

## Bosnia and Herzegovina<sup>1</sup>

**IHF FOCUS: freedom of expression and the media; rule of law and the judicial system; right to privacy, security services; national and ethnic minorities; racial discrimination, intolerance and hate speech; returnees and IDPs, property rights; women's rights; rights of the child.**

The beginning of the year 2003 was marked by the constituting of new governmental authorities from those parties that had won the elections in November 2002. The nationalistic parties—the Serb Democratic Party (SDS), the Bosniak Party of Democratic Action (SDA) and the Croat Democratic Union (HDZ) came to power again and formed a coalition joined by political groups closely linked to them. The efforts of the authorities in power appeared to be primarily directed toward preservation of ethnic and political divisions. They did not display a willingness to undertake major reforms, especially in the economic sphere, which were necessary for the renewal of the economy, normalization of the overall situation in post-war Bosnia and Herzegovina (BiH) and conforming to the Euro-Atlantic integration processes. Some laws and decisions of a reformist nature were adopted, however, only under the pressure and influence of the international community, which continued to play a key role in the life of the country. The High Representative for Bosnia and Herzegovina, Paddy Ashdown, failed to give due attention to the need to strengthen democratic institutions and dialogue with civil society. Moreover, the overall situation in BiH was overshadowed by the fact that suspected war criminals Radovan Karadzic and Ratko Mladic, were still at large, thereby complicating any normalization of relations both within the country and with the international community.

In the area of human rights, neither the international community nor domestic authorities showed a willingness to genuinely apply the high standards set out in the Dayton Peace Accords. While the Law on the Protection of Rights of National Minorities, the Law on Gender Equality, and Protocols 12 and 13 to the European Convention on Human Rights (ECHR) were passed under pressure from the Council of Europe as part of the post-accession commitments, the adopted laws neither were implemented nor were bylaws adopted to enable such implementation. In 1998, the High Representative initiated a comprehensive reform of the judiciary (courts, election of judges and the legislative).

Based on a decision taken by the international community, under the pretext that it was too expensive, the Human Rights Chamber was abolished. It had been the judicial body with the highest credibility in the country and a strong and reliable support mechanism for citizens whose rights had been violated. Since citizens still had no access to the European Court of Human Rights in Strasbourg, the possibility of protecting human rights before the courts was reduced to the bare minimum.

A Law on Ombudsmen of Bosnia and Herzegovina adopted in December 2000 gave the presidency of Bosnia and Herzegovina the right to nominate candidates for this post. It was criticized that the main criteria used to select candidates for the position were their links to the nationalistic political parties, rather than their professional experience in the human rights field.

In spite of the fact that NGOs, as late as 2000, had launched an initiative to create a Commission for Truth and Reconciliation, the proposal did not gain governmental support. This was heavily criticized as it was felt that such a commission would have alleviated inter-ethnic tensions and contributed to establishment of mutual trust—instead, any serious confrontation with the past and work on reconciliation were avoided.

In a positive development, the return of property to refugees and displaced persons was very successful. Toward the end of 2003, about 90% of the property had been returned to pre-war owners. The actual process of return, however, was still fraught with many difficulties. Depending on the

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<sup>1</sup> Unless otherwise noted, based on the Helsinki Committee for Human Rights in Bosnia and Herzegovina, *Report on the State of Human Rights in Bosnia and Herzegovina (January through December 2003)*.

region, the percentage of return varied between 7% (in some municipalities in the eastern part of Republika Srpska, RS) and almost 50% (in Drvar, Glamoc and Grahovo).

During the course of 2003, employment rights of workers became one of the biggest problems in the area of human rights. In numerous cases, the process of privatization resulted in lay-offs and there was no social support network to take care of those who had been made redundant. Moreover, employers frequently failed to meet the basic obligations toward their employees: health and insurance contributions were not paid and in some cases even salary. With weak trade unions and refusal of authorities to discuss the issue, many workers resorted to hunger strikes, road blocks and suicide threats.

## **Freedom of Expression and Media**

In previous years, the establishment of legal regulations controlling independence of the media was the main preoccupation of the Helsinki Committee in Bosnia and Herzegovina. Following adoption in the year 2000 of the Law on Free Access to Information and the Law on Libel a climate was created in which there was less room for authorities to control the media.

Throughout 2003, the print media came to be characterized by blatant disregard for public interest and for the basic role of the media, as well as further undermining the reputation of the profession. Journalists were unconcerned with the professional code of conduct and with the quality of their products, and little effort was put into building any self-respect. Violation of ethical standards and rules became everyday practice amongst many of the BiH dailies and weeklies. The emergence of intolerance during the election campaigns and promotion of interests of only one political option or group in the course of 2003 escalated into a practice where the print media became private intimidators, often taking on the role of prosecutor, judge and executioner, thereby undermining any form of democratic dialogue.

