation process, together with the Agents of the three governments, through regular contact and meetings with the agents;
- Continue assistance given by other international organisations, in particular UNMIBH and IJC, in the implementation process.

3. Capacity building at the Ministry for Human Rights and Refugees – The BiH Ministry for Human Rights and Refugees (MHRR) was created in April 2000 and took over some of the then competencies of the BIH Ministry for Civil Affairs and Communications (MCAC). In addition to immigration, asylum and human rights, the Ministry is responsible for activities related to the repatriation to BiH of BiH citizens who became refugees abroad and for co-ordination of inter-entity activities with regard to return (as regulated in the Law on Refugees from BiH and Displaced Persons in BiH, published in December 1999). In addition, MHRR has been instrumental in the re-registration of displaced persons and of more than 6,000 Serb refugee families from Croatia in Republika Srpska and Brcko District. The creation of the Ministry presents an opportunity to develop capacity within the Ministry to act in a number of fields. The Ministry may be well placed to work with the entities and international organisations in order to ensure greater implementation of the property laws and certificates of the CRPC.

Plan of Action: involve the Ministry for Human Rights and Refugees in property-related matters

- Ministry for Human Rights and Refugees to Chair property implementation meetings with the International Community and the entity ministries responsible for implementation.
- The role of MHRR regarding return will need to be strengthened during 2001. MHRR can play an important role in facilitating the exchange of information among Entities on return of displaced persons and the implementation of the property law. A Protocol among OHR, UNHCR, MHRR and the Entity Ministries on return and reconstruction priorities for 2001 will be also discussed

4. Promotion of a vibrant civil society – A strong and participating civil society is an essential pre-condition to promote accountability and transparency in the country. NGOs and Associations are to play a crucial role in the transition phase, taking over most of the tasks currently fulfilled by the IC.

Plan of Action: Creating a vibrant civil society

- **Promotion of the involvement** of the local legal aid centers (currently supported by UNHCR) and domestic non-governmental organizations in all monitoring and reform activities to make them sustainable in long term. Training and financial support needs to be provided;
- **Push the passage of BiH Law on Associations and Foundations** and two similar laws in the Federation and RS. The legislative process still very much depends on the local parliaments;
- **Monitor the general legal framework laws**which are not expected to cover all the legal problems and restrictions that NGOs are facing. This is particularly related to the financial aspects, such as taxation and customs, that have a great impact on the sustainability of non-governmental organizations in BiH.

5. Effective responses to human trafficking – Domestic authorities have been given primary responsibility for responding to the problem of trafficking in human beings. The Ministry for European Integration and the Stability Pact have been tasked by the Council of Ministers to take the lead in ensuring that Bosnia and Herzegovina draw up a national plan of action to combat trafficking. A primary concern is that local authorities have not established shelters for trafficking victims, instead relying on the UNMIBH/IOM repatriation project. The fact that victims are so

quickly repatriated, however, has complicated or prevented prosecutions of traffickers, as victims are unable to provide testimony to courts. Often, local police or judicial officials have complicated prosecutions by failing to prioritise trafficking cases.

Plan of Action: Press local authorities to effectively combat trafficking

- **Press local authorities to open shelters and to provide protection for victims**, so that they can testify against traffickers;
- To give assistance to the government ministries and NGO's in the areas of responsibility designated to them under the national plan of action.
- **Press local authorities to expedite criminal procedures in trafficking cases.**

6. Missing Persons

To date ICRC has received tracing requests for a total of 20,508 persons who disappeared in the course of the conflict. Over the last five years the fate of 2,241 individuals have been clarified. Out of these 292 persons were found alive. Another 1,949 missing persons were identified and their mortal remains handed over to their families. Finally the families of an additional 860 missing persons have received reports about the death of their relatives but are waiting to recover the mortal remains to confirm this information. Consequently, families of 17,407 missing persons are still seeking answers to their tracing request. As per 1 January 2001, coordination of the Inter Entity Exhumation Program was transferred from OHR to the Missing Persons Institute (MPI.)

Plan of Action:

- The authorities must provide information on all persons unaccounted for according to their obligations under the DPA, Annex 7, Article V. The authorities must ensure that sufficient funds are allocated to the Missing Persons Commissions and to the Courts, to continue the Inter Entity Exhumation Program.

IV. PERSONAL INTEGRITY OF OFFICIALS

1. Police (vetting procedures) – The importance of reforming the police and the judiciary to build the foundations for increased respect for the rule of law and protection of human rights cannot be overestimated. Through implementation of the policy on Registration, Provisional Authorisation, and Certification, UNMIBH evaluates the suitability of law enforcement officials. Those with unsuitable backgrounds are prohibited from serving as police officers. Additionally, through implementing its non-compliance policy, UNMIBH identifies officers whose conduct deviates from international standards.

Plan of Action: Support police vetting procedures:

- **Vet Police Officers who violate property laws;**
- **Resolute implementation of IPTF policies on Registration and Non-Compliance**, with the intent of ensuring that officers with unsuitable backgrounds, or who display unsuitable behavior, are not permitted to work as police officers;
- **Press local police authorities to initiate internal disciplinary proceedings against officers who receive IPTF non-compliance reports.**

2. Judiciary and Prosecutor's Offices – During the year 2000, the basis for regulating and improving professionalism within the judicial system was established through the enactment of laws on judicial and prosecutorial service. These laws established judicial and prosecutorial bodies. Judges and prosecutors generally view these laws as a substantial measure in establishing the independence of the judiciary and prosecutor's office in the handling of their own affairs. The laws in both entities empower the Commissions/Councils to carry out certain activities affecting the judiciary and the prosecutor's office. First, the Commissions/Councils review candidates for judicial or prosecutorial posts and recommend to the appointing authority the most qualified candidates. Second, the Commissions/Councils are responsible for disciplining judges and prosecutors who commit ethical violations. Third, the Commissions/Councils are conducting a comprehensive review of judges and prosecutors in order to determine their fitness to hold office. The comprehensive review period began in summer

2000 and will last 18 months.

