Implementation Of The Human Rights Provisions Of The Peace Agreement

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I. Executive Summary

Although some progress has been made since the signature of the Peace Agreement, the Parties have not taken adequate steps to fulfill the commitment set forth in Annex 6 of the agreement *"to secure to all person within their jurisdiction the highest level of internationally recognized human rights and fundamental freedoms."* While it would be unrealistic to expect immediate implementation of all of the varied and comprehensive human rights commitments embodied in that broad pledge, the shortcomings in this case are more profound. In both entities, some authorities have contributed to ethnic division both directly by committing, inciting or sanctioning human rights violations and implicitly by failing to act in the face of harassment and intimidation of ethnic minorities. In the Sarajevo suburbs and in Teslic, for example, it is not simply the right to return which is at stake, but also the right to remain and live in safety. In addition, the Parties have failed to take certain concrete steps which are fundamental to the peace process and which could be accomplished immediately with sufficient political will, including adopting amnesty laws which are consistent with the peace agreement, bringing property legislation into compliance with the right to return, permitting freedom of movement and releasing persons who are arbitrarily detained.

At the same time, the everyday life for the vast majority of people in Bosnia and Herzegovina has improved dramatically in the past six months. The successful implementation of the military provisions of the Peace Agreement has provided a stable environment in which people have begun to resume their lives. Along with this change, basic institutions essential to protection of human rights have been established. The creation of the Human Rights Commission, including its component parts the Human Rights Chamber and the Ombudsperson's Office, is a substantial step towards making the protections set forth in the Peace Agreement a reality in Bosnia and Herzegovina. Efforts are underway to improve the situation in other institutions, including projects to significantly strengthen independent radio and TV, restructure the police, and reform the judiciary. These changes are not just key steps to realisation of the human rights provisions of the Peace Agreement, they are fundamental ingredients for a stable peace. Again, progress in these areas continues to fall short of expectations, but the situation represents a considerable improvement nevertheless.

One of the most positive developments which has occurred in the past months is the improvement in the situation as it relates directly to human rights monitoring. The Peace Agreement calls for the a number of organisations to play a substantial role in human rights monitoring and protection in Bosnia and Herzegovina, including OSCE, the UN IPTF, UNHCR and the UN High Commissioner for Human Rights. While resources have often not matched the commitment of these organisations in the human rights monitoring field, the fact remains that there are monitors deployed throughout Bosnia and Herzegovina, and that we are now presented with a much more comprehensive picture of the human rights situation throughout Bosnia and Herzegovina than was possible before the Peace Agreement. The record of human rights violations compiled by these organisations forms the basis of the second section of this report. Human rights monitors have, unlike the population at large, been afforded nearly complete freedom of movement in carrying out their tasks, although there have been isolated incidents in which international monitors have

been harassed or threatened. In addition, the activities and reporting by international and local non-governmental organisations has expanded greatly, although these organisations have not always been able to operate as freely. We have witnessed the first stages of a re-establishment of the local non-governmental organisations in Bosnia and Herzegovina. While a few well-established NGOs have considerable expertise from before and during the war, the domestic NGO community is substantially underdeveloped and warrants considerable attention and support given its crucial role in the country in the coming years.

The overall human rights situation in Bosnia and Herzegovina, however, is far from adequate. Human rights monitors report a high number of incidents involving overt discrimination and violence directed against minority populations, including instances of forced evictions, beatings, and arbitrary arrests/detention; in too many cases the authorities are either unresponsive or directly involved in committing such abuses. The security situation for vulnerable populations remains precarious in many parts of the country – in Sarajevo the continued harassment and intimidation of remaining Serbs has caused many to rethink their decision to remain after the transfer of authority; in Mostar and elsewhere political hardliners continue to use inflammatory nationalist rhetoric to maintain ethnic tension; and in Teslic, Banja Luka and Prijedor, authorities have not taken action to stop violent intimidation directed at ethnic minorities reminiscent of tactics used during the conflict. Also, more subtle discrimination through administrative practices, such as threats of dismissal from employment and requiring *"loyalty oaths,"* are evident in both entities.

Despite some progress, fundamental impediments to freedom of movement remain. Police continue to set-up unauthorised temporary checkpoints along the IEBL, subjecting persons to unnecessary delays and harassment, including verbal or physical abuse or confiscation of identity documents. Attempts by organised groups to cross the IEBL to visit pre-war places of residence have on many occasions been violently disrupted, calling into question the Parties' commitment to cooperate with UNHCR to facilitate the return of refugees and displaced persons in safety and with dignity.

In a number of areas, legal reforms are critical to improving the overall human rights picture. For example, police continue to arbitrarily arrest and detain individuals, sometimes with the stated purpose of having someone to *"exchange;"* arrests on vague suspicions of war crimes undermine freedom of movement. Detained persons are routinely denied access to counsel during the initial stage of detention. The vast majority of complaints received by human rights monitors relate to denial of property rights, in large part because laws which are contrary to the right to return continue to be enforced. On the media side, administrative and technical barriers to the expansion of independent media remain in place, and the program content of state-run electronic media is still heavily skewed in favour of the ruling parties.

The Parties' substantial shortcomings in implementing the human rights provisions of the Peace Agreement must be rectified. To achieve that end, the many international organisations and NGOs involved in monitoring and protecting human rights in Bosnia and Herzegovina will need to intensify their efforts to push for compliance with international human rights standards. While the international community has taken significant steps to work together on human rights issues, these efforts too must be enhanced to ensure that the response to substantial human rights violations is swift and sure. At the last meeting of the Human Rights Task Force, it was decided that the major implementing organisations would jointly agree on several priority cases or situations concerning which concrete strategies would be developed for ensuring that the Parties meet their human rights obligations. By focusing attention on these cases, the participants in the HRTF hope to set precedents for future action and to demonstrate to the Parties that continuing failure to implement the human rights provisions of the Peace Agreement will not be tolerated.

II. Human Rights Institutions And Monitoring Organisations

The human rights provisions of the Peace Agreement provide for both long-term structures and immediate measures to enhance human rights protection in Bosnia and Herzegovina. A number of organisations have accepted the explicit invitation of the Peace Agreement to establish monitoring missions in the country. The mandates and geographical coverage of these groups varies, however, presenting a patchwork of sometimes overlapping activities and gaps in certain areas. The initial steps have been taken to create permanent institutions which will

handle human rights cases and address the crucial issue of property claims. The true test of the impact which these organisations will have on the human rights situation in Bosnia and Herzegovina, however, has not yet occurred. The Human Rights Commission and the Commission for the Real Property Claims of Displaced Persons and Refugees require not just the tacit support of the Parties, but their active involvement to ensure that the decisions of these institutions are promptly and fully enforced.

Peace Agreement Institutions

The Commission on Human Rights

The Commission on Human Rights established by the Peace Agreement is composed of two parts: the Human Rights Chamber and the Office of the Ombudsperson. Under Annex 6, Article III(2), the Parties are responsible fore providing fully adequate funding for the Commission to fulfil its mandate. Recognising the difficulties which both entities face in meeting the obligation, an international funding appeal has been launched on behalf of the Commission (as well as the Annex 7 Commission). The Human Rights Chamber and the Office of the Ombudsperson have each received grants for their first year of operations from foreign governments in the amount of $1 million.

Human Rights Chamber

The Human Rights Chamber was established and held its first session from 27-30 March. During its next two sessions, the Chamber continued consideration of its draft Rules of Procedure. The Chamber has not yet begun to receive or hear cases.

The Office of the Ombudsperson

The Office of the Ombudsperson Office published its Rules of Procedure and began accepting complaints at the end of March. As of 1 June, the Office had received some 133 cases. According to the Office's procedures, these cases are divided into provisional files (108) where there is some obstacle to proceeding with the case (e.g, further information necessary, jurisdiction between the Ombudsperson and other institutions is unclear, or where formal requirements for admissibility have not been met) and registered cases (25). The Ombudsperson intends to open an office in Banja Luka. Other organisations, including OSCE, have agreed to assist the work of the Ombudsperson by distributing complaint forms through their field staff.

