

**REFUGEE WOMEN AND
DOMESTIC VIOLENCE:
COUNTRY STUDIES**

Bosnia and Herzegovina

A report by

Refugee Women's Resource Project

Asylum Aid

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Please note: we have highlighted in bold sections of the text which we consider may be particularly relevant for ease of reference.

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Refugee Women's Resource Project
Asylum Aid, 28 Commercial Street, London E1 6LS
Tel: 020 7377 5123 Fax: 020 7247 7789
Email: rwrp@asylumaid.org.uk

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BOSNIA AND HERZEGOVINA

1. Introduction

1.1 Political background

The State of Bosnia and Herzegovina has existed as an independent state since 1995, consisting of **two entities**: the **Federation of Bosnia and Herzegovina**, and the **Republika Srpska**

“The 1995 General Framework Agreement for Peace in Bosnia and Herzegovina (the Dayton Accords) ended the 1991-95 war and created the independent state of Bosnia and Herzegovina, previously one of the constituent republics of Yugoslavia. The agreement also created two multiethnic constituent entities within the state: The Federation of Bosnia and Herzegovina (the Federation) and the Republika Srpska (RS). The Federation, which has a postwar Bosnian Muslim (Bosniak) and Croat majority, occupies 51 percent of the territory; the RS, which has a postwar Bosnian Serb majority, occupies 49 percent. The Constitution (Annex 4 of the Dayton Accords) establishes a statewide government with a bicameral legislature, a three-member presidency (consisting of a Bosniak, a Serb, and a Croat), a council of ministers, a constitutional court, and a central bank. The Accords also provided for the Office of the High Representative (OHR) to oversee implementation of civilian provisions. The High Representative also has the power to impose legislation and remove officials who obstruct the implementation of the Dayton Accords. The entities maintain separate armies, but under the Constitution, these are under the ultimate control of the presidency of Bosnia and Herzegovina. Municipal elections held in April and general elections conducted in November were generally free of violence, although there were some voting irregularities in both elections. Multiethnic parties committed to building on the foundation established at Dayton, such as the Social Democratic Party (SDP), made inroads against the support for the nationalist, ethnically based parties in the November elections, resulting in a state House of Representatives almost evenly divided between the two groups. In the RS, the ethnically based Serb Democratic Party (SDS) maintained its dominant position, while the nationalist Croatian Democratic Union of Bosnia and Herzegovina (HDZ) remained strong in Croat-majority municipalities. The Party of Democratic Action (SDA) remained the largest nationalist Bosniak party. Although formally independent, the judiciary remains subject to influence by political parties and the executive branch and is unable to prosecute complex or even simple crimes fairly and effectively.

“One of the two entities that make up Bosnia and Herzegovina, the Federation of Bosnia and Herzegovina, was established in March

1994 and transformed the government structure of the Bosnian territories under Bosniak and Croatian control. The President of the Federation appoints the Prime Minister subject to parliamentary approval. The Federation Parliament is bicameral. Federation structures continue to be implemented only gradually. Major steps were the creation of canton governments, the unification of Sarajevo under Federation control in spring 1996, and the 1996, 1998, and 2000 elections of the Federation Parliament. However, serious ethnic and political rivalries continue to divide Croats and Bosniaks. Parallel Bosniak and Croat government structures continued to exist in practice.

***“The Republika Srpska of Bosnia and Herzegovina is the other entity that makes up Bosnia and Herzegovina.** In 1997-98, most of the RS political and administrative agencies moved from Pale, a stronghold of former Bosnian Serb leader and indicted war criminal Radovan Karadzic, to Banja Luka. The President and Vice President were elected in November for 4-year terms. The RS National Assembly is unicameral and elected on a proportional basis. The November general elections in the Republika Srpska were relatively free and fair, and resulted in the nationalist parties, led by the SDS, increasing their strength at the expense of the pro-Dayton moderates.*

*“Demilitarization of the city of **Brcko, which was made a "self-governing neutral district" in March,** was completed in February. A districtwide multiethnic police force also was established. The internationally appointed supervisor is empowered to address such issues as taxation, law enforcement, district management, and composition of the district assembly”.¹*

The results of the November 2000 general election saw nationalist parties maintain a significant amount of political power, and it has been argued that the political stalemate that has followed presents a barrier to the advancement of human rights in the country.² Section 1.2 provides more detail.

1.1.1 Social and economic context

Following the conflict in the countries of the former Yugoslavia, there remain severe and extensive economic and social problems. Bosnia and Herzegovina is no exception. The most recent evidence from the Human Rights Co-ordination Centre (HRCC) summarises the situation as follows:

¹ U.S. Department of State (2001) *Country Reports on Human Rights Practices: Bosnia and Herzegovina*, Washington, Bureau of Democracy, Human Rights, and Labor

² UN Economic and Social Council Commission on Human Rights (January 2001), *Situation of human rights in the former Yugoslavia: Report of Mr. Jiri Dienstbier, Special Rapporteur of the Commission on Human Rights on the situation of human rights in Bosnia and Herzegovina, the Republic of Croatia and the Federal Republic of Yugoslavia*, E/CN.4/2001/47, Accessed via <http://www.unhchr.ch/html/menu2/7/a/myug.htm>

*“Economic and social conditions remain poor for much of the population. Unemployment is extremely high (40-50%) and many of those most capable of contributing to the future development of the economy continue to migrate, especially the youngest and brightest, which exacerbates the problems of an ageing population. Overall, the economy in BiH remains fragile, with the main difficulties during 2000 being increased external debt service requirements and the impact upon the budgets of both Entities. In order to avoid economic and social crisis, economic reform in BiH is a priority”.*³

1.1.2 Returnees

The conflict in the former Yugoslavia also resulted in the displacement of hundreds of thousands of people.⁴ Many European countries, including the United Kingdom, agreed to offer Bosnian refugees temporary protection on the condition that they return to Bosnia and Herzegovina once areas were designated as ‘safe’.⁵ The UNHCR was given primary responsibility for ensuring the safe return of displaced people, and in 2000 estimated that approximately 350,000 refugees had returned to Bosnia, although they stress that *“because of ongoing political tension between the Muslim, Serb and Croat communities, the majority were not able to go to their old homes”*.⁶

The situation regarding the sheer number of returnees, continuing ethnic tensions, disputed claims to land and property, and systems for dealing with these remains acute. There are major shortages of accommodation. The Human Rights Co-ordination Centre reported in March this year:

“Approximately 67,000 minority returns were registered in 2000 compared with the 41,000 in 1999. The upward trend continues this year: In January 2001, there were 4,026 minority returns and in February there were 4,697. Within these figures, Property Law implementation statistics have also greatly improved with 21% of property claims having been resolved. However, the number of security incidents involving minority returns is also high.

³ Human Rights Co-ordination Centre (HRCC) Quarterly Report (2001), *HRCC Human Rights Report: 01 September 2000 –31 March 2001*,p.31; available at http://www.oscebih.org/oscebih_eng.asp There is also substantial information available via the United Nations High Commission for Refugees (UNHCR) website: www.unhcr.ch/world/euro/seo/bosnia.htm

⁴ UNHCR (2000) estimated that approximately 700,000 Bosnians became refugees in Western Europe; see <http://www.unhcr.org/>

⁵ UNHCR (2000) *The State of the World’s Refugees: Fifty Years of Humanitarian Action*, New York, Oxford University Press

⁶ UNHCR (2000) <http://www.unhcr.org/>

...“During the reporting period, the rate of implementation of property legislation increased by one percent each month, on average. At this rate of implementation it would take approximately six-and-a-half years to solve all property claims. To date, 13% of all cases in the Republika Srpska (RS) have been solved, and 29% in the Federation, giving a countrywide average of approximately 21%. BiH-wide, the implementation of applications for repossession of property has increased from 18% (43,500 repossessions) to 21% (51,709 repossessions). However, the overall rate of implementation remains unacceptably low as local officials fail to take ownership of the repossession process.

... “The statistics show that the implementation of the property legislation is more than twice as poor in the RS than in the Federation, with Eastern RS particularly bad and the Bosniak majority areas of the Federation with the best record.

...“**Lack of Alternative Accommodation:** Failure by Local Authorities to provide alternative accommodation continues to be a significant obstacle. Lists of unclaimed socially owned property, intended to be used as alternative accommodation, are often incomplete. In addition, the allocation of the apartments, which should be used as alternative accommodation, remains problematic. The allocation of newly built housing units generally occurs in a non-transparent and discriminatory manner. There are some small signs of improvement - notably in Prijedor, where the RS Ministry of Displaced Persons and Refugees (MRDP) and the municipal authorities have jointly agreed to finance the accommodation of evicted DPs in a local hotel. Similar steps have taken place in Bosanski Novi/Novi Grad, Kotor Varos and Ljubinje in the RS, and Kakanj and Busovaca in the Federation. In general, however, few municipal/government officials fully accept their responsibilities regarding the identification and provision of suitable alternative accommodation”.⁷

The state of such accommodation is frequently unsuitable and considered a major barrier to appropriate and sustainable resettlement:

“In addition to deprivations suffered by the returnees in the areas of social and economic rights, it has been noticed that an increasing number of people repossessing their property have subsequently been cut off from utilities such as telephone, water, electricity or gas. The lack of supply of these services is considered to be an obstruction to a sustainable return.”⁸

⁷ HRCC (2001) op. cit., p.1-7

⁸ HRCC (2001) op. cit., p.33

As will be shown in Section 5, women returnees frequently experience a disproportionate impact of these difficulties via discrimination in property allocation and access to employment. Returnees are subject to further human rights abuses as detailed below.

