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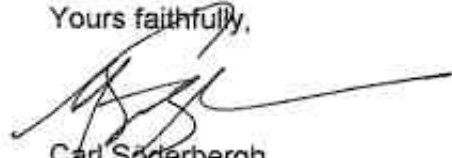
Dear Partners,

Please find enclosed for your information copies of the following documents, provided by our Headquarters in Geneva.

- Update of UNHCR's position on categories of persons from Bosnia and Herzegovina who are in continued need of international protection, May 1999
- Updated UNHCR Guidelines for the Humanitarian Evacuation Programme of Kosovar refugees in the former Yugoslav Republic of Macedonia, 11 May 1999

1. Vedlagt

Yours faithfully,


Carl Söderbergh
Refugee Law Training Officer

Distribution:

UNHCR counterparts in the Baltic and Nordic countries

BOZNIEN-HERTEGOMINA

(PF)

NATIONS UNIES

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**UPDATE OF UNHCR'S POSITION ON
CATEGORIES OF PERSONS FROM
BOSNIA AND HERZEGOVINA WHO
ARE IN CONTINUED NEED OF
INTERNATIONAL PROTECTION**



United Nations High Commissioner for Refugees, May 1999

UNHCR's Position on
Categories of Persons from Bosnia and Herzegovina who are in Continued Need of
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1. Introduction

1.1 As a result of the conflict in Bosnia and Herzegovina (BH), some 1.2 million refugees fled abroad, mainly to countries of the former Yugoslavia and Western Europe, while an additional 1.3 million people became internally displaced. BH had a pre-war population of some 4.3 million people. Almost 60 per cent of the total population was affected by the conflict.¹ According to UNHCR's estimates, over 350,000 refugees from BH are still in need of a durable solution. Outside the region, Germany hosts the highest numbers (estimated 100,000 in Germany). Within BH, up to 836,000 people remain displaced from their pre-conflict homes, of whom 490,000 are in the Federation of Bosnia and Herzegovina (the Federation) and 346,000 are in the Republika Srpska (RS). This number has increased in the course of 1998, as a result of returns of refugees from asylum countries, and in the absence of a major substantial breakthrough in minority returns. The country also hosts some 30,000 refugees from Croatia. Additionally, since March 1998, the State authorities registered some 7,450 refugees from Kosovo, but there may in fact be up to 13,600 Kosovo Albanians in the country. Since 24 March 1999, the current major crisis in the Federal Republic of Yugoslavia (FRY) has led to the arrival in BH of additional groups of persons from FRY of concern to UNHCR: some estimated 16,000 Muslims from the Sandzak region; and some estimated 2,700 persons from other areas of FRY, including Croatian Serb refugees.

1.2 The majority of Bosnian refugees who found refuge in Western Europe were generously granted temporary protection.² Although the treatment afforded under temporary or provisional protection is not identical to refugee status under the 1951 Convention relating to the Status of Refugees and its 1967 Protocol, temporary protection has nonetheless become an important tool of international protection as a response to mass influx situations. Because it is protection offered without an individual analysis, however, in UNHCR's view, which is supported by State practice, the ending of temporary protection requires a differentiated approach. While some may be able to repatriate, particularly to majority areas, others require continued protection.

1.3 Arguably, not least because ethnic displacement was a central objective of the conflict in Bosnia and Herzegovina, the majority of current beneficiaries of temporary protection may have qualified for refugee status according to the 1951 Convention relating to the Status of Refugees and its 1967 Protocol, if they had been processed in individual asylum procedures at the time they arrived in their current host countries.³ While the temporary protection regime is different in character from the asylum regime under the 1951 Convention and the 1967 Protocol, there are certain areas of overlap. Taking into account that overlap, it is important to have in place sufficient protections for those categories of persons identified to be in continued need of international protection. While the 'ceased circumstances' cessation clause

¹ Some 250,000 people died and many thousands more were injured. There is consensus among researchers that the majority of the population is currently suffering from some form of psychological disturbance, ranging from slight post-traumatic stress disorder to acute psychiatric illness [see OXFAM (Sarah Maguire), *'A Family Affair': A Report of Research into Domestic Violence against Women in Albania, Bosnia and Herzegovina, Croatia, Federal Republic of Yugoslavia*, page 22].

² See, for instance, the *Resolution on Certain Common Guidelines as Regards the Admission of Particularly Vulnerable Groups of Persons from the Former Yugoslavia*. Adopted by the EC Ministers responsible for immigration in Copenhagen on 2 June 1993.

³ See UNHCR, *A Regional Strategy for Sustainable Return of Those Displaced by Conflict in the Former Yugoslavia*, Overview.

of Article 1C(5) of the 1951 Convention may not be directly applicable, there are valuable elements to be drawn from the application of this cessation clause to consider when and for whom temporary protection can be lifted.⁴ To allow for the general lifting of temporary protection for the categories of persons who have been identified to be in continued need of international protection, the changes, coupled with reintegration potential, must be fundamental and must remove the circumstances which generated the protection need in the first place.

1.4 Annex 7 of the General Framework Agreement for Peace (GFAP) guarantees in Article I(1) the right of all refugees and displaced persons freely to return to their homes of origin. The underlying rationale for this position in international law is grounded on the fact that peace building, peace consolidation and the creation of secure and stable conditions in BH are related to reversing the effects of ethnic cleansing, that is, forced displacement to gain effective control over territory, which was the prime objective of the conflict.

1.5 In its 1997 Repatriation and Return Plan,⁵ UNHCR recognised that repatriation of persons to their former place of residence was a possibility where this was within an area where their constituent people were the majority and where they administered the area (so-called 'majority returns').⁶ Such majority returns were subject to verification by the host State that there were not individual circumstances which could impede safe repatriation. However, fundamental political and other barriers still prevented repatriation to minority areas. The development of an effective domestic human rights protection mechanism in BH, as well as the removal of the political and other barriers to return were considered crucial if minority returns were to be successful and sustainable.

1.6 In planning for 1998, UNHCR had considered that 50,000 minority returns to BH would constitute a credible breakthrough. This figure was realistic at the time, in view of the renewed commitments and declarations of intent by the authorities. An estimated 110,000 Bosnian refugees and 29,570 displaced persons had returned to and within BH in 1998.⁷ However, despite the massive involvement of the international community, only some 41,275 minority returns are estimated to have occurred in 1998, including some 15,531 registered returns.⁸ This reflects the reality that the fundamental causes of displacement have not been removed.

1.7 For 1999, the Peace Implementation Council (PIC) held its annual ministerial level meeting in Madrid on 15 and 16 December 1998. The PIC agreed that, after the end of the current phase devoted to consolidating peace, the next two years would be devoted to making that peace self-sustaining. Enabling a free choice on return home was recognised as an

⁴ For further discussion, see the Standing Committee document, *Note on the Cessation Clauses*, EC/47/SC/CRP.30 of 30 May 1997, para. 27.

⁵ See UNHCR, *Repatriation and Return Operation 1997* (document HIWG 97/2), pages 3-4.

⁶ Definitions of working terms used in this document: "Returnees" encompasses both refugees and displaced persons returning to their homes of origin. "Minority" is used to describe persons who are members of the current minority constituent people in their place of origin. It is important to note that many minority residents and returnees were part of the majority constituent people in their place of origin according to the pre-conflict demographic situation.

⁷ It is estimated that some 323,590 refugees out of 1.2 million repatriated to BH since the signing of the GFAP until end of February 1999 (as for the internally displaced, the estimated number of returns is 255,077 for the same period).

⁸ In 1998, 13,186 minority returns were registered to and within the Federation and 2,345 to the RS.

essential component of this strategy. Considerable emphasis was placed on the fact that the current very high levels of international support could not continue. While the atmosphere was constructive and non-confrontational, there was little indication that significant positive changes would be forthcoming from the parties in the region: many statements drew attention to the fact that the progress made had largely been imposed. The Council resolved 'to support every effort to create the conditions for a major step forward on returns to own homes in 1999 for those who wish to exercise this right.'⁹

1.8 A reinforced framework for the removal of the many barriers to return and a coherent and well-prioritised support for the return process itself has been elaborated in the 1999 Action Plan of the Return and Reconstruction Task Force. The resolution of the space, security and sustainability issues, as outlined in this Action Plan, will be crucial for the minority return process gaining momentum, not to mention becoming self-sustaining (and will only be possible with an extraordinary level of engagement and commitment by the international community). It remains to be seen whether this major effort of the international community will lead to a substantial breakthrough on minority returns in 1999. Any such breakthrough will influence the review of categories of persons in continued need of international protection.

1.9 At the same time, large numbers of those still in search of solutions may not return home because they are either unable or unwilling to do so. Many factors influence such decisions. Some are borne of experience during the war, some of experience since the war ended, and some reflect trends that would have changed the demography, even without conflict, thus related more to socio-economic reasons. While the international community will need to continue to promote minority return opportunities for those wishing to return home in line with Annex 7 of the GFAP, other solutions will need to be found for those who, for valid protection reasons, are unable or unwilling to return, at least for the time being. It is only logical that, in the absence of a fundamental and durable removal of the causes of flight¹⁰,

⁹ The key paragraph reads as follows:

" 11. We agreed to press ahead with refugee and displaced person returns. We recall the too long denied right of refugees and displaced persons freely to return to their homes of origin and to have restored to them property of which they were deprived in war. We remain gravely concerned about the frequency of violent incidents in parts of Bosnia and Herzegovina, related to refugee return and to general criminality, and call on all concerned to act in accordance with the law and the Peace Agreement. We call for a re-doubling of efforts to create the conditions for a large number of returns in 1999. In particular, we:

- recall the unfulfilled obligation of the Parties under Annex 7 of the Peace Agreement to co-operate with UNHCR and to create suitable conditions for return;
- insist that the parties establish the conditions necessary for an effective returns process;
- note that many tens of thousands of Bosnians have so far expressed a wish to return home immediately to minority areas, and endorse the Reconstruction and Return Task Force (RRTF) action plan for 1999, which sets out an intensive programme to address the three key issues of space, security and sustainability and includes specific sector plans such as a substantial information campaign;
- undertake to provide the appropriate funding, commitment and resources needed for that purpose;
- welcome the high degree of co-ordination ensured by the plan, as well as, in particular, the intention of UNMIBH and SFOR to cooperate in its implementation to the maximum extent possible within their mandates."

¹⁰ Those responsible for the conflict and the displacement that was often its objective continue to undermine the enormous efforts of the international community to promote return opportunities [see UNHCR, *Progress in and Prospects for Sustainable Return and Solutions in the former Yugoslavia* (document HIWG 98/9, para. 16)]. See also Marcus Cox, *Strategic Approaches to International Intervention in Bosnia and Herzegovina*, (Cluster of Competence, The rehabilitation of war-torn societies: a project co-ordinated by the Centre for Applied Studies in International Negotiations), Sarajevo, October 1998, page 7: 'The three war-time regimes

certain categories of refugees from BH will therefore remain in continued need of international protection.

1.10 UNHCR considers that five main categories of people are in continued need of international protection. Repatriation of these groups should only take place when the individual has decided to return out of her or his own free will and on the basis of an informed choice. The situation of each of the following five categories is examined in Sections 2 - 6:

- Persons originating from areas where they would no longer be in the majority upon return;
- Humanitarian cases (ex-camp or prison detainees; victims or witnesses of violence, including sexual violence; severely traumatised persons; witnesses testifying before the International Criminal Tribunal for Former Yugoslavia; individuals in need of special care);
- Persons of mixed ethnicity or in mixed marriages;
- Potentially stateless persons;
- Other specific protection categories (political and military leaders of the Demokratska Narodna Zajednica, also known as, 'former Abdic supporters'; deserters and draft-evaders of the Bosnian Serb army; minority members of the armed forces; members of the Roma communities).

Section 2 also contains a brief examination of the effects of induced repatriations to situations of internal displacement on the individuals themselves, on others, and more generally.

1.11 Section 7 sets out relevant considerations regarding the treatment of new arrivals and identifies groups at particular risk of persecution in addition to the aforementioned categories.

2. Persons Originating from Areas where they would no longer be in the Majority upon Return

2.1 This category includes all persons who would fall within a current minority constituent people in their area of pre-conflict residence. This applies to all constituent peoples throughout the country. Members of minority constituent peoples who would be likely to experience systematic harassment, discrimination and violations of their rights upon return, continue to be in need of international protection, especially on cumulative grounds. The situation in many minority areas produces a feeling of insecurity regarding their future existence. The lifting of temporary protection in respect of this category can therefore only be recommended once the changes to the political, security, legal, administrative and social framework in BH are sufficiently substantial to allow for their safe, dignified and sustainable return. In the absence of changes, repatriation to a minority area, including to recognised 'Open Cities', should only take place if the individual has made a free and informed choice as to her or his return.

2.2 Problems include the following: continued threats to the personal safety of returnees; inadequate legal and administrative framework conducive to safe, dignified and sustainable return, notably in the property, citizenship and amnesty areas; major difficulties in the implementation of the property laws; absence of an effective human rights protection regime;

remain intact, and the ideology of ethnic separatism remains the dominant political force. The parties have consistently obstructed the creation of the State institutions, preferring to preserve their own autonomy and extra-constitutional power structures.

denial of residence registration and/or issuance of ID cards, and thus access to essential social services; levying of arbitrary fees in administrative procedures; discrimination in the education and employment sectors. In short, most individuals still consider the greatest threat to their safety, freedom and well-being to be living in areas administered by a different ethnic group.

2.3 The following paragraphs provide a general overview of the legal, administrative and social framework in BH as it relates to the safe and dignified return of refugees and displaced persons. It identifies, in particular, the shortcomings of this framework by describing in more detail the administrative and legal obstacles to return, and outlines briefly the measures necessary to create the enabling legal, social and administrative conditions conducive to voluntary and sustainable return in safety and with dignity. It also describes the effects of induced repatriations to situations of internal displacement.

a. The Legal Framework

i) Property Legislation

2.4 One of the essential elements for the safe and dignified return of all pre-conflict residents is the existence in both Entities of property legislation in line with the requirements of Annex 7 of the GFAP, as well as its swift and fair implementation.

2.5 The four new Federation laws regulating property and housing issues (*The Law on Cessation of the Application of the Law on Temporarily Abandoned Real Property Owned by Citizens*, *The Law on the Cessation of the Application of the Law on Abandoned Apartments*, *The Law on the Taking Over of the Law on Housing Relations and the Law Amending the Law on the Sale of Apartments with an Occupancy Right*) came into effect on 4 April 1998.¹¹ The accompanying Instruction was adopted on 30 April 1998 and entered into force on the same day with its publication in the Federation Official Gazette.¹² While the basic legal framework for the filing of repossession claims has been established, the implementation of the laws has been slow and difficult¹³ and hardly anyone was able to repossess her/his property. According to a recent survey of municipal authorities, some 47,500 claims have been registered for socially owned apartments, and a further 8,500 for private property. However, only 11,000 positive decisions have been made in relation to apartments, and 2,100 on private housing. Even when the housing authorities have recognised property rights and issued

¹¹ FBH Official Gazette, No. 11/98, 3 April 1998 and further amendments.

¹² FBH Official Gazette, No. 16/98, 30 April 1998.

¹³ The first monitoring exercise in summer 1998 revealed that the implementation of the property laws was extremely problematic and deliberately obstructed, particularly with regard to the filing of claims. In many municipalities, claimants were inappropriately asked to provide extra documentation or required to pay fees for the processing of their claims, even though a clear instruction prohibiting this practice was sent to all competent authorities by the Federation Minister for Urban Planning and Environment. Cases of misinformation, refusal to issue the proper claim form or deliberate confusion with other procedures were also reported. As a result, the High Representative extended the deadline of 4 October 1998 for a further 6 months. A second monitoring exercise was conducted in January 1999. Whereas access to the claims procedure is now guaranteed in most of the Federation territory, some municipalities continue to charge fees (e.g. Bosanska Krupa, Velika Kladusa, Visoko, Sarajevo Centar, Novo Sarajevo and Novi Grad), ask for supplementary documentation in order to accept the claim or refuse to receive claims submitted by third persons (as is the case in the Sarajevo Canton). In view of the results of this second survey, the High Representative decided an extension of the deadline for another three months.

positive decisions, displaced persons and refugees have in effect so far been unable to repossess their property.

