

Bosnien og Hercegovina (79)

PUBLIC

Office of the High Commissioner for Human Rights

Human Rights Field Operation

BOSNIA AND HERZEGOVINA



Quarterly report

(Period covered: November 2003 to January 2004)

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1. Executive summary

The main areas of activities of OHCHR respond to major human rights issues that Bosnia and Herzegovina (BiH) is currently facing. Concerns remain regarding the rule of law, in particular the lack of human rights protection in new legislation or in its implementation. The Office has been involved in addressing problems of implementation of the new Law on Movement and Stay of Aliens and Asylum and has made comments on the Criminal Procedure Code and the law on Witness Protection, incorporating civil society concerns. Office continued to be involved in the Poverty Reduction Strategy Paper (PRSP) process and in monitoring the situation of social and economic rights through the Rights-based Municipal Assessment Project (RMAP). The problematic social and economic context is linked to the continued serious level of organised crime, including smuggling and trafficking of persons, and the negative influence it exerts on good governance. OHCHR has been particularly involved in raising awareness on trafficking at a national and regional level and in building capacity of police, judges and prosecutors. Finally, the perceived impunity of those responsible for war crimes continues and the focus now placed on the transfer of cases from ICTY to BiH has brought a hiatus in relation to prosecution at Entity level. OHCHR has been supporting civil society involvement and capacity as regards witness protection, prevention of torture and enforced disappearances.

2. Human rights context

The changes made in 2003 to the legal and constitutional framework became apparent in the reporting period. The major institutional change in the protection of human rights was the closure of the Human Rights Chamber (HRCh) and the creation of a commission within the Constitutional Court. The commission is now focusing on clearing the backlog of cases from the Chamber. Concerns have been voiced on the implication on human rights protection of this change, remain as given the more limited jurisdiction of the Constitutional Court (CC).

The State Court is now being supported by a substantial international staff of judges and prosecutors who are directly involved in cases. This has created confusion over procedures, application of law and separation of powers. Likewise confusion remains regarding the criminal law package. The absence of real witness protection continues to inhibit progress on all levels, from war crimes to trafficking and gender based violence.

The new SFOR commander, General Packett, has placed a high priority on the arrest of indicted war criminals, particularly Karadic and Mladic. The approach adopted is to break the support networks upon which they allegedly depend. In that respect, SFOR conducted several

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operations in January, which resulted in the arrest and detention at SFOR bases of at least two persons. As OHCHR has stated on many occasions, there is a clear and obvious link between organised crime and those responsible for war crimes. However, the issue is how SFOR and the national police can ensure that the correct legal framework is applied to each category in order to ensure that prosecution is in accordance with law. It is not in the interest of the rule of law and protection of human rights that those involved in organised crime are used merely as informants or witnesses instead of subject of investigation.

As the Republika Srpska (RS) report on the fall of Srebrenica to the HRCh was deemed insufficient, the RS had 6 months to submit a new report. OHR created the "Srebrenica Commission" to uncover and disclose information missing in the initial reports. The Commission was finally formed in 14 January 2004, after a delay caused by difficulties to find members for the Commission. The Commission has until April 14 to publish a report. Members of the Commission have already warned that by this date the Commission would not be able to fully investigate and establish the truth about the fall of Srebrenica. Clearly, this has repercussions on the work being pioneered on a regional basis by NGOs, assisted by OHCHR, towards truth and reconciliation.

OHCHR has voiced its concerns on response to trafficking. In particular, the Office has stressed that trafficking should not be viewed as primarily an issue of law enforcement and prostitution. There is an urgent need to focus on the elements of trafficking that must be prioritised, in particular prevention and the instruction on the treatment of trafficked persons. Research by OHCHR and UNICEF in cooperation with NGOs has shown that Bosnian women and children are rapidly becoming the majority of those forced into exploitative sexual service and there are no effective mechanisms in place to provide assistance. A return to previous regular meeting with all relevant actors and the Government is strongly encouraged.

