BOSNIA AND HERZEGOVINA:

Sectarian divide continues to hamper residual return and reintegration of the displaced

A profile of the internal displacement situation

25 October, 2006

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Through its work, the Centre contributes to improving national and international capacities to protect and assist the millions of people around the globe who have been displaced within their own country as a result of conflicts or human rights violations.

At the request of the United Nations, the Geneva-based Centre runs an online database providing comprehensive information and analysis on internal displacement in some 50 countries.

Based on its monitoring and data collection activities, the Centre advocates for durable solutions to the plight of the internally displaced in line with international standards.

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OVERVIEW

Sectarian divide continues to hamper residual return and reintegration of the displaced

More than ten years after the signing of the Dayton Peace Agreement, there are still some 180,200 people internally displaced in Bosnia and Herzegovina. Further to a re-registration exercise completed by the authorities in 2005, the number of internally displaced persons (IDPs) dropped from 309,000 at the end of 2004 to 187,000 in Spring 2005. This decrease can be explained by the number of returns which had taken place since the previous registration in 2000 and by the fact that many displaced have decided to integrate locally.

Over one million internally displaced people (IDPs) and refugees have returned to their homes since the end of the conflict in 1995, representing half of those displaced during the war. Return figures however have decreased by two thirds between 2004 and 2005, from 18,000 to 5,100. The 2006 figure is expected to be similar to the previous year. Several factors indicate that return is now a residual process concerning the most vulnerable among the IDPs and areas with a sensitive political and economic environment. The political debate is still dominated by ethnic issues as illustrated by the 2006 general elections and failure of the constitutional reform. This perpetuates an environment of widespread discrimination in virtually all areas of public life, which in turn constitutes a serious obstacle to return. As a result, the access of IDPs to employment, education, social and economic rights and justice in return areas remains affected by their ethnicity.

While the country has achieved most of its progress on return, property, and education thanks to the determination of the international community and the binding powers of the High Representative, this era is now ending. The current High Representative, Christian Schwartz-Schilling, who was appointed in December 2005, has announced the closure of his office for 2007 and explained that he will no longer use his binding powers to promote reform. It is hoped that this will result in a more responsible attitude from political parties to carry out the necessary reform of the institutions and go beyond the interests of the ethnically-based entities. The continued involvement of the international community is still required to ensure the sustainability of returns in Bosnia and Herzegovina, but it is now up to the national authorities to fully assume their responsibility to govern the country in the interests of all its citizens.

Background and main causes of displacement

Large-scale displacement in Bosnia and Herzegovina (Bosna i Hercegovina, BiH) resulted from the conflict that erupted in 1992, following the collapse of the Socialist Federal Republic of Yugoslavia. Refusing to live with other ethnic groups in an independent Bosnia and Herzegovina, Serb forces (paramilitary units, militia and police) supported by formations of the mainly Serb Yugoslav Army, conducted a campaign of ethnic cleansing across the country. The objective was to create territorial continuity between Serb-dominated areas in Bosnia and Herzegovina, and Serbia. Serious violations of humanitarian law were committed during the conflict, including large-scale expulsion of civilians, systematic rape, indiscriminate attacks and mass murder. Although officially united in an alliance against Bosnian Serbs, the two other ethnic groups in the country, the Bosnian Croats and, to a lesser extent, the Bosnian Muslims (Bosniacs), also attempted to create homogenous ethnic areas through the forced displacement of civilians.

By the end of the conflict in 1995, more than two million people had been uprooted (UNHCR, 6 February 2003). Approximately half of them fled abroad, while the other half became internally
displaced (OHCHR, 16 June 2003, para.21). Additional displacement of over 60,000 people occurred between 1996 and 1999 following the transfer of territories between the two entities that now make up Bosnia and Herzegovina, the Republika Srpska (RS) and the Federation (OHCHR, 17 March 1998).

The Dayton Peace Agreement, signed in December 1995, enshrined the right of the displaced persons to return to their homes of origin (Annex VII). To facilitate the exercise of this right, the agreement provides for a strong international presence, comprising a civilian office headed by the High Representative, as well as a NATO-led military force. The agreement also called for the creation of a mechanism to ensure the enforcement of the property rights of the displaced, namely the Commission for Real Property Claims.

The displaced population decreased significantly in the first year following the war, reflecting mainly the large-scale return of IDPs to areas where their ethnic group constituted the majority. As conditions were not conducive for so-called minority returns, i.e. the return of IDPs to areas where they would live as a minority, the decrease of the number of displaced slowed down during the following years. The improvement of the security situation and the acceleration of the property repossession process from 2000 on led to a short but dramatic increase in the pace of returns, before the return rate levelled off again in 2003 and 2004, mainly due to the fact that the remaining cases are the most difficult to solve and many IDPs may not want to return any longer. Further to a re-registration process initiated by the authorities and completed in 2005, the estimated number of displaced persons dropped from 309,000 at the end of 2004 (UNHCR,
December 2004) to 187,000 in Spring 2005 with approximately 86,000 IDPs in Republika Srpska, 98,000 in the Federation, and the remainder in the Brcko District (UNHCR, June 2006). The main reasons for the decrease are returns which had taken place since the previous registration in 2000, and the fact that some 120,000 people decided not to register probably because they had become integrated in their area of displacement (UNHCR, 15 April 2005). At the end of August 2006, an estimated 180,200 people remained internally displaced in Bosnia and Herzegovina (UNHCR, 31 August 2006). As of October 2006, the authorities were still processing applications for IDP status. Once the process is completed, it is expected that the number of IDPs will be further reduced (UNHCR, May 2006).

**Sharp drop of return figures amidst continuous obstruction of reforms**

IDP return figures dropped significantly from almost 18,000 in 2004 to 5,100 in 2005. This two-thirds decrease confirms that the return process is stalling on the hard core of vulnerable cases. As of August 2006, the overall return figure stood at approximately 1,014,000, including 572,000 internally displaced persons. This is only a slight change compared to 2004 when the number of returnees (IDPs and refugees) reached the landmark of one million, or half of those displaced during the war. Half of those who returned have done so to areas where they are in a minority (UNHCR, 30 September 2006). These minority returns have been among the most difficult challenges faced by the international community in its efforts to reverse the ethnic partition of the country. In that light, the overall minority return figure can be considered an achievement. It is also important to note that for the last three to four years, a significant proportion of returnees have been going back to areas of RS and the Federation traditionally dominated by hardline nationalists and which, until 2002, were almost completely closed to return. In 2006 the highest number of minority returns took place in Srebrenica, Foca and the Herzegovina-Neretva Canton (UNHCR, 30 September 2006).

Several factors seem to indicate that return in BiH is now a residual process. It concerns areas where return is particularly difficult, and remaining candidates for return are among the most vulnerable (collective centre residents, the elderly, female heads of household, traumatised individuals) for whom the decision is much more difficult to make in view of the current obstacles to sustainable return. Funds for durable solutions such as reconstruction or income-generating activities are essential for these vulnerable individuals. However, the availability of such funds is falling every year, threatening to undermine the return movement and its sustainability (UNHCR, COP, 2005). On the other hand, more than ten years after the end of the war, most of the displaced persons who wanted to return have done so and many others decided to integrate locally as confirmed by the above-mentioned re-registration exercise (UNHCR, September 2005).

The political environment, which is still highly sectarian, is another disincentive to return. The country’s overall positive record on return can largely be attributed to the determination of the international community to overcome political obstruction from nationalist forces. The High Representative frequently had to impose legislation or remove officials to ensure implementation of the Dayton agreement. However, almost ten years after the signing of the peace agreement, this is hardly compatible with the necessity to consolidate a democratic state able to join the European Union. As a result, High Representative Christian Schwartz-Schilling, who was appointed by the Peace Implementation Council in December 2005, made clear that he would no longer use his binding powers to promote reform and announced the closure of his office for 2007 (OHR, 16 March 2006, 21 July 2006). It is hoped that this will result in a more responsible attitude from political parties in the country who will now have to face the full consequences of their political decisions without relying on OHR to unlock obstructionist behaviour. The main issue at stake is the strengthening of state institutions and the transfer of certain powers to the federal level. The Dayton peace agreement assigned state-like powers to the two ethnically-based entities. But this arrangement is now proving to be an obstacle to further reconciliation and the
building of a state that develops and implements policies to benefit all citizens regardless of their ethnicity. The current concentration of competences at the entity level also directly affects the displacement situation, as it leads to an ethnic bias in key policy areas such as education, employment, social welfare and police, which constitutes a serious obstacle to minority returns (Helsinki Monitor, 21 January 2003; Helsinki Monitor, December 2004; USDOS, 28 February 2005, Section 2. d). Progress in this area remains limited. In April 2006, the Parliament failed by two votes to adopt constitutional amendments which, although limited, were slowly moving from a system based on ethnic representation to a system based on representation of citizens (CoE PACE, 29 June 2006). The preliminary result of the October 2006 general elections shows the continuing ethnic divide over the country’s future; while the candidate who won the Muslim seat on the Presidency advocates for a more centralised and unified country, the winner of the Serb seat comes from a party proposing a referendum to allow the Serb entity to secede (Associated Press, 2 October 2006).

Remaining IDPs suffer from increasingly difficult living conditions

The living conditions for IDPs and minority returnees are generally precarious. National authorities have identified displaced persons as one of the groups most vulnerable to poverty (PRSP, 30 May 2003, Sect. 2B; UNHCR, October 2004, p.6). Vulnerable segments of the IDP population include those whose property has not been rebuilt and who are unable to access reconstruction assistance. Many IDPs have had to vacate properties they temporarily occupied in order to allow for the return of the original owners of the property without having a home to go back to (UNHCR, July 2003, para.23). Those who were accommodated in unclaimed apartments are threatened with losing their current apartments since the adoption in 2005 by the Federation Parliament of a law providing for the reallocation or sale of those flats without addressing the housing needs of the most vulnerable occupants. In the absence of a functioning social housing system, many of these people risk ending up in critical situations (COE, 25 April 2005).

Among those in need of housing, approximately 8,000 displaced persons still live in collective centres, most of them unofficial ones, with little support from the authorities. The deplorable living conditions are associated with social isolation resulting in a significant proportion of inhabitants being affected by depression. The great majority of collective centre residents belong to vulnerable groups such as female-headed households, elderly persons, severely traumatised individuals, witnesses in war crimes or Roma (UN CHR, 29 December 2005, par.30). Another category at risk are refugees who were sent back by their asylum countries but have been unable to return to their places of origin. They are de facto displaced persons but do not have the corresponding status and are therefore denied access to the rights and entitlements of IDPs (UN CHR, 29 December 2005; UNHCR, January 2005, p.10).

The existence of separate welfare systems in each entity has created difficulties for returnees who run the risk of losing their entitlements or receiving lower benefits upon return to an entity different from the place of displacement. Lack of inter-entity cooperation on pension and health insurance systems, for example, remains a problem that hinders return (IDMC/ICHR/MRG, 3 July 2006).

For many displaced persons and minority returnees, limited access to employment opportunities is a factor in the decision not to return to their pre-war community. In 2005, the unemployment rate reached 60 per cent in many rural areas (USDOS, 8 March 2006). Limited employment opportunities are compounded by widespread discrimination based on ethnicity, political affiliation, national origin and gender.

Physical security has steadily improved over the years and is satisfactory in most return locations. Cases of ethnically-motivated violence persist but they are mainly directed against religious buildings, properties and only occasionally against returnees (Helsinki Committee, 17 January
2006; USDOS, 8 March 2006). There are concerns that the police and the judiciary are reluctant to punish ethnically-motivated violence (UN CAT, 24 November 2005). Efforts are still required, in particular in RS, to reinforce the multi-ethnicity of police forces in order to develop trust between potential returnees and law-enforcement officials (USDOS, 8 March 2006). The failure of the authorities, especially in the RS, to arrest and prosecute war criminals affects the sense of security of potential returnees. The lack of effective witness protection for those intending to testify before court and the presence of war criminals freely moving around and sometimes working for local administrations constitutes a clear deterrent to return, particularly for witnesses of war crimes and traumatised individuals (UNHCR, Country operation plan, January 2005, p.3; USDOS, 28 February 2005).

Land mines pose a significant barrier to the safe return of displaced persons and refugees, as well as to the development of economic activity and reconstruction of the country. The majority of current returns are taking place to rural areas where agriculture and cattle-breeding are essential means of subsistence (UNCHR, 29 December 2005, par.37). As of December 2005, there were still 18,300 minefields in the country (ICBL, 1 July 2006). The Ministry of Civil Affairs is responsible for the implementation of the BiH mine action plan which intends to prioritise de-mining in return areas. However, funds allocated to de-mining are clearly insufficient for the scope of the problem and international financial support is strongly needed (UNDP, July 2006, UNHCR, January 2005, p.6).

**Property and education: two key reforms to encourage return**

The repossession of properties occupied during and since the war has been instrumental in unlocking the return process. Property repossession has been a success story underlining the determination of the international community to overcome nationalist obstruction. Amendments to property legislation were imposed by the High Representative on several occasions on both entities in the country. A systematic monitoring of the implementation of property laws by local authorities was launched in 1999 when all relevant international organisations agreed to coordinate their efforts by setting up the Property Law Implementation Plan (PLIP). Property repossession gave a strong signal to those occupying property that accommodation rights acquired during the war were void and would be reversed, while opening new perspectives of return for the displaced. Nevertheless, a significant proportion of those who reposessed their property decided to opt for local integration rather than return and sold it rather than reoccupy it (BIRN, 31 August 2006; Helsinki Committee, 17 January 2006). As of March 2006 the repossession process was almost completed, with 93 per cent of cases closed (UNHCR, March 2006). However, certain categories such as female heads of households, widows, and Roma face particular difficulties in repossessing their properties due to lack of property title (UNCHR, 29 December 2005). Some problems have also been reported in the implementation of sensitive cases such as military apartments. This concerns 4,000 flats claimed by former Yugoslav soldiers, mostly Serbs, for whom the legislation does not allow restitution (USDOS, 8 March 2006). There are also concerns with the cases that the Commission for Real Property Claims could not solve before it was closed at the end of 2003. Those cases were mostly transferred to municipalities at the end of 2004 which explains why the repossession process, which was almost complete before then, was still not finalised nearly two years later (USDOS, 8 March 2006).

The situation in the education sector still represents a serious obstacle to return. Schools have classes where children are separated based on their ethnicity. Separate curricula with strong nationalist contents are taught in different parts of the country. As a result, returnee children would often travel long distances by bus to attend school for the same purpose. Since 2002, serious efforts have been made to address discrimination at school and develop an egalitarian education system. A common core curriculum was designed at state level to ensure that some common elements were included in the various curricula proposed. The proportion of common elements varies depending on the subject: high in scientific matters, a minimum in history. An
“Interim agreement on accommodation of specific needs and rights of returnee children” was signed in March 2002 between Entity Ministers of Education and an education reform was launched the same year. In 2004, these initiatives increased the number of returnee children attending school in their place of return thanks to the teaching of national subjects, recruitment of minority teachers and establishment of a common core curriculum. In 2005 a textbook review commission drafted guidelines on several subjects, including two of the most sensitive such as history and geography to address the wide discrepancies between various curricula (OSCE, 21 July 2006).

However many challenges remain. Even though the authorities stopped financing the bussing of children to other entities by the end of the 2003-2004 school year, some parents have organised transportation themselves. Education is still organised along ethnic lines and there are still 52 “two schools under one roof” where children are segregated according to ethnicity (USDOS, 8 March 2006). The provision of the interim agreement on returnee children allowing parents to choose a specific curriculum for certain subjects paradoxically contributed to further separation of children by encouraging the multiplication of curricula within schools (OSCE, 22 April 2006). The implementation of a framework state-law on primary and secondary education met such strong opposition in certain (mainly Croat) Cantons, that the High Representative had to impose the necessary amendments in July 2004 (OHR, 8 July 2004). The resistance to the creation of an inclusive and non-discriminatory education system illustrates the division of society and reflects badly on the country’s capacity to educate future generations in a spirit of reconciliation.

National response

The country’s national response to internal displacement is hampered by the constitutional framework and division of society. The refusal at the entity or sub-entity level to transfer competencies and harmonise legislation at state level creates inequalities between citizens depending on their place of residence therefore limiting return and slowing down reform.

Primary responsibility for implementing the Peace Agreement lies with the authorities of Bosnia and Herzegovina. Under Annex VII of Dayton, the two entities and national and local authorities are responsible for upholding the right of displaced people to return and repossess their pre-war homes, as well as ensuring suitable conditions for return. However, the international community has had to intervene repeatedly over the years to overcome local obstruction to return. In January 2004 Bosnia and Herzegovina took over full responsibility from the international community for implementing Annex VII. A “Strategy of Bosnia and Herzegovina for implementation of Annex VII” was adopted by the Peace Implementation Council and BiH Council of Ministers early in 2003. The “Strategy” advocates for harmonisation of legislation in the area of education and social welfare. As explained above, this goal is facing fierce resistance and there has hardly been any progress in this area. However, the “Strategy” has reinforced the competencies of the state on return-related issues. A return fund was established at state level where international donors as well as the entities and the state contribute in order to finance return projects in municipalities selected by the BiH State Commission for Refugees and displaced persons (SCRDP). In order to determine priority areas, the state Ministry for Human Rights and Refugees has launched a public call to refugees and displaced persons to apply for support for reconstruction and return. As of November 2004, over 23,000 families had registered, which indicates interest in return and a significant need for reconstruction assistance. While in 2004, the authorities provided around €18 million to rebuild 2,000 housing units in 42 municipalities, their 2005 pledged contributions did not materialise (UNHCR, May 2006). Out of 42 projects, 30 will be financed entirely by Bosnia and Herzegovina funds and 12 through SUTRA projects (see below) (MHRR, December 2004). In 2005, the Ministry for Human Rights and Refugees also started to implement a project with the Council of Europe Development Bank (CEDB) to support the return of collective centre residents (USDOS, 8 March 2006).
On the legislative side, new IDP laws regulating acquisition and cessation were adopted in 2005 by both entities, in connection with the re-registration exercise aiming at revising the number and status of displaced persons (UNHCR, June 2006).

**International response: focusing on the most vulnerable**

Since 1995, the international community has maintained a massive presence in the country to ensure the implementation of the peace agreement under the supervision of the High Representative and assist in the recovery of the country. Five billion dollars were spent in aid and half of the homes damaged during the war have been rebuilt (UNHCR, 21 November 2005). The Dayton agreement made UNHCR the lead agency for the return of refugees and displaced persons. A strong coordination effort through an inter-agency framework, the PLIP, helped achieve considerable success in the property restitution process. The overall coordination of return and reconstruction was ensured, until 2003, through the Reconstruction and Return Task Force, which comprised humanitarian and human rights agencies, development actors such as UNDP and the World Bank, and key donors.

Ten years after the signing of the peace agreement, the focus of the international community has clearly moved from a humanitarian to a development agenda. This process is supported by the SUTRA Framework, a UNDP/EU initiative aimed at handing responsibility for all aspects of return to local authorities (UNDP, January 2003). Further to the success of the initial project, SUTRA II and III were signed in 2005 and 2006 to pursue reconstruction in ten municipalities (UNHCR, May 2006). In a context of decreasing funds, assistance is focusing on the most vulnerable among the displaced and returnees as illustrated by the CEDB project in favour of collective centre residents, and UNHCR’s decision to assist areas which only recently opened to return (UNHCR, September 2005). During his visit to the Balkans, in June 2005, the Representative of the UN Secretary-General on the Human Rights of IDPs, Walter Kälin, also emphasised the need to provide durable solutions and improve living conditions for the most vulnerable among the IDPs (UNCHR, 29 December 2005).

There is concern that the international community in Bosnia and Herzegovina may be prematurely wrapping up the return process at a point when candidates to return require more tailored assistance in view of their specific needs, such as psycho-social support and reintegration assistance (UNHCR, December 2005). The end of 2006 has been presented by UNHCR, OHR and BiH authorities as the time by which return will be substantially completed (UNHCR, September 2005). At regional level, the Ministerial Conference on Refugee Return initiated in 2005 and bringing together BiH, Croatia and Serbia and Montenegro foresees the end of displacement in the region by the same date. However, it is highly unlikely that the remaining 180,200 IDPs will all return during 2006, and declaring the return process over prematurely would risk depriving many of the remaining IDPs of their right to return. The continued involvement of the international community is crucial to ensure the sustainability of returns in the country.

(Updated October 2006)
CAUSES AND BACKGROUND

Causes of displacement

Displacement during the armed conflict (1992-1995)

• The most ethnically mixed country of former Yugoslavia was the worse affected by the break up of the Former Republic of Yugoslavia
• Most of current displaced and refugee population forced to leave in early months of the war (1992) by the Bosnian Serb forces
• In 1993, a new round of ethnic cleansing starts in Central Bosnia when Bosnian Croats turn against the Bosniaks (Muslims)
• At the end of the war 1.300 000 million persons were internally displaced by the conflict
• The pattern of systematic human rights abuses and displacement of minority population gave rise to a new concept: "ethnic cleansing"

UNHCR, 2001, p.218-219:
"The violent break-up of the Socialist Federal Republic of Yugoslavia, which began in June 1991 when Slovenia and Croatia both declared independence, resulted in the largest refugee crisis in Europe since the Second World War. [...]In 1992, the war spread to neighbouring Bosnia and Herzegovina, with even more devastating consequences. Bosnia and Herzegovina was the most ethnically mixed of all the republics of the former Yugoslavia. According to a 1991 Yugoslav population census, the three main groups in Bosnia and Herzegovina were Muslims (44 per cent) Serbs (31 per cent) and Croats (17 per cent). When Bosnia and Herzegovina declared its independence in March 1992, the government of Serbia, led by President Slobodan Milosevic, vowed to fight on behalf of the Serb minority population there.

Within days, Serbian paramilitary forces moved into the eastern part of the republic and began killing or expelling Muslim and Croat residents. At about the same time, Serb forces from the Yugoslav army took to the hills surrounding the Bosnian capital Sarajevo and began attacking it with artillery. By the end of April 1992, 95 per cent of the Muslim and Croat populations in the major towns and cities of eastern Bosnia had been forced from their homes and Sarajevo was under daily bombardment. By mid-June, Serb forces controlled two-thirds of Bosnia and Herzegovina and approximately one million people had fled their homes.

In the early stages of the war, Muslims and Croats in Bosnia and Herzegovina fought together against the Bosnian Serbs, but in early 1993, fighting broke out between Bosnian Croats and Bosnian Muslims. Another round of ‘ethnic cleansing’ began, this time in central Bosnia. Bosnian Croat forces, backed by Croatia, attempted to create an ethnically pure swath of territory adjoining Croatia. Although tensions between them continued, fighting between Bosnian Croat forces and the mainly Muslim Bosnian government forces came to an end in March 1994, with the signing of the Washington Agreement and the creation of a Muslim–Croat Federation.

By the time the war ended in December 1995, over half the 4.4 million people of Bosnia and Herzegovina were displaced. An estimated 1.3 million were internally displaced and some 500,000 were refugees in neighbouring countries. In addition, around 700,000 had become refugees in Western Europe, of whom some 345,000 were in the Federal Republic of Germany."
AI 19 March 1997, Part I:
"The armed conflict in Bosnia-Herzegovina was characterized by gross human rights abuses as armed forces led by one nationality attempted to force other nationalities out of the disputed territory. Bosnian Serb and Yugoslav National Army (JNA) forces (early in the conflict) were responsible for most abuses, but Bosnian Croat forces, the Croatian Army which fought with them, and to a lesser extent, forces of the mainly Muslim Bosnian Army also perpetrated abuses. While there were both regional and chronological variations in the pattern of events, analysis of the abuses reveals deliberate policies of killing, physically expelling or causing "unwanted" civilian populations to leave.

Some of those people were taken away at gunpoint, but most fled to escape the gross human rights abuses which were being perpetrated around them. Many of those who left were forced to sign documents transferring their property to the municipality."
requested UNHCR’s assistance. Then, in November, UN Secretary-General Javier Pérez de Cuéllar formally requested High Commissioner Sadako Ogata to consider lending her ‘good offices’ to bring relief to needy internally displaced people affected by the conflict and to coordinate humanitarian action in the region. [...] Following an investigative mission to the region, UNHCR accepted the role and officially took the lead in coordinating the humanitarian assistance of the UN system in the region in November 1991. [...] UNHCR set up relief operations in all the republics of the former Yugoslavia, but the organization faced its greatest challenges in Bosnia and Herzegovina. For the first time in its history, UNHCR coordinated—in the midst of an ongoing war—a large-scale relief operation to assist not only refugees and internally displaced people, but also hundreds of thousands of other war-affected civilians. [...] Unable to agree on how to end the conflict, the international community focused much of its energy on supporting the humanitarian relief operation led by UNHCR. Governments offered large amounts of funding for the relief operation, but were able to find a consensus on little else. The humanitarian operation increasingly became a ‘fig leaf’ and the only visible response of the international community to the war. [...] Another difficult choice which UNHCR had to make was whether or not to assist in evacuating vulnerable civilians. Initially, UNHCR resisted evacuating civilians, but as it became apparent that the alternative for many was detention camps where they were often beaten, raped, tortured or killed, the organization began evacuating civilians whose lives were under threat. Such evacuations, however, led to an outpouring of criticism that UNHCR was facilitating ‘ethnic cleansing’. In November 1992, High Commissioner Ogata described the predicament as follows: “In the context of a conflict which has as its very objective the displacement of people, we find ourselves confronted with a major dilemma. To what extent do we persuade people to remain where they are, when that could well jeopardize their lives and liberties? On the other hand, if we help them to move, do we not become an accomplice to ‘ethnic cleansing’?” The UNHCR Special Envoy for the former Yugoslavia, José-Maria Mendiluce, was even more blunt: ‘We denounce ethnic cleansing’, he said, ‘but with thousands of women and children at risk who want desperately to be evacuated, it is my responsibility to help them, to save their lives. I cannot enter any philosophical or theoretical debate now...’ As ‘ethnic cleansing’ continued to produce waves of refugees and internally displaced people, the international community looked for new ways of protecting civilians to avoid the outflows. At the beginning of 1993, a critical situation developed in eastern Bosnia, which had largely been emptied of non-Serbs, except for three small pockets of territory around Srebrenica, Zepa and Gorazde. These enclaves were crowded with Muslims, many of whom had fled there from the surrounding countryside. They were defended by poorly armed Bosnian government soldiers and surrounded by Bosnian Serb forces. [...] In April 1993 “after Bosnian Serb shelling had killed 56 people during a UNHCR-organized evacuation from Srebrenica, the Security Council adopted Resolution 819, declaring the enclave to be a UN-protected ‘safe area’ and, amongst other things, calling on UNPROFOR to increase its presence there. Three weeks later, the Security Council adopted Resolution 824, also declaring Sarajevo, Tuzla, Zepa, Gorazde and Bihac to be safe areas. The safe areas were established without the consent of the parties to the conflict and without the provision of any credible military deterrent. Although the UN Secretary-General had warned that an additional 34,000 troops would be required ‘to obtain deterrence through strength’, governments were not willing to provide this number of troops and the Security Council therefore adopted an alternative ‘light option’ in which only 7,500 peacekeepers were to be deployed for this task. UNPROFOR troops were permitted to use force only in self-defence, and not in defence of the civilians they had been sent to protect. This was eventually to prove entirely inadequate. As
UN Secretary-General Kofi Annan later acknowledged, the areas designated by the UN Security Council as safe areas were in fact ‘neither protected areas nor safe havens in the sense of international humanitarian law, nor safe areas in any militarily meaningful sense’. […]

Since the safe areas contained not only civilians but also Bosnian government troops, the Bosnian Serb forces considered them to be legitimate targets in the war. They often shelled them and subjected them to sniper fire. On many occasions, attacks carried out by Bosnian Serb forces were in response to attacks made out of the safe areas by Bosnian government troops. The Bosnian Serb authorities denied the people living in the safe areas freedom of movement through Serb-controlled territory, and frequently prevented humanitarian organizations such as UNHCR from reaching them. The safe areas became crowded—predominantly Muslim—ghettos. While they provided some refuge for vulnerable civilians, they also became areas of confinement where civilians were trapped: in essence, open detention centres. Meanwhile, as the international community focused on the safe areas, little attention was given to the plight of any remaining non-Serbs living in Serb-held territory. As a result these people became even more vulnerable to ‘ethnic cleansing’. […]

On 11 July 1995, the Bosnian Serb army overran Srebrenica, taking hundreds of Dutch peacekeepers hostage and forcing some 40,000 people to flee. Meanwhile some 7,000 people, virtually all of them men or boys and virtually all Muslims, were killed by Bosnian Serb forces in the largest massacre in Europe since the Second World War. […] Days after the fall of Srebrenica, Serb forces overran Zepa, another so-called safe area.”

UNHCR 1995a, Box 3.5:
"After an intense round of diplomatic negotiations, NATO announced that it would launch intensive air strikes against the Bosnian Serb forces, should they advance upon the remaining safe areas, particularly Gorazde in the east of the country.

As the Secretary-General has acknowledged, the safe areas in Bosnia and Herzegovina are not only dangerous, but have also been drawn into the deadly logic of the war. 'What is happening now,' he observed in May 1995, 'is that certain safe areas are used by the two parties to the conflict to sustain their confrontation.' Established without the consent of the Bosnian Serbs, and used as military bases by the Bosnian government forces, the safe areas could even be said to provoke attacks on the residents and relief personnel they are intended to protect."

For more information, see also:
- "Final periodic report on the situation of human rights in the territory of the former Yugoslavia submitted by Mr. Tadeusz Mazowiecki, Special Rapporteur of the Commission on Human Rights, pursuant to paragraph 42 of Commission resolution 1995/89", 22 August 1995, paras. 67-93 [Internet]

More population displacement in 1996

- Transfer of territory between the Muslim-Croat Federation and the Republika Srpska (mainly in Sarajevo) forced about 60,000 Serbs to leave for the Yugoslav Republic or various destinations in the Republika Srpska
- Remaining minorities evicted particularly in the Republika Srpska and in Croat-held areas

USCR 1997, p. 170:
"With the signing of the Dayton Peace Accords on December 14, 1995, the stage was set for the monumental task of implementing the agreement's provisions in Bosnia and Hercegovina […]"
during 1996. By March, the North Atlantic Treaty Organization (NATO) had deployed most of its 60,000-troop “Implementation Force” (IFOR), which successfully separated the warring parties and began to provide the necessary security to edge the Bosnian cease-fire toward peace. On September 14, Bosnians went to the polls and elected national representatives without any major security incidents reported. Notwithstanding these noteworthy accomplishments, the implementation of major aspects of the peace agreement lagged far behind in 1996. Rather than uprooted persons being able to return to their original homes – a fundamental principle of the Dayton Peace Accords – displacements and “ethnic cleansing” continued during the year, accentuating the trend toward ethnic separation and away from the ideal of a single, multi-ethnic state enshrined in the Dayton Peace Accords.

More displacement induced by transfer of territory
USCR 1997, pp. 172-173:
"The transfer of territory between the Muslim-Croat Federation and the Republika Srpska and the ability of Muslims and Croats to govern jointly within the Federation posed the first critical challenges to the Dayton Peace Accords during 1996. Both issues came to a head in the cities of Sarajevo and Mostar between January and March.

Among the most contentious of the land transfers mandated by the Dayton Peace Accords was the return of five Serb-held suburbs around Sarajevo to Federation control by mid-March 1996. The Bosnian Serb authorities relinquished control of Grbavica, the last of the five suburbs, on March 19. But by the time of Sarajevo’s reunification, some 62,000 Serb residents had left those suburbs for the Federal Republic of Yugoslavia and various destinations in the Republika Srpska. These included Srebrenica, Bratunac, Zvornik, Visegrad, and Rogatica – areas which had Muslim majorities before the war but since had been "ethnically cleansed." Only about 8,000 Serbs chose to remain in the five formerly Serb-held suburbs after they reverted to the control of the Bosnian government.

In the weeks and days preceding and directly following its transfer, Serb-held Sarajevo degenerated into a state of lawlessness, characterized by widespread terror, looting, and arson. Serbs who decided to remain in their Sarajevo homes were subject to systematic intimidation, first from Serb nationalists determined to prevent peaceful coexistence between Bosnia’s ethnic groups, and second by extremists among the Muslim returnees to the suburbs who harassed them and looted their houses with impunity once the Bosnian government authorities had resumed control. These events, said NATO’s Secretary General, Javier Solana, represented a ‘terrible blow to our vision of a multi-ethnic Bosnia.’

Displacements resulting from the transfer of territory elsewhere in Bosnia foreshadowed the considerably larger exodus of Sarajevo’s Serb communities. In January, some 7,000 Bosnian Serbs abandoned their homes in and around Odzak in northern Bosnia before the area reverted to Federation control. An additional 2,500 Serb residents of the south-central Bosnian town of Borci left their homes for Visegrad in the Republika Srpska. As in Sarajevo, widespread looting and burning took place in these and other areas that were transferred from one side to the other."

Continued Ethnic Cleansing
USCR 1997, p. 174:
"As members of Bosnia’s rival groups strongly, and sometimes violently, opposed the return of minority refugees and internally displaced persons in 1996, so too were they intolerant of minorities who remained in their midst. Extremists and advocates of ethnic purity, particularly in the Republika Srpska and Croat-held territory, continued to “cleanse” their communities of undesired minorities who remained."
Background

The Dayton Agreement consolidates the cease-fire, September-December 1995

- In 1995, a new wave of ethnic cleansing, massacre and changes on the military ground led to a peace treaty: the Dayton peace agreement
- Bosnia and Herzegovina continued as a sovereign state comprising two entities: The Federation of Bosnia-Herzegovina (a Bosniac -Croat Federation) and the Republika Srpska (Serbian Republic)
- Agreement provided for a strong NATO peace implementation force (IFOR) (later the peace stabilization force (SFOR)), together with a civilian office of the high representative (OHR).

UNHCR, 2001, pp.228-229:
"In early 1995, there was a new wave of ‘ethnic cleansing’ by the Bosnian Serbs in western Bosnia, particularly in the Banja Luka area, which the UNHCR spokesman at the time labelled the Bosnian ‘heart of darkness’. In May, the United Nations’ credibility in Bosnia and Herzegovina was further tarnished when hundreds of UNPROFOR soldiers were taken hostage by the Bosnian Serbs following airstrikes carried out by NATO at UNPROFOR’s request. Some of the hostages were chained by the Bosnian Serbs to potential air-strike targets as ‘human shields’, and television images of them were broadcast across the world. Then in mid-1995 a number of events dramatically changed the dynamics of the war. In July, the Bosnian Serb army overran the safe areas of Srebrenica and Zepa. In early August, the Croatian army launched ‘Operation Storm’, a massive military offensive involving more than 100,000 troops, in which it overran all Serb-controlled areas in the western and southern Krajina region of Croatia. As a result, some 200,000 Serb civilians fled, the majority of them going to the Federal Republic of Yugoslavia, while smaller numbers remained in Serb-controlled parts of Bosnia and Herzegovina. Then, on 28 August 1995, Bosnian Serb forces fired a shell into a busy market place in Sarajevo, killing 37 people and injuring dozens more.

NATO responded by launching a two-week intensive air campaign against Bosnian Serb targets. Bolstered by the air strikes, Croatian and Bosnian government forces mounted a joint offensive in Bosnia and Herzegovina to recapture Serb-held territory, taking back a third of the territory held by Bosnian Serb forces. Aware that they were losing territory by the day, Bosnian Serb officials accepted a ceasefire and agreed to attend peace talks in Dayton, Ohio. The Dayton Peace Agreement which resulted from these talks was signed in Paris on 14 December 1995 by the presidents of the Republic of Bosnia and Herzegovina, the Republic of Croatia, and the Federal Republic of Yugoslavia."

Stubbs 1998, p. 192:
"A cease-fire was called in September 1995. A general framework agreement (the 'Dayton Agreement') was signed in Dayton, USA on 21 November 1995 and subsequently in Paris, France by the presidents of Bosnia-Herzegovina, Croatia and Serbia.

The Dayton Agreement secured the continuation of Bosnia-Herzegovina as a sovereign state within internationally recognized borders, but gave this state and its revolving presidency only limited powers. De facto, most power resides in the two entities that make up the state: the Federation of Bosnia-Herzegovina, which controls 51 per cent of the territory, effectively a Bosniac–Croat federation that is further divided along ethnic lines at the cantonal and municipal levels; and Republika Srpska (the Serbian Republic), which controls 49 per cent, itself increasingly split between the western part loyal to Republika Srpska President Plavsic, and the eastern part loyal to Bosnian presidency member Krajišnik and, ultimately, to indicted war
criminal Karadzic. The two entities are divided by an inter-entity boundary line (IEBL), which, on the whole, runs along the cease-fire line. In places, this is a highly visible line with the Dayton Agreement securing demilitarized 'zones of separation'; in others it is virtually invisible. Two significant territorial exchanges were agreed: Sarajevo became reunified within the federation, and Mrkonjic Grad and its surrounding areas were handed over to Republika Srpska. The strategically important town of Brcko remained Serb-held pending final arbitration [...]. The Dayton Agreement provided for a strong NATO peace implementation force (IFOR), which later became the peace stabilization force (SFOR), together with a civilian office of the high representative (OHR)."

For the full text of the Dayton Agreement, see “General Framework Agreement for Peace” (Office of the High Representative Website) [Internet].

Nationalist obstruction lead successive High Representatives to make strong interventions on the political scene, 1999-2002

- Nationalistic forces dominated the political scene until the General Elections of November 2000 requiring frequent use by the High Representative of the “Bonn powers” to protect the implementation of the Dayton peace agreement
- The victory of moderate parties in the 2000 elections raised hopes that Bosnian authorities were ready to assume stronger ownership in political affairs
- Relations with neighbouring countries have normalized
- Threats against Dayton continue with the establishment of an agreement between Republika Srpska and the Former Republic of Yugoslavia (FRY), and attempts by Bosnian Croats to create a third entity.
- October 2002 general elections show mixed results
- The votes of returnees and potential returnees, voting in absentia, have begun to affect politics locally

In 1997 the Peace Implementation Council (PIC) meeting for its annual meeting in Bonn, requested the High Representative to take decisive action in order to overcome obstruction to the implementation of Dayton. According to these new “Bonn powers”, the High Representative could impose compelling decisions and remove from public office officials violating legal commitments and Dayton (even in the case of elected officials).

Assessment of political developments by the High Representative (August 1999-May 2002) OHR 14 May 2002, sect. II:
"In general, I would divide my three-year term as High Representative into two parts. The first part, which lasted for about a year and a half, was marked by robust, intensive, and above all, direct engagement in all aspects of political life in BiH. During that period, I had to remove –under my GFAP Annex 10 powers- around 70 politicians, among them the Croat member of the BiH Presidency, a cantonal governor, several ministers and a number of mayors, for obstruction of the peace implementation process. Because of persistent nationalist obstruction of essential legislation in the BiH Parliament, I had to impose laws on a wide range of issues, necessary for strengthening the State institutions, sustaining returns and reforming the economy.

The second part of my term was marked by efforts to establish partnership with the non-nationalist forces that came to power after the elections of November 2000, and to show them that they, too, are responsible for the future of BiH. During this second phase, BiH made significant strides towards a progressive transfer of ownership to its citizens and institutions.
Politicians in BiH are now more capable of independent problem-solving and decision-making, as demonstrated by the passage of the Election Law in August 2001 and, above all, the negotiations on Entity constitutional reform which culminated in the 27 March 2002 Mrakovica-Sarajevo Agreement. […] The Council of Europe (CoE) provided important recognition of BiH's progress when it granted the country full membership on 24 April 2002.

Developments such as CoE accession highlight the fact that BiH statehood is no longer at issue. Although its citizens sometimes still have difficulty viewing their country with pride and confidence, this will change as the IC's institution-building efforts begin to bear fruit and the State begins to deliver benefits. Also, since the establishment of democratic regimes in Croatia and the Federal Republic of Yugoslavia (FRY), the country is no longer under any serious external political or military threat. In this regard, the last year has been characterized by a series of events including the exchange of ambassadors between BiH and FRY and a number of high-level parliamentary visits from both FRY and Croatia.

As said in my 19th Report, the Republika Srpska (RS) and FRY signed an Agreement on Special Parallel Relations (SPR) on 5 March 2001. Although the concept of "special" relations between an Entity and a neighboring country is an outdated concept, such an agreement is a right of the Entities, in conformity with the General Framework Agreement for Peace in BiH (GFAP). Nevertheless, I ensured that the agreement's text and spirit fully respect BiH's sovereignty and territorial integrity. My Office has a supervisory role in the agreement's implementation and is involved in the drafting of its annexes. Moreover, I insist with the governments of neighbouring countries -and with those in BiH at State and Entity level- to concentrate on state-to-state relations.

The overall positive developments in the region influenced the results of the November 2000 Elections and had major impact on the nationalist parties of BiH. Still, during my mandate it was necessary to face down religious and nationalist intolerance, most blatantly over the Croat declaration of 'self-rule' on 3 March 2001. […] Because of this declaration, I had to remove Ante Jelavic, the Croat member of the BiH Presidency and President of the nationalist HDZ party, from his positions, for personally leading this violation of the constitutional order. In April that same year, I appointed a Provisional Administrator for Hercegovacka Banka, which acted as the financial backbone of the HDZ-led illegal parallel structures. The investigation into this bank is continuing and, in April 2002, I decided to extend the term of the Provisional Administrator for another year.

The hard-line leadership's failure to establish the Third Entity has led to a crisis in the HDZ. At first, Jelavic and his cohorts refused to step down from their leadership positions in the party, even though that meant they could not register for the 5 October 2002 elections. But, as of 4 May, Jelavic and his associates resigned. Although I welcome the resignations as a sign that the majority of HDZ members realize that the pursuit of a Third Entity is a dead-end, it is too early to say whether or not the party will undergo a true process of democratization.

Change is also taking place among the nationalist elements in the RS. Although the Serb members of the BiH Parliamentary Assembly still often obstruct legislation and slow down efforts to strengthen the State and enhance its competencies, there have been some welcome signs of shifting attitudes. On 12 December 2000, in my presence, the SDS leadership endorsed Dayton, along with all previous PIC Declarations, and committed the party to full cooperation with the IC. Although they have not fulfilled all these commitments, there has been significant improvement, and in December 2001 they barred indicted war criminals from membership in the party. They also participated actively in the 2002 constitutional reform process, and accepted the Mrakovica-Sarajevo Agreement, including the provision that positions in the RS government, legislature, and judiciary must be given to Bosniacs and Croats. Such a development would have been difficult to imagine when I took on the role of High Representative in August 1999."
UNHCR 28 February 2001, p. 4:
"Nationalist local officials have continually set up obstacles to the return of the displaced since the signing of the Dayton Peace Agreement in 1995. The appointment of the new moderate government has been hailed by international observers as a development which should contribute to the country's progress in accelerating the return of refugees and displaced people."

On 5 October 2002, general elections awarded four-year mandates for the Presidency of BiH, the House of Representatives of the Parliamentary Assembly of BiH, the House of Representatives of the Parliament of the Federation of BiH (Federation), the President and Vice Presidents of the Republika Srpska (RS), the National Assembly of the RS, and ten Cantonal Assemblies in the Federation, as well as a two-year mandate for the Municipal Council of epce. Representatives of the nationalist SDA, SDS, and the HDZ, won the Bosniac, Serb, and Croat seats in the three-member BiH Presidency. At the State level, and in the elections for the Entity parliaments, the HDZ and SDS saw their vote drop slightly, while the SDA increased its vote by five percentage points. The SDP, which was the central party in the Alliance that had governed at State and Federation level, lost the biggest share of votes when it dropped from 27.3% to 16.2%.

ICG 13 December 2002, executive summary:
"[The results of Bosnia’s fourth post-war general elections on 5 October 2002] were widely interpreted by the international media and some of the domestic press as an unalloyed victory for the nationalist parties that made and fought the war – and had done their worst since to preserve its spoils, including the homogenisation achieved by ‘ethnic cleansing’. The outcome was seen as an ominous setback for efforts to put the complex multinational state recreated in Dayton on the path to stability, legitimacy, prosperity and European integration.

The Cassandras overlooked several factors. Not only did support for two of the three nationalist parties, the Croatian Democratic Union (HDZ) and Serb Democratic Party (SDS), decline, but the latter faced its most serious challenge to date from the moderate Alliance of Independent Social Democrats (SNSD). This was sufficient to undermine its longstanding claim to be the natural party of government in ‘its’ entity, Republika Srpska (RS). Moreover, the votes of returnees and potential returnees, voting in absentia, have begun to affect politics, permitting Federation-based parties to claim 17 per cent of the seats in the RS National Assembly in the October elections.

The media also failed to consider that the biggest losers, the multinational Social Democratic Party (SDP) that had led the ‘Alliance for Change’ in the Federation and on the state level, may have done most to contrive their own defeat. In any case, the low turnout (55 per cent) was as much a vote against politics-as-normal as for nationalism.”

High representative’s plan to strengthen BiH's security institutions and address RS’s lack of cooperation with the ICTY creates a political crisis in the RS (2004)

- NATO’s refusal to admit BiH in the Alliance’s Partnership for Peace because of RS’s lack of cooperation with the ICTY triggers strong reaction from the High Representative
- The High Representative removes 9 RS officials believed to have supported war criminals
- RS Prime Minister is instructed to study the documentation produced by the Sreberenica commission to identify and sanction those involved in the events
- Entity Ministry of Defense (MoD) must transfer its competence to the State MoD
- HR decision provokes a serie of resignation in the RS and a debate on Dayton’s institutions
OHR, 16 December 2004:

"The High Representative today announced the start of a process designed to address the systemic weaknesses in BiH's law enforcement and security institutions. This follows last week's announcement by NATO foreign ministers that for the second time running BiH has failed to make progress in its efforts to join the Alliance's Partnership for Peace as a result of the continued failure of Republika Srpska's authorities to comply fully with the ICTY.

We are here today because yet again NATO has given this country a "No" to [Partnership for Peace] PFP membership because of its continued lack of co-operation with The Hague," said the High Representative. The recent press reports of the RS Army continuing to employ Ratko Mladic until 2002, and VRS soldiers harbouring him in Han Pijesak in June-July 2004 were "shocking examples of the RS's institutional complicity in the evasion of justice of ICTY fugitives." He explained that today's measures will remove individuals involved with helping war criminals and their networks, and begin to address the systemic weaknesses of the RS's security institutions. This process will run into the spring of next year.

The measures include:

- The removal of 9 officials believed to have helped war criminals and their networks.
- The blocking of bank accounts of individuals for the same reasons.
- An instruction to RS Prime Minister Dragan Mikerevic to set up a group under the supervision of the EU Police Mission to study documentation produced by the Srebrenica Commission and identify those officials whose names appear in connection to the events of July 1995. The work of this commission should be complete by the end of February 2005 when a decision will be taken on further action, including if needed criminal prosecutions and suspensions.
- A request to BiH Defence Minister Radovanovic to investigate the assistance given by some in the RS Army to fugitives at large and to suggest concrete measures to prevent this happening again.
- An acceleration of Defence Reform. Functions currently carried out by the Entity Ministry of Defence's (MoD) must be transferred to the State MoD, and the Entity MoD's closed down. This process should be complete by the autumn of next year.
- The creation of a single system of policing as recommended by the Police Restructuring Commission, in accordance with the EC criteria laid out in its Feasibility Study. These reforms should also be adopted early next year.
- An amendment of the RS Law on Auditing to the payment provisions in the RS Law on Auditing and Public Sector of Republika Srpska to ensure that it will be possible to fund special audits of key companies in coming months and years. Six companies have already been identified. These are RS Telekom, RS Post, Elektroprivreda RS, RS Railways, Oil Refinery Brod, RS Post and Srpske Sume.
- An amendment to the BiH and Entity Criminal Codes to require all family members except the spouses, parents and children of the accused to co-operate with police investigations and to give evidence in war crimes trials.

If BiH fails to qualify for a third time for PFP then the High Representative said that he will not hesitate to take further measures that deal "directly and powerfully" with the assets and institutions of the RS. "I can tell you now, no options are currently ruled out if it comes to this," said the High Representative.

CoE, 4 February 2005, par.5:
"[Further to the High Representative’s decision, a] cascade of resignations followed in the second half of December 2004 by Bosnian Serb political leaders and members of the PDP, including the RS Prime Minister and the BiH Minister of Foreign Affairs; Mr Pero Bukejlović was nominated RS-Premier designate on 8 January 2005 and given 40 days to form a government."

CoE, 4 February 2005 par.43:

"These measures by the High Representative were the subject of very strong reactions by the highest officials in the Republic of Serbia (President, Prime Minister and Parliament Speaker) who warned against the risk to jeopardise the political stability in BiH and in the entire region. However, during his official visit to Belgrade in early January 2005, the High Representative received assurances from the Prime Minister of Serbia that he would actively and energetically support Banja Luka in the process of cooperating with The Hague and meet its international obligations. Serbian President Boris Tadic and the High Representative agreed that the issue of co-operation with The Hague was holding up the European future of countries throughout the region and that in this sense intensive and concrete co-operation was needed. They also agreed that it was unacceptable to change the Dayton Agreement and the constitutional arrangements of BiH without the consensus of all three constituent peoples/nationalities."

New High Representative announces limited use of the Bonn powers to hand full responsibility to Bosnians (2006)

- Christian Schwarz-Schilling announces phasing out of OHR
- Use of Bonn powers will be limited to maintain peace and cooperation with the ICTY
- Non intervention of the High Representative will allow Bosnian authorities to take full responsibilities for their decisions

Christian Schwarz-Schilling succeeded to Paddy Ashdown on 31 January 2006 as High Representative

OHR, 16 March 2006:

"Role of the OHR

The political and administrative strategy for phasing out the OHR is now moving to a timely conclusion. Four years ago the organization had more than 800 members of staff. Today that number is just over 300. Four years ago the use of the Bonn Powers was still generally viewed as an integral and indispensable element in the effort to make the BiH political system work. This is manifestly no longer the case.

I have made it clear that I will use the Bonn Powers without hesitation should this be necessary to maintain peace and stability or to further BiH’s cooperation with the ICTY.

I have made it equally clear that I will not use the Bonn Powers for anything else.

Let me take this opportunity to reiterate this commitment. The days when OHR micromanaged the political process in BiH by using – or simply by threatening to use – the Bonn Powers are over."
OHR, 24 May 2006:
"It is an honour to be here to build on the work of my distinguished predecessors. But they were working in different times, with different circumstances and different challenges. Now we have reached a new phase of transition and ownership. And so my job today, as High Representative and EU Special Representative, must reflect that.
I made it clear on day one when I addressed the citizens of Bosnia and Herzegovina that I have come to assist, advise and advocate. I have kept that promise.
I will not take decisions for those who do not have the courage to take them – this is a democracy, and Parliament must make up its own mind;
I will not intervene every time the authorities fail to take up their responsibilities;
In short, I will not do the jobs that the institutions and elected leaders of this country must do.
Transition and ownership means the transfer of full responsibilities to the institutions of this country. This will enable Bosnia and Herzegovina to become a ‘normal’ European country. What does that mean in practice? It means that we, in the International Community, will engage actively and assist constructively. But we will not intervene when there are mistakes, and we will not run this country for you. And it means that you, the people and politicians of Bosnia and Herzegovina, must decide on the path you want to take to a better future."

OHR, 18 April 2006:
"In the general elections in October, the Bosnian people will for the first time vote for leaders who will have full responsibility for governing their own country. There will in future be no safety net from the International Community to step in when there are problems. This is how democracy gives ownership to the voters of Bosnia and Herzegovina."

OHR, 16 March 2006:
"The electorate will no longer have the option of calculating that, for example, this candidate is known to me, through TV or perhaps even in person; I don’t have complete confidence in the candidate’s integrity or competence, but I like the style – and if there is any misbehavior in office, well the foreigners will make sure that the damage is limited."

On the Bonn powers and the development of a functioning state:

Bosnia, 10 years after, Transitions online, 22 November 2005

On the closure of the Office of the High Representative:

Bosnian peace overseer post to close in mid-2007, Reuters Foundation, 23 June 2006

Weekly column by Christian Schwarz-Schilling, High Representative for BiH, “Less is more”, OHR, 21 July 2006

Beyond Dayton: Reinforce state-level institutions to go beyond the ethnically based entities created by the agreement, 2002-2004

- Dayton agreement reached its main goal which was to put an end to the conflict
- The Constitution included in the agreement reflected the weak consensus over a BiH state and the strength of the partisans of ethnic division
- Dayton created a state with weak competencies and gave wide powers to two entities divided along ethnic lines
- Strong opposition to Dayton and the reform process lead the High Representative to increase its involvement in several areas of political and civil life
The international community is now trying to reinforce state competencies to counter-balance the nationalist influence of the entities and prepare an exit strategy. Many people inside and outside Bosnia believe that the 1995 Dayton peace agreement has outlived its usefulness. There is, however, no consensus on what to put in its place, or on whether fundamental changes in Bosnia would have a negative impact on the rest of the Balkans (see "RFE/RL Balkan Report," 5 September and 19 December 2003, and 16 April and 8 October 2004).

The Dayton agreement unquestionably served its immediate purpose of ending the fighting in Bosnia-Herzegovina and preventing a resumption of hostilities. In the past few years, however, a debate has ensued both in Bosnia and abroad over the allegedly dysfunctional nature of the constitutional system set down in the treaty.

It provided for a loose central authority over two separate “entities,” the Muslim-Croat Federation and the Republika Srpska. The federation is further divided into 10 cantons, which are more or less ethnically based. In addition to the two entities there is the internationally run district of Brcko, which was the one part of Bosnia that proved impossible for all concerned to agree on at the Dayton conference or even later.

Throughout Bosnia, political power at most all levels is carefully divided according to ethnic criteria. This nationally oriented approach is reinforced by the fact that most elected officials, at least since the 2002 general elections, come primarily, if not exclusively, from the three main nationalist parties. They are the Muslim Party of Democratic Action (SDA), which was long linked to the name of the late President Alija Izetbegovic; the Serbian Democratic Party (SDS), which was formerly headed by wartime leader and indicted war criminal Radovan Karadzic; and the Croatian Democratic Community (HDZ), which was an offshoot of the Croatian party of the same name, particularly until the death of President Franjo Tudjman in 1999. (RFE/RL, 17 October 2004)

[T]he problematic “divided” nature of the Bosnian state does not refer to the mere existence of two entities, but to the ethno-territorial principle which is at the basis of that division. By “ethno-territorialism” is meant the establishment of a link between a given community (or “ethnic group”) and a specific territory. That linkage, which is unprecedented in Bosnia and Herzegovina’s history, is the direct translation into political terms of the results of ethnic cleansing carried out during the conflict. But ethno-territorialism is also enshrined in the Dayton agreement and derives in particular from two aspects of the Constitution: the perpetuation of the name “Republika Srpska” for one of the entities and the political representation system adopted for the Presidency and the House of Peoples of Bosnia and Herzegovina. (...) Moreover, that principle also implicitly innervates other provisions, such as those granting state-like prerogatives to the entities. (Helsinki Monitor, December 2004)

On top of this complex structure is the international community's unelected high representative, who has the right to legislate and remove elected officials at will without any right of appeal. (RFE/RL, 17 October 2004)

The Office of the High Representative has the paradoxical task to enforce Dayton through the use of extended coercive powers while at the same time trying to promote ownership of reforms with Bosnian authorities and people. The new role of the High Representative as EU special Representative provides him with a critical role in the strengthening process of the state required by the EU for future accession.
Among the most important milestones in the peace implementation process was the PIC Conference in Bonn in December 1997. Elaborating on Annex 10 of the Dayton Peace Agreement, the PIC requested the High Representative to remove from office public officials who violate legal commitments and the Dayton Peace Agreement, and to impose laws as he sees fit if Bosnia and Herzegovina’s legislative bodies fail to do so.

Nonetheless, the governing principle of the OHR’s engagement in Bosnia and Herzegovina is the concept of domestic responsibility. This concept calls on the officials and citizens of Bosnia and Herzegovina to take responsibility for the peace process and the problems that their country faces.

In February 2002, the European Union’s General Affairs Council (GAC) appointed the High Representative the EU’s Special Representative in BiH. The High Representative maintains an overview of the whole range of activities in the field of the Rule of Law, including the EUPM, the IPTF follow on mission. In this context, the High Representative provides advice to the EU Secretary General/High Representative and the Commission itself. (OHR, General information, December 2004)

“Preparation of a future Stabilisation and Association Agreement (SAA) with the EU remains a political priority for BiH and the prospect of further European integration continues to be the strongest incentive to accelerate reforms in the country. However, the consensus on further European integration does not always translate into political action.” (CoE, 4 February 2005, par.13)

“[The] 2004 Stabilisation and Association Report for BiH, issued by the European Commission on the 30 March 2004, concludes that the “Government at State level remains under-developed, while tensions between State and Entities still affect government business and reform. Reforms such as that of the public administration and of the defence sector have the potential, if fully implemented, to move BiH towards self-sustainability.” (CoE, 18 June 2004, Par.13)

“ The consolidation of the State-level institutions and implementation capacity cannot be totally dissociated from a reflection on the evolution of the present constitutional system. However, as mentioned in previous reports, there is still no consensus on the content of such a reform. There is only one agreed basic principle: it should be the result of the decision of all citizens and parties of BiH and not be imposed by the international community. The CoE, in particular its Venice Commission, stands ready to provide advice and assistance whenever there is an agreement on the revision of the present constitutional arrangements. In this respect, it is worth recalling that, following the PACE’s request in Resolution 1384(2004)m, the Venice Commission is preparing an Opinion on three related issues: (a) the efficiency and rationality of the constitutional arrangements in BiH; (b) the compatibility of the BiH Constitution with the ECHR and the European Charter of Local Self-Government and (c) the compatibility of the powers of the High Representatives with CoE standards, mainly the ECHR.” (CoE, 4 February, par.16)

The paradoxical role of the High Representative

The ambiguity enshrined in the Dayton agreement, coupled with the complex institutional structure described above, fed an ever-growing dependency towards international organizations. […]. However, the dependency syndrome that subsequently materialized was probably not foreseen at the time of the Dayton negotiations and resulted more from the subsequent inability of local actors to implement the reforms that would ensure Bosnia’s stability and prosperity. […] This local obstructionism compelled international actors to become always more involved in Bosnia in order to compensate for the national authorities’ inaction. This in turn would lead to sustained dependency as local leaders became used to resting on the shoulders of international staff, while
they would themselves spend most of their time criticizing the international community or reviving nationalism. (Marianne Ducasse-Rogier, Helsinki Monitor, December 2004)

“The problem in Bosnia and Herzegovina is the simultaneous intervention of the international community and the affirmation of a new state. It is, in effect, not one of the slightest paradoxes in the transition process in Bosnia and Herzegovina that outside intervention, which has as its declared objective the establishment of an autonomous state, is also simultaneously the origin of reforms, with the negative consequence of limiting or marginalizing the sovereignty of the state and the responsibility of the politicians of the designated state. [...] The future of this country lies in its capacity to adapt the transition and democratization processes (in some respects, both of which are already well on their way), the central aims being the restoration of the state and the reinforcement of its institutions. [...]”

While [the High Representative] must check that the entities act in the interests of the country and that they fulfill their obligations and commitments, he must at the same time, progressively strengthen the state-controlled institutions in order to counter centrifugal forces, to reinforce the official recognition of the state and most importantly, to carry out his primary duty to establish a viable state.”(Christophe Solioz, HM, January 2003)

Progress on reinforcement of state level institutions halted by rejection of constitutional reform (2006)

- While progress to reinforce state level institutions have been achieved reform is still needed
- The Dayton peace agreement’s objective was to make peace not to establish a functioning state
- In March 2005, the Venice Commission suggested to reform the constitution by transferring competencies from Entities to State level
- Consequently, Bosnian political parties presented a proposal for constitutional reform which was rejected in April 2006
- The ultimate objective of a constitutional reform is to move from a system based on ethnic representation to a system based on representation of citizens

PACE, 29 June 2006, par.1-4:
"1. Since Bosnia and Herzegovina’s accession to the Council of Europe in April 2002, slow but steady progress has been achieved in building a stable, functional and efficient state. Examples are the setting up of a court at State level and the transfer of competences from the Entities to the State in the fields of defence, intelligence, the judiciary, indirect taxation and the forthcoming police reform on the principles of which all parliaments at entity and state level agreed upon in October 2005.

2. To date, however, the continuing weakness of the State and the constitutional necessity to ensure full equality at every level between the 3 constituent peoples have led to a situation where around 60 percent of the GDP is still spent on maintaining state and entity apparatus: there are 3 rotating Presidents at state level, 2 Presidents at entity level, 13 prime-ministers, over 180 ministers, 760 members of various legislative bodies, and 148 municipalities. Furthermore, the voluntary or imposed transfer of a number of competences to the State level has not resulted in a corresponding reduction of the entity apparatus.

3. The Assembly recalls that a key objective of Bosnia and Herzegovina’s membership in the Council of Europe is to promote domestic ownership and responsibility for reform. It also recalls its Resolution 1383 (2004) in which it urged the authorities and the political forces in the country to engage in a constructive dialogue on the issue of constitutional reform.
4. The opening of Stabilisation and Association Agreement negotiations with the European Union just before the 10th anniversary of the Dayton Peace agreement in November 2005 makes it even more imperative to take measures to address the generally recognized need to strengthen State institutions that are currently too weak to allow for Bosnia and Herzegovina's further integration into Europe.

COE Venice Commission, 7 April 2006, par.1-8:
“The Constitutional reform process in Bosnia and Herzegovina:
The present Constitution of Bosnia and Herzegovina was adopted as Annex IV of the 1995 General Framework Agreement for Peace in Bosnia and Herzegovina, the Dayton Agreement. Its main purpose was to end the bloody conflict in the country and not to establish a functional state.

In March 2005 the Commission adopted, at the request of the Parliamentary Assembly of the Council of Europe, its Opinion on the Constitutional Situation in Bosnia and Herzegovina and the Powers of the High Representative (CDL-AD(2005)004). In this Opinion the Commission concludes that constitutional reform is indispensable and that it will have to be carried out in several stages, with an entirely new Constitution based on a democratic process in Bosnia and Herzegovina (hereinafter referred to as BiH) as the final aim. As regards the first stage of constitutional reform, the Commission notes:

“102. A central element of the first stage of constitutional reform has to be a transfer of responsibilities from the Entities to BiH by means of amendments to the BiH Constitution. This is an indispensable step if any progress is to be achieved in the process of European integration of BiH. This step will be difficult since, as with other constitutional amendments in BiH, it will have to be based on consensus among the representatives of the three constituent peoples. Constitutional reform cannot be imposed. Another element of the first stage should be a streamlining of decision-making procedures within BiH, especially with respect to the vital interest veto, and a reform of the provisions on the composition and election of the Presidency and the House of Peoples which seem either now or following the entry into force of Protocol No. 12 on 1 April 2005 incompatible with the ECHR. The reform of the vital interest veto at the State level could best be carried out in parallel with similar reforms in both Entities.”

In addition, the Commission insists on the urgency of the reform of the Constitution of the Federation of Bosnia and Herzegovina. The agreement on constitutional reform examined in this Opinion only relates to the Constitution of the State.

The Opinion of the Venice Commission raised a lot of interest in Bosnia and Herzegovina. With the assistance of a former Principal Deputy High Representative, Donald Hays, now at the US Institute for Peace, a group of experts appointed by the main political parties started to meet to discuss constitutional reform, taking as the point of departure the Venice Commission Opinion. The agreements reached at expert level were further discussed by the leaders of the main political parties and finally, on 18 March 2006, the party leaders approved the agreement on the first phase of constitutional reform. This agreement was facilitated by the US embassy in Sarajevo and also took into account a Venice Commission Opinion on three different proposals to elect the Presidency of Bosnia and Herzegovina (CDL-AD(2006)004).”

PACE, 29 June 2006, par. 8, 15-20:
“8. The Assembly therefore strongly regrets that on 26 April 2006, the parliament of Bosnia and Herzegovina failed, by just two votes, to reach the required two-thirds majority in the House of Representatives in order for the constitutional amendments to pass. (…) 15. The Assembly strongly believes that the only realistic way out of Bosnia's current constitutional impasse is for the three constituent peoples and their representatives to leave behind their war-time thinking. Serbs, Bosniaks and Croats must show mutual readiness for an
open dialogue on all contentious issues: this remains a pre-condition for finding comprehensive and innovative solutions for a future constitutional reform.

16. All citizens of Bosnia and Herzegovina who also hold the citizenship of neighbouring states must realise that they cannot only claim rights but that they also have duties towards the state of Bosnia and Herzegovina. And civic-minded citizens of Bosnia and Herzegovina need to abandon their disillusion with the political process and fully engage with it instead.

17. Although it would probably not be realistic to expect that Bosnia and Herzegovina move quickly from a system based on ethnic representation to a system based on representation of citizens, drafting a completely new Constitution would certainly in the long run be preferable to trying to improve the Dayton one.

18. As a first step the Assembly expects people and politicians in Bosnia and Herzegovina to again discuss constitutional reform immediately after the October general elections, and if they decide to do this on the basis of the proposals agreed upon so far, to eliminate at least the entity voting in the House of Representatives and to define more precisely the vital national interest and the related veto mechanism. In this respect, the Assembly urges the House of Representatives to take into account all the different recommendations made by the Venice Commission in its Provisional Opinion dated 7 April 2006, both on the text of the failed amendments and on the steps to be taken in the next phase of constitutional reform.

19. The Assembly expects the political leaders who will emerge from the next elections to finally go beyond sectarian political divides and to put the interests of citizens first. It will not be possible to continue simply creating further layers of bureaucracy at the State level in addition to the multiple bureaucracies at the lower level; in particular the situation in the Federation of Bosnia and Herzegovina with its 10 cantons will have to be addressed as soon as possible.

20. As a second step the Assembly therefore urges the authorities of Bosnia and Herzegovina by October 2010 at the latest, to draft and adopt a new Constitution in order to:

20.1. replace the mechanisms of ethnic representation by representation based on the civic principle, notably by ending the constitutional discrimination against "Others";

20.2. find efficient and rational decision-making procedures that are not sacrificed to the principle of involving representatives of each constituent people in any decision;

20.3. review the territorial organisation of the State and its division into entities, cantons and municipalities and the repartition of competences between the state and the lower levels with a view to increasing efficiency and sustainability;

20.4. examine how to integrate the Brcko District.”

CoE, 18 July 2006, par.17-19:

“17. In spite of the agreement reached by 7 political parties, the House of Representatives failed to adopt the package on 26 April. Two main parties voted against: the “Club of representatives of Croatian People”, for fear that the reform would undermine the constitutional position of Croat interests, particularly vis-à-vis the RS and the “Party for BiH”, which felt that the reforms did not go far enough and had the effect of entrenching the Dayton status quo. Whilst there seemed to be widespread agreement on the fact that, having elaborated the package in record time when there was no expectation on a possible debate on constitutional reform was in itself a sign of a maturing political class, positions diverged on the follow-up to be given to the whole process.

18. When meeting with Members of Parliament (both Houses), the Secretariat delegation had the clear impression that constitutional reforms were, for the first time, debated in an open and substantial fashion, giving renewed credibility and strength to a key State-level institution such as the Parliament. Although no clear prospect of an early agreement for re-submission of the package is in sight, Members of Parliament all seemed to agree on the need for reform of Dayton and for it to happen in a transparent, open and carefully-timed way. There seems to be some prospect of the existing but rejected package of reforms being reintroduced into parliamentary process, at the very beginning of the new Parliament, following the October elections. International interlocutors insisted on the importance of keeping all the issues in the package on
the BiH political agenda, some even suggesting a “partial implementation” of the less controversial provisions in the area of human rights and administrative streamlining.

3. Reinforcing BiH statehood, reform ownership and integration into Europe

19. The successful adoption of the defence reform is clearly a step in the right direction, showing how the development of common, State-wide institutions can also accommodate tailor-made arrangements to ensure the preservation of some specific traditions. Whilst the implementation of the defence reform is a tangible sign of a strengthened State institutions, the overriding commitment of “reinforcing BiH statehood” is yet to be fulfilled. The current political landscape is still basically Entity-oriented and/or constituent-people driven. A critical mass of competencies and functions, to be exercised at State level, is still to be secured before political discourse and political action becomes truly State-relevant. In order to reach that point BiH has to solve two dilemmas:

- the first is the strengthening of State institutions, on the one hand, and the gaining of ownership over its European destiny, on the other. It seems, however, increasingly difficult to achieve both simultaneously, as the former cannot be secured without a strong dose of intervention by the international community;

- the second is the opposing logics of, on the one hand, the “constituent people” basis of its legal and societal structures and, on the other hand, the requirement of building genuine European institutions based on a citizenship rather than an “ethnic” approach.”

See also:

*Opinion on the constitutional situation in Bosnia and Herzegovina and the powers of the High Representative, Council of Europe, Venice Commission, 11 March 2005*

Regional context more favourable to durable solutions (2000-2003)

- Changes of leadership in the Federal Republic of Yugoslavia and Croatia create conditions for more constructive bilateral relations
- On 27 June 2001, Croatia, the Federal Republic of Yugoslavia and Bosnia and Herzegovina endorsed a ‘regional action’ programme to accelerate refugee returns
- On 29 June 2001, the Agreement on Succession Issues of the Former Socialist Federal Republic of Yugoslavia (SFRY) was signed in Vienna
- BiH and Serbia and Montenegro signed a bilateral agreement on refugee return (October 2003)
- An agreement on dual citizenship between BiH and Serbia and Montenegro was ratified in October 2003 by both countries and has now entered into force
- In January 2003, Croatia ratified the provisionally applied agreement on the determination of border crossings of 6 April 2001

UNSC 30 November 2000, para. 33:
“Progress in Bosnia and Herzegovina is inextricably linked to developments in the region. With the recent historic change in the leadership of the Federal Republic of Yugoslavia, together with
changes earlier in 2000 in the Republic of Croatia, for the first time since the war there is a realistic prospect of constructive bilateral relations based on mutual respect for the sovereignty and territorial integrity of each State, while also developing the 'special relations' that are envisaged in the Dayton Accords. The recent visit of President Kostunica to Sarajevo was a first step towards full normalization of bilateral relations. Every effort should continue to be made in order to move this process forward."

**OHR HRCC 18 October 2001:**

"Renewed Regional Co-operation: On 21 May, an official BiH state delegation visited Belgrade for the first time since the end of the war. A week later, the Croatian President, Stipe Mesic, paid a two-day visit to Sarajevo. A result of these meetings was the establishment (in the case of the FRY) and the more efficient functioning (in the case of Croatia) of Inter-state Councils between BiH and the two states. In addition, on May 14, the ministers of interior of these three countries signed an agreement on the fight against organized crime in the region, corruption and the trafficking of people, and on joint police activities. On 27 June, the Republic of Croatia, the Federal Republic of Yugoslavia and signed a 'regional action' programme in Brussels to accelerate refugee returns in the Balkans. The programme will be funded through bilateral initiatives and national action plans under the umbrella of the Stability Pact for SE Europe. The objective is to resolve the plight of approximately 490,000 refugees and displaced persons within two years. BiH On 29 June, the Agreement on Succession Issues of the Former Socialist Federal Republic of Yugoslavia (SFRY) was signed in Vienna by the Foreign Ministers of BiH, the Republic of Croatia, the Republic of Slovenia and the Federal Republic of Yugoslavia, and the Vice President of the Former Yugoslav Republic of Macedonia. The Agreement provides for the distribution of the rights, obligations, assets and liabilities of the SFRY among the States, and symbolises the beginning of a period of renewed regional co-operation."

**Refugee Return Agreement between Serbia & Montenegro and Bosnia and Herzegovina (6 October 2003)**

**OSCE 6 October 2003:**

"OSCE would like to welcome the signing of a bilateral agreement between BiH and Serbia and Montenegro on refugee return. This agreement is a sign that the two neighbouring countries are ready to invest joint efforts into finding a regional solution to the refugee problems. It is very important that the countries in the region exchange information on refugees in order to provide the full respect of their right to property and return."

**BiH and Croatia: Border Crossing Agreement in Force and Citizenship Agreement Drafted**

**OHR 13 October 2003, para.41:**

"A significant step was reached between BiH and Croatia when Croatia managed, in January 2003, to ratify the provisionally applied Agreement on determination of border crossings of 6 April 2001. This is the first bilateral agreement to enter into force in this field. The newly constituted BiH Presidency and President Mesic have agreed to do their utmost to complete pending procedures and negotiations regarding border issues and dual citizenship, and in early February, they initiated the draft Agreement on the local border zone regime and the three annexes to the Co-location Treaty of 17 June 2002. These documents are now waiting to be signed by both Foreign Ministers."

**BiH and FRY: Dual Citizenship Agreement in Force and Initialisation of Draft Border Agreements**

**OHR 13 October 2003, para.42:**

"Two developments in the relationship between BiH and the then-FRY deserve a special mention. First, an Agreement on dual citizenship was signed on 29 October 2002 in Belgrade by the BiH Minister for Civil Affairs and Communications and the Yugoslav Minister of the Interior. This Agreement has been ratified in 2003 by both countries and has now entered into force in both countries. Second, both heads of delegations to the commissions dealing with border issues
initiated in December the draft Agreements on the local border zone regime and on a simplified regime to be applied in a zone in the Eastern part of BiH enmeshed with the territory of Serbia and Montenegro."

Ministers of refugee and DPs in Bosnia, Croatia and Serbia-Montenegro commit themselves to close the displacement chapter in their region by end of 2006 (2006)

- Ministers dealing with refugees and IDPs in Bosnia, Croatia and Serbia-Montenegro commit to solve the remaining population displacement in the region by the end of 2006 through return or local integration (2005)
- This commitment is one of the requirement included in the accession process to the EU
- Each country will design a country plan of action
- A task force will meet four times a year to unite individual actions plans in a joint implementation matrix
- EC, OSCE and UNHCR commends the process as an important step in the right direction
- As of May 2006, roadmaps still have not been finalised and discrepancies remain on major issues such as occupancy rights in Croatia

UNHCR, May 2006:
The 3x3 Initiative
"Recognizing the remaining number of persons displaced throughout the region and the need to find durable solutions for them, three international actors (OSCE, the EC and UNHCR) came together to encourage the three Governments of BiH, SCG and Croatia to formulate a policy to find durable solutions for refugees in the region within a reasonable timeframe. This "3x3 Initiative" led to the January 2005 Regional Ministerial Conference on Refugee Returns which resulted in a Ministerial Declaration in January 2005. In the Declaration, the Governments pledge to ensure just and durable solutions for refugees in the region, whether by return or local integration. The Declaration further commits the Governments to formally acknowledge all remaining obstacles to durable solutions in country-specific "Roadmaps", which contain suggested ways forward. These Roadmaps are to be unified into one regional "Joint Matrix". A 3x3 ministerial meeting at the end of March 2006 was hoped to have accelerated the process and led to the finalization of the Roadmaps by the three Governments but, unfortunately, it seems not to have managed that. Lack of agreement on substantial issues, such as a resolution to the issue of former tenancy rights holders in Croatia, continues to hamper real progress."

