Human Rights Report February 1999

SUMMARY

- 100 Bosnian Serbs return to Mostar
- Bomb in Travnik injures Bosnian Croat policeman
- Review of implementation of Federation property laws
- Implementation of RS property laws begins
- NGO issues report on discrimination and segregation in education in Federation

THE RIGHT TO RETURN

ASSESSMENT VISITS AND RETURNS

[This section focuses on visits and returns which are particularly significant from a human rights perspective]

General overview

1. The period under review witnessed increased activities of international and local organisations involved in returns. On 15 February, a Roundtable on Reconstruction and Return was held in **Travnik (FBiH)**. The Roundtable was chaired by the OHR and attended by the Governor and Deputy Governor of Central Bosnia Canton, other local officials and representatives of interested international organisations. Though the Roundtable had been scheduled before the 10 February attack on a Bosnian Croat policeman in Travnik (see para. 10 below) it provided the opportunity to reassure the returnee community that returns to Central Bosnia Canton will continue in a secure environment. To address the security concerns of prospective returnees a Cantonal

Return Security Committee was established to share information on on-going and expected return movements and to discuss related security measures. Property related issues were also discussed.

2. Organised assessment visits continued in all parts of BiH during February, in most cases passing without incident. Over the weekend of 13-14 February (the Orthodox Christian Day of Death), a number of graveyard visits took place throughout BiH. These included the visit of 160 Bosnian Serb displaced persons currently living in **Petrovo (RS)** to the villages of **Krtova and Dizje (FBiH)** and 200 Bosnian Serb displaced persons currently living in **Janja (RS)** to **Srebrenik (FBiH)**. Local police ensured that the visits passed without incident, except in **Sarajevo (FBiH)** where a group of Bosniak women wielding sticks assaulted a group of Bosnian Serb displaced persons at Rogacici cemetery. Returns are currently being negotiated by UNHCR to such municipalities as **Pale, Sokolac, Han Pijesak** (all in eastern **RS**), where minority returns have not taken place so far.

Visits/Returns to Eastern RS

3. Approximately 100 Bosniaks have returned to **Klisa**, a village in **Zvornik** municipality, since the beginning of 1999 without major incident (see HRCC Monthly Report, October 1998, at para. 9).
4. On 10 February, some 50 Bosniak displaced persons visited **Kosluk**, a village 20 km north of Zvornik. The visit was planned as a house assessment visit, but due to tensions in the area, was altered to a graveyard visit. 100 Bosnian Serb local residents gathered to protest the visit.
5. On 22 February, a group of Bosniak displaced persons made the first organised assessment visit to **Visegrad** municipality. The Bosniaks met with the Mayor, local

police and IPTF to discuss freedom of movement and reestablishment of graveyard visits, on hold since the SFOR detention of Bosnian Serb General Krstic in December 1998 (see HRCC Monthly Report, December 1998, at para. 10) and the SFOR killing during attempted detention of ICTY-indicted Dragan Gagovic, also a Bosnian Serb, in January 1999 (see HRCC Monthly Report, January 1999, at para. 20).

6. Both Zvornik and Visegrad municipalities are considered as priority areas for return by the international community as virtually the entire Bosniak population either fled or was expelled from these areas during the war. Authorities in these areas however have been particularly intransigent regarding returns.

Visits/Returns to Federation

7. On 6 February, a meeting was held in **Tuzla (FBiH)** between Bosniak displaced persons from **Srebrenica (RS)** and Bosnian Serbs currently living in Srebrenica. The meeting was organised without involvement from the international community. Upon their return to Srebrenica, a number of the Bosnian Serb visitors were subjected to hostile treatment when fellow Bosnian Serbs made openly disparaging and provocative comments. In addition a statement made by the Serb Radical Party (SRS) was read out on Bosnian Serb television in Srebrenica following the meeting and referred to the "Ustase who went to visit the Muslims who slaughtered the Serbs during the war".
8. On 13 February, approximately 100 Bosnian Serb displaced persons currently living in **Nevesinje (RS)** and **FRY** returned to **Rastani** in **Mostar** Municipality West. Approximately 70 persons remained overnight to clean their houses whilst the others came to visit their houses. SFOR and local police were present and the visit passed without incident. An earlier attempt to return to

Rastani in late 1998 failed when Bosnian Croat residents blocked the roads to the settlement. Though not the first Bosnian Serb return to Mostar (others have already returned to Mostar Municipality South), this return movement was significant because the (Bosnian Croat) Mayor of Mostar Municipality West was present in Rastani to welcome the Bosnian Serbs, having given his formal agreement to the return, including the route chosen through west Mostar.

