

**THE CONTINUING CHALLENGE
OF REFUGEE RETURN
IN BOSNIA & HERZEGOVINA**

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THE CONTINUING CHALLENGE OF REFUGEE RETURN IN BOSNIA & HERZEGOVINA

EXECUTIVE SUMMARY AND RECOMMENDATIONS

In preparing for and orchestrating the proximity talks that marked the end of the 1992-1995 war in Bosnia & Herzegovina (BiH), the authors of the Dayton Peace Accords (DPA) placed a particularly high priority on the return of refugees and internally displaced persons to their pre-war homes. Annex 7 of the DPA is devoted entirely to ensuring the right of return. The peacemakers hoped that such return might one day reverse the territorial, political and national partition of the country that the DPA otherwise recognised.

While the first four years of peace saw large-scale return by both refugees and internally displaced persons to areas where their own nations were a majority, the chauvinist agendas and entrenched power structures of the nationalist parties kept “minority” returns to a minimum. By 2000, however, there was a surprising reversal. Not only has this trend continued, as ordinary people seek to return to their pre-war homes in ever-larger numbers, but it has begun to alter the prevailing political climate in much of the country.

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

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

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

Perhaps more remarkably, the press missed the story of the more than 367,000 Bosnians who have “voted with their feet” against partition and returned to live as “minorities” in areas governed by former foes. Years of international effort to open up returns through targeted reconstruction assistance – and to ensure that refugees and displaced persons have every opportunity to reclaim pre-war residences – have borne fruit. Official figures show that some 900,000 people have returned to homes from which they fled or were expelled during the war. High Representative Ashdown can reasonably claim that

“we’ve invented a new human right here, the right to return after a war.”

The Peace Implementation Council will consider refugee issues in January 2003. There are worrying indications, however, that impressed by recent success in creating and implementing a legal framework for repossessing pre-war housing, it may declare Annex 7 officially “implemented” before the job is done. That would suit the authorities in RS and parts of the Federation who are keen to equate property law implementation with actual return and close the book before creating the conditions that make return sustainable. Yet Annex 7 makes clear that the Bosnian authorities must also create the “political, social and economic conditions conducive to the voluntary return and harmonious reintegration of refugees and displaced persons, without preference for any particular group”.

While highlighting the positive role return has had in moderating nationalist politics in some areas, this report examines why many refugees are not yet in a position to choose freely where they will live. Depressed economic conditions are part of the answer. Discrimination in many municipalities prevents the full realisation of potential returns, threatens the sustainability of achieved returns and encourages returnees who do stay to huddle in enclaves rather than to reintegrate.

The Bosnian authorities’ gradual acquiescence, under pressure, in the right to reclaim pre-war housing has not been matched by willingness to eliminate the institutionalised discrimination that condemns many “minority” returnees to second-class citizenship. While high unemployment afflicts BiH in general, returnees face particular obstacles, including flawed privatisation. Bosnia’s education system, with three separate and politically charged curricula, is another reason often cited by families with children for not returning, as is discrimination in accessing utilities, healthcare and pensions.

Although the security situation has improved considerably, intimidation of “minority” returnees still occurs. Local police, prosecutors and courts often fail to bring those responsible for nationally motivated violence to book. In some parts of the RS a returnee is ten times more likely to be the victim of violent crime than is a local Serb. Even where the actual threat may be low, the continuing presence of putative war criminals – especially if in public office – sends a message to potential returnees.

Nationalist authorities also create economic incentives for “their” people to relocate through the often-illegal distribution of building plots and business premises, with the apparent intention of ensuring that returnees remain a poor minority.

This report also analyses the impact of recent amendments to the constitutions of Bosnia’s two entities. These aim to eliminate discrimination by annulling the special constitutional status once accorded Serbs in the RS and Bosniaks and Croats in the Federation and require local administrations to hire returnees according to national quotas, based on the population in the last, pre-war census. If implemented, these amendments will give returnees greater opportunity to defend their interests.

The partial nationalist victory in October prompted some commentators to suggest the time had come for the international community to give up on its multinational experiment in BiH and accept a final partition. The will of hundreds of thousands of refugees and displaced persons to return has already rendered such a division nearly impossible, barring more war and “ethnic cleansing”. The experiences of Cyprus, Kashmir and many other cases demonstrate the perils of partition. Bosnian returnees have rejected the nationalist programs, encapsulated in the wartime refrain that “we cannot live with *these people* anymore”, by returning to their pre-war homes. The viability of the Bosnian state and the stability of the region depend in large measure upon whether they can stay and prosper.

RECOMMENDATIONS

To the Peace Implementation Council, High Representative and international organisations and donors:

1. Resist the temptation to declare prematurely that Annex 7 has been implemented and hold domestic authorities to the requirement that they create the “political, social and economic conditions conducive to the voluntary return and harmonious reintegration of refugees and displaced persons, without preference for any particular group”.
2. Insist that cantonal and municipal authorities implement the reforms demanded by the 2002 amendments to the entity constitutions which require “fair representation” of “constituent peoples” and ensure that other national power-

sharing arrangements are implemented consistently.

3. Consider promoting staff exchanges between the entities, particularly in areas where proximity makes commuting across former confrontation lines easy, in order to facilitate the national reintegration of local administrations required by the constitutional amendments.
4. Step up efforts to eliminate discriminatory practices against returnees in accessing employment, pre-war property, healthcare, pensions and other social benefits.

To international donors, international financial institutions and investors:

5. Consider increasing, or at least do not decrease, funds for housing reconstruction and economic sustainability projects in 2003-04, taking advantage of the belated opportunity offered by the rising tide of interest in return on the part of Bosnian refugees of all nations.
6. Work with the BiH governments to create an economic development strategy based on the model of economic regions, exerting pressure to reform laws and regulations that discourage investment, ironing out regulatory discrepancies that divide Bosnia's economic space, and wherever possible, conditioning donations, loans and investments on employment opportunities for returnees.
7. Target specific sanctions against entity and canton governments where the police and judiciary fail to investigate and prosecute crimes against returnees.

To the Return and Reconstruction Task Force (RRTF), Office of the High Representative (OHR) and entity and cantonal governments:

8. Require entity and cantonal governments to increase budgetary support of the return process, so that each devotes perhaps some 10 per cent of its budget to funding reconstruction of housing and infrastructure, provision of alternative accommodation and initiation of sustainability projects.

9. Bolster the Joint Project Fund at the state level, with one account to be managed by a board consisting of representatives of the cantonal, entity and state refugee ministries – and if need be regulate it through High Representative Decisions – so that it can better support refugee return under the State Commission for Refugees and Displaced Persons, which in turn should be encouraged to:

- (a) set assistance priorities;
- (b) apply transparent criteria in the selection of beneficiaries;
- (c) oversee tenders and the identification of beneficiaries; and
- (d) monitor project implementation.

10. Do not transfer RRTF functions to BiH authorities until domestic capacity has been developed, in particular until the Joint Project Fund administered by the State Commission for Refugees is fully functional.

To the Organisation for Security and Co-operation in Europe (OSCE):

11. Accelerate efforts to reform Bosnia's divided education system, in particular by facilitating agreement on a common core curriculum and standards and assessment agency, while pushing for interim arrangements to allow returnees to take “national subjects” according to the curriculum of their choice and for the hiring of returnee teachers, in line with the Interim Agreement on Special Needs of Returnee Children.

To OHR and the entity governments:

12. Examine the relationship between the cantons and municipalities in the Federation and the entity ministries and municipalities in the RS with a view to enabling municipalities to collect, control and be accountable for more of their own revenues.

Sarajevo/Brussels, 13 December 2002



THE CONTINUING CHALLENGE OF REFUGEE RETURN IN BOSNIA & HERZEGOVINA

I. INTRODUCTION

The 1995 Dayton Peace Accords (DPA) sought through Annex 7 to provide a mechanism for reversing the “ethnic cleansing” that had defined both the tactics and war aims of the insurgent forces in Bosnia & Herzegovina (BiH), and that had forced half the state’s population (some 2.2 million persons) to flee their homes. The DPA charged domestic authorities with responsibility for creating the “political, social and economic conditions conducive to the voluntary return and harmonious reintegration of refugees and displaced persons, without preference for any particular group.”¹ But it also gave a broad mandate to a wide range of international organisations to ensure that this obligation was met. In the years that followed, international leverage was brought to bear on the wartime leaderships, who had been confirmed in power in their respective territories by the first post-war elections and remained determined to ensure that the fruits of national consolidation endured.² These nationalist establishments not only sought to provide incentives for members of their own nations either to stay put or to consolidate further the areas under their control, but also to erect barriers to return by such “aliens” as might prove brave (or foolish) enough to try.

Seven years after the war, significant returns have nonetheless occurred, altering the national balance and political atmosphere in some municipalities and communities. Unlike in neighbouring Croatia, where

too few Serbs have expressed an interest in return to pose any “threat” akin to that they were perceived as representing in 1990-1991, refugee return in BiH has the potential to moderate nationalist politics and to undo the worst effects of “ethnic cleansing”. Indeed, a stable future for Bosnia as a multinational state depends on creating an environment in which all citizens are able to move freely within their country and to live wherever they choose without fear of discrimination. This is not yet the case.

International efforts since Dayton have focused mainly on opening up space for return by ensuring refugees and internally displaced persons can reclaim and/or reconstruct their pre-war properties. In contrast to Croatia, laws in both BiH entities provide for a straightforward administrative procedure by which refugees³ can repossess private or socially owned properties that they abandoned during the conflict. These laws give precedence to the right of pre-war occupants to repossess their property over the right of current occupants to remain. As a result of constant international pressure on the authorities to process claims and to evict current occupants, over 150,000 Bosnians (62 per cent of applicants) were reported to have succeeded in reclaiming their property by the end of September 2002. While certain municipalities continue to obstruct implementation of these laws, international bodies co-operating in the Property Law Implementation Plan (PLIP) contend that

¹ The General Framework Agreement for Peace in Bosnia and Herzegovina, Annex 7, Article 11, paragraph 1.

² The popular refrain of the time was “We cannot live with *these people* any more.”

³ In official parlance, “refugee” refers to someone who left BiH because of the conflict, while “internally displaced person” or in this report “displaced person” (DP) refers to persons who took refuge in another part of the country. Unless specifically noted, the term “refugee” will be used here to encompass both refugees and internally displaced persons.

virtually all claims will be processed and properties returned by the end of 2003.⁴

Unfortunately, PLIP statistics are not wholly reliable, and probably overstate the extent to which properties have been reclaimed by their owners.⁵ Although it still not possible to assess the degree of inflation involved, the process of revising figures has begun and already suggests that the road ahead will prove longer than is now claimed.⁶ Furthermore, the ongoing uncertainty over the PLIP data raises questions about the wisdom of transferring full responsibility for property implementation and other return-related matters to the local authorities at the end of 2003, as is currently planned.

Targeted international assistance in reconstructing destroyed houses and infrastructure has also enabled hundreds of thousands of refugees to exercise their right to return. Unfortunately, donors have lately cut or, in some cases, ceased altogether their funding of reconstruction, even as the tide of would-be returnees that began to flow in 2000 has continued to mount. At the beginning of 2002, UNHCR and OHR estimated that refugees had expressed a strong interest in returning to about 66,500 devastated properties, but reconstruction funding was available for only about 20 per cent of them.⁷ Entity and cantonal governments have begun to fill a part of the

gap, but all allocate a very small percentage of their budgets to supporting return.

Although international efforts have helped make it possible for refugees to go home, they have been less successful in creating the conditions needed to sustain such return. Micro-credit programs for small returnee businesses and donations of livestock and agricultural equipment have made a difference, particularly in rural areas and when supplemented by pension payments. But with an official unemployment rate of some 40 per cent, returns to urban areas, where there is little or no land available for gardens and subsistence farming, are more problematic. Still, some cities and towns, including Sarajevo, have experienced a large and growing influx of returnees. Areas close to entity (and ethnic) boundaries also attract and stand a better chance of keeping returnees, since such persons can more readily visit, clear up and rebuild their former homes – and assess conditions for permanent return – before actually making the break. Moreover, in cities such as Prijedor and Sarajevo, many people have returned to live as “minorities”, but continue to commute to the places where they were formerly displaced to work. While it is a positive sign that so many people nowadays disregard former confrontation lines in their everyday lives, not every returnee or would-be returnee can have the added security of living close to an area where his or her group is in the majority.

⁴ This is the official line, but several international officials admitted to ICG that it would be more realistic to expect an 80 per cent implementation rate by the deadline the PLIP organisations have set themselves.

⁵ Since municipal housing offices report the total number of property claims and repossessions rather than submitting information on each individual case, the accuracy of the data cannot be directly confirmed. Questions about the PLIP statistics recently prompted the European Commission to call for a detailed reckoning of figures. As of 30 October 2002, housing offices will have to send all individual repossession cases to the Commission for Real Property Claims (CRPC), which is compiling a case-by-case repossession database to check against current statistics.

⁶ The CRPC has already found a significant number of cases where municipalities reported repossessions of destroyed property (which are meant to be excluded) or double-counted single housing repossessions. In Bugojno, for instance, the CRPC found that about 400 cases had been submitted twice. Though the PLIP estimates continue to report Bugojno's repossession ratio at over 88 per cent, a source in one of the PLIP agencies estimates that, after correction, the real number would be closer to 60 per cent. ICG interview with PLIP official, 15 November 2002.

⁷ Internal OHR document, “Housing Reconstruction Needs”, 2002.

Another problem is that returnees, particularly to the RS, have not been as successful in repossessing former business premises and usurped land as they have been in repossessing houses and apartments. International figures on property law implementation do not include this type of property, which is nevertheless essential for providing returnees with a sustainable living.⁸

⁸ The decision by the international community not to insist on the return of business premises and land plots with the same tenacity as residential properties has threatened the sustainability of thousands of returns. While PLIP statistics do not contain information on the repossession of these types of property, the CRPC does collect statistics on the basis of claims made to that agency for business premises. It has found that the authorities have returned a mere 450 of the 2,489 claimed through CRPC. The situation with land repossession is even more disturbing because of the number of claims (over 80,000 to CRPC) and the fact that the international community does not require municipalities even to collect, let alone to submit, data on resolved claims. With the CRPC mandate winding down, this organisation has been urged by others in

For one or more of these reasons, many Bosnians who repossess their pre-war properties soon opt to sell or exchange them for flats or houses among their own kind. Since the revocation last year of the Federation's rule prohibiting those who had reclaimed their homes from selling them for at least two years, this has been all the easier. Meanwhile, those who return to stay often live double lives: residing as a "minority" in one area but travelling to work or to see a doctor and sending their children to school where their nation predominates. Others rent their reclaimed properties, making some money while waiting to see if conditions improve.

Nationalist politicians and pundits, as well as some self-proclaimed realists among the international community, have been quick to assert that this behaviour proves that Bosnia's several nations will never be able to live together again. Others argue in mitigation that, after four years of war and ten years of living apart, many people have naturally made new lives for themselves. In any case, a moribund economy rather than a hostile political climate or inveterate national antagonism is the main reason why many people opt not to return. For all the reasons mentioned above, many refugees are simply in no position to choose freely where to live.

Despite the many barriers and inhibitors, ever larger numbers of refugees are either returning to their homes or expressing an interest in doing so. This means that issues of sustainability must command commensurate attention by international organisations and domestic governments alike. Otherwise, the ethos and propaganda of the separatists could be validated. As Serbs have returned to the Federation from both the RS and Yugoslavia over the past two years, they have defied the imprecations of the Serb Democratic Party (SDS) that this trend represents a form of treason. Similarly, as Bosniaks have dared to venture into the hard-line fastness of the eastern RS, they have given the lie to the past line of the Party for Democratic Action (SDA) that only its protective mantle can keep Bosniaks safe in an incorrigible "Serbian entity".

International engagement is still necessary to maintain and sustain the decisions of ordinary people to resist their wartime leaders' invocations of tribal solidarity. This is not just a question of human rights. It is also the principal test of whether or not the Bosnian state conceived at Dayton can endure and evolve as a viable multinational state.

the international community to concentrate on issuing decisions on contested habitable property rather than on non-disputed destroyed property or land. While the PLIP agencies have truly achieved an amazing success in pushing for the return of residential properties, the pressure to paint a rosy picture and justify quick disengagement has meant that returnees can be given a place to stay but denied a means to live.

II. RETURN AND DISPLACEMENT IN 2002

Since the signing of the DPA, UNHCR has registered some 907,000 returns, both within Bosnia and from abroad,⁹ of which 367,000 were so-called “minority” returns, whereby persons return to an area now dominated by another national group.¹⁰ This means that returns to and inside BiH far exceed the total number of Serbs who fled Croatia since 1991, and testify to the relative success of Bosnia’s system of property repossession in facilitating return. These movements against the grain of both the war and nationalist propaganda have grown steadily since 2000, when UNHCR figures registered an increase of more than 50 per cent on 1999. The upward trend continued in 2001 and in the first three-quarters of 2002.¹¹ In the course of June 2002 alone, UNHCR counted more “minority” returns than in the same month in 1999, 2000 and 2001 combined.¹²

Moreover, UNHCR officials explain that their estimates are almost certainly on the low side since, until 2002, they represented only those people who registered their returns with the local municipal or cantonal authorities.¹³ Throughout BiH, large

numbers of returnees fail to register because they want to maintain their pensions or health benefits in the places from which they have returned, because they have gone home only provisionally or part-time, or because they do not trust the local authorities.¹⁴ The latter phenomenon is particularly marked in the eastern RS municipalities of Srspe Gorazde, Zvornik and Foca, from which UNHCR receives very little data on returns because returnees are reluctant to make their presence known.

Notwithstanding the increased tempo of return in recent years, the pool of potential returnees remains large. Some 127,000 refugees from BiH still live in Croatia and Yugoslavia, while approximately 380,000 remain internally displaced within Bosnia. If the current rate of return is maintained through the end of 2003, another 150,000 returns can be expected, meaning that more than half of those displaced because they belonged to the “wrong” nation will have gone home. UNHCR believes that this trend will continue *if* international pressure and financial support are maintained. However, if the sustainability of returnees’ livelihoods does not improve a dramatic decline in return, as well as an exodus of a portion of more recent returnees, can be expected. Yet in the second case, most such people will have no place to go in the areas where they lived previously as displaced persons. Having ceded or been evicted from the temporary housing they formerly occupied, many may have no recourse but to seek asylum in western countries.

⁹ UNHCR Returns summary from 01/01/96 to 30/09/02.

¹⁰ UNHCR, “Total Minority Returns into BiH from 1996 to 30 September 2002”. In the rest of this text, “return” will be used to refer to this particular type of return, i.e. to an area where one’s own people is not demographically or politically dominant, unless otherwise specified. The term “minority return” is unfortunate, since “minority” in the legal discourse of the former Yugoslavia connotes people who are not “constituent” or state-forming nations, regardless of whether or not they represent a numerical majority in a given area. In BiH, Serbs, Croats and Bosniaks, as “constituent peoples”, cannot be minorities in the legal sense, wherever they may reside in the country. The term has nonetheless proved useful in distinguishing between the early post-war returns by refugees to areas where their own nation formed the majority and the more recent returns by refugees and DPs to regions in which they now constitute a minority.

¹¹ According to UNHCR, over 250,000 minority returns have been recorded between September 1999 and September 2002. UNHCR Press Release, 9 September 2002.

¹² “In June of this year, 12,653 returnees were recorded in their respective pre-war municipalities; this figure is higher than the corresponding figures for June 1999, 2000 and 2001 combined.” UNHCR Press Release, 6 August 2002.