MHRR, 31 January 2005:
“We, the ministers responsible for refugees and internally displaced persons in Bosnia and Herzegovina, Croatia, and Serbia and Montenegro, met today in Sarajevo to identify our individual and joint activities that should be undertaken in the forthcoming period with the assistance of the international community in order to ensure a just and durable solution to refugee and IDP situation in our countries; Considering that a just solution to this important issue must primarily be in the interest of safety, dignity and well-being of individuals and peoples, and should also contribute to peace and stability in Southeastern Europe, as well as to the efforts our countries are making to join the EU; We have agreed as follows:
1. Pursuant to our country programmes, we are committed to solving the remaining population displacement by the end of 2006, to facilitating returns or local integration of refugees and internally displaced persons in our countries, depending on their individual decisions, without any
discrimination, and providing assistance and support to refugees and internally displaced persons in cooperation with UNHCR, the EU and OSCE;

2. Access to all rights and entitlements, including the right to accommodation, shall be ensured in a fair and transparent manner, while all social, legal, procedural or any other requirement for the implementation of the above-said shall be met in the spirit of the present Declaration.

3. Without prejudice to the precedence of the right to return, refugees who have chosen not to return will be assisted by their new host countries to locally integrate in accordance with their national legislation.

4. UNHCR, as well as the EU and OSCE are invited to assist our governments in the return process and local integration and to raise financial and other support and assistance from the international community;

5. Upon return or local integration, all refugees shall enjoy the same rights and shall have the same responsibilities as all other citizens, without any discrimination;

6. The above mentioned principles and goals shall serve as a basis for the development of individual action plans ("Road Map") in our countries, including a comprehensive list of all the tasks that must be undertaken and each country shall bear the individual responsibility for the implementation. Those individual plans of activities shall be unified in a joint implementation matrix;

7. Each country shall prepare its own action plan within the next three months. During the same timeframe UNHCR is invited to assist in creating the necessary databases.

8. We commit ourselves to appointing the representatives of the responsible ministries and other relevant bodies, and we invite UNHCR, as well as the European Union and OSCE to appoint their representatives to the Task Force.

The Task Force shall meet at least four times a year to:
- unite individual action plans in a joint implementation matrix;
- review the data base referred to in paragraph 7 herein;
- review the remaining challenges from (i) repatriation programmes and access to the rights, (ii) economic development in the areas of returns and integration, (iii) exchange of data on durable solutions, and (iv) possible issues of local integration, including, inter alia, issues related to social protection of vulnerable groups, such as the elderly, patients and single mothers;"

**OSCE, 17 February 2005:**

"On 31 January, Chairman of the BiH Council of Ministers Adnan Terzic opened a ministerial conference on regional returns attended by representatives of the governments of Serbia and Montenegro, Croatia, Bosnia and Herzegovina and the international community. The conference produced a Declaration in which the three participating countries committed themselves to "solving the remaining population displacement by the end of 2006". The governments, in cooperation with the United Nations High Commission for Refugees (UNHCR), the European Union and the OSCE, also pledged to increase their efforts to facilitate returns and local integration of refugees and internally displaced persons.

Over the next three months, the three countries are to develop individual action plans that will be united under a joint implementation matrix; a Task Force, in which representatives of the three international organizations will take part, are then to review these plans. A meeting of the region’s prime ministers, reviewing the progress of the initiative, is also supposed to take place yearly. The next is already scheduled for October 2005 in Sarajevo."

**UNHCR, 30 January 2005:**

"The principals of the European Commission (EC), OSCE and UNHCR from Bosnia and Herzegovina reiterated their support for the governments of Bosnia and Herzegovina, Croatia and Serbia and Montenegro in their efforts to enable refugee return in the region, and thus fulfil their responsibilities to the Dayton Peace Accord, at a conference held in Sarajevo yesterday."
Participating in the Regional Ministerial Conference, hosted by BiH Prime Minister Adnan Terzic, international community representatives were encouraged by the willingness of the three governments to openly discuss achievements and the outstanding challenges to conclusively tackle the remaining population displacement between these three countries.

UNHCR, EC and OSCE underline the importance of proceeding with the implementation of the Declaration adopted yesterday, within the timeframe agreed, and look forward to continuing our involvement in this process.”

Progress towards EU integration requires a self-functioning state (2006)

- EU recommends launch of negotiations for a Stabilisation and Association agreement further to reforms strengthening state level competencies.
- A reform of the constitution should be the next step to reinforce BiH statehood
- Measures required by the EU accession process have to be taken by BiH authorities and not imposed by the High Representative.
- After the closure of the OHR, the High Representative will remain as EU Special Representative

CoE, 3 November 2005, par.5, 8-9,12)
“[S]ome major reforms, pushed for years by the international community, have finally been approved, mainly the defence, police and broadcasting reforms, allowing the European Commission (EC) to recommend on 21 October 2005 the launch of negotiations for a Stabilisation and Association Agreement (SAA) with BiH. This is an historical decision marking, few weeks before the 10th Dayton Anniversary, a decisive shift away from the country’s post-war reality. (…)

8. With respect to international relations, the EC decision to recommend the launch of negotiations on a SAA between BiH and the EU has undoubtedly been the major development in the period covered by the present report. The decision has been taken just after the adoption of the Agreement on police reform, a major achievement towards reinforcing of BiH statehood (see below paras. 63-65).

9. At the same time, the success of the defence reform has brought BiH closer to accession to the Partnership for Peace (PfP) with NATO. The Law on Defence and the Law on Service in the Armed Forces of BiH were adopted early October 2005. The former provides for the transfer of the authority over defence from the entity to the state level, introduces a single defence budget, regulates a common defence system throughout the country and establishes and defines the chain of command. The Law on Service in the Armed Forces of BiH sets the basis for the creation of a professional single military organised on the UK model of “regional” regiments and controlled by BiH. In its Communiqué of 7 October 2005 the Steering Board of the Peace Implementation Council (PIC) warmly welcomed the recent adoption of the defence reform noting that the creation of a NATO compatible single military force will give BiH the armed forces it needs to meet the security challenges of the 21st Century. The only obstacle to accession to the PfP with NATO remains respect of the BiH commitment to fully co-operate with the ICTY, including the transfer to the Hague of all war crimes indictees. (…)

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With the SAA process under way, the need for more radical and sustainable reforms becomes more apparent. Such reforms may only be achieved if an overall constitutional change is to be agreed by all three constituent peoples. 10 years after Dayton there is a growing feeling that BiH has come as far as it could under its present constitutional arrangements. A constitutional change will not only allow the state to be more functional, closer to its citizens and less expensive for taxpayers, but will also allow the development of ownership by the national authorities and the phasing out of the Bonn Powers and the OHR as a whole. In the words of the High Representative, “provided that the necessary progress is made, by the October 2006 general elections there is every possibility that the OHR will not exist and that the Bonn powers have been got rid of”.

OHR, 21 July 2006:
“The so-called “Bonn Powers”, instituted at the end of 1997, gave the High Representative the authority to dismiss officials found to be obstructing implementation of the peace agreement, and to impose legislation that will ensure peace and stability. This has allowed the OHR to reduce obstruction and help take Bosnia and Herzegovina to a point where it is now negotiating a Stabilisation and Association Agreement (SAA) with the European Union, the first step towards eventual EU membership.
So, why change something that is working?
The simple answer is that a democracy that is protected and consolidated through the use of executive powers granted to an extraneous institution cannot develop the necessary inner strength to sustain itself.
If Bosnia and Herzegovina is to complete its journey to full post-war rehabilitation and Euro-Atlantic integration, it must travel the remainder of the way under its own steam. (…)

Already two years ago, the European Union made it clear that legislation required to launch the SAA would only be considered acceptable if enacted by the authorities of Bosnia and Herzegovina on their own. It could not be imposed by the High Representative. (…)

The international community will remain engaged in Bosnia and Herzegovina through the continued presence of EUFOR, the EU Police Mission, NATO and other international actors. Indeed, the European Union’s engagement will be reinforced, by enhancing the role of the EU Special Representative and by moving forward with the SAA process. I intend to serve as High Representative until the closure of the Office and then to remain in Bosnia and Herzegovina in my other capacity, as EU Special Representative.”
POPULATION FIGURES AND PROFILE

Global Figures

After significant drop down in 2005 due to re-registration, number of displaced persons slowly decreased to 180,250 (2006)

- 180,251 displaced persons according to UNHCR as of 31 August 2006
- 185,000 registered as internally displaced in April 2005
- In January 2005, 308,748 persons were registered as internally displaced
- Number of IDPs after re-registration is two-third less than the number of the previous re-registration exercise in 2000
- According to the re-registration exercise 13% have registered for the first time as IDPs
- 98,000 IDPs currently reside in the Federation of which 37% are displaced within the Federation
- Around 86,000 DPs reside in the Republika Srpska (RS), of which 5% is displaced within the RS
- Further to the re-registration exercise, the authorities will go through the applications and revise IDP status according to the legislation
- The revision process should be completed in the course of 2006

UNHCR, 31 August 2006: Number of displaced persons in Bosnia and Herzegovina: 180.251

UNHCR, May 2006:
"At the end of 2004, the relevant State and Entity authorities, with the co-operation of UNHCR, engaged in a country-wide re-registration exercise of displaced persons (DPs). Following the last such exercise in 2000, when over half a million persons registered as DPs, the aim was to readjust operating figures by determining the accurate number and identifying the main needs of those still displaced in 2005. The exercise was completed in Spring 2005 and resulted in figures dropping from some 518,000 DPs who registered in 2000 to 185,531 persons who re-registered this time. Of these, some 98,000 persons reside in the Federation, some 86,000 in the RS, and the remainder in the Brcko District. After the revision of status, in line with the corresponding legislation, the final number of DPs may lower. However, it is important to remember that individual applications for DP status can still be made."

UNHCR, June 2006:
"In spite of the substantial return, BiH is still dealing with a large group of 186,138 (59.892 households) DPs who applied for DP-status in the 2005 re-registration exercise, initiated by the local authorities. The authorities are currently in the process of reviewing the applications and are expected to complete this task in the course of 2006. Given the recent decrease in return, the return of the majority of these DPs in the near future is unlikely.

The number of DPs that re-registered and filed an application for extension of their DP-status numbers roughly 187,000. Of these DPs approximately 24,000 persons (13%) are registered for the first time. Of the total of DPs, approximately 98,000 reside in the Federation of Bosnia and Herzegovina (FBiH), of which 37% is displaced within the FBiH. Around 86,000 DPs reside in the
Republika Srpska (RS), of which 5% is displaced within the RS. The remainder are displaced in the Brcko District.

For more information on the IDP revision process go to section "National response", See also for more detailed results on the re-registration exercise (in sources below) "Comparative analysis on access to rights of refugees and displaced persons, Ministry for Human Rights and Refugees, December 2005, pp.81-95

UNHCR, 15 April 2005:

Internally displaced persons:
Federation: 125,515
Republika Srpska: 163,533
Brcko district: 19,700
Total: 308,748

Number of displaced persons in collective centres:
Federation: 633
Republika Srpska: 106
Total: 739

Internal displacement since Dayton (1995-2005)

- Rapid decrease in 1996 corresponds to massive majority returns in the immediate post-war situation (1996)
- Re-registration exercise in December 2000 shows a drop in IDP figures reflecting the intention of many to locally integrate
- Increased feeling of security and progress in property repossession lead to significant return in 2001 and 2002
- Slow decrease of IDP population in 2003 and 2004 corresponds to lower rate of return due to several reasons: certain IDP have locally integrated, lack of funding for reconstruction of houses, sustainability issues
- Ministry for Human Rights and Refugees gives a slightly lower estimates of IDPs in need of solution than UNHCR: 295.000 (14000 less)
- Preliminary results of re-registration exercise shows significant drop of IDP figures
Re-registration exercise of IDPs in December 2000
Commission for Human Rights, 2001:
“According to the Office of the United Nations High Commissioner for Refugees (UNHCR), as of October 2000 there were still some 793,000 internally displaced persons (IDPs) in Bosnia and Herzegovina and 300,000 Bosnian refugees abroad. Under the new laws on refugees and IDPs, all displaced persons have to re-apply to maintain their status (as displaced persons). It is expected that this re-registration exercise, the results of which were expected in early December 2000, will determine more precisely the current number of displaced persons, as well as their aspirations for the future. The number is likely to be somewhat lower than the UNHCR figure and many IDPs/refugees may declare that they no longer wish to return to their pre-war homes.”

Progress of property repossession helps many IDP to return (2001-2002)
Housing conference, 2003:
“The decrease in the regional displaced population during 2002 as shown in the above table is a continuation of the decrease in 2001. This progress is summarily analysed below. 2001-2002 saw rapidly decreasing numbers (compared to previous years) of refugees and DPs. Many found durable solutions by returning: over 120,000 returns have been recorded in 2001 in Croatia (23,100) and in BiH (98,900); some 100,000 were so-called minority returns of refugees and DPs. In 2002 17.600 returns have been registered in Croatia and 108.000 including over 102.000 "minority returns" in BiH by 31 December (Total: 125.600). (…)

Actual property repossession in BiH through the Property Legislation Implementation Plan (PLIP) at mid-March 2003 stood at 74% of the submitted requests for property repossession. Property repossession in Croatia has progressed since the 2001 revision of occupied private property. By 1 February 2003 some 8,600 housing units have been repossessed, while 10,300 units are yet to be returned to their owners.”

IDP figures stagnates (2003-2004)
Reuters, 2003:
"[UNHCR representative, Udo]Janz also said the figure halved in 2003 from the previous year's 107,000 people, an indication that the bulk of the people who wanted to return have done so by now"

In 2004 the Ministry for Human Rights carried out a re-registration exercise to identify the IDP in need of durable solutions. Those who have benefited from reconstruction assistance of have repossessed their property are not considered as IDPs in need of solution.

MHRR, 2004:
"Ministry for Human Rights and Refugees, in cooperation with competent Entity Ministries and UNHCR, during 2004 carried out revision of numerical situation of displaced persons in BiH. In a systematic manner, and based exclusively on administrative measures, number of displaced persons has been corrected from 570,000 displaced persons registered in 2000 to some 470,000. Then comparison has been conducted of indicators from database on displaced persons with collected indicators on reconstruction and property repossession, land allocation and other indicators, and there is a conclusion that only some 295,000 displaced persons in BiH are in need of displaced person status.

This strengthened MHRR in conviction that it is necessary to carry out reregistration, and then revision of status, in order to arrange legally the status of all BiH citizens, who still have need for enjoying the status of displaced person in BiH. Therefore, the “Protocol on Implementation of the Process of Revision of Numerical Situation and Status of Displaced Persons in BiH” was signed between BiH Ministry for Human Rights and Refugees, RS Ministry for Refugees and Displaced Persons, FBiH Ministry for Displaced Persons and Refugees, and the District Brcko Government. Its implementation has been foreseen in two phases. Re-registration process in BiH is underway. It will be completed on 15 February 2005, and will give reliable picture in the field of displaced persons, as well as enable launching new process, since data collected during re-registration will be used for harmonized determination of legal status and determination of rights of displaced persons at the entire territory of BiH.”

UNHCR, 15 April 2005:
"The number of displaced people in Bosnia and Herzegovina has dropped dramatically in the last five years due to returns and local integration, according to the preliminary results of a major re-registration exercise.

The initial results, released by the authorities in Bosnia and Herzegovina on Friday, show that there are now 185,000 internally displaced people (IDPs) in the country, down by two-thirds from the 2000 figure of more than 500,000. The new number is also substantially lower than the last UNHCR estimate of 310,000 at the end of 2004.

"While this drop is partly accounted for by the known return of some 210,000 people to their homes in their pre-war places of residence during this period, the figures also reveal that a further 120,000 people decided not to re-register as displaced this time round," UNHCR spokeswoman Jennifer Pagonis told reporters in Geneva on Friday. "This is presumably for the most part because they have in the meantime found a solution, either by returning to their pre-war homes or by integrating into the communities where they have been living for the past decade."

She added that the authorities must now process the applications and determine the true needs of those who are still displaced in Bosnia and Herzegovina, almost 10 years after the signing of the Dayton Peace Agreement."
"Once this is done, we should have a much clearer picture of the outstanding needs, and the authorities will be in a better position to target the limited funds available for those among the 60,000 or so families who are still in need of assistance," said Pagonis.

**National authorities estimate lower IDP figures (as of October 2003)**

- The Ministry for Human Rights and Refugees estimates indicate 386,110 internally displaced persons as of 30 June 2003
- However, the Ministry for Human Rights and Refugees estimates that the actual number of displaced persons is less than 250,000
- Reasons provided for a lower number include, displaced persons who registered more than once and persons who are no longer displaced but have not legally de-registered

**Ministry for Human Rights and Refugees October 2003, pp.23-24:**

"Current Number Of Persons Displaced In BiH"

When the number of displaced persons as at 31 December 2000 is reduced by the number of returns recorded from 01 January 2001 to 30 June 2003, there are about 386.110 persons currently displaced in Bosnia and Herzegovina. The breakdown of persons currently displaced in BiH according to national structure is presented in the charts to follow.

**Displacement Figures as at 30 June 2003**

<table>
<thead>
<tr>
<th>Category</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>Others</td>
<td>1,055</td>
</tr>
<tr>
<td>Serbs</td>
<td>207,955</td>
</tr>
<tr>
<td>Croats</td>
<td>29,489</td>
</tr>
<tr>
<td>Bosniacs</td>
<td>147,611</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>386,110</strong></td>
</tr>
</tbody>
</table>

[...]

**Projection Of Actual Number Of Displaced Persons In BiH**

The Sector for Refugees from BiH and Displaced Persons in BiH estimates that the former presented figure of 386.110 displaced persons as at 30 June 2003 is both incomplete and inaccurate because after the census had been carried out in 2000 there was no de-registration in BiH. This clearly indicates that the number of displaced persons is considerably lower then calculated while the reliable figure would be established upon the status revision exercise.

A lot of displaced families have in the meantime repossessed their properties or occupancy rights following the implementation of property laws. Additionally there is a large number of families who have been assisted in reconstruction for return and a significant number of those who have sold out either/or exchanged their housing units and settled elsewhere too. All the listed situations are according to the Law reasons for cessation of a displaced person's status [1]. For the establishment of an accurate numerical indicators on current displacement in BiH it is necessary to carry out a de-registration exercise of all those who durably resolved their status.

Besides, a technical control of the Central Database on Displaced Persons (CDDP) has resulted in the verification of a large number of double-entries due to the fact that some families have applied for status for two or more times and even in two or more municipalities at the same time.
The Strategy of Bosnia and Herzegovina for the Annex VII (GFAP) Implementation recognized the completion of a database on refugees and displaced persons as one of the most important preconditions for a successful proceedings on Annex VII (GFAP) provisions. The Ministry for Human Rights and Refugees in co-operation with UNHCR is considering the legal provisions for the realization of this process.

It is marked that not only displaced persons who are still in the need for durable solutions would benefit from this activity, but all national and international subjects providing for the reconstruction and Annex VII (GFAP) implementation too. This would result in directing the reconstruction assistance to priorities and eliminating double beneficiaries.

It is our understanding proved by the collected indicators that around 140,000 persons should be additionally de-registered in relation to the currently stated figures of displacement, as follows:

- 35,000 persons who are in the database recorded two or more times,
- 105,000 persons who durably resolved their status in some other way,

Explanation:
A lot of families have durably regulated their status on individual bases or have been assisted by various national and international organizations upon the registration exercise had been carried out.

- Some of displaced families have purchased or exchanged properties and thus decided to live elsewhere.
- A large number of families had been allocated construction land and either by self assistance or donations have built housing units.
- The implementation of property laws resulted in large number of displaced persons' repossession so the voluntary return to former places of residence in safety and with dignity is feasible but either the whole families or some of their family members are not willing to return. A lot of them are just waiting for a good opportunity to sell, exchange or rent their housing units.
- Additionally, a large number of housing units have been reconstructed but the prewar owners or individual members of their families are not returning. However, when applying for assistance in reconstruction at the same time they submitted the applications for voluntary return yet they had not left their temporary accommodation and have not returned.
- Unfortunately, some of displaced persons took the opportunities of various resettlement programmes and left abroad thus "de facto" loosing a displaced person's status but these circumstances have never been regulated "de jure".

All listed situations represent the legal basis for a cessation of a displaced person's status.

Referring to the aforementioned we estimate that less then 250,000 persons in BiH still need the status of displaced persons.

This short review does not include the social or some other aspects and dimensions on the issue but aims at the presentation of the present understanding and estimations of the Ministry for Human Rights and Refugees with regard to the current and actual number of displaced persons in BiH.

[Footnote 1] Article 6 of the Law on Refugees from Bosnia and Herzegovina and Displaced Persons in Bosnia and Herzegovina ("Official Gazette" of Bosnia and Herzegovina, 23/99)

For further information, see the full report, “Comparative Indicators On Refugees, Displaced Persons and Returnees Property Laws Implementation and Reconstruction in
At least 200,000 persons have become internally displaced since the Dayton Agreement (1995-1999)

- 80,000 persons displaced as a result of transfers of territory between the two Entities
- The internally displaced population also includes returning refugees who cannot return to their pre-war home

Newly displaced persons
UN Commission on Human Rights, 17 March 1998, para. 4:
"Since Dayton, another 80,000 individuals have been displaced as a result of transfers of territory."

Relocated returning refugees
USCR 2000, p. 220:
"In 1999, 43,385 internally displaced persons returned to their places of origin - 50 percent more than in 1998, when 29,570 internally displaced persons returned. Despite these returns, the overall number of internally displaced people in Bosnia barely decreased from the previous year, as many repatriating refugees became newly displaced. About 10,000 Bosnian Serbs originating in the Federation relocated from Yugoslavia to Republika Srpska at the time of the bombing; and many non-Serb returnees from third countries, originally from Republika Srpska, were forced to relocate to areas of the Federation."

UN SC 11 June 1999, para. 46:
"The total number of refugees having returned to Bosnia since the end of the war has reached some 330,000. Another 256,000 displaced persons have returned within Bosnia, but the overall estimated number of displaced has continued to increase to approximately 850,000, as refugees relocated upon repatriation outnumber those who return to their pre-war homes."

HIWG 16 November 1998, p. 13
106,000 refugees relocated in the Federation
9,500 refugees relocated in the Republika Srpska

For more information on the relocation on returning refugees, see "Return of refugees to situations of internal displacement (1999)" [Internal link].

Disaggregated data

Statistical profile of displaced person population (2006)

UNHCR, June 2006:
"Approximately, 82% of the DPs still have their property destroyed. It is assumed that the DPs are mainly accommodated in private property owned by someone else (22%). Some are residing in collective accommodation (8%) or are accommodated in socially owned apartments (8%). As the
economic situation in BiH is bleak, worsened by the difficulties faced through the economic transition, the problem of scarce employment opportunities is endemic for BiH. While the lack of employment opportunities constitutes an obstacle for return, it also haunts individuals in displacement. Only an estimated 17% of the DPs are employed. Besides employment, other sources of income are pension and other allowances and/or entitlements. It is assumed that 20% of the DPs are without any source of income. Among the DPs are significant numbers of persons who need special attention: 8,845 persons are physically and/or mentally challenged and 10,926 are chronically ill. (...)

**Gender and age considerations**
The recent re-registration indicates that 2,467 are elderly without any source of income. Children are also seen as a vulnerable group. There are around 19,000 minors, of which 3,000 between the ages 0-5 and 16,000 aged between 5 and 18. Furthermore, it appears that a significant number of DPs are women, roughly 96,000. Women, especially those heading a household, are also a group of particular concern. It is assumed that 32% of the households are female-headed.

For more information on the results of the re-registration exercise of IDP, see also (in sources below) "Comparative analysis on access to rights of refugees and displaced persons, Ministry for Human Rights and Refugees, December 2005, pp.81-95
PATTERNS OF DISPLACEMENT

General

Increased deportations of BiH citizens lead to further internal displacement (2005)

- Deportees are rejected asylum-seekers, or persons whose temporary protection status have ceased
- Some of the deportees are former IDPs who sought asylum abroad after the war because they were unable to return to their home
- This phenomenon was prompted by the late progress of the property repossession process
- Application by asylum countries of the “internal flight alternative” contributes to swell IDP numbers

UNHCR, January 2005:

“The number of deportations to BiH has increased in the past three years. According to the BiH State Border Service (SBS), 3,398 persons were deported from European countries during the year 2003, nearly double the number of deportations in 2002 (1,716 persons). Another 2,199 persons were deported to BiH in 2004. The highest number of deportations came from Sweden (611), Germany (465), Croatia (411) and Denmark (165). While the percentage among the deportees who appear to have gone through an asylum procedure is limited, some are persons whose temporary protection status ceased, and others are rejected asylum-seekers who left BiH after the war.

UNHCR has observed that among the deportees are former IDPs in BiH who were seemingly not able to return to their homes of origin because of their continuing protection needs and who decided to seek asylum abroad. This is prompted by the fact that, with the relatively late implementation of the property laws, many IDPs in recent years had to vacate the properties they were temporarily occupying to allow the return of the original property right holder. This, coupled with the lack of appropriate alternative solutions, may have led some of the evictees who fear to return to their pre-war place of residence or who do not have habitable property to return to deciding to seek durable solutions abroad. (UNHCR note: The Property Law Implementation Plan (PLIP) was conceived in 1999 as a tool for enabling the right to return to one's home, a right enshrined in Annex VII of the GFAP. PLIP in fact helped hundreds of thousands of refugees and IDPs to return home since. Implementation implied, however, that the right to property repossession could ultimately be enforced through the forcible eviction of the current occupant who refuses to vacate the property of another rightful owner. Under the domestic DP legislation, BiH authorities are required to provide often basic accommodation to IDPs who had to vacate the occupied properties but have a genuine need for housing. In practice, such accommodation may be limited to the neediest and is not always adequate in terms of standards.)

UNHCR remains concerned that such cases are summarily dismissed, on the presumption of the overall improved conditions in BiH, and without proper consideration of the individual claim. As some of these new asylum-seekers might have been unable to return to their area of origin because of concerns for their safety, past persecution or severe trauma, or fear of persecution by non-state agents (such as war criminals still at large), there is a continuing need for a case-by-case assessment of their claims.

An increasing number of asylum countries have started to apply the so-called “internal flight or relocation alternative” (IFA) to asylum-seekers from BiH, be they “new” asylum seekers who left
BiH after the war or persons whose temporary protection status has ceased. The application of the IFA implies that persons who have a well-founded fear of persecution in one place may be able to settle safely in other parts of the country and live a normal life there.

As indicated in UNHCR’s Guidelines on the internal flight alternative, (...) the concept should not be used to bypass a comprehensive assessment of the asylum claim. Before it can possibly be considered to expect a refugee whose well-founded fear of persecution has been established for one part of the country of origin to relocate to another, careful analysis as to the relevance and to the reasonableness of such relocation should be applied. It is UNHCR’s assessment, that in view of the current conditions in BiH, internal flight or relocation may not be an option for many individuals, who instead swell the numbers of IDPs in the country.”

**Remaining IDPs and current returnees are among the most vulnerable (2005)**

- IDP figures reduce slowly as the remaining candidates for return are the most vulnerable
- A re-registration exercise to be completed early 2005 should give a better estimate of the number of IDPs in need of durable solutions
- Returnees are also among the most vulnerable

**UNHCR, 2005:**

“[T]he number of returning refugees and IDPs is lower than expected. It is anticipated that 2005 will see a continuation of refugee and IDP returns, albeit on a reduced scale. During 2005, UNHCR will continue working towards the completion of its obligations under Annex VII of the Dayton Peace Agreement.

The continuation of the re-registration exercise begun in 2004 will yield a clearer picture of the number of those still displaced who wish to return. Although the overall number of returns is likely to be modest in comparison with those of recent years, the undiminished attention of the humanitarian community will be required, as a number of those who do choose to return will be particularly vulnerable. Legal advice and basic assistance will be required by households headed by single females, people who have been languishing in sub-standard collective facilities (including the handicapped and elderly) and those traumatized by war.”

**UNDP April – June 2003, pp.21-22:**

“The category of internally displaced persons is getting smaller – not because they are returning to their pre-war homes, but because their property is being reinstated and they lose the status of being displaced. In the previous and this quarter, the number of reinstatements grew considerably; what is worrying is that return is being reduced to the return of the poorest and socially vulnerable categories, who become even more vulnerable in their new-old environment, since they cannot count any longer with the assistance of international and entity institutions, or social or neighborly solidarity. International organizations and entity ministries complete their work on the return by reinstating refugees and displaced persons or by constructing housing facilities. It turns out that this is only a smaller part of the work, since the returnees, usually without any savings and means to start a private business, continue to depend on assistance. Thus, returnee settlements turn into isolated and introvert enclaves, without social links with their surroundings.

Numerous groups of the Roma communities, scattered around BiH, are in a similar position. Members of this population begin returning to their country, too, but they meet with a worse reception than other categories of the population. Social work centres do not even keep records of their number or these records are totally unreliable because of the great movability of Roma
families. In any case, the Roma can count less than other inhabitants of BiH with social welfare, and by all accounts, efforts of the international community to implement projects of assistance for the Roma minority have not yielded significant results.

**Displaced Roma, a particularly vulnerable group (2005)**

- Bosnian war affected Roma like other groups of the country
- Dayton peace agreement while trying to protect the three main ethnic group marginalized Roma
- Bosnian war has altered demography of Romani settlement in the country
- Marginalisation of Roma has made their return more difficult

**ERRC, February 2004, p.10:**
“The break-up of the former Yugoslavia and the wars that ensued had a devastating effect on Romani individuals and communities in Bosnia and Herzegovina. Roma were brutally treated by all parties to the conflict, and it is feared that as many as 30,000 Roma were subject to ethnic cleansing. Many Roma were also detained and severely ill-treated in concentration camps, particularly Serb-run concentration camps. Roma and Romani communities were reportedly particularly targeted in Prijedor and the surrounding villages of Kozarac, Hambarine, Tukovi and Rizvanovici. Horrific atrocities were also committed against Roma from Vlasenica, Rogatica and in Zvornik and surrounding villages. At least seventy Roma were killed in the infamous massacre at Srebrenica in 1995. Romani men were also forcibly conscripted and made to perform slave labour in the armies of all sides to the conflict. Many Romani women were raped and/or forced to perform sex labour. The 1992-1995 war saw the wholesale destruction of a number of Romani communities. To date, justice has yet to be provided to Romani victims of actions during the 1992-1995 war. […]”

**ERRC, February 2004, p.21:**
“The ethnic tensions that surfaced in 1980 and which, in 1992, culminated in three years of bitter ethnic civil war, have contributed significantly to the social exclusion of Roma in Bosnia and Herzegovina. The relatively small Romani minority was not formally allied with any of the parties to the war and at no point during the civil war did Romani groups attempt to constitute themselves as a fourth combatant group in Bosnia’s ethnic war.[…] When the terms of the peace settlement were negotiated, the situation of Roma was not taken into account. Indeed, the resulting peace treaty designed at Dayton and the post war Constitution institutionalize a state of Bosnia and Herzegovina which recognizes three groups - Bosniaks, Croats and Serbs-as hegemonic, to the exclusion of other ethnic groups”

**ERRC, February 2004, p.10:**
The genocidal civil war fought in Bosnia and Herzegovina fundamentally altered the demography of Romani settlement in Bosnia and Herzegovina. Perhaps more importantly for individuals concerned, vast number of Roma have been to date unable to claim pre-war property and have remained without adequate compensation for property confiscated or destroyed during the war.”

**ERRC, February 2004, p. 19-20:**
“As for the current situation, the London-based Minority Rights Group considers the number of Roma to be around 40-50,000, and according to the Organisation for Security and Co-operation in Europe (OSCE) Mission to Bosnia and Herzegovina, there are “10,000 to 40,000 Roma in BiH, although there could be as many as 60,000”. Local Romani activists put the number of Roma in Bosnia and Herzegovina even higher, estimating it to be 80,000 to 120,000 persons. The distribution of the Romani population is uneven, where the highest concentration is in the tuzla
Canton in the Federation, home to some 15,000 Roma. Before the Bosnian war, many of the Tuzla Canton's Roma lived in the territory that now belongs to the Republika Srpska entity, but were forcibly displaced during the war as they fled persecution as Muslims in this predominantly Serb region. In comparison, the number of Roma in all of Republika Srpska today do not reach 10,000 persons, whereas it is considered that before the war the majority of Bosnian roma lived on this territory. The Tuzla Canton is followed by Zenica-Doboj and Sarajevo cantons in terms of numbers of Roma living in them.

See also on Roma:
In the Education Section, "Efforts to facilitate the integration of Roma children at schools"
In Documentation Section, "Roma excluded from fundamental political and social rights because of lack of personal documents"
In Subsistence Needs Section, "Displacement aggravates the living conditions of Romas"
In Property rights section, "Roma continue to struggle to access property rights" and "Some measures taken to legalise Roma settlements"

Internal displacement follows a rural-urban migration pattern (1998)

Stubbs 1998, p. 194:
"There are few systematic data comparing and contrasting refugees and IDPs, though some generalizations can be made. On the whole, the refugees who left Bosnia-Hercegovina did so earlier in the war rather than later (when the exit doors were firmly closed). They tend to be urban, more cosmopolitan in outlook and better educated than their internally displaced counterparts. The presence of large numbers of rural IDPs in the urban centres has been a cause of continuing tension in Bosnia-Hercegovina (the two groups were relatively impermeable before the war) and has contributed to the continued dominance of the three ethnically-based nationalist parties."

See also "War-induced movements: typology (1998)" [Internal link]
PHYSICAL SECURITY & FREEDOM OF MOVEMENT

**Physical security**

Security situation has constantly improved in the past years but reluctance to punish ethnically motivated violence increases the feeling of insecurity (2006)

- Security has steadily improved in the last three years but return related incidents still occur in various part of the country
- There is reluctance on behalf of the police to investigate return-related incidents and a low number of convicted perpetrators
- Ethnically motivated violence affects minority returnees or their properties, religious buildings, and graves
- In some cases the authorities have fuelled inter-ethnic tensions by allocating private land belonging to minorities to members of dominant ethnicity.
- Ethnic bias in favour of the dominant ethnicity has also been reported in Court

**USDOS, 8 March 2006 p.7 and 14:**

“While incidents of violence decreased overall in the country, follow-up investigations in a number of cases were problems. Police conducted investigations but consistently failed to apprehend and charge perpetrators of ethnically motivated hate crimes. For example, in February an unknown assailant physically attacked an elderly Bosniak returnee to the RS town of Doboj.

In May a match between the country's junior national soccer team and the team of Serbia and Montenegro in Bijeljina was marred by ethnic slurs against Bosniaks and burning of the BiH flag by Bosnian Serb supporters of the visiting team. Also in May unknown persons broke the windows of three Bosniak-owned shops in Prozor.

Harassment and discrimination against minorities continued throughout the country, often centering on property disputes, despite improvements in some areas. These problems included desecration of graves, arson, damage to houses of worship, verbal harassment, dismissal from work, threats, and assaults.

Entity and local governments and police forces frequently allowed or encouraged an atmosphere in which abuses of religious freedom could take place, although there was improvement from previous years. Overall, respect for religious freedom declined during the year. In some cases, however, police and local government officials acted to protect religious freedom by providing security for major religious events and for religious buildings. The reluctance of police and prosecutors to aggressively investigate and prosecute crimes against religious minorities remained a major obstacle to safeguarding the rights of religious minorities.

Ethnically motivated religious violence was often directed against ethnic symbols, clerics, and religious buildings. Local police generally did not conduct serious investigations into such incidents. For example, in December the glass door on the mosque in Donja Puharska, near Prijedor, was broken. This was the third act of vandalism against the mosque during the year.

In the RS, administrative and financial obstacles impeded the rebuilding of religious structures that were damaged in the 1992-95 war, limiting the ability of minorities to worship and interfering with their return in many areas.”
Helsinki Committee, 17 January 2006:

“Although the security of the returnees and their property has improved in 2005, we still record a large number of assaults on national and religious facilities and monuments, and there were some cases of physical assaults and the cases of destruction of property. The police are more efficient in their work, but there is still unbalanced number of employees from the ranks of minorities.

The Helsinki Committee for Human Rights in BiH this time also expresses its concern because the authorities still fail to undertake measures in order to resolve many-year focal points and potential inter-ethnic conflicts in some cases, such as Kotorosko near Doboj where local authorities passed decisions to allow construction of houses for displaced Serbs on the appropriated private property. Already for years, Bosniaks have been claiming back their private land, and 126 Serb families ask for places to live in. In Sanski Most too, many-year pending court disputes relating to appropriation of the land of the citizens of Serb ethnicity have not yet been resolved. The authorities claim that „there is no law“ under which illegally placed crosses at the Stolac Old Town and at the monument of victims of Blajburg at Radmilja can be destroyed, etc. “

For more information on security incidents see Helsinki Committee full report (link in "Sources" below)

UNHCR, January 2005, p3-4:

“Security is still an important concern for returnees in BiH and continues to constitute an obstacle to return for some returnees. In most return locations, the security situation has steadily improved and many returnee communities report that relations with local residents are good and that the local police are acting professionally. However, as evidenced by the continued presence of over 7,000 international troops under the EU Force (EUFOR) command after the hand-over from NATO’s Stabilization Force (SFOR) in December 2004, significant concerns remain. Serious incidents continue to occur in certain areas, including killings and beatings, violence directed against properties as well as incidents of harassment and vandalism of religious premises. The presence of suspected war criminals and failure to arrest and prosecute them constitutes an important obstacle to return and affects the sense of security of many returnees.”

See also: “Impunity for war crimes and lack of efficient witness protection hinders minority return.”[internal link]

UNHCR, January 2005, p. 3-6:

“In 2004, 135 return-related security incidents were reported over the year, 56 in the RS, 73 in the Federation and six in Brcko District. In December 2004, a returnee leader in Teslic was killed by an unknown perpetrator which created fear and anger among the returnee community. Apart from being a returnee leader, the victim was also witness to a cantonal court trial against an individual charged for war crimes.[…]

It remains a significant concern that the local police are often reported to be slow in responding to incidents affecting returnees and that few return related incidents result in adequate sentences or even identification of the perpetrators. In certain instances, serious negligence and mishandling during the examinations have cast serious doubts on the ability and willingness of the local police to identify and arrest suspects. Prosecutors have also on several occasions been reluctant to act upon cases, as was the case in the Eastern RS in March 2004, when hateful messages and posters of Radovan Karadzic were driven around in open vans and no investigation related to Article 390 of the RS Criminal Code (inciting or promoting national, racial or religious hatred) was being launched.
The number of perpetrators convicted remains extremely low, and the sentences imposed are often lenient in spite of the seriousness of the crimes. Additionally, local authorities often do not sufficiently condemn return-related incidents and if so, their statements are frequently the result of strong encouragement from international organizations. The recruitment of additional “minority police officers” still needs to be actively pursued and the proper conditions for them to fulfil their duties need to be put in place. In Srebrenica, for instance, less than 10% of the local police force are ‘minority officers’ and it has been very difficult to retain them due to the salary differences in force across Entities. It is hoped that the European Union Police Mission (EUPM) despite its limited mandate will continue to exert efforts in ensuring the recruitment of “minority police officers” within the context of a transparent police reform process and in securing the safety of returnees.”

UNHCR, COP, January 2005, p.3:

“During 2005, UNHCR will continue working towards the substantial completion of its obligations under Annex VII of the GFAP. While the number of returns is expected to be modest when compared with those of earlier years, among those who do choose to return inevitably will be some of the most vulnerable of the displaced. Single female-headed households, the war-traumatised and those languishing in sub-standard collective facilities, including the handicapped and elderly, will require legal advice and basic assistance in their search for durable solutions. As the number of agencies prepared to provide such assistance to the vulnerable returnee population is ever dwindling, UNHCR’s continued attention, albeit with reduced human and financial resources, to these populations will be critical. Additionally, geographic focus for such assistance will be placed on those areas where minority returns began only in recent years and returnees did not receive assistance that was more readily available in the earlier years of the return (e.g. in Eastern Republika Srpska). Apart from providing assistance to the most vulnerable of the returning population, UNHCR staff will continue to be active in the field albeit with reduced human and financial resources, monitoring the overall return and reintegration process and intervening in critical protection related matters.”

MHRR. December 2004:

“Within discussion on security issues as elements on sustainability of return, it has been stated that security is less and less a reason which negatively affect reintegration of returnees and adoption of final decision on return. During last two years property laws implementation has been accelerated, and almost all property and occupancy rights have been repossessed by pre-war owners and occupancy rights holders. This has given great stimulus to creation of good atmosphere among people, very accelerated freedom of movement and opening of all parts of BiH for free access and movement of pre-war population. However, in the sense of overall situation in the segment of security, it is necessary to work further on institutional building of this sector. Employment of representatives of so-called «minority peoples» in the police and Ministry of Interior is certainly the priority on which not enough has been done.”

Landmines continue to pose barrier to safe return of displaced persons and refugees (2006)

- Lack of funding for demining hinders sustainable return
- Demining is particularly difficult in BiH due to the absence of mines map
• 128 municipalities are affected by mines
• BiH Ministry of Foreign Affairs coordinates demining activities, a mine action strategy was adopted in 2003
• Between 1996 and 2002, the mine incident rate has fallen from an average of 52 casualties per month to six casualties per month
• In the first 4 months of 2003, 14 of 27 fatal mine accidents were returnees
• Land mines pose a significant barrier to the reconstruction of BiH, to the safe return of IDPs and refugees and to the development of economic activities

UN Committee on Human Rights, 29 December 2005, par.37:  
“Landmines pose a significant obstacle to the safety of returnees, to reconstruction efforts and to the development of economic activities in Bosnia and Herzegovina, which remains the most heavily mined country in South-Eastern Europe. As the majority of returns are taking place to rural areas where agriculture and cattle-breeding are essential means of subsistence, IDPs and returnees are particularly heavily affected. From 2003 to 2004, a total of 95 persons were victims of mine accidents, of whom 37 were returnees and 5 were IDPs. The Ministry of Civil Affairs, which is responsible for the implementation of the mine action plan, intends to prioritize mine clearance in return areas. However, at the current rate of mine clearance, which is almost totally funded by international donors, this will take an estimated 10 years.(…) The Representative also received allegations of a deliberate lack of mine clearance efforts in some return areas.”

See also: Reducing risk through community mine action, July 2006

UNHCR, January 2005, p.6:  
“Land mines are still a significant barrier to the reconstruction of the country, the safe return of IDPs and refugees and the development of economic activity in BiH, which remains the most heavily mined country in South Eastern Europe. According to figures provided by the BiH Mine Action Centre in 2003, 670,000 mines and 650,000 unexploded ordnance (UXOs) remain in roughly 10,000 sites. Twelve (12) per cent of these explosive devices are located in zones of everyday use, reconstruction and economic activities. Low resources allocated to demining activities negatively impact the possibility for the safe return of IDPs and the creation of job opportunities. At the current speed of demining (currently almost totally funded by international donors), it is estimated by the BiH Mine Action Centre that it will take around 10 years to demine these priority areas, excluding the clearance of UXOs.

In 2003, a total of 54 persons were victims of mine accidents, out of whom 9 were children, 19 were returnees and 5 were IDPs.12 During 2004, a total of 41 mine accidents were reported by the ICRC, 18 of which involved returnees. Two 10-year-old boys were killed in an UXO explosion in a return area near Mostar when playing outside in October 2004.”

MHRR, December 2004, p.67-69:  
“Mine clearance is certainly important precondition of return, especially if we know that at the moment of current interest is return in villages and places where agriculture and cattle breeding represent basis for securing existence of returnees.

This field is being coordinated with Ministry of Civil Affairs, in a manner that return plans and projects are forwarded to it, after which they are harmonised with mine clearance plans through Mine Action Commission and bilateral donors. Bosnia and Herzegovina is a country with the biggest and the most complex mine problems in Europe and is in the group of the most
endangered countries in the world. This situation is made more complex by nature of mine problems in Bosnia and Herzegovina, whose main characteristics are the following: lack of minutes on minefields, unreliable information on minefield locations, their forms and disposition of mines, laying of mines individually or in a relatively small number over large area, which has large suspicious area as a consequence.

Mines restrict access to natural and other resources necessary for country development, particularly for sustainability of population return.

Total suspicious area is 2,481 sq.m. or some 4% of the territory of Bosnia and Herzegovina. Number of local communities endangered by mines in BiH is 1,366, which is 1/5 of total number of all communities. Some 1,300,000 people reside in mine-struck communities, out of which some 100,000 are directly endangered. A total of 128 municipalities have been affected by mine contamination.

In the previous period significant progress has been achieved in building of the antimine actions in Bosnia and Herzegovina. This progress is reflected in building onto Standards for mine and UXOs clearance, and adoption of new Demining Strategy in Bosnia and Herzegovina till 2009.

Landmine Monitor Report, 18 November 2004, p.5:
“There are 18,600 recorded minefields, which is said to represent only about 60% of the actual number of mined areas. [...] The increase [compared to previous years] is attributed to identification of new suspected mined areas by the Landmine Impact Survey and by systematic survey in Republika Srpska.”

Landmine Monitor Core Group 25 August 2003:
“As of 9 May 2003, the ICRC database contained information on 4,798 landmine/UXO casualties since 1992, of which 927 were killed and 3,871 injured. Between 1996 and 2002 the mine incident rate fell from an average of 52 casualties per month to six casualties per month. [...] BHMAC reports that the mine/UXO suspected areas cover about 12 percent of Brcko, in comparison with 1.6 percent of Republika Srpska and 6 percent of the Federation. Brcko is an area from which there was substantial population displacement during the war and to which refugees are actively returning, despite the mines and UXO.”

UNHCR July 2003, para.14:
“From 1996 to November 2002, 1,423 persons were victims of mine accidents (out of which 480 were fatal accidents). In 2002, 72 mine accidents were reported, 18 of which involved IDPs or returnees. According to the ICRC, a total of 27 persons were victims of fatal mine incidents in the first four months of 2003, 14 of whom were returnees.”

March 2004, “Mine action plan of Bosnia and Herzegovina for the year 2005”, Ministry for Civil Affairs and Communications

Mine action web page

Police and judicial institutions contribute to impunity in certain areas but reform is ongoing (2006)

- Police and judiciary response to minority-related violence and harassment remained inadequate
- Follow-up investigations were problematic and police failed to apprehend offenders
• Federation Canton governments have agreed to an ethnically mixed police, yet there continues to be resistance in practice
• Ethnic imbalances in police force still need to be redressed to ensure safety of minority returnees
• Police and judiciary reforms were underway in 2003

UN Committee against Torture, 24 November 2005, par.10:
"[T]he Committee is concerned about:

reported failure by the State party to carry out prompt and impartial investigations, to prosecute the perpetrators and to provide fair and adequate compensation to victims;

alleged discriminatory treatment in criminal proceedings where the ethnic majority often fails to prosecute alleged criminals of the same ethnic majority;

reported harassment, intimidation and threats faced by witnesses and victims testifying in proceedings and the lack of adequate protection by the State party; (…)

inadequate cooperation with the International Criminal Tribunal on Former Yugoslavia, in particular by the Republika Srbska, in failing to arrest and transfer indicted persons, including Radovan Karadzic and Ratko Mladic, indicted for genocide, torture and other international crimes"

USDOS, 8 March 2006, p.3:
"Police in the RS generally did not meet target standards of ethnic representation, as mandated by various agreements; however, the number of minority police officers in both entity police forces continued to increase slightly. (…)

The Federation and the RS have their own police forces, as does the District of Brcko. There are three primary levels of law enforcement in the country: the state-level BiH Ministry of Security, which does not have a police force but is supported by the State Investigation and Protection Agency (SIPA) and the State Border Service (SBS); the Federation Ministry of Interior; and the RS Ministry of Interior. The RS interior ministry is centralized with five public safety centers. The Federation interior ministry is decentralized; each of the 10 cantons has its own cantonal ministry of interior that functions autonomously. Neither the Federation nor the RS interior ministries reports to the BiH Ministry of Security. Although they share information, these structures function quasi-independently and have jurisdiction over different offences. For example, the security ministry is responsible for state-level crimes, such as terrorism and trafficking in persons, whereas the RS and Federation interior ministries are responsible for crimes in their areas. In October the entities and state authorities approved a police reform proposal which supported key European Commission principles on unified policing and set out a roadmap for implementation."

CoE, 18 July 2006, par.10:

"On police reform, the Republika Srpska (RS), after accepting the principles of the reform, is currently blocking any implementation measure that would threaten existing Entity competence, which is seen as a first step in the dismantling of the Serb Entity;"

For more information on police reform see:

“Police reform is about making BiH a safer place to leave”, OHR, 28 July 2006 (see link in sources below)
Authorities began to deploy minority officers in areas with minority returns; however, the lack of housing for returning police officers hindered this process. The RS Ministry of Refugees committed to provide reconstruction material to a total of 20 Bosniak minority police during the year. Eighteen packages had already been delivered by year's end. NGOs provided the majority of this assistance, but the RS assistance was an improvement over last year. In Prijedor 42 of the 747 area police officers were Bosniak, and a number of senior positions were set aside for Bosniaks.

All Federation Canton governments have agreed to an ethnically mixed police force in principle; however, many Cantonal governments continued to resist integration in practice. The Neretva (Mostar) Canton was an exception; the Interior Ministry in this Canton made significant progress in unifying the police force, including co-locating offices, shedding Croat nationalist insignia, and unifying portions of the budget under its direct control. In other cantons of Herzegovina, there has been far less progress in depoliticizing the police forces. Although Western Herzegovina (Livno) Canton hired significant numbers of police from among Serb returnees in several municipalities, Croat nationalists still dominated the command structure and budget process. A Serb appointed in late 2001 as police chief in the town of Drvar resigned in September. Both the Livno and Siroki Brijeg Cantons failed to remove Croat nationalist insignia from police uniforms, and they continued to fly Croat nationalist flags on police and Interior Ministry buildings. On the other hand, due to IPTF pressure, Livno's Interior Ministry began flying the Federation flag, alongside the Croat nationalist flag, in September. (Drvar had already begun flying the Federation flag.) Drvar was also the site of an incident involving the destruction of a Catholic cross, allegedly by local Serbs, but police reinforcements from Livno defused the situation without any violence.

Police in the RS generally did not meet target standards of ethnic representation, as mandated by various agreements. An interentity agreement negotiated under U.N. auspices allows the voluntary redeployment of officers across entity lines to redress ethnic imbalances. There were over 1,600 minority police throughout the country by year's end. This represented approximately 10 percent of the total police force. In general, while new officers were accepted into the police academies under strictly observed ethnic quotas, it will take years of concentrated effort to establish effective, professional multiethnic police forces throughout the country.

UNHCR July 2003, para. 13:
"The recruitment of minority police officers still needs to be actively pursued and the proper conditions for them to fulfill their duties need to be put in place. In Srebrenica, for instance, 8.6% of the local police force are minority returnees, and there have been many difficulties in retaining them due to the salary differences across entities. It is hoped that the European Union Police Mission (EUPM) will continue to exert efforts in ensuring the recruitment of ‘minority’ police officers and in securing the safety of returnees, despite their limited mandate and means.”

European Commission 18 November 2003:
"With significant international input and support, BiH has begun to address the weaknesses of its various system(s) of justice and home affairs. For too long, ethnicity, geography and personal contacts were the major determinants of justice in a fractured legal system. Crime, both
opportunist and organised, became widespread, and corruption put deep roots into the social, economic and political fabric of society. The full implementation of the legal and judicial reforms currently underway will determine whether BiH can establish rule of law and due process.

[...]

In both Entities and Brcko District, police reform is ongoing. Since January 2003 an EU Police Mission (EUPM) has worked to establish and consolidate sustainable policing arrangements under BiH ownership in accordance with best European and international practice. The EUPM mentors, monitors and inspect police with the aim of enhancing police managerial and operational capacities. The exercise of appropriate political control over the police is monitored. In operational terms, EUPM priorities are to develop an intelligence-led approach to fighting organised crime and to reinforce returnee security. As a result, BiH policing has improved: professionalism has increased, management capacity has grown and co-operation between police services and other enforcement agencies (e.g. SBS and customs authorities) has developed. The creation in 2003 of a new State-level Ministry of Security is also welcome. Though still in its infancy, the ministry will have responsibility for State-level concerns such as border control and counter-terrorism (i.e. SBS, SIPA and Interpol).

[...]

A reform leading to the creation of a State-level intelligence and security service is underway.

[...]

The judicial system in BiH was long sub-standard. In contrast with Brcko District where the entire legal and judicial system was relatively quickly overhauled, both FBiH and RS persistently accommodated incompetence and corruption within their legal and judicial systems. Judges and prosecutors were subject to pressure both from political leaders and from criminals. Basic judicial infrastructure was poor, lacking proper equipment, records and access to information and modern legal practice. Moreover, since the BiH legal space was split between Entities and Brcko, justice was easily avoided; judicial decisions in one jurisdiction were seldom enforced in another.

Reform has begun. In February 2002 a comprehensive judicial reform strategy was inaugurated. Despite a constitutional challenge by the RS National Assembly, High Judicial and Prosecutorial Councils (HJPCs) at State and Entity levels with both national and foreign members were established with the task of overseeing the appointment of judicial staff. Simultaneously, a reform of the court structure and of prosecutors’ offices was inaugurated, cutting the number of courts and judges. [...]

A further important reform was the creation of a BiH State Court and State Prosecutor (again initially challenged by the RS). The State Court has criminal, administrative and appellate divisions and a number of Special Panels, including those for Organised Crime, Economic Crime and Corruption. It is staffed by both national and international judges. First cases have already been transferred to the Court. The Court will fill a legal lacuna by dealing with issues (e.g. asylum and immigration cases) which are within the competence of the State. Also, it should create a further bridge between the judicial and legal systems of the Entities. The 2003 creation of the State Ministry of Justice charged with ensuring international and inter-Entity co-operation on legal matters is also significant, although this ministry also faces personnel and resource shortages.

The highest level of judicial authority is the BiH Constitutional Court. Despite Road Map recommendations, the Constitutional Court has been persistently short of resources and for more than a year it was reduced to inactivity because of the failure of RS to appoint Serb members. Despite these difficulties, the Court enjoys authority and has become a respected arbiter."

For more information on concerns relating to violations of international human rights law by security forces in Bosnia-Herzegovina, see pp. 79-81, “Anti-terrorism Measures, Security and Human Rights: Developments in Europe, Central Asia and North America in the Aftermath of September 11”, International Helsinki Federation for Human Rights, April 2003 [Internet].
Establishment of a special War Crime Chamber in a context of widespread impunity for war crimes (2005)

- The Internal Tribunal for Yugoslavia is due to end investigations end of 2004
- A special War Crime Chamber of the BiH State Court will be established to take over cases from the International Tribunal.
- International presence within the War Crime Chamber is foreseen during the first few years
- Majority of war crime cases will still have to be judged by local courts known for their ethnic bias
- Despite a state-level law that provides for protection of vulnerable witnesses issued by the High Representative, there remains inadequate protection of vulnerable witnesses
- Lack of adequate witness protection does not encourage victims to testify and risks to perpetuate impunity
- Thousands of perpetrators continue to enjoy impunity for war crimes, crimes against humanity and genocide, committed during the war in Bosnia-Herzegovina

HRW, 14 October 2004

“As part of its completion strategy, the Yugoslav tribunal is scheduled to end investigations this year, trials by 2008, and appeals by 2010. Recently, the tribunal’s prosecutor moved to refer cases back to the courts in Croatia and Bosnia as part of that strategy”

CoE, 4 February 2005:

“The package of laws regulating the establishment of the War Crimes Chamber within BiH and the transfer of cases from ICTY to the BiH Prosecutor and the State Court officially came into force on 6 January 2005. A Registry will provide independent administrative support to the Court. Only highly sensitive war crimes and organised crime cases will be tried by the BiH State Court while other cases will proceed before the Entity (local) courts. To make sure that the new Chamber gains the benefit of years of international war crimes tribunal experience a strong international presence is foreseen for the first two years. This presence will gradually decline during years three to five and thereafter this specialised Chamber and the corresponding Department in the BiH Prosecutors Office will be fully BiH staffed institutions. Although it was foreseen that the War Crimes Chamber would be operational in January 2005 and start its first trials, the required reconstruction work and building of secure pre-trial detention facilities are now expected to be completed by the end of February 2005. As also requested by PACE (see PACE Recommendation 1664(2004, adopted in June 2004), the CoE member States are invited to consider assistance to the new War Crimes Chamber by way of human, material and financial resources. In this respect, the OHR has already indicated that substantial additional funds will be required to continue work of the Chamber into the future. International donors have pledged to revisit this requirement once the Chamber has been set up.”

HRW, 14 October 2004:

“Setting up specialized war crimes chambers—as they have done in these three countries [Bosnia and Herzegovina, Croatia, Serbia and Montenegro]—is a good thing, but there will still be hundreds of cases in Croatia and Bosnia that will need to be tried by ordinary local courts,” explained Richard Dicker, director of the International Justice Program at Human Rights Watch.
“In local courts, we see bias against ethnic minorities, intimidation of witnesses, and police stonewalling investigations.”

AI, 26 May 2004:
“In June the PIC endorsed a proposal by a joint OHR/Tribunal working group to establish a special chamber for war crimes in the new State Court, to be operational from 2004. This was the latest development in a protracted process which aimed to set up a judicial mechanism which would be capable of taking over cases from the Tribunal and other sensitive and complex cases from the Cantonal and District Courts.[…] However, AI remained concerned that the proposed solution would prove inadequate to address the vast legacy of outstanding cases of war crimes and other crimes under international humanitarian law. Given the problematic and flawed trials for war crimes conducted so far before the entity courts, the organization had serious concerns that a short-term solution which would only deal with a fraction of the outstanding caseload would not provide justice to the tens of thousands of victims of these crimes, nor would it benefit the longer-term process of truth-seeking and reconciliation between various communities. The proposal also did not take into account the regional nature of the war and the fact that many perpetrators as well as material evidence relating to these crimes remained in neighbouring states, beyond the reach of the Bosnian criminal justice system. Another issue of crucial importance, the protection of vulnerable witnesses from attacks and intimidation, was not adequately addressed: although a new state-level law was imposed by the High Representative in January, in practice there was no effective protection inside the country and AI was informed that no international protection scheme, along the lines of the one used by the Tribunal, was foreseen.”

UNHCR, January 2005:
“Some initiatives have, in the meantime, been taken to establish a legislative and administrative framework for witness protection in BiH.[…] The new War Crimes Chamber of the BiH Court, for example, will also include a Victim and Witness Management Section. While this is in itself a positive development and shows acknowledgment that the protection of citizens providing testimony in war crimes trials is the responsibility of domestic institutions, the fact that the Victim and Witness Management Section itself has already been discussing with selected states about the potential relocation of war crimes witnesses and their families to third states, is testimony to the country’s accepted lack of ability to ensure the safety of some witnesses, as the implementation of laws that provide for the protection of war crimes witnesses has also been hampered by the lack of financial resources for technical requirements for the courts to provide proper protection.”

AI 12 November 2003:
“Thousands of perpetrators continue to enjoy impunity for war crimes, crimes against humanity and genocide, committed during the war in Bosnia-Herzegovina. The official number of persons still unaccounted for is around 16,000 (including thousands of unresolved ‘disappearances’). Rape and sexual abuse of women and girls occurred on a massive scale. However, most of the vast number of case files, recorded and investigated by Bosnian police and prosecutors, are gathering dust in the criminal justice system’s offices and archives, instead of generating active and effective prosecutions before the country’s courts. At the Tribunal, proceedings have been completed or are continuing for about 90 persons, most of whom were in leadership positions or responsible for large numbers of these crimes. Thus, many thousands of persons responsible for the worst possible crimes in Bosnia-Herzegovina still have got to be brought to justice in any court.”

See also also
"Looking for justice, The War Crimes Chamber in Bosnia and Herzegovina", Human Rights Watch, February 2006 (see link in sources below)
"Justice at risk: War crimes trials in Croatia, Bosnia and Herzegovina and Serbia and Montenegro", Human Rights Watch, 14 October 2004
**Republika Srpska recognizes its responsibility in the Srebrenica massacre (2006)**

- In 2003, the Human Rights Chamber requires RS to give information on Srebrenica events and the fate of the victims
- Close monitoring and pressure of OHR ensures efficiency of the Srebrenica Commission
- A first report is produced in June by the Srebrenica Commission whereby authorities of RS recognizes responsibility for the massacre
- A final report is released in November 2004
- Resolving the fate of missing persons is key to reconciliation and stabilization of the country
- RS continues to be reluctant to identify, try and remove from office persons mentioned by the Srebrenica Commission

**USDOS, 8 March 2006:**

"The RS government established an independent Srebrenica Commission to comply with a 2003 Human Rights Chamber decision ordering it to inform families of the fate of relatives missing from the Srebrenica massacre and to investigate the events giving rise to the massacre and report the results of the investigation. In November 2004 the commission turned over a classified annex of documents implicating an unknown number of war crimes suspects to RS authorities for investigation. In March the RS government forwarded to the Office of the High Representative and the state prosecutor a list of 892 persons suspected of involvement in the massacre who still hold government jobs. However, the High Representative Paddy Ashdown found that RS authorities failed to provide information about hundreds of individuals listed in the classified annex. In October RS authorities submitted their final report as required by the High Representative Ashdown. (…)

During the year the Federation commission uncovered five mass graves in Liplje near Zvornik that contained the remains of more than 1,000 victims of the Srebrenica massacre."

**OHR, 18 November 2004:**

"A suit brought by a group of relatives of those still classified as missing following the fall of the Srebrenica “safe area” in July 1995 led, in 2003, to a judgement by the Bosnia and Herzegovina Human Rights Chamber requiring Republika Srpska, inter alia, to conduct an in-depth investigation to discover the fates of these missing persons and to issue a report on its efforts and findings.

Although the Human Rights Chamber’s judgement did not task the Office of the High Representative with any particular action, it was clear that international monitoring and stimulus to this process was necessary if it was to have the outcome sought by the Human Rights Chamber. Therefore I requested the Senior Deputy High Representative, Bernard Fassier, to monitor the activity of the Republika Srpska Commission. Following the Commission’s belated establishment
in January 2004, it became apparent that the role of the Senior Deputy High Representative would need to involve more than mere monitoring if the Commission were to produce a meaningful report that disclosed hitherto unknown facts relevant to the chamber’s judgement. […]

The eventual result of these efforts was a report in June that, for the first time, constituted recognition by the Republika Srpska of the origins, nature and extent of the atrocities committed in and around Srebrenica. The report also disclosed the location of previously unknown primary and secondary mass graves, documents and other evidence that may serve as bases for further prosecutions of war crimes.

The report established that, between 10 and 19 July 1995, some 8,000 Bosniaks were liquidated in a manner that constituted a severe violation of the international laws of war and that the perpetrators and others took elaborate measures to conceal these crimes by relocating the bodies.

Moreover, the report:

· Identified 32 locations of mass graves, 11 of which were not previously known;
· Elaborated upon the participation of particular Republika Srpska military and police units;
· Alluded to participation by army and police units from “Republika Srpska Krajina” and Serbia in the action and aftermath.

The report cites documents making clear that “Operation Krivaja” had three planned phases: the attack on Srebrenica, the separation of women and children, and the execution of males.

The Srebrenica Commission promised to produce a consolidated list of all the persons still unaccounted for after the July 1995 events in and around Srebrenica, but stressed that it would have achieved better results if it had had access to other relevant documentation of the competent Republika Srpska institutions, as well as to records of the Federation.”

CoE, 13 October 2004:
“On 22 June 2004, the RS President addressed the Entity’s population on TV and endorsed the Srebrenica Commission’s report as a shocking confirmation of crimes and human suffering on a massive scale. The publication of the Interim Report and RS President subsequent public statement have contributed to breaking the taboo surrounding war crimes, which may make political and executive cooperation with the ICTY less controversial.

CoE, 18 Juin 2004:
“[T]he authorities should be urged to take more active measures on the issue of missing persons. As underlined by the International Commission on Missing Persons (ICMP), a large number of missing persons often means that a significant part of the population does not, or does not fully, identify with the peace process. It also undermines trust in government and democratic institutions. Resolving the fate of missing persons is a crucial humanitarian and political task. It is a sine qua non to reconciliation and to the building of a peaceful future in common.

In this respect, the RS Srebrenica Commission is a key test for the RS: according to the High Representative, the Interim Report published on 14 April 2004 highlighted “sustained and systematic obstruction and inaction by the government of RS”. Consequently, he dismissed a
number of RS officials, including the RS ICTY Liaison Officer and decided to hold RS Ministers of Interior and Defense personally “responsible for ensuring a sea change in the cooperation and support offered by their institutions” and has required RS President and RS Prime Minister to take direct personal responsibility for ensuring the work of the Commission. He will also hold them ultimately responsible for ensuring that the Human Rights Chamber’s legal requirements are met and that BiH’s reputation and future are restored. “

**USDOS, 28 February 2005, section 1.b:**

“On November 15, the Commission released the final portion of its report. The Commission found that there were 7,806 confirmed victims. A classified annex of documents implicating an unknown number of war crimes suspects was turned over to the RS authorities for investigation. Former RS Prime Minister Mikerevic and RS President Cavic acknowledged publicly for the first time that large-scale war crimes took place in Srebrenica and apologized to the relatives of the victims on behalf of the RS government. The families’ associations reiterated their desire to see the perpetrators of the massacre brought to justice as soon as possible.

By year's end, 1,438 victims of the Srebrenica massacre had been buried; 1,304 of them were interred at the Srebrenica-Potocari Memorial and Cemetery.”

**OHR, 7 January 2005:**

“The High Representative expressed concern that the RS Government has to date taken no action to form a group which will analyse the documentation produced by the Srebrenica Commission and to identify all officials, with emphasis still in the employment of the RS authorities, whose names appear in the confidential annexes. This is critical to demonstrate the commitment of the RS to build a future for all Bosnia's citizens. The High Representative reminded PM Mikerevic that he "expects the work to be completed, and a report delivered both to the State Prosecutor and to the OHR, by the end of February".

Then RS Government has publicly pledged to bring those responsible for war crimes to justice. This review is amongst the measures designed to remove from the RS institutions - and especially from the RS security structures - those who bear individual responsibility for the RS' non co-operation with the ICTY and bring to justice those directly responsible for these crimes.

The High Representative reaffirmed that the actions he set out in his press conference on 16 December must be followed up by the RS and BiH. It is the obligation of all countries in the region to fully co-operate with the ICTY.

The High Representative also informed PM Mikerevic of the personal assurance given to him yesterday in Belgrade by Vojislav Kostunica, the Serbian Prime Minister, when PM Kostunica said he would do everything possible to assist the RS to extradite individuals indicted by the ICTY to the Hague.”

**Determination of international community against RS lack of cooperation with ICTY leads to first transfers to the Tribunal (2005)**

- Current assessment of war crime accountability in Bosnia and Herzegovina shows that RS has the worse record in terms of cooperation with the International Tribunal
- RS lack of cooperation with the Hague leads to a series of dismissal in the RS in June 2004.
- Cooperation with ICTY is Council of Europe commitment and one of the conditions for further European integration
- NATO refuses BiH's participation to Partnership in Action because of RS lack of cooperation with ICTY
Radical measures adopted by the High Representative’s provoke political crisis in RS
IC’s determination bears fruit: RS finally transfers its first 3 suspected war criminals to the Hague (January-March 2005)

HRW, 14 Janvier 2005:

“War crime accountability
For the first time in years, the NATO-led Stabilization Force (SFOR) did not arrest a single Bosnian citizen indicted before the International Criminal Tribunal for the former Yugoslavia (ICTY) in 2004. Nevertheless, SFOR intensified efforts to arrest Bosnian Serb wartime leader Radovan Karadzic, conducting several operations near Sarajevo and in remote mountain villages in the east of the country, where Karadzic was believed to be hiding. SFOR also arrested several individuals believed to belong to the network of persons who were helping Karadzic hide. Still, Karadzic remained at large as of October 2004.

Leading political and military figures in the wartime Croatian Republic of Herzeg-Bosnia – Jadranko Prlic, Bruno Stojic, Slobodan Praljak, Milivoj Petkovic, Valentin Coric, and Berislav Pusic – surrendered to the Tribunal on April 5, 2004. They are charged with crimes against humanity and war crimes committed against Bosnian Muslims in Western Bosnia and Herzegovina during the early 1990s. […]

Local officials in each entity of Bosnia remain unwilling to prosecute members of the ethnic majority in their region for war crimes. Hundreds, possibly thousands, of war crimes committed in Republika Srpska have yet to be investigated and tried before the Republika Srpska courts. In May 2004, Republika Srpska opened the first war crimes trial ever against ethnic Serbs; eleven Serbs are accused of the illegal detention of Catholic priest Tomislav Matanovic in 1995, who was later found murdered. In the Federation of Bosnia and Herzegovina (the Bosniac majority area), there have been more indictments against members of the local ethnic majority, but these efforts have been plagued by a lack of support on the part of police and political elites, as well as poor cooperation between the countries in the region and entities in Bosnia and Herzegovina on judicial matters, and a lack of witness protection mechanisms.”

CoE, 18 Juin 2004:

“During an exchange of views with the CoE Ministers’ Deputies on 7 May 2004, the President of the ICTY, Mr T. Meron welcomed the joint statement made on 14 April by State and Entities’ authorities, in which they committed themselves to making a maximal effort to bring all indicted war criminals to justice and cooperate fully with the ICTY. However, Mr Meron also underlined a number of problems with the RS and called upon the RS authorities to strengthen their efforts in locating and apprehending individuals indicted by the ICTY, as mandated by the Security Council Resolution 1534. Concrete results are still expected. He also urged the RS to increase their efforts to investigate and try individuals responsible for war crimes within their domestic judicial system and emphasized the importance of the creation of a War Crimes Chamber within the BiH Court. In this respect, he underlined that the ICTY would not transfer any case to national judicial authorities as long as there was any doubt about their capacity to make impartial judgment. In a press statement on 12 May 2004, Judge Meron warned that the ICTY should not close before Messrs Karadzic and Mladic are tried.”

CoE, 13 October 2004:

“Co-operation with the International Criminal Tribunal for the former Yugoslavia (ICTY) is an unambiguous obligation under the Dayton Agreements and under international and domestic law. It is also a CoE post-accession commitment identified as a priority matter by the CoE Ministers’ Deputies back in 2003, as well as one of the 16 conditions of the EU Feasibility Study. Consequently, the Secretariat delegation repeatedly pointed out that the road to further European integration goes via real cooperation with the ICTY, especially in the RS.”
June 2004: the High Representative dismisses RS officials to clear obstruction to cooperation with the Hague

CoE, 13 October 2004:
"On 30 June 2004, the High Representative dismissed 59 RS senior officials, including the RS Parliament speaker and RS Interior Minister, from their political, administrative or economic posts, in order to "clean the corrupt and obstructionist structures in the RS and especially the SDS, and to root out those people who bear the heaviest responsibility for creating a climate of secrecy, intimidation and criminal impunity that allows indicted war criminals to evade justice"[...] "11 of them have been removed indefinitely and 48 may return to public life once Radovan Karadzic is in the Hague and BiH and its entity the RS complies with its international obligations towards the ICTY"[...]. The High Representative announced other measures, in particular the establishment of a Commission on Police restructuring. On 9 July 2004, the UN Security Council also reiterated its call on the BiH authorities to fully cooperate with the ICTY[...]. Subsequently, the BiH Prime Minister proposed an increased cooperation between intelligence and security agencies of BiH and Serbia-Montenegro and a joint police team. The RS National Assembly also adopted a Resolution inviting the indicted persons to voluntarily surrender."

December 2004: NATO’s refusal to let BiH within the Partnership for Peace on account of bad cooperation with the Hague triggers a new set of measures by the High Representative, including new dismissals of RS officials:

CoE, 4 February 2005:
"On 16 December 2004, following a second refusal by NATO to admit BiH into its Partnership for Peace programme because of continued lack of co-operation with the ICTY by the BiH authorities, especially those in RS, the High Representative, Lord Ashdown, announced a series of measures "to address the systemic weaknesses in BiH’s law enforcement and security institutions" (see below, under IV, B). His announcements were accompanied by those of the US government to freeze the assets of the Serb Democratic Party (SDS), founded by war-crimes fugitive Radovan Karadzic, and impose a visa ban on the leaders of the SDS and its coalition partner, the Party of Democratic Progress (PDP).

Twenty-four hours later [after the announcement of the HR’s decision], the RS Prime Minister and member of the PDP, Mr. Dragan Mikerevic, resigned in protest. He was followed by the BiH Minister of Foreign Affairs, Mr. Mladen Ivanic, founder and leader of the PDP. The BiH Minister of Transports and Telecommunications (PDP) resigned on 20 December and the Minister of Defence submitted his resignation on 29 December 2004. The BiH Minister of Justice stated he would only resign if asked to by all the RS political parties." [...]“The first transfer of a war crimes suspect to The Hague, with the co-operation of the Republika Srpska (RS) authorities in mid-January 2005, is a significant step in the right direction. However, as most wanted war crimes suspects remain at large, much is still needed to ensure full co-operation with the ICTY, a priority matter for the CoE and a pre-condition for progress towards further Euro-Atlantic integration. The decision of the High Representative mid-December 2004 to dismiss several high officials of the RS testifies that obstacles still exist in this respect.”