3. Activities undertaken

3.1. Trafficking, organised crime and smuggling

- OHCHR gave induction training to new members of the European Union Police Mission (EUPM) staff on trafficking in human beings, in November. In addition, OHCHR trained judges, prosecutors and policemen in Banja Luka on trafficking and international standards. This training was the second session organised by Centres for Education Judges and Prosecutors of RS and the Federation of BiH (FBiH).
- The Head of Mission was invited by the Belgrade-based NGO "Astra" as guest speaker at the launching of a Training Manual for the media, in November. The Head of Mission also gave a presentation on trafficking at the Centre for Security Studies in Geneva, as well as at the OSCE Ministerial Forum in Maastricht, in December.
- OHCHR participated in the regular working group on trafficking. Among other things, participants discussed the need to train officials in BiH on trafficking and effective measures to fight trafficking.
- OHCHR has been engaged in several cases where persons have been trafficked, subsequently worked, seemingly voluntarily, in the sex industry and wanted neither assistance nor intervention on their behalf. OHCHR has met with prosecutors and police to explain the legal position of those, who fall within this category, and is developing the by-law and instructions with Government and NGO partners to ensure that adequate

safeguards are provided. OHCHR is discussing this with one embassy with a view to develop a project whereby OHCHR and local NGOs provide training, with the involvement of the Bar Councils, for lawyers to be on call to attend police stations to ensure legal advice is provided.

- In December 2003, OHCHR participated in a meeting which was organised by the Office of the National Coordinator with Ms. Helga Konrad, Head of the Stability Pact Trafficking Task Force, NGOs, Representatives of State Ministries, UNICEF, OSCE, UNHCR, and IOM. After the meeting OHCHR, OSCE, and UNICEF launched a joint regional report on *"Trafficking in Human Beings in South Eastern Europe"* and participated in a press conference.

3.2. Addressing ongoing impunity in the context of rule of law reform

3.2.1. Law reform

OHCHR convened three conferences for law faculty students in the FBiH and RS to train them on the European Convention for Human Rights and its application to the new Criminal Law package imposed by OHR.

The Office reviewed and commented on draft chapters of a Commentary on the Criminal Procedure Code.

3.2.2. Protection

December saw the culmination of the case of the police officers, who had been decertified by IPTF. Some 150 had lodged cases in local courts and twelve were before the HRCh. The HRCh declared one of the cases admissible and, accordingly, all similar cases were referred for hearing on the merits. The HRCh deemed BiH authorities responsible to ensure the national law and the right to a fair hearing before an impartial tribunal be upheld. Clearly, responsibility had laid with UNMIBH to ensure that the correct procedures had been in place before de-authorisation. The UNCT were asked by OHR to find a solution with DPKO. OHCHR took the lead in providing legal analysis and additional documentation for the concerned parties. No final solution has yet been reached but it is hoped that DPKO will at least review the cases before the courts.

3.2.3. Witness protection

In November and December, the Office organised two Conferences for civil society and Government to identify gaps and solutions for strengthening witness protection. The Office also briefed civil society on the draft Law on Witness Protection Program and supported their efforts to provide comments and proposed amendments to the draft law.

OHCHR prepared a legal analysis and proposed amendments to the Law on the Protection of Vulnerable Witnesses and Witnesses Under Threat. As chair of the sub group tasked with proposing amendments to the legal framework, OHCHR circulated its analysis and amendments among members of the OHR Working Group on Witness Protection.

The Office met with the Secretary General of the State Court of Bosnia and Herzegovina to follow up on concrete ways of addressing the technical and logistical obstacles to implement the Law on the Protection of Vulnerable Witnesses and Witnesses Under Threat and

reviewed their funding proposal to overcome these obstacles. As a result, the Office met with the European Commission and OHR to highlight problems faced by State Court and encouraged their consideration of the Court's funding proposal.

3.2.4. Enforced disappearances

OHCHR reviewed the revised draft Law on Missing Persons and provided legal analysis and proposed amendments to the draft law. The consultant working on an assessment of the legal situation of families of missing persons should submit his report at the end of February.

3.2.5. Conscientious objection

In November the Office reviewed the Temporary Instructions on Alternative Service, signed into law in the Federation.