¹³ In 2002, UNCHR introduced the category of “recorded returns” to include both registered returns and estimates based on return information collected by international organisations and local associations of returnees.

¹⁴ In addition, many families hedge their bets: some members stay full-time, others work elsewhere, and the offspring are sent to school or university in “majority” areas, returning home for the holidays.

III. NATIONALIST STEREOTYPES AND THE POLITICAL IMPACT OF RETURN

Annex 7 of the DPA stipulates that the right to return is absolute – if individuals choose to exercise it. Annex 7 also embodies the hope and presumption of its authors, if not of its signatories, that the return and reintegration of Bosnia's national groups would serve both as the foundation of a stable state and the scourge of chauvinist politics. Although such a reading of Bosnia's long history as a multinational community accords with the facts, it is often argued that its recent history – and developments elsewhere in Eastern Europe – demonstrate that single-nation states have a better chance of ensuring prosperous, democratic and peaceable futures. While the sum total of returns recorded thus far has yet to transform the overall pattern of national separation and homogeneity inflicted upon BiH by the war, returnees have significantly altered social and political life in many municipalities and localities (*mjesne zajednice*), thus testing the argument over whether reintegration is politically stabilising or destabilising.

In the Bosniak-majority town of Bugojno in central Bosnia some 8,500 Croats have returned, half the pre-war population of Croats. A lesser, but not insignificant, percentage of Serbs has also returned to Bugojno. In Drvar, where Serbs formed the overwhelming majority until almost all fled the assault of the Croatian Army in 1995, returning Serbs have re-nationalised the town. In the tiny RS municipality of Vukosavlje (near Modrica), about 80 per cent of the mostly Bosniak refugees have returned.¹⁵ Janja (in the Bijeljina municipality) was an almost exclusively Bosniak settlement before the war and an almost entirely Serb one thereafter. It has seen the return of about 6,000 Bosniaks (or 60 per cent of its pre-war Bosniak population).¹⁶ In Sarajevo, Serbs have lately returned in significant numbers. There were 17,891 registered returns to Sarajevo Canton in 2001 and almost double that

number is expected in 2002.¹⁷ These are just a few examples of encouraging movements on the local level.

The Bosanska Krajina municipality of Prijedor demonstrates how returnees and potential returnees can help marginalise nationalist politicians if they participate in elections. In the 2000 municipal polls, over 10,000 Bosniaks still living outside the municipality cast absentee ballots, securing nine places on the 32-member municipal council for Bosniaks from the Coalition for a Unified and Democratic Bosnia (CUD, the then coalition of the SDA and the Party for BiH, SBiH). At the same time, large numbers of Prijedor Serbs defected from the SDS to more moderate parties formed after the SDS split in 1997: the Alliance of Independent Social Democrats (SNSD), Serb National Alliance (SNS) and Party of Democratic Progress (PDP). The Bosniak councillors supported the election of SNSD member Nada Sevo as mayor and secured the appointment of one of their number, Muharem Murselovic, as president of the municipal assembly. Large-scale returns since 2000 mean that Bosniaks are likely to become an even stronger political force after the next municipal elections.

As many as 20,000 Bosniaks are estimated to have returned to Prijedor. They thus exercise greater political influence than is possible in most other municipalities to which refugees have returned. But mixed municipal councils are now common throughout BiH. This ensures that returnees have representatives to defend their interests, even if they are still regularly outvoted by members of the dominant group. The 2004 municipal elections will result in even more power sharing, since the returnee population will be more than double that of 2000. The next step will be to reintegrate returnees in the local administrations, school staffs, public companies and police, where their presence is still negligible. The April and October 2002 amendments to the entity constitutions (discussed below) mandate

¹⁵ "Kada ce Vukosavljeni postati Jakesani", *Oslobodjenje*, 8 June 2002.

¹⁶ They have done so despite the fact that only 30 out of 300 destroyed houses have been reconstructed. Helsinki Committee for Human Rights in Bosnia and Herzegovina, Bi-weekly "FaxLetter", N°123, 15 April 2002.

¹⁷ This still represents, however, only a fraction of the 150,000 Serbs who lived in the municipalities now making up Sarajevo Canton before the war. Rates of return within Sarajevo Canton vary markedly from municipality to municipality. Close to half of the pre-war Serb population has been registered as returning to the inner city municipalities of Centar, Novi Grad and Novo Sarajevo. But return to the outer suburbs has generally been much less. In the absence of comprehensive figures on the numbers of people who return merely to settle their affairs and sell their reclaimed properties before leaving again, it is impossible to say how many returns are permanent.

these reforms in the cantons and municipalities, but will remain dead letters without pressure from the international community.

Returnees emerged as recognisable constituencies in both entities in the October 2002 general elections, albeit of widely varying significance in the different legislatures (state, entity and cantonal). Federation-based parties won fourteen seats in the 83-member RSNA and elected two of the fourteen RS deputies to the state parliament.¹⁸ On the other hand, RS-based parties took just one seat in the Federation House of Representatives. Nor did they do well in cantonal races. As is explained below, however, under new constitutional amendments, each of the three “constituent peoples” will nonetheless have representatives in the governments and legislatures of the entities and cantons.

Although the SDA has long been active in the RS, garnering Bosniak ballots from both returnees and absentee voters, the SDS and HDZ have, since 1996, actively discouraged displaced Serbs and Croats from casting votes in their home regions. Their aim has been to consolidate the relocation of their displaced constituents in those areas most vital to their respective national projects. Because of the HDZ’s hostility to returns which dissipate the Croat national corpus, moderate Croat parties enjoy considerable support in those areas to which Croats have nonetheless returned, particularly Posavina and central Bosnia. Such Croat returns have served to chip away at the HDZ’s predominance among Croats in the Federation. In the RS, the moderate New Croatian Initiative (NHI) occupied the only seat won by a Croat party in both the 2000 and 2002 elections to the RSNA. On the other hand, this situation also reflects the generally low interest among Croats in returning to the RS.

Accelerating Serb return to the Federation prompted the relatively moderate SNSD and PDP to put up more candidates for the cantonal and Federation legislatures in 2002 than they had before. Milorad Dodik’s SNSD had enjoyed some limited success in the Federation in the 2000 elections as a result of the support it had among returnees to places like Drvar. Thus, having established itself as a defender of returnee Serbs, the SNSD was expected to win additional votes in 2002 from Serbs who had

returned in the meantime, particularly to Cantons 1 (Bihac) and 9 (Sarajevo), where PDP candidates also ran.

The SNSD and PDP may also have aimed to take votes from among Serbs who had remained in Sarajevo throughout the war and who might be disappointed with their traditional party, the SDP. This party was sometimes criticised for diluting its commitment to multinational ideals as a consequence of its need to keep Bosniak voters from defecting to the SDA and SBiH. Several prominent Sarajevo Serbs abandoned the SDP before the 2002 elections and joined the PDP candidates’ list.

As it happened, the PDP won no seats, but the SNSD took three in the Canton 10 assembly and received one compensatory mandate (for a Federation-wide vote of 5,200) in the Federation House of Representatives. Insofar as they voted, most Federation Serbs must have stayed loyal to the SDP.¹⁹

The representation of “minority” returnees to both entities will in any case be amplified this year by the implementation of constitutional amendments guaranteeing at least four seats in the entities’ parliaments to each of the three “constituent peoples”. The amendments also require the newly formed entity governments to include a specified number of ministers from each people, as well as prescribing that certain key offices must be shared out among the different nations. What is effectively a second chamber of the RSNA, the Council of Peoples, has been created with the power to block legislation that offends against “vital national interests”. The pre-existing Federation House of Peoples, meanwhile, has been recast to include an equal number of Serbs. These changes – and others discussed in more detail below – will have the effects of both giving greater voice to returnees and encouraging yet more returns.

¹⁸ The SDA took six seats, the SBiH four, the SDP three and the New Croatian Initiative (NHI) one in the RSNA. The SDA and SBiH each took an RS seat in the BiH parliament.

¹⁹ For the complete 2002 results, see www.izbori.ba.

IV. CREATING SPACE FOR RETURN OR RELOCATION?

A. RECONSTRUCTION ASSISTANCE

The first requirement for a refugee family to return is housing. Although international donors have spent some €608 million to date on repairing war-damaged houses and infrastructure,²⁰ there is now estimated to be a funding gap of €99 million between what is available this year and what UNHCR and OHR reckon is needed to rebuild the 66,500 housing units to which pre-war occupants seek to return.²¹ Moreover, of some 16,000 families who have already returned to their pre-war homes but are still awaiting reconstruction assistance, between 4,125 and 7,000 will not in fact get that help before winter.²² In some parts of the country, returning refugees continue to shelter in tent villages or to cram together in partially reconstructed houses, waiting for building materials and other assistance. For example, in the eastern RS village of Glogova (Bratunac municipality) to which Bosniaks began to return in force in 2000, their inflow continues to outpace reconstruction aid. Many of these families not only survived the 1995 Srebrenica massacres, they are also returning despite the fact that Bratunac is still run by the same wartime leadership that “cleansed” the municipality in 1992.²³

²⁰ Internal OHR document, Housing Reconstruction Funding, 1995-2002.

²¹ SIDA (the Swedish International Development and Co-operation Agency) arrived at a similar estimate in a recent internal report, confirming that “the number of house repairs that are still needed before the return-related reconstruction needs are substantially fulfilled are in the order of up to 50,000 houses.”

²² UNHCR internal “Briefing Note on the Implementation of the Dayton Peace Agreement Annex VII in Bosnia and Herzegovina”, November 2002. Cost calculations are based on the EC Delegation's estimate that €8-10,000 is required to bring each housing unit up to International Management Group standards. The UNHCR briefing note estimates that \$90-95 million will have been spent on reconstruction during 2002 by both domestic and foreign agencies. Thus, assuming rough parity between the euro and the dollar, and further assuming the low end of available assistance and the high end of estimated costs per dwelling, funds are available to rebuild about 9,000 units. On the other hand, if available funding is the maximum envisaged and unit costs are at the bottom of the range, then there will be money to reconstruct some 11,875 dwellings. This means that between 4,125 and 7,000 of the highest priority housing units will remain unbuild this year.

²³ “Povratnicima prijeti glad”, *Nezavisne novine*, 5 June 2002.

Thus while returns have risen steadily since 1999, the availability of funds to support this movement has declined just as steadily. Major donors such as the U.S. State Department's Bureau of Population, Refugees and Migration (BPRM) and UNHCR have recently stopped money for reconstruction altogether.²⁴ The European Commission (EC) cut its yearly allocations from €69 million in 1999 to €23.5 million in 2002;²⁵ and USAID's programs for infrastructure to support return have dropped in similar proportions since 2000. Fortunately, some bilateral donors – like the Swedish International Development Agency (SIDA) – have bucked the trend, maintaining or increasing their financial support for return-related projects in the face of overall declines in international assistance to BiH. Last year's announcement of the creation of a Unified Islamic Return Fund, managed by a board of six bilateral donors from Muslim countries, is another helpful development. But disbursements from this fund have been slow and cumbersome to date. Nor have they been co-ordinated with OHR and UNHCR.

It seems inevitable that Bosnia's state, entity and cantonal budgets will need to shoulder an increasing share of the financial burden for reconstruction of housing and infrastructure, as well as for sustainability projects. In 2002, the Federation and RS governments allocated, respectively, KM 32 million (€6 million) and KM 10 million (€5 million) for reconstruction projects to support return into and out of their jurisdictions. The state, the resources of which are significantly smaller than those of the entities, committed only KM 3.6 million (€1.8 million) for return projects. The Federation cantons and Brcko District, together, set aside some KM 45 million (€22.5 million) for refugees, though this figure includes the costs of alternative housing for displaced persons as well as for returnees.²⁶

²⁴ Although BPRM-funded projects are still being implemented and UNHCR maintains a small “quick support” fund to respond to the emergency needs of returnees.

²⁵ ICG interview with EC representative, Sarajevo, August 2002.

²⁶ A degree of transparency has been introduced into entity spending on return (which is not present at the cantonal level) since the High Representative ordered the entity governments to submit quarterly reports on their spending of allocated funds at the beginning of this year. “Decision ensuring transparency in the use of funds for return of refugees and displaced persons in both Entities”, 24 January 2002.

While these allocations may seem generous at first glance, they represent but a small fraction of the various Bosnian governments' total budgets. In 2002, the RS and Federation devoted about 2 per cent of their respective budgets to refugee and return-related issues. When compared to their spending on war veterans and invalids (13 per cent in the RS and a whopping 23 per cent in the Federation), it is clear where political priorities lie.²⁷ In the cantons of the Federation, the absolute and relative levels of assistance to returnees vary wildly, but meanness is the rule. The richest canton, Sarajevo, spends about 3 per cent of its budget on refugees and returnees.²⁸ On the other hand, Canton 1 (Bihac) provides a meagre KM 715,000 (or about 0.5 per cent of its KM 100 million plus budget) on alternative accommodation for individuals who vacate housing reclaimed by returnees.

The recent constitutional changes will permit previously powerless national groups to influence budgetary allocations when their "vital interests" are at stake. In 2002, Bosniak and Croat members of the RSNA Constitutional Commission held up passage of the year's budget until the Assembly agreed to increase its allocation to support the return of non-Serbs. On the other hand, some Federation-based Serb groups have accused the RS of failing to support the return of Serbs to the Federation in a manner commensurate with what the Federation does to back Bosniak and Croat returns to the RS.²⁹ This is not surprising, for as the RS government has come under increasing international pressure to tolerate the return of Bosniaks and Croats, it has sought to keep displaced Serbs in the RS.

Annex 7 of the DPA mandated the creation of a Refugees and Displaced Persons Property Fund in the Central Bank of BiH. It was to be administered by the Commission for Displaced Persons and Refugees and financed both by the acquisition and disposal of real property (a task which fell instead to the Commission for Real Property Claims) and by

direct payments from the "Parties" (including Croatia and Yugoslavia) and other donors. No such fund was established.³⁰ This is regrettable. A common fund, managed by a board of representatives from the entities, Brcko district and the state – and possessed of a joint account at state level – would have served both to reduce overhead costs and to enhance transparency. Instead, the current process means that beneficiaries are selected, allocated support and the works monitored by the fourteen separate levels of government that encumber BiH.³¹

The State Commission for Refugees and Displaced Persons, made up of representatives from the state Ministry for Human Rights and Refugees, the entity and Brcko refugee ministries and UNHCR, did eventually set up a Joint Project Fund of KM 15.8 million (€8 million) for agreed priority projects in 2002. But under this scheme the state and entities still maintain separate accounts and can refuse to spend the sums agreed.³² The BiH authorities are unlikely to create a common pot unless and until the High Representative imposes such a solution, since the current lack of transparency permits them to use funds for unintended purposes such as political patronage and majority relocation. This situation should be rectified before the international community hands over the management of reconstruction funds to the local authorities, which is planned to take place at the end of 2003. Otherwise, the rampant abuse of humanitarian funds that characterised the early years after Dayton can be expected to return.

As donations to BiH continue to fall, development assistance in the form of soft loans and direct investments will also be needed to pick up the slack. International financial institutions (IFIs) like the World Bank have expressed a willingness to offer soft loans for this purpose, and the Council of Europe Development Bank could also assist, now that Bosnia is a member of that body.

An Austrian housing association, allied to that country's Social Democratic Party, has recently

²⁷ OHR Internal Document, Overview of the BiH budgets for reconstruction (and return) and war veterans.

²⁸ Sarajevo Canton spends large sums in an irrational and non-transparent manner on associations of war veterans, invalids and their families. For instance, in the Vogosca municipality public funds support four or five separate municipal associations of this type, each spending money to rent office space and maintain itself.

²⁹ "SGV trazi rusenje satorskih naselja u BiH", *Oslobodjenje*, 17 June 2002.

³⁰ DPA, Annex 7, Article XIV: Refugees and Displaced Persons Property Fund.

³¹ That is, the state, two entities, ten cantons and Brcko District.

³² For example, the Federation Ministry of Finance has proved reluctant this year actually to disperse earmarked funds from its account. ICG interview with UNHCR official, 12 November 2002.

demonstrated another possible solution by investing KM 7.5 million (€3.8 million) in Sarajevo Canton under an agreement brokered by the Stability Pact's Regional Return Initiative. This money will be used to construct housing for socially vulnerable persons, including returnees. The canton will service and maintain the envisaged bloc, and repay the investment over 25 years at a low rate of interest.

International organisations will need, however, to monitor the selection of beneficiaries and other aspects of project implementation to ensure that the local authorities do not allocate dwellings to politically-connected individuals or use them to encourage the permanent relocation of refugees who could otherwise return to their former homes. A similar project, financed by GTZ (The German Society for Technical Co-operation) in Bijeljina, backfired when the unsupervised municipal authorities allotted flats to members of the local SDS establishment.³³ Another option would be to increase the availability of low-interest reconstruction loans to individuals. UNHCR's experience with micro-credit schemes implemented through a variety of local and foreign NGOs has shown a high level of repayment.

B. PROPERTY REPOSSESSION

A second crucial factor since 2000 in opening up the housing stock required for refugees to return has been international pressure on local authorities to help would-be returnees realise their right to repossess their pre-war flats and houses. After unwanted citizens fled or were expelled, the wartime regimes distributed refugees' abandoned or forcibly surrendered housing to incomers of the "right" sort. In some cases, the authorities were forced to allocate empty dwellings as an *ad hoc* response to uncontrolled inflows. In other cases, the nationalist parties – principally the HDZ and SDS – organised the mass expulsion of "alien" groups and the mass relocation of their own, sometimes over great distances. For example, after the Croatian Army took Drvar in September 1995 and the Serb population fled, the HDZ sought to entice Croats from ethnically mixed central Bosnia to resettle there, advertising a better life with a job and free housing in Croatia's new strategic borderland. Similarly, when the

implementation of the territorial provisions of the DPA led to the transfer of the Serb-held Sarajevo suburbs to the Federation in early 1996, the SDS dragooned Serbs into fleeing and relocating in eastern Bosnia, occupying the homes of expelled Bosniaks.

In 1997 and 1998, the international community resolved to support return by insisting that the right to repossess one's pre-war property should take precedence over any rights that local authorities had granted to the current occupant. In 1998, international arm-twisting compelled the entities, first the Federation and then the RS, to create legal frameworks for property repossession. These laws were strengthened and harmonised by the High Representative in October 1999. They established a straightforward administrative procedure, set deadlines for local housing offices to process claims and current occupants to vacate housing units, and compelled local authorities to evict occupants who would not leave voluntarily.

Predictably, these laws and procedures met – and continue to meet – with obstruction throughout the country. However, the five primary international agencies working to support return³⁴ have largely succeeded in overcoming such resistance, even in hard-line municipalities, through a unified strategy for implementing the law: the Property Law Implementation Plan (PLIP). Under this plan the agencies' representatives serve as Focal Points, each covering a few municipalities and charged with coordinating their activities at the local level and monitoring the work of local housing offices.

The UN International Police Task Force (IPTF) exercises its supervisory powers over local police forces to ensure that evictions take place as ordered. Double Occupancy Commissions, composed of local and international officials, work to prioritise evictions of people with multiple dwellings. In a number of municipalities with particularly bad records, internationals co-locate in return offices, setting quotas of cases to be resolved and providing daily oversight. Finally, the High Representative has used his Bonn-Petersburg powers to remove over 30 mayors and other municipal officials who have obstructed implementation of the property laws and exercise of the right to return.

³³ For an account of some other shortcomings of this project, see Human Rights Watch, "Bosnia and Herzegovina Unfinished Business: The Return of Refugees and Displaced Persons to Bijeljina", Vol 12, N°7(D), May 2000.

³⁴ That is, UNHCR, OHR, OSCE, UNMIBH and CRPC.