1.2 Human rights

Recent reports by the United Nations Economic and Social Council's Special Rapporteur of the Commission on Human Rights have expressed serious concern at human rights abuses in Bosnia and Herzegovina:

*"In his previous report to the Commission on Human Rights, the Special Rapporteur stated that **Bosnia and Herzegovina remained divided along ethnic lines and that substantial human rights violations were continuing, in particular violations of the rights to property and to return. One year later, he must observe once again that there is little fundamental change or significant progress to report on respect for human rights and the rule of law. The main reason for this unsatisfactory situation continues to be deliberate obstruction by those who hold the power in Bosnia and Herzegovina.** The municipal elections of April 2000 led to cautious optimism among international observers as non-nationalistic forces gained some ground, especially in parts of the Federation of Bosnia and Herzegovina (the "Federation"). However, the results of the general elections of November 2000, organized and supervised by the Organization for Security and Co-operation in Europe (OSCE) mission in Bosnia and Herzegovina, did not meet the expectations of the international community, and the success of nationalist parties was a significant reverse.*

"A climate of nationalism, as illustrated by the aggressive election campaign in November, continues to prevail in the country. Compared to the dramatic changes in both the Republic of Croatia and the Federal Republic of Yugoslavia in 2000, change in Bosnia and Herzegovina is happening at a much slower pace. This is perhaps not surprising, considering the large portions of the population that were and continue to be affected by the war and that therefore remain susceptible to nationalist rhetoric. The political environment, complicated constitutional and legal framework, and fragmentation of State institutions are the main impediments to any real change in Bosnia and Herzegovina. In addition, corruption and organized crime plague the society and prevent the healthy development of the economy. Illegal migration through Bosnia and Herzegovina to Western Europe and the trafficking of human beings have also been major issues in 2000

"B. General human rights situation

*In his previous reports, the Special Rapporteur outlined his major areas of human rights concern in Bosnia and Herzegovina. These concerns remain valid. **The role of the police, as agents of the State, in ensuring the effective protection of human rights is vitally important. Despite the efforts of the United Nations Mission in Bosnia and Herzegovina (UNMIBH) to restructure the local police, police forces remain mono-ethnic in most areas and their effectiveness in crime detection,***

investigation and response remains low. The lack of a functioning and independent judiciary continues to be another major concern.

The interference of political power structures both within law enforcement agencies and the judicial system remains strong. The judicial system assessment programme (JSAP) of UNMIBH, which is closing down in December 2000, has over a period of two years monitored and assessed the court system. Its main findings have been that the entire judiciary is politically, professionally and structurally dysfunctional. The successor of JSAP, the Independent Judicial Commission, will have the difficult task of actually implementing the judicial reforms needed.

“On a more positive note, there has been a continued trend towards greater implementation of decisions of the Human Rights Chamber, the Ombudsman (previously the Ombudsperson), and the Federation Ombudsmen during the reporting period. Even recommendations and decisions in politically-sensitive cases, such as the decision to rebuild the destroyed mosque in Banja Luka, are finally being implemented. In April 2000, the first three Ombudsmen for the Republika Srpska were appointed as a multi-ethnic Ombudsman institution. As of November 2000, the first complaints were lodged with this new institution and will be investigated.

“The main concern in Bosnia and Herzegovina continues to be the return of refugees and displaced persons. Security is still a major factor hindering return in some parts of the country. More than 300 return-related incidents were reported to the United Nations International Police Task Force (IPTF) since March 2000. Impunity of perpetrators of ethnically motivated attacks on returnees or their property remains the rule rather than the exception. Other factors slowing the rate of return of minorities are obstruction in property law implementation, lack of basic utilities, lack of employment opportunities, difficulties with regard to receiving pensions and health care, lack of facilities for education, and discrimination. The authorities at all levels have failed to create conditions conducive to sustainable return - one of the key demands of the Dayton Agreement. The question of the sustainability of return is of the utmost concern to the Special Rapporteur and hence is the main focus of the present report”⁹

This year’s update of his previous report also highlights the significance of discrimination as a main source of human rights abuses:

“The months following the November 2000 elections in Bosnia and Herzegovina have been dominated by political crisis and stalemate. It was only on 22 February 2001 - more than three months after the elections -

⁹ U.N. Economic and Social Council Commission on Human Rights (January 2001), op. cit., p.6-8

that the Council of Ministers was formed, and other key structures have been similarly delayed. The delays have been detrimental to the people of Bosnia and Herzegovina, especially as the country is faced with competition from neighbouring countries for aid and investment. The Special Rapporteur hopes that the new Government – the first formed without the three main nationalist parties since the conflicts began - will make the protection of human rights one of its top priorities.

“One of the country’s principal challenges, as frequently observed by the Special Rapporteur, is endemic and institutionalized discrimination. It may be recalled that the Constitutional Court in 2000 issued an important decision stating that some of the provisions of the entity constitutions (especially in the Republika Srpska) were incompatible with the federal Constitution. Despite this decision, little has been done to implement its requirements. On 11 January, the High Representative issued a decision to establish constitutional commissions in both entities, with the ultimate aim of abolishing discrimination and protecting the rights and interests of all peoples in the country. The decision imposes an interim arrangement until the Constitutional Court’s ruling is fully implemented”.¹⁰

Roma

The above references to the problems facing returnees draw particular attention to the clear divisions that exist between ethnic groups, and to the fact that members of minority groups in any one area are susceptible to discrimination and human rights violations. However, it should be emphasised that the Roma are particularly vulnerable throughout the country:

“The European Roma Rights Centre reports upon the widespread discrimination against, and violent attacks upon, Roma throughout Europe, maintaining that Roma continue to be the most disadvantaged minority group in Europe. In BiH, Roma constitute a large minority group, and yet are often overlooked in all spheres of public life. In particular, Roma are discriminated against in the fields of employment and housing. Furthermore, the absence of ‘national minority status’ for the Roma and often lack of awareness that the Roma constitute an ethnic minority group adds to the difficulties and prejudices encountered”.¹¹

¹⁰ UN Economic and Social Council Commission on Human Rights (March 2001), *Situation of human rights in the former Yugoslavia: Report of Mr. Jiri Dienstbier, Special Rapporteur of the Commission on Human Rights on the situation of human rights in Bosnia and Herzegovina, the Republic of Croatia, and the Federal Republic of Yugoslavia*, Addendum, E/CN.4/2001/47/Add.1, p.3; Accessed via <http://www.unhchr.ch/html/menu2/7/a/myug.htm>

¹¹ HRCC (2001) op. cit., p.35

1.3 Bosnia and Herzegovina & international legal instruments

Bosnia and Herzegovina has ratified the main human rights treaties including the International Convention on the Elimination of All Forms of Racial Discrimination, the International Covenant on Economic, Social and Cultural Rights, and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. However, human rights guarantees under these treaties have also been incorporated into the state's Constitution, which actually binds it to internationally recognised Human Rights legislation, including the European Convention on Human Rights.

1.3.1. The Constitution of the State of Bosnia and Herzegovina

“The Constitution of Bosnia and Herzegovina is a document binding the state to “the highest level of internationally recognised human rights and fundamental freedoms”, as it is stated in Article 2.1. Having incorporated the European Convention on Human Rights directly into domestic legislation, the Constitution applies its provisions in protecting individuals from violations by the state.

...“Thus, the state can be held responsible if a given law, whose scope falls within the European Convention on Human Rights, fails to protect individuals or groups of individuals, or if it regulates or is applied in a discriminatory manner.