Print media published open threats to individuals or groups, who were placed on a hit list and newspapers contained one-sided texts, flavored with animosity, insults and open hatred. Apart from editors and journalists (often consciously) violating the code that they themselves had adopted, many also ignored the existence and decisions of the Press Council as a self-regulatory body in charge of monitoring and mediation. The fact that journalists were still fragmented into six associations further complicated the situation, despite attempts to unite them within a single association. Such an approach to journalism made print media unable to resist the new post-electoral offensive of the governmental bodies, political or financial power centers and individuals aimed at tampering with editorial policies.

As a result of this, citizens remained insufficiently and inadequately informed. At the same time, public confidence in the written word was weakened, all the more so since the institutions of the system did not even react to topical issues that were researched correctly and clearly pointed to cases of corruption and other forms of crime.

Furthermore, even eight years after the signing of the Dayton Peace Accords, with almost 190 million KM (€85 million) of international assistance invested in the electronic media, BiH still did not have a regulated public broadcasting system. There were ideas to have three legally separate broadcasters complementing each other, of which one would provide services throughout the territory of the state, and the other two in the entities in which they were operating. One joint legal body would be responsible for the use of assets, technical resources, advertisements, mutual representation, rights related to foreign programs, and for harmonizing the system, policies and procedures between the three broadcasters, and this body would be responsible to the management board of the system. However, no clear viable plans were agreed upon and each new team of experts commenced with a new model. Criticism was also levied at the international community for being more engaged in disciplining electronic media than in realizing any genuine desire to assist in a serious and extremely complex process. The High Representative declared this to be an “urgent procedure” to be completed

by the end of 2003. However, due to the desired speed, shortcomings were built into the system, including a decision that future management boards of the public broadcasters should be appointed by the political parties in power, thereby contravening democratic standards and enabling unacceptable political interference with editorial policies. Management boards will also appoint the directors and editors-in-chief of radios and TVs, and these will in turn appoint journalists in their confidence.

Both entity parliaments had already in the course of 2003 palpably demonstrated their attitude toward independence and freedom of media, the Federation Parliament by an order (the Amendment to the Law on the RTV of the Federation, i.e. BiH public radio and television) requiring the mandatory broadcast of all sessions of both Houses in full, and the RS parliament by requesting resignations of the top people of the entity TV. Through such decisions the parliamentarians impeded the promotion and implementation of democratic standards and principles of the ECHR.

Whilst radio and TV stations, as a result of continuous and rigorous supervision of the Communication Regulatory Agency (CRA), had eliminated the language of hatred from their programs, it was felt that any effect was lost as the resulting programs were in the main dull and unrelated to the citizens. In a positive step towards transforming the CRA into a fully domestic institution, for the first time a BiH national was appointed as director general.

### **Rule of Law and the Judicial System**

All reports into the state of human rights in BiH following signature of the Dayton Agreement have pointed to the inefficiency of the judicial system, including, *inter alia*, slowness of courts and corruption. Before Dayton, the judiciary had been separated into two entities, and each entity had its own Supreme Court. Under the agreement, in addition to regular courts established in the entities, two courts were established outside the judicial system at the level of the state: the Human Rights Chamber and the Constitutional Court of BiH. The latter was set up and began work in early 2003 to try war crimes cases approved by the International Criminal Tribunal for the former Yugoslavia (ICTY) and cases dealing with organized crime and terrorism. In 1998, the High Representative initiated a comprehensive reform of the judiciary, encompassing the courts, election of judges and the legislative. These reforms were conducted simultaneously and at the end of 2003 were in their final stages.

The area of reform of the court system and jurisdictions involved reducing the number of courts and judges in the country. Analyses showed that in comparison to the rest of Europe there were too many courts and judges per inhabitant. Legal regulations were thus adopted abolishing some of the municipal courts and providing for a smaller number of judges overall in the country. At the same time, the prosecution system was restructured in a similar manner. Whilst changes to the Criminal and Civil Procedure Codes also facilitated the work by transferring the burden of proof to the parties in the proceedings, it was argued that the reduction in the number of judges would inevitably create a backlog of cases that had not been disposed of before the passage of the new laws.

There was also concern that the reform did not foresee the need for a large number of “accessory associates to judges.” Courts only had a small number of professional associate staff, 2-3 per court at most, and thus with a reduced number of judges could not be expected to attain the level of efficiency required. It was felt that to ensure efficiency, the process of reduction in number of courts and judges should have been spread over a longer time period, until the backlog had been resolved.

Processing of administrative cases before a court of cantonal or district jurisdiction took one to three years, while the Supreme Court of the Federation of Bosnia and Herzegovina had a three to four year backlog. Administrative disputes included important cases relating to the status rights of the citizens, as well as all other cases in which administrative bodies passed final and binding decisions.