3.2.6. Gender

OHCHR provided legal expertise at a seminar organised in November for members of Parliament and NGOs by the Gender Centres in relation to the implementation of the Gender Law.

In December, the Office assisted the discussion on the first BiH CEDAW Report organised by the BiH Ministry for Human Rights and Refugees and Gender Centres FBiH and RS. This meeting was opportunity for NGOs to express their concerns, suggestions and proposals.

In December, the OHCHR contributed to a meeting on the Law on Domestic Violence organised by the Ombudsman's office.

3.3. Human rights frameworks for migration

OHCHR met with officials from Ministry of Interior and State Border Service to identify gaps and problems in the implementation of the new Law on Movement and Stay of Aliens and Asylum (LMSAA), which came into force at the State level on 6 October 2003. This process highlighted the need for a roundtable to engage all actors in developing solutions to barriers in implementation, raising awareness on the Law and working towards greater cooperation between State agents.

In December, upon Government request, OHCHR organised and facilitated a roundtable discussion on the new Law on Movement and Stay of Aliens and Asylum with participants from Government and international organizations.

OHCHR drafted an assessment of the new Law for its compliance with international and regional human rights standards. This analysis includes findings of the roundtable held in December and will serve as a tool for drafting by-laws and ensuring a more effective implementation of the law.

As working groups responsible for the drafting of 14 by-laws to the LMSAA have been established, OHCHR is involved in key groups that will focus on areas where human rights are of concern. Comments were provided to the first of the draft by-laws.

3.4. Rights based approaches to development and poverty reduction strategies

3.4.1. Poverty Reduction Strategy Paper (PRSP)

The BiH PRSP was finalised in December and approved by the BiH Council of Ministers in February. Its adoption was urged by members of the international community, including the High Representative, as key to further development in BiH.

OHCHR has continued its work through the co-ordinated working group of national NGOs and institutions (Ombudspersons) established to develop rights-based monitoring tools for health, education, the environment and social welfare.

3.4.2. Rights-based Municipal Assessment Programme (RMAP)

Round 3 reports: OHCHR gave support to RMAP teams for round 3 assessment reports. Priority setting meetings were held in October to determine areas covered by the report, as well as brainstorming sessions in December. Together with RMAP and OHCHR, the brainstorming sessions allowed for underlying root causes of municipal problems and a framework for individualised reports to be identified. RMAP teams finalised the first drafts of round 3 reports in January.

Training: The Office organised and facilitated an intensive induction of new staff in November (4 National Officers and the new Legal Officer).

Human rights tools: Two additional human rights checklists were prepared, on enforced disappearances and missing persons and on human trafficking and migration. The Office also prepared a Vulnerable Groups Checklist in order to assist teams asking relevant questions. All the checklists were reviewed in January.

Consolidated report: The thematic working groups comprising of OHCHR and RMAP staff, established to review the 12 finalised municipal assessments reports from rounds 1 and 2 of RMAP, met regularly in November and December in preparation for the Consolidated Report. Findings from the Working Groups were merged and a framework for the Consolidated Report determined.

3.4.3. Torture victims

In December, OHCHR facilitated the visit of a member of the secretariat of the UN Voluntary Fund for Victims of Torture to two NGOs that have been supported by the Fund in 2003. At the same occasion, the Office organised a round table for professionals working with torture victims to explore the possibility of joint projects in order to improve access and availability to health care for torture victims in remote areas of BiH. As a result of the meeting, NGOs from Belgrade, Zenica and Sarajevo decided on a joint project in 2004 to reach out to torture victims that have difficulties accessing psychosocial care. These NGOs have met again at the beginning of February to draft a project proposal to be submitted to donors locally as well as to the UN Fund. The Office participated in the working group to clarify the UN Fund's Guidelines and pre-screen the project proposal.

4. Cooperation with partners

4.1. Cooperation with national partners

OHCHR is the only international organization with a human rights mandate in BiH that focuses on NGOs capacity building. The aim is, and always has been, to strengthen NGOs as partners of the Government. This approach is most developed in the areas of trafficking, domestic violence, and witness protection.

