

Human Rights Priorities for 2000

Human Rights Steering Board Recommendations to the Human Rights Task Force

This document sets forth the proposed priorities of the Human Rights Steering Board, comprised of the OHR, UNHCR, OSCE, OHCHR, UNMIBH and the Council of Europe, for the year 2000, for the review and approval of the Human Rights Task Force. It is based upon extensive consultations, through the Human Rights Coordination Centre, with issue-specific Coordinating Groups, Regional Human Rights Working Groups, and Bosnian NGOs.

This document succinctly prioritizes critical areas of concern for the year 2000. Should the reader wish additional background material or detail regarding the scope of these priorities, he or she is referred to three background documents compiled by the HRCC as part of the HRTF Process, which further elaborate the priorities stated here: *Background Document #1: Assessment and Priorities of HRSB Coordinating Groups; Background Document #2: Assessment and Priorities of Regional Human Rights Working Groups; and Background Document #3: Assessment and Priorities of Bosnian NGOs.*

Introduction

After four years of international engagement in Bosnia and Herzegovina, the most serious physical security threats have been eliminated; yet political obstruction persists in nearly every sphere, resulting in a severely diminished overall human security for many ordinary citizens. The promotion of human rights has reached a critical juncture — renewed focus and energy must be directed towards those issues upon which tangible impacts can be achieved, and which will make a meaningful difference and improvement in the lives of all citizens of BiH.

The human rights community must in a concerted and energized manner, tackle the political obstruction which prevents the realization of substantive human rights throughout Bosnia and Herzegovina. It must continue to assist in the establishment of legal frameworks and structures which build respect for the rule of law. Further, the human rights community must continue to strengthen and secure mechanisms which will ensure Bosnian ownership over human rights protection, ultimately leading the way to a self-sustaining peace.

The elimination of discrimination on any prohibited ground is central. Bosnians must be able to expect that regardless of their ethnicity, political opinion, religion, or gender, they are entitled to be treated in a non-discriminatory manner by their officials, be they the police, judiciary, or administrative authorities. Each priority described below will, in year 2000, be tackled with a recognition of presently discriminatory impacts, and a view to their eradication.

In addressing priorities for 2000, awareness and addressing of discrimination based on gender must be a central concern. Human Rights Steering Board members agree to direct particular attention to ensuring that legislative and programmatic developments adequately address the needs of both women and men. Critically, this must include the involvement of gender specialists in the process of legislative review, through the Gender Coordinating Group.

1. Sustainable Futures in BiH: Substantive Justice for All

All Bosnians, whether those who stayed in one location throughout the war, the internally displaced, or those who fled and returned, are affected in their daily lives by a series of legal and political obstacles which render daily life difficult. From the repossession of property, to registering one's residence and receiving an ID Card, enrolling one's children in school, becoming gainfully employed, securing access to pensions, to reconnecting to electricity, water, or telephone networks in each of

these elements of daily life Bosnians are confronted by abuses emanating from the law or from the conduct of their officials. This is particularly so for returnees, either of the majority or minority ethnic groups, minorities who stayed, and those of the “wrong” political persuasion. In 1999, efforts to address each of these interlocking issues were undertaken by the international community, with success in some cases, but leaving much to be addressed in the year 2000.

In the sphere of property repossession, the primary legislation required to secure the right of individuals to repossess their property was achieved through the imposition of more than twenty laws and Decisions by the High Representative. Loopholes previously used by obstructive officials to effectively deny the right to return were closed, paving the way for a shift in focus towards implementation rather than legislative efforts. Multiple occupancy commissions and property commissions throughout BiH delivered preliminary successes in some regions, while police participation at evictions improved implementation in Sarajevo and select other locations. Yet overall, the implementation rate remains extremely low, with a mere five percent reinstatement rate throughout the country, and an even lower rate in Bosnian Croat and Bosnian Serb majority regions. This acts to strangle return possibilities.