2.6 The low implementation rate is due to the following shortcomings: i) the shortage of alternative accommodation for current occupants who are unable to return to their own housing; ii) the failure on the part of the authorities to evict illegal and double occupants, as well as temporary occupants where temporary accommodation is available; iii) the authorities claim to be overworked, lacking in staff and resources, and unable to render decisions within the deadlines stipulated in the property laws; iv) the administrative authorities' failure to deal with repossession claims relating to former JNA flats; v) but above all, the lack of political will from local authorities to implement the property laws.¹⁴ Furthermore, the authorities fail to tackle effectively cases where the temporary occupant is a local resident and has alternative accommodation or where members of a single household previously living in one dwelling have spread over several apartments (multiple occupancy related to powerful and influential families). This is particularly the case in urbanised areas, such as Sarajevo, Tuzla and Bihac.

2.7 In the RS, the *Law on the Cessation of the Application of the Law on the Use of Abandoned Property*¹⁵ which creates an administrative procedure for refugees and displaced persons to claim repossession of socially-owned apartments with occupancy rights and private property, entered into force on 19 December 1998. The accompanying *Instruction* was adopted on 19 December 1998 but entered into force only on 21 January 1999.¹⁶ Like in the Federation, claims for repossession of socially owned apartments must be filed within a six-month deadline (that is, 19 June 1999). Some of the inconsistencies identified in the Law were corrected by the accompanying *Instruction*, however, major problems are expected in relation to: i) the claims process for repossessing socially owned apartments that were not "declared abandoned";¹⁷ ii) the lack of criteria for deciding cases where two persons are in possession of one apartment as a result of the later occupant obtaining a permanent occupancy right;¹⁸ iii) the identification of alternative accommodation for the current occupants in cases where s/he cannot, or does not, wish to return to her/his pre-conflict home. First indications from the field monitoring of the implementation of the RS property legislation point to similar shortcomings as identified in the Federation, that is, obstruction at the local level to receive and process the claims in accordance with the Law and the Instruction.

¹⁴ The Federation property laws protected the new permanent occupancy rights by giving the authorities the possibility to allocate the pre-conflict occupancy right holder another apartment, according to criteria to be issued by the Federation Government. In October 1998, the Federation Minister for Urban Planning and Environment issued an *Instruction on the Criteria for the Allocation of an Alternative Apartment to the Occupancy Right Holder or Current Occupant of the Apartment* (FBH Official Gazette, No. 40/98, 21 October 1998), which was not in accordance with the Law itself, nor with Annex 7, but in addition did not fulfil the basic criteria worked out by the international community. Therefore, the High Representative suspended the application of Article 3(6) of the *Law on the Cessation of the Application of the Law on Abandoned Apartments*, as well as the sale of apartments to individuals who acquired an occupancy right after 30 April 1991 (decision passed on 5 November 1998). Finally, on 13 April 1999, the High Representative cancelled all permanent occupancy rights issued in the Federation and in the RS during and after the conflict in BH, converting them into temporary occupancy rights.

¹⁵ RS Official Messenger, No. 38/1998, 11 December 1998.

¹⁶ RS Official Messenger, No. 1/99, 21 January 1999.

¹⁷ Despite promises by the RS authorities to include all abandoned apartments into the administrative claims process, the Law and the Instruction only cover the repossession of apartments "declared" abandoned.

¹⁸ See Article 17 (2) of the *Law on the Cessation of the Application of the Law on Use of Abandoned Property*. With the cancellation of all permanent occupancy rights, these two problems have in the meantime been resolved.

2.8 Both Entity authorities must amend those parts of the current property legislation which are not in accordance with Annex 7 of the GFAP and ensure full implementation to effect the return of pre-conflict residents.

ii) Citizenship Legislation

2.9 Effective citizenship¹⁹ is key to the exercise of human rights and fundamental freedoms. The State *Law on Citizenship of Bosnia and Herzegovina*²⁰ entered into force on 1 January 1998. Its transitional provisions ensure the legal continuity of the internal citizenship of the former Socialist Republic of BH and regulate the status of those who did not hold it but who had permanent residence in BH. In accordance with Article 36 of the Law, the MCAC passed an *Instruction on the Rule Book on the Format of the Citizenship Certificate*²¹ which entered into force on 19 June 1998. Article 5 of the *Instruction* provides that citizenship certificates must be issued on the basis of the data recorded in the Births' Registers and the Registers of Citizens. The *Instruction* also prescribes the model of the citizenship certificate of BH and of the respective Entities.

2.10 Article 43 of the Law provides for the adoption of harmonised citizenship regulations in both Entities. This should have taken place within 45 days after the passing of the *Instruction*. The passing of the Entity citizenship regulations is a necessary precondition for an adequate functioning and full implementation of the whole citizenship regime, not least because, according to Article 42 of the State Citizenship Law, all laws and by-laws regulating citizenship became invalid with the entry into force of the State Citizenship Law. Regrettably, the Entities have so far failed to pass their respective regulations and continue to apply the old laws in contravention of the Constitution and the State Citizenship Law.²² In the Federation, a draft has been prepared in co-operation with OHR, UNHCR and the Council of Europe. However, the Draft Federation Law on Citizenship is still under discussion in an internal governmental working group. In the RS, the drafting process started at the end of 1998. The Council of Europe convened a meeting of experts in Strasbourg on 18-20 November 1998, which included the participation of the RS Government, UNHCR and OHR. A Draft RS Law on Citizenship was adopted during this meeting, and there seems to be a consensus within the current RS Government concerning the text of the Draft. In view of the current political crisis in the RS, an early adoption of this legislation is not expected.

2.11 The State Citizenship Law also stipulates in Article 40(1) that a Commission to review the status of persons who were naturalised after 6 April 1992 and before the entry into force of the Constitution shall be established. Article 41 (4) states that if the Commission finds that the regulations in effect in BH at the time of naturalisation had not been applied, and it is clear that the applicant was aware that s/he did not fulfil the conditions for naturalisation, the person will lose her/his citizenship of BH, unless s/he thereby becomes stateless. The Commission

¹⁹ The Constitution of Bosnia and Herzegovina stipulates that there shall be a citizenship of Bosnia and Herzegovina and a citizenship of each Entity. All citizens of either Entity are thereby citizens of Bosnia and Herzegovina - hence the fundamental importance of the adoption of appropriate Entity citizenship legislation and accompanying regulations.

²⁰ BH *Official Gazette*, No. 4/97. The Law was imposed by the High Representative in December 1997, due to the inability of the State institutions to agree on an acceptable text.

²¹ BH *Official Gazette*, No. 10/98.

²² The old RS law is discriminatory on ethnic grounds.

was supposed to be set up within two months after the date of entry into force of the State Law, however, so far, the Council of Ministers has failed to appoint its members.

2.12 In terms of the actual implementation of the State Citizenship Law, a lot of uncertainties and an unclear legal situation remain. UNHCR has indications that some municipalities, both in the RS and in the Federation, do not comply with the *Instruction*. For instance, the municipality of Doboj (RS) has been issuing certificates of citizenship which do not mention the name of the State and omit to indicate the State citizenship.²³ In Livno (Federation), the certificates are in contravention of the Federation Constitution and the *Instruction* since they refer to Canton 10 as the 'Herzeg-Bosnia' Canton.²⁴

iii) Amnesty Laws

2.13 Article VI of Annex 7 of the GFAP provides for a granting of amnesty to all those who evaded the draft, deserted or refused to answer a military call-up during the conflict. Since many, if not most male refugees fall within this category, the full implementation of this guarantee is essential for safe and dignified return.²⁵ In addition, Article II stipulates that 'the Parties ... shall give positive consideration to requests for exemption from military or other obligatory service based on individual circumstances, so as to enable returnees to rebuild their lives'. The Sarajevo Declaration of 3 February 1998 reiterated this demand and called for the adoption of Entity legislation on alternative service in line with international standards.²⁶ There are currently no indications that persons who are in the minority where they live would be considered favourably for exemption from military service. OHR is planning to negotiate legislation on alternative service with both Entities.

2.14 The Amnesty Law of the Federation entered into force on 1 July 1996²⁷ and is considered to be in line with Annex 7 of the GFAP. The Federation authorities must ensure that only the Federation Amnesty Law is applied in the Federation, and not the previous amnesty laws of the then Republic of Bosnia and Herzegovina and the so-called 'Herzeg-Bosna' authorities. The legality and recognition of an amnesty granted under the previous laws remain questionable and contribute to legal uncertainties. The granting of amnesty does not exempt persons between the age of 18 and 27 from one-year military service in the

²³ To remedy this situation, OHR sent two letters to the RS Minister of the Interior in September 1998 and October 1998 asking the authorities to comply with the *Instruction* and the State Citizenship Law. On 24 December 1998, the RS Minister of the Interior informed OHR that competent municipal bodies had been requested to abide by the *Instruction*. It remains to be seen whether this will be followed in practice.

²⁴ The Federation Constitutional Court decided that Article 4 of the Constitution of Canton 10, which determines the official name of Canton 10 as 'Herzeg-Bosnia' Canton, contravenes Section I, Art. 2 of the Federation Constitution, FBH *Official Gazette*, No. 23/98, 17 June 1998.

²⁵ For more detailed information please see the *UNHCR Background Paper on Amnesty Laws in Bosnia and Herzegovina* (19 March 1998).

²⁶ Paragraph 10 of the Declaration provides: 'Participants also noted that military conscription holds important implications for the peaceful, phased, and orderly return of individuals to their pre-war homes, and called upon the competent authorities to ensure that returnees shall be exempted from military service for a minimum period of 5 years. In addition, both Entities should adopt legislation on alternative service which is consistent with international standards and, until such legislation is implemented, should respond favourably to requests for exemption from military service for persons who are in the minority where they live and for conscientious reasons.'

²⁷ FBH *Official Gazette*, No. 9/96, 30 June 1996. The Federation Law was amended on 24 December 1996 to cover offences up to 22 December 1995 (which is the date of the official termination of the state of armed conflict), see FBH *Official Gazette*, No. 19/96.

Federation army. Sanctions for avoiding military service in peace time range from one year to five years imprisonment.²⁸

2.15 The currently applicable RS Amnesty Law²⁹ is not in compliance with Article VI of Annex 7 of the GFAP and constitutes a serious impediment to return. This law does not grant amnesty to RS citizens for offences of desertion, draft evasion and refusal to respond to a military call-up. In addition, the RS Amnesty Law does not cover the last seven days of the conflict, that is, offences committed between 14 December and 22 December 1995. However, the RS National Assembly passed amendments to the RS Amnesty Law on 23 February 1999. These amendments are reported to ensure compliance with the requirements of Article VI of Annex 7 of the GFAP by inter alia retroactively extending the amnesty guarantees to RS citizens (currently excluded from the amnesty in the still applicable law). These amendments have, however, not yet entered into force since they require signing by the RS President and gazetting.³⁰

2.16 As for the implementation of the RS Amnesty Law, UNHCR has received scarce, at times contradictory information, which would indicate that the implementation of the Amnesty Law in the Republika Srpska is not consistent. According to the Public Prosecutor of the Banja Luka Primary Court, files for offences not covered by the law are being filed but not prosecuted. The Public Prosecutor of Visegrad took the same position on the basis of the fact that the RS Law was in contradiction with the GFAP. The President of the Military Court of Bijeljina stated that thousands of cases of deserters were in the investigative stage but few were being put to active prosecution. This situation is not satisfactory, since it creates undesirable legal uncertainties. As in the Federation, the granting of amnesty does not exclude someone from performing nine months of compulsory military service in the RS army. Sanctions for avoiding military service in peace time range from one year to ten years imprisonment.^{31 32}

iv) Legislation on Displaced Persons and Returnees

²⁸ As for conscientious objection, Article 72 of the *Federation Law on Defence* (Articles 382 and 383 of the *Federation Criminal Code*) stipulates that individuals can refuse to perform armed service for conscientious, religious or moral reasons. They have then the possibility to carry out humanitarian or other activities in the Federation armed forces or in other legal entities determined by the Minister of Defence. This type of service lasts 24 months. No information is available as to how these provisions are applied in practice. However, according to the Federation Ombudsmen, the commission for civil service, which is supposed to review the applications of those choosing to perform alternative service, has not yet been established by the Federation authorities (the Decision on Appointment of the Commission for Civil Service was published in the *FBH Official Gazette*, No. 29/97 and entered into force on 13 December 1997). Applications are therefore not being processed.

²⁹ RS *Official Messenger*, No. 13/96.

³⁰ On 4 March 1999, 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 (see HRCC Monthly Report, February 1999), which is unlikely to happen in the near future given the current political crisis in the RS.

³¹ Articles 214 and 217 of the RS Criminal Code.

³² Article 215 (2) of the RS *Law on Army* (RS *Official Messenger*, No. 31/96, 31 December 1996) provides that a conscript who, for religious or moral reasons, does not wish to perform military service can instead perform civil service for twelve months. Civil service can be performed at economic facilities connected with the military sector, general emergency organisations, health organisations, organisations in charge of the rehabilitation of invalids, and other organisations and institutions of general interest. At this stage, there is no information available as to its actual implementation.

2.17 An adequate legal framework covering the treatment and return of refugees and displaced persons, as well as its full and fair implementation, is necessary for the effective protection and promotion of durable solutions.

2.18 In co-operation with UNHCR, the RS Ministry for Refugees and Displaced Persons and the Federation Ministry for Social Affairs, Displaced Persons and Refugees have drafted new legislation in this area, with a view to ensuring consistency with Annex 7 of the GFAP and relevant international standards.³³ The RS Government adopted the relevant Draft Law on 2 February 1999 but has so far failed to provide the necessary support for its adoption by the National Assembly. The Federation Government has not yet passed the necessary draft legislation and is currently in the process of consolidating all the comments submitted by the Cantons (a competency dispute has arisen, which has effectively blocked the adoption of this Draft Law for almost a year). In addition, the BH Council of Ministers discussed a Draft Framework State *Law on Bosnian Refugees and Displaced Persons* in August 1998 but has so far failed to reach agreement on some of its core provisions.

2.19 In February 1998, the Federation Ministry for Social Affairs, Displaced Persons and Refugees passed an *Instruction on the Method of Organising the Return of Displaced Persons and Repatriates to/within the Territory of the Federation of Bosnia and Herzegovina*³⁴ which requests all Cantonal and municipal authorities responsible for return issues to use a common and standardised Voluntary Return Application Form and follow procedures linked to property assessment and exchange of information on the registration of displaced persons wishing to return. The mechanism, which is linked to a database system, is intended to support and facilitate organised return and the basis for return planning purposes in accordance with Article I(5) of Annex 7 of the GFAP. In June 1998, the RS Ministry for Refugees and Displaced Persons adopted a similar Instruction.³⁵ The Ministry of Civil Affairs and Communication, in co-operation with UNHCR, has finalised the text of a State Instruction on Organised Return to facilitate inter-Entity returns and repatriation from abroad but has, for the past seven months, failed to adopt it formally. The absence of the State Instruction effectively hampers the smooth incorporation of refugees willing to return into the system.

2.20 While Municipal Information Offices (MROs) in the Federation and Municipal Offices of the Ministry for Refugees and Displaced Persons (OMIs) in the RS have been established in most municipalities of BH, the implementation of the Instructions has already proven difficult in some parts of the Federation and the RS and has in fact been used by the local authorities in certain municipalities to obstruct return, often by adding bureaucratic hurdles. For example, some OMIs charge illegal fees and require that applicants present supporting documentation relating to property repossession in order to register their intentions to return, which is not required according to the Instructions on Organised Return. In both the Federation and the RS, the authorities have not fully met the staffing needs and running costs of the MROs, OMIs and related municipal bodies to conduct housing assessments. Consequently, the performance of these municipal bodies is uneven and the processing of applications is slow with occasional stoppages, particularly in the Herzegovina-Neretva Canton.

³³ The proposed legislation will complete the domestic legal framework, regulate current voluntary repatriation movements and put in place an adequate return mechanism, as required by international standards, in particular Annex 7 of the GFAP.

³⁴ FBH *Official Gazette*, No. 6/98, 9 March 1998.