The second aspect of the reform was the re-election of judges and prosecutors. The High Representative established High Judicial and Prosecutorial Councils, composed of domestic judges and prosecutors and foreign experts, with a view to appointing these new judges and prosecutors, and vacancies were announced for all judicial bodies. Simultaneously citizens were given the possibility to lodge complaints against individual judges and prosecutors to the High Judicial and Prosecutorial Councils, which then examined whether these were founded or not. In the selection process, all candidates were invited by the councils for interview, and the decision whether they would be appointed depended on the references quoted in their applications, results of the interviews and the findings of the investigations into any complaints lodged by the citizens. The whole process was due to be completed by 1 April 2004.

The results of the selection of judges and prosecutors appointed by the end of November 2003 indicated that the councils had in most cases used appropriately critical criteria in the recruitment process, and had respected national proportionality in all courts and prosecutor's offices. In addition, whenever possible, preference was given to candidates who either did not already work in the judicial system or had left it in 1992 or during the war.

The process meant that those selected were for the first time being appointed for life. However, limitations to this life-long appointment were provided for by a mechanism which would continually oversee the work of each judge or prosecutor. This will be established by the High Judicial and Prosecutorial Council once the appointment process is completed. Whilst the mechanism will make it possible for complaints to be lodged against the work of individual judges and prosecutors and for disciplinary procedures to be conducted, there was concern that the independence of the judiciary might be jeopardized by interference of the international community in the decision-making. During the reform process, several cases of obvious dependence on decisions and opinions of the international community by the judiciary were evident.

- In 2002, police officers were reissued with certificates following a verification process undertaken by the UN Mission in BiH. Some 500 however did not receive certificates and consequently lost their right to be employed in similar work in the future. The minister of interior was instructed to terminate their employment. The majority filed requests for review of the decision, stating that it contravened the ECHR, but were merely issued with a standard rejection letter. This was taken to court but during the proceedings, the Office of the High Representative sent a letter to all the ministries that had issued decisions on dismissal, to the effect that they could not reverse their decisions, since these were final and binding decisions of the UN Mission which could not be reversed even by courts. This letter was sent to the Ministry of Justice of BiH, and then forwarded via the Ministries of the Interior to the courts involved in adjudication of the actions of the decertified policemen.

Reform of legislation was also almost completed with the passage of new procedural laws—the Criminal Procedure Code, the Civil Procedure Code, and new, textually almost identical, Criminal Codes for Bosnia and Herzegovina and both entities. The Procedural Codes were passed in order to improve the efficiency of the judiciary, while the new Criminal Code was passed in order to modernize the old one and adapt it to the present conditions and to existing codes in democratic countries abroad. Some concern was voiced over the real improvements the changes in legislation would actually make given the manner in which the texts were drafted. The laws were drafted by commissions composed of domestic judges and international experts, but under the dominant influence of international experts. Some of the laws were imposed by the High Representative, later to be adopted by the parliaments. Another part of the laws was passed by the parliaments in summary procedures, under strict instructions from the High Representative. Moreover there was no public debate on the draft laws, nor were suggestions from associations of judges, prosecutors or lawyers requested.

In addition, the laws incorporated various schools of jurisprudence, and various institutes, so that court proceedings would be conducted in a manner unknown anywhere else in the world. The

passage of the laws and their enforcement took place almost on the same day, with little or no previous training of judges and prosecutors, although the trial proceedings were almost completely changed in comparison with the previous trial proceedings. The texts were in places vaguely worded and contained gaps. Uncertainty in both texts and the manner of proceedings can lead to serious violations of the rights of individual citizens.

Overall there was a feeling that although reform was necessary, domestic experts and civil society were not consulted enough and the process was pushed too fast.

### **Right to Privacy, Security Services**

Throughout the year, BiH was hit by various scandals involving the secret service. There were at least three domestic secret services which served the parties in power and were not subject to any form of external regulation. Although the Constitutions of BiH and both entities guaranteed privacy, the transcripts of tapped conversations were occasionally made public, mainly through the print media. In the large majority of cases legal procedures, according to which wire-tapping and bugging may be conducted only under strictly defined circumstances and following an order from a competent court, were not complied with. However, since the secret services were in the hands of political parties, they were used in attempts to disqualify political opponents.

