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Introduction

Between 1992 and 1995 the three major ethnic groups of today's Bosnia and Herzegovina (BiH), Bosniaks (Bosnian Muslims), Bosnian Serbs and Bosnian Croats, fought a bitter conflict for political and economic power. Tens of thousands of people were killed and millions were driven from their homes as attempts were made to create "ethnically cleansed" territories. Tens of thousands of workers in these territories were discriminated against and unfairly dismissed because of their ethnicity.

The General Framework Agreement for Peace in Bosnia and Herzegovina (Dayton Agreement) of 14 December 1995[1] established two semi-autonomous entities in the country, the Federation of Bosnia and Herzegovina (FBiH) and the Republika Srpska (RS).[2] Since the end of the war, the international community has continued to exert significant influence over the political process in BiH, as part of the civilian implementation of the Dayton Agreement, led by a High Representative with far-reaching powers. Throughout the post-war period, the international community has made efforts to encourage the return of those who fled or were driven from their homes, to reduce ethnic discrimination and to ensure that all parts of the country function as multi-ethnic communities.

Despite these efforts, discrimination continues to be one of the most serious obstacles to the return of refugees and internally displaced persons (IDPs). This report focuses on the continuing discrimination against workers from ethnic minorities,[3]

[1] The Dayton Agreement was signed on 14 December 1995 in Paris after having been initialled at a US Air Force base at Dayton, Ohio. It was signed by the Republic of Bosnia and Herzegovina, the Republic of Croatia and the Federal Republic of Yugoslavia (now Serbia and Montenegro).

[2] The Brčko District was given a special status as a single administrative unit of local self-government under the sovereignty of the BiH state and international administration, after international arbitration settled its constitutional status in 1999.

[3] Amnesty International recognizes that there is currently no internationally agreed definition of a minority, however, in using this term we refer to non-dominant ethnic, religious and linguistic communities, who may not necessarily be numerical minorities. Amnesty International believes that the existence of a minority is a question of fact to be determined on the basis of reasonable and objective criteria. Membership of a minority should be by choice; in the absence of other criteria, membership of a minority should be determined by self-identification.

including in equal access to work and full reparation (including restitution, compensation, satisfaction, rehabilitation and guarantees of non-repetition) for the discriminatory dismissals suffered in the past. Using illustrative examples of war-time and continuing discrimination and discussing in detail the cases of the Aluminij aluminium plant in Mostar and of the Ljubija iron ore mines near Prijedor, it shows how the BiH, FBiH and RS authorities have failed to address violations of workers' rights and allowed discrimination to continue.

The right to sustainable return

Since 1994 Amnesty International has campaigned for the millions of people displaced by the conflict in BiH to be guaranteed the right to return to their pre-war homes.[4] The right to return is a key remedy to the massive violations and abuses committed in the context of the conflict and with the purpose of achieving "ethnically cleansed" territories.[5]

The Dayton Agreement, and specifically its Annex 7 on refugees and displaced persons, explicitly recognized the right to return as both a remedy to the human rights violations of unlawful transfers or deportations and as a means to reverse the effects of the "ethnic cleansing" of territories during the conflict.[6] It was also intended to resolve the needs of the large displaced population which has burdened the BiH social and political infrastructure and continues to seriously hamper economic development.

Since the early years of the post-war period, the rate of returns, particularly of those whose ethnic groups formed the minority population in the return area (minority returns) was seen as one of the main indicators of progress in the implementation of

[4] See *Bosnia-Herzegovina: "You have no place here" – Abuses in Bosnian Serb-controlled areas*, AI Index: EUR 63/11/94, June 1994.

[5] See *Bosnia-Herzegovina "Who's living in my house?"- Obstacles to the safe return of refugees and internally displaced people*, AI Index: EUR 63/001/1997, March 1997; *Bosnia-Herzegovina: All the Way Home: Safe "minority returns" as a just remedy and for a secure future*, AI Index: EUR 63/002/1998, February 1998; *Bosnia-Herzegovina: Waiting on the doorstep: minority returns to eastern Republika Srpska*, AI Index: EUR 63/007/00, July 2000.

[6] Acts of unlawful transfer or deportation are war crimes (Statute of the International Criminal Tribunal for the former Yugoslavia, Article 2; Rome Statute of the International Criminal Court, Article 8). Acts of forcible transfer and deportation, if committed as part of a widespread or systematic attack against any civilian population may amount to crimes against humanity (Statute of the International Criminal Tribunal for the former Yugoslavia, Article 5; Rome Statute of the International Criminal Court, Article 7[1d]). Actions constituting "ethnic cleansing" are prohibited under international human rights law (see for instance Protocol No. 4 to the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), Articles 3 and 4).

the Dayton Agreement. The United Nations High Commissioner for Refugees (UNHCR) estimated the number of registered returns, as of October 2005, at approximately 1,011,000.[7] With the achievement of such figures, the international institutions tasked with the implementation of Annex 7 of the Dayton Agreement have begun the phasing out of those parts of their field missions exclusively working on the return process.[8]

A Property Law Implementation Plan was devised [9] to promote the implementation of property repossession legislation and has successfully supported the handing back to returnees of private and socially owned property. As of January 2005, almost 93 per cent of all claims for repossession of private and socially owned property were reported as "completed cases".[10] However, successful returns, and in particular minority returns, cannot be achieved merely through the return of property. Annex 7 of the Dayton Agreement clearly stipulates that the authorities, beyond allowing the displaced to return, must also create the conditions for them to (re)integrate into their pre-war communities. Such integration appears elusive, and many of the thousands of recorded returns are effectively not sustainable.[11]

Amnesty International believes that those who are still displaced as a result of the conflict, whether inside BiH or abroad, are suffering a continuing and grave human rights violation. This position is reflected in the case-law of the Human Rights

[7] UNHCR stated that it had recorded 20,390 returns in 2004, of which 14,199 were minority returns.

[8] A Humanitarian Issues Working Group report (*The Transition from Humanitarian Action to Social and Economic Inclusion: Sustainable Solutions for Displaced Populations in South-Eastern Europe*, 1 June 2002) stated:

> "With the reduction of emergency humanitarian needs in the region, UNHCR will be able to initiate the downsizing of its humanitarian assistance programmes under the Dayton Peace Agreement, and to concentrate its work on core protection mandate activities. After 2003, material humanitarian support provided by UNHCR will be very limited".

The UNHCR field mission in BiH reduced its activities after 2003, with a view to transforming (the remainder of) its operations from emergency humanitarian assistance to some projects more relevant to the reintegration of returnees, in collaboration with the Regional Return Initiative of the Stability Pact for South Eastern Europe.

[9] By the Office of the High Representative (OHR), the Organization for Security and Co-operation in Europe (OSCE), the UNHCR and by the Commission for Real Property Claims for Displaced Persons and Refugees.

[10] OSCE, UNHCR and OHR, *Statistics. Implementation of the Property Laws in Bosnia and Herzegovina*, 31 January 2005.

[11] See International Crisis Group (ICG), *The Continuing Challenge of Refugee Return to Bosnia & Herzegovina*, Europe Report No. 137, 13 December 2002, which concludes that the international community cannot declare the return process completed when (alleged) full implementation of the property legislation is achieved.

Chamber for Bosnia and Herzegovina.[12] Amnesty International considers that the process of return should ensure that returns are sustainable and that the cause of flight and discrimination on ethnic grounds should be removed and effective reintegration made possible.[13]

Obstacles to sustainable return and durable integration

Return-related violence

Despite improvement in the security situation of minority returnees, return-related violence remains a significant impediment to return. According to UNHCR, throughout 2004, some 135 incidents related to the security of returnees were reported, one of which was fatal.[14] Of these, 73 occurred in the FBiH, 56 in the RS and six in the Brčko District. While the overall number of incidents reported has reduced significantly from previous years,[15] the fact remains that in many cases the perpetrators responsible for such attacks remain unpunished. This failure of the criminal justice system to follow up adequately on such politically sensitive crimes undermines the rule of law, and does nothing to inspire confidence in the local authorities and the concept of multi-ethnic integration within a vulnerable and tense returnee community. Safety concerns continue to play an important role in people's decision not to return, especially those traumatized by having suffered or witnessed war crimes.[16]

[12] In cases relating to the repossession of residential property of victims who were forcibly evicted during the war, the Human Rights Chamber has found that the ongoing failure of the authorities to ensure the repossession of former occupants, constitutes a violation of the rights enshrined in Articles 6 (enshrining the right to a fair trial), 8 (enshrining the right to respect for private and family life) and 13 (enshrining the right to an effective remedy) of the ECHR, Article 1 of Protocol No. 1 to the ECHR (enshrining the right to peaceful enjoyment of possessions) and of Article 26 of the International Covenant on Civil and Political Rights (ICCPR) (prohibiting discrimination on any grounds such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status). See for example Human Rights Chamber for Bosnia and Herzegovina, Decision on the Admissibility and Merits, *Đ. M. against the Federation of Bosnia and Herzegovina*, Case No. CH/98/756, 14 May 1999.

[13] *Bosnia-Herzegovina: Waiting on the doorstep: minority returns to eastern Republika Srpska*, AI Index: EUR 63/007/00, July 2000, Chapter 3.

[14] UNHCR, *Update on Conditions for Return to Bosnia and Herzegovina*, January 2005.

[15] In 2002 and in 2003 430 and 277 return-related incidents were reported, respectively. See UNHCR, *UNHCR's Concerns with the Designation of Bosnia and Herzegovina as a Safe Country of Origin*, July 2003 and UNHCR, *Update on Conditions for Return to Bosnia and Herzegovina*, January 2005.

[16] When UNHCR interviewed 600 displaced persons in Tuzla Canton, 220 individuals indicated they were not (yet) interested in return to their pre-war homes (in the RS); most of those in this group of interviewees said poor security in the return area was the reason why they wished to remain in the

One example of such unresolved crimes is the murder of 16-year-old Meliha Durić in the returnee settlement of Džamdžići near Vlasenica in eastern RS on 11 July 2001.[17] The victim was reportedly killed by one shot to her neck, in the second shooting incident to have taken place in the settlement that year. Despite international outcry about the shooting and extensive involvement of the International Police Task Force of the UN Mission in Bosnia and Herzegovina (UNMIBH/IPTF) in the investigation, to date no one has been brought to justice for the attack.

In December 2004 Hrustan Suljić, a witness to a war crimes trial held in Zenica (who reportedly had recently made two witness statements), was shot dead in the garden of his family's home in Teslić by unknown perpetrators. The fact that the victim was also a returnee leader reportedly created fear and anger in the returnee community in Teslić.[18] The large number of suspected war criminals who remain at large and often in positions of direct or indirect political and economical power adds to the real or perceived lack of security for returnees. Amnesty International has serious concerns that the current criminal justice system is ill-equipped and unwilling to tackle the huge caseload of outstanding war crimes investigations and prosecutions and that the War Crimes Chamber in the BiH State Court, which has recently become operational, cannot alone address this vast problem.[19]

Social and economic factors

Apart from security concerns, the most powerful barriers to potential and sustainable returns are the persistent and endemic problems minorities face in realizing rights to education, to health including access to healthcare, to social security including access to social services, pensions and, above all, the right to work.

In the education system, the protracted difficulties in producing a single curriculum, instead of the "mono-ethnic" ones that are now still often in use in schools,[20] and the continuing existence of schools divided along ethnic lines and

FBiH. See UNHCR, *UNHCR's Survey on Displaced Persons in Tuzla Canton from the Podrinje Area, Eastern Republika Srpska*, June 2003.

[17] See OHR, *High representative condemns fatal attack in Džamdžići*, 12 July 2001.

[18] UNHCR, *Update on Conditions for Return to Bosnia and Herzegovina*, January 2005.

[19] For more details on Amnesty International's concerns and recommendations in this area, see *Bosnia-Herzegovina: Shelving Justice – War Crimes Prosecutions in Paralysis*, AI Index: EUR 63/018/2003, November 2003. See also *Amnesty International's concerns on the implementation of the "completion strategy" of the International Criminal Tribunal for the former Yugoslavia*, AI Index: EUR 05/001/2005, 6 June 2005.

[20] See European Commission against Racism and Intolerance (ECRI), *Report on Bosnia and Herzegovina*, CRI (2005) 2, 15 February 2005. The report states at Paragraph 30:

operating on the basis of "two schools under one roof"[21] have done little to restore the faith of returnees. A similar but less well-defined system of segregation and/or discrimination is in force in certain areas in the health services, undermining the confidence and trust of returnees.[22]

The international community has spent long years and resources in an effort to render the payment of pensions to returnees a possibility and in theory, pensions should now be available to everyone. However, in practice, many problems remain for returnees claiming pension payments (and back payments), particularly in gaining recognition of the superannuation years of employees dismissed on grounds of their ethnicity. The continuing existence of three separate pension funds, in the FBiH, the RS and in the Brčko District, has in some cases discriminatory effects.[23]

Moreover, vulnerable groups of displaced people such as families with missing or deceased members (often the male head of the household) are overwhelmingly dependent on social benefits[24] and cannot contemplate returning to their pre-war community without having assurances that they will not lose these benefits.

> "In spite of existing legislation and of agreements signed by the authorities of Bosnia and Herzegovina at different levels, often under the auspices of the international community, and in spite of initiatives taken at the international and domestic level, ECRI is concerned that pupils in Bosnia and Herzegovina still predominantly access education in a segregated way. Schools are reported to often still be mono-ethnic, with pupils and teachers speaking only one language and using only one alphabet. They are also reported to often follow curricula imported from neighbouring countries, depending on the ethnic and political affiliation of the local authorities, including in the area of religious education".

[21] In Central Bosnia, Zenica-Doboj and Hercegovačko-Neretvanski Cantons. See OSCE, *Raising Debate: Is BiH Respecting its International Commitments in the Field of Education Questions for the Citizens of BiH*, 19 April 2005. See also OSCE, *European model of university studies is in the interest of all BiH citizens*, 19 January 2005.