Return of families with children, in particular, is further frustrated by the prevalence of discrimination in the education system. Primary and secondary education are divided along ethnic lines, and integration is severely hampered by nationalist rhetoric on all sides. Many children study from foreign textbooks which contain highly offensive material, and throughout the country “schools” are emerging in homes as a response to the failure to establish a multi-ethnic education system. Despite some successes in 1999, such as significant steps towards the eradication of offensive materials from textbooks, the task for the year 2000 and beyond is daunting: to ensure that children throughout BiH are offered not only a quality education, but an education which will foster long term reconciliation and prospects for a sustained peace.

Similarly, as individuals and families return, or as they continue their lives in displacement within Bosnia and Herzegovina, the issue of sustainable livelihoods — both through employment and, where appropriate, through pension entitlements — is ever more pressing. Clearly, lack of employment options is a daunting challenge; discrimination in employment, on the basis of ethnicity, political opinion, or gender serves to accentuate already pronounced challenges to integration. Discrimination in access to pension entitlements remains, despite efforts by the human rights community, a tangible obstacle for many Bosnians. Limited preliminary successes in 1999, such as the conceptualization of the “*Conditional Investment Project*,” the development of “*Fair Employment Principles*” based on international examples, and the enshrining of a comprehensive non-discrimination clause in the recently adopted *Federation Labour Law* offer tools to address the issue of discrimination in employment. Efforts underway to merge the pension funds in the Federation also offer hope. Yet the imperatives for the year 2000 are clear: a concerted effort to address these issues must be prioritized, or the limited post-war progress in terms of return will not be sustainable.

Finally, a critical concern to those returning and minorities who stayed throughout the war is their physical and psychological security. The arrest of war criminals indicted by the ICTY, and support for the exhumations process is essential for the promotion not only of reintegration, but also reconciliation. To date co-operation by local authorities with the ICTY has been poor; with respect to exhumations co-operation has generally been good. The challenge for 2000 will be to assist in ensuring that both processes move forward.

Priorities for the year 2000 must therefore address these core issues: ensuring that Bosnians are able to repossess their homes; that the education system is fundamentally reformed and improved; that all Bosnians are offered better prospects for sustainable livelihoods; and that physical and psychological security is promoted through better state and entity co-operation with the ICTY. As identified more specifically below, this must include ongoing efforts to address administrative and legal barriers to return, which continue, despite ongoing efforts, to pose obstacles. It must also include efforts to ensure access, without discrimination, to primary health care and any other assistance available.

Priority Tasks ⁽¹⁾:

1. Continuation of efforts **to ensure the physical and psychological security of all Bosnians**, through ongoing efforts on police training and integration, independent investigation of human rights violations by local police, close monitoring of targeted investigations conducted by the

local police, and continued support for the exhumations and ICTY liaison. (UNMIBH, OHR, OHCHR)

2. Targeted political interventions to secure **implementation of the property laws** in order to facilitate return of displaced persons. This must include a mechanism to recommend punitive action against officials who obstruct implementation of the property laws. (OHR, OSCE, UNHCR, UNMIBH)
3. **Removal of administrative barriers to return**, through: adoption and implementation of state and entity laws on ID cards and residency registration; political interventions to ensure equality of access to utility provision; and renewed efforts to ensure access to and recognition of public documents. (OHR, OSCE, UNHCR, UNMIBH, SFOR)
4. **Removal of legal barriers to return**, through: amendment of the RS Law on Peace and Public Order; adoption and implementation of the state and entity laws on refugees and displaced persons; and implementation of citizenship laws in BiH and the RS, and adoption and implementation of the same in the Federation. (OHR, OSCE, UNHCR, UNMIBH, CoE)
5. Development and if necessary, imposition of a process leading to the implementation of a joint **framework educational curriculum** throughout BiH, with a view to introducing a new curriculum for the 2000-2001 school year. Continued review and improvement of textbooks, coupled with ongoing interventions to ensure ethnic integration of classrooms, and access of all returnee children to educational facilities. ⁽²⁾ (OHR, OSCE, UNHCR, CoE)
6. Continuation of efforts to **reduce employment discrimination**, on any prohibited ground, through the promotion of "Fair Employment Principles" and the implementation of the "Conditional Investment Project." A review of the RS Labour Law is essential, as is monitoring of the discriminatory impacts of the privatization process. Efforts to ensure the re-employment of pre-conflict employees should be strengthened. (OSCE, OHCHR, CoE)
7. Continuation of efforts to **ensure that pensioners are able to realize their pension entitlements**, through efforts to establish an appropriate legal framework (equalization of entity legislation, adoption of a new law in the RS in line with the BiH Constitution and human rights standards, and adoption of a state level law regulating basic pension rights and co-operation between the three funds), through efforts to unify the pensions funds, and through monitoring of the impending agreement between the three funds. (OHR, UNHCR, OSCE, OHCHR)
8. Political interventions to **ensure that all citizens are able to access electricity, water, gas and telephone**, without discriminatory treatment. Implementation of the July 30 HR Decision of regarding telephone reconnection. (OHR, OSCE, UNHCR)
9. Legislative review and interventions to **ensure non-discrimination in policy and practice with respect to health care provision**, coupled with support for inter-entity co-operation in the field of health care, and support for the creation of affordable health insurance. Support to local authorities to ensure their development of an HIV/AIDS awareness program. (OHCHR, UNMIBH, CoE)
10. Establishment of an evaluation mechanism to determine conditions of return, to ensure that the displaced are able to return in safety and dignity. (UNHCR)
11. Monitoring of the treatment of vulnerable groups such as minority returnees and Roma, **to ensure that benefits are equally available to all sections of the population**. (OSCE, UNHCR, OHCHR)
12. Review of laws and monitoring of implementation of laws, such as the entity amnesty laws, to ensure non-discrimination in law or effect. (OHR, UNHCR, OSCE, UNMIBH, OHCHR, CoE)