- Disclosure of tapped conversations with Zlatko Lagumdžija, leader of the Social Democratic Party (SDP), the strongest opposition party, attracted the most public attention. On the basis of biased interpretation of the results, the ruling SDA Party accused Lagumdžija, his associates and the SDP of attempting a *coup d'état*. The Prosecutor's Office did not find any grounds for launching a criminal investigation, and the House of Representatives of the Parliamentary Assembly of BiH stated that there were no elements deriving from the results of wire-tapping that would indicate that a *coup d'état* was being prepared. The public viewed this as an attempt to discredit the opposition and there was thus increasing wariness as regards the independence of the services.
- Another case of bugging of foreign diplomats, residing in the same apartment building, also leaked to the public. Bugging devices were found, but the secret services tried to justify this by saying that they were bugging one of the tenants, a BiH national, who was undergoing a court procedure.
- The Board of the Islamic Religious Community from Stolac claimed that their correspondence was being regularly read before being delivered to them in opened envelopes. It was not known for certain in this case who the perpetrator was but there were indications that such acts were also widespread.
- In the height of the fight against terrorism, there were several cases where apartments were searched by SFOR soldiers, without a mandate nor warrant. Citizens who experienced this violation of human rights did not have any legal remedy to resort to, nor was there any domestic or international judicial body that had the jurisdiction to review the complaints concerning the behavior of international peace forces.

### **National Minorities, Discrimination and Intolerance**

The Law on Protection of Rights of Members of National Minorities was adopted in 2003 and was in line with international conventions. It provided for criminal prosecution of those who jeopardize the survival of minority group members or instigate ethnic hatred and discrimination. However, the law was still not applied in practice both due to the lack of political will and to the absence of bylaws that would regulate its implementation. The law lists 17 national minorities living in BiH. However, since there was no valid statistical data (the last census was conducted in 1991), it

was realistic to assume that the number of minorities was much greater—NGOs estimated a figure of 21 national minorities.

BiH has signed and ratified all important international instruments which guarantee the rights to members of national minorities, as well as those that prohibit racial, religious and other forms of discrimination, *inter alia*, the Framework Convention on Protection of National Minorities and the Convention on Elimination of all Forms of Racial Discrimination. Article 2 of the Constitution of BiH also contained provisions against discrimination that were in line with these international instruments.

In 2002, the Constitutions of the Federation of BiH and RS underwent changes to the effect that the present entity constitutions now provided for equality of all three constituent peoples—Serbs, Bosniaks and Croats—throughout the territory of the country. However, both the BiH Constitution and the entity constitutions only referred expressly to the members of these constituent peoples while the term “other” referred to members of national minorities and those who did not identify themselves as members of any of the constituent peoples.

There were no representatives from the ranks of national minorities at any levels of the legislature. On 26 September, the Helsinki Committee in BiH launched an initiative to change the Election Law which would guarantee members of national minorities the right to elect their representatives in the parliaments, but this proposal had at the time of writing not been accepted.

Relations between ethnic groups in BiH were characterized by political representatives of the numerically bigger ethnic group in a given territory aspiring to achieve supremacy without taking into account the interests of numerically smaller groups. At the same time, in those parts of the country where members of the same ethnic group constituted the numerical minority, their political representatives stood for compliance with the highest standards of human rights protection.

Those acts that most frequently destabilized relations between the ethnic groups included the planting of explosive devices in front of religious facilities, desecration of graveyards, verbal injuries and threats.

The consequences of discrimination on ethnic grounds were most obvious in the field of employment. In most municipalities, the majority peoples constituted 99% of those employed in public institutions. This percentage was lowest in Sarajevo with 95%. The root cause of this lay in the character of the ruling nationalistic parties and the political climate they created. HDZ, SDA and SDS, in particular, advocated solely the interests of their respective peoples and were unwilling to condemn perpetrators of human rights violations if the victims were members of the other two peoples. There was little done to create a culture of tolerance amongst the various ethnic groups and religious communities. Rather the parties secured their influence and power by maintaining a feeling of fear of and threat from those who were different. Such nationalistic policies incited more or less serious outbursts, excesses, even acts of terrorism. This did not mean that the nationalistic parties directly instigated such acts, but it is certain that their behavior encouraged both extreme nationalists and criminals who were behind most of the attacks on members of minority peoples. Belief that such acts went unpunished, confirmed in practice, encouraged extremists to incite fear and make people give up the idea of returning or make them leave environments in which, as members of a certain group, they felt unsafe and threatened.

Religious communities also shouldered part of the responsibility for the present situation. Inter-religious dialogue, which in itself was very limited, took part only between the leaders of religious communities, excluding parish priests. It was not uncommon for priests to directly serve nationalistic political parties and speak the language of politicians and thereby form a link between nationalistic political parties and practicing believers. There was a strong belief that nationalistic parties owed their electoral victory to the clergy and their role in the electoral campaigns.

In addition, some media outlets had a clear negative impact, using sensationalism to contribute to the dissemination of intolerance and hatred and thereby contributing to the climate of fear and insecurity.