[22] See ECRI, *Report on Bosnia and Herzegovina*, CRI (2005) 2, 15 February 2005, Paragraph 28, where it is noted that "[w]hile access to healthcare is reported to be problematic for many of the citizens of Bosnia and Herzegovina, it has been reported to ECRI that minority returnees encounter even more serious difficulties in accessing health services".

[23] *Ibid.*, Paragraph 29.

[24] Whose payment in the FBiH is regulated by Cantonal legislation. On the process of return of minority women see UNCHR, *Daunting Prospects. Minority Women: Obstacles to Their Return and Reintegration*, April 2000.

Discrimination in employment

A weak economic situation and the difficulties of economic transition and post-war reconstruction make employment opportunities scarce in general, and in many areas extremely high levels of unemployment negatively affect the entire population.[25] However, endemic discrimination against members of minority communities continues to disproportionately affect returnees, denying them equal access to employment. Without employment many returnees are unable to ensure or maintain an adequate standard of living and, facing destitution, many either decide to go back to their area of displacement, or commute there to continue working. Others emigrate in search of work.

This lack of equal access to employment has its roots in the war, when mass dismissals of workers belonging to the "other" ethnic group, coupled with the illegal expropriation of their businesses and other assets (motivated by both ethnic hatred and intolerance as well as personal gain), featured typically as one of the early stages of a process, eventually resulting in the forcible transfer or deportation of members of minority groups. This was particularly prominent in those regions where the persecution on ethnic grounds was most systematic and ferocious, such as the Prijedor/Banja Luka areas and eastern RS, under the control of the Bosnian Serbs, and certain areas under control of the Bosnian Croats.[26]

The initial stages of the "ethnic cleansing" operation would typically consist of the systematic and brutal removal through abductions and killings of high profile political and business personalities in the area, with the aim of depriving the community targeted as a whole of political, social, and economic leadership and support. This pattern was repeated throughout the country, and persisted for the duration of the war.

In 1999 the OSCE Mission to BiH made a comprehensive study of discrimination in access to employment.[27] This study, relying on information

[25] Official unemployment figures for BiH are at approximately 40 per cent. However, this figure is estimated as being exaggerated, given the significant proportion of the population employed in the unofficial "grey economy". Unemployment data at the municipal level are not always available. In the Stolac municipality 45.8 per cent of the workforce was reported as being unemployed in 2003 (See United Nations Development Program (UNDP) and Office of the United Nations High Commissioner for Human Rights (OHCHR), *Rights-Based Municipal Assessment and Planning Project (RMAP): Municipality of Stolac*, April-July 2003. In the Trebinje municipality the OSCE estimated in 2003 the real level of unemployment at approximately 65 per cent (See UNDP and OHCHR, *Rights-Based Municipal Assessment and Planning Project (RMAP): Municipality of Trebinje*, April-July 2003).

[26] See Human Rights Watch (HRW), *Bosnia and Hercegovina, The Unindicted: Reaping the Rewards of "Ethnic Cleansing",* January 1997, Vol. 9, No.1 (D), which describes the targeted intimidation and persecution of the Prijedor non-Serb elite with the purpose of gaining economic control of the area.

[27] OSCE, *Employment discrimination in Bosnia and Herzegovina*, June 1999.

collected by the organization's field offices, the FBiH Ombudsman's legal aid offices, as well as on court records, found that there had been widespread dismissals of workers based on their ethnicity or political views during the war, coupled with the subsequent recruitment of workers belonging to the majority ethnic group, remaining or resettling in the area. Many workers were not formally fired but instead were put on so-called waiting lists[28] (a practice which had also been widely used before the war to deal with the surplus of workers during times of decreased production), most often on grounds of their ethnicity, and were not reinstated in their jobs after the end of the conflict.

While efforts have been made to create multi-ethnic employment in government institutions, this process has been painfully slow and cumbersome and has not always proven to be sustainable. For example, the recruitment of minority (returnee) police officers throughout the country by UNMIBH/IPTF, which gathered full pace from 2000 onwards, encountered many problems. Minority officers were often appointed as "token" signs of integration, but subjected to unequal treatment and discrimination. In Srebrenica, less than 10 per cent of police officers belong to minority communities;[29] moreover, it has reportedly been difficult to retain them, because of pay differences between the RS and the FBiH (where members of the police force receive a significantly higher salary).[30]

The situation is similar outside the public administration, in state-owned enterprises and in the private sector, where ethnic discrimination continues to be widespread, negatively affecting the sustainability of returns. Provisions in the entities' labour laws aimed at ensuring that unfairly dismissed workers (including in those cases where the worker was dismissed on the grounds of their ethnicity) are either compensated or reinstated in their old job, remain largely unimplemented and do not provide effective reparation.

Moreover, in those cases where previously state or socially owned enterprises were privatized,[31] the manner in which privatization has been carried out has often

[28] During the 1992-95 war workers were in some cases put on waiting lists because of the need to reduce the capacity and production resulting from the war. It was originally intended that such workers would be re-hired when circumstances negatively affecting the production ceased to exist. A disproportionate number of members of minority ethnic groups were put on waiting lists. See OSCE, *Employment discrimination in Bosnia and Herzegovina*, June 1999, pp. 5-6.

[29] Bosniaks are now estimated to make up approximately 40 per cent of the municipality's population.

[30] UNHCR, *Update on Conditions for Return to Bosnia and Herzegovina*, January 2005, p. 5.

[31] That is, part or all of the ownership was transferred to the private sector. Amnesty International takes no position on the desirability or otherwise of privatization. Under international human rights law, the State has an obligation to respect, protect, promote and fulfil human rights. These include economic and social rights laid out in the International Covenant on Economic, Social and Cultural Rights (ICESCR). Like any other public policy, privatization must comply with states' human rights

cemented past ethnic divisions, allowing members of the majority ethnic group to gain greater economic power and to continue discriminatory employment practices.[32]

Achieving reintegration

Minority returnees should be guaranteed access to employment, adequate housing, health care and social benefits and education on an equal footing with the majority population. Unless returnees can become truly reintegrated into their pre-war communities and secure an adequate standard of living, the right to return will remain an empty concept.

Amnesty International believes that the widespread and ongoing discrimination against returning refugees and IDPs, based on their ethnicity, perpetuates the effects of war-time policies of "ethnic cleansing" which have led to the ethnic division of the country and causes the unhealed rifts between communities to continue. Moreover, it constitutes a violation of the rights of returnees to be free from discrimination, and has an impact on the right to sustainable return of all people who were displaced by the conflict. Widespread and ongoing discrimination violates international human rights law and standards, as well as domestic law and the provisions of the Dayton Agreement.

If sustainable return is to be facilitated, gaps and ambiguities in current labour legislation and in its implementation, which permit the persistence of discrimination and fail to ensure effective remedies and reparation for those who have faced discriminatory dismissals, must be fully addressed.

obligations. Amnesty International takes the view that any decision to privatize any industry or service must not lead to further worsening of the human rights situation and that, following the privatization, the state cannot abdicate the responsibility to regulate the conduct of the privatized company.

[32] A US General Accounting Office report on corruption in BiH published in 2000 raised a red flag over the issue of ethnicized corruption within the privatization process, noting that the majority of already privatized companies belong to the various nationalist parties. See United States General Accounting Office, *Bosnia Peace Operation: Crime and Corruption Threaten Successful Implementation of the Dayton Peace Agreement*, GAO/NSIAD-00-156, July 2000.

1. The prohibition of discrimination in the enjoyment of the right to work

The right to be free from discrimination, including in the enjoyment of the right to work, is enshrined in a number of international human rights standards and treaties to which BiH is party. These include the ICESCR, the International Convention on the Elimination of All Forms of Racial Discrimination (Convention against Racial Discrimination), the International Labour Organization (ILO) Convention No. 111 and Protocol No. 12 to the ECHR, which prohibits discrimination in the enjoyment of any right set forth by law. The Framework Convention for the Protection of National Minorities prohibits any discrimination based on belonging to a national minority.[33]

The Dayton Agreement

Annex 7 to the Dayton Agreement (Agreement on Refugees and Displaced Persons) states that "[a]ll refugees and displaced persons have the right freely to return to their homes of origin" (Article I[1]) and that "[t]he Parties shall ensure that refugees and displaced persons are permitted to return in safety, without risk of harassment, intimidation, persecution, or discrimination, particularly on account of their ethnic origin, religious belief, or political opinion" (Article I[2]). In Article II of the same Annex, the Parties further committed themselves to "create in their territories the political, economic and social conditions conducive to the voluntary return and harmonious integration of refugee and displaced persons, without preference for any particular group".

Annex 6 of the Dayton Agreement (Agreement on Human Rights) committed the parties to "secure to all persons within their jurisdiction the highest level of internationally recognized human rights and fundamental freedoms, including the rights and freedoms provided in the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols and the other international agreements listed in the Appendix to this Annex" (Article I).[34] Many of these instruments explicitly guarantee the right to be free from discrimination.

[33] For a detailed discussion of international law and standards on the prohibition of discrimination in the enjoyment of the right to work, see the appendix to this report.

[34] These Human Rights Agreements are: The Convention on the Prevention and Punishment of the Crime of Genocide, the 1949 Geneva Conventions I-IV on the Protection of the Victims of War, and the 1977 Geneva Protocols I-II thereto, the 1950 ECHR and the Protocols thereto, the 1951 Convention relating to the Status of Refugees and the 1966 Protocol thereto, the 1957 Convention on the

The Commission on Human Rights

Annex 6 of the Dayton Agreement provided for the establishment of a Commission on Human Rights. The Commission consisted of the Office of the Human Rights Ombudsman and a Human Rights Chamber, a mixed national-international court empowered to issue decisions on individual applications which are final and binding upon the parties. The mandate of the Human Rights Chamber expired on 31 December 2003. A special Human Rights Commission within the BiH Constitutional Court is currently dealing with the backlog of cases registered with the Human Rights Chamber before its closure.

Under Annex 6 of the Dayton Agreement the Commission had jurisdiction to consider "alleged or apparent violations of human rights as provided in the European Convention for the Protection of Human Rights and Fundamental Freedoms and the Protocols thereto" or "alleged or apparent discrimination on any grounds such as sex, race, color, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status arising in the enjoyment of any of the rights and freedoms provided for in the international agreements listed in the Appendix to this Annex" (Article II).

The Human Rights Ombudsman and the Human Rights Chamber were thus mandated to examine cases of both violations of the rights enshrined in the ECHR, and cases of discrimination (including on grounds of national origin or association with a national minority) in access to rights and freedoms incorporated in a large number of human rights instruments. The Commission's explicit jurisdiction enabled in particular the Chamber[35] to process a vast number of cases of human rights violations which had their origins in war-time discriminatory practices. Although the Chamber only dealt with applications concerning matters which occurred or continued after 14 December 1995 (the date when the Dayton Agreement entered into force), it found many cases which originated in the war admissible, as they constituted continuing violations.

Nationality of Married Women, the 1961 Convention on the Reduction of Statelessness, the 1965 Convention against Racial Discrimination, the 1966 ICCPR and the 1966 and 1989 Optional Protocols thereto, the 1966 ICESCR, the 1979 Convention on the Elimination of All Forms of Discrimination against Women, the 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the 1987 European Convention on the Prevention of Torture and Inhuman and Degrading Treatment or Punishment, the 1989 Convention on the Rights of the Child, the 1990 Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the 1992 European Charter for Regional or Minority Languages, and the 1994 Framework Convention for the Protection of National Minorities.

[35] The Chamber was authorized to deal with applications directed against the parties to the Dayton Agreement, and by extension to any official or organ of the parties, the Cantons, Municipalities or any individual acting under authority of such official or organ.

The Chamber considered the prohibition of discrimination as a central objective of the Dayton Agreement, to which it attached special importance.[36] Relying on the jurisprudence of the European Court of Human Rights and of the Human Rights Committee, the Chamber maintained that any differential treatment is discriminatory if it has no reasonable and objective justification, that is, if it does not pursue a legitimate aim or if there is no reasonable relationship of proportionality between the means employed and the aim sought to be realized.[37]

Corporate responsibility of private companies for human rights

States are the duty bearers of human rights obligations, however the UDHR calls on every organ of society, thus including companies, to promote respect for human rights and to secure their universal and effective recognition and observance. There is an increasing trend that acknowledges the need to apply human rights responsibilities directly when states are unwilling or unable to protect rights of their people. There are moves to develop standards of corporate accountability for human rights. The first step in this direction was the adoption by the UN Sub-Commission on the Promotion and Protection of Human Rights of the Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights (UN Norms for Business).

The UN Norms for Business and their commentary set out in a single succinct document a comprehensive list of the human rights norms relevant to the activities of business and, more importantly, are also an extremely useful benchmark by which to judge the adequacy of national legislation to determine whether the governments are living up to their obligations to protect rights.

According to Article 2 of the UN Norms for Business, companies "shall ensure equality of opportunity and treatment […] for the purpose of eliminating discrimination based on race, colour, sex, language, religion, political opinion, national or social origin, social status, indigenous status, disability, age – except for children, who may be given greater protection – or other status of the individual unrelated to the inherent requirements to perform the job, or of complying with special measures designed to overcome past discrimination against certain groups".

[36] Human Rights Chamber for Bosnia and Herzegovina, *Samy Hermas against the Federation of Bosnia and Herzegovina*, Case No. CH/97/45, Decision on the Admissibility and Merits, 18 February 1998 (*Hermas* decision), Paragraph 82.

[37] The respondent party has the *onus* to justify otherwise prohibited differential treatment. *Hermas* decision, Paragraphs 86 and ff. The Chamber's jurisprudence is discussed in more detail in Chapter 3 of this report.

The UN Norms for Business are not legally binding *per se*, but reflect the framework of human rights standards enshrined in a variety of treaties and other instruments that already have international agreement and should therefore be used as the main basis to enable companies to fulfil their responsibilities in relation to human rights.[38]

[38] In April 2005 a Special Representative on Business and Human Rights was established *inter alia* in order to clarify and identify human rights responsibilities of companies. Amnesty International is campaigning to ensure the establishment of a set of UN standards that will have universal recognition, and insists that these standards will be based on the UN Norms for Business.