2. Legal Frameworks and Structures: Building Respect for the Rule of Law

Despite considerable efforts, impartiality of administration, law enforcement, and of the justice

system, have not been achieved. Each remains distinguished not by fairness, but by arbitrariness of conduct, and is marked by a lack of accountability, and transparency. Monitoring of select court cases reveals political interference; judges are not yet independent or impartial; inter-ethnic crimes such as return-related violence still often do not receive a fair hearing; parallel courts persist in Canton 7; and inter-entity legal co-operation remains difficult in most parts of the country. There is a serious lack of security in courts, and court decisions are not enforced in many cases. Local police can still not be said to be operating in compliance with human rights standards. In 1999, numerous efforts were undertaken by the international community to assist in the establishment of the rule of law in Bosnia, but again, much remains to be done.

Promotion of the rule of law requires not only support to existing structures, but institution- and capacity-building. Indeed such efforts are essential to secure the eventual hand-over from the international community to Bosnians. In 1999, efforts to create an independent judiciary were furthered by the adoption of identical codes of ethics in the Federation and the RS. Laws regulating the selection and dismissal of judges have been drafted and are pending before the respective legislative bodies. Laws aimed at strengthening the independence of judges and prosecutors in the Federation were imposed, but have yet to be implemented. Efforts to address inter-ethnic crimes, such as return-related violence, were furthered by the adoption of a law strengthening the Federation Prosecutor's office in cases which fall within the exclusive jurisdiction of the Federation including crimes with inter-cantonal dimensions (such as organized crime including trafficking in persons). As well, amendments to the Law on the Supreme Court in the Federation provide the first instance jurisdiction to hear the cases that fall within the exclusive jurisdiction of the Federation. However, implementation of these two Federation laws has proved difficult. In the year 2000, these preliminary successes must be carried forward and developed, to ensure that an impartial and independent judiciary becomes a reality.

Laws providing for the establishment of Judicial Training Centres in the Federation and the RS, which would provide a concrete mechanism for the development of a consistent ethic of impartiality within the judiciary, are near completion. The challenge for the year 2000 will ultimately be to operationalize these centres. With respect to the development of a system of legal aid and legal advice provision, progress was made in 1999 with respect to coordination in the international community, and it has been agreed that a law to regulate legal aid provision is essential. In the year 2000, with shrinking funding to some agencies, the challenge will be to ensure that this fundamental mechanism providing access to justice is not irreparably jeopardized.

