

# **Human Rights Priorities for 1999 – January 1999**

## ***Human rights coordination centre***

### **A cooperative effort within the Office of the High Representative**

#### ***Human Rights Steering Board Recommendations to the Human Rights Task Force***

## **Introduction**

Progress made in the field of human rights during 1998 has contributed to the further development of a variety of mechanisms for human rights protection in Bosnia and Herzegovina which can eventually become self-sustaining. The Peace Agreement committed its signatories to securing the highest level of internationally recognized human rights, making directly applicable the rights and freedoms under the European Convention on Human Rights (ECHR). 1999 must be the year in which judicial reform, the reinforcement of conditions to support safe and dignified return, and the further strengthening of national and entity human rights institutions, as well as nongovernmental human rights organisations, makes a reality the protection of human rights afforded under the BiH and entity constitutions.

Major developments in the priority areas identified by the Human Rights Task Force (HRTF) at its last meeting in November 1997 are outlined in the following paper. While increased cooperation and coordination among the organisations represented on the Human Rights Steering Board has resulted in significant progress in each of these priority areas, much remains to be achieved. Priorities and objectives for 1999 are then recommended by the Human Rights Steering Board.

# **Assessment of Progress Towards 1998 Priorities**

At its meeting in November 1997, the HRTF established the priorities and objectives for 1998 under the following headings: Rule of Law; Human Rights Institutions and Support for NGOs, Return of Refugees and Displaced Persons (human rights aspects); and Human Rights Education, Training and Public Information. The following is a brief overview of major developments in meeting these priorities and objectives.

## ***I. Rule of Law***

**Criminal justice reform in both Entities to ensure compliance with standards set forth in the BiH Constitution, in particular with the ECHR**

As part of the first phase of reform of the criminal justice system, the Entities were called upon to review and revise the Criminal Codes and Criminal Procedure Codes in order to eliminate provisions which violate the ECHR. On 29 July 1998, the Federation House of Representatives adopted codes to replace the previously applicable Criminal Code of the Socialist Federal Republic of Yugoslavia as well as the Criminal Code and Criminal Procedure Code of the Republic of Bosnia and Herzegovina. These codes were signed by the President of the Federation on 6 November 1998.

As in the Federation, the reform of the Republika Srpska Criminal Code and Criminal Procedure Code is a joint initiative of the entity Ministry of Justice, with international expertise from OHR, Council of Europe, UNMIBH and UNCICP. International experts have assessed drafts of the codes prepared by Republika Srpska experts as to their compliance with the ECHR and other international standards. The final drafts are expected by the end of December 1998 and will then be submitted to the Republika Srpska National Assembly.

## **Legal assessment with regard to institutions with jurisdiction in human rights cases**

The judicial system created under the Peace Agreement gives rise to a number of jurisdictional and structural questions. Immediate concerns involve the competence of the Entities to legislate criminal matters within the jurisdiction of BiH on an interim basis and the establishment of additional BiH judicial structures.

The Council of Europe's Venice Commission issued a report in March 1998 on the competence of the Federation of Bosnia and Herzegovina in criminal law matters. In November 1998, the Venice Commission issued its opinion that the BiH Constitutional Court has no appellate jurisdiction in respect of decisions of the Human Rights Chamber. The Venice Commission further issued a decision in November regarding the creation of judicial institutions at the state level to deal with criminal offenses perpetrated by BiH public officials in the course of their duties as well as administrative and electoral matters. Regarding the establishment of an RS Ombudsmen Institution, the Venice Commission has prepared a draft law on the establishment of such a body and the OHR, OSCE and Council of Europe have held preliminary discussions on the subject with the government and with the new President of the Republika Srpska.

## **Consistency and cooperation between the two Entities with regard to legal matters**

On 20 May 1998, the Ministers of Justice of the Republika Srpska and the Federation signed the Memorandum of Understanding on The Regulation of Legal Assistance between the Institutions of the Federation of Bosnia and Herzegovina and the Republika Srpska. The Memorandum of Understanding addresses issues such as tracing of witnesses, serving subpoenas, reenactments and investigations at-the-scene, as well as how to facilitate an ad hoc cooperation between the

Entities.

An Inter-Entity Legal Commission was established in June to provide a basic mechanism for establishing cooperation and implementing the Memorandum of Understanding. The Commission, chaired by OHR, held its inaugural session on 4 June 1998 and has held three subsequent sessions, endorsing the Memorandum of Understanding and making recommendations regarding accessibility and exchange of documents, land records and court files.

On 25 September, the first out-of-court session of a Federation court in the other Entity occurred on the basis of the Memorandum of Understanding. The session included a reenactment at the scene in a war crimes trial currently before a Federation Court and was an important step towards encouraging more effective inter-entity legal cooperation. Additionally, on several occasions witnesses were examined in court in order to satisfy a request for judicial cooperation by a court of the other Entity.