### *Roma Minority*

The largest national minority was the Roma: according to estimates about 80,000 to 85,000. They were also worst off of all minority groups, both in terms of their economic situation and access to education, use of language and culture. The Romani language was not used in communication with law enforcement, administration or the judiciary and was not taught in schools. There were no print media in Romani and only two radio stations occasionally broadcast programs in the language.

Employment of Roma and their economic situation were particularly dire. In each of the two cantons, Sarajevo and Tuzla, there were only two police officers of Romani nationality; in Visoko one Romani teacher; in the chemical factory (Tuzla), two chemical engineers. Moreover, there were municipalities where not a single Rom was employed, even though before the war the employment rate of Roma was not insignificant.

This was compounded by limited health care as only employed persons and members of their families, and pensioners, were entitled to free medical treatment.

As concerns access to education, Roma girls on average left school in the fifth grade, even though eight years is compulsory.

Significant numbers of Roma had failed to repossess apartments and houses in which they lived before the war, while most remained in poor and cramped conditions without sanitation, water supply and electricity.

### **Returnees and IDPs, Property Rights**

A key success in 2003 was in the area of implementation of property laws. After a series of years of blatant obstruction and discrimination, in 2003 the pace of return of property quickened. As of 30 October, about 90% of claims for repossession of property (224,000 claims in total) in the territory of BiH were positively resolved. In 54 municipalities the process of return of property was fully completed.

The aforementioned data was, however, not reflected in the number of people returning to their pre-war homes in 2003. Between October 2001 to October 2002, 85,189 persons returned, while only 55,687 persons returned in 2003 (of which 28,470 to the Federation of BiH, 24,928 to the RS and 2,289 to the Brcko District). In the municipalities of Foca/Srbinje and Visegrad, about 95% of property claims were positively resolved, but only about 10% of Bosniak refugees returned to these places. In Trebinje, 98% of claims were resolved, with about 400 citizens of Bosniak ethnicity returning there.

Cumulatively, from the time of the signing of the Dayton Agreement to 30 October 2003, 963,655 refugees and displaced persons had returned to their homes, of which 419,711 were so-called minority returns. 703,790 refugees and displaced persons returned to the Federation of BiH, 239,191 to the RS, and 20,674 to Brcko District.

Throughout the year, the Helsinki Committee cautioned against the often uncritical presentation of positive data regarding the implementation of property laws. This served to push the issue of real return to the background. The international community was the most vocal in accentuating any positive developments, desirous of creating the impression that one of the most important processes for the survival of multiethnic BiH was near completion. This also fell in line with the ruling parties' nationalistic concept of ethnically clean territories

- The municipality of Modrica was both an example and result of these war and post-war policies. Data from July 2003 indicated that out of 9,660 pre-war Croat inhabitants only 150 now lived in this municipality. Under the guise of “humane resettlement,” designed and conducted by the HDZ, Croats from this part of Posavina were resettled, mainly to the Republic of Croatia. Whilst the previous post-war period was seen as a time when local authorities did everything in their power to obstruct the process of implementation of property laws, by September 2003 less than 60 out of 4,500 claims for repossession of property remained unresolved. The “humanely resettled” have not, however, returned, but had instead either sold or had the intention to sell their property.

The selling or exchange of houses and apartments was a general phenomenon throughout the country. Although there were no records, estimates indicated that in urban settlements more than 75 % of repossessed property was sold. Returnees returned to their pre-war residence merely to claim possession of apartment, thereafter to buy, sell, exchange or simply lock it up and then return to their present place of residence.

Estimates indicated that as of late 2003 there were about 640,000 BiH nationals throughout the world, while there were 670,000 persons internally displaced in the territory of BiH (30% of the pre-war population). The majority of refugees had regulated their status in the countries of asylum, while the BiH authorities did nothing to attract them back to their homes. As many as 110,000 BiH nationals had left the country since the Dayton Agreement, 90% of them young people. In Oslo alone there were 1,700 university students from BiH and few contemplated returning. The average age of returnees extended beyond 60. In addition, official figures from the Ministry of Civil Affairs, Department for Citizenship and Personal Documents showed that 17,458 persons, principally young people, had been removed from the registry of BiH citizens at their own request.

Domestic authorities continued to do little to support sustainable return in terms of providing employment, health care, education and a safe environment. A reform of the education system did not take place and despite numerous agreements to provide for education in their mother language, many did not have this access. In some places, even four years after return the returnees had not been provided with electricity or water supplies, roads were ruined, and there were no schools or surgeries. Moreover, returnees were forced to pay high fees to get connections to electricity and water supply networks, and telephone lines.

In comparison with previous years, when the main obstacle to return appeared to be obstructions to the implementation of property laws and threats to the security of both persons and property, in 2003 the Helsinki Committee found that problems had moved to the economic and social sphere, although discriminatory attitudes on grounds of ethnic origin were still present. Safety of returnees and their property had greatly improved.