....“According to Article II, paragraph 4 of the Constitution, Bosnia and Herzegovina must protect the rights and freedoms provided for in the mentioned documents for all its citizens, “without discrimination on any ground such as sex, race, skin colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.””¹²

The Constitution also incorporates:

“the two International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights, the European Convention on Human Rights, the European Social Charter and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)”¹³

¹² International Helsinki Federation for Human Rights (IHFHR) (2000) 'Bosnia and Herzegovina' in *A Perspective on Women's Human Rights*, p. 84-85; www.ihf-hr.org/index.htm

¹³ IHFHR (2000), op. cit. Further detail of how international legislation has been incorporated is given: *“The relationship between international and domestic legislation in the field of human rights is regulated by Section VII - Article 3 of the Federation Constitution, which states that “International treaties and other agreements in force in respect of the Federation and the general rules of international law shall form a part of the law of the Federation. In case of incompatibility between a treaty and legislation, the former shall prevail.”*

These obligations on the State are further reinforced by the respective Constitutions of the Federation of Bosnia and Herzegovina, and the Republika Srpska:

*“Section II.A, Article 2 further re-affirms that all persons within the territory of the Federation shall enjoy the right to equality before the law - paragraph 1(c), and to freedom from discrimination based on, inter alia, sex (paragraph 1 (d)). The Constitution of the Republika Srpska guarantees the protection of human rights and freedoms in accordance with international standards (Section I, Article 5). Like its Federation counterpart, Section II of the Republika Srpska Constitution is dedicated to human rights and freedoms, and Article 10 provides for equality of all persons within the RS, irrespective of, inter alia, sex. Article 16 expressly guarantees equal protection before the courts and other state bodies and organisations”.*¹⁴

CEDAW

As stated above, the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) has been incorporated into the State’s Constitution, and was ratified by succession in 1993. However, the two states have reached different stages in including CEDAW in their own constitutions:

“Although the Constitution of Republika Srpska makes no direct reference to CEDAW, it does contain several key provisions and general principles that refer to women’s rights. Thus, the provisions of the CEDAW are directly applicable through the state Constitution.

*“Bosnia and Herzegovina was expected to submit an official report on the implementation of CEDAW by January 1998, but failed to do so. The previous report submitted on compliance with CEDAW did not meet the procedural standards established under Article 18 of the Convention and it was sustained orally in January 1994”.*¹⁵

1.4 Women’s human rights

The Constitutional provisions imply that women enjoy an equal status to men in Bosnia-Herzegovina. However, although in 1999 and 2000 the U.S. Department

¹⁴ IHFHR (2000) op. cit., p. 84

¹⁵ IHFHR (2000) op. cit., p.84

of State reported that there was “*little legal or social discrimination against women*” in Bosnia and Herzegovina, their latest report states that:

*“Discrimination against women persists, and violence against women, in particular domestic violence, is a persistent yet underreported problem... There is little **legal** discrimination against women, and women serve as judges, doctors, and professors; however, a male-dominated society prevails in both entities, particularly in rural areas, with few women in positions of real economic power or political power”*¹⁶

The extent of domestic violence, trafficking for forced prostitution, and discrimination against women (in the workplace for instance), that are highlighted by this report indicate that women experience discrimination and human rights abuses in many aspects of their lives.

¹⁶ U.S. Department of State (2001), op. cit.

2. Domestic violence

2.1 Prevalent, under-researched and underreported

Research into the prevalence and nature of domestic violence in Bosnia-Herzegovina has been limited, as highlighted by a 1998 report conducted by researchers on behalf of the Sarajevo Branch of the Lawyers' International Forum for Women's Human Rights, in conjunction with Non-Governmental Organisations working in the area:

*“Many participants already had a good idea of the prevalence of domestic violence in the Sarajevo area, or factors influencing its incidence, and of the response of state and other agencies. However, it was apparent that their work was hampered by the fact that there was no available data on women's experience of violence”.*¹⁷

Three years on, this still appears to be the case, although there is substantial evidence that domestic violence is prevalent:

*“Violence against women is a problem. **Credible NGO observers reported that violence against women, including spousal abuse and rape, remained widespread and underreported.** A report by the International Helsinki Federation for Human Rights estimates that about 30 percent of women in the country are victims of domestic violence; however, there is little data available regarding the extent of the problem. Throughout the country, rape and violent abuse are considered criminal offenses. The laws prohibit rape in both the Federation and the RS. Spousal rape and spousal abuse are also illegal in the Federation. However, domestic violence usually was not reported to the authorities; a sense of shame reportedly prevents some victims of rape from coming forward to complain to authorities”.*¹⁸

Medica Zenica, a women's Non-Governmental Organization based in Zenica (Federation of Bosnia-Herzegovina), conducted research that attempted to gauge the prevalence of violence against women by using interviews, a survey, and documentation research. Their survey of 540 women found domestic violence in the Zenica municipality to be:

“prevalent and far-reaching. Every fifth woman (20%) we interviewed said her partner (husband or boyfriend) had threatened her with violence; of the women who said that their partners had threatened them, four out of five (79%) said that this had happened more than once. Every fifth (23%)

¹⁷ Maguire, S (1998) 'Researching 'a family affair': domestic violence in former Yugoslavia and Albania' in *Gender & Development*, Volume 6, No.3, pp.60-66, Oxfam, London

¹⁸ US Department of State (2001), op. cit.

*had been beaten by their partners; of the women who said that their partners had beaten them, four out of five (77%) said that this had happened more than once. almost every fourth (24%) had been battered over a long period of time.”*¹⁹

It should be noted that this research appeared to be primarily concerned with threats or incidences of physical violence, rather than sexual, psychological or emotional abuse.

The International Helsinki Federation for Human Rights (IHFHR) has reviewed research carried out by the International Committee in Gorazde Canton, which:

*“revealed that over 50% of the women interviewed confessed to either having been hit or beaten by their husbands or boyfriends or to have witnessed similar incidents”*²⁰

2.2 Sexual violence

Other sources have stressed that sexual abuse is also difficult to measure, and underreported:

*“Statistics on rape and other sexual crimes are not systematically collected or maintained by the authorities at any level. A number of NGOs have tried to meet this need, but none have the resources to do so at a national level”*²¹

However, the International Human Rights Law Group also report that data from the police in Tuzla Canton indicated that from over 100 cases of reported domestic violence, a substantial number involved sexual violence, and how sexual violence, like domestic violence, is similarly underreported:

*“almost 20% of reported violence were cases of sexual assault... Like domestic violence, rape and other sexual crimes are not regularly reported, and for similar reasons.... victims of sexual crime are often humiliated and ashamed to make known their experience”.*²²

2.3 The impact of conflict

Both Medica Zenica and the International Helsinki Federation for Human Rights agree that the prevalence of domestic violence in Bosnia and Herzegovina

¹⁹ Medica Zenica (1999) *To Live Without Violence: Final Report*

²⁰ IHFHR (2000) *op. cit.* p.96. Note that different definitions and methodologies may account for considerably different figures

²¹ International Human Rights Law Group (IHRLLG) (1999) *National NGO Report on Women's Human Rights*

²² IHRLLG (1999), *op. cit.*

increased during the aftermath of the Former Yugoslavian conflict.²³ This increase in violence is often attributed to problems associated with the reintegration of families following the war, and with “war trauma” where “men who had been in combat used violence as a response to their emotions”. According to Medica Zenica, for these reasons, women often suffer in silence.²⁴ The International Helsinki Federation for Human Rights state that this results in women tolerating violence because they believe it to be

*“rooted in the post-war social environment, due to post-traumatic stress syndrome, unemployment, or men’s refuge in alcohol”*²⁵

This evidence suggests that domestic violence might tend to be more socially and officially condoned partly as a consequence of the conflict, and as such, any interventions inappropriate. However, attributing an increase in domestic violence to the experience of conflict is not without its counter arguments. It may be for instance that, as with other crimes, factors influenced the frequency with which domestic violence was reported during the conflict, and the nature of authorities’ responses. It does seem plausible that reporting domestic violence might have been less of a priority for women during the conflict – indeed, many women’s partners were away from the domestic environment. Sarah Maguire found that many women’s agencies reported an increase in demand for their services during the “lead-up” to the war, but that this was followed by a reduction in the level of domestic violence reported once the war had begun.

However, she argues that it is essential to remember that “*violence against women is an ongoing and ubiquitous problem, and a feature of society before, during, and after conflict*”.²⁶ The apparent increase following the conflict may therefore simply reflect the return of men to the family home and a change in circumstances that enables women to report domestic abuse more frequently.

2.4 Violence from sons to mothers

Most of the research referred to by this report has focused on the abuse of women by their husbands or partners. However, the International Helsinki Federation for Human Rights report stated that:

“According to the report issued by the Center for Development Information and Evaluation – U. S. Agency for International Development, another form of violence within the family is increasing at an alarming rate in Bosnia and Herzegovina: a SOS hotline in Mostar revealed an increasing number of mothers being abused by their sons. Some of the cases were

²³ See also Immigration and Refugee Board Research Directorate (2000) *Bosnia and Herzegovina: Availability of police protection to women victims of domestic violence (1992-1999)*, BOS34122.E, Ottawa; available at www.irb.gc.ca

²⁴ Medica Zenica (1999), op. cit.

²⁵ IHFHR (2000) op. cit., p.96

²⁶ Maguire (1998) op. cit., p.62

analysed and the victims' opinion was that this is one of the very specific consequences of the post-war phenomenon".²⁷

²⁷ IHFHR (2000), op. cit., p.96.