### **Training initiatives for legal professionals and support for the establishment of judicial training institutes**

The establishment of Judicial Training Centres is a key project in the training field. A proposal to which OHR, ABA/CEELI, Council of Europe, UNMIBH, OSCE, and UNCICP/UNDP contributed, has been submitted to both the Federation and RS Ministries of Justice for consideration. Council of Europe experts are currently preparing written comments on a draft statute for the Centre.

The Council of Europe has been organising seminars on the ECHR on a regular basis since 1996 with the participation of the Ombudsperson's Office, and intends to implement a further intensive ECHR training initiative over the next three years. The International Human Rights Law Group is in the second phase of an extensive training project on the ECHR, and will

be supported by OSCE. Extensive education and training for legal professionals following the adoption of the revised Criminal Code and Criminal Procedure Code in the Federation and Republika Srpska was identified as a priority for 1998. A joint initiative for training legal professionals has been coordinated by ABA/CEELI, funded by USAID and with involvement by OHR, Council of Europe, UN CICIP/UNDP and UNMIBH.

A training project for police in the new criminal codes has been prepared by OSCE to be implemented jointly with UNMIBH. Other organisations involved include UNCICP/UNDP, ABA/CEELI, Council of Europe, OHR, and ICITAP. The project proposal includes the development of training material, and a separate criminal procedure handbook for the police.

Training sessions on the new Federation property and housing laws have been conducted jointly by UNHCR, CRPC and OHR. Over ten training sessions have been held throughout BiH and in Belgrade, with a total of around 500 participants. The objective of these sessions was to enable staff of national and international organisations to identify and address obstacles to implementation of the laws so that interventions can be made and to identify legal benchmarks and standards for their implementation by government officials. At the last session in August, participants included municipal, Cantonal and Federation Government officials.

### **Efforts to ensure an impartial and independent judiciary, including reform of judicial appointments process and support for professional associations**

Based on an initial draft of the Federation Judges' Association, a working group of international organisations drafted legislation for a Judicial Selection Commission in the Federation. As a first step, this law specifies conditions for the selection, dismissal and suspension of judges by an independent Commission to be established at the Federal level, within the existing constitutional framework. The Commission

would review the applications of all candidates for judicial office and requests for dismissal throughout the Federation and would submit binding recommendations to relevant authorities. Similar legislation has been prepared for the Republika Srpska. Organisations involved include OHR, Council of Europe, OSCE, UNMIBH and ABA/CEELI.

The strengthening or establishment of legal professional associations is an important element of the judicial system reform process. The Federation has both a Judges' and Prosecutors' Association which have been involved in the development of ethical codes of conduct. With the support of ABA/CEELI, the Republika Srpska Judges' and Prosecutors' Association was established in early May. ABA/CEELI and the Swedish Bar Association are also working to strengthen the Republika Srpska Bar Association.

### **Monitoring and assessing the judicial system**

On 16 July, the UN Security Council endorsed the establishment of a programme within UNMIBH to monitor and assess the court system in BiH, as part of an overall programme of legal reform as outlined by OHR. A Council of Europe expert provided assistance and expertise in drawing up the methodology for the programme. UNMIBH is currently in the process of implementing the Judicial System Assessment Programme (JSAP): staff have been recruited and trained in cooperation with other relevant organisations, and were deployed in early November.

Trial monitoring efforts involving OHR, UNMIBH, OSCE, and OHCHR have continued to focus on cases with particular inter-ethnic or political implications, primarily war crimes trials in domestic courts.

### **Police reform**

UNMIBH/ IPTF continued its programmes to train, monitor, advise and equip the local police in Bosnia and Herzegovina with the end goal of establishing professional police forces

in both Entities that operate in accordance with democratic policing principles.

In the Federation, UNMIBH/ IPTF continued to facilitate the development of Cantonal police forces with compositions that reflect that of the population according to the 1991 census. As part of its policy on Minority Police Recruitment and Return, UNMIBH is working with local authorities to identify minority candidates and has placed a priority on minority police applications, until the quotas set under the Bonn-Petersberg Agreement are met. Police restructuring and reform are underway in all Cantons and inaugurations have taken place in all but two, Cantons 8 and 10. Resolution of obstacles to the inauguration of Canton 8 are expected before the end of the year; however, issues of minority police recruitment and the insignia to be worn, may continue to stall the process in Canton 10.

All 11,500 existing Federation police officers have been vetted and by the end of 1998, all will have completed IPTF's basic Human Dignity and Transitional Training courses. The first class of new recruits for the Federation force is now completing the year-long basic police academy course at the Federation Police Academy. In addition, IPTF is now developing and implementing specialised training for the local police to combat organised crime, corruption and drugs, as well as to improve their skills in the areas of public order and major incident management and is teaching courses in and border control and crowd control.