³⁵ RS *Official Messenger*, No. 18/98, 8 June 1998

v) Reform of the Criminal Code and the Criminal Procedure and Functioning of the Judiciary and other Human Rights Institutions

2.21 The criminal legislation and procedures applied in the Entities were taken over from the legal framework of the former Socialist Federal Republic of Yugoslavia, and do not comply with international standards of due process of law.³⁶ Key international organisations³⁷ have undertaken to reform the criminal legislation in both Entities and to provide training to judges, lawyers and prosecutors to bring their practice in line with international standards and, specifically, with the provisions of the European Convention for the Protection of Human Rights and Fundamental Freedoms. In the Federation, the Parliament adopted revised criminal and criminal procedure codes on 29 July 1998 which had been drafted in co-operation with an expert team from the Council of Europe.³⁸ The reform of the criminal legislation in the RS is still ongoing and is assisted by an expert team from the Council of Europe.

2.22 This reform process is crucial for the respect and effective enforcement of human rights in BH, as well as the full restoration of effective national protection. The reports of the human rights institutions demonstrate that complaints concerning the functioning of the judicial system are almost as numerous as those concerning property rights violations.³⁹ The most common abuses relate to the denial of access to effective remedies, the length of proceedings, arbitrary detention and the denial of right to a fair trial.⁴⁰ Moreover, the current judicial appointment process⁴¹ and the lack of qualified legal staff seriously jeopardise the independence and impartiality of the judiciary. In most Cantons the cantonal judges are elected by the legislative branch upon proposal by the executive.⁴² The municipal judges are appointed by the President of the Cantonal court after consultation with the President of the Canton. This selection process has resulted in politically motivated appointments and allows for political interference in court proceedings.⁴³ In an effort to remedy this situation, OHR has

³⁶ See Final Report of the Special Rapporteur of the Commission on Human Rights on the situation of human rights in Bosnia and Herzegovina, E/CN.4/1998/63.

³⁷ The Council of Europe, OHR, the United Nations Development Programme, the American Bar Association and the UN Mission in Bosnia and Herzegovina (UNMIBH) are involved in this process.

³⁸ FBH *Official Gazette*, No. 43/98, 20 November 1998.

³⁹ See the Human Rights Chamber Summary of Activities dated December 1998 and the Human Rights Ombudsperson Case Summary of 31 December 1998.

⁴⁰ The case of the 'Zvornik 7' illustrates the abuse which the present system allows. In this particular case, seven Bosniac men from Srebrenica were tried for murder before the Zvornik Municipal Court (RS) following their arrest on 10 May 1996. On 24 April 1997, three of the defendants were convicted of murder and sentenced to 20 years in prison. All seven defendants were convicted of illegal possession of weapons and sentenced to one year imprisonment. The RS Ministry of Justice took a decision whereby no lawyers from the Federation could appear as co-counsel before the Court in Zvornik. The Bosniac defendants were therefore represented by Serb lawyers appointed by the Bijeljina Court itself. Moreover, only three witnesses gave testimony during the trial, and all were given for the prosecution. The Zvornik Municipal Court Decision was quashed on appeal by the Bijeljina District Court on 31 December 1997. However, the sentence was confirmed on 12 December 1998. The Human Rights Ombudsperson Special Report No. 2650/99 of 18 January 1999 describes the numerous violations committed during the trial of the 'Zvornik 7'.

⁴¹ See, for instance, ICG Report, *Rebuilding A Multi-Ethnic Sarajevo, The Need for Minority Returns*, dated 3 February 1998.

⁴² Except in the Central Bosnia Canton where Cantonal judges are appointed by the President of the Canton and the Deputy President.

⁴³ See, for instance, OHR's *Report on the Election and Appointment of Judges in Canton Sarajevo* of 21 May 1997, which explains how municipal judges have been elected and court presidents appointed in violation of the established voting rules.

prepared a Federation Draft *Law on Judicial Selection and Dismissal* and submitted it to the Association of Federation Judges for comments in December 1998. For the RS, OHR proposed to the Minister of Justice the establishment of a working group to prepare a draft text for the judicial appointment process in January 1999. In its first information report of 22 December 1998, the UNMIBH's Judicial System Assessment Programme (JSAP)⁴⁴ identified other serious structural problems, such as the lack of material, human and financial resources and the limited access to legal materials.⁴⁵ This situation directly impacts on the processing of cases⁴⁶ and ultimately undermines confidence in the judiciary. In summary, the functioning of the judicial system remains based on ethnic and political criteria.⁴⁷ Several reports indicate that cases involving members of minority constituent peoples are not dealt with in an appropriate manner, particularly when related to property or other civil rights, as well as security - such cases are never taken up or are left pending for protracted periods.

2.23 The Commission on Human Rights was established in accordance with Annex 6 of the GFAP. It consists of the Human Rights Chamber and the Office of the Ombudsperson, both of which are integral components of the new Bosnian domestic legal system. The Commission serves as a last resort in cases of human rights violations and is composed of both local and international judges and lawyers.⁴⁸ In addition to these internationally-established human rights institutions, the Federation has established its own Ombudsman institution while discussions are still ongoing to set up a similar institution in the RS. However, the State and the Entities continue seriously to undermine the work of the international and domestic human rights institutions. Both the Federation and the RS only established a permanent liaison office for the Human Rights Commission in December 1998 although both institutions started functioning in 1996.⁴⁹ The State designated three agents in June 1998, but they were only officially appointed at the end of 1998.⁵⁰ The Human Rights Chamber still regrets the fact that the Federation liaison office lacks the necessary resources to fulfil all its obligations concerning the Chamber. The RS agent resigned in June 1998 before a sensitive hearing.⁵¹ He was re-appointed in November 1998 but the Chamber was only notified in January 1999. The most crucial problem faced by the Human Rights Chamber and the Office of the Ombudsperson is

⁴⁴ The Judicial Assessment Programme is a component of UNMIBH and was established pursuant to the UN Security Council Resolution 1184 of 16 July 1998.

⁴⁵ A variety of governmental and non-governmental organisations have started projects to address these issues: the Council of Europe (trying to establish a Judicial Training Centre in each Entity); the American Bar Association, which is involved in training and criminal law reform; and OSCE which is involved in the dissemination of legal texts initiatives.

⁴⁶ According to JSAP, in Sarajevo Canton alone, both the Municipal and the Cantonal Courts have an estimated backlog of 15,000 cases, in addition to 5,000 cases awaiting execution by the local police.

⁴⁷ For an update, see UNMIBH (JSAP), *Report for the Period November 1998 to January 1999*, April 1999.

⁴⁸ Between March 1996 and 31 January 1999, the Office of the Ombudsperson opened more than 52,959 provisional files, registered 2,731 of them, processed 1,069 cases and rendered decisions in 601 cases. As at early March 1999, the Human Rights Chamber had registered 1,748 cases and decided 98 cases on their merits.

⁴⁹ The Federation Office for Co-operation with and Representation before the Human Rights Commission was established on 10 December 1998. The RS Office of the Legal Representative of the RS was created on 25 December 1998.

⁵⁰ See the 1998 Annual Report of the Human Rights Chamber for Bosnia and Herzegovina, March 1999.

⁵¹ In the case No. CH/96/29, *Islamic Community v. Republika Srpska*, the Human Rights Chamber was prevented from conducting the hearing initially scheduled for 13 July 1998 in Banja Luka. Upon political pressure, the owner of the facilities identified for the hearing cancelled the arrangements made with the Human Rights Chamber. Moreover, in another attempt to hold the session, the RS failed to send its Agent, claiming a last minute resignation. See Statement of the Human Rights Steering Board, 12 November 1998.

constructive collaboration and the implementation of decisions. For instance, between 1 April 1996 and 31 December 1998, the Office of the Ombudsperson made 122 requests for responses to the State and received none. 242 were submitted to the Federation and only 15 were received whereas the RS responded to 72 requests out of 177.⁵² The Human Rights Chamber reports that, by the end of 1998, it issued final decisions in 36 cases. However, only five decisions were complied with, and there was only partial compliance in four other cases. This apparent lack of will by the authorities at all levels to collaborate with or enforce the decisions of the human rights institutions creates a high sense of injustice and distrust among the population.⁵³

b. The Administrative Framework

i) Safety and Police

2.24 Under the GFAP, the Parties are required to provide a safe and secure environment for all persons in their respective jurisdictions. Potential returnees regard security in the pre-conflict place of residence as vital when considering return.⁵⁴ The local police forces have in many instances not effectively protected members of the minority constituent peoples and human rights organisations still report an important number of cases of arbitrary detention and ill-treatment by the local police forces, both in the Federation and in the RS.⁵⁵ Furthermore, an estimated 750,000 mines and unexploded ordnance remain in some 30,000 separate areas in Bosnia and Herzegovina (as at the end of 1998).⁵⁶

2.25 The following selected examples (grouped according to areas) illustrate a widespread pattern of threats to the personal safety of returnees and show that the local police is not always able, or willing, to extend protection to members of the other constituent peoples. In

⁵² Human Rights Ombudsperson Case Summary as of 31 December 1998.

⁵³ See 1998 Annual Report of the Human Rights Chamber for Bosnia and Herzegovina, March 1999, and Second Annual Report of the Office of the Human Rights Ombudsperson, May 1997-April 1998 (the Third Annual Report is expected for mid-April 1999).

⁵⁴ See the study prepared by the Commission for Real Property Claims of Displaced Persons and Refugees, *Return, Relocation and Property Rights*, December 1997.

⁵⁵ For instance, following abuses and reported cases of torture by the Teslic (RS) local police, the UNMIBH Human Rights Office released a report entitled *Torture and Abuse of Authority in Teslic Police: Investigation and Redress Measures* (July 1998). Consequently, disciplinary proceedings were initiated against 32 police officers. Ten were also facing criminal charges and a total of 17 officers were suspended from duty (HRCC Human Rights Monthly Report, July 1998). In another case, on 2 October 1998, Croat police officers beat up two Bosniac police officers and a SDA member of the Federation Parliament. They were later detained and tortured. The Chief of the Capljina Police Administration was decertified by IPTF (HRCC Human Rights Monthly Report, October 1998). In the RS, the IPTF determined in its report entitled *Interrogation Techniques Employed by RS law Enforcement Officials in the Srdan Knezevic Murder Investigation* that seven out of the 16 individuals arrested for the murder of the Pale Police Chief were tortured with pliers and electric stun guns. The Chief of uniformed police was removed by IPTF, which also requested that disciplinary proceedings be taken against thirteen officers, including criminal charges against four of them (HRCC Human Rights Report, August-September 1998 and January 1999; U.S. Department of State Country Report on Human Rights Practices in BH for 1998). For the month of October 1998 alone, ten cases of arbitrary detention and violation of the right to physical integrity perpetrated by the local police were reported to IPTF Sarajevo, five in Banja Luka, three in Bihac, seven in Mostar, four in Tuzla, and one in Bihac (UNMIBH Human Rights Office Weekly Reports for October 1998). Most of these abuses are directed at minorities.

⁵⁶ Mine contamination prohibits the use of over 290 square kilometres of land. Returnees are the most likely group to suffer a mine accident as they lack knowledge of the battle areas (see report of the UNHCR Demining Programme in Bosnia and Herzegovina, March 1999).

some cases the police remained passive whereas in others they actually participated in the violence.

2.26 As for incidents in the Federation:

- In February 1997, during the Bajram celebration (Aid El Kebir), a peaceful group of Bosniacs visiting their graveyards in Mostar West (Croat-controlled) were shot at by the Croat police forces.
- In August 1997, an angry mob in Jajce burnt down several UNHCR-reconstructed houses, in an effort to prompt the departure of Bosniac returnees.
- On 30 August 1997, two Croats were shot in the village of Nula (Travnik). On 10 September 1997, a Croat died after a violent dispute with the Bosniac owner of his home. On 26 October 1997, two murders were committed in Nula. On 21 March 1998, a visit by some 80 Croats to the village of Bukovica was disrupted when two Bosniacs beat several Croats. Unidentified individuals also burnt several Croat homes in the village. In April 1998, two Croats returning to clean their homes in Bukovica were seriously wounded by an explosion; among the injured were members of a group of 30 displaced Croats carrying out assessments visits. In May 1998, two off-duty Croat police officers were fired upon in the village of Han Bila, and an explosion damaged a Croat house in the village of Gavrinice Kuce. In Travnik a car bomb exploded next to the local police station on 10 February 1999, causing injuries to a Croat police officer. This was the third incident of its kind after two Croat police officers were killed by explosive devices in June and July 1998.
- In the Herzegovina-Neretva Canton alone, IPTF reported a total of 132⁵⁷ return-related violent incidents, including explosions, arsons and stoning incidents, from 1 January to December 1998. Of these 136 incidents, 73 occurred in Stolac, 25 in Capljina, 19 in Mostar, 11 in Jablanica⁵⁸ and 8 in Rama-Prozor.⁵⁹ In early October 1998, one Bosniac returnee was killed and two others were injured by a hand grenade thrown into their house in the village of Tasovcici, near Capljina, where road blocks were set up to prevent the return of a group of 50 Bosniac displaced persons.⁶⁰ Most of the incidents remain unpunished. The particularly worrying security situation in Stolac prompted UNMIBH to carry out an investigation on return-related incidents in the Stolac area. The report (released in July 1998) confirms a worrying pattern of a violent anti-return attitude and outlines the inability and unwillingness of the local police to prevent these incidents⁶¹, to investigate them in accordance with international standards and bring to justice those responsible for these criminal activities.⁶² Consequently, UNMIBH sent an IPTF Inspection Team to Stolac in December 1998 to review the working methods of the local police. As a result of the inspection, which demonstrated that the command structure was not properly functioning and that policing standards were not applied, the IPTF Commissioner decided to place the entire Stolac local police administration on three-month probation as of February 1999. Officers who will not improve their policing standards will not be re-certified.⁶² On 7 January 1999, unknown individuals fired automatic weapons at

⁵⁷ Two houses were blown up in Jablanica in Doljani and Zukici on 19 May 1998.

⁵⁸ Human Rights Co-ordination Centre (HRCC) Monthly Report, October 1998.

⁵⁹ HRCC Monthly Report October 1998.

⁶⁰ By increasing the patrols in the return areas for instance.

⁶¹ UNMIBH, *Incidents in Stolac and Other Municipalities of Canton 7 in the Context of Minority Returns*, 26 March - 30 June 1998, July 1998.

⁶² UNMIBH Press Release, 28 January 1999.

the house of a Serb returnee family in Zeljusa (Mostar West), causing external damage to the building.⁶³

- In Drvar, the murder of a Serb couple on 16 April 1998 was followed on 24 April by a violent demonstration orchestrated by Croat extremists.⁶⁴ The elected Serb Mayor of Drvar was injured and several buildings were set on fire, including offices of international organisations (such as IPTF and UNHCR). These events led to the departure of approximately 225 Serb returnees. At least some 80 arsons are reported to have occurred in Drvar in 1998, often aimed at preventing return and intimidating returnees (5 since 1 January 1999).

2.27 As for incidents in the RS:

- On 8 April 1998, a well-organised angry mob of about 60 to 70 Serb displaced persons prevented 500 Bosniacs from visiting their graveyards in Bosanski Novi/Novi Grad. Stones were thrown and buses blocked the road. Even though no injuries were reported, this incident was intended to send a clear message to potential minority returnees.
- On 23 April 1998, in spite of prior guarantees that the local police would provide security, a Catholic ceremony in Derventa was disrupted by a crowd of approximately 1,500 to 2,000 demonstrators, preventing 600 Croats from reaching Derventa. On 25 April 1998, a crowd of 200 displaced Serbs prevented displaced Croats from Slavonski Brod from attending a mass at Plehan monastery near Derventa (RS). SFOR reported the presence of four more road blocks between Dugo Polje and Plehan.
- On 26 April 1998, in Svjetlica near Doboj, five Serbs harassed a group of Bosniacs who had returned to their homes. A confrontation ensued, resulting in the establishment of roadblocks on both sides of the Inter-Entity Boundary Line. The roadblocks were subsequently dismantled⁶⁵ but the Doboj local police continues to take a hard line stance, undermining freedom of movement and return in that area. On 14 November 1998, a group of 15 Serbs blocked a road obstructing a bus carrying 51 Bosniacs coming from Slovenia for an assessment visit to Kotorsko Doboj. The bus was stoned and the local police reportedly failed to take any action. IPTF issued a non-compliance report to the Doboj Chief of police for inadequate direction of the operation.
- In Zvornik, the Bosniac member of the municipal executive board was verbally and physically assaulted on 27 August 1998 (causing him to leave town).⁶⁶
- Spring last year saw the beginning of a spontaneous return process to Gradiska.⁶⁷ Tensions between the various groups of displaced persons and returnees grew to a boiling point during this period. In July 1998 alone, four explosions were thrown at homes of Bosniacs in Gradiska, most of whom had remained in Gradiska throughout the war, coinciding with the highly publicised return of refugees from Austria to the village of Orahova and two visits to Gradiska of refugees from Sweden and Denmark. In early August 1998, the car of

⁶³ HRCC Monthly Report, January 1999.