In the sphere of policing, efforts to restructure and reform the police forces of both entities are underway, but progressing slowly. Inappropriate political influences continue to impede the establishment of professional police forces in accordance with internationally accepted principles of democratic policing. Minority participation in both the Federation and the RS police forces is still limited, with both entities far from meeting minimum representational requirements. In the Federation, efforts to restructure the Federation Ministry of Interior have not yet been completed, and there is continued resistance to remove parallel structures from within Ministries of Interior in mixed cantons. In neither entity has the full potential of the police academies been reached.

The adoption of the BiH *Law on Immigration and Asylum* constitutes an important step towards the establishment of the rule of law and respect for international standards of refugee protection and treatment of aliens. However, a number of steps remain to be taken by the State and Entity Governments, in order for the law to be implemented; drafting of the by-laws and instructions at state and entity level; establishment of the bodies foreseen in the law; training of the officials and translation of relevant documents.

One issue which critically reflects progress within Bosnia towards responsible, impartial administration of justice is local war crimes arrest and prosecution in a manner free from discrimination and bias. On this highly charged issue, there have been some achievements in 1999. The number of local arrests of suspected war criminals in violation of the Rules of the Road has substantially decreased. This has greatly enhanced freedom of movement and has reduced arbitrary arrests. However, co-operation with the ICTY remains generally poor.

In the year 2000, priorities in this field must therefore include: continued efforts to secure the independence and impartiality of the judiciary; ongoing efforts towards police restructuring as required by the Luxembourg PIC; and continued monitoring to ensure that domestic arrests and trials of war criminals are conducted in a manner free from discrimination.

Priority Tasks:

1. **Continue building foundations which promote the rule of law**, through: securing the passage and implementation of the *Law on Judicial and Prosecutorial Service in the Federation* and the *Law on Courts and Judicial Service in the RS*; promotion of the entity laws on judicial training and assisting in the establishment of the Judicial Training Centers in the Federation and the RS; assisting and promoting the amendment of the *RS Criminal Code* and *Criminal Procedure Code*; and promotion of the enactment of witness protection/ anonymity laws in the RS. (OHR, UNMIBH-JSAP, OSCE, CoE)
2. **Continuing building of institutions which will support the establishment of the rule of law**, through: implementation of the *amended Law on the Supreme Court and Law on the Federation Prosecutor's Office*; strengthening the role of the prosecutors in the investigation and trial, relative to the police and the investigative judge while strengthening the role of the defense attorneys in the criminal process; further reviewing the organisation and operation of the Minor Offenses Courts; implementation of the *Law on Court Police in the Federation*, adoption of a *law on court police in the RS*, as well as training in both entities; and continuation of efforts to revive and expand the suspended Commission on Inter-Entity Legal Co-operation Improvement of the mechanisms for enforcement of civil judgments. (OHR, UNMIBH-JSAP, OSCE, CoE)
3. **Continued support for capacity building efforts in the field of rule of law**, through: assisting in the creation of viable and accessible domestic structures for the provision of legal advice, and strengthening the existing Legal Aid Programme (Benefits Commission) by establishing it as a domestic legal institution, in part through the drafting of legal aid legislation and in part by securing funding until it can be handed over to the government; securing longer term sustainable funding for the legal assistance (legal advice and legal aid) sector as a whole through the establishment of a legal assistance fund; increased domestic and applicable international legal information and materials should be made available to judges, practitioners and the general public; continued efforts with respect to the litigation strategy; and finally, the public regarding reforms taking place and their rights under law. (UNHCR, OSCE, OHR, OHCHR)
4. **Continued efforts to restructure the police forces in both Entities**. Efforts will continue with respect to restructuring and reform of local police in accordance with democratic principles of policing and international human rights standards. Specifically, efforts will intensify with respect to police registration, minority recruitment, unifying parallel police structures and establishing common institutions such as the state border service. IPTF registration of all police personnel and the removal of provisional authorization to exercise police powers from police not meeting minimum standards will continue to be employed as strategies. (UNMIBH, OHR, CoE)
5. **Continued monitoring** of select cases and of the general conduct of local authorities and the local police, to gauge the success of efforts listed above. Specifically: Monitoring of judicial and other authorities who fail to execute their duties properly, with a view to their eventual removal and or prosecution; continuing to monitor trials including domestic war crimes trials, to ensure that international human rights standards are met; and continued monitoring of compliance with the Rules of the Road. (OHR, OSCE, UNHCR through Legal Aid Centres, UNMIBH)
6. **Continued monitoring** of trials, particularly those with an inter-ethnic dimension, or domestic war crimes trials, to ensure that international standards are being met and that the proper administration of justice is being followed. (OSCE, OHR)
7. Continued **review of legislation** to ensure compliance with the ECHR.
8. **Full implementation of the BiH Law on Immigration and Asylum**, in particular with regard to; drafting of by-laws and instructions at State and Entity level, regulating in detail the implementation of the law; establishment of the bodies foreseen in the law; transfer to the Ministry of Civil Affairs and Communications of records on decisions taken by competent