The Federation Interior Ministry has been reorganised to allow for greater power sharing between the Minister and Deputy Minister. As a result, internal cooperation and cooperation with the IPTFs restructuring efforts are much improved. The reduction of Bosniak officers and the integration of Bosnian-Croat and Bosnian-Serb officers is proceeding slowly.

Progress with regard to a functioning multi-ethnic police

force has been most notable in the Brcko Municipality, where IPTF's co-located advisor programme and community policing programme are at their most developed.

Efforts to restructure the RS police force have been stalled by a lack of political will and ongoing government transition and formation in the RS. In November 1998, new negotiations began between UNMIBH and a high level RS negotiating team to finalise an agreement on police restructuring and reform to be implemented in 1999. The expected agreement will lay out basic commitments, building on those in the Principles of Police Restructuring in the RS signed in September 1997 to complete restructuring in 1999. It has been agreed that the number of persons exercising police powers is fixed at 8,500 and these officers have begun IPTF's vetting process. IPTF is engaged in negotiations to establish a police academy in the RS. Human Dignity and Transitional Training is taking place at sites around the Entity.

In addition, the IPTF has begun a process to evaluate and, if appropriate, re-train officers from the RS Police Anti-Terrorist Brigade (PATB), currently under SFOR monitoring in accordance with Annex 1A. A select number of PATB members who meet IPTF eligibility criteria and approval and undertake specific training are to revert from SFOR to IPTF monitoring, although no date is fixed.

### **Responding to human rights violations**

Accountability for human rights abuses is a key element for the implementation of the GFAP and in particular towards establishing the rule of law and facilitating minority returns. UNMIBH/ IPTF has pursued its specific mandate to investigate or assist with investigations into human rights abuses by law enforcement personnel under Security Council resolution 1088, and has exercised its power to de-certify police officers who have failed to meet minimum standards of democratic policing. As a result of independent investigations



carried out by UNMIBH/ IPTF, law enforcement officials who have committed human rights abuses have been removed from office and in some instances, local authorities have opened disciplinary and criminal proceedings. The overall response of local authorities was, however, unsatisfactory, in particular in protecting the rights of minority returnees.

## ***II. Human Rights Institutions and Support for NGOs***

### **Ensuring full cooperation with the human rights institutions**

In 1998 the cooperation of BiH and entity authorities with the Human Rights Commission has been impeded by the slow process of appointment of governmental agents to the Commission. There has been some progress at the BiH level and in the Federation after agents were appointed in mid 1998, although the BiH agents did not begin participating in proceedings until October 1998. The RS Government has not had an agent since June 1998. To date, implementation of final and binding decisions of the Human Rights Chamber has occurred on a piecemeal basis, with no systematic or consistent approach by either BiH, the Federation or the Republika Srpska. Subsequent to the November 1998 opinion of the Venice Commission that the BiH Constitutional Court has no appellate jurisdiction over decisions of the Human Rights Chamber, attempted appeals should cease to be a cause of delays. Certificates issued by the CRPC are still not respected by public authorities, including judges. Compliance by the Republika Sprska authorities with the Ombudsperson's recommendations has significantly improved, whereas compliance by the Federation and the State remains problematic. Although cooperation with the Federation Ombudsmen has generally improved during 1998, cooperation remains a problem in politically sensitive human rights cases, while the RS Ombudsmen institution has yet to be created.

### **Adequate and stable funding for the Commission on Human Rights and the Commission for Real Property Claims**

Securing adequate funding for the Annex 6 and 7 Institutions is essential if these institutions are to deal effectively with growing caseloads. Progress has been made as a result of financial contributions by some of the Peace Implementation Council (PIC) Steering Board members on the basis of the assessment proposal presented by the High Representative to the PIC Steering Board in January 1998. Additional voluntary contributions from several governments have also provided much-needed funds. The ability of the institutions to function at full capacity, as well as to plan activities for 1999, is dependent, however, on their receiving stable as well as adequate funding. The institutions have faced serious cash flow problems in 1998 due in part to problems with the timing of contributions and delays in remittances. The OHR has requested the PIC Steering Board to continue assessed contributions in 1999, since these are essential for the work of the institutions until the government of BiH is able to fulfill its obligations in this regard.

The OHR has continued to place pressure on the BiH authorities to meet their funding obligations under the Peace Agreement to support the institutions. While some progress has been made, there have been substantial problems with the implementation of the state budget in 1997 and 1998. In the 1998 state budget, 200,000 KM was included for each institution; yet each institution received only 100,000 KM.

### **Establishment of a legal framework to support the development of civil society organisations and improved government cooperation with NGOs**

National NGOs have continued to face serious obstacles to their development and effectiveness, including the absence of a legal framework for civil society organisations. A draft Law on Associations and Foundations, at both Federation and BiH levels, is under discussion and was widely distributed to NGOs for comment in June. NGOs continue to receive little cooperation from the authorities throughout BiH.