⁶⁴ Drvar was nearly 100% Serb before the conflict.

⁶⁵ HRCC Monthly Report, April 1998.

⁶⁶ As for developments in Bijeljina: In March 1998, Serb displaced persons originally from Zenica attended a return information meeting in Janja. The meeting was disrupted by a mob. Fights in the street took place and the local police was absent during the whole event. In April 1998, a Bosniac currently living in Mali Zvornik (Yugoslavia) visited his father's grave in Janja. He was then beaten up by some individuals. The local police has never followed up this case.

⁶⁷ At the end of 1998, there were more than 500 spontaneous Bosniac returnees to the area, of which only around 20 families managed to be reinstated in their properties.

a recent Bosniac visitor from Germany was damaged in an explosion in Gradiska. In September 1998, two explosions were reported in Gradiska outside the houses of two Bosniacs who had accepted some Bosniac returnees to stay in their homes. By the end of 1998, more than 10 explosions against Bosniac houses had been registered in Gradiska. During the very recent political upheaval in RS, a Bosniac-owned shop was the target of another explosion in Orahova, which is particularly concerning given that even in the height of tensions last year, Orahova was spared, despite being the main prime receiver of returning refugees. A number of serious violent incidents against minority returnees have also been reported following the crisis in FRY as of 25 March 1999. Tensions remain high in Gradiska today.

- In Brcko, between May and August 1998, 5 instances of throwing grenades at newly rehabilitated property of minority returnees were reported. On 28 July 1998, a young Bosniac returnee was murdered in Brcko town (so far no results as to the perpetrator). In July 1998, a Bosniac who tried to re-establish his business in Brcko town suffered bomb attacks, one of which was directed against his working premises, the other against his car. As a result, the businessman left Brcko. Serb displaced persons have opposed returns to areas which are largely uninhabited but close to the town. The marking of the houses and the approval by the OHR Return Commission of 81 Bosniacs to return to Klanac were accompanied by well organised demonstrations of displaced persons, which effectively blocked the return process.
- Attacks on Bosniac returnees were also reported in Teslic in October 1998 following the return of 71 Bosniac families in September 1998. On 9 and 15 October 1998, grenades were thrown at Bosniac houses in Teslic town, Gornji Teslic and Donji Ruzevic. On 6 November 1998, a grenade was again thrown at a Bosniac house in Pribnice Selo Marica (Teslic municipality).⁶⁸ On 17 February 1999, a Bosniac resident was killed in Teslic.
- In Kozarac (Prijedor municipality) a Bosniac house was blown up by an explosive device on 9 November 1998.⁶⁹ The house was in the process of being rebuilt by the Norwegian Refugee Council with UNHCR funds. Another house, used as a youth centre was partially destroyed by an explosion in Kozarac on 1 January 1999. Reportedly, the house of a minority returnee couple in Alisici near Prijedor was ransacked in their absence during the night of 14 April 1999. The house was damaged and graffiti were drawn on the walls. This is the third incident in Alisici since the beginning of March 1999: on 14 March 1999 a hand grenade was thrown at a returnee's house and on 28 March a Serb threw stones at a returnee's house.
- In autumn 1998, 5 houses under reconstruction belonging to potential Bosniac returnees were completely demolished in Modrica.
- Violent incidents also took place in the Banja Luka area where, for instance, hand grenades were thrown at Bosniac houses on 8 and 17 November 1998.⁷⁰
- On 21 February 1999, a group of Bosniacs clearing an area in the Gajevi area of Lopare for reconstruction purposes got under sniper fire attack and a 12-year old Bosniac child was seriously injured as a result.⁷¹

⁶⁸ A similar pattern of grenade and arson attacks against Bosniac returnees in Teslic occurred in the summer of 1996 and in the spring of 1997, resulting in 1996 in the departure of some 100 Bosniac families to the Federation. See also HRCC Monthly Report, November 1998.

⁶⁹ HRCC Monthly Report, January 1999.

⁷⁰ HRCC Monthly Report, November 1998. The owners were recent returnees from Germany.

⁷¹ Already early 1997, 15 houses of Bosniac returnees were blown up in the same area. The action was repeated a couple of days later when the Bosniacs made a renewed attempt to return.

2.28 Throughout 1998 and in 1999, international organisations working in BH have also been the target of serious attacks. Demonstrations and criminal acts against representatives of the international community have often taken place either following the arrest of suspected war criminals or to oppose minority return movements. For instance, during the Drvar events in April 1998, the offices of UNHCR, UNMIBH and IPTF were burnt down. In June 1998, the arrest of an indicted war criminal⁷² in Foca triggered a demonstration during which IPTF and OSCE offices were damaged and an IPTF vehicle was burnt.⁷³ In December 1998, SFOR's arrest of a suspected war criminal⁷⁴ in Vlasenica (RS) created serious disturbances in Eastern RS. One IPTF vehicle was destroyed by an explosion in Vlasenica, and around 2,000 persons demonstrated against the international community at the instigation of the SDS and SRS.⁷⁵ Two members of the European Community Monitoring Mission (ECMM) were injured by the demonstrators. In Bratunac, a grenade was thrown outside the IPTF station during the night of 4 December 1998.⁷⁶ Five IPTF officers were injured after the attempted arrest and killing of an indicted war criminal⁷⁷ in Foca/Srbinje (RS) on 9 January 1999. The IPTF station was ransacked and the IPTF monitors ultimately evacuated by SFOR.⁷⁸ At the end of January 1999, anti-SFOR and anti-OHR posters appeared in the Herzegovina-Neretva Canton. SFOR was described as an occupation force and Croats and Serbs were asked to resist the presence of the international community in BH. Similar posters were seen in Livno, Vitez, Usora, Sarajevo and Tuzla at the end of January 1999.⁷⁹ Finally, the removal of the President of the RS, the announcement of the Brcko Decision on 5 March 1999, as well as the ongoing serious crisis in FRY were followed by demonstrations⁸⁰, explosions⁸¹ and the distribution of leaflets calling for resistance against the High Representative and the international community.⁸² These selected examples show that the situation in BH remains volatile and that some segments of society are ready to take radical action, even against members of the international community to prevent minority returns or the implementation of other aspects of the GFAP.

2.29 The insecurity which still prevails in some regions, as well as the impunity enjoyed by most of the perpetrators of criminal acts against minorities, demonstrate that the local authorities have so far failed to provide safety to all BH citizens, in particular in minority return areas. An analysis comparing locations where minority returns occur with security incidents reveals a clear correlation, except for some areas where more sophisticated legal and administrative barriers are erected to prevent sustainable return. The above-mentioned selected examples illustrate the anti-return attitude of many local officials in BH, who do not hesitate to manipulate the frustrations and the fears of displaced persons and potential

⁷² Milorad Krnojelac.

⁷³ Helsinki Committee for Human Rights in Bosnia and Herzegovina, Faxletter No. 44, 1 July 1998.

⁷⁴ General Radislav Krstic.

⁷⁵ The Mayor of Vlasenica stirred things up by telling the demonstrators that the suspected war criminal was tortured for 30 hours by SFOR.

⁷⁶ HRCC Monthly Report, December 1998.

⁷⁷ Dragan Gagovic.

⁷⁸ UN Mission in Bosnia and Herzegovina Weekly Situation Report, 4-10 January 1999.

⁷⁹ Helsinki Committee for Human Rights Faxletter, No. 58, 15 February 1999.

⁸⁰ In Visegrad, Brcko, Dobo and Bijeljina on 6 and 7 March 1999.

⁸¹ On 5 March 1999, IPTF vehicles were damaged by bomb explosions in Prijedor and Gradiska and an explosion took place outside the SFOR Civil Affairs Centre in Prijedor. Two explosions took place in Derventa on 7 and 8 March 1999, one directed at the SFOR Civil Affairs Office and the other at the OHR. In Zvornik, four UNHCR vehicles were damaged or destroyed and a staff member and his family were threatened.

⁸² Distribution of such leaflets took place in Banja Luka. For more information, see footnote 133.

returnees to achieve their objective of consolidating territorial control in areas they perceive to be in their strategic interest.

2.30 UNMIBH is working with the law enforcement institutions in BH to help reform, restructure and democratize the local police forces in both Entities. This effort aims to de-politicise and build community confidence in the local police forces. In the Federation, to assist the authorities in these efforts, one of IPTF's objectives⁸³ is to strive for joint policing and promote multi-ethnicity in the police forces (reflecting the nationality balance of the 1991 Census). To varying degrees, the implementation of the police restructuring has proven to be difficult, particularly in Canton 8 and 10. Police officers of different constituent peoples continue to answer to different chains of command, refuse to wear uniforms with IPTF-approved insignia, and are often paid through separate parallel payment systems, which undermines the efficiency of joint policing. In the Federation, minority police officers, notably Serbs, are still under-represented by over 2,230 Serb officers.⁸⁴ The local authorities invoke legal and administrative requirements to prevent the advertising of positions and recruitment.⁸⁵ Furthermore, it was reported that Croat police officers temporarily boycotted joint police patrols after the bomb attack against the Federation Deputy Minister of Interior on 16 March 1999. This demonstrates the fragility of integrated administration in the Federation.

2.31 In the RS, on 9 December 1998, the RS Prime Minister signed an agreement with UNMIBH providing for the restructuring of the RS police forces and the recruitment of minority police officers⁸⁶ (based on the national balance reflected in the results of the 1997 municipal elections). However, no sizeable joint police forces have so far been established in the RS, except for the Brcko area, which is under special status.

2.32 In addition, the number of women serving in police forces in both Entities is below 1 percent, whereas the European standard goal is 10% women. This gives rise to serious concern in order to address gender specific crimes, such as domestic and sexual violence.

ii) Residence Registration of Displaced Persons and Returnees and Issuance of Identity (ID) Cards

2.33 Legally, persons who registered their permanent residence in any municipality before the conflict should be able to re-establish their residence in that municipality and receive the

⁸³ The International Police Task Force (IPTF) is a United Nations civilian police force created under Annex 11 of the GFAP.

⁸⁴ The Federation police forces should be composed of 11,500 officers (5,558 Bosniacs; 2,674 Croats; 2,317 Serbs and 931 others). As at 11 December 1998, there were 6,875 Bosniac officers; 2,986 Croat officers, 122 Serb officers and only 8 others (9991 police officers in total). Canton 10, Tuzla-Podrinje, Herzegovina-Neretva and Sarajevo Cantons, for instance, are falling short of their obligations to either recruit minority police officers or to reduce their current levels of majority police officers.

⁸⁵ For instance, the Federation authorities require the performance of military service as a prerequisite for recruitment. The Special Representative of the UN Secretary General has asked the High Representative for assistance to remove these obstacles.

⁸⁶ The RS police forces should comprise 8,500 uniformed police officers, 7,000 officers (5,317 Serbs; 1,474 Bosniacs and 262 Croats) and 1,000 special police, border service officers, and RS state police. Article 8 of the Agreement provides that the RS shall recruit 25% of minority police officers by 30 June 1999, and shall recruit an additional 15% by 31 December 1999. The RS Minister of the Interior stated on 19 February 1999 that 180 Bosniacs had so far been integrated in the RS police forces.

relevant Entity ID Card which is essential for exercising basic rights (e.g. access to social welfare, health care, humanitarian aid, food) and for all administrative purposes.

2.34 Although the situation has improved for minority returnees to receive their ID Cards in the RS, the processing of the requests for issuance of ID Cards is still slow and interventions of the international community are necessary. In addition, the RS authorities link registration and the issuance of RS ID Cards to the applicant's ethnicity or to conditions not in accordance with the *Law on Identification Cards*, such as requiring all draft-age males to show proof that they have registered with the military authorities or demanding payment of *taxes* or deregistration papers from the host countries. Authorities have also cited a lack of blank ID Cards. This cannot be an excuse for not providing minority returnees with RS ID Cards. Of particular concern, however, are ex-officio residence deregistrations in the Banja Luka area carried out in 1995/1996 based on lists of those wishing to leave the RS (mostly minorities), irrespective of whether they have left the country or not. As a result, persons who now want to return or who remained in the area do not "exist" for the RS authorities, and they face serious problems in regulating their status.⁸⁷ The same is true for persons who deregistered themselves and who hold deregistration papers.

2.35 In some Federation municipalities, potential returnees who cannot yet repossess their property face difficulties in obtaining permanent Federation ID Cards since they do not yet live at their permanent residence in the Federation. In other cases, minority returnees face enormous bureaucratic hurdles in obtaining required documentation, particularly in Croat-administered areas or municipalities and others face difficulties in using their Federation ID Cards.⁸⁸

2.36 In both Entities, applicants are requested to provide different sets of documents for the issuance of Entity ID Cards, and there is no clear guidance by the authorities which documents need to be provided under which circumstances, opening the system for abuse by municipal officials. Costs requested for the issuance of ID Cards also differ from area to area. Clear and uniform instructions on which documents need to be submitted by returning refugees and displaced persons under which circumstances would greatly facilitate the return and reintegration process.

2.37 Overall, the legal framework for residence registration and the issuance of ID Cards needs to be revised for both Entities. Laws and regulations of the pre-conflict period have either been taken over or were passed during the conflict. These laws and regulations do not necessarily cover all return-related and post-return situations, in particular intra-Entity returns. In addition, the division of competencies between the Federation of BH and its Cantons in these areas results in ten different laws and regulations dealing with residence registration and issuance of ID Cards, thus creating a high degree of legal uncertainty. This legal uncertainty could possibly be overcome by the adoption of laws at the Entity level.⁸⁹ Given the different

⁸⁷ For more details, see UNHCR's survey on *Registration of Repatriates in the Republika Srpska and Entitlement to Identity Documents, Food Assistance and Medical Care*, October 1997 (Update February 1999).

⁸⁸ See UNHCR's survey on *Registration of Repatriates in the Federation of Bosnia and Herzegovina and Entitlement to Food Assistance and Medical Care*, May 1997 (Update November 1998).

⁸⁹ See Chapter III, Article 1 of the Federation Constitution clearly spells out that the issue of citizenship falls into the competency of the Federation. It could reasonably be argued that residence registration and the issuance of ID Cards are implicitly contained in the Entity citizenship competency, not least because of the

layers of legislation and confusion as to which provisions apply - this is particularly the case in the Federation Bosniac/Croat administered municipalities - and whether or not the Cantons have to pass legislation in these areas, it is highly recommended that the Federation pass legislation on the registration of residence and issuance of ID Cards, including provisions which deal satisfactorily with the situation of returning displaced persons and refugees. This would also ensure the use of a uniform ID Card throughout the Federation territory. Until such legislation is in place, authorities in both Entities are called upon to interpret the existing legislation in the spirit of Annex 7 of the GFAP. Returnees should not have to face bureaucratic obstacles which prevent them from restarting their lives.

iii) Access to Documents

2.38 In both Entities full access to personal records and documents, such as birth, death, marriage and divorce certificates, and employment, educational, medical, insurance, pension and property documents, has not yet been secured, not least because registers were frequently destroyed or have disappeared. Furthermore, the retrieval of such records and documents is often subject to excessive bureaucratic procedures. In some instances, returnees, particularly when returning from abroad, and including those relocating to other areas, are grossly and arbitrarily overcharged when asking for personal records or other official documents.

iv) Recognition of Public Documents

2.39 Public documents issued by judicial, administrative and other agencies and institutions in one Entity are frequently not recognised by the corresponding bodies of the other Entity, thus hindering sustainable return and successful reintegration.