9. On 17 February, around 30 Bosnian Serb displaced persons currently living in **Srebrenica** and **Bratunac (RS)**, visited their pre-war homes in Bugojno. During the visit the displaced persons met with municipal officials and discussed the current situation in the municipality as well as return opportunities.

RETURN-RELATED INCIDENTS

[This section focuses on a few of the most significant return-related incidents that were reported to and investigated by the international community.]

Federation

10. At approximately 2150 hours on 10 February, a Bosnian Croat policeman finished his shift and proceeded to his private vehicle parked near **Travnik (FBiH)** police station. As he entered the vehicle, an explosive device detonated under it. The police officer was injured and taken to Travnik hospital with non-life threatening injuries. The crime scene was secured by the police but the investigation was hampered by severe weather conditions. The cantonal police have initiated an investigation into the explosion, to be monitored by IPTF.
11. The motive for the attack is unclear, but Bosniak Croat authorities have alleged that this was part of an orchestrated effort to block Bosnian Croat returns to

the area. Last summer, two Bosnian Croat police officers were killed on separate occasions by a similar method and device increasing tension in the area and giving rise to the temporary move by all Bosnian Croat local police officers to **Nova Bila (FBiH)** (a Bosnian Croat dominated pocket nearby) (see HRCC Monthly Reports, June 1998, at para. 1, and July 1998, at para. 1). Investigations into those incidents are ongoing. On 11 February, the HDZ delegates walked out of a session of the Federation's House of Peoples, demanding a report on this and the earlier incidents.

Republika Srpska

12. On 21 February, approximately 10 rounds of sniper fire were fired in the direction of a group of Bosniaks clearing an area in the **Gajevi** area of **Lopare** municipality for the reconstruction of houses. A 12 year old Bosniak child was shot and seriously wounded in the hip by sniper fire and taken to **Tuzla (FBiH)** hospital. An investigation is being conducted by local police.

RULE OF LAW

13. Following the request by OHR to the Council of Europe to provide an expert opinion on the draft entity ***Laws on Judicial Service Commissions***, consultation meetings were held in February attended by representatives from both entities, including the Ministers of Justice, judges of the Constitutional and Supreme Courts, the Public Prosecutors, members of judges' and prosecutors' associations and experts from OHR and OSCE. The RS draft law, based on the Slovenian model, is to be amended and re-submitted to interested international organisations, whilst in the Federation, the Ministry of Justice has established a working group to amend the proposed legislation.
14. By a vote of 45 to 30 (1 undecided) the RS National

Assembly amended the 1996 Law on Amnesty. The amendments were urged by the international community to bring the law into compliance with Annex 7 of the GFAP (Agreement on Refugees and Displaced Persons). Upon coming into force, the amended law provides that draft evasion and desertion be included in the list of crimes to be amnestied and extends the amnesty period in which amnestiable crimes were committed from 14 December 1995, the signing of the GFAP, to 22 December 1995, the official date of cessation of hostilities. Adoption of this legislation should encourage the return of refugees to the RS. [**Ed. Note:** On 4 March, then RS President Poplasen refused to sign the amendment. As such the amendment will now have to be re-passed by the RS National Assembly. If it is passed by at least 50% of the Delegates present, it will not require signature by the President to come into force.]

WAR CRIMES

16. The retrial of Miodrag Andric for war crimes began on 28 April, 1998 (see HRCC Monthly, April 1998, at para. 16). In August 1997, Andric was convicted by the **Sarajevo (FBiH)** Cantonal Court of having committed war crimes against the civilian population and sentenced to twenty years imprisonment in a trial which fell short of international fair trial standards. An appeal was subsequently lodged with the Federation Supreme Court. In February 1998, the Federation Supreme Court sent the case back to the Sarajevo Cantonal Court for retrial due to, inter alia, the fact that, at the original trial (1) the Federation defence lawyer was denied the opportunity to stage a re-enactment of the crime in the RS and; (2) witnesses from the RS were unable to attend the trial to give testimony. Upon the defendant's request, the OHR, together with the Helsinki Committee for Human Rights in RS, enabled Andric to be represented by a RS lawyer, who

has since been working with the Federation lawyer on the retrial.