### ***III. Return of Refugees and Displaced Persons (human rights aspects)***

#### **Housing and property laws in both Entities to ensure full implementation of Annex 7**

Housing and property legislation directed towards the implementation of Annex 7 was adopted by the Federation Parliament and came into force on 4 April 1998. Implementation of this legislation, however, has been obstructed through a range of illegal and unfair practices by municipal authorities. The legislation gave the pre-war holder of rights to socially owned apartments a period of six months to claim repossession of their property. As a result of obstacles in the claims process, as monitored by OHR, OSCE, UNHCR and CRPC, the High Representative extended this deadline for a further six months, until April 1999. In November, due to continuing flaws in the legislation, the High Representative suspended, until further notice, the reallocation of apartments under regulations adopted by the Federation Government, and suspended the sale of apartments to individuals who acquired an occupancy right after 30 April 1991. The High Representative asked the Federation Government and Parliament to undertake a comprehensive review of laws and administrative practices relating to property and housing.

The Republika Srpska government failed to adopt new property laws within the deadline of 31 August set in the Luxembourg Declaration. The High Representative has agreed to give the new Republika Srpska Parliament a further brief period in which to adopt the legislation, but has made clear that if necessary he will use his powers to ensure that a proper legal framework for implementing Annex 7 is in place in the immediate future.

**Efforts to provide access to personal documents and ensure recognition of documents throughout Bosnia and Herzegovina and initiatives to break down barriers to freedom of movement**

In July, OHR, OSCE, UNMIBH and UNHCR started to develop a mechanism to ensure access to and recognition of personal and public documents. As an interim measure, instructions will be issued to Entity Prime Ministers to ensure access to personal documents, based on the existing Law on Administrative Procedures in each entity, with the possibility of legislation to regulate recognition of public documents.

UNHCR is in the process of reforming the procedure on registration as to residence which is an essential precondition to the full reintegration of returnees as it conditions access to documents and social services. To that end, UNCHR has been carrying out surveys on registration of repatriates in both the Federation and the Republika Srpska and is also working to establish a legal framework in the field of displaced persons and refugees. Throughout 1998, UNHCR was engaged in negotiations with both Entities and the State in order to finalise their respective Laws on Displaced Persons and Repatriates. The draft Republika Srpska Law on Displaced Persons, Refugees and Returnees has been finalised and tabled for the next session of the Republika Srpska National Assembly. The final draft of the Federation Law on Displaced Persons and Repatriates has been sent by the Federation authorities to the Cantons for comments. These laws regulate the conditions in which the various status are granted and lifted as well as the rights which ensue. UNHCR has also negotiated with the State and the Entities the adoption of State and Entities' instructions on organised return. The aim of these instructions is to ensure that repatriation from abroad and from within the country is orderly and phased.

The State Law on Citizenship was imposed by the High Representative and then adopted by the BiH Parliament in December 1997, and came into force on 1 January 1998. The implementation of the Law still faces considerable problems, particularly with regard to the format of the certificate of

citizenship in the Republika Srpska. Both Entities have to date failed to pass the legislation on Entity citizenship which is essential for the effective protection of all BH nationals. UNHCR, OHR and the Council of Europe are currently considering the RS draft Citizenship Law.

The Law on Travel Documents was adopted by the BiH Parliament in December 1997 but due to technical problems and a lack of coordination between the BH Ministry of Civil Affairs and the Entities' Ministries of Interior, implementation has been slow. The issuing of passports began in the Republika Srpska in mid-July 1998 and in the Federation on 7 August 1998.

### **Greater access to information for refugees and displaced persons and broader public awareness concerning return issues**

The establishment of the Repatriation Information Centre has significantly improved the availability of return-related information to refugees and displaced persons. A number of NGOs and national legal aid centres have also taken a more active role in providing information and legal advice to returnees.

The Property Media Group (PMG) has produced and distributed information for those affected by the new Federation property and housing laws, and who wish to file a claim to repossess their socially-owned apartment. The PMG, comprised of property and media experts from the main international organisations in BiH, has devised a variety of information products and ensured their distribution both in Bosnia and Herzegovina and abroad, particularly in countries with a large concentration of Bosnian refugees. The media used include television, radio, newspapers, and leaflets distributed through refugee associations, embassies, governments, UNHCR and OSCE.

### **Necessary conditions for a safe return established before removal of temporary protected status or forced repatriation**

Since the signing of the Peace Agreement, there have been

improvements in conditions to ensure the safe and dignified return of those still under temporary protection abroad. Freedom of movement has been greatly improved by the introduction of the common license plates and the population's awareness of human rights has increased, partly as a result of the activities of local non-governmental organisations. However, these changes are not yet sustainable and irreversible and the core mechanisms of national protection, such as the police forces and the judiciary, do not operate to promote and protect minority return. For this and other reasons (which are outlined in more detail in UNHCR's Position on Categories of Persons from Bosnia and Herzegovina who are in continued need of International Protection), UNHCR remains opposed to the non-voluntary repatriation of refugees falling under the following categories: persons originating from areas where they would no longer be in the majority upon return; humanitarian cases including ex-camp or prison detainees, witnesses of violence, witnesses of the International Criminal Tribunal for the former-Yugoslavia, severely traumatised persons and individuals in need of special care; persons of mixed ethnicity or mixed marriages; former leaders of the Demokratska Narodna Zajednica and members of the Roma community.