After 9 years of inactivity, RS transfers three indictees for war crimes to the ICTY

OHR, 14 March 2005:
"Welcoming the transfer of Gojko Jankovic to the ICTY today the High Representative, Paddy Ashdown said:

"I welcome the fact that Gojko Jankovic is finally in The Hague after nearly a decade on the run, and that the RS authorities have carried out his transfer. He stands accused of grave crimes for which he will now answer before a court of law.

Jankovic is the third indictee transferred to the ICTY this year by the Republika Srpska authorities, and the second in a period of three days. These are welcome steps forward by the RS authorities, and in notable contrast to their previous nine years of inactivity and obstruction in relation to the ICTY.

But these steps represent the start of a process. The international community will now be watching closely to see that this process on which the RS authorities have embarked continues and picks up pace. That means that the remaining indictees - including Radovan Karadzic and Ratko Mladic - must be transferred to The Hague without delay. The first steps on the road towards cooperation with the ICTY have been taken: but the journey will not be complete until every indicted war criminal from BiH is in The Hague."

See also: "Statement: HR welcomes Stanisic transfer to the Hague", OHR, 11 March 2005 and "Statement by the High Representative for BiH, Lord Paddy Ashdown, with regard to the transfer by the authorities of Republika Srpska (RS) of ICTY indictee Savo Todovic", OHR, 18 January 2005

**Freedom of movement**

**Improving freedom of movement despite continued influence of ethnic separatists (2002-2003)**

- All permanent police checkpoints were dismantled in 1999
- The introduction of universal license plates in 1998 also improved the freedom of movement throughout Bosnia significantly
- There were improvements to facilitate freedom of movement during 2002
- The High Representative continued to remove local officials obstructing the return of refugees and IDPs in 2002
- Many problems remain to prevent returns, including political pressure for individuals to remain displaced to increase ethnic homogeneity in specific areas
- Though trends of intimidation for displaced persons to stay in their place of displacement decreased in 2002-2003, they were still practiced in some areas

**U.S. DOS March 2003, sect.2d:**
"The Constitution provides these rights, and freedom of movement, including across the Inter-Entity Boundary Line, continued to improve; however, some limits remained in practice."
Pressure from evictions, combined with an increased sense of security in most areas of the country and awareness that international assistance was limited, prompted the increase in returns.

There were some improvements during the year that facilitated returns. In January the High Representative promulgated the ‘Vital Interest’ Decision, which provided a clearer accounting of Refugee Ministry budgets used to support return. In the RS, the Refugee Ministry followed the initiative begun in 2001 and supported the return of Bosniaks and Croats by providing reconstruction assistance to both of these groups. As of September, a total of 460 Bosniak and Croat families received such assistance. As of October, the RS Refugee Ministry had spent $3.2 million (KM 6.4 million) on the initiative. The RS Refugee Ministry also agreed to provide reconstruction assistance to approximately 20 minority police officers returning to the RS, and deliveries were made to 18 of these officers as of the end of October. The increased number of ethnically integrated police forces helped improve the climate for returns, although security remained inadequate in some areas [...].

Serbs continued to return in greater numbers to the Federation. In October the Federation Refugee Minister, after some delay, paid funds promised for joint reconstruction and return projects. The town of Drvar, a previously Serb town which was ‘ethnically cleansed’ during the war by Croats, was by year’s end again majority Serb, with a rate of compliance with property laws of 90.27 percent. In early June, the High Representative removed the hard-line Bosniak mayor of Donji Vakuf for obstructing the return of refugees and IDPs. The mayor had publicly opposed the return of Serbs. In December preparations were made for a plan to hand over the responsibilities of OHR’s Reconstruction and Return Task Force to the BiH Government. Because no government was formed from the October elections by the end of the year, these plans were delayed.

Many problems remained that prevented returns, including: Hard-liners obstructing implementation of property legislation; political pressure for individuals to remain displaced in order to increase the ethnic homogeneity of the population in a specific area; societal violence; and the lack of an ethnically neutral curriculum in public schools. Lack of housing also contributed to the problem; the needs continued to far outweigh available resources. Municipal administration taxes on documents that are necessary for return, such as birth or land certificates, remained high. In addition, minority returnees often faced employment discrimination, lack of access to health care in the place of return, and denial of utility services such as electricity, gas, and telephones by publicly owned utility companies. All of these problems decreased from the previous year, yet still persisted in hard-line areas. In October members of the Federation Ministry for Refugees and Social Welfare were subjects of allegations of corruption; the High Representative determined that an audit of the Refugee Ministry’s budget needed to be undertaken. Auditors initially commented that fraud and misuse of funds were likely involved. The audit was ongoing at year’s end. The Federation Ministry was unable or unwilling to keep financial commitments in support of returns throughout the year, and this caused many IDPs, particularly Bosniaks, to remain displaced or continue living in deplorable conditions as a result of the Ministry’s failure to provide support.

The continued influence of ethnic separatists in positions of authority hindered minority returns. Government leaders in both the RS and the Federation often used a variety of tactics, including public statements, to inhibit the return of IDPs. Municipalities in the RS continued to allocate illegal land plots in areas such as Zvornik and Bratunac, in eastern RS, altering prewar demographics and intimidating potential returnees. Much of Croat-controlled Herzegovina and towns in eastern RS remained resistant to minority returns, although efforts by hard-line Croats to resettle returning refugees in a manner that consolidated the results of ethnic cleansings ceased for the most part. IDPs living in those areas, even those who privately indicated interest in returning to their prewar homes, frequently had been pressured to remain displaced, while those
who wished to return had been discouraged, often through the use of violence […]. These trends of intimidation for displaced persons to stay in their place of displacement decreased, although they were still practiced in the staunchest hard-line areas of the RS and Herzegovina.

U.S. DOS February 2001, sect. 2d:
"The IPTF and SFOR completed the dismantling of all permanent police checkpoints in 1999, greatly enhancing freedom of movement.

Freedom of movement improved significantly with the introduction of universal license plates in 1998. The new plates do not identify the vehicles as being registered in predominantly Bosniak, Bosnian Serb, or Bosnian Croat areas."

UNHCR September 2001, para. 10:
"[D]espite the inclusion in Article I (4) of the Constitution of BiH of a guaranteed right to return to freedom of movement, the introduction by the High Representative in 1998 of uniform vehicle license plates across BiH, and the ongoing activities of UNHCR bus-lines across key return axes, certain segment of the displaced population remain reluctant and uncertain to cross inter-Entity, and sometimes inter-Cantonal boundary lines."

Inter-entity bus traffic supported by UNHCR has contributed to improved freedom of movement of minority members between the entities (1996-2002)

- Free bus service initiated by UNHCR in 1996 to foster cross-entity visits of minority members
- Security of buses initially ensured through escorts by international armed and police forces
- Bus lines were fully commercialized by the end of 2002

ICG 30 April 1997, section 1.4:
"By late spring of 1996, it was obvious to UNHCR that the assessment visit strategy was not working and that the dividing lines between the entities were hardening into de facto borders. It was equally clear that tens of thousands of 'minority' Bosnians desperately wanted to cross the lines to visit their former towns, get in contact with family members and friends, find out whether their former houses were still standing and, if so, who was occupying them.

In perhaps its boldest experiment, UNHCR decided to open a free bus service on routes to the Sarajevo Serb suburbs and between cities such as Banja Luka and Drvar, Tuzla and Bijeljina, and Sarajevo and Gorazde. UNHCR began this program with considerable trepidation because it was clear there might be harassment and attacks on the buses. There were indeed some problems on a number of routes initially, but overall the bussing program was a success. The buses were often filled to capacity and the frequently emotional response of the riders made clear that beneath the surface of the inter-community cold wars, there remains a pool of 'normal people' who resist the nationalists' program of ethnic segregation.

The safety of the bussing experiment was of high concern at the start, and this was an area where IFOR took special measures to assure security. The initial runs on some routes were escorted by IFOR and IPTF, and were monitored from the air. Bosnian Serb authorities in some areas such as Banja Luka initially resisted the buses on the grounds that the service had not received prior authorisation, that the drivers were not licensed in the RS Entity, and the buses were uninsured. At one point, a British IFOR commander in Banja Luka dispatched armoured vehicles to an especially troublesome Bosnian Serb checkpoint with orders to attach hooks to the police cars and drag them away. This put a definitive end to the resistance at that location. Over time the harassment subsided."
The service was sub-contracted to the Danish Refugee Council. By the end of the year, 11 such bus lines were in operation, providing transportation to up to 1,000 passengers per day wishing to visit their places of origin. UNHCR intended to transfer this service to a commercial operation, but security concerns have so far prevented the implementation of this intention. Despite the efforts of local authorities, in particular Bosnian Serbs and Croats, to obstruct the bus service, some 283,000 passengers have used the buses as of April 1997. The annual cost of this service has been approximately $1.3 million. While the impact of the bus service on actual numbers of minority returns is impossible to determine, there is no doubt that it was an important confidence-building effort and promoted freedom of movement across the former confrontation lines.

UN December 1998, p. 59:
"The present UNHCR-sponsored bus lines enabled hundreds of thousands to visit their former homes and re-establish pre-war links. While some of these bus lines were commercialised during 1998, UNHCR will maintain the remaining bus lines which service minority returns and are not commercially viable, and will open additional bus lines particularly in sensitive areas of minority return."

UNHCR May 1999, sections 2.45-2.46:
"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. 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.

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."

UNHCR June 2002, p. 353:
"Bus lines (one a cross-border service) were operational in 2001. The number of bus lines was reduced to nine after April 2001, due to commercialization of four lines. The remaining lines will be privatized as soon as they become commercially viable."

The UNHCR bus lines operated through December 2002. The bus lines have now been fully commercialized.

See Map of UNHCR bus lines as of December 2002 (website of UNHCR Office of the Chief of Mission in Bosnia and Herzegovina) [Internet].
Vulnerable groups

Ensuring witness protection to address war crimes (2005)

- Successful prosecution of war crimes depends on availability of credible witnesses
- Monitoring of war crime trials shows that inadequate witness protection hamper trials and put witnesses at risk
- Impunity for war crimes puts witness at risk and prevents return
- Lack of cooperation between entity police and judicial forces facilitates impunity
- There are several reports of harassment of witnesses leading to withdrawing of statements
- Adequate witness protection should ensure physical and psychological situation of the witnesses

UN Commission on Human Rights, 29 December 2005, par.35:

“The Representative was informed of a series of acts of intimidation and harassment of witnesses in war crime trials and regrets the absence of a functional witness protection programme. With large numbers of alleged war criminals still enjoying impunity, the protection needs and safety concerns of these persons cannot be underestimated and often pose a decisive obstacle to them upon return to their communities of origin. The domestic criminal justice system persistently failed to take steps to actively prosecute alleged perpetrators. A major factor regarding continuing impunity was the lack of cooperation between the Federation of Bosnia and Herzegovina and Republika Srpska judicial authorities and police forces. The War Crimes Chamber within the Bosnia and Herzegovina State Court has after much delay taken up its work in September 2005, which constitutes an important step towards expediting the prosecution of war criminals. However, the lack of financial and other urgently required resources is a continuing cause for concern, as it may undermine the effectiveness of the Chamber’s operation and impedes the realization of a witness protection programme.”

UNHCR, January 2005:

“Special attention must be paid to witnesses testifying before the International Criminal Tribunal for the former Yugoslavia (ICTY), because of the number of suspected and/or indicted war criminals still at large and the fact that a fully functional witness protection programme is not yet in place in BiH. For example, in 2002, ICTY witnesses were on at least two occasions the target of violence. In two separate incidents, the house of an ICTY witness was damaged by explosives and a war crime witness found an explosive device under his car. In May 2004, the brother of a war crimes suspect allegedly in the process of providing information on the former Bosnian Serb leader Radovan Karadzic and his network to the ICTY, was mistakenly killed in a raid by the Republika Srpska (RS) police. It is being argued2 that the informer was targeted in order to silence him before he was able to say more. Increasing numbers of cases have become known where war crimes witnesses have been threatened and in several instances they were reported to have withdrawn their statements. As an indication for the prominence with which war crimes suspects still move around BiH with impunity, it was revealed in December 2004 that the RS Army had until summer 2004 been harboring and protecting prime war crimes suspect Ratko Mladic, despite repeated and public pleas to collaborate with the ICTY and apprehend war
In December 2004, a witness to a local war crimes trial in Zenica who had recently made two statements was killed by an unknown perpetrator in Teslic. This situation of intimidation and harassment of trial witnesses may be further exacerbated when cases begin to be transferred from the ICTY to domestic courts.

HRW, October 2004:

“The successful prosecution of war crimes cases depends on the availability of credible witnesses, which in turn requires that witnesses are confident that they can testify truthfully without fear of retribution. Achieving accountability through national war crimes trials, therefore, requires measures to protect witnesses prior to, during, and after trials. In some cases, effective witness protection requires a long-term witness protection program or resettlement in another country.

Governments in the region should develop mechanisms to resettle witnesses in other countries, in cooperation with the international community, as a complement to effective in-country witness protection programs. Many crimes will be impossible to prove unless former members of the military, paramilitary, or police units that perpetrated the crimes testify against their comrades. The international community must undertake to facilitate the relocation of such witnesses, including arrangements for them to reside outside the former Yugoslavia.

Ultimately, the small size of many Balkan states sets an objective limit to the usefulness of witness protection measures. In the long run, the best defense against witness intimidation is the creation of a climate conducive to war crimes prosecutions throughout the Balkans, by developing a political consensus about the importance of war crimes prosecutions, as well as independent and professional legal systems. Unfortunately, the actual climate is far from ideal. It is crucial that the governments show leadership and speak clearly in favor of accountability. Human Rights Watch’s monitoring of recent war crimes trials in the Balkans indicates that the lack of adequate witness protection is hampering trials and forcing witnesses to take unnecessary risks.

The Ilijasevic trial in Bosnia and Herzegovina makes clear that where witnesses share the same ethnicity as the accused they are often afraid or otherwise unwilling to testify in war crimes trials. The three ethnic Croats who testified for the prosecution in the trial between December 2002 and October 2003 stated that they did not know the accused. A former prison guard in the Croat-held Vares detention facility, testifying on March 25, 2003, even claimed that he did not know the name of any other guard who worked in the same shift with him in the prison.

Trial observers and journalists from the area have repeatedly suggested to Human Rights Watch that fear of retribution prevented some Bosniac (Bosnian Muslim) witnesses in the Ilijasevic trial from telling the court all they knew and, in some cases, from coming forward at all. A majority of the Bosniac witnesses in the trial are returnees to the locations mentioned in the indictment against Ilijasevic. Although it is difficult to establish whether or why witnesses were unwilling to provide complete and accurate evidence, fear of retribution is certainly a plausible explanation.

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AI, 12 November 2003, p.19:

“The issue of protecting the security of victims and witnesses as a result of testifying at war crimes proceedings has been the subject of protracted discussion in Bosnia-Herzegovina. Reports of harassment and intimidation of trial witnesses have emerged during virtually all war crimes trials that have taken place to date, often resulting in the collapse of prosecution cases or the significant reduction of evidence as witnesses changed or revoked statements given earlier. While the adoption of witness protection legislation (currently only in force on the state level, and to a limited extent in the Federation) goes some way towards resolving the problematic situation, much more needs to be done on the practical and legal level in order to ensure adequate protection of witnesses testifying in war crimes trials before all courts in the country. […] The point needs to be made that the protection of vulnerable witnesses must take account of other needs apart from their physical security. These politically-charged trials have a profound social impact - both at the general level of the community at large and at the level of those participating in the proceedings. They do not take place in an academic, judicial vacuum but are very much part of the dynamics of political and social developments, as many proceedings so far have taken place against a backdrop of mass publicity. Practical, psycho-social and medical support should be offered to all vulnerable witnesses, in particular with regards to the high risk of re-traumatisation as a result of giving testimony and being subjected to cross-examination. The need for such support is expressly recognized in international law. Article 68(1) of the Rome Statute requires the Court and the Prosecutor to take such measures.[…]

The dire economic and social living conditions of many witnesses (in particular former detention camp inmates, rape victims, displaced persons, single parents and the elderly - categories which obviously to a large extent overlap) need specific attention as well. Therefore, it is recommended that witness protection schemes work in close cooperation with the local health and social service system, as well as with organizations with experience in working with vulnerable and traumatized individuals.”

See also "Justice shelved: impunity for rape in Bosnia-Herzegovina", Amnesty International, 12 October 2004
"Decision enacting the Law on protection of witnesses under threat and vulnerable witnesses", OHR, 24 January 2003

Impunity for war crimes and lack of efficient witness protection hinders minority return: (2005)

- Presence of suspected war criminals in the place of return constitutes a serious obstacle to return
- War criminals are moving freely and occupying position in local administration
• Impunity associated with psychological and material vulnerability of war crime victims makes return even more difficult
• Impunity continues for those responsible of widespread rape campaigns
• In general, BiH cooperation with ICTY has been has been less than satisfactory, especially in the RS
• RS Authorities have transferred their first case of war crime indictee in 2005 after heavy pressure from the international community

USDOS, 8 March 2006:
“The security situation for returnees improved during the year, although isolated incidents of violence were reported and a hostile atmosphere still existed in many areas. Many returnees cited authorities’ failure to apprehend war criminals as a disincentive to return, as they did not want to live in communities with persons who had committed war crimes and had not been held accountable. Many displaced persons were creating permanent lives away from their prewar homes, and only individuals with few other options (including a large number of elderly pensioners) tended to return.”

UNHCR, January 2005:
“The presence of suspected war criminals and failure to arrest and prosecute them constitutes an important obstacle to return and affects the sense of security of many returnees. Moreover, it is not only that the local police has often not been able to arrest war criminals, but the continued presence of suspected war criminals in the local administration which hampers trust of the local population and particularly returnees into the justice system.[…] Despite the efforts made in the context of the decertification process undertaken by the International Police Task Force (IPTF) before the end of 2002 as regards police officers against whom there was evidence of wartime crimes, considering the magnitude of war crimes committed in Bosnia and Herzegovina, and the active role of local administrators in the execution of these crimes, it is unlikely that all war criminals have been removed from local administrative bodies. In cases where officers have been decertified, IDPs and returnees have come across them in other central roles in their former municipalities, either as experts or consultants to the Ministry of Interior, in the judicial systems and other central parts of the local administration, including in schools.”

AI 12 November 2003, p.19:
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AI, 12 October 2004:
“Entrenched ethnic divisions among the political elites in Bosnia continue to shape political and human rights developments in the country. While ethnic violence has for the most part ended, ongoing ethnic divisions among Bosnia’s constituent peoples – Bosniacs (Bosnian Muslims), Serbs, and Croats – continue to impede progress in key human rights areas, such as war crimes accountability and the return of refugees and displaced persons.

An example of impunity: sexual war crimes

“Bosniak, Croat and Serb women who endured horrendous crimes of sexual violence have still to obtain justice. Nearly a decade after the armed conflict in Bosnia-Herzegovina of 1992-95, only a handful of those responsible have been brought to justice for the widespread rape and sexual abuse of women. Women were held in sexual slavery and subjected to repeated rapes and other forms of torture by armies and paramilitary groups on all sides of the conflict.

Vigorous campaigning by women’s organizations, which first revealed to a shocked world the extent of the abuses in 1992, has made a crucial contribution to the recognition of rape as a war crime. Prosecutions for rape and sexual enslavement as crimes against humanity took place at the International Criminal Tribunal for the former Yugoslavia, and the Rome Statute of the International Criminal Court subsequently recognized rape, sexual enslavement and other crimes mostly committed against women and girls as war crimes and crimes against humanity.

Despite this, virtual impunity continues. There have been almost no prosecutions for rape and other crimes of sexual violence before domestic courts in Bosnia-Herzegovina, denying most women access to justice, redress and reparation. The men who raped them enjoy continuing impunity, while the lives of the victims remain socially and economically blighted. Apart from services provided by women’s organizations, appropriate medical and psychosocial support remains generally unavailable.

In June 2003, as the Tribunal began to prepare for its closure in 2010, the international community proposed the establishment of a State Court with a War Crimes Chamber in Bosnia-Herzegovina, which is expected to start proceedings in early 2005. However, moves to create a national war crimes court in Bosnia-Herzegovina have not satisfied doubts that the perpetrators will ever be brought to justice.

The new court – created in a process that appeared driven by international financial and political factors – will fail to deliver justice and redress unless women feel that it is safe to testify. There would have been even fewer prosecutions at the Tribunal if it were not for the courage and determination of women who have stood up to threats and intimidation.

There is no effective protection for witnesses from attacks and intimidation inside the country or under an international protection scheme such as that in place at the Tribunal. Women prepared to testify at the State Court need to be guaranteed protection of their physical safety and access to psychological, social and economic support both during trial proceedings and afterwards.”

War crime accountability

HRW, 14 Janvier 2005:

Local officials in each entity of Bosnia remain unwilling to prosecute members of the ethnic majority in their region for war crimes. Hundreds, possibly thousands, of war crimes committed in Republika Srpska have yet to be investigated and tried before the Republika Srpska courts. In May 2004, Republika Srpska opened the first war crimes trial ever against ethnic Serbs; eleven Serbs are accused of the illegal detention of Catholic priest Tomislav Matanovic in 1995, who was later found murdered. In the Federation of Bosnia and Herzegovina (the Bosniac majority area), there have been more indictments against members of the local ethnic majority, but these efforts
have been plagued by a lack of support on the part of police and political elites, as well as poor cooperation between the countries in the region and entities in Bosnia and Herzegovina on judicial matters, and a lack of witness protection mechanisms.”

**CoE, 4 February 2005:**
“The first transfer of a war crimes suspect to The Hague, with the co-operation of the Republika Srpska (RS) authorities in mid-January 2005, is a significant step in the right direction. However, as most wanted war crimes suspects remain at large, much is still needed to ensure full co-operation with the ICTY, a priority matter for the CoE and a pre-condition for progress towards further Euro-Atlantic integration. The decision of the High Representative mid-December 2004 to dismiss several high officials of the RS testifies that obstacles still exist in this respect.”

See also “Justice at risk: War crimes trials in Croatia, Bosnia and Herzegovina and Serbia and Montenegro”, Human Rights Watch, 14 October 2004, link below
“Foca confronts its past” HRW, 15 October 2004

*For more information on the need for continued international protection of witnesses of war crimes, see Section 3, UNHCR, July 2003, “UNHCR’s Concerns with the Designation of Bosnia and Herzegovina as a Safe Country of Origin”, link below*

*For more information regarding the general problems with justice and reconciliation in Bosnia , see ”Bosnia: Massacre Trial Highlights Obstacles to Justice in the Balkans,” Human Rights Watch, 16 January 2004, link below*

**New impetus to prosecute war crimes trial in Republika Srpska but cooperation with the ICTY remains inadequate (2006)**

**Human Rights Watch, 16 March 2006**
“For most of the past decade there has been effective impunity for war crimes in Republika Srpska (the predominantly Serb entity of Bosnia). By November 2005, only two war crimes trials had been completed in Republika Srpska. In contrast, over fifty war crimes cases were heard during the same period in the Federation of Bosnia and Herzegovina (Bosnia’s other entity), including more than a dozen involving defendants from the dominant ethnic group in the location in question. Serbia and Montenegro carried out thirteen trials in the same period, all but one involving Serb defendants, and Croatia had a large number of trials, including nine trials involving Croat defendants.

However, in late 2005 war crime prosecutions began to gain momentum in Republika Srpska. In two trials completed in November and December respectively, a court in Banja Luka convicted a total of four ethnic Serbs on war crimes charges, and one Serb was convicted in the town of Trebinje in December. As of early February 2006, a war crimes trial against an ethnic Serb was ongoing in Trebinje district court, and another one involving a Serb defendant in Banja Luka district court. Prosecutors in charge of war crimes prosecutions in several parts of Republika Srpska were also nearing completion of other investigations.

The rise in the number of prosecutions reflects a greater willingness of Republika Srpska to bring war crimes suspects to trial. In addition, the creation of the new Sarajevo War Crimes Chamber has significantly increased the number of war crime cases likely to be heard in Republika Srpska. During 2005, the Special Department for War Crimes in the Office of the Prosecutor of Bosnia
and Herzegovina carried out a review of war crimes cases investigated in Bosnia. While the most serious cases are likely to be prosecuted in the War Crimes Chamber in Sarajevo, a large number have already been referred to local prosecutors in Republika Srpska and the Federation of Bosnia and Herzegovina. The Special Department for War Crimes has transferred around forty cases to Republika Srpska prosecutors, and further transfers are possible.”

AI, January 2006:

“Co-operation between the RS authorities and the Tribunal remained inadequate. By the end of 2005, no suspect indicted by the Tribunal had been arrested by the RS police. A policy of “voluntary surrenders” by the RS authorities resulted in a number of transfers from the RS, or with the assistance of the RS authorities. However, the policy violated the obligation of the RS to co-operate fully by arresting and transferring indicted suspects. Six publicly indicted suspects remained at large, some of them believed to be in the RS or in Serbia and Montenegro.”

Reintegration of vulnerable groups can prove very difficult (2000-2003)

- Discrimination based on ethnicity, political affiliation, national origin and gender impact more severely on vulnerable groups, including minority returnees, Roma and female-headed households
- 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
- Ethnic membership, lack of financial resources and absence of family support seriously affect the access of vulnerable groups to health care and social services
- Already disadvantaged groups also risk being further marginalised through reconstruction assistance, privatization and allocation of the housing stock
- Many returnees, in particular in rural areas controlled by another ethnic group, or elderly, disabled and residents of collective centres, find themselves in extremely precarious conditions

OHCHR 21 January 2003, para.6:

“It is still the case that the majority of human rights concerns are rooted in some form of discrimination based on ethnicity, political affiliation, national origin, gender, or various intersections thereof. Difficulties experienced by the entire country due to economic hardship or the aftermath of the conflict impact more severely on vulnerable groups, for example minority returnees, Roma and female-headed households. The pervasive influence of political parties in areas which should be free of any influence, such as employment and access to housing, is to be deplored and must be remedied. […] It is hoped by the Special Representative [of the Commission on Human Rights to examine the situation of human rights in Bosnia and Herzegovina] that the new gender law, when implemented, will address some of the inequalities, but he urges much greater efforts to analyse the full ramifications of all forms of discrimination to ensure that positive steps are taken towards their removal.”

UNHCR August 2000, sect. 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 BiH. 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 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.

The ethnicity of a returnee might also affect her/his access to health care and social services. 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. 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. The reintegration of elderly persons without family support can prove particularly difficult. The elderly in BiH 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 BiH 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."

**UNCHR 29 January 2001, para. 33:**
"Insufficient attention has been paid to the needs and problems of persons belonging to vulnerable groups, many of them women, in the return process. There is a grave risk of already disadvantaged groups being further marginalized and excluded when property is redistributed in Bosnia and Herzegovina through reconstruction assistance, privatization and allocation of the limited available housing stock. Additional efforts are needed to address the needs of vulnerable people."

**UNCHR 29 January 2001, para. 18:**
"Five years after Dayton, discrimination on the basis of ethnicity, political opinion and gender remains one of the core problems in Bosnia and Herzegovina. The importance of this matter increases as the international community tries to push for the accelerated return of refugees and IDPs. Return makes sense only if it is sustainable. Once the familiar obstacles of poor security and difficulties in property repossession are overcome, access to social and economic rights will be of primary importance. Unfortunately, many returnees - particularly in rural areas and locations where returnees are a small minority (in particular in eastern Republika Srpska and some Bosnian Croat controlled areas) - find themselves in extremely precarious conditions. This is especially true for the most vulnerable groups among the returnees, including the elderly, sick and disabled, and residents of collective centres."

*See also "Extremely Vulnerable Individuals: The Need for Continuing International Support in Light of Difficulties to Reintegration Upon Return", November 1999, website of UNHCR mission in Sarajevo [Internet]*
SUBSISTENCE NEEDS

General

The failure to reform of the social welfare system leaves the most vulnerable IDPs unassisted (2006)

- The current structure of the social welfare system allows for unequal assistance depending on which Canton or which entity the DP reside
- The reform required to ensure a functional the social welfare system is hampered by pressure of various interest groups
- The international community is promoting a reform to address the needs of the most vulnerable

CoE, 11 May 2005, par.50:
“Another complicating factor in this sphere is the extremely complex and heavy institutional structure of the State and especially the Federation. In this Entity, social welfare is a Cantonal power, but without all Cantons having adopted legislation thereon. The Cantons also have large competences to adopt implementing legislation on health care. The Advisory Committee has been given to understand that the current system results in significant differences between the Cantons and between the Entities and that no authority feels responsible for filling existing gaps in the social net. This situation has a negative impact on those having to deal with authorities of different levels in their daily life, in particular displaced persons such as the Roma who fled the Republika Srpska.”

UN CESCR, 24 January 2006, par. 40-42:
“The Committee encourages the State party to promote the adoption of the proposed Law on Amendments to the Law on Social Protection, Civilian War Victims, and Families with Children which is currently in the Parliamentary procedure in the Federation of Bosnia and Herzegovina and which provides for the transfer of the budget for the social protection of civilian war victims and persons with disabilities not related to armed conflict from the cantons to the Federation, in order to eliminate inequalities resulting from the diverging availability of funds in the cantons. It also requests the State party to ensure that the authorities of the Federation of Bosnia and Herzegovina extend this budgetary transfer to other categories of social protection beneficiaries.

The Committee recommends to the State party ensure that victims of sexual violence suffered during the armed conflict of 1992-1995 obtain the status of civilian war victims, to devise and implement a coherent strategy at State level to protect the economic, social and cultural rights of victims of sexual violence and their family members, and to ensure the participation of victims of sexual violence in any decision-making processes affecting them.

The Committee requests the State party to promote the adoption of an inter-entity agreement on pension rights and to ensure the implementation of the inter-entity agreement on health insurance with a view to guaranteeing access to pension benefits and health care by returnees who move from one entity to the other.”

OSCE, 11 April 2006:
“In the absence of gainful employment, displaced people and returnees at the very least need to have access to essential social services and utilities in order to remain in their homes. Social welfare and assistance payments, pension benefits, health care, education, and temporary social housing are all issues that influence whether an individual who returns home is able to remain. Unfortunately, a combination of inter-entity politics and labyrinthine constitutional structures hampers Bosnia and Herzegovina’s ability to provide such services successfully at even minimal levels. Too often still, local interest groups influence decisions on budgets for essential aspects of life such as social assistance and health care, social security, and welfare in order to ensure that their particular constituency receives a disproportionate share of the available benefits. This only works to the detriment of other socially vulnerable groups, which include but are by no means limited to refugees and the internally displaced. Since these special interest groups often hold disproportionate sway within political parties, politicians often tend to evince little or no interest in making the legislative and policy changes needed to ensure a functional social safety net in Bosnia and Herzegovina.”

OSCE, 15 September 2005, p.5:
“The Mission has, for instance, lately increased its engagement in the rights to social protection and adequate housing. This alteration in focus has gradually taken shape because of the acute failure of entity level governments to meet basic international obligations and to implement state-wide legislation to cover the needs of the most vulnerable members of society. This shift in focus also coincides with the efforts of the international community to reform the social welfare system, as part of the World Bank’s SOSAC II programme and its work with the BiH authorities resulting in the country’s Poverty Reduction Strategy Paper (PRSP), as well as to ensure adequate funding to such protection mechanisms after the introduction of a Valued Added Tax (VAT) at the beginning of 2006. (The Government of BiH has committed to establishing a ‘social fund’ to help people of limited means cope with the effects of a single, seventeen percent-rate VAT with no exemptions, but so far concrete details for this fund are lacking.)”

Persisting problems of access to utilities for returnees and other vulnerable persons (2006)

- Ministry for Human Rights and Refugees coordinates efforts to reach agreement on electricity between responsible Ministries and Directors of electricity companies
- MoU harmonises procedures for reconnection in favour of returnees
- Reconstruction of electricity network will focus on return areas
- Some areas of Croat controlled Herzegovina and Eastern RS still deny returnees access to electricity
- Problems in access to utilities for returnees and other vulnerable persons continued to be reported in 2002-2003 in a number of municipalities
- Private lawsuits have been lodged against utility companies
- Inter-Agency Working Group on Utilities was created in May 2001 to deal with legal analysis and the development of a strategic approach regarding discriminatory practices
- Returnees are often over-billed for periods during which they were displaced or for reconnection
- Utility companies claim a lack of technical or network capacity to deny re-connection to returnees

Helsinki Committee, 17 January 2006:
“One of the most common forms of obstruction can be illustrated with the example of the Croatian returnees to the municipality of Derventa, who have been waiting already for six years for the low-voltage electric network to be reconstructed and connected to their homes. There are 150 households waiting for it. In the area of Ustiprac, 20 percent of returnees’ houses are also in darkness, the same as in the municipalities of Zvornik, Višegrad, Sanski Most, Glamoc and elsewhere throughout Bosnia and Herzegovina. The situation is similar with water supply, roads, and in particular it is difficult to exercise the rights to health and social protection, or education.”

UNHCR, 26 January 2004:

UNHCR welcomes the MOU on Reconnection of Returnee Housing Units to the Electricity Networks, signed today in Sarajevo between the responsible BiH ministries and the electricity companies in Bosnia and Herzegovina. The MOU and its future implementation represents significant progress in the BiH authorities taking over the responsibilities for the creation of suitable conditions for the return of all peoples who wish to return in line with Annex 7 of the General Framework Agreement for Peace in Bosnia and Herzegovina.

Returnees have faced a myriad of problems with the reconnection of their properties to the electricity network since the very beginning of the return process in Bosnia and Herzegovina. Returnees as one of the most economically vulnerable groups in BiH, were thus also heavily burdened by taxes and fees for the electricity reconnection.

As a result of the MOU, all three BiH electricity companies will take over the responsibilities for the reconstruction of the electricity network with an emphasis on return areas and returnee households as a priority for reconnection. Municipal authorities and MHRR Regional Centres will closely cooperate with the electricity companies in order to ensure full transparency in the use of funds allocated for this purpose. The most important provision in the MOU is the harmonization of an exemption of reconnection taxes and fees for returnees throughout Bosnia and Herzegovina. UNHCR will continue to monitor its implementation until the rights of all returnees to again have access to vital services to be provided by the authorities, is ensured.

US DOS, 28 February 2005:

“Some areas of Croat-controlled Herzegovina and some towns in eastern RS remained resistant to minority returns. This was most often expressed through official obstruction of returnees’ access to local services

(i.e. municipal power and water, education, and health care). For example, the government-owned RS electric company was obliged to connect residents who live within 50 meters of an existing power line. Despite repeated requests, they consistently failed to connect many eligible returnee households, especially in the Srebrenica-Bratunac area.”

Ombudsman of the Federation of Bosnia and Herzegovina, March 2003:

“In a number of municipalities problems of access to utilities for minorities were reported in 2002 - 2003 Article 11 of the International Covenant on Economic, Social and Cultural Rights recognises the right of every citizen to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions.

However, there is a huge rift between standards defined by international conventions, which bodies of governance committed to comply with, and the actual state of social rights of citizens in the Federation of BiH.
Wartime devastation and reduced donations by the international community cannot be used, seven years since the end of the war, as valid justification for the arrogant attitude of authorities towards the socially most vulnerable categories of the population. There continues to be a disproportion between the living standard of the majority of the population, who are on the verge of poverty, and the fees burdening them for utility services, which are an essential requirement for life. […] An example that illustrates social poverty are numerous addresses by citizens over lawsuits brought against them by public enterprises for failure to pay utility bills. Although sometimes these bills are around 10 or so KM, citizens are in a hopeless situation between an inability to pay and a possibility of being left without electricity or water, as the basic requirements for normal life.

In the area of Herzegovina-Neretva Canton, cases were reported of massive addresses by citizens who complained of water and electricity being cut off for entire buildings and settlements due to outstanding debts from the wartime and post-war period. Through mediation by the Office of Ombudsmen of FBiH in Mostar, in co-operation with responsible persons in the water company in Mostar, a fast and efficient solution was found to prevent water being cut off.

The problem of electricity cuts, however, remained unsolved. The power distribution company in Mostar, "Elektrodistribucija", namely, refuses to issue outstanding debt cards which would show which period outstanding debts refer to. This prevents citizens from checking individual monthly bills and their foundedness, or if they are possibly outdated. The board of "Elektrodistribucija" Mostar passed a decision that citizens themselves would have to cover the costs of issuance of outstanding debt cards, which is an additional fee for the already impoverished citizens.”

**UNDP 2003:**

Bugojno Municipality

[...] "Access to public utilities: Low confidence in the ability of potential returnees from rural areas to access public utilities undermines return. For example, Bosniak returnees to Bosanski Dubocac complain that municipal authorities by-passed their village when connecting telephone lines to a neighbouring Serb village. In the village of Zeravac, houses reconstructed by international donors are still without electricity. Reconstructed houses in Velika faced difficulties in connecting utilities, and the delivery of electricity remains unstable. Water supply is a problem for the whole population in Derventa Town, but is especially acute in rural areas. Such difficulties in accessing utilities can create a perception that the municipality does not encourage minority returns in rural areas where most return takes place.”

**Helsinki Committee for Human Rights in Bosnia and Herzegovina, 2003:**

Cazin Municipality

“The data from the NGOs and the municipalities related to the return of apartments show that the return was completed in 99% of the cases, while the return of private property was completed in almost 90% of the cases. They are planning to complete this task in hundred percent of cases by the end of the year. Such results are the consequence of strengthening of human resources in those municipal services that are in charge of return. Unfortunately, this is not the case with other municipal services and public institutions. For example, there are still cases where some people are favoured at the expense of others in getting phone lines, and where infrastructure and utility problems (water, electricity, roads) are being slowly or not at all resolved.”

**UNHCR September 2001, paras. 68-69:**
"A number of problems have been identified with respect to access to public utilities and 'obsolete debts'. In particular, a number of pre-conflict subscribers who have since repossessed their properties or who have had their homes reconstructed, are faced with discriminatory excessive charges for reconnection or are discriminatorily refused reconnection on the grounds of a lack of, for example, required telephone lines or materials. Additionally, a considerable number of persons were faced with bills incurred in their absence by displaced persons who had occupied their property during the period 1992-95. While the majority of these debts should have been considered obsolete, a number of persons paid portions under threat of disconnection, thereby canceling the limited period.

Pre-conflict subscribers continue to encounter major difficulties in accessing public services, including electricity and gas services, in addition to telecommunications network reconnections. This affects in particular minority returnees. It should be noted that private lawsuits against public companies have been submitted to local courts (approximately 400 cases in Tuzla alone) where returnees were forced into living in inappropriate living conditions due to the disconnection of water, gas, and electricity supply. It is evident, however, that the problem of discriminatory access to utilities is sustained by a number of recorded means, including the charging of inflated reconnection fees/war-time occupants' usage costs to returnees, utility companies claiming a lack of 'technical/network capacity' to effect re-connections to returnees, and a deficient regulatory legal framework."

OHR HRCC 18 October 2001, para. 114:

"Lack of access to public services including utilities supply hinder sustainable return and is contradictory to Annexes 6 and 7. The Inter-Agency Working Group on Utilities was established (with the authority of Human Rights Steering Board) in May 2001 to deal with legal analysis of the case material and development of a strategic approach regarding discriminatory application of existing laws and regulations. Despite the fact that public companies are bound by law to represent the public interest and uninterruptedly supply services they choose to deliberately impose their internal regulations and disconnect their clients without a warning system when bills (caused by temporary users) were not paid. It has been reported that private lawsuits (about 400 in the Tuzla area alone) against public electric companies have been submitted to local courts. A first review of the verdicts showed inconsistency in applying local civil laws. The Working Group on Utilities developed a questionnaire to be used for reporting cases of discriminatory application of laws and internal regulations. It is to be decided by International Community if the already existing network of NGOs specialised in return and reconstruction issues could deal with and, if necessary, report cases for further consideration to Working Group on Utilities. The result of a thorough legal analysis would possibly demand changes of present legal provisions and regulations. At the same time conditionality of funding is being considered to be imposed on those state-owned companies that do not comply in supporting the basic needs of returnees. An action plan was developed in May 2001, by the Inter Agency Working Group on Utilities. An Agreement was reached to distribute the questionnaire through RRTF and LAIC (UNHCR) networks. The distribution has been accomplished. In parallel action representatives of the WG were meeting representatives of the Entities’ Ministries of Energy and Mining to discuss the occurring problems in electricity supply around the country, and informing the relevant authorities and electricity companies about the forthcoming survey. The deadline for reporting was extended until the end of October 2001. Electricity providers, already included in the survey, were among the first respondents. The results of the survey will be analysed by the Working Group."
Shelter and non-food items

At least 7,000 internally displaced persons still live in collective centres (1995-2006)

- Statistics show a sharp decrease in the first years due to the first post-war returns
- In subsequent years the population only decreased gradually thanks to reconstruction or property repossession
- Several assistance projects have contributed to decrease the number of collective centre residents through reconstruction of their houses.
- Only the most vulnerable cases remain in the collective centres. Some of them unable to return (elderly, traumatized) require institutional care.
- Some figures indicate that some 7,000 IDPs still live in informal collective centres under dire conditions.
- Many of those IDPs do not correspond to strict criteria of reconstruction projects
UNHCR, June 2006:
“IDPs of particular concern to UNHCR are those accommodated in collective types of accommodation. It is difficult to determine the accurate number of these persons but according to information collected during the 2005 re-registration exercise, at least 7,000 persons are still living in collective centres. Although there are various projects for return, including reconstruction assistance, a significant number of persons accommodated in collective/alternative accommodation in BiH do not meet legal criteria stipulated by these projects. In practice, there is a discrepancy between legal regulations stipulating too formal and complicated eligibility criteria and the real situation of the persons concerned.”

UNHCR, CC report:
“At the end of the war in December 1995, some 45,000 displaced resided in such centres. The number of residents in these centres declined drastically to 18,500 at the end of 1996, after the majority returned to their pre-war residences. Since then, however, the number of persons still requiring assistance provided in these centres has only reduced gradually. (...)In April 2000, UNHCR discontinued most material assistance and focused its activities to the identification of durable solutions for the residents, leading to the eventual closure of the centres. At the same time, UNHCR has been encouraging the Entity authorities to take a more proactive approach in resolving the plight of this vulnerable population. Since 2001, the Federal Ministry for Social Affairs, Displaced Persons and Refugees made attempts to close some collective centres by accommodating the individuals concerned in reconstructed houses. The Ministry for Refugees and Displaced Persons in Republika Srpska continued its strategy of housing collective centres residents in newly constructed apartments for a one year tenancy period. UNHCR is strongly advocating proper institutional care, in close co-ordination with the respective Ministries of Health, to be offered where possible and necessary to the elderly among the centres’ residents.

Late in 1998, in partnership with the Government of Switzerland, UNHCR started with the implementation of projects to provide lasting solutions for Collective Centres residents. The Swiss Humanitarian Aid (SHA) programme ‘Durable Solutions for Collective Centres Residents’ (DuSoCC) was thus established. Project costs are covered by UNHCR and administration costs are borne by the Government of Switzerland (Project Manager and seven local staff). SHA’s staff has been based in UNHCR offices in BiH since February 1999 to enable them to work closely with UNHCR’s field colleagues.

From the beginning of 1999 to date, some KM 6, 5 million has been spent on this project, and some 1,520 beneficiaries found durable solutions returning to their reconstructed pre-war homes. As a consequence of diminishing financial resources and the rapidly deteriorating living conditions in the Collective Centres, the residents remain of primary concern to UNHCR in terms of providing protection and assistance to this vulnerable group. Although Swiss Humanitarian Aid (SHA) is striving to provide durable solutions wherever possible, no other donors are providing contributions to this project. UNHCR’s ultimate goal is to eliminate the need for collective centres altogether by end 2005. UNHCR and SHA will maintain and update the database of individual residents in all the Collective Centres. Efforts will have to be made to target the most vulnerable individuals, while reviewing changing circumstances in property repossession.

Donors funding reconstruction projects throughout BiH has been drastically diminishing since 2002, and at the same time it is focused predominantly on repairing and rebuilding houses for other beneficiary groups. UNHCR would like to see these efforts complemented with a contribution in aid of collective centre residents. Such resources could not only be used for constructing housing units, but also for economic assistance through income generation projects and agricultural initiatives to ensure sustainability of these returns. UNHCR urges donors to either fund already prepared projects in order that solutions for these most vulnerable displaced persons can be identified and implemented in a timely manner.”

In 2004, a project financed through a grant of the Council of Europe Development Bank (CEB) was implemented in cooperation with UNHCR to support the most vulnerable residents of the remaining collective centres by supporting return or institutional care. In November 2004, the CeB approved a loan of USD 8,000,000 to rehabilitate houses of 1100 families living in collective centres or temporary accommodation.

IDPs in collective centres live are among the most vulnerable and live in appalling conditions (2006)

- Officially only a few hundreds IDPs remain in collective centres
- However, it is estimated that about 7,300 IDPs live in unofficial collective centres in appalling conditions
- Irregular collective centres are located mainly in the Federation and receive some help from authorities and UNHCR
- Collective centres inhabited by Roma often lack running water and electricity
- Those living conditions lead to health and psychological problems, children are particularly affected
- IDPs living in collective centres are particularly vulnerable to human trafficking
- UNHCR is disseminating information on sexual and gender based violence in reception centres and collective centres
- Children living in collective centre face difficulties to go to school

UN Commission on Human Rights, 29 December 2005, par. 30-31:

30. Due to achievements with regard to the rate of return, as well as the start of the closure of camps by international agencies and local authorities some years ago, only several hundred IDPs remain in officially recognized collective centres. However, according to official figures, about 7,300 persons still live in irregular collective centres and ad hoc settlements which were originally provided by local authorities as temporary shelter for those displaced by the conflict. Most of these centres, which remain monitored by UNHCR, are located in the Federation of Bosnia and Herzegovina where some receive limited support from the Federation of Bosnia and Herzegovina Ministry of Refugees and Displaced Persons or the cantons and municipalities concerned. The Representative visited some of these unofficial centres and settlements no longer supported by the Government or the international community and noted with concern the abject poverty and deplorable living conditions of IDPs, which are clearly not in accordance with the right to an adequate standard of living as provided for by guiding principle 18. Unofficial settlements inhabited mainly by Roma have no running water and electricity and are not connected to public services such as waste collection. As a consequence of these conditions, the social isolation of the centres and the high percentage of inhabitants suffering from depression and trauma, an increased level of learning and psychological difficulties among children has been documented by UNICEF, affecting especially those children who have been living there for extended periods of up to 10 years. (…)

31. Almost all inhabitants of collective centres belong to particularly vulnerable groups, such as female-headed households, elderly persons without family support and the disabled, severely traumatized individuals, witnesses in war crime investigation or Roma. Their return to their places of origin is unlikely for a variety of reasons, mainly: (a) unresolved property repossession processes; (b) delays in reconstruction of their houses, sometimes because they have been unable to submit the required documentation; (c) adverse conditions in communities of origin, such as lack of infrastructure, employment opportunities, access to education and health care; and (d) changes in the ethnic structure of return communities or the still outstanding return of other community members. 20 Special assistance to these groups is necessary, and 10 years after the Dayton Peace Agreement, instituting systematic efforts to find durable solutions for them is a matter of urgency.

32. Many IDPs are suffering from long-term post-traumatic stress disorder (PTSD). PTSD is especially prevalent in households headed by females because the husbands and fathers are missing. The extent of the trauma suffered as well as other difficulties faced by displaced children
in the post-war period, including mourning the missing and killed, lack of financial resources and separation from closely related persons, gravely affects their development and health. Particularly difficult is the health situation of the estimated 200,000 camp survivors and an unknown number of victims of sexual violence, who are in need of specific social services and psychological programmes. Bosnia and Herzegovina still lacks adequate medical and psychiatric services to address their continuing suffering. This infringes on the rights of traumatized, sick and disabled IDPs to receive the medical care and attention they require (guiding principle 19, para. 1). While camp survivors and victims of sexual violence have been recognized as victims of torture by the International Criminal Tribunal for the former Yugoslavia,[…] their status does not amount to a legal recognition which would grant them specific rights and protection measures. The absence of an umbrella law at the State level for their protection and the lack of acknowledgement by society and the State of their suffering may lead to re-traumatization. The Representative notes the assurances recently given by a representative of Bosnia and Herzegovina to the Committee against Torture that an umbrella law on their protection would be initiated at the State level in 2006.”

UNHCR, Background note on trafficking, June 2006, p.1-2:
“Prevention of trafficking among displaced population groups UNHCR seeks to avoid that persons of concern to the Organization are exposed to the risk of becoming victims of trafficking. Women and children in displacement may be more vulnerable to different forms of exploitation and abuse being separated from family members and traditional support mechanisms or isolated from their communities. Categories who may be particularly vulnerable to trafficking are those in “camp situations” e.g who are accommodated in reception centres in BiH, namely asylum-seekers, temporarily protected (‘admitted’) persons, and refugees. Other categories of persons of concern are women returnees and internally displaced persons, especially those accommodated in collective centres in BiH.

UNHCR BiH includes prevention of trafficking in the general gender-based violence (SGBV) awareness raising campaigns and other activities in the reception centres. UNHCR’s ‘Guidelines for Prevention and Response: Sexual and Gender-Based Violence against Refugees, Returnees and Internally Displaced Persons” have been translated into the local language, used in training events and widely disseminated.”

Helsinki Committee, 17 January 2006, p.13-14:
“Children who are still with their parents in collective refugee and asylum centers, in which the accommodation capacities and living conditions are below human dignity, are in an extremely difficult situation. The transportation to the school is not provided to the children, particularly in rural environments. They often go on foot, even for more than 7 kilometers (village Branjevo – municipality of Zvornik – 350 pupils), which certainly affects on the security of the youngest ones.”

For statistics on the official number of IDPs in collective centres check the following website: www.unhcr.ba

Significant reconstruction needs remain unaddressed (2005)

- 50,000 housing units are still in need of substantive repairs
- In 2004, the Ministry for Human Rights and Refugees registered application for reconstruction from refugees, displaced persons and returnees
- Applications will be used to determine priority areas for reconstruction
- 86% of applicants are currently residing in Bosnia being either displaced or returnees
UN Commission for Human Rights, 29 December 2005, par.41:
“Some 50,000 housing units remain destroyed or in need of substantive repairs, and many need to be reconnected to the public water and electricity supplies. Resources for reconstruction are scarce as donators are increasingly directing funds to other priorities. Again, vulnerable groups face the biggest difficulties in having their houses reconstructed. They may only receive part of the building material required or lack the capacity or the resources to do the actual construction work. Vulnerable categories have often been excluded from the process of identifying beneficiaries for reconstruction assistance.”

MHRR, September 2005, p.5, 7, 15, 21:
“Last year in June, the Ministry for Human Rights and Refugees of Bosnia and Herzegovina, publicly invited all refugees from BiH, displaced persons in BiH and returnees in BiH who meet the general criteria for the housing units reconstruction aid projects aiming the return to submit their applications for the registration of potential beneficiaries for the assistance in reconstruction and return. The public call is launched in order to determine reconstruction and return needs, to identify priority areas of return and for the planning of activities on substantial completion of the return process in BiH through the provision of an uniform and harmonized realization of the GFAP Annex VII goals at the entire BiH territory. (…)

All applications collected so far have been processed in the Department for Refugees and DPs and data have been recorded in the Central Database on potential beneficiaries of the return-related reconstruction assistance. (…)

These results were used in the identification of priority areas for “30 Municipalities” and “SUTRA 2” projects which have been realized within the Commission for Refugees and Displaced Persons ad monitored by the MHRR. (…)

Now, almost 10 years after the peace agreement was signed in Dayton, according to the recorded requests for the registration, more than 120.000 persons are still waiting the reconstruction assistance and the return to their pre-war homes in BiH.

The highest percentage of recorded applications (some 55%) is related to the requests for the reconstruction of more than 19.000 damaged and/or destroyed housing units for return of 66.000 persons to F BiH, while some 42% applications are related to requests for reconstruction of some 14.500 properties ensuring the pre conditions for the return of some 50.000 persons to RS.

Aiming the return of some 4.000 persons to their housing units from 1991 in Brcko District 1.350 family requests for registration is recorded. (…)

As indicated in the former review of registered applicants by categories, obviously the largest number of potential beneficiaries (30.529 families) currently reside in Bosnia and Herzegovina i.e. 103.425 persons or some 86% of the total number.

Out of this number, in BiH Federation currently reside 15.426 families of potential beneficiaries, 13.422 in Republic of Srpska and 1.661 in Brcko District respectively.”

For more detailed information and statistics, see: Report on registered potential beneficiaries of assistance for reconstruction and return in BiH, Ministry for Human Rights and Refugees, September 2005 (see link in sources below)
Absence of a state level housing law to address the needs of the most vulnerable (2005)

UN CESCR, 24 January 2006, par.24-25:
“The Committee is concerned about the absence at the State level of a housing law and of a national housing strategy to address the housing needs of the population. The Committee is also concerned about the lack of social housing units, especially for the low-income and disadvantaged and marginalized groups.

The Committee notes with deep concern that many of the informal settlements in which the Roma people lived prior to the armed conflict have been destroyed without adequate alternative accommodation or compensation being provided to them, and that many Romani cannot lay claim to their settlements because of the lack of security of tenure relating to their property. The Committee is also deeply concerned about the high number of pre-armed conflict tenants who have been evicted from their homes without being provided with adequate alternative accommodation or compensation.”

For more information see also “Internal agencies urge local authorities to develop social housing to address the needs of displaced persons (2006)” in property section

Roma living in informal settlements live in sub-standards housing conditions and are vulnerable to evictions (2005)

• The majority of DPs living in informal settlements are Roma
• Those settlements are rarely connected to water and electricity and waste disposal services
• Informal nature of settlements does not provide an official address which is a precondition to obtain identity documents
• Lack of documents impede access to social services
• Legal status of settlements should be addressed

CoE, 11 May 2005, par.46-49:
“46. The authorities have so far not been able to secure full and effective equality between the Roma and the rest of the population. The Advisory Committee is particularly concerned about reports of the alarming situation in informal Roma settlements, where thousands of Roma, who face particularly serious difficulties, live in substandard housing conditions without basic sanitary facilities, electricity or reliable source of heating and with a lack of waste disposal services as well as insufficient access to fresh water. In many settlements, these conditions are such as to affect the overall health situation of their residents. The Advisory Committee is deeply concerned by these sub-standard living conditions and considers that these problems merit urgent attention and targeted measures by both domestic authorities as well as support by international donor agencies.

47. A particularly acute problem facing many Roma is the lack of personal documents, including birth certificates, personal identity documents, documents related to State-provided health insurance and social welfare as well as documents attesting to citizenship (see comments under Article 3 above, paragraph 24). One reason for this is the informal nature of many Roma settlements, whose residents are not legally registered at the local level and therefore blocked in practice from obtaining identity cards or refused access to social services such as health insurance or social benefits. The case of birth certificates has in particular been raised with the Advisory Committee: seemingly a number of Roma women leave hospitals after having given birth before being formally discharged as they cannot afford to pay the medical fee. As a result, these women do not acquire the necessary medical records for the purpose of registering the
newborn, for whom it is then impossible to obtain a birth certificate. The Advisory Committee considers that the lack of personal documents creates a range of undue obstacles in the realisation of their basic human rights by many Roma and therefore urges the local authorities to step up their efforts to systematically register all their residents, irrespective of the legal status of the Roma settlements.

48. The Advisory Committee emphasises that Roma residing in settlements that have not been legalised are vulnerable to forced evictions without being provided alternative accommodation (see related comments under Article 6 below). It is therefore essential that the authorities address the legal status of these settlements as a matter of priority, and that no evictions involving human rights violations are carried out.

49. As a matter of principle, the Advisory Committee is deeply concerned that in Bosnia and Herzegovina, no authority seems to have perceived the scale of the problems faced by the Roma and the ensuing need to design and develop a comprehensive strategy at all levels to efficiently tackle these problems. The State Report for instance mentions only one case of discrimination in Kiseljak but fails to analyse the overall situation of exclusion faced by the Roma and the reasons behind it. The Advisory Committee was particularly struck that during discussions with both the Ministry of Health of the Federation and the Ministry of Labour and Social Welfare of the Canton of Tuzla, its interlocutors refused to admit the need for a systematic and coordinated action on behalf of Roma on the alleged ground that social action should have no link whatsoever with ethnicity.

ECRI, 15 February 2005, par.62:
“At present, between 50 and 70% of the Roma of Bosnia and Herzegovina are estimated to live in informal settlements, where conditions are extremely poor and, in some cases, such that the health and lives of their inhabitants are seriously threatened. Many of these settlements lack basic facilities such as access to drinkable water, electricity, reliable sources of heating, sewage system or garbage disposal. Furthermore, people in settlements are vulnerable to forced evictions, following which, in a number of reported cases, alternative accommodation has not been provided. ECRI strongly urges the authorities of Bosnia and Herzegovina to address without delay the housing situation of the Roma population and to ensure in the short term, that all Roma dwellings meet, at the very least, basic standards of adequate housing. ECRI notes that, in some municipalities, such as in Sarajevo, and in Brcko district the authorities have taken some steps to legalise settlements or to provide alternative accommodation to their inhabitants and strongly recommends to the authorities of Bosnia and Herzegovina to extent these initiatives.”

For information on OSCE’s efforts to legalise Roma informal settlements and facilitate return of Roma IDPs see: “Report on Roma informal settlements”, OSCE,8 April 2005

See also in the same section “Displacement aggravates the living conditions of Roma (2005)”

HR decision extends use of collective and transit centres as alternative and emergency accommodation for six months (2003)

- In January 2003, the High Representative extends by six months the requirement that domestic authorities ensure use of collective and transit centers as alternative accommodation

OHR 2 January 2003:
“The High Representative, Paddy Ashdown, on Wednesday issued a Decision extending by six months the requirement that domestic authorities take steps to ensure that all collective centres
and transit centres in Bosnia and Herzegovina are used as both alternative and emergency accommodation. Substantial progress has been made on implementing a plan adopted by the State Commission for Refugees and Displaced Persons on 11 September 2002, whereby a list of around 600 families still living in transit or collective accommodation, and who have unsolved property claims, was created. Over 60 percent of these cases have now been solved. The High Representative’s Decision will cease to apply when all the remaining cases from the list, affecting around 250 families, are solved.

The High Representative has issued this Decision in order to ensure that no one is left without adequate protection while this plan is being implemented.

This type of accommodation is needed in order to provide for those who would otherwise risk becoming homeless upon leaving claimed property. As many facilities as possible should be devoted to this purpose, in accordance with the property laws. As one of the largest potential resources for such accommodation, collective centres must remain open and be converted into alternative and emergency accommodation, to ensure that as the property laws are implemented in chronological order and within the legal deadlines, the risk of anyone being left unprovided for is minimised.”

Housing shortages affect displaced persons who are being evicted as a result of the property restitution process (2000-2003)

- Human rights organizations document problems in accessing accommodation for displaced persons due to the acceleration in property implementation process in certain municipalities (2003)
- Until now, most of those who had to vacate contested properties have been local residents who already have their own properties (double occupancy)
- Many of those who are still occupying properties cannot return because their own house is destructed or occupied or because of security concerns
- Local authorities fail to provide alternative accommodation to evicted families
- UNHCR appeals to donors to ensure that adequate resources are made available to address housing needs of minority evictees who cannot return to their own homes

Višegrad Municipality
Helsinki Committee for Human Rights in Bosnia and Herzegovina 2003:
“Successful implementation rate of property legislation and accelerated evictions of the Serb families from apartments and houses owned by Bosniaks additionally aggravated the status of refugees and displaced Serbs in Višegrad. Along with the piece of information that between 7,000 and 8,000 exiled and displaced persons live in Višegrad the Mayor also said that "quite a good number of them" in the meantime resolved the issue of a roof over their heads either by buying or exchange of property, that a number lives in collective centres and that the Municipality pays alternative accommodation for some of them. According to the same source at one moment in time 4,500 Serbs were placed in collective accommodation centres which were absolutely inhabitable. At present around 450 persons are forced to live in this kind of accommodation while the governmental bodies promised that their problems would be resolved by the end of the year. A particular problem represents settlement Nezuci where open misunderstanding exists between the governments and displaced Serbs. The Mayor also outlined illegal construction, a huge number of illegally constructed objects during the war and post-war period as a problem for which they still did not have adequate solution.
Displaced Serbs publicly on the street protested against evictions from temporary accommodation during October.

There is also an open issue of dissatisfaction of exiled and displaced Serbs regarding construction of settlements on Bikavac and Garca. Originally allocated rulings asserting the right to ownership over these residential units were annulled due to new legal regulations and the purpose of these residential units was altered. The displaced persons referred to the right to be entitled to compensation since they invested tens of thousands of labour hours into the construction of the settlement.”

Zvornik Municipality
Helsinki Committee for Human Rights in Bosnia and Herzegovina 2003:
“According to the data in possession of Šaban Redžic, Chair of the Municipal, Assembly, between 12,000 and 13,000 of Bosniaks returned to Zvornik. It approximately represents one-third of its pre-war population of the Bosniak ethnicity. Those who wished to return exert a huge pressure but there were no donations for the reconstruction of destroyed residential units.

On the other hand around 20,000 displaced Serbs live in Zvornik who, as Redžic said, in the largest number so far refused to return to their pre-war places of residence. The implementation of property legislation / decisions on more than 90 percents of claims were passed by the end of September, and more than 80 percents was implemented / as a consequence brought a huge number of evictions so that current issue is how to resolve the problem of accommodation of the displaced persons.

The Commission for Return, Development and Integration was recently established within the Municipal Assembly of Zvornik, which by means of donor-funded projects would offer assistance to the most vulnerable returnee and displaced families. With the help of donors the Commission was supposed to engage in reconstructing houses of returnees and displaced persons, reconstruction of school buildings, roads and other infrastructure-related projects.”

2001 – 2002
UNHCR 30 April 2001, p. 4:
“...
UNHCR is concerned that not enough priority is being given to the needs of vulnerable families who are being forced to vacate the properties they occupy. The property restitution process will accelerate during the course of this year. This is critical to ensure that displaced persons and refugees are able to exercise their right to return. At the same time, UNHCR is appealing to donors to ensure that adequate resources are made available to address the emerging needs of vulnerable individuals affected by the process, particularly minority evictees who cannot return to their own homes. Action by the local authorities which is urgently required includes the implementation of a fair social housing policy and development of viable social safety net.

UNHCR January 2001, p.4:
"In addition, an emerging issue is the question of alternative accommodation for the increasing number of illegal occupants who are being evicted as part of the property restitution process. Until recently, evictions under the Property Law Implementation Plan have focused on 'double occupants' or people who have access to more than one property. With the problem of double occupancy now largely addressed, the process has moved on towards evictions of illegal occupants who do not have access to another property and who must find alternative accommodation. Some of those being evicted are minorities who have nowhere to go, and who cannot return to their own homes because they are occupied by other displaced people. Along with the Office of the High Representative, the OSCE, and other international agencies involved in the implementation of the property law implementation programme, UNHCR will continue to work with local authorities to step-up their efforts to deal with this key question."

For more details on the funding gaps relating to the reconstruction process and housing needs, see International Management Group, "Reconstruction Needs in Bosnia and Herzegovina", January 2001

General

Health

Health statute of IDPs is poorer than domicile population (2006)

- Large physical distances to health facilities, low income and lack of documents are major obstacles to access to health
- Displaced households are more likely than domicile population to suffer from hunger, poor health and neuroses

UNDP, 26 June 2006, pp.91-94:
"The displaced are more likely to suffer from neuroses and disorders related to the psychological trauma of displacement. Large physical distances to health facilities, low incomes, and lack of proper identity documents, are major barriers to access to health services for displaced households. Insufficient vaccination coverage (most often due to inadequate identity documents) is a major determinant of vulnerability, particularly for displaced children. Like Roma, displaced households are much more likely than majority households to go to bed hungry because they cannot afford food. Displaced children are particularly susceptible to nutrition risks. (...)"
The data suggest that displaced households in the Western Balkans are particularly vulnerable to poor health and malnutrition, and illustrate the need for disaggregated health data to monitor their status. The data show that displaced respondents lost an average of 17 days of normal activity as a result of illness, compared to just 12 days for majority respondents. This seems to be related both to the higher incidence of illness among displaced respondents and their less satisfactory access to healthcare. (…)

Twenty-two per cent of displaced respondents (compared to 18 per cent of majority respondents) report suffering from some form of chronic illness. This may be due to the lower quality of housing: the incidence of diseases among displaced households associated with dust and other lung irritants that are attributable to poor housing conditions, such as bronchitis or emphysema, is higher than among majority households (14 per cent of the displaced compared to 8 per cent of the majority). The data also support one of the more alarming findings often reported by qualitative research – the frequency of neuroses and psychological trauma.

Just 35 per cent of displaced households have access to a family doctor, compared to 43 per cent for majority households. The data suggest that such limited access to health care for displaced households is caused by their remoteness: 35 and 36 per cent of displaced households reported living more than three kilometres from a primary medical centre or general practitioner respectively, compared to 17 and 24 per cent for majority households. (However, 39 per cent of displaced households reported living within three kilometres of traditional healers, compared to 30 per cent of majority households—see Figure 2-34). These data suggest that, in light of the scarcity of modern medical care in the vicinity of the camps in which they live, displaced households turn more to traditional – largely unregulated – forms of health care.

In addition to their physical isolation, low incomes and inadequate identity documents are also barriers to adequate health care for displaced persons. Thirty-eight per cent of displaced households reported periods during the past 12 months in which they could not afford to purchase medicines prescribed to a member of the household (compared to 20 per cent for majority households). Although throughout the former Yugoslavia displaced persons were officially given ID cards entitling them to health care, 9 per cent of displaced respondents reported having been denied medical service due to lack of proper documentation. (…)

Health status is directly related to nutrition, which in turn is influenced by expenditures (i.e., poverty). The data show that although the reported differences in nutrition security for Roma households are much more pronounced than for majority and displaced households, the latter still face considerable risks. As much as 12 per cent of displaced households (versus 2 per cent of majority households) reported experiencing four or more cases within a month when they went to bed hungry because they couldn’t afford food. Almost one fifth of displaced households face nutrition risk, compared with 4 per cent of majority households (Figure 2-35). For children from displaced households, this figure rises to 27 per cent, compared to just 7 per cent for children from majority households.

Health care system does not sufficiently address the needs of returnees and internally displaced persons (2006)

- Mono-ethnic composition of medical institutions negatively affects minority returnees confidence in these institutions
- The state of health of the population of BiH has been deteriorating since the war
- Inequalities in access to, and receipt of, health care are particularly acute for returnees due to political and administrative barriers
Due to lack of harmonization of entity laws on health insurance, returning IDPs frequently lose health insurance and face difficulties in accessing health institutions.

Problems are mainly linked to the complexity of the legal framework, lack of funds and absence of inter-Entity co-operation.

The situation is aggravated by the damaged infrastructure, and the effects of war on the health of the population.

An agreement between all health insurance funds was signed in December 2001 which may improve coverage across Entity lines.

Pensioners and unemployed persons continue to face difficulty to register for health insurance upon return.

ICHRI/IDMC/MRG/Cardozo, 3 July 2006, p.4:

"The inter-entity agreement on health insurance provides that returnees can, upon registration, have access to health services and benefit from health insurance in their area of return. However, several elements hamper access of returnees to health services in their area of return. Many returnees who are in a minority situation in their entity of return feel uncomfortable to be treated there for fear of discrimination and prefer to travel back to their area of displacement. The complexity of the system results in difficulty to transfer coverage from one entity to another and even from one canton to another within the Federation. In addition, the non-payment of contributions by employers into the different health funds limits the financial possibility to meet their obligations. The difficulty to access adequate health care in the area of return acts as a deterrent to return especially for elderly displaced persons."

ECRI, 15 February 2005, par.28:

"While access to healthcare is reported to be problematic for many of the citizens of Bosnia and Herzegovina, it has been reported to ECRI that minority returnees encounter even more serious difficulties in accessing health services. Contrary to the pre-war situation, which was characterized by the existence of a single nation-wide health insurance scheme, there are at present three separate basic health insurance schemes in Bosnia and Herzegovina: one in the Federation, the responsibility for the operation of which has effectively been delegated to the ten Cantons: one in Republika Srpska; and one in Brcko District. The complexity of this institutional framework results in a number of difficulties-including the inability to transfer coverage from one location to another and the absence of inter-Entity co-operation on health insurance issues-compounded by non-payment of contributions into the different health funds. It has been pointed out to ECRI that some of these difficulties, and notably the impossibility to transfer coverage between cantons and between entities acts a deterrent to potential returnees and that it also constitutes a powerful obstacle for those who have already returned, since many of them are required, in practice, to travel to the other Entity to access health services. ECRI notes that an inter-Entity Agreement on Health Insurance has been concluded with the aim to overcome the difficulties in accessing healthcare faced by insured people, mostly returnees, who have had to move from one Entity to the other. However, the implementation of the Agreement is reported to be not satisfactory. ECRI strongly urges the authorities of Bosnia and Herzegovina to thoroughly implement the inter-Entity Agreement on Health Insurance. In addition, ECRI has received numerous reports according to which the mono-ethnic composition of the staff in health provision facilities in a number of municipalities negatively affects minority returnees’ confidence in these institutions. It has also received some allegations according to which health care services are not equally provided to members of all ethnic groups. ECRI urges the authority of Bosnia and Herzegovina to ensure that all persons living in Bosnia and Herzegovina enjoy adequate access to healthcare in a manner that is not directly or indirectly discriminatory vis-à-vis particular ethnic groups."

Poverty Reduction Strategy Paper Team, 30 May 2003, Sect. 2.2:
“The state of health of the population of BiH has been deteriorating steadily since the war. The reasons are [...] socio-economic circumstances, unemployment, migration, the large number of displaced persons, lack of health insurance, unhealthy lifestyles, etc. As many as 22 percent of the BiH population aged over 17 report intermittent constraints on their daily activities as a result of health problems; 24 percent have chronic ailments and 4 percent suffer from serious ailments. [...] In addition, there has been a marked deterioration in population health as a result of long-term stress–post-traumatic stress disorder (PTSD).”

Poverty Reduction Strategy Paper Team 30 May 2003, Sect. 3:
“Health insurance does not provide cover, even for those who have insurance, against having to make additional payments in the case of serious illness, while the uninsured are particularly at risk. Given the high costs of health care, this pushes households into poverty.[...] About 20 percent of the better-off have no health insurance, while as many as 36 percent of the poor are uninsured. There are also regional inequalities in access to health care, to the disadvantage of rural areas. The problem of access to health care in BiH as a whole is further exacerbated by the fact that the health care system is split between the two Entities (FBiH and RS), and between the cantons within FBiH, plus Brcko District. Inequalities in access to and receipt of health care are particularly acute for returnees, who are mainly unemployed or pensioners, and for whom political and administrative barriers mean they are almost entirely without health care. As a result, returnees have to make out of pocket payments for health care services, mainly in the private sector, which impoverishes this category of the population in BiH.”

UNDP June 2003, pp.62 -68:
“Some serious problems have been identified, such as an inadequate registration and information system. Such as system is clearly required for the timely planning, implementation, and assessment of national immunisation activities. Moreover, significant and constant population migration contribute to flawed registration data, and thus lead to a low rate of vaccination coverage with Roma children, refugees, and displaced persons. An agreement on the realisation of health care has been signed between the Entities and between the Entities and the Brcko District. However, this agreement has not been complied with, so that a relatively small number of beneficiaries end up exercising their right to health care as laid out in this agreement. Due to the fact that entity laws are not harmonised with respect to health insurance, the change of residence that occurs when displaced persons return results in the loss of health insurance and difficulties in accessing health institutions.”

UNHCR September 2001, paras. 57-59:
“The provision of health care and the availability and quality of treatment in BiH does not sufficiently address the needs of the residents of the country, particularly those of displaced persons and returnees. This represents a significant problem for those who are chronically ill or in need of continuing medical care who may be returning either from abroad or from internal displacement. This predicament results from a myriad variety of problems and obstacles, although many are related to the overall complexity of the legislative and legal framework surrounding the provision of health care and the general lack of funds and resources attributed to the health care system of BiH. These problems are seriously compounded by the post-war situation in BiH, which includes refugee returns, internally displaced persons, and damaged structures.
Regardless of the difficulties faced in providing health care to the residents of the country, the levels of health care currently provided are both significantly lower than that of other, more developed nations, as well as below the level provided in BiH prior to the conflict. Recognizing the scale and severity of this issue, UNHCR completed a detailed examination of the health care system in BiH in July 2001.
Aside from the difficulties created by the complexity of the compulsory health insurance scheme, primary problems also include geographic fixation of where health care can be provided, the inability to transfer coverage from location to location, non-payment of contributions into the
health funds, and the absence of inter-Entity co-operation on health insurance issues. Various international agencies and key influential players have advocated an inter-Entity agreement between the health funds. However, as of July 2001, no agreement had been signed. As a result of these difficulties, residents who are covered under the current system must often pay high prices for treatment and medication and generally experience difficulty accessing proper health care.

When examining the health care system of BiH from a medical perspective, it quickly becomes apparent that adequate medical care is often not available. This is due in part to the complexity of the insurance schemes, but from a medical point of view, it result primarily from the absence of proper facilities, equipment and medication, as well as from a lack of essential funds. These major shortcomings are exacerbated by transportation problems resulting from rugged topography and damaged infrastructure, as well as by the fact that the war seriously affected the health of the population, resulting in unforeseen increases in demand on health care providers. Given these considerations, it is evident that it may not be possible for patients with chronic diseases to obtain the necessary treatment in the territory of BiH. At the current levels of treatment available, the lives of persons in need of medical treatment for chronic diseases or conditions, even of these would not ordinarily be considered life-threatening conditions outside BiH, may be jeopardized if they are forced to seek treatment in BiH."

UNHCHR 8 January 2002, para. 19:
"The complex division of authority between Entities plaguing health care and protection may be ending. On 5 December 2001, the Directors of the Entity (and Brcko District) health insurance funds signed an agreement that all those insured in one Entity can receive health coverage in the other, with specific provisions entitling pensioners to added benefits. Notably, this is the first major inter-Entity agreement prepared and negotiated without the intervention of the international community. This agreement and the manner in which it was negotiated are strongly endorsed by the Special Representative."