While the organisational steps which have been taken to date are necessary precedents to a more substantial role, the Commission has not yet had a substantial impact on the human rights situation in Bosnia and Herzegovina, as evidenced by the relatively small number of complaints which have been submitted to the Ombudsperson's office. Efforts are underway to increase public awareness of the Commission's work, including the process for filing a claim.

Commission for the Real Property Claims of Displaced Person and Refugees

The Commission for the Real Property Claims of Displaced Persons and Refugees established in Annex 7 of the Peace Agreement will consider individual claims of refugees and displaced persons relating to ownership or tenancy of real property. The Commission will assist affected persons in regaining their property or receiving appropriate compensation. The Commission was inaugurated on 27 March and is comprised of nine members; three are international experts and six others were appointed by the Federation (4) and Republika Srpska (2).

The Commission has held several working sessions with the participation of intergovernmental organisations concerned with property related issues. It recently appointed an Executive Officer to develop systems and structures to handle the large number of claims that it expects will be filed. In early June, the members met in Rome to discuss a number of complex technical questions related to the work of the Commission, including determining types of compensation to be offered. The Commission expects to start receiving

claims in late July or August, at which time it will launch a public information campaign in Bosnia and Herzegovina and abroad to explain the application process.

Given the complexity and importance of the issues at stake, the Commission's efforts to establish a sound procedural footing for its work are crucial. At the same time, it is essential that the Commission begin to consider cases, especially those with precedential value, with all possible speed.

Office of the High Representative

Human Rights Task Force

Recognising the need for coordination in the human rights field, the participants in the London Conference called upon the High Representative to establish a Human Rights Task Force to bring together the multiplicity of organisations involving in implementing the human rights provisions of the Peace Agreement. Following two large meetings in Brussels, the Human Rights Task Force has convened a number of meetings in Sarajevo. Participants in the HRTF/Sarajevo, in addition to the implementing organisations, include a broad range of local and international NGOs. Much of the work of the Human Rights Task Force is accomplished through the smaller working subcommittees of the HRTF which were established in March to deal more substantively with issues which required additional coordinated action. Subcommittees have been formed or ad hoc meetings held under the HRTF umbrella on the subjects of: property, detention issues and trial-monitoring, legal assistance and representation, and public information efforts involving human rights. The Property Subcommittee has met on a weekly basis for several months. The subcommittee has derived a set of agreed principles for immediate steps which must be taken to bring property legislation into compliance with the rights to return and property set forth in the Peace Agreement and agreed on a strategy for advocating changes in property laws; participants are working both together and individually toward their agreed goals.

Human Rights Coordination Centre (HRCC)

Participants in the first Human Rights Task Force meeting in Brussels on 26 January agreed that a central point for collection of human rights information and day-to-day coordination of human rights activities was needed. In response to the call for coordination of human rights implementation efforts and in order to support his work in the area, the High Representative established the Human Rights Coordination Centre (HRCC) within his office. The staff of the HRCC includes representatives of the Organisation for Security and Cooperation in Europe, the UN International Police Task Force and two experts made available by the UN High Commissioner for Human Rights, as well as liaisons from UN Civil Affairs, the European Community Monitoring Mission, the UN High Commissioner for Refugees and the International Committee of the Red Cross. Participants in the HRCC work together to ensure coordinated, effective responses to human rights situations of particular concern. Substantial progress has been made in creating an information clearinghouse for reporting from the major implementing organisations. Each of the participating organisations provides its reporting to the HRCC on a daily basis, and the HRCC receives ad hoc reporting from international and local NGOs on the human rights situation in Bosnia and Herzegovina.

The human rights activities of the Office of the High Representative have met with modest success during the past months. The impact of the Human Rights Coordination Centre is largely dependent upon the support it receives from implementing organisations who, in turn, work with the HRCC in proportion to its usefulness to them in fulfilling their own mandates. Given the overlapping roles and competing interests of the many organisations working in the human rights field, the coordination of their activities which has been achieved through the HRCC is both noteworthy and valuable. The HRCC should in the coming months

provide more thorough public reporting concerning its activities and human rights issues of particular concern. In addition, efforts to link the work of the HRCC to coordination activities in other areas (including Bihac, Tuzla, Banja Luka and Mostar) should be enhanced.

Intergovernmental Organisations

Under the Peace Agreement, the United Nations Commission on Human Rights, the OSCE, the United Nations High Commissioner for Human Rights, and other intergovernmental and regional human rights organisations are invited to monitor closely the human rights situation in Bosnia and Herzegovina. These organisations are joined by the UN High Commissioner for Human Rights, the UN International Police Task Force, both of which have substantial human rights components in their mandates. Other regional organisations, including the ECMM and the Council of Europe, also have substantial human rights activities in the country. Finally, the bodies established for monitoring compliance with the many human rights treaties which form a part of the human rights obligations of the Peace Agreement also follow the human rights situation in Bosnia and Herzegovina closely.

UN Mission in Bosnia and Herzegovina

UN International Police Task Force In fulfilling its mandated duties of monitoring, observing and inspecting law enforcement activities and facilities, including associated judicial organisations, structures, and proceedings, the UN IPTF plays a substantial human rights monitoring role. IPTF officers report on and seek resolution of a broad range of human rights violations, including restriction on freedom of movement, incidents of harassment, intimidation and violence based on ethnicity or political affiliation, arbitrary arrest and detention, and inhuman or degrading treatment or punishment. IPTF monitors the activities of local police and judicial authorities, and intervenes as appropriate to address improper conduct by law enforcement officials. There are currently more than 1,400 IPTF monitors in the mission area, including a designated Human Rights officer in each of the UN IPTF's three regional headquarters and an IPTF Human Rights liaison within the Human Rights Coordination Centre. UN IPTF Region South recently initiated special community outreach patrols in the Sarajevo suburbs.

Given the critical role that law enforcement officials play in protecting (and sometime violating) human rights and the fact that IPTF officers far outnumber the field staff of any other monitoring organisation, human rights has a central place in the mandated responsibilities of UN IPTF. However, IPTF officers have no executive authority and are required to rely in large part on cooperation by the authorities. When the scope and limitations of IPTF's human rights mandate are considered, the current shortcomings in IPTF's activities are predictable, but critical nevertheless. IPTF has done an effective job of creating a country-wide reporting system, but the quality of the reporting varies greatly from district to district. This problem is in no small part attributable to substantial operational and logistical problems in many stations. IPTF has been plagued by a lack of sufficient resources, including inadequate communications and transport and a significant shortage of translators. There are also substantial gaps in IPTF reporting concerning certain aspects of its mandate, including detention-related information. While IPTF is attempting to address this issue through the establishment of a comprehensive database on detention, for the time-being, questions concerning persons detained are handled on an ad hoc basis, with significant attention devoted to some cases but with gaps in coverage and without a general perspective. Problems have also arisen given the lack of human rights training for IPTF monitors, who come to the UN IPTF mission with differing levels of knowledge concerning the applicable human rights standards. IPTF has recently taken substantial steps to address this issue, through instituting a comprehensive human rights training program designed and led by the UN Centre for Human Rights / UNHCHR.

UN Civil Affairs

UN Civil Affairs staff support the work of IPTF, including by monitoring and responding to human rights issues which arise in the field. Many of the 45 Civil Affairs officers provide useful human rights information as an aspect of their overall analysis and assessment of the political and social situation in their locations. UN Civil Affairs also provides its *"good*

offices" for the resolution of problems and has been involved in liaising with local authorities on cases of discrimination, harassment, and violence based on ethnicity or political affiliation; violations of freedom of movement; and evictions and property issues. UN Civil Affairs has designated a Human Rights Officer at its headquarters and in each of its three regional offices; at the headquarters and in the field, UN Civil Affairs officers work closely with other organisations active in the human rights field, including the Human Rights Coordination Centre. UN Civil Affairs is providing much needed support to assist IPTF in fulfilling its human rights mandate; these efforts are valuable and should be enhanced.