### **Development of an education program which prompts understanding and reconciliation among ethnic groups**

At the local level, efforts have focused on the development of satisfactory curricula and the use of more acceptable textbooks in the short term with respect to minority returns. Efforts in Sarajevo have concentrated on work by the educational authorities to review textbooks, develop democracy projects and examine possible discrimination. The Sarajevo Education Working Group established by the Sarajevo Declaration supervises this work, but its role in supervising textbook review has recently been challenged by the Cantonal Government. OHR coordinated efforts in other parts of the

country and brokered local agreements relevant to minority return.

An Agreement Regarding Textbook Review and Removal of Offensive Material was signed by the Republika Srpska Minister of Education and the Federation Minister and Deputy Minister of Education in May 1998. Three expert teams have been established to review exchanged textbooks and have produced reports identifying offensive materials. While this agreement is a potentially important step in removing offensive materials in textbooks in use in primary and secondary schools in BiH, its implementation has been extremely slow. OHR is establishing the Independent Commission envisaged in the Agreement to arbitrate on those issues that cannot be resolved by the parties.

UNESCO has taken the lead on overall curricular reform and has engaged three international experts to work with local pedagogical institutes and Ministries of Education to analyse and review the present curricula in BiH and to plan a seminar for early 1999. The Council of Europe, in conjunction with UNESCO, is establishing a Higher Education Reform Task Force. The EU is carrying out a curricula reform project in the field of vocational education. In the meantime, the World Bank, in conjunction with the Council of Europe, have initiated an extensive project to examine the financing and governmental structures of the education system nation-wide with a view to reform in these areas. Legislative issues are also being examined.

#### ***IV. Human Rights Education, Training and Public Information***

**Increased public awareness of human rights situation, legal rights and available mechanisms to protect those rights**

Access to rights through lawyers at the local level and the provision of legal aid and advice and information is currently

provided through a variety of means and organisations. The Benefits Commission, established by OSCE and Council of Europe and funded by OSCE, gives access to the legal system for those who cannot afford to pay. UNHCR and other sponsored legal advice centres provide legal advice and information, referral to other services or direct representation in court. A number of international organisations also provide direct assistance, their main focus being on return. These structures have been the subject of analysis by OHR to assess the network and make recommendations to support the process, including greater cooperation on legislative reform with local lawyers who are to implement such reforms in the field, greater support for the work of local lawyers vis-a-vis existing court and political structures, and the overall development of the capacity and professionalism of a sustainable indigenous system of local law centres.

Public information concerning human rights is provided through a range of local organisations, including both human rights NGOs and the legal aid and advice/information centres. The Sarajevo University Human Rights Centre is a significant resource of human rights information.

Increased accessibility to legal materials for professionals has been promoted in a number of ways. OHR is working to ensure that Official Gazettes are available throughout BiH. The ongoing OSCE judicial survey will provide data on the need for legal materials. The Council of Europe is translating and publishing selected ECHR case law, in cooperation with lawyers from the Office of the Ombudsperson. An extensive human rights library, including a wide range of Council of Europe documents, has been created within the Human Rights Centre of the University of Sarajevo. The Council of Europe also intends to donate a basic human rights library to the Banja Luka Law Faculty's new Human Rights Centre once it is established.

Training in human rights for those other than legal professionals has taken place through a number of initiatives



organised in the most part for the benefit of NGO workers.

## ***V. Asylum and Immigration Issues***

A draft asylum law is currently under discussion, but as yet no procedure exists for determining refugee status. UNHCR has been cooperating closely with the authorities of Bosnia and Herzegovina in the reception of arriving Kosovo Albanian asylum seekers. As of 1 November 1998, the country received some 10,000 persons. In early October, the authorities issued an "Instruction on the Temporary Admission of Federal Republic of Yugoslavia (FRY) refugees from the Territories of Kosovo and Metohija", which provides that the refugees will be admitted on a temporary basis and will be protected from being sent back, envisages the registration of new arrivals and sets out their entitlements. Regulations to implement the above instruction were issued in early November.

### **Creating Self-Sustaining Human Rights Protection Mechanisms in 1999**

The overall priority for 1999 must be to give fresh impetus to judicial reform and strengthen self-sustaining mechanisms for the protection of human rights and freedoms in BiH. This involves building on the achievements in each of the 1998 priority areas as well as focusing on further issues and objectives. In particular, greater emphasis must be placed on gender equality and prevention of domestic violence, overcoming discrimination against ethnic minorities and political groups, and protection of journalists and media freedom.