2. Deepening the divide: ethnic discrimination in employment

Discrimination in employment during the 1992-95 war, as well as in the post-war period, has been endemic and has affected large sectors of the BiH workforce. Workers in all areas of BiH and from all ethnic communities have been victims of discrimination in access to employment. However, such discrimination has been more widespread and systematic in certain areas under Bosnian Serb and Bosnian Croat control, where campaigns of "ethnic cleansing" were most aggressively carried out. Widespread discrimination in employment in the public and private sectors has continued in the post-war period and is one of the most significant obstacles to the return of refugees and IDPs.

War-time discrimination in employment

In its 1999 report on discrimination in employment, the OSCE highlighted several cases of reported discrimination in employment arising from the war. By mid-1992 non-Croat workers were already being reportedly dismissed in the Neum municipality (in today's FBiH); all non-Croat teachers in the municipality were put on a waiting list in September 1992 and subsequently dismissed in 1995 for failure to report to work (see below).[39] Discrimination in employment was reported in Livno (in present-day FBiH) in late 1992. In one case, an ethnic Serb teacher in the Podhum primary school was reportedly threatened by four members of a paramilitary group who came to the school in November 1992 and told her that she could not work as a teacher any longer because of her ethnicity. Following this episode she was not allowed to work at the school.[40] The OSCE reported that throughout 1993 non-Croat workers in the areas corresponding to present-day Hercegovačko-Neretvanski and Zapadnohercegovački cantons (both in the FBiH) were indeed victims of widespread discrimination in their right to work.[41] In West Mostar (in present day FBiH), in particular, it was reported that "before the expulsions took place, Croat authorities had used administrative powers to harass Muslim residents and progressively curtail their rights" and that "these measures included widespread job dismissals from late 1992".[42] Non-Croat

[39] See OSCE, *Employment discrimination in Bosnia and Herzegovina*, June 1999, p. 15.
[40] Human Rights Chamber for Bosnia and Herzegovina, Decision on Admissibility and Merits, *M. M. against the Federation of Bosnia and Herzegovina*, Case No. CH/00/3476, 7 March 2003 (*M. M* decision).
[41] OSCE, *Employment discrimination in Bosnia and Herzegovina*, June 1999, p. 4.
[42] UN Economic and Social Council, *Fifth periodic report on the situation of human rights in the territory of the former Yugoslavia submitted by Mr. Tadeusz Mazowiecki, Special Rapporteur of the*

workers were dismissed or (in the Aluminij and Soko factories) were simply prevented from entering their workplace. In September 1992 at least 20 Serb employees were dismissed from the Igman factory in Konjic (in today's FBiH). The OSCE report stated:

> "It would seem that there was a public radio announcement for people to report to the factory, but many Serbs, in particular, were afraid to go under the circumstances at the time. A list containing the names of the dismissed employees was posted on the factory gate, and these employees were subsequently refused entry. The company lawyer apparently stated that this was in the 'high interest of the State', as the factory was producing weapons. This suggests that the dismissals were overtly based on the ethnicity of the employees".

In some cases discriminatory dismissals had no formal explanation and were simply justified by a "violation of working obligations"[43] without further specification, had no date, and were pinned to blackboards inside the firms, meaning that displaced workers, or workers otherwise unable because of the conflict to reach their workplace, were unable to learn about them and therefore could not take legal action to protect their rights.[44] In other instances, they were based on the discriminatory application of legislation providing for the termination of employment of workers allegedly taking part in the conflict and joining enemy forces. A war-time decree by the Republic of Bosnia and Herzegovina provided for the dismissal of employees who took "the aggressor's part against the Republic of Bosnia and Herzegovina".[45] Similarly, a decree of the Bosnian Croat controlled Croatian Community of Herceg-Bosna, which entered into force in December 1992, provided for the dismissal of all workers "guilty of direct participation, preparation and organization of the rebellion".[46] Even before the adoption of such decrees, in May 1992, some 60 non-Bosniaks were dismissed in Bugojno for being "on the side of the aggressor".[47] Between July and October 1993 virtually all non-Croat workers in Livno and Tomislavgrad were dismissed, apparently following incidents between Bosniaks and the Croatian Defence Council (Hrvatsko vijeće obrane, HVO, the Bosnian Croat Armed Forces). Reportedly, the *de*

Commission on Human Rights, pursuant to paragraph 32 of Commission resolution 1993/7 of 23 February 1993, UN Doc. E/CN.4/1994/47, 17 November 1993.

[43] OSCE, *Employment discrimination in Bosnia and Herzegovina*, June 1999, p.6.

[44] Ombudsman of the Federation of Bosnia and Herzegovina, *Special Report on Violations of Social Rights*, September 1998.

[45] *Ibid.*, p.4.

[46] *Ibid.*

[47] *Ibid.*

facto Bosnian Croat authorities ordered that all those who took part in the "rebellion" be dismissed and their relatives be sent on unpaid leave or forced to accept other jobs.[48]

Other provisions which were applied in a discriminatory way, or otherwise indirectly discriminated against a certain ethnic group, relate to dismissals for absence from work. Under Socialist Federal Republic of Yugoslavia (SFRY) legislation, workers who did not report to work for five days without justification could be dismissed. Similar provisions in the RS and in the Croatian Community of Herceg-Bosna reduced the number of absence days to three.[49] There are numerous reports to suggest that such provisions were used in a discriminatory way to dismiss members of a specific ethnic group. Ethnic Serb workers in Konjic, Jablanica and East Mostar (in present-day FBiH), for example, were reportedly dismissed from Bosniak-owned firms on grounds of their absence from work.[50] Even in those cases where such dismissals were not manifestly discriminatory, they ultimately affected members of ethnic communities who were forced to flee the area. In Tuzla (in today's FBiH), for instance, dismissals for failure to report to work disproportionately affected ethnic Serbs who had no choice but to leave the region.[51]

A number of cases of discrimination in employment, mostly against ethnic Serbs, were reported in Sarajevo as well, often in connection with the application of provisions on absence from work. The Democratic Initiative of Sarajevo Serbs, a non-governmental organization (NGO) working mostly on the return of Bosnian Serbs to Sarajevo, estimated in 2002 that between 12,000 and 15,000 Sarajevo Serbs, who were unfairly dismissed during the war, were still waiting for compensation,[52] or to return to their old jobs.[53]

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[48] *Ibid*., p. 17. See also Human Rights Chamber for Bosnia and Herzegovina, Decision on the Admissibility and Merits, *Arif Brkić against the Federation of Bosnia and Herzegovina*, Case No. CH/99/2696, 12 October 2001 (*Brkić* decision), relating to the case of a Bosniak oral surgeon who was dismissed in July 1993 from the Livno Medical Centre, reportedly alongside with 12 other physicians and medical workers of Bosniak origin. In Human Rights Chamber for Bosnia and Herzegovina, Decision on the Admissibility and Merits, *Sakib Zahirovi against Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina*, Case No. CH/97/67, 8 July 1999 (*Zahirović* decision), the Chamber discusses *inter alia* the placement of 52 Bosniak Workers of Livno-Bus on a waiting list. For a more comprehensive discussion of the jurisprudence of the Human Rights Chamber, see Chapter 3 of this report.

[49] OSCE, *Employment discrimination in Bosnia and Herzegovina*, June 1999, p. 7.

[50] *Ibid.*

[51] *Ibid.*

[52] See Chapter 3 of this report for a thorough discussion of existing FBiH and RS provisions on severance pay to unfairly dismissed workers.

[53] Institute for War and Peace Reporting, *Bosnia: Returnees Suffer Economic Woes*, 21 December 2002.

Discriminatory dismissals of workers in the Ljubija mines near Prijedor (in today's RS), which will be described in more detail below, were part of a campaign of systematic ethnic discrimination against non-Serb workers in many areas under the control of Bosnian Serb forces.[54] Workers were often dismissed by the employers and subsequently evicted from premises which the employer owned.[55] Radoslav Brdjanin, a former leading Bosnian Serb political figure, was found guilty in September 2004 of crimes against humanity, grave breaches of the 1949 Geneva Conventions and violations of the laws and customs of war in proceedings held at the International Criminal Tribunal for the former Yugoslavia (Tribunal). The Trial Chamber considered the denial of fundamental rights, including the right to employment, as an element of the crime of persecution and found that the accused ordered persecution with respect to denying the fundamental right to employment.[56] The judgment describes ethnically motivated dismissals in the self-proclaimed Autonomous Region of Krajina (ARK), comprising a number of municipalities (including Prijedor) under Bosnian Serb control. These dismissals were part of a "strategic plan" to link Serb populated areas in BiH together, to gain control over these areas and to create a separate Bosnian Serb state, from which most non-Serbs would be permanently removed.[57] Dismissals of non-Serb workers, initially affecting those holding key positions in public enterprises and institutions and subsequently extended to "all posts important for the functioning economy", were among the first steps taken by the ARK *de facto* authorities to ensure Bosnian Serb control over public and private enterprises and institutions.[58] Such dismissals were formally sanctioned in decisions of the ARK Crisis Staff, the self-proclaimed highest organ of authority in the ARK. On 22 June 1992, for instance, a decision of the ARK Crisis Staff held that:

> "All executive posts, posts involving a likely flow of information, posts involving the protection of public property, that is, all posts important for the functioning economy, may only be held by the personnel of Serbian nationality. This refers to all socially-owned enterprises, joint-stock companies, state institutions, public utilities, Ministries of Interior [sic] and the Army of the Serbian Republic of Bosnia and Herzegovina. These posts may not be held by employees of Serbian nationality who have not confirmed by Plebiscite or

[54] OSCE, *Employment discrimination in Bosnia and Herzegovina*, June 1999, p. 6, p. 18.
[55] UN Economic and Social Council, *Report on the situation of human rights in the territory of the former Yugoslavia*, UN Doc. E/CN.4/1993/50, 10 February 1993.
[56] *Prosecutor v. Radoslav Brdjanin*, Judgement, Case No. IT-99-36-T, Paragraphs 1062-1067.
[57] *Ibid*., Paragraph 65.
[58] *Ibid.*, Paragraph 233.

> who in their minds have not made it ideologically clear that the Serbian Democratic Party is the sole representative of the Serbian people".[59]

By the end of 1992, almost all members of the Bosniak and Bosnian Croat communities living in the ARK had been dismissed from their jobs.[60]

The legacy of the war: continuing discrimination in employment

Ethnic discrimination in employment has continued to remain widespread in the post-war period and remains one of the main obstacles to the return of refugees and IDPs.[61] In many cases post-war dismissals have directly stemmed from the war-time period, in that they have affected workers who had been put on waiting lists, were forcibly displaced, or were otherwise prevented from working during the war.

In 1998 the FBiH Ombudsman reported that "[d]iscrimination in employment and dismissals was, and still is present in the areas of Livno, Tomislavgrad, Bugojno, Stolac, Čapljina, Mostar, Sarajevo" and cited cases arising from past decisions to lay off workers because of their failure to report to work.[62] The 1999 report of the FBiH Ombudsman noted that the ethnic composition of employees continued to resemble the war-time composition when discriminatory policies and practices had been intensively pursued.[63] In addition to episodes of discrimination relating to past war-time violations, in 1999 the OSCE reported "new" cases of discrimination against Bosnian Serbs in Bihać (FBiH), Tuzla, Visoko (FBiH), Konjic and East and West Mostar; against Bosnian Croats in Bihać, Vareš (FBiH), Tešanj (FBiH) and East

[59] *Ibid.*, Paragraph 235.
[60] *Ibid.*, Paragraph 236. See also OSCE, *Employment discrimination in Bosnia and Herzegovina*, June 1999, pp. 18-19 where it is reported, for instance, that during the war all Bosniaks (approximately 20 workers) were dismissed from the Energopetrol company in Bijeljina; HRW, *Bosnia and Hercegovina, The Unindicted: Reaping the Rewards of "Ethnic Cleansing",* January 1997, Vol. 9, No.1 (D); HRW, *Bosnia and Hercegovina: Unfinished Business: The Return of Refugees and Displaced Persons to Bijeljina*, Vol. 12, No. 7 (D); HRW, *War Crimes in Bosnia-Hercegovina: U.N. Cease-Fire Won't Help Banja Luka*, Vol 6, Issue 8, June 1994.
[61] OSCE, *Fair Employment Project Report 2002*. See also World Bank, *Bosnia and Herzegovina: Labor Market in Postwar Bosnia and Herzegovina. How to Encourage Businesses to Create Jobs and Increase Worker Mobility*, Report No. 24889-BIH, 4 November 2002.
[62] Ombudsman of the Federation of Bosnia and Herzegovina, *Report on Human Rights Situation in the Federation of Bosnia and Herzegovina for 1998.*
[63] Ombudsman of the Federation of Bosnia and Herzegovina, *Report on Human Rights Situation in the Federation of Bosnia and Herzegovina for 1999.*

Mostar; and against Bosniaks in West Mostar, Brčko and the RS.[64] These cases mostly relate to unfair dismissals and to a limited number of instances of reported discrimination in hiring procedures. Also in 1999, the UNHCR reported that:

> "According to various sources, discriminatory dismissal or recruitment based on ethnicity, political affiliation, membership of a particular trade union or participation in social movements is especially prevalent in the local administrations at all levels, public enterprises, the legal profession, the medical field, schools and universities. Such discrimination, in particular on account of ethnicity, started during the conflict, when the employees who were displaced were either dismissed or put on waiting lists. Members of the minority constituent people are therefore more affected by such discriminatory practices than others. In Mostar, for instance, the Aluminij Complex company asked its Bosniak workers not to come back to work, once the company resumed work".[65]

The UNHCR document also mentions cases of discriminatory employment practices in Vitez (FBiH), where 1,416 Bosniak workers had been reportedly dismissed from a Croat-controlled military factory,[66] and in Glamoč in the Zapadnobosanski Canton (FBiH), where the recruitment to the Croat-controlled company Finvest was used to promote the relocation of ethnic Croats in the area.[67]

According to more recent information, discrimination continues to remain prevalent both in the public administration and in the private sector.[68] In a number of municipalities, data on ethnic discrimination in employment (as well as in the realization of other rights) has been collected and published as part of the Rights-Based Municipal Assessment and Planning Project (RMAP) being conducted by the UNDP and the OHCHR.