governmental institutions regarding the entry, movement and stay of aliens, as well as the grant of asylum; training of State and Entity officials in international refugee and asylum law; translation/distribution of relevant refugee-related documents/handbooks/training modules. (OHR, UNHCR, OHCHR, UNMIBH)

3. Building Sustainable Domestic Human Rights Capacity

Successful peace implementation in Bosnia and Herzegovina must mean in part the successful development of a domestic human rights protection capacity. This includes the implementation of the human rights protections offered by the Ombuds-Institutions and the Human Rights Chamber, in a manner which offers genuine, credible, domestic remedies where human rights violations occur. It includes the development of a vibrant and active civil society, equipped, through NGOs and the media, to act in a preventative manner as a watch against encroachments on human rights, and as an information and advocacy resource, where violations have occurred. Finally, such a domestic human rights protection capacity includes the development of a human-rights-sensitive legal profession and public, cognizant of human rights guarantees to which they are protected, and able to utilize those protections in a concrete manner.

With respect to the protections offered through the Ombuds-Institutions and the Human Rights Chamber, much remains to be achieved. While some progress was evident 1999, the local authorities in both the Federation and the RS have failed to comply with many reports and decisions, particularly with respect to property cases. Overall, the level of compliance with decisions of these bodies is not sufficient to offer genuine, credible remedies to human rights violations. There is no general level of acceptance of the obligation of parties to secure human rights, including the prevention of future violations.

Still outstanding at the end of 1999 is adequate state funding for the human rights institutions as required under the Dayton agreement; the establishment of an RS Ombuds-Institution; implementation of CRPC certificates, in compliance with Dayton and with new laws specifically requiring their implementation; the publishing of decisions of the Human Rights Chamber in the Official Gazettes; and adequate co-operation by authorities at all levels with the Agents of the RS, the Federation and the State. International efforts in 2000 must attempt to address these still outstanding issues.

Efforts to develop the capacity of civil society, through NGOs, to address human rights issues and to ensure the sustainability of human rights activities currently undertaken by international organizations have continued throughout 1999, including monitoring of human rights violations, as well as monitoring the response of authorities and monitoring of court proceedings. Important legislative work must be undertaken in 2000 however, to ensure that these NGOs (as well as many active on other issues) are able to work effectively. Namely, the now complete state and entity *Laws on Associations and Foundations* must be passed, in order to ensure a legislative environment which is conducive to the work of Bosnian NGOs.

Progressive media in Bosnia and Herzegovina have been thwarted from being able to provide critical, objective information, as evidenced most dramatically by the assassination attempt on a Banja Luka journalist in 1999. According to the Federation Ombudsmen and the Helsinki Committee, numerous journalists who challenge party lines and take the risks necessary for critical reporting, have found themselves facing charges for slander and libel. Preliminary efforts were undertaken in 1999, including the establishment of a legislative advisory group on media laws, removal by the High Representative of a term of imprisonment as a possible criminal penalty for slander and libel, and the appointment by the Federation Ombudsmen of a special assistant focusing on media issues. These efforts must be strengthened in 2000 by the establishment of a new legislative framework, and concrete measures to protect journalists. Without this, a critical source of information and advocacy for the protection of human rights will be silenced.

Efforts to improve understanding by citizens of their human rights, including incorporation of human rights education into university and school curricula, have been undertaken but have not achieved the desired visibility. Efforts in this regard must continue for the year 2000, particularly with respect to increasing access to human rights materials, and continuing education of lawyers with respect to the European Convention on Human Rights.