ICG 13 December 2002, p. 21-22:
"The problem of medical insurance is closely linked to those of pensions, since the funds contribute directly to the public health care sector. Under the Agreement on Mutual Rights and Obligations in the Implementation of Pension and Disability Insurance, returnees who collect their pensions in the “other” entity do not have access to associated benefits, most significantly health insurance. Another agreement between the entities and Brcko District, signed on 5 December 2001, does allow returning pensioners to register for health insurance if the pension fund from the “other” entity certifies their entitlement. Unfortunately, the RS pension fund reportedly fails to provide the needed certification for returnees to the Federation.

Until recently, younger returnees’ health cover depended on the dubious prospect of finding an employer who would pay contributions. However, unemployed returnees can now register as such and so qualify to receive medical benefits. But they must register within a specified period. International officials monitoring refugee issues say that it is too soon to tell how this system is functioning, but initial indications are not encouraging. Several associations of returnees to Sarajevo recently complained that their members are being systematically discriminated against in seeking health care, citing the examples of hundreds of returnees who sought the associations’ help after a recent outbreak of flu. The RS media picked up the report, Glas Srpski using it as fodder for its near-daily articles on the allegedly intolerable conditions facing Serbs in Sarajevo. As with the pension system, a more durable arrangement for health coverage will have to be found – one which does not punish individuals who choose to exercise their right to return."

See also: Consolidated report of the municipality assessments in Bosnia and Herzegovina, MHRR, UNDP, OHCHR, April 2004, p.56-61
See also: Health Care in Bosnia and Herzegovina in the context of the return of Refugees and Displaced Persons, Sarajevo, UNHCR, July 2001
Many IDPs suffering from long-term post-traumatic stress disorder do not receive adequate assistance (2006)

UNDP, 26 June 2006, pp.91:
“The displaced are more likely than the domicile population to suffer from neuroses and disorders related to the psychological trauma of displacement.”

UN Commission on Human Rights, 29 December 2005, par.32 and 63:
“32. Many IDPs are suffering from long-term post-traumatic stress disorder (PTSD). PTSD is especially prevalent in households headed by females because the husbands and fathers are missing. The extent of the trauma suffered as well as other difficulties faced by displaced children in the post-war period, including mourning the missing and killed, lack of financial resources and separation from closely related persons, gravely affects their development and health. Particularly difficult is the health situation of the estimated 200,000 camp survivors and an unknown number of victims of sexual violence, who are in need of specific social services and psychological programmes. Bosnia and Herzegovina still lacks adequate medical and psychiatric services to address their continuing suffering. This infringes on the rights of traumatized, sick and disabled IDPs to receive the medical care and attention they require (guiding principle 19, para. 1). While camp survivors and victims of sexual violence have been recognized as victims of torture by the International Criminal Tribunal for the former Yugoslavia, (…) their status does not amount to a legal recognition which would grant them specific rights and protection measures. The absence of an umbrella law at the State level for their protection and the lack of acknowledgement by society and the State of their suffering may lead to re-traumatization. The Representative notes the assurances recently given by a representative of Bosnia and Herzegovina to the Committee against Torture that an umbrella law on their protection would be initiated at the State level in 2006. (…)

63. Specific resources need to be allocated to assist persons suffering from post-traumatic stress disorder. State-level legislation recognizing the status of victim of torture, creating specific protection measures and granting victims specific entitlements, should be enacted.”

Vulnerable Groups

Vulnerable IDPs live in deplorable conditions (2006)

- IDPs are more vulnerable to poverty than domicile population
- Certain factors such as gender, age, health, family status, group status aggravate vulnerability to poverty

UN Commission on Human Rights, 29 December 2005, par.54:
“The Representative is concerned about the deplorable living conditions of IDPs, especially those belonging to particularly vulnerable groups, such as the elderly without family support, traumatized victims, disabled or sick persons, female-headed households and families of missing persons, witnesses in war crimes investigations and trials, or members of the Roma and other minorities, who still live in collective centres, irregular settlements and other forms of temporary shelter, often experience multiple discrimination and are unlikely to be able to return to their original homes.”

UNDP, 26 June 2006, p.80:
"This chapter emphasizes the importance of the unresolved legal status of displaced persons, and of its links to poverty and exclusion. It suggests that, while Roma need priority attention in terms of poverty reduction efforts, it is not just Roma who need such attention. Refugees and internally displaced persons are also vulnerable groups who face greater-than-average risks of poverty and social exclusion. Data also support the findings of other research that, within the ‘displaced group’ IDPs are often in much more difficult positions than refugees, and as such deserve particular policy attention.

Such factors as group status, country of residence, age, education level, and skill level of employment, significantly affect a household’s vulnerability to poverty. Although displaced persons have lower poverty rates than Roma, the analysis also shows that in terms of the above mentioned factors, displaced households are vulnerable to poverty, i.e. they have a high risk of falling into poverty in the future given their household characteristics and their unsettled status.

Also, the magnitude of the decline in status experienced by the displaced (most of whom were not vulnerable prior to the conflict) suggests that subjective perceptions of poverty and vulnerability may be particularly acute. It should be kept in mind that some of the IDPs are Roma. On the other hand, the issue of the adaptation capabilities of the Roma IDPs as compared to those of the other IDPs should be considered."

See also in section on Population profile and figures: “Statistical profile of displaced person population(2006)”
“At risk: Roma and the Displaced in Southeast Europe”, UNDP, 26 June 2006, P.73-80 (see in sources below)
“Coping with war, coping with peace, livelihood adaptation in Bosnia-Herzegovina, 1989-2004”, Elizabeth Stites, Sue Lautze, Dyan Mazurana, Alma Anic, April 2005

Displacement aggravates the living conditions of Romas (2005)

- Roma are one of the most vulnerable groups in society
- Most Roma live in informal settlements and have therefore been excluded from reconstruction assistance and are particularly vulnerable to evictions
- Roma live under very poor shelter conditions
- Lack of personal documents exclude Roma from access to health, education and public life
- Several projects are ongoing to improve the conditions endured by the Roma

OSCE, “Overcoming exclusion”, 2004:

“As the largest national minority in Bosnia and Herzegovina (BiH) and as a socially, economically and politically marginalized group, the issues of concern to Roma are diverse. They range from access to education to employment discrimination; housing and property needs to the revival of the Romani culture and language.

Roma in post-war BiH face a series of difficulties exercising the full range of fundamental human rights guaranteed under the BiH Constitution. Such difficulties have been compounded by the displacement caused by the war. Of particular concern are issues regarding property rights and access to personal documents. It is estimated that there are between 30,000 to 60,000 Roma in BiH. This figure was determined during a joint fact-finding project by the OSCE High Commissioner on National Minorities and the Council of Europe."
A continued lack of organized political representation, coupled with prejudice and discrimination, make Roma one of the most vulnerable groups in society. Roma face a range of problems linked to the lack of respect for their human rights. Denial of the right to property stems from longstanding uncertainty about the legal status of Roma settlements. Denial of other rights, such as access to social welfare and education, in part stems from problems many Roma face in registering with the civil authorities. In turn, a lack of education creates an unfair disadvantage in finding a job – making it difficult or impossible for Roma to secure employment. Meanwhile, with little access to social welfare, unemployed Roma have become one of the poorest groups in society.

The OSCE has developed a phased programme of activities to remove the obstacles to recognition of property rights, and assist with civil registration of Roma as first steps in achieving full recognition of and respect for their rights. […]

The lack of personal documents such as birth certificates, identification cards or registered residence further contributes to the exclusion of Roma from society. Failure to register a child at birth prevents enrolment in school and inclusion in the social welfare system. Lack of personal documents also influences their access to healthcare and the participation in elections. The inability to secure documents is related to poverty and the low social status in the Roma community.

ECRI, 15 February 2005, par.62:

“At present, between 50 and 70% of the Roma of Bosnia and Herzegovina are estimated to live in informal settlements, where conditions are extremely poor and, in some cases, such that the health and lives of their inhabitants are seriously threatened. Many of these settlements lack basic facilities such as access to drinkable water, electricity, reliable sources of heating, sewage system or garbage disposal. Furthermore, people in settlements are vulnerable to forced evictions, following which, in a number of reported cases, alternative accommodation has not been provided. ECRI strongly urges the authorities of Bosnia and Herzegovina to address without delay the housing situation of the Roma population and to ensure in the short term, that all Roma dwellings meet, at the very least, basic standards of adequate housing. ECRI notes that, in some municipalities, such as in Sarajevo, and in Brcko district the authorities have taken some steps to legalise settlements or to provide alternative accommodation to their inhabitants and strongly recommends to the authorities of Bosnia and Herzegovina to extent these initiatives.”

Council of Roma, October 2004:

“More than 85% of Roma in the 15-65 age group do not enjoy social security or health care, while this percentage is lower in other age groups. Catastrophic statistics of this segment show a death rate among children that results from the lack of medical aid because of non-possession of health booklets or non-entitlement to medical care in some other way. A great number of Roma are refugees and displaced persons. However, owing to the lack of identification documents before the war, they have not been able to get the status of refugees or displaced persons and thereby they have not been able to get any health insurance. They might be entitled to health insurance through registration with the labor exchange office, but they are not able to register with it either, because they do not have permanent place of residence.”

For more information on living conditions of IDPs see:
“Protecting the rights of national minorities in BiH”, OSCE, accessed 16 August 2006
Lack of adequate programmes to support victims of sexual violence (2006)

Women War Peace, 14 October 2005:
“Over twenty thousands Bosnian women are thought to have been raped during the war. This figure is undoubtedly an underestimate due to underreporting (Lene Hansen, “Gender, Nation, Rape: Bosnia and the Construction of Security”) […] UNHCR found many Bosnian women to be overtly traumatized by their experience of rape, detention and forced displacement. This trauma was found to be a significant factor in minority women’s unwillingness to return to their communities. In addition to psychosocial ailments, gynaecological problems and stress-related illnesses such as hypertension were found to be very prevalent amongst Bosnian women in 2000. […] According to UNHCR, survivors of rape are doubly shamed as their violation represents an affront to their community as well as their personal integrity. Survivors are ostracized from their communities. (UNHCR, Daunting prospects)

UNCESCR, 24 January 2006, par.19:
“19. The Committee is gravely concerned about the absence of a coherent strategy to support victims of sexual violence suffered during the armed conflict of 1992-1995 and that Entity laws pertaining to civilian war victims are gender-insensitive and provide inadequate social protection for victims of sexual violence.”

UNCERD, 2 September 2005, par.66:
“66. As mentioned above, there are endangered groups of women in Bosnia and Herzegovina who are displaced persons, returnees, women belonging to minority groups, asylum seekers and poor women. Besides the Law mentioned above adopted for protection of women, the State Action Plan for enhancing the position of women in BIH society is in the progress of passing. The projects and programmes carried out to implement the Law on Gender Equality are particularly interesting (Initial Report BIH CEDAW). The institutional mechanisms have also been established in BIH to support the implementation of the law and policies focused on strengthening the position of women and the activities dedicated to better protection of endangered categories of women.”
Female-headed households less likely to obtain secure housing or health care (2002-2003)

- Refugee and displaced female-headed households face greater difficulties in obtaining secure housing or enforcing health insurance
- 22% of female-headed households are housed in temporary, illegal or emergency accommodation
- 25% of women in the RS live in bad or worse conditions as opposed to 15% in FBiH

UNDP May 2003, pp. 7, 12:
A UNDP report on female headed households "examines the poverty condition for female heads of household on the basis of the data extracted from the Living Standards Measurement Survey (LSMS). The findings suggests that, in the generally impoverished situation for people in BiH, female headed households are usually worse off where they exhibit one or more of these traits:
- the heads are of pensionable age or older, which indicates that they receive relatively lower incomes,
- they are headed by widows living alone, which suggests an absence of family care,
- the household is made up of refugees or displaced persons, which indicates that they will face greater difficulties obtaining secure housing or enforcing health insurance,
- they are based in the RS, which makes them twice as likely to be living in poor housing.

[...]
Surprisingly, the results derived from the LSMS indicate that 81 percent of female heads of household consider that they live in basically good or good conditions. The majority of these households also appear to have access to electricity and running water of some sort. A substantial number also enjoy security of tenure. 65 percent of female headed properties are owner-occupied, and a further six percent are in the process of becoming acquired by a household member under privatization schemes for state-owned property. This situation compares well with male headed households, 68 percent of which are owner-occupied. By contrast with these home-owning households or households with rental agreements, only 22 percent of female headed households are housed in 'temporary', 'illegal' or 'emergency' accommodation. Presumably, this category of people in insecure housing would include most of the 18 percent of female heads who have indicated that they are displaced persons or refugees.

Also revealing is the fact that the percentage of female heads of households living in good accommodation is significantly lower in the RS. 25 percent live in bad or worse conditions as opposed to 15 percent in the FBiH. This means that the chances of living in bad accommodation in the RS are almost twice as high for female heads of household. The poverty gap between the entities widens further for women living alone. 31 percent of women living alone in the RS considered their accommodation poor, when only 15 percent of women living alone in the FBiH endured bad conditions. More persons in the RS do not have access to a telephone and is it unlikely that the situation will improve for older people after privatisation, particularly in respect of provision of telephones to impoverished rural households [...]."

Members of Roma community continue to face discrimination upon return (2002 – 2003)

- According to the Council of Europe/OSCE, 40,000 to 60,000 Roma face discrimination, including limited access to health care and education, poverty and weak legal status
- In 2002, there was limited assistance to the Roma from national authorities and international organisations
ERRC No.3 2003:
“Roma in post-war Bosnia and Herzegovina (BiH)[1] face numerous difficulties in exercising the full range of fundamental human rights guaranteed under the BiH Constitution. These difficulties have been exacerbated by the displacement of about 2 million people, among them large numbers of Roma, during the conflict in BiH in 1992-1995.[2] Of particular concern are issues regarding property rights and access to personal documents. The issues affecting the Romani community have not been adequately addressed by the international community so far, as focus had been primarily on the concerns regarding displaced Serbs, Croats and Bosniaks.”

U.S. DOS 31 March 2003:
“A Joint Council of Europe/OSCE-ODIHR report issued in June identified a number of problems regarding the social situation, discrimination, and human rights violations faced by the country's 40,000 to 60,000 Roma, such as limited access to health care and education, poverty, and weak legal status. Large segments of the Roma population were unable to substantiate their citizenship claims. Only a tiny number of Roma children and youth were enrolled at educational institutions; only a small number of Roma adults were in full time employment; and in spite of dire need, Roma were often denied social support. Nearly all Roma in the RS were expelled from their property during the war; very few have been able to reclaim it. These displaced Roma, as well as Roma in the Federation who have lost their property because of the ravages of war, lived in makeshift dwellings on abandoned property. Conditions for some were extremely poor, and many relied on begging to subsist. The situation was further complicated by the lack of relevant data on Roma. The Roma continued to be marginalized during the year, and neither the Federation, the RS, nor the BiH Ministry of Human Rights and Refugees took steps to assist the Roma population.

While Roma faced problems that many others in the country faced, they had far fewer social and charitable organizations interested in helping them, and faced widespread discrimination. However, some international NGOs began reconstruction programs for Roma. A lack of formal title to land in some instances greatly delayed these projects. There had been no reconstruction assistance by either the Federation or the RS for Roma by year's end.”

UNHCR September 2001, paras. 88-90:
“The pre-war Roma population in BiH numbered approximately 50,000-60,000 and may be higher as this figure does not include those who declared themselves as ‘Yugoslavs’, ‘Muslims’ of ‘Others’. No updated figures of the post-conflict population are available and accurate statistics on the Roma population in general are difficult to obtain.

Before the conflict, many Roma lived in what is now the Federation of BiH, especially in urban areas such as Sarajevo and Tuzla. Many Roma also lived in what is now the RS, predominantly in the eastern region near the areas of Bijeljina and Zvornik, as well as Brcko. Many of those displaced from this region are still living abroad or remain displaced in the Federation. Having been generally displaced during the war, Roma returnees often encounter extremely difficult conditions including widespread discrimination in terms of access to employment, to adequate education for children, to social services and health benefits, and to adequate housing. Roma in BiH can also be subjected to acts of violence perpetrated by residents of return areas. Attacks by Croat nationalists against returning Roma have been registered in eastern Bosnia and the return of Roma has also been seriously hindered by local authorities in the RS, one example being in Bijeljina, where municipal and Entity military and civil institutions had been situated in former Roma houses, including the Ministry for Displaced Persons and Refugees, the Military Court, and the RS Directorate for Privatization.

Roma constitute a large minority group in BiH and yet are often overlooked in all spheres of public life. The absence of ‘national minority status’ for Roma and a general lack of awareness
that the Roma constitute a minority group add to the difficulties and prejudices encountered by Roma returnees. The Stability Pact for South-Eastern Europe has suggested that in the year 2001, which has been declared the International Year of the Roma, both governmental organizations and NGOs in the Region focus their efforts on the plight of Roma."

-[1] The exact number of Roma currently living in BiH remains unknown, but is estimated to be between 40,000 and 60,000. This amounts to between 1 and 1.5% of the population of BiH.

[2] There is no reliable estimate as to the number of displaced Roma. According to the United Nations High Commissioner for Refugees (UNHCR), to date over 875,000 refugees and displaced persons have returned to their prewar homes. However, while there are statistics measuring the return of Bosniaks, Croats and Serbs, there is no clear information on the return of refugee or displaced Roma. Most Roma are likely counted as 'others', of which only 6,700 have returned since the end of the conflict.

See also:
Section I on Tolerance and Non-discrimination in the report of the “OSCE Human Dimension Implementation Meeting: Interventions and Recommendations by the International Helsinki Federation for Human Rights” IHF, 6-17 October 2003
“Access of Roma to Education and Health Care Services in Tuzla Canton, Federation of Bosnia and Herzegovina” December 2001 - January 2002, report published by the OSCE, the Council of Europe and UNICEF
ACCESS TO EDUCATION

General

Impact of displacement on education (2006)

- In Bosnia and Herzegovina, the literacy level of IDPs is similar to those of the domicile population
- IDPs have lower enrolment rates than the domicile population
- Domicile population spends an average of 10 years and 9 months in education while displaced persons only have 9 years
- Displacement is more disruptive for children who have not completed school
- Displaced women are 27 per cent less likely to obtain secondary education than displaced men

UNDP, 26 June 2006, p.81-82:

“The survey data indicate that education is the area in which the profiles of displaced and majority respondents coincide most closely (see Figure 2-11). This suggests that weak education backgrounds do not pose the major problem for displaced persons that they pose for Roma.

However, there is a small gap in education status between majority and displaced household members. As with the Roma, lower attainment rates among the displaced reflect their lower enrolment rates, particularly at the secondary level (see Figures 2-12 and 2-13). Lower enrolments among the displaced are reflected in the number of years they spend in education. While the majority spends an average of 10 years and nine months in education, displaced persons spend just nine years.

Lower enrolment and attainment rates among the displaced, along with problems (for some respondents) associated with learning new languages, are reflected in the lower literacy rates among this group (see Table 2-4), which (with the exception of Bosnia and Herzegovina) fall below national literacy rates.

Although the above suggests that the education status of displaced and majority communities is broadly comparable, at least at the elementary and primary levels, it is clear that important pockets of vulnerability are present among the displaced. In particular it is important to distinguish between the displaced whose schooling was disrupted by displacement, versus those who either completed school before they were displaced or have begun/renewed education since the displacement. As shown in Chapter 2.1 (see Figure 2-1), the two largest waves of displacement followed shortly after the Croatian and Bosnian conflicts in 1991, and the armed resistance movement in Kosovo which took hold after 1997. The data show that for displaced persons of secondary school or prime university age (16-21 years), there were major drops in education levels, particularly for those at the older end of this range and who may have been less able to pick up their education in another environment following displacement (see Figure 2-14). These differences in education status can be explained by the turbulent and uncertain circumstances in which displaced children often find themselves (see Box 19). This underscores the importance of policies to ensure improved educational support for those whose education has been disrupted by displacement.
The survey data also suggest that displaced women are particularly vulnerable. Not only is the gap in attainment larger in the case of displaced women than displaced men (see Figure 2-15)—it increases with the level of education. The data indicate that displaced men are 15 per cent less likely to obtain secondary education than men from majority communities, while displaced women are 27 per cent less likely to obtain secondary education than displaced men. Overcoming the lower education status of the displaced requires interventions sensitive to the vulnerable state of displaced women."

Figures can be accessed at the following link, p.82:

Current education system fails to play a reconciliatory role (2006)

- Students in minority areas frequently face a hostile environment in school
- Fragmentation of the education system in BiH prevents reform
- Education is under the responsibility of the Entity in Republika Srpska, in Federation, responsibility belongs to 10 Cantons
- BiH has 13 Ministers of Education who often resist implementation of commitments taken at state level
- Resistance to create an inclusive and non-discriminatory education system reflects the division of society in post-war Bosnia
- The current system characterised by segregation and multiple curricula does not contribute to building a unitary and reconciled society.

USDOS, 8 March 2006, sect.4:
“Students in minority areas frequently faced a hostile environment in schools that did not provide an ethnically neutral setting. Obstruction by nationalist politicians and government officials slowed efforts to remove discriminatory material from textbooks, abolish school segregation, and enact other reforms. Cantonal governments in the Federation and the Ministry of Education in the RS pressured school directors at the primary and secondary school level, and several schools were directed by hard-line political figures.”

MRG, 12 July 2006:
“BiH’s education system is highly fragmented, with education having been devolved to the entities. In the Republika Srpska (RS) education is the responsibility of the entity, whereas in the Federation of BiH (FBIH), education has been further devolved from the entity level to the 10 cantons. Education also falls under the responsibility of the Brcko district. At the state level, education is under the remit of the Ministry for Civil Affairs, yet the power is devolved. There are 13 additional Ministries of Education (MoEs), with varying remits. However, only the state can commit BiH to international undertakings, and has the responsibility to ensure the implementation of ratified international treaties.”

UN CRC, 25 September 2005, par.8:
“While the Committee notes the numerous pieces of legislation recently adopted aimed at ensuring better implementation of the Convention in the State party, it is concerned that the State party’s particular political and administrative structure (2 Entities, 10 Cantons and an administrative district, each with widespread budgetary and administrative autonomy) may constitute an obstacle for the development and implementation of cohesive State policies and comprehensive and coordinated legislation in full compliance with the principles and provisions of the Convention.”
COE, 18 July 2006, par.70-73:
“70. Education in general is a source of concern in Bosnia and Herzegovina. Since the last monitoring report, no progress has been made in this area. The phenomena of segregation in the schools of the Federation (so-called “two schools under one roof”), the absence of real choice of curriculum other than the RS one in Republika Srpska, the non-implementation of the state-level Framework Law on Primary and Secondary Education in BiH and lower-level education legislation and agreements such as the “Criteria for School Names and Symbols” as well as the non-adaptation of the law on higher education are signs that the educational sector in Bosnia and Herzegovina is alarming.

71. The questions related to education are becoming a social problem as the families, especially in ethnically mixed communities, insist on segregation and ethnically-pure schools.

72. According to a number of politicians from different ethnicities and groups, the role and the influence of the religious leaders and communities are expanding to an extent that, in the educational field, they rival the State institutions. A law on religions and religious communities at the State-level could answer this question and limit the role of religion in education.

73. Education is the most important aspect of the further unification of the future generations and, moreover, of the country as a whole. Therefore, it is recommended that education should be streamlined, planned and organised mainly at State level.(…)

75 Nevertheless, the fact that practical improvements that do no require legal changes are not being implemented shows that it is not only the complicated State system of Bosnia and Herzegovina that prevents the reforms from being implemented, but it is actually the authorities that do not want to implement them”

UN CERD, 2 September 2005, par.160:
“The current situation with education in Bosnia and Herzegovina presents serious threat to stability, security situation, reconciliation, institution building, sustained return and economic recovery. Instead of being a driving force for common growth and development, education is often used as the ideological means to raise ethnic separation, intolerance, segregation and discrimination. In many areas, children from different constituent peoples attend the same school, but have separate classes. The minorities, especially Roma children, and the children with special needs, confront discrimination, and often have not any possibility for education.”

OSCE, 22 April 2006:
“We in the OSCE have therefore entered into this field not because we have particular expertise in determining whether, say, there is a better way to arrange vocational education or whether every third grade in every school needs to introduce “child-centered education.” Other organizations such as the European Commission or UNICEF are better suited to do that than we are. Rather, we have entered into this field because we are an organization that sends out missions like the one I head in order to carry out what the OSCE considers its core tasks - “conflict resolution” and “post-conflict rehabilitation.” Both of these tasks, in my view, must begin in this country, given its constituencies and composition, with the education of its future citizens and future leaders. After all, if they continue to be taught to believe in division and difference, as they are now, what hope does this country have for holding itself together, much less for joining the European Union?”

Persistent discrimination and segregation in the education system hamper return of displaced persons and refugees (2005)

- IDPs and returnees as well as children with disabilities, face difficulties in accessing schooling.
- majority are Roma and displaced children.
- Children of minority families often continue to live or attend school in the area of displacement
• There continues to be ethnically segregated schools in BiH

UN CHR, 29 December 2005, par.46-48 and 62:
“Problems in the area of the right to education, such as discrimination and ethnic separation, pose another important obstacle to sustainable return. For years after the war, children attending the same school were separated on the basis of ethnicity, and different curricula with strong nationalist content were taught to different groups. As a result, many families have split, with one parent returning and the children staying with the other in the place of displacement to be able to follow the curriculum corresponding to their ethnicity. In other cases, children have returned with their parents but travel long distances to school. Since the authorities stopped financing the bussing of children to other entities at the end of the 2003/04 school year, some parents organize transportation themselves.

Although serious efforts have been made to address discrimination and to develop an egalitarian education system with curricula designed at State level, many challenges remain. In some regions, education is still organized along ethnic lines. For example, some 50 so-called “two schools under one roof”(…) located mainly in parts of Herzegovina use the same facilities but are administratively separate and follow different curricula. Children, teachers and non-teaching staff segregated along ethnic lines attend the same school in shifts or use separate entrances and sections. The Representative found that school segregation perpetuates ethnic tensions into the next generation and delays the process of national reconciliation.

Efforts addressing these challenges include the 2002 education reform and an “interim agreement on accommodation of specific needs and rights of returnee children” signed in March 2002 between the entity Ministers of Education. As a result, returnee teachers were hired, and a larger number of schools offer to their minority returnee children separate classes on certain subjects such as language and literature, history, geography and religious instruction. Some schools have introduced the common core curriculum agreed upon by the education ministers in August 2003. As a consequence, certain areas recorded an increase in the number of returnee children attending schools in their places of return. Despite these efforts, marginalized groups of children, including IDPs and returnees as well as children with disabilities, face difficulties in accessing schooling. Of the 4-6 per cent of children not attending school at all, the majority are Roma and displaced children. (…)

Limited, or lack of, access to the right to education constitutes a major obstacle to return, as IDPs are reluctant to return to areas where their children would face segregation and intolerance and have to attend schools with a curriculum that does not respect the cultural traditions of their own ethnic group. The Representative recommends that the authorities continue the process of harmonization of the educational system and gradually eliminate the system of “two schools under one roof”. Countrywide educational programmes aimed at creating an environment of tolerance, peace and understanding of diversity should be established.”

UNHCR September 2001, paras. 70-74:
“Both Federation and RS Ministers on 10 May 2000 signed a Declaration and Agreement on Education in BiH. This affirms the commitment of the authorities of both Entities to pursuing the dual strategy supported by OHR, which focuses on removing offensive and ethnocentric material from textbooks and the curriculum, and on eradicating ‘ethnic’ bias from the educational system as a whole. The agreement also provided for the establishment of a national Curriculum Harmonization Board (CHB). A national Higher Education Co-ordination Board for university-level education was also established.”

Ombudsman of the Federation of Bosnia and Herzegovina March 2003:
“Major problems faced by returnee families with school-age children confirm the opinion of the Institution of Ombudsmen of the Federation of BiH that poorly organised and often discriminatory education is a big obstacle to the return of displaced persons and refugees.

Namely, how can children from returnee families be educated in conditions such as mono-ethnic curricula, provocative contents in classes, classes in the language of an ‘enemy ethnic group,’ constant attacks, threats and intimidation, mono-ethnic symbols in schools, unresolved problem of transportation of children, etc.

These are the causes of a new phenomenon: children, even after returning to their pre-war residences, continue to commute to the other entity to which they had been displaced in order to continue going to school.

Research done by the Division for the Rights of the Child shows that returnee children in the Republika Srpska commute up to 70 km to attend classes in the Federation surrounded by their own ethnic group and that some children do not go to school at all. Examples: in Srebrenica Municipality a total of 37 children attend classes, of whom 29 go to primary school, although the number of returnees is higher; in Vlasenica Municipality only four returnee pupils go to primary school, although a large number of families have returned, but other children attend classes in the Federation; in the area of Bratunac Municipality 60 pupils go to school in their places of return, and the rest in the Federation, while due to lack of resources 10 pupils of primary school age do not attend classes; from Klisa, in the Republika Srpska, 90 pupils commute to Sapna (Federation); from Snagovi 54 pupils commute to the Federation.”

**Education reform attempts to address discrimination at school (2004)**

- Education reform proposes to create modern education system based on non-discrimination
- The reform intends to de-politicise education and strengthen a feeling of citizenship towards the country
- Non-discrimination measures should encourage returnee children to attend school in their place of return
- State-level framework law on primary and secondary education should ensure recognition of diplomas throughout BiH and facilitate return and freedom of movement
- Development of a common core curriculum should provide common foundation of knowledge while offering safeguards to protect various culture and languages.

**Education Reform**

**OSCE, Key areas, 2004:**


**OSCE, Key areas, 2004:**
“Our overriding objective is to depoliticise education, while creating the conditions that will ensure equal access to a high-quality, modern education throughout BiH.

Quality education is needed:
For the individual. It brings confidence and personal growth, as well as the skills, knowledge, values and attitudes that are critical for a young person to become a good and successful citizen.
For the community. It produces an aware and engaged citizenry, an enhanced potential for prosperity, and a society that is both fair and just.
For the country, As BiH strives to become a modern European state, quality education is essential to prosperity and progress.
We aim to put an end to segregation and discrimination through education, and to encourage returnees with school-age children to continue to go back to their homes.
We aim to de-segregate education, while respecting the rich cultural diversity that is the hallmark of our country.

 [...]”

“We will ensure that all children have access to quality education, in integrated multicultural schools, that is free from political, religious, cultural and other bias and discrimination and which respects the rights of all children. We will accomplish this by:
Providing returnee children with ready access to education, in integrated multicultural schools in their area of return, that is free from political, religious and cultural bias and discrimination.
. Implement the March 5th 2002 Agreement on Accommodation of Specific Needs and Rights of Returnee Children (February 2003)
. Develop long-term solutions for the education of all constituent peoples and persons belonging to national minorities (August 2003)"

**OSCE, Key areas, 2004:**
“Implementing a state-level law on education in primary and secondary schools, as prescribed in the Council of Europe post-accession commitments, and implementing the Human rights and educational principles embedded in this law by adopting laws in the Entities and Cantons that are consistent with it.

 [...]”

Establish a high-level expert working group, bringing together the OSCE, Council of Europe and OHR in co-ordination with the Ministries of Education at all levels of competence, to begin developing a common core curriculum (from 1 December 2002)
Establish an effective instrument to ensure that the common core curriculum and its implied European human rights standards, as prescribed by the state-level law on education in primary and secondary schools are implemented throughout BiH (September 2003 at the latest)
Develop, adopt and implement laws in the Entities and Cantons that are consistent with the human rights and education principles and standards embedded in the state-level law (at least two months before the beginning of the school year (2004-2005)

 [...]”

Obtain agreement of the cantonal authorities in the Federation to defer their powers in the area of higher education to the entity level, in accordance with the Constitution of the Federation of BiH, to achieve overall consistency in legislation for higher education.”

**OSCE, Key areas, 2004:**
“Consistent with its mandate in the area of human rights and pursuant to the decision of the OSCE Permanent Council in July 2002, the OSCE Mission to BiH has assumed responsibility for the co-ordination and facilitation of the work of the International Community in the education sector in Bosnia and Herzegovina

 [...]”

A key priority of the OSCE Education Department was the development, and is now the implementation, of the BiH *Education Reform Strategy*"
Primary and secondary education
OSCE, New law, 2004


[...]

The Framework Law on Primary and Secondary Education in Bosnia and Herzegovina ensures greater mobility for all students across BiH and will facilitate wider recognition of school certificates. It allows for greater school autonomy and increased parent and teacher involvement and partnerships. It also put into place a Common Core Curriculum, which helps and make possible full and free access to schools anywhere in BiH.

The law establishes that every child has a right to access and equal participation in the educational process as a basic educational and human rights principle. It also ensures the priority in education is focused on the rights of the child. Legislation entails the following additional aspects:

affirms the primacy of children’s rights over any other rights;

ensures that all primary schools have a catchment area, which establishes that children will attend schools in their own communities. This eliminates the risk of children being bussed to other schools based on ethnic criteria; [...]

ensures that certificates and diplomas issued by verified educational facilities have equal status in the whole territory of BiH;

provides an indisputable basis for developing and adopting the Common Core Curriculum which was implemented starting in September 2003. This reform should lead to a large extent to the elimination of segregation through curriculum;

ensures that the educational process will contribute to developing a sense of commitment towards the State of BiH;

ensures that the languages of the three constituent peoples enjoy equal status throughout the territory of BiH, as guaranteed by the BiH Constitution.

In addition, legislation:

establishes a Curriculum Agency responsible for implementation, follow-up, evaluation, improvement and further development of the Common Core Curriculum;

ensures that the composition of school boards reflects the ethnic composition of the schools;

sets out that School Directors are to be appointed by the School Board – in effect giving greater autonomy to schools; and

foresees the establishment of parents’ and students’ councils with an advisory capacity.”

Common curriculum
OSCE, Essence, 2004:

“The Common Core Curriculum clearly sets out what is common in curriculum across BiH. It provides a broad core in all subjects, and also includes room for acknowledging different traditions and features of history, culture, and language from region to region. In these subjects, some 50 per cent or more of topics taught are the same. For science and mathematics, the common elements make up more than 80 per cent of the syllabi taught.

Why is a Common Core Curriculum needed?

to facilitate unrestricted access to any school in BiH;

to make it easier for students to change schools if they move to different parts of the country;

to provide a common foundation for the further modernisation of the education system (better quality and higher standards for all), while offering safeguards to protect everyone’s culture and language;

to promote mutual understanding and respect for differences;”
Implementation of the Education reform: progress under international pressure (2006)

- Some Cantons have failed to implement legislation on primary and secondary education in particular with regards to the so-called “Two schools under one roof”
- Constitutional court confirms that the law on primary and secondary education does not violate the interest of Croat constituent people
- Criteria on removal of offensive school names and symbols from schools have been adopted
- Strong nationalist resistance against adoption of the law on higher education
- Some cantons refuse to transfer their competences in education policy to the Federation

Primary and secondary education

OSCE, 1 June 2006:
“This has been seen in the field of primary and secondary education where the lower-level authorities have failed to fulfill their legal obligation to harmonise their legislation with the provisions of the BiH Framework Law on Primary and Secondary Education (adopted in June 2003) or to implement this legislation.”

COE, 18 June 2004, par.42:
“The State–level Framework Law on Primary and Secondary Education was adopted unanimously on 30 June 2003. Harmonised lower level legislation should have been adopted by the FBiH 10 Cantons, the RS and the District of Brcko. As of 8 June 2004, four Cantons have not yet fully harmonised their legislation with the State Law, thus bringing themselves into direct conflict with the State of BiH and its international obligations, in particular the CoE post-accession commitment to adopt legislation on education within two years after accession (i.e. 24 April 2004). On 25 May 2004, the FBiH Constitutional Court rejected the HDZ’s invocation of ‘Vital National Interest’ in one of these Cantons.”

OSCE, 17 February 05:
“ In November 2004, the Constitutional Court of the Federation ruled that the amendments to the laws on Primary and Secondary Education in Central Bosnia Canton imposed by the High Representative in July 2004 do not violate the vital national interest of Croat constituent people. The decision further strengthened the principle that teaching exclusively in one language would in fact violate the right of other constituent peoples and contravene the principle that all languages in BiH are to be regarded as equal. Following the court’s ruling, the amendments entered into force on 31 December 2004, marking the end of the process of harmonization of lower-level legislation with the state-level Framework Law on Primary and Secondary Education. With new education laws now in place, all of the Ministries of Education must now adopt the relevant by-laws necessary for setting common standards on various issues such as the establishment and functioning of school boards, school directors’ appointment, or school names and symbols. The Mission has contributed to the development of prototype education by-laws for use by the Ministries of Education.”

OSCE, 11 November 2004:
“Still, there is good news to report, too. With the assistance of the OSCE Mission, the Office of the High Representative, and the Council of Europe (CoE), all primary and secondary education laws in the country have been harmonized with the state-level Framework Law on Primary and Secondary Education. Most BiH authorities have also developed and adopted Criteria on School Names and Symbols, which aim to ensure the use of appropriate, non-political, non-divisive names and symbols in schools.”

On this issue see also: Report on implementation of the criteria for school names and symbols, Coordination Board for the implementation of the March 5th 2002 Interim Agreement on Returnee Children, 5 April 2006

OSCE, 17 February 05:

“On the positive side, the Commission for the Development of Guidelines on Textbook Writing for the Subjects of History and Geography in BiH successfully completed its work by producing guidelines for textbook authors and publishers. These guidelines are designed to ensure that students, for instance, have a basic understanding of the history and geography of all three constituent peoples and national minorities. Revision of the Common Core Curriculum for Foreign Languages also reached a successful conclusion in November 2004, thanks to a joint effort of the OSCE, the Council of Europe and the ministries of education. The new curricula, designed to bring foreign language learning in BiH in line with Europe-wide standards, now await the approval and subsequent endorsement of the country’s many ministers of education.”

Higher education

OSCE, 1 June 2006:

“The state has also neglected to adopt a state-level higher education law since 2003, thereby failing to provide the legal framework for the BiH universities to fulfill the Bologna obligations endorsed by the State.”

CoE, 18 June 2004, par.43:

“The State-level Framework Law for Higher Education, drafted by BiH and CoE experts, should have been adopted by the end of March 2004 to secure a World Bank loan package. This draft law specifically guarantees, inter alia, the recognition of BiH diplomas according to the same standards throughout Europe and student mobility and quality assurance. However, the State Parliament failed to adopt the law following the invocation of the ‘Vital National Interest’ clause by BiH Croat representatives in the House of Peoples on 7 May 2004 on the ground that the draft law would not, in particular, guarantee that there will continue to exist at least one University in BiH with Croatian language as the official language. They also contest the transfer of competences of the Cantons to the Federation in the education policy.”

CoE, 4 February 2005

“Regrettably, BiH continues to lack a Law on Higher Education offering a legal framework to regulate the country’s higher education system in conformity with European standards. It remains thus one of the only two States to be part of the Bologna process but still lacking this crucial law.

Challenged by the Croat Caucus in the BiH House of Peoples, the BiH Constitutional Court ruled, in June 2004, that the Draft Framework Law on Higher Education endangered the vital interest
not only of the Croats, but of all constituent peoples. The Court made it clear that all three constituent languages must be respected at all universities in BiH, thus preventing ethno-centric higher education.

In July 2004, the BiH Parliament stipulated that a new draft be prepared as quickly as possible taking into account the ruling of the BiH Constitutional Court and the interests of all constitutional peoples in BiH.”

**OSCE, 17 February 2005:**

“Unfortunately, the international community remains the main driving force behind education reform. In the coming months, this process will have to leap some crucial hurdles if reform is to continue. They include the establishment of a state-level Curriculum Agency; a revised Standards and Assessment Agency for primary and secondary education; as well as, upon adoption of a law on higher education, a Centre for Information, Recognition and Quality Assessment. Both the Curriculum Agency and Standards Assessment Agency are state-level institutions envisaged by the Framework Law on Primary and Secondary Education adopted in June 2003 and yet steps towards their creation have been halting at best.”

**CoE, 4 February 2005:**

“The persistence of ethnically ethno-centric schools in BiH is still a matter of grave concern for the CoE. Elimination of all aspects of segregation and discrimination based upon ethnic origin is not only one of the post-accession commitments undertaken by BiH, it is of the utmost importance for the peoples concerned and for the further European integration of BiH.”

**OSCE, 11 November 2004:**

“The educational sphere is, however, like other spheres of life in BiH, unfortunately not immune from political intervention. In fact, the recent failure to adopt the state-level Framework Law on Higher Education is a sad but illustrative example. Bosnia and Herzegovina has seen crucial reforms in higher education, most notably the long overdue mutual recognition of diplomas and qualifications with those of other European countries, postponed and ultimately undermined. Disappointing as this may be, formal and informal talks continue and the Mission, in co-operation with its partners in the international community, continues to work with BiH’s education authorities to break this political logjam. We are optimistic that, when it comes to higher education, thanks in part to our continued support, BiH will eventually join the rest of the family of European nations.”

**See also:**
CoE, 8th report, par.66-68, see link in sources below
OHR, press release, 8/07/04 “High representative enacts legislation harmonizing education laws in three cantons with BiH Education law”
OSCE, Citizens feel detached from their authorities, HoM interview, Dnevni list, 26/01/05

**Implementation of interim agreement addressing discrimination against returnee children (2005)**

- The Interim Agreement allows parents to chose the curriculum for certain subjects
- Permanent education solutions remain to be identified to ensure an inclusive and non-discriminatory education system
- School boards must also reflect the composition of the population
• OSCE has been entrusted with monitoring of the education reform
• Statistical data indicates over 400 school-age returnee children were enrolled in schools in their area of return and over 150 returnee teachers were hired (2003)
• The total number of returnee children enrolled in schools is over 33,000 and the number of teachers is almost 1,800 (2003)
• The number of multi-ethnic school boards increased slightly
• The practice of bussing children outside of their catchment area decreased significantly in a number of cantons

OSCE, 19 April 2005, p.12:
“In 2002, given the increasing number of returnee families and their concerns regarding education options in their areas of return, the 05 March 2002 Interim Agreement on Accommodation of Specific Needs and Rights of Returnee Children (Interim Agreement) was signed and in March 2003, an Implementation Plan for this Interim Agreement was adopted by all Ministers of Education. This implementation Plan allowed parents the possibility to opt for the curriculum of their own choice in the national group of subjects. As this is considered only to be an interim measure, it remains necessary to identify permanent education solutions which would ensure that curricula taught in schools throughout BiH address the needs of all constituent people and national minorities and which aim to provide for an inclusive and non-discriminatory education system.”

OSCE Coordination Board for the Implementation of the March 5th 2002 Interim Agreement on Returnee Children 19 November 2003:
“On March 5th 2002, Entity Ministers of Education signed the Interim Agreement on Accommodation of Specific Needs and Rights of Returnee Children. The aim of the Interim Agreement is to provide the necessary conditions in order to increase the enrolment of returnee children in schools throughout Bosnia and Herzegovina, particularly in schools where returnee children constitute a minority.

The Interim Agreement provides returnee parents with the possibility to opt to have their children taught the national subjects. (Language and literature, history, geography, nature and society, religious instruction) according to their choice of curricula. The Interim Agreement also provides conditions for the increased employment of returnee teachers to teach the national group of subjects and stipulates that the ethnic composition of School Boards shall reflect the composition of the school population where schools are located. The Interim Agreement also requires Ministers of Education to issue instructions on implementation and to appoint a representative from their Ministries to deal with the issue of returnee children.

In order to ensure full implementation of the Interim Agreement, a special working group comprised of representatives of all Entity and Cantonal Ministries of Education was established in order to draft a comprehensive Implementation Plan for the Agreement. On 13 November 2002, an Implementation Plan for the Interim Agreement was signed by Entity and Cantonal Ministers of Education. The Implementation Plan stipulates the conditions necessary for schools to organise and finance the teaching of national subjects for returnee children. Provisions for the hiring and recruitment of returnee teachers to teach the national group of subjects and for changing the composition of school boards to reflect the national structure of the student population are also included in the Implementation Plan.

In order to oversee implementation of the Interim Agreement, a Coordination Board comprised of representatives of all Entity and Cantonal Ministries of Education and the International Community (OSCE and OHR) was established.

OSCE, 20 November 2003:
The Statistical report on the implementation of the Interim Agreement on Returnee Children
"[…] showed that this school year over 400 school-age returnee children enrolled in schools in their area of return and over 150 returnee teachers were hired. The total number of returnee children enrolled in schools in the area of return is now over 33,000 and the number of teachers is almost 1,800. The number of multi-ethnic school boards increased slightly, and the bussing of children outside of their catchment area decreased significantly in Una Sana, Posavina, Tuzla and Bosnia-Podrinje Cantons."

OSCE Coordination Board for the Implementation of the March 5th 2002 Interim Agreement on Returnee Children 19 November 2003:
“The statistical data collected by the Entity and Cantonal Ministries of Education indicate the following trends: In the FBiH, the number of returnee students increased by 0.69% from 26,959 during the 2002/03 school year to 27,145 during the current school year. In the RS, the number of returnee students increased by 3.6% from 6,051 during the last school year to 6,269 during the current school year. In areas of high return, the number of the returnee students also increased significantly. In northeast Bosnia, between June and September 2003, the number of returnee students increased from 2,300 to 3,600 (56%). As of the 2003/04 school year, 1,776 qualified returnee teachers were hired in schools throughout BiH. This increase was due largely to the efforts of education authorities to give priority to qualified returnee teachers and to advertise teaching vacancies in areas of displacement. In the FBiH, the percentage of multi-ethnic schools boards decreased from 46.67% during the 2002/03 school year to 44.93% during the current school year. In the RS, the number of multi-ethnic school boards increased from 11.01% in 2002/03 to 17.82% during 2003/04. The number of students being bussed to schools outside their catchment area decreased by 6.52% in Una Sana Canton, 81.48% in Posavina Canton, 26.44% in Tuzla Canton and 5.15% in Bosnia Podrinje. In Central Bosnia Canton and Zenica-Doboj canton, the number of students being bussed outside their catchment area increased.”

UNHCR email correspondence with UNHCR Sarajevo, 18 February 2005
“Many of the required steps for the implementation of the Interim Agreement have been successfully met, like the removal of inappropriate content from textbooks for the national group of subjects, and the development of criteria and an implementation plan to assist school authorities in removing or replacing school names and symbols that could be viewed as inappropriate.”

OSCE, Over 33.000, 2004:
"In February 2005, guidelines for textbook on history and geography have been presented and endorsed by Ministers of Education. The guidelines aim at ensuring multiperspective teaching on controversial points. A new report on the implementation of the interim Agreement on Returnee Children is expected to be adopted in March 2005
Assessment of the implementation of the interim agreement (2005)
Education in BiH continues to be divided along 'national' lines, as school curricula are used to reflect the nationalist ideology of the dominant national group in any locality. As assessed by UNHCR through an extensive return monitoring survey in 2002, even following the official ‘return’ of some families, their children often continue to reside with relatives or friends in their place of displacement or where they are in majority, or will travel great distances in order to attend school in an area where the curriculum taught is that of 'their' group.

In the interim, and building on the momentum set late 2002 and 2003, efforts continued in 2004 to fully implement the Interim Agreement on the Accommodation of Specific Needs and Rights of
Returnee Children signed in March 2002. To accommodate returnees, a higher number of schools offered to their ‘minority’ returnee pupils separate classes for their religion and language. Returnee teachers were hired. In some areas, schools started to implement the measures adopted back in 2003 for ensuring better representation of the national composition of the student population on school boards. Already by the end of the 2003-2004 school year, authorities had ceased the official financing of transportation of children across cantons or Entities to attend schools where they are in the majority or where the favoured curriculum is taught. Also, some schools started to introduce the common core curriculum, agreed upon by the education ministers in August 2003. As a result, certain areas in BiH recorded an increase in the number of returnee children attending school in their place of return.

Challenges remain. In 2004, although no longer officially supported by the authorities, there were still a number of cases of parents independently organising ‘bussing’ across the inter-entity boundary line. Although common criteria were developed, there is little change on the ground to remove offensive or inappropriate school names and symbols. More contacts with returnee communities, other confidence building measures and, most importantly, comprehensive changes to the curricula taught in schools are still called for to ensure that education in BiH is indeed non-discriminatory, inclusive and respectful of the rights and needs of all children in BiH."

See also:


Two schools under one roof: segregated education persists in Bosnia and Herzegovina (2006)

- The “two schools under one roof” are schools where children of various ethnicity use the same school without having joint classes
- Such schools have separate entrances and shifts depending on ethnicity
- Two schools under one roof were initially supported by the international community to encourage minority returnee children to attend school and mix with children of other ethnicity for extra-curricular activities
- This temporary solution has become permanent and legitimises a form of segregation
- Removal of two schools under one roof is one of the CoE post-accession commitments of BiH
- According to State level Framework law on Primary and Secondary education, such schools are illegal and administrative unification is required
- Administrative unification does not entail unification of curricula
- In September 2005 Canton 7 decided to added further separation between Bosniak and Croat pupils
- As of July 2006, there are still 54 two schools under one roof

ECRI, 15 February 2005, par.33
“In these schools, pupils of different ethnic origin use the same facilities. However, these facilities host, in actual terms, two schools segregated along ethnic lines. These two schools are administratively separate, and the children follow different curricula. In addition, pupils, teachers, and non-teaching school staff of different ethnic origins often go to the same school in different shifts or use separate entrances and occupy separate sections of the same building.”

OSCE, 24 March 2005:
“The history of the phenomenon known as ‘two schools under one roof’ offers an instructive lesson in unintended consequences. It also offers an object lesson in how a purely educational issue can unfortunately metamorphose into a political one. It is a perfect example of why politics does not belong in the classroom. It is now time for these schools to be unified. It is also time that all parties understand that, by saying this, we are speaking only of legal and administrative unification of schools. We are not speaking about unifying languages or curricula.

‘Two schools under one roof’ began with the best of intentions. They were seen as a means of encouraging return by families with school-age children to areas in which their nation had become a ‘minority’ during the war. Yet, although the international community originally blessed this development, it always had reservations about it. For one thing, by suggesting that pupils from all three constituent peoples and the ranks of the ‘others’ should not attend school together, it appeared to legitimise and institutionalise a form of segregation. For another, by duplicating administrative and teaching staffs, complicating budgetary processes, and creating yet another barrier to the modernisation of primary and secondary education, it appeared wasteful. (…)

It was not surprising, therefore, that the Council of Europe should have tasked the authorities to eliminate all aspects of segregation and discrimination based upon ethnic origins when it admitted BiH to membership in April 2002. BiH ministers then signed up in November that year to an education reform strategy that required that the authorities provide for “integrated multicultural schools free from political, religious, cultural and other bias and discrimination”. In other words, the education reform strategy envisioned the administrative unification of “two schools under one roof”. The state-level Framework Law on Primary and Secondary Education, passed unanimously in June 2003, did so as well. This law led, in turn, to cantonal laws in the Federation in 2004.

Administrative unification is, therefore, now a clear legal imperative. The courts have rejected all challenges to it. Nine months later, however, we still have more than 50 “two schools under one roof” operating in Zenica-Doboj, Hercegovina-Neretva and Central Bosnia cantons, though the overwhelmingly majority lie in Central Bosnia Canton. These schools remain an object of political contention because certain political parties have seen fit to make them one. They have succeeded in creating the impression among parents, pupils, and teachers that administrative unification also means the homogenisation of curricula and the subordination of one or another of the official languages to the third. This is simply not true.”

CoE, 3 November 2005, par. 69-76:
“69. Increased politicisation along nationalist lines has led to repeated incidents of separation of children based on ethnicity across BiH at the beginning of the 2005/2006 school year in violation of BiH post-accession commitment to “eliminate all aspects of discrimination and segregation based upon ethnic origins.

70. Municipal authorities in Herzegovina-Neretva Canton (Canton 7), at the beginning of September, adopted decisions to divide “two schools under one roof” by establishing new schools
in replacement of existing branch schools, thus adding physical separation between Bosniak and Croat pupils in Prozor/Rama and Capljina municipalities to already existing programmatic (2 parallel curricula) and legal separation. The CoE had written, through the SRSG, to both municipalities ahead of these decisions, warning that such moves violated BiH’s post-accession commitments. EU Ambassadors in BiH, the OSCE Mission, and OHR, acting in concert with the CoE, subsequently also issued written and oral condemnations. At its meeting of 7 October 2004, the Peace Implementation Council (PIC) voiced its deep concern at the repeated failure of education authorities to implement legal regulations and fulfil the CoE post-accession commitments.

71. It should be recalled that the legal and administrative unification of the so-called “two schools under one roof” in the FBiH is provided for legislation and the subsequent Instruction issued by the Minister of Education of the Herzegovina-Neretva Canton (Canton 7). However, it has never really been implemented with the exception of the Mostar Gymnasium and 2 primary schools.

72. The unification of the Mostar Gymnasium, endorsed by the Cantonal and city boards of HDZ and SDA, led to a shared administration (a Croat Director and a Bosniak Deputy Director, as well as a Bosniak Head of Board), a shared meeting room for teachers and social mixing of students from the two ethnic groups in numerous shared extra-curricula activities. The Secretariat Delegation visited the Mostar Gymnasium and acquired a very positive impression. The success of its unification has been recognised by parents and students and has led to an increase in student enrolment, particularly in the Croat curriculum, where the number of first year students (aged 14) doubled in September 2005 (see also below para. 82).

73. However, in other “two-schools under one roof”, children from different ethnic groups often attend classes in two different shifts (one in the morning and the other in the afternoon) or, where shifts are mixed, the age group is different (for instance, the 6 to 8 year old Bosniak children go to school in the morning together with the 9 to 11 year old Croat children). The creation of the “two schools under one roof”, an initiative promoted by the International Community, was inter alia designed to allow socialising among children of different ethnic groups, at least during extra-curricula activities and in the playground. This was seen as a first step towards an ultimate and more ambitious objective of integrated education with a framework curriculum accommodating cultural diversity through the national group of subjects. But through the tactics of double shifts, even physical unification was prevented. At the same time, although a firm commitment was given by all Ministers of Education to respect the set of criteria agreed upon in the use of symbols and names in the schools, these criteria were never properly implemented. Thus, it can still happen that children of an ethnic group attend classes in a classroom where the ethnic or religious symbols of the other group are present. The recent decisions of municipal councils to create separate main schools in some municipalities in Canton 7, following what seems to be a high-level political deal between HDZ and SDA, should thus be seen against this background.

74. The decision taken on separation and the creation of the separate school “Alija Isakovic” for Bosniak pupils in Prozor Rama (Canton 7) was finally annulled by the municipal council at the beginning of October. This reversal was mainly the result of protests by Croat parents who did not accept the idea of Bosniaks obtaining their own school in the Canton.
75. A new problem appeared recently in Zepce (Canton 4) where a lack of textbooks and of a curriculum in Croat language precipitated protests by Croat parents and a subsequent boycott, specifically arguing in favour of an 8-year rather than a 9-year education. While an 8-year education system is provided for in Croatia, the Framework Law on Primary and Secondary Education in BiH, adopted in June 2004, provides for a 9-year system. Thus any other option violates existing legislation. At the same time, in Central Bosnia Canton (Canton 6), Bosniak parents have put forward demands for the introduction of the “national group of subjects” according to the curriculum of their own choice, while in one instance they have demanded a separate school. Lastly, groups of returnee parents in the Republika Srpska increasingly voiced their requests demanding the introduction of the so-called “national group of subjects” (language and literature, history, geography and religious education) or a separate curriculum.

76. To sum-up, beyond the issue of administrative and legal unification of “two schools under one roof”, the main issue on which CoE and the rest of the International Community should continue to insist is full integration in education and an education system equal to all and respectful of the constitutional principle of equality of the three languages of the constituent peoples on the whole territory of BiH. A gradual evolution from three distinct curricula to a common core curriculum with the three languages being used equally in all schools and a national group of subjects to ensure respect for cultural diversity must be the only long-term objective which can ensure a common future for BiH.”

COE, 18 July 2006, par.74-75:

“74. Reports that are being published by the UN and the OSCE confirm that attempts to address the problem of “two schools under one roof” in a graduated process, e.g. administrative unification first, then eventually complete unification of the school, has failed. The only schools among the 54 that unified their administration (one Director, Assistant Director, etc) are the Mostar Gymnasium and the schools in Canton 4 and only under intense international pressure.

75. According to the authorities of the Mostar regional government, the unification of five vocational "two schools under one roof", that was planned by the international community, will not take place. This actually means that all vocational schools in Mostar, a supposed unified city, would be ethnically segregated. The CoE and OSCE have issued a joint letter to the Mostar authorities (attached in Appendix II), to attempt to avert this outcome and ensure at least administratively unified schools, along the lines of the Mostar Gymnasium.”

USDOS, 8 March 2006, sect. 4:

“Administrative and legal unification of the 52 cases of “two schools under one roof,” with separate classes for Bosnian Croats and Bosniaks, did not lead to integrated classrooms, although shared extracurricular activities, school entrances and recreation facilities sometimes resulted. In some areas of the country, notably Vitez in central Bosnia and Prozor-Rama and Stolac in Herzegovina, local officials and parents sought to establish complete physical segregation of Bosniak and Croat students. Segregation and discrimination were entrenched in many schools, particularly in the teaching of national history and religious education. In the RS, non-Serbs made up less than 5 percent of the teaching staff in primary and secondary schools. In the Federation, minority teachers made up between 5 and 8 percent of all teachers, depending on the canton.”
UN CESC, 24 January 2006, par.28:
“28. The Committee is deeply concerned about the practice of “two schools under one roof”, whereby common premises are either divided or being used at different times to teach separate curricula to children belonging to different ethnic groups, and about the trend in some locations to build separate schools for the respective ethnic groups.”

See also UN Committee on the Rights of the Child, 21 September 2005, par.58-59 and “Harmony a long way off in Bosnia's disunited schools”, by Predrag Popovic, BIRN, 13 October 2006 (in sources below)

Children are being taught different curricula depending on their ethnicity (2006)

- The Law provides that a common core curriculum (CCC) must be implemented in all schools
- The objective is to ensure that students learn at least a minimum of common elements throughout to facilitate greater student mobility
- The CCC is not one curriculum but rather the common elements which must be included in all curricula
- The percentage of common curricula varies depending on the subject: very high for sciences and limited to the minimum for history
- The Interim Agreement on returnee children allows parents to choose specific curriculum for “national group of subject”
- This temporary measures has led to multiplication of curricula within schools and further separation of children
- Ethnically coloured content has been prevalent in textbooks covering national groups of subject
- Foreign curricula from Zagreb or Belgrade are still being used in Bosnia with minor modifications
- A Textbook Commission drafted guidelines for authors of textbooks in national groups of subjects including history and geography

Common Core Curriculum (CCC)
OSCE, Essence, 2004:
“The BiH Common Core Curriculum comprises all common elements taught in BiH schools and is an integral part of the state-level Framework Law on Primary and Secondary Education. It was adopted by all Education Ministers on 8 August 2003 and was introduced at the beginning of the 2003/04 school year. A Common Core Curriculum Steering Board was established to develop the overall curriculum guidelines and to oversee the work of Subject-Specific Working Groups. The Subject-Specific Working Groups were comprised of experts in primary and secondary education coming from schools, Pedagogical Institutes, and universities. They compared the existing curricula, identified commonalities, and compiled the core syllabus for each subject for all years that the subject is taught.”

OSCE, 19 April 2005, p.11-12:
“Article 59 paragraph 4 FW PSE Law (Framework Law on Primary and Secondary Education) stipulates that a CCC must be implemented in all schools in BiH, at the beginning of the school year 2003/2004 at the latest. The objective of the CCC was to ensure that students learn at least a minimum of common elements across the entire country and to facilitate greater student mobility. Although the CCC does not resolve the issue that curriculum across the country remains ethnically- coloured, as will be discussed later, it should be considered a first step in the right direction.
The CCC “consists of all the curricula and syllabi of all subjects of primary and general secondary education of BiH that have as broad an agreed common core as possible” (...). In essence, this means that for each of the 18 subjects covered by the CCC, a certain percentage is the same for all pupils, with the remaining percentage varying depending on the curriculum or curricula (...) of the canton or entity. The proportion between that which is fixed for all pupils and that which is not depends on the subject: in subjects such as mathematics or science, the common portion covers virtually the entire subject content whereas in subjects such as language and literature, history, geography, nature and society, the common portion comprises far smaller areas of the subject matter. With significant support from the international community, all Ministers of Education adopted the CCC on 8 August 2003. Implementation, however, has not been quite so unanimous. (...)

As touched above, the CCC is not one curriculum, but rather the common elements which must be included in all curricula in force across the country. In most cantons and in the RS, there is only one curriculum in force, that of the majority ethnic group in the canton/entity. Thus, a curriculum developed by the Mostar Institute for School Affairs is in force in Posavina Canton, West Herzegovina Canton and Canton 10 and parts of Central Bosnia Canton and Herzegovina-Neretva Canton. The latter two cantons also have schools following the curriculum issued by the FBiH Ministry of Education which is also in force in Una-Sana Canton and Bosnia-Podrinje Canton (Canton 5). A curriculum issued by the RS Ministry of Education and Culture is in force in the RS. Each of the remaining cantons, namely Tuzla Canton, Zenica-Doboj Canton and Sarajevo Canton, have a different curriculum. Finally, and as indicated above, in Zenica-Doboj Canton, Central Bosnia Canton and Herzegovina-Neretva Canton, there are two curricula in force and the curriculum depends on the ethnic majority in the school. In practice, this means that curricula are still ethnically coloured throughout the State. This ethnic colouration is primarily seen in the subjects of mother tongue and literature, geography, history, nature and society and religious instruction. For example, the country of reference, particularly for some of the history curricula, primarily remains neighbouring countries and not BiH.

National groups of subjects and textbook Commission:
OSCE, 19 April 2005, pp.12-13:

“In 2002, given the increasing number of returnee families and their concerns regarding education options in their areas of return, the 05 March 2002 Interim Agreement on Accommodation of Specific Needs and Rights of Returnee Children (Interim Agreement) was signed and in March 2003, an Implementation Plan for this Interim Agreement was adopted by all MoEs. This Implementation Plan allowed parents the possibility to opt for the curriculum of their own choice in the national group of subjects. As this is considered only to be an interim measure, it remains necessary to identify permanent education solutions which would ensure that curricula taught in schools throughout BiH address the needs of all constituent people and national minorities and which aim to provide for an inclusive and non-discriminatory education system.

Alongside curriculum, ethnic colouration has also been prevalent in textbooks. Under the 10 May 2000 Agreement, in order to stop the practice of importing textbooks for the national group of subjects from neighbouring countries, it was agreed that textbooks imported from Zagreb and Belgrade should not be used past June 2002. However, this agreement has often been circumvented, and continues to be circumvented, by simply reprinting the same textbooks within BiH with minor modifications.

Following on the 10 May 2000 Agreement, and in line with the Interim Agreement, a Textbook Commission was re-established which completed a review of textbooks for the national group of subjects prior to the 2003/04 school year. While this Textbook Commission made much progress towards insuring that inappropriate content was removed from the national group of subject textbooks, it did not look at long-term solutions, nor did it review every textbook in use across the
country for all subjects. Therefore, the content in many textbooks remained one-sided and biased. As stated by the 2004 U.S. Report on the State of Human Rights in BiH, “there were textbooks in use outside the so-called national group of subjects that were not subject to the review process but contained material that was inappropriate. For example, the textbooks on politics and economics used in schools following the curriculum in Bosnian Croat majority cantons were produced in Croatia and contained material considered slanderous and hurtful to Serbs. Other cases were less explicit but were recognized as inappropriate or controversial”. In an endeavour to promote longer-term and more sustainable solutions, a Textbook Commission for the Development of Guidelines for Authors of History and Geography was established in 2004. Recently completed guidelines were produced for textbook authors on the writing of history and geography textbooks which aim to ensure that students have a basic understanding of the history and geography of all three constituent people and national minorities, which promote multi-perspectivity and which use BiH as a main reference point. Notwithstanding this recent positive step, given a review of the curriculum and textbooks in use across BiH, one could only conclude at present that “the needs of children of an ethnic background other than the majority one are not yet met in practice in schools in Bosnia and Herzegovina”.

USDOS, 8 March 2006, Sect. 4:
“Schools throughout the country continued to use textbooks on subjects outside the so-called "national group" of subjects that contained controversial material. For example, textbooks in Bosnian Croat-majority areas refer to Croatia as the homeland of all Croat people, while texts in the RS instill a sense of patriotism towards Serbia and Montenegro. During the year the Interentity Textbook Review Commission drafted guidelines for authors of new textbooks that emphasized multiple points of view, including those of women and national minorities. Despite their earlier commitment to the commission, five Bosnian Croat cantonal ministers of education and RS Minister of Education Milovan Pecelj refused to sign the guidelines.”

OSCE, 21 July 2006:
“ All Bosnia and Herzegovina’s Ministers of Education have now agreed on guidelines for authors and publishers of history and geography textbooks- two of the most sensitive and jealously protected subjects in this country’s three curricula- that, if adhered to, as I hope they will be, would finally give students a basic understanding of the history and geography of all three constituent peoples as well as of this country’s national minorities”

OSCE, 22 April 2006:
“We have already, in my view, spent far too much time decrying the existence of “two schools under one roof” in these two places, while failing to note that this kind of “segregation” is endemic to the entire country, just under different forms. Instead, my example comes from the area around Prijedor, where Croat students in two schools with less than eighteen students of their particular constituent community in each grade have now received the right to education in what are called here “the national group of subjects.” (The law stipulates that each grade must have at least eighteen students of a particular Constituent People before such subjects become part of the school’s curriculum.) My educational experts think that, on balance, this is a good thing - as an interim measure. I hope they are right. It is, after all, on the face of it, precisely the tolerance of differences that I am calling for. But let us not forget that “two schools under one roof” were supposed to be an interim measure as well. They were supposed to be a means of encouraging refugees to return to their former homes and different communities to begin to mix in schools by at least being in the same building. But, as the poet Robert Burns once wrote, “the best laid plans o’ mice an’ men gang aft agley.” These divided schools have now taken on an aura of permanence. They now serve mainly as a means to keep these communities apart. The larger point I wish to make, however, is that, for the sake of consistency, if this is done for Croats in Prijedor, it probably ought to be done every else in the country where students of a particular Constituent People are in schools in small numbers, too. How, for instance, can the
authorities in Jajce now continue to deny Bosniacs instruction in the national group of subjects as they are demanding? One wonders where this will end.

In that regard, I am reminded of a recent visit I made to a branch primary school just outside of Visegrad. It was serving a community of Bosniacs who had returned to their pre-war homes. I went there on a snowy, cold day. The school consisted, in its entirety, of thirteen students, in three grades, in one room and with one teacher. It was so cold in that school that, within half an hour, my feet had turned to blocks of ice. I admired the teacher and the students for their valor and resoluteness in seeking to teach and to learn under such conditions. The parents who waylaid me afterwards told me they liked having the school close at hand, no matter how small. I later learned that this was the largest of the seven or so branch schools for this community. Others had as few as two or three students in them.

It struck me, then, that this may well have been a means to a different end - the end of keeping students of different ethnicities apart. Maintaining seven such small branch schools otherwise made little sense to me, for even if you do not heat the building, as the local educational authorities had clearly opted not to do, it still must cost something to operate these facilities. (Then again maybe it does not, for this particular school had so little in it - no gymnasium, no laboratory, no computer that I could see - that I wondered what kind of “professionally competent capital” it might be producing.) I now also wonder whether an agreement to grant fewer than eighteen students the right to education in their national group of subjects will not actually accelerate the tendency to atomize education in this way. The last thing you need in this country is more and more, smaller and smaller, mono-ethnic schools teaching distinctly different histories, cultures, and geographies. If the schools in Visegrad follow the precedent in Prijedor, the Bosniac students in these seven branch schools will soon be learning substantially different things about Bosnia and Herzegovina and their place in it from their Serb neighbors just down the road in the central school in town. (…)

[When I hear that certain well-regarded local authors are taught in, say, Mostar in one curriculum as foreign writers simply because they are not of the same ethnicity as those studying under that particular curriculum, I grow distressed. If Bosnia and Herzegovina is to succeed as a community - as a commonwealth of citizens, even if composed of different cultures, religious beliefs, and languages—then this will hardly do. After all, how will you grow up feeling that you are a citizen of the State of Bosnia and Herzegovina if you are taught that your capital is actually Zagreb or Belgrade, if you are taught that the only possible orientation for your community and your country is Islamic, or if you are taught that everyone who does not speak or worship exactly like you does not belong with you?”

See also: Two schools under one roof are a disgrace, OSCE, 7 September 2006 (see source below)
Statement of the Head of Mission to the Permanent Council, OSCE, 15 September 2005 (see source below)
History textbooks-Towards multiperspectivity, OSCE, 26 September 2006

Efforts to facilitate the integration of Roma children at schools (2005)

- Discrimination and poverty are the main reasons for low attendance of Roma children at school
- A national plan on the needs of Roma and other minorities has been adopted
- Majority of children not attending schools are Roma and displaced children
- Provision of accelerated learning programmes, schoolbooks, supplies and meals have helped increase attendance of Roma children at school
• Several positive examples of integration show the impact of the increased awareness on the issue

UN CHR, 29 December 2005, par.48:
“Despite these efforts, marginalized groups of children, including IDPs and returnees as well as children with disabilities, face difficulties in accessing schooling. Of the 4-6 per cent of children not attending school at all, the majority are Roma and displaced children.”

UNCESCR, 24 January 2006, par.28 and 51:
“The Committee expresses its grave concern about the fact that 80 per cent of Romani children do not attend school. (…) The Committee urges the State party to promote equal access by Romani children to primary, secondary and tertiary education, e.g. through the grant of scholarships and the reimbursement of expenses for schoolbooks and of travel expenses to attend school, and to closely monitor school attendance by Romani children.”

OSCE, “FAQs”, 2004:
“Currently, the presence of Roma in schools is sporadic at best. Very few Romani children attend the later grades of primary and secondary schools. Extremely poor living conditions, lack of proper clothing and the inability to purchase required schoolbooks are the most common reasons for the exclusion of Roma from schools, despite a willingness of many parents to enroll their children.

As part of the Education Reform Strategy, a special Task Force has developed an Action Plan on the Educational Needs of Roma and Other National Minorities in Bosnia and Herzegovina and OSCE will work to oversee its implementation. (…)

In February 2004, Education Ministers adopted an Action Plan on the Educational Needs of Roma and Other National Minorities in Bosnia and Herzegovina which proposes concrete measures to address the social and economic barriers BiH’s largest minority, the Roma, often face by calling on authorities to provide financial assistance for textbooks and transport as well as to raise awareness among Roma parents and communities about the importance of schooling. The Action Plan also proposes steps to ensure that the language and culture of all national minorities is respected within BiH schools and that Ministries incorporate aspects of the culture, history and literature of national minorities into the existing curricula.” (OSCE, “access to quality education”, 2004) “OSCE field staff, in close collaboration with school directors, municipal authorities and NGOs are working at the local level to provide solutions. In Modrica municipality, for example, 50 Romani children attended summer school classes out of which 39 children enrolled for the 2003/2004 school year. In Gradiška municipality, the mayor has supported families of Romani children with enrolment fees for Romani students in secondary school. Catch-up classes are being planned in two of the municipalities’ main schools.

Another successful example from which education authorities can learn can be found at the Džemaludin Caušević Primary School from the municipality of Novi Grad in Sarajevo Canton.

The director of that school obtained permission to allow Romani children to retroactively take exams required to continue their education. After taking extra classes during the summer, 13 Romani children passed their exams and were able to continue their education, putting the total number of Romani students attending regular teaching at 65. Additionally, the school addressed the needs of those students - Roma and non-Roma - who could not afford lunch by providing a hot lunch through donor assistance.”

The Council of Minorities, responsible for overseeing the implementation of the Action Plan, has not been appointed as of February 2005. However, OSCE indicates that the Action Plan has
done a lot to raise awareness and create a positive atmosphere within the various authorities dealing with the issue (OSCE, email, 16 February 2005)

**As of October 2006, the Council of Minorities had still not been adopted (email from OSCE BiH, 13 October 2006)**

MRG, 12/07/06:

“Some of the Ministries of Education have recently adopted regulations/by-laws on national minority children’s education. Regarding the Roma, by-laws deal with regular and systematic data collection on enrolment and school completion rates; accelerated learning programmes; provision of school books, supplies and transport; additional teachers’ help for learning; provision of scholarships, etc. Regulations again emphasize the importance of pupils’ education in their native languages. (…)"

Roma children’s attendance at schools is sporadic at best. They are generally absent from the upper years of primary and secondary school. The implementation of the MoE’s policies resulted in the provision of free school books, supplies, and meals for Roma children, (with transport also provided in some instances). Further, 60 young Roma have scholarships which are provided by Open Society Fund BiH through the Foundation ‘Education Builds BiH’. Of these, fewer than 10 are university students (and none are studying pedagogy, which is essential if the number of Roma teachers is to grow). In terms of increasing the enrolment rate among Roma and the provision of support for accelerated learning some improvements have been made in regions which were included in the comprehensive project ‘Promoting Roma children’s access to education’. These measures have slightly increased the number of Roma children in schools, but the drop-out rate remains high. This is due to the poverty and marginalization of the Roma community, and Roma parents’ lack of awareness of the importance of education for their children. No attempt has been made to enable the teaching of the Roma language. In research for this study, all 173 Roma respondents said that there are no such optional subjects in schools, or Roma teachers. They said that they mainly learn about Roma culture and history from their families (81.5 per cent) or communities (64.1 per cent); 87.7 per cent cited school as the place where they learned least about these issues. This is the case even in Tuzla canton, where measures were adopted in 2005 to introduce lessons about Roma culture, literature, language, and history within primary school curricula. Despite this, none of schools in Tuzla canton, which has one of the largest concentration of Roma, apply these measures. Roma holidays are celebrated in some primary schools in Sarajevo and Tuzla, but not in Banja Luka. Over 61 per cent of Roma children aged 10–16 years, feel that the celebration of Roma holidays is important for their sense of identity, among other reasons.

The views of Roma over the age of 16 are more complex. Most of them strongly support these ideas: ‘Roma have to know more about their people and customs’. Their statements indicate a wide range of feelings, from a greater stress on the need to develop their identity to experiencing exclusion from society: ‘We accept the culture of others, but they do not want to hear about us at all.”