OHCHR continues to cooperate with the Government, especially in the field of implementation of new laws. For example, the Office has been requested by the Government to provide assistance in the preparation of regulations supporting implementation of the new Law on Movement and Stay of Aliens and Asylum after fruitful discussions on necessary steps forward. In addition, the cooperation with the Government is very strong in the implementation of the Gender Law, improving measures against trafficking on the basis of the NPA, training judges, prosecutors, and police on trafficking and domestic violence.

4.2. Cooperation with regional partners

OHCHR was invited to facilitate a Working Group on Trafficking at a regional conference organised by the Gender Centres in Banja Luka with the support of UNDP and UNIFEM. Participants concluded there is need to have strong regional coordination and mechanisms to ensure the transfer of experiences and knowledge in the region. This will be the aim of future work.

As a member of the Stability Pact Trafficking Task Force, the Head of Office also ensured continued close cooperation on trafficking with international organizations working at a regional level.

4.3. Cooperation with international partners

Coordination with international partners took place through thematic working groups with participation of OSCE, OHR, Council of Europe, UN agencies, EU, EUPM, and embassies and international NGOs. The Office participated in the Working Groups on Trafficking, on Immigration and Asylum, on Development, on Gender, on Witness Protection, on Juvenile Justice, on the Transfer of War Crimes Cases for National Prosecution, on the Rule of Law Task Force (chaired by OHR), on Conscientious Objection and on Persons Unaccounted For. Individual meetings also took place with members of various organizations to establish grounds for future co-operation in common areas of interest (UNHCR, IOM).

UNCT. Towards the end of 2003, the UNCT was finalizing the CCA and UNDAF processes under three priorities: governance, social protection and human security. In January, a consultant was hired to finalise the draft of the UNDAF. OHCHR has been assisting this process, providing advice on integrating a human rights based approach. The UNDAF should be finalised by mid-February. In light of the UNDAF process, OHCHR is in the process of arranging basic human rights training for UN staff, which will take place in mid February.

ACT Project. As BiH has been selected for a second year under the ACT project, OHCHR and UNDP convened a Task Force. The Task Force decided to prioritise the issues of health and human rights this year and, accordingly, invited WHO to join the Task Force. A letter of invitation was sent to NGOs dealing with health issues to apply for small grants. The deadline for application was 19 January 2004. The Task Force will have selected and notified its 6 successful applicants by mid-February.

5. Impact and / or concrete achievements

5.1. Migration

In December, at the Government's request, OHCHR organised and facilitated a roundtable discussion on the new Law on Movement and Stay of Aliens and Asylum with participants from Government and international organizations. The meeting was successful in identifying areas to be addressed through the regulatory framework. Particular attention was paid to vulnerable categories of migrants.

5.2. PRSP

The BiH PRSP was finalised in December and approved by the BiH Council of Ministers in February. The document has taken into account human rights concerns raised by OHCHR.

OHCHR has continued its work through the working group on national NGOs and institutions established to develop rights-based monitoring tools for health, education, the environment and social welfare. The Group has drawn up a preliminary list of international standards and commitments, national standards and strategies as well as indicators for the above-mentioned areas. The group reviewed and finalised this list by the end of January, closing the first phase of its activities.

5.3. Human rights based approaches to development.

In the second half of 2003 OHCHR has been developing a Human Rights Checklists to help the RMAP assessment teams identify international human rights standards and principles relevant to development issues. 15 Human Rights Checklists touching all major issues that the teams are assessing in the municipalities have been finalised. These tools provide highly valuable human rights material for the RMAP Project.

OHCHR was invited to participate in the UNICEF 2004 country programming meeting in order to support efforts to integrate a human rights based approach to strategies and activities. The Office received positive feedback that its participation helped maintain direction toward human rights goals and objectives.

5.4. Trafficking

In December, OHCHR, OSCE, and UNICEF launched a joint Regional Report on "Trafficking in Human Beings in South Eastern Europe" and participated in a press conference in Sarajevo on that topic, in the presence of the Head of the SPTTF, Helga Konrad.

As a Guest Speaker, the Head of Mission raised awareness on trafficking with the Foreign Ministers at the OSCE Ministerial Forum in Maastricht.