This combination of legal and political pressure has yielded results. By 30 September 2002, PLIP statistics indicated that over 150,000 families had repossessed their houses and flats, but nearly 100,000 claims remained outstanding. The RS continues to lag behind the Federation in the percentage of claims resulting in repossessions, but the gap between the entities is closing. Under Minister for Refugees and Displaced Persons Mico Micic, the RS significantly improved its rate of implementation: from 31 per cent at the end of 2001 to 56 per cent in September 2002.³⁵

Nevertheless, high-ranking international officials recently chastised Bosnian officials for failing to enforce the property laws in a “uniform, efficient and transparent way”, pointing to the continuing practice of allowing judges, politicians, police officers and war veterans illegally to occupy other peoples’ homes.³⁶ Some municipalities in the eastern RS still seek to thwart Bosniaks from reclaiming their property and, thereby, to preserve this strategic region’s new Serb majority. Meanwhile, housing officials in the two largest cities of the western RS, Banja Luka and Prijedor, also appear reluctant to embrace the notion that these towns should again be mixed. A number of smaller Bosniak-majority towns in the Federation, including Lukavac, Srebrenik, Zavidovici, Donji Vakuf and some outlying municipalities in Sarajevo Canton, also lag behind due to politically motivated resistance to return.

Of even more concern is the fact that the Republika Srpska authorities seem to have focused significantly more effort on returning socially-owned apartments, mostly in urban areas, to their pre-war owners than on returning private property, more often located in rural areas. This is troubling because return to villages is more easily sustainable through agriculture than is return to cities and towns, where employment opportunities are scarce. Overall, the rate of repossession of socially owned property in the RS was 64 per cent in September 2002, while claimants of private property had only succeeded in 53 per cent of cases. In some municipalities (e.g., Dobojski, Visegrad, Zvornik and Foca) the implementation rate for socially owned property is close to or greater than twice that for private

houses.³⁷ Thus in these areas the focus seems to be on returning property to persons less likely to return in fact, but more likely to exchange or sell. Coupled with the failure to return land for farming and business premises at the same rate as housing, these data suggest a policy of implementing the law in a manner calculated to result in a minimum of sustainable returns.

Despite such game playing and hold-ups, international officials have declared their confidence that the housing property laws will be fully implemented by the end of 2003. This in sharp contrast to the gloom that prevailed as recently as 2000, when sluggish implementation rates suggested that many people could be waiting for up to 40 years to recover their residences in the RS and 22 years in the Federation. Some international officials admit privately, however, that 15 to 20 per cent of property claims will probably remain unresolved at the end of 2003. There is thus a danger that, in their haste to slim down the international presence in BiH and to hand over to the local authorities, the relevant agencies will slacken their engagement or significantly reduce their presence, so allowing recalcitrant Bosnian officials to block the final tranche of housing repossessions. Concentrated action after 2003 in the remaining hard-line municipalities should be enough to prevent this.

Of greater concern is the temptation that the international community may feel to declare Annex 7 complete as soon as the property laws have been fully implemented for housing. Not only would such a declaration imply the abandonment of tens of thousands of Bosnians who cannot yet return to unreconstructed homes, as well as those who will not have repossessed other property essential to sustainable return, it would also absolve the BiH authorities of their wider obligation under Dayton to provide conditions conducive to return and re-integration.

As this report will argue, local governments, particularly in the RS, have collaborated in permitting ever larger numbers of refugees to

³⁵ “Implementation of the Property Laws in Bosnia and Herzegovina - Summary”, 30 September 2002.

³⁶ “A New Strategic Direction in PLIP: IC principals demand an end to selective implementation of the property laws”, 12 September 2002.

³⁷ In Dobojski, 72 per cent of socially owned property has been successfully reclaimed, but only 42 per cent of private property. The differentials in the other municipalities are as follows: Foca, 73 per cent and 42 per cent; Visegrad, 76 per cent and 32 per cent; Zvornik, 65 per cent and 23 per cent. “Review of Implementation of the Property Laws in Republika Srpska”, 30 September 2002.

repossess their homes because they have also been left free to pursue other policies that discourage real return. In the eastern RS, municipal governments have either distributed free land and building materials or provided credits for buying them to displaced Serbs whom they aim to keep in the RS. Throughout BiH, the nationalist establishments have been able to count on dire economic conditions and discrimination in access to employment as disincentives to return. Difficulties in accessing utilities, divisive and nationalistic school curricula, delays and bureaucratic barriers to the payment of pensions and the provision of health care, and the presence of uncaught and unpunished war criminals all play varying parts in deterring return.

C. RETURNING TO SELL?

No international organisation or government agency has precise figures on how many Bosnians, after reclaiming their houses or flats – or receiving reconstruction assistance – then decide to sell or exchange them and relocate elsewhere. Both anecdotal evidence and classified advertisements in the newspapers suggest that the practice is widespread, as well as being more common in the cases of socially owned flats than private houses. Reliable data are available only for returns to reconstructed (as opposed to repossessed) property because the international Housing Verification and Monitoring Unit (HVM) systematically collects this information for donors interested in knowing what impact their assistance has had.

HVM has physically verified about 34,000 of the estimated 111,000 housing units reconstructed in BiH. This effort has revealed that about three-quarters of pre-war occupants do return to their reconstructed dwellings; but in a third of these cases, only a part of the family does so.³⁸ A number of trends appear to be reflected in these findings, including the tendencies for only older family members to return permanently and for school-age children to remain in or be sent back to their “majority” areas. In about 20 per cent of the verified cases, reconstructed houses and apartments remained empty, but less than 4 per cent had been let, sold or lent to an occupant other than the original beneficiary. Rather than demonstrating any lack of interest in return on the part of refugees,

these figures show that incentives for the return of younger refugee families remain weak, though also that such people seem to be keeping their options open by holding on to their reconstructed property. More young people could be expected to return if discriminatory practices in access to employment, public services and education were removed.

As for repossessed houses and apartments, reports from the field illustrate varying patterns of return, sale and rental, depending on the area. After the High Representative decreed an end to the two-year moratorium on re-sale in the Federation in July 2001, applications for repossession from persons in the FRY shot up. The cancellation of this rule also resulted in large numbers of apartment sales in municipalities such as Croat-majority Kupres, where RRTF officials claim most Serbs have repossessed property only to sell it. Sarajevo media report that as many as 10,000 repossessed apartments in Sarajevo Canton remain empty, which, if true, would represent about half the properties repossessed in the canton.³⁹

On the other hand, in Drvar, about 500 Serb owners of repossessed and privatised flats have signed rental agreements allowing displaced Croats to stay on. Most of these Croats work for Finvest, the major employer in Drvar, and can thus afford to pay rent. In many cases, however, the families of these breadwinners have returned to their pre-war homes in central Bosnia or resettled in Croatia. Similar arrangements are common in the eastern RS town of Foca, where Bosniaks may have repossessed their flats but, in the absence of work, have rented them to displaced Serbs. These examples reflect an apparent desire among potential returnees to keep their options open and to secure some income while waiting for employment opportunities to arise or for the security environment to improve. In the meantime, permanent return is more often centred on villages, where subsistence agriculture can be practised.

D. ILLEGAL LAND ALLOCATION TO REFUGEES: DEMOGRAPHIC ENGINEERING CONTINUES

As the international community has become increasingly determined to uphold the right of refugees to repossess their property, the nationalist regimes have fought back by focusing on creating

³⁸ Housing Verification and Monitoring Unit, Housing and Verification Statistics per HVM Entry Point, 27 July 2002.

³⁹ “Sedam gladnih godina”, *Oslobodjenje*, 27 July 2002.

incentives for their own displaced persons to settle permanently where it will benefit their respective national agendas. Entity, cantonal and, most often, municipal authorities achieve this through the distribution of building plots, construction materials, business premises and commercial real estate to displaced persons.⁴⁰ This policy is most common in the RS.

In many such cases, what was socially owned land under the old order, and which may yet be subject to restitution, is pre-emptively privatised on behalf of new owners. In particularly egregious cases, the property of those who were “cleansed” or the sites of places of worship that were destroyed are expropriated. According to one report, the Serbianisation of the left bank of the Drina from Cajnice in the south to Srebrenica in the north has been guaranteed by the usurpation of private land in 84 destroyed villages.⁴¹

In analogous fashion in the Federation, the authorities in Sanski Most have permitted displaced Bosniaks to build houses in the gardens of Serb home owners, sending a clear message that Serb-owned land is fair game as compensation for past Bosniak suffering. In another set of cases, land owned by Serbs in Sanski Most was usurped for the building of a school.⁴² According to one OHR official, some 200 property owners in Sanski Most suffered similar usurpation during the 1995-1999 regime of local SDA warlord and former BiH Army General Mehmed Alagic, who is now facing war crimes charges in The Hague.⁴³ OHR is currently investigating unresolved cases of land usurpation in Sanski Most; but it is claimed that individuals in the

municipal administration who participated in such seizures under the previous mayor have been obstructing the resolution of these cases.⁴⁴

Even when land is not privately owned, it can be allocated in a manner that encourages the colonisation of one group and discourages the return of another. For example, the building of Serb houses on communal land in Doboj that was previously farmed by Bosniaks both undermines returnees’ ability to feed themselves and discourages others from following. Land allocation policy in the RS seems, in fact, to be specifically targeted at diluting the demographic and political effects of Bosniak and Croat return, since land grants occur most frequently in those areas of return that had non-Serb majorities before the war.

Although this strategy is more comprehensively implemented in the RS, it is not unknown in the Federation. Veterans of the wartime BiH Army and the families of those killed in its ranks were last year offered low-interest loans to purchase flats in a huge new block being constructed in the Stup district of Sarajevo. This concession has been criticised as an attempt to alter the national composition of what has traditionally been a largely Croat neighbourhood.⁴⁵ Moreover, OHR is investigating allegations that Bosniak applicants for permits to build flats on the roofs of existing buildings are being favoured in the Sarajevo suburb of Vogosca.⁴⁶

The allocation of publicly owned land for building new mosques and churches is also a concern when construction takes place on land that was owned by members of a different confession prior to nationalisation or when a religious object is erected in the middle of a returnee settlement. OHR recently ordered a halt to the construction of a new mosque in an area of significant Serb return in the centre of Ilijas, right next to a school.

Estimates of the number of building plots that have been distributed across the country vary widely and wildly, ranging from 20,000 to 100,000. The state Ministry for Human Rights and Refugees has recently embarked on creating a database of all land allocations based on inquiries in every municipality. However, according to the Ministry, data received to

⁴⁰ For example, a Serb from Sarajevo who is granted a lot on which to build a house in Zvornik (and perhaps some building materials as well) can build a house on that plot for a fraction of the market value of his property in Sarajevo. He can then sell the Sarajevo dwelling and use the profit to establish himself in Zvornik, where the cost of living is lower.

⁴¹ “Devastiran 84 bosnjacka sela”, *Nezavisne novine*, 19 July 2002.

⁴² “Sumrak Aneksa 7”, *Nezavisne novine*, 1 June 2002.

⁴³ Although many of these owners subsequently accepted compensation, the money due them has not often been paid. One group of returnees claims that the municipality paid them through a bank that then filed for bankruptcy, informing OHR but not the beneficiaries that the compensation had been paid. See “Sumrak Aneksa 7”, *Nezavisne novine*, 1 June 2002. A group of Serb citizens from Sanski Most recently complained that a local general and the deputy commander of the local police station had built houses on private Serb property. “UN ne interesuje povratak”, *Nezavisne novine*, 14 August 2002.

⁴⁴ Ibid.

⁴⁵ “Hrvati na Stupu uskoro manjina”, *Dnevni list*, 8 June 2002.

⁴⁶ ICG interview with RRTF official, 6 September 2002. Vogosca was held by the Serbs during the war.

date remain partial. Because of political controversy surrounding the issue, the Ministry is reluctant to make an unconfirmed estimate. Everyone agrees, however, that the most intensive land allocation (and relocation of displaced persons) is taking place in a few municipalities in the eastern RS. In Bijeljina and Zvornik, grants of building lots run into the thousands. In addition, much illegal building is taking place in the latter town, funded by Dragan Spasojevic, a member of the SDS crisis staff when the “cleansing” of Zvornik commenced and later its chief of police.

The SDS house journal, *Glas Srpski*, congratulated the local authorities in July 2002 for completing 90 per cent of housing projects in Srpsko Sarajevo, the far-flung collection of outlying suburbs, villages and towns from which Radovan Karadzic dreamt of building a rival capital after Dayton. Citing statistics provided by the Council of Serb Sarajevo (an administrative body not recognised by the international community), the paper claimed that nearly 6,000 houses and flats have been built in Pale, Sokolac, Srpska Ilidza and Srpsko Novo Sarajevo to meet the needs of Serbs who had left the Federation.⁴⁷ This represents about half the number of dwellings to be reconstructed by international donors in 2002, and demonstrates that the RS authorities could allocate more to returnee housing if that were a political priority. According to OHR, Pale and other municipalities previously linked to Sarajevo have been particularly active in building commercial enterprises – hotels, cafes and other businesses – on formerly socially owned land. After demanding to know the names of those who had benefited from these allocations, OHR staff learned that many were current or former SDS luminaries.⁴⁸

Imputations of corrupt practices have not come only from the international community. The Association of Refugees and Displaced Persons of Pale, a group that favours Serb relocation in the RS, has accused SDS functionaries of skimming off funds intended for DP resettlement and building houses for themselves. It also sought OHR’s help in ensuring that grants of dwellings and business premises are made in a transparent manner.⁴⁹

OHR has sought to control abuses in the distribution of socially owned land by imposing a general ban on the practice. Local authorities that have already made or seek to make such allocations are required to apply to OHR for a waiver.⁵⁰ Applicants for waivers must prove that the land in question is publicly owned, that it is not subject to restitution and that its transfer is “non-discriminatory and in the best interests of the public.”⁵¹ OHR has not, however, been able to stop illegal building work from continuing while waivers are sought, let alone to thwart land grants and construction work in an unknown number of cases where no waiver is even sought. Local authorities, meanwhile, rely on the assumption that the international community will not dare to raze houses that have already been built.⁵² In some cases OHR has received false documentation about land ownership, as well as evidence that families receiving free building lots already have housing.

Successive high representatives have sacked six mayors and other municipal officials in 2001-02 for making illegal allocations, but to little effect. Treating illegal land grants as a matter for the criminal law has proved more effective. According to international officials working in the eastern RS, the indictment of a former mayor of Bratunac that seeks to make him liable to pay damages to all those individuals who have been harmed by his abuses has had a chilling effect on further building in that municipality. This former mayor is currently being tried in absentia, because he has fled to Serbia.

⁴⁷ “Kuce na sve strane”, *Glas Srpski*, 23 July 2002.

⁴⁸ ICG interview with RRTF official, 3 October 2002.

⁴⁹ “Izbjeglice traže pomoć OHR”, *Nezavisne novine*, 2 August 2002.

⁵⁰ “Decision on reallocation of socially owned land, superseding the 26 May 1999 and 30 December 1999 decisions”, OHR, 27 April 2000.

⁵¹ Ibid.

⁵² Recently, however, the new mayor of Dobojski seems to have taken to heart the High Representative's dismissal of two of his predecessors for complicity in illegal building. The municipality ordered the removal of the roofs from two houses in the Kotorsko settlement that had been constructed after OHR banned further building work. See OHR Media Round-up, 31 October 2002.

V. REASONS NOT TO RETURN

Besides the possibility of recovering and repairing their homes, would-be returnees also base their decisions on the availability of work, their assessment of the security situation, their children's chances of getting a decent education, the provision of basic public services, and their access to pensions, health care and other social benefits. Recalcitrant authorities, meanwhile, rely on their capacity to deny one or more of these things to persuade persons who have repossessed and rebuilt their homes that it would be wise to sell up and to abandon the attempt to stay in areas where they are not welcome.

Implementation of Annex 7 means more, therefore, than simply ensuring that refugees can reclaim their property. It also means the creation of conditions that will give "minority" returnees a fighting chance of surviving and prospering in their former communities. Bosnia's segregationists – particularly in the RS – are thus keen to declare Annex 7 complete as soon as the property laws have been implemented, so providing a stamp of legality and permanence on "ethnic cleansing". If the international community, in its haste to proclaim its mission in BiH a success and to decamp, accepts this narrow definition of Annex 7, many of those who have already returned are also likely to pack their bags and go.

A. DISCRIMINATION IN A DEPRESSED ECONOMY

As in Croatia, the weakness of the economy discourages return, though the situation in Bosnia is much worse. Not only has Croatia long since regained and surpassed its pre-war GDP, but the official rate of unemployment in that country is just half of BiH's 40 per cent. Bosnia's economic travail stems from its huge war losses, its structural handicaps in making the transition from socialism to capitalism, its stalled and corrupted privatisation process, and its unreformed laws, regulations and habits of mind – all of which discourage both foreign and domestic investment. In particular, the country's fragmented economic and political space has thwarted the elaboration and implementation of serious or realistic development plans. Thus, throughout the country, indigenous populations, displaced persons and returnees all struggle to make ends meet.

It is nonetheless obvious that discriminatory policies and practices serve to stack the deck against returnees. As a facet of "ethnic cleansing", members of the "wrong" national group were dismissed from firms and public institutions which came under the control of the nationalist parties, particularly in the RS and in HDZ-controlled "Herceg-Bosna". During the war, municipal councils in the RS issued orders requiring "legal entities and individuals" to place Muslim and Croat workers on waiting lists for "a determined period of time, without compensation".⁵³ Those who have since sued to get their jobs back have had virtually no success in courts still organised to dispense "ethnic justice". Although the Federation Law on Labour Relations guarantees those who have been unfairly sacked either their jobs or compensation, employers ignore the law in practice. The comparable RS law provides only for compensation, but is in any case also ignored.⁵⁴

International organisations working to support refugee return contend that "discrimination in employment is a human rights violation that is widely reported throughout Bosnia and Herzegovina", and that such discrimination is "most commonly based on ethnic origin, political opinion, affiliation and participation in trade union activities or gender".⁵⁵ Moreover, employment laws in both entities discriminate against returnees by giving priority to demobilised soldiers, war invalids and the families of fallen soldiers – classes of persons that, by definition, exclude those from the "other side".⁵⁶ Although the generally dire state of the Bosnian economy and the paucity of new jobs mean that

⁵³ "‘Cekanje’ dugo deset godina", *Oslobodjenje*, 6 October 2002.

⁵⁴ ICG interview with staff at UNHCR legal aid centre in Republika Srpska, 16 July 2002. Apparently, however, a small number of large employers in the Federation has agreed to comply with the requirement to give compensation or return to work. The Sarajevo Brewery is said to have offered work to 68 pre-war employees, only one of whom reportedly chose employment over compensation. Sarajevo is also reported to be the only area where authorities have complied with a Decision by the High Representative requiring that the pre-war owners of business premises have their workplaces returned to them. ICG interview with OSCE official, 10 October 2002.

⁵⁵ OSCE, OHR, OHCHR, UNHCR, "Prevention and Elimination of Discrimination in Employment, Fair Employment Practices Strategy, Revised Policy Paper", October 2001.