Organisation for Security and Cooperation in Europe

OSCE is both *"invited"* under the Peace Agreement to monitor closely the human rights situation in Bosnia and Herzegovina and to provide assistance to the Parties in creating social conditions under which elections can be effective. OSCE's principal efforts are dedicated to initiatives to improve the internal situation in the country by implementing its 12-point democratisation strategy. In addition, OSCE maintains a major programme of monitoring and reporting on human rights conditions with a view to intervening on behalf of individuals and bringing an end to recognisable patterns of human rights abuses. OSCE's human rights component has a staff of 40, including the human rights officers who work with the Federation Ombudspersons. These officers are deployed in the mission headquarters (7), in six regional centres (13) and in 15 field delegations (20).

Concerns were initially raised over the size of the OSCE human rights monitoring mission, the extent of the staff's human rights experience, and the lack of human rights training provided by OSCE prior to deployment of its monitors. These questions have, however, largely been resolved in OSCE's favour. As the only intergovernmental organisation with a substantial number of specifically-designated human rights field monitors, OSCE has provided useful, professional reporting in both the Federation and the Republika Srpska. Also, OSCE's mandate encourages active intervention on human rights issues by its monitors. Despite their best efforts, however, the limited number of OSCE monitors has meant that the picture provided by their reporting is at best an accurate snapshot of the human rights situation, rather than a comprehensive survey of the human rights field. In addition, OSCE's lack of human resources has limited its ability to address more time-consuming human rights cases, for example, forced evictions. Finally, OSCE has in many ways subsumed its human rights mandate within the framework of its elections responsibilities, leading it to focus on civil rights which may mean other pressing issues receive less attention.

United Nations High Commissioner for Refugees

UNHCR's involvement in the field of human rights is three-fold: (1) coordination with other agencies involved in the field of human rights; (2) returns of displaced persons and refugees; (3) freedom of movement. UNHCR works with intergovernmental and national human rights organisations and institutions, both at the Sarajevo level and through its field offices. With regard to returns of refugees from abroad, UNHCR has established three benchmarks for the lifting of temporary protection by host governments: compliance with the military provisions of the Peace Agreement; the passing of comprehensive amnesty laws; and the functioning of effective human rights mechanisms. While some progress has been made, UNHCR believes that the right conditions have not been established to ensure a safe and dignified return. UNHCR maintains that the fundamental human right of freedom of movement is an overriding benchmark governing the return of refugees and displaced persons. To address the current blockages in this area, UNHCR is promoting a number of confidence-building measures, such as visits by displaced persons and the establishment of bus services across the IEBL.

UNHCR's long-standing experience in Bosnia and Herzegovina is a valuable resource. UNHCR staff work with, and have organised, interagency working groups at the field level. This type of coordination is essential to ensure that UNHCR's extensive expertise is not under-utilised. In addition, UNHCR may wish to rely more heavily on the human rights reporting of other organisations, for example, to strengthen the human rights assessment provided in the repatriation information reports it is preparing to inform refugees and displaced persons of current conditions in various municipalities.

United Nations High Commissioner for Human Rights

The UNHCHR's Field Operation in the former Yugoslavia supports the work of the Special Rapporteur and the Expert on Missing Persons, including preparation of missions and providing assistance on the issue of missing persons. In addition, two human rights experts have so far been made available by the UNHCHR to assist the High Representative through the Human Rights Coordination Centre. Finally, the UNHCHR has organised a substantial programme of human rights monitoring and law enforcement training for the UN IPTF under which some 900 monitors will participate in training before the programme's conclusion in early August. The UNHCHR Field Operation provides useful support and expertise for other organisations active in the human rights field. The Operation's impact, however, has been circumscribed by budgetary constraints, which have delayed and limited the extent of the UNHCHR's contribution.

European Community Monitoring Mission

The 20 ECMM teams deployed throughout Bosnia and Herzegovina provide frequent and helpful reporting on humanitarian and human rights matters. Their work on humanitarian and human rights matters is assisted by four humanitarian officers in HQ Zagreb, one in the Sarajevo Regional Centre, and one in each of 5 Coordination Centres. The Coordination Centres and the Regional Centre in Sarajevo assess the human rights situation on a weekly basis. ECMM teams provide valuable field expertise and support for other international organisations. ECMM also works closely with OSCE on human rights issues.

Council of Europe

The Council of Europe has instituted a multi-faceted program which provides human rights support to institutions and individuals in Bosnia and Herzegovina. Their efforts include: a seminar scheduled for late June on the European Convention on Human Rights; provision of human rights documentation; study visits for local officials and lawyers; and provision of constitutional and legal expertise through the Venice Commission.

Other Organisations

In addition to the intergovernmental organisations outlined above, a number of international and local non-governmental organisations are active in the human rights field in Bosnia and Herzegovina. Foremost among these institutions is the International Committee of the Red Cross, which has worked throughout the war to protect and assist victims of armed conflict. The ICRC has been actively involved in protecting prisoners held in relation to the conflict and monitoring and facilitating their release. In addition, the ICRC plays a lead role in working on cases of missing persons through its traditional tracing activities and by chairing the Working Group on the Unaccounted For through which the Parties are called upon to work together to address this important issue. Human Rights Watch/Helsinki has recently opened an office in Sarajevo; other international human rights monitoring organisations, including Amnesty International and the International Helsinki Federation, send frequent missions to the country. In addition, the International Crisis Group has established a mission in Bosnia and Herzegovina which is actively involved in human rights issues.

Human rights monitoring and protection activities by local NGOs continue to grow, although efforts are still concentrated in the Federation and no organisation has yet established an effective nationwide presence. A number of international organisations have taken on the important task of providing support to the burgeoning NGO community, including the International Council of Voluntary Agencies and OSCE.

Overall Assessment

With the piecemeal framework for human rights monitoring and protection established in the Peace Agreement as a backdrop, the current monitoring situation in Bosnia and Herzegovina is

surprisingly good, due in large part to the willingness of implementing organisations to derive new and more expansive methods for coordinated action. Despite the particular concentrations of the major human rights implementing organisations based on their specific mandates, their combined reporting provides a fairly thorough and accurate picture of the human rights situation throughout Bosnia and Herzegovina. The most significant gaps at this mid-term point involve not gathering of information but responding to the human rights violations revealed by that reporting. Both in the field and at the headquarters level, new methods of information-sharing, cooperation and coordinated action are being devised to address this shortfall. Nevertheless, there are substantial gaps which must be addressed in the coming months. Some of the more problematic areas include:

Detention

As noted above, information concerning detention is now sporadic and IPTF's efforts to gather comprehensive, timely data are essential steps to address this problem. While the number of unregistered detainees is believed to be relatively small, compiling thorough information on detainees will also help address frequent reports that hundreds of those listed as missing are detained in *"hidden"* camps.

Trial Monitoring

Although its mandate extends to monitoring judicial systems, IPTF lacks the resources and expertise to cover this important area effectively. Efforts are underway within the Human Rights Coordination Centre to bring together organisations with resources to address monitoring of the legal system, but it remains to be seen whether this gap can be filled through the combined efforts of a group of intergovernmental and non-governmental organisations.

Legal Advice and Representation

While several groups provide legal support for a relatively small number of individuals, there is no systematic effort in place to inform people concerning their rights and to provide legal assistance and representation in cases implicating basic human rights. This problem is intensified by the limitations on freedom of movement discussed below, which restrict the ability of persons arrested in one entity to retain an attorney from the other entity. Further attention needs to be devoted by intergovernmental and non-governmental organisations to this problem in order to build confidence in a much-battered legal system and to ensure that people are aware of the many rights and remedies afforded to them following the Peace Agreement.