2.40 The Federation *Law on Recognition of Public Documents on the Territory of the Federation of Bosnia and Herzegovina*, which entered into force on 26 February 1998, provides for the recognition of public documents issued by the authorities of the then Republic of Bosnia and Herzegovina and the so-called 'Herzeg-Bosna' authorities.

2.41 The Federation Ministry of Justice interprets Article 6 of the above-mentioned Law to mean that recognition of public documents issued by the RS must be regulated by the State and not the Federation Law. Some Cantons (Tuzla-Podrinje Canton, Una-Sana Canton) have in fact passed instructions not to recognise documents issued by RS authorities. Although some courts in the Federation recognise certain RS public documents (e.g. Municipal Courts I and II in Sarajevo Canton) and similarly, some courts in the RS recognise certain Federation documents, this situation must be remedied formally and consistently for the sake of legal security and to facilitate sustainable returns.

2.42 With the support of OHR, the Entity Governments signed a Memorandum of Understanding on Inter-Entity Legal Co-operation on 20 May 1998.⁹⁰ This document regulates legal assistance in civil, criminal and administrative matters, the harmonisation of legislation concerning the legal practice, the exchange of judicial and administrative acts, a review of the situation and exchange of public records, the exchange of personal

strong inter-linkage between these matters (*Annexmaterie*). In fact, residence registration and the issuance of ID Cards are the single, most important outlet of Entity citizenship.

⁹⁰ The exact title is: *Memorandum of Understanding on the Regulation of Legal Assistance between Institutions of the Federation of Bosnia and Herzegovina and the Repulika Srpska*.

documentation and other similar matters. The Memorandum entered into force on the day it was signed. During the first session of the Commission on 3 June 1998, the members agreed that laws must be passed concerning the recognition of the respective Entities' public documents. Regrettably, the Entities have so far failed to adopt such laws on access to and mutual recognition of public documents. In order to remedy this situation OHR has taken the initiative to draft State and Entity legislation on access and recognition of documents. This drafting process is still ongoing.

v) Freedom of Movement

2.43 Article I (4) of the Constitution of Bosnia and Herzegovina guarantees the right to freedom of movement. Freedom of movement has substantially improved with the introduction of the new common license vehicle plates and remains especially important to potential returnees and displaced persons as it enables them personally to assess the situation in their home areas, and then to move back to their homes when and if they feel they are prepared to do so.

Illegal Checkpoints

2.44 UNMIBH (IPTF) has developed a checkpoint policy to prevent the establishment of illegal checkpoints by the local police, which often lead to the harassment of motorists of other ethnic groups. UNMIBH (IPTF) has reported, in particular, the continued failure of the Sarajevo Cantonal police to abide by the checkpoint policy. Moreover, the illegal practice of road toll and illegal fines, as well as excessive traffic controls seem to have become now another means to hinder freedom of movement without violating the IPTF checkpoint policy. Around Sarajevo, both the Federation and the RS police are collecting 'fines'. Instances of road taxes being charged by the RS traffic police have been reported by UNHCR and UNMIBH in March, October and April 1998. In the Federation, cases of illegal fines have been reported by UNMIBH in Praca and in Novo Sarajevo in September 1998. In North Eastern Bosnia, several reports indicate that illegal fines are being levied by the local traffic police on minorities, notably around the municipality of Orasje, as well as in Dobo⁹¹.

UNHCR Bus Lines

2.45 In 1996, in an effort to promote freedom of movement, UNHCR established a number of inter-Entity bus lines to compensate for the lack of security and the absence of public and commercial transport from the Federation to the RS and vice versa. There are now 17 UNHCR bus lines. Thirteen lines previously run by UNHCR were commercialised in 1998 and handed over to private companies. A survey conducted in December 1998 revealed that for many people, this was the only way to visit the other Entity, friends, relatives and homes. The UNHCR bus lines provide a sense of security and are more frequently used by Serbs than by Bosniacs or Croats. UNHCR bus lines are flexible and often re-directed in order to follow return trends and identified axes of return. However, the UNHCR bus lines do not prevent security incidents from taking place during assessments visits. For instance between March and June of 1998, a series of violent incidents took place which ranged from a group of 50-75 Serbs stoning the Kladanj-Vlasenica UNHCR bus to the physical assault and/or robbery of a number of Bosniac passengers from Sapna (Federation) visiting Zvornik (RS). In Zvornik, when victims approached the local police for help, the common response was that they were attacked by a gang operating in the area and that the victims should not return in the future.

⁹¹ This is reported by the UNMIBH Human Rights Office in September 1998 (Weekly Reports 3-9 September 1998/27 August- 2 September 1998).

Another incident took place in the town of Piskavice, outside of Vlasenica (RS), and involved a group of approximately 12 Bosniac women, five of whom were verbally and physically assaulted whilst visiting their pre-conflict homes and the local graveyard. On 29 August 1998, a crowd of Serbs threatened the displaced Bosniacs who were visiting Klisa (RS). The displaced Bosniacs were advised to leave and, as a result, they held the IPTF officers hostage. On 5 June 1998, displaced Bosniacs also originally from Klisa had their bus stoned. On 5 October 1998, the UNHCR bus line Trebinje (RS)-Mostar (Federation) was stopped for two hours by the Federation local police. The luggage of the passengers was searched and some boxes of cigarettes were confiscated.

2.46 While these types of incidents are not a daily occurrence, they happen with enough frequency to indicate that tensions remain high and that full freedom of movement is still not fully assured throughout the country.

vi) War Taxes

2.47 The expression 'war taxes' can be defined as any amount of money which returning refugees⁹² have to pay directly or indirectly to the local authorities or communities in exile in their quasi official capacity upon return because of their stay abroad during the conflict. Article I(3)(a) of Annex 7 of the GFAP provides that all discriminatory administrative obstacles to return must be removed. Since war taxes affect only those returning to BH from abroad, they are clearly of a discriminatory nature. Both Entities passed laws and regulations for the collection of taxes for the reconstruction and the restoration of their respective territories. In both Entities the payment of war taxes is often a pre-condition for obtaining documents, being included in reconstruction projects or ensuring connections to phone or electricity networks. Moreover, war taxes are levied either at border entry points, where passports can be confiscated until the tax is paid, or by municipal officials in charge of registration or of the issuance of identification documents. The amount is often determined arbitrarily.⁹³

2.48 In the Federation, war taxes are levied on the basis of municipal decisions which were often passed during the conflict with a view to providing financial means for their defence. In March 1998, UNHCR wrote to 20 municipalities in North-Eastern Bosnia known for levying war taxes, reminding them of their obligation to remove discriminatory administrative practices. As a consequence five municipalities passed official decisions bringing the practice to an end.⁹⁴ In July 1998, the Federation Minister for Social Affairs, Displaced Persons and Refugees reiterated the Federation's position that the levying of war taxes was illegal and requested the Cantonal Ministers for Refugees and Displaced Persons to report on the issue

⁹² Returning displaced persons are not usually subject to the payment of such taxes (except in the Gorazde Canton where a Cantonal Decision of 11 April 1997 provides that returning displaced persons and refugees have to pay an extra 20 % for the issuance of certain public documents, such as driving licenses, ID cards or passports).

⁹³ This can amount to several 1000 Konvertible Mark (KM). The exchange rate between the D-Mark (DM) and KM is 1:1.

⁹⁴ The municipalities of Zavidovici, Banovici, Celic, Kalesija and Olovo have repealed the decisions adopted during the conflict. The municipalities of Gradacac and Srebrenik deny charging war taxes on repatriates.

and to stop this practice.⁹⁵ However, several municipalities did not repeal their decisions to collect war taxes.⁹⁶ It seems that this practice is less acute outside North-eastern BH.

2.49 In the RS, the *Law on Tax for the Reconstruction and the Restoration of the RS* was passed in June 1996⁹⁷ and the accompanying *Instruction* was adopted by the then Minister of Finance in August 1996.⁹⁸ This legislation required RS citizens who worked abroad to pay a tax which consists of a fixed amount of money to be paid on a monthly basis.⁹⁹ The obligation to pay the tax was not subject to statutory limitations. Individuals returning to the RS had to pay retroactively for the entire period they worked abroad. On 24 June 1998, the RS National Assembly repealed this legislation by adopting the *Law on the Cessation of Application of the Law on Tax for the Reconstruction and the Restoration of the RS*¹⁰⁰. This is a positive development.

c. The social framework

i) Access to Social Services, Health Care and Public Services

2.50 In both Entities, access to public health, medical care, social security, food aid¹⁰¹ and pension is subject to prior registration of residence with the local authorities and obtainment of an Entity ID card. UNHCR's surveys reveal that returnees and relocatees face considerable difficulties registering their permanent and temporary residence with the municipal authorities and/or obtaining the respective Entity ID cards. The impossibility to register/obtain an ID card results in the denial of access to such above-mentioned services. These practices affect not only minority returnees but also returnees of the majority constituent people. Both Entity authorities need to issue identity cards to returnees without discrimination to enable them to have access to essential social services. In addition, pre-conflict subscribers often encounter major difficulties in accessing public services, including water, electricity, telephone, garbage collection and mail delivery. They are often overbilled for periods during which they were displaced or for reconnection. There are wide discrepancies across the country for charges to

⁹⁵ Letter sent to all Cantonal Ministers for Displaced Persons for Refugees and Displaced Person on 7 July 1998. The Federation Minister of Justice had taken the same initiative at the request of OHR on 25 September 1997.

⁹⁶ These municipalities include Doboj East, Gracanica, Kladanj, Lukavac, Rahic-Brcko, Sapna/Zvornik, Teocak, Zivinice, Doboj South, Maglaj, Tesanj, Odzak and Orasje.

⁹⁷ RS *Official Messenger*, No. 15/96.

⁹⁸ Instruction No. 01-398/96.

⁹⁹ See Article 15 (2) of this RS Law.

¹⁰⁰ RS *Official Messenger*, No. 23/98, 11 July 1998.

¹⁰¹ Since September 1997, the World Food Programme (WFP) has provided food aid only to the most vulnerable individuals. Until March 1998, beneficiaries had to have a monthly income of less than 25 DM per person and belong to certain categories of vulnerable groups in order to be entitled to food assistance. Following the joint food aid needs assessment mission, new criteria have been set up to recategorise the most socially vulnerable beneficiaries. The income limit has been increased to 50 KM and the categories of beneficiaries were reduced to the following four groups: i) Elderly (over 65 years for men and 60 for women) living alone and without family support, and with a pension below 50 KM per person per month and no possibility of additional income; ii) Physically and mentally handicapped persons incapable of working, and with a compound income (including invalid benefits) of less than 50 KM per person per month, and without another member of the household capable of working; iii) Single parents with a child or children below 15 years of age, without family support and with a compound income (including child benefits) of less than 50 KM per person per month; iv) Foster children or orphans in households with no members capable of working and with a compound income of less than 50 KM per person per month.

be paid, which are often not transparent nor linked to the quality of services delivered. This affects in particular minority returnees.

ii) Education

2.51 The education systems and the issue of different curricula remain dominated by ethnic bias, discrimination and segregation, thus inhibiting the return of entire families. Foreign textbooks continue to be used in the RS and in Croat-administered areas of the Federation.

2.52 On 18 May 1998, and following considerable efforts on the part of OHR, the Federation and the RS Ministers of Education agreed to establish two expert teams (one in each Entity) to review the content of the various textbooks in use. The textbook review has not yet managed to resolve sensitive issues concerning history and literature and will require international mediation (probably through a commission created by OHR, with the assistance of the Council of Europe and UNESCO). The expert teams are then supposed to share their final findings and recommendations with their respective Ministers, who will be responsible for implementing these recommendations. UNESCO has sent a mission of education experts to BH in January 1999 to gather information on the three different curricula in use in BH. The report of this mission will be presented at an international symposium in which the Entity education authorities and relevant international organisations will participate.

2.53 In the Federation, the *Instruction on the Use of Two Curricula and Education Plans on the Whole Territory of the Federation of Bosnia and Herzegovina*¹⁰², which provided for the segregation of children according to their ethnicity, was repealed on 10 November 1997. In an effort to promote tolerance, the Federation authorities have established a Commission for the Development of a Uniform Curriculum to develop a core curriculum. This initiative has, however, failed, resulting in the development of a curriculum by the Bosniac side only. The prepared curriculum is now being opposed to, and rejected by, the Croats. While the rescinding of the *Instruction* has limited the segregationist tendencies, problems still exist with regard to languages and religious classes. The situation is further complicated by the fact that education is a cantonal matter regulated by at least ten different cantonal laws.¹⁰³ In theory, any of the three languages can be used in BH, since there are three constituent peoples. However, in practice schools promote the use of the language of the majority. This has, for example, been reported in the Sarajevo area, as well as in Mostar. Regarding religious education, even though optional, often no alternative classes are offered to those choosing not to study religion.¹⁰⁴ In the RS, the curriculum and textbooks were changed in 1992 after the beginning of the conflict in BH.¹⁰⁵ The RS curricula for primary and secondary schools were developed taking the Federal Republic of Yugoslavia system as a model. The Helsinki

¹⁰² The Instruction was passed on 15 July 1997 by the Federation Minister Rizvanbegovic and Deputy Minister Pehar of the Ministry for Education, Science, Culture, and Sports.

¹⁰³ See Article 1 and 2 of the Constitution of the Federation of BH, which do not list education neither as an exclusive competency nor as shared one.

¹⁰⁴ See International Human Rights Law Group, *Segregation and Discrimination in Education in the Federation of BH, A Human Rights Report One Year after the Revocation of the Instruction on Dual Curricula in the Schools*, 25 February 1999. This report observes that a number of institutionalised segregation and discriminatory practices are a reality in many schools all over BH. See also the report from OSCE and ECMM, *The Educational System in Bosnia and Herzegovina*, March 1998.

¹⁰⁵ See USAID sponsored report of the Helsinki Committee for Human Rights in Republika Srpska, *Comparative Analysis of some Aspects of Education, Educational Plans and Curricula in Bosnia and Herzegovina*, Bijeljina 1998.

Committee report denounces *inter alia* the far too complex pedagogical objectives set out by the new legislation and the ethnocentrism of the curricula. Such a system does not allow for the proper reintegration of returnee children of other constituent peoples. The International Human Rights Law Group reports that in Bijeljina, for instance, children who are not attending religious classes are not being graded. This impacts greatly on their overall academic assessment.

2.54 The Sarajevo Education Working Group, established by the Sarajevo Declaration¹⁰⁶ for the purposes of *inter alia* withdrawing all material contributing to ethnic hatred, has experienced serious difficulties, which illustrates the sensitivity of the education issue. In November 1998, after recommending the removal of some offensive material, UNESCO faced a severe media campaign which brought the work of the Working Group to a standstill. The Cantonal government opposed UNESCO's recommendations and passed a conclusion on 3 November 1998 reminding the Working Group of its *ad hoc* nature and lack of legal status.

iii) Employment

2.55 The Bosnian economy has suffered a severe degree of destruction.¹⁰⁷ While the country is slowly recovering from the conflict, the rate of unemployment remains extremely high.¹⁰⁸ Based on reports by international agencies and other institutions, the limited employment opportunities are compounded by wide-spread discrimination based on ethnicity, political affiliation or gender.¹⁰⁹ In addition to political obstacles, the current state of the economy often does not allow minority returnees to reintegrate into the employment

¹⁰⁶ The Sarajevo Declaration was adopted during the Sarajevo Return Conference on 3 February 1998.

¹⁰⁷ As for the state of the economy, please refer to *Bosnia and Herzegovina. The Priority Reconstruction Program: Achievements and 1998 Needs*, prepared by the European Commission and the Europe and Central Asia Region of the World Bank, April 1998. This report observes that, as a result of the conflict, industrial production dropped down to 5-10% of pre-conflict levels. While production has rebounded during the past two years, Bosnian enterprises still suffer from: i) lack of working capital or access to financing; ii) obsolete, destroyed or looted plants and equipment; iii) lack of markets; and iv) disruption of pre-conflict trade links as a result of the breakdown of the former Yugoslavia. As for the state of agriculture, at the end of the conflict, wheat, maize and potato outputs were 60 to 70 percent of 1990 levels. Fruit production dropped by more than half. As much as 70% of the farm equipment and 60% of livestock was lost. Farm buildings and irrigation equipment were destroyed. Forest roads and harvesting equipment were heavily damaged. High-value orchards and vineyards were destroyed directly or through neglect during the conflict. Food marketing systems were disrupted. Some 15% of farmland and 20% of forests became inaccessible due to mines.