17. Hearings in the retrial were held throughout 1998 to hear the testimony of eye witnesses and other prosecution witnesses. Following the two re-enactments which took place in September and December last year, inconsistencies were revealed in the testimonies of the eye witnesses. Consequently hearings were held during February to re-examine these eyewitnesses in order to clarify inconsistencies in their statements. At the February hearings, the defence also filed a motion to have 12 witnesses, residing in the RS, be heard by the Sarajevo Court panel in **Rogatica (RS)** Basic Court. The Court agreed that four of the 12 witnesses could be heard in Rogatica provided the President of the Rogatica Court gave his consent and scheduled a hearing to take place on 1 March in the Rogatica Basic Court. OHR and IPTF were requested to escort the Presiding judge and Prosecutor to the hearing in Rogatica on 1 March. [**Ed. Note:** The hearings were held as scheduled and proceeded well. On 17 March Andric was acquitted by Sarajevo Cantonal Court. Details will be provided in the HRCC Monthly Report, March 1999.]

PROPERTY LEGISLATION

Federation Property Legislation Update

18. On 1 February, an OSCE-organised meeting was held in **Trebinje (RS)** to discuss implementation of the Sarajevo Declaration (on minority returns to Sarajevo, adopted in February 1998) and Federation property laws. The meeting was aimed at Bosnian Serb displaced persons from Sarajevo currently living in Trebinje. The meeting was addressed by officials from Sarajevo Canton, including the Cantonal Prime Minister, and discussed the submission of claims for return to socially and privately owned property; sale and exchange of property;

reconstruction of homes and compensation for destroyed property. All attendees were given detailed information on relevant government offices assisting returnees to exercise their right to return.

Implementation of Federation Property Legislation

19. A review of implementation of the Federation property laws has now been completed. Surveys were carried out by OSCE, UNHCR and OHR in every municipality within the Federation, with the objective of obtaining a detailed picture of the progress, obstacles and major resource constraints in the property claims procedure. These results are in the process of being compiled and analysed, and will be used to determine whether any extension is required to the 4 April 1999 deadline for claiming socially owned apartments in the Federation. It will also serve as a basis for interventions to improve the return process during the course of 1999. A preliminary analysis indicates that over 80% of the apartments which were formally declared abandoned have been claimed, and that most or all of the forms of obstruction to claims registration which were identified in the September 1998 review (such as illegal charging of fees, non-recognition of identification documents, improper requests for additional documentation) have now been successfully addressed (see HRCC Monthly Report, September 1998, at paras. 24-25). However, it is also clear that there may still be vulnerable categories requiring protection, particularly refugees abroad who may have faced difficulties in making a claim. A decision regarding the deadline will be taken during March.
20. The review also reveals that the number of claims filed for private property is very low. The property media campaign therefore has been adjusted to raise the

profile and improve information about the claims process for private property.

21. The survey results indicate that the implementation of the later stages of the claims process – the issuing of decisions, administrative appeals, and the implementation of decisions – is proceeding very slowly. In all areas of the Federation, deadlines for issuing decisions are routinely disregarded, and across the board, fewer than 25% of claimants have received a positive decision. Even those claimants who do obtain confirmation of their property rights are rarely able to secure the eviction of the current occupant of their property. Although the laws provide otherwise, the authorities very rarely proceed with an eviction unless they are able to offer alternative accommodation to the current occupant. At the same time, the authorities make little effort to identify multiple occupancy and other forms of misallocation of housing, which would increase the stock of alternative accommodation available to facilitate return.
22. Particular problems continue in **Zenica**, where the municipality has a practice of rejecting claims under Article 3(2) of the ***Law on Cessation of the Application of the Law on Abandoned Apartments*** on the basis that the departure of the original resident was unconnected with the war (see HRCC Monthly Report, November 1998, at para. 18). OSCE reports that this practice has been extended to include claimants who left during the war with convoys organized by the municipality. Those sick or elderly who left with the convoys have had their claims approved, whilst those who were neither sick nor elderly have had their claims rejected.

Legislative Review: Amendments to Federation Property and Housing Laws

23. The deadline for purchasing apartments under the

privatisation scheme, which was originally set for 6 March 1999, has been extended by twelve months to 6 March 2000. The Federation Ombudsmen has released several reports indicating that the process of sale is proceeding extremely slowly, caused by, for instance, the requirement that applicants for purchase present a large number of documents, which may be very difficult to collect. There are other reports of delays, illegal charges and unreasonable demands by the companies selling the apartments. Overall, it appears that fewer than 5% of eligible individuals have been able to purchase their apartments.