Missing Persons / Exhumation

The establishment of the ICRC Working Group on the Unaccounted For and the Expert Group on Exhumation and Missing Persons chaired by the Office of the High Representative are substantial steps to ensuring that this important issue is addressed thoroughly and with the urgency it deserves. The success of these efforts depends upon a continuing commitment by the Parties, intergovernmental organisations and NGOs to work together on this highly-charged issue, as well as on support from the international community, especially to fund the creation of a team of international forensic scientists within the Expert Group to monitor exhumations, to establish an antemortem database and to assist with exhumations where other means of investigation have proven unsuccessful or where there is reason to believe that exhumation will provide an efficient means for resolving cases.

Human Rights Implementation

The Parties have failed to take many of the concrete steps required for effective implementation of the human rights provisions of the Peace Agreement. Little has been done by the Parties to suspend enforcement of laws which are contrary to the rights set forth in the Peace Agreement and, other than in the field of constitutional reform, even fewer steps have been taken to incorporate the *"highest-level of internationally recognised human rights"* into the legal system. The human rights standards which the Parties agreed to uphold in the Peace Agreement remain largely unrealised, abstract promises with little impact on the day-to-day lives of people in Bosnia and Herzegovina. Some of the pledges made in the human rights field which portended the greatest benefit to individuals have simply not yet been met, as is the case with implementation of comprehensive amnesty laws and allowing freedom of movement. In other areas, authorities of both entities have taken steps which directly undermine basic human rights and threaten the remnants of the country's multi-ethnic society, as evidenced most dramatically today by the threatening situations faced by many minority residents in the areas of the Sarajevo suburbs and Teslic.

Legislative and Institutional Reform

The failure of the Parties to adopt and fully implement adequate amnesty laws remains a substantial obstacle to freedom of movement and return of refugees and displaced persons. The Republika Srpska Parliament has considered, but has not yet adopted, an amnesty law. The Federation Parliament adopted an amnesty law on 12 June. The legislation adopted was modelled after the Bosnia and Herzegovina law, which itself contained several significant flaws: (1) it suspends, rather than eliminates, the relevant criminal provisions; (2) there is an 8 day gap in application of the legislation – it applies only to offences up to 14 December and the end of the state of war was not declared until 22 December; and (3) those covered by the amnesty must request that the amnesty to be applied to them. In addition, UNHCR states that in certain areas the BiH amnesty law has not been fully respected, including the arrests of returnees from the Kuplensko camp in Croatia on war crimes allegations and the reported initiation of criminal proceedings in Sarajevo courts against some 83 Bosnian Serb army soldiers.

Neither entity has complied with the requirement that it immediately repeal domestic legislation and administrative practices with discriminatory intent or effect, as evidenced by the continuing enforcement of property legislation with widespread discriminatory effect, described in greater detail below. In addition, the Parties agreed last February in Geneva to make necessary changes in legislation promptly to ensure that socially-owned apartments would be left available to those who have the right to reside in them and who reoccupy them within six months. Not only have such changes not been made, but there is also substantial evidence to document a pattern of behaviour by local authorities directly contrary to the Geneva principle.

In the crucial field of criminal law, applicable laws and procedures have not been brought into conformance with international human rights standards. While a complete review of the criminal and criminal procedure codes could well take longer than half a year, there is little evidence that such a review is underway or that more limited reforms are being implemented in the interim. For example, despite the requirement in Article 1 of the Second Optional Protocol to the International Covenant on Civil and Political Rights that the death penalty be abolished, no steps have been taken within Bosnia and Herzegovina to fulfil this commitment, and persons remain under sentence of death. Police practices which violate internationally recognised standards have also continued unabated, including arbitrary arrest and mandatory *"informational interviews"* in which persons are called in for questioning on less than reasonable grounds.

Both the Federation Constitution and the Peace Agreement established new legal structures and required certain reforms to the judicial system. Although efforts are underway to implement these changes, it will be a long-term process and one determined by the level of resources dedicated to it. Within the Federation, a continuing problem is the integration of the legal structures in areas controlled by Bosnian Croats into the Federation judiciary. While the Constitution of Bosnia and Herzegovina provides for a free and independent judiciary, there are numerous obstacles to achieving this goal. Prior to the war, the legal system was subject to significant political influence, and the judicial structures that were put in place by the Parties during the conflict incorporated many of the weaknesses of the pre-war system. As a result, the leading political Parties

III. continue to exert considerable influence over the legal system, particularly regarding judicial appointments. Party affiliation and political connections appear to weigh heavily on the appointments process, and the ruling parties have attempted to stack the courts with party loyalists.

In general, the Parties distrust any judicial structure outside their own, and do not believe it is possible for a person of a different ethnicity than the detaining authority to receive a fair trial on so-called *"enemy"* territory. A related problem is the lack of transparency concerning cases under the jurisdiction of military court system. The procedures for determining whether a case should be tried in a military or civilian court are unclear, and the number of on-going cases in the military courts is unknown.

Creation of Conditions for Human Rights Organisations to Operate Effectively

The ability of human rights institutions to function effectively without interference or harassment is a crucial measure of the human rights situation in a country. In this regard, Bosnia and Herzegovina has achieved considerable progress. Human rights monitors have been able to travel without restriction in all areas of the country, although occasional blockages have been reported. There are few reports of threats or harassment of international monitors, with the notable exception of the Mostar area. For example, in April an Italian WEU officer was shot in the neck by an off-duty Croat policeman who reportedly demanded that the officer turn over two Bosniak policemen riding in the car. International organisations have experienced some difficulties in gaining access to prisoners (especially for confidential interviews) and detention facilities, but authorities in both entities have been fairly responsive when these problems are reported to them. In particular, IPTF has been given widespread access to detention facilities and prisoners in both entities, including confidential interviews; however, IPTF continues to press authorities in all areas to standardise requests for immediate access to detention facilities and case files on individual prisoners.

A more significant obstacle to human rights investigations has been the difficulties associated with obtaining relevant laws and procedural rules. This problem is especially acute in the Republika Srpska where, for example, one local official refused to copy RS legislation for an international human rights monitor, claiming that permission from the Minister of Justice was required. At the same time, local authorities, including police, remain largely unaware of the requirements imposed upon them by the Peace Agreement. International monitors have been forced to assume an educational role, first informing the relevant authorities of the decisions made by their superiors, then seeking implementation of the agreements.

While there are reports of harassment and intimidation directed at some international and local NGOs involved in human rights, most organisations appear to be able to operate fairly freely. Given the nascent nature of the NGO community, especially in the Republika Srpska, it remains to be seen whether the relatively tolerant climate persists as the activities and profile of human rights organisations grows. One possible indicator is the fact that several incidents involving threats directed at the Federation Ombudspersons, who have gained prominence in the past year, have been reported recently.

One crucial element of cooperation with human rights institutions remains substantially deficient. The response by authorities to decisions or interventions by human rights monitors in cases of human rights violations is often unduly delayed and frequently nonexistent. For example, the Federation Ombudspersons have tried without success to seek equitable resolution to hundreds of property cases. In other cases, interventions by international monitors to seek the release of persons arbitrarily detained are met with blatant acknowledgement of the unfounded nature of the detention, and offers to "exchange" the detainee for others who are allegedly wrongfully detained by another party. There seems to be little recognition that such exchanges are inappropriate, in fact unlawful, in the post-Dayton environment. Local officials are, in many instances, able to act in an entirely arbitrary manner with absolute impunity.