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[64] OSCE, *Employment discrimination in Bosnia and Herzegovina*, June 1999, p. 10 and ff.

[65] UNHCR, *UNHCR's Position on Categories of Persons from Bosnia and Herzegovina who are in Continued Need of International Protection*, 9 June 1999, Paragraph 2.55.

[66] See also Helsinki Committee for Human Rights in Bosnia and Herzegovina (BiH Helsinki Committee), *Analysis of the State of Human Rights in Bosnia and Herzegovina (Monitoring covered the period 1 January – 1 December 2001)*, No. 13A-12/2001.

[67] Representatives of the company were reported as stating publicly that ethnic Serbs could not be employed without the approval of the local municipal authorities. UNHCR, *UNHCR's Position on Categories of Persons from Bosnia and Herzegovina who are in Continued Need of International Protection*, 9 June 1999, Paragraph 2.55.

[68] In the private sector data on the ethnic breakdown of the workforce are often not available. However, there is a significant body of anecdotal evidence suggesting that discrimination remains widespread and in some cases systematic in private businesses as well.

In some cases discrimination appears to be the result of deliberate policies and in others is the effect of the lack of any effort, on the part of authorities and employers, to ensure that vacancies are widely advertised to members of all communities, including IDPs formerly living where the job is situated. In its annual report for 2003 the BiH Ombudsman stressed that "[a] significant part of incoming complaints are related to employment discrimination or other kinds of labour disputes".[69] The BiH Helsinki Committee noted in its 2003 annual report that "the consequences of discrimination on ethnic grounds are most obvious in the area of employment" and noted in particular that in most municipalities the overwhelming majority of employees in local institutions belong to the majority ethnic group.[70] The report stressed that discrimination in employment appeared to affect in particular minority returnees. A 2004 ECRI report on BiH states that "minority returnees are widely discriminated against both in private and in public sector employment" resulting in a situation whereby virtually no minority returnees are reported to be employed in the private sector and, in most municipalities, public administrations and state-owned companies reportedly tend to employ only members of the majority ethnic group or persons affiliated with the ethnically based political party in power.[71] The report notes how, as a result of discrimination, "most minority returnees are forced into the grey economy, which further deteriorates their situation in respect of social and health protection".[72]

In 2004 none of the Croat-owned businesses in Stolac (FBiH) reportedly employed Bosniaks.[73] For example, the INKOS textile company, which was

[69] Human Rights Ombudsman of Bosnia and Herzegovina, *Compilation for Annual Report 2003*, 31 December 2003.

[70] Substantially monoethnic local administrations are, in itself, another obstacle to sustainable returns as they may have discriminatory effect on minority returnees' access to a number of other economic and social rights.

[71] ECRI, *Report on Bosnia and Herzegovina*, CRI (2005) 2, 15 February 2005, Paragraph 43. Similarly, the CoE Advisory Committee on the Framework Convention for the Protection of National Minorities, in its Opinion on Bosnia and Herzegovina, ACFC/INF/OP/I(2005)003, 27 May 2004, found that "access to employment gives rise to discrimination in the Entities and especially in the Republika Srpska".

[72] *Ibid.* The ECRI strongly urged the authorities of Bosnia and Herzegovina to address as a priority the employment situation of minority returnees throughout the country. The ECRI also recommended that the authorities of Bosnia and Herzegovina raise the awareness of public institutions, public companies and the private employment sector of the illegality of current ethnically discriminatory practices. Moreover, the ECRI called for the adoption of effective civil and administrative antidiscrimination provisions and for a thorough implementation of the existing criminal law provisions against discrimination.

[73] US Department of State, *Bosnia and Herzegovina: Country Reports on Human Rights Practices – 2004*, 28 February 2005. The privatization of formerly socially owned companies in the Stolac municipality (as well as elsewhere in BiH) has been carried out in a non transparent way, rewarding the

privatized and is now under the control of Bosnian Croat owners, reportedly refused to reemploy non-Croat returnees. Production resumed in February 2003, when 65 workers (all of them Bosnian Croats) were hired. In Glamoč, Finvest was still reported in late 2003 as refusing to employ its non-Croat workers unfairly dismissed during the war.[74] In Čapljina[75] (FBiH), out of 53 employees in the municipal administration, only four were non-Croats in 2003.[76] In the Posavski Canton (FBiH), according to local trade unions, only 27 of the 2,650 workers who had lost their jobs during the war and have filed claims under Article 143 of the FBiH Law on Labour (see below), were reemployed, as of 2003.[77] A RMAP report on the predominantly Croat municipality of Orašje (FBiH), stated that "some Serb returnees once held respectable posts like teaching positions, and their attempts to reclaim their pre-war positions are often met with obstruction, at times leading to protracted legal battles". The report includes the case of a Bosnian Serb primary school teacher who, after having obtained her reinstatement, was boycotted by her pupils (or their families). As a result, she was forced to accept a position as a school librarian.[78] In Ključ (FBiH), as of 2004, no Bosnian Serb returnee was employed in the municipal administration.[79] In Sanski Most (FBiH), in recent years, Bosniaks constituted the overwhelming majority of employees in the local administration (as of 2003 they were approximately 94 per cent of the employees, while Bosnian Serbs and Bosnian Croats each made up approximately 3 per cent of the employees).[80]

Discrimination has continued to be widespread in the RS as well. A milling factory in Modriča (RS), which employed before the war a workforce mostly

political supporters and members of the local Bosnian Croat party (Hrvatska demokratska zajednica Bosne i Herzegovine, HDZBiH). As a result privatized companies remain under the control of Bosnian Croat managers and continued with a policy aimed at preserving the monoethnic structure of the workforce. See UNDP and OHCHR, *Rights-Based Municipal Assessment and Planning Project (RMAP): Municipality of Stolac*, April-July 2003, p. 28 and ff.

[74] Bosnian Institute, *Glamoc Abandoned*, 30 September 2003.

[75] Where Bosnian Croats were slightly more than 50 per cent of the total population in the pre-war period and now compose approximately three quarters of the population.

[76] UNDP and OHCHR, *Rights-Based Municipal Assessment and Planning Project (RMAP): Municipality of Capljina*, October 2002-February 2003, p. 14.

[77] UNDP and OHCHR, *Rights-Based Municipal Assessment and Planning Project (RMAP): Municipality of Odžak*, April-July 2003, p. 48

[78] UNDP and OHCHR, *Rights-Based Municipal Assessment and Planning Project (RMAP): Orašje Municipality*, April-August 2004, p. 16.

[79] "Nijedan srpski povratnik ne radi u opštinskoj administraciji", *Nezavisne novine*, 17 February 2004.

[80] Bosnian Serbs and Bosnian Croats together make up approximately 13 per cent of the population of the municipality. Before the war Bosnian Serbs and Bosnian Croats made up approximately 42 and 7 per cent, respectively, of the municipality's population. See UNDP and OHCHR, *Rights-Based Municipal Assessment and Planning Project (RMAP): Municipality of Sanski Most*, April-July 2003, pp. 13 and 19. See also "Opstrukcija zapošljavanja povratnika", *Nezavisne novine*, 17 June 2004.

composed of Bosniaks, after its privatization reportedly did not employ a single Bosniak.[81] Although the overall security situation has improved over the past few years, until recently some employers who decided to employ members of minority ethnic groups were exposed to harassment and violent intimidation. In 2002 the car of the director of the Radnik engineering company in Srebrenica (RS) was set ablaze, reportedly because he had decided to reemploy two Bosniak returnees.[82] Also in 2002, a bomb was thrown into a shop in the village of Grapska, in the Doboj municipality (RS). The attack was apparently in connection with the fact that two Bosniaks were working in the shop.[83]

According to the RS Helsinki Committee, in 2004 RS ministries employed 9,656 ethnic Serbs, 445 Bosniaks and 85 ethnic Croats. The situation appeared to be even worse in the local administration and in schools. Out of a total of approximately 3,600 employees in the RS local administration bodies, only 92 Bosniaks and 31 ethnic Croats were reportedly employed in 2004.[84] In Prijedor only three Bosniaks were reportedly employed in the local administration. Together with one Bosniak doctor, one veterinary surgeon, three teachers and the principal of the Kozarac elementary school, they comprised the total number of returnees employed in the public sector in Prijedor.[85] In the Bratunac municipality (RS), as of late 2004, only three Bosniaks were employed in the local administration and there were only three Bosniak employees in the municipality's schools.[86] In the entire Bijeljina municipality (RS), only approximately 10 Bosniaks were employed in the educational sector (in 2004).[87]

Reportedly, as of early 2005, in the municipality of Jezero (RS) 10 out of 11 employees in the local administration were Bosnian Serbs and the local company Agrocentar did not employ a single Bosniak.[88] In Kotorsko, near Doboj, the

[81] BiH Helsinki Committee, *Analysis of the State of Human Rights in Bosnia and Herzegovina (Monitoring covered the period 1 January – 1 December 2001)*, No. 13A-12/2001.
[82] Helsinki Committee for Human Rights in Republika Srpska (RS Helsinki Committee), *Narrative report, February and March 2002, Protection, promotion and monitoring of human rights in Republika Srpska*, 26 May 2003.
[83] RS Helsinki Committee, *Narrative report, April and June 2002, Protection, promotion and monitoring of human rights in Republika Srpska*, 26 May 2003.
[84] RS Helsinki Committee, *Promotion, Protection and Monitoring of Human Rights, May-June04*, 4 August 2004.
[85] UNDP and OHCHR, *Rights-Based Municipal Assessment and Planning Project (RMAP): Municipality of Prijedor*, October 2003-February 2004, p. 18.
[86] RS Helsinki Committee, *Narrative Report on Human Right* [sic], 10 December 2004.
[87] RS Helsinki Committee**, '***Promotion, protection and monitoring of human rights in Republika Srpska', period October 1 – December 31, 2004*, 28 March 2005, p. 18. Before the war, non-Serbs made up more than 30 per cent of the population of the municipality.
[88] "Položaj Bošnjaka lošiji nego ikad", *Nezavisne novine*, 29 March 2005.

management of the local furniture factory Enterijer, reportedly refused to rehire Bosniak returnees who worked for the company before the war.[89] In the municipality of Novi Grad/Bosanski Novi (RS), representatives of a local association of returnees reportedly claim that, out of 6,000 Bosniak who have returned, only three are employed in the local administration, one in the local court, and a small number in the police and schools.[90] Reportedly, not a single returnee is employed in state-owned companies in the municipality. In Srebrenica less than 5 per cent of returnees of working age were employed as of 2004,[91] while the majority of available jobs were in companies which still remained under the control of the RS authorities and of the local leadership of the party in power. The overwhelming majority of the employees in such companies are Bosnian Serbs[92] and reportedly out of 51 managerial positions in public enterprises in Srebrenica, only two are held by Bosniaks.[93] Vitinka, a Zvornik-based company producing juices and mineral water, was reported in 2003 as only employing Bosnian Serbs (whereas before the war approximately 50 per cent of the workforce was composed of Bosniaks).[94] Similarly, the "19 Decembar" construction company was reported as employing 126 workers, all Bosnian Serbs. In Milići (RS) the "6 Avgust" wood processing company, which used to employ before the war some 360 workers, (50 of them Bosniaks), as of May 2003, was staffed by 207 workers, all Bosnian Serbs.[95]

[89] "Bez posla, a mnogi bez struje i vode", *Oslobođenje*, 25 May 2004.
[90] "'Nema posla za povratnike'", *Nezavisne novine*, 22 September 2005.
[91] UNDP and OHCHR, *Rights-Based Municipal Assessment and Planning Project (RMAP): Municipality of Srebrenica*, October 2003-February 2004, p. 16.
[92] Including in the local Zinc mine. See "After the massacre, a homecoming", *The Guardian*, 30 April 2005.
[93] *Ibid.*, p. 43 and ff.
[94] UNDP and OHCHR, *Rights-Based Municipal Assessment and Planning Project (RMAP): Zvornik Municipality*, October 2002-February 2003.
[95] UNDP and OHCHR, *Rights-Based Municipal Assessment and Planning Project (RMAP): Milici Municipality*, April-July 2003.

3. Implementation in BiH of the prohibition of discrimination in the enjoyment of the right to work

There is little information available on cases related to discriminatory dismissals and waitlisting procedures before the domestic courts, relying on the labour laws of either entities. It appears that one of the main problems in bringing such cases has been the (perceived) difficulty to prove in court their discriminatory intent. In many cases, both during and after the war, large scale dismissals have been justified on purely economic reasons, such as decreased production and/or the reorganization and restructuring of the company. Although the dismissals disproportionately affected a particular ethnic group, there are relatively few cases in which the workers' ethnicity was explicitly mentioned as their reason.[96]

The Human Rights Chamber for Bosnia and Herzegovina, before its closure in 2003, played a crucial role in redressing human rights violations, including in a number of cases arising from discrimination in employment. In 2000 the BiH Constitutional Court adopted four partial decisions addressing the ongoing problem of discrimination in the country. However, their implementation has been slow and has been mostly the result of pressure by the international community.

The FBiH and RS labour laws prohibit discrimination in employment. They also contain provisions providing compensation to victims of discriminatory dismissals. However, such provisions remain insufficient. Among other problems, these legal protections do not apply to all workers who lost their jobs as a result of discrimination and compensation, when awarded, is manifestly inadequate and generally regarded as "symbolic". Equally importantly, the mechanisms to consider claims by former workers and to award compensation are not in place or are too limited. The vast majority of claims remain pending.