24. The Federation Parliament rejected a proposal by the Federation Government to amend the ***Law on Sale of Apartments with Occupancy Right*** to oblige refugees and displaced persons to wait 5 years after their return before purchasing their apartment. This leaves the current laws in place, which permit purchase 6 months after return, but prohibit the subsequent sale of the apartment by the returnee for a further 5 years.
25. An OHR proposed amendment to the ***Law on Housing Relations*** is still waiting to be passed by the Federation House of Representatives, having been already adopted by the Federation House of Peoples in January 1999. This amendment will cancel all court decisions which terminate the occupancy rights of refugees and displaced persons to socially owned apartments during the period of their absence, and will permit the affected individuals to reclaim their apartments through the same administrative process as applies to other claimants. It is essential that this measure be adopted prior to the expiry of the deadline for claiming socially owned apartments on 4 April 1999.
26. The Federation Government has provisionally adopted a proposal of the draft ***Law on Restitution***. The OHR and other concerned international organisations are reviewing the draft, to ensure that it complies with

international human rights standards, and to assess its impact on the privatisation process of socially owned enterprises.

RS Property Legislation Update

27. An amendment to the RS ***Law on Housing Relations***, similar to that currently before the Federation Parliament (see para. 24 above) has been discussed extensively by OHR and the RS Government, and is currently on the agenda of the RS National Assembly. OHR has also requested the RS Government to repeal an amendment to the ***Law on Housing Relations*** made in 1993, which permitted housing authorities to reallocate families to smaller apartments for the purposes of space rationing. There are at least 150 families in **Banja Luka** alone whose rights have been affected by this Law.
28. The RS National Assembly has approved an amendment to the ***Law on Construction Land***, which in combination with a Ministerial Instruction has the effect of removing the power of municipalities to reallocate socially owned land which has previously been used by refugees and displaced persons for residential, religious or cultural purposes.
29. The Republika Srpska Ministry for Refugees and Displaced Persons is near to completing the organisation of its municipal level offices responsible for receiving and deciding claims for the repossession of private property and apartments in accordance with the ***Law on Cessation of Application of the Law on Use of Abandoned Property*** (see HRCC Monthly Report, December 1998, at para. 18). The registration of claims has now begun in most municipalities, although a large number of early problems have been observed. The Ministry has prepared a list of addresses of its offices in each municipal department and the responsible officials for the claims process which will be widely distributed to all

interested organisations and refugee and displaced person associations. The Ministry has also carried out a series of training sessions on the repossession procedure for responsible officials.

30. Relevant international organisations have commenced a joint public information campaign on the new RS property law. A pamphlet has been developed which will be distributed by refugee and displaced person associations and relevant international organisations both within BiH and among refugees abroad. The pamphlet provides essential information on the claims process under the Law. Television and radio announcements have also been finalised for broadcast throughout BiH. The fifth in the series of Information Sheets has been produced and distributed for use by advisors who deal with property and return issues. Sheet No.5a provides detailed information on the process for reclaiming private property in the RS, and No.5b on reclaiming socially-owned apartments.

ECONOMIC, SOCIAL AND CULTURAL RIGHTS

31. On 25 February, the International Human Rights Law Group (IHRLG) issued a report entitled ***Segregation and Discrimination in Education in the Federation of BiH***. The report contains an overview of the current educational situation since the publication of the ŒDual Curricula' in October 1997. The report notes that a number of institutionalised segregation and discriminatory practices remain in effect in many schools throughout BiH. These include discriminatory access to religious education, where for example in **Sarajevo**, only Islamic religion is offered. Other problems include, inter alia, the use of languages in schools where children have only one class a week in the Cyrillic alphabet and that in the third and fourth grades, and the lack of educational facilities and

suitable resources for children with special needs.

32. Before publication of its report, the IHRLG held a roundtable to discuss the situation in Federation schools and to assess some of the measures taken by the government with the assistance of the international community to address these problems. Bosnian individuals, members of NGOs and international organisations, teachers, and others concerned, participated at a roundtable in Sarajevo during February and produced a set of recommendations for policy makers, including;
    - the establishment of a minimum core curriculum for all of BiH;
    - the taking of immediate measures against all forms of discrimination;
    - the setting up of education working groups in other parts of the country following the model of the Sarajevo Education Working Group;
    - the review of textbooks for offensive material currently underway should be supported by all relevant government bodies; and
    - teachers and administrators should not hold executive positions within political parties, to ensure that education is free from political influence.

    (**Segregation and Discrimination in Education in the Federation of BiH** is available from IHRLG's office in Sarajevo, tel. 387-71-205 319.).