The lack of cooperation by Republika Srpska officials with the International Criminal Tribunal for the former Yugoslavia is illustrative of this problem and is itself another substantial shortcoming in human rights implementation. At the same time that the Bosniak side of the Federation became the first party to surrender persons under indictment of their own dominant ethnicity to the Hague, the Republika Srpska continued its policy of blatant defiance of ICTY and the Peace Agreement by allowing persons indicted for war crimes to remain in high political and military office. In addition, both the Republika Srpska and Federation authorities in the areas controlled by the HVO have failed to apprehend and surrender indicted persons to the Hague.

Release of Prisoners

Under Annex 1A of the Peace Agreement, the Parties were required to release all combatants and civilians held in relation to the conflict no later than thirty days after the Transfer of Authority (19 January). As of that

date, there were 1183 prisoners being held. Substantial releases did occur in late January and February, but as of mid-March approximately 219 prisoners were still detained on a variety of pretexts. The parties complied with their obligations only as a result of intensive pressure, including the possible sanction of denying non-complying Parties the ability to participate in the Brussels donors conference. To secure the additional prisoner releases, the High Representative, along with ICRC and IPTF, established a process under which the Parties agreed to send files on all persons held on suspicion of war crimes to ICTY and release the remainder. The Parties also agreed that they would release any prisoner if the Tribunal concluded that evidence submitted was insufficient to warrant further detention. All three Parties complied by sending files on all unreleased prisons to the Hague for review; a total of 29 cases involving ICRC-registered prisoners were sent. Without being requested to do so, the Parties added files relating to eleven additional persons who had been arrested on suspicion of war crimes after 19 December (and thus who were not covered under Annex 1A). In a series of decisions issued over the next two months, the Tribunal found insufficient evidence in 26 cases and declined to review the files sent in three cases on jurisdictional grounds. In the remaining eleven cases, the Tribunal found that the evidence submitted was sufficient to warrant investigation and detention on war crimes charges, but did not assert its own jurisdiction in any of the cases. In each case in which a decision of insufficient evidence was issued, the detaining party complied by releasing the prisoner involved.

There remain an unknown number of unresolved cases involving prisoners detained in relation to the conflict. Of primary concern are prisoners held from before the Peace Agreement entered into force who have not been registered and who were not, therefore, included in the process described above. In one particularly egregious and well-known case, a Croat priest from Prijedor and his parents have been detained since September 1995. Republika Srpska authorities have recently acknowledged that the priest is being held in *"private"* detention in the Prijedor area and have pledged that he will be released. It is impossible to quantify, however, the number of other cases of this sort which remain outstanding. In addition, both Parties have arrested a number of people, allegedly on suspicion of war crimes, since 19 December 1996. As noted, 11 of these files were sent to the Hague in mid-March, but a small number of additional arrests have occurred after that date. These arrests are clearly contrary to the agreement reached in Rome on 18 February by which the Parties agreed that persons who have not been indicted by the Tribunal *"may be arrested and detained for serious violations of international humanitarian law only pursuant to a previously issued order, warrant or indictment that has been reviewed and deemed consistent with international legal standards by the International Tribunal."* Despite efforts to make this pledge operational, the Parties have failed to submit the lists and files required under the Rome agreement to the Tribunal, and have continued to arrest persons on suspicion of war crimes.

IV. Protection Of Fundamental Rights And Freedoms

Non-discrimination / Protection of Minorities

The fundamental goal of the Peace Agreement is the reestablishment of a multi-ethnic Bosnia and Herzegovina through the creation and strengthening of institutions which respect the rights of all citizens, regardless of ethnicity. While it would be unrealistic to expect that ethnically-based fear and hatred would disappear in the six months since the signing of the Peace Agreement, the Parties have not demonstrated a willingness to take steps necessary in order to protect minority populations. Although in certain areas like Tuzla mixed communities coexist relatively peacefully, there continues to be an unacceptably high number of incidents of harassment and discrimination directed against minority populations throughout Bosnia and Herzegovina. Also, in too many cases there is evidence of tacit or direct involvement of the authorities.

For the most part, instances of discrimination and harassment are clearly designed to intimidate remaining ethnic minorities or political opposition figures. While such harassment may be subtle and indirect (e.g. threatening telephone calls), there have been numerous well-documented instances of overt discrimination or violence; incidents commonly cited include forced evictions, beatings, and arbitrary arrests/detention. In many cases, authorities are unresponsive to complaints of violations against minority populations.

The series of developments in the Sarajevo suburbs is an instructive example of the types of problems encountered by ethnic minorities in Bosnia and Herzegovina. In the lead-up to the transfer of authority in

the suburbs to Federation control, Republika Srpska officials encouraged the departure of remaining Serbs from the Sarajevo area; at the same time the media in both entities created a climate of fear concerning the pending transition. The result of this pressure from all sides was predictable – approximately 60,000 Serbs left the suburbs in February and March. There were numerous reports of intimidation and harassment of those who indicated a willingness to remain in the suburbs after 20 March; many of these long-term Sarajevo residents were targeted by organised gangs of departing Serbs. A common intimidation tactic involved late-night visits to homes of persons who did not appear to be making preparations to leave. In such cases these individuals were asked repeatedly when they planned to leave, and others were told that their apartments would be looted or burned if they did not leave. The Republika Srpska police were generally unwilling to intervene in such cases, contributing to the climate of uncertainty and fear among the population of remaining Serbs. At one point, UNHCR set up a safe house in Grbavica for persons who were too afraid to spend the night in their own homes. The break-down in law and order in the last days before the transfer of authority resulted in numerous acts of violence and destruction of property that went unpunished. However, despite these problems, 8,000 to 10,000 Serbs decided to remain in the suburbs under the authority of Federation officials.

The arrival of Federation police did not, however, result in a significant improvement in the situation for most of the Serbs who remained in the suburbs. Discrimination and harassment of non-Bosniak residents has continued, and the number of such incidents has increased considerably since early May. The deterioration in the security situation appears to be related to the influx of displaced persons from eastern Bosnia to the suburbs, although the number of incidents reported involving the active participation of Federation police is also on the rise. In one case in early June, a Serb man who had been beaten on several occasions by a Bosniak gang in Grbavica sought the help of Federation police only to be beaten by police at the station; the man has since relocated to Republika Srpska. Also, two *"war crimes"* arrests in contravention of the *"rules of the road,"* have contributed to the insecurity of remaining military age men. Federation police have at times been unwilling to intervene in cases involving non-Bosniaks, even if present during the commission of a crime. In Mostar, the level of tension and hostility between East and West remains palpable, and the active involvement of the local authorities in fuelling ethnic tensions has kept Mostar a divided city.

In Republika Srpska, abuse and mistreatment of minorities remains a serious problem which the political leadership has been largely unwilling to address. There are numerous reports of ethnic minorities being subjected to extreme forms of harassment and intimidation, strikingly similar to the tactics used during the conflict. A recent high-profile example is the forced expulsions of minority residents from villages in the Teslic municipality in May-June. According to information gathered in interviews with persons who fled the area, gangs of masked Serbs (mainly displaced persons) visited the homes of remaining Bosniaks and Croats terrorising families until they departed the area; to add insult to injury, fleeing residents were forced to pay a 10 DM departure fee. There were also reports that mines were planted in yards, and grenades thrown at homes. Despite high-level interventions with Republika Srpska officials, concrete steps to protect remaining minority residents have not been taken, nor have the authorities taken action to create conditions conducive for return of persons who fled in fear.

More subtle forms of administrative discrimination are also widespread, which contributes to an inhospitable environment for minorities or those with opposition political views living in those areas. There have been several reports of ethnic minorities being forced to sign *"loyalty oaths"* in order to be rehired by their pre-war employers. Also, human rights monitors have documented numerous cases of dismissal or threats of dismissal from employment apparently on the basis of political or ethnic factors. In one case in mid-May, the Editor-in-Chief of one publication was dismissed and replaced with an SDA member who reportedly did not have experience as a journalist. Similarly, in recent months, police officers in the Republika Srpska municipalities of Prijedor and Novi Grad were replaced because they were considered insufficiently loyal to the SDS. There is also substantial evidence that party affiliation and loyalty are advantageous, if not necessary, to advance within a company or industry. In terms of educational discrimination, many minority families are understandably unwilling to send their children to school with nationalist-oriented educational programs.