¹⁰⁸ The latest edition of the *Economic Brief for Bosnia and Herzegovina* published by the World Bank in November 1998 reports a nominal growth rate of approximately 19% for 1998. This high growth rate was primarily achieved through donor-financed reconstruction efforts and should be reduced with the decrease of reconstruction assistance. According to the same report, in the Federation, the unemployment rate reaches some 40% and goes up to more than 50% if those on waiting lists are considered unemployed. Average nominal wages have increased from 299 to 334 KM. In the RS the World Bank gives a nominal growth rate of 20.4% and an estimated unemployment rate of 47%. The average net wage is now 139 KM. The World Bank warns that these figures are not completely reliable since data are difficult to gather in BH and because of other technical difficulties.

¹⁰⁹ According to the Report: *Bosnia and Herzegovina. The Priority Reconstruction Program: Achievements and 1998 Needs*, prepared by the European Commission and the Europe and Central Asia Region of the World Bank, April 1998, returnees and displaced persons rank among the most disadvantaged groups with the highest unemployment rates. They have reduced access to social networks and encounter more difficulties in finding employment. See also PRISM Research, *Women in the B&H Economy: Current Status and Future Strategies*, Sarajevo (December 1998), page 20: '... the most common manifestation of the discrimination is employment related.'

market.¹¹⁰ Pressure on the employment market is already high since the Bosnian economy does not generate enough jobs to absorb all or even a substantial part of the available workforce. It is also feared that discrimination based on ethnicity, political affiliation and/or gender will affect the selection criteria of those who may lose their employment as a result of economic reform.¹¹¹ Large numbers of induced returns to the Federation or to the RS will therefore create further social and political tensions.

2.56 According to various sources¹¹², discriminatory dismissal or recruitment based on ethnicity, political affiliation, membership of a particular trade union or participation in social movements is especially prevalent in the local administrations at all levels, public enterprises, the legal profession, the medical field, schools and universities. Such discrimination, in particular on account of ethnicity, started during the conflict, when the employees who were displaced were either dismissed or put on waiting lists. Members of the minority constituent people are therefore more affected by such discriminatory practices than others. In Mostar, for instance, the Aluminij Complex company asked its Bosniac workers not to come back to work, once the company resumed work. This policy prompted a French firm to stop co-operating with the Mostar-based company in July 1998.¹¹³ The Human Rights Chamber also reports cases of employment discrimination, such as the *Malic* case, which concerns a former employee of the Dental School at the University of Sarajevo. The applicant was ultimately re-employed after a friendly settlement was reached.¹¹⁴ In Livno, 52 Bosniac employees of the local Bus Company were dismissed without reasons in September 1997. The Human Rights Chamber held a hearing on this case during its 31st session in mid-December 1998. The decision is expected in May 1999 if no friendly settlement is achieved.¹¹⁵ The Helsinki Committee reported the dismissal of 1,416 Bosniac workers from a Croat-administered military factory in Vitez.¹¹⁶ In Canton 10, a Croatian company, *Finvest*, provides for most of the economic activity. *Finvest* is in fact used as a means to promote relocation of Croats from Central Bosnia to Canton 10 and its representatives indicated publicly that Serbs cannot be employed without the approval of the Croat-controlled municipal authorities.¹¹⁷

2.57 Discriminatory treatment on account of actual or imputed political opinion has also been reported in both Entities. In the Federation, UNHCR's returnee monitoring survey in Velika Kladusa in October 1998 revealed that teachers, former municipal employees and policemen who supported Fikret Abdic during the conflict were not reemployed in their former positions or were discriminated against when applying for new jobs. Some of the

¹¹⁰ See Marcus Cox, *Strategic Approaches to International Intervention in Bosnia and Herzegovina*, (Cluster of Competence, The rehabilitation of war-torn societies: a project co-ordinated by the Centre for Applied Studies in International Negotiations), Sarajevo, October 1998, page 38: 'Each ethnic region operates as a discrete economic space, with separate enterprises, financial institutions, taxation systems and customs areas. For a country as small as Bosnia and Herzegovina, this is highly inefficient...'

¹¹¹ See United Nations High Commissioner for Human Rights, *Report from the Human Rights Field Operations in Bosnia and Herzegovina, the Republic of Croatia, and the Federal Republic of Yugoslavia*, 25 February 1999, paras. 36-42.

¹¹² See for instance International Crisis Group Report, *Rebuilding a Multi-Ethnic Sarajevo: The Need for Minority Returns*, 3 February 1998.

¹¹³ Helsinki Committee for Human Rights in Bosnia and Herzegovina, *Faxletter* No. 45, 15 July 1998.

¹¹⁴ Case No. CH/97/35, *Malic v. Federation of Bosnia and Herzegovina*.

¹¹⁵ Case No. CH/97/67, *Zahirovic v. Federation of Bosnia and Herzegovina*.

¹¹⁶ Helsinki Committee for Human Rights in Bosnia and Herzegovina, *Faxletter*, 1 June 1998.

¹¹⁷ See International Crisis Group report, *Hollow Promise? Return of Bosnian Serb Displaced Persons to Drvar, Bosansko Grahovo and Glamoc*, 19 January 1998.

former municipal employees who went to inquire to the municipality about their old positions were told they were 'politically inconvenient' or that there were no jobs for former Abdic followers.¹¹⁸

2.58 A clear pattern of discrimination on ethnic and political grounds seems to prevail in post-conflict BH. The few existing economic opportunities are reserved for those who provide political support to the dominant political parties.

d. Overall Assessment

2.59 Informed observers describe the current situation in BH as politically unstable and consider the peace process far from self-sustaining. Following are some of the elements underlying this analysis: i) the ongoing difficulties concerning the establishment of a RS government acceptable to the international community which have led to a political crisis in the RS culminating in the removal of RS President Poplasen by the High Representative; ii) the massive protest over the Final Award of the Arbitral Tribunal for Dispute over Inter-Entity Boundary in Brcko Area and the ensuing Serb boycott of the joint institutions at the State level, thus effectively blocking the work of the common State bodies¹¹⁹; iii) the lack of constructive co-operation between the Bosniac and Croat partners in the Federation, as, for example, illustrated by the political crisis within the Federation after a car-bombing attack on the Croat Deputy Minister of the Interior in Sarajevo on 16 March 1999¹²⁰, and the ensuing withdrawal of the Croat side from the Federation and State institutions; iv) the consolidation of power of the hard-liners within the Croat community, including the suggestion from some quarters to establish a 'third Entity'; v) and the lack of constructive co-operation between the Entities, as well as between the State and the Entities. These politically destabilising events, often followed by unrest in certain areas of the RS and Croat-administered parts of BH, as well as repercussions from the ongoing humanitarian crisis in FRY are important factors which sadly impinge on a successful repatriation process and sustainable minority return. Developments in FRY, if not resolved quickly, may undermine peace-building efforts in BH and lead to another refugee influx to BH during 1999 which will increase existing social and political tensions.¹²¹ In addition, the frustration generated by the lack of minority return possibilities is in itself destabilising and gives rise to tensions and sometimes violent incidents.

2.60 The Bosnian society is still strongly divided along ethnic lines, as a result of the war, as well as ongoing massive manipulation and intimidation, in particular through the media.¹²² The

¹¹⁸ *Returnee Assessment Study in Velika Kladusa, Una Sana Canton Bosnia and Herzegovina*, February 1999, UNHCR Sarajevo.

¹¹⁹ For an analysis of the political crisis in the RS, as well as the impact of the ongoing crisis in FRY, see ICG report, *Republika Srpska-Poplasen, Brcko and Kosovo: Three Crises And Out?*, 6 April 1999.

¹²⁰ He succumbed to his injuries on 28 March 1999.

¹²¹ The Peace Implementation Council stated in Madrid in December 1998 that the structure of BH remains fragile. Para. 4 of the Declaration reads as follows: 'Without the scaffolding of international support, it would collapse. In order to create a self-sustaining state of BiH, action is needed in particular on: inter-ethnic tolerance and reconciliation; the development of effective common institutions with powers clearly delineated from those of the Entities; and an open and pluralistic political life. The growth of organised crime also represents a serious threat to BiH, and is completely incompatible with BiH's integration into Europe.'

¹²² For example, on 6 February 1999, Bosniacs originally from Srebrenica met in Tuzla with Serbs currently displaced in Srebrenica. When these Serbs returned to Srebrenica, a number of them were intimidated by other Serbs. Moreover, an inflammatory statement against them was issued by the Serb Radical Party (SRS) and broadcast on local television. See HRCC Monthly Report, February 1999.

current constitutional framework is not conducive to ethnic reintegration and in fact it is used by those in power to pursue their narrow nationalist agendas and to consolidate territorial and other gains obtained during the war years.¹²³ Essential legal reform work, including in the area of return and displacement, as well as the removal of obstacles to return, is seriously hampered by a highly decentralised constitutional regime, the continued existence of parallel structures and administrations, as well as an often unclear division of competencies between the State and the Entities, and within the Federation between the Federation level and the Cantons. The predominance of the ethnic factor as the primary power-sharing model is yet another complicating element in this complex web of different legal systems. Matters that would fall into the competencies of the Entities but would equally require inter-Entity co-operation are currently not subject to an effective mechanism to address and regulate such matters.

2.61 The various State actors fall far short of providing effective national protection to all BH citizens without discrimination, particularly minority returnees. Reforms of the legal and administrative framework in 1998 were only possible due to massive international intervention and imposition¹²⁴, which demonstrates the lack of political will and commitment of the authorities fully to implement the provisions of the GFAP. The general elections held on 12-13 September 1998¹²⁵ have confirmed the dominant role of the three nationalist parties both at the State and Entity levels and in most executive positions. The current electoral system de facto favours the population to vote along ethnic lines.¹²⁶ Given their respective programmes and ideologies, these parties are not working to correct the consequences of the conflict but rather consolidate and aggravate them. In fact, minority return, reconciliation and ethnic reintegration run counter to their monoethnic agendas and interests to preserve their economic and political powerbase.¹²⁷ The problems surrounding the formation of the new RS government or some Cantonal administrations of the Federation, as well as the slow and often inadequate implementation of the September 1997 municipal election results reveal the lack of collective responsibility beyond the narrow boundaries of ethnicity. The political vacuum created by this situation in some areas does not bode well for the future of BH as a State

¹²³ See, for example, Thompson, *Correcting Dayton's Oversight: Underpinning Bosnia's Democracy with the Rule of Law* (The Atlantic Council of the United States), October 1998.

¹²⁴ The High Representative has imposed laws and made decisions on a number of important subjects, such as citizenship, the design of the national flag and the currency, foreign investment, the uniform vehicle licence plate, privatisation, telecommunications, and property-related matters. This said, the Yugoslav Dinar is still in use in the RS, as well as the Croatian Kuna in Croat-administered areas of the Federation despite the introduction of a common currency. The Croatian flag flies on many public buildings in Croat-administered areas of the Federation. There are also a number of ongoing border disputes between BH and Croatia in return areas (e.g. Martin Brod).

¹²⁵ Elections were held for the BH Joint Presidency, the BH House of Representatives, the Presidency of the RS, the RS National Assembly, the Federation House of Representatives, the 10 Cantonal Assemblies and 12 new municipalities.

¹²⁶ See ICG Report, *Breaking the Mould: Electoral Reform in Bosnia and Herzegovina* (March 1999).

¹²⁷ See Marcus Cox, *Strategic Approaches to International Intervention in Bosnia and Herzegovina*, (Cluster of Competence, The rehabilitation of war-torn societies: a project co-ordinated by the Centre for Applied Studies in International Negotiations), Sarajevo, October 1998, page 29: 'Large-scale minority return is opposed on all sides because it raises the possibility of losing control of territory gained or successfully defended during the war. It particularly threatens displaced persons of the majority ethnic group in the return area, who fear being displaced again by the return of others. Minority return may be tolerated to empty villages without economic or strategic significance, or in small numbers into large urban centres, but outside those marginal situations it is consistently opposed.'

functioning in accordance with the rule of law and European standards.¹²⁸ Elected officials (in most cases the previous war-time leaders) continue to use extreme nationalist rhetoric, which demonstrates their unwillingness to depart from a war-shaped mindset. Moreover, the State of BH is undermined by the quasi-absence of vertical and horizontal co-operation of its various institutions. Vertically, the central institutions' authority over other administrative or institutional bodies is often rebuffed by the Entities, the Cantons or the municipalities.¹²⁹ Horizontally, there is little, if any, co-operation between the Entities on subjects of common interest.

2.62 UNHCR's 'Open Cities' concept demonstrates that minority returns are feasible where there is political will, coordination between international organisations and appropriate allocation of funds. However, many of the barriers currently hampering minority returns in the country are also encountered in the Open Cities, such as the slow implementation of the property legislation, the lack of accommodation, the presence of large groups of displaced persons who cannot return home, and instances of discrimination or harassment upon return. UNHCR therefore reiterates its position that Open Cities, as well as other areas which are in the process of opening to minority returns, should not be considered 'safe areas' for the non-voluntary repatriation of refugees from abroad.

2.63 As repeatedly stressed in reports of the UN Special Rapporteur of the Commission on Human Rights¹³⁰ and other international organisations, human rights violations in BH continue on a large scale. The UNMIBH Human Rights Office, which monitors the human rights situation, along with the Organization for Security and Co-operation in Europe (OSCE) and IPTF, has recorded a total of 1,841 human rights cases between 1 January and 21 October 1998. A multi-ethnic local police force still needs to be established throughout the RS, while the various Federation police forces where this has been achieved have yet to carry out their duties in accordance with international standards. Police restructuring and reform are essential elements of the security framework, along with the establishment of effective and non-discriminatory policing practices. The housing, employment, education, social services and health care capacities in the pre-conflict places of residence need to be improved considerably for returns to become dignified and sustainable. Currently, inadequate budgetary provision is made for these sectors. Also, freedom of religion is not fully guaranteed, particularly not in the RS and in Croat-administered areas of the Federation.

2.64 The inadequacy of the current legal, administrative and social framework is not conducive to the full restoration of effective national protection. The domestic mechanisms needed to ensure national protection are not yet fully operational. Important progress needs to be achieved in areas such as judicial co-operation between the Entities, judicial reform of the domestic legal framework and the functioning of the court system.¹³¹ UNHCR's

¹²⁸ See the Council of Europe's *Report on Human Rights and the Rule of Law in Bosnia and Herzegovina* of December 1998, assessing the credibility of BH's application for membership to the Council of Europe.

¹²⁹ For instance, UNHCR faced tremendous difficulties in having the Federation, the municipalities and some Cantons implement the *State Instruction on the Temporary Admission of Federal Republic of Yugoslavia Refugees from Territories of Kosovo and Metohija*, adopted in October 1998 in order to grant temporary protection to refugees from Kosovo.

¹³⁰ See the Special Rapporteur's reports on the *Situation of Human Rights in Bosnia Herzegovina, Croatia and the Federal Republic of Yugoslavia*; E/CN.4/1999/42; A/53/322 and A/53/322/Add.1.

¹³¹ See the Final Report of the Special Rapporteur on the Situation of Human Rights in the Territory of the Former Yugoslavia, E/CN.4/1998/63 and E/CN.4/1998/L.86/Rev.1.

experience in 1998 has shown that, even when favourable legislation is adopted, the administrations at all levels are, in many instances, not transparent, professional nor accountable, which creates widespread obstructions across the board.¹³²

2.65 In the Federation, the adoption of the property legislation in April 1998 was a step forward after two and a half years of negotiations. However, its implementation remains undermined by problems and/or bad will on the part of the authorities. Moreover, even though the legal position of pre-conflict owners and occupancy-right holders has improved, this does not mean that even if they obtain confirmation of their rights, they can immediately return to their housing units, as the laws provide for delays for the reinstatement into and repossession of property.