See also:

*National action plan on the education needs of Roma and members of other national minorities in Bosnia and Herzegovina, February 2004*

Report on Bosnia and Herzegovina, European Commission against Racism and Intolerance, 15 February 2005, par.58-71,

See also on Roma:

Documentation Section, Envelope “Roma excluded from fundamental political and social rights because of lack of personal documents”

Subsistence Needs Section, Envelope “Displacement aggravates the living conditions of Roma”

Patterns of Displacement Section, Envelope “Displaced Roma, a particularly vulnerable group”

Property Rights Section, Envelope “Roma continue to struggle to access property rights”

Property Rights Section, Envelope “Some measures taken to legalise Roma settlements”

Obstacles to education
ISSUES OF SELF-RELIANCE AND PUBLIC PARTICIPATION

Self-reliance

Displaced persons and refugees among four population groups at greatest risk of falling into poverty (2006)

- This is particularly the case in the Republika Srpska, while this risk appears to be lower in the Federation
- The position of displaced persons in the social welfare system and other social support systems has not been adequately resolved
- Displaced persons constitute approximately 45% of the extremely poor in the FBiH and 21% in the RS
- The most vulnerable are displaced persons living in collective centres, 40% of whom fall into the category of the poorest and 39% who are just over the poverty line
- Single mothers in displaced persons’ or returnee households do not have adequate access to the basic forms of social welfare
- With radical cutbacks in humanitarian and international assistance, the system at the entity and cantonal level has been unable to take the role of financing the needs of the displaced
- Displaced persons and other vulnerable groups are often forced to pay for basic services

Poverty Reduction Strategy Paper Team 30 May 2003, Sect. 2B:

"Below the poverty line are most frequently children, persons with low education levels, the elderly and the disabled as well as the rural population. An analysis of data for the population as a whole indicates that children, especially those under 5 years of age, displaced persons and returnees, the unemployed, and persons with low education levels, are particularly exposed to the risk of poverty.

[...] Poverty of families with children is at its most pronounced where none of the family members are employed, and the situation is particularly difficult for displaced households, where the head of household is unemployed.

[...]
In all parts of the country, these categories, who are frequently without any stable source of income and not being covered by the existing social welfare systems, are considerably more vulnerable to poverty than the population that was not forced to move. In the case of returnees, the picture varies: in the RS returnees are extremely exposed to the risk of poverty, while in the FBiH that risk is even lower than the average, which is certainly a result of different conditions for returns and differing attitudes towards returnees in the two entities.[...] Displaced persons constitute around 45% of the extremely poor in the FBiH, while in the RS, the displaced population accounts for only 21% of all those falling into this category. Eight percent of the poorest and 37% of persons on the poverty line live in a joint household with at least one displaced person. By far the most difficult is the situation of displaced persons still living in collective centers, 40% of whom fall into the category of the poorest and 39% are just above the poverty line. It should be pointed out that this analysis is based on data originating from a survey conducted in 1998, and that it is probable that significant movements within those groups have occurred since.[...]"
An additional problem of displaced persons results from the fact that they emerged as a vulnerable group during the war, and their position in the social welfare system and other social support systems has not been adequately resolved. They have been to a great extent dependent on humanitarian aid and the support of international organizations. Housing conditions are mainly poor, regardless of whether they are in collective centers or other people’s apartments allocated for temporary occupancy.[…]

In the circumstances of radical cut-backs and the imminent cessation of these types of assistance, the displaced are in an especially difficult position, as there is no organized system at the entity and cantonal level that could take over the role of financing the needs of the displaced. The displaced therefore represent a charge on the municipalities which, in most cases, are unable to provide them with even the minimal conditions for survival. […]

Single mothers in displaced persons or returnee households face particularly serious problems since, in addition to all the other aspects of discrimination, they do not have access to even the basic forms of social welfare provided to other population groups. […]

The Living Standards Measurement Survey did not include the most vulnerable group of the displaced, those who are still residing in collective centers. According to official data, there are still around 1000 displaced persons in collective accommodation in FBiH and some 2000 in the RS. In the continued elaboration of the Poverty Reduction Strategy this population group will also be covered by the research so that their specific problems can be taken into account. […]

The most precise research on poverty in BiH to date has demonstrated, contrary to what was expected, that the poverty level is lower than anticipated, and that no one in BiH is below the lower limit of extreme poverty, i. e. unable to satisfy at least the minimum food needs. 19.5% of the BiH population is below the general poverty line. However, around 30% of the population are concentrated immediately above the poverty line and are vulnerable to falling below it.

More population is exposed to poverty in the RS (25%) than in the FBiH (16%). Inequality is also pronounced within each entity and there are major differences among areas populated by different majority peoples: Croat majority areas enjoy the highest standard of living, Bosniac majority areas are in between (with the exception of Goražde), while the living standard is the lowest in the RS. In Croat majority areas, 6.9% of households are in the group of the poor in terms of realized income, in the Bosniac majority areas this percentage varies between 22 and 25%, and in the Serb majority areas the percentage of such households is 40 -43%. In the RS, the living standard of the population is lower in the eastern parts than in the north-western parts around Banjaluka. […]

Violations of human rights, particularly in the case of minority returns, are one of the important causes of poverty. Returnees are frequently denied the right to personal safety, right to peaceful enjoyment of private property, right to work, right to education and access to health and social care services, as well as the right to equality before the courts of law. These citizens are frequently victims of discrimination, and their opportunities to influence the course of events in public life are almost nonexistent. As a result, returnees are one of the poorest and most vulnerable categories, especially in the RS. […]

The existing social welfare systems are completely inadequate to meet the greatly increased needs. The extremely limited means which the governments of the Entities can set aside for this purpose apart, the problem is compounded by the decentralization of responsibilities in the area of social policy. This in the end results in a large number of beneficiaries entitled to social assistance who do not enjoy these benefits.”

Poverty Reduction Strategy Paper Team 30 May 2003, Sect. 5D:
“Corruption, too, hits the poor especially hard, whether it is related to visiting a doctor, acquiring rights to some form of social assistance, obtaining documents, education, return of property or employment, because they often have no other way to ensure the necessary services. Displaced persons, the elderly, the rural population, children and young people are often forced to pay for such services because they are not properly accepted or recognized by their communities, and lack the channels of communication that could enable them to demand their rights.”

See also, At risk: Roma and the displaced in Southeast Europe, UNDP, 26 June 2006, p.17-29 (see in sources below)

Overstretched social welfare system and wide spread violation of social rights (2002-2003)

- Wide spread violations of social rights including discrimination at work, overdue salaries and back pensions were reported in 2002-2003
- Inadequacies in the social system often prevents displaced persons and refugees from returning
- Returnees and displaced persons are often forced to move to cantons that will grant them greater social protection or employment prospects
- The legal framework necessary to ensure returnees’ unbiased access to socio-economic facilities and opportunities is largely in place, yet enforcement remains limited
- To increase returnees’ awareness of their rights, the OHR has developed public information campaigns on access to employment opportunities, education, health, and utilities
- Social policy is the responsibility of Entities and Cantons, while social assistance in the Republika Srpska is provided by the municipalities
- Unemployment is at 40% and is expected to rise with the privatization of state owned enterprises
- According to the UNDP Human Development Report (2002), the country is 65% poorer than it was before the war

IFRC 1 January 2004:
“As a result of slow economic recovery and detrimental effects of the transition process, the quality of life of many marginalised groups has deteriorated. The already high unemployment rate of more than 40 per cent is expected to rise in the forthcoming privatisation of giant stateowned enterprises. Impoverishment is widespread with 25 per cent of the population in Republika Srpska entity and 16 per cent in the Federation entity living below the poverty line. The situation is compounded by widespread corruption, low and irregular salaries and pensions that represent a huge burden for the fragile BiH economy. In addition, the complicated and overstaffed government structure at all levels consumes over 60 per cent of GDP. To change this, a radical reduction in government spending and shift to development and social sector spending is needed. In its Human Development Report 2002, the UNDP states that ‘on the basis of per capita GDP (USD1,206), the country is 65 per cent poorer than it was before the war and it is close to the bottom of all the regional rankings’.

Funds for humanitarian aid are decreasing dramatically and local authorities are unable to take over the responsibility for people in need.”

Council of Europe 1 October 2003, para. 57:
“Representatives of the civil society in both Entities – NGOs and Ombudsmen - unanimously expressed their major concern with the social climate in BiH. They referred to widespread violations of social rights –including cases of discrimination at work- and to the increased protests by employees and retirees to request overdue salaries and back pensions. The situation of unemployed, elderly and ill persons, refugees and IDPs, as well as the health protection system was particularly critical.”

**Ombudsman Institution of the Federation of Bosnia and Herzegovina, March 2003:**
“The system of pension, disability and health insurance, which is divided by entity levels of authority and cantons, and in some cases is connected to ethnic background, prevents displaced persons and refugees from really returning to their homes. Even when they do go back to their pre-war properties, unsolved social issues often force them to sell them and to take up permanent residence in an area where they expect to solve them more easily.

This assessment is generally true of returnees from the Republika Srpska, as well as displaced persons in the Federation of BiH, who, after repossessing their properties, tie their existence to areas, i.e. cantons, which offer them a higher degree of social protection or an employment prospect.”

**OHR 13 October 2003, para.50:**
“As returnees attempt to reintegrate into society, combined domestic and international efforts must ensure that their individual choice is sustainable. The legal framework necessary to ensure returnees’ unbiased access to socio-economic facilities and opportunities is largely in place, but information on and enforcement of the applicable laws and agreements remains limited. To increase returnees’ awareness of their rights, my Office has developed a number of public information campaigns that provide information on access to employment opportunities, education, health, and utilities.”

**European Commission 2002, pp. 9-10**
“The war shattered economic and social structures in BiH completely. 250,000 people were killed or registered as missing and more than 1.2 million persons were displaced. According to UNHCR estimates there are still almost half a million displaced persons in BiH. Under the GFAP exclusive responsibility for social policy rests with the Entities and in the case of the Federation this responsibility is shared with the Cantons, which are also responsible for policy implementation and service provision. Social assistance in the RS is provided by the municipalities. This situation has contributed to underdeveloped and uncoordinated social policy formulation.”

[...]

**Excessive attention given to the war veterans**
**Poverty Reduction Strategy Paper Team December 2002**
“A specific issue is that of financial assistance provided to war veterans by the governments of both Entities. Contrary to conventional public opinion, the analysis of the data collected during the living standard survey (LSMS) has shown that war veterans and the war disabled face considerably lower poverty-related risks than the average BiH population, which might be explained by very high consideration that the governments give to these categories, motivated by political promises, and spurred by the strength and high level of organization of these groups. The veterans protection system in both BiH Entities is one of the most generous in the world. The transfers to the war veterans represent the single largest form of social welfare transfers. These transfers, which amount to nearly 4 percent of GDP, are a major burden for the entity budgets, limiting the scope for the provision of assistance to other vulnerable categories of the population. In addition, considerable sums are being allocated from lower levels of government for financing the veterans' benefits. Nonetheless, it has been noted that there are certain subcategories of disabled and of families of those killed in war who are not adequately covered and protected, while some groups, on the other hand, do not even depend on these transfers.”

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See also:
For more on economic and social rights, see paras. 15 - 19 in “Question of the Violation of Human Rights and Fundamental Freedoms in any Part of the World” Situation of human rights in parts of South-Eastern Europe, Report submitted by José Cutileiro, Special Representative of the Commission on Human Rights.

Lack of harmonised legislation at state level on social entitlements limits freedom of movement (2006)

- Constitutional framework for Bosnia confer limited responsibility and authority to state level
- The consequence is that entitlements to social and economic rights vary depending on the entity or canton people live in
- Discrepancy in entitlements limits freedom of movement when return results in loss or decrease of social benefits
- Pensions for military victims of war are far more generous than pensions for civilian victims of war
- Victims of sexual violence are not adequately protected or compensated under the current scheme for civilian war victims
- A law currently under examination proposes transfer of the budget for the social protection of civilian war from the Canton to the state level to eliminate inequalities resulting from the diverging availability of funds in the cantons
- The different eligibility criteria for recognition of the status of civilian victim of war may be an obstacle to return for those holding such status in the entity of displacement.
- Municipalities should allocate an adequate budget for return.

UN CESCR, 24 January 2006, par.8, 12, 18-19, 40-41:
“The Committee notes that the constitutional framework for Bosnia and Herzegovina imposed by the Dayton Peace Agreement, which divides the State party into two Entities (the decentralized Federation of Bosnia and Herzegovina consisting of 10 cantons and the centralized Republika Srpska) as well as one district (the District of Brcko), confers limited responsibility and authority to the Government at the State level, in particular in the field of economic, social and cultural rights, and creates a complex administrative structure, which often results in the lack of harmonization and implementation of laws and policies relating to the equal enjoyment of economic, social and cultural rights by the populations of the two Entities, the cantons of the Federation and the municipalities of the same or different entities. (…)

The Committee expresses its deep concern that returnees, in particular those belonging to ethnic minorities, are often denied access to social protection, health care, school education for their children and other economic, social and cultural rights, thereby impeding their sustainable return to their communities. (…)

The Committee notes with deep concern the extent of the discrepancy between the significant budget allocations for financing the pensions of military victims of war and the comparatively low resources allocated to social protection, as reflected by the fact that, under the Law on Amendments to the Law on Social Protection, Civilian War Victims, and Families with Children of the Federation of Bosnia and Herzegovina, civilian war victims will receive only 20 per cent of the pension benefits received by military victims of war.

The Committee is gravely concerned about the absence of a coherent strategy to support victims of sexual violence suffered during the armed conflict of 1992-1995 and that Entity laws pertaining
to civilian war victims are gender-insensitive and provide inadequate social protection for victims of sexual violence. (…)

The Committee encourages the State party to promote the adoption of the proposed Law on Amendments to the Law on Social Protection, Civilian War Victims, and Families with Children, which is currently in the parliamentary procedure in the Federation of Bosnia and Herzegovina. It provides for the transfer of the budget for the social protection of civilian war victims and persons with disabilities not related to armed conflict from the cantons to the Federation, in order to eliminate inequalities resulting from the diverging availability of funds in the cantons. It also requests the State party to ensure that the authorities of the Federation of Bosnia and Herzegovina extend this budgetary transfer to other categories of social protection beneficiaries. The Committee recommends that the State party ensure that victims of sexual violence suffered during the armed conflict of 1992-1995 obtain the status of civilian war victims, to devise and implement a coherent strategy at State level to protect the economic, social and cultural rights of victims of sexual violence and their family members, and to ensure the participation of victims of sexual violence in any decision-making processes affecting them."

**UN CHR, 29 December 2005, par.50 and 60:**

"As the protection of civilian victims of war is regulated by entity laws which, as described above, differ from one another, the different eligibility criteria for recognition of the status of civilian victim of war may be an obstacle to return for those holding such status in the entity of displacement. (…)

The unwillingness of local authorities to sufficiently respect, protect and fulfill the human rights of returnees, in particular their economic and social rights, continues to pose a major obstacle to sustainable return. These obstacles often originate in widespread and persistent discrimination along ethnic lines which still penetrates all spheres of public and private life in many regions of the country. Despite recent efforts, non-harmonized laws and regulations at different levels remain and have also hampered return and integration. The Representative recommends that existing legislation be reviewed at all levels in the light of human rights provisions relevant to IDPs and returnees, with support from the international community. A comprehensive policy of non-discrimination, possibly designed with the assistance of the international community, should be adopted to address discrimination in all spheres, particularly education, health, social protection, employment, access to justice, public participation and the media. It should include legislative measures as well as effective mechanisms for redress and compensation, a system monitoring the situation of vulnerable groups, codes of conduct and public campaigns. The participation of all sectors of society, including the private sector, would be essential for the successful implementation of the policy. Legislation should be harmonized and simplified, especially in the areas of pensions and employment, access to health, education, the use of symbols in public institutions and the recognition of the status of civilian victim of war. (…)

Further, the Representative recommends that the authorities make the necessary budget allocations for the implementation of laws affecting the situation of returnees and displaced persons, especially in the areas of social welfare and health. Municipalities should likewise allocate an adequate budget for return. The Representative invites the authorities to consider accepting the competence of the Committee on the Elimination of Racial Discrimination to examine individual communications, by making the declaration under article 14 of the International Convention on the Elimination of All Forms of Racial Discrimination."

**Inter-entity return still hampered by divided pension system (2006)**
- Under the current agreement between the two pension funds of the country a returnee pensioner will keep receiving his pension from the fund where he was displaced.
- Since pensions are not harmonised throughout the country pensioners from Republika Srpska returning to the Federation are disadvantaged because they will receive a meagre RS pension to live in an area with a higher cost of living.
- Most returnee pensioners keep their health insurance in their area of displacement for fear of discrimination.
- The merging of the Mostar and Sarajevo-based funds in January 2002 has made return between Croat and Bosniac-dominated areas easier.

IDMC/ICHR/MRG/Benjamin. 3 July 2006:
“Freedom of movement hampered by lack of harmonisation of rights and education curriculum at state level
As a result of their weakness, state level institutions are unable to guarantee equal social and economic rights throughout the country. The lack of harmonised entitlements to social and economic rights and limited cooperation between entities affects freedom of movement since displaced persons might be reluctant to return to an entity where they will receive a lower pension or limited access to health care. Under the current agreement between the two pension funds of the country (one in Republika Srpska and one in the Federation), a displaced person returning to his entity of origin will keep receiving the amount given by the pension fund in his place of displacement. Since pension entitlements are higher in the Federation than in Republika Srpska (RS), this has a significant impact on the decision of IDPs to return from the RS to the Federation. IDPs, being usually poorer than the rest of the population, are particularly affected by the relative loss of income that the low RS pension would represent in the Federation where the cost of living is clearly higher.”

UN CHR, 29 December 2005, par.51:
“Similarly, the different pension calculation schemes and pension amounts in each entity also adversely affect returns. Following the Agreement on Mutual Rights and Obligations in the Implementation of Pension and Disability Insurance between the entity funds, it became possible for a beneficiary receiving a pension from the fund in his or her place of displacement to continue receiving this pension after return. However, individual return decisions and sustainability are influenced by the difference in pension amounts between entities in conjunction with differences in the cost of living.”

UN CERD, 11 April 2006, par.21:
“The Committee notes that although pension benefits are significantly higher in the Federation than in the Republika Srpska, pensioners who previously received their pensions in the Federation, but who were internally displaced to the Republika Srpska, continue to receive pensions from the Republika Srpska Pension Fund upon their return to the Federation. Furthermore, most internally displaced persons returning to their pre-armed conflict Entity of residence keep their health insurance status in the Entity where they resided while displaced because of complicated registration procedures and fear of discrimination in the places of their pre-armed conflict residence, despite the significant financial burdens imposed on them by virtue of having to commute between Entities to receive treatment or, alternatively, to bear the full costs of health services in the Entity to which they have returned (Art. 5 (e) (iv)”

Ombudsmen Institution of the Federation of Bosnia and Herzegovina, March 2003:
“The different amount of pensions in the entities, with a different level of living costs, results in that displaced persons who are entitled to a pension in the RS, which as a rule is lower than the one they would be entitled to in FBiH, after exercising the right to return, cannot cover even basic livelihood needs. Attempts made by the entity governments to overcome these problems by way
of protocols have not given result in practice. [...] The Ombudsmen of FBiH on several occasions
pointed out the unfoundedness of the above agreement and violation of rights of numerous
citizens, which the implementation of the agreement in practice leads to. Responsible bodies and
responsible individuals in these bodies and institutions turned a deaf ear to all that, defending
their position by referring to the unfounded document.

Finally, the Human Rights Chamber, deciding on complaints lodged by a number of citizens, took
a stand identical to the stands and assessments of the Ombudsmen of FBiH and assessed that
the above agreement was legally unfounded and that its implementation violated the rights of
citizens.”

**Human Rights Chamber for Bosnia and Herzegovina, Annual report 2002:**

“Pensions:
During the year the Chamber has considered a group of cases (Klickovic and others v. Bosnia
and Herzegovina, the Federation of Bosnia and Herzegovina and the Republika Srpska)
concerning the pension rights of displaced persons. The applicants are retired persons who lived
in Sarajevo before the war. They were displaced during the war and lived in the territory of the
Republika Srpska. They have since returned to live in Sarajevo. Under the arrangements in force
their pensions are paid by the Republika Srpska pension fund. They complain that the pensions
they receive are less than those paid to other Federation residents who were not displaced. The
cases raise issues under Article 1 of Protocol No. 1 to the Convention and in relation to
discrimination in the enjoyment of the right to social security under Article 9 of the International
Covenant on Economic, Social and Cultural Rights. The Chamber's decision in these cases was
adopted and delivered in January 2003.”

**Human Rights Chamber, January 2003, par.9-13:**

“Following changes brought about by the armed conflict, pensions in Bosnia and Herzegovina
came to be administered by three separate funds: the Social Fund of Pension and Disability
Insurance of Bosnia and Herzegovina (hereinafter the .Sarajevo Fund.), the Bureau of Pension
and Disability Insurance Mostar (hereinafter the .Mostar Fund.), and the Public Fund of Pension
and Disability Insurance of Republika Srpska (hereinafter the .RS Fund.). The Sarajevo Fund and
Mostar Fund subsequently merged, following a November 2000 decision by the High
Representative,2 into the Federation PDI Institute (hereinafter the .Federation Fund.), which has
been operational since 1 January 2002. Presently there is one pension fund in the Federation and
one in the Republika Srpska, and all legislation directly concerning pension systems is made at
the Entity level.

The basic calculation schemes for determining rights to pension and disability insurance are
different in each entity. One result of this has been significantly lower pensions in the Republika
Srpska. In March 2002, the average pension in the Federation was 190 KM, and the average
pension in the Republika Srpska was 120 KM. The minimum pension payment prescribed by law
in the Federation of Bosnia and Herzegovina is 140 KM, while the minimum pension in the
Republika Srpska is 80 KM.

The system of pension insurance in Bosnia and Herzegovina, as inherited from the former SFRY,
has been based on the .pay/go. principle that salary contributions from current workers support
the current pensioners. Thus, money that comes into the system as contributions is immediately
paid out as pensions, rather than becoming interest-generating capital from which the interest is
paid out as pensions. When the current workers retire, salary contributions from the future
generation of workers will finance the current workers' pensions. Therefore, the pension system
as a whole has had the character of a general social insurance system. This is also the case with
the current Federation and RS Funds.
On 27 March 2000, the Mostar Fund, Sarajevo Fund, and RS Fund entered into the Agreement on Mutual Rights and Obligations in Execution of Pension and Disability Insurance (hereinafter the Pension Agreement.) (OG RS, no. 15/00, 5 June 2000; OG FBiH, no 24/00, 30 June 2000), under which they agreed that the Fund that had made payments to pensioners before the Agreement came into force would continue to pay those pensions regardless of the pensioners' place of temporary or permanent residence. The Pension Agreement entered into force on 18 May 2000. The enabling legislation for the Pension Agreement is listed in the preamble as Article 205, paragraph 2 of the Republika Srpska Law on Pension and Disability Insurance (OG RS nos. 27/93, 14/94, and 10/95) and Article 82, paragraph 4 of the Federation Law on Pension and Disability Insurance (OG FBiH no. 29/98).

The RS Fund, with the authorisation of the Republika Srpska government, unilaterally terminated the Pension Agreement in March 2002 (OG RS, no. 10/02, 4 March 2002). According to a June 2002 report by the United Nations High Commissioner for Refugees (hereinafter UNHCR.), despite its withdrawal from the Agreement, the RS Fund has continued to pay those pensioners already recognised as its beneficiaries. For its part, the Federation Fund has declared that it will continue to follow the Agreement and pay its beneficiaries now living in the Republika Srpska."

See also Klickovic and others v. Bosnia and Herzegovina, the Federation of Bosnia and Herzegovina and the Republika Srpska, Human Rights Chamber of Bosnia and Herzegovina, January 2003

See also:
For more detailed information, see "Pension and Disability Insurance Within and Between Bosnia and Herzegovina, the Republic of Croatia and the Federal Republic of Yugoslavia in the Context of the Return of Refugees and Displaced Persons", a discussion paper prepared for the ongoing trilateral dialogue in the context of the Stability Pact Regional Return Initiative Task Force, October 2001.

Impact of displacement on access to employment (2006)

- Unemployment rates are higher among displaced than domicile population
- Displaced workers are overrepresented in sectors dominated by manual labour low-skill work and the informal sector
- Majority and displaced women across the region have higher unemployment rates than men
- Unemployment rates can also be influenced by the degree of ethnic segregation or integration.

UNDP, 26 June 2006, pp.83 and 87:
This study presents the result of findings in countries of the Balkans: Bosnia and Herzegovina, Croatia, Serbia, Montenegro.

"Despite broad comparability in the education status attained among displaced and majority communities there are major differences in the employment opportunities available to the two groups. (…)

The data show that unemployment rates and subjective perceptions of unemployment are far higher among displaced than among majority respondents, and in most cases more than twice as high (see Figure 2-16) In contrast to majority respondents, whose subjective perceptions of
unemployment and reported unemployment rates are fairly close, relatively high proportions of the displaced perceive themselves as being unemployed when they are in fact involved in some form of income generation. This most likely reflects the fact that employment for the displaced is concentrated in the informal sector, involving irregular or poorly paid work. Although such activities may generate income, they may not be regarded as ‘employment’.

**Differences in types of employment and sources of income:**
The data in Figure 2-17 show that, in comparison with workers from majority communities, displaced workers are overrepresented in sectors dominated by manual labour and low-skill work – such as trade and construction – and underrepresented in public sector employment in such areas as public utilities, health care, education and science. This is most probably caused by both an aversion to lower-skilled employment among the majority, combined with a lack of public-sector opportunities for the displaced due to their largely ‘provisional’ and ‘unresolved’ status. The ‘provisional’ status of the displaced seems to affect their ability to obtain skilled employment: just 15 per cent of displaced workers are in skilled employment, compared with 31 per cent of workers from majority communities. Differences in levels and types of unemployment among the displaced have a major impact on their incomes. Average monthly incomes from wages among majority households (363 euros) are nearly double those of displaced households (191 euros).

**Gender**
Disaggregating unemployment rates by sex highlights the doubly vulnerable position of displaced women. The data show that majority and displaced women across the region have higher unemployment rates than men (see Figure 2-21). As discussed in the Employment chapter on Roma, this might be related to the greater probability that women will withdraw from conventional labour market activities to engage in activities such as housework and/or looking after children. (...)

Unemployment rates can also be influenced by the degree of ethnic segregation or integration. The survey approached this issue by posing questions about the ethnic mix of the respondents’ settlement, village, town, city, or immediate neighbourhood. The data show that unemployment rates are highest among the displaced living in areas predominantly containing the displaced, and lowest among those living in mixed areas (see Figure 2-24). The extent of ethnic mixing does not appear to have a significant impact on the employment prospects of majority workers. This suggests that initiatives to reduce unemployment among displaced persons should focus on increasing their integration into majority communities and on providing living opportunities outside of refugee centres.”

See also, *Coping with war, coping with peace: Livelihood adaptation in Bosnia-Herzegovina, 1989-2004*, Elizabeth Stites, Sue Lautze, Dyan Mazurana, Alma Anic, April 2005

**Sustainable return continues to be hindered by high rates of unemployment amongst displaced and returnees (2005)**

- Discriminatory practices in employment is a major factor in people’s decisions not to return
- Unemployment is most widely spread among the young people and displaced persons
- Unemployment rate stands around 42.7% in the FBiH and 38.2% in the RS (December 2002)
- The limited employment opportunities are compounded by widespread discrimination based on ethnicity, political affiliation or gender
- Discriminatory dismissal or recruitment is especially prevalent in the public sector and should be punished
There are also certain concerns that the privatization process in some parts of BiH is taking place in a corrupt fashion.

International efforts towards eliminating ‘ethnic’ discrimination in employment, focuses on legislative reform and the implementation of an anti-discrimination strategy.

Sustainability of return to urban areas may be endangered by lack of land for subsistence farming.

To encourage DPs to consider return, the OHR developed media programmes that increase the visibility of successful returnees and provide information on return conditions.

UN CHR, 29 December 2005, par.64:
“Discriminatory practices in employment, especially prevalent in the public sector of municipalities, discourage minority returns. Returnees excluded from the formal labour market have to resort to the informal economy or other coping mechanisms. The Representative recommends that the authorities closely review and monitor recruitment practices in the public sector with a view to eliminating discrimination. Disproportionate underrepresentation of one ethnic group in given public company should be taken as an indication of discrimination unless otherwise demonstrated. Programmes and initiatives aimed at creating employment opportunities specifically for IDP and female returnees who are heads of household should be created. Such measures might include vocational training for women as well as training for employers on gender equality. Authorities should also take steps towards creating an environment conducive to economic growth and development in return areas, and ensure that the privatization process is conducted in a transparent and accountable manner. Past incidents of discrimination in employment need to be addressed by providing those unfairly made redundant with re-employment or compensation.”

AI 1 October 2003:
“Insufficient conditions for returnees in the place of their return continued to mar the sustainability of their return [in 2003]. In particular, the lack of access to employment was a major factor in people’s decision not to remain in their pre-war community. Employment opportunities were scarce in general, reflecting the weak economic situation and the forced transition to a market-led economy through mass privatization, however those in ethnic minorities in addition faced discrimination when trying to find employment or get rehired in their pre-war jobs, and had virtually no access to legal remedies or any other form of redress.”

Poverty Reduction Strategy Paper Team 30 May 2003, Section B2:
“Displacement had an impact on the stratification of the labour market: the displaced are in a much more difficult situation, facing greater difficulties in finding a job and often forced to accept jobs that other groups were not interested in. In view of the difficult economic situation as well as continued ethnic tensions, returnees almost never manage to return to their previous jobs.”

Poverty Reduction Strategy Paper Team 30 May 2003, Section B4
“According to official statistical data, in December 2002 the official number and rate of unemployment (unemployed registered with employment bureaus) were 435,505, or 41.1% (42.7% in the FBiH and 38.2% in the RS) of active population.[…] Women represented 46.3% of the overall number of unemployed. Approximately one third of the unemployed were demobilized soldiers, while 4% were family members of killed soldiers and military war disabled.[…] About 34% of the population (38.6% of the FBiH population and 26.7% of RS population) regard unemployment as the single most serious problem faced by the country. As a result of cuts in military personnel, as already announced, as well as the impact of privatization, jobless numbers are expected to continue to rise.

In December 2002 in the FBiH there were 21,711 more unemployed persons, or 8.1% more compared to December 2001. In the same period, the number of people in employment was
390,201, a drop of 15,488, or 4%. [...] The observed trend of rising unemployment can be attributed, in the long term, to privatization and the slow pace of economic reform and, in the period in question, to the demobilization of a part of the professional soldiers of the FBIH Army. Subject to certain conditions, the unemployed who previously had jobs have the right to participate in the safety net which provides benefits of between 117 and 240 KM, payable for a period of between 6 and 12 months. Insufficiency of funds for this purpose led to only 3,320 people receiving these benefits in 2002. 38 Unemployed persons in the FBIH are entitled to health care on condition that they are registered with one of the cantonal employment institutes. The resources for paying health care contributions for this category are provided from part of the unemployment insurance contribution levied on wages. [...]

In the RS, at the end of 2001 there were 147,749 unemployed persons, i.e. 40%. In 2002, unemployment continued to decline gradually, falling to 144,790 or 38%. [...] It should be noted that the data of the RS Statistical Institute on the unemployed and the June data from the records of the RS Employment Institute, which point to a drop in the number of registered unemployed, are not confirmed either by the data on the real decline of industrial production in the RS, nor by the findings of polls carried out amongst the population. [...] Of the overall number of unemployed persons registered at the Employment Bureau, 43% are women. Demobilized soldiers account for 38.7% of registered unemployed persons, military war disabled 4.5%, and members of families of killed soldiers 5.1%. 27% of the unemployed are refugees, 10.6% are displaced persons and 1.8% are returnees. [...] A further problem is the estimate that over 50% of the approximately 223,000 employees in RS are in fact on "wait-lists". [...]"

"The consequences of the war have extremely complicated the situation in BiH and the position of its rural population, where the level of poverty is significantly higher. Although BiH has no pronounced potential for the development of agriculture, about half the rural population relies to a large extent on agriculture to survive. Many rural communities have been destroyed and their population displaced, either to third countries or within the country, where they are now largely living in cities. The slow pace of demining means that normal life is still impossible in many parts of the country, and a proportion of arable land cannot be cultivated. [...]"

The lack of a comprehensive agriculture development policy deters people from investing in that activity, while options for other types of employment in rural areas are minimal. All this prevents many displaced persons from leaving their temporary residences in the cities, which creates an additional pressure on the very small number of jobs, increases the cost of housing and gives rise to difficulties in the provision of educational, health care and social services." (Poverty Reduction Strategy Paper Team 30 May 2003, Section C4)

Poverty Reduction Strategy Paper Team 30 May 2003, Section 5D:
“Unemployment (coupled with inactivity or exclusion from the labour force) are among the major immediate consequences of the difficulties facing BiH in the process of post-war recovery and the transition to a market economy. At the same time, unemployment is a shock to society and the individuals, which brought poverty and inflicted it, directly or indirectly, on members of virtually all categories of the population, although it is most widely spread among the young people and displaced persons.”

OHR 13 October 2003, paras. 51-52:
“Many DPs still do not return to their pre-war residences because they feel they would be unable to rebuild their lives there. While many of the concerns are well grounded, some are based on incomplete information. To encourage DPs to consider return, my Office developed media programmes that increase the visibility of successful returnees and provide factual information on return conditions. In addition, my Office, SERDA and the country’s Employment Bureaus are
jointly developing a system to make information on vacancies around the country more widely accessible.

Further, there are many employment creation initiatives around the country, often targeting returnees in particular, but no study ever compared the effectiveness and efficiency of the different approaches followed. To aid donor agencies in their programme designs for 2003, my Office conducted a survey among implementing organisations and provided donor agencies with their feedback on the advantages and drawbacks of the various types of programmes. These efforts are aimed at rebuilding BiH’s multiethnic society with opportunities for all citizens, including refugees, DPs, returnees and the domiciled communities."

U.S. DOS 31 March 2003:

“The continued depressed state of the economy throughout the country and the consequent lack of employment opportunities for returnees remained a serious obstacle to a significant number of returns. Attempts by returnees to receive compensation for jobs illegally lost during the conflict years were largely unsuccessful. As a result, most minority returnees were elderly, which placed a burden on receiving municipalities. Younger minority group members, who depended on adequate wages to support their families, generally remained displaced, especially in cases in which they had managed to find work in their new place of residence. Some reports described younger returnees going back to their prewar homes, but no adequate statistics existed to determine the age of returnees.”

See:
The Human Rights Chamber for Bosnia and Herzegovina and the Human Rights Ombudsperson for Bosnia and Herzegovina for decisions relating to employment discrimination catalogued on the web.

For more information on the labour law in Bosnia and Herzegovina, consult the human rights reports prepared by the Human Rights Coordination Centre (HRCC). In particular, see Paragraphs 108 to 113 of HRCC report covering the period between 1 April and 30 June 2001.

See also:

Authorities have failed to address violations of workers’ right who arbitrarily dismissed during the war (2006)

- During the war, tens of thousands of workers were dismissed arbitrarily because of their ethnicity
- Mechanisms put in place by authorities to remedy this situation are not functional

AI, 26 January 2006, press release:
"Ten years after the signing of the Dayton peace agreement, the authorities of the Federation of Bosnia and Herzegovina and of the Republika Srpska have failed to address violations of workers' human rights," Omer Fisher, Amnesty International's researcher on Bosnia and Herzegovina said.

The 1992-1995 war between the three major ethnic groups of today's Bosnia and Herzegovina, Bosniaks (Bosnian Muslims), Bosnian Serbs and Bosnian Croats, took the lives of tens of thousands of people while driving millions away from their homes. Tens of thousands of workers in these territories were discriminated against and unfairly dismissed because of their ethnicity. Discriminatory dismissals were in many cases the first step in aggressive campaigns of "ethnic cleansing", which included killings, forcible transfers and deportations.

The Dayton Agreement, and specifically its Annex 7 on refugees and displaced people, explicitly recognized the right to return as both a remedy to the human rights violations of unlawful transfers or deportations and as a means to reverse effects of the "ethnic cleansing". In the ten years after the end of the war, about half of the 2 million people displaced by the conflict have returned to their homes.

"When coming back to their homes, minority returnees often must struggle to overcome persistent and endemic discrimination in accessing employment," Omer Fisher said.

"Without employment many returnees are unable to ensure or maintain an adequate standard of living and, facing destitution, many either decide to go back to their area of displacement, or commute there to continue working. Others emigrate in search of work."

The right to be free from discrimination, including in the enjoyment of the right to work, is enshrined in a number of international human rights standards and treaties to which Bosnia and Herzegovina is party. The Federation of Bosnia and Herzegovina and Republika Srpska labour laws prohibit discrimination in employment. They also contain provisions providing compensation to victims of discriminatory dismissals. However, such provisions remain insufficient. Among other problems, these legal protections do not apply to all workers who lost their jobs as a result of discrimination and compensation, when awarded, is manifestly inadequate and generally regarded as "symbolic". Equally importantly, the mechanisms to consider claims by former workers and to award compensation are not in place or are too limited. The vast majority of claims remain pending.

In those cases where workers were unfairly dismissed on the grounds of their ethnicity from state-owned companies, the state failed to respect the principle of non-discrimination in the enjoyment of the right to work. Where they were dismissed by private companies, the state failed to protect workers from discrimination. In all cases, workers who were dismissed in a discriminatory manner have a right to full reparation for the human rights violations they suffered."

See also full report: Bosnia and Herzegovina: behind closed gates: ethnic discrimination in employment, Amnesty International, 26 January 2006

Public participation

Current constitution and legislation limits the right of participation of minority returnees (2006)
The current Constitution of Bosnia and Herzegovina allocates certain important rights on an explicit ethnic basis.

Reform of Bosnia’s segregated electoral system is vital to triggering a process of gradual political and social cohesion.

Only individuals from the three ‘constituent peoples’ - Bosniacs, Croats and Serbs - can stand for office in the House of Peoples or for election as President therefore excluding Roma, Jews and other minorities.

Choice for voters is restricted upon ethnicity: only a Serb may be elected from Republika Srpska and only a Bosniac or Croat from the Federation.

Restrictions on self-identification exclude individuals of mixed ethnicity who refuse to choose one constituent people identity over another.

Returnees face problems regarding participation in public affairs, which also prevents or complicates returns, particularly of minorities, and social reintegration.

Deprivations of minority returnees’ rights are inextricably linked with the lack of political representation of the non-dominant group into the political system.

MRG, 17 November 2005:

“On the eve of the 10th anniversary of the Dayton Peace Agreement, negotiations over the new Bosnia and Herzegovina Constitution must firmly establish minority rights and reform a discriminatory electoral system that enhances ethnic divisions. Minority Rights Group International (MRG) stated that such an undertaking is key to healing entrenched divisions and fostering a pluralist society where all existing minorities are able to fully participate in public life. Political structures designed along ethnic lines in the post-Dayton Constitution 10 years ago have been blamed for creating greater ethnic division in Bosnia. (…) Long-overdue reform of Bosnia’s segregated electoral system is vital to triggering a process of gradual political and social cohesion.

MRG, in partnership with the Benjamin N. Cardozo School of Law Human Rights and Genocide Clinic and the European Roma Rights Center (ERRC), is campaigning to change the electoral system, which violates the rights of many citizens to participate equally in public life, and institutionalizes politics along ethnic lines. Only individuals from the three ‘constituent peoples’ - Bosniacs, Croats and Serbs - can stand for office in the House of Peoples or for election as President, to the exclusion of Roma, Jews and other minorities. Additionally, the choice for voters is restricted upon ethnicity: only a Serb may be elected from Republika Srpska and only a Bosniac or Croat from the Federation. Restrictions on self-identification exclude individuals of mixed ethnicity who refuse to choose one constituent people identity over another. This violates of the right to choose to be treated or not to be treated as a national minority, and the principle that no disadvantage shall result from this choice [FCNM Article 3].”

UN CHR, 29 December 2005, par.52:

“Due to discriminatory attitudes and practices by some local authorities, returnees expect or face problems regarding participation in public affairs, which also prevents or complicates returns, particularly of minorities, and subsequent social reintegration. In July 2000, the Constitutional Court of Bosnia and Herzegovina ruled that none of the three main ethnic groups as the constituent peoples of Bosnia and Herzegovina shall be excluded from exercising its rights in the entities and that their members shall be represented at all levels of government and public administration. However, problems remain with the implementation of these principles as well as for those who do not belong to any of the three constituent peoples, the so-called “others” such as the Roma.”

UN CERD, 11 April 2006, par. 4, 11-12:
“The Committee notes that the structure of the current Constitution of Bosnia and Herzegovina allocates certain important rights on an explicit ethnic basis. The Committee recognizes that this structure arises out of the Dayton/Paris Peace Agreement and that it may have been necessary, on an interim basis, to secure peace in the aftermath of the armed conflict. However, the Committee also notes that the Constitution’s current assignment of important rights based expressly on ethnicity may impede the full implementation of the Convention. (…)

The Committee is deeply concerned that under Articles IV and V of the State Constitution, only persons belonging to a group considered by law to be one of Bosnia and Herzegovina’s “constituent peoples” (Bosniaks, Croats, and Serbs), which group also constitutes the dominant majority within the Entity in which the person resides (e.g., Bosniaks and Croats within the Federation of Bosnia and Herzegovina, and Serbs within the Republika Srpska), can be elected to the House of Peoples and to the tripartite Presidency of Bosnia and Herzegovina. The existing legal structure therefore excludes from the House of Peoples and the Presidency all persons who are referred to as “Others,” that is persons belonging to national minorities or ethnic groups other than Bosniaks, Croats, or Serbs. Although the tripartite structure of the State party’s principal political institutions may have been justified, or even initially necessary to establish peace following the armed conflict within the territory of the State party, the Committee notes that legal distinctions that favour and grant special privileges and preferences to certain ethnic groups are not compatible with Articles 1 and 5 (c) of the Convention. The Committee further notes that this is especially true when the exigency for which the special privileges and preferences were undertaken has abated. (Arts. 1 (4) and 5 (c)). The Committee urges the State party to proceed with amending the relevant provisions of the State Constitution and the Election Law, with a view to ensuring the equal enjoyment of the right to vote and to stand for election by all citizens irrespective of ethnicity.

The Committee expresses its concern that the State and Entity Constitutions allocate certain authority to, and confer specific rights exclusively on members of the so-called “constituent peoples” (Bosniaks, Croats and Serbs), and that persons not belonging to one of these ethnic groups are formally referred to as “Others” (Article 2 (1) (c)). The Committee urges that the State party ensure that all rights provided by law are granted, both in law and in fact, to every person within the territory of the State Party, irrespective of race or ethnicity. The Committee strongly recommends that the State party review and remove all discriminatory language from the State and Entity Constitutions, and from all legislative and other domestic law texts, including especially, but not limited to, distinctions between so-called “constituent peoples” and “Others.”

MRG, Benjamin N. Cardozo, February 2006:
Par. 5:
“Given the need to secure the collective rights of the three main ethnic groups in BiH after the war, which ostensibly was fought on ethnic grounds, the rights of “others” have often been overlooked in the implementation of human rights and collective rights in almost areas of life. And in spite of progress, as outlined in BiH’s periodic report, severe problems of racism and discrimination persist in the country, often as a result of nationalist policies pursued by ethnically based political parties.”

Par. 8:
“In light of the ongoing negotiations over constitutional reform and the scheduled Bosnian elections in October 2006 this report will focus on discrimination in regard to the right of public participation. In particular, this report will focus on the incompatibility of the BiH Constitution and the Election Law of BiH with Article 5(c) of ICERD. It is argued that the Constitution and Election Law do not provide for equal treatment of all citizens in the exercise of their right to vote and to stand for election.”
Par. 14-16:
“The [Constitution and legislation ] reserve access to the tripartite presidency for persons belonging to the “constituent peoples”, namely Bosniac, Serb or Croat ethnicities. Thus, persons falling outside of - or not identifying themselves with - the stated ethnic groups are legally barred from holding a position in the tripartite presidency.

Moreover, Serbs residing in the Federation and Bosniacs or Croats residing in the RS are not eligible to the tripartite Presidency of BiH. (...) Thus, the right to participate in elections is inextricably linked to ethnicity, which in turn is linked to territory.

Finally, citizens voting rights in both Entities are restricted on the basis of ethnicity in that an individual may only vote for candidates of specified ethnicities.”

Par. 31-34:
“The BiH structure creates incentives for the three constituent peoples to govern in a manner beneficial to their ethnic constituencies and detrimental to the needs of citizens outside these three groups. Thus, it is difficult to argue that the means to achieve this aim – which have deeply entrenched discrimination in the political system, and alienated a sizeable proportion of citizens in BiH – were either reasonable or objective.

Regardless of whether the Committee finds that the discriminatory measures were reasonable at the time they were implemented, BiH is now ten years from the end of the war and moving beyond the needs of the post-conflict rehabilitation phase of its development. It can no longer justify the political disenfranchisement of significant portions of the population on racial grounds.26

Moreover, the lack of any objective or reasonable justification for restrictions imposed on “constituent peoples” of mixed ethnicity who refuse to choose one identity over another constitutes another most apparent form of discrimination contrary to Articles 1 and 5(c) of CERD, thereby weakening any argument for the legitimacy of the means used to achieve the aim of equitable power-sharing. The same can be said of the denial of access to effective participation experienced by those “constituent people” who do not reside in their prescribed geographic area.

In this regard the Venice Commission has pointed out that ‘If the members of the Presidency elected from an Entity represent all citizens residing in this Entity and not a specific people, it is difficult to justify that they must identify themselves as belonging to a specific people. Such a rule seems to assume that only members of a particular ethnicity can be regarded as fully loyal citizens of the Entity capable of defending its interests.”

Par. 41:
“[T]he BiH Constitutional Court in the Constituent Peoples decision requires, at a minimum, that all three constituent groups and ‘others’ are to be treated equally across the whole of BiH. (...)Disenfranchising national minorities and minority returnees, meaning, Serbs living in the Federation and Bosniac and Croats living in the RS, does not represent equal treatment of all people across the whole of BiH. (...) The highest court of the land in BiH has recognized that the contested laws are discriminatory on their face.”

Par. 46-49:
“This political arrangement directly thwarts the principle and practise of refugee return also enshrined in the DPA, (...) discouraging individuals from returning to the Entity in which they now form a minority (minority returns) and perpetuates entrenched discrimination in all areas of life, against minority returnees, national minorities, other minority groups, and individuals unable or unwilling to identity with the “constituent people” categories. (...)
In the absence of a population census since 1991, the current number of inhabitants and their distribution according to ethnic groups remains unclear. Nevertheless, population estimates suggest the number of minority returnees in each Entity is very low. In the case of the RS, approximately 17% of the population is of non-Serb ethnicity whereas in the Federation 8.7% of the population are of Serb ethnicity. (…) Obstacles to minority returns include return-related violence, where the criminal justice system fails to follow up adequately on such crimes, social and economic factors such as realizing rights to education, health, social security and pensions, and above all the right to work. These broad deprivations of minority returnees’ rights are inextricably linked with the lack of political representation of the non-dominant group into the political system.

Effectively, Serbs from the Federation and Bosniacs and Croats from the RS have no representation of their own in the Presidency or the BiH Parliament. This not only raises issues about discriminatory treatment in the right to vote and be elected, but it also has the effect of thwarting the principle of refugee return.

Further, non constituent peoples have even less of an opportunity to have their concerns heard and rights protected. To illustrate concretely, as recounted for the European Roma Rights Center: “When a Bosniak decided to return to Republika Srpska he can always count on the [pro-Bosniak] SDA to cry foul in the event that for some reason he is not treated well in his place of return. If, on the other hand, a Romani person is denied access to healthcare, prevented from repossessing property or prevented from sending his children to school, no one says anything. And this is just considered normal.”

See also:
“Submission to the Human Rights Committee”, ICHR, IDMC, MRG, Benjamin N.Cardozo, 3 July 2006 (see in sources below)
“Summary of pressing concerns: Bosnia and Herzegovina, European Roma Rights Centre, 3 July 2006 (see sources below)
“Progress on reinforcement of state level institutions halted by rejection of constitutional reform (2006)” in this profile, section Causes and Background

Returnees are not adequately represented in public institutions (2005)

- Public institutions have been subjected to a policy of ethnic homogenization, especially in the Republika Srpska
- Minority returnees have to face hostility from authorities and often prefer to avoid any contact with them
- This is particularly a problem in entity, cantonal and municipal housing offices
- Risks of discrimination are also real from public utility companies, the education system, justice and police officers
- The recruitment of minority police officers remains insufficient
- However, returnees are in the process of establishing themselves in governments and institutions in various municipalities
- High Representative has forced local authorities to guarantee representation to all ethnic groups

UN CHR, 29 December 2005, par.51:
“The provocative use of national or religious symbols by some local authorities contributes to creating and maintaining a hostile environment towards minorities. Public institutions are often
dominated by nationalist political parties who follow a policy of ethnic homogenization, which leads to favouritism privileging the ethnic majority while neglecting or underrepresenting the interests of vulnerable groups. This discredits public institutions which are perceived by minority returnees as non-transparent and open to corruption.”

ICG 13 December 2002, pp. 16-18:

“The homogenisation of Bosnia’s population in separate national enclaves during the war, the partition sealed by the DPA and the subsequent electoral victories of the nationalist parties have ensured that municipal administrations, courts, police, schools, and public companies are staffed almost exclusively by members of the locally dominant nation. There are partial exceptions to this rule in some cities and professions in the Federation, but the RS as a whole continues to reflect the success of ‘ethnic cleansing’, particularly in those towns where the SDS initiated its project through the exemplary execution or expulsion of influential leaders of the Bosniak and Croat communities.

Mono-ethnic institutions inhibit return in two key ways. First, because the private sector accounts for a mere 35 per cent of BiH’s GDP, public institutions are the largest employers. More significantly, because of the many appointments of ardent loyalists to public sector jobs made by the nationalist parties during and since the war, the members of new minorities can still expect to meet with antagonism and discrimination in their contacts with these authorities. In places like Prijedor, Bratunac and Srebrenica, where individuals involved in running concentration camps or leading paramilitary formations are known to work in the courts, schools and police, the natural tendency of returnees to avoid dealings with the authorities is all the greater. As a result, where large-scale return has taken place, returnees have usually formed parallel institutions, led by returnee associations, serviced by token representatives in municipal government and sustained by a largely separate economy. Return has not yet resulted in re-integration.

One sector where the past has an obvious effect on return is in the staffing of entity, cantonal and municipal housing offices, to which potential returnees must apply to repossess their pre-war property. For example, according to figures provided by the RS Ministry for Displaced Persons and Refugees, only 22 out of 520 employees in that ministry are not Serbs. Moreover, a significant number of employees in the RS Housing Offices OMIs) are themselves displaced persons, with an obvious conflict of interest in assisting returnees to repossess property usually occupied by people like themselves. None of the OMI heads of office in the RS represents returning Bosniaks or Croats.

Returnees can encounter discrimination in many spheres and guises. For example, in some areas, newly built settlements for ‘majority’ DPs are connected to roads, electricity grids and other utilities before returnee villages, whose infrastructure was destroyed in the war, are reconnected. This reflects the fact that the public utility companies are run by the governing parties throughout the country. Meanwhile, […], the nationally exclusive curricula and staffing of schools perpetuates divisions and deters returnee parents from sending their children to school. Nor have judges and prosecutors, appointed during the war for their loyalty, proved ready to dispense nationally impartial justice.

Bosnia’s police forces are, in fact, the only public institutions that the international community has sought systematically to reintegrate. In restructuring agreements signed with the Federation in 1996 and with Republika Srpska in 1998, the UN mission set quotas for the recruitment of ‘minority’ officers to the entities’ forces. In the Federation, forces were meant to reflect the national composition of the prewar population in a given municipality, as determined by Yugoslavia’s last census in 1991. A laxer standard was accepted for the RS, where the profile of the police force in a given municipality was required to conform only to the level of participation by the various national communities in the 1997 elections.
The reintegration of Bosnia’s police forces has had two objects. First, it seeks to ensure a more secure environment for returning refugees through the assurance that ‘their’ nation is represented among those upholding the law. Second, reintegration aims to provide employment for some returnees, thereby offering a stimulus to return. But the experience of UNMIBH in attempting to reintegrate municipal police forces also offers a primer to international organisations that will be endeavouring to ensure the proportional representation of the three ‘constituent peoples’ and ‘others’ in all institutions of authority following the April and October 2002 amendments to the entity constitutions.

Not surprisingly, the recruitment of ‘minority’ police officers has been subject to overt political obstruction by entity and cantonal interior ministries. But it has also fallen foul of prevailing salary and cost of living differentials, the lack of enough places in the police academies and the absence of affordable housing in the receiving locality. Moreover, officers who have taken up employment in areas where another nation predominates have had to face either intermittent threats to their security or marginalisation. For example, ‘minority’ officers are sometimes sidelined, not issued with weapons or badges, prevented from participating in investigations and assigned to menial jobs such as doorman or parking attendant. Abuses of this sort are particularly widespread in the RS and in Croat ruled parts of the Federation.

Although 10 per cent of police ranks across BiH were composed of ‘minority’ officers by October 2002, recruitment still lags well behind the targets set for both entities. Progress has, however, been made in some municipalities with significant returnee populations. In Drvar, continuous UNMIBH pressure on the recalcitrant Canton 10 authorities in Livno, including the successive removal of three interior ministers, has finally paid off, with Serb returnees now comprising 44 per cent of the force and a Serb chief in place. In neighbouring Bosansko Grahovo, to which Serbs have also returned in significant numbers, returnees comprise 27 per cent of the force.

Returning Serbs have also succeeded in securing political power in Drvar, as well as significant representation in the municipal administration, despite the efforts of the HDZ-dominated cantonal government to frustrate or contain this process. In Bosansko Grahovo and Glamoc, too, Serb (and Bosniak, in the case of Glamoc) returnees are in the process of establishing themselves in the municipal governments and administrations. Yet as returns have overturned the post-war demographic structure in these towns, the canton has cut off revenue payments and transferred competencies up to the cantonal level. The SNSD mayor of Drvar has characterised these policies as an ‘economic blockade’ of the municipalities, a judgment confirmed to ICG by a number of international organisations working in the canton. As a consequence of the High Representative’s imposition of amendments to the Federation constitution on the morrow of the 5 October elections, however, Serbs and Bosniaks will be guaranteed representation in the government of Canton 10 commensurate with their pre-war numbers. The robust implementation of these amendments will both exclude the possibility of mono-ethnic cantonal governments and serve to encourage further return.”


Election Law provides for the right to vote of the displaced but some problems remain (August 2005)

- In some municipalities, minority returnees are indirectly excluded from voting in elections for lack of information, transportation or documentation
• Displaced households have much lower social or political engagement than domicile households
• A displaced person can vote either in municipality of current residence or of pre-war residence
• The Law also prohibits illegal occupants of properties from voting in the place of current residence and from running elections

UN CHR, 29 December 2005, par.51:
“The lack of trust in public institutions is a serious democratic deficit. In some municipalities, minority returnees are indirectly excluded from voting in elections because of the limited information made available to them, or the lack of transportation. (…) Many Roma IDPs are excluded from voting as they lack the required documentation.”

UNDP, 26 June 2006, p.94:
“Political participation is essential for ensuring that the needs of the displaced are met. However, the survey data show that displaced households have much lower social or political engagement than majority households. Just 13 displaced households surveyed (1 per cent of the total sample) reported having at least one household member who is a member of the local municipal council or assembly, compared to 35 majority households (3 per cent of the total sample). Limited access to information, which is an important component of social and political participation, might be a contributing factor. The data show that the displaced are far less likely than the majority to have access to various sources of information in their homes.”

OHR 13 September 2001, para. 1:
"On 23 August [2001] the BiH passed the Election Law, thus ending several years of failed attempts. Both Chambers approved this crucial piece of legislation in the version that had been submitted to them by the CoM as a result of an agreement in principle on its content reached by key party leaders under the auspices of the International Community (apart from my Office, the OSCE and the CoE were also involved). This crucial decision means that BiH now has the legal framework through which to sustain democratic governance as this new Law paves the way for the formation of an Election Commission.”

OSCE 25 July 2002, sect. III-J:
“Article 19.8 provides special voter registration options and voting options for displaced persons and refugees. A displaced person has three registration options: (1) permanent residence according to the last national Census (1991), (2) permanent residence at the time the person acquired the status of a displaced person, subject to proof of the same, or (3) current residence if established at least six months prior to Election Day, subject to proof of the same. A displaced person, who exercises one of the first two registration options, can vote either (1) in person in the appropriate polling station within the municipality of permanent residence or (2) in the appropriate absentee polling station within the municipality of current residence. Similarly, a refugee has the first two registration options (current residence is obviously not applicable). A refugee can vote by mail from out of country, or return on Election Day and vote a tendered ballot.

Article 19.8 also provides that a ‘citizen of Bosnia and Herzegovina who is occupying a house or an apartment for which s/he does not have an ownership or occupancy right, while an enforcement document is issued by a competent court or administrative authority on the restitution of a house or an apartment, or CRPC decision, has no right to vote in the place of current domicile, until s/he abandons real-estate property owned by other, and may register to vote only in the municipality where s/he had the permanent residence in accordance to the last Census in Bosnia and Herzegovina (sic).’ […] Article 3.7 provides that no person shall forfeit any right or entitlement due to the fact that he or she has registered as a voter, or due to his or her registration to vote for a municipality other than the one in which he or she currently resides. This
article also provides that no person shall be required to present any document issued relative to registration or voting for any other purpose except as is necessary for the purpose of voter registration, confirmation of registration, or voting. The purpose of this article is to prevent the conditioning or forfeiture of rights based on the municipality registration option exercised by a voter. This provision is especially applicable to displaced persons and refugees."

**OSCE 25 July 2002, sect. III-B:**

“Article 19.9 prohibits the candidacy of a person who fails to vacate real estate property or to leave an apartment where the property or apartment is owned by or subject to the occupancy right of a refugee or displaced person, provided this issue has been adjudicated by an administrative, enforcement, or court decision. This same prohibition applies to a person who refuses to vacate or leave within 120 days of the filing with a competent administrative body of a request to enforce a certificate issued by the Commission for Real Property Claims of Displaced Persons and Refugees (CRPC).”

*For information on the election law prior the August 2001 reform, see “Internally Displaced Persons and Political Participation: the OSCE Region, An Occasional Paper”, Simon Bagshaw, September 2000, section on Bosnia and Herzegovina*

**Higher abstention rate among IDP population at October 2002 elections (2002-2003)**

- The 5 October 2002 general elections were the first to be administered by the BiH authorities since the Dayton Peace agreement
- Most voters cast ballots at “regular” polling stations in their places of permanent residence
- To accommodate displaced persons, there were special polling stations for absentee voters or voters who reside in BiH but chose to have their ballots count for their place of permanent residence according to the 1991 census
- Internally displaced voters displayed a substantially higher abstention rate than those voting in regular polling stations

**OSCE 9 January 2003, sects. 1, 3, 14:**

“The 5 October 2002 general elections in Bosnia and Herzegovina (BiH) were the first administered by the BiH authorities since the Dayton Peace Agreement. They were also the first in which all State and entity offices were elected for four-year terms.

The conduct of the elections was **largely in line with international standards** for democratic elections, when considering the country’s unique legal and constitutional framework. They mark important progress toward the consolidation of democracy and rule of law under domestic control.

These were essentially **transitional elections**. Although administered by BiH authorities, they took place in a legal context in which ultimate authority still rests with the international community. As in previous elections, the international community took a number of steps affecting key aspects of the elections which, while in line with their mandate and in compliance with UN Security Council resolutions, were in some instances irregular by international standards. Such measures will hopefully be unnecessary in future elections.

A wide range of candidates and political parties provided voters a **genuine choice**. The campaign was largely free of violence and intimidation, with general respect for freedom of movement, association, and expression. Nationalism was a less overt theme than in previous elections, although it remained a significant underlying issue. A notable positive trend was substantially more cross-entity politicking than in previous elections. However, the campaign was
negative and often personalized, with little meaningful debate on key issues. An active broadcast and print media provided extensive and diverse election coverage.

[...]

Most voters cast ballots at ‘regular’ polling stations in their places of permanent residence. In addition, in order to accommodate displaced persons, there were special polling stations for absentee voters, meaning voters who reside in BiH but who chose to have their ballots count for their place of permanent residence according to the 1991 census. A third type of polling station was specifically for tendered ballots, which could be used only by persons who had returned permanently to their pre-war municipalities and not updated their voter registration details before the 20 June cut-off date for voter registration. BiH citizens still residing abroad could register and vote by mail.

[...]

Article 19.8 of the Election Law links the right of displaced persons to return freely to their homes - a key element of the peace process - to the right to vote. Under the Law, persons illegally occupying a residence and subject to a restitution order should have no right to vote in their current municipality of domicile. However, lack of clarity in Article 19.8 and difficulties of enforcement led to the application of the rule to just some 200 people out of the tens of thousands of registered voters who may be illegal occupants, raising concerns about the equitable application of the law.

[...]

The turnout at absentee ballot stations was strikingly low: 30.33% overall. Thus, internally displaced voters displayed a substantially higher abstention rate than those voting in regular polling stations.”

Minority returnees emerge as a political force after October 2002 elections (2002)

- Returnees have impacted on the political life of several municipalities
- They can help marginalize nationalist politicians if they participate in elections,
- Next step will be to reintegrate returnees in the local administrations
- 2002 constitutional amendments will help to strengthen minorities’ representation

ICG 13 December 2002, pp. 5-6:

“While the sum total of returns recorded thus far has yet to transform the overall pattern of national separation and homogeneity inflicted upon BiH by the war, returnees have significantly altered social and political life in many municipalities and localities (mjesne zajednice), thus testing the argument over whether reintegration is politically stabilising or destabilising. In the Bosniak-majority town of Bugojno in central Bosnia some 8,500 Croats have returned, half the pre-war population of Croats. A lesser, but not insignificant, percentage of Serbs has also returned to Bugojno. In Drvar, where Serbs formed the overwhelming majority until almost all fled the assault of the Croatian Army in 1995, returning Serbs have re-nationalised the town. In the tiny RS municipality of Vukosavlje (near Modrica), about 80 per cent of the mostly Bosniak refugees have returned. Janja (in the Bijeljina municipality) was an almost exclusively Bosniak settlement before the war and an almost entirely Serb one thereafter. It has seen the return of about 6,000 Bosniaks (or 60 per cent of its pre-war Bosniak population). In Sarajevo, Serbs have lately returned in significant numbers. There were 17,891 registered returns to Sarajevo Canton in 2001 and almost double that number is expected in 2002. These are just a few examples of encouraging movements on the local level.

The Bosanska Krajina municipality of Prijedor demonstrates how returnees and potential returnees can help marginalise nationalist politicians if they participate in elections. In the 2000 municipal polls, over 10,000 Bosniaks still living outside the municipality cast absentee ballots,
securing nine places on the 32-member municipal council for Bosniaks from the Coalition for a Unified and Democratic Bosnia (CUD, the then coalition of the SDA and the Party for BiH, SBiH). At the same time, large numbers of Prijedor Serbs defected from the SDS to more moderate parties formed after the SDS split in 1997: the Alliance of Independent Social Democrats (SNSD), Serb National Alliance (SNS) and Party of Democratic Progress (PDP). The Bosniak councillors supported the election of SNSD member Nada Sevo as mayor and secured the appointment of one of their number, Muharem Murselovic, as president of the municipal assembly. Large-scale returns since 2000 mean that Bosniaks are likely to become an even stronger political force after the next municipal elections.

As many as 20,000 Bosniaks are estimated to have returned to Prijedor. They thus exercise greater political influence than is possible in most other municipalities to which refugees have returned. But mixed municipal councils are now common throughout BiH. This ensures that returnees have representatives to defend their interests, even if they are still regularly outvoted by members of the dominant group. The 2004 municipal elections will result in even more power sharing, since the returnee population will be more than double that of 2000. The next step will be to reintegrate returnees in the local administrations, school staffs, public companies and police, where their presence is still negligible. The April and October 2002 amendments to the entity constitutions (discussed below) mandate these reforms in the cantons and municipalities, but will remain dead letters without pressure from the international community.

Returnees emerged as recognisable constituencies in both entities in the October 2002 general elections, albeit of widely varying significance in the different legislatures (state, entity and cantonal). Federation-based parties won fourteen seats in the 83-member RSNA and elected two of the fourteen RS deputies to the state parliament. On the other hand, RS-based parties took just one seat in the Federation House of Representatives. Nor did they do well in cantonal races. As is explained below, however, under new constitutional amendments, each of the three 'constituent peoples' will nonetheless have representatives in the governments and legislatures of the entities and cantons.

[...]

The representation of 'minority' returnees to both entities will in any case be amplified this year by the implementation of constitutional amendments guaranteeing at least four seats in the entities' parliaments to each of the three 'constituent peoples'. The amendments also require the newly formed entity governments to include a specified number of ministers from each people, as well as prescribing that certain key offices must be shared out among the different nations. What is effectively second chamber of the RSNA, the Council of Peoples, has been created with the power to block legislation that offends against 'vital national interests'. The pre-existing Federation House of Peoples, meanwhile, has been recast to include an equal number of Serbs. These changes – and others discussed in more detail below – will have the effects of both giving greater voice to returnees and encouraging yet more returns.


Lobby groups for the displaced (1996-2003)

- 1996: Creation of the Coalition for Return, a multi-ethnic movement of displaced persons
- The objective of the organisation is to lobby for the creation of an environment conducive to return of all displaced, regardless of their nationality
• The Coalition for Return has also organized assessment visits and disseminated information on the rights of the displaced

• The BiH Alliance of Associations of Refugees and Displaced Persons (SIRL) is an umbrella organisation that lobbies for the rights of displaced persons

**ICG 30 April 1997, section 1.4.3:**
"A promising development during 1996 was the formation of the Coalition for Return, a multi-ethnic movement of displaced persons from all parts of Bosnia and Herzegovina. Coalition for Return's aim is to lobby for the creation of an environment conducive to the return of all displaced persons - regardless of their nationality - to their homes of origin. The Coalition was established on the initiative of Deputy High Representative Ambassador Michael Steiner in Sarajevo in October 1996. Representatives of displaced persons were urged by Ambassador Steiner to form a forum to counterbalance the nationalist-separatist political agendas of the ruling political parties. Within five months, the Coalition managed to organise a network spanning both Entities, the neighbouring countries, and refugee host-countries in Western Europe, including approximately 70 displaced persons associations representing tens of thousand individuals. The Coalition for Return has met with local authorities to persuade them to comply with the provisions of Annex 7 of DPA, and to promote the safe and voluntary return of all displaced persons to their homes of origin.

[...] The Coalition for Return has also focused on bringing displaced persons in contact with other displaced persons currently residing in their homes. The Coalition for Return has organised fact-finding visits to identify areas of the country where return is most feasible. The Coalition for Return is in the process of consolidating relevant information which will serve to bridge the gaps on questions and issues relevant to displaced persons. Such research could be valuable sources of objective and unbiased information for displaced persons, thus enabling them to make informed choices about returning to their homes or remaining in their temporary areas of residence."

**UN GA 11 September 1998:**
"Most minority returns so far have been spontaneous, arranged by displaced persons themselves through local non-governmental organisations. The Coalition for Return (whose representatives the Special Rapporteur met in July 1998) has organized assessment visits, collected and disseminated information, and advocated strongly for returns, thus creating some small progress. The Special Rapporteur believes this is a good way to achieve sustainable returns, and hopes that these associations receive support for their work."

**OHR 27 December 2000:**
The BiH Alliance of Associations of Refugees and Displaced Persons (SIRL) is a lobby group on behalf of displaced persons and refugees. It has been active in representing the rights of displaced persons in the return process in negotiations with national authorities and humanitarian organizations.

**ONASA 19 January 2004:**
In January 2004, the associations of displaced persons and refugees organized a meeting with representatives of authority and humanitarian organizations, agreeing that internally displaced persons from the area of Sarajevo Canton require larger investments in the reconstruction of joint parts of housing buildings.

See also "High Representative meets Displaced Persons and Refugee Associations" OHR Press Release 26 January 2000
DOCUMENTATION NEEDS AND CITIZENSHIP

Documentation needs

Citizenship

Legal status of minorities

Roma excluded from fundamental political and social rights because of lack of personal documents (2006)

- Roma are deprived of health care, education, accommodation, and reconstruction and humanitarian assistance because of lack of birth and identity documentation
- Because of lack of documentation, many Roma have been unable to register for “displaced persons” status and some even become stateless
- Initiatives aiming at facilitating registration of Roma are ongoing targeting local authorities and Roma themselves but overall state initiative is needed to address the issue
- The UN CERD Committee urged the Bosnian authorities to facilitate access of Roma to personal documents

ERRC, 3 July 2006:
“Many Roma in Bosnia and Herzegovina lack personal documents and, in extreme cases, citizenship. Instances of statelessness have been reported among Roma in Bosnia and Herzegovina. Roma have encountered difficulties in accessing documents including but not limited to birth certificates, personal identification cards, documents related to the provision of health insurance and social aid, and passports. Barriers arising from a lack of documents can be daunting, and the lack of one document can lead to the documents and citizenship threatens the ability of Roma in Bosnia and Herzegovina to gain access to services crucial for the realisation of a number of fundamental rights and freedoms, such as the right to vote, the right to adequate housing, the right to social assistance, the right to education and the right to the highest attainable standards of health. The government should adopt a programme to provide Roma in Bosnia and Herzegovina with all relevant documents necessary for the realisation of fundamental social, economic, civil and political rights.”

ERRC, 30 March 2006:
“NGOs and other independent observers today welcomed the concluding observations on Bosnia and Herzegovina of the United Nation's Committee on the Elimination of Racial Discrimination (CERD), made public this week.. (…) The very troubling human rights situation of Roma was a central concern of the Committee. It offered no fewer than seven recommendations devoted specifically to problematic issues of law, policy and/or practice in the area of securing the fundamental human rights of Roma on an equal basis with others in Bosnia. Areas of concern include segregated education, low rates of attendance in primary and secondary education, exclusion from the labour market, lack of legal title for housing, lack of sufficient funding for the official Roma Council, failure to adequately implement the government's Roma Strategy, and a widespread lack of personal documents among Roma. To the latter issue, the Committee urged
the Bosnian government "to take immediate steps, e.g. by removing administrative obstacles, to ensure that all Roma have access to personal documents that are necessary for them to enjoy, inter alia, their economic, social and cultural rights, such as employment, housing, health care, social security and education."

**OHCHR 21 January 2003, p.7:**
“In addressing issues of displacement, the Special Representative[of the Commission on Human Rights to examine the situation of human rights in Bosnia and Herzegovina...] draws attention to the particular situation of Roma displaced persons whose numbers are impossible to estimate, as there are no available data. Lack of birth and identity documentation, discrimination, mistrust, prejudice and lack of awareness mean that many in the Roma community have not been able to register for ‘displaced persons’ status. They are thereby deprived of special entitlements such as health care, education, accommodation, and reconstruction and humanitarian assistance.”

**ERRC, No.3 2003:**
“The lack of personal documents has led to the exclusion of many Roma from fundamental political and social rights such as the right to vote, to have access to health care, etc. The lack of personal documents has also created additional obstruction in the exercise of property rights. The inability to secure documents is related to poverty and low social status in the Romani community and leads to even further exclusion from public life. Both illiteracy and discrimination by public officials add to the problem. Because of illiteracy, many Roma are unaware of the steps necessary to obtain documents, nor can they fill out the necessary forms. Discrimination by public officials is another serious factor preventing Roma from enjoying fundamental rights. For example, anecdotal evidence indicates that many municipal officials are reluctant to allow Roma to register residence within their municipality. Without a registered residence, one cannot vote nor have access to social benefits.

In some cases, the lack of one document, for instance a birth certificate, can lead to a situation where other documents cannot be secured. When a child is born in BiH it must be registered. This registration allows for the issuance of a birth certificate. Both the parents and hospital authorities where the child is born are obliged to inform the local Birth Registry Office of the fact of the birth. Parents must then go to the Birth Registry Office with their personal ID documents to register the child. There is no fee for registration of the birth - fees are charged only for copies of the birth certificate. If the birth is not registered at the time of birth, it is possible to register the birth at a later date. However, such administrative procedures remain unclear. Many Romani children in BiH are not born in hospital due to the fact that their parents cannot afford to pay the hospital fees. If a birth is not registered, the child cannot receive a birth certificate nor a personal identification number (JMBG). In order to obtain an identification document, an individual must provide a birth certificate with a personal identification number imprinted on it. And an individual must present an identification document in order to register residence. Without a registered residence one cannot vote nor have access to utilities. It may also prevent the registration of children in schools. Lack of residence documents poses particular problems for Roma residing in informal settlements.”

**OSCE, “Overcoming exclusion”, 2004:**
“The [OSCE] Mission [to BiH] is assisting the Roma in civil registration, through a pilot project implemented in Eastern Bosnia, by facilitating dialogue with local authorities to simplify the complex procedures of late registration from one side, and to work on an information campaign to raise awareness of the Roma population about the importance of registration.”

**See also:**

Concluding observations of the Committee on the Elimination of Racial Discrimination: Bosnia and Herzegovina, CERD/C/BIH/CO/6, 11 April 2006 (see source below)
The non-constituents: rights deprivation of Roma in post-genocide Bosnia and Herzegovina, BiH Country report, European Roma Centre, February 2004

and Report on Bosnia and Herzegovina, European Commission against Racism and Intolerance, 15 February 2005, par.58-71

See also in other sections of this country profile:
“Efforts to facilitate the integration of Roma children at schools” in the Education section
“Displacement aggravates the living conditions of Romas” in Subsistence needs section
“Displaced Roma, a particularly vulnerable group” in Pattern of displacement section
“Roma continue to struggle to access property rights” and “Some measures taken to legalise Roma settlements” in Property issues

Minority Rights Law recognises minority groups (2003)

- The Law on the Protection of the Rights of the Members of National Minorities was passed by the Parliamentary Assembly of Bosnia and Herzegovina in April 2003
- Article 3 of the Law on the Protection of the Rights of the Members of National Minorities recognizes Roma as a minority group
- Article 4 bans discrimination against minority group members and their forced assimilation
- In its current form, the law is reserved for citizens which raises complex issues given the problem of statelessness among Bosnian Roma

ERRC No.3 2003:
“The Law on the Protection of the Rights of the Members of National Minorities (Zakon o zaštiti prava pripadnika nacionalnih man-jina), debated by the legislature in Bosnia and Herzegovina for a considerable time, was finally passed by the Parliamentary Assembly of Bosnia and Herzegovina on April 1, 2003 and came into effect in May 2003. Previously, the House of Representatives of Bosnia and Herzegovina adopted the draft Law on Minorities in June 2002. This version was then sent to the House of Peoples for approval, which however refused to debate the bill because the House of Peoples had one year earlier adopted a different version of the Law on Minorities. In accordance with the Rules of Procedure of Parliament, a Joint Commission was formed for the purpose of harmonising the two versions of the Law on Minorities into the version that was adopted.