Despite these problems, there are numerous efforts underway by intergovernmental organisations and NGOs to foster reconciliation and teach ethnic tolerance. Through the Joint Civilian Commission/Sarajevo, the authorities have agreed to put structures in place to ensure equal treatment of residents in the Sarajevo

area. OSCE and the Office of the High Representative worked closely together to ensure that the decision to reopen Serb schools in the Sarajevo suburbs was implemented as agreed to prior to the transfer of authority. Similarly, IPTF Region South has instituted a special community policing unit to encourage Sarajevo residents to refer problems to IPTF. In Teslic, IFOR and IPTF have begun joint patrols in more remote areas to improve security and as a confidence-building measure.

Freedom of Movement

Both the Constitution of Bosnia and Herzegovina and the Peace Agreement recognise freedom of movement as a fundamental right, and one which is particularly important to conducting elections. Overall, considerable progress has been made on establishing freedom of movement between the entities since the signing of the Peace Agreement. Compared to restrictions in place during the conflict, many individuals and small groups have generally been able to travel throughout most areas of Bosnia and Herzegovina for both private or commercial purposes. For example, in an informal survey over a two-day period in May, IFOR counted approximately 28,000 inter-entity boundary line (IEBL) crossings; IPTF and ECMM reports support this conclusion.

This picture, however, conceals the fundamental, unresolved problems which still characterise the situation regarding movement in Bosnia and Herzegovina. Restrictions on freedom of movement remain one of the most pressing problems, with serious implications for return of refugees and elections. There continue to be numerous incidents – some violent – in which local authorities or others target persons attempting to cross the IEBL or individuals travelling through areas which are dominated by an ethnic group different than their own. The fear engendered by these incidents is itself a significant obstacle to free movement. For example, in late May, a uniformed Croat police officer stopped a Bosniak couple who were driving through a predominantly Croat area near Zepce, and reportedly asked why they had only Bosnian registration documents. After the police officer returned the car registration and identity documents and the couple began to drive away, he fired on the vehicle, shooting the driver in the back of the head. The victim died several days later; after IPTF intervention, the police officer and an additional suspect involved were arrested by Federation authorities.

In many cases, even those who succeed in crossing the IEBL experience unnecessary delays and harassment; common forms of harassment include verbal or physical abuse or confiscation of identity documents and/or car registrations. Although police are not allowed to establish permanent checkpoints, police continue to set-up unauthorised checkpoints along the IEBL, most often through the use of temporary or mobile checkpoints. Freedom of movement is also hampered by the perceived risk of arrest or detention without charge, as well as the unavailability of information on who is being sought for war crimes and information concerning amnesty.

Attempts by organised groups to exercise freedom of movement have met with mixed results. Since the signing of the Peace Agreement, UNHCR has successfully arranged visits of small groups across the IEBL to inspect property or visit cemeteries. However, other visits have been thwarted by angry groups of local residents – sometimes organised by political leaders, prominent officials or even the police – who have attacked bus convoys with rocks or assembled to confront visiting groups. During the lead-up to the Bajram holiday (mid-to-late April), the first attempts at large-scale IEBL crossings resulted in a number of violent confrontations between local residents and groups attempting to visit their pre-war residences. In several incidents, IFOR was forced to fire warning shots in order to disperse crowds. In a high-profile incident on 29 April, two persons were killed and five injured during a confrontation between Bosniaks and Serbs between Lukavica Jijeka and Sjenina; several additional people were injured when they attempted to cross a marked mine field.

Particularly problematic have been attempted visits to locations where politically-hardline local authorities are openly opposed to the return of refugees and displaced persons. For example, in Prijedor, the police chief is known to be openly hostile to visits by organised groups and on several occasions Republika Srpska police have turned back persons attempting to visit the area; well-documented reports indicate that the Mayor of Prijedor incited the residents by making inflammatory statements on Radio Prijedor. Large hostile crowds have gathered along the routes which visitors are required to take, creating substantial risks of violent attacks. In areas under Croat control, displaced persons have been obstructed by Croat police and residents from visiting their pre-war villages and grave sites, despite close supervision by international

agencies.

Attempts to establish inter-entity bus services have encountered significant difficulties. On several occasions, Republika Srpska authorities blocked buses travelling the designated routes. After several delays however, a commercial inter-entity bus service has been introduced to link the Sarajevo suburbs with nearby Lukavica (inside Republika Srpska), and after some initial difficulties, the service is well underway with four scheduled trips per day. The number of riders has been so high that the company which runs the service is considering adding another bus to the route. Attempts to establish commercial service from Banja Luka were thwarted, UNHCR has been able to establish regular service on that route, but only through the use of buses with UNHCR license plates and international drivers.

Under the structure of the Joint Civilian Commission chaired by the Office of the High Representative, a Working Group was established to address policy issues related to freedom of movement. Through the Working Group, the Parties have officially recognised all license plates and registration documents throughout Bosnia and Herzegovina; other issues, such as recognition of identity documents and unauthorised checkpoints are addressed in the Working Group. Also, in order to avoid potentially violent incidents associated with cross-entity visits by groups of displaced persons and refugees, UNHCR has devised a set of guidelines which were agreed to by the Parties in order to facilitate organised, safe visits across the IEBL. *Arbitrary Detention / Fair Trial* Authorities in both Federation territory and Republika Srpska continue to detain arbitrarily numerous persons in contravention of international human rights standards, including Articles 5 and 6 of the European Convention on Human Rights. In many instances, arrested persons are not informed of the reason for their arrest, nor are they provided access to legal counsel. The fact that many persons throughout Bosnia and Herzegovina are unaware of their rights contributes to frequent violations of these international standards. In some of these cases, persons are released after 2-3 days in detention, although IPTF and other international organisations have reported several cases which remained unresolved for months. In some cases, these arrests are clearly designed to harass and intimidate ethnic minorities or political opposition figures, although the police also pick people up seemingly at random for questioning.

In addition, there is a smaller number of documented incidents of arbitrary arrest or *"hostage taking"* by the military in which persons are held outside the scope of the normal judicial structures. This problem is exacerbated by the fact that the war-time mentality of retaining prisoners for exchange purposes persists. For example, in February three persons were arrested in Kiseljak and transferred into HVO-custody in Mostar; all three remain in detention without charge and there is no evidence that judicial proceedings are underway. Numerous attempts to secure the release of the three have been unsuccessful, in large part because the detaining authority hopes to exchange them for Croats who are serving criminal sentences elsewhere in Federation territory. Similarly, particularly within the Federation, there is a tendency toward *"tit for tat"* arrests, which has the effect of escalating tensions between the Parties involved. A high-profile example was the February arrest of Bosniak journalist Hidajet Delic, who was arrested by Republika Srpska authorities in apparent retaliation for the arrest and subsequent extradition of General Djukic and Colonel Aleksa Krsmanovic to ICTY custody in the Hague; repeated interventions by the Office of the High Representative, OSCE and UNMIBH resulted in Delic's release in early March.

Although reports of the existence of numerous *"private"* detention facilities, particularly in Republika Srpska, continue to surface, improved access to all areas within Bosnia and Herzegovina has led international monitors to conclude that it is unlikely that large-scale detention facilities exist, but that smaller non-traditional facilities (e.g. ghost houses) may be used. There are also numerous unconfirmed reports that the military/police or criminal gangs have detained an undetermined number of persons without charge in facilities under their respective control.