These mechanisms will ultimately form the basis of human rights protection in Bosnia and Herzegovina, beyond the presence of the international community. In 2000, particularly in the context of ever-shrinking resources, efforts must be refocused to ensure that these tools for the protection of human rights are strengthened to the greatest extent possible. Priority tasks in that regard include the following:

Priority Tasks:

1. Based on the concept of national ownership of human rights protection, the international community will work at a senior level to **ensure prompt and full implementation of the orders of the Human Rights Chamber and Reports of the BiH Ombudsperson and the Federation Ombudsmen** by the responsible national authorities. Equally, the IC must levy the political pressure necessary to ensure that CRPC Decisions are enforced. (*OHR, OSCE, UNMIBH, CoE*)
2. Ensure strengthening of the Human Rights Institutions, through **encouraging adequate state funding of the institutions**, coupled with international funding as necessary. (*OHR, OSCE, UNHCR, CoE*)
3. **Reform of the human rights mechanisms** on the basis of an opinion, from the Venice Commission, on the future of human rights mechanisms in BiH, to be completed prior to the expiration of the five year transitional period in Annex 6 of Dayton.
4. Promote co-operation between the Agents and the local authorities, and encourage the authorities to provide adequate funding, particularly to the RS Agent. Additionally, the international community must promote continuing co-operation between the Agents and the human rights institutions, including prompt and full responses by authorities at all levels for information and documents. (*OHR, OSCE, CoE*)
5. Promote the adoption, in the first half of 2000, of the State, RS, and Federation laws governing their respective Ombuds-institutions. (*OHR, OSCE, CoE*)
6. **Ensure the adoption of State and Entity Laws on Associations and Foundations**, in order to ensure that a conducive legal framework exists for NGOs throughout the country. (*OSCE, OHR, OHCHR, UNHCR, CoE*)
7. **Promote co-operation between agencies working to advance the ability of NGOs** and other members of civil society to be active in a human rights arena, through the establishment of an HRSB Coordinating Group on NGOs and Civil Society. (*OSCE, OHR, OHCHR, UNHCR, CoE*)
8. **Increase production of human rights and public information tools and materials**, such as translations of already existing publications, or new publications tailored to the BiH audience. (*CoE, OHCHR, UNHCR, UNMIBH*)
9. **Continue training on the European Convention on Human Rights**, in particular for legal aid lawyers, as well as for others in the legal community. Such training must be progressively linked with the Judicial Training Centres. (*CoE, UNHCR, OHCHR*)
10. Drafting, adoption and implementation of **laws on defamation and freedom of information**; coupled with the development of concrete proposals for the protection of journalists. (*OHR, OSCE, CoE*)

Conclusion

The year 2000 year must be utilized to renew, focus and consolidate engagement on human rights issues in Bosnia and Herzegovina. As critical resources show signs of diminishing and international attention is diverted to other post-war countries, the international community *must* tackle key issues in the year 2000, issues which will tangibly improve the lives of Bosnian citizens, and ultimately lead the way for international disengagement.

Core issues must be addressed: Ensuring sustainable futures, through addressing concrete issues of livelihood, property, education, pension, is essential for promoting reintegration and reconciliation, and must be a key priority. Only in addressing these issues, while securing an environment of non-discrimination, can the international

community hope to leave behind a sustainable peace. Efforts to establish and strengthen the rule of law, giving Bosnians confidence in their judiciary and police, must be strengthened and consolidated. And tools must be put in place to ensure Bosnian ownership over human rights protection mechanisms, through human rights institutions, NGO development, and the fostering of an independent and vibrant media.

More than ever, the international community must definitively challenge the obstructive forces which for four years have prevented a full implementation of peace and the protection of human rights. Those who seek to delay these efforts towards a BiH where human rights are protected must not be permitted to further de-rail peace-building process.

Much must be achieved in the year 2000. The human and financial resources presently available to address the above human rights priorities must be utilized in a focused, strategic, and concerted manner. Continued co-operation of the human rights community will be essential for the achievement of this goal.

Footnotes:

1. Priority tasks are not listed in order of importance.
2. SFOR has indicated willingness to assist in securing physical access to schools, where necessary.

OHR Human Rights/Rule of Law Department