A principal impediment to the full enjoyment of human rights in Bosnia and Herzegovina is the continued failure of Federation and Republika Srpska authorities to ensure that refugees and displaced persons are permitted to return in safety. Minority returnees continue to be subjected to harassment, intimidation, discrimination and attacks on person and property, particularly in Bosnian-Croat majority Cantons. Republika Srpska authorities have generally failed to create even minimum conditions conducive to minority return. The

international community must continue and strengthen its concerted efforts to hold accountable all authorities who have impeded the safe return of refugees and displaced persons and who have failed to protect the rights of returnees.

Creating an independent and impartial judiciary is essential for self-sustaining human rights protection, building confidence and fostering peace and reconciliation. Political influence on the judiciary must be removed.

To date, the review of existing legislation to ensure compliance with the ECHR and other human rights standards has not been comprehensive: non-complying laws have been addressed on a piecemeal basis, with a priority given to those laws viewed as critical to the return process (e.g. property and housing laws). As part of the process of seeking accession to the Council of Europe, a more thorough review of current legislation is underway. But the process of bringing legislation at all levels of the Bosnia and Herzegovina political system into compliance with the Constitution has only begun. The State's institutions and authority must be strengthened, as well as the cooperation between the Entities.

The legal reform process must be spurred on by the human rights protection mechanisms established under the Peace Agreement. The effective functioning of the Human Rights Chamber, the BiH Ombudsperson, the CRPC, and the Federation Ombudsmen has thus been a key focus of human rights efforts. With substantial effort and investment by the international community, these institutions are now more fully able to carry out their mandates. A huge gap in implementation remains, however, given the general failure of government authorities to cooperate with these institutions, to respond to their reports and recommendations, and to enforce the decisions of the Chamber and the CRPC. Implementation of the large body of recommendations and case law issued by these institutions would be a substantial step forward towards protection of human rights in BiH.

On 30 October, the Human Rights Coordination Centre (HRCC) held a full-day Human Rights Strategy Workshop in Sarajevo. A broad range of participants from approximately 60 organisations attended including intergovernmental organisations, international NGOs, indigenous NGOs, and national human rights institutions. Taking into account the discussions at the Workshop, the Human Rights Steering Board makes the following recommendations to achieve the goal of building self-sustaining human rights protection mechanisms in BiH.

### ***Rule of Law – Judicial and Police Reform***

- The creation of an independent and impartial judiciary is a key element for the establishment of the rule of law in Bosnia and Herzegovina. Legislation to achieve an independent judiciary, focusing on judicial appointments, adequate salaries, technical and material support and objective standards must be adopted in both Entities.
- The adoption of judicial and prosecutorial codes of ethics as well as the establishment of a disciplinary and dismissal system based on these standards.
- The establishment of necessary structures at the BiH state and Entity levels to fulfill the requirements of the respective Constitutions.
- Efforts to strengthen inter-entity legal cooperation must continue in 1999 including the immediate amendment of the Law on Legal Practice of both Entities as proposed by the Inter-Entity Legal Commission, allowing for lawyers registered with any Bar Association in BiH to exercise his/her duties on the entire territory of BiH without any limitation or further requirement. In the Federation such wording has already been included into the draft Law on Legal Practice, whereas in the Republika Srpska, no action has yet been taken in this respect.

- Support for the establishment of Judicial Training Centres and provision of legal materials and resources. Intensified efforts to ensure public distribution of legal materials, including international conventions and relevant case law, enhance awareness of individual rights and freedoms and ensure access to legal assistance. Training courses begun in 1998 should be continued during the next year.
- Development of the system of legal aid and advice and provision through the continued capacity building of local organisations and coordination of their work with a view to establishing a functioning system of local law centres.
- Concern over the judicial system's ability to address effectively cases with an "inter-ethnic" dimension, particularly threats or violence against returnees and political minorities, has led to an increased focus on available means to enhance prosecution of such crimes. Proposed approaches to strengthening the role of the Federation Prosecutor's Office and the RS Republican Prosecutor are ready for implementation and other means to better ensure investigation and prosecution of inter-ethnic crimes must also be pursued.
- Information flowing from UNMIBH/ JSAP's monitoring and assessment of the judicial system should be fully reflected in the training and restructuring efforts coordinated by OHR. A "diagnosis" of the judicial system will be carried out by JSAP through its focus on the following aspects: (1) technical (legislative issues as well as the application of legislation); (2) institutional (including human and technical resources); and (3) political (as it affects the independence of the judiciary).
- Restructuring of the police forces in both Entities must be accelerated. In the Federation, demonstrated progress must be made to achieve the levels of minority representation committed to in the Bonn-Petersberg

Agreement. In the Republika Srpska, as a first step, the composition of the police force must reflect the results of the 1997 elections in the Republika Srpska (supplemented by the 1998 elections in the case of newly formed municipalities), and thus be in accordance with the Luxembourg Declaration of the Peace Implementation Council.