The issue of arrests of persons suspected of *"war crimes"* and other criminal violations committed during the conflict is addressed elsewhere in this report. However, given the large number of men who served in the armed forces, the lack of clarity on who is being sought for war crimes has had serious implications for freedom of movement. The lack of adequate information on amnesty also contributes to this atmosphere of uncertainty and fear on the part of the populace.

Although the Constitution of Bosnia and Herzegovina provides for a free and independent judiciary, including the *"right to a fair hearing in civil and criminal matters,"* these rights are not fully respected in

practice. The judiciary continues to be subject to undue influence by the leading political parties. For those seeking legal redress through the court system, therefore, the lack of an independent judiciary presents a serious obstacle to a person's ability to receive a fair hearing. Although there is no statistical data comparing decisions in cases involving ethnic minorities versus the majority population, there is a widespread perception that judges discriminate against ethnic minority defendants. A discussion of the status of judicial reforms is found elsewhere in this report.

Many of the problems with the judiciary will be addressed as the structures envisioned in both the Federation Constitution and the Peace Agreement are implemented, but this effort will be a long-term process. In the interim, numerous international organisations and NGOs are working to protect citizens' rights within the judicial system and to develop independent judicial structures that are perceived as such by the Parties and ordinary Bosnians. In the Federation, the creation of the institution of the Federation Ombudsmen has been an invaluable resource for individual complainants who are seeking legal redress for their legal problems. Similarly, the Human Rights Commission, which was established in Annex 6 of the Peace Agreement, has published its rules of procedure and is now taking individual complaints of human rights violations. There are also several proposals to develop internationally-funded legal advice centres, which would advise persons of their rights under the Peace Agreement and relevant Constitutions and refer individuals to appropriate institutions for judicial relief.

Right to Return / Property rights

A fundamental objective of the Peace Agreement is to ensure the safe and voluntary return of refugees and displaced persons to their homes of origin. Property rights are recognised as central to achieving this objective, and the Peace Agreement calls on the Parties to repeal domestic legislation and administrative practices which may interfere with the right to return. Despite these provisions, the vast majority of human rights complaints reported by international human rights monitors are related to property rights violations. According to statistics compiled by the International Centre for Migration Policy Development (ICMPD), an estimated 100,000 to 200,000 people have been deprived of their property, as a result of laws which are inconsistent with the rights enumerated in the Peace Agreement. Both the Ombudsperson and the Federation Ombudsmen have reported that approximately 70% of all claims they have received are property-related. The large number of these types of disputes is due in part to the mass dislocations of persons and destruction of property associated with the ethnic cleansing campaigns of the war. As a result, the allocation of scarce housing has become a highly sensitive issue, and one with significant political ramifications.

These problems are exacerbated by enforcement of laws passed during the war to regulate the use of abandoned property, which were subsequently amended in a manner that has had the practical effect of denying persons the ability to return to their pre-war homes. The most common examples involve laws related to *"socially-owned"* property. In a typical Sarajevo case, an application by a refugee or displaced person interested in reoccupying his or her pre-war apartment would be rejected by the municipal authority under Article 10 of the Law on Abandoned Apartments. Under this provision of the law, holders of occupancy rights had to return and reoccupy their pre-war apartments within 7 days, or 15 days if located abroad, after the cessation of the State of War (22 December 1995). Needless to say, this requirement posed a virtually insurmountable obstacle for refugees and displaced persons who would have had to reoccupy their homes by 6 January 1996. Also, in many cases, temporary occupancy rights have been granted to displaced persons, resulting in competing claims for the use of a particular apartment.

Property disputes also form the basis of numerous incidents of abuse and discrimination; anecdotal evidence suggests that local officials sometimes apply property laws arbitrarily either to manipulate the ethnic make-up of a particular area or to falsely declare apartments *"abandoned"* in order to evict minorities. For example, in Busovaca in April, municipal authorities refused to recognise the occupancy rights of 95 Croat families who had lived in military-owned apartments prior to the war; these flats were subsequently allocated to other families.

In Republika Srpska, property laws are similarly used to deny persons the ability to return to their pre-war homes. The RS Law on Deserted Property does not differentiate between private or socially-owned property, and although the law allows for the speedy return of vacant property to the owner/holder of occupancy rights, apartments that are occupied are subject to a *"reciprocity"* clause. Under this provision, the

temporary occupant must willingly depart the dwelling before its rightful owner/occupant can return – unlikely given the large numbers of displaced persons in Republika Srpska and the lack of adequate alternate housing. Other problems commonly cited involve the sale/occupancy rights of previously JNA-owned apartments, and the issue of contracts of exchange by owners of private property between the entities.

Although certain statutes are clearly inconsistent with the Peace Agreement, the Parties have resisted repealing or even suspending enforcement of these laws. This is due in part because their priority is to provide shelter to those who remained in Bosnia and Herzegovina during the war, which reflects an inclination to cater to natural constituencies rather than make decisions which might be viewed as favouring *"minority"* groups. This is especially true in advance of the upcoming elections as the Parties facilitate the relocation of displaced persons to certain areas to strengthen political support. For example, since early May there has been an influx of thousands of refugees from Eastern Bosnia (via Tuzla) into the Sarajevo suburbs, which has resulted in heightened tensions between these new arrivals and the remaining Serb population and intensified competition for limited housing stocks. Pressure for housing and related disputes also has the effect of discouraging Serbs from returning to the suburbs.

While it is true that the Parties cannot in every instance guarantee that conditions will exist to ensure the safe return of refugees, the Parties must be held responsible for removing administrative and legal barriers to returns. Although there are a complex set of factors related to return of refugees and displaced persons, problematic property laws must also be addressed in order to ensure that the right of return as stated in the Peace Agreement is practically possible. To date, despite the recognition of the enormity of this problem, the Parties have not taken even the initial steps to develop appropriate solutions.

In response to interest among intergovernmental organisations (UNHCR, OSCE, UNMIBH), NGOs and the Federation Ombudspersons in addressing property issues, the Human Rights Task Force, under the auspices of the Office of the High Representative, established a subcommittee to devise a common approach to address these problems. The subcommittee has met on a weekly basis for several months and has developed an agreed set of principles which should guide efforts to revise existing property laws. Representatives from the participating intergovernmental organisations have met with authorities in both the Federation and Republika Srpska to raise property-related concerns. Also, through the Joint Interim Commission (JIC) and the Joint Civilian Commission (JCC) structures, the Parties have made political commitments to address problematic property legislation. In addition, there have been substantial efforts by all the members of the property subcommittee to heighten awareness of both the international community and the political leadership to this complex and growing problem. Finally, OSCE has prepared and will soon distribute a special report on violations of property rights, which includes an analysis of problematic property legislation in both entities.

Freedom of Thought / Expression / Association

The establishment of a free and independent media is noted in the Peace Agreement as a key factor for holding democratic elections. Although the number of independent media outlets continues to grow, there are numerous obstacles to the development of a truly free and independent media in Bosnia and Herzegovina. The Parties have not taken adequate steps to dismantle the administrative and technical barriers that block the expansion of independent media outlets, nor have they encouraged the development of objective, professional journalistic standards. Independent media lack adequate resources to expand their reach or audiences, and current legislation limits the transmission areas for independent radio and television broadcasts. Also, restrictions on freedom of movement hamper print journalists' ability to report on issues across the entities.

There has been some limited improvement in access to state-run electronic media by opposition politicians, but program content is still heavily skewed in favour of the ruling parties. In many instances, excessive editorialising has resulted in unbalanced news coverage, and media monitors have noted instances of propagandistic slogans during television broadcasts in both entities. For example, TV BiH reporters and hosts continue to use inflammatory generalisations like *"Serb fascist hordes"* to describe persons from Republika Srpska; similar characterisations of Bosniaks are prevalent during Sprska Radio-Televisija broadcasts. In areas dominated by hard-liners, political leaders continue to use inflammatory nationalist rhetoric to maintain tensions within these communities. For example, the local media in Mostar is often

dominated by nationalist rhetoric, and in the Doboj region in Republika Srpska, a radio show hosted by SDS supporters has featured inflammatory anti-Bosniak rhetoric in its program.