3. Domestic violence and the law

The new Constitution of the State of Bosnia and Herzegovina provided both the Federation of Bosnia and Herzegovina and Republika Srpska with significant governing powers, and each entity has different legislation for addressing domestic violence

3.1 Federation of Bosnia and Herzegovina – the law and physical violence

The revised Criminal Code of the Federation of Bosnia and Herzegovina was implemented in 1998, and *does* contain some specific legal provision regarding domestic violence. The International Helsinki Federation for Human Rights reports that:

*“The new Criminal Code contains specific legal provisions addressing physical injuries committed against the spouse within the marriage, or against the partner within a partnership...”*²⁸

“Article 178” states that:

*“a person will be held criminally responsible for an act of minor physical injury against a spouse or person with whom he or she cohabits, or a parent of his or her child with whom he or she lives”*²⁹

However, it is essential to note that this definition of domestic violence only refers to physical injury occurring within a co-habiting relationship between adult partners, thus adopting a narrow definition of domestic violence.

3.2 Federation of Bosnia and Herzegovina – the law and sexual violence

The new Criminal Code also amended the definition of rape in order to recognise its occurrence within marriage:

“The new Criminal Code of the Federation of Bosnia and Herzegovina includes a new provision on rape. The former provision, which defined rape as vaginal intercourse under the pressure of serious threat to the life and body of the victim, or a person close to the victim, committed by a man against a woman with whom he did not live in a marital relationship, was replaced with Article 221. The new legal text stipulates that rape is forced vaginal intercourse under the pressure of serious threat to life and body of the victim, or a person close to the victim, that one person

²⁸ IHFHR (2000) op. cit., p.95

²⁹ IHRIG (1999), op. cit.

commits against another. The punishment shall be imprisonment for three to ten years.

“Despite the new legal possibilities available through Article 221 for punishing marital rape, it should be noted that the law is articulated from the perspective of the perpetrator, and not of the victim. The definition of rape is limited to forced sexual intercourse; any other forms of forced sexual assaults must be punished under Article 226 as acts of debauchery. The penalty in such cases is imprisonment for up to three years”³⁰

It should therefore be noted that sexual abuses excluded from this Article, i.e. those other than *“forced sexual intercourse”*, carry much lower penalties. Placing the focus of the legal definition on particular acts of abuse, by failing to incorporate the perspective of the woman herself, means that her *“experience of a violation of her bodily integrity and...self is irrelevant under the law”*.³¹

3.3 The law and domestic violence in Republica Srpska

There is no specific domestic violence legislation. Republica Srpska still operates the Criminal Code of the former Socialist Republic of Bosnia and Herzegovina. More general legislation against violence contained in this code must be referred to in assessing the adequacy of protection for women fleeing domestic violence. It should be noted that although most of the critical analysis of legislation and protection available to women experiencing domestic violence is specific to the Federation of Bosnia & Herzegovina, this does not mean that the situation in Republica Srpska is any better. The lack of specific legislation suggests it might be worse, and indeed this is the conclusion reached by Medica Zenica, although most of their work was carried out in the Federation:

“All our meetings with women from the Republic of Srpska show that the problem seems to be the same, if not worse, there”³²

3.4 The law and sexual violence in Republica Srpska

A report by the International Helsinki Federation for Human Rights states that the criminal code also *“does not contain any specific legal provision regarding marital rape”*, so whilst rape is prohibited, within marriage it will not be recognized as such.³³

³⁰ IHFHR (2000), op. cit., p.97.

³¹ IHRG (1999), op. cit.

³² Medica Zenica (1998b) *Situation of women victims of violence*

³³ IHFHR (2000) op. cit., p.95

3.5 Summary of legislative protection in both entities

To summarise, although the US Department of State reported in 1999 that:

“Throughout the country, rape and violent abuse are considered criminal offenses. The laws prohibit rape in both the Federation and the RS [Republika Srpska. Spousal rape and spousal abuse are also illegal in the Federation”.³⁴

this must be considered critically since in the Federation of Bosnia and Herzegovina, the definition of domestic violence is limited, as highlighted above, and only recognises such abuses within the contexts of certain types of relationships. Rape within marriage is not specifically recognised in the Republica Srpska, and other forms of sexual abuse are also neglected.

Indeed, this is confirmed by the HRCC:

“In cases of sexual and physical violence against women, including domestic violence (see above), lack of awareness within the Criminal Justice System exists and legislative mechanisms for the protection of women’s rights are also wanting. In response to the ground-breaking pilot project undertaken by Medica Zenica, to raise awareness, amongst members of the Criminal Justice System and local authorities, of violence against women, UNICEF have begun seeking NGOs as Implementing Partners for a similar project to be implemented BiH-wide”.³⁵

³⁴ U.S. Department of State (2001), op. cit.

³⁵ HRCC (2001) op. cit., p.34

4. The reality of seeking protection

Several reports suggest public awareness of domestic violence is extremely limited, and that women frequently prioritise maintaining the “unity” of the family over ensuring their own protection and security:

*“[The] level of acceptance by women of domestic violence is also a serious issue... **Thirty percent of the women interviewed by IRC Gorazde agreed with the statement ‘It is OK if a husband beats a wife if she does something wrong’**”³⁶*

Further:

“...women in Bosnia and Herzegovina refrain from reporting cases of family violence, as Bosnian society is traditionally patriarchal and views domestic violence as a part of life... domestic violence is further perpetrated by men and tolerated and accepted by women without really questioning whether a dominant behaviour pattern plays a role. Due to this perpetuation of the understanding of the family environment, women very often do not “recognise” the existence of domestic violence. Consequently, the number of those cases that are actually reported gives a far from accurate picture of the extent of the problem. Educated to endure what is normally seen as a part of life, namely the violent behaviour of their husbands/male life partners, 73% of the women interviewed in the above report [Medica Zenica research, 1999] declared that it is very important, almost a duty, for a woman to keep the family together, whatever the price. Moreover, 15% of respondents did not agree that there is no excuse for violence in the family.”³⁷

Maguire has argued that the sheer number of male lives lost has resulted in women being more prepared to tolerate domestic violence:

*“In... Bosnia and Hercegovina, almost the entire adult male population were killed, disappeared or fled. Some years after the war, women constitute up to 90% of the population in some areas... **There is evidence that younger women – who are conscious of the competition to find and keep a man – are tolerating patterns of male behaviour that their older sisters and mothers would have considered unconscionable in pre-war years**”³⁸*

³⁶ IHRIG (1999), op. cit.; The research referred to is that of the International Rescue Committee in Gorazde which consulted 249 women.

³⁷ IHFHR (2000), op. cit., p.96.

³⁸ Maguire (1998), op. cit., p.65

If these factors are interpreted together with the evidence given above that suggests women are more likely to feel pressure to support husbands and partners traumatized by war, it suggests that many women are unlikely to seek help for domestic violence. Here we consider the responses she might receive if she does.

As Section 3 indicated, there is only limited specific legislation available to protect women experiencing domestic violence, and this exists only in the Federation of Bosnia & Herzegovina. This may be one reason why research has found that women are reluctant to report incidences of domestic violence to the police or other authorities.

*“domestic violence usually was not reported to the authorities, and a sense of shame reportedly prevents some victims of rape from coming forward to complain to authorities”.*³⁹

The research carried out by Medica Zenica found that 60% the women who had experienced physical violence (23% of the total 540 women [i.e. approximately 124] they interviewed) had never used the services of *“either the Centre for Social Work, the police, or the courts”*⁴⁰

This study found it difficult to ascertain the reasons for women not seeking protection from such agencies, but they suggest that it may be related to *“the lack of a cohesive series of protective legal codes about domestic violence”*, thus making it difficult for institutions to pursue cases, and also lack of recognition of or understanding of domestic violence.⁴¹ This seems a reasonable conclusion where no clear legal definition exists.

Women's reluctance to report domestic violence may also be explained by the responses of various authorities and the lack of an adequate system of justice. The HRCC explain this as follows:

*“During the reporting period, there were approximately 45 cases of domestic violence reported to the local police throughout BiH. Local authorities generally continue to treat such cases as domestic disputes instead of crimes. In January 2001, however, the Bihac Municipal Court sentenced a man to 3.5 years imprisonment after finding him guilty of stabbing his wife eight times with a knife. The sentence was reduced because of medical evidence submitted by defence indicating that the husband suffered from a brain disorder”.*⁴²

³⁹ US Department of State (2001) op. cit.

⁴⁰ Medica Zenica (1999), op. cit.

⁴¹ Medica Zenica (1999), op. cit.