In 2003, more intensive reconstruction of religious facilities commenced. Local authorities displayed more understanding towards this issue and facilitated access to the necessary paperwork. In addition, in some cases authorities even awarded financial support for renewal of religious services and reconstruction of destroyed or damaged facilities.

As regards employment, discriminatory attitudes towards returnees persisted. In all cities without exception so-called minority returnees were denied the right to work. Amendments to the Law on Employment in Public Administration, Establishment and Enterprises remained unimplemented

- In Foca/Srbinje, by 1 November, only four Bosniaks got jobs in the public sector: president of the municipal assembly and three police officers. According to the Ministry of Justice of RS, of 20 judges employed at the District Court in Banja Luka two were of Croat and one of Bosniak ethnic origin. In the District Court in Srpsko Sarajevo, out of eight judges seven were of Serb and one of Croat ethnic origin. In the District Court in Doboj, out of 38 employees,



one was of Croat and one of Bosniak ethnic origin. Ethnic representation, provided for under the Constituent Peoples Decision, had also not been implemented- Trebinje, Bijeljina (district courts), Foca, Zvornik, Vlasenica, Lopare, Rogatica and Srebrenica (municipal courts)—in all these courts all employees were Serbs.

- Drvar, Grahovo and Glamoc were among those municipalities to which a relatively large number of Serbs returned (in total 15,000—Drvar 7,500, Glamoc 4,100, Grahovo 3,500, i.e. 50% of the pre-war population of Serb ethnic origin). All of them without exception lived in almost unbearable conditions. In Grahovo 229 inhabitants or 6% of those employed (3,500) before the war had jobs. Ninety-eight percent of the industrial infrastructure was destroyed in Grahovo during the war, and it was the municipality with the lowest rate of employment in the country. In Drvar, fewer than 250 returnees had jobs, mostly working illegally.

In many municipalities, the authorities hid behind the former Law on Building Land, and without informing the pre-war users or permitting them to participate in the procedures, took the land away from members of the minority peoples, and allotted it to “persons with merits.” Lists of those who received the land for free showed that many were activists or followers of the ruling parties SDA, HDZ and SDS in power in the respective areas.

- A decision made by the former authorities meant that Serb returnees to Sanski Most were deprived of their lands, as Bosniaks had built housing and business facilities on them in the meantime. In this municipality alone, there were 125 cases of usurpation of private land. Such actions not only violated the fundamental human rights of the pre-war owners, but also effectively sanctioned the continuation of ethnic cleansing by other means.

A large number of houses and apartments that had been returned to their owners were either destroyed or devastated, so that the refugees and displaced persons, although expressing their desire to return, did not have the possibility to do so. The desire to return far surpassed the financial capacities for reconstruction compounded by a decreasing number of donors.

- In Central Bosnia (Bugojno, Busovaca, Donji and Gornji Vakuf/Uskoplje, Dobretic, Jajce, Fojnica, Novi Travnik, Kresevo, Kiseljak, Travnik and Vitez), 36,172 housing facilities were destroyed during the war. By September 2003, about 17,000 of them had been reconstructed while 19,000 were still waiting to be reconstructed. In the Tuzla canton in all 13 municipalities of the canton only 400 houses had been reconstructed.

The coming into force of the Law on Amendments to the Law on Refugees and Displaced Persons marked the establishment of a single Fund for Return. The fund was due to start operating at the beginning of 2004, and was to be financed by funds coming from all levels of government in BiH, as well as by loans from the Development Bank of the Council of Europe.

However, during a fact-finding mission, representatives of the Helsinki Committee were once more persuaded that the process of return is significantly impeded by the fact that not all indicted war criminals were brought to justice, and that some of them are still at large in BiH cities.

A further problem concerns the fact that the National Assembly of the RS had not yet harmonized its Law on Flag, Coat-of-Arms and Anthem, Seals, Territorial Organisation and Local Self-governance with the constitutional amendments on equality of peoples. The returnees continuously mentioned the fact that the present flag, coat-of-arms and anthem clearly represented mononational symbols of Serb people, presenting the RS as an entity of exclusively Serb people. Attempts to change certain symbols in the Federation of BiH had also failed to yield results.

## Women's Rights

Despite the fact that BiH had incorporated the Convention on Elimination of All Forms of Discrimination Against Women into the Constitution of Bosnia and Herzegovina, women's rights had still not gained full recognition in the country.