The Human Rights Chamber

From 1996 to 2003, The Human Rights Chamber for Bosnia and Herzegovina played a crucial role in the implementation of international human rights law, offering interim protection and remedies to victims of discrimination. In its last annual report, the Chamber noted:

> "In the practice of the Chamber those cases concerning discrimination in the right to work, the right to social security and the right to access to the public

[96] The unfair dismissal of non-Serb workers from the Ljubija mine near Prijedor is one exception in this respect since the ethnicity of the workers being explicitly mentioned as the reason for the dismissal (see below).

> service have become more and more important. Discrimination in employment or reemployment is one of the most severe problems for the return of refugees and displaced persons".[97]

In a number of cases, the Human Rights Chamber found that the authorities of the respondent party had discriminated (or tolerated discrimination)[98] against the applicant in their enjoyment of the right to work.[99]

In the Zahirović case the applicant, a Bosniak man who worked for the Livno-Bus Company, was put on a waiting list together with 51 other employees of Bosniak origin at the time of the Bosniak-Croat conflict in the area of Livno. The Chamber did not accept the argument that the waitlisting was justified in view of the company's financial difficulties, as about 40 non-Bosniak workers had joined the company after the war to perform the work of the Bosniak employees placed on the waiting list. Nor did it accept as a valid ground for differential treatment that the composition of the workforce should reflect the ratio of the different ethnic groups within the population.[100]

Two similar cases were initiated by an ethnic Croat and an ethnic Serb who lived in the Sarajevo suburb of Grbavica, held during the war by Bosnian Serb forces. Both applicants (together with other employees) had been dismissed on the grounds that they had failed to report to work during the war. In one case, the Chamber found that the applicant had been discriminated against because the decision of dismissal had a disparate impact on persons of non-Bosniak origin and the majority of employees who were required to reapply for their jobs after the war ended were non-

[97] Human Rights Chamber for Bosnia and Herzegovina, *Annual Report 2002*, p. 7.

[98] With respect to the privatization of formerly state-owned companies, the Chamber recalled the positive obligation under Article I of the Agreement on Human Rights (Annex 6 to the Dayton Agreement) to secure to all persons within their jurisdiction the highest level of internationally recognized human rights and fundamental freedoms. See Human Rights Chamber for Bosnia and Herzegovina, *Zahirović* decision, Paragraphs 102 and 132. This interpretation of a state's positive obligations to implement international human rights law is in line with General Recommendation XX to Article 5 of the Convention against Racial Discrimination.

[99] See for example: *Brkić* decision; *Ana Kraljević against the Federation of Bosnia and Herzegovina*, Decision on the Admissibility and Merits, Case No. CH/01/7351, 12 April 2002; *M. K. against the Federation of Bosnia and Herzegovina*, Decision on Admissibility and Merits, Case No. CH/98/565, 22 December 2003 (*M. K.* decision). In all these cases the Chamber ordered the respondent party to pay the applicants compensation and to ensure that they be offered the possibility of resuming their work or another position appropriate to their skills and training (or a fair and just retirement). In other cases registered by the Chamber the parties reached an amicable resolution: *Mirjana Malić against the Federation of Bosnia and Herzegovina*, Report, Case No. CH/97/35, 25 May 1998.

[100] Human Rights Chamber for Bosnia and Herzegovina, *Zahirović* decision, Paragraphs 126-130.

Bosniaks.[101] In the other case, the Chamber noted that "persons of Serb origin living in Grbavica and employed in the Federation were generally unable to report to work during the armed conflict and were the persons most likely to suffer termination of their employment by operation of the statutes in place at the time the applicant stopped reporting to work".[102]

In relation to the proceedings initiated by the applicants seeking redress before domestic courts, the Chamber consistently found violations of Article 6[1] of the ECHR.[103] In one case, the Human Rights Chamber found that the courts of FBiH "perpetuated the denial of the applicant's right to work".[104] In two other cases, the Chamber concluded that the finding of the domestic courts rejecting the applicants' claims against dismissals were discriminatory in themselves.[105] In this respect, the Chamber noted:

> "[T]he current legal framework and practice of the authorities, both administrative and judicial, do not provide an effective remedy for these applicants. On the contrary, these cases show that systematically a violation of the right to fair trial within a reasonable time is added to the alleged violation of the right not to be discriminated against in the right to work in the aftermath of the armed conflict".[106]

In 2002, more than 500 applications were pending before the Chamber alleging discriminatory termination of labour relations, mostly on grounds of ethnic or national origin. A special Human Rights Commission within the BiH Constitutional Court is currently dealing with the backlog of cases registered with the Human Rights Chamber before its closure. The cases still pending before the Human Rights Commission include a collective application by workers of Aluminij Mostar.

[101] Human Rights Chamber for Bosnia and Herzegovina, *Zoran Pogarčić against the Federation of Bosnia and Herzegovina*, Decision on Admissibility and Merits, Case No. CH/98/1018, 6 April 2001, (*Pogarčić* decision), Paragraph 61.
[102] Human Rights Chamber for Bosnia and Herzegovina, *Mladen Vanovac against the Federation of Bosnia and Herzegovina*, Decision on Admissibility and Merits, Case No. CH/99/1714, 8 November 2002 (*Vanovac* decision), Paragraph 49.
[103] Human Rights Chamber for Bosnia and Herzegovina, *Zahirović* decision, Paragraph 140; *Pogarčić* decision, Paragraph 80; *Vanovac* decision, Paragraph 57; *Brkić* decision, Paragraph 88; *M. K.* decision, Paragraph 67.
[104] Human Rights Chamber for Bosnia and Herzegovina, *M. M.* decision, Paragraph 74.
[105] Human Rights Chamber for Bosnia and Herzegovina, *Edita Rajić against the Federation of Bosnia and Herzegovina*, Decision on Admissibility and Merits, Case No. CH/97/50, 7 April 2000, Paragraph 60; *Mile Mitrović against the Federation of Bosnia and Herzegovina*, Decision on Admissibility and Merits, Case No. CH/98/948, 6 September 2002, Paragraph 54.
[106] Human Rights Chamber for Bosnia and Herzegovina, *Annual Report 2002*, p. 15.

Given the many protracted problems associated with the efficient functioning of the local courts in BiH, and their general reluctance to apply international human rights law, Amnesty International remains concerned that the closure of the Chamber, whose mandate expired on 31 December 2003, has resulted in a dramatic loss of protection for victims of human rights violations, in particular violations of social and economic rights such as the right to work.[107]

The 2000 Constitutional Court decisions

Annex 4 of the Dayton Agreement, which forms the BiH Constitution, states in its preamble that the Constitution is based upon the "respect for human dignity, liberty and equality". Article II[4] contains an explicit provision on non-discrimination which stipulates that "[t]he enjoyment of the rights and freedoms provided for in this Article or in the international agreements listed in Annex I to this Constitution shall be secured to all persons in Bosnia and Herzegovina without discrimination on any ground such as sex, race, color, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status".

In 2000 the BiH Constitutional Court issued four partial decisions which set out a range of fundamental measures, *inter alia*, to address the ongoing problem of discrimination in the country.[108] In keeping with the preamble of the Constitution, the Constitutional Court decided in Partial Decision III[109] that all three constituent peoples of BiH (Bosniaks, Serbs and Croats) should enjoy equal status throughout the country, regardless of which entity they live in. In its reasoning the Constitutional Court stated that "a government must represent the whole people belonging to its territory without distinction of any kind thereby prohibiting […] a more or less complete blockage of its effective participation in decision-making processes" (Paragraph 55), and that:

> "in the context of a multi-national state such as BiH the accommodation of cultures and ethnic groups prohibits not only their assimilation but also their segregation. Thus, segregation is, in principle, not a legitimate aim in a democratic society" (Paragraph 57).

[107] See *Bosnia-Herzegovina: Abolition of Human Rights Chamber leaves citizens unprotected*, AI Index: EUR 63/015/2003, 11 June 2003.
[108] The Constitutional Court was deciding on an application filed in 1998 by Alija Izetbegović, the then Chairman of the State Presidency, which claimed that provisions in the entity constitutions were in violation of the State Constitution.
[109] Constitutional Court of Bosnia and Herzegovina, Decision in Case No. U 5/98 III, 1 July 2000.

The Constitutional Court concluded that, following the entering into force of the Dayton Agreement, there was and still is a "systematic, long-lasting, purposeful discriminatory practice of the public authorities" of both the RS and the FBiH through "direct participation in violent incidents or by abstaining from the obligation to protect people against harassment, intimidation, or violent attacks on grounds of ethnic origin only" and through their failure "to establish necessary political, economic and social conditions conducive to the voluntary return and harmonious reintegration of refugees and displaced persons, without giving preference to any particular group", as provided by Article II[5] of the BiH Constitution (Paragraphs 95 and 138). The Constitutional Court ruled that, in order to combat the problem, the authorities should not only refrain from discrimination, but also had a "positive obligation to protect against discriminatory acts of private individuals and, with regard to refugees and displaced persons, to create the necessary political, social and economic conditions for their harmonious integration" (Paragraph 81).

The implementation of the Constitutional Court's decisions has been cumbersome and slow. Without active engagement of the OHR it is doubtful the process would have taken off at all. In order to implement the Constitutional Court's decisions, both entities needed to amend their respective constitutions substantially, and to this end the OHR established multi-ethnic Constitutional Commissions in January 2001 to draft the necessary amendments. The Constitutional Commissions were also mandated to ensure interim protection against discrimination and could veto laws and policies which they deemed discriminatory in the entity parliaments.

After protracted discussions between politicians representing key political parties, on 27 March 2002 the Sarajevo Agreement was reached which presented a compromise solution on several elements crucial to the implementation of the decisions. The agreement proposed *inter alia* that there be proportional representation of the constituent peoples in the entities' public institutions (that is, in the entity, cantonal and municipal governments, and in the courts on all levels).[110]

The implementation of the Constitutional Court decision at the cantonal and municipal level has appeared to be particularly difficult, subject to vague and

[110] The formation of multi-ethnic courts on all levels has been one of the aims of a country-wide process of renewed selection and appointment of judges and prosecutors to all courts, led by the High Judicial and Prosecutorial Councils of Bosnia and Herzegovina. Before the reappointment 91.2 per cent of the RS judiciary was composed of Serbs. Following the reappointment, Bosniaks constitute 22.8 per cents and Croats 8.1 per cent of RS judges and prosecutors. Before the reappointment, the composition of the FBiH judiciary was as follows: 64.8 per cent Bosniaks, 9.6 per cent Serbs, 17.5 per cent Croats and 2.5 per cent others. Following the reappointment, the composition of the FBiH became: 56.5 per cent Bosniaks, 19.1 per cent Serbs, 21.9 per cent Croats and 2.5 per cent others. See Independent Judicial Commission, *Final Report of the Independent Judicial Commission. January 2001 – 31 March 2004*, November 2004.

ambiguous criteria and hence an easy target for obstruction and indefinite delay. Some of the obstacles in this process lie in the fact that those employed in public institutions at the municipal level, i.e. in education, healthcare and social services, as well as those with civilian functions in the police, while to a large extent currently belonging to a mono-ethnic workforce, hold valid employment contracts.

The Fair Employment Practices Strategy

In November 2001 the OSCE (in conjunction with the OHR, the UNHCR and the OHCHR) adopted the Fair Employment Practices Strategy, which laid down standards for employment practices and mechanisms to promote inclusive and non-discriminatory hiring practices by private and public employers in the country and to enhance free movement of workers.[111] This strategy put forward fair employment principles, based on international standards as well as national legislation (see box).

In 2002 OSCE field offices established a Fair Employment Project in some key minority return areas. Targeted employers were asked to agree to implement non-discriminatory employment polices in return for technical advice and assistance from the OSCE. By mid-2003, 24 employers, seven of them municipal administrations and 17 private and state-owned companies, had participated in the project. The project also comprised a number of training seminars and roundtables involving NGO and trade union representatives, employers, and the relevant authorities, which continued in 2004.[112]

The implementation of the Fair Employment Project marked a positive step in promoting future fair and non-discriminatory practices. However, judging by the vast number of unresolved cases of continuing employment discrimination, it appears that a far more comprehensive and consistent action plan to address discrimination in employment, as well as more effective and speedier access to redress mechanisms, continue to be needed.

[111] See OSCE, OHR, OHCHR and UNHCR, *Prevention and Elimination of Discrimination in Employment, Fair Employment Practices Strategy, Revised Policy Paper*, October 2001.
[112] The OSCE is currently continuing to promote fair employment practices in the context of its new Corporate Governance Project.

The fair employment principles

1. All workers have the right to equal treatment regardless of sex, race, colour, nationality, language, religion, political or other opinion, ethnic or social origin, property, birth, membership or non-membership of a trade union, disability or other status.
2. These principles apply to all conditions of employment, including recruitment, promotion, discipline, dismissal, lay-off, pay, benefits, facilities, services, transfer, training and membership and benefits of workplace organisations. In particular, employment opportunities at all levels, including management, should be publicly and widely advertised according to objective criteria and open to all.
3. Workers have the right not to be subjected to harassment on the above grounds where this had the purpose or effect of creating an intimidating, hostile, offensive or disturbing environment. In particular, political, nationalistic or religious images or phrases and other manifestations that have this purpose or effect should be removed.
4. Workers should not be subjected to apparently neutral criteria that adversely impact workers to whom any of the above grounds apply, unless those criteria are objectively justified and proportionate.
5. Workers should not be subjected to any detriment as a result of raising issues under these principles.
6. Employers should ensure that all workers are aware of these principles and that these principles are put into effect.

Entity labour law provisions

In its 1999 study of discrimination in employment, the OSCE recommended the introduction of a national labour legislation prohibiting discrimination in employment on any grounds.[113] Despite these recommendations, labour legislation still only exists in BiH on the level of the entities.

[113] The OSCE report (p. 20) states:

Prohibition of discrimination

The FBiH and RS labour laws[114] were both amended in 2000 in order to incorporate anti-discrimination provisions.