The new minority rights law brings important changes to the legal status of Roma in Bosnia and Herzegovina. At Article 3, the law officially recognises Roma as a minority group and has thus changed the legal situation with regards to their rights and duties. The law bans discrimination against minority group members and their forced assimilation in Article 4. The law protects the rights of Roma and all other national minorities to preserve and develop their ethnic, cultural, linguistic and religious identity. National minorities have the right to use their language both publicly and privately, according to Article 11. Under Articles 13 and 14, national minorities have the right to set up their own private educational institutions, as well as to receive educational materials and teaching in their own language in public schools, if they so request. They would also have the right to be represented in public authority bodies and in all levels of the civil service, as defined under Article 19.

In its current form, however, the law reserves such rights for citizens of Bosnia and Herzegovina. This is particularly problematic taking into account the widespread problem of statelessness among Bosnian Roma.”

For more information, see the European Center for Roma Rights website.
ISSUES OF FAMILY UNITY, IDENTITY AND CULTURE

Family unity

**Missing persons and disappearances: 16,000 cases have still not been solved (December 2003)**

- Some 16,000 persons remain unaccounted for (2003)
- In 2003, the Working Group on Persons Unaccounted For reconvened for the first time since 1999
- Investigations continue to be hampered by lack of cooperation from local authorities, in particular in the RS
- Exhumations have been implemented under an OHR-mediated Agreement reached in 1996
- The ICRC has received request to trace more than 20,000 missing persons since the war years, of which about 3,143 have been accounted for
- In 2003, the Human Rights Chamber ruled that by failing to disclose information to the relatives of the fate and whereabouts of their loved ones the RS violated their human rights

**ICRC, 17 October 2003:**

“Eight years after the Dayton Agreement, large numbers of people – some 16,000 according to information collected by the ICRC from close relatives – are still unaccounted for in Bosnia-Herzegovina.”

**AI 5 March 2003, p.1-2:**

“‘Disappearances’ represent perhaps the largest unresolved human rights issue in Bosnia-Herzegovina. The number of victims and their relatives is huge. Virtually no cases have resulted in those responsible having been brought to justice and the trauma of relatives and dependants left behind has not healed.

[...] Most ‘ disappearances’ took place in the context of armed conflict or related military operations in areas that were bordering on areas of direct fighting. Though many of the ‘disappeared’ were members of one of the armed forces active in the conflict, civilians – including women and children – equally became victims of this violation. The fact that ‘disappearances’ occurred in the context of a devastating and multi-sided war has made it even harder to establish the fate and whereabouts of most of these people. At the end of armed conflict in Bosnia-Herzegovina, an estimated 27,000 people from all sides to the conflict, but predominantly Bosniak (Bosnian Muslims) remained unaccounted for,[…] a number considered to be among the highest in the world.[…]”

**U.S. DOS 31 March 2003, sect 1b:**

“Under an OHR-mediated agreement reached in 1996, exhumations were carried out by the Bosniak, Bosnian Croat, and Bosnian Serb commissions for missing persons. The commissions were free to carry out exhumations and collect unburied mortal remains in territory under the authority of another majority ethnic group using an established notification system. The International Commission for Missing Persons (ICMP), which operated in all countries of the former Yugoslavia, reported that the remains of an estimated 750 persons had been recovered in the country as of mid-October, and an additional 60 or more sets of mortal remains were exhumed in the intraentity process. The largest gravesite to be uncovered during the year was
found in Kamenica and was believed to contain, along with other gravesites in the area, approximately 1,000 sets of mortal remains of victims from Srebrenica, which were expected to be recovered by the end of the year.

The ICMP continued developing its centralized system of DNA identification, finishing construction of its DNA laboratory in Banja Luka. The ICMP collected 9,729 blood samples by the end of September and was expected to have collected 13,000 samples by the end of the year. During the year, 18,838 DNA blood profiles were obtained. ICMP also received 4,000 bone samples resulting in 2,519 DNA bone profiles during the year. By the end of the year, 1,250 DNA matches had been made that should result in the identification of approximately 750 missing persons.

The Missing Persons Institute (MPI) is a state institution that opened in August 2000 to serve as a working platform for entity-level commissions on missing persons under guidance from the ICMP. During the year, ICMP instigated the separation process of MPI from ICMP, as MPI will eventually take over responsibility for recovering and identifying human remains and supporting families of the missing.

[...]
The International Committee of the Red Cross (ICRC) reported that since 1995 it had received requests from family members to trace 20,845 persons missing from the war years, including 17,330 Muslims, 740 Croats, 2,643 Serbs, and 132 others. A total of 3,143 of these persons had been accounted for (318 of whom were found alive) by year’s end. The ICRC reconstituted the Working Group for Tracing Missing Persons, which was created by the Dayton Peace Agreement to serve as a channel for passing tracing requests to local authorities. This group had been suspended in 1999 due to lack of cooperation from local authorities.

RS compliance with the Human Rights Chamber’s decisions ordering full investigations into several wartime disappearance cases improved somewhat during the year [...]. For example, the RS fully complied with the 1997 Human Rights Chamber’s order to conduct a full investigation into the disappearance of Father Tomislav Matanovic from Prijedor in 1995 [...]. Pressure from the IPTF was a factor in the successful conclusion of this investigation. However, the RS authorities ignored requests for investigations in numerous other cases.”

**AI 31 March 2003:**

“On 7 March [2003] the Human Rights Chamber of Bosnia and Herzegovina, a domestic court including international judges, issued its decision in a case brought by 49 relatives of missing men and boys from Srebrenica. The Chamber ruled that by failing to disclose any information to the relatives of the missing of the fate and whereabouts of their loved ones the RS violated their human rights. The RS authorities were ordered to immediately disclose such information as well as the location of mass grave sites and to open a comprehensive investigation into the events in Srebrenica. In addition, the authorities were ordered to pay a total of 4 Million Konvertible Marks (approximately 2 Million Euros) for the collective benefit of all applicants and families of Srebrenica victims to the Foundation of the Srebrenica-Potocari Memorial and Cemetery.”

*See, “Bosnia-Herzegovina: Honouring the ghosts – challenging impunity for ‘disappearances,’” Amnesty International, 5 March 2003*

Households exposed to domestic violence as a result of displacement and return (1999-2003)
- Roma and refugee children are particularly vulnerable to violence
- Violence against women is not adequately addressed by the authorities

**UNDP June 2003, p.39:**
"With regards to the rights of the child, instances of violence against children in BiH – or more specifically the disrespect of fundamental rights of the child such as the right to education in the case of Roma children – are striking. One study pointed to violence against children as a sociological phenomenon that has been on the rise after the war, and to refugee and Roma children as particularly vulnerable sub-categories.[1]"


**OCHA 31 December 2002:**
"Continued abuses of the rights of women and children, often resulting in the break-up of family units and related displacement, as a result of lingering war scars and the lack of a legal protection framework, is also of priority concern."

**OHR/HRCC September 1999, para. 90:**
"Violence against women is not defined in any domestic law nor have there been any official instructions or policy statements regarding the problem by government at any level. In Bosnia, domestic violence against women has increased due to: difficult transitions when women became heads of households, while men went to war, compounded by tensions when the men returned home, often to underemployment [or] unemployment; forced migration resulting in the loss of community which might otherwise provide a safety-net for the strains on families; and post-traumatic stress not only on those who fought during the war but those who remained behind. Given the lack of legal definition of domestic violence, courts are left to decide what measures to take, if any against perpetrators."

**Religion**


- A variety of incidents directed at religious targets were reported throughout 2002 and in the first half of 2003
- Administrative and financial obstacles to rebuilding religious structures impeded the ability of religious minorities to worship freely and delayed the return of minority refugees in many areas
- Following the October 2002 elections, which returned nationalist political parties to power, the number and severity of violent incidents directed against refugee returns have increased sharply
- Local authorities frequently allowed or encouraged an atmosphere in which abuses of religious freedom could take place

**U.S. DOS 18 December 2003:**
"The State Constitution of Bosnia and Herzegovina and the entity constitutions of the State's two constituent entities, the Federation of Bosnia and Herzegovina and the Republika Srpska, provide
for freedom of religion, and individuals generally enjoy this right in ethnically mixed areas or in areas where they are adherents of the majority religion; however, adherents of minority religions in non-ethnically mixed areas have had their right to worship restricted, sometimes violently.

There was no change in the status of respect for religious freedom during the period covered by this report. After a significant increase in 2001-2002 in the number of refugees returning to areas in which they constituted a religious minority, the number of returns sharply declined during the first 5 months of 2003. This decline likely resulted from a combination of factors, including the success of nationalist parties in the October 2002 elections, poor economic conditions, an increase in return-related violence, deaths and injuries caused by landmines, and frustration over problems with property restitution.

Religious intolerance in the country directly reflects ethnic intolerance because of the virtually indistinguishable identification of ethnicity with one's religious background. Ethnic Bosnian Muslims (Bosniaks) generally are associated with Islam, ethnic Croats with the Roman Catholic Church, and ethnic Serbs with the Serbian Orthodox Church. Despite the constitutional provisions protecting religious freedom, some discrimination against religious minorities occurs in virtually all parts of the country. In some communities, local religious leaders contributed to intolerance and an increase in nationalist feeling through public statements and on occasion in sermons. Following the October 2002 elections, which returned nationalist political parties to power, the number and severity of violent incidents directed against refugee returns have increased sharply. [..]

Ethnic cleansing during the 1992-1995 war caused internal migration, which almost completely segregated the population into separate ethno-religious areas. Increased levels of returns in 2001-2002 slowed markedly in 2003, leaving the majority of Serbian Orthodox adherents still living in the RS and the majority of Muslims and Catholics still living in the Federation. Within the Federation, distinct Muslim and Catholic majority areas remain. Returns of Serbian Orthodox adherents and Muslims to their prewar homes in Western Bosnia Canton and Muslims to their prewar homes in eastern Bosnia near Srebrenica have shifted notably the ethno-religious composition in both areas. [..]

The weak administrative and judicial systems effectively restrict religious freedom and pose major obstacles to safeguarding the rights of religious minorities. In some cases, the RS Government, local governments, and police forces made some improvements in protecting religious freedoms, although problems remained, including an atmosphere in which abuses of religious freedom may occur. [..]

The RS Government, local governments, and police forces frequently allowed or encouraged an atmosphere in which abuses of religious freedom could take place, although there was some improvement from previous years. The absence of a police force willing to protect religious minorities and a judicial system willing to prosecute crimes against them posed major obstacles to safeguarding the rights of religious minorities. While new officers continue to be accepted into the police academies under strictly observed ethnic quotas, the goal of establishing effective, professional, multiethnic police forces throughout the country will take years of concentrated effort. Administrative and financial obstacles to rebuilding religious structures impeded the ability of religious minorities to worship freely and delayed the return of minority refugees in many areas.

Thirteen Croats who in December 2001 had attacked the site of a mosque being reconstructed in Stolac received fines of $113 (250 KM) per person for disturbing the public order, a petty offense. Two Bosniaks who had attempted to defend the mosque site received fines of $91 (200 KM) each for the same violation. Reconstruction of the Stolac mosque continued without further problems and should reach completion by the end of 2003.
In October 2002, after many delays, 14 persons received sentences of 2 to 13 months in prison for their role in a violent demonstration by Serb nationalists in May 2001 that disrupted a cornerstone laying ceremony on the site of the destroyed Ferhadija Central Mosque in Banja Luka. The demonstration had resulted in injuries to approximately 30 individuals, as well as the destruction of Bosniak-owned businesses and other property.

A significant number of citizens remained internally displaced or as refugees abroad following the 1992-1995 war. Virtually all had fled areas where their ethno-religious community had been in the minority or had ended up in the minority as a result of the war. Although organized and spontaneous returns significantly increased in 2001-2002, they began to fall sharply in 2003.

A variety of incidents directed at religious targets in all three ethnic majority areas were reported throughout 2002 and the first half of 2003. In March a booby-trapped hand grenade killed a Muslim and seriously injured his son as they tried to repair an apartment in the Croat-controlled part of the ethnically divided town of Mostar. The apartment belonged to someone other than the two victims, making the intended target of the attack unclear.

In January local police arrested two suspects for breaking the windows in the houses of two Bosniak returnees in Srebrenica.

Incidents directed at Bosniak Muslims during the last months of 2002 included: The December 19 bombing of the house of a Bosniak returnee near Bijeljina, the December 23 desecration of two Muslim tombstones in a graveyard in Prijedor, the December bombings in Doboj of a mosque and two houses belonging to Bosniaks, and a November bomb attack against a mosque in Prijedor.

In September 2002, a powerful explosion completely destroyed the minaret and damaged the roof and windows of a newly reconstructed mosque in Gacko, only 3 months after the inauguration of the mosque in June 2002. During the same month, police arrested two Serbs for breaking the windows of a mosque in Doboj.

There were also incidents directed at Bosnian Croats during the last months of 2002. In December 2002, vandals in Mostar burned the municipal creche; police arrested several suspects in connection with the incident. Later that month, Muamer Topalovic, a Bosniak, attacked a Croat family that had recently returned to Konjic, killing three and severely injuring another. Topalovic, who apparently had carried out the attack for religious reasons, was sentenced to 35 years in prison.

A Croat family in Mostar received a threatening, racist letter with slogans praising Hamas, Islamic Jihad, and al-Qa'ida, attached to a hand grenade. Unknown culprits stoned the reading room and headquarters of the Croat humanitarian-cultural association "Danica" in Banja Luka. In November 2002, vandals sprayed the walls of Saint Joseph's Catholic Church in Drvar with insulting graffiti.

Roman Catholic Church authorities in Sarajevo reported vandalism to cars belonging to church workers and other church property, the overturning of gravestones in Catholic cemeteries, and church entrances stained by urine. In April 2002, stone throwers attacked St. Anthony Church in Sarajevo during Easter week services.

There were incidents directed against members of the Bosnian Serb Orthodox community during the period covered by this report. Federation police arrested three suspects for attacking a Serb returnee family in Lukavac. In May the Orthodox Church of St. Peter and Paul in Kozarac repeatedly was stoned; police arrested four minors in connection with the incident, and the investigation continued at the end of the period covered by this report.”
PROPERTY ISSUES

Overview of restitution process

While property repossession is largely completed unresolved cases affect most vulnerable categories (2006)

- Implementation rate of property repossession is estimated to be between 93 and 99% depending on the source
- The Domestic Commission on Real Property Claims (DCRPC) took over from the CRPC in 2003
- Transfer by DCRPC of thousands of unresolved cases to municipalities at the end of 2004 explains that the implementation rate has improved slowly since 2004
- Former Yugoslav officers who were living in military apartments are still not allowed to repossess their flats
- Female heads of households, widows and Roma face difficulties to repossess their property due to lack of property titles

For latest statistics on property

COE, 25 April 2005, par 58:
“The implementation rate of the property repossession process in BiH, considered as a major achievement in the country, was estimated by UNCHR at 93% by the end of December 2004 (see “Update on Conditions for Return in Bosnia and Herzegovina”, UNHCR, January 2005). According to BiH authorities, the implementation rate was much higher by mid-March 2005 and had reached 99.5%. The remaining percentage concerned mainly claims still being processed in the municipality of Banja Luka. In the meantime, Banja Luka has also completed implementation of property law having issued and enforced decisions upon all claims filed before 17 March 2005.”

USDOS, 8 March 2006:
“The Domestic Commission on Real Property Claims (DCRPC) processed claims for property wrongfully taken during the 1992-95 war that were not adjudicated by the Commission for Real Property Claims (CRPC), whose mandate ended in 2003, or by municipal housing authorities. During the year the DCRPC resolved 98 cases. As of July less than 7 percent of the claims for property seized during the war remained outstanding; most of the settled claims were resolved in favor of the prewar owners/occupants. Because the DCRPC transferred thousands of unresolved cases to municipalities for adjudication at the end of 2004, only 12 of 127 municipalities had resolved all pending claims by July 30. Banja Luka municipality in the RS and Sarajevo Canton in the Federation had the highest numbers of unresolved claims.
In September 2004 the Constitutional Court upheld a Federation law prohibiting ownership of property in the Federation by anyone who served in the Yugoslav military after May 19, 1992. The ruling affected former Yugoslav officers, mostly Serbs, who claimed four thousand apartments they had abandoned during the war. The court also ruled that the Federation could apply a Yugoslav legal principle that prevents a citizen from claiming tenancy rights to more than one apartment at a time; this adversely affected the officers’ claims, since most had apartments elsewhere, primarily in Serbia. Even with the court ruling, the DCRPC must still render official legal decisions in all these cases.
The Constitutional Court received 2,700 new cases during the year. By the end of the year, the court had resolved 1,693 cases, including all but 10 of the cases filed in 2004. The court found constitutional violations in approximately 5 percent of the cases it considered. Authorities enforced the Constitutional Court's orders in all but a few cases."

UN CHR, 29 December 2005, par 39:
“Female heads of household, frequently widows of war veterans or of civilian war victims or missing persons, often lack property titles, which prevents them from submitting claims for both repossession and reconstruction of their houses. Some women have lost access to their pre-war property due to divorce or because their husband has abandoned them. Some widows did not formally inherit their late husband’s property, making them dependent on the goodwill of parents-in-law to obtain access to their property. A number of war orphans have also not been able to reclaim property, as they are not included in the Property Law Implementation Plan, and institutions with guardianship over these children often failed to claim their rights. The situation of the Roma is particularly problematic.”

For more information on Roma and property see in this section “Roma continue to struggle to access property rights (2006)”
For more information on military apartments, see in this section: “Continued restrictions on ability to repossess military apartments in BiH (2006)”

War time and early post-war property legislation contributes to ethnic cleansing (2005)

- During the war, homes left empty by their inhabitants were allocated to displaced persons
- Legal provisions to allocate empty properties aimed at facing housing needs of vulnerable displaced but mostly benefited to the elites
- Immediate post-war legislation attempted to consolidate the rights acquired by temporary occupants
- Local authorities tried to cancel the rights of displaced persons to socially owned apartments
- Socially owned property was a type of strong tenure specific to former Yugoslavia countries
- Authorities who had allocated housing to DPs strongly opposed to any restitution process

OHR, 15 May 2000:
"As a result of the armed conflict in Bosnia and Herzegovina, hundreds of thousands people fled their homes in the country's villages and cities. Local authorities, faced with an influx and outflow of refugees and displaced persons (DPs), introduced a series of laws aimed at declaring these properties abandoned and accommodating the in-coming refugees and displaced persons by providing them with legal authority to occupy these abandoned properties. Simultaneously, some displaced persons moved into vacant property without the involvement or authorization of the local authorities.

In Bosnia and Herzegovina, like the other former Republics of the Socialist Federal Republic of Yugoslavia, there were essentially two types of property. Property was either privately-owned, which is the common method of ownership in the free market economies, or it was socially-owned, a form of property entitlement which is stronger than a rental agreement, but not as strong as private property."
Socially-owned property is different in fundamental respects. First, the property is always an apartment and is usually located in an urban area. Employees of state-owned enterprises or organs, such as the municipalities or government ministries, paid a portion of their salary to a housing fund. The managers of the enterprises or state organs used the housing fund to construct apartments for the employees. Employees who were entitled to an apartment, as set out in the Law on Housing Relations, were allocated apartments and, once they actually moved into the apartment, they became occupancy right holders (ORHs). An ORH exercised almost unlimited rights over the apartment, to include passing the apartment on to his/her children. However, and most importantly, the ORH could not sell the apartment and s/he must occupy the apartment. An occupancy right could be cancelled if the ORH failed to occupy the apartment for six months or more.

Both private property and socially-owned property were declared temporarily abandoned by local authorities, who allocated these properties to refugees and DPs, as well as to politically well connected people. Laws were passed establishing how the owner could return and reclaim possession of his/her property. Local authorities invoked the failure to occupy these apartments by those who fled during the conflict to cancel hundreds of thousands of occupancy rights. The authorities then re-allocated these apartments to others, usually DPs and refugees, but again, also to some members of the political class.

Marcus Cox, Madeleine Garlick, 2003:
“During and in the aftermath of the Bosnian war, property laws were used by all three sides as a tool for furthering ethnic cleansing. Within the three separate political entities which emerged at the outset of the conflict, war-time regimes seized control of property “abandoned” through the displacement of other ethnic groups, initially on a temporary basis to meet the humanitarian needs of incoming displaced persons. These emergency measures later created an array of legal and administrative obstacles to displaced persons returning to their homes, and over time developed into a legal basis for the permanent dispossession of other ethnic groups.”

OHR, 15 May 2000:
"After the signing of the General Framework Agreement on Peace in Bosnia and Herzegovina, the international community, citing Annex VII of the Peace Agreement, which provides that DPs and refugees have the right to have restored to them property of which they were deprived in the course of hostilities since 1991, demanded that the two Entities of Bosnia and Herzegovina implement a claims process that would allow displaced persons and refugees to reclaim their homes.”

Marcus Cox, Madeleine Garlick, 2003, pp.67-69:
"Not surprisingly, in the aftermath of the war, no political authority was willing to contemplate the eviction of members of its own ethnic group in favor of returning minorities. According to one observer, the view that members of other ethnic groups had forfeited the right to their homes was so widespread that “it pass[ed] as respectable in political society everywhere in Bosnia”. […] The Bosnian authorities, who retained a broad political commitment to a multi-ethnic Bosnia, fought for the right of Bosniac displaced persons to return to Republika Srpska, but made no effort to support the return of Serbs to Sarajevo and other Bosniac-majority urban centers. The Serb and Croat regimes engaged in aggressive campaigns to encourage their own populations to settle permanently in areas under their control, so as to cement their territorial claims.”

Charles Philpott, Journal of Refugee Studies, February 2005:
“The immediate post-war period, rather than seeing a reversal of wartime allocations, witnessed their consolidation. [...] In the case of socially-owned property, authorities used the absence of those who had fled or been expelled during the war as a pretext for canceling their occupancy rights under the pre-war legislation (Article 47, Law on Housing Relations, Official gazette of the
Socialist Republic of Bosnia and Herzegovina, No 14/84). In other cases, occupancy rights were cancelled *ex lege*. In particular, in the Federation, an amendment to the wartime Law on Abandoned Apartments [...] allowed displaced occupancy right-holders only seven days (15 days for refugees) to return or face permanent cancellation of their occupancy right. [...] In the meantime, local authorities busied themselves handing out new ‘permanent’ occupancy rights to the abandoned flats, mainly to members of the ethnic group that dominated the area-post war.[...] Without an effective mechanism by which to repossess their occupied real property, the right to return set out in Annex 7 of Dayton was an empty promise for most IDPs and refugees.”

**Dayton’s provision on the right to pre-war home face strong obstruction from authorities 1996-1999 (2006)**

- Annex VII of the Dayton Peace Agreement provides that displaced persons and refugees have the right to have restored to them property of which they were deprived since 1991
- Annex 7 calls the Parties to repeal domestic legislation with discriminatory intent or effect
- Following intense pressure from the international community, new property laws were passed by the Federation in April 1998 and by Republika Srpska in December 1998
- The Office of the High Representative (Human Rights/ Rule of Law Department) has been deeply engaged in restructuring the legal regime which governs property rights
- Faced with obstruction from authorities, the Office of the High Representative takes legislative measures in 1999 to harmonise and improve efficiency of property laws passed in 1998
- Property laws provide that claims for repossession will be processed by the municipality where the property is located.
- Local authorities have to determine in their decision the rights of the claimant and the right to alternative accommodation of the temporary occupant
- Legal requirement to provide alternative accommodation to vulnerable temporary occupants is abused by authorities to obstruct property repossession

**Catherine Phuong, FMR, April 2000:**

“In Annex 7 of the Dayton Peace Agreement (DPA), Article I states that “all refugees and displaced persons have the right freely to return to their homes of origin. They shall have the right to have restored to them property of which they were deprived in the course of hostilities since 1991 and to be compensated for any property that cannot be restored to them.” For the first time, it was stated that not only should refugees be able to repatriate to their country of origin but also that IDPs should be able to return to their pre-war homes. Such an ambitious explicit commitment to ensure that each refugee or IDP is able to return to pre-war accommodation was made in the aftermath of ethnic cleansing which resulted in the creation of almost entirely homogenous territories in communities which had been ethnically mixed. An implicit objective of the DPA has been the reversal of ethnic cleansing via promotion of the return of populations forcibly displaced during the war.”

**Paul Prettitore, World Bank, June 2004:**

“Annex 7 establishes not only individual rights for refugees and displaced persons, but also includes certain obligations on the Parties to ensure the return of refugees and displaced persons. [...] Article I(3) obliges the Parties to, among other things, take the necessary steps to prevent any activities which would impede safe return of refugees and displaced persons. Most importantly for the right to repossess lost property, this article specifically obliges the Parties to undertake “the repeal of domestic legislation and administrative practices with discriminatory
intent or effect.” This provision was used as a basis to adopt post-conflict legislation that annulled legislation used to deprive refugees and displaced persons of their property during the conflict. In addition, the right to repossess property or be compensated is elevated to a constitutional right of refugees and displaced persons."

**OHR/OSCE/UNHCR/UNMIBH/CRPC, October 2000:**

“In 1996, the international community in BiH initiated a sustained campaign to repeal wartime laws on abandoned property, and create a legal framework for property repossession. The campaign met with intense resistance, and required all of the political leverage of the international community over an extended period of time to achieve results. In April 1998, the first legal framework for property repossession was adopted in Federation legislation, followed in December 1998 by like legislation in Republika Srpska. A further intensive campaign, involving the use of the High Representative’s Bonn powers, was required in order to strengthen and harmonise the laws. In their current form, the laws have been in place since October 1999.”

**Marcus Cox, Madeleine Garlick, 2003:**

“From December 1998 onward, the international mission in Bosnia began a belated but dramatic process of evolution. Originally strong on the military side but weak and disorganized in its civilian functions, it began to develop certain attributes of a protectorate. In particular, the High Representative, nominated as the leading civilian official under the Dayton agreement, was granted the authority to overcome obstacles to the peace process by imposing laws and dismissing domestic officials. These powers allowed for a new strategy on property repossession. Through an extensive legislation reform campaign, the High Representative repealed discriminatory rules, reaffirmed the rights of the pre-war owners and occupants and established an administrative property claims process at municipal lever, under close supervision.

**Catherine Phuong, FMR, April 2000:**

“In April 1999, [the High Representative] over-ruled decisions taken during and after the war to permanently reallocate some flats which had the effect of preventing the return of the former occupant. In October 1999, he made a series of major amendments to property legislation”

Key aspects of the property laws as amended in October 1999:

Note: the property laws adopted in 1998 in Federation and RS are called “Laws on Cessation” ( in Federation:Law on cessation of the application of the law on abandoned real property and Law on cessation of the application of the law on abandoned apartments. In RS, Law on cessation of application of the law on use of abandoned property)

“The claims process follows an administrative, rather than a judicial process. A large number of claims for repossession of property would have overwhelmed BiH’s judicial system, and claimants would be forced to wait for years for resolution of their cases. In addition, the BiH court system at the end of the conflict was viewed as ethnically biased, in particular as some refugees and displaced persons had been deprived of their property through court proceedings.[…]

First and foremost, the Laws on Cessation cancelled the further application of laws on abandoned property. They also obliged the competent authorities to issue decisions on both the rights of owners to repossess the property, and the rights of temporary occupants. The temporary occupant is entitled to remain in the property under the applicable legal conditions until a decision has been issued in favor of the claimant. In order to process the claims, Bosnian authorities established housing offices in every municipality in BiH. Claimants could submit claims for private property to either the municipal housing office or CRPC. Claims for socially-owned property were to be made to the municipal housing office, but CRPC would also accept claims if the claimant could demonstrate the municipal housing office did not accept the claim or did not issue a decision with the legally prescribed time period.” […]

**Paul Prettitore, World Bank, June 2004:**
"The rights of the temporary occupants responded to the need to protect vulnerable displaced persons but were often abused by authorities to refuse to implement property legislation and consolidate ethnic cleansing.

"The deadline for the vacation of property subject to a claim for repossession under the Laws on Cessation depends on the housing needs of the temporary occupant. Such a determination was necessary for a number of reasons. Since a number of temporary occupants were not vulnerable persons, there was no reason to provide them with alternative accommodation.[…] In addition, as a result of damage caused by the conflict and the fact that little new housing was constructed during this period, there was housing shortage in most parts of BiH. This housing shortage was exaggerated in most cases by housing officials as an excuse not to return abandoned property. For these reasons, available housing space had to be prioritized for the most vulnerable persons. Temporary occupants that never received a decision on allocation of the property are considered illegal occupants, and have no rights to alternative accommodation. However, if the current user is a registered refugee or displaced person, they may still be entitled to a form of emergency accommodation under the relevant legislation on refugees and displaced persons. In cases where the housing needs of the temporary occupant are otherwise met, the deadline for vacation of the property in the decision is fifteen days. […] If the housing needs of the temporary occupant are not otherwise met, a decision is given with a ninety-day period to vacate the property. In such cases the current user is entitled to alternative accommodation to be provided by housing authorities, but the burden of proof of demonstrating eligibility is on the temporary occupant.[…]

In practice, the rights of temporary occupants became the primary obstruction to implementation of the Laws on Cessation in BiH. In general, housing authorities issued decisions granting the right to alternative accommodation to temporary occupants without any real investigation as to whether their housing needs were otherwise met. At the same time, housing officials did little to secure space to serve as alternative accommodation.[…] This combination led to an incredible strain on the overall system, such that decisions obliging the temporary occupant to vacate the property within ninety-days were almost never enforced within the ninety-day period. In some cases temporary occupants with decisions to vacate the property within ninety-days remained in the property for several years. Due to these obstructions, it was necessary to amend the provisions of the Laws on Cessation relating to alternative accommodation several times. Most importantly, the right to alternative accommodation was further restricted to ensure space would be available for the most vulnerable individuals. A provision was added that provided for the eviction of the temporary occupant at the end of the ninety-period even if housing authorities fail to secure alternative accommodation."

Catherine Phuong, FMR, April 2000:
"Local authorities do not carry out evictions, on the pretext that no alternative accommodation is available for the current occupants. Often, the local police force does not attend evictions or only offers limited support."

*For an overview of the restitution process in Bosnia and Herzegovina see also (in sources below):*


A coordinated attempt to unlock the return process and restore property: the Property Law Implementation Plan (PLIP) 1999 (2006)
The High Representative launched the PLIP with the support of OSCE, UNHCR and UNMIBH to show the determination of the international community towards implementation of property laws.

The PLIP is an effort by the international community to support and monitor implementation of property law in a consistent manner throughout the country.

A network of international focal points covering each municipality monitored the progress of local authorities, reported abuses to the PLIP cell in Sarajevo and advised local authorities on legal issues.

The PLIP cell, coordinating mechanism gathering officials of organizations involved in implementation of property law issues legal clarification and joint letter to respond to problems reported by focal points.

PLIP also includes capacity-building of local authorities and financial support.

Publication of monthly statistics showing progress of property law creates a sense of competition between municipalities.

**OHR/OSCE/UNMiBH/UNHCR/CRPC 11 May 2000:**
"On October 27, 1999 the High Representative, Wolfgang Petritsch, with the full support of OSCE, UNHCR and UNMIBH launched the Property Law Implementation Plan (PLIP) by passing amendments and instructions to harmonize and clarify RS and FBiH legislation on property repossession, in order to create a consistent legal framework and equal rights and remedies for all refugees and displaced persons across Bosnia and Herzegovina. The Property Legislation Implementation Plan (PLIP) - closely coordinated and executed by representatives of OHR, OSCE, UNHCR, UNMIBH and CRPC - is at its heart a political operation to ensure that all citizens of BiH can exercise their individual rights to property, thereby unlocking the return process throughout BiH."

**OHR/OSCE/UNMiBH/UNHCR/CRPC, October 2000:**
"The Property Law Implementation Plan (PLIP) has developed from collaborative relationships between OHR, UNHCR, OSCE, UNMIBH and CRPC. It was conceived in October 1999 as a means of gathering the whole range of property related activities of the different agencies into a coherent, goal-oriented strategy for securing implementation of the new laws.[...] This is the most complex legal component of the implementation of Annex 7, and accordingly requires dedicated resources and thorough management."[...]

At the heart of this approach is the bedrock principle that the same pressures, demands and expectations must be applied to all of the officials and municipalities of BiH. This standardisation in itself will serve to undermine the narrow collectivism and nationalist exclusion that has prevailed in Bosnia and Herzegovina.[...]

The PLIP approach is designed to be applicable throughout Bosnia and Herzegovina. This represents an evolution from earlier return strategies, which focused on selected return locations mainly in rural areas (target areas; destroyed villages, empty space) or modalities of return (political declarations; reciprocal agreements; return quotas). This was necessary at the time in order to initiate the process of return.

The PLIP varies from these earlier policies by promoting the neutral application of the law across the board, rather than the notion of ‘minority return’ to rural areas. By insisting that no deviation is permitted from the strict requirements of the law, it ensures that equal standards, procedures and international pressure are applied throughout the country.

The PLIP is a mechanism for developing a common stance of the international community towards political problems in the return process. On a number of
occasions, the PLIP has co-ordinated joint letters from the Principals in order to place combined pressure on state and entity authorities, and to express the international community’s common expectations in the property law implementation process. This has proved to be an effective way of resolving problems, and should be continued. The same policy can be followed down the command structure, at regional and even local level, in responding to problems that occur in the field."

Paul Prettitore, World Bank, June 2004:
"This mechanism included: administrative reform; capacity-building of local administrative and judicial bodies; de-politicization of the property issues; and establishment of the rule of law.

Marcus Cox, Garlick, 2003:
"There were training programs for local officials in the new laws, and extensive public information campaigns. Field officers at the local level were well placed to identify over obstruction and mobilize various intervention strategies, including letters of protest from international agencies, visits from high-ranking international officials, conditionality on local aid projects and liberal use of the High Representative’s dismissal powers”

Paul Prettitore, World Bank, 2004:
"To measure implementation, monthly statistics are produced by monitors detailing the number of claims, decisions and implemented decisions in each municipality. These statistics have been highly publicized, and for a time the full statistics list was published in local newspapers. One lesson from the PLIP project is that the process became truly effective when it moved from a political process driven by political forces to a rule of law process based on individual rights.

Charles Philpott, Journal of Refugee Studies, February 2005, pp. 9-10:
“The main value of PLIP lay in its public relations value. Four years after Dayton, a year and a half into property restitution, and after a succession of failed ‘years of return’, international enthusiasm was waning and donors looking elsewhere, New packaging for old strategies and aims, a hint of progress, and a catchy new acronym rekindled interest. The principal international organizations publicly affirmed their commitment to full property restitution. As important, previously ad hoc strategies were regularized and coordination was improved. These included the monthly collection and publishing of statistics on property restitution for each municipalities and regions, and the exchange of information about reinstatements. Such ‘Information Exchange’ sought to prevent IDPs who had had their own property restored to continuing to occupy property in another municipality.

Each municipality in the country was assigned an international ‘focal point’. The majority of focal points were UNHCR and OSCE field officers, with RRTF [OHR Return and Reconstruction Task Force] covering a small number of municipalities. A focal point collected statistics and channeled Information Exchange data for the MHO and OMI [Federation and RS local bodies in charge of property implementation] to act upon. A focal point was also responsible for delivering PLIP guidelines and instructions to the authorities and coordinating the activities of international field staff-in order to avoid a situation in which the local authorities were spending all their time in meetings with different organizations delivering the same or, worse, a different message.”

See also in sources below: “Post-conflict property restitution and refugee return in Bosnia and Herzegovina: implications for international standard-setting and practice” by Rhodri Williams, Journal of International Law and Politics, vol.37, n.3, 6 March 2006

At the time the PLIP was launched in 1999 only 15% of claims had been solved.

2000: progress but wide discrepancies throughout the country with RS and Croat majority areas clearly lagging behind.

Looting of properties and violence against housing officials increase.

2001: The High Representative imposes an important set of amendments to accelerate property repossession.

2002: Implementation of claims reaches 64%. A New Strategic Direction is launched emphasizing chronological processing of claims to limit discretion of authorities and corruption.

2003: 92.5% of claims implemented by year end.

Publications of guidelines for substantial completion of property laws.

2004: Property law near completion. Only Banja Luka in RS is still processing claims.

1999
Paul Prettitore, 18 June 2004:
“At the time the PLIP strategy was developed, the rate of implementation of the property laws was so slow that it was estimated that the full resolution of all claims would have taken at least 30 years, a time period unacceptable for the international community. [At the beginning of PLIP] only fifteen percent of claims for repossession of property had been resolved.”

2000
OHR, OSCE, UNHCR, UNMIBH, CRPC, 19 February 2001:
“OHR, UNHCR, OSCE, UNMIBH and CRPC have consolidated the results of the efforts to monitor property law implementation throughout BiH during the year 2000, the first full year of property law implementation. As of 31 December, the rate of implementation (the total number of repossessions versus the number of claims for residential non-destroyed properties) for BiH stands at 21% - with an implementation in the Federation of 29% and in the RS 13%. Of a total of roughly 249,000 claims, 111,500 have received decisions (45%) and 51,500 have been implemented.

From May through December of 2000, the rate of implementation in BiH grew approximately 1% per month. At this continued rate of implementation, it would take roughly six more years to fully implement the property laws. This is not acceptable, especially as some municipalities have shown that it is possible to reach better implementation rates by consistently increasing it by over 3% per month. Given the resources directed at increasing the rate of implementation, we expect a considerable improvement in the monthly implementation rates during 2001.

We remain concerned that the rate of implementation varies widely throughout BiH. As both Entities have the full legal framework to ensure repossession, there is no reason for implementation rates to vary between below 5% and over 50%. In Cantons 4 (Zenica Doboj) and 6 (Central Bosnia) several municipalities are nearing completion of the implementation process - if it can be achieved there, it can be achieved elsewhere.

These results are in direct contrast to areas where progress remains slow. We have not seen adequate progress in the Croat-majority areas in Cantons 7 (Herzegovina Neretva) and 10, nor in areas of the Eastern RS including Bratunac, Foca/Srbinje, Srpsko Gorazde and Visegrad. In the five municipalities that account for 40% of the claims for repossession in the RS - Banja Luka, Prijedor, Doboj, Bijeljina and Zvornik - the average rate of implementation stands at merely 10%. We expect better progress in each of these areas.

We are also concerned the RS implementation rate continues to lag behind that of the Federation of BiH. Although property law implementation began in the RS after it did in the Federation, the
RS has received considerable assistance from the International Community, most notably the over USD 1 million in budget assistance to the Ministry for Refugees and Displaced Persons to hire additional staff and upgrade housing offices. There is no reason for this gap to remain, and we expect the RS to make quick progress towards full implementation.

While progress slowly increased throughout 2000, several obstacles stemming from the failure of local authorities to take full ownership of the implementation process prevented a country-wide breakthrough in repossessions. In many cases, local authorities have still not provided adequate resources for the full functioning of housing offices. We also expect that they will take special measures to employ returnees/minorities in the housing offices. Although the State-level Ministry for Human Rights and Refugees was created, a stronger role in the co-ordination of property issues between the Entities is necessary.

There continue to be many illegal acts encountered in implementation of the property laws, including illegal allocations of private property, looting, violence against housing office employees and illegal revalidations/privatisations, which have not been adequately addressed by local officials. There also remains a considerable problem with public officials occupying claimed space. These shortfalls must be corrected in 2001.

Another important obstacle to increased implementation is the failure of local officials to secure alternative accommodation. Local officials are responsible for ensuring that everyone with the right to alternative accommodation receives it. Inexcusably, these legal obligations remain mostly unmet. Only few municipalities have produced lists of unclaimed socially owned property, and many state owned companies have not provided records on property where occupancy rights changed during the war. Little effort has been made to use other structures as possible alternative accommodation, such as hotels, schools, army barracks and any other adequate structures as permissible under entity property legislation. On this issue, we expect immediate progress. The International Community will not recommend assistance to municipalities unless all steps to secure space have been taken.”

2001
OHR, OSCE, UNHCR, UNMIBH, CRPC, 11 December 2001:
“The Agencies involved in the Property Law Implementation Plan (OHR, OSCE, UNHCR, UNMIBH and CRPC) announced today that, as of the end of October, the overall implementation rate of the property laws has risen to 37% in BiH. 46% of cases have been solved in the Federation, 27% in the Republika Srpska and 33% in Brcko. In other words, out of 129.366 households that filed a claim in the Federation, 59.543 have repossessed their property and out of 120.087 claims in the Republika Srpska, 31.896 have been solved. In total, 93.698 out of 256.328 have repossessed their property.”

December 2001 Amendments
OHR/OSCE/UNHCR/UNMIBH/CRPC, 5 December 2001:
"The High Representative, Wolfgang Petritsch, yesterday issued a package of thirteen decisions comprehensively amending the property laws of both Entities. Changes were urgently needed, as the increase in the pace of property law implementation has stalled over recent months, forcing many people to wait before repossessing property, often in makeshift shelters. Many others are being prevented from privatising their apartments. The amendments will reduce the possibility of manipulation and delay, allow for the speedier eviction of multiple occupants, and ensure the full right of refugees and displaced persons to "freely return to their homes of origin", as guaranteed by the Dayton Peace Agreement.

The amended laws specifically take account of the fact that many categories of persons may be considered to have had their housing needs met, including those who accept land plots or housing construction assistance and have sufficient time to build, and those who show no interest in filing a claim for their property, or in pursuing enforcement of their claims."
All purchases of apartments where the purchase is based on a revalidated contract to an unclaimed apartment will be frozen, pending establishment of a proper review process. Unclaimed apartments are to be used as alternative accommodation, unless the temporary occupant meets strict criteria for revalidating the occupancy right. Previously, many individuals who did not meet the criteria were able to revalidate and then privatise. Thus a large source of alternative accommodation for vulnerable individuals was lost. The new amendments provide for stricter review of all revalidations and subsequent privatisations.

People who are unable for reasons of their own to repossess their property in person do not have to miss the deadline for repossession but can send a proxy instead.

The deadline for repossession of apartments will be reduced from 90 days to 30 days.

Fines for multiple occupancy will be introduced.

The appeals process has been tightened, with the claimant's case upheld if the appeals body does not respond before expiry of the deadline. This will eliminate the long periods -- in some cases as much as a year or more - which some claimants have had to wait for cases to come back from the second instance body.

The burden of proving that someone meets the criteria for alternative accommodation will be placed upon the current occupants. If they cannot prove they meet all criteria, they will be issued with 15-day decisions. This will also reduce the time previously spent by housing authorities attempting to document occupants' cases.

Problems arising from property exchanges will be regulated. Contracts on exchange will be confirmed in cases where both parties agree the exchange was voluntary. If only one party claims, the other party will be deemed to have claimed even if a deadline has passed. And in cases of exchanges of property outside of BiH the party outside of BiH will have to prove that the property they currently possess can be returned to the pre-war owner/occupant.

Instructions enabling the purchase of apartments in the Federation have been established following the receipt of numerous complaints from citizens who currently face excessive demands for documentation, and are unable to purchase their apartments following repossession. The instructions regulate the documentary requirements for purchase, and the obligations of the competent bodies. The documentary evidence that can be requested by the authorities is defined and limited by the new instruction for the Federation.

2002

OHR/OSCE/UNHCR/UNMIBH/CRPC, 3 December 2002:

"The overall implementation ratio reached 64 percent in October, which is an increase of two percent from last month throughout the country.

In Brcko District, 70 percent of properties have been repossessed with an increase of four percent in October, while the Federation ratio has risen by two percent to 68 percent, and the RS recorded a one percent increase since September, to 57 percent in October. Out of a total of 254,730 claims in the whole of BiH, around 92,000 claims are still to be resolved."

Launch of the New Strategic Direction (see envelope on NSD)
OHR/OSCE/UNHCR/UNMIBH/CRPC, 12 September 2002:

“SDHR Gerhard Enver Schrömbgens, OSCE Head of Mission Robert Beecroft, UNHCR Deputy Chief of Mission Udo Janz, CRPC Executive Officer Steven Segal and UNMIBH Head of Civil Affairs Jaque Grinberg today announced a New Strategic Direction for the full implementation of the property laws by end 2003.”

2003

OHR/OSCE/UNHCR, 11 February 2004:

“The PLIP agencies (OHR, UNHCR and OSCE) announced today in Sarajevo that the implementation of the property laws in Bosnia and Herzegovina (BiH) is nearing its completion. The Office of the High Representative, the United Nations High Commissioner for Refugees and the OSCE Mission to BiH, said that the property law implementation ratio in the country at the end of December had reached 92.5 per cent. The three agencies said that local housing authorities had finalized 201,902 of a total of 218,310 property claims registered and issued almost 99 per cent of first instance decisions. A total of 41 municipalities have been verified as having substantially completed the implementation, and 88 municipalities which have completed all pending cases have established concrete timetables to demonstrate their substantial completion of all legal obligations under the property laws, in accordance with the Municipal Guidelines for Substantial Completion of Property Law Implementation.”

A new serie of amendments to property laws were imposed by the High Representative in May 2003. Guidelines to assess completion of property laws were established to define conditions under which a municipality can consider that the repossession process is completed(see envelopes on these subjects for further details)

2004

OSCE, 17 February 2005:

“Property law implementation is nearing completion across BiH. Since November 2004, the OSCE, OHR and UNHCR have verified that a further sixteen municipalities have completed their property work. All told, 120 of 129 municipalities have now finished the property restitution process in their jurisdiction. Of the remaining nine municipalities, eight have finished processing claims and are preparing their final reports. Only the Banja Luka housing authority is still processing claims. Inadequate staffing and resources and a lack of political support have delayed its work. […]

In the Federation of BiH, local authorities are currently considering legislation that would regulate the final disposition and use of unclaimed apartments. The Mission has been actively engaged with the Ministries of Refugees and Displaced Persons, as well as of Labour and Social Policy, to ensure that housing entitlements are protected and that some of these apartments are set aside for the most vulnerable individuals and families.”

See also in sources below:

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“Post-conflict property restitution and refugee return in Bosnia and Herzegovina: implications for international standard-setting and practice” by Rhodri Williams, Journal of International Law and Politics, vol.37, n.3, 6 March 2006

And “Though the dog is dead, the pig must be killed: Finishing with property restitution to Bosnia and Herzegovina’s IDPs and refugees, by Charles Philpott, Journal of Refugee Studies, Vol.18, n.1, February 2005

First phase of PLIP characterised by prioritisation of cases and monitoring of public official's housing situation, 1999-2001 (2006)

- As PLIP member, UNMIBH decides to monitor the property situation of police officials and condition their certification on regularisation of their housing situation
- Police officers that are double or illegal occupants face removal from the police if they do not vacate the property
- Since August 2000, more than 1500 police officers have legalised their housing status (June 2001)
- The Provisional Election Commission can remove candidates from the candidate lists if they occupy property where a decision is outstanding
- The newly established Independent Judiciary Commission (IJC) will help identify members of the judiciary who are occupying contested space (March 2001)
- The High Representative issued a decision prioritising the return of properties to returnee police officers (April 2002)
- In 1999, OSCE attempts to prioritise the return of minority councilors but finally renounces
- Provisional Election Commission bar officials from office if they are occupying property
- OSCE monitors housing situation of judges and prosecutor to ensure that officials representing the law are in compliance with it. In 2002, The High Representative decides to prioritise property repossession of minority police to increase sense of confidence among returnees.

OHR, 18 October 2001:
"Local Police: Under the UNMIBH Policy on Registration, Provisional Authorisation, and Certification, police officers who are double or illegal occupants face de-authorisation if they do not vacate property within a specific time period. During the period of 1 April to 30 June 2001, 201 police officials have legalised their housing status, either either by voluntarily vacating the property they occupied or concluding rental agreements with property owners. Since this policy entered into force, around 1500 police officers hav voluntarily vacated property they had illegally occupied. Nevertheless, hundreds more police officers in both Entities continue to use claimed property. IPTF's Housing Action Team is continuing to compile and act on cases of police occupancy throughout the country, and to notify fellow members of the multi-agency Property Legislation Plan (PLIP), which comprises OSCE; OHR, and UNHCR, together with UNMIBH and CRPC. Additionally, UNMIBH concluded the local police survey project, which consisted of verifying the legality of all police stations in Bosnia and Herzegovina through the CRPC claim. In the course of this project, 11 police stations were identified as illegally occupying somebody's else property for which there was a claim a CRPC claim. At the end of the project, all police stations were regularised, vacating the property or reaching a rental agreement with the rightful owner of the property."

Charles Philpott, Journal of Refugee studies, February 2005:
Elected Officials:
“The OSCE, pursuant to its elections and election-result implementation mandate, initially sought to prioritize the return of minority councilors to their pre-war homes in the municipalities they represented. This policy was abandoned by early 1999, when the restitution process was bogged down generally, having largely failed to accelerate the restitution of property of many councilors. Even when successful, and after intensive effort, few of the councilors actually returned.”

OHR 18 October 2001, paras. 7-9:
“PEC Rules 7.16 and 108 bar officials from holding office if they occupy property where an administrative decision, CRPC decision, or Court decision remains outstanding. The PEC regulations have further led to the parties screening their lists to ensure that none of their candidates are in violation of the ruling and, in numerous cases, to the vacation of contested property by candidates/officials in order to avoid removal. Ninety-five elected and appointed officials were appointed officials were removed under the PEC Rule on Illegal Occupants in 2000, and a further 7 in 2001, bringing the total up to 102. On 76 June 2001, the Bihac Minister of Culture and Education, Izolda Osmanagic, was removed by PEC due to her failure to comply with property laws. She was occupying someone's property and did not vacate the property in question by the deadline that she was issued.

Judges, Prosecutors and Housing: Under the auspices of the Property Legislation Implementation Plan (PLIP), OSCE has been systematically gathering information on judges and prosecutors who have failed to bring their housing situation into full compliance with the property law. Through IJC [Independent Judiciary Commission], these cases will be brought to the attention of the competent entity review Commissions and Councils under the Comprehensive Review Process, established to enforce standards of professional behaviour among judges and prosecutors.”

OHR 30 April 2002:
"The High Representative, Wolfgang Petritsch, today issued a Decision prioritising the return of residential properties to returnee police officers in both Entities. Housing bodies, which under the property laws are obliged to resolve claims on the repossession of private and socially owned properties in the chronological order in which they were received, are now legally requested, as an exception, to treat claims by returning police officers as priorities.

The High Representative has issued this Decision in order to promote the return of so called minority police officers in accordance with the Framework Agreement on Police Restructuring, Reform and Democratisation in Republika Srpska and the Agreement on Restructuring the Police in the Federation, as well as the recent amendments to the Entity Constitutions under which the ethnic composition of the public administration at all levels must reflect the 1991 census. An accelerated return of minority police officers is important for the overall return process as most minority returnees point to the presence of minority police officers on the local police forces as a guarantee of their safety in their pre-war municipalities.”

For an overview of the restitution process in Bosnia and Herzegovina see also (in sources below),
and,
“Though the dog is dead, the pig must be killed: Finishing with property restitution to Bosnia and Herzegovina’s IDPs and refugees”, by Charles Philpott,Journal of Refugee Studies, Vol.18, n.1, February 2005

- After focusing on cases easy to solve such as double occupants, a more systematic approach is adopted to address all cases in a just and consistent manner
- The New Strategic Direction emphasises the chronological processing of claims
- Chronological processing of claims ensures transparency and protects officials from corruption and political interference.

OHR/OSCE/UNMiBH/UNHCR/CRPC 12 September 2002, sect. 2:

"In its attempts to guarantee property rights and support return, the IC has proved adept at matching its tactics to changing conditions on the ground. First came the push for adoption of Entity laws on administrative property repossession in 1998, and their initial harmonisation through High Representative amendments in 1999. Early implementation efforts overcame local authorities’ initial resistance, at first to taking, and later to deciding, claims.

The current phase of implementation has focused on enforcement by drawing the authorities’ attention to cases of ‘double’ or ‘multiple occupancy.’ The fact that multiple occupants are defined by their ability to otherwise meet their own housing needs (by dint of income, access to housing elsewhere, etc.) renders them ‘easy cases,’ whose eviction carries little political cost for the authorities.

As a result, the IC has been able to kick-start real enforcement of the property laws by encouraging the housing authorities to focus their resources on confirming and acting on allegations of multiple occupancy. Very often the IC field presence has been relied on to provide data confirming multiple occupancy status to be acted on by the authorities. In light of the ongoing reduction of IC resources, this pattern is no longer sustainable.

The initial focus on multiple occupancy saw implementation rates rise to 15% in the summer of 2000 and over 30% one year later, reaching an implementation rate of 57% at end July 2002. However, the cost of this strategy has been borne fully by those claimants whose property is occupied by ‘hard cases,’ i.e. temporary occupants who cannot otherwise meet their own housing needs and are therefore entitled to look to the authorities for alternative accommodation (AA). Where the authorities fail to provide AA within legal deadlines, they are required to evict the temporary occupant, unless, in accordance with the conditions prescribed by the property laws, they have conclusively proven to OHR’s satisfaction the non-availability of AA. This requirement for eviction in accordance with the legal deadlines is the most widely breached provision of the property laws leaving the owners of properties occupied by ‘hard cases’ indefinitely dispossessed. Temporary occupants with the right to AA are effectively given an open-ended right to live in other people’s claimed property in open violation of the law.

In effect, the current strategy risks creating the appearance of tacit IC approval of two illegal practices—the failure to provide AA (despite numerous available low-cost options) and the related failure to nevertheless return properties occupied by ‘hard cases’ to their rightful owners. Compounding this problem, the freedom to pick and choose alleged multiple occupant cases for prioritised processing has left housing authorities with broad discretion over the order of processing all cases, inviting both bribery and pressure not to act against politically protected groups.

These concerns have given rise to the third phase of the PLIP, described in this paper. The ‘New Strategic Direction’ (NSD) reflects a new emphasis on chronological processing of all cases, other than the exceptions provided by law. This policy must be supported by the provision of sufficient alternative accommodation to ensure smooth processing of ‘hard cases’ as they arise.
within the chronology, and allowing the rightful owners to repossess their property without further delay.

Crucial preliminary steps have already been taken. Most importantly, the amendments imposed on 4 December 2001 to the property laws have made chronological processing an explicit legal obligation binding on housing authorities in both Entities, save for the exceptions defined in subsequent HR decisions. The PLIP agencies have also intensified their campaign of pressuring authorities at all levels to provide sufficient budgetary funds for AA and ensure their efficient use. Chronological processing is now virtually universally understood and accepted in principle and is being applied in practice in an increasing number of municipalities. The time has come for ad hoc efforts to promote chronology based on adequate alternative accommodation to give way to a clear and systematic IC policy in line with recent amendments to the property laws as promulgated by the HR.”

Paul Prettitore, World Bank, June 2004:
“To further strengthen the PLIP process, the same agencies adopted the New Strategic Direction in September of 2002. The strategy built on that of PLIP, but focused more on the chronological processing of claims rather than the creation of special categories of refugees and displaced persons for prioritization of claims.[...] This amendment was necessary in regards to provide more fair and transparent procedures, as opposed to the old system that left more discretion to local authorities and was open to corruption and political interference. It also protected housing officials from political pressure to address, or not address, certain cases, and provided clearer insight of claimants as to when their specific claims would be resolved.”

For an overview of the restitution process in Bosnia and Herzegovina see also (in sources below),
and
“Though the dog is dead, the pig must be killed: Finishing with property restitution to Bosnia and Herzegovina’s IDPs and refugees”, by Charles Philpott, Journal of Refugee Studies, Vol.18, n.1, February 2005

Property law amendments passed by High Representative accelerate resolution of property disputes (2006)

- High Representative imposed property law amendments with the “Laws on Construction Land” on May 16, 2003 to speed up the final stages of the property implementation process
- The amendments address a number of important issues, including multiple occupants and alternative accommodation availability
- Multiple occupants face heavy fines if they do not leave illegally occupied property
- Measures were taken to facilitate the provision of alternative accommodation to temporary occupants within the RS
- The amendments also transfer valid wartime and postwar property allocations of land back to local authorities
- Administrative proceedings for reclaiming properties have been simplified

OHR 16 May 2003:
“High Representative, Paddy Ashdown, […] imposed ‘Law on Construction Land’. This law ensures that all future transfers of land under the domestic legal process will be non-
discriminatory, and will provide a framework for resolving disputed land allocations made after the start of the war in Bosnia and Herzegovina on 6 April 1992.

The decision comes three years after High Representative Wolfgang Petritsch first asked the local authorities to provide a framework for resolving disputed land allocations for refugees and displaced persons. It also brings the law into line with a ruling of the Constitutional Court by redefining specific categories of Construction Land, including socially-owned property, into either State owned or Privately owned property, as required by the Constitution of Bosnia and Herzegovina.

The High Representative also enacted corrective technical amendments to the property repossession laws, the need for which was identified during the implementation of those laws, and in the decisions of the Human Rights Chamber. These amendments will help refugees and displaced persons by preventing unnecessary administrative proceedings both when an exchange contract is presented to a housing body, and when enforcing CRPC decisions. This will apply to both private and socially owned property.

[...]

OHR expertise will be available to assist in the training of local authorities to implement these laws quickly and accurately.

Decision follows extensive consultations within the international community, including the UNHCR and OSCE and CRPC, and with the competent Entity and State Ministries."

OHR 17 June 2003:

“... The Amendments introduce a number of significant changes on issues such as multiple occupants and alternative accommodation availability in order to speed up the final stage of property law implementation.

[...]

The amendments address the following issues in both entities:

- All multiple occupants now face fines if they fail to vacate within the deadline set out in the original administrative decision against them. When implemented, these provisions will ensure that housing authorities no longer have to waste time and resources carrying out evictions of multiple occupants.
- The authorities will no longer be responsible for damage made to vacated private property where they have taken all legal steps to notify the owner.
- If the municipal housing authorities find that alleged wartime or postwar exchanges or transfers of property meet the formal legal conditions to be found valid, they must suspend the administrative decision-making process, and refer the parties to the competent court for a final decision. If the municipal housing authorities find that the exchange or transfer is not formally valid, they must issue and enforce an administrative decision on repossession of the property.
- Municipal offices of the Republika Srpska Ministry of Refugees and Displaced Persons may now provide alternative accommodation anywhere in Republika Srpska to entitled temporary occupants displaced in the municipalities they are competent for. This harmonizes the RS Law with similar Federation BiH provisions.
- The provisions on applicability of the minimum space requirement for alternative have been harmonized. Specifically, this limitation will only apply in cases where alternative accommodation has been provided by the competent authorities, or where members of the temporary occupant’s 1991 family household have accommodation in the entity of displacement or municipality of 1991 residence."

See also, "Public land allocation to support resettlement and discourage return", in: The Wages of Sin: Confronting Bosnia's Republika Srpska, a report by the International Crisis Group, 8 October 2001, pp. 30-32.

For an overview of the restitution process in Bosnia and Herzegovina see also (in sources below),
and,
“Though the dog is dead, the pig must be killed: Finishing with property restitution to Bosnia and Herzegovina’s IDPs and refugees, by Charles Philpott,Journal of Refugee Studies, Vol.18, n.1, February 2005

Uniform criteria established for the completion of the property law implementation process (2003)

- The Property Law Implementation Plan (PLIP) is a collaborative operation formed in 1999 by OHR, UNHCR, OSCE, UNMIBH and CRPC to address all property related issues in the country
- PLIP Municipal Guidelines for Substantial Completion of Property Law Implementation set out primary requirements on each municipality
- Finalizing property laws implementation is one step towards the full realization of Annex VII of the Dayton Peace Agreement
- One of the criteria includes solving all pending property claims
- Alternative accommodation should also be provided to those who are entitled to it
- Information on solved claims should be shared with the municipalities of displacement and with the CRPC
- International agencies together with the housing bodies assess that all requirements have been met

OHR/OSCE/UNHCR/UNMIBH/CRPC October 2000, p.2:
“The Property Law Implementation Plan (PLIP) has developed from collaborative relationships between OHR, UNHCR, OSCE, UNMIBH and CRPC.[1] It was conceived in October 1999 as a means of gathering the whole range of property related activities of the different agencies into a coherent, goal-oriented strategy for securing implementation of the new laws. The PLIP is a specialist operation designed to ensure that all citizens of Bosnia and Herzegovina who were dispossessed of their property in the course of the conflict can repossess it. This is the most complex legal component of the implementation of Annex 7, and accordingly requires dedicated resources and thorough management.”

[Footnote 1]The Office of the High Representative (OHR), United Nations High Commissioner for Refugees (UNHCR), Organisation for Security and Cooperation in Europe (OSCE), United Nations Mission in Bosnia and Herzegovina (UNMIBH) and Commission for Real Property Claims (CRPC) have been the lead organisations in Bosnia and Herzegovina in property and return issues.
OHR 31 July 2003:
“The PLIP Municipal Guidelines for Substantial Completion of Property Law Implementation from May 2003 set out the most important requirements that each municipality needs to fulfil in order to have Property Law Implementation substantially completed.”

OHR 26 May 2003:
“The [...] guidelines reflect the current expectations of the international community in terms of the minimum criteria for completion. They are based on ongoing consultative field application in some municipalities. Substantial completion of property law implementation is achieved when the competent authorities have resolved all pending property cases in their jurisdiction and have planned for all ongoing and future obligations, such as the processing of future claims and the provision of alternative accommodation to those who remain entitled.”

OSCE 3 June 2003:
“Each month new municipalities in BiH join the group of those having completed their outstanding property claims. To date 32 municipalities throughout BiH have done so. To ensure transparency and a standardized approach, the agencies involved in the Property Law Implementation Plan, OHR, OSCE, UNHCR and CRPC, have approved a set of guidelines to verify that municipalities have complied with all the legal obligations under the law.

These guidelines indicate concrete measures that the housing authorities are expected to take in their own municipalities before declaring PLIP substantially completed. The municipalities are required to report all solved claims, to make unused alternative accommodation available to neighboring municipalities, to regularly review the lists of alternative accommodation beneficiaries, and to maintain sufficient administrative capacity to deal with any property claims submitted to their offices in the future.

International agencies working in the field will assess together with the housing bodies that all requirements to declare Property Law Implementation substantially completed have been met. The State Commission for Refugees and Displaced Persons will be kept fully informed on the completion in the respective municipalities as will the media. This will ensure transparency of the process and ensure that it is equally applied throughout BiH.

Finalizing Property Laws Implementation is only one step towards the full realization of Annex VII. Municipalities remain obliged to facilitate the return of refugees and displaced persons by other means to make the returns sustainable.

Municipalities that have completed the Property Law Implementation can now fully dedicate themselves to their economic and social development and progress towards a normal life.”

OHR 30 October 2003:
“Municipalities must meet a number of criteria to be verified as having substantially completed property law implementation:

1) Municipalities must solve all pending property claims to the effect that all properties were repossessed.
2) Municipalities must continue to provide Alternative Accommodation (AA) to those who are entitled to it.
3) Municipalities must ensure that sufficient administrative capacity has been allocated to deal with future claims and with cases returned from second instance bodies or the courts.
4) Municipalities must ensure that information on solved claims is shared with the municipalities of displacement and with the CRPC.
5) Municipalities must archive and protect all records according to the relevant Laws.”
Substantial completion does not terminate the right of individuals to claim repossession of private property through the competent administrative bodies.

Verification of substantial completion is based on a close review of documentary evidence provided by the relevant housing bodies, providing of that they have fulfilled all their legal obligations related to property law implementation.”

See also,

Specific aspects

Analysis of the PLIP process: from ‘right to return’ to a rights based approach of property restitution (2006)

- The PLIP process has been a flexible tool which evolved as conditions changed
- Initially focused on return, the repossession process gradually moved to an approach based on the rights of the claimants independently of the return dimension
- The return focus has initially led the international community to accept legal provisions which conditioned right of repossession to the return of the claimant
- A narrow return approach can actually conflict with the repossession rights of the individual
- Rights-based approach to repossession allows the individual to choose freely whether he wants to return or resettle in his place of displacement

Charles Philpott, IJRL, March 2006:
“Given the numbers displaced as part of the means and methods of the armed conflict during the war in Bosnia Herzegovina between 1992–95, it is not surprising that the return process has been long and drawn out. Nevertheless, a remarkable process of post-war reconciliation has quietly drawn to completion in Bosnia Herzegovina. In less than a decade after the end of the war, over 90 per cent of the 211,871 claims for the restitution of real property made by internally displaced persons (IDPs) and refugees have been resolved. (…) The greatest factor in seeing the process through to the end was the shift from a process that focused primarily upon ethnically-linked ‘return’, sometimes at the expense of individual property rights, to one that was driven primarily by the recognition of property rights and the rule of law. This was possible for a number of reasons. Uniquely, international human rights conventions were incorporated directly into post-war Bosnian domestic law. Influenced by this, legislative amendments and changes in implementation strategy progressively slanted the process in favour of simple, almost intuitive, rights recognition. Shifting away from the emphasis on ‘return’ removed a subjective element from implementation and, combined with greater emphasis on the ‘rule of law’, narrowed the scope for the system to be manipulated and thwarted. This, thereby, de-politicised restitution. (…) That said, the “right to return” remained an underlying philosophy of the restitution regime. For the most part, “return” and “rights” complemented one another in moving the process forward.
Occasionally however, the two seemed to clash. Opting for one or the other, usually in the name of expediency, sometimes advanced the process and at other times retarded it. Those occasional situations in which the two were not reconciled impeded, and in some cases, will likely continue to impede, the final resolution of all property claims arising from the conflict, and the creation of a stable property market in Bosnia and Herzegovina.

Charles Philpott, Journal of Refugee Studies, February 2005:
“Unprecedented in itself, the Bosnian ‘success’ is made all the more remarkable given that expulsions were continuing even after the war ended […] Domestic political resistance to restitution was strong from the start,. The permanent resettlement of displaced populations by local politicians remained on the local political agenda long after the end of the war. And yet it was these same local authorities who were charged with carrying out the restitution process. While many of the early obstacles to the property restitution regime stem from this fact, arguably the eventually self-sustaining nature and success of the process can also be attributed to such local ‘ownership’ of the process and, in a strange twist, even to their obstruction of it. An important feature of the process was that the battle to reverse ethnic cleansing had been shaped by what was ‘doable’ on the ground, rather than by grand repatriation plans, and came to be waged largely on the legal level. In addition to setting the process above political influence or, worse, the use of force, the legal approach shifted the focus of restitution from IDP/refugee ‘return’ to recognition of property return.”

Marcus Cox, Madeleine Garlick, 2003:
“Several years after Dayton, it had become clear to all of the major political players that restoring property rights was the essential pre-condition not only to return, but also to the successful resettlement of those who chose not to return. Those who were able to sell their pre-war homes recovered the means to build or buy in a new location.[R]estoring property rights creates freedom of choice.”

Rhodri Williams, FMR, September 2004:
“Legally, the right to post-conflict property restitution derives from two independent rationales. The most commonly cited rationale is the ‘right of return’ whereby refugees and IDPs are entitled to return voluntarily not only to their country but to their actual home of origin. A parallel - rights-based - rationale derives from the necessity of providing adequate remedies to the victims of human rights violations. Paulo Sérgio Pinheiro, the UN Special Rapporteur on property restitution, has noted that "restitution as a remedy for actual or de facto forced evictions resulting from forced displacement is itself a free-standing, autonomous right." […] While these two rationales are not mutually exclusive, practice in the former Yugoslavia indicates that the relative emphasis placed on the return vis-à-vis the human rights rationale for property restitution can greatly affect implementation. […]

In both Bosnia-Herzegovina (BiH) and Croatia, private homes will largely have been restored to their owners by the end of 2004. However, restitution of a second category of property - socially-owned apartments - has been far more problematic.

Although such apartments constituted a lower percentage of the housing stock than private homes, their urban location and general high standard made them highly desirable. Most apartments were allocated by public employers to employees on the basis of an 'occupancy right', contingent on a 'use requirement' forbidding prolonged absence of the occupancy right holder. This was rarely enforced but was then revived in wartime regulations allowing empty apartments to be declared abandoned and re-allocated - typically on the basis of ethno-political cronyism - without regard to the wartime conditions that may have necessitated the flight of the previous residents.
In post-war BiH, new domestic property repossession laws again revived the "use requirement" as a "return requirement", forcing apartment claimants to fulfil three conditions:

- claim within a set period (initially identical to that triggering cancellation under the pre-war use requirement)
- seek enforcement of a positive decision within a set period of receiving it physically reoccupy the apartment within a set period of its becoming available

In the immediate post-war period, many displaced people were fearful of returning. The international community's initial support for measures ostensibly designed to force return waned as it became obvious that they were being applied in a manner meant to permanently cancel pre-war occupancy rights, pre-empting any possibility of return in individual cases. By imposing amendments the Office of the High Representative removed most of the requirements in 2001, clearing the way for completion of a restitution process that has seen the return of almost 100,000 apartments in BiH. However, the original deadlines for claiming remained in force, thus preventing restitution and pre-empting return for as many as 9,000 displaced families. The question remains as to whether, from a human rights law perspective, the continued exclusion of those who failed to meet the claim deadlines represents a permissible limitation on the right to property restitution.

In BiH, the property restitution laws implicitly required claims to be processed in chronological order. International monitors in BiH endorsed chronology in keeping with general attempts to depoliticise return by emphasising the impartial 'rule of law' nature of property restitution. However, international monitors also demanded, as a matter of policy, that certain categories of claimants be 'prioritised' to repossess their homes, based on arguments that this encouraged return. The efficacy of this policy in promoting return was debatable and evidence mounted that the discretion given by the international community to allow policy-based exceptions to chronology was being abused in order to protect politically-connected temporary occupants from eviction. Beginning in 2001, the international community espoused processing in strict accordance with law, clearing one of the last lines of obstruction to completion of the property restitution process. […]

Practice in BiH and Croatia demonstrates two risks involved in basing post-conflict property restitution on a pure return rationale:

Firstly, it can foster conditionality of restitution on actual return, particularly where pre-war homes were held in conditional or informal tenure forms. In BiH, the resulting choice between immediate return to an uncertain security environment or permanent loss of one's pre-war home posed a risk of actually pre-empting return.

Secondly, the logic of promoting return can result in attempts to identify and prioritise repossession of property for groups deemed likely to return or encourage return. Such policies can undercut the transparency, perceived impartiality and effectiveness of property restitution processes.

On the other hand, it should be emphasised that property restitution justified as a remedy to human rights violations presupposes free choice as to whether or not beneficiaries actually return. However, given that coerced return would in any case simply subject victims of human rights violations to further harm, property restitution programmes should be based on principles likely to ensure speedy, full and fair restitution of homes.”
Return does not necessarily take place upon property restitution (2002-2003)

- Many owners did not return to their repossessed property
- While property repossession is an essential pre-condition to return other factors have been obstructing return
- Awareness of the authorities that repossession does not equal return probably contributed to their support to the repossession process at a certain stage
- Obstruction to return was then focusing on other means
- Property repossession has not reversed the demographic effect of ethnic cleansing
- There is concern that repossessions are largely technical, with property owners not actually returning to their pre-war residences
- Large number of refugees or returnees do not go back to their homes, but in various ways handle their repossessed property
- People are not returning due to discrimination in obtaining documentation, finding employment, accessing health care and education for their children

JRLP, March 2006, pp.443-447:
“...The return of virtually all properties claimed by those dispossessed in the conflict has played a key role in ensuring that the more than 2.2 million Bosnians displaced by the conflict have been given an opportunity to return to live in their pre-war homes and municipalities, meeting one of the major requirements set out in the 1995 General Framework Agreement on Peace in BiH (GFAP) that ended the conflict in Bosnia. (...) This achievement is all the more remarkable for having been carried out primarily by local administrative officials answerable to the ethnic-nationalist parties that had fomented the war and displacement in Bosnia. (...) The international community (...) in Bosnia also played a critical role in overcoming the initially fierce political resistance to refugee return, drawing on an unprecedented deployment of legal, political, and financial resources, (...) as well as an unusual level of unity and perseverance. (...) Nevertheless, the success of this process is often considered against the fact that the number of people who have
actually permanently returned to live in their pre-war residences in Bosnia has not kept pace with the number of people registered as having simply repossessed their property. (…) In other words, the return of property to people has not always resulted in the return of people to property. While property restitution has been a vital precondition for the actual return of one million of refugees and displaced persons, (…) many others who repossessed their properties have opted to sell or rent them instead. Though the proceeds from such sales and rentals often facilitate durable solutions other than return for those displaced by the conflict, (…) the disparity between results achieved in property restitution and refugee return has nevertheless provoked an ongoing debate about the success of the international peace-building effort in Bosnia. For instance, a November 2002 report by a widely-read research group warned darkly of the consequences of “collaboration” by Bosnian authorities to permit property repossession, leaving them free to “pursue other policies that discourage real return: (…) International engagement is still necessary to maintain and sustain the decisions of ordinary people to resist their wartime leaders’ invocations of tribal solidarity. This is not just a question of human rights. It is also the principal test of whether or not the Bosnian state conceived at Dayton can endure and evolve as a viable multinational state. (…)"

The tendency in Bosnia to conceive of property restitution in rhetorical opposition to refugee return became increasingly pronounced as complete property law implementation began to look achievable, emphasizing the fact that the simultaneous upswing in actual return, though considerable, would never achieve complete restoration of the prewar demographic composition of Bosnia.”