⁴² HRCC (2000) op. cit. p.21

4.1 The police

Again, the lack of information is evident, as indicated by research into the availability of Police protection for women experiencing domestic violence conducted by the Research Directorate of Canada's Immigration and Refugee Board last year.⁴³ There are however, major problems with the operation of the Police in both entities of Bosnia and Herzegovina, which should be recognised as having an impact on their responses to all crime. Firstly there is evidence of Police inaction, corruption and misconduct in the Federation of Bosnia and Herzegovina, and in the Republica Srpska:

"Of 1,063 incidents reported to IPTF since 26 July 1999, 49% have involved officers from the Federation, 45% from the RS, and 6% from the Brcko District. Categories of misconduct include assault, beatings in custody, excessive use of force, ill treatment, harassment, police inaction, illegal detention, restriction of movement, improper seizures, abductions, sexual assaults, negligence, corruption, and abuse of power".⁴⁴

Also:

"Despite the efforts of the United Nations Mission in Bosnia and Herzegovina (UNMIBH) to restructure the local police, police forces remain mono-ethnic in most areas and their effectiveness in crime detection, investigation and response remains low".⁴⁵

Secondly, the domination of police forces by one ethnic group has also been documented by the HRCC, although it is apparent that steps are being taken to redress this imbalance:

"The total number of registered police personnel throughout BiH stands at 22,598. Of the 12,646 police personnel registered in the Federation, 66% are Bosniaks, 30% are Croats, and 3% are Serbs. Of the 9,400 police personnel registered in the RS, 97% are Serbs, 2.5% are Bosniaks, and 0.5% are Croats".⁴⁶

There is also a lack of female officers. Research carried out by the Research Directorate of Canada's Immigration and Refugee Board refers to information from the United Nations:

⁴³ Immigration and Refugee Board Research Directorate (2000), op. cit.

⁴⁴ IPTF refers to the International Police Task Force; HRCC (2000) op. cit. p.18

⁴⁵ U.N. Economic and Social Council Commission on Human Rights (January 2001), op. cit. N.B. This also implies that any investigation into the availability of protection should take into account the ethnic origin of a woman in order to assess factors that might affect agency responses.

⁴⁶ HRCC (2000) op. cit. p.17-18

“According to a 24 October 1999 UN report on the human rights situation in Bosnia and Herzegovina, the statutory shortcomings are exacerbated by the small number of women police officers:

*“The number of women in the police forces of both [Bosnia and Herzegovina] is alarmingly low: only some 200 female police officers out of more than 11,000 in the Federation and approximately 30 out of 8,500 in the Republika Srpska. This has serious implications for the proper investigation of gender-based violence, such as domestic violence and rape. The problem is compounded by the fact that the police are in general not trained to respond adequately and in a gender-sensitive manner to gender-specific crimes”.*⁴⁷

4.1.1 Reporting domestic violence to the police

It is highly plausible that the above factors present major additional barriers to seeking protection, above and beyond those faced by all women experiencing domestic abuse, and that there are additional problems for women from minority ethnic groups. This has been found to be the case in the research by the International Helsinki Federation for Human Rights, where, in Bosnia and Herzegovina, although any incidence of domestic violence reported to the Police together with a file of complaint of *bodily* injury requires Police investigation, the reality is that:

*“victims of domestic violence are very reluctant to report to police, mainly due to a fear of not being understood or of being further ostracised by making their private life public. **The custom of ‘disciplining’** a woman through violence for something she did wrong as part of her family duties means that the police are unresponsive when called to intervene in a violent family situation...*

“The police have little or no training in investigating cases of domestic violence and research and case studies have revealed that police officers usually react in one of two ways when dealing with such cases: they will either intervene if the violence results in death or, if a woman files a complaint for being abused by her husband/partner, they will treat her as responsible for triggering the violence. This latter situation arises out of the law and public protectors’ (in the case of Federation of Bosnia and Herzegovina) limited understanding of the nature of domestic violence and from the subjectivity with which the police treat cases of bodily injuries (in the case of Republika Srpska).

*“One could conclude that, in cases of domestic violence, the police are themselves a significant obstacle to intervention and legal redress”*⁴⁸

⁴⁷ Immigration and Refugee Board Research Directorate (2000), op. cit.

⁴⁸ IHFHR (2000) op. cit., p.97

The United States Department has also described the limited abilities of the police to deal with domestic violence:

*“The police have little or no training in investigating cases of domestic violence, and there were reports of police inaction in cases of domestic violence and sexual assault. According to human rights groups, in one case, a police officer from Zvornik was accused of raping two teenage girls. The father reported the incident to the local police station, but the officers on duty did not record the complaint. When the police finally interviewed the victims, the accused officer was allowed to be present in the room. The IPTF has requested an independent investigation. The OHR reported that in one case, police answering a call about domestic abuse noticed injuries on the woman and her minor daughter, but offered only to take them to the hospital. The woman, who had previously reported other incidents of abuse to the police, later committed suicide. In Canton 4, a police officer hung up on a midnight call from a daughter calling for help when her father threatened her mother with a knife. No record of the complaint was made. The IPTF has called for an investigation and for disciplinary action against the duty officer”.*⁴⁹

4.1.2 Reporting sexual abuse and rape to the police

The same appears to be true of sexual abuse:

*“As is the case with domestic violence, women in Bosnia and Herzegovina do not report rape or other forms of sexual assault. If women victims of these crimes do report to the police, the subsequent investigation frequently involves three or more cross-examinations. Police are untrained and insensitive in investigating sexual offences and the attitude towards the victim is somewhat more oriented to passing judgement on her character and appearance than to considering the physical and psychological trauma that she experienced. Traditional investigation methods and criminal procedures require the victim to prove the act of rape actually took place and the woman must explain how the rape happened. She must also prove that she tried to escape and was unsuccessful in her attempt. Unfortunately though, the law neither defines nor specifies the concrete terms and procedures for proving that the offence took place. As a result, law enforcement in this regard is open to police interpretation, which in practice lessens women’s chances of seeking justice”.*⁵⁰

The International Human Rights Law Group also emphasise the above:

⁴⁹ US Department of State (2001) op. cit.

⁵⁰ IHFHR (2000), op. cit., p.97. NB This refers to the Federation of Bosnia and Herzegovina only.

*“Police are untrained and notoriously insensitive in the investigation of sexual crimes, especially in terms of attitudes towards victims, often seeking, instead, to judge the character of the victims and ignore the physical and psychological trauma they have experienced. Moreover, the Bosnian police force is overwhelmingly male”.*⁵¹

It must also be stressed that even with the revised criminal code in the Federation of Bosnia and Herzegovina, it is still the woman’s responsibility for pursuing proceedings against the perpetrator. The International Human Rights Law Group highlight this as a significant barrier to women seeking protection. The same is applicable for women seeking to bring perpetrators to justice under the Republica Srpska criminal code:

*“the fact that the Criminal Codes of both entities require a victim to personally initiate criminal proceedings in cases of light bodily injury, rather than the state, is a serious impediment in the prosecution of domestic violence. **Having to file charges against a husband, father, boyfriend, or other family member, puts the victim in a dangerous situation, since more often than not she is still living with him...**It also places the burden of proof on the victim, as opposed to prosecution ex officio where the burden is proved by the state which has offices to investigate and collect the necessary evidence. It is thus obvious why domestic violence so often goes unreported”.*⁵²

Importantly, there are also no legal measures available to ensure that any perpetrator who has proceedings being brought against him has to stay away from the woman he has been violent towards:

*“the lack of any form of injunctive relief or restraining orders to physically separate and keep an offender away from his victim (temporarily or permanently) is a significant obstacle to the effective legal protection of women’s lives. There is also a real danger to a victim of violent crime who is required to pursue a prosecution personally, without protection against the heightened risk of intimidation or further violence by a vindictive offender that such a prosecution is likely to encourage”*⁵³

⁵¹ IHR LG (1999), op. cit.

⁵² IHR LG (1999), op. cit.

⁵³ IHR LG (1999), op. cit.

4.2 The judicial and legal system

Given the above, it is not surprising that only a minute proportion of cases reach the courts. In 1997, the Sarajevo Municipal Court recorded receipt of only eight cases of minor physical assault.⁵⁴

Even then, the lack of an explicit legal definition of domestic violence in both entities means that:

*“the courts alone are left to decide what measures to take in this very sensitive and serious situation. The lack of a cohesive set of protective measures regarding domestic violence is no obstacle to the courts being able to adequately punish this crime”*⁵⁵

This together with the lack of protection for women pursuing charges may explain why of these eight cases, *“four were withdrawn or rejected, two were given suspended sentences, and [in 1999] two cases are still in process”*.⁵⁶ The inadequacy of mechanisms for dealing with domestic violence is also noted by a 1999 HRCC report, referred to by the Canadian Immigration and Refugee Board Research Directorate:

“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. ... Given the lack of legal definition of domestic violence, courts are left to decide what measures to take, if any against perpetrators (Oct. 1999)”.⁵⁷

There are further problems regarding the inadequate functioning of an independent judiciary in both entities of Bosnia and Herzegovina, as identified by the United Nations:

“The lack of a functioning and independent judiciary continues to be another major concern. The interference of political power structures both within law enforcement agencies and the judicial system remains strong. The judicial system assessment programme (JSAP) of UNMIBH, which is closing down in December 2000, has over a period of two years monitored and assessed the court system. Its main findings have been that the entire judiciary is politically, professionally and structurally dysfunctional”.⁵⁸

⁵⁴ IHRG (1999), op. cit.

⁵⁵ IHRG (1999), op. cit.

⁵⁶ IHRG (1999) op. cit.