Plan of Action: Monitor the work of and build out a structural framework of the Federal and Cantonal Commissions and the High Councils:

- **Monitor the work of the Commissions/Councils** in conducting the professional review of sitting judges and prosecutors, under the oversight of the IJC, in order to determine fitness to hold office;
- **Regulate, on a long term basis, the professionalism of judges and prosecutors** through the codification of appointment and disciplinary procedures as contained in books of rules for the Commissions/Councils and develop the authority of the Commissions/Councils. These two procedures are significant to the long-term development of standards of independence and professionalism in the judicial system, and these procedures should embrace standards contained in professional codes of ethics, also passed in 2000;
- **Provide the Commissions/Councils, through the IJC, with assistance in interpreting laws regulating judges and prosecutors**, to help establish their authority to regulate judges and prosecutors free of political interference, and to propose any changes or introduce additional regulatory measures necessary to the enforcement of ethical and professional standards;
- **Vet judges who violate property laws.**

3. Identify and remove people in public functions who fail to implement property laws – Increased accountability of public officials must be promoted within the context of existing mechanisms such as the PEC Rules and Regulations and the High Representative's removal procedure.

Plan of Action: All public officials required to comply with property laws in terms of their own housing situations

- **Remove through either the PEC or the High Representative's power consistently obstructionist officials;**
- **Pass draft law that suspends officials for obstructing the implementation of property laws;**
- **Prosecute and fine officials who are violating the laws or obstruct their implementation.**

V. RESPECT BY BOSNIA AND HERZEGOVINA OF INTERNATIONAL TREATY OBLIGATIONS

1. ICTY Co-operation – None of the war criminal indicted by the ICTY were arrested by the national authorities. Over the past year SFOR has apprehended eight indicted war criminals in BiH. In total, SFOR has now detained twenty two alleged war criminals in BiH in addition to the nineteen who surrendered or have been apprehended in third countries. More than half of the publicly indicted who remain at large originate from BiH.

2. Asylum and Irregular Migration – Over the past year, BiH has become an attractive transit country for traffickers, smugglers, irregular migrants and asylum seekers. Reasons for this development include inter alia, the improved security situation, a relatively liberal visa policy, a number of legal lacunae with respect to migration and asylum. The porous borders of BiH are, in addition to the nascent State Border Service, largely patrolled by regular Cantonal or Entity police (and others) who do not have any specific competence for such tasks, and who lack equipment and training.

The new Ministry for Human Rights and Refugees (MHRR) is responsible for all issues relating to human rights, immigration and asylum in BiH. However, it must be noted that matters relating to immigration and asylum are a fairly new domain for BiH, and that MHRR is severely under-funded and under-resourced. Extensive capacity-building is therefore required well beyond 2001.

While the focus has been on “illegal” or irregular migration, a significant number of these may have legitimate reasons for fleeing from their country of origin, including asylum seekers, who must be assured protection in accordance with international refugee and human rights law. Although the Law on Immigration and Asylum is technically in force since 31 December 1999, it represents a complete institutional and structural reform of earlier legislation. Extensive by-laws and instructions are still needed and the required national institutions are not yet in place. UNHCR is in the meantime undertaking refugee status determination as well as making available extensive technical expertise and limited financial resources to the MHRR.

Plan of Action: (UNHCR unless otherwise specified)

- **To ensure respect for fundamental international refugee law principles**, including refoulement and access to the territory (refoulement is the return to countries and territories where a person may fear serious harm – the principle also applies when return is likely to take place indirectly as well as at the border);
- **To ensure rights of asylum seekers and refugees** are respected;
- To ensure access to the asylum procedures in BiH by developing a mechanism for the identification and referral to UNHCR of potential asylum seekers and refugees;
- **Extensive training in refugee law with the MHRR, State Border Service, local police, judiciary and others;**
- **Elaborate by-laws to the Law on Immigration and Asylum** and other required instructions and decisions together with the MHRR;
- **To seek durable solutions for refugees from FRY and Croatia**

3. Human Rights Treaty Reporting Requirements – 14 reports are currently overdue. The body responsible is the Ministry for Human Rights and Refugees. International organisations are prepared to offer technical assistance in preparing these reports and in establishing capacity in the ministry to produce, and “defend” the reports before the relevant committee, as required in the six treaties which have implementation bodies.

Plan of Action: Support BiH Ministry for Human Rights and Refugees to produce its overdue reports to human rights treaty bodies, and include NGO participation in the process:

- **The international community to work with the Ministry for Human Rights on beginning the reporting process to the treaty bodies**. To provide technical assistance in this process. Fourteen reports to all six treaty bodies are overdue at present. The original focus to be on reports to the Economic, Social and Cultural Rights Committee, the Human Rights Committee and the Core Document for reporting to Human Rights Treaty Bodies;
- **Improve the status of national minorities**, including Roma, in B&H under the Framework Convention for the Protection of National Minorities through the Implementation of the Framework Convention for the Protection of National Minorities in Bosnia and Herzegovina (Early 2001).

OHR Human Rights/Rule of Law Department