OHR 27 February 2003:
“The Agencies engaged in the Property Law Implementation Plan (OHR, UNHCR, OSCE, CRPC) would like to clarify that completion of Property Law implementation does not equal completion of Annex 7. While property law implementation is the fundamental first step it is only one among many of the elements underpinning sustainable return. Full implementation of Annex VII means that not only can people return to their homes but that they can do so safely with equal expectations of employment, education and social services. Therefore the PLIP agencies call on the local authorities to accelerate the pace of property law implementation and at the same time redouble their efforts to create the conditions conducive to sustainable return.”

OHCHR 26 March 2003, paras. 25-27:
“Implementation of property laws has progressed […]. The Special Representative [Commission on Human Rights to examine the situation of human rights in Bosnia and Herzegovina] observes, however, that repossessions are largely technical, with property owners not actually returning to their pre-war residences. The climate of security has not been assured for returnees; eight years after Dayton, those who choose to return to their pre-war homes face threats or outright violence, as well as discrimination in obtaining documentation, finding employment in a generally depressed economy, accessing health care and access to education for their children. In some areas, separate schools for different nationalities exist, despite efforts by the international community and governments to come up with a joint curriculum for all schools.”

Ombudsman of the Federation of Bosnia and Herzegovina March 2003, Introduction:
“Return of property develops relatively effectively and could be marked as a good one (which particularly applies to apartments), however, true return of people lacks. Close to accurate statistics concerning repossession of property already exist, which is also a part of this Report, however, statistic related to real return of people to their prewar homes is followed through statistics of no authorities. Additionally, according to complaints of the citizens who addressed the Institution of the Ombudsmen of FB&H, large number of refugees or returnees do not go back to their homes, but in various ways handle their repossessed property. Numerous paper advertisements and evidence contained in the book of validation of signatures on concluded contracts on sale or contracts on exchange of real estates are the best witnesses for the latter.”
According to results of investigations conducted by the Ombudsmen, main reasons for giving up return are lack of existential conditions and change of ambient, which was during the war and after it imposed and accepted in all three ethnic parts of B&H. Accordingly, due to high level of distrust, guaranteed, true and sincere agreement on general peace and coexistence of different ethnicity, cultures and religions has never run aground. Verbal agreement on the latter exists only partly, yet it is neither sincere nor true.

Consequently, eleven years after the beginning of the war and seven years after its end, peace process suffers serious and chronic consequences, since full political will on implementation of civil part of Dayton Agreement has not been reached on all territory of B&H, since true return of refugees to their prewar homes has been and is main condition for peace and progress in B&H. Although by the end of 2003 intensive repossession of property and apartments is expected, significant return of refugees and displaced persons is not expected.”

See also in sources below: “Post-conflict restitution and refugee return in Bosnia and Herzegovina: Implications for international standard-setting and practice”, by Rhodri Williams, New York University Journal of International Law and Politics, Vol.37, n.3 6 March 2006 p.544-548.

See also, “Real or Administrative Return in Bosnia-Herzegovina?” South East European Refugee Assistance Network, 14 July 2003

For more on issues beyond property restitution facing displaced persons, see paras. 11 – 14 in “Question of the Violation of Human Rights and Fundamental Freedoms in any Part of the World” Situation of human rights in parts of South-Eastern Europe, Report submitted by José Cutileiro, Special Representative of the Commission on Human Rights.

International agencies urge local authorities to develop social housing to address housing needs of displaced persons (2006)

- A 2005 law provides to sell apartments occupied by displaced persons which have not been claimed
- International Community was advocating for continued use of those flats to the displaced
- There is currently not adequate social housing mechanisms to address the needs of the most vulnerable categories
- UN Committee on Economic, Social and Cultural Rights calls authorities to allocate sufficient resources for the provision of social housing
- Funding for reconstruction and repair of returnees’ homes is inadequate
- There has been a failure to repair destroyed homes of displaced persons, with most funding being invested in repairs of apartments
- Though formally entitled to temporary accommodation, a number of displaced persons have not been practically able to exercise this right
- Implementation of property law is mainly obstructed by the failure to provide alternative accommodation for persons due to be evicted
- Main international agencies urge the Federation to maintain use of unclaimed apartments as alternative accommodation

COE, 25 April 2005, par.59:
“At the end of March 2005, the FBiH Parliament adopted the Law on Return, Allocation and Sale of Apartments. The law foresees the return of apartments for which repossession claims have not
been submitted by owners from 1991. If the owner is a currently privatised company, apartments will be returned to municipalities. Some 6,000 apartments are covered by this law, of which 3,000 are in the Sarajevo area. Unclaimed apartments have been mostly used as alternative accommodation for refugees and displaced persons. At the end of last year, the representatives of the international community had stressed the need that the new law should protect the continued use of unclaimed apartments by legal beneficiaries of alternative accommodation and take into account the housing needs of the most vulnerable categories of society (see SG/Inf(2005)2 final, para. 20 and Recommendation B vii). The OSCE Mission to BiH has now expressed its concern that the Law, as adopted, fails to address these issues. The Mission emphasised that a social housing policy is needed to ensure that (i) the re-allocation of unclaimed apartments does not adversely affect the rights of alternative and emergency accommodation beneficiaries, and (ii) responsible local authorities provide durable solutions to the housing situation of other vulnerable social cases currently neglected under the applicable law."

UN CESC, 24 January 2006, par.46:
"The Committee recommends to the State party to adopt, at the State level, a housing law and a national housing strategy to address the housing needs of the population. The Committee also recommends that the State party allocate sufficient resources for the provision of social housing, especially for the low-income and disadvantaged and marginalized groups."

COE, 4 February 2005, par.50
"On 23 December 2004, the representatives of OSCE, OHR and UNHCR drew the attention of the FBiH Parliament to the fact that the draft Law on Return, Allocation and Sale of Apartments, which the Federation Parliament planned to discuss at the end of December 2004, should consider the continued right to alternative accommodation of the beneficiaries currently using unclaimed apartments, as envisaged by the Law on Cessation of the Application of the Law on Abandoned Apartments. The international community representatives noted that the draft Law did not prioritise the neediest families in the allocation process and underlined that the allocation criteria in the new Law, which would dispose of the last housing stock remaining in public hands, should take into account the housing needs of the most vulnerable categories of society. Vulnerable segments of the IDP population include those whose property has not been restructured and who are unable to access reconstruction assistance." 

OHR 27 March 2003:
"The OSCE Mission to Bosnia and Herzegovina, the Office of the High Representative (OHR) and the United Nations High Commissioner for Refugees (UNHCR) have urged Bosnia and Herzegovina's authorities to begin adequate planning for a fully-functioning social welfare system. A letter has been sent to the Ministers in charge of social welfare, urban planning, displaced persons and refugees issues in both of the country's entities -- the Federation and Republika Srpska. In it, the international agencies highlighted the pressing needs of the country's population with regard to property issues, especially in light of the expected completion of the property law implementation by the end of 2003, in accordance with the New Strategic Direction of the country's Property Law Implementation Plan.

There are several categories of people currently housed in alternative accommodation whose homes were completely destroyed and who have been unable to find reconstruction assistance. Others had never possessed any property or had benefited from the social welfare system before the war. In all cases of people who have no prospect of being able to provide for their own housing needs, alternative accommodation under the property laws is not an appropriate long-term solution."
The international agencies also called upon the competent ministries to provide social support to the growing number of people who are not legally entitled to temporary accommodation under the laws on property and displaced person, but remain without resources to house themselves.

They urged the competent Ministers to anticipate these issues and begin instituting measures that would ensure a seamless transition from provision of alternative accommodation under the property repossession laws to effective long-term social policies. Such measures should include both a review of the current legal framework regarding social welfare and a realistic assessment of the resources necessary to meet anticipated needs.

See also: “Alternative accommodation cannot be left out”, OSCE, 5 April 2005

Continued restrictions on ability to repossess military apartments in BiH (2006)

- In 1998, the Federation army unlawfully took control of 4,000 former Yugoslav military apartments that had been abandoned
- The pre-war owners of these apartments continue to be unable to possess them despite rulings by the Human Rights Chamber that the apartments should be returned

IJRL, March 2006:

“Another issue that the Human Rights Chamber may have left for the Court in Strasbourg to sort out is that of JNA apartments. Initially, the Chamber took a firm line with the Federation, which had cancelled the purchase of JNA apartments initiated just prior to the outbreak of war. (…)

After a long stand-off, the Federation negotiated a compromise with OHR. The High Representative inserted article 3a into the Federation Law on the Cessation of the Application of the Law on Abandoned Apartments and articles 39a to 39e into the Federation Law on the Sale of Apartments with Occupancy Right. For the purposes of restitution, article 3a (…) allowed certain categories of military personnel to be excluded from restitution on the basis that they were not refugees. Articles 39a, b, c, d and e (…) then set out a procedure by which some of the pre-war purchases could be finalised or compensation claimed.

The impasse, however, was not resolved. The Federation Ministry of Defence still refused to allow the return of apartments that passed the article 3a test or to account for former JNA apartments that had been reallocated. In the meantime, article 3a itself was challenged. (…)}
Human Rights Chamber, in the decision of Miholic’ & Others, (…) whilst holding that the application of the first paragraph of article 3a violated the ECHR, stated that the second paragraph did not. The second paragraph, for the purposes of claiming under the law, stated that ‘[a] holder of an occupancy right . . . will not be considered a refugee if s/he remained in active military service of any armed forces outside of the territory of Bosnia Herzegovina after 14 December 1995 . . .’. The Chamber found that this was an acceptable limitation on the definition of a refugee and, as such, those caught by the provision could thereby be excluded from the Law on Cessation process. (…)

The Chamber decision, nevertheless, recognized the rights in question as being unperfected private property rights. It stated that the claimants should be allowed to register the purchased apartments in the land title books. Mysteriously, it did not explain why the claimant could not then apply for restitution of the apartment as private property; that is, under the Law on Cessation of the Application of the Law on Temporarily Abandoned Real Property Owned by Citizens. Therein, there is no equivalent to article 3a and, indeed, no requirement that the claimant be an IDP or refugee in order to claim for the return of private property. As such, not only did this decision buck the trend away from return-linked restitution, (…) it extended ‘return’ conditionality to a category of property rights that had hitherto been beyond its reach.

Despite a clear order from the Chamber that article 3a be brought into compliance with the ECHR, (…) the Federation dragged its heels for almost a year. It then reformulated the provision, (…) rather than addressing the Chamber's main concerns head on. Federation authorities were supported in this, in part, by the aforementioned confusion in the Chamber's decision, (…) the unwillingness of OHR to step in and remedy a provision that it had imposed in the first place, (…) and by CRPC’s seemingly political decision to reject claims for JNA apartments.”

USDOS, 28 February 2005:

“During 1998, the Federation army unlawfully took control of approximately 4,000 abandoned apartments owned by the former Yugoslav military (JNA). Federation authorities encouraged post-war illegal occupants of these apartments to purchase them. In the meantime, the prewar owners of the apartments (former JNA officers, mostly Bosnian Serbs) began filing claims to return to their property. After inadequate action by local authorities, several of these cases were brought before the Human Rights Chamber, which decided that apartments owned by JNA officers should be returned. Federation authorities continued to refuse to evict the current residents or to allow pre-war owners to regain possession, in violation of the Dayton rules for property implementation. The Constitutional Court ruled in September that the Federation's legislation that prohibits ownership of property in the Federation by anyone who served in the JNA after May 19, 1992 (effectively disenfranchising all Bosnian Serbs with claims to these properties) is constitutional. Because most claimants to these apartments have been allocated apartments elsewhere (mostly in Serbia), the Court held that the Federation has the right to uphold the legal principle applied in the former Yugoslavia, which holds that citizens cannot have tenancy rights to more than one apartment at the same time. The MOU authorizing the transfer of responsibilities to the DCRPC specifies that the appeals shall be decided in accordance with international law except where it conflicts with Bosnian law. The Constitutional Court's decision suggests that the DCRPC will have to rule in favor of the current occupants of the JNA apartments, a position inconsistent with international legal principles; however, until the DCRPC rules on these cases, the situation remains unresolved.”


Some measures taken to legalise Roma settlements (2006)

- 50 – 70 % of Roma reside in informal settlements and face forcible eviction due to unclear title to the land they occupy
- OSCE identifies more than 30 informal settlements throughout BiH
- Efforts are undergoing to ensure legal ownership or alternative housing for Romas
- Brcko district authorities pledged to legalise a Roma informal settlement
- Roma have been excluded from reconstruction assistance due to lack of documents and formal title on their houses

OSCE, “Overcoming exclusion”, 2004:

“The property situation of Roma is particularly problematic. Prior to the war, a large number of the Roma community in BiH lived in settlements built on State-owned land, which were often not recognized by local authorities. As a result there are few records establishing the Roma settlements, and no concrete information on the total number and location of such settlements.

OSCE’s preliminary field research identified more than 30 such settlements throughout BiH. Most residents do not have any legal title over the land they have resided on for decades or longer. Nor can they receive assistance from donors for reconstruction of homes, since most donors require proof of ownership. Many Roma settlements were destroyed during the course of the war, and Roma regularly face eviction from current settlements.

OSCE is conducting a survey, funded by the Council of Europe, to gather information on each settlement, in an attempt to ensure legal ownership or alternative housing assistance pursuant to international and domestic law. OSCE has been working and will continue to work with local officials to prevent forcible evictions.”

ECRI, 15 February 2005, par.62

“At present, between 50 and 70% of the Roma of Bosnia and Herzegovina are estimated to live in informal settlements, where conditions are extremely poor and, in some cases, such that the health and lives of their inhabitants are seriously threatened. Many of these settlements lack basic facilities such as access to drinkable water, electricity, reliable sources of heating, sewage system or garbage disposal. Furthermore, people in settlements are vulnerable to forced evictions, following which, in a number of reported cases, alternative accommodation has not been provided. ECRI strongly urges the authorities of Bosnia and Herzegovina to address without delay the housing situation of the Roma population and to ensure in the short term, that all Roma dwellings meet, at the very least, basic standards of adequate housing. ECRI notes that, in some municipalities, such as in Sarajevo, and in Brcko district the authorities have taken some steps to
legalise settlements or to provide alternative accommodation to their inhabitants and strongly recommends to the authorities of Bosnia and Herzegovina to extent these initiatives.”

**OSCE, 13 May 2003:**
“The OSCE Mission in Bosnia and Herzegovina (BiH) has welcomed the decision by Brcko district authorities to allocate apartments to 15 Roma families who have been living in an informal settlement in Prutace for many years.

Under current legislation, these families were to be evicted from the apartments this month. Following a meeting with the OSCE Mission, the Brcko district authorities decided to let the families continue to live in the informal settlement in Prutace and pledged to legalise it as a formal settlement of Roma community. This is a positive step by local authorities to resolve the housing issues of the Roma community.”

**Council of Roma, October 2004:**
"More than 70 % of Roma do not have a house, while the rate of Roma returnees is very low. [...] During the war in Bosnia and Herzegovina Roma settlements were literally demolished and warehouses of different companies have been built on the locations or the locations have been declared water protection areas or buffer zones or the locations have been usurped by non-Roma or the local authorities have been claiming municipal ownership of the locations or the like. Roma population in Bosnia and Herzegovina has achieved the lowest ratio of housing reconstruction and the commitments for reconstruction by the Ministry of Social Security, Displaced Persons and Refugees have not been honoured yet."

**See also (in sources below):**
“Report on Roma informal settlements in Bosnia and Herzegovina”, OSCE, 8 April 2005
“UNHCR and OSCE Advocate For a Permanent Housing Solution for Roma Families from Butmir Settlement”, UNHCR, 5 September 2006

**See also in other sections of this country profile:**
“Efforts to facilitate the integration of Roma children at schools” in the Education section
“Roma excluded from fundamental political and social rights because of lack of personal documents, in Documentation needs and citizenship section
“BiH and Entity Constitutions link access to many aspects of public life to ethnicity” in self-reliance and public participation section
“Displaced Roma, a particularly vulnerable group” in Pattern of displacement section
“Roma continue to struggle to access property rights”, in Property rights
“Displacement aggravates the living conditions of Romas”, in Subsistence needs section

**Roma continue to struggle to access property rights (2006)**

- Several UN human rights committees have urged authorities to address the difficulties faced by Roma people to repossess their property and access adequate housing
- Roma lack legal entitlements to their pre-war residences and are thus unable to recover their rights
- Roma residents of informal settlements are also vulnerable to local government decisions to reallocate the land for more lucrative purposes

**UN CESCR, 24 January 2006, par .47:**
“The Committee urges the State party to ensure the right of the Roma people to repossess their pre-armed-conflict property, to guarantee security of tenure to inhabitants of Romani settlements and to ensure that adequate alternative housing or compensation is provided to the Roma people
and to pre-armed-conflict tenants who have been evicted from their settlements and homes, in line with the Committee’s general comment No. 7."

UN CERD, 11 April 2006, par. 20:
“The Committee is deeply concerned that many people of different ethnic origin, especially the Roma, are unable to return to their pre-armed conflict homes because of the lack of legal title to their property or because of the authorities’ failure to evict and punish temporary occupants who often vandalise or loot the homes before relinquishing possession of them. The Committee is also concerned about reports that many informal settlements in which Roma lived prior to the armed conflict have been destroyed, and that Roma continue to be evicted from their informal settlements, without adequate alternative accommodation being provided, and in view of the fact that Roma are frequently unable to rent private accommodation because of racial discrimination and/or poverty (Art. 5 (e) (iii)).

Referring specifically to General Recommendation 27, the Committee urges the State party to facilitate the return of all people of different ethnic origin, especially the Roma, to their pre-armed conflict homes, to ensure their ability to occupy and reside in informal Roma settlements legally and safely, and where necessary, to provide adequate alternative housing or compensation for displaced Roma, including to pre-armed conflict tenants who have been evicted from their settlements or whose homes have been destroyed.”

ERRC, 3 July 2006, par.5:
“Many Roma have experienced difficulties in exercising their property rights and accessing the right to adequate housing in post-war Bosnia and Herzegovina. Indeed, many Roma are still internally displaced within the country for a myriad of reasons. In some cases, Roma have been unable to return to their pre-war homes due to fear and/or impediments to return. The repossession of personal property by Roma has been left to the discretion of local (generally non-Romani) authorities slow to remove temporary occupants from their property. In many of the cases of repossession of personal property by Roma of which the ERRC is aware, temporary occupants have vandalised or looted property before leaving. Many of the informal settlements in which Roma lived prior to the war have been destroyed and no adequate alternative accommodation has been made available to former inhabitants. Roma who have been able to return to informal settlements often find themselves at the mercy of local authorities eager to allocate their land for industrial or other economic development projects, while at the same time making no plans for the provision of alternative accommodation for Roma displaced through forced evictions. Roma living in informal settlements or who lived in social housing before the war are frequently excluded from the benefits of new property laws and are in many cases ineligible for the aid money that has poured into the country under reconstruction schemes. In such settlements, an adequate standard of living is not available. In extreme cases, very substandard conditions in such settlements have led to the death of vulnerable inhabitants. Further, Roma are frequently unable to rent private accommodation due to racial discrimination or poverty or both. The government should act without delay to ensure that all Roma in Bosnia in Bosnia and Herzegovina enjoy the right to adequate housing in practice.”

UN CHR, 29 December 2005, par 39:
“The situation of the Roma is particularly problematic. Before the war, a large number of the Roma community lived in settlements which were built on State-owned land and often not recognized by local authorities. As a result, there are few records of these settlements, and no concrete information about the exact location of houses. Today, an estimated 50-70 per cent of Roma reside in informal settlements in a precarious situation as the land could be reallocated by local authorities at any time.(…) Currently, some two thirds of all Bosnian Roma are not registered at a permanent address, which complicates or bars various administrative procedures such as obtaining official documents. The Representative noted with concern cases of forced eviction of Roma
communities, such as that in Bisce Polje near Mostar in 2003. A Roma settlement built on State-owned land was reportedly demolished and burnt by the authorities without prior warning and with no alternative accommodation offered.”

OSCE 7 April 2002:
"Roma make up the largest of BiH's 17 national minority groups. There are Roma throughout the Federation and RS, with the biggest concentration in Tuzla Canton, where there is large community of displaced people and repatriates. During the war many of Bosnia's Roma, who are mainly Muslim by religious orientation, were expelled from predominantly Serb/Croat held parts of the country and fled to other European countries, such as Germany, Switzerland, Italy, Sweden and the Netherlands, as well as being internally displaced. Post-war they have been returning to BiH, but many still can not return to their pre-war homes because they have been destroyed or occupied. In Bijeljina for example, which used to be home to some very wealthy Roma, Roma have returned to find their houses lived in by local authorities. There have been some cases of Roma living in tents in the garden of their occupied houses. Like all persons displaced during the BiH war, Roma face many obstacles and obstructions as they try to maneuver through the complicated legal administrative property repossesssion process. Yet Roma also face the additional hurdle of discrimination on the part of housing authorities.”

ERRC, No.3 2003 :
“"The obstacles to exercising fundamental rights facing Roma stem from a number of causes. Roma displaced from their property during the war have had difficulty repossessing their property because of discrimination and lack of adequate information on the necessary procedures. Most of the Romani individuals who were allocated social housing before the war are currently left without housing. In contrast, most field evidence points to the fact that other ethnicities living in such housing prior to the war have, in fact, been able to reclaim it. Roma living in informal settlements[1] are left in a precarious situation as the land on which they reside can be re-allocated by local authorities. In addition, many Roma are further impaired in exercising their rights because of the lack of personal documents. Lack of ownership documents also hampers repossession of property and the provision of reconstruction assistance in cases where housing was destroyed during the war.

Exercise of Property Ownership Rights

The problems regarding Roma and property basically fall into three categories: the inability to repossess private property or socially-owned apartments [2] lost during the conflict; the loss of pre-war social welfare housing;[3] and the lack of security of tenure in informal settlements. The first two categories stem directly from the conflict. Individuals who lost private property can submit claims for repossession of such property pursuant to the property laws in both the Federation of BiH and the Republika Srpska (RS).[4] Individuals residing in social welfare housing who became displaced during the war have no right to repossess their property, as the current legislation governing repossession does not include such property. The primary concern regarding housing of Roma, however, remains informal settlements.

Pre-war, the majority of the Romani community in BiH, estimated at between 50 to 70 percent, lived in settlements built on state-owned or private land, which were often not recognised by local authorities. Such settlements were not recognised because the inhabitants had not secured any legal rights to use the property. Unfortunately, there are few records in either land books or municipal cadastres establishing the Romani settlements. Nor is there concrete information on the total number and location of such settlements. A survey conducted by the Organisation for Security and Cooperation in Europe (OSCE) in 2002 identified roughly one hundred such settlements with a population of over 22,000 persons in over thirty municipalities.[…] This list, however, is not exhaustive. Most residents of informal settlements do not have any legal right to reside on the land, despite in some cases having resided on the property for decades or longer.
Nor can they receive assistance from donors for reconstruction of homes, since most donors require proof of ownership. Under these circumstances, hundreds of Roma, whose houses in informal settlements were destroyed during the war, have been left without access to their pre-war housing and with little chance of securing alternative housing.

ERRC, February 2004, p.117:
“It is important to note that much of the housing in BiH prior to the war was built without required permits, but nonetheless has been ‘formalized’ by local officials, except in cases where the property belonged to Roma. There are only several cases where local officials have made attempts to provide some security of tenure to Roma in informal settlements.”

ERRC, No.3 2003:
Romani residents of informal settlements are also vulnerable to local government decisions to reallocate the land for more lucrative purposes. This can be illustrated by the case of the pre-war Romani settlement in Gorica, in the Sarajevo Canton. Roma had been using the site as a settlement for decades (or longer according to the Romani community) prior to the war. However, post-war municipal authorities decided to allocate the land for other purposes. Fortunately, the mayor of the municipality was persuaded through constant pressure by members of the international community to allocate the land to the resident Roma. Construction permits were then negotiated and a donor was identified to fund reconstruction of the destroyed housing for roughly fifteen families. The Roma were also permitted to register in the land books, thus attaining legal title to the property. A similar situation also occurred in Doboj in the Republika Srpska, where only after considerable intervention from the international community, particularly the Office of the High Representative (OHR)[…] and the OSCE, did the reconstruction programme take place, benefiting roughly twenty-eight Romani families.”

[Footnote 1] In this case the term informal settlements applies to any settlement where housing has been constructed without the requisite permits or legal title for use of the land.

[Footnote 2] Socially-owned property is a form of property entitlement which is stronger than a rental contract but is not equal to private property. Socially-owned property was allocated to employees of state-owned enterprises or state bodies. Individuals allocated socially-owned property were considered ‘occupancy right holders’. Occupancy right holders exercised broad rights over the property, including passing it to family members resident in the apartment after the death of the occupancy right holder. However, they were not entitled to sell the property.

[Footnote 3] Prior to the war, most employed Roma worked for companies responsible for communal services, with the work being manual in nature. Because these companies did not generate considerable revenue they were unable to build housing for their employees, as was common practice under the prewar Yugoslav system. Thus, many Roma had to be allocated housing by municipal officials under social welfare programs. Many Roma lived in such housing for years or even decades.

For more background information, see

See also in other sections of this country profile:
“Efforts to facilitate the integration of Roma children at schools” in Education section
“Roma excluded from fundamental political and social rights because of lack of personal documents, in Documentation needs and citizenship section
“Displaced Roma, a particularly vulnerable group” in Pattern of displacement section
“Displacement aggravates the living conditions of Romas”, in Subsistence needs section
“Some measures taken to legalise Roma settlements”, in Property issues

- The Commission is responsible for the processing of property claims for displaced persons and refugees under Annex 7 of the Dayton Peace Agreement
- CRPC, an institution created to overcome obstruction of local authorities
- Successful role at the beginning of the process and in sensitive cases
- CRPC’s role was to determine the ownership of the property
- Lack of enforcement mechanism seriously hampered the efficiency of CRPC decisions and led to channel its decision through the general administrative process
- Possessors of CRPC decisions had to go to local authorities to request enforcement and determine the rights to alternative accommodation of current occupants.
- CRPC has collected claim applications for 319,220 properties throughout BiH (December 2003) and issued 302,109 decisions providing incontrovertible proof of property rights have been issued (July 2003)
- CRPC conducted other useful property related activities such as reconstruction checks, maintenance of an information exchange database to monitor double occupancy,
- The CRPC completed its mandate end of 2003
- Transfer of CRPC activities to the authorities are regulated by a special agreement
- The CRPC reconsideration body stopped its activity in December 2004

Charles Philpott, Journal of Refugee Studies, February 2005:
“During its mandate, the CRPC received 240,333 claims for 319,220 properties. […] and decision issuance was slow. Nevertheless, In the absence of an alternative process early on, and at a stage when the courts and authorities were rejecting restitution claims, the CRPC proved a useful repository of claims against the day when restitution might be possible. […] It had also balanced its own relative powerlessness by conducting useful property-related research and supporting a variety of return and restitution strategies, such as housing checks of elected officials and police, international staff accommodation checks, reconstruction checks, and collating Information Exchange data. Participation in PLIP was pivotal.”

Charles Philpott, Journal of Refugee Studies, February 2005:
“Since there were concerns as to the ability of local officials to fully implement the right to repossession of property, an international body was created to assist. Chapter II, Article VII of Annex 7 established the Commission for Displaced Persons and Refugees. This Commission was created as the Commission for Real Property Claims (CRPC). The creation of CRPC was an attempt to circumvent Bosnian legal and administrative bodies that were inadequate for the task. Municipal housing bodies were poorly organized and resourced, and many were staffed by political hardliners bent on preventing the return of properties. The judiciary was viewed as biased and ill-equipped to handle a large number of new cases. The original mandate of CRPC under the DPA was to last for five years, but the mandate was extended for an additional three years given the backlog of claims that developed. CRPC ceased operations on 31 December 2003. The mandate of CRPC is to receive and decide claims for real property, whether the claim is for return of the property or for compensation.[…]

CRPC consists of three international and six national commissioners and a number of international and national staff involved in collection of claims and drafting of decisions. Its decisions are final and binding, and only CRPC can alter its decisions upon a request for reconsideration of the decision by either the claimant or the temporary occupant. When issuing
decisions CRPC is permitted to disregard any domestic legislation viewed as contrary to the DPA.

Through its mobile teams and offices in countries of asylum, CRPC created an easier
environment for many refugees and displaced persons to file claims.

CRPC decisions address only the right of the claimant. Decisions make no determination as to
the subsequent rights of the current user. Its decisions confirm whether the claimant was the
owner or occupancy right holder as of April 1992 – the start of the conflict. CRPC investigates
claims primarily through access to official land records, as there are no oral hearings. [...]The
basis for the implementation of CRPC decisions is pursuant to both the RS and Federation of BiH
Laws on Implementation of the Decisions of the Commission for Real Property Claims of
Displaced Persons and Refugees, imposed by the High Representative in October 1999 and
amended several times thereafter.[…]

The comparative advantage of an international organization such as CRPC was the its ability to
issue mass decisions confirming prewar ownership or possession. [...]However, the primary
obstacle in the process of repossessions of property in BiH proved not to be the determination of
rightful owners and possessors, but determining the rights of temporary occupants. Given that
displacement lasted a relatively short period of time and that property was allocated only on a
temporary basis, there were few disputes as to the actual owner of the property. [...]In addition,
CRPC could not effectively resolve cases where the legality of wartime property exchanges was
in question, especially regarding cases involving duress. For this reason the Laws on
Implementation of the Decisions of the Commission for Real Property Claims of Displaced
Persons and Refugees were amended to provide judicial proceedings in such cases. […]

Another weakness of CRPC is that its decisions are not immediately enforceable. In attempt to
remedy this situation, the High Representative imposed legislation on implementation of CRPC
decisions in 2000. An individual who receives a CRPC decision in their favor must submit the
decision along with a request for enforcement to the housing office in the municipality where the
property is located and file a request for enforcement with BiH authorities, otherwise housing
office officials are under no obligation to act under a CRPC decision. […] Once the request for
enforcement is made, housing officials must make a determination as to the
rights of the temporary occupant, and issue the appropriate decision pursuant to the Laws on
Cessation. For decisions involving private property there is no deadline for requesting
enforcement of a CRPC decision. Therefore the value of a CRPC decision became solely
dependent on the functioning of the domestic housing office system. Since most problems in the
process stemmed from the rights of the current occupant, CRPC certificates were not viewed as
adding considerable benefit to the process.

In practice, officials in housing offices rarely implemented the CRPC decisions, and instead
issued their own decisions that were later implemented. In this respect CRPC served as a parallel
mechanism to the system of housing offices, especially since many individuals filed claims with
both. The end result was that CRPC and domestic housing bodies ended up issuing decisions on
the same cases, since many individuals filed claims to both bodies.

However, CRPC was advantageous in issuing decisions in politically sensitive cases, such as
those involving elected officials, judges, military officials and police officers, so that local housing
office could stand behind the CRPC decision as opposed to issuing one themselves and opening
themselves up to threats. CRPC also issued decisions for destroyed property, which was a
prerequisite for securing reconstruction assistance from international donors.”

Paul Pretittore, World Bank, June 2004:
“CRPC did not process its decisions chronologically and, in fact, many thousands of claims that
were difficult to resolve for evidentiary reasons had been placed at the end of the queue. These
so-called ‘Black box’ cases (estimated at 3,000 to 30,000) would remain in limbo, with the claimants having no recourse, until the end of CRPC’s mandate on 31 December 2003.”

“The mandate of the Commission for Real Property Claims (CRPC) [...] ended during the year. As part of its transfer process, the CRPC was to transfer all of its claim files (approximately 240,000) and records to the BiH National Archives, and to transfer its computer database to the BiH Ministry of Human Rights and Refugees (MoHRR). CRPC was unable to resolve approximately 50,000 private property claims because they involved conflicting documentary evidence and required a hearing, which was beyond CRPC’s mandate. A public information campaign was designed to inform claimants of their responsibility for pursuing these claims. In addition, 5,000 occupancy rights housing claims were transferred to municipal housing bodies for resolution because these claims faced statute of limitation issues. At year’s end, several memoranda of understanding remained unsigned and laws needed to be enacted to accomplish the handover. Local authorities were slow to take the necessary actions to ensure a smooth transfer.” (USDOS, 25 February 2004

Rhodri Williams, FMR, September 2004:
“Because CRPC failed to reach agreement with domestic authorities on the transfer of its remaining necessary operations and finances by the end of its mandate, 31 December 2003, these responsibilities automatically transferred to the government of BiH.
The BiH authorities have chosen to regulate this obligation by means of an agreement with both Entities. This agreement, currently being finalized, will result in a limited “nationalized CRPC”

that will not issue any further decisions, but which will take up the important role of “reconsidering” CRPC decisions challenged by people affected by their enforcement.”

Phone conversation and email exchange with OSCE officials in Bosnia and Herzegovina March 2005:
The transfer of CRPC activities is regulated by the Agreement between BiH, Federation and RS on transfer of competencies and continuation of financing and work of the CRPC signed on 25 May 2004. According to the agreement, 754 reconsideration cases have been transferred to the CRPC reconsideration body, 1399 have been transferred to local authorities. The “Black box” cases are estimated to 20,000 cases on which there is little information. No arrangement is made to process such cases which are currently archived.

According to the agreement, the new commission will decide on cases according to CRPC book of rules unless it differs from national legislation. The main area where CRPC book of rules differs from domestic laws are military apartments. On 16 October 2004, authorities have amended laws relating to purchase apartments including military apartments. In April and May 2004, the Federation Government and both chambers of the Parliament have issued decisions suspending enforcement of CRPC decisions under reconsideration until the second instance commission is functional. The decision also calls for suspension of administrative and judicial procedures for repossession of military apartments until the new Law on sale of apartments with occupancy right is voted. The new Commission started its activities in December.

See also:” Property restitution in Bosnia and Herzegovina: a remarkable achievement but concerns remain about CRPC claims”, Rhodri Williams, ICHR, link below

A forgotten aspect of Annex VII, the right to compensation for loss of property: (2005)

- Annex VII of the Dayton peace agreement provided for compensation for lost properties
The planned mechanism never functioned as donors feared that compensation would deter return and consolidate ethnic cleansing.

Donors preferred funding reconstruction projects which was more favourable to return.

Paul Prettitore, World Bank, June 2004

“The emphasis which international organizations have put on achieving more minority returns has had the result of diverting attention from discussions of relocation and compensation for loss of property. [...] Operational international agencies looking at property issues as part of their overall strategy to recreate a multi-ethnic country, have emphasized minority returns. Relocation and compensation for loss of property have not been overtly promoted lest they be seen as contrary to the strategy to reverse the consequences of ethnic cleansing.”

Under both the BiH Constitution and Annex 7 of the DPA refugees and displaced persons have the right to be compensated for any property of which they were deprived in the course of hostilities that cannot be restored to them.

Annex 7 does provide mechanisms for compensation. It provides for the establishment of the Refugees and Displaced Persons Fund to settle claims for compensation. [...] This Fund was to be established in the Central Bank of Bosnia and administered by CRPC. Resources for the Fund were to be provided through the purchase, sale, lease and mortgage of real property that had been claimed before CRPC [...] Funds could also be provided through direct payments by the Parties to Annex 7 or from contributions from international donors.

While both the right to, and a mechanism for, compensation were established under the DPA, in practice compensation did not materialize as envisioned. When submitting a claim to CRPC, a claimant could request compensation in lieu of return of the property. But in practice, preferences for compensation were used only for statistical purposes, and no compensation has ever been paid. The Fund was never established because no resources were made available. [...] This was the case for a number of reasons, the most important being that the political preference was for the return of refugees and displaced persons in order to create a unified, multi-ethnic state. For that reason most international donors, the biggest being the European Commission and the US Government, placed resources in the reconstruction of destroyed housing and other related activities that promoted return.

In addition, immediately following the conflict the security situation remained somewhat tenuous, and there was concern that at that time refugees and displaced persons would chose compensation because of their concerns regarding return. In that sense, international organizations wanted more time to create an atmosphere to promote return. [...]”

“[I]t could be argued that the right to compensation has been partially fulfilled by allowing refugees and displaced persons to repossess and subsequently sell their property because in general there have been no restrictions on the sale of property. In such cases the property owners probably received a fairer price, and more quickly, than they would through a compensation scheme. However, individuals whose property was destroyed would be disadvantaged as no consideration would be made for the destruction to their property.”
PATTERNS OF RETURN AND RESETTLEMENT

General and policy


- Return figures in 2005 is one third less compared to previous year
- Since 2002 which registered the record return figure of 102,000, return has constantly decreased down to 5,100 in 2005
- Over one million persons return to Bosnia and Herzegovina since Dayton
- After three year of increasing return, figures have dropped sharply in 2003 and 2004
- Return are now occurring in areas worst hit by the conflict
- UNHCR will focus its assistance in Eastern Republika Srpska
- Property restitution has significantly contributed to the return process
- Several obstacles to sustainable return remain: economic situation, failure to arrest war criminals, persistence of ethnic debate, access to social and economic rights
- Remaining IDPs are among the most vulnerable who are in particular need of assistance
- Assistance is still needed in particular in reconstruction of houses

Total Return in BiH
- per national structure and years -

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<td>52,648</td>
<td>10,204</td>
<td>34,889</td>
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<td>2002</td>
<td>54,103</td>
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<td>2003</td>
<td>26,848</td>
<td>5,005</td>
<td>21,454</td>
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<td>12,976</td>
<td>1,028</td>
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<td>2005</td>
<td>1,177</td>
<td>437</td>
<td>3,540</td>
<td>5,164</td>
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</table>

Source: UNHCR, Ministry for Human Rights and Refugees, 2006

"HRW, 18 January 2006:
"The return figures were particularly discouraging in 2005. Between January and the end of September, UNHCR registered 5,059 minority returns, a twelve-fold drop compared to the same period in 2002. Continuing attacks and harassment targeting returnees, scarce employment
opportunities in places of return, insufficient funding for reconstruction of destroyed properties, and obstacles affecting social and economic needs of prospective returnees, frustrated the return process."

**UNHCR, May 2006:**

“By the end of April 2006, 1,012,970 former refugees and internally displaced persons (DPs) have been recorded as having returned to their pre-war homes and municipalities in BiH, out of an estimated 2.2 million persons forcibly displaced during the war. Recorded returns include some 455,105 so-called minority returns, as opposed to the 557,865 so-called majority returns who returned to municipalities where their own constituent people of BiH are in a numeric majority. Of the total, 442,219 were refugees who had fled Bosnia and Herzegovina, and 570,751 had been forcibly displaced inside the country. Nearly three quarters of the total (735,434) returned to the Federation of Bosnia and Herzegovina (Federation) and one quarter (256,154) to the Republika Srpska (RS). Some 21,400 have also returned to the Brcko District. Broken down by the constituent peoples of BiH, they included around 627,150 Bosniaks, 248,400 Bosnian Serbs and 129,400 Bosnian Croats.

These return figures provide a clear indication that the demography of BiH has been altered in line with Annex VII of the GFAP, which underlined the right to return for all those displaced during the war, although a definite assessment of the demographic composition of the population in BiH will only be possible once a new census has taken place. Following the very high number of recorded returns in 2002, during which some 108,000 refugees and displaced persons returned to their places of origin in BiH, the total number of recorded returns for 2003, 2004 and 2005 was only some 81,100 persons, less than 6,500 of which occurred in 2005.”

**UNHCR, June 2006, UNHCR and DPs in Bosnia:**

“Given the recent decrease in return, the return of the majority of these DPs in the near future is unlikely. While UNHCR, in co-operation with its national partners, continues its efforts to promote return, the current fate of the most vulnerable among these DPs is of its immediate concern.

The number of DPs that re-registered and filed an application for extension”

**UNHCR, September 2005:**

“The return trend, so promising in the first years of the decade, declined drastically in 2003 and 2004. In 2005, it is expected that some 17,500 people will still return from internal displacement or refuge abroad, with likely a similar number in 2006. By the end of 2006, it can be assumed that the great majority of those who wish to return from situations of refuge or internal displacement will have exercised that right, while others will have identified alternative solutions.”

**UNHCR, COP, 2005:**

“Following three successive years of ever increasing numbers of returns, 2003 saw a decrease to less than half the returns recorded in 2002, a trend that continued in 2004 with a further decline by more than half of recorded returns by end July (15,470) as opposed to 32,967 during the same period in 2003.”

**Reuters, 17 December 2003:**

“[...]Janz also said that the figure halved in 2003 from the previous year’s 107,000 people, an indication that the bulk of the people who wanted to return have done so by now”

**UNHCR, 21 September 2004:**

“UNHCR's Representative in Sarajevo, Udo Janz, said that although the overall rate of returns has fallen sharply over the past two years, he was nevertheless encouraged by the high proportion of people returning to areas where they are in a minority - including many of the places
that were worst hit by the conflict and the accompanying large-scale killing and atrocities. "Clearly the situation remains volatile in many parts of the country, so the challenge before us now is to consolidate the returns that have taken place and make them sustainable," said Janz.

"During the first seven months of 2004," he continued, "a total of 15,470 people returned. Of these, 10,589 - or two-thirds - were so-called minority returns, and there have been significant increases in some areas, including for example in the eastern part of Republika Srpska, including in Bratunac, Srebrenica and Zvornik."

"It is vital that the international community, together with the authorities of Bosnia and Herzegovina at all levels, continue to assist those who have returned or have decided to do so in the future," said Janz. "[…] [T]he returnees still need help to rebuild their destroyed houses. They still need help to earn a living. Such support is especially required for minority returnees."

USDOS, 28 February 2005:
Some areas of Croat-controlled Herzegovina and some towns in eastern RS remained resistant to minority returns. This was most often expressed through official obstruction of returnees' access to local services (i.e. municipal power and water, education, and health care). For example, the government-owned RS electric company was obliged to connect residents who live within 50 meters of an existing power line. Despite repeated requests, they consistently failed to connect many eligible returnee households, especially in the Srebrenica-Bratunac area. (…)

Ethnic differences remained a powerful political force in the country; however, mixed communities existed peacefully in a growing number of areas. To a limited extent, nationalist Bosnian, Serb and Croat politicians sought to increase the ethnic homogeneity of the population in areas they controlled by discouraging IDPs of their own ethnicity from returning to their prewar homes if they would be in the minority there (see Section 2.d.). The RS Government was increasingly supportive of Bosniak and Croat returns to the RS, and Bosniak returns to the Srebrenica area increased; however, the RS continued to support integration of displaced Bosnian Serbs within the RS using the war veterans' budget and at the municipal level, land allocations.

Regularly updated information on return statistics can be found on the website of UNHCR Bosnia and Herzegovina.

See also “Legacy of War: Minority Returns in the Balkans”, Bogdan Ivanisevic, Human Rights Watch, 1 January 2004

Lack of conditions to ensure sustainable return (2006)

- Difficult economic situation along with employment discrimination against minority returnees remains the most significant obstacle to return
- Lack of funds for reconstruction, inadequate access to social and economic rights (health and pensions) prevents return or makes it difficult to last
- Impunity for war crimes and the presence of land mines in areas of origin prevent return

USDOS, 8 March 2006:
"The difficult economic situation in the country remained the most significant factor inhibiting returns, with many rural areas experiencing unemployment rates above 60 percent. When jobs were available, minority returnees often complained of discrimination in hiring. Funds for reconstruction assistance continued to decline, although the BiH Ministry of Human Rights and Refugees began implementing projects from the joint return fund during the year."
The security situation for returnees improved during the year, although isolated incidents of violence were reported and a hostile atmosphere still existed in many areas. Many returnees cited authorities' failure to apprehend war criminals as a disincentive to return, as they did not want to live in communities with persons who had committed war crimes and had not been held accountable. Many displaced persons were creating permanent lives away from their prewar homes, and only individuals with few other options (including a large number of elderly pensioners) tended to return.

Other factors inhibiting returns included a lack of available housing and high municipal administration taxes on documents that are necessary for return, such as birth or land certificates. Minority returnees often faced intimidation and discrimination, lack of access to health care and pension benefits, poor local infrastructure, and denial of utility services such as electricity, gas, and telephone by publicly owned utility companies. While problems decreased from previous years, they persisted in hard-line areas. Authorities in some areas of Croat-controlled Herzegovina and some towns in eastern RS continued to resist minority returns, obstructing returnees' access to local services, including municipal power and water, education, issuance of important civil documents, and health care.

UN CESC, 24 January 2006, par.9 and 12:
“...The Committee also takes note of the continued existence of landmines and other explosive remnants of war in the territory of the State party, which in many cases prevents the safe return of returnees to their homes and farming lands. (...) The Committee expresses its deep concern that returnees, in particular those belonging to ethnic minorities, are often denied access to social protection, health care, school education for their children and other economic, social and cultural rights, thereby impeding their sustainable return to their communities.”

CoE, 18 July 2006, par.48, 50-54:
“48. A question concerns the impact of the assessment of the level of co-operation with the ICTY concerning the ongoing negotiations with the EU on SAA. The lack of co-operation with the ICTY certainly plays a role in preventing further return. (...) 50. According to the statistics of the Ministry for Human Rights and Refugees, although almost 100% of the property has been returned, the actual number of refugees and displaced persons that have returned to their homes since the signing of the Dayton Peace Agreement remains at a much lower level (the most optimist numbers suggests up to 50%). It is usually the elderly members of the families who return, which will have no future impact on the demography of the ethnically-cleansed area. In some other cases, if the returnees do not sell their repossessed property, they use their houses as weekend homes only or, after official registration, live and work elsewhere. 51. A number of problems explain the low level of the sustainable return of refugees and IDPs: the lack of employment opportunities, limited access to social services, including health care, education and public utilities, a combination of inter-Entity politics and labyrinthine constitutional structures hamper Bosnia and Herzegovina's ability to successfully provide the necessary services at minimum levels. In addition to the slow and complicated administrative structures, local politicians also obstruct the exercise of many other fundamental rights of returnees belonging to a minority ethnicity, including access to electricity and water supplies, as well as the construction of roads. 52. Although the FBiH and RS labour law prohibits discrimination in employment, providing compensation to victims of discriminatory dismissals, in reality, legal protection does not apply to all workers who lost their jobs as a result privatisation operations. Given the scarcity of jobs, preference is given to members of the ethnic majority group. 53. For returnees, there is no law that allows them to resume the job which they had to leave. The majority of them are often without a job in the place that they return. There have not been many major incidents of an ethnic nature in the places where returnees have settled, nor to their private
property. However, according to the police records, there have been attacks on religious buildings or cemeteries, although one cannot classify them as being planned and organised. Use of national symbols in State institutions or schools causes feelings of resentment among the returnee population and is also a factor that prevents further return.

54. Nevertheless, there are some positive developments in certain parts of Bosnia and Herzegovina, such as the efforts of the town of Prijedor, which the Secretariat delegation had the occasion to visit. At present, some of the Bosniacs who fled during the war have returned, but not all of them have sufficient access to education or job possibilities.”

UN CHR, 29 December 2005, par.57-58:
“57. Sustainable return in Bosnia and Herzegovina is dependent on: (a) ensuring the safety of life and limb of returnees; (b) property repossession and reconstruction of houses; and (c) a political, social and economic environment that respects human rights and addresses the special needs of returnees. While impressive results have already been achieved, many challenges remain. The Representative recommends that all necessary measures be taken to ensure the effective protection of human rights of displaced persons and returnees, including by implementing his recommendations. He calls upon the international community to ensure that assistance programmes entail a transfer of responsibilities and capacities to national and local stakeholders and that during this process the human rights of displaced persons and returnees are mainstreamed into all relevant parts of the administration. The Representative invites the authorities and the international community to establish a mechanism to closely monitor the return situation and its sustainability by using reliable indicators and disaggregated data.

58. Most returnees now enjoy physical security. Concerns remain about the widespread presence of landmines as well as threats against witnesses in war crimes investigations and trials and members of ethnic minority groups. The Representative recommends that the authorities continue, and possibly accelerate, with the support of the international community, the process of mine clearance with a priority on return areas. Law enforcement institutions should take effective measures to ensure that all crimes and acts of violence against IDPs and returnees are properly investigated and prosecuted. A functional witness protection programme should be established.”

Overview of return policies since Dayton 1996-2003 (2005)

- Return is linked to repossession or reconstruction of homes
- Return to property was very slow until 2001 due to political obstruction
- Return linked to reconstruction was linked to available funding and took place mainly in rural areas
- The Return and Reconstruction Taks Force was a mechanism created by the international community to coordinate return activities
- In 1997, return projects would focus on prioritised or cluster areas
- In 1998, conditionality of assistance was introduced for authorities supporting minority return
- Open city initiative: an example of conditionality
- 1999 RRTF Action Plan sets an integrated approach to return including monitoring of property repossession process and coordination of assistance

Paul Prettitore, World Bank, June 2004:
“The return of refugees and displaced persons in BiH has taken two forms: return to reconstructed housing and return to occupied housing. Return in Bosnia began mostly with refugees
and displaced persons returning to destroyed housing that had been reconstructed by the international community. The pace of return was in many ways dictated by the amount of available funding. This property was located primarily in rural areas or the outskirts of urban areas. However, return to occupied property was initially slow due primarily to the fact that the rights of temporary occupants had not yet been addressed. In general, cases of occupied property tended to be located in urban centers. Return to contested space was wholly dependent on implementation of legislation enacted to allow for the repossession of property by refugees and displaced persons. [...] Throughout the return process a number of mechanisms and programs were introduced by the International community with varying levels of success. Most of these were coordinated by the Reconstruction and Return Task Force (RRTF). The conclusions of the London Peace Implementation Conference established the RRTF with the mandate of coordinating an integrated approach to the return of refugees and displaced persons. It was expected that in 1997 roughly 200,000 refugees and displaced persons would return. The Office of the High Representative took chairmanship of the RRTF, and the other participating institutions included UNHCR, the European Commission, the World Bank, the International Management Group and the Commission for Real Property Claims. OHR reported that in 1996 roughly ninety-percent of returns were spontaneous in nature and followed no organized process. [...] It was also pointed out that in order for safe and orderly return to take root it was necessary for the establishment of the rule of law and certain political conditions, including positive conditionality for the return of minorities.

The basis for the 1997 RRTF plan was for the return to “cluster areas”, selected by the following criteria: (i) projected numbers of returns; (ii) present and pre-war population; (iii) level of damage; (iv) political climate; (v) potential impact of investment upon return; (vi) the grouping of target areas into regional clusters and hubs. [...] The RRTF report of July 1997 highlighted the fact that many refugees and displaced persons were returning to areas near the prewar homes, but were prevented from returning to their actual homes. In this respect, the RRTF called for the need for break-through on minority returns. In order to make its recommendations more effective on the ground, the RRTF established four Regional RRTFs covering the whole of BiH. The RRTF Report of December 1997 reiterated support of the “cluster areas”, while introducing two more tracks to this three-track approach: (i) the need to broker minority returns to strategically important areas and (ii) the provision of flexible funding to support spontaneous returns.

The RRTF plan for 1998 focused on four pillars: political environment and security; economic revival and employment; housing; and local infrastructure. [...] Mechanisms for progress on these pillars included conditioning donor assistance on the acceptance of minority returns and matching reconstruction assistance to areas of spontaneous returns.

During this time, UNHCR launched the first return program in BiH – the “Open Cities” Initiative. The aim of this initiative was to encourage municipalities to publicly declare their willingness to support the return of minorities. If a municipality requested recognition as an Open City UNHCR and other international organizations would make an assessment based on a set of criteria, which focused on a demonstrated willingness to support the return and reintegration of minorities, particularly in the exercise of basic human rights and access to employment and education. [...] This program was originally backed by five million dollars from the U.S. Department of State, which was followed by funding from other international donors. However, the “Open Cities” Initiative met with little success. [...] Monitoring of municipalities declared open cities was weak, and no set criteria was maintained to ensure progress beyond the designation of “open” status. Another problem was that most donors had their own funding priorities. Many European countries preferred to allocate funding to areas that were the prewar homes of refugees that they were currently hosting. Other donors chose locations for political reasons. For instance, much assistance of the US Government was focused on Brcko and Central Bosnia at the start of the returns process. Often times the priorities of donors were areas
not declared as open cities. This was the case not only in relation to the “Open Cities” Initiative, but also affected RRTF attempts to coordinate reconstruction projects. The RRTF 1999 Action Plan was a major step forward in the return process, in that it adopted a fully comprehensive and integrative approach to the return of refugees and displaced persons. While explicitly stating the responsibility for the slow rate of return thus far rested with BiH officials, it also outlined the tools available to the International Community to overcome these obstructions by forcing a breakthrough in minority returns. Up until this time only a small number of returnees were minorities. The primary obstacles to minority return were political, including: obstruction in the adoption of adequate property laws; failure to provide security to returnees; and lack of access to employment, healthcare, pensions and education. Recognizing that political interventions and economic conditionality could achieve results, what the 1999 Action Plan asked of the International Community was the following: greater political will and acceptance of minority return as the key activity; more focused and coordinated activities; a redirection of donor assistance to support returns; and acceptance that the Plan would have to be driven, and financial resources and management authority necessary would be provided. The 1999 Action Plan focused on three factors necessary for a breakthrough in minority returns: space, security and sustainability. The problem of space was due mainly to the fact most housing belonging to refugees and displaced persons was either destroyed or occupied, and in order for return to take place space would have to be generated. Space could be generated in a number of ways. One of the easiest, at least politically, was the reconstruction of destroyed housing by international donors focusing on RRTF’s priority axis. However, the amount of space that could be generated in this way was dependent on the amount of funding available. It also became dependent on the willingness of local officials to ensure beneficiaries of housing reconstruction in turn vacated any property they were occupying. Another mechanism for generating space was the elimination of illegal and multiple occupancy through improved mechanisms for housing management. In this multiple occupancy refers to individuals that came to occupy more than one property during the course of the war. This mechanism was wholly dependent on the willingness of BiH officials to develop and implement adequate property laws, and the willingness of the International Community to strictly monitor this process. […] Security was a key factor in the decision-making process of potential returnees. In order to ensure adequate security, a number of measures were recommended and implemented. These included the recruitment of minority police officers, working with receiving communities on prevention measures and ensuring adequate patrolling by SFOR. Sustainability concerns were also frequently cited by potential returnees. The most key factors affecting sustainability are employment, education, and access to health and social services. To this end RRTF recommended a number of measures, including assessments and the establishment of working groups to make further recommendations on certain issues.”

Domination of ethnic issues in the public debate makes return difficult (2006)

- More subtle forms of ethnic cleansing continue
- Nationalists of all side try to increase ethnic homogeneity by discouraging return of IDPs of their own ethnicity
- Lack of integration opportunity lead many to sell or exchange their repossessed properties to remain abroad or in their own ethnic communities elsewhere in Bosnia and Herzegovina
- Most returnees have no social or health insurance, face discrimination in their search for work and have limited access to services such as utilities
- Local authorities failed to secure and support the return of minority members and to take efficient measures to facilitate the return of refugees and internally displaced persons
- In spite of significant return, municipalities remain largely mono-ethnic
- Ethnic debate still dominates public life
**USDOS, 8 March 2006:**

“Ethnic differences remained a powerful force in the country, although mixed communities existed peacefully in a number of areas. Nationalist Bosnian, Serb, and Croat politicians sought to increase the ethnic homogeneity of the population in areas they controlled by discouraging IDPs of their own ethnicity from returning to their prewar homes if they would be in the minority there (see section 2.d.). However, the RS government was supportive of Bosniak and Croat returns to the RS, and Bosniak returns to the Srebrenica area increased; however, the RS continued to support integration of displaced Bosnian Serbs within the RS using the war veterans’ budget and at the municipal level, land allocations.”

**IHF 6-7 October 2003, p.64:**

“The return of refugees and IDPs to Bosnia and Herzegovina […] remains problematic..

[...]

In most parts of Bosnia and Herzegovina, property and apartments have been returned to their original owners in about 80-90 percent of cases of lost property, but this has happened only due to pressure by the international community on the local authorities -- not because of commitment on the side of Bosnian political parties to do so.

To date, more subtle forms of ethnic cleansing still continue. Many of those who have recovered their property end up selling it or exchanging it because they either prefer to remain abroad or in their own ethnic communities elsewhere in Bosnia and Herzegovina. As a result, a large number of refugees have either become foreign citizens or IDPs.

Most returnees have no social or health insurance and they have become targets of local authorities when trying to claim their rights. Local authorities have done virtually nothing to secure and support the return of minority members. It is almost impossible for the returnees representing an ethnicity other than the majority population to find a job. For instance, only one hundred of several thousand Serb returnees have found a job in the city of Drvar, and it took eight years for nine Bosnian teachers be able to start working in Bijeljina. There are still tensions between Bosniaks belonging to different party fractions in the Unsko-sanski canton.

Minority returnees are discriminated against in almost all sectors of life, including the supply of basic infrastructure such as water supply, electricity and telecommunications, and courts still resort to judging on ethnic grounds.

The failure of the three main nationalist parties -- the Bosniak Party of Democratic Action (SDA), the Croat Democratic Union (HDZ), and the Serb Democratic Party (SDS) -- to take efficient measures to facilitate the return of refugees and IDPs implies that they tacitly support or at least tolerate this situation. Efforts by international organizations have also decreased. The goal of the international peace mission appears to be to wrap up the returnee question as soon as possible, an attitude that may be highly dangerous. The Commission for Property Claims (CRPC), sponsored by the international community, will wind down its operation this year, sending a message that for the international community the issue is no longer of importance. Unless there are major changes, the returnees will continue to be targeted while ethnically cleansed territories will be a dominant characteristic of Bosnia and Herzegovina.”

“The implementation of the property laws which has enabled claimants to establish their property claims and repossess their property has been central to the return process. […] Although projects are underway to determine, through the municipalities, the number of persons who came back to live permanently in their pre-war homes, no exact figures are available at present on this. However, ECRI notes reports according to which most of those to whom property has been returned keep such property empty use it occasionally, sell it, or exchange it with property.
elsewhere generally in an area predominantly inhabited by people of their same ethnic origin. For instance, non-governmental organizations estimate that, in Republika Srpska, only between 20 and 30% of those to whom property has been returned actually live there. It would also appear that persons who have repossessed property located in rural areas are more likely to go back and live there than persons who have repossessed property located in urban areas, where non-governmental organizations estimate that around 75% of repossessed property is sold. In Mostar, a city where Bosniaks and Croats live since the war in two separate neighbourhoods, returnees whose repossessed property is located in the neighbourhood inhabited by the other ethnic group are for the most part reported to sell their flats or exchange them with flats located in the other neighbourhood. More generally, although it is reported that there are at present no areas where no minority returns have taken place, many municipalities in Bosnia and Herzegovina are still to a large extent mono-ethnic.

While ECRI welcomes the attention devoted to property repossession and the successful results of this process. It stresses that priority attention should now urgently be devoted to ensuring the sustainability of returns in order to put people who are enabled to return in a position where they are also enabled to stay. In ECRI’s view, sustainability of returns includes thorough protection of the human rights of the returnees and their economic and social integration. This includes ensuring that returnees are guaranteed personal security and that they are not discriminated against directly or indirectly in access to jobs and social security, that their continuing needs for reconstruction assistance for destroyed property are met and that their children have access to unbiased education in a non-segregated manner. [...] ECRI is seriously concerned that these conditions are at present far from being met. ECRI is pleased to note that both domestic and international attention is increasingly focused on how to ensure sustainable returns. It strongly encourages the authorities of Bosnia and Herzegovina to devote to these aspects absolute priority.”

ECRI, 15 February 2005, par. 22-23 and 45:
“ECRI has received numerous reports according to which the local political leadership has actively contributed to creating a threatening and hostile climate vis-à-vis minority returnees which not only undermines the sustainability of their return but also deliberately discourages those who have not yet returned from doing so. These actions have included public condenring of the activities of war criminals, discriminatory allocation of financial resources to build or reconstruct religious premises, and generally intolerant and stigmatising statements vis-à-vis the constituent people to which minority returnees belong.”


EU Feasibility Study identifies conditions conducive to return among key requirements for European integration (2005)

• Preparation for the integration into the European Union is made conditional upon a stronger engagement of Bosnia and Herzegovina for the creation of conditions for sustainable returns
• This includes the adoption and implementation of any outstanding legislation supporting refugee returns, in particular legislation on the BiH Refugee Return Fund
• Compliance with the European Human Rights Convention, cooperation with the ICTY, adoption and implementation of property laws, and a non-discriminatory education system are also required

EC 18 November 2003:
“The Feasibility Study is the latest stage of the EU's Stabilisation and Association Process (SAP), designed to integrate BiH gradually into EU structures. BiH's first step in this process came in early 2000 when work began on a “Road Map” of 18 priority reform steps. The Road Map was “substantially completed” in September 2002, and at that stage the Commission initiated work on the Feasibility Study. In March 2003 a questionnaire covering all sectors relevant to a future SAA was given to the BiH Directorate for European Integration. BiH's answers were discussed with the Commission in a series of working groups between May and September 2003. The findings of the Study are thus based on BiH responses to the questionnaire and on the findings of the working groups, complemented by further Commission research. Success in the reforms outlined in the Feasibility Study would open the way to SAA negotiations. An SAA helps to prepare the countries of the Western Balkans in the same way as the Europe Agreements helped prepare the countries of Central and Eastern Europe for accession.”

EC, 18 November 2003:
“...The European Commission has approved a Feasibility Study assessing the readiness of Bosnia and Herzegovina (BiH) to take its next steps towards European Integration, by opening negotiations for a Stabilisation and Association Agreement (SAA). The Commission concludes that it hopes to be able to recommend the opening of SAA negotiations next year - on the condition that BiH makes significant progress in a number of areas identified as priorities for action: compliance with existing conditionality and international obligations; more effective governance; more effective public administration; European integration; effective human rights provisions; effective judiciary; tackling crime, especially organised crime; managing asylum and migration; customs and taxation reform; budget legislation; budget practice; reliable statistics; consistent trade policy; integrated energy market; BiH single economic space and public broadcasting.
[
Among the above listed priorities, of direct significance to displaced persons and refugees, the European Commission recommends BiH should take action in 2004 to:

Comply with existing conditionality by:

BiH and particularly RS, fully co-operating with the International Criminal Tribunal for the former Yugoslavia, notably in bringing war criminals to justice before the Tribunal.

Taking steps to meet BiH's Council of Europe post-accession criteria, especially in the area of democracy and human rights.

Complete outstanding Road Map steps.

Strengthen institutional capacity by:

Ensuring effective human rights provision by adopting and bring into force any outstanding legislation supporting refugee returns, in particular by introducing, adopting and implementing legislation on the BiH Refugee Return Fund. Complete the transfer of the human rights bodies to BiH control. Ensure that unresolved cases of the Human Rights Chamber are dealt with and that the Chamber's responsibilities are transferred to the Constitutional Court. Provide adequate funding for the Court. Assume full national responsibility for the State Ombudsman and make progress in the merger of State and Entity Ombudsmen.”

Background
OHR HRCC 15 May 2000, paras. 101-102:
"EU Consultative Task Force: The European Union has identified a number of steps which should be taken by BiH in order to prepare for the launch of a feasibility study which would lay the groundwork towards eventual integration into the European Union. The steps identified include..."
tasks within the political realm, economic developments and steps in the field of 'Democracy, Human Rights, and Rule of Law.' Within the latter, the EU has prioritized: implementation of property laws; stronger engagement for the creation of conditions for sustainable returns; implementation of decisions and reports of the human rights institutions; adoption and implementation of laws on judicial and prosecutorial service in both entities; and cooperation with OHR regarding implementation of public broadcasting at both the state and entity levels.

Progress towards meeting CoE Accession Requirements: In May 1999 the Council of Europe identified 13 requirements for BiH to be admitted into the Council of Europe, of which 7 accession requirements pertain to human rights (totaling 40 separate tasks). These include tasks pertaining to domestic human rights institutions, judicial reform, compliance with the European Convention on Human Rights, cooperation with the ICTY, adoption and implementation of property laws, and the establishment of a non-discriminatory education system. The HRCC has been monitoring progress on these criteria in each entity as well as at the state level, and has found that progress is very slow. Of the 40 tasks specifically related to human rights, as of today, only 10 tasks have been achieved, six of these through imposition of legislation by the High Representative. During the reporting period and after the issuance of the last HRCC report on accession of BiH to CoE, two additional tasks were fulfilled: the passage of the Law on Courts and Court Service and the Law on Public Prosecutors Office in the RS, and the imposition by the High representative, of the Law on Judicial and Prosecutorial Service. Other completed tasks include adoption of various property laws (through imposition by the High Representative), adoption of the revised Law on Citizenship, and adoption of the Law on Immigration and Asylum.

MHRR, December 2004:

"In 2004, the Return Fund has been fully established as an independent administrative financial-type organization within the Council of Ministers of BiH. The Return Fund performs financial execution of the SCRDP [State Commission for Refugees and DPs] decisions. Funds for the functioning of the Return Fund and implementation of the SCRDP conclusions in the field of reconstruction of housing units for the needs of return have been secured as a part of budget resources for 2004 of competent Entity Ministries, Ministry for Human Rights and Refugees and District Brcko Government."

USDOS, 28 February 2005:

"Both entity-level Ministries for Refugees provided limited reconstruction assistance to returnees and also committed part of their budgets to be implemented through joint projects to be determined by the BiH State Commission for Refugees (SCR). In October, the SCR agreed that 30 priority municipalities should receive reconstruction assistance through the newly established Joint Reconstruction Fund (JRF). By year's end, the State Government, the RS Ministry for Refugees and Displaced Persons and Brcko District had paid into the JRF. However, the Federation Ministry of Refugees and Displaced Persons did not make its contribution by the December 31 deadline."

On 25 November 2005 negotiations for a Stabilisation and Association Agreement were officially opened in Sarajevo.


See also, the website of the European Commission's Delegation to Bosnia and Herzegovina.

Promotion of minority returns through political agreements: the Sarajevo declaration and the Banja Luka Conference (2005)

- Conference hosted by the OHR, the US Government and the European commission to facilitate more significant returns to the Sarajevo Canton
- The Conference agreed on concrete steps to be taken by the authorities and the international community
- The target of 20,000 minority returns to Sarajevo during 1998 was not met until February 2000
- A similar initiative took place in Banja Luka
- Both initiatives had little success in terms of return
- For the first time assistance is conditioned to progress on minority return
- Contrary to a rule of law approach, political agreements can subject return to political will

ICG 14 May 1998, section 3.D.1:
"The December 1997 Bonn Peace Implementation Conference called for a highly visible return conference in Sarajevo to promote minority returns. On 3 February 1998, the OHR, the US Government and the European commission hosted a high-level conference which conditioned future economic aid to the Sarajevo Canton on the return of at least 20,000 minorities in 1998. Although there have been more minority returns to the Sarajevo Canton than anywhere else in Bosnia and Herzegovina, it was agreed that the Canton had nevertheless failed to do enough to facilitate more significant minority returns. The Sarajevo Conference was a highly-publicised attempt to exert pressure on the Sarajevo authorities to take the lead in welcoming minorities. A Sarajevo Declaration, drafted under the leadership of the OHR, outlined the most grievous problems and set deadlines for solutions."

OHR 9 April 1998, para. 64:
"The Conference agreed on concrete steps to be taken by the authorities and the international community to make Sarajevo a model canton for minority return and multinational coexistence."

OHR/RRTF 12 December 1998, "Executive Summary":
"Implementation of the Sarajevo Declaration has been marked by continual problems. It is vital that the limited momentum which built up during the Summer should be reinstated, and in particular that no changes be made which might reduce the efficiency of the Cantonal Housing Department. Positive steps in some areas, including public security, have been overshadowed - and in some cases canceled out by - failings by the authorities in other areas, notably housing and return to own homes of minorities. The number of registered minority returns to Sarajevo is around 4,000 - although it would have been closer to 6,000 if whole families had returned in all cases. It is estimated that there may have been 5000 unregistered returns. The recent set-back in education, where the Sarajevo Canton government has reneged upon its previous position of support for the Education Working Group yet again raises doubt about its good faith commitment to implement the Sarajevo Declaration and its fundamental aim of making Sarajevo a model for reconciliation, multi-ethnicity, freedom of movement and the unconditional right to return throughout Bosnia and Herzegovina. These failures could have an impact on international assistance to the Sarajevo Canton in 1999."

Paul Prettitore, World bank, 18 June 2004:
"The first attempt at political support for return came in the form of the Sarajevo Declaration. […]

As the capital of BiH and a model of co-existence, Sarajevo was expected to set the pace for the return of refugees and displaced persons. To lead by example, officials of Sarajevo Canton and the Federation of BiH agreed to enable the return of at least 20,000 minorities residents during
the course of 1998. To achieve this, a number of issues needed to be addressed: legislative; housing; education; employment; and security. Legislative issues included implementation of property legislation and the Federation of BiH Amnesty Law, and ensuring access to documents necessary for reintegration. Sarajevo authorities agreed to improve management of available housing to support returns. It also established the Sarajevo Housing Committee, which monitored housing issues. On the education front steps were to be taken to reintegrate minority students including the reform of text books and curricula. Authorities also agreed to adopt and implement fair labor standards and provide a secure environment for returnees.

The Banja Luka Conference, attended by officials of BiH, Croatia and Yugoslavia, covered many of the same issues.[See Chairmen’s Concluding Statement, the Banja Luka Regional Return Conference, 28 April 1998, available at www.ohr.int] Recommendations were made that BiH officials would adopt and implement legislation consist with Annex 7. Other steps were to be taken to promote return and reintegration, including the hiring of minority police officers and promotion of the freedom of movement.

In general, neither the Sarajevo Declaration nor the Banja Luka Conference resulted in considerable returns. This was due primarily to the lack of political will. Implementation of the Sarajevo Declaration was severely undermined by the lack of an adequate legal framework to support repossession of property. What legislation did exist was implemented in a discriminatory manner. In particular, Sarajevo officials were reluctant to address the issue of double occupants. On the practical side, Sarajevo also encountered problems creating space for returns because it hosted many displaced persons from the eastern Republika Srpska, an area where very few returns were taking place.

Implementation of the recommendations from the Banja Luka Conference also remained inadequate, primarily due to political obstruction. However, a number of lessons were learned from these political exercises. In regards to the Sarajevo Declaration, the International Community for the first time adopted the policy of conditionality. When necessary due to the poor performance of Sarajevo and Federation of BiH Officials, the International Community would place sanctions on assistance, such as reconstruction of housing and infrastructure, in Sarajevo Canton. This proved an effective measure to further implementation. These political exercise also demonstrated that due to the nature of displacement, return would have to take place throughout the region at the same time and under the same conditions if there were truly to be a breakthrough on minority returns.

In many cases obstruction to return in certain areas would create a logjam to overall return initiatives. Lastly, it became apparent that political agreements on their own would not lead to considerable returns. Such agreements left the ability to return subject to political whims and objectives. Not only was this an inefficient way to support returns, but it also ran contradictory to the individual rights of refugees and displaced persons enshrined in the DPA and the BiH Constitution.”

For the full text of the "Sarajevo Declaration", see website of the Office of the High Representative.

For a critical review of the Sarajevo Return Conference, see International Crisis Group (ICG), Minority Return or Mass Relocation?, (Sarajevo), 14 May 1998.

War-induced movements: typology (1998)
The conflict has caused new movements, which would not have happened in a peaceful situation, such as the expulsion of ethnic minorities from areas with strong economic potential.

The conflict has also accelerated pre-war urbanization- and transition-related population movements, which will not be reversible.

OHR/RRTF March 1998, paras. 13-15:
"Even prior to the start of hostilities in the former Yugoslavia, significant population movements had taken place. The effect of the conflict has been two-fold: (i) it has caused new movements, which would not have happened in a peaceful situation; and (ii) it has accelerated pre-war migration trends.

Population movements can be classified in four categories:

Movements which would not have happened in peace time. These include: expulsions of ethnic minorities from areas with strong economic potential, abandonment of housing units located close to frontlines or heavily damaged, etc.

Movements resulting from pre-war housing shortages. Before the war, a relatively large number of families shared their houses with relatives. With the departure of ethnic minorities, many households have split up and currently occupy several housing units (and they are reluctant to return to the pre-war situation).

Urbanization (see Box 2). Urbanization began prior to the war, in patterns similar to those of other Central European countries. The war caused a large number of rural people to move to cities, and many of them have become accustomed to urban standards of living. Many former rural dwellers may prefer to remain in town rather than to return to remote areas. This is likely to be particularly true for younger people.

Transition-related movements. Bosnia and Herzegovina is undergoing a substantial economic reform process. A number of pre-war large enterprises are likely to be restructured (e.g., Zenica steel plant), and new businesses are already emerging in many places (e.g., Tuzla). The distribution of employment opportunities throughout the country is rapidly changing - which has generated and will continue to generate significant labor force migration (although ethnic factors are likely to constrain such movements for at least a few years).

Box 2: Urbanization
Before the war, about 40 percent of Bosnia and Herzegovina's active population was employed in agriculture. However, only 16 percent of the 570,000 farms had more than 5 ha (and 35 percent had less than 1 ha) of cultivable land. Agricultural output in many mountainous areas was very poor and primarily limited to subsistence needs. Household incomes were often completed by a salary earned by one family member working abroad or in a neighboring factory. Social infrastructure of villages was heavily subsidized (to a large extent by the Northern republics in the former Yugoslavia). During the period 1986 - 1991, a large number of people moved from the countryside to the cities. Similar trends can be observed in other Central European countries: as an example, since 1989, rural employment has declined by 40 percent in the Czech Republic.

The four types of movement have different potentials for reversal: …

Movements which would not have happened if the war had not occurred can, in principle, be reversed. If adequate encouragement is given to local authorities, combined with significant financial assistance, people who were expelled or had to abandon their homes, in particular ethnic minorities, may be in a position to return. … Movements which were accelerated by the war are less likely to be reversible. Urbanization trends and transition-related movements are unlikely to differ from patterns observed in other Central European countries. And governmental
authorities are no longer able to subsidize the social infrastructure of villages, while extensive repairs have to be carried out in many places. In many instances, sustainable return to rural areas which relied on subsistence farming prior to the war will not be possible.

Regardless of their preferences, and even if the political situation improves substantially, a significant number of refugees and displaced persons will have to relocate for economic reasons, particularly those originating from rural areas which suffered heavy destruction. However, to foster sustained peace in the region, the decision to relocate should be made with a sense of free will (in view of economic opportunities for example, rather than as a result of political pressure), which requires effective implementation of the 'right to return'.