In May 2003, the Law of Bosnia and Herzegovina on Gender Equality was adopted, which marked the beginning of developments to set out legal regulations governing women's rights in the country. This law promoted, regulated and protected gender equality, and guaranteed equal opportunities to all citizens, both in public and private spheres. It outlawed direct and indirect discrimination on the grounds of gender, particularly in the areas of education, economy, employment and work, social and health care, sports, culture, public life and media, irrespective of marital or family status. Furthermore, the law regulated the obligations on authorities, i.e. the Ministry for Human Rights of BiH was given the task to form an agency for gender equality at the state level within three months. The law also prescribed the obligation to have state and entity laws harmonized with provisions of the law within six months. At the time of writing, however, no state agency for gender equality has been formed, and harmonization of other laws and secondary legislation is still at the incipient stage.

Some mechanisms for securing women's rights had, however, been installed: all levels of legislature had commissions for gender equality, while in the municipalities commissions for human rights had been formed, with the mandate to monitor the issues of protection and fulfillment of women's rights. The ombudsmen of BiH and of the entities had also established bodies for monitoring women's rights.

In 2003, activities for preparation of the first national report under the UN Convention were initiated, and it was due to be sent to the UN in early 2004. During the year, the Ministry for Human Rights also began activities for the development and adoption of an action plan on women's rights, based on the commitments deriving from the Beijing Declaration.

Whilst several mechanisms existed, social practices did not produce satisfactory results in the protection and promotion of these rights and the delay in implementing the Law on Gender Equality further complicated matters. Women continued to be marginalized in decision-making, privatization, employment, and suffered violence and discrimination in the family and in society in general.

Although women constituted more than half of the population (51%), they were not even close to being proportionally represented in the labor market (employment rate of women was about 44%), in political life (about 14,2%), or within political parties (about 18.5%). A considerably higher percentage (62%) of women were employed in education and the health and social care sectors.

The entity labor laws provided for equal right to employment for men and women, but the situation was completely different in practice. Employers rarely decided to employ women as it increased operation costs (use of sick leave to provide child care, use of maternity leave). In addition, there was also discrimination against women on the grounds of age: the majority of vacancy announcements appearing in the daily press asked for women up to 35 years of age, normally with a remark that they should be "attractive."

Moreover, when looking for a job, or in the very work place, women were exposed to various forms of sexual harassment. A survey conducted by the Gender Centres of the Federation of BiH and RS within the Gender Equality and Equity Project in BiH,<sup>2</sup> based on a sample of 600 interviewees, indicated that sexual harassment or abuse existed in all environments. The response given also displayed a lack of recognition of various forms of sexual harassment: 17.6% of men and 7.9% of women from the sample did not see an invitation to intimate relations as sexual harassment or abuse.

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<sup>2</sup> Report-Analysis of the survey "Sexual Harrassment and Maltreatment," March-July 2003.

In addition, 87.6 % of women felt that they were not exposed to any form of sexual harassment. If sexually harassed, 33.3% of women stated that it was by their colleges, and 37.3% stated that it was by their superiors.

Limited access to health care was also tied to the unemployment. There was no uniform health care policy or health care organization for the protection and promotion of public health. This area, like that of education and social welfare, fell within the competences of the entities, and in the federation within the competence of the cantons as well. Since unemployment levels were high, more than 50% of the female population was without health insurance.

The right to abortion was provided for under legal regulations. Whilst procedures were simple, a co-payment fee for abortion and the requirement to pass through the commission procedures meant that an increasing number of women opted to visit private doctors. The general economic situation was increasingly a determining factor in the decision to terminate pregnancies (28 out of 100 pregnant women opted for termination of pregnancy), particularly in urban environments. Within the educational curricula, there was no sexual education nor family planning, which had an impact on a demographic development of the country.

Domestic violence continued to be a problem with this form of violence still taboo and rarely spoken about in public. Estimates suggested that one in four families experienced such violence and those most frequently victimized were women (mostly aged 25 to 35), children and the elderly. Domestic laws (Criminal Code of BiH, Criminal Codes of Federation of BiH and of RS) prohibited the use of violence, bodily injuries, rape or other forms of sexual molestation of spouses or other family members. A provision of the Criminal Code of BiH provided that lawsuits covering such acts were filed *ex officio*. Within the project fact-finding mission in women's prisons in BiH and by conducting interviews with female inmates, the Helsinki Committee in BiH found that 80% of the convicts had committed murder of their spouses or other family members because they had suffered physical and mental abuse long-term.