The three main political parties (SDA, HDZ, and SDS) continue to dominate the political process, and there are numerous reports of harassment and intimidation of opposition parties in both entities. In Croat-held areas, particularly in West Mostar, opposition parties are reportedly reluctant to organise openly because of fear of retaliation by HDZ supporters. Similarly, the SDS dominance in Republika Srpska is pervasive at all levels of government structures, and the SDS is also intolerant of public opposition political activity. For example, in early March a Socialist Party of Republika Srpska (SPRS) public meeting in Blatnica was violently disrupted by members of a local paramilitary group who beat one of the SPRS members until he was unconscious. In Kalesija (southeast of Tuzla), 159 people were called in for *"informational interviews"* by the military police because they were accused of having heckled the Mayor of the municipality during a public appearance. In the Velika Kladusa area, supporters of Democratic People's Union (DNZ) leader Fikret Abdic are regularly targeted for harassment and abuse by SDA supporters. There are numerous reports of beatings of persons who are returning to the area from the Kuplensko camp; human rights monitors also report instances of arbitrary detention and interrogation of persons believed to be active Abdic followers.

Through the Provisional Election Commission and the Media Experts Commission, the OSCE will have structures in place to address specific incidents of violations of election-related rights (e.g. freedom of assembly and expression) during the campaign period. On the media side, the efforts by the Office of the High Representative and OSCE to establish a Bosnia-wide independent television network is critical to ensure equal access to the media by all candidates during the lead-up to the election. The Swiss/OSCE radio project should also provide much-needed voter education and campaign information during the two months preceding election day.

Protection of the Person

Human rights monitors, including the IPTF receive regular reports of brutality by police and other security forces in violation of international human rights standards. The most common incidents reported are beatings of detainees while in police custody. A large percentage of these reports involve ethnic minority returnees who are detained by police upon arrival. For example, in Velika Kladusa, beatings of Kuplensko camp returnees is considered a *"rite of passage"* which is tolerated by the victims and authorities alike. In a specific incident in Sanski Most in March, ABiH soldiers arrested and beat a Serb man who had returned to the area, accusing him of *"war crimes;"* the man was released after 2 days in custody. In Mostar West in March, a senior-level police officer involved in investigating incidents of violent crime in the area was badly beaten by three masked men using baseball bats.

Given the level of violence and abuse that took place during the conflict, it is likely that the majority of incidents of physical abuse perpetrated by police or the military go unreported. Those who are most often targeted for abuse are ethnic minorities who have often endured high levels of intimidation and violence during the war. Among the populace there is little confidence in governmental structures – especially the police — and persons are often too afraid to report incidents to the IPTF for fear of retaliation.

The Ombudsperson has begun to accept individual claims of human rights violations, including instances of abuse perpetrated by the police. Similarly, IPTF has been actively involved in ensuring that the authorities take appropriate action to punish police officers responsible for committing such abuses.

V. Conclusions And Recommendations

The Parties must take immediate steps to address the substantial shortcomings identified in this report. Resolution of these issues is inextricably linked to creation of a stable peace in Bosnia and Herzegovina. The human rights provisions of the Peace Agreement constitute an interwoven fabric of interdependent steps which must be taken for the peace process to move forward. For example, the Parties' failure to secure full freedom of movement is a major impediment to the return of refugees and displaced persons. While some progress has been made, the severity of recent abuses in places such as Teslic and the Sarajevo suburbs belies the conclusion that with time the Parties will, without outside pressure, make the necessary changes to ensure respect for human rights. Instead, there is troubling evidence of a trend not only to accept, but

also to institutionalise ethnic separation. In order to reverse this trend, the Parties must work actively to create conditions conducive to the return of members of minority groups to their homes and to ensure that vulnerable persons, including those with opposing political views, are able to return and live in safety. In particular, the Parties are called upon to implement the following urgent measures:

Institutional Steps

1. Repeal or suspend property laws which do not respect the rights to return and property enumerated in the Peace Agreement, along with expeditious steps to implement legislation which is consistent with those rights;
2. Adopt amnesty legislation in the Republika Srpska which is consistent with the Peace Agreement, amend the existing legislation in the Federation to comply with the Peace agreement, and implement the amnesty laws effectively throughout Bosnia and Herzegovina, including a broad public information campaign concerning the amnesty;
3. Develop procedures to identify and take action against officials directly or tacitly involved in violation of international human rights standards;
4. Put in place an effective system for distributing information by which the Office of the High Representative and the relevant international organisations are immediately informed of legal developments in both entities, including drafts of proposed legislation;
5. Encourage the development of independent media by removing technical and other barriers that currently block the ability of independent media to expand their audiences and take steps to allow circulation of print media throughout the country; and
6. Improve the quality of electronic media programming by expanding access to state-run electronic media by opposition politicians and diminishing excessive editorialising and attention to the activities of the ruling Parties that can lead to unbalanced news coverage.

Cooperation with Human Rights Institutions and Organisations

1. Permit the ICRC to identify and register all remaining persons who are detained in relation to the conflict, followed by the immediate release of such individuals;
2. Provide UN IPTF with thorough records concerning all detained persons which detail the basis for detention;
3. Take all necessary steps to accelerate and intensify efforts to determine the fate of the thousands of persons who remain unaccounted for, in particular by reporting on the cases submitted within the ICRC Working Group;
4. Exhume graves only after other means of investigation have proven unsuccessful or where there is reason to believe that exhumation will provide an efficient means for resolving cases; in all circumstances, exhumation of grave sites should be performed in accordance with internationally recognised standards, including recognition of the right to decent burial for both identified and unidentified remains, and under the supervision of international experts; and
5. Provide both financial and political support for the human rights institutions created in the Peace Agreement and other important national structures, including the Commission on Human Rights, the Commission for the Real Property Claims of Displaced Persons and Refugees and the Federation Ombudspersons;

Addressing Human Rights Abuses

1. Take immediate steps, including public statements and instructions to local authorities, to send a clear message that harassment, intimidation and discrimination of minority populations, including those who hold opposing political views, will not be tolerated;
2. Investigate and prosecute cases involving abuse of minority residents, including those involving local authorities, to the fullest extent of the law and provide effective protection

for vulnerable persons who wish to remain in their homes;

3. Implement a process under which the cases of persons arrested and held for more than 72 hours after crossing the IEBL would be reviewed to determine whether there is sufficient evidence to warrant detention under international standards and to ensure that all those held in contravention of international standards are immediately released;
4. Put the "rules of the road" agreed in Rome on 18 February into practice by (1) forwarding lists of persons suspected of committing violations of international humanitarian law with supporting evidence to ICTY for review and (2) implementing a process for review by the Tribunal of the cases of all persons arrested in contravention of the *"rules of the road"*; and (3) immediately releasing all persons arrested on suspicion of war crimes for whom files are not sent to the Tribunal or those held in cases in which the Tribunal determines that the evidence presented is insufficient to warrant further detention;
5. Support the work of the Media Experts Commission to investigate and adjudicate claims involving violations of international media standards, including the use of inflammatory nationalist rhetoric, as noted in OSCE's media regulations; and
6. Take steps to facilitate freedom of movement, particularly across the IEBL by (1) instructing local police to protect persons travelling to their pre-war places of residence, (2) supporting UNHCR's efforts to establish inter-entity bus service, (3) investigating to the fullest extent possible, persons actively involved in civil disturbances to infringe upon freedom of movement, and (4) halting administrative policies that arbitrarily punish persons attempting to exercise their rights to move freely (e.g. confiscation of identification documents).

OHR Report of the High Representative
Florence, 13 June 1996