Specific aspects

Regional dimension of displacement and return in BiH (2006)

- There are still around 21,000 Croatian Serbs with refugee status residing in BiH, mainly in the Republic of Srpska (November 2003)
- The citizenship and legal status of Croatians Serbs in the RS lacks clarity and affects the ability to assess local integration versus repatriation prospects for the Croatian Serbs
- There is no bilateral agreement on dual citizenship between Croatia and BiH (May 2003)
- Many homes belonging to Bosnian internally displaced persons are being occupied by Serbian refugees who have not been able to repossess their own homes in Croatia
- Obstacles in property implementation and return in RS are largely connected to the situation faced by the Croatian Serb refugees presently residing in RS
- There are also around 6,000 refugees from Serbia and Montenegro (2003)
- In January 2005, Ministers responsible for refugees and IDPs of BiH, Croatia and Serbia and Montenegro meet in Sarajevo committing to end population displacement by the end of 2006

European Commission 18 November 2003, p.11:

“An indication of connection, inter-dependence and regional dynamics can be seen in the fact that some 21,000 Croatian Serbs with refugee status still reside in BiH, occupying property in RS. The return of these refugees to Croatia would facilitate a resolution of the problems of remaining internally displaced people within BiH.”

OHR 13 October 2003 para. 48-49:

“There remains some 21 000 Croatian Serbs who occupy the homes of others and who still seek to either repossess their homes in the Republic of Croatia and/or return. Increasingly, these families face eviction under BiH’s laws without their own long term housing solutions because the recent amendments to the property laws in Croatia have not gone far enough and have yielded little real results. Similarly, pre-war residents of other neighboring countries in the Region (Slovenia) have approached my Office similarly concern about their own eviction and similarly unable to repossess property and return to their own prewar homes in the region. Solutions within Croatia and other former Yugoslav states must be identified for these individuals and this requires compatible property law throughout former Yugoslavia.”
UNHCR May 2003, Executive Summary:

“The central issue of what citizenship and therefore legal status the Croatian Serbs in the RS possess or should possess highlights the complex and varied nature of the population at hand. It is important to note that 75 percent of the Croatian Serb heads of households registered in BiH stated that they were currently possessing BiH citizenship. There are several difficulties related to the legal status of Croatian Serbs in the RS, a number of these specifically relate to the manner in which persons acquired RS/BiH citizenship.

Further, given the current lack of a bilateral agreement with the Republic of Croatia on dual citizenship, it is not certain that many who registered citizenship under the 1992 RS citizenship legislation and/or who obtained BiH passports actually wished to give up their Croatian citizenship in favour of BiH citizenship. Based on information available from Croatian Serbs approaching UNHCR, many simply wished to acquire viable documents which would permit travel to Croatia.

At the same time, despite continuing obstacles that Croatian Serb returnees have to overcome in order to return and regularise their status in the Republic of Croatia, property law implementation in BiH has fostered an increased interest in the return option. While initially, emphasis in promoting return had been placed on the organised procedure as it allowed for additional guarantees, more recently all persons with valid travel documents have been encouraged to return spontaneously, without undergoing the time consuming housing verifications and other procedural checks of the Return Programme.

A significant number of these individuals receive their pension from Croatia today and all have rights to health care, education and employment depending on their status. A number of the Croatian Serb population in the RS, however, have encountered problems because of invalid refugee cards. Depending on the actual number of Croatian Serbs with verified BiH citizenship, this group of individuals may wish to integrate locally in the RS. As the situation stands today, most Croatian Serbs do not have the means to start a life as well-integrated citizens of BiH. The lack of clarity regarding citizenship issues directly affects the ability to accurately assess local integration versus repatriation prospects for the Croatian Serbs.”

UNHCR 1 September 2003 p.2:

“BiH continues to host a number of refugees from SCG [Serbia and Montenegro], many of whom arrived in 1998 and 1999. While the majority has repatriated by the end of 1999, a re-registration exercise carried out in mid-2002 indicated that some 6,000 remain in BiH. Many originate from Kosovo and had obtained Temporary Admission (TA) status in BiH. It is expected that BiH authorities will review the TA regime again in 2004 and may not extend the TA arrangement beyond the middle of 2004.”

UNHCR, May 2006:

“Recognizing the remaining number of persons displaced throughout the region and the need to find durable solutions for them, three international actors (OSCE, the EC and UNHCR) came together to encourage the three Governments of BiH, SCG and Croatia to formulate a policy to find durable solutions for refugees in the region within a reasonable timeframe. This “3x3 Initiative” led to the January 2005 Regional Ministerial Conference on Refugee Returns which resulted in a Ministerial Declaration in January 2005. In the Declaration, the Governments pledge to ensure just and durable solutions for refugees in the region, whether by return or local
integration. The Declaration further commits the Governments to formally acknowledge all remaining obstacles to durable solutions in country-specific "Roadmaps", which contain suggested ways forward. These Roadmaps are to be unified into one regional "Joint Matrix". A 3x3 ministerial meeting at the end of March 2006 was hoped to have accelerated the process and led to the finalization of the Roadmaps by the three Governments but, unfortunately, it seems not to have managed that. Lack of agreement on substantial issues, such as a resolution to the issue of former tenancy rights holders in Croatia, continues to hamper real progress.”

MHRR, 31 January 2005:

“We, the ministers responsible for refugees and internally displaced persons in Bosnia and Herzegovina, Croatia, and Serbia and Montenegro, met today in Sarajevo to identify our individual and joint activities that should be undertaken in the forthcoming period with the assistance of the international community in order to ensure a just and durable solution to refugee and IDP situation in our countries.”

OHR, OSCE, UNHCR, 1er February 2005:

“The principals of the European Commission (EC), OSCE and UNHCR from Bosnia and Herzegovina, Croatia and Serbia and Montenegro in their efforts to enable refugee return in the region, and thus fulfil their responsibilities to the Dayton Peace Accord, at a conference held in Sarajevo yesterday. Participating in the Regional Ministerial Conference, hosted by BiH Prime Minister Adnan Terzic, international community representatives were encouraged by the willingness of the three governments to openly discuss achievements and the outstanding challenges to conclusively tackle the remaining population displacement between these three countries.

For more information on the 3x3 initiative see “OSCE, UNHCR and EC reiterate support for implementation of Sarajevo Declaration on refugees”, UNHCR/OSCE/EC, 27 March 2006

For further information see “The Status of the Croatian Serb Population in Bosnia and Herzegovina: Refugees or Citizens?” UNHCR, May 2003

Current returnees are among the most vulnerable and require adequate assistance (2005)

UNHCR, September 2005:

“While the number of returns is expected to be modest when compared with those of the earlier years of the decade, among those who do choose to return inevitably will be some of the most socially disadvantaged of the displaced population. Single female-headed-households, the war-traumatised and those languishing in sub-standard collective facilities, including the handicapped and elderly, will require legal advice and basic assistance in their search for durable solutions. As the number of agencies prepared to provide such assistance to the vulnerable returnee population is ever dwindling, UNHCR’s continued attention, albeit with reduced human and financial resources, to these populations will remain critical. Additionally, geographic focus for such assistance will be placed on those areas where minority returns began only in recent years, and where returnees did not receive assistance that was more readily available in the earlier years of the return (e.g. in Eastern Republika Srpska). Apart from providing assistance to the most vulnerable of the returning population, UNHCR staff will continue to be active in the field, monitoring the overall return and reintegration process and intervening, where appropriate, in protection related matters. (…)

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Rejected asylum-seekers returned to Bosnia and Herzegovina risk internal displacement (2006)

UN CHR, 9 December 2005, par. 53:
“Specific problems are encountered by some rejected asylum-seekers, persons whose temporary protection status in host States has ceased and other persons returned from countries of asylum in Western and Northern Europe. The Representative was concerned that those who, upon return, do not have the means to sustain themselves and do not have access to durable solutions are at an increased risk of becoming displaced themselves. An increasing number of countries of asylum, mostly in Western Europe, have started applying the “internal flight alternative” to asylum-seekers from Bosnia and Herzegovina, arguing that the latter are not in need of international protection as they can find refuge elsewhere in their country of origin. In view of the conditions described above, however, this ostensible alternative may not be a viable option for many individuals. Given the small size of the country and the continuing impunity, some persons, in particular victims or witnesses of war crimes, may be exposed to a serious risk to their safety even in an area of relocation if returned to Bosnia and Herzegovina. Concerns also include severely traumatized individuals, who are not likely to be able to live anywhere in the country without being constantly reminded of their suffering and past violations and who, in practical terms, would not be in a position to receive the assistance they need, such as specific social services and psychological support, given the poor state of the health system and the absence of sufficient psychosocial counselling. Apart from these problems affecting specific groups, many interlocutors shared with the Representative their concern that the country’s reintegration and absorption capacities would be overburdened should mass returns from abroad take place; indeed, renewed displacement might be the consequence.”

Review of returns to Srebrenica: case study (2005)

• Minority returns to Srebrenica started only in 2000
• Since the last two years the Eastern RS has been the largest return area in BiH
• Most return occur from Tuzla, Sarajevo and Zenica cantons
• Some 27,500 Bosniaks lived in Srebrenica before the war compared to 4000 in 2005
• The Srebrenica Return Commission compiles applications for return and assists returnees
• UNDP launched the Srebrenica regional recovery Programme (SRRP) to promote socio-economic recovery while strengthening local government structures
• Assistance in Srebrenica consists of activities ranging from rehabilitation of houses and, infrastructure to legal aid

UNHCR, 1 June 2005:
“Returns to Srebrenica have been slow to begin with, and many families remain in displacement, primarily in collective centres and settlements in the Federation of Bosnia and Herzegovina (FBiH). Minority returns to Srebrenica and most areas in Eastern Republika Srpska (RS) started in earliest only in 2000, approximately three years after most other areas in BiH had experienced significant return movements. Today, the Mayor of Srebrenica, Abdurahman Malkic, is proactive in supporting return. There are 57 Bosniak minority returnees who have found employment in the
municipality. Srebrenica has thus raised the highest rate of employment of minority returnees in the Eastern RS. Over the last two years, the Eastern RS has seen the largest returns of any area in BiH. Most returns occur from Tuzla, Sarajevo and Zenica-Doboj Cantons in the Federation of BiH.

Minority returns (Bosniak) have taken place primarily to isolated hilly rural areas away from the town centre. The infrastructure in these areas remains is in ruins, and some areas face additional problems with unexploded ordinance and land mines.

### Bosniak Returns to Srebrenica

<table>
<thead>
<tr>
<th>YEAR</th>
<th>RETURNS</th>
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<tr>
<td>2000</td>
<td>60</td>
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<td>2001</td>
<td>127</td>
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<td>2002</td>
<td>462</td>
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<td>2003</td>
<td>1,455</td>
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<td>2004</td>
<td>780</td>
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<td>2005</td>
<td>180</td>
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During the last official national Census in 1991, the Srebrenica pre-war population stood at 36,666, with the following ethnic breakdown: 27,572 Bosniaks; 8,315 Serbs; 38 Croats; 380 Yugoslavs; and 361 others. Population estimates today assume that approximately 4,000 Bosniaks and 6,000 Serbs reside in the municipality. At the same time, preliminary results of the 2004-2005 displaced persons (DP) registration show that 1,308 DPs (391 families) remain in Srebrenica today. In December 2002, the Srebrenica Municipal Assembly established the Srebrenica Return Commission. It has five voting members who are municipal councillors and it is ethnically balanced and politically mixed. The Commission also has two professional staff and maintains an Office in the municipality, accessible to the public on a daily basis. The Commission has three tasks: first, to register and collect data on families interested in returning or leaving the municipality; second, to assist with project beneficiary selection (making field assessments) with NGOs and donors; and third, to draft and forward project proposals. (…)

### Houses

Approximately 6,600 houses were destroyed during and just after the war. Some 1,530 will have been reconstructed by the end of 2005. The primary international donors in Srebrenica have been the governments of the Germany, the Netherlands, Sweden, and U.S.A.. There are also a number of private donors providing housing assistance. These donors have made substantial contributions, primarily assisting those returnees that are able to rebuild their homes under a self-help policy. There are more than 2,600 families currently registered who are still awaiting housing and income generating assistance. UNHCR invested some $680,000 in Srebrenica since 1996, which focused on reconstruction of homes, income generation activities and the provision of legal aid to all who need it, implemented by several NGOs. UNDP has been working in Srebrenica since 2002 to revitalise the municipality and surrounding villages. Their core task is in five areas: Economic Development, Local Government, Civil Society, Gender Mainstreaming and Infrastructure. The overall goal of the Srebrenica regional recovery Programme (SRRP) is to promote the socio-economic recovery while strengthening local government structures. The lack of economic opportunities, the high rate of unemployment, lack of modern technology, the loss of traditional markets linkages from before the war, coupled with the fact that qualified and skilled labour has fled, are major obstacles to getting the economy re-started.

UNDP included housing assistance as part of their Srebrenica Regional Recovery Programme (SRRP) for the first time in 2005, as there remains a substantial reconstruction funding gap. The SRRP has committed $12.3 million and expects to have spent $11 million by the end of 2005 in the wider Srebrenica region. In 2004 the RS authorities, contributed KM 1,565,000, and the FBiH Government contributed KM 750,000 to the SRRP. In 2005, KM 612,000 for reconstruction of 34
housing units will be provided by the Return Fund established under the aegis of the State Commission on Refugees and Displaced Persons (SCRDP).

**Infrastructure**

Some of Srebrenica’s villages are as far as 45 kilometers from the town by dirt roads, often inaccessible during the winter months. Returnees emphasize that return cannot be sustainable unless the pre-war infrastructure is re-established (e.g. regular bus lines to connect them with Srebrenica), since public services for residents in rural areas is almost non-existent.

*Additional information on property, education, economic situation in: “Review of return to Srebrenica”, UNHCR, 1 June 2005 (see sources below)*

**Gender aspect of return is neglected (2003)**

- Female-headed displaced and refugee families face more difficulties in exercising the right to return and the right to ownership
- Annex 7 fails to address the issues of women refugees and displaced persons

**UNDP June 2003, 36:**

“The gender aspect of return has been very much neglected. UNHCR has assessed three specific obstacles to return that have an impact on families headed by women – single mothers, single women, extremely vulnerable women, as well as women without husbands, widows (civilian and military) and abandoned women, victims of sexual violence or torture, and severely traumatised women. These obstacles are the absence of a family or of support by the community, an expressed fear for personal safety, and the presence of traumas.

Ownership issues are also coloured by gender problems. More women than men face problems when it comes to exercising the right to ownership, especially after a divorce or death of the spouse, or his disappearance during the war. Private ownership titles and occupancy rights are usually to the husband’s name, or the name of the father-in-law. Implementation of ownership rights is additionally slowed down by long court proceedings, and the access to pre-war property is an impediment for the return of families headed by women.”

**UNDAW 5 November 2003, p.5:**

“The rights of refugees

Annex 7 especially fails to address the issues of women refugees, who, without doubt, together with children and the elderly, represent a vast majority of all refugees and displaced persons. The provision on the right to return, for instance, does not mention women, now often widowed or alone; it reads only as follows: “permitted to return in safety irrespective of ethnic origin, religious belief, or political opinion” (annex 7, Chapter One, Article 1(2)).

[...]

**Property and return**

The return of property is another issue that should have a gender-differentiated focus. Albeit there is an increasing number of single women returnees or widows, Bosnia and Herzegovina still, especially in rural areas, retain traditional ownership over land and other assets.

There is also an ineffective legislation and judiciary for the protection of ownership rights which demands close and sex differentiated approaches to the issue of and the return of property. Although Article XV of Annex 7 stipulates that domestic laws on property rights should be considered in developing of rules and regulations regarding the agreement, it does not specify who and what laws it targets. Generally domestic laws, which reflect traditional practices and
customary norms whereby men are primary owners of land, are unfavourable to women in way that probably would not have been accepted if it had concerned an ethnic group."

Special protection needs of vulnerable categories of returnees (especially women) (2000-2003)

- Most dependents of disappeared persons are women and children
- A major factor in the decision of women who have missing family members not to return is the fear they will lose benefits associated with having missing family members
- A UN study (April 2000) highlights the particular problems faced by vulnerable women in minority returns

AI 5 March 2003, p.52-55:
"Quite apart from the emotional impact of the 'disappearance' of a family member, concerns have been repeatedly voiced by organizations involved in the issue that, given that the majority of those left behind in the wake of this violation are women and children,[1] there are severe and enduring adverse effects both on their economic and social circumstances as well as their personal security.[2] In particular, in cases where the dependants of the 'disappeared' are still internally displaced – such as with the majority of the Bosniak female population from Srebrenica of non-Serb origin – they face mounting financial problems and social exclusion." (AI 5 March 2003, p.52)

[...] There is "an additional and overwhelming need to incorporate the issue into the overall process of enabling access to social and economic justice for relatives and victims of human rights violations committed during the armed conflict. The overarching need for reparation must be addressed by taking into consideration the particular situation of those directly affected by 'disappearances', which will require a gender-sensitive and longterm approach. There is a current drive by the international community to close down programs of assistance and terminate funding of local organizations, while applying a "tick-list" strategy to addressing unresolved issues forming the legacy of the war."

Despite the increased rate of implementation of property legislation and the ever higher numbers of registered minority returns, many of the women and dependants of the 'disappeared' are unlikely to return to their pre-war communities for a variety of reasons. Such factors range from fear for their personal security, compounded by the absence of a family or community network in the place of return. A major concern is the lack of financial means to rebuild destroyed housing. [...] Although Annex 7 to the Dayton Peace Agreement states that 'all refugees and displaced persons have the right ... to have restored to them property of which they were deprived in the course of hostilities since 1991 and to be compensated for any property that cannot be restored to them.' (Chapter 1, Article 1). [...] However no functioning compensation mechanism was ever set up. Reconstruction of destroyed housing was funded by and large through donations and investments by the international community, which has drastically decreased this funding over the past years. In the case of the displaced population – which numbered over two million at the end of the war – the argument could have been made that this category of people should have in fact been made the primary beneficiaries of the privatization process. [...] This process as such, however, has been of concern to human rights monitors in the international community, as it reinforced discriminatory practices and undermined ethnic reintegration and minority returns. [...] Furthermore, many of these women continue to have little trust in the unbiased functioning of the police, the judiciary, health services and the education system – most of which remain to a large degree mono-ethnic despite attempts by the international community to increase the recruitment of minority returnees to the public sector."
A major factor in the decision not to return is the expectation of many women that they will face a drastic cut in income as they will lose the benefits associated with having missing family members, as the systems and criteria for such benefits (invalidnine) are tied to the ethnicity of the victim and benefits do not appear to be easily or at all transferable across entity borders. For some displaced women with missing relatives this assistance is in fact their only source of income. [3] In addition, even though the invalidnine are reportedly higher than other social allowances and pensions, displaced women in this category increasingly have to resort to renting private accommodation after being evicted from housing they previously occupied.[4]

Moreover, in both entities, legislation regarding pensions and allowances awarded to the relatives of the missing or dead who were civilians appears to be inadequate. Concern has been expressed that many women who are in need of support are falling through the cracks of the system. […]

Whether these women choose to return to their pre-war municipalities or remain in the places where they have settled since, there is a clear and overwhelming need to develop comprehensive and long-term strategies to integrate them and their families fully and permanently in society and enable them to have unimpeded access to employment, education, health care and social welfare. [5] […]

[Footnote 1] According to the ICRC, out of 20,786 tracing requests for persons unaccounted for after the war in Bosnia-Herzegovina, on 30 June 2002, 17,087 cases were still pending. There are no current statistics for the on the gender breakdown for Bosnia-Herzegovina solely, however out of the total of 31,541 tracing requests still unresolved in former Yugoslavia (Croatia, Bosnia-Herzegovina and the Federal Republic of Yugoslavia including Kosovo) 27776 cases or 88.1% concern missing men and boys. (from Unknown Fate, Untold Grief, ICRC Special Report, August 2002). The special report by UNHCR/UNHCHR estimated that 92% of the missing persons in Bosnia-Herzegovina are men (see: Daunting Prospects – Minority Women: Obstacles to their Return and Integration).

[Footnote 2] See: UN Study on Women, Peace and Security, United Nations 2002, Paragraphs 109-110. The International Helsinki Federation for Human Rights (IHF), for example, has also noted that displaced women in Bosnia-Herzegovina “are particularly vulnerable to prostitution and organized prostitution, both of which involve a significant risk of health problems and violence that should not be underestimated.”

[Footnote 3] For example, this is the case for displaced women from Srebrenica still living in collective accommodation or in pre-fab housing units constructed in 1993-5, in Tuzla Canton, and for whom the loss of such benefits (at around a monthly 400KM) presented insurmountable difficulties, given their already dire economic situation (Amnesty International interviews with displaced women in the Ježevo and Grab potok settlements, Banovici municipality, August 2002). Feedback from organizations working with displaced women implies that in practice they encounter difficulties in transferring these benefits from the location of displacement to their pre-war municipality. Given the current differences in legislation and claims procedures in the Federation (where each Canton has its own implementing legislation) and the RS, it would be difficult to see how such transfers would happen without further agreements between the relevant entity ministries regulating the process.

[Footnote 4] According to BOSFAM, a local non-government organization working with displaced persons in Tuzla Canton, the average amount of rent for private accommodation in that Canton as a rule claims the larger part of the invalidnine displaced women from Srebrenica are receiving on grounds of their missing or dead relatives.
For example, both minority returnee women and displaced women have reported that they are discriminated against in offers of employment […] They are in particular concerned about the problems they face in ensuring proper education for their children: for example displaced women remaining in collective centres in remote areas, who lack the financial means to pay for transportation to the nearest school, reportedly in some cases decided to send their male children to school only. Both categories of women also lack adequate and affordable health care for themselves and their families, including psycho-social counselling services which may help them overcome severe trauma experienced during the war.

**OHR HRCC 15 May 2000, paras. 32-35:**
"Gender study: 'Daunting Prospects - Minority Women: Obstacles to their Return and Integration': In April, UNHCR (assisted by the OHCHR) issued a report on the current situation and specific obstacles to return and integration faced by displaced and returnee women. The study focuses on female-headed families, single women and extremely vulnerable women, from all ethnic backgrounds.

The study identified three specific obstacles to return for the categories of women examined: (1) lack of familial or community support, (2) personal security and (3) psychological trauma. It was generally found that their fear of returning (whether or not justified) was compounded by the lack of familial or community support, or by psychological trauma. Regarding access to the reconstruction assistance, it was found that there is no common (BiH wide) criteria for beneficiaries of reconstruction assistance. In many cases, it was not clear whether women were prioritised or sidelined for such assistance, or indeed if such aid was evenly distributed. Specific concerns were raised with the principle of 'funding follows return,' which may disadvantage those who require child care assistance, are alone or are elderly and/or immobile. Regarding the repossession of property, the report recommends serious efforts be made to ensure that vulnerable women are not forgotten, whether with respect to monitoring evictions, the allocation of alternative accommodation, or the re-allocation of unclaimed apartments.

Other issues, such as the prosecution of alleged war criminals, satisfactory gender and ethnic composition of local police forces, access and quality of health care, employment opportunities and access to education and vocational training, were also reviewed as factors affecting return and/or integration potential. Without improvements, the report found, women will continue to be marginalized, and their return and/or integration potential compromised."

**See Daunting Prospects. Minority Women: Obstacles to their Return and Reintegration, UNHCR/UNHCHR, April 2000**

**See also Extremely Vulnerable Individuals: the Need for Continuing International Support in Light of the Difficulties to Reintegration upon Return, UNHCR, November 2000**

**Difficulty to determine accurate figures on return (2006)**

- Various organisations use different methodology
- A substantial number of returnees do not register with UNHCR not to lose their social benefits in their place of displacement.
- Many spontaneous return take place in isolated areas where contact with majority population are limited
- Property repossession does not always result in return

**Helsinki Committee, 17 January 2006, pp.2-3:**
“Having investigated how it was possible to come to the unrealistic figure of million and even more returnees, we found out that in the methodology used for monitoring the process of return, very often a simple summing up of those whose property had been returned and members of their family was done. It is easily to ascertain in the field that most frequently one or two elderly members returned to the repossessed apartment or house, staying there for a limited period of time – until they sell or exchange the property. In a large number of cases, the owners use their reconstructed houses as week-end houses, and there are also many who have certificate of registration at the pre-war addresses, and live and work in another Bosnian-and-Herzegovinian municipality, or abroad. For example, the UNHCR does not have data on how many of the above-mentioned 1,099 returnees from abroad live at their addresses. In addition, there is no any institution which keeps record on how many people from Bosnia and Herzegovina left their homes for the second time during 2005. (…) 

On the basis of the reports of its monitors, and on the basis of the results of the “fact-finding missions on the status of human rights” conducted in municipalities throughout BiH, on the basis of the data obtained from the Unions and Associations of Refugees and Displaced Persons, on the basis of the data obtained from the local communities, i.e. from the representatives of the governmental and non-governmental sectors, the Helsinki Committee for Human Rights in Bosnia and Herzegovina cannot confirm the above-mentioned allegations (one million returnees). All collected data speak in favor of the assessment of the Union of Associations of Refugees and Displaced Persons in BiH, the President of which, Mirhunisa Zukic, claims that only one third of the total number of displaced persons and refugees returned to their homes. While assessing the process of return, the Helsinki Committee for Human Rights in BiH, has dealt with the results of real return, respecting the right of each individual to select the place of residence.

On the same topic, see controversial article “Bosnian returnees quietly quit regained homes”, BIRN, 31 August 2006

ICG 31 May 2000, “How Many?”:
“Given the confusion in post-war Bosnia, exact numbers of returnees are difficult to calculate. Information on refugee returns is collected primarily by three different agencies: United Nations High Commission on Refugees (UNHCR), Office of the High Representative's Reconstruction and Return Task Force (RRTF), and the NATO-led Stabilisation Force (SFOR). In addition, each
utilises a different methodology for gathering data on returns, and each readily admits that its numbers are inaccurate. Given the difficulties of accurate statistical collection in Bosnia, none of these numbers should be taken as absolute. Rather, they should be seen as relative indicators of trends. UNHCR figures are based on the number of returnees that actually register with the UNHCR field offices. RRTF figures are based on "previous experience and the fact that substantial numbers of returnees do not register." SFOR figures are based on "reports from SFOR patrols, which cannot cover the whole state, but may be useful as a trend indication." As a result of the different methodologies, UNHCR, RTTF, and SFOR all provide differing estimates. Given the difficulties of accurate statistical collection in Bosnia, none of their numbers should be taken as precisely accurate, but rather as general indicators of trends.

ICG, 13 December 2002

"Throughout BiH, large numbers of returnees fail to register because they want to maintain their pensions or health benefits in the places from which they have returned, because they have gone home only provisionally or parttime, or because they do not trust the local authorities. The latter phenomenon is particularly marked in the eastern RS municipalities of Srspko Gorazde, Zvornik and Foca, from which UNHCR receives very little data on returns because returnees are reluctant to make their presence known."

Return movements

Return prospects
HUMANITARIAN ACCESS

General

Sporadic violence against representatives of the international community continues to be reported (2002-2003)

- Human rights groups operate without government restriction but their recommendations often remain ignored
- Registration of NGOs was simplified in December 2001

“A wide variety of domestic and international human rights groups generally operated without government restriction, investigating and publishing their findings on human rights cases. Government officials were somewhat cooperative and responsive to their views.

International community representatives were given widespread, and for the most part, unhindered access to detention facilities and prisoners in the RS as well as in the Federation. The Law on Associations and Foundations allows NGOs to register at the national level and therefore to operate throughout the country without administrative requirements. The passage of this law in 2001 was a requirement for the country's admission into the Council of Europe. The law follows the general principle of voluntary registration and allows associations and foundations to engage directly in related economic activities. NGOs have registered at the national level to receive greater recognition from the international community, to show that they were not nationalist oriented, and to receive money from the Government once a new tax structure is put into place.

While monitors enjoyed relative freedom to investigate human rights abuses, they rarely were successful in persuading the authorities in all regions to respond to their recommendations. Monitors' interventions often met with delays or categorical refusal. In contrast to the previous year, there were no major incidents of violence against international community representatives. Soon before the election, the SDA called on all media outlets to boycott polls of the National Democratic Institute because SDA felt that these polls were unfairly biased towards the SDP.”
(U.S. DOS 31 March 2003, sect. 4)

"In Republika Srpska in Bosnia and Herzegovina, the Helsinki Committee for Human Rights has been a target of constant attacks and other forms of harassment. It has received telephone threats, as has committee chair Branko Todorovic, whose wife and children have also been threatened. […]

Mladen Milicanin, president of the Citizens' Association Milici was beaten so brutally by unknown perpetrators on 26 March 2003 that he had to undergo urgent surgery in Belgrade and remained handicapped. Milicanin had received telephone threats for several days prior to the assault because of his human rights activities, and it is believed that the beating was an act of retaliation for exposing abuses by local public officials in Milici. The perpetrators of the attack were never found, but available information suggests police involvement or collusion. The prosecutor's office initiated investigations only after pressure from the local Helsinki Committee, but has worked inefficiently. Milicanin continues to receive threats as of this writing. […]
Bojan Bajic and other members of ‘Luna’ NGO in Ruda, eastern Bosnia, have also been targets of different kinds of threats, mainly by extremists.” (IHF 6-7 October 2003, p.18)
Legal framework and national policy

Domestic response to internal displacement (2005)

- Legislative framework defining rights of IDPs exist at state and entity level
- IDP legislation theoretically entitles IDPs to a wide range or rights but are in practice limited to health care and accommodation
- There is no state law concerning the protection of victims of war therefore rights vary from one entity to another and IDPs risk losing their entitlements upon return
- A State Ministry for Human Rights and Refugees was created in 2000
- In January 2003, the State and the entities adopted the “Strategy of Bosnia and Herzegovina for the Implementation of Annex 7”

UN CHR, 29 December 2006:
“19. At the State level, the Law on Refugees from Bosnia and Herzegovina and Displaced Persons in Bosnia and Herzegovina (...) sets out the general principles regulating the acquisition and cessation of the status of refugee or displaced person as well as these persons’ rights, including the right to recover their property. The State establishes a framework requiring the entities to pass their own laws which need to be consistent with State law and each other. However, while laws on property restitution exist at the entity level, (...) the State has never passed such a law.

20. According to the Federation of Bosnia and Herzegovina Law on Displaced-Expelled Persons and Repatriates, holding IDP status entitles a person to a number of rights and benefits, such as accommodation, food, social reintegration and psychological support, health care, education for children and youth and other essentials. (...) In practice, however, only accommodation and basic health care are provided. In the Republika Srpska, the Law on Displaced Persons, Returnees and Refugees regulates legal IDP status and its cessation, as well as rights and entitlements to certain benefits, such as cash assistance, basic health care, elementary education, unemployment benefit, loans to start income-generation projects as well as temporary basic accommodation, provided IDPs cannot cover expenses themselves. It specifically stresses that “responsible authorities shall issue to displaced persons and returnees all documents necessary for the exercise of their legal rights”. (...) According to both laws, IDP status including its entitlements ceases upon return to a person’s pre-war place of residence, “when a safe and dignified return to her/his former place of residence is possible, but a displaced person has not returned there, or when this person voluntarily decided to permanently settle in another place”. (...)”

21. There is no law at the State level concerning the protection of victims of war crimes and crimes against humanity, most of whom remain displaced. Instead, their protection is regulated by entity laws, with the consequence that their rights differ from one entity to another. In the Federation of Bosnia and Herzegovina, for example, the Law on the Basis of Social Welfare, Protection of Civilian Victims of War and Protection of Families with Children does not include women who were raped in the categories of persons eligible for such status. The Republika Srpska Law on the Protection of Civilian Victims of War grants wider protection to civilian victims of war, i.e. persons who suffered bodily harm as a result of ill-treatment, rape, deprivation of
freedom and forced labour and who suffered harm over at least 60 per cent of their bodies. (...) However, the deadline to apply for victim status was set for 2000 when returns were still comparatively low.

22. Established in 2000, the State Ministry for Human Rights and Refugees is responsible for the coordination of inter-entity return activities. Each entity has its own IDP-related ministry: the Ministry for Refugees and Displaced Persons in the Republika Srpska and the Ministry for Refugees and Displaced Persons in the Federation. To encourage dialogue between State and entity ministries, the State Commission for Refugees and Displaced Persons was created in February 2000. Its mandate is to receive and decide claims for real property in cases where the property has not voluntarily been sold or otherwise transferred since 1 April 1992, and where the claimant does not now enjoy possession of that property. Claims may be for return or just compensation in lieu of return. As regards claims for compensation, the required mechanisms have not been set up as donors feared that compensation in lieu of return would consolidate “ethnic cleansing”.

23. The main task of the State Commission for Refugees and Displaced Persons is the examination and approval of return and reconstruction projects prepared by the entities and their sub-units (municipalities as well as cantons in the Federation of Bosnia and Herzegovina) and collected by the State Ministry for Human Rights and Refugees. It also authorizes and supervises the financial support of approved reconstruction and return projects through the Return Fund. The Return Fund was established in 2000 with the aim of supporting the sustainability of return. It ensures that both domestic and external financial aid allocated to the return process are concentrated in one single institution. It became operational in late 2004 after the State, the entities and the Brcko District made their financial contributions.

24. At the entity level, the Federation of Bosnia and Herzegovina Ministry for Refugees and Displaced Persons is responsible for return projects approved by the State Commission for Refugees and Displaced Persons. Each of the 10 cantons in the Federation of Bosnia and Herzegovina has a ministry responsible for return, although this task is in most cases combined with competencies in other areas. The role of cantonal ministries in both the reconstruction of housing and the implementation of sustainability measures is largely an administrative one, limited to the procurement and delivery of materials for repairs and reconstruction carried out by returnees themselves. In the Republika Srpska, the centralized authority responsible for refugees and IDPs is the Ministry for Refugees and Displaced Persons.

25. Most of the 164 municipalities of Bosnia and Herzegovina have departments for refugees and IDPs. Since 2003, municipalities have had the main responsibility for beneficiary selection and technical implementation of reconstruction projects. In 2003, four Regional Centres for the return process were established in Sarajevo, Banja Luka, Tuzla and Mostar under the State Ministry for Human Rights and Refugees. They are responsible for supervising the implementation of the return and reconstruction process at the municipal level.

26. In January 2003, the State and the entities adopted the “Strategy of Bosnia and Herzegovina for the Implementation of Annex 7” to the Dayton Peace Agreement which had been prepared by the Ministry for Human Rights and Refugees. As the first joint framework document at the country level since the Agreement, the strategy is the most comprehensive orientation for the sector of refugee and IDP returns and has been endorsed by the international community. The strategy outlines the necessary actions and reforms for the full realization of Annex 7, such as capacity-building for a transfer of responsibilities to domestic institutions. Its goals, envisaged to be achieved by the end of 2006 (although at the time of writing, the deadline seems likely to be extended), are: (a) completion of the return process of IDPs and refugees; (b) completion of the reconstruction of housing units for returnees; (c) realization of property and occupancy rights and repossession; and (d) securing conditions for sustainable return and reintegration. As affirmed by
Parliament, the right to return cannot, however, be limited to a specific deadline. (...) Actions and reforms to be undertaken include the harmonization of entity laws with the State law on refugees from Bosnia and Herzegovina and IDPs, as well as the harmonization of regulations in the fields of education, health, pension and disability insurance, allocation of socially owned property and the application of property laws. The strategy further envisages structural and organizational reforms to the institutional framework dealing with return. The main change would be the planned reduction of the institutional layers responsible for return from four to two, so that only the State and the municipalities would deal with return issues, eliminating the involvement of the entities and cantons.”

New framework to revise IDP number and grant IDP status has been adopted (2006)

- A Protocol was signed in 2004 between UNHCR, MHRR and the two Entities to regulate revision of IDP number and granting of IDP status.
- The Federation and Republika Srpska adopted new law on displaced persons in 2005
- Inadequate interpretation of the law has led to IDPs losing their status because they did not own a property
- UNHCR and responsible BiH Ministries, signed in July 2005 the Guidelines for the bodies responsible for revising and recognition of the IDP status to address this problems

UNHCR, UNHCR and Displaced persons, June 2006:

“The legal framework for displaced persons is laid down in the Law on Refugees from BiH and Displaced Persons in BiH (BiH Law), the Law on Displaced Persons and Returnees in the Federation of Bosnia and Herzegovina and Refugees from BiH (FBiH Law) and the Law on Displaced Persons, Returnees and Refugees in the Republika Srpska (RS Law). On the basis of these laws and BiH Strategy for the Implementation of Annex 7 of the Dayton Peace Agreement, the Ministry for Human Rights and Refugees (MHRR), responsible Entity Ministries and Brcko District, in co-operation with UNHCR, signed on 30 March 2004 the Protocol on the Implementation of the Revision of the Number and Status of Displaced Persons in BiH. The Protocol regulates the update of the database on DPs, determination and cessation of DP status and identifying the needs of the remaining DPs for the purpose of finding durable solutions for them.

In March and May 2005, the Entities (The Federation of BiH and Republika Srpska) adopted new DP laws with the same or very similar provisions regulating acquisition and cessation of DP status and access to rights and enabling harmonized approach to the resolution of the issue of displacement BiH wide. Definition of DP contained in the Entity laws is also harmonized with the one stipulated by the BiH Law, and which reads as follows:

“A displaced person is a citizen of BiH residing within BiH who has been expelled from his habitual residence as the consequence of the conflict or left his habitual residence after 30 April 1991, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership to a social group or political opinion, and who is neither able to return in safety and
dignity to his former habitual residence nor has voluntarily decided to take up permanent residence elsewhere.”

This definition, although narrower than internationally accepted definition of internally displaced person (IDP), represents a good starting point for the responsible bodies when conducting the procedure for revising DP status. Unfortunately, a bureaucratic approach to its interpretation by some responsible authorities sometimes causes cessation of DP status of those who are still displaced and in need of protection.

Namely, the wording “habitual residence” from the domestic definition of DP is interpreted by the authorities as a property over which DP has ownership right. DPs without property lose their status solely on that basis in despite of existence of other compelling reasons for not returning to the former place of residence. As a result of such practice and due to the lack of a appropriate social protection system in BiH, a new vulnerable category without any status and subsequently access to basic rights is created.

In order to remedy this unfair situation and ensure application of relevant DP legislation in line with international standards, the responsible BiH Ministries, in co-operation with UNHCR, signed in July 2005 the Guidelines for the bodies responsible for revising and recognition of the status of a displaced person in Bosnia and Herzegovina. The Guidelines provide broader interpretation of the cessation clauses contained in the relevant DP laws explaining how and in what cases protection and humanitarian concerns should be taken into account. Although the application of the Guidelines has not still been unified on the whole territory of BiH due to slow acceptance by some responsible local authorities, they have produced some positive results through issuance of positive status decisions based on humanitarian grounds.”

For more information on the results of the re-registration exercise of IDP, see also (in sources below) “Comparative analysis on access to rights of refugees and displaced persons, Ministry for Human Rights and Refugees, December 2005, pp.81-95

Law on displaced persons and returnees in the Federation of BiH and refugees from BiH, 16 March 2005
Law on displaced persons, returnees and refugees in the Republika Srpska, 26 April 2005
Law on refugees from BiH and displaced persons in BiH, 2003

National framework and ongoing activities to facilitate return (2006)

- More than 120,000 people (35,000 families) wish to return and have applied for reconstruction of their destroyed property.
- Most of the reconstruction applicants are currently displaced within BiH
- A loan of the Council of Europe Bank has been approved in 2004 and will be used to rebuild houses to persons living in temporary accommodation such as collective centres
• Political issues have delayed the implementation of the reconstruction
• It is only in May 2006, that the first list of beneficiaries consisting of 256 families has been set up
• The Return fund became operational in the first half of 2005
• In 2003, the OHR Reconstruction and Return Task Force transferred its return facilitation activities to the domestic institutions, limiting its role to monitoring
• The BiH Ministry for Human Rights and Refugees (MHRR) will be responsible for the return process
• Centres will be established throughout the country to maintain and facilitate the return process
• The first MHRR regional center opened in Sarajevo on 22 December 2003
• The aim of BiH's strategy is to complete the return of displaced persons and refugees by 2006
• In January 2003, BiH presented to the PIC an "Annex VII (GFAP) Strategy" detailing a transfer of responsibilities for refugee returns to domestic institutions
• The strategy was adopted by the BiH Council of Ministers in February 2003
• A number of legislative deadlines have been significantly delayed, affecting the establishment of a BiH Return Fund
• A return fund has been established to finance return projects
• Authorities finance and implement joint project

UNHCR, September 2005:
“A joint Strategy for the Implementation of Annex VII was developed by the Ministry for Human Rights and Refugees, UNHCR and OHR and endorsed by the BiH Council of Ministers in 2003, and foresees the substantial completion of the Annex VII of the GFAP in BiH by the end of 2006. The “Strategy” serves as a roadmap for the transfer of responsibilities from the international community to the BiH Government for the coordination of the return process. The State Commission for Refugees and Displaced Persons (SCRDP), whose membership includes senior representatives of the State, Entity and Brcko District Governments is a central construct of the “Strategy”, whereby domestic authorities meet on a regular basis to consider return related issues and arrive at recommendations for action to be taken to facilitate the completion of returns to and within the country, within the stated timeframe. Legislative amendments based on the “Strategy” also established a “Return Fund” where State and Entities contribute to a substantial pool of funds to be used country-wide for reconstruction and sustainability projects benefiting returnees. UNHCR actively participates in the SCRDP as an observer, advocating for a concerted and sustained effort on the part of the local authorities in all aspects of return. As UNHCR responsibly phases down from its involvement with the return process in BiH, the SCRDP takes on an increasingly important role in local ownership and responsibility for the eventual closure of the chapter of forced population displacement in BiH. The “Strategy” also called for the establishment of four “Regional Centres” with MHRR staff serving a monitoring and advisory function in return related interventions. UNHCR field offices will continue to cooperate closely with these Regional Centres as they assume an increasingly prominent role in the final stages of returns to and within BiH. In 2004, UNHCR successfully advocated that a Council of Europe Development Bank (CEB) loan be made available to BiH in support of the most difficult return and reintegration challenges. The CEB loan was approved and implementation of reconstruction and reintegration projects, under the auspices of the SCRDP, is expected to begin by mid-2005 and continue until at least the end of 2006. In this important project, UNHCR is tasked with actively participating, in cooperation with the Regional Centres and municipal authorities in the selection of beneficiaries.”
UNHCR, May 2006:

"According to the BiH Ministry for Human Rights and Refugees (MHRR), more than 120,000 people (35,000 families) wish to return and have applied for reconstruction of their destroyed property. While most of the reconstruction applicants are currently displaced within BiH, 15% of the applications were submitted from abroad. Ongoing international- and local-assistance projects are still seeking to facilitate the return of those who wish to return but have not been able to as their houses remain damaged and the area of return lacks the necessary minimum infrastructure in terms of road access, access to utilities such as water and electricity, etc. In this context, at the end of September 2005, OHR, OSCE and UNHCR facilitated a revised agreement between the main electricity providers and the relevant authorities to further ease returnees’ access to electricity.

New and additional sources of funding have been vigorously pursued over the past year and a half, including funding from multilateral lending institutions such as the Council of Europe Development Bank (CEB). A loan in the amount of Euro 8.0 million to Bosnia and Herzegovina for the reconstruction of about 1,100 housing units was approved in November 2004. The project will benefit selected persons currently living in temporary accommodation such as Collective Centers or Alternative Accommodations. The total cost is estimated at Euro 12.0 million and the project is expected to be completed by 2007. The generous assistance by the Governments of Sweden and the United Kingdom as well as the BiH Central Bank in assisting BiH to meet its payment obligations to qualify for membership of the CEB has been critical in bringing about this development. The local contribution of some Euro 4.0 million will be secured by the Federation, the RS, and the Brcko District in the same proportion as their respective participation within the project. It was not until July 2005 that the BiH Council of Ministers adopted the procedure for signing of the Framework Loan Agreement between BiH and the CEB. In May 2006, the Entity ministries, Brcko District and UNHCR finally settled on a first list of beneficiaries of 256 families for whom it is hoped that reconstruction work will start without further delay. It is regrettable, however, that progress has been delayed for political reasons and, once again, it is the most vulnerable members of BiH society who are suffering as a result.

The Return Fund, intended to replace the Joint Project Fund administered by the State Commission on Refugees and Displaced Persons (SCRDP) during 2002 and 2003, became operational only in the first half of 2005. Its Director recorded the pledged contributions from the Entities, Brcko District and MHRR in the Funds' accounts. Pledged contributions in 2004 from MHRR, the Entities and Brcko District of approximately 9 million Euros did not materialize in their entirety at the year's end due to budgetary constraints faced by the Entity Refugee Ministries and the MHRR. As a result, agreement was reached among all concerned BiH institutions to contribute allocated resources in 2005 through regular payments over the course of the year. In 2005, new and additional contributions to the Fund from the European Commission and other donors were, however, made on the condition of a successful start-up and the demonstrated capacity of the SCRDP to transparently and effectively manage the Fund. The adoption of the European Commission’s SUTRA II project by the SCRDP in 2005 was an important step in the right direction and allowed the Commission to implement housing reconstruction projects in 10 municipalities where the needs are greatest. Including contributions of BiH, the project is worth approximately 8 million Euros. A similar project, SUTRA III, was adopted in May of 2006. At the same time, MHRR, the Entities and Brcko are implementing reconstruction projects in 30 additional municipalities."

USDOS, 8 March 2006:

"In the RS, the refugee ministry provided support to Bosniaks and Croats returning to the RS and to Bosnian Serbs returning to the Federation. The Federation Ministry for Refugees assisted Croats and Serbs returning to the Federation and Bosniaks returning to the RS. Both entity-level refugee ministries provided limited reconstruction assistance to returnees and also committed part of their budgets to be implemented through joint projects to be determined by the BiH State Commission for Refugees. In October 2004 the commission agreed that 30 priority municipalities
should receive reconstruction assistance through the newly established joint reconstruction fund. During the year municipal authorities began selecting beneficiaries and implementing projects in the fund's target municipalities. The BiH Ministry of Human Rights and Refugees also began implementing two separate projects partly funded by the Council of Europe Development Bank (CEDB) and other foreign government agencies. The CEDB project was aimed at getting residents out of collective centers (in the Federation) and alternative accommodation (in the RS) and back to their prewar homes.

OHR 30 December 2003:
‘The OHR's Reconstruction and Return Task Force will close on the last day of 2003, when the relevant BiH institutions will formally assume responsibility for the return process. Property Law implementation is nearing completion, almost one million people have returned to their homes, and the BiH institutions have expressed a clear desire to take the lead in maintaining and then completing the return process. As part of the ongoing process of handing back responsibility for key state functions to BiH institutions, the International Community will primarily assist and monitor the newly empowered domestic authorities with Annexe-Seven implementation as of next year.

‘Full responsibility for human rights and for refugee return is being formally returned to the BiH authorities, because they now have the tools that they need to complete the work of refugee return and to uphold the human rights of BiH citizens,’ the High Representative, Paddy Ashdown, said. ‘This handover is crucial because the responsibilities being handed over are so important, and because it is part of the process of domestic institutions taking full responsibility for the governance of BiH.’

It should be emphasized that Annexe Seven implementation is not complete. Large numbers of homes have still to be rebuilt and there remain many citizens who wish to move back to their pre-war places of origin but have not yet done so.

The BiH Ministry for Human Rights and Refugees (MHRR) opened its first regional centre in Sarajevo on 22 December 2003. Centres will be established throughout the country to maintain and facilitate the return process. The launch of the regional centres marks the start of an implementation program that will set in place a comprehensive nationwide structure through which the MHRR can discharge its responsibilities effectively. An important practical boost to this programme has been BiH's recent acceptance as a member of the Council of Europe Development Bank, which will make it possible for BiH to receive soft loans for return and reconstruction projects. [...] There is no definitive data on how many registered returnees have chosen to remain in their pre-war communities but as many as 2-300,000 may still wish to return. They will be helped by BiH institutions, who will implement reconstruction and return projects, with continued assistance from the International Community. The aim of BiH's strategy is to complete the return of displaced persons and refugees by 2006.”

COE 14 April 2003, par.68:
“The Council of Ministers’ (CoM) session on 3 February adopted the proposed BiH strategy for implementation of Annex VII. This is the first State strategy document that regulates the issue of returns.”

MHRR, December 2004:
“In 2004, the Return Fund has been fully established as an independent administrative financial-type organization within the Council of Ministers of BiH. The Return Fund performs financial execution of the SCRDP [State Commission for Refugees and DPs] decisions. Funds for the functioning of the Return Fund and implementation of the SCRDP conclusions in the field of
reconstruction of housing units for the needs of return have been secured as a part of budget resources for 2004 of competent Entity Ministries, Ministry for Human Rights and Refugees and District Brcko Government."

USDOS, 28 February 2005:

“Both entity-level Ministries for Refugees provided limited reconstruction assistance to returnees and also committed part of their budgets to be implemented through joint projects to be determined by the BiH State Commission for Refugees (SCR). In October, the SCR agreed that 30 priority municipalities should receive reconstruction assistance through the newly established Joint Reconstruction Fund (JRF). By year's end, the State Government, the RS Ministry for Refugees and Displaced Persons and Brcko District had paid into the JRF. However, the Federation Ministry of Refugees and Displaced Persons did not make its contribution by the December 31 deadline.”

Authorities struggle to take ownership of reforms (2005)

National response to displacement has evolved over time usually under heavy pressure from the international community.

The first years after the war were characterised by strong resistance of local authorities to the return of members of the other ethnicity. Even the Bosniaks, who were the most committed to a multi-ethnic country, did all they could to resist the return of members of other ethnicity. (Marcus Cox, Madeleine Garlick, 2003). While the international community has focused all its efforts on return to reverse ethnic cleansing, Bosnian authorities in both Entities but mostly in Croat and Serb dominated area have encouraged their displaced persons to locally integrate. Relocation of displaced person was ensured through allocation of land, accommodation and war veteran benefits. (USDOS, 28 February 2005). The main objective of this policy was to consolidate the ethnic majority resulting from the war and ensure political majority to nationalist officials put in place by the conflict.

It was in Bosniak dominated areas that a policy of supporting return started first, a couple of years after Dayton. Authorities and even political parties gave material to facilitate return of their displaced persons to areas where they would be in minority. Projects supporting relocation still exist but progress have been made in recent years and RS is increasingly supporting Bosniak and Croat return to the RS and return of Serbs to the Federation while the Federation is supporting return of Serbs to the Federation and return of Bosniaks and Croats to the RS (USDOS, 28 February 2005).

Bosnian authorities have progressively taken more responsibility in fulfilling their task assigned by Annex VII of the Dayton Peace Agreement. These tasks are to support return and determine a legal framework regulating the situation and return of displaced persons and refugees. The International Community has been instrumental in strengthening state level institutions and legal framework. DP legislation has been drafted and adopted under close scrutiny of UNHCR between 1999 and 2003. The international community also supported the creation of a State-level Ministry for Human Rights and Refugees (MHRR) in 2000 to improve the coordination of return policies at
country level and reinforce the capacity of the authorities to deal with return in preparation of the progressive withdrawal of the international community.

In January 2003, the Peace Implementation Council adopted a plan “Strategy of BiH for the implementation of Annex VII” drafted by the Office of the High Representative (OHR) and MHRR detailing the hand over of the Return and Reconstruction Task Force (RRTF) to the Government of Bosnia and Herzegovina. Since 1998, the RRTF was the main body coordinating efforts of the international community for implementation of Annex VII (on return of refugees and DPs). The exit strategy provided to amend the State Law on refugees to reflect increased responsibilities of the State Commission for Refugee and DPs (SCR) regarding return, transfer CRPC database on property claims to MHRR, make operational a Return Fund centralizing and coordinating funding between international donors and the BiH and entity government levels, and replace RRTF field offices by regional offices reporting directly to the State. This arrangement was supported by the international community to short-circuit the heavily politicized entity or cantonal structures.

In order to support local capacity to face its responsibility towards return the EU and UNDP launched in 2003 an initiative called “SUTRA”, Sustainable Transfer to Return-related Authorities. SUTRA focuses on return, reconstruction and area-based development. The projects are implemented by local authorities based on priorities established at State level. SUTRA’s intent is also to increase cooperation of authorities with civil society organisations. Funds come from a Return Funds financed by State, Entities and the International Community. In a context of decreasing international funding and evolution towards development, such initiative is a logical step to improve and develop ownership in determination of return policies. In its first phase (2003-2005), SUTRA received EUR 4.6 millions (2.2 millions from EU and UNDP, and matching contribution from the State and the Entities through the State Commission for Refugees. Upon completion in May 2005, 333 houses will have been reconstructed as well as related technical infrastructure in 7 municipalities. (UNDP, 24 September 2004). The second phase of SUTRA (2005-2007) will receive EUR 4 millions from the EU, EUR 100,000 from UNDP. Authorities pledged to double the current contribution (UNDP, 6 January 2005).

Bosnia and Herzegovina obtained a loan from the Council of Europe Development Bank (CEB) to support housing needs of displaced persons living in collective centres. As a member of the Council of Europe, Bosnia and Herzegovina is entitled to loans from the CEB which promotes projects addressing social problems as a result of the presence of refugee or displaced persons. A loan of EUR 8 millions matched by EUR 4 millions from the Government will serve for the accommodation of 1,200 collective centre residents. (UNHCR, 15 March 2005).

The amendments to the Law on refugee and DPs required by the “Strategy of BiH for implementation of Annex VII” were made in November 2003. The SCR capacity to determine reconstruction and return priorities was affected by nationalist interference. This delayed the issuance of a list of 30 priority municipalities in need of assistance. At the end of 2004, the beneficiaries of these projects had not been selected yet. Reconstruction projects will be financed by a joint return fund to which State, and Entities contribute equally. (USDOS, 28 February 2005).

UNDP also supported the creation of a database on foreign assistance and development resources. The database is run and updated by the Ministry of Foreign Trade and Economic Relations. It includes data about past and planned assistance as well as future needs. It should help donor to have an overview of the current sectorial needs in terms of funding. It is also another step in the development of the authorities’ capacity to determine their priority in a context of reducing funds.

In December 2004, the State Ministry for Human Rights and Refugees published a report on implementation of Annex VII by Bosnian authorities. The reports reviews the measures taken to facilitate the rights of refugee and DPs enunciated in Annex VII, namely the right to return, right to repossession one’s property and creation of conditions for sustainable return. As underlined by the Poverty Reduction Strategy Paper, displaced persons are among the most vulnerable to poverty in the country. This implies that they depend on decreasing humanitarian assistance and local authorities. In its report on implementation of Annex VII, MHRR admits that the conditions for sustainable return are not yet met in particular with regard to access to social and economic rights. (MHRR, December 2004, p.71). The lack of cooperation between welfare...
institutions in both Entities and the refusal to agree on a state-law framework on health and pension issues continue to hamper return and place returnees in difficult situation. Unemployment is high in the country but particularly affects returnees who, as member of a minority group, face additional difficulties to find work. Public administration has not yet met the objective to reflect the 1991 structure of the population.

Although the overall security situation is good and rather stable, many displaced persons still feel insecure to return mainly because of the persistence of the ethnic debate throughout the country. People do not trust the police or the judicial system. The police, still largely mono-ethnic, is known not follow up on ethnically motivated attacks and perpetrators are rarely charged. Until recently when the international community supported a process of re-appointment of judges and prosecutors of the country, the judicial system was under heavy influence of nationalist politicians. The failure of Republika Srpska to cooperate with the International Tribunal is also an element which is a strong disincentive to return for displaced who have been victims of war crimes or have witnessed such crimes. Those who perpetrated these crimes are often at large or even employed in public positions. Recent progress on the war crime issue have been made with the publication by the RS authorities of the Srebrenica report where they recognize responsibility for crimes committed in Srebrenica and give essential information on the location of mass graves. In December 2004, NATO refused entry of BiH into the Alliance’s Partnership for Peace for lack of cooperation with The Hague. At that time, RS had not yet arrested any person indicted for war crimes. In early 2005, RS finally transferred its first case to the Tribunal, then two cases in March after nine years of obstruction. However this result was obtained after heavy pressure from the international community and several dismissals imposed by the High Representative. (OHR, 16 December 2004).

Under guidance and support of the Organization for Security and Cooperation in Europe (OSCE), substantial progress has been made in the Education sector where various ethnically based curricula co-existed, representing a serious obstacle to return. However, every progress has been faced with strong resistance of nationalists which result in the use by the High Representative of its binding powers. Nationalists of the country in both Entities strongly resist attempts to strengthen State institutions and determine policies at State level. They do not want to lose the advantages given to them by the Dayton peace agreement which established a weak state and gives state-like competencies to ethnically based entities. Most policies are therefore defined according to the interest of the dominant ethnicity in each Entity. It is therefore almost impossible to define a state policy in the interest of all citizens which applies throughout the country.

Ownership is the key word for Bosnia and Herzegovina’s future. It is the key word for the country and for its accession to the European Union. The International Community is phasing out, the binding powers of the High Representative are increasingly questioned within the country and also outside the country (see Venice Commission report). As underlined by the Venice Commission, the transfer of responsibilities from the Entities to BiH is a condition sine qua non for any progress on European integration. OHR has been trying to promote ownership of reform but most nationalists in the political class often prefer to hide behind the international community to avoid responsibility for reform and political compromise. It is high time for Bosnian politicians to take their fate in their own hands and make reform happen from their own initiative. This will be the best way to render the binding powers of the High Representative inappropriate and obsolete.

A domestic legal framework for repatriation and return movements has been adopted in both Entities and at State level (1999-2003)

- To fully apply the legal framework, the respective authorities still need to adopt further by-laws and instructions
- Amendments to the Law on Refugees and Refugees from BiH and Displaced Persons in BiH was adopted by the House of Representatives in September 2003
Amendments to the Law on Displaced-Expelled Persons and Repatriates in the Federation of Bosnia and Herzegovina were enacted in March 2003.

"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.

In cooperation with UNHCR, the respective Entity Ministries (RS Ministry for Refugees and Displaced Persons; Federation Ministry for Social Affairs, Displaced Persons and Refugees) and the then competent State Ministry (Ministry for Civil Affairs and Communication) drafted new legislation in this area, with a view to ensuring consistency with Annex 7 of the GFAP and relevant international standards [Note 8]. The respective legislative bodies finally adopted the respective laws in 1999 and 2000 [Note 9]. This provides a domestic legal framework which regulates current voluntary repatriation movements and puts in place an adequate return mechanism, as required by international standards, in particular Annex 7 of the GFAP. To fully apply the legal framework, the respective authorities (State, Entity, Cantons in the Federation of BiH) still need to adopt further by-laws and instructions. Further, it remains to be seen how the authorities will apply the relevant provisions. In particular, whether they continue to grant DP status only to persons with accommodation. [Note 10]

[Footnote 8]: 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.


[Footnote 10]: According to the Law on Displaced-Expelled Persons and Repatriates in the Federation of Bosnia and Herzegovina, a displaced person is, among other, entitled to accommodation. Given the lack of accommodation the authorities will only grant the status provided the person concerned has already accommodation." (UNHCR August 2000, sect. 2)

“Law on Amendments to the Law on Refugees from BiH and Displaced Persons in BiH was adopted at the session of the House of Representatives of the Parliamentary Assembly of BiH, held on 24 September 2003, and published in ‘Official Gazette of BiH, no. 33/03 of 5 November 2003’.

The Law went into effect on 13 November 2003.

Harmonization of Entity laws with the State Law on Refugees from BiH and Displaced Persons in BiH. This activity is underway, Entities have submitted drafts of their new laws, and it would soon be in the legislative procedure within Entities." (Ministry for Human Rights and Refugees December 2003, p.3)

The Law on Displaced Persons, Refugees and Returnees in the Republika Srpska (RS Official Gazette, No. 33/99, 26 November 1999) has been amended by the Decision of the High Representative Enacting, the Law on Amendments to the Law on Displaced Persons, Refugees and Returnees in the Republika Srpska, 4 December 2001 [Internet].

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International response

International response: focusing on the most vulnerable (2006)

Since 1995, the international community has maintained a massive presence in the country to ensure the implementation of the peace agreement under the supervision of the High Representative and assist in the recovery of the country. Five billion dollars were spent in aid and half of the homes damaged during the war have been rebuilt (UNHCR, 21 November 2005). The Dayton agreement made UNHCR the lead agency for the return of refugees and displaced persons. A strong coordination effort through an inter-agency framework, the PLIP, helped achieve considerable success in the property restitution process. The overall coordination of return and reconstruction was ensured, until 2003, through the Reconstruction and Return Task Force, which comprised humanitarian and human rights agencies, development actors such as UNDP and the World Bank, and key donors.

Ten years after the signing of the peace agreement, the focus of the international community has clearly moved from a humanitarian to a development agenda. This process is supported by the SUTRA Framework, a UNDP/EU initiative aimed at handing responsibility for all aspects of return to local authorities (UNDP, January 2003). Further to the success of the initial project, SUTRA II and III were signed in 2005 and 2006 to pursue reconstruction in ten municipalities (UNHCR, May 2006). In a context of decreasing funds, assistance is focusing on the most vulnerable among the displaced and returnees as illustrated by the CEDB project in favour of collective centre residents, and UNHCR’s decision to assist areas which only recently opened to return (UNHCR, September 2005). During his visit to the Balkans, in June 2005, the Representative of the UN Secretary-General on the Human Rights of IDPs, Walter Kälin, also emphasised the need to provide durable solutions and improve living conditions for the most vulnerable among the IDPs (UN CHR, 29 December 2005).

There is concern that the international community in Bosnia and Herzegovina may be prematurely wrapping up the return process at a point when candidates to return require more tailored assistance in view of their specific needs, such as psycho-social support and reintegration assistance (UNHCR, December 2005). The end of 2006 has been presented by UNHCR, OHR and BiH authorities as the time by which return will be substantially completed (UNHCR, September 2005). At regional level, the Ministerial Conference on Refugee Return initiated in 2005 and bringing together BiH, Croatia and Serbia and Montenegro foresees the end of displacement in the region by the same date. However, it is highly unlikely that the remaining 180,200 IDPs will all return during 2006, and declaring the return process over prematurely would risk depriving many of the remaining IDPs of their right to return. The continued involvement of the international community is crucial to ensure the sustainability of returns in the country.
International response: promoting reform through capacity building (2005)

International response to displacement in Bosnia and Herzegovina has been massive and diversified. The tragedy of the war and the fate of displaced persons throughout the country raised strong interest in reversing the effect of ethnic cleansing and supporting the reconstruction of the country. In the first years after the conflict assistance was mainly directed to reconstruction of houses and infrastructure, and distribution of humanitarian assistance to displaced persons. It has now evolved to institutional building and development activities. The international community has played a crucial role in both stabilising the country and promoting reform.

Institutional Framework:
The first international response to internal displacement in post-war Bosnia and Herzegovina has been the Dayton Peace Agreement. While setting the general framework and institutions of the country, the peace agreement clearly mentions the need to protect the rights of displaced persons and the role of agencies responsible for monitoring the situation. Annex VII provides that displaced persons and refugees have the right to return to their homes but also the right to repossession their properties. According to the Agreement, Bosnian authorities are responsible to ensure safe return and to create condition for sustainable return. Annex VII also acknowledges the role given to the United Nations High Commissioner for Refugees by the UN Secretary General since 1992 whereby the organisation takes the lead role in coordinating assistance to displaced persons and refugees. The right to vote of displaced persons is provided for in Annex III dealing with elections. OSCE is requested to supervise the preparation of free elections, and conduct them. Respect of Human Rights and establishment of institutions able to receive claims of violations are essential aspects for the protection of IDP rights. These issues are described in Annex VI OHCHR, OSCE, and the International Tribunal are the main agencies responsible to monitor the human rights situation.

The DPA gives the Office of the High Representative the overall responsibility to implement the civilian aspects of Dayton and coordinate activities of civilian organizations and agencies operating in BiH. The SFOR is responsible for the implementation of military aspects. A UN International Police Task Force (IPTF) is requested to monitor, advise and train local police (Annex XI). In 1995, the Security Council established the UN IPTF and a UN Civilian office brought together as United Nations Mission to Bosnia and Herzegovina (UNMIBH).

The High Representative and his office are a central element of the post-war framework. In addition to the responsibilities mentioned above, the High Representative participates in donor meetings on rehabilitation and reconstruction, and reports on progress of in implementation of the peace agreement to the Peace Implementation Council (PIC). The PIC, a group of 55 countries and international organisations that sponsor and direct the peace implementation process, has subsequently elaborated on his mandate. Faced with fierce and widespread obstruction of nationalist forces, the High Representative was granted binding powers at the PIC conference in Bonn in December 1997. According to these new “Bonn powers” the High Representative can remove from office public officials who violate legal commitments and the Dayton Peace Agreement. He could also impose laws if Bosnia and Herzegovina’s legislative bodies fail to do so.

The “Bonn powers” have been the lead force behind most of the reforms and progress in Bosnia and Herzegovina. It is thanks to them that property laws have been amended to ensure a legal framework free of discriminatory provisions. Removal of officials obstructing implementation of Dayton has also shown the determination of the international community and the risks there were to act against Dayton through, for example, obstruction to minority return and property repossession. However, resistance to reform remains in many sectors and the High
Representative still had to use his binding powers in 2004 to support the Education reform or sanction lack of cooperation of RS with the International Tribunal.

Although necessary in practice, the Bonn powers seem more and more at odds with the integration process to the EU which requires that BiH take ownership of the reform and creates a functional government (EC Country Strategy Paper, 2001). Ten years after Dayton, it is high time for the country to determine policies according to the interest of all its citizens and not on partial basis. In this context, and at the request of the Council of Europe Parliamentary Assembly, the Venice Commission adopted a report in March 2005 which questions the conformity of the Bonn powers to democratic principles. While recognizing the positive role these powers have had for the peace process, the report recommends that these powers be phased out and that constitutional changes be debated by the people of BiH to create a functional and democratic framework. Such a reform should base the constitution on the equality of all its citizens rather than the current equality of the three main groups of the country. (Venice Commission, 12 March 2005)

The role of the High Representative in particular and the international community in general has been essential to the stabilization of the country. This role has evolved with the situation on the ground and adapted to constant changes.

**Evolution of assistance since Dayton**

In the first years after the war, the level of destruction and the security situation were the main obstacle against return. 445,000 homes or 37% of the housing stock had been destroyed (MHRR, December 2004, p.49), the infrastructure was severely damaged throughout the country. Assistance focused on humanitarian needs of the displaced and other war victims and reconstruction. Between 1996 and 2004, the international community reconstructed near to 163,700 houses. (MHRR, December 2004, p.50). However, it clearly appeared in 1997 that thousands of the reconstructed houses remained empty either due to improper selection of beneficiaries or difficult security conditions. These beneficiaries remained in displacement often occupying other people’s home (Marcus Cox, Madeleine Garlick, 2003, p. 77).

This situation led to a change of strategy by the international community who decided to focus its reconstruction on those who had already returned to their destroyed houses and to select priority axis of return. The Return and Reconstruction Task Force (RRTF) was created in 1997 and determined the return policy of the international community (Paul Prettitore, World Bank, 12 June 2004). The RRTF return plans were determined by OHR, UNHCR and participation of other agencies such as the OSCE, European Commission, the World Bank, the International Management Group and CRPC.

In a context where implementation of property laws was completely blocked, the existence of beneficiaries who had not returned to their reconstructed house incited the international community to focus on the eviction of double-occupants (people occupying a home while they have another housing solution available). A Housing Verification Monitoring project was established in 1999 with the task to verify occupancy of reconstructed houses and report to the international community and municipalities in order to facilitate eviction of double occupants. (Global Future, Fourth Quarter, p.22). This approach helped to kick start implementation of property law but had the inconvenient to be highly labour intensive for the international community.

The second serious obstacle to return between 1996 and 1999 was the security situation. Tensions were still very high, and the legacy of war was one of hatred and fear of retribution. This situation was clearly deterring the return of those who would be a minority in their place of origin the so-called “minority returns”. The police were mono-ethnic paramilitary units acting
independently within their majority area (Republika Srpska, Croat part of the Federation and Bosniak part of the Federation). Police forces would openly discriminate against members of other ethnicities. Ethnic division was reinforced by police checkpoints positioned along the Inter-Entity Boundary Line (IEBL) separating the two Entities. These checkpoints seriously impeded freedom of movement. SFOR was instrumental in removing these checkpoints. To further improve freedom of movement UNHCR organized assessment visits of displaced persons to their place of origin to see their homes and neighbours and assess the situation. Once the security situation improved, the assessment visits escorted by UNHCR were replaced by bus-lines running along return axis. OHR, jointly with UNMIBH imposed new license plates in 1998. This measure considerably improved freedom of movement because license plates did not indicate the entity where the car was registered. Discriminatory police controls were therefore rendered more difficult. To improve compliance of local police with law, IPTF introduced selection and recruitment procedures as well as sanctions against local police who would not respect the law (such as occupying claimed property for example). IPTF also set up agreements establishing target percentages of minority police officers to be recruited in each entity. This measure aimed at reinforcing confidence of returnees in law enforcement officials. (UNMIBH, Overview, 2002). As of end 2003 the proportion of minority police in RS and Federation had not yet met the target but new recruitments are based on ethnic quota. It is estimated that it will take years before a professional multi-ethnic police is established (USDOS, 25 February 2004).

In 1999, the RRTF return plan was reinforced by the launch of the Property Implementation Plan (PLIP) setting up the objectives and the mechanism by which the international community would monitor the progress of property laws in the country. Property repossession was essential to unlock the return process by freeing space and allowing displaced to return thereby freeing the house they would occupy. The united approach and the determination shown by the international community resulted in impressive results. From a rate of implementation of 15% in 1999, the implementation rate jumped to 37% in 2001, 64% in 2002 and 93% in 2003. (Paul Prettitore, World Bank, 12 June 2004, OHR/OSCE/UNHCR/UNMIBH/CRPC, 11 December 2001, OHR/OSCE/UNHCR/UNMIBH/CRPC, 3 December 2002, OHR/OSCE/UNHCR, 11 February 2004).

It is also in 1999 that minority returns started to represent more than half of the total return. In 2000, 89% of returnees were minority in their place of return. The peak of the return movement was reached in 2002 with 107,000 returns during the year, 96% of whom were minority returnees. The return movement consequently slowed down in 2003 and 2004. (MHRR, December 2004, p.36 and p.39)

It can be seen from the above that it took several years for displaced persons to feel safe about return and to have the possibility to do so, thanks to reconstruction and property implementation. Unfortunately, the impetus of the return movement creating new assistance needs corresponded to the decline of international funds. This situation had a very negative impact leading several agencies to cut down their projects intending to make return sustainable. The lack of funds created the risk to see a return into displacement. (CAP, 8 November 2000). The late return movement illustrated the fact that minority return is a long-term process and that funds are essential to ensure sustainability of return. The Consolidated Inter-Agency Appeal (CAP) for 2001 received 49% of the requirements while the last CAP (for 2002) received only 40% (CAP, 20 January 2002, OCHA, 31 December 2002). From 1996 to 2002 Bosnia and Herzegovina received an average of USD 750 millions per year from the international community. The two largest donors have been the European Union and the United States. According to a survey carried out by UNDP the funding prospect is USD 120 million of bilateral assistance per year for the next 2-3 years, between USD 80 and 90 millions yearly from the World Bank for 2004 and 2005, USD 10 millions per annum from UNDP for 2004 and 2005. (UNDP, November 2003, p.46). The European Union has given EUR 64 million for its 2004 CARDS programme (EC delegation to BiH, 6 June 2004).
From humanitarian assistance to state-building and development.

This drastic fall in assistance to Bosnia and Herzegovina has been accompanied by a re-orientation of the assistance from a humanitarian and reconstruction phase to a longer term one focused on reinforcement of State institutions and capacity-building. Over the years, the international community consistently widened the scope of its intervention to make BiH a functioning and sustainable state and to provide an environment conducive to return. Reform of the judicial, education, police and defence system has been undertaken under guidance of the international community. Human rights institutions have also been reformed to reinforce national capacity to deal with claims of violations. These reforms reflect the objectives set up by the European Union which has stated that one of the requirements to progress on the accession process is to develop functioning state institutions complying with democratic and human rights principles. Compliance of the Council of Europe commitments is a pre-condition to accession. (EC, 22 October 2001).

This move towards Europe is reflected in the changing framework of international assistance which has progressively moved from UN response to a mainly EU one (except for the UNDP). The UN mission and IPTF ended their activities in December 2002. The police tasks were taken over by the European Police Mission (EUPM). The NATO SFOR was replaced by EUFOR, EU military forces in December 2004. The European Union has now the responsibility to ensure peacekeeping operations. (NATO, 2 December 2004).

The EU has made it clear that the accession process would depend on the capacity of Bosnia and Herzegovina to take ownership of the reforms. (EC, 22 October 2001). UNDP policy and programmes support that objective and aim at reinforcing the capacity of Bosnian authorities and local actors to determine their priorities for development and implement their own projects. (UNDP, November 2003, p.5 and 46). UNDP is focusing on the development aspects and has developed projects in line with national priorities as defined in the PRSP, and longer term objectives set in the Millennium Development Goals. Programmes such as SUTRA (see national response above) and the Rights-Based Municipal Assessment and Planning Programme (RMAP) contribute to foster dialogue at local level between authorities and civil society. By the end of 2005, the RMAP will have made an assessment of human rights situation in 25 municipalities. RMAP is an effort to identify and human rights violations, responsible sides and measures needed to improve the situation. The project is jointly implemented by UNDP, OHCHR and Ministry for Human Rights and Refugees.

Since Dayton, the focus of the assistance delivered by the international community has been on facilitating return to reverse the effects of the war. Almost 10 years after Dayton, it is still the case and the international community is avoiding support to projects facilitating integration of IDPs. In the Bosnian context, this is still seen as a consolidation of ethnic cleansing and a deterrent to return. Indeed, local authorities have focused on relocation of IDPs, often with ill intentions. However, the most vulnerable cases among the displaced who cannot return for various reasons (age, handicap, war trauma) should be able to receive such support. Even though the bulk of return has already happened, many displaced might still be interested to return if socio-economic conditions and discriminatory atmosphere upon return improve. Those who have destroyed houses need support.
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