- Efforts to hold accountable law enforcement officials who have been found responsible for human rights abuses must continue and be strengthened. Law enforcement officials who have committed serious human rights abuses must be removed from office. Such officials must be subjected to prompt and effective disciplinary and criminal proceedings by authorities, including where they have been identified by UNMIBH/ IPTF as having failed to adhere to democratic policing principles. UNMIBH/ IPTF will vigorously use its powers to de-certify police officials who have failed to meet minimum standards of democratic policing. OHR and SFOR support for UNMIBH's recommendations arising from investigations carried out under Security Council resolution 1088 remain critical.
- Reform of the prison system should be carried out in parallel with the reform of the judicial system in both Entities. The legal and organizational framework as well as prison conditions must be scrutinized.

### ***Support for Human Rights Institutions, Commission for Real Property Claims (CRPC)***

- The credibility of Bosnia and Herzegovina's application for membership in the Council of Europe is dependent upon its enforcement of the decisions of the Human Rights Chamber and the CRPC and ensuring adequate response to the recommendations of the Ombudsperson. BiH and entity authorities must live up to their obligations under Annex 6 and 7 of the Peace Agreement and the

Federation Constitution. Government authorities at all levels must bear responsibility to strengthen the institutions through the following:

- Ensuring prompt and full implementation of the decisions of the Human Rights Chamber, and the publication of decisions in the Official Gazettes thereby making the case law of the Human Rights Chamber accessible to the courts, enabling incorporation of this case law into the domestic legal system.
- Ensuring adequate response to reports and recommendations of the BiH Ombudsperson and Federation Ombudsmen.
- Ensuring full implementation of the decisions of the CRPC, adoption of implementation legislation for the CRPC and procedures for the publication and distribution of decisions.
- Pressing for the durable appointment and full participation of State and Entity agents to the Human Rights Commission, including the immediate appointment of an RS agent.
- Establishing a multi-ethnic Ombudsmen institution in the RS based on the recommendations of the Venice Commission. Continued OSCE and other international funding support for the Office of the Federation Ombudsmen, as well as for the RS Ombudsmen when established.
- Ensuring progress towards sufficient funding by the government of BiH to cover salaries and expenses of the BiH institutions, as required by the Peace Agreement, and international funding to the extent necessary.

## ***Gender Equality***

- Addressing gender discrimination must be an integral component of the efforts in each priority area identified for 1999. Women should be engaged in the process of legislative review. The response of police to

violence against women and children, including domestic violence, must be improved, and, local authorities and police should be given appropriate training and should recognise the role of women's NGOs and their work.

- Encouraging and supporting political participation and representation of women at all levels of government.
- While awareness of the work of women's NGOs has improved during the past year and has been supported through increased training, financial and technical support, further efforts are necessary to support existing groups and the establishment of new NGOs.

### ***Social and Economic Rights and Vulnerable Groups***

- A systematic review of current and proposed labour legislation to incorporate nondiscrimination principles, and a survey of the representatives of minorities and women at all levels.
- Development of accessible, independent and efficient administrative and legal redress mechanisms to protect workers' rights, and monitoring compliance by employers with court decisions through a strengthened labour inspection system.
- Further measures to prevent, eliminate and sanction discrimination in the field of employment, on all grounds (ethnic origin, political affiliation or opinion, participation in trade union activities, gender, etc.)
- Intensify efforts to enable all retired persons from BiH to obtain their pension especially through inter-entity cooperation and agreements between the relevant institutions in the successor States of the former Yugoslavia.
- Promote access of all persons to public services including administrative services, utilities, health care, educational and other public institutions, humanitarian assistance, etc. without discrimination.

Eliminate discriminatory practices such as illegal and arbitrary fees imposed on individuals, denial of access to services, etc.

- Support the development and consolidation of initiatives aimed at the protection of children, the care of elderly persons and the elimination of discrimination against disabled persons.

## ***Support for Nongovernmental Organisations***

- Current legislation in both Entities fails to address certain basic needs: NGOs cannot register to operate throughout BiH; registration processes are not harmonized; 30 individuals are required to create an association; mutual and public benefit organisations are not distinguished (vital to tax deductible contributions and access to government grants and contracts); norms that regulate economic (income generating) activities of NGOs are lacking or inappropriate. The Federation and BiH draft Laws on Associations and Foundations currently under review address these concerns and must be adopted.
- Development of capacity of local human rights NGOs to ensure sustainability of human rights activities currently undertaken by international organisations, including monitoring human rights violations, the response of authorities and court proceedings.
- Development of networking among NGOs and between NGOs and the international community for better information sharing, strategic planning and engagement of NGOs in the process of legislative reform.
- International support for the effective operation of local human rights NGOs, unimpeded by threats or intimidation by authorities, and education for authorities on the role of NGOs in civil society development.