⁵⁷ Research Directorate, Immigration and Refugee Board (2000), op. cit.

⁵⁸ U.N. Economic and Social Council Commission on Human Rights (January 2001), op. cit. The U.S. Department of State corroborate this: *“Although formally independent, the judiciary remains subject to influence by political parties and the executive branch and is unable to prosecute complex or even simple crimes fairly and effectively”*, U.S. Department of State (2001), op. cit.

There have however, been significant attempts to improve the independence of the Judiciary, with the establishment of an Independent Judicial Commission in December 2000. This Commission is responsible for implementing recent legislation passed in both entities regarding the functioning of the justice system.⁵⁹

4.3 Other support services

Medica Zenica reported in 1998 that

*“Bosnia-Herzegovina has no women’s shelter in the sense of a place of refuge for survivors of domestic violence, apart from the work done in projects like ‘Medica Zenica’ or ‘Vive zene Tuzla’”*⁶⁰

There is limited information on the work of these agencies. Medica Zenica provides accommodation for approximately forty women. However, this is clearly only a small number, and furthermore is based in Zenica. Their report goes on to say that *“Female isolation is prevalent in rural areas – women here have no knowledge of legal help”*.⁶¹ Maguire also states that as well as a lack of research into domestic violence in Bosnia and Herzegovina,

“there were areas of work which had not been begun; for example, there was no provision of information for women experiencing violence, and no public awareness campaigns had taken place. Organisations not only lacked the necessary financial resources to carry out such work, they also lacked training. Even in instances where health-care professionals and social workers were receiving training on trauma from international NGOs, very few trainers were able to provide training on gender issues, let alone on violence against women”.⁶²

⁵⁹ HRCC (2001) op. cit., p.1; p.16-17

⁶⁰ Medica Zenica (1998a), op. cit.

⁶¹ Medica Zenica (1998a), op. cit.

⁶² Maguire (1998) op. cit., p.59-60

5. The situation for separated or divorced women

The extent to which there is a lack of state and voluntary sector protection for women experiencing domestic violence is illustrated by the preceding section. The prospects of her facing further human rights abuses as identified by the European Convention on Human Rights can, to some extent, be drawn from this. The following evidence considers some of the difficulties that might face women who are forced to return, particularly in attempting to secure economic and social independence. As always, it is important to consider the individual circumstances of every woman - factors such as ethnicity may be particularly important in the context of Bosnia and Herzegovina, as highlighted by Section 1. It is plausible that these factors contribute to an extremely difficult situation facing women forced to return to either entity of Bosnia and Herzegovina. This being the case, coupled with the lack of support for women fleeing domestic violence, the danger of her returning to an abusive relationship is heightened.

5.1 Discrimination

As referred to in Section 1, the most recent U.S. State Department report notes widespread discrimination against women. Further to this, the HRCC state that:

*“In light of various reports from the field, **gender discrimination against women continues unabated**, especially in employment practices, in accessing health care services, and in the protection of property rights”.*⁶³

Section 1 also highlighted the additional discrimination faced by returnees, and this United Nations report from 1997 indicates that women have experienced these difficulties disproportionately:

“Economic recovery in post-war Bosnia is proving to be a slow process, and for every sector of the population, access to income-earning opportunities is a major concern. For displaced and returnee women, a large proportion of whom are widows and single heads of households, the economic situation is particularly difficult. Many were financially dependent on their spouses before the war and they consequently have no marketable skills or entrepreneurial experience. Others who are of rural origins and who are unable to go back to their home areas face considerable problems in adapting to life in a town.

Visiting Bosnia in the aftermath of the war, a team of experts, some of them from the US-based Women’s Commission for Refugee Women and Children, concluded that displaced and returnee women required much better access to vocational, literacy and skills training programmes, as

⁶³ HRCC (2001) op. cit., p.34

well as banking and credit facilities. Without such services, they would not become economically independent.

Acting upon these findings, in 1996, UNHCR established the Bosnia Women's Initiative (BWI) with the help of a major grant from the US government. The organization then began a detailed process of consultation with the many women's groups which had sprung up in Bosnia during and after the conflict, so as to gain a better understanding of their needs and aspirations.

In its first year of operation, the BWI has sponsored a wide range of activities, including the provision of legal training and advice to Bosnian women on issues such as land, property, employment and pension rights, as well as family law. The latter is of particular importance as there has been a disturbing increase in the incidence of domestic violence since the war came to an end. The programme also attempts to address some of the particular legal, social and political problems experienced by women with husbands from a different ethnic group”⁶⁴

It is unclear whether the majority of women would benefit from such initiatives. Certainly the most recent evidence, such as that from the Human Rights Co-ordination Centre detailed in the introductory section of this report suggests that returnees continue to experience discrimination in accessing housing, and this extract from the UN Special Rapporteur indicates how gender and ethnicity continue to shape women's experiences of return:

“As a reflection of the division of the country into three separate ethnic zones, ethnically-motivated violations of economic and social rights persist throughout Bosnia and Herzegovina. It is all the more difficult to combat these violations in that they are intrinsically linked with various forms of corruption. While the international community has focused on property issues and judicial and police reform, equally essential economic and social rights have been disregarded, even though in some cases they have an impact even on the right to life, especially for the most vulnerable groups.

“It would not be an exaggeration to state that the deprivation of economic and social rights is a mere continuation of policies of ethnic cleansing. In areas where security is not at stake any more, such deprivation constitutes an obvious obstruction to sustainable return. Economic arguments are frequently used to rebuff concerns about economic and social rights violations, but problems in Bosnia and Herzegovina cannot be simplistically explained in economic and financial terms. The economic situation must not prevent the international and local communities from protecting economic and social rights and from combating all forms of

⁶⁴ United Nations (1997); available at http://www.unhcr.ch/refworld/pub/state/97/box4_4.htm

discrimination. This is especially true since the dysfunctional economy is to a large extent the consequence of policies of ethnic division. The manipulation of the privatization process is but one illustration of this. Despite the importance of this part of the reconstruction process, the international community seems to have overlooked this central problem.

“Among the core objectives of the international community is the economic viability of Bosnia and Herzegovina. The privatization process is considered a principal tool to speed up the transition towards a market economy and attract investment in a country that bears the double burden of a communist legacy and war devastation. However, the process should not be conducted at any price and without strict monitoring. In general there seems to be poor understanding of the complex realities in Bosnia and Herzegovina, and this ignorance has serious consequences, notably in that it reinforces discrimination and ethnic division.

*“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.”⁶⁵*

5.2 Economic security

The following extract from International Helsinki Federation for Human Rights details some of the context:

“Women’s lives are affected by the social and economic conditions in society, and their economic position is often worse than men’s. Despite the pervasive belief that women and men were fundamentally equal in the field of employment and economics in the pre-war socialist system, this was not in fact the case and it is certainly not the case in post-war Bosnia and Herzegovina, where the transition from a system of State ownership to private enterprise has implications for women’s ability to take advantage of their economic rights. Despite the protections within the labour laws, they are often not implemented in practice, in large part because of the

⁶⁵ U.N. Economic and Social Council Commission on Human Rights (January 2001), op. cit., p. 9

*dysfunctional enforcement mechanisms at all levels of government (i.e. court cases can drag on for years). Administrative bodies for grievances or other worker protections (e.g. Workers' Councils) are often politically controlled; and disciplinary decisions go unimplemented. The lack of State law to regulate labour relations along with the implementing instruments in administrative and judicial arenas throughout the country is a significant deficiency in the protection of everyone's human rights."*⁶⁶

5.2.1 Access to employment

The following evidence indicates that women are in a disadvantaged position in attempting to gain employment that is both secure and of sufficient remuneration. The financial security of single women is thus threatened, although it is clear that there is a lack of official data that adequately reflects the position of women:

"Official data on women in the labour force is generally unavailable. It appears that in 1988, women comprised 38.7% of the national registered labour force, but by 1991 the percentage was 35.9%. In 1992, the Federation Employment Institute reported that women made up 53% of the registered unemployed. These official figures ignore the fact that Bosnian women were largely engaged in what is generally considered the non-productive activity sector, such as unpaid labour on family farms, in the home, or in the underground parallel market. Gender-disaggregated data is still not available today, in the post-war environment. The European Commission and the World Bank concluded that little in-depth analysis has been carried out on the composition of unemployment (e.g. according to gender, age, occupation, and region). However, a household survey conducted by the above international agencies revealed that women, especially those in households where the male figure is absent, have lower employment rates, and 20-50% lower wages than their male counterparts.