Article 5[1] of the FBiH Law on Labour prohibits discrimination against workers and persons seeking employment on the basis of "race, colour, sex, language, religion, political or other opinion, ethnic or social origin, financial situation, birth or any other circumstance, membership or non-membership of a political party, membership or non-membership of a trade union, physical or mental impairment" in respect of recruitment, training, promotion, terms and conditions of employment, cancellation of the labour contract or other issues arising out of labour relations. Victims of discrimination in employment are explicitly granted the right to bring a complaint before the competent court (Article 5[3.1]), which can then order employment, reinstatement, or the provision or restoration of any right arising from the contract of employment (Article 5[3.3]). In those cases where the complainant presents obvious evidence of discrimination, the FBiH Law on Labour provides that the respondent party has the *onus* to present evidence that any differential treatment was not made on discriminatory grounds (Article 5[3.2]).

Article 5 of the RS Law on Labour provides that "[a] worker, or a person seeking employment, may not be placed in an unequal position when trying to realize the right to work or the right to find employment, on grounds of race, ethnic origin, skin colour, sex, language, religion, political or other conviction, social origin, financial situation, membership or non-membership of a trade union or a political organization, physical or mental health or other characteristics not directly related to the nature of the employment". Article 5 also recognizes the right of victims of such discrimination to bring a complaint before a competent tribunal, with the authority to order an employer to reinstate a complainant and to ensure that their right to adequate reparation is respected.

> "the challenge is now both to remedy past discrimination and to prevent such discrimination continuing. Legal challenges should work towards both of these aims, as litigation has *both a remedial and a deterrent effect*" (emphasis added).

The OSCE also proposed a comprehensive training program for lawyers and the judiciary in international standards relating to non-discrimination, a public campaign on these issues, the training of employers in these standards and the raising of awareness among potential investors and donors. See OSCE, *Employment discrimination in Bosnia and Herzegovina*, June 1999, p. 21 and ff.

[114] Official Gazette of the Federation of Bosnia and Herzegovina, No. 43/99, 32/00 and 29/03; Official Gazette of the Republika Srpska No. 38/00, 40/00, 47/02, 38/03 and 66/03.

Severance pay for dismissed workers and workers placed on waiting lists

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

Both entities have introduced provisions into their labour legislation to address the problem of the large number of workers who had been either dismissed or put on waiting lists during the war (many, if not most, on account of their ethnicity). These have, however, proved wholly inadequate to deal with the volume of the complaints and have failed to provide an effective remedy to those affected by a discriminatory dismissal or transfer to waiting list.

Article 143 of the 1999 FBiH Law on Labour provides that workers on waiting lists are entitled to compensation "in the amount specified by the employer" and, in those cases where they are not requested to resume work, to a severance pay which is calculated on the basis of the average monthly salary in the FBiH. For the purpose of article 143, an employee who was employed on 31 December 1991 and who, within three months from the entering into force of the Law on Labour, addressed in writing or directly the employer for the purpose of establishing his/her legal and working status, and had not accepted employment from another employer during this period, was also considered an employee on the waiting list. Article 143 also provides that in those cases where the employment of a waitlisted worker is terminated, and he/she is still unemployed, for one year the employer cannot employ another employee with the same qualifications or educational background of the dismissed worker.

Amendments to the FBiH Law on Labour entered into force on 7 September 2000, with the addition of Articles 143[a], 143[b] and 143[c], which established and regulated the functioning of the federal and cantonal commissions for the implementation of Article 143. The amendments also limited the maximum amount of severance pay, which depends on the total length of service, and in any case, cannot exceed a sum equal to three times the average monthly salary in the FBiH.[115] In accordance with these provisions, employees who believed that their rights arising from Article 143 were violated could lodge a claim with the Cantonal Commission for

[115] According to the FBiH Federal Office of Statistics in 1999, when the FBiH Law on Labour entered into force, the average gross monthly salary in the FBiH was approximately 550 Convertible Marks, equivalent to approximately 280 Euros or 330 US Dollars. Reportedly the international community exerted significant pressure to reduce the severance pay, which was seen as unrealistically high. See Federal Commission for the Implementation of Article 143 of the Law on Labour, *Informacija o implementaciji člana 143. Zakona o radu*, May 2003.

the Implementation of Article 143 of the Law on Labour, established within the relevant cantonal ministry. A Federal Commission for the Implementation of Article 143 was also established, tasked with deciding on complaints against procedural decisions of the cantonal commissions. Decisions of the Cantonal and Federal Commissions are "final and subject to the court's review in accordance with the law" Article 143[c]. The amendments established a new deadline (6 December 2000) by which claims had to be submitted.

Many thousands of workers[116] used the new provisions to file a complaint with the cantonal commissions. However, in many cantons the Article 143 commissions did not operate for a long time and those cantonal commissions which were established were the subject of hundreds of complaints to the FBiH Ombudsman for Human Rights.[117] The FBiH Ombudsman reported that, by early 2001 only some 2,700 complaints had been examined. A 2004 Council of Europe (CoE) report on Roma access to employment in BiH notes that:

> "at the end of 2002, two years after the law had defined rights on this ground, former workers are just as far from the exercise of rights guaranteed under Article 143. […] In the area of Herzegovina-Neretva Canton, the Cantonal Commission for the Implementation of Article 143 of the Law on Labour has not operated since November 2001 and in the area of Central Bosnia Canton – since April 2001. […] Bearing in mind that in the Central Bosnia Canton only, around 11,000 complaints were lodged by workers related to the exercise of rights ensuing from Article 143, it is evident that bodies of governance – by failing to create requirements for the work of commissions, which serve as a mechanism for the exercise of workers' rights – clearly show little respect towards the rights of workers guaranteed under this law. But even in cantons in which these commissions operate, the total number of decided complaints and complaints decided in favour of workers is insignificant. For example, in Herzegovina-Neretva Canton, out of 3,647 reported complaints for regulating labour status, only 230 complaints were decided with the plaintiff's complaints being accepted, but in the majority of these cases employers then lodged complaints with the Federation Commission and these have not been decided yet. According to data on the work of the Cantonal Commission in Sarajevo, out of 14,000 complaints that this commission is responsible for, 11,000

[116] Approximately 60,000 claims were lodged, according to information Amnesty International has received from the FBiH Ministry for Labour and Social Policy.

[117] Ombudsman of the Federation of Bosnia and Herzegovina, *Posebni izvještaj o radu kantonalnih i Federalne komisije za implementaciju člana 143. Zakona o radu*, 30 April 2001.

complaints were decided by December 1, 2002, of which 20% were decided in favour of plaintiffs and 80% of the complaints were rejected".[118]

In July 2004 the BiH Human Rights Ombudsman issued a special report on the implementation of Article 143 of the FBiH Law on Labour and Article 152 of the RS Law on Labour (see below). As of March 2004, only approximately 10,700 claims had been examined by cantonal commissions while the Federal Commission had received 3,700 complaints, of which some 2,400 had been examined. The BiH Ombudsman found that the length of proceedings before such commissions constituted a violation of Articles 6 and 13 of the ECHR, as well as of the BiH Constitution.[119] In June 2005 the FBiH Ministry for Labour and Social Policy informed Amnesty International that commissions in all cantons, with the exception of the Zapadnohercegovački Canton, had considered 29,042 claims, out of a total of 60,456. The Ministry also informed Amnesty International that information on the activities of the Article 143 commission in the Zapadnohercegovački Canton was not available, as the commission had not been working "for a long time".[120]

Leaving aside the inadequacies of the commissions, major problems lay in the legislative framework itself. The international NGO American Refugee Committee (ARC), whose office in Mostar had offered legal assistance to hundreds of persons who had lost their employment on grounds of their ethnicity, noted that the FBiH Law on Labour, by excluding from severance pay and compensation anyone who had accepted any form of employment, effectively discriminates against members of minority groups.[121] Such circumstances applied overwhelmingly to members of minority ethnic groups who had to leave their pre-war homes (and workplaces) as a result of persecution or threats, and who had been forced to find other work while displaced in order to survive.

[118] CoE, *Report on Roma access to Employment in Bosnia and Herzegovina*, June 2004.
[119] Article 6 of ECHR provides that "everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law". Article 13 stipulates that "[e]veryone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity". The BiH Ombudsman noted in particular that the failure of the FBiH and RS authorities to adequately address unfair dismissals and waitlisting is a violation of Article II[5] of the BiH Constitution, which enshrines the principle that "all refugees and displaced persons have the right freely to return to their homes of origin".
[120] Correspondence with the FBiH Ministry for Labour and Social Policy, 13 June 2005.
[121] ARC Legal Aid Center, Mostar, *Commentary on the problems related to the application of Article 143 of the new Labour law*, Spring 2001.

Moreover, the ARC considered that, even in processing workers' applications under Article 143, companies continued to discriminate against members of certain ethnic groups. The Aluminij factory in Mostar, for instance, required from non-Croat workers that they provide exhaustive and costly documentation on their war-time employment, whereas ethnic Croat employees, hired during or at the end of the war, did not have to present any records of their employment during the war period.[122]

Provisions on compensation to unfairly dismissed workers, which entered into force in the RS in December 2000, present similar problems. Article 152 of the RS Law on Labour provides that "[a] worker who was employed on 31 December 1991 by an employer situated on the present territory of the Republika Srpska, and who considers that his employment status was terminated illegally in the period from that date until the day this law enters into force, has the right to apply for severance pay, within three months of the law entering into force". The RS Law on Labour also provides for the establishment of a commission tasked with processing applications for compensation (Article 158).[123]

In November 2000, before the new Law on Labour entered into force, the OHR amended the provisions on severance pay extending this right also to workers on waiting lists "in as far as their employer, within a period of three months from the day this law enters into force, does not call them back to work".[124] Moreover, the OHR decision reduced the severance payment[125] to a maximum of four times the average monthly salary paid in the RS over the three months preceding the month when the employment contract was terminated.[126]

The implementation of provisions on severance pay in the RS has suffered even greater delays than in the FBiH. Although the RS Ministry for Labour and

[122] Other companies, including Elektroprivreda in Sarajevo and Cartonprint in Stolac, followed similar practices. Aluminij reportedly also demanded that in the applications be included information confirming that the applicant had not served in any army from late 1991 until he/she filed his/her application, ignoring the compulsory mobilization orders that were in force during the war throughout the country.

[123] In this case the Commission for the Implementation of Article 152 was to be established only at the entity level.

[124] OHR, *Decision amending the RS Labour Law, reducing compensation payments to employees on 'waiting lists'*, 12 November 2000.

[125] *Ibid.* The OHR considered that "the liability to make severance payments as provided for by the said Assembly [the RS National Assembly] would have caused considerable financial difficulties to a large number of enterprises, thereby impeding the privatisation process and jeopardising current employment and the viability of enterprises all over the Republika Srpska".

[126] According to the RS Institute of Statistics in 2000, when the RS Law on Labour entered into force, the average gross monthly salary in the RS was approximately 390 Convertible Marks, equivalent to approximately 200 Euros or 240 US Dollars.

Veterans received "between 60,000 and 80,000 requests for compensation" [127] a Commission for the Implementation of Article 152 was set up only in November 2003. [128] Since November 2003, the Commission has reportedly been working intermittently, partly because activities related to the Commission are not the main occupation of its members. The ECRI noted in a recent report on BiH[129] that "in spite of the many thousands of claims filed (80 000 in Republika Srpska alone), only a few cases appear to have been solved to date".[130] Moreover, the Office of the RS Human Rights Ombudsman warned in its annual report for 2003 that, even in those cases where the RS Commission for the Implementation of Article 152 issues a decision on severance pay, there exists the risk that the amount will not be paid, simply because of lack of financial resources. [131] According to the latest information available to Amnesty International, as of June 2004, the RS Commission had considered 1,562 requests for severance pay, out of which 388 were approved. The RS authorities have not replied to Amnesty International's requests for updated information on the functioning of the RS Commission for the Implementation of Article 152 of the Law on Labour and on the number of claims it has considered.

Apart from the inadequacy of functioning mechanisms for the implementation of Article 152, the provision itself explicitly refers to workers formerly employed by an employer "situated on the present territory of the Republika Srpska". However, before the war, many companies, which operated factories in the RS, were legally registered in Sarajevo or elsewhere in the SFRY. It is not yet clear whether this clause will be interpreted restrictively by the RS Commission for the Implementation of Article 152 of the Law on Labour, precluding compensation to workers of factories and other establishments located in the RS, but which were not legally registered there.

[127] Apparently more accurate figures are not available. See for example Human Rights Ombudsman of Bosnia and Herzegovina, *Specijalni izvještaj u vezi primjene čl. 143 Zakona o radu Federacije BiH i čl. 152 Zakona o radu RS*, 26 July 2004

[128] *Ibid.* Also in the RS the BiH Human Rights Ombudsman has criticized delays in addressing claims arising from unfair dismissals and waitlistings noting that the length of proceedings constituted a violation or Articles 6 and 13 of the ECHR, as well as of the BiH Constitution.

[129] ECRI, *Report on Bosnia and Herzegovina*, CRI (2005) 2, 15 February 2005, Paragraph 38.

[130] The ECRI strongly urged the authorities of Bosnia and Herzegovina to ensure a thorough implementation of Article 143 of the FBiH labour code and of Article 152 of the RS labour code.

[131] Ombudsman of the Republika Srpska, *Annual Report 2003*, March 2004, p. 16. See also "Otpremnine na čekanju", *Nezavisne novine*, 29 September 2005. Reportedly, the RS Ministry for Labour and Veterans acknowledged that it will not be possible to finance the payment of severance pay under Article 152 of the RS Law on Labour, due to lack of financial resources.

Assessing entity provisions on severance pay, compensation and discriminatory dismissals and their implementation

Some of the problems in the existing legal framework on compensation and severance pay for unfairly dismissed workers have already been mentioned. Among the most significant of them is that Article 143 of FBiH Law on Labour appears to limit the right to a remedy for war-time dismissal or transfer to waiting list to those who have not entered any form of employment. As noted above, such provision disproportionately affects members of minority communities and excludes from compensation a significant number of workers who were affected by discriminatory dismissals.