⁵⁶ Bosna i Hercegovina, Ministarstvo za ljudska prava i izbjeglice, "Informacija o Realizaciji Aneksa VII Opceg Okvirnog Sporazuma za Mir u BiH", March 2002, p 32.

returnees of all national groups, including those belonging to the majority, have trouble re-integrating, experience shows that “minority” returnees face the added obstacle of institutionalised discrimination.⁵⁷ The fact that neither entity’s employment bureau has a section dedicated to assisting returnees highlights the lack of official concern for such people.⁵⁸

One particularly worrying aspect of the privatisation process in BiH is that it has so far been largely controlled by nationalist establishments that have used and abused it to strip the assets of public companies before privatisation and to ensure that viable companies end up in the hands of their cronies. Before privatisation was regulated by law in 1997, a few successful commercial enterprises were subject to a wholly spurious form of privatisation known as “co-capitalisation”. This put profit-making firms like Aluminium Mostar (BiH’s biggest exporter) and Finvest (a wood products company based in Drvar) into the hands of the cross-border HDZ oligarchy. The firms were then used to cement “ethnic cleansing” by dispensing jobs to displaced Croats whom the party aimed to attract and keep in Croatia’s new strategic glacis.⁵⁹

Matters were little improved by the voucher-based privatisation scheme initiated by USAID in 1998. It created twelve privatisation agencies: one for the RS, one for the Federation, and one for each of the ten Federation cantons. Their proliferation increased the scope for corruption by putting the process in the hands of nationally partisan administrations.⁶⁰ Entity and cantonal governments used this structure to distribute a disproportionate number of vouchers to war veterans and other favoured groups that had lived in a given area during the war. The result has been that viable companies privatised to date tend to end up in the control of individuals connected with

the wartime parties, who then dispense available jobs to their brethren.⁶¹

Through the Inter-Agency Working Group on Employment, the international community has begun to address the problem of employment discrimination in a systematic manner. In its joint strategy for preventing and eliminating discrimination, this group admitted last autumn that “although the 24 May 2000 Peace Implementation Council highlighted the need to foster economic, educational and labour market opportunities for returnees, the actual implementation of these crucial objectives has not yet started.”⁶² The international strategy for combating employment discrimination has three main components: (1) conducting surveys throughout the country to assess the nature and degree of discrimination; (2) educating employers and the public about fair employment practices; and (3) revising legislation and creating a means to support litigation by persons who feel they have been wronged.⁶³

In assessment visits to areas of significant refugee return throughout Bosnia, ICG was told repeatedly by international officials, returnees’ representatives and local authorities that economic stagnation was *the* single greatest obstacle to return. With the rate of unemployment still on the rise in BiH, policies to end discrimination can have but limited effect. Between March and May of 2002, 12,163 workers in the Federation lost their jobs.⁶⁴ According to UNDP survey data from June 2002, 67 per cent of respondents in the RS and 48.7 per cent in the Federation claimed that they were not earning enough to meet their basic needs. The growing gulf in wellbeing between residents of the RS and the Federation is highlighted by the fact that the average wage in the RS is significantly lower than the cost of a typical basket of essential consumer items.⁶⁵

Any long-term strategy to address the interlocked problems of economic retardation and refugee return will have to focus on developing the Bosnian economy as a single economic and regulatory space,

⁵⁷ “UNHCR Protection Policy and Guidelines to the Field, Employment”, April 2002.

⁵⁸ ICG interview with staff at UNHCR legal aid centre in Republika Srpska, 16 July 2002.

⁵⁹ Finvest was recently reported to have hired 50 Serb returnees. As displaced Croats continue to leave Drvar, the company is compelled to find labourers among the returnee population, a positive sign that when privatisation is complete, capitalism may yet prove stronger than nationalism.

⁶⁰ See ICG Balkans Report N°115, *Bosnia’s Precarious Economy: Still not Open for Business*, 7 August 2001.

⁶¹ Ibid.

⁶² OSCE, OHR, OHCHR, UNHCR, “Prevention and Elimination of Discrimination in Employment: Fair Employment Practices Strategy, Revised Policy Paper,” October 2001.

⁶³ Ibid. It seems, however, that this typically high minded working group is still in the survey phase after a year.

⁶⁴ UNDP, *Early Warning System*, April-May 2002, p.13.

⁶⁵ Ibid., p.16.

the lack of which is one of the main barriers to foreign investment. OHR and its Bosnian partners have attempted to jump-start this process by establishing cross-entity economic development regions, but until the SDS and other RS parties overcome their dread of anything that compromises their entity's powers, little real development is likely.

In the general climate of economic gloom prevailing in BiH, decisions about whether to return or remain probably depend most of all on individual families' calculations of where they can best eke out a tolerable existence. For example, in trying to integrate Bosniaks and Croats into the RS police force, the UN mission has come up against the natural unwillingness of experienced officers in the Federation to take the pay cut that such transfer would entail.

Meantime, the RS policy of distributing free building plots to displaced Serbs has had a pronounced effect on their decisions to stay. Differential pensions and difficulties in collecting them after return (discussed below) also have an exaggerated impact on the decisions people make regarding return, especially as the modest pension paid to an elderly family member may be that family's only regular cash income. Finally, economic calculations are most visible in the greater rates of return to rural rather than urban areas. For in villages returnees can hope both to live off the land and to enjoy the support of their own kind.

Impoverishment alone, however, cannot explain either the preference for rural areas on the part of those who do return or the decisions of many potential returnees not to do so. Economic insecurity is a constant for most people in BiH, but the authorities can nonetheless tip the scales against return through discriminatory practices in the spheres of property law, justice, social services, pensions, education, health care and public utilities. This means that refugee families are likely to consider poverty in an area where their group predominates as preferable to poverty in an area controlled by hostile authorities.

B. MONO-ETHNIC INSTITUTIONS

The homogenisation of Bosnia's population in separate national enclaves during the war, the partition sealed by the DPA and the subsequent electoral victories of the nationalist parties have ensured that municipal administrations, courts, police, schools, and public companies are staffed

almost exclusively by members of the locally dominant nation. There are partial exceptions to this rule in some cities and professions in the Federation, but the RS as a whole continues to reflect the success of "ethnic cleansing", particularly in those towns where the SDS initiated its project through the exemplary execution or expulsion of influential leaders of the Bosniak and Croat communities.

Mono-ethnic institutions inhibit return in two key ways. First, because the private sector accounts for a mere 35 per cent of BiH's GDP, public institutions are the largest employers. More significantly, because of the many appointments of ardent loyalists to public sector jobs made by the nationalist parties during and since the war, the members of new "minorities" can still expect to meet with antagonism and discrimination in their contacts with these authorities. In places like Prijedor, Bratunac and Srebrenica, where individuals involved in running concentration camps or leading paramilitary formations are known to work in the courts, schools and police,⁶⁶ the natural tendency of returnees to avoid dealings with the authorities is all the greater. As a result, where large-scale return has taken place, returnees have usually formed parallel institutions, led by returnee associations, serviced by token representatives in municipal government and sustained by a largely separate economy. Return has not yet resulted in re-integration.

One sector where the past has an obvious effect on return is in the staffing of entity, cantonal and municipal housing offices, to which potential returnees must apply to repossess their pre-war property. For example, according to figures provided by the RS Ministry for Displaced Persons and Refugees, only 22 out of 520 employees in that ministry are not Serbs.⁶⁷ Moreover, a significant number of employees in the RS Housing Offices (OMIs) are themselves displaced persons, with an obvious conflict of interest in assisting returnees to repossess property usually occupied by people like themselves. None of the OMI heads of office in the RS represents returning Bosniaks or Croats.

⁶⁶ See ICG Balkans Report N°103, *War Criminals in Bosnia's Republika Srpska*, 2 November 2000. Bosniak councillors and returnees in Srebrenica, as well as international officials, confirmed to ICG that this remains a problem.

⁶⁷ RS Ministry for Displaced Persons and Refugees, Document Number 03/1-166/02, 6 June 2002.

Returnees can encounter discrimination in many spheres and guises. For example, in some areas, newly built settlements for “majority” DPs are connected to roads, electricity grids and other utilities before returnee villages, whose infrastructure was destroyed in the war, are reconnected. This reflects the fact that the public utility companies are run by the governing parties throughout the country. Meanwhile, as is discussed below, the nationally exclusive curricula and staffing of schools perpetuates divisions and deters returnee parents from sending their children to school. Nor have judges and prosecutors, appointed during the war for their loyalty, proved ready to dispense nationally impartial justice.

Bosnia’s police forces are, in fact, the only public institutions that the international community has sought systematically to reintegrate. In restructuring agreements signed with the Federation in 1996 and with Republika Srpska in 1998, the UN mission set quotas for the recruitment of “minority” officers to the entities’ forces. In the Federation, forces were meant to reflect the national composition of the pre-war population in a given municipality, as determined by Yugoslavia’s last census in 1991. A laxer standard was accepted for the RS, where the profile of the police force in a given municipality was required to conform only to the level of participation by the various national communities in the 1997 elections.⁶⁸

The reintegration of Bosnia’s police forces has had two objects. First, it seeks to ensure a more secure environment for returning refugees through the assurance that “their” nation is represented among those upholding the law. Second, reintegration aims to provide employment for some returnees, thereby offering a stimulus to return. But the experience of UNMIBH in attempting to reintegrate municipal police forces also offers a primer to international organisations that will be endeavouring to ensure the proportional representation of the three “constituent peoples” and “others” in all institutions of authority following the April and October 2002 amendments to the entity constitutions.

Not surprisingly, the recruitment of “minority” police officers has been subject to overt political obstruction by entity and cantonal interior ministries. But it has also fallen foul of prevailing salary and cost of living

differentials, the lack of enough places in the police academies and the absence of affordable housing in the receiving locality. Moreover, officers who have taken up employment in areas where another nation predominates have had to face either intermittent threats to their security or marginalisation. For example, “minority” officers are sometimes sidelined, not issued with weapons or badges, prevented from participating in investigations and assigned to menial jobs such as doorman or parking attendant. Abuses of this sort are particularly widespread in the RS and in Croat-ruled parts of the Federation.

Although 10 per cent of police ranks across BiH were composed of “minority” officers by October 2002,⁶⁹ recruitment still lags well behind the targets set for both entities.⁷⁰ Progress has, however, been made in some municipalities with significant returnee populations. In Drvar, continuous UNMIBH pressure on the recalcitrant Canton 10 authorities in Livno, including the successive removal of three interior ministers, has finally paid off, with Serb returnees now comprising 44 per cent of the force and a Serb chief in place.⁷¹ In neighbouring Bosansko Grahovo, to which Serbs have also returned in significant numbers, returnees comprise 27 per cent of the force.⁷²

Returning Serbs have also succeeded in securing political power in Drvar, as well as significant representation in the municipal administration, despite the efforts of the HDZ-dominated cantonal government to frustrate or contain this process. In Bosansko Grahovo and Glamoc, too, Serb (and Bosniak, in the case of Glamoc) returnees are in the process of establishing themselves in the municipal governments and administrations. Yet as returns have overturned the post-war demographic structure in these towns, the canton has cut off revenue payments and transferred competencies up to the cantonal level. The SNSD mayor of Drvar has characterised these policies as an “economic blockade” of the municipalities, a judgment confirmed to ICG by a number of international organisations working in the canton. As a consequence of the High Representative’s imposition of amendments to the Federation constitution on the morrow of the 5

⁶⁸ For details, see ICG Balkans Report N°130, *Policing the Police in Bosnia: A Further Reform Agenda*, 10 May 2002.

⁶⁹ UNMIBH Internal Document, 15 October 2002.

⁷⁰ ICG interview with IPTF Commissioner, “Mijesanje politicara u rad policije mora prestati”, *Oslobodjenje*, 21 October 2001.

⁷¹ Internal UNMIBH document, August 2002.

⁷² Ibid.

October elections, however, Serbs and Bosniaks will be guaranteed representation in the government of Canton 10 commensurate with their pre-war numbers. The robust implementation of these amendments will both exclude the possibility of mono-ethnic cantonal governments and serve to encourage further return.

C. SECURITY

ICG has been told repeatedly by both international officials and local politicians that threats to the security and wellbeing of returnees have diminished markedly throughout BiH during 2002.⁷³ But human rights organisations such as the RS Helsinki Committee paint a less positive picture, contending that attacks on returnees to that entity are increasing.⁷⁴ An analysis of violent incidents carried out by SFOR confirms that there are several trouble-spots. It shows, for instance, that a Bosniak returnee to Bijeljina or Prijedor is ten times more likely to become a victim of violent crime (defined as bombing, rape, stoning, assault, arson or murder) than a local Serb.⁷⁵ Moreover, out of six returnee deaths in the eastern RS since 2000, police investigations have yet to result in a single prosecution.⁷⁶

In its quarterly report for April-June 2002, the Helsinki Committee of Republika Srpska reported eight attacks with explosive devices against returning Croats and Bosniaks and their property in the RS.⁷⁷ Repeated attacks on Bosniak returnees to the south-eastern RS municipality of Gacko in the first half of 2002 culminated in the demolition of the minaret of a newly reconstructed mosque in September.⁷⁸ Although both the mayor of Gacko and RS Prime Minister Mladen Ivanic condemned this

act, it remains to be seen whether the perpetrators will be pursued and prosecuted. Bombings directed against three returnees to Prijedor in the first half of this year – not to mention the case of one Bosniak family in Banja Luka whose home has been attacked five times since 1999 – demonstrate that a persistent if low-level campaign of violence against returnees continues even in more “liberal” areas in the RS.⁷⁹ Ugly demonstrations and vandalism directed at returnees’ homes and businesses in Brcko and several RS cities following Yugoslavia’s victory in the world basketball championship in Indianapolis in September 2002 – and comments by the RS interior minister that the miscreants were just “having fun” – point to a climate of officially sanctioned impunity.

Sources in OHR and UNHCR report that SDS-controlled municipalities in the eastern marches of the RS remain an exception to the general trend towards greater returnee security in that entity. The police, prosecutors and courts in the municipalities of Bijeljina, Zvornik, Bratunac, Vlasenica, Milici and Visegrad, to name the worst, still fail to treat attacks on returnees and their property, including murders, as crimes, even when considerable international pressure is brought to bear on police and prosecutors.

Bratunac witnessed a particularly noxious rash of return-related violence in March this year when a returnee was killed by an explosive device planted in his yard, a grenade was thrown at another returnee’s house and two Bosniak parents were beaten up at a school where they had gone to enquire about enrolling their children. Potential indictees for war crimes, including men who participated in the Srebrenica massacres, retain significant power in the town’s administration. On the other hand, OHR and OSCE officials working in the area claim that the police have subsequently succeeded in curtailing violent outbreaks in the town.

The murder of a sixteen-year old Bosniak girl, shot dead in front of her house near Vlasenica by a sniper on the sixth anniversary of the fall of Srebrenica in July 1995, highlights the climate of impunity prevailing in the eastern RS. According to international officials familiar with the case, the initial police investigation both ignored and covered up crucial evidence. After the IPTF became involved, a bullet was recovered and sent to France

⁷³ It is interesting to note that these same international organisations and, in particular, the UN mission, while characterising the general security situation as improved, refuse to divulge their own figures on return-related violence.

⁷⁴ Helsinki Committee Republika Srpska, “Protection, Promotion and Monitoring Human Rights in Republika Srpska, April 1-30 June 2002. Attacks included the bombing of a Serb-owned business in Doboju that had recently employed two Bosniak returnees.

⁷⁵ ICG interview with source in SFOR, 1 July 2002.

⁷⁶ ICG interview with UNHCR, June 2002.

⁷⁷ Helsinki Committee Republika Srpska, “Protection, Promotion and Monitoring Human Rights in Republika Srpska, April 1-30 June 2002.

⁷⁸ Ibid. Also, “Srusena dzamija”, *Nezavisne novine*, 20 September 2002.

⁷⁹ Helsinki Committee Republika Srpska, “Protection, Promotion and Monitoring Human Rights in Republika Srpska, April 1-30 June 2002.

for ballistics tests. Further investigation matched the bullet with a gun owned by a local Serb. Following more IPTF intervention, the police finally arrested three suspects in April 2002, including the owner of the gun and a friend who had “borrowed” it. But all were subsequently released. Refugees from Vlasenica identified one of the suspects as having participated in war crimes against Bosniak civilians. With the EU taking over responsibility for monitoring the police from the UN in January 2003, some international officials have expressed concern lest this case be dropped.⁸⁰

Regardless of the seriousness of this particular crime, the reluctance of the police to investigate, their sloth in eventually doing so, the unwillingness of prosecutors to mount a case, and the allegations that one of the suspects was also a known war criminal all serve to illustrate how difficult it is for non-Serbs to obtain justice in this region, even when the international machinery is brought to bear. Such attacks and the official indifference with which they are met are hardly fortuitous. They reflect, rather, the determination of local SDS oligarchs to preserve their eradication of Bosniak majorities in the Drina valley.

Attacks on returnees also continue in the Federation, though both the frequency and severity of such disorders are much less than in the RS. Nevertheless, incidents such as the stoning in September 2002 of a bus containing 70 potential Serb returnees to the Gorazde area are equally clearly designed to inhibit return.⁸¹ Violence directed at Serb returnees to Drvar and the representatives of international organisations on the spot has diminished substantially of late. But those same international organisations warn that accelerated return to Glamoc, Bosansko Grahovo and other nearby towns could lead to new outbreaks of anti-Serb and anti-international intimidation.⁸²

Although the presence of putative war criminals in local administrations, police forces, schools and informal municipal power structures continues to impede return throughout BiH, the removal of such people encourages return. IPTF now regularly decertifies police officers against whom there is

evidence of wartime misdeeds. The sacking in 2001 of the police chief of the outer Sarajevo suburb of Hadzici is a case in point. Sacked because he had run a notorious camp in Tarcin where Serb civilians were held and from which some disappeared, his removal from office was quickly followed by seemingly permanent Serb returns to Hadzici.⁸³

The relatively large number of public indictments issued by the ICTY against the commandants and guards of the several concentration camps around Prijedor – and, more especially, the early and high-profile arrests carried out by British SFOR troops – were crucial to opening up the area for large-scale return. Subsequent removals of police officers in Prijedor and Janja on suspicion of involvement in war crimes have doubtless helped to keep the flow of returns going. Yet arrests and removals from office will only have a lasting effect on the climate for return when local courts begin to follow them up with war crimes’ prosecutions. ICTY officials have claimed that between 15,000 and 25,000 individuals in the former Yugoslavia may be indictable for war crimes.⁸⁴ Given the fact that the Bosnian war was the longest and bloodiest of the Yugoslav conflicts, many thousands of these individuals must still be residing in BiH. In a recent assessment visit to Bosnia, the president of the Association for Threatened Peoples confirmed that war criminals remain present in the institutions of the RS, including its schools.⁸⁵ They may not be big enough fish for indictment by The Hague, but they are certainly remembered by their surviving victims.

D. APARTHEID IN EDUCATION

Bosnian primary and secondary schools teach according to three separate, nationally specific curricula, in three supposedly distinct languages and often using textbooks replete with terminology and interpretations that are offensive to returnee children and their parents. Up until recently, curricula and teaching materials in Croat and Serb schools were largely those of Croatia and Serbia, respectively. The failure since Dayton (which entrusted education to the entities and, in the Federation, to the cantons) to create a common system or curriculum means that, in the best of cases, “minority” returnee pupils attend all

⁸⁰ ICG interview with UNHCR, June 2002.

⁸¹ “Kamenovani Srbi povratnici”, *Nezavisne novine*, 13 October 2002.

⁸² UNHCR internal document, “Briefing Notes for the Municipalities of Drvar, Bosansko Grahovo, Glamoc, Livno, Kupres and Tomislavgrad, July 2002.

⁸³ ICG interview with OHR official, 22 September 2002.

⁸⁴ “Mali Hag u Sarajevu”, *Oslobodjenje*, 21 October 2001.