*"Another survey targeting the socio-economic status of women, conducted by Prism Research in late 1998 and involving 2,100 women aged 18-55, found that 30% of the Republika Srpska respondents were registered as employed and 25% of the Federation respondents were registered as employed. Thus, 62% of this random selection of women in the RS are unemployed, compared with 71% of women in the Federation. Dnevni Avaz recently reported that 45% of those seeking employment in the Federation of Bosnia and Herzegovina are women; but Prism predicts that official statistics underestimate the actual unemployment levels of women by as much as 25%."*⁶⁷

⁶⁶ IHFHR (2000) op. cit., p.90

⁶⁷ IHFHR (2000) op. cit., p.87-89

The gender stereotyping of women's occupational opportunities also means that they tend to be restricted to less well paid employment:

“Although the assumption is that women in pre-war BiH had equal access to jobs, again the reality of their actual employment was somewhat different and occupations in BiH have always been gender-typed.

“According to Prism research, currently nearly two-thirds of employed women are in state/socially-owned enterprises. This is significant when one considers the disproportionate impact of privatisation on women, particularly their presence on “waiting lists” for downsized or defunct companies, and that many women have had difficulty in securing benefits earned over the years. Furthermore, 20% of Federation women reported being employed in positions below their formal qualifications; the situation was slightly better in the Republika Srpska. The gender stereotyping of occupations continues, affecting women's opportunities in the labour market. Women are virtually excluded from some of the most active occupations in the post-war economy, such as construction-related jobs and are being pressured to accept more traditional roles as mothers and housewives, as well as traditional occupations in administrative fields, clothing manufacturing, or the production of homemade goods. The average salary for women in the FBiH is 400 DM, and below 200 DM in the RS.”⁶⁸

5.2.2 Workplace discrimination

Women also face further discrimination in securing work **and** in the workplace:

“Women have been discriminated against in the workplace in favor of demobilized soldiers, and a small but increasing number of gender-related discrimination cases have been documented. Anecdotal accounts indicate that women and men receive equal pay at socially owned enterprises but not necessarily at private businesses. Women are entitled to 12 months' maternity leave and may be required to work no more than 4 hours per day until a child is 3 years old. However, women in all parts of the country encounter problems with regard to the nonpayment of maternity leave allowances and the unwarranted dismissal of pregnant women and new mothers. A woman with underage children may not be required to perform shift work”.⁶⁹

The Prism research referred to above by the International Helsinki Federation for Human Rights found that of women surveyed, 25% reported experiences of employment related discrimination, 46% of whom had faced this in obtaining work.

⁶⁸ IHFHR (2000) op. cit., p.87-9

⁶⁹ US Department of State (2001), op. cit.

“Women are still involved in the “parallel economy” (i.e. underground economy) or are simply not officially registered by their employers (as is required by law), although this is not only a gender problem. Still, according to a random survey of 100 women in Mostar, only 6% of those employed in private enterprises are officially registered. When asked why they did not contact the proper institutions to protect their rights and employee benefits, most said they were afraid to take action against their employer for fear of losing their job. On the other hand, even when legally employed, some employers declare lower salaries than they actually pay, in order to reduce their financial obligations towards the state for health and pension benefits. Similarly, employees are reluctant to press charges because they are afraid of being dismissed in retaliation. It is also interesting to note that, of the approximately 25% of the Prism survey respondents who reported having experienced discrimination, 38% were discriminated against in trying to acquire the relevant documents to claim employment and pension benefits. It is not immediately obvious that these problems affect women in greater numbers than men...

...“Another problem for women is that legal preferences are given to ex-soldiers in a number of areas, including employment (it has been reported that ex-soldiers have the lowest unemployment rates and the highest wages). Such preferences directly violate international and domestic standards of non-discrimination and equal opportunities, as men constitute the majority of demobilised soldiers. Article 9 of the Republika Srpska Employment Law, for example, provides priority in employment first to the families of deceased soldiers (if no other member of the household is employed). Priority is also given to disabled war veterans, according to disability, to demobilised soldiers and last to individuals officially listed as unemployed for at least two years. In this context, the increased potential for discrimination against women seeking employment has been noted.⁷⁰

This research found further evidence that such discrimination would be even greater for women forced to return, and women from ethnic minorities:

“Minority women and displaced women report being discriminated against in employment, although it is difficult to prove that displaced women are affected to a greater extent than displaced men. Still, discrimination on the basis of displaced person status was reported by the Prism respondents (all women) as slightly more common than gender discrimination. The European Commission and the World Bank also note that, because of reduced access to social networks, displaced persons and returning refugees have greater difficulty finding jobs, and are often subject to discrimination. Another significant aspect is that minority women are frequently passed over for jobs, while people with lesser qualifications

⁷⁰ IHFHR (2000) op. cit., p.87-9

fill their positions. Women in mixed marriages have been particularly vulnerable.”⁷¹

5.3 The consequences of divorce

5.3.1 Divorced women’s property rights

Although women and men appear by law to have equal rights to property, in marriage, property and other assets are generally owned and controlled by the male partner:

“men usually control the marital assets, leading women and children to suffer upon divorce. In many cases, the woman and children leave the home while the man stays pending the outcome of the divorce proceedings. Additional problems occur because the division of marital property is a long, drawn-out procedure and is handled separately from the relatively swift divorce proceedings. As a result, divorced women are initially faced with an uncertain financial situation”.⁷²

This male control of assets is protected by the unequal legislation, albeit at the draft stage in Republika Srpska:

“The issue on unequal treatment of women in the process of privatisation of state owned apartments continues to raise concern. According to the draft RS Law on Privatisation of the State Owned Apartments, the wife has to sign the purchase contract together with the husband, but the ownership is transferred to the husband only. This arrangement is satisfactory if the couple remains together but can be detrimental if the woman wants to leave the marriage. Of particular concern is if the woman is a victim of domestic violence and remains with the husband in order to avoid homelessness”.⁷³

The International Helsinki Federation for Human Rights cites that the law in the Federation of Bosnia and Herzegovina is also discriminatory:

“Article 21 of the Law on the Sale of Apartments with Occupancy Rights (of the Federation of Bosnia and Herzegovina) appears to be neutral, but can have a disproportionately discriminatory impact on women. It gives the holder of an occupancy right a reduction in the purchase price of the flat based on a percentage of the number of years of work”.⁷⁴

⁷¹ IHFHR (2000), op. cit., p.89

⁷² IHFHR (2000) op. cit., p.90-91

⁷³ HRCC (2001) op. cit., p.34

⁷⁴ IHFHR (2000) op. cit., p.90-1

This not only impacts on divorced women's long-term financial security but should also be interpreted in terms of its potential impact on her return, i.e. it is arguable that, given this situation, she might be forced to return to an abusive relationship.

5.3.2 Divorced and separated women's entitlements to financial support

For women separated from their husbands, and divorced women if they have not remarried, there are entitlements under the laws of both entities to financial support from their husbands or ex-husbands:

"The pre-war Family Code is still in force in both entities and establishes the mutual obligation of both spouses to support members of the family, in proportion to their capabilities and according to the needs of the dependants (Article 229). Above all, parents are obliged to support minor children (Article 230). A spouse is entitled to support from the other spouse if she/he is incapable of working or unable to obtain employment (which terminates when the dependent spouse remarries, Article 239). In addition, the Family Code obliges a former spouse to pay alimony to an otherwise dependent ex-spouse. Article 237 of the Family Code provides for the right of a dependent spouse to maintenance from his/her spouse "in proportion to the capabilities of that person." Avoiding such financial obligation carries criminal penalties, and avoiding alimony payments is a crime under Article 238 of the Criminal Code, punishable by up to one-year imprisonment. This is also true for divorced couples".⁷⁵

However, in practice there are significant problems faced by separated women in securing the financial support to which they are entitled. Note that women are most likely to be given custody of children.

"Despite reasonable legislation, non-compliance with the law is a serious problem and this is particularly important with respect to child support when parents separate, and is felt acutely by Bosnian women who often have difficulty obtaining alimony. Court proceedings to obtain alimony from the father are routinely long and drawn out, during which time the mother is forced to care for the children on her own. Even where they obtain a court order granting alimony or child support, Bosnian women have a great deal of trouble in securing the enforcement of their orders and most defendants know that the failure to appear in court has no real consequences.

"In most cases, by default or court decision, the mother is given custody of the children after divorce. Before the war, such court orders were sent directly to the defendant's employer, and the child support was deducted

⁷⁵ IHFHR (2000), op. cit., p.91

from his wages. Following the war, this system of enforcement has broken down since many people are illegally employed, i.e. not registered. There is also a problem in securing child support from men leaving the country, or from those who stayed behind as refugees in host countries when women and children decided to return to Bosnia after the war.

*“Although it is a crime to avoid court ordered financial support both in the Federation of Bosnia and Herzegovina as well as in Republika Srpska, in practice a substantial burden is placed on the complainant to prove that she (in most cases it is the woman) is entitled to the money, going through various procedural hurdles to prove that the defendant has “avoided” the support and to help the court determine his income, and also to attempt to execute the order. The Federation Criminal Code (Article 238, para. 3) allows a defendant charged with failure to pay alimony to pay off his obligation at any time up until the first instance court reaches a decision. If he does so, even at the last moment, the court will not impose penalties. In practice, this gives offenders great latitude to harass their former spouses, knowing they can ultimately avoid punishment or accountability for such behaviour”.*⁷⁶

5.4 Trafficking

Trafficking has emerged as a major concern in many of the former Yugoslavian countries. It is essential to consider whether a vulnerable woman forced to return may be at risk of being the victim of traffickers. The extent of trafficking, and a local failure to protect women was highlighted by the Special Rapporteur’s recent report:

“E. Gender based violence and trafficking

24. The trade in women and children for the purpose of forced prostitution remains one of the most serious human rights violations now being committed in Bosnia and Herzegovina. Information has been received from NGOs that women from Bosnia and Herzegovina are arriving at shelters in some Western European countries, indicating that the country is no longer a country of destination only, but also a country of origin.