2.66 In the RS, despite the revision and adoption of the property legislation in December 1998 to ensure greater compliance with Annex 7 of the GFAP, its implementation is fraught with difficulties. The RS authorities openly and publicly support relocation and do not demonstrate genuine commitment to create an environment conducive to minority returns. A long list of unresolved issues remains: i) the absence of substantial minority returns to the RS, not least because of continued security threats; ii) the uncertainty of the political situation, further aggravated by the ongoing crisis in FRY and the condemnation of the NATO bombings by all political actors in the RS¹³³; iii) the allocation of public land to displaced persons which amounts to relocation¹³⁴; iv) the active discouragement by the RS authorities and communities of Serb displaced persons who wish to pursue return to the Federation, thereby effectively blocking minority return to the RS; v) the inadequacy of the Amnesty Law; vi) the failure of the RS authorities to ensure the reinstatement of the 300 to 400 eviction cases in Banja Luka and Bijeljina. The voluntary repatriation to Croatia of a small number among the estimated 30,000 Croatian Serb refugees, most of whom are currently staying in and around Banja Luka, has started and will increase the prospects of minority returns in the Western RS.¹³⁵

¹³² For example for the past three months, the Cantonal Government of Sarajevo has failed to appoint a new Head for the Cantonal Housing Department - thereby blocking the issuance of decisions and eviction notices. During 1998, the authorities also obstructed return through more subtle (ad hoc) administrative practices, for example in demanding fees, requiring additional documentation and introducing hearings. These obstructions are easily established and effective, because the existing administrative requirements are non-transparent and complex/legalistic. It is difficult to keep up with the obstructions as they appear and disappear, and to define the extent of the obstruction and immediate corrective action. The local authorities (especially the municipalities) are like bastions of heavy bureaucracy - queues and paperwork for everywhere, and poorly motivated/qualified staff - this creates a bureaucratically obstructive and corrupt mentality, which is easily targeted towards minorities.

¹³³ On 24 March 1999, the RS National Assembly condemned the 'aggression' against FRY. Several anti-NATO rallies and violent incidents against international organisations have taken place all over the RS since the beginning of the NATO air strikes on FRY. International organisations had to evacuate staff and close their offices in Banja Luka and other areas of the RS, particularly after the premises of OHR, UNHCR, WFP, SFOR-CIMIC, the British, German and US consulates were attacked and damaged by angry crowds on 26 March 1999. Following these air strikes, a series of acts of violence against members of IPTF and SFOR have also been reported in the RS. The security situation in the RS remains tense and uncertain with the possibility of acts of violence.

¹³⁴ In June 1998, the RS adopted the *Law on Changes and Amendments to the Law on Land for Building* whereby displaced persons are able to obtain free of charge plots of land in the RS (RS Official Messenger No. 23/98, 11 July 1998 and accompanying *Instruction on the Conditions and Method of Free Allocation of City Construction Land*, No. 02/1-020-1538/98, 20 August 1998).

¹³⁵ In June 1998 the Croatian Government adopted the Programme on Return and Providing Care for Displaced Persons and Refugees (hereafter the Programme) which sets out the procedure for return to Croatia. Since the adoption of the Programme, 560 applications for return to Croatia were received from BH. ODP

2.67 The authorities of both Entities have also been reluctant or outright unwilling to enforce lawful evictions and to provide alternative temporary accommodation for those lawfully evicted. In addition, the volatile security situation in some areas continues to remain a major obstacle to return, particularly in the RS and Croat-administered areas of the Federation.

e. Repatriation to situations of internal displacement

2.68 Given these constraints outlined above, there may be pressures on persons in this category to return, but to a majority area. The great majority of repatriations from abroad are now to areas other than the returnee's home. They are to areas where the returnee would be displaced but among the majority, while the returnee's home lies in an area where they would be among the minority.¹³⁶ UNHCR is gravely preoccupied that the return and peace-consolidation processes are, and may continue to be, seriously undermined by induced repatriation to an area which is not the pre-conflict place of residence, but where the returnee will be part of the majority. Article I(1) of Annex 7 of the GFAP provides for the right of every refugee or displaced person to return to her/his pre-conflict place of residence. This recognises that the deliberate placement of groups of people into housing belonging to other ethnic groups in order to secure ethnically-based control over territory and thus prevent minority return (also referred to as hostile relocation), is unacceptable.¹³⁷

has so far cleared 185 Croatian Serb refugees from the RS. The first organised repatriation took place on 10 November 1998 and UNHCR has organised weekly convoys. To date, some 96 individuals have repatriated.

¹³⁶ According to UNHCR, approximately 100,000 BH refugees still remain in Germany. The total figure of repatriations from Germany since the signing of the GFAP amounts to some 250,000. In 1998, 83,000 BH refugees from Germany benefited from assisted return programmes (GARP/IOM). UNHCR estimates the overall number of returnees from Germany by the end of 1998 to reach 105,000, including self-organised returns. More than 2,000 were deported in 1998. While the deportation numbers may not appear significant, they do have in practice a major impact on people who are trying to make an informed choice as to their possible repatriation. The majority of these returns in 1998 has been to internal displacement. UNHCR summarised its concerns in a Note by UNHCR on Repatriation from Germany to Bosnia and Herzegovina dated 21 July 1998, which was shared with the German Government in July 1998 and remains valid. On the Return of Refugees and Displaced Persons, the PIC, in its Peace Implementation Agenda, annexed to the December 1998 Madrid Declaration of the PIC, regretted the small proportion of minority returns of those who returned in 1998. In view of the limited absorption capacity in BH, a rapid pace of returns leading to relocation would adversely affect not only the minority return process but also the full implementation of the Federation and newly passed RS property laws, both of which are high priorities of the international community in BH during 1999.

¹³⁷ See UNHCR, *A Regional Strategy for Sustainable Return of Those Displaced by Conflict in the Former Yugoslavia*, paras. 7.9 and 7.10 for the circumstances in which relocation is considered acceptable. The following excerpt is reproduced below: 'To be acceptable, relocation must respect the property rights of others, be voluntary and based on an informed choice as to the desired place of residence, whether newly built or existing accommodation. Once all the obstacles to return home are removed, refugees and displaced persons will be in a position to make such an informed choice. Both host countries and the authorities of the areas to which return takes place are urged to ensure that repatriation policies and deportations effected by application of bilateral return agreements do not, in fact, result in hostile relocation. Non-voluntary repatriation to areas of internal displacement exacerbates pressure on the limited available housing stock and already stretched absorption capacities; prevents the return of minorities, since relocatees often occupy their houses; increases the number of internally displaced; thus further complicating the search for durable solutions and sowing the seeds of future instability. It also means that generous repatriation grants are not invested in rebuilding new lives but spent on subsistence needs.'

2.69 Given the Federation policy to refer returnees from abroad to areas close to their pre-conflict homes, these returnees are trying to find temporary accommodation in various municipalities along the Inter-Entity Boundary Line, particularly in parts of the Una Sana Canton, Canton Sarajevo and throughout Tuzla-Podrinje Canton, all areas already well known for their lack of absorption capacity. Not least because of slow progress in the implementation of the GFAP, in particular its Annex 7, in the RS and, notably, in its Eastern parts, Bosniac returnees originating from the RS are currently unable to return to their homes of origin in the RS. Nor can the majority of these returnees remain in the transit accommodation which they usually identify on first arrival. Such returnees thus face further displacement to temporary accommodation.

2.70 Induced repatriations to situations of internal displacement which is not sustainable aggravate existing problems and are increasingly counterproductive for ongoing efforts to implement the GFAP, and specifically to promote minority return opportunities generally. This is widely recognised by OHR, OSCE, SFOR and others concerned. In situations of internal displacement, people are relocating to the homes of others (minorities) and as the option of returning to their own homes does not yet exist, they are not exercising a free choice. The following paragraphs set out briefly the effects of such returns on the individuals themselves, on others, and more generally.

i) Effect on the individuals themselves

2.71 Such returnees have little choice as to their place of temporary residence, and as accommodation becomes scarcer, they have still less. They are exposed to a number of protection problems. For example:

2.72 The majority of municipal authorities in the Federation of BH and RS register those who cannot return to their pre-conflict place of residence if they can provide proof of accommodation, but are not in a position to assist them in identifying accommodation if they are in need. The two respective Entity laws on Refugees and Displaced Persons¹³⁸ impose obligations on the two competent Entity Ministries to register them as displaced persons and to provide temporary accommodation in case of need, and it is the responsibility of these two Ministries for designing an appropriate distribution mechanism in cases where the absorption capacities of municipalities are exhausted. In reality, the non-registration of displaced person and, consequently, the denial of the displaced person's card to them means that they are denied access to food, medical care and other assistance.¹³⁹

2.73 In addition, it should be noted generally that those displaced internally because of the conflict are now living temporarily in places other than their registered place of permanent residence and have obtained temporary residence registration under certain circumstances. A displaced person, irrespective of her/his place of origin, cannot convert temporary residence registration to registration of permanent residence, unless s/he first deregisters at her/his place of former permanent residence and has managed to integrate fully, without depending on any assistance provided by the authorities.

¹³⁸ See RS Law on Refugees and Displaced Persons (RS Official Messenger, No. 26/95) and the Federation Law on Displaced-Expelled Persons and Refugees (FBH Official Gazette, No. 2/95).

¹³⁹ See footnotes 87 and 88.

2.74 It is therefore not surprising that such returnees often come under the influence and pressure of those who are opposed to their subsequent (minority) return to their homes and are vulnerable to these pressures, as they are to the increasingly organised mafias who control the housing market, the local economy, etc.; or vice versa, not least because of their economic and physical insecurity, they are manipulated by extremists to create the potential for violent incidents in forced return attempts or to support radical nationalist agendas. This is aggravated by the fact that they are forced to spend their return grant (if received) and savings not on repairing their homes and restarting a sustainable life, but on short-term survival, exorbitant rents, bribes, etc. Their continued displacement without prospects for a meaningful future is therefore a major destabilising factor.

2.75 Repatriates returning to displacement in the countryside often rely on smallscale farming for their livelihood. As rich farmland has already been allocated to the early displaced, the newly arrived displaced repatriates would only get land of lower quality and higher mine risks. This land often lies near the former front lines.¹⁴⁰

ii) Effect on others

2.76 Increasingly, these relocations are directly blocking minority returns that could now be realised. Such returnees, with accumulated savings and the financial assistance package provided by the authorities, are very likely to occupy accommodation to which the pre-conflict occupants and owners would return, if they were able. The recent returnees are also likely to dislodge displaced persons unable to pay higher accommodation rentals now being sought by impoverished locals. Such returns may force the most vulnerable into collective centres.

2.77 Transit or temporary accommodation may become blocked, not least because of the new arrivals of refugees and returnees from FRY.

iii) More generally

2.78 Since the resources in the areas of accommodation, employment, education, health service and humanitarian aid are generally scarce, repatriates to circumstances of displacement compete with the local population and the other displaced persons. This aggravates already existing prejudice and hostility against returning refugees who are perceived as 'traitors and wealthy' while those remaining in BH are considered to have 'defended the country and suffered'. According to a report commissioned by the World Bank, 'discrimination within the communities of people of the same nationality can at times be stronger than against people of other nationalities'.¹⁴¹

2.79 Indeed, these relocations deplete the absorption capacity of municipalities and are therefore increasing the level of social frustration, criminality and domestic violence as a result of over-crowding and the dashed expectations of the returnees. Reconciliation is set back as a result, as national and international observers attest. Those local authorities who are genuinely

¹⁴⁰ See Action contre la Faim, *Literary Review of Agricultural Issues facing Displaced Persons and Returnees in Bosnia and Herzegovina*, August 1998.

¹⁴¹ See *Social Assessment of the Impact of the War in Bosnia and Herzegovina, Focus Group Discussion Report*, 30 July 1998. See also PRISM Research, *Women in the B&H Economy: Current Status and Future Strategies*, Sarajevo (December 1998), page 20: 'The most common basis for discrimination reported by respondents is displaced person status, this is closely followed by gender discrimination.'

ready to commit to minority return are unable to do so because of the need to accommodate these 'majority relocatees'. This also impinges on the ability of municipalities to meet Open City criteria. Those local authorities who are seeking reasons to block minority return are strengthened, as are the corrupt and criminal elements in their communities. There is now a 'grey' population of perhaps tens of thousands of these relocatees who are not registered, whose whereabouts are not recorded and who are vulnerable to manipulation. As in Sanski Most, 'hostile relocation' also feeds agendas for local political manipulation to secure ethnically-based control over territory, thus preventing minority return and giving rise to future instability. It provides those who obstruct the peace process with yet another tool.

2.80 In summary, these returns to internal displacement are clearly undermining the progress that is being made on minority return and causing real and avoidable hardship.

3. Humanitarian cases (ex-camp or prison detainees; victims or witnesses of violence, including sexual violence; witnesses testifying before the International Criminal Tribunal for Former Yugoslavia; severely traumatised persons; individuals in need of special care)

a. International protection because of compelling reasons arising out of previous persecution

3.1 Beneficiaries of temporary protection who can invoke 'compelling reasons arising out of previous persecution' for refusing to return to Bosnia and Herzegovina should be offered local solutions in their host countries.¹⁴² Ex-camp or prison detainees, victims or witnesses of violence, as well as severely traumatised persons would fall under this category. It is presumed that such cases have suffered grave persecution, including at the hands of elements of the local population, and cannot reasonably be expected to return to Bosnia and Herzegovina.

3.2 Apart from strong humanitarian grounds, many of the persons directly responsible for their persecution are still at large in Bosnia and Herzegovina, sometimes even holding official positions in the administration. Witnesses testifying before the International Criminal Tribunal for Former Yugoslavia should equally be protected. These groups clearly require the option of long-term solutions elsewhere.

b. Individuals in Need of Special Care

3.3 The assessment of medical cases and socially vulnerable persons, such as (mentally and physically) handicapped persons or the elderly, should not be limited merely to the availability of treatment or special care requirements in Bosnia and Herzegovina. Several other factors play an equally important role in ensuring accessibility to treatment and special care. The financial resources of the concerned individuals must be taken into account, since the former social policy of free access to social services and health care, applied under the socialist system, has changed with the introduction of fees to access health care and social services. Vulnerable but impoverished returnees in general do not have access to proper treatment and

¹⁴² Such an approach would be consistent with the spirit of fundamental humanitarian principles, including those formulated in the 1951 Convention, in relation to situations where a person may have been subjected to very serious persecution in the past and therefore requires continued protection.

to medical facilities. The health insurance system is still ineffective and the restructuring of the health care and social service infrastructure is far from complete. The reform of the Entities' legislation regulating these matters may well take some time since it must take into account the constitutional competencies of the various levels of government authority.

3.4 The ethnicity of a returnee will also affect her/his access to health care and social services (see problems with regard to residence registration/issuance of ID cards). Therefore, the reintegration of members of minority constituent peoples might be further undermined by their vulnerability and their disability. Provided there are no other protection problems, the possibility of repatriation of individuals in need of special care should be assessed on a case by case basis. Returnees without prospects of re-integration run the risk of ending up in collective centres, which the local authorities and UNHCR are trying to phase-down by providing solutions to the displaced residents.¹⁴³ Consideration should be given to whether the community of origin or relatives can provide care and assistance or, alternatively, to whether the appropriate institutions are close to the place of origin so as to ensure proper reintegration in the place of pre-conflict residence, and finally as to whether funds are available to pay for services provided by a medical facility or through home care.¹⁴⁴ The reintegration of elderly persons without family support can prove particularly difficult. The elderly in BH represent close to 11% of the total population as opposed to the 1991 figure of 6.5%. UNHCR discourages the creation of new institutions for vulnerable persons, because they do not take into account their needs of independence and socialisation and because they often represent an expensive model of care for which the authorities in BH do not provide the necessary funds to sustain. As in any repatriation, children separated from their families or traditional care-givers must be accorded special care and attention, particularly regarding their legal status and special protection needs.

4. Persons of mixed ethnicity or in mixed marriages

4.1 Many persons in mixed marriages continue to face protection problems¹⁴⁵ and discrimination in accommodation, education and employment following return. They have to keep a low profile and the situation is worse where the head of household or person supporting the family is of a 'minority' constituent people in a given location. The current political uncertainty in the RS (particularly following NATO air strikes on FRY) and increased tensions in the wake of these developments prompted some mixed returnee couples to move back to the Federation.¹⁴⁶ This demonstrates the fragility of their situation and their incomplete reintegration into their place of pre-conflict residence. There are also increased reports with regard to domestic violence against women of a 'minority' constituent people and lack of protection on the part of the authorities.¹⁴⁷ Persons of mixed ethnicity generally face

¹⁴³ According to UNHCR statistics on collective centres (as at 28 February 1999), 5,554 displaced persons still reside in collective centres in the Federation and 6,408 in the RS.