Leaving aside the issue of which categories of workers are entitled to compensation, both Article 143 and Article 152 fail to provide redress to those affected by discriminatory dismissals or transfers to waiting lists, including those who under current provisions have the right to file a claim for compensation. In 2001 the BiH Constitutional Court reviewed the constitutionality of Article 152 of the RS Law on Labour, following a request of a member of the BiH Presidency. The applicant alleged that "the law provides neither for a right to continue their [of unfairly dismissed workers] former employment nor for any recognition of employment years or other forms of social insurance, nor does it penalize 'all other consequences of ethnic cleansing', and that it thereby legalizes the discrimination on ethnic grounds".[132] In line with the position taken by the international community (and in particular the OHR), the Constitutional Court found that Article 152 is in conformity with the BiH Constitution. In relation in particular to the amounts granted as severance pay, the Constitutional Court held that:

> "the legislator has a certain margin of appreciation as to finding a reasonable solution within the limits laid down in the Constitution. In view of the difficult economic conditions of the private and public companies affected, the Constitutional Court cannot find that the legislator […] transgressed this margin of appreciation".[133]

However, Amnesty International considers that the amounts payable as compensation for unfair dismissals, which in most cases does not exceed the equivalent of a few hundred Euros both in the RS and in the FBiH, appear to be completely inadequate to constitute fair compensation to the workers.

[132] Constitutional Court of Bosnia and Herzegovina, Decision in Case No. U 19/01, 2 November 2001, Paragraph 9.
[133] *Ibid.*, Paragraph 27.

Discriminatory dismissals, particularly those which formed part of an orchestrated campaign of "ethnic cleansing",[134] had not only direct negative economic consequences for workers and their dependants, but also a negative impact on a number of other economic and social rights. Many dismissed workers effectively lost their right to a pension, or saw their pension significantly reduced, as a consequence of their dismissal and their subsequent long-term unemployment.[135] In addition, in the SFRY's "socialist" system, companies often provided health care and other forms of social welfare to their workers and their families. For instance, special outpatient health care clinics were financed, equipped and managed by employers. These clinics were the major source of primary care for employees of Yugoslavia's large enterprises.[136]

Amnesty International understands the need to create legal certainty for those companies that ceased or reduced their activities during the war and that the reinstatement of unfairly dismissed workers may not be possible in all cases.[137] However, the organization is concerned that the RS, as well as the FBiH labour law fail to provide other forms of reparation for the violations of the rights of unfairly dismissed workers and their dependants arising from discriminatory employment practices.

As already noted, Amnesty International is also concerned that the mechanisms in place to ensure that existing provisions on discriminatory dismissals are fully implemented appear to be completely inadequate. As noted above, the RS Commission for the Implementation of Article 152 of the Law on Labour has only recently become operational. Moreover, its activities are hampered and delayed by the

[134] Which then resulted in the impossibility for the dismissed worker to find another job because of an existing pattern of ethnic discrimination and/or because of his/her displacement.

[135] In those cases where the worker was dismissed shortly before he/she reached the minimum number of years in service to qualify for a pension, there was a direct causal relation between dismissal and lack of access to pension rights.

[136] Šarić, Muhamed and Rodwin, Victor, "The Once and Future Health System in the Former Yugoslavia: Myths and Realities", *Journal of Public Health Policy*, Vol. 14, No. 2, pp. 220-237, 1993.

[137] See Constitutional Court of Bosnia and Herzegovina, Decision in Case No. U 19/01, 2 November 2001. The Court reasoned that "[s]uch legal certainty may also be essential for investors in such companies and for the general development of the economy of Bosnia and Herzegovina" and held that "public interest could reasonably be considered to prevail" [over the right of those unlawfully dismissed or placed on a waiting list to be reinstated into their previous positions]. However, it is worth noting that the Decision also states that in principle, insofar as the dismissed employees were victims of a discriminatory practice, their right to work should not cede to that of those who have in the meantime replaced the dismissed employees, especially when the former are presently unemployed. See Paragraph 25.

lack of material and other resources necessary to perform its tasks effectively.[138] As a result, only a tiny fraction of the complaints has been examined by the Commission. In this respect, the situation in the FBiH is only slightly better. After various delays cantonal commissions for the implementation of Article 143 of the FBiH Law on Labour have begun their activities in most cantons. However, also in the FBiH such commissions have inadequate resources[139] and as a result are operating at an extremely slow pace and have only considered a limited number of complaints.

Moreover, Amnesty International is concerned at the apparent lack of effective mechanisms to enforce decisions of the FBiH and RS commissions.[140] It has been reported to the organization that often such decisions are simply not enforced, including because companies have *de facto* ceased their activities or are otherwise insolvent.

The situation in the FBiH is made even more difficult given that the FBiH Supreme Court has held that decisions of the commissions are not directly enforceable and has advised individuals, whose right to compensation has been recognized by the commissions, to go to court to enforce such decisions, in those cases where the employment company still exists and is solvent.[141] However, given the state of the BiH judiciary, proceedings before a court are lengthy and, in fact, do not give any assurance of enforcement.[142]

In general, the implementation of the commissions' decision has been hampered by the difficult economic situation in BiH, affecting liable companies. The BiH Ombudsman noted that:

> "most of the related enterprises were wrecked by the complete economic meltdown that the war brought about, and only few companies are actually capable of undertaking their legally prescribed obligations. Many companies have changed ownership, been privatised, are on the verge of bankruptcy or have totally collapsed. Therefore, a system, in which the enterprises are liable

[138] The BiH Ombudsman had noted that length of the proceedings before the commissions seem to be at least partly explained by "poor or not adequate equipment as well as a lack financial means for staff salaries". See Human Rights Ombudsman of Bosnia and Herzegovina, *Resolution regarding a number of separately listed complaints concerning certain issues relating to entity labor legislation*, 28 November 2003.

[139] Federal Commission for the Implementation of Article 143 of the Law on Labour, *Informacija o implementaciji člana 143. Zakona o radu*, May 2003.

[140] See for example Ombudsman of the Federation of Bosnia and Herzegovina, *Report on Human Rights Situation in the Federation of Bosnia and Herzegovina for 2001*.

[141] Human Rights Ombudsman of Bosnia and Herzegovina, *Resolution regarding a number of separately listed complaints concerning certain issues relating to entity labor legislation*, 28 November 2003.

[142] Human Rights Ombudsman of Bosnia and Herzegovina, *Annual Report 2002*, p. 30.

> to compensate the previous employees, may not be practically feasible. The decision of a commission or court, which is often impossible to enforce in practice, are not of any value yet may even be contra-productive. Rather than bringing about justice, the result may instead be an increased burden on the judiciary, tremendous administrative costs and public frustration".[143]

In this respect, it is imperative that the FBiH and RS ensure that sufficient resources are allocated to funds established in order to pay compensation, and to finance other measures of reparation, to unfairly dismissed workers in formerly state-owned enterprises. Reparations should cover all human rights violations suffered by victims of discrimination and, where appropriate, their dependants. At present, allocated financial resources are reportedly largely insufficient to pay even the limited amounts set out in the entities' labour laws to all workers who, under current provisions, have legitimately claimed compensation for their unfair dismissal.

[143] *Ibid.*

4. Case studies

a) The Aluminij factory in Mostar

"During the war we wanted to keep the factory going, even though it was being shelled. But then they [Aluminij's management] fired us, because we were Serbs or Muslims. I don't say I am a dismissed worker; I say I am a Serb worker, and that's why I was asked not to return to work" (Amnesty International interview with Nebojša Spajić, a former employee of the Aluminij factory).

One of BiH's most profitable enterprises, the aluminium manufacturing plant Aluminij, lies to the south-west of Mostar. Before the war Mostar had a mixed population of about 120,000 of which Bosniaks and Bosnian Croats made up roughly 40 per cent each, with Bosnian Serbs and others, including Jews, Roma and people of mixed heritage, comprising the remaining 20 per cent.[144]

In the initial phase of the war, the conflict in Mostar saw hostilities between the Bosnian Croat and Bosnian Government forces, jointly fighting against the Yugoslav People's Army (Jugoslovenska narodna armija, JNA). In 1993 conflict between Bosnian Government and Bosnian Croat forces erupted, leaving the city divided along ethnic lines (see box).

While progress has been achieved in Mostar's legal and political reunification, economic and social circumstances prevailing in the city, including continuing discrimination and segregation, have continued to negatively affect the reunification process. In fact, in the post-war years, some of the main issues of dispute between the former warring sides in the city have concerned the lack of equality in the realization of economic, social and cultural rights including the right to education, to health including access to healthcare, social security and the right to work.

[144] The 1991 Yugoslav population census put the population of Mostar at 126,067, 34.8 per cent of which were Bosniaks, 33.8 per cent Croats, 19.0 per cent Serbs and 12.4 per cent others.

The conflict in Mostar and its aftermath

After war broke out in April 1992, Mostar was besieged by the Yugoslav People's Army JNA, which was repelled by the Army of Bosnia and Herzegovina (Armija Bosne i Hercegovine, ABiH) and the HVO, the Bosnian Croat armed forces. However, tensions between the ABiH and the Bosnian Croat political and military leadership, which increasingly claimed the right to territorial control over large parts of Herzegovina, escalated in April 1993 into open fighting. On the night of 9-10 May 1993, HVO forces captured the ABiH headquarters in western Mostar and established control over that part of the city. The majority of the non-Croat population fled into East Mostar. In August 1993, Bosnian Croat leader Mate Boban officially declared the "Croatian Republic of Herceg-Bosna" (Hrvatska republika Herceg-Bosne), establishing a *de facto* military and political administration which governed the Croat-controlled areas of Herzegovina. The self-proclaimed Republic of Herceg-Bosna was never recognized by the international community.

The conflict was accompanied by grave human rights violations and serious violations of international humanitarian law, in particular the massive internment of mainly Bosniak civilians in makeshift detention centres where they were subjected to executions, "disappearances", torture including rape, starvation and forced labour. Civilians were also victims of forcible transfers aimed at creating "ethnically clean" territories. While the HVO was responsible for the majority of these violations of international human rights law and international humanitarian law, against the Bosniak and Bosnian Serb populations, there were also reports of violations committed by the ABiH against Bosnian Croats in areas under their control. As elsewhere in BiH, impunity for the majority of these serious crimes under international law still prevails.

In the Dayton Agreement of 1995, Mostar became part of the FBiH. Since then the international community has attempted to unify the city's administration, battling deliberate obstructionism which has persistently divided the city along ethnic lines and undermined attempts at integration and reconciliation. In September 2003 the OHR appointed a new commission under international leadership which at the end of 2003 issued its recommendations and proposed a new statute for the city of Mostar. In January 2004 the OHR enacted the Statute of the City of Mostar, merging Mostar's six separate Bosniak and Bosnian Croat municipalities into a single city administration.

Aluminij during and after the war

Before the war Aluminij was one of the largest state-owned companies in the SFRY. The company produces high-grade aluminium, which is in considerable demand from the automobile and other industries. Today, Aluminij is one of the BiH's most important companies, with over 20,000 people reportedly dependent on the plant directly and indirectly.

The war affected the Aluminij factory in several ways. Power supply became erratic and access to raw materials became more difficult as supply lines were disrupted. Transport links were also affected, preventing workers from reporting to work regularly. Production inevitably declined. On 23 April 1992, the factory reportedly came under heavy shelling by the JNA and the electrical substation was blown up. An inspection report, drawn up by former members of Aluminij's pre-war managerial board, stated that all activities of the plant stopped the next day, on 24 April 1992.[145] The report, which was issued in November 1992, noted that the Bosnian Serb Army and Serb paramilitaries had subsequently looted the factory and destroyed equipment and buildings, despite the workers' efforts to protect and secure the facilities. While the damage was considerable, the report concluded that vital parts of the factory's components had been preserved and that it was possible to start up the plant again.

On the withdrawal of the JNA, the HVO took over control of the area on which the plant was situated and in June 1992 it issued a decision to appoint a new board of managers, consisting solely of Bosnian Croats. These included Mijo Brajković as the company's general director, who has remained in this position after the war, and three other Bosnian Croats. All had been on the board previously. During the ensuing Croat-Bosniak conflict the company ceased all production. There have been reports that during the war Bosniak prisoners, detained at the Heliodrom detention camp, were forced to clean the anode plant[146] for a period of six months.[147] Some of these prisoners, it is alleged, were former workers of Aluminij.[148]

After having been damaged during the war,[149] the Aluminij plant became operational again in stages. In mid-1996, the management decided to get the anode

[145] Husein Kapić, Suad Šarić and Sulejman Dizdarević, *Osvrt na aktuelno stanje u ALUMINIJU Mostar*, 11 November 1992. The former executives estimated at that point that between 25 and 30 million US Dollars would be required to start up production again.
[146] Where aluminium is produced through electrolysis.
[147] "Logoraši Bošnjaci sa heliodroma na prisilnom radu u Aluminiju", *Bosanskohercegovački dani*, 21 September 2001.
[148] *Ibid.*
[149] However, the exact extent of damage sustained by Aluminij during the war and the cost of renovating the factory remained disputed.

factory working again. The company's website credits the "selfless dedication" of the workers and of the management which allowed for the first electrolytic cell to be made operational again on 14 August 1997. Company officials told Amnesty International they spent over 5 million US Dollars to get the plant working again. Aluminij's executives claim they managed to make the plant operational single-handedly, without any help from the FBiH, BiH, or from Herceg-Bosna. Today, the factory employs approximately 970 workers, less than a third of its pre-war workforce.

Aluminij lists as its business partners, including companies that buy its products and companies with which it has technical collaborative links, major international corporations, such as Conoco of the US, DaimlerChrysler and Debis of Germany and the US, Norske Hydro of Norway, FIAT of Italy, Glencore of Switzerland, and TLM Šibenik of Croatia.

Discriminatory conversion of unpaid salaries into shares

While Aluminij Mostar is widely regarded as one of the country's most profitable and prominent companies, substantial issues remain to be addressed regarding its current ownership structure. The company, which before the war was entirely state-owned, has since 1997 seen drastic changes in the ownership of its capital.