25. The causes for the trafficking problem in Bosnia and Herzegovina include the lack of an effective State border service, the existence of a market and - of greatest significance – economic conditions in the countries of origin. Most women found in Bosnia and Herzegovina come from Moldova, Romania and the Ukraine. Disturbingly, recent raids on brothels in Bosnia and Herzegovina have shown that a substantial number are minors, some as young as 14.

⁷⁶ IHFHR (2000), op. cit., p.91-2

26. To date, responsibility for protecting the human rights of these individuals has fallen almost entirely on the shoulders of the international community. Raids on night clubs, coffee bars and other locations where trafficked women are believed to work are conducted by local police accompanied by members of the United Nations International Police Task Force. Initial interviews are conducted and women are asked whether they want to return to the country of origin. As far as is possible, women are informed of their legal rights and offered counseling and health care but, given the limited resources, neither the international community nor the local authorities can offer all the assistance that is necessary.

27. The number of victims assisted thus far by the International Organization for Migration (IOM) and UNMIBH, as of the end of November 2000, included 198 women who had been repatriated and more than 360 who had been assisted to leave the places where they were being held. It is believed, however, that these are only a small percentage of the women brought into Bosnia and Herzegovina.

28. The prosecution of perpetrators largely depends on evidence provided by the trafficked women against the traffickers or bar and night club owners. To date, however, only three perpetrators have been successfully prosecuted and sentenced, with sentences ranging from 4 to 20 months' imprisonment, with fines. Clearly this is inadequate as a deterrent".⁷⁷

Furthermore, women are often criminalized for their involvement in prostitution.

"It is illegal to run a brothel in Bosnia, but local police have focused primarily on women engaged in prostitution rather than procurers or those managing the brothels. As a result, women who have been coerced or forced into prostitution have little recourse. Authorities generally treat prostitution as a minor misdemeanor regarding the woman involved, but employers and customers do not face charges. Women convicted of prostitution can be fined, imprisoned for 60 days, or deported. It is estimated that there are some 700 brothels in the RS and some 300 in the Federation, where some 15,000 prostitutes work. Police officials in Brcko have been removed from office for involvement in prostitution".⁷⁸

⁷⁷ UN Economic and Social Council Commission on Human Rights (March 2001), op. cit., p.11; The problem has been widely documented elsewhere – see for example U.S. Department of State (2001) op. cit.; IHFHR (2000) op. cit.

⁷⁸ U.S. (2001), op. cit.

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www.unhcr.ch/world/euro/seo/bosnia.htm
www.unhcr.ch/refworld/pub/state/97/box4_4.htm

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Note

There is no up to date report issued by the Immigration and Nationality Directorate of the U.K. Home Office.

Bosnia and Herzegovina

Appendix

Update March 2002

1.2 Human rights

Amnesty International reported concerns on political violence, minority returns and police ill-treatment in September 2001:

“Political violence

Throughout the period of review [January – June 2001], AI expressed concerns about the high incidence of politically and ethnically motivated violence, particularly that which targeted minority returnees in various parts of the country. In many cases the authorities failed to adequately investigate and prosecute the perpetrators of such attacks. In the majority of cases in the RS [Republika Srpska] impunity for return-related violence was the norm, especially in the eastern part of the entity. In Bratunac and Bijeljina (RS), the United Nations International Police Task Force (IPTF) Commissioner removed several police chiefs from their positions in respectively February and March, primarily for their failure to adequately respond to and investigate repeated incidents of ethnically-motivated violence.

“Minority returns

Statistics compiled by international organizations again indicated a substantial rise in the return of private property and socially-owned apartments to their pre-war owners and occupants. Over 30,000 houses and flats were returned in the period under review, nearly two thirds of them in the Federation and the remainder in the RS and the autonomous Brcko district. In spite of this progress, many cases of violations of the right to return and disregard of property laws persisted. This was particularly true in respect of the so-called "floaters", people who were evicted from their property but stayed in their municipality throughout the war, of which reportedly some 400 remain in the larger RS towns of Banja Luka and Bijeljina.

“There was concern that donor funding for reconstruction did not keep pace with the increased interest in and speed of returns. The United Nations High Commission for Refugees (UNHCR) estimated in January that there was an urgent need for funding to reconstruct some 15,000 housing units belonging to returnees; by the end of June this number had risen to 22,000. A large part of reconstruction aid was also needed for people who had already returned to their pre-war communities on the

principle of "funding follows return", and who were living in tent settlements or temporary accommodation awaiting the rebuilding of their destroyed homes.

"It remains difficult to assess how many of the reported returns proved to be sustainable, and how many returnees have succeeded in reintegrating in their pre-war communities. Discrimination on grounds of ethnicity in regaining employment and the enjoyment of other social and economical rights was a common occurrence throughout the country, impacting heavily on the feasibility of sustainable return and on the decisions of those still displaced whether to leave areas where members of their nationality held political and economic control.

"Investigations into ill-treatment by law enforcement officials

There were several allegations of police ill-treatment throughout the country. In addition, police reportedly failed to react adequately to violent attacks on citizens. For example the Helsinki Committee for Human Rights reported that in February, in the Una-Sana Canton, a member of the Federation Army and three others attacked and seriously injured the wife and children of a former supporter of Fikret Abdic (the war time de facto leader of that region), an attack apparently condoned by the local police."⁷⁹

1.4 Women's human rights

The 2002 U.S. State Department report comments:

"Women

"There is little legal discrimination against women, and women serve as judges, doctors, and professors; however, a male-dominated society continued to prevail in both entities, particularly in rural areas, and few women are in positions of real economic power or political power. Women have been discriminated against in the workplace in favor of demobilized soldiers. A small but increasing number of gender-related discrimination cases have been documented. Anecdotal accounts indicate that women and men generally receive equal pay for equal work at socially owned enterprises but not always at private businesses. Women are entitled to 12 months' maternity leave and may not be required to work more than 4 hours per day until a child is 3 years old. A woman with underage children may not be required to perform shift work. However, women in all parts of the country encountered problems with regard to the nonpayment of

⁷⁹ Amnesty International (2001), *Concerns in Europe January – June 2001*, AI-index: EUR 01/003/2001, 01/09/2001, London, Amnesty International, available at <http://web.amnesty.org/ai.nsf/Index/EUR010032001>

maternity leave allowances and the unwarranted dismissal of pregnant women and new mothers.

“The integration of women into the police force in uneven but has improved; there is substantial female representation in the Brcko district and in police academy classes in both the RS and the Federation.”⁸⁰

2. Domestic violence

The 2002 report by the US State Department addressed domestic violence, stating

“Violence against women, including spousal abuse and rape, remained a widespread and underreported problem. A report by the International Helsinki Federation for Human Rights in 2000 estimated that approximately 30 percent of women in the country were victims of domestic violence; however, there is little data available regarding the extent of the problem. Throughout the country, rape and violent abuse are considered criminal offenses, and laws in both the Federation and the RS prohibit rape. Spousal rape and spousal abuse also are illegal in the Federation and the RS. However, domestic violence usually was not reported to the authorities; a sense of shame reportedly prevented some victims of rape from coming forward to complain to authorities.

Although police received specialized training to handle cases of domestic violence, there were reports of police inaction in cases of domestic violence and sexual assault. On May 15, a Pale court convicted a man of three counts of causing bodily harm to his ex-wife. Over a 6-month period, the man had hit and kicked his wife, hit her in the head and damaged her eyes, and pushed her into a stove causing burns to her hands and legs. The judge ordered only a \$407 (900 KM) fine. Local police failed to actively pursue an investigation while the abuse was ongoing despite repeated complaints by the woman. The Pale Assistant Police Commander initially told IPTF human rights officers that the incidents happened “behind closed doors” so the police could not intervene. Centers for abused women were created in the District of Brcko, Bihac and Sarajevo based on the successful a model in Zenica in the Federation.

“Trafficking in women from Eastern Europe and the former Soviet Union for purposes of sexual exploitation was a serious and growing problem”⁸¹

⁸⁰ U.S. State Department (2002), *Country Reports on Human Rights Practices, 2001: Bosnia and Herzegovina*, Washington, Bureau of Democracy, Human Rights and Labor, available at www.state.gov/g/drl/rls/hrrpt/2001/eur/8236.htm

⁸¹ U.S. State Department (2002), *op. cit.*