¹⁴⁴ Please note that in the Federation the average pension per month amounts to some 200 KM in Sarajevo, 150 KM in Mostar, while in the RS it is 45 KM (with the lowest amounting to 15 KM).

¹⁴⁵ For instance, on 10 April 1999 a vehicle belonging to a mixed couple was damaged by an explosive in Rodoc, near Mostar.

¹⁴⁶ UNHCR is aware of at least two mixed couples from Banja Luka (RS) who returned to Cazin (Federation) because of the tensions in the RS.

¹⁴⁷ See also OXFAM (Sarah Maguire), *'A Family Affair': A Report of Research into Domestic Violence against Women in Albania, Bosnia and Herzegovina, Croatia, Federal Republic of Yugoslavia*, pages 22-28. This report states that domestic violence is widely accepted as traditional, cultural and/or as a result of war-

similar problems to minorities, even if one of their parents belongs to the constituent people of the majority. There are clearly individual exceptions in urban areas or when family members in the majority group are able to support the return, but these positive cases still remain relatively few in most areas.

5. Potentially Stateless Persons

5.1 Even though the State Law on Citizenship of Bosnia and Herzegovina was drafted with a view to avoiding situations of statelessness, the combination of the effect of citizenship laws of the other former Republics of Yugoslavia and the lack of adequate Entity Laws on Citizenship may leave certain individuals without, or with unclear, citizenship. These individuals may require continued international protection until their citizenship status is regularised.

6. Other specific protection categories

a. Leaders of the Demokratska Narodna Zajednica ('former Abdic supporters')

6.1 Municipal elections were held in Bosnia and Herzegovina on 13 and 14 September 1997. The Demokratska Narodna Zajednica (DNZ) presented candidates both in Velika Kladusa (VK) and Cazin. With 62.5% of the votes in VK, the DNZ was granted 15 seats out of 24 in the municipal assembly, while in Cazin it obtained 16.6% of the votes and 5 seats out of 30. However, the DNZ-led municipality in VK does not function effectively. The DNZ Mayor faces difficulties in establishing his authority over the local institutions, such as the police, the judiciary, local radio and companies. The Party of Democratic Action (SDA) uses its strong influence over the police forces,¹⁴⁸ the education and health care sectors, some segments of the population, the judiciary and the local economic sector to undermine the political authority and the action of the DNZ municipal leadership.¹⁴⁹ The SDA-led Cantonal authorities also take part in this process by controlling firmly in particular the police and the judiciary and restricting implementation powers of the municipality in other sectors (e.g. housing and social sector).

6.2 The VK return process is almost complete. Over the last three years, some 21,000 former Abdic supporters have returned from Croatia. However, the major challenge ahead is to ensure the sustainability of these returns. The returnee monitoring exercise carried out by UNHCR, OSCE and UNMIBH in VK¹⁵⁰ in October 1998 has confirmed that there have been numerous attacks and acts of intimidation against the DNZ associated population and harassment and intimidation remain frequent even to this date. Security and discriminatory

traumas and that men are not considered accountable for their violence, with the police being reluctant to intervene in what they regard as a private matter (pages 25 and 28).

¹⁴⁸ There are no DNZ associated police officers employed in the VK police. All police officers are SDA associated (often recruited from among demobilised V Corps soldiers).

¹⁴⁹ For instance, it is reported that the municipal authorities do not 'dare' to implement the new property legislation, since this would lead to the eviction of some displaced persons (mainly war veterans loyal to the SDA) and therefore, could destabilise the situation in Velika Kladusa.

¹⁵⁰ UNHCR conducted this survey from 5 to 9 October 1998, with the assistance of OSCE and UNMIBH. The survey covered the municipalities of Velika Kladusa and northern Cazin. Over 100 'Abdic supporters' were interviewed. It was distributed in March 1999 and is available from UNHCR Headquarters or UNHCR Sarajevo (*Returnee Assessment Study in Velika Kladusa, Una Sana Canton, Bosnia and Herzegovina, February 1999*).

employment policies remain major concerns.¹⁵¹ Indeed, the situation of the DNZ associated population in VK and northern Cazin constitutes a unique case of discriminatory treatment on account of (imputed) political allegiance in BH where the SDA-controlled local authorities, including the police and the courts, frequently fail to provide effective national protection (often because of inaction). Violent incidents and other serious human rights violations have been reported in 1996, 1997 and 1998,¹⁵² mostly immediately upon return or in connection with electoral periods or involving prominent figures of the DNZ.¹⁵³ For instance, when the results of the September 1998 elections were released, convoys of 50 to 100 cars (allegedly involving police officers) flying SDA banners were driving around VK and the surrounding villages for several days intimidating and harassing the DNZ-associated population. IPTF confirmed that following these demonstrations, non-SDA followers filed 18 complaints for verbal provocation, physical assault, bomb throwing and gun shots with the local police.

6.3 In this context and in the absence of fundamental changes, the political and former military leadership of the DNZ, as well as prominent former supporters of Abdic, are not assured effective national protection from the authorities, which justifies the need for continued international protection of this specific group.

b. Deserters and Draft Evaders of the Vojska Republike Srpske

6.4 Section II (a) of Annex 7 of the GFAP provides for the amnesty of those who evaded the draft, deserted, or refused to answer a military call-up during the conflict.¹⁵⁴ The current RS Law on Amnesty does not comply with this requirement and, therefore, denies amnesty to RS citizens, many of whom may therefore be prosecuted¹⁵⁵ upon return. Deserters and draft-evaders of the Bosnian Serb army, therefore, still need international protection.

c. Minority Members of the Armed Forces and Police Forces

6.5 Discrimination against persons who served in the armed forces controlled by a constituent group of which they were not a member continues to occur despite all three amnesty laws granting amnesty to persons who served in the enemy army. The individual circumstances of each case must be scrutinised carefully to determine whether or not it is safe for the persons and their families to repatriate.

¹⁵¹ In the case of the 'Abdic supporters', it is interesting to note that the traditional means of 'ethnic cleansing', such as de-registration and deprivation of properties, used in other parts of the country to prevent the return of ethnic minorities, were not widely applied in the VK and Cazin area.

¹⁵² The authorities tagged 27 politically-motivated violent incidents, reported to the police between 29 July and 30 September 1998, as minor episodes. Only after strong pressure from the international community did the police engage in further criminal investigations, resulting in five criminal charges. Additional international community pressure was necessary to prompt the courts to decide upon a calendar of hearings.

¹⁵³ In October 1997, a former prominent follower of Abdic was initially sentenced by the Bihac Cantonal Court to eight and a half years imprisonment for alleged war crimes. In May 1998, the Federation Supreme Court ordered a retrial which led to his acquittal in November 1998 (after 27 months in prison). In another case, a DNZ parliamentarian was arrested and jailed in Sarajevo in May 1997 for war crimes. The ICTY investigated this case and decided against arrest. The Sarajevo Cantonal Court convicted and sentenced this person to 10 years in October 1998. An appeal is currently pending with the Federation Supreme Court. Informed local and international observers believe that these arrests and convictions are politically motivated and not because of alleged war crimes.

¹⁵⁴ See paras. 2.13-2.16.

¹⁵⁵ The maximum penalty will vary according to the offence, from 10 years imprisonment to the death penalty. According to OHR estimates, some 30,000 people could potentially be affected.

d. Members of the Roma Communities

6.6 The situation of members of the Roma communities remains critical.¹⁵⁶ Before the conflict many Roma lived in the Sarajevo, Zenica, Kakanj, Tuzla and North-Eastern Bosnia (Zvornik, Bijeljina) areas, but many of those who were displaced from what is now the Republika Srpska are living abroad or are displaced in the Federation.

6.7 Members of this group are even less integrated into the post-conflict Bosnian society than they were before the conflict as they have now slipped even more into "political invisibility," since their interests are not being represented by any existing political party. Bosnian society, the authorities, as well as the public, are indifferent to this minority group. Even though most of them are Muslims, religion is not the essential identification factor for this group and they do not necessarily attract the attention of their Bosniac coreligionists. Although there are various Roma associations, they seem to lack cohesion and co-ordination amongst themselves, and lack the political representation that would allow them to voice their problems with the authorities.

6.8 In February 1999, an inter-agency monitoring survey was undertaken in the Tuzla-Podrinje Canton, aimed at repatriates from abroad, including Roma. Approximately 25% of the interviewees (54 families) belonged to the Roma community.¹⁵⁷ The survey included sections on housing, documentation, health, education and security.

6.9 As a result of the conflict, like many people in BH, numerous Roma lost their traditional sources of income, which stemmed from their work in state-owned companies. According to RRTF unemployment statistics based on a Spring 1997 survey,¹⁵⁸ unemployment in the Tuzla Podrinje Canton is 27.7%. According to the RRTF report, unemployment rates for returnee and displaced persons are often significantly higher. Some of the explanations for this are resentment aimed at those who left during the war, ethnic discrimination and social networking. This partially explains the high unemployment amongst the interviewees. Almost half of the families stated at least one adult in the family was employed before the conflict. Currently, out of 156 adults interviewed, only one is employed. The majority of interviewees cited lack of jobs and discrimination as key obstacles to finding employment.

6.10 Their housing situation is precarious, since some groups who used to live in unregistered shacks now cannot substantiate their right to return with proper documentation or even dwellings to which to return. About half of the Roma interviewed were displaced from their homes of origin, two-thirds of which stated their homes were now destroyed and many are now squatting on someone else's property. Several indicated that they had already been threatened with eviction, and - as illegal occupants - the municipality is not obliged to offer them alternative accommodation.

¹⁵⁶ The pre-conflict population was estimated at around 50,000-60,000 individuals. These figures did not include those who declared themselves as 'Yugoslavs', Muslims or others. There are no updated figures of the post-conflict population.

¹⁵⁷ The 54 families consisted of 280 persons, 26 families were displaced or relocatees and 28 families managed to return to their homes of origin (returnees).

¹⁵⁸ Reconstruction and Return Task Force, *An Action Plan in Support of the Return of Refugees and Displaced Persons in Bosnia and Herzegovina*, March 1998.

6.11 Out of 66 Roma children, only 6 (9%) are presently attending school. The number one reason given why children were not in school was lack of financial resources. School location and problems with school authorities, including two cases where the authorities refused to accept their certificates from Germany, were also cited. Many families stated their children had attended school abroad, even though they were not presently attending.¹⁵⁹ The extremely poor record of school attendance of Roma children points to a future of increased marginalisation of the Roma population in BH.

6.12 This survey revealed that discrimination against the Roma manifests itself in more subtle forms. Within the Roma community, discrimination, as well as lack of political and economic support networks have resulted in an amplification of post conflict themes, such as unemployment and housing, with which other Bosnians are presently coping. Extreme poverty and lack of education seem to be the Roma communities' greatest handicaps.

6.13 Therefore, in a society dominated by nationalist politics, members of the Roma communities are marginalised and deprived of the full enjoyment and protection of their rights, particularly if they originate from the RS. Such discrimination requires, therefore, continued international protection, on cumulative grounds.

7. Other categories of persons at risk

7.1 The aforementioned categories of persons in continued need of international protection have been analysed primarily from the perspective of a previously recognised need of international protection. There are other categories of persons at risk, however, as set out in this section 7. Persons from Bosnia and Herzegovina lodging asylum applications should, like all other asylum-seekers, be afforded full access to regular status determination procedures, for consideration of their applications on a case-by-case basis.

7.2 Journalists may be one other category which require international protection. In 1998 several journalists were targeted in both Entities. In the RS, a court in Zvornik sentenced a journalist to five months' imprisonment in October 1998 for the publication of an article denouncing war profiteers and powerful local politicians. The journalist was dismissed from her employment and, reportedly, she was not given the full opportunity to present her defence.¹⁶⁰ The Editor-in-Chief of the newspaper is also facing charges in connection with the article. In the Federation, a journalist working for a local radio in Kupres municipality was illegally dismissed in November 1998 because of his description of the situation in the Croat-administered municipality. Serious incidents also occurred in Sarajevo in summer 1998 when journalists of the by-weekly independent magazine *Dani* were threatened and assaulted after publishing an article on the political protection provided to some officials and individuals close to the SDA allegedly engaged in illegal activities.

7.3 These politically-motivated dismissals, trials and attacks on independent media and journalists illustrate a wider pattern of intimidation and harassment which has now developed and may affect all those who openly oppose the views of the dominant nationalist parties and actively work against them. Despite the existence of independent media both in the Federation

¹⁵⁹ A long term consequence of a failure to complete primary education and to present proof of such is an ineligibility to register with the Employment Office which also has ramifications for access to health insurance.

¹⁶⁰ Helsinki Committee for Human Rights in Bosnia and Herzegovina, *Faxletter* No. 54, 1 November 1998.

and in the RS,¹⁶¹ media outlets controlled by the leading political forces still have a significant influence in BH.¹⁶² Other categories of persons, such as prominent members or leaders of non-nationalist political parties, intellectuals, judges, lawyers and particularly exposed police officers¹⁶³ are at risk of being considered traitors and may experience human rights violations, if voicing opinions contrary to those of the ruling parties. Given the fact that these parties control nearly all aspects of the society, the various administrations and other institutions, including the judiciary, the police, the media, as well as access to employment and benefits, such persons may be deprived of effective national protection.

8. Return of rejected cases

8.1 On the question of the return of rejected asylum-seekers from Bosnia and Herzegovina (departures post-Dayton), one needs to make a general distinction between those who would be able to return to their former places of pre-conflict residence and those who would, in fact, return to a situation of internal displacement. While return of persons to their former place of residence is considered possible where this is within an area where their own community is in the majority and administers the area, important political and other barriers still impede return to so-called "minority" areas. These obstacles are set out in more detail in paras. 2.1 to 2.80 of this position paper.

8.2 Unless the rejected asylum-seeker returning to a situation of displacement in Bosnia and Herzegovina already has accommodation available or considerable financial means to obtain it, it may prove difficult, if not impossible, to register their residence in such situations and, consequently, to receive from the authorities necessary documentation, which is an essential pre-condition for the exercise of basic social and economic rights. Even to register as a "displaced person" in a location other than that of pre-conflict permanent residence, proof of accommodation is needed.

9. Conclusion

9.1 On the basis of the foregoing analysis, UNHCR concludes that the non-voluntary repatriation of refugees falling under the aforementioned categories is not appropriate. Nevertheless, given the very individual circumstances of members of the above categories, the return of some is already a possibility. However, numbers are as yet too small to draw any general conclusions. For those in these categories for whom voluntary return may be an option, the key remains access to objective and accurate information. In this regard, UNHCR welcomes the ongoing policy of many host countries to support widespread dissemination of information to refugees and assessment visits to their areas of pre-conflict residence.

¹⁶¹ Such as the magazines *Dani* and *Slobodna Bosna* or the internationally-supported television OBN (Open Broadcast Network) in the Federation or the *Nezavisne Novine* and *Novi Prelom* newspapers in the RS.

¹⁶² For instance, the Federation State Television (RTV BH), the Croatian State Television (HRT) and the Serb-Radio Television (SRT) reflect in fact the views of the main political parties in BH, respectively the SDA, the HDZ and the SDS. In 1997, after SFOR took control of a number of SRT transmitters to stop the anti-SFOR propaganda, OHR devised a restructuring plan, which is now stalled. In the Federation, a Memorandum of Understanding was signed in June 1998 by A. Izetbegovic and K. Zubak in order to restructure RTV BH.

¹⁶³ In the RS, there was an assassination attempt against the Chief of Police of Bijeljina on 9 July 1998, reportedly because of investigations into allegations of fraud against SDS officials. The Deputy Chief of the Pale police station (RS) was assassinated on 7 August 1998 reportedly because of similar investigations.

9.2 For those for whom return is not a viable option and given the fact that some may now be in their seventh year of displacement, appropriate action in this regard would include granting long-term residence or other protective status. UNHCR therefore encourages host countries to give serious consideration this year to regularising permanently the stay of those BH refugees who are, in UNHCR's view, considered to be in continued need of international protection.

UNHCR
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