Another salient problem was human trafficking, which was on the increase. Whilst BiH had previously only been a country of transit and destination, all available indicators showed that it had also become a country of origin. A National Action Plan for Combating Human Trafficking was adopted, based on the UN Convention against Discrimination Against Women, and the Convention on the Rights of the Child. A co-ordination committee for tracking, preventing, suppressing and sanctioning the trafficking in human beings, especially in women and children was also established. A network of NGOs, "RING," was formed, to monitor the implementation of the Action Plan, which opened a number of shelters for women victims of trafficking and domestic violence (*inter alia* in Modrica, Mostar, and Sarajevo). Special care for women victims of trafficking was provided by the International Organisation for Migration (IOM), which looked after their health and mental state, and facilitated return to their country of origin. Along with IOM, United Nations Office of the High Commissioner for Human Rights (UNOHCHR), the United Nations Children's Fund (UNICEF), OSCE, Oxfam and other agencies also took part in addressing the problem. There were no valid statistics on the number of women victims of trafficking, but according to a UNOHCHR report of June 2003, seventy criminal charges were brought against 90 persons in 2002<sup>3</sup>. Out of that number, 76 foreign women received sentences of 9-30 days imprisonment and nine domestic nationals were sentenced to 253 days imprisonment in total. Domestic nationals were penalized for putting premises at the disposal of traffickers or for mediation in prostitution or human trafficking for the purpose of prostitution. The Criminal Code contained criminal offences for human trafficking, but shortcomings in the Law on Immigration and Asylum were the main obstacles in suppressing and preventing human trafficking. Links between law enforcement officials and criminal circles, as well as corruption, also created fertile ground for the increase in human trafficking.

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<sup>3</sup> UNOHCHR, *Trafficking in human beings in Bosnia and Herzegovina*, June 2003.

As regards female prisoners, there were at the time of writing 65 sentenced women serving their sentences in special facilities for women. No cases of violence against them on the part of the staff of these establishments were reported. Their treatment was generally in line with international standards.

Concerning the issue of women refugees, it was estimated that 50% were expelled from their homes. There was no government program for these women and only NGOs, especially women's organizations, provided help to refugees and displaced persons through special programs in the areas of human rights, computer training programs or humanitarian social programs. While the State Ministry for Human Rights and Refugees did develop a strategic plan for rehabilitation of housing stock and sustainable return for the refugee population in general, this did not focus on women in particular.

## **Rights of the Child**

BiH ratified the Convention on the Rights of the Child in December 1993. The Dayton Agreement and the Constitution of BiH reaffirmed the importance of the convention and the convention was incorporated in it. The Constitutions of BiH and its entities also prohibited any form of discrimination on the grounds of race, color, gender, language, religion, political or other opinion, national or social origin and this was protected by relevant criminal codes. While these positive developments existed, the rights of children were all but invisible in the social life of the country. In addition there were no reliable available statistical data on population numbers. Estimates pointed out that one third of the population were children from 0 to 18 years of age.

Legal regulations which relate to the protection and the rights of children were transferred to the entities and these rights were dealt with by a large number of legal projects, depending on the right in question. The only law that had been adopted by the end of 2003 at the national level was the Framework Law on Primary and Secondary Education of BiH. This law regulated all matters pertaining to the rights of children to education, promotion of respect for human rights, freedom of movement, rights and duties of parents and schools, as well as the standards that must be applied in the education process. Other matters relating to the rights of the child, such as access to health care, social protection, and health insurance were passed at the levels of entities and cantons.<sup>4</sup> At the national level, BiH had adopted an Action Plan for Children of Bosnia and Herzegovina for the 2002-2010 period based on the UN Convention and formed a Council for Children, the mandate of which was to monitor and implement the Action Plan.

There were several cases of violations of the rights of the child that could be seen to amount to discrimination of certain groups of children on the grounds of their ethnic origin, religion, and even of political opinions of their parents. The most frequent cases of violation related to lack of access to school facilities, and the issue of religious instruction being imposed on children from mixed marriages. Whilst the Framework Law on Primary and Secondary Education of BiH was being implemented in practice there was much controversy amongst parents, teachers and religious communities, who deemed that the way in which this was implemented threatened national interests, such as the right to language, culture. No institution or NGO conducted a survey amongst the children, or asked them about their opinions as to whether they would like to be in the same classroom with their schoolmates from other national groups.

Institutions existed to accommodate children with development difficulties, but due to the economic situation these institutions operated under great strain and managed to survive only with utmost effort.

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<sup>4</sup> Family Law, the Law on Education, the Law on Basis of Social Protection, Protection of Civil Victims of War and Protection of Families with Children, the Law on Health Insurance, the Law on Ombudsmen of the Federation of BiH and of Republika Srpska.

Domestic violence, pedophilia and other forms of sexual abuse of children were also prominent.

All laws on health care guaranteed to all children from birth to seven years of age the right to health care, but most frequently such health care was not provided because the parents of the children did not have health insurance. Some 40-50% of children in Bosnia and Herzegovina did not have health insurance.

The status of children who belonged to national minorities in terms of classes held in their mother tongue, proportional representation of their culture in school curricula, and other educational contents that would recognize specific characteristics of all peoples, cultures and religions present in these territories was a problem that had not yet been resolved, despite adoption of the Law on National Minorities.