⁸⁵ “Ratni zlocinci rade kao profesori u skolama”, *Oslobodjenje*, 20 October 2002.

but the so-called “national group” of subjects with their “majprity” peers. For the “national” subjects (language and literature, history, geography and religion) they are meant to receive instruction according to the curriculum prevailing in those areas where their nation forms the majority. In too many places, however, segregation is virtually complete, with entirely separate schools or different curricula being taught in divided spaces under the same roof.

Often the children of returnees do not attend school in their place of return at all: either continuing to reside with relatives or friends in their majority areas, travelling to such areas for classes, or evading school altogether. Falling enrolments throughout BiH – and particularly by returnee pupils in secondary schools – testifies to the negative effect of unreformed schooling on return. On the other hand, where returnees demand and get schools of their own, the result can be to render existing schools non-viable, exacerbating the fragmentation, poverty and retardation of the system as a whole, not to mention national-educational apartheid.

In Bosniak-controlled Sanski Most, over 3,000 Serb returns were registered by UNHCR in 2001.⁸⁶ Many of these returns were made possible by large-scale returns by Bosniaks from Sanski Most to nearby Prijedor. Another 6,000 Serbs now living in FRY last year expressed an interest in going home to Sanski Most,⁸⁷ and more than 1,000 of these families applied to UNHCR for help in doing so.⁸⁸ The continuation of such returns by Serbs to Sanski Most could even begin to dismantle the national re-engineering in the eastern RS, since many Serbs from Sanski Most were resettled in Bratunac, Srebrenica and Janja.⁸⁹

However, continuing anxiety over education could break this virtuous circle of refugee return. Despite the thousands of registered Serb returns to Sanski Most, only fifteen Serb primary school pupils were reported to have signed up for classes in the municipality this autumn. In that part of the

municipality to which Serbs have returned in the largest numbers, Lusci Palanka, not a single Serb child out of some 1,100 returnee families has registered to attend the local primary school. Another school in the area, recently renovated thanks to a donation from the Norwegian government, is likely to close this year because most of the Bosniak families have gone home to the RS, but no Serb returnee pupils have enrolled.⁹⁰

Nationally exclusive curricula are not the only problem. Returnee parents often complain that, in most areas, teachers are drawn almost exclusively from the dominant group. In Janja, for example, only one Bosniak teacher was reported to be working in the local schools last year, even though approximately 220 of 1,400 primary school pupils and 40 out of 350 secondary school students were Bosniaks.⁹¹

The entity ministers of education signed an Interim Agreement on the accommodation of specific needs and rights of returnee children in March 2002, and an international working group on Access and Non-Discrimination in Education has undertaken to implement the agreement in municipalities where return is happening. The agreement requires returnee children to take all general subjects under the curriculum in force in the area of return, but allows parents to opt for their curriculum of choice in the “national group” of subjects. Significantly, the agreement also calls upon local authorities to hire returnee teachers and to ensure that the national composition of school boards reflects that of the population.

The interim agreement is a step in the right direction, though its implementation will require the international community both to keep up the pressure at the entity and cantonal levels and to monitor developments on the local level. In the RS, the requirement that school boards should be representative of their communities has been largely disregarded thus far, with the education minister (an SDS appointee) continuing to nominate party loyalists as members. In the Federation, the March agreement carries little force in itself, since it is the cantonal ministers of education who make and effect policy. Efforts have been made to overcome this legal obstacle by convincing cantonal ministers to issue instructions in line with the Interim Agreement,

⁸⁶ UNHCR, *Minority Return from 01/01/96 to 31/07/2002 in Bosnia and Herzegovina*.

⁸⁷ OHR/UNHCR RRTF - Work Plan 2002. The example of Sanski Most also illustrates the widening gulf between the demand for return and the resources available to support it. The EC CARDS project for 2002 foresees funding for rebuilding a mere 90 houses in Sanski Most. “CARDS 2002 Integrated Return Program: EC Cards Project-cluster number 3, RRTF Region Northwest”.

⁸⁸ *Ibid.*

⁸⁹ OHR/UNHCR RRTF - Work Plan 2002.

⁹⁰ “Skole bez ucenika”, *Nezavisne novine*, 17 September 2002.

⁹¹ OSCE, “Education Issues in the Field”, January 2002.

but implementation of the agreement has been spotty thus far.⁹²

In Drvar, Serb parents and other protesters blocked a main road in October 2002 to demand that the “national subjects” and, in particular, the Serbian language rather than Croatian should be offered this year in Drvar’s schools. The protesters succeeded in part, securing an agreement with the canton to allow for both classes to be held and assignments completed in Serbian, as well as for the immediate hiring of three Serbian (or Serbo-Croat) language teachers.⁹³ This strike and demonstration, in which hundreds of persons reportedly participated, indicates how significant education issues are for returnee parents.

The only viable solution in the long term will be a thoroughgoing overhaul of the entire educational system in BiH, including its legislative framework, management, financing, teacher-training provision, standards and, perhaps most fraught of all, the elaboration of flexible curricula common to all national groups. Late in the day, the international community has turned its attention to education, and entrusted the OSCE with the job of energising and co-ordinating reform.

E. PENSIONS AND HEALTH INSURANCE

Returnees in BiH face legal and practical obstacles in accessing pensions and securing health insurance. These also affect both individual choices about whether or not to return and the sustainability of existing and future return. Paradoxically, substantially lower (and more irregularly paid) pensions in the RS represent a disincentive for Serbs to return to the Federation, since under current arrangements these returnees continue to receive the mean RS pension in the higher-cost Federation.

Moreover, the decision of the RS pension fund in March 2002 to terminate an earlier reciprocity

agreement made with the Federation’s then separate Bosniak and Croat pension funds means that Serb pensioners who have returned to the Federation may soon lose altogether the facility permitting them to collect their payments in the Federation. Termination of the agreement also affects younger returnees to the Federation, who stand to lose any contributions they had made to the RS fund. While inter-entity pension arrangements are likely to be regularised in future, delays and uncertainty have a deterrent effect on potential return to the Federation.

Return between Croat and Bosniak-majority areas in the Federation is no longer hampered by problems of pension access, since the Mostar and Sarajevo-based funds were finally merged in January 2002, in line with an earlier decision by the High Representative. But until the entity pension funds are similarly merged and regulated at the state level – or at least until a state-level framework harmonises entity legislation and ensures the same method of calculating pensions based on contributions in both entities – the authorities will be able to manipulate pensions to discourage cross-entity return.

The primary advantages of a single state pension fund would be reduced administrative costs and a more transparent process of collection and disbursement. Politically, it would also deprive incumbent governments of the means to buy popularity and votes by paying back pension instalments or bumping up pay out rates. Although the RS defends entity prerogatives assiduously, its declining and greying population, worsening economy and the mounting threat of political retribution by elderly voters embittered by late, partial and miserly pension payments might yet convince the authorities to support a state fund. On the other hand, the Federation government would be likely to balk at any centralisation that cost its residents increased contributions to the fund.

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

⁹² On the other hand, a detailed Implementation Plan was agreed and signed under OSCE auspices in Mostar on 15 November 2002 by the entity and cantonal education ministers. This achievement was subsequently hailed by the PIC Steering Board, meeting in Brussels on 21 November, which also endorsed the education reform strategy presented to it by the BiH authorities. Communiqué by the PIC Steering Board, 21 November 2002.

⁹³ “Agreement on Introducing Mother Language in Primary School Achieved”, FENA, 10 October 2002.

Unfortunately, the RS pension fund reportedly fails to provide the needed certification for returnees to the Federation.

Until recently, younger returnees' health cover depended on the dubious prospect of finding an employer who would pay contributions. However, unemployed returnees can now register as such and so qualify to receive medical benefits. But they must register within a specified period. International officials monitoring refugee issues say that it is too soon to tell how this system is functioning, but initial indications are not encouraging. Several associations of returnees to Sarajevo recently complained that their members are being systematically discriminated against in seeking health care, citing the examples of hundreds of returnees who sought the associations' help after a recent outbreak of flu. The RS media picked up the report, *Glas Srpski* using it as fodder for its near-daily articles on the allegedly intolerable conditions facing Serbs in Sarajevo.⁹⁴ As with the pension system, a more durable arrangement for health coverage will have to be found – one which does not punish individuals who choose to exercise their right to return.

VI. CASE STUDIES

The following subsections examine the return process in three very different municipalities. They seek to illustrate the local variability of factors militating in favour of or inhibiting return. The first looks at the problems associated with return to Foca in the eastern RS, where a few courageous Bosniaks have recently initiated a “breakthrough” return to villages violently “cleansed” in 1992. Economic malaise features as the major obstacle to sustainable return to the town itself. Returnees have made inroads in establishing a presence in the municipal council, but a climate of unregenerate racism compels returnees to keep a very low profile.

The case of Prijedor represents an RS municipality where significant Bosniak return has re-established a strong and highly visible Bosniak presence in the local economy, politics and society. Yet the continuing presence as well of unindicted war criminals, a divided education system and a largely un-integrated municipal administration have encouraged Bosniak returnees to establish a parallel existence, separate from their Serb neighbours.

Finally, the phenomenon of Serb return to Drvar and neighbouring municipalities in Canton 10 of the Federation is unique because returns to these towns have almost completely reversed the national engineering orchestrated by the HDZ after 1995. However, as Serbs have asserted their presence in the institutions of these municipalities, the HDZ-run canton has instituted policies designed to deepen their impoverishment. Serb return to Drvar has also raised issues about how to facilitate the return of Croat DPs from Drvar to their pre-war homes in central Bosnia while accommodating those who wish to remain.

These three examples demonstrate that the return of pre-war property is not the equivalent of real return, particularly in the absence of equal opportunities for returnees and the genuine reintegration of returnee communities. In the cases of the Prijedor and Drvar success stories, it is instructive that large-scale return pre-dated the international community's push for implementation of the property laws, so revealing that such implementation is but one of the many factors needed to ensure the rights guaranteed under Annex 7.

⁹⁴ “Bez prava na liječenje”, *Glas Srpski*, 12 March 2002.

A. FOCA (“SRBINJE”)

Before the war, approximately 21,000 Bosniaks lived in the Drina valley municipality of Foca. They comprised 52 per cent of the population. Serbs made up 45 per cent, and the remainder consisted of “Yugoslavs” and a handful of Croats.

War came to Foca in April 1992, when local Serb paramilitary formations, police and civilian authorities initiated the “ethnic cleansing” of the municipality. Concentration camps and short-term detention centres were established where Bosniak men were tortured and executed.⁹⁵ Women, children and the elderly were held in motels, flats and long-term detention facilities, including the local secondary school and sports hall.⁹⁶ Serb paramilitaries systematically raped female prisoners held in these places. The lucky ones succeeded in fleeing to nearby Gorazde or to Sarajevo, and many continued onwards to live as refugees abroad. In the course of terrorising, murdering and expelling Bosniaks, the insurgents demolished their homes and mosques. In the large village of Jelec, for example, all 273 Bosniak houses were razed.

The ICTY has publicly indicted eleven individuals for war crimes committed in Foca. Many more persons who took an active part in the atrocities have yet to be indicted. After the war, Foca maintained its reputation as a black hole of violent extremism, where indicted and unindicted war criminals appeared to enjoy complete impunity and could be seen sipping coffee in the town centre with French SFOR troops.

Nevertheless, a spontaneous return of small groups of Bosniaks to the ruins of their villages surrounding Foca took place in 2000. They set up tent settlements and began to clean up the sites of their houses while waiting for international reconstruction assistance. Following these first tentative moves back, a few hundred Bosniaks returned in 2001. The momentum increased markedly in the first seven months of 2002, when some 1,800 Bosniaks registered their return with UNHCR. Seventy-five families have returned to reconstructed houses in Jelec alone, where the first mosque in the area to be rebuilt was opened in September 2001.

Nonetheless, the total of 2,265 returns to Foca registered by the end of July 2002 represents only 11 per cent of the pre-war Bosniak population.⁹⁷ The likelihood that more Bosniaks would like to return is illustrated by the fact that some 4,000 Bosniaks cast absentee ballots in the 2000 municipal elections. As a result, seven Bosniaks (representing the SDA, SBiH and SDP) were elected to the 31-member Foca municipal assembly. This means that Bosniaks hold 23 per cent of the seats in the assembly, even though their share of the resident population is probably no more than 5 per cent. Yet if all of the 14,000 Bosniaks then registered to vote in Foca had done so in absentia, their councillors might have formed a majority in the assembly. Even so, if significant returns to Foca continue over the next couple of years, Bosniak voters could challenge the longstanding dominance of the SDS in the 2004 municipal elections.

However, the sustainability of further Bosniak return to Foca is questionable. The local economy is in a parlous state. Unemployment, at about 70 per cent, is the norm. The largest pre-war industry in the area, a wood-processing plant that employed 5,000 people before the war and 1,500 immediately afterwards, has been crippled by a dubious privatisation deal and a subsequent fire which destroyed most of its equipment. A flea market, a small mine and a few woodworking firms represent capitalism in Foca.

Public bodies are thus the primary employers in the municipality, including a prison used as a concentration camp during the war and the theological, medical and dental faculties of Srpsko Sarajevo University. The municipal administration employs virtually no non-Serbs, although the local housing office does “boast” of having one Croat in its ranks.⁹⁸ Some senior posts in the police force have been reserved for experienced Bosniak police officers from Foca who are now working in Sarajevo or Gorazde, but they are not ready to accept the pay cut that moving to the RS would imply. As a result, only three junior Bosniak officers currently serve on the force.

Because of the dire economy, return to Foca has to date been confined largely to the municipality’s rural

⁹⁵ Prosecutor vs Gojko Jankovic et al, Amended Indictment, IT-96-23-PT.

⁹⁶ See Human Rights Watch, *A Closed, Dark Place: Past and Present Human Rights Abuses in Foca*, July 1998.

⁹⁷ Based on comparison of official 1991 census figures by municipality, and UNHCR, “Minority Returns from 01/01/1996 to 31/07/2002 in Bosnia and Herzegovina”.

⁹⁸ RS Ministry for Displaced Persons and Refugees, Document Number 03/1-166/02, 6 June 2002.

environs, where predominantly elderly returnees can live off a pension and some subsistence farming. Very low returnee enrolment rates in the schools illustrate both the concern of parents over the RS curriculum – though arrangements have been made for “national” subjects to be taught according to the Bosniak system – and the fact that younger returnees tend to leave their children behind when they come home.

Although 1,157 families had by the summer of 2002 successfully reclaimed their houses or socially owned apartments, and hundreds of housing units had been reconstructed, average occupancy rates per housing unit were less than two persons. In the town itself, between 500 and 600 Bosniak property-owners are reported to have let their flats and houses.⁹⁹ Given the economic situation, it is of course reasonable for people who have reclaimed their dwellings to take advantage of the property’s income-generating potential. Such behaviour may also reflect their continuing interest in permanent return when conditions improve. On the other hand, it may merely indicate their reluctance to sell at the bargain-basement prices currently prevailing in the area.

International organisations working in Foca see the development of a far-flung Sarajevo economic region as the eventual answer to Foca’s progressive impoverishment. In this context, the municipality and international agencies plan to link dairy farmers in the municipality with the creamery in the neighbouring Federation salient of Gorazde, as well as to lobby for credit opportunities for small businesses. Still, the municipality will continue to have difficulty attracting either investment or aid as long as it retains its reputation for being a haven for war criminals. Because of the U.S. Congress’s Lautenberg Amendment, which bars that country’s government from providing assistance to entities that do not co-operate with the ICTY, Foca has been under an aid embargo since 1996.

International organisations disagree over whether the embargo is still justified. Three publicly indicted war criminals from Foca remain at large. Since their families live in the town, it is widely assumed that the inditees must be nearby as well. Moreover, two members of the wartime SDS crisis staff, alleged to have organised the mass expulsions and killings, are said to be regular visitors. And, of course, Radovan

Karadzic himself is thought to be hiding out in the vicinity, enjoying the solid support of its denizens.

The problem of unindicted but putative war criminals in institutions of authority also remains a problem. The UN IPTF has removed several Foca police officers since 2001 because of their wartime pasts, including three officers cited in a November 2000 ICG report on war criminals in positions of power.¹⁰⁰ However, no one has attempted or even suggested a similar screening of municipal employees, including a municipal councillor and school teacher mentioned in the same report.¹⁰¹

Although Foca remains under the firm control of the SDS, local Bosniak politicians claim that the political climate in the municipal assembly has improved and that the mayor, in particular, belongs to a softer SDS strand than do many of his colleagues in the council. In the localities (*mjesne zajednice*) to which significant numbers of Bosniaks have returned, they report that they can work together with Serbs in these lowest units of self-government. Similarly, virtually everyone ICG met in Foca pointed to the BiH state flag that had recently been run up outside the town hall, averring that it was a sign that the winds of change were blowing. Yet this banner was both dwarfed by the double-headed eagle of the RS flag alongside and had only been put up when the international community threatened to cut off the little outside assistance Foca now receives.

The security situation in Foca is also reported to have improved. Returnees are now more likely to meet with cold hostility than brutal intimidation. The facts that Serbs continue to insist on the town’s “ethnically cleansed” name of “Srbinje”, and that streets have been rechristened to celebrate Draza Mihailovic’s Chetnik movement, which perpetrated a major massacre of Muslims in Foca in 1942, serve to remind Bosniaks that they are present on sufferance. When returnees repossess their property, they usually find that the previous Serb occupants have carted off everything in the house, including plumbing fixtures, hardwood floors and electrical wiring – a practice that the local authorities neither prevent nor punish. Finally, recent moves by the Orthodox Church to consecrate for Serb use an old Muslim cemetery, located next to a mosque razed

⁹⁹ ICG interviews with international officials in Foca, 5 July 2002.

¹⁰⁰ SFOR Transcript: Joint Press Conference, 27 November 2001. See ICG Balkans Report N°103, *War Criminals in Bosnia’s Republika Srpska*, 2 November 2000.

¹⁰¹ Ibid.

during the war, confirm that, in Foca, even the dead risk being “cleansed”.

B. PRIJEDOR

Prijedor is often hailed as the exemplar of successful return to and in Republika Srpska. Several international community representatives told ICG that “when the majority of places look like Prijedor, we can leave the process of return to the Bosnians.” Yet Prijedor is also an example of the fact that property law implementation and refugee return are not identical processes. As with Serb return to Drvar, Bosniak return to Prijedor pre-dated energetic action to apply the property laws and reflects a variety of locally specific factors.

Depending on the source, estimates of the number of Bosniak returnees to the municipality range from 8,500 to 20,000. The latter figure would represent half the pre-war Bosniak population.¹⁰² Population figures are particularly difficult to pin down in Prijedor, however, because many Bosniaks who found refuge in Scandinavian countries or in the United States during the war acquired foreign citizenship. They are now in a position to divide their time and families between their old and new homes.¹⁰³ Besides helping to oust the SDS from municipal government with their votes, Bosniak returnees have re-established their presence in very tangible ways. In the satellite town of Kozarac they now form the majority, operate a thriving parallel (and more affluent) economy and have rebuilt six mosques, including the first mosque to be reconstructed in the RS.

But Prijedor also demonstrates the hard road ahead if the physical return of “minorities” is to be followed by reintegration and full-fledged citizenship. Bosniak employees are conspicuously lacking in the municipal administration, school system and other public institutions, while they remain marginal in the police. Just as seriously, wartime memories continue to divide Bosniaks and Serbs. Many Bosniaks who survived Prijedor’s concentration camps or lost

loved ones there return to find that both their Serb neighbours and Serb incomers either deny the existence or downplay the horrors of Omarska, Keraterm and Trnopolje.