## ***Return of Refugees and Displaced Persons (human rights aspects)***

- Adoption and full implementation of property laws necessary to permit displaced persons and refugees to reclaim their pre-war homes in both Entities.
- Adoption of State and Entity laws on refugees and displaced persons.
- The elimination of existing legal barriers to return is an essential component for creating a framework which supports the return of refugees and displaced persons and self-sustainable reintegration of these persons. In particular, the Republika Srpska Law on Public Order and Peace as well as the Republika Srpska Law on Amnesty must be amended and war taxes eliminated where they continue to be levied in some Federation municipalities.
- Administrative barriers to return must be addressed including discrimination against ethnic and political minorities related to residence registration, issuance of identity cards and the developing practice of retroactive payments of utility bills by returnees or bills incurred by the previous temporary occupant. Finalizing efforts to ensure access to, and recognition of, public documents is a priority.
- Full and fair implementation of the BH Law on Citizenship and adoption of Entity Laws on Citizenship consistent with the right to return.

## ***Education***

- The content of children's lessons needs to be addressed as a matter of priority; this requires full implementation of the Agreement between the Ministers of Education on the removal of offensive materials from textbooks in use throughout BiH, and the development of a basic history of the war period which can be taught in all schools.

- A process of longer term curricular development in both Entities must be commenced, respecting minority rights, while contributing to tolerance and stability throughout BiH, and accommodating differences in language without leading to the segregation of students. Additional projects in teacher training on human rights, development of curricula in vocational training, higher education and primary and secondary school education should be supported.
- Strengthening of the system through clarification of roles of Federation Ministry vis-à-vis the cantons, cooperation between Entities on educational development and support for current projects to reform governance, finance and legislation regarding education.
- Improved access to education generally, through refurbishment of schools, provision of equipment and payment of teachers salaries, and particular attention to additional needs of returnee children. Consideration should be given to making material support conditional on cooperation of authorities with curricular and textbook reform process.

## ***Media Reform and Protection of Journalists***

- Building a stable democracy in Bosnia and Herzegovina requires the establishment of a robust “fourth estate,” a free, open and independent media which encourages vigorous debate within a legal framework upholding individual rights and the public’s right to information. Links between media across de facto ethnic barriers must be encouraged and supported through international assistance.
- The development of a coordinated response to attacks on journalists and protecting media freedom, in consultation with the IMC and relevant international and domestic organisations. Judicial reform must incorporate efforts to protect media freedom and ensure individuals

legal recourse in cases of slander, libel, defamation, or violation of privacy, as defined by international standards.

- Ensuring free movement of all journalists throughout the territory of BiH.

### ***Missing Persons and Cooperation with ICTY***

- While improved coordination between the Entities in joint exhumations has been a major step forward, international pressure must overcome the failure of the authorities in their commitment to address the issue of missing persons and detainees unaccounted for.
- The development of long-term structures, including improved services to the families of the missing, and more effective tracing mechanisms in cooperation with the ICRC and the Working Group on Missing Persons, should be emphasized.
- Pressure must be maintained on entity authorities to meet their obligations to arrest and surrender all individuals openly indicted by the ICTY.
- The Rules of the Road process has been instrumental in eliminating the routine arbitrary arrests which occurred frequently in 1996, thereby strengthening freedom of movement, implementation of municipal election results and building confidence in the court systems of both Entities. International pressure must ensure that the authorities in both Entities meet their obligations to comply with the Rules of the Road, including prohibition of arrests in violation of the Rules of the Road and elimination of threats based on local war crimes lists.
- As judgments flow from the ICTY, international organisations should support efforts to promote public understanding of its role in BiH.

### ***Human Rights Education and Public Information***

- Improved understanding by citizens and recognition of

rights of individuals through campaigns on human rights with emphasis on international standards, constitutional obligations and available redress mechanisms.

- Targeted public information and education campaigns to protect the rights of vulnerable groups regardless of gender, ethnicity and religion.
- Incorporation of human rights education in university and school curricula, and support for the Council of Europe programme to develop a teacher training programme in citizenship education and human rights and other projects promoting democratic values.

## ***Conclusion***

- The culture of impunity in BiH will not be overcome until indicted war criminals are arrested, and there is prompt accountability for current human rights violations.
- There will be no confidence in the security essential for sustainable return until a multi-ethnic police force and judiciary in both Entities act independently of political control.
- Legal guarantees of human rights protection will not be a reality until the authorities implement the decisions and recommendations of the institutions applying them, and respect the watchdog roles of indigenous non-governmental organisations and the independent media.
- A new generation will not surmount ethnic divisions unless their education and upbringing reflects tolerance and non-discrimination.
- These four major conditions for peace implementation should underlie the human rights work of international organisations working in continued cooperation in 1999.

## **Office of the High Representative**