HUMAN RIGHTS INSTITUTIONS

33. Experts from OHR, OSCE, and the Human Rights Chamber participated in the Paris session of the European Commission for Democracy through Law (Venice Commission)'s Working Group in February to discuss ***the future of human rights protection mechanisms in BiH***. Proposals for streamlining and improving the efficiency

of the current national human rights institutions were discussed, including the requirement of various legal and constitutional amendments by the state and entity authorities, and will be considered at the March plenary meeting of the Venice Commission.

34. **Progress of Human Rights Institutions: The Human Rights Chamber** (at early March 1999) had registered 1748 cases, decided 98 cases on the merits, and struck out or deemed inadmissible 42 cases. **The Office of the Human Rights Ombudsperson** (at early March 1999) had registered 2811 cases, closed or not opened 325 cases, issued final reports in 310 cases, and issued 14 "special" *ex-officio* reports. In addition, it had successfully applied interim measures in 117 cases. **The CRPC** (at the start of 1999) had received claims concerning 148,167 properties, and had made decisions with respect to 25,421 properties.
35. **Human Rights Chamber:** During its February session, the Human Rights Chamber held a public hearing on the admissibility and merits of ***Mahmutovic v. RS***. In this case, the applicant, a Bosniak, had requested that the execution of a decision of the **Prnjavor (RS)** municipality be cancelled. The decision orders the applicant to exhume the body of his deceased wife, also a Bosniak, from the town cemetery, and to move her body to a new cemetery in the eastern part of Prnjavaor. According to the applicant, this new cemetery does not exist. The applicant alleges violation of his basic human rights as well as discrimination based on nationality, origin and religion.
36. At the public hearing the Chamber delivered its decision on the admissibility and merits of ***Onic v. FBiH***. The applicant holds an occupancy right over an apartment in **Sarajevo (FBiH)**. After a visit to **Grbavica (FBiH)** in May 1992, she was unable to return to her apartment due to the hostilities. In 1993, the apartment was declared abandoned and temporarily allocated to L.O.. In 1996,

the applicant's claim for repossession was rejected as being out of time under the 1994 Law on Abandoned Apartments. In July 1998, she received a decision under the 1998 Law on the Cessation of the Application of the Law on Abandoned Apartments, confirming her occupancy right, entitling her to repossess the apartment and ordering L.O.'s eviction within 90 days. L.O., however, was considered to be in need of alternative accommodation pursuant to the 1998 law. The applicant's enforcement request of September 1998 has been in vain. The Chamber found that the authorities' refusal to allow the applicant to return to her apartment was an ongoing interference with her right to respect for her home under Article 8 of the European Convention on Human Rights and Fundamental Freedoms (ECHR). Article 8 had been violated both by the refusal under the 1994 law to allow the applicant to return to her apartment and the failure to execute the decision of July 1998 pursuant to the 1998 law entitling her to return to that dwelling. The Chamber also found that Article 1 of Protocol No. 1 to the ECHR had been violated by the authorities' effective refusal under the 1994 law to recognise the applicant's occupancy right and to allow her to return to the apartment. The Chamber further found that the non-enforcement of the July 1998 decision entitling the applicant to return to her apartment had not been "subject to the conditions provided for by law" also in violation of Article 1 of Protocol No. 1. The Chamber ordered the Federation to take all necessary steps the enable the applicant to return swiftly to the apartment and to report to the Chamber by 12 April 1999 on the steps taken to comply. *[Chamber decisions and reports are available from the Secretariat or on the Internet at http://www.gwdg.de/~ujvr/hrch/hrch.htm].*

37. **Implementation:** The Federation Agent reported the establishment of a mechanism for the transfer of funds following compensation awards requiring payment by the

Federation. She further indicated that applicants with an outstanding compensation award will receive their money in the near future.

38. The RS Agent has not yet reported payment in cases involving compensation awards made against the RS, but hopes to be able to do so soon. No progress was reported on compliance with the decision of the Human Rights Chamber in the ***Matanovic*** case, of a Catholic priest who disappeared in 1995.

NOTE: *The HRCC Human Rights Monthly Report is based on the regular and special reporting of inter-governmental and non-governmental organisations. The aim of the Report is to provide a concise overview of human rights issues, cases and trends affecting the overall human rights situation in Bosnia and Herzegovina during the reporting period. Questions on specific items should be directed to the reporting organisation or to the HRCC. Please send information for inclusion in the report to 387-71-447-420 to the attention of Bela Kapur or Sirpa Rautio or by e-mail to bela.kapur@ohr.int or sirpa.rautio@ohr.int.*

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