The Trnopolje camp is again a primary school, but the school now celebrates its official day on 24 May, the date on which it was converted into a concentration camp in 1992. Bosniak children from Kozarac, some of whom were held with their parents in the camp, were invited to attend last year’s festivities.¹⁰⁴ Serb denial of the atrocities committed at Trnopolje and its ilk is made all the more intolerable by the fact that men who worked in or managed these camps still walk free in the city, in some cases as police officers, court officials and school teachers. Factors such as these – as well as institutionalised discrimination – encourage returnees to huddle together and to lead separate lives.

The Bosniaks of Prijedor seem, nonetheless, to have returned to stay. They have opened businesses (including a cement factory and a lavish swimming pool), presumably with money earned abroad, and are sending their children to school. In this light, Prijedor raises two sets of questions vital to understanding the dynamics of return in BiH. First, why has return to Prijedor been so relatively successful, and are there lessons applicable elsewhere? Second, what factors continue to impede return, render it unsustainable or foster divisions between national communities?

Several important factors enabled large-scale return to Prijedor:

1. *Prijedor’s exiles were well organised and keen to return when international funding was at its peak.* Return to Prijedor by prominent Bosniak professionals and community leaders in 1998 was accompanied by the establishment of a local NGO, *Fondacija* [or The Foundation]. This organisation and its energetic director, Sead Jakupovic, campaigned at home and abroad for donor funds to rebuild housing and infrastructure and to provide credits for returnees to start businesses. During the first

¹⁰² ICG interview with Bosniak member of Prijedor municipal council, 16 July 2002.

¹⁰³ Pre-war patterns of guest-worker emigration help explain this phenomenon. Like other Yugoslavs, Bosnians had extensive experience of creating what amounted to workers’ colonies in west European countries while, simultaneously, maintaining a holiday-time presence in their home regions.

¹⁰⁴ Serb politicians were nonetheless loud in their expressions of outrage in October 2002 when the Council of Ministers and High Representative confirmed the former Viktor Bubanj barracks in Sarajevo as the future home of the BiH Court. During the war, the barracks were used as a detention centre in which Serbs were allegedly persecuted and tortured.

major push to return to Kozarac in 1998, the international community financed the repair and reconstruction of about 1,000 houses. Moreover, several hundred returnees to Kozarac had the means from working abroad to rebuild their own houses.

As of August 2002, at least 4,668 returnee houses in the municipality had been rebuilt, the majority from the foundations up.¹⁰⁵ Settlements virtually obliterated by Serb forces during the war have come to life again. But as international funding has waned, the regional RRTF has focused on other areas where serious return is just beginning. One such place is nearby Sanski Most, from which many of Prijedor's Bosniaks have returned and to which breakthrough returns by Serbs from the western RS and Yugoslavia are now taking place. Unfortunately, the inadequacy of reconstruction funds could prevent Sanski Most from repeating Prijedor's success.

2. *From the first municipal elections in 1997, refugees from Prijedor have participated in sufficient numbers to gain a political voice in the municipality.* As noted above, absentee ballots cast by Bosniak refugees in the 2000 municipal elections were largely responsible for Bosniaks winning nine out of 31 seats on the Prijedor council and its presidency. The HDZ, the only Croat party to run in the municipality, won no seats, even though more than 6,000 Croats (5 per cent of the population) lived in Prijedor before the war. Since assuming his position, Council President Muharem Murselovic has been an active defender of Bosniak interests. Often among the first returnees to Prijedor, the Bosniaks now serving as councillors have encouraged others to follow their lead. They stand in sharp contrast to the Bosniak politicians who now form a majority on the Srebrenica council. None of the thirteen SDA or SBiH councillors elected in 2000 to the latter assembly actually live in the municipality, while the one Bosniak SDP councillor only moved back last year. Srebrenica's SDA mayor allegedly lives illegally in alternative accommodation in Tuzla

and complains that he cannot visit returnees because he has no four-wheel drive vehicle.

3. *Many families from Prijedor worked abroad before and during the war and were eager to invest in the community once return began.* This was particularly true in Kozarac. Not many other areas of return or potential return have been or will be so fortunate, but financial muscle has been crucial in creating the conditions for economically sustainable return to Prijedor.
4. *Prijedor is located just a few kilometres from Sanski Most, which served as a jumping off point for return from the Federation in 1998-1999.* Intending returnees were easily able to visit Prijedor, clear their houses and get a sense of the climate for permanent return. Accessibility thus facilitated large-scale return. Although many DPs do not enjoy the advantage of proximity to their pre-war homes, many do – and this has smoothed the progress of return elsewhere.
5. *Also because of proximity, many people were able to return to Prijedor while keeping their jobs in Sanski Most.* In fact, commuting to work between the entities has become common, especially for recent returnees. This feature should make the pending national reintegration of municipal administrations easier, since “deficit” staff could, effectively, be exchanged between places like Sanski Most and Prijedor or Sarajevo and Srpsko Sarajevo.
6. *Early and high-profile SFOR arrests in 1997 of indicted war criminals in the Prijedor area created a significant measure of “psychological security” for intending returnees.* Continued arrests by SFOR, the belated removal by IPTF of police officers implicated in wartime atrocities and, most recently, the forwarding to the ICTY of evidence against several Prijedor Serbs by the RS government have served, progressively, to enhance the sense of relative security created by the first arrests. While some individuals connected with the concentration camps retain prominent positions – most notably, the president of the municipal court – personal embodiments of Prijedor's past are slowly fading away. The U.S. government recently acknowledged the progress made in Prijedor by lifting the aid embargo imposed under the Lautenberg Amendment. It is not too

¹⁰⁵ Foundation for Return and Reconstruction Prijedor '98, “Prijedor: Podrucija povratka u opcini”. This figure understates the total because it excludes houses rebuilt in the town centre.

late to replicate the Prijedor experience elsewhere. The capture of Radovan Karadzic could still work wonders in transforming the environment for return in the eastern RS.

7. *The presence of SFOR on the ground and pressure by IPTF on the local police has gradually provided physical security for returnees.* Although attacks on returnees and their homes still occur, Bosniak officials in Prijedor acknowledge steady improvement in the security situation. Latterly, in fact, the big story in Prijedor has been an alleged attack by Bosniaks on Serb policemen.
8. *Arrangements for schooling acceptable to Bosniak parents have been made.* Particularly in recent months, the public schools have hired (or rehired) a few Bosniak teachers and a rebuilt school has opened in Kozarac with 350 pupils in attendance. The school employs the RS curriculum, but has a Bosniak director and offers the “national subjects” according to the Bosniak scheme. This sort of solution can, of course, be replicated elsewhere, even if it is far from ideal.

Thus, well organised, politically active and relatively affluent refugees, ample reconstruction and development funding, arrests of war criminals and proximity to a gateway all contributed to make return to Prijedor a success. Once returnees established themselves in sufficient numbers, they began to tackle the problem of sectarian education. While the Prijedor experience cannot be replicated elsewhere in every particular, it does show what can be done if there is a genuine effort on the part of the international and local authorities and the returnee communities themselves to create the “social, political and economic conditions” conducive to return.

For instance, given the irreversible decline in international donations, the provision of housing for future returnees will have to come through increasingly rigorous implementation of the property laws (which is happening) and by requiring the entity and cantonal governments to set aside more money to support return (which is not). Moreover, the poverty of most returnees means that international and domestic funding should focus on making return economically viable through micro-credit support of small businesses and other development strategies. Finally, not every returnee can rely on there being a nearby town where his or her nation is in the majority

in order to find a job, educate a child or access health and social services. Receiving municipalities must, therefore, be made to eliminate the systematic discrimination that makes return to the boondocks unsustainable.

Besides showing at least a part of the way forward, Prijedor also exemplifies some of the obstacles to be overcome if physical return is to be followed by real reintegration. The self-segregation of Bosniak returnees to Prijedor may be understandable, but it is hardly encouraging. Several factors induce returnees to establish, live and work within enclaves rather than to reintegrate in host communities.

1. *Public companies, institutions and the police have hired only token numbers of Bosniaks, while many institutions, including the schools, remain under SDS control.* As in most parts of BiH, employees sacked during the war because of their national identity have not been able either to get their jobs back or to win any compensation. This impacts upon the sustainability of the post-return economy for those without other means.

After five years during which Bosniak political parties have shared power in Prijedor, only three Bosniaks are employed in the 150-member municipal administration. As a result of inter-party negotiations over public sector jobs, two Bosniak doctors and one veterinarian now work in the local medical and veterinary centres. Three Bosniak teachers are employed in the municipality in addition to the director of the school in Kozarac. This small complement of Bosniaks makes Prijedor's public administration one of if not *the* most “integrated” in the RS. It also demonstrates how constant pressure from elected politicians has been required to make even minimal breaches in the ramparts of Serb exclusivity.

It is particularly telling that no non-Serb works in the municipal housing office, which is staffed overwhelmingly by displaced Serbs.¹⁰⁶ This goes some way towards explaining Prijedor's less than sterling record in property law implementation, since most members of staff can hardly be keen to evict Serb DPs so that Bosniaks and Croats can repossess their

¹⁰⁶ This office is not run by the municipality, but by the RS Ministry for Refugees and Displaced Persons.

property. When asked by ICG how she envisaged the April 2002 constitutional amendments requiring proportional national representation would be implemented in the municipality, Prijedor's mayor, Nada Sevo, replied only that Banja Luka would have to take the lead.

2. *Property law implementation lags behind that of the RS in general.* Only about 45 per cent of repossession claims in Prijedor had been resolved by the end of September 2002. This compares to an implementation rate of nearly 56 per cent in the RS generally and 66 per cent in the Federation. Moreover, the repossession rate for socially owned apartments in the town is higher than for private homes, especially in rural areas where return is more sustainable. And although the tempo of repossession has increased of late (to some 400 per month), approximately 6,000 owners are still waiting to reclaim their houses and flats. In fact, outstanding cases in Banja Luka and Prijedor represent more than a quarter of the RS total.¹⁰⁷
3. *Relations between Bosniak and Serb politicians are polite but relentlessly adversarial.* The two communities' leaders continue to see themselves as advocates on behalf of opposing interests: either Bosniak returnees or displaced Serbs. Bosniaks who have business with the municipality or need assistance of some sort are invariably referred to "their" representatives, even when the matter to hand lies outside a particular Bosniak official's competence. The local administration thus reflects and reinforces segregation. It does not promote reintegration.
4. *The recruitment of "minority" police officers remains far below target and non-Serbs are relegated to marginal positions in the force.* According to the restructuring agreement signed between the UN and the RS in December 1998, the entity's police were meant to reflect the national composition of the electorate voting in the 1997 municipal elections. Since Bosniaks took 37 per cent of the seats on the Prijedor council in that year, about 280 of the 750-man local force should be Bosniaks. As of October 2002, however, only 33 Bosniaks and nine other

non-Serbs (Croats and Ukrainians) are employed by the Prijedor police command.¹⁰⁸

The primary reason why so few "minority" police officers have been recruited in Prijedor, as elsewhere in the RS, is that salaries are not competitive with those in the Federation, especially for experienced officers. Many Bosniaks are in any case reluctant to don a uniform bearing Serb national insignia or to serve in a force that celebrates an Orthodox saint's name day as its own. In Kozarac, service in the RS police is an especially sensitive issue. Most of the town's Bosniak officers were "liquidated" by Serb forces in 1992. In addition, Bosniak officers in the Prijedor force are reportedly sidelined. Instead of being assigned to Bosniak-majority Kozarac, for example, they complain that they are given menial jobs or denied weapons. Three Bosniak officers resigned in frustration earlier this year.

5. *Despite ICTY indictments, SFOR arrests and IPTF dismissals, the criminal justice system of the RS has proved incapable of investigating and prosecuting war crimes.* Rather than investigating and prosecuting putative war criminals among police officers de-certified by IPTF, such men are often transferred to administrative posts.

The only war crimes case in Prijedor that the RS authorities have attempted to deal with has in fact served to demonstrate their continuing resistance to any reckoning with the past. A 1997 judgment by the BiH Human Rights Chamber ordered the RS to ascertain the fate of a Catholic priest, Tomislav Matanovic, and his parents. They had disappeared in September 1995 after being detained by the Prijedor police. Only in November 2000 and as a result of pressure from UNMIBH did the RS interior ministry establish a team to investigate the

¹⁰⁷ Review of Implementation of the Property Laws in Bosnia and Herzegovina, 30 September 2002.

¹⁰⁸ UNMIBH reckons that the presence of 42 non-Serbs is a success, although the Croat and Ukrainian officers ought not to count towards the fulfilment of the Bosniak quota. The UN accommodated itself to a double standard when it signed its 1998 agreement with the RS. The 1996 restructuring agreement with the Federation established targets for "minority" recruitment based on the 1991 census, whereas the pact with the RS not only accepted the "cleansed" reality of the RS as it was in 1997, but also set that reality in stone. See ICG Balkans Report N°130, *Policing the Police in Bosnia: A Further Reform Agenda*, 10 May 2002.

Matanovic family's fate. In April 2001 it was revealed that the Prijedor police had been in possession of the priest's car since his disappearance. In September the investigators finally acknowledged that Matanovic and his parents had been detained. Their bodies were found in a well near Prijedor soon thereafter. All three had been shot in the head at close range before being dumped down the well.

After collecting evidence against five former policemen and getting the approval of the ICTY to proceed with the case, the RS police arrested the five suspects in May 2002. Later the same month, however, charges were filed against another 21 serving or former officers in Prijedor for the theft and destruction of Catholic Church property. Observers smelled a rat, suspecting that the new charges had been filed in order to complicate and delay the trial of the original five.¹⁰⁹ In August the RS police brought charges against another six Prijedor policemen. Meanwhile, the first five indictees had been set free pending trial. Although the case is still open, the wife of one of the defendants has alleged that the identity of the Matanovics' murderer is widely known in Prijedor, but that he is a high-ranking police officer who is being protected.¹¹⁰

Justice may yet be done in this case, but the omens are not encouraging. Nevertheless, having at least investigated, suspended and charged some of its own for crimes that still rank as patriotic achievements in the eastern RS, Prijedor remains an exception.

C. DRVAR

The three most north-westerly municipalities in what is now HDZ-governed Canton 10 – Drvar, Glamoc and Bosansko Grahovo – all had substantial Serb-majority populations before the war and were controlled by Serb forces throughout most of it. But during the operations leading to and following the capture of Knin and the destruction of “Republika Srpska Krajina” in August 1995, the Croatian Army (HV) and the (Bosnian) Croat Defence Council

(HVO) overran these towns. Their Serb inhabitants fled in the face of the onslaught.

After Dayton, the HDZ embarked on a program of national re-engineering that aimed to recruit Croats, mostly from central Bosnia, to settle in what were now ghost towns. Taking over such sources of wealth as existed – most notably the publicly owned forestry enterprise – businesses linked to the HDZ elite in Zagreb began to invest heavily in Drvar. The largest publicly-owned forestry company, Finvest, was effectively privatised on behalf of these interests. The HDZ was now able to offer employment to Croats willing to relocate. Leaflets, radio commercials and personal contacts were used to get word out that a good job and the keys to an empty flat or house were waiting in the “newly liberated Croat town of Drvar”.

The counterpart to encouragement of Croat colonisation was discouragement of Serb return. The municipality issued so-called “looting permits” granting settlers the “right” to help themselves to whatever remained in abandoned Serb houses. Reports issued by IPTF and OSCE implicated the HDZ leadership, Drvar's mayor and deputy mayor and the local police in burning 25 Serb houses in May 1996. Two high-ranking police officers were dismissed and a HDZ candidate was struck from the list of candidates for the municipal elections as a consequence.

But Serb DPs were determined to return and organised themselves accordingly. Resisting SDS pressure before the 1997 municipal elections to vote in their current places of residence in the RS, the Serbs of Drvar insisted on voting there, either in absentia or in person. They won nineteen out of 30 seats in the municipal assembly. This result emboldened more Serbs to join those few who had already returned. It also prompted a rash of retaliatory house burning and violence by Croats that culminated, in April 1998, in the murder of an elderly Serb couple and riots directed at both returnees and the international community. The new Serb mayor, Mile Marceta, was assaulted and nearly killed. Again, international organisations on the spot were able to demonstrate the involvement of the local police, the HDZ and the HVO in these events, as well as collusion among them.

Such violence did not stem the tide of Serb return. Some 2,200 returns were registered in 1998 and 1,500 in 1999. The 2000 municipal elections confirmed the population shift underway, with Serbs

¹⁰⁹ “Serbs Delay War Crimes Case”, *IWPR Tribunal Update*, N°269, 3-8 June 2002.

¹¹⁰ OHR Media Round-up, 9 July 2002.

representing the SNSD winning a majority of places on the council, but this time thanks more to the votes of actual returnees than to those of absentee voters. A post-election power-sharing arrangement between the SNSD and HDZ led to the election of a Serb mayor and a Croat deputy mayor, with positions in the administration divided on a 50:50 basis. There is no doubt that it was the fact of return that both caused the HDZ to accommodate itself to the new realities and produced a climate favouring further return. By July 2002, UNHCR had registered more than 6,000 Serb returns to Drvar. Serbs were the majority community once more.

Although property law implementation was crucial to unleashing refugee return to many municipalities in 2000-01, it was not an important factor in Drvar. Rather, it was the returnees' and would-be returnees' earlier self-organisation and political engagement that provided the stimulus. More than half of the returns to Drvar occurred before the international community began to apply serious pressure on the local housing authorities to implement the property laws. By the end of 2001, only 24 per cent of repossession claims had been resolved in Drvar, in large part because international officials were reluctant to push for fear of provoking a new outbreak of violence. In late 2001, however, they took off the kid gloves, subjecting the housing office to almost daily visits and setting targets for the issuance of decisions and eviction orders.¹¹¹ By summer 2002, evictions were being carried out at a rate of six or seven per day, and 82 per cent of the 2,777 Serb families that had applied for return of their property had succeeded in repossessing it.¹¹² International pressure has achieved similar results in Bosansko Grahovo.

Glamoc is proving a tougher nut to crack. With only 51 per cent of claims resolved by September 2002,¹¹³ international officials attribute Glamoc's laggard status to tensions in both the security and political spheres. Two shootings targeted the homes of Serb returnees who were also municipal officials in 2001, and five Croat police officers were dismissed and three others suspended for beating Serb returnees. Political intrigues have not helped matters this year. When the HDZ mayor resigned earlier this year, council members refused to accept that Glamoc's own power-sharing arrangement required that his successor must also come from the HDZ. Under an arbitration agreement brokered by Federation mediator Christian Schwartz-Schilling in July 2002, OSCE Deputy Head of Mission Dieter Woltmann ruled that the HDZ was not entitled to the mayoralty and that the Serb candidate elected by the council should assume office.¹¹⁴ This means that the mayors of three of Canton 10's six municipalities are now Serb returnees.

While Glamoc continues to grapple with changes in the balance of political power, controversy in Drvar in 2002 has centred on conflicts between the rights of returning Serbs and Croat DPs. In March a group of Croats protested the increasing number of evictions in Drvar and Grahovo by staging a demonstration in Knin, where they threatened that the "expulsion" of Croats from Drvar would result in a mass exodus into Croatia. The Croatian media picked up and ran with the story, warning of an impending crisis in which "thousands" of BiH Croats, "thrown out on the streets", would soon be seeking asylum in Croatia – all as a consequence of the international community's effort to "ethnically cleanse" Drvar.¹¹⁵ Under pressure from rightwing elements that thrive on the perils and humiliations to which Croats and Croatia are supposedly subjected, Zagreb promptly

¹¹¹ A crucial change to entity laws on property repossession, imposed by the High Representative in December 2001, facilitated evictions in Drvar. The new provisions related to the rules governing access to alternative accommodation on the part of temporary occupants slated for eviction from someone else's property. In particular, families with incomes sufficient for them to rent a dwelling place would no longer be entitled to alternative accommodation. Heretofore, the absence of alternative housing had stymied evictions. Hundreds of Croats living in Drvar and working for Finvest and other HDZ-connected enterprises were affected. As a result, some 500 Croats now rent flats from Serb landlords. OHR, Decision Enacting the law on amendments to the Law on the Cessation of Application of the Law on Temporary Abandoned Real Property Owned by Citizens (FBiH), 4 December 2001.

¹¹² Statistics: Implementation of the Property Laws in Bosnia and Herzegovina, 31 August 2002.

¹¹³ Ibid.

¹¹⁴ UNHCR internal document, "Briefing Notes for the Municipalities of Drvar, Bosansko Grahovo, Glamoc, Livno, Kupres and Tomislavgrad", July 2002. In an analogous and contemporary contretemps, the SDA sought and failed to remove the speaker of the assembly after she defected from the party and declared herself an independent. This, effectively, was another blow to hard-line nationalist politics in the town.

¹¹⁵ See, for example, "Tisuće Hrvata iz BiH na cesti", *Vecernji list*, 17 March 2002.

despatched a note to Sarajevo expressing “concern” over a possible new “refugee wave”.¹¹⁶

International agencies in Bosnia responded equally promptly, explaining that “more than 95 per cent of temporary occupants [in Drvar] are either illegal or multiple occupants” and that “it is likely that those who opt to go out to Croatia following their evictions have already received, or have been offered, housing options” in BiH.¹¹⁷ Indeed, further research into the status of those who protested in Knin revealed that many seeking “refuge” in Croatia had in fact repossessed or rebuilt their property in other parts of Bosnia, but had failed to return to it. Others, including the two leaders of the protest, had not even been evicted.¹¹⁸ The international agencies further assured the Croatian government that all of the approximately 2,000 evictions carried out in the Drvar area since September 2001 had been perfectly legal.¹¹⁹

A large part of the problem in Drvar thus stems from some Croat DPs’ preference for exile in Croatia over return to central Bosnia. For its part, the HDZ has sought to politicise legal evictions and to characterise the upholding of property rights previously usurped by the party itself as a form of “ethnic cleansing” in reverse. Several international officials have suggested that the authorities in Knin may also have seen a political advantage in keeping their collective centres full of Bosnian Croats, thereby staving off international pressure on them to evict illegal or temporary occupants in Croatia to make room for would-be Serb returnees.

Regardless of such gamesmanship, the international community in BiH should take care to ensure that Croat temporary occupants in Drvar do not end up homeless. Such persons, having swallowed HDZ assurances that the Serbs would never come back to reclaim their homes, now risk becoming victims of the party’s failed project to consolidate Croat hegemony in the region. As a consequence, some declined to apply for the return of their socially

owned apartments elsewhere in Bosnia before the deadline, and have therefore forfeited their right to repossession. Although the majority of persons evicted in Drvar do have housing available elsewhere, the international community will need both to harry and assist the local authorities to establish alternative accommodation for those with nowhere else to go.

The evaporation of HDZ control and consequent evictions are not, however, the only reasons why Croats might want to abandon Drvar. The parlous state of the local economy is another. According to international officials, between 1,500 and 2,000 Croats left the town in the first three-quarters of 2002. But the rate of Serb return has also dwindled because of the absence of jobs or prospects of jobs.¹²⁰ In fact, Drvar’s population is now estimated to be just one-third of its pre-war size.

Past discrimination in employment means that almost all remaining Croats are employed, while almost all Serb returnees are not. The partial integration of municipal bodies has not been matched by an opening up of those of the canton, such as in the public utilities and schools. (The ongoing battle over curricula and teaching staff is discussed above.) The police are an exception to prevailing segregation, as longstanding pressure on the cantonal ministry of interior by IPTF has served to create a force in Drvar that is now 44 per cent Serb and has a Serb chief. Yet the police are not a growth industry. Without more jobs, further returns will be difficult to sustain.

As returns have changed the demography of Drvar, Grahovo and Glamoc, the HDZ power structure in Canton 10 has cut off revenues to these municipalities and transferred competencies up to the cantonal level. Tax collection in municipalities is the responsibility of the canton, which is then obliged to remit 40 per cent of the proceeds to the respective municipalities. But this process lacks transparency, and municipalities must rely on the word of the cantonal authorities regarding the sums collected. Even those revenues which the canton admits are due to the municipalities are paid late when they are paid at all.

Drvar is currently in dispute with the canton over the non-payment of the levy on logs cut in the municipality. According to a report by the Federation

¹¹⁶ Republic of Croatia, Ministry of Foreign Affairs, Press Release, 18 March 2002.

¹¹⁷ SFOR, Transcript: Joint Press Conference, 19 March 2002.

¹¹⁸ When they learned after the protests that international organisations were investigating their circumstances, these grandstanders reportedly approached the housing authorities in Drvar to request immediate eviction!

¹¹⁹ ICG interview with OSCE representative in Sarajevo, 18 June 2002.

¹²⁰ ICG interview with returnee NGO in Drvar, 3 September 2002.

Financial police, as of 31 June 2001, the canton owed Drvar KM 331,000 in unpaid logging fees. By August 2002, the mayor estimated that the canton's debt to the municipality had risen to KM 600,000. Besides refusing to pay, the canton reduced the logging levy from 5 to 4 per cent in early 2002.¹²¹ The mayors of Drvar, Glamoc and Grahovo thus claim that the canton is stripping their towns' main asset in order to enrich the Croat-controlled half of the canton. They also claim that the canton manipulates the rules on granting licences to open new businesses in a manner detrimental to returnees and has usurped ownership of revenue-generating institutions like the large sports centre in Drvar from the municipalities.¹²² According to international officials, the mayor of Drvar and the premier of Canton 10 will nowadays not even sit together in the same room.

Despite its problems, Drvar stands out as the first municipality in the north-west of the Federation to have seen significant and SDS-defying Serb return. Although the rate of return to Drvar now seems to be falling, other municipalities along Bosnia's western frontier continue to experience more returns. In addition to Grahovo and Glamoc in Canton 10, several municipalities in Canton 1 (Bihac) are sharing in the trend. About 10,000 Serbs have registered their returns to Bosanski Petrovac, Sanski Most and Bosanska Krupa. These latter returns have been made possible in large measure by implementation of the property laws. The ever-diminishing availability of international reconstruction funds means, however, that many potential returns will not take place unless local governments are obliged to pick up more of the tab.

Moreover, if the momentum is to be maintained, all of these municipalities will need to embark on fundamental reforms to reintegrate returnees. Problems in Sanski Most related to the usurpation of privately owned Serb land and unwelcoming school curricula have been noted above. Failure to tackle such issues could reinforce the inclination of returnees to form separate institutions and parallel economies. An open letter sent to international organisations, local government and media and some political parties in June 2002, purported to represent the "Senate of Canton 11", though the signatures on the document were illegible. The letter called for the

creation of a new, eleventh canton in the Federation to be comprised of five contiguous municipalities in Cantons 1 and 10 which had pre-war Serb majorities and have experienced significant return, including Drvar.¹²³ Yet the local Croat press made more of the "declaration" as proof that returning Serbs want to conquer new territories than was warranted, since none of the Serb parties represented in the councils of the municipalities involved supported it. On the other hand, SDS-controlled media in the RS have also sought to exploit sometimes minor problems in places like Sanski Most and Drvar to present the Federation as unliveable for Serbs and, of course, to deflect criticism of the pervasive discrimination against Bosniak and Croat returnees to the RS.

¹²¹ ICG interview with mayor of Drvar, 2 September 2002.

¹²² ICG interviews with international official in Banja Luka, 17 July 2002, and mayor of Drvar, 2 September 2002.

¹²³ Open Letter signed by the "Senate of Canton 11", June 2002.

VII. CONSTITUTIONAL CHANGES AND THEIR SIGNIFICANCE

A Catholic priest active in promoting Croat return to the RS recounted a conversation with RS President Mirko Sarovic during which the SDS politician told him, “the problem for you Croats stems from the fact that you don’t have any of ‘your’ politicians [in the RS].”¹²⁴ This comment reflects the reality that, in BiH, the exercise of certain basic human rights often depends on belonging to the group whose national standard bearers wield political power. As this report has shown, institutionalised discrimination in access to property, justice, employment, healthcare, education and other social benefits provides a continuing incentive for returnees to turn around and to become refugees once more.

Until recently, this discrimination was embodied in the constitutional order itself, by which Serbs enjoyed a pre-eminent constitutional status in “their” homeland, Republika Srpska, while Bosniaks and Croats comprised the “peoples of state” in the Federation. In 2000, however, a decision by the BiH Constitutional Court struck down those provisions of the entity constitutions giving precedence to particular nations as contrary to the state constitution. According to the latter, all of Bosnia’s “constituent peoples” – Serbs, Croats, Bosniaks and “others” – enjoy equal status wherever they reside in the state. The court also found that the special status accorded to Serbs in the RS and to non-Serbs in the Federation violated the constitution’s ban on national discrimination, its guarantee of the right to return and the pledge of the DPA’s signatories in Annex 7 to create the “economic, social and political conditions conducive to return.”

Because the Constitutional Court had based its decision on data confirming the nationally exclusive character of the entities’ structures, the amendments to their constitutions that were discussed during the second half of 2001, imposed in April 2002 and supplemented in October 2002 were designed, effectively, to undo the institutionalisation of “ethnic cleansing”. They seek to remedy matters by reserving places in the entity and cantonal governments, their legislatures and judiciaries for members of all three “constituent peoples”, as well as for those “others”

who belong to minority groups or refuse to be categorised as anything other than citizens. Likewise at the municipal level, the national composition of administrations must now conform to the profile of the population depicted in the last, pre-war census in 1991. The amendments also provide for second chambers in both entities’ parliaments – and for a mechanism in the cantons – by which national caucuses can block or amend legislation deemed to violate any one group’s “vital national interests”. Finally, the establishment of national quotas in public sector jobs also aims to redress the wartime establishment of segregated and/or mono-ethnic institutions.

These innovations seek explicitly to encourage refugee return, particularly by basing targets (or quotas) for “minority” representation and recruitment on the 1991 census until such time as Annex 7 has been fulfilled. While some have criticised the use of the pre-war census as a device for empowering “dead souls” or deprecated national quotas as anathema in a civil society, transitional incentives are obviously needed to counter the institutional legacy of “ethnic cleansing”. In any case, the protection of collective rights is an inescapable necessity in a multinational state like BiH. In towns such as Prijedor, Bijeljina, Bugojno and Drvar, where returns are beginning to restore pre-war ethnographic balances, these constitutionally decreed changes are a logical step towards re-integrating returnees into political, economic and social life. If implemented, they have the potential to boost already impressive levels of return by assuring would-be returnees that they need not fear becoming second-class citizens or a ghettoised “minority”.

The changes mandated by the April 2002 amendments to the entity constitutions are summarised below, along with a brief discussion of their likely impact on refugee return.

A. ENTITY LEVEL CHANGES

1. Composition of the Governments

- Pending the fulfilment of Annex 7, the government of Republika Srpska will be comprised of a prime minister and sixteen ministers, eight of whom will be Serbs, five Bosniaks and three Croats. The prime minister may also appoint an “other” in place of one of the Serb ministers. Two of the ministers will

¹²⁴ ICG interview with a priest active in promoting return to Banja Luka, 16 July 2002.

also serve as deputy prime ministers. The prime minister and his deputies must each represent different national persuasions.

- A similar arrangement is to prevail in the Federation, save that eight ministries are reserved for Bosniaks, five for Croats and three for Serbs. Again, the prime minister may appoint an “other” in place of one of the Bosniaks.
- Once Annex 7 is deemed to have been fully implemented, the formulas become less restrictive. Each of the “constituent peoples” will then be guaranteed at least 15 per cent of the seats in the entity governments, while two of them must together occupy no less than 35 per cent of posts.

Although the domestic and international media focused overwhelmingly on the victory of the nationalist parties in the October 2002 general elections, little attention has been accorded to the effects that these new representational requirements will have on either the formation or the future operation of the resulting entity governments. The impact is likely to be far greater in the RS where, with the exception of one Bosniak minister appointed after the 2000 elections, governments have always been composed exclusively of Serbs.

Immediately after the announcement of the preliminary results, the SDS called for the formation of a grand coalition for the defence of the RS by the big-three Serb parties, seemingly oblivious to the new rules of the game. Yet given the fact that the RS-based parties have almost no Croats or Bosniaks in their ranks, either non-party Bosniak and Croat ministers will have to be found, or the Federation-based parties that have won seats in the RS National Assembly will need to join any such coalition. This would make it a different animal from what the SDS envisages. On the other hand, any coalition formed without the SDS will probably require the backing of at least two of the non-Serb parties. These parties will have fourteen of the 83 seats in the RSNA. They could thus find themselves in a position to make or break a coalition that excludes the SDS.

In contrast to the RS, Federation governments have, since the war, been bi-national or multinational, both because of the pre-ordained power-sharing arrangements between Bosniaks and Croats and because the leadership of one of the major Federation parties, the SDP, is multinational. Nevertheless, the

Federation was created as a Bosniak-Croat condominium that will now be obliged to accord equal status to Serbs in its governing structures. This is not only what the constitutional amendments require, but is also appropriate, given the rate of Serb returns to the Federation in recent years. Serb ministers in the Federation are likely to come from the SDP or from Milorad Dodik’s SNSD, but might also be found among the SBiH or even the SDA.

The allocation of seats in the entity governments and legislatures will thus accelerate the process whereby parties heretofore based in one entity will become increasingly important in the “other”. This will send a clear message to potential returnees that they can count on having representatives of their own “constituent people” in positions to protect their national interests after return. It will also undermine the prevailing territorial assumptions of the nationalist parties – and particularly that of the SDS, whose ideology decrees that real Serbs live only in the RS.

2. Entity Presidents and Vice-Presidents

- Both the RS and the Federation are now required to have a president and two vice-presidents, each of whom must represent a different “constituent people”.

The election of Bosniak and Croat vice-presidents in the RS will have primarily symbolic import, since the posts confer little power. This is because the RS constitution neither defines the role of the vice-presidents, nor does it require the president to consult them before proposing a government to the RSNA or proroguing one. But their existence will help change the image of the RS as an exclusively Serb polity. In the Federation, on the other hand, the president and vice-presidents must agree on the government they nominate for confirmation by the Federation House of Representatives.¹²⁵

3. Sharing Key Entity Positions

- “Key functions” in the entities’ power structures must in future be shared out among the three nations. In both entities, no more than two of six enumerated positions may be filled by members

¹²⁵ Moreover, the Federation president and vice-presidents are elected by the House of Peoples, consisting of equal numbers of Serbs, Bosniaks and Croats. The RS president and vice-presidents are directly elected.

of a single people or the “others”. The RS posts are prime minister, chair (or speaker) of the RSNA, chair of the Council of Peoples (the new second chamber), president of the Supreme Court, president of the Constitutional Court, and public prosecutor.¹²⁶ In the Federation, the positions are prime minister, speaker of the House of Representatives, speaker of the House of Peoples, president of the Supreme Court, president of the Constitutional Court, and public prosecutor.¹²⁷

Again, these changes will have a greater impact in the RS than in the Federation because positions in the latter are already divided between Bosniaks and Croats. All of these positions represent significant power within the system of checks and balances among the branches of government.

4. Parliamentary Reforms

- In the directly elected parliamentary chambers of both entities – the Federation House of Representatives and the RS National Assembly – there must be a minimum of four members from each constituent people.
- The RS is to have what is effectively a new second chamber, the Council of Peoples. It will be composed of eight Bosniaks, eight Croats, eight Serbs and four “others”, elected by the respective national (or non-national) caucuses of the RSNA.¹²⁸ This chamber will have the power to block and amend all “laws or other regulations or acts” deemed relevant to the “vital national interests” of one or more of the groups, albeit through a somewhat convoluted procedure.¹²⁹ If a Joint Commission of the

RSNA and Council of Peoples cannot reach agreement on the particular issue, then it will be decided by the RS Constitutional Court. Although more than enough Bosniaks won election to the RSNA on 5 October to form a caucus and to represent their nation in the Council of Peoples, there will be a shortage of elected Croats.

- In the Federation, the existing House of Peoples is already charged with protecting Bosniaks and Croats from laws, regulation and acts that may

education; religion; language; promotion of culture; tradition and cultural heritage; territorial organisation; public information system and other issues which would be treated as vital national interest issues if it is so considered by two-thirds of one of the caucuses of the constituent peoples in the Council of Peoples.” Amendment LXXVII, Constitution of Republika Srpska, 18 April 2002. The analogous passage defining vital national interests in the amendment to the Federation Constitution is the same, except that it refers to the “House of Peoples” rather than to a “Council of Peoples”. The rather labyrinthine procedure for blocking and amending legislation in the Council of Peoples is as follows. The Council of Peoples and House of Peoples each has a chair and two vice-chairs coming from different constituent peoples. If more than one of the chairs or vice-chairs deem a law, regulation or act to be of “vital national interest”, then the issue is considered as such, and the issue goes to the vote. If the majority of members of each caucus support the law, regulation or act, it is adopted. The Council can also agree on amendments and send the law back to the RSNA for further consideration. If the Council of Peoples cannot reach agreement or if the RSNA does not adopt the proposed amendment, then a Joint Commission of equal numbers of members from each house is formed on the basis of “parity”, i.e. equal numbers representing each constituent people. The Joint Commission must create a consolidated version of the law, regulation or act which will only be adopted if accepted by consensus. Otherwise, it fails.

If, however, an issue is raised by only one chair or vice-chair – but with the support of two-thirds of the relevant caucus – then the procedure is the same, unless the Joint Commission fails to agree on a consolidated version. In that case, the issue is referred to a special panel for the protection of vital interests of the entity Constitutional Court. The panel is to consist of seven members, two from each constituent people and one member from the ranks of the “others”. A two-thirds majority of the panel must agree on the admissibility of the claim within a week, after which support for the complaint by two or more judges leads to its failure. Otherwise, the law, regulation or act passes by simple majority. Amendments LXXXII and LXXXVIII, Constitution of Republika Srpska, 18 April 2002. The analogous procedure in the Federation provides for the same mechanism in the House of Peoples, but with final recourse to a special panel of that entity’s Constitutional Court. Amendments XXXVIII and XI, Constitution of the Federation of BiH, 19 April 2002.

¹²⁶ RS Constitution, Amendment LXXVI.

¹²⁷ Federation Constitution, Amendment XLIX.

¹²⁸ If the number of representatives in the RS National Assembly from one of the three constituent peoples is less than the number of required representatives in the Council of Peoples from that people, then the amended RS constitution stipulates that “the additional number of delegates shall be elected by the caucus which shall be established to that purpose from the councillors in the Municipal Assemblies in the Republika Srpska.” Amendment LXXVIII to the Constitution of Republika Srpska, 18 April 2002.

¹²⁹ The list of vital national interests is as follows: “exercise of the right of constituent peoples to be adequately represented in the legislative, executive and judicial bodies; identity of a constituent people; constitutional amendments; organisation of the bodies of public authority; the equal rights of the constituent peoples in decision making process;

threaten their “vital national interest”. It will now have an equal number of Serbs. Given the modest electoral success of the SNSD in the Federation, it is not clear at this time of writing where the members of the Serb caucus of the expanded House of Peoples will come from.

The introduction of the RS Council of Peoples is probably the most significant change, since national caucuses, comprised primarily of deputies elected by returnees and potential returnees voting in absentia, will now be able to influence law-making and other parliamentary decisions in that entity. As in the case of the entity presidents and vice-presidents, however, the power of the Federation House of Peoples will be greater than that of its RS counterpart. This is because the House of Peoples must approve *all* legislation by a simple majority, in addition to having the power to veto laws, regulations and acts inimical to a “vital national interest” – as defined by a majority of any single national caucus.

ICG has criticised this chamber of the Federation parliament in the past because of the propensity of its national caucuses and, above all, the monolithic HDZ bloc, to invoke (or to threaten to invoke) previously undefined “vital national interests”. Such behaviour had the aim and effect of paralysing common Bosniak-Croat institutions. Both the belated definition of interests and the new presence of Serbs and “others” should curb this tendency.¹³⁰

Abuse of this sort is less likely in the RS Council of Peoples. On the contrary, the High Representative may well be compelled to intervene in its early days to ensure that this new chamber is not bypassed by the still overwhelmingly Serb RSNA. The reason is that, although the RSNA is now required to submit all laws, regulations and acts that impinge upon a “vital national interest” to the Council of Peoples, the constitution does not specify any means for ensuring that this will indeed happen. The RSNA has already sought to ignore the temporary Constitutional Commission – created in 2001 to safeguard national interests pending the enactment of amendments – in the case of judicial appointments. The High

Representative was obliged to intervene to set aside the appointments.¹³¹

On the other hand, the temporary commission has also demonstrated the important role that the Council of Peoples will play. For example, the Bosniak and Croat members of the commission succeeded in forcing the RS government to boost its funding in support of refugee return by blocking passage of the 2002 budget for several months. In fact, the range of issues impacting on refugee return which may involve a “vital national interest” is potentially wide, including education, media and the exercise of the constituent peoples’ equal rights in decision-making processes generally. Most significantly, many of the generally worded provisions of the new amendments will need to be fleshed out in law, and will thus come within the ambit of the vital national interest relating to the “exercise of the right of constituent peoples to be adequately represented in the legislative, executive and judicial bodies.”¹³²

B. CHANGES IN THE CANTONS

The Federation constitutional amendments of 19 April 2002 required that, within nine months, “the Constitutions of the Cantons, laws and other regulations and acts and judicial rules shall be harmonised with the Constitution of the Federation of Bosnia and Herzegovina.” The failure of the Federation parliament and cantonal assemblies to agree on amendments for the cantons by early October led the High Representative to impose the requisite amendments to the Federation constitution during the weekend of the elections. Applying to all cantons, this imposition was necessary in order to avoid having to form post-election cantonal

¹³⁰ For a full discussion of the previous functioning of the Federation House of Peoples, see ICG Balkans Report N°108, *After Milosevic: A Practical Agenda for Lasting Balkans Peace*, Part III, Chapter 7, 2 April 2001, and ICG Balkans Report No128, *Implementing Equality: The ‘Constituent Peoples’ Decision in Bosnia & Herzegovina*, 16 April 2002.

¹³¹ The case related to appointments of judges from the RS to the BiH Constitutional Court. See “Decision annulling the appointment of two Judges from the RS to the BiH Constitutional Court”, Office of the High Representative, 16 September 2002. For RS objections to the Decision, see “Ugrozen srpski interes”, *Glas Srpski*, 19 September 2002. On the other hand, the High Representative recently overruled Bosniak and Croat members’ veto of the RS law designed to implement the constitutional amendments by reducing the number of ministries and specifying the numbers (if not the portfolios) of Serb, Bosniak and Croat ministers. See, ‘Esdaun odbacio veto Bosnjaka i Hrvata’, *Nezavisne novine*, 17 October 2002.

¹³² Amendment LXXVII, Constitution of Republika Srpska, 18 April 2002, and Amendment XXXVII, Constitution of the Federation of BiH.

governments according to the old rules, then to disband and re-form them once amendments had been enacted.¹³³ The amendments imposed provide that:

- The constituent peoples and “others” must be proportionally represented in cantonal governments, in line with the 1991 census, until Annex 7 is implemented in full. National caucuses in the cantonal legislatures will have some say, depending on their numbers, in the nomination of a prime minister who, in turn, appoints the government. In those cantons in which two or more constituent peoples each constituted 30 per cent or more of the pre-war population, the government nominated by the prime minister must win the approval of two-thirds of the members of the legislature. This latter provision effectively replaces the special regimes heretofore prevailing in the “mixed” Central Bosnia and Hercegovacka-Neretvanska cantons.
- Caucuses of constituent peoples will be formed in all cantonal legislatures whenever at least one member of a particular nation sits in the body. Through a procedure similar to that of the Federation House of Peoples and the RS Council of Peoples, these caucuses can block laws, regulations or acts relating to an enumerated “vital national interest”.
- The amendments also require that the “constituent peoples and members of the group of Others shall be proportionally represented” in the cantonal courts and administration, and that “such proportionate representation shall

follow the 1991 census until Annex 7 is fully implemented.”

Since so much decision-making power in the Federation is devolved to the cantons – including education, policing, infrastructure and other functions important to returnees – the application of the principles of the “constituent peoples” decision at cantonal level was essential. The impact of these amendments will be felt most dramatically in those cantons that were defined previously in the constitution as Bosniak-majority or Croat-majority units, but which had highly mixed populations before the war. Wherever significant refugee return has occurred, these constitutional changes will reinforce the challenges already being mounted to nationally exclusive power structures and discriminatory practices.

A particularly telling example of the impact that return and reform have had (and will have) is Canton 10 (Livno). It has been run as a criminalised, HDZ mini-state since Dayton. Yet Serb returns to Drvar and Bosansko Grahovo – and Bosniak and Serb returns to Glamoc – have altered the demographic balance of these large but sparsely populated municipalities. Up till now, however, the HDZ has retained tight control over cantonal institutions, in part by usurping municipal prerogatives and partly by cutting off revenue flows to municipalities with high levels of refugee return.

Before the war, Serbs comprised 37 per cent and Bosniaks 10 per cent of the population of the current canton. This means that members of these groups must now have proportional representation in the cantonal government and administration. Although the HDZ-led coalition won a majority in the cantonal assembly in the October elections, it will be compelled either to find Serb and Bosniak collaborators or to admit Serb and Bosniak parties into government. Given the respectable showings of the SNSD, SDA and the moderate Croat-led party, Work for Progress, in Canton 10, it is unlikely that the HDZ could muster a two-thirds majority to confirm a government without the support of at least one of these parties.

From the perspective of return, it may be even more important that cantonal administrations will now have to hire staff with an eye to fulfilling the national quotas represented by the 1991 census. In Canton 10, this means that returnee teachers, civil servants and other professionals, as well as manual workers in the

¹³³ Decision Amending the Constitution of the Federation of Bosnia and Herzegovina, 7 October 2002. The amendments widen the right of cantons to establish Councils of Cantons for co-ordinating policies and matters of common interest. Previously, constitutionally defined Bosniak-majority and Croat-majority cantons could form such associations, but the amendments eliminated this categorisation, allowing any group of cantons to form a Council. In addition to eliminating nationally defined cantons, the amendments nullified the status previously accorded to the Central Bosnia and Hercegovacka-Neretvanska cantons as “cantons with a special regime”. In these “shared” cantons, special provision was made for protecting the “vital national interests” of Bosniaks and Croats. In effect, this meant parallel institutions. Under the new amendments, mechanisms for protecting the national interests of each constituent people will apply in all ten cantons of the Federation.

locally dominant (and publicly owned) forestry industry, will have to be accorded priority.

C. INTEGRATING THE ADMINISTRATION

Implementation of the new constitutional provisions requiring representation in municipal public service jobs proportional to the 1991 shares of BiH's constituent peoples will prove difficult for both practical and political reasons, many of which were discussed above in regard to "minority" police targets. However, because some municipalities have witnessed dramatic demographic shifts as a result of return, such reintegration is an essential next step. In many areas where return has already recreated a multinational population, local institutions of authority remain strictly mono-national. This situation suits the nationalist power structures because it inhibits further "minority" return while encouraging "majority" DPs to sell their properties in alien-controlled areas and to settle permanently where they are.

The potential of the constitutional changes to mitigate "ethnic cleansing" and to moderate separatist ambitions is particularly great in the eastern RS. As the October elections made clear, this region remains an SDS fiefdom. Its indigenous and displaced Serb population also continues to resonate strongly to the siren call for eventual unification with neighbouring Serbia. This not only reflects geographical and historical propinquity, but also the enormity of the crimes committed in the course of "cleansing" Bosniak-majority municipalities such as Bratunac, Foca, Rogatica, Srebrenica, Visegrad, Vlasenica and Zvornik.

It is hardly surprising, therefore, that Bosniak returns to these towns have come later, been fewer in number and have met with more organised violence than in the western RS. The perpetrators of violence, in fact, are sometimes the same people who participated in wartime atrocities. Yet now, for example, 63 per cent of the posts in the municipal government and administration of Visegrad must be entrusted to Bosniaks, despite the fact that only 843 (or 6 per cent) of that town's pre-war Bosniak population of 13,500 was reported to have returned by the end of July 2002. Farther up the Drina valley in Foca, 2,265 (or 11 per cent) of the pre-war Bosniak population of 21,000 has returned, but will be in line for 52 per cent of public sector jobs. Finally, on the lower Drina in Zvornik, 10,836 (or 23

per cent) of the city's 1991 Bosniak population of 48,000 has come home.¹³⁴ They will be due 59 per cent of government posts. It will not be difficult to figure out where the most formidable resistance to such "affirmative action" can be expected.

¹³⁴ UNHCR, "Minority Returns from 01/01/1996 to 31/07/2002 in Bosnia and Herzegovina".

VIII. CONCLUSION

A. ANNEX 7 AND THE RE-INTEGRATION OF RETURNEES

In September 2002, RS President Mirko Sarovic, then the leading and now the victorious SDS candidate for the Serb seat on the BiH Presidency, stated that if he were elected he would work urgently to secure a new census. The point, of course, would be to avoid having to long endure administrations staffed according to the national proportions of 1991, since most of the constitutional amendments specify that, after the full implementation of Annex 7, a new census can be conducted and the affirmative action entitlements for “constituent peoples” diluted.¹³⁵ A new census would thus register and legitimise post-war Serb predominance in the RS. Yet this is the same politician who attributed Croats’ difficult position in the RS to their lack of politicians.

Clearly, the strategy of the SDS and some other parties in the RS is to delay reforms that would either encourage refugee return or make it more sustainable, including implementation of the constitutional amendments. At the same time, the RS (and some cantonal authorities in the Federation) can be expected to accelerate implementation of the property laws and, then, when a majority of property claims has been resolved, to sue for an international declaration that Annex 7 has been fulfilled. Unfortunately, international agencies, under pressure from member governments and donors to demonstrate success, could prove all too willing to connive in such a whitewash.

In a recent interview, High Representative Paddy Ashdown noted that “we’ve invented a new human right here, the right to return after a war”.¹³⁶ And indeed, the international community’s focus on creating a procedure for repossessing property under local law and ensuring its implementation has been both unprecedented and amazingly successful.

However, recent comments by the High Representative and other international officials suggest a rush to declare refugee return a success

and to withdraw from the process. Reporting to the UN Security Council on peace implementation on 23 October, Lord Ashdown declared that:

The important thing now is that we don’t slacken our efforts during the course of 2003, so we are really in a position to hand over successfully to BiH authorities at the end of next year.¹³⁷

In a presentation to the Peace Implementation Council’s Humanitarian Issues Working Group in June 2002, the then deputy chief of the UNHCR mission to BiH, Udo Janz, reported that:

By the end of 2003, it is hoped that with the appropriate support forthcoming, the majority of the displaced will have either returned to their homes or will have found an alternative solution through local integration, and that, eight years after Dayton, UNHCR’s responsibilities under Annex 7 will largely have been met.¹³⁸

For his part, IPTF Commissioner Sven Frederickson (who will continue in post under the EU follow-on mission from January 2003) struck a note of resignation regarding the re-integration of Bosnia’s police forces in a recent interview. Effectively undermining efforts to move towards the multinational institutions mandated by the constitutional amendments, Frederickson suggested that future police quotas should be based on a new census.¹³⁹

On the other hand, those amendments represent a belated acknowledgement that simply returning a property to its pre-war owner is not a sufficient condition for a refugee family to make a reasonably free choice about where it wants to live. For a large number of refugees, repossession of a property has led merely to provisional or tentative return. Many others have succumbed either to the numerous and intentionally-created obstacles put in the way of permanent return or to the incentives offered them to sell their reclaimed properties and relocate among their own people. In areas where returnees have

¹³⁵ OHR Media Round-up, 10 September 2002.

¹³⁶ Julian Glover, ‘King Paddy’, *The Guardian*, 11 October 2002. What is “new”, in fact, is the right to reclaim and return to one’s own home - and the thoroughgoing international effort being made to ensure that refugees can actually exercise this right - not post-war return to one’s own country.

¹³⁷ Speech by the High Representative for Bosnia and Herzegovina Paddy Ashdown to the United Nations Security Council, 23 October 2003.

¹³⁸ Udo Janz, “UNHCR’s Activities to Find Durable Solutions for Refugees and Displaced Persons Under the General Framework Agreement for Peace (Dayton Agreement)”, 27 June 2002.

¹³⁹ “Mjesanje politicara u rad policije mora prestati”, *Oslobodjenje*, 21 October 2002.

achieved critical mass, their communities often seek separate schools for their children, develop parallel economies or demand their own municipalities.

This tendency towards the formation of enclaves in places where return has taken place on a significant scale demonstrates that local governments, no less than those of the entities and cantons, have failed to create environments conducive to the true reintegration of Bosnia's peoples. The first lesson is that a thoroughgoing implementation of the representational requirements of the April constitutional amendments is an essential next step. The second, however, is that simply declaring Annex 7 to be complete when the PLIP comes to end would be to mistake the shadow of return for its substance.

B. THE RISKS OF DECLARING VICTORY TOO SOON

The historical and topographical intricacy of Bosnia's pre-war patterns of rural and urban settlement will never be restored. Hundreds of thousands of people have accommodated themselves to permanent resettlement abroad or relocation at home. The industrial economy planted by the communists in both cities and countryside after the Second World War – and which added mightily to the country's commingled demography – is dead. In the absence of a viable new economy, the re-ruralisation now taking place offers neither an adequate nor a long-term solution. This highlights the fact that support for refugee return is, above all, a political and legal imperative. The restoration of a modicum of multinationalism to Republika Srpska and its reinforcement in the Federation will represent an overdue defeat for the "ethnic deansers" and a promising victory in the struggle to enhance Bosnia's chances of enduring as a democratic multinational state.

But the promotion of refugee return is also a front in the fight to inculcate the rule of law. It is a question of ensuring that people who were forcibly deprived of their homes have the right to choose freely where they will live and, if they opt to return, that they will enjoy the same rights as other citizens. Among such rights are equality before the law, physical security and equal opportunities in education, employment and commerce. Returnees need to be assured that the war criminals who persecuted them will be prosecuted. They have to know that the police will protect them, their property and their religious institutions. They should be able to expect that the

authorities will not discriminate against them in dispensing permits, pensions, social benefits and healthcare. They must be confident that the schools will neither humiliate nor fail their children. And they need hope that when employment opportunities arise, they will have equal access to them.

As matters stand, however, the battle to ensure that refugees and displaced persons have real choices about where they will live is far from won. Implementation of the property laws for housing has gone a long way towards making such choices possible, but in too many areas the deck is still stacked in favour of segregation and against reintegration. Land allocations to "majority" DPs and discriminatory measures directed at "minority" returnees prejudice the decision-making process. The former stay on while latter sell up, thereby confirming the success of "ethnic cleansing". While the international community cannot and should not seek to compel Bosnia's peoples to live together once more, it can and should hold domestic authorities responsible for creating the conditions necessary for the exercise of free decisions. Moreover, it should not lose sight of the fact that the ultimate success of Annex 7 will depend as much on economic, constitutional and rule of law reforms as on the implementation of the PLIP.

One of the mantras of the international engagement in BiH since Dayton has been that the return of refugees and displaced persons to their pre-war homes is a necessary precondition for the establishment of a sustainable (and self-sustaining) peace. By focusing political pressure on the domestic authorities to uphold individuals' rights to reclaim their property, by targeting reconstruction assistance and by organising itself to maximise its knowledge and clout, the international community has enabled several hundred thousand Bosnians to go home. But with time, money and interest all running out – and with institutional and personal reputations on the line – the urge to redefine the continuing challenge out of existence is becoming ever greater. It must be resisted. As this report has demonstrated, the PLIP and Annex 7 are not the same thing. Annex 7 can only be declared complete when Bosnia & Herzegovina has become a sufficiently "normal" country so as to permit the dismantling of all the other extraordinary structures to which it is subject – and their replacement by those genuinely "normal" constraints that civilised societies impose upon themselves.

Sarajevo/Brussels, 13 December 2002

APPENDIX B

ABOUT THE INTERNATIONAL CRISIS GROUP

The International Crisis Group (ICG) is an independent, non-profit, multinational organisation, with over 80 staff members on five continents, working through field-based analysis and high-level advocacy to prevent and resolve deadly conflict.

ICG's approach is grounded in field research. Teams of political analysts are located within or close by countries at risk of outbreak, escalation or recurrence of violent conflict. Based on information and assessments from the field, ICG produces regular analytical reports containing practical recommendations targeted at key international decision-takers.

ICG's reports and briefing papers are distributed widely by email and printed copy to officials in foreign ministries and international organisations and made generally available at the same time via the organisation's Internet site, www.crisisweb.org. ICG works closely with governments and those who influence them, including the media, to highlight its crisis analyses and to generate support for its policy prescriptions.

The ICG Board – which includes prominent figures from the fields of politics, diplomacy, business and the media – is directly involved in helping to bring ICG reports and recommendations to the attention of senior policy-makers around the world. ICG is chaired by former Finnish President Martti Ahtisaari; and its President and Chief Executive since January 2000 has been former Australian Foreign Minister Gareth Evans.

ICG's international headquarters are in Brussels, with advocacy offices in Washington DC, New York and Paris and a media liaison office in London. The organisation currently operates eleven field offices

(in Amman, Belgrade, Bogotá, Islamabad, Jakarta, Nairobi, Osh, Pristina, Sarajevo, Sierra Leone and Skopje) with analysts working in over 30 crisis-affected countries and territories across four continents.

In *Africa*, those countries include Burundi, Rwanda, the Democratic Republic of Congo, Sierra Leone-Liberia-Guinea, Somalia, Sudan and Zimbabwe; in *Asia*, Indonesia, Myanmar, Kyrgyzstan, Tajikistan, Uzbekistan, Pakistan, Afghanistan and Kashmir; in *Europe*, Albania, Bosnia, Kosovo, Macedonia, Montenegro and Serbia; in the *Middle East*, the whole region from North Africa to Iran; and in *Latin America*, Colombia.

ICG raises funds from governments, charitable foundations, companies and individual donors. The following governments currently provide funding: Australia, Austria, Canada, Denmark, Finland, France, Germany, Ireland, Luxembourg, The Netherlands, Norway, Sweden, Switzerland, the Republic of China (Taiwan), Turkey, the United Kingdom and the United States.

Foundation and private sector donors include The Atlantic Philanthropies, Carnegie Corporation of New York, Ford Foundation, Bill & Melinda Gates Foundation, William & Flora Hewlett Foundation, The Henry Luce Foundation, Inc., John D. & Catherine T. MacArthur Foundation, The John Merck Fund, Charles Stewart Mott Foundation, Open Society Institute, Ploughshares Fund, The Ruben & Elisabeth Rausing Trust, the Sasakawa Peace Foundation and the United States Institute of Peace.

December 2002

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* The Algeria project was transferred from the Africa Program in January 2002.

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