A key part of the transformation of Aluminij, in September 1997, into a company with limited liability was the decision by the executive board of the company to convert the value of unpaid wages (accrued during the war by the company's workers) into shares in the company, apparently without consultation with or the consent of the workers concerned. According to the company's management, unpaid wages totalled approximately 97 million German Marks[150] but, crucially, not every employee was awarded the same amount of unpaid wages. Most of Bosnian Serb employees did not receive any sum or shares as compensation for unpaid wages. Bosniaks received shares corresponding to the minimum salary for the nine-month period between 1 August 1992 and 1 May 1993, when the conflict between Bosnian Croats and Bosniaks started in Mostar.[151] Bosnian Croat workers, on the other hand, received shares corresponding to their full salary for the entire period in which the factory was not working (53 months). Thus, the partial privatisation of the company was carried out in a non-transparent way, and appears to have had discriminatory consequences affecting non-Croat workers.

[150] Approximately 50 million Euros or 59 million US Dollars.
[151] Implying that Bosniak workers were no longer considered employees once the conflict between Bosnian Croats and Bosniaks began.

According to a report, drawn up by a team of legal experts, commissioned by OHR in May 2000 to review the legality of the decisions leading to the changes in the company's ownership structure, many of the decisions and actions of Aluminij's management in this respect had been questionable, albeit not in "clear breach of the law". However, the team of experts, composed of two representatives of the FBiH Agency for Privatization, two Mostar civil lawyers, and headed by a Dutch legal expert, could not reach a common position on recommendations to be issued. Therefore, the final report contained a number of recommendations issued only by the international advisor who *inter alia* proposed to award every (former) worker, regardless of his/her ethnicity, shares amounting to 53 months of wages.

These conclusions and recommendations were presented to the FBiH government and to the Aluminij management. They were rejected by the FBiH authorities, including on the grounds that the state had been disadvantaged during the controversial privatization and that the proposed settlement did not constitute a just remedy. Reportedly the management of Aluminij broadly accepted the conclusions, and has in fact since made some proposed settlements to employees which appear to be somewhat similar to the recommendations of the international advisor.

The ownership structure of Aluminij has continued to remain a subject of controversy and the FBiH government has for a long time insisted that the issue be resolved through international arbitration. In May 2005 representatives of the FBiH government and of the company have reached an agreement in principle on the ownership structure of the company, which foresees that the state and the workers each retain a share of 44 per cent of the company and TLM the remaining 12 per cent. Although statements by FBiH public officials have indicated that such agreement on the ownership structure will also encompass specific measures aimed at remedying past discriminatory provisions[152] against non-Croat workers, it is not yet clear how and to what extent they will fully address past discrimination. Moreover, the failure in November 2005 by the FBiH House of Representatives to adopt amendments to the Law on the Privatization of Companies, may mean that the agreement between FBiH government and Aluminij will not be implemented.

Discrimination against non-Croat workers

Companies, including international companies, have operated in divided communities in the past. In the most famous example, several US corporations which operated in

[152] In the privatization process and in the dismissal of workers (see below).

apartheid-era South Africa implemented the Sullivan Principles,[153] under which they worked towards eliminating segregation and discrimination at the workplace and promoting "affirmative action". Some companies cited their adherence to the Sullivan Principles as the reason they felt they could continue to operate in South Africa, even though anti-apartheid groups were campaigning for divestment from South Africa. In their limited way, the Sullivan Principles showed that companies could operate in difficult circumstances and promote non-discrimination even in a state that practices discrimination.

Ethnic composition of Aluminij's workforce before and after the war

	1992	**2003**
Bosniaks	1119 (33%)	25 (3%)
Bosnian Croats	1519 (44%)	827 (93%)
Bosnian Serbs	777 (23%)	37 (4%)

Source: Aluminij

In the divided city of Mostar, Aluminij has pursued a policy of ethnic discrimination during the war, the effects of which continue to be felt, and elements of which continue to be practiced. From being a company with a significant number of employees from each of the three major communities of BiH (Bosniaks, Bosnian Croats and Bosnian Serbs) Aluminij has become a company with an overwhelmingly Croat workforce.

[153] Formulated in 1977 by Leon Sullivan (who had joined the board of directors of General Motors in 1971), these principles required companies to follow policies that included: non-segregation of the races in all eating, comfort, and work facilities; equal and fair employment practices for all employees; equal pay for all employees doing equal or comparable work for the same period of time; initiation of and development of training programmes that will prepare, in substantial numbers, blacks and other non-whites for supervisory, administrative, clerical, and technical jobs; increasing the number of blacks and other non-whites in management and supervisory positions; improving the quality of life for blacks and other non-whites outside the work environment in such areas as housing, transportation, school, recreation, and health facilities. In 1984, one more principle was added, calling on companies to work "to eliminate laws and customs that impede social, economic, and political justice".

Aluminij's war-time management placed a significant number of workers on a waiting list and dismissed employees who did not report to work for more than five days.[154] As already explained, the circumstances of the war often made it impossible for workers belonging to the "other" ethnic group to report for work and this meant that such decisions to terminate employment had a discriminatory effect, and resulted in a more ethnically homogeneous workforce. Aluminij's executives also claimed that the FBiH Parliament declared the end of war in December 1996 and that this meant that companies had to switch to peacetime business regulations. From that day, the company's management says, Aluminij could no longer accept absences related to the war and had to dismiss workers who did not report to work. In reality, workers did not show up at the factory in late 1996 because many of them, particularly those from ethnic minorities, were either internally displaced or refugees abroad. It took time for them to return, and then try to re-establish their old lives. Moreover, from early 1996 to 1998, most non-Croat workers who reported to the factory were told that they were not welcome back. Many reported having been physically barred from entering.[155] They were racially abused by the security guards and confronted with racist graffiti saying "*balije* (a derogative term for Bosniaks) are not allowed here" or "access forbidden to Serbs and dogs".[156]

Aluminij's management acknowledge that the ethnic composition of the company's workforce has radically changed, but defends itself by saying that Mostar's demographic profile has also changed since the war. This is undeniably so[157] and, as already noted, one of the central aims of the warring parties was to secure territory and power and to share resources only with members of their own ethnic group, by "cleansing" regions of people of other ethnicities. However, the consequences of "ethnic cleansing" cannot be effectively reversed as long as members

[154] The five-day limit was established in the SFRY Law on Basic Rights in Employment Relationships. However, in November 1992 a Republic of Bosnia and Herzegovina decree raised the limit to 20 days and established that employees serving in the ABiH had the right to return to their old posts.

[155] One of these workers, who had worked for Aluminij as a driver since 1974, was reportedly prevented from entering by the company's security guards in 1996. Subsequently, requests by the local branch of the BiH Trade Union of Metal Workers for a meeting with the company management and for Cantonal and FBiH labour inspectors to enter the factory in order to examine the workers' employment status were refused by Aluminij's management.

[156] "Alija Behmen protiv Mije Brajkovića", *Bosanskohercegovački dani*, 25 May 2001.

[157] For instance Bosnian Serbs, who in 1991 constituted approximately 19 per cent of Mostar's population, are now estimated to make up less than 1 per cent of inhabitants. See Commission for Reforming the City of Mostar, *Recommendations of the Commission. Report of the Chairman*, 15 December 2003.

of the minority ethnic groups continue to be subject to discrimination, including in access to employment.[158]

In 1999 the Governing Body of the ILO issued a report,[159] following an application by the Union of Autonomous Trade Unions of Bosnia and Herzegovina (Savez samostalnih sindikata Bosne i Hercegovine, SSSBiH) and the Union of Metalworkers, alleging that the of dismissal of Bosniak and Bosnian Serb employees of the Mostar-based factories, Aluminij and Soko was solely motivated by their ethnicity. The ILO instructed the authorities *inter alia* to ensure that workers dismissed from the Aluminij and Soko factories on the grounds of their ethnicity receive adequate compensation for the damage that they have sustained; receive payment of any wage arrears and any other benefits to which they would be entitled if they had not been dismissed; and are as far as possible reinstated in their posts without losing length of service entitlements.

In 2001 the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) concluded that the government had so far not implemented the ILO recommendations.[160] The CEACR observed that, though new sections had been added to the FBiH Labour Law in late 1999, providing compensation to workers dismissed during the war, it was unclear whether and how the Aluminij and Soko managements intended to use this legislation in order to implement the ILO decision.[161]

In 2003 the CEACR requested that the BiH authorities provide detailed information on dismissed workers of the Aluminij and Soko factories, including on claims brought by affected employees before the cantonal and federal commissions for the implementation of Article 143 of the FBiH Law on Labour.[162] In 2004 and

[158] The role of Aluminij, in this respect, could be especially significant, being the company one of the largest employers in the Mostar region.

[159] ILO, *Report of the Committee set up to examine representation alleging non-observance by Bosnia and Herzegovina of the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), made under article 24 of the ILO Constitution by the Union of Autonomous Trade Unions of Bosnia and Herzegovina*, 1999, Recommendations.

[160] CEACR, *Individual Observation concerning Convention No. 111, Discrimination (Employment and Occupation), 1958 Bosnia and Herzegovina*, 2001.

[161] The CEACR also noted that it had received a written communication from the USIBH and a trade union organization of the Ljubija mines, in the RS, about the dismissal of approximately 2,000 non-Serb workers from the mines in 1992 (see below). The CEACR requested the BiH authorities to reply to these communications concerning the Ljubija mines in their next report.

[162] CEACR, *Individual Observation concerning Convention No. 111, Discrimination (Employment and Occupation), 1958 Bosnia and Herzegovina*, 2003.

2005 the CEACR, noting that the BiH authorities had failed to reply to its previous observation, reiterated the same request.[163]

In August 2003 Amnesty International interviewed several former Aluminij workers who were dismissed in a discriminatory way. Mujo Hodžić, a Bosniak, 56, had worked at Aluminij since 1980 and was actively employed at the factory until the early months of 1993, before the conflict between HVO and ABiH started. After the war he applied in writing to get his job back, but he never received a reply. In 1998, he set up a local trade union affiliated with the BiH Trade Union of Metal Workers in an attempt to find a solution for fellow workers who had also been summarily dismissed on account of their ethnicity. His efforts included travel to the RS to locate Bosnian Serb former colleagues so that they would be represented as well. Mujo Hodžić told Amnesty International that most unfairly dismissed workers were at no point formally informed that their employment had been terminated.

Muhamed Avdović, a 55-year-old Bosniak who had been with the company since 1974, unsuccessfully tried to get back his job in the maintenance department in mid-1996. At the gates of the factory, a guard told him that he could not enter because he was a *balija*. He managed to get inside to the human resources department to collect his work booklet.[164] After several attempts to get his booklet, he was told by a clerk that he could get it back but that then his case would be closed, and he would never be able to return to the factory. He told Amnesty International: "So I refused to take it. Other people who have asked for their booklets are told they have been lost. But without a work booklet you can't get a job".[165]

Nebojša Spajić, Bosnian Serb, 38, who had worked at the plant's fire department from 1988 to 1992 told Amnesty International he had worked double shifts, totalling 15-16 hours a day, together with about 150 colleagues, while the plant was being shelled. He told Amnesty International: "During the war we wanted to keep the factory going, even though it was being shelled. But then they fired us, because we were Serbs or Muslims. I don't say I am a dismissed worker; I say I am a Serb worker, and that's why I was asked not to return to work". Nebojša Spajić says he has not worked for 11 years, after he was not allowed to return to his post at Aluminij.

[163] CEACR, *Individual Observation concerning Convention No. 111, Discrimination (Employment and Occupation), 1958 Bosnia and Herzegovina*, 2004; *Individual Observation concerning Convention No. 111, Discrimination (Employment and Occupation), 1958 Bosnia and Herzegovina*, 2005.

[164] The work booklet provides a detailed record of the worker's tenure. Workers need to take such booklets with them to the next employer.

[165] Interview with Muhamed Avdović, August 2003.

According to Aluminij, some 1,600 workers applied to be reinstated in their former jobs under Article 143 of the FBiH Law on Labour.[166] None of them was allowed to return to work. The company claims that it has agreed to pay severance pay to 503 workers, of whom 397 have actually accepted a small payment[167] and the remaining have refused to be "bought out" and to settle their claim through the payment of severance.

The company has shown some willingness to meet its formal obligations under Article 143 of the FBiH Law on Labour. However, Aluminij has relied on the exclusion from Article 143 of workers who had taken up any form of employment elsewhere to deny people in such a position an effective remedy. In August 2003 Amnesty International was informed by the head of human resources at the plant that Aluminij had a list of 800 former workers, all of whom had taken up another job. "We have investigated each case, every complaint, and we will show you records. They have either taken other jobs, some have retired, some are dead. Others have falsified records. If they accept another job, they cannot be rehired. […] We are only implementing the law. We have records of every employee, every name and number. No other firm in Bosnia and Herzegovina has such good records". The company's human resources department showed Amnesty International delegates their personnel filing system with colour-coded files, denoting the ethnic origin of the employees.

Continuing discrimination in employment and remedies

Even in more recent years, despite having been included in the OSCE Fair Employment Project, Aluminij has not made adequate efforts to have a more ethnically balanced workforce. Aluminij executives told Amnesty International in 2003 that the company does not have an anti-discrimination policy. Asked to explain the continuing imbalance in its ethnic composition, company executives explained that unemployment affects all ethnic communities and that all candidates for a post are judged merely on the basis of their skills and qualifications. Defending the company's employment policies, Aluminij's executives told Amnesty International:

[166] As noted above, Article 143 provides for the possibility for former employees to ask to be reinstated in their old jobs. However, the FBiH Law on Labour leaves it to the discretion of the employer to decide whether to rehire the former worker or simply to pay him/her compensation.

[167] Usually amounting to about 1,000 Convertible Marks, approximately 500 Euros or 600 US Dollars. Amnesty International notes that such payments appeared in some cases to be lower than laid down in the law. Some workers subsequently lodged applications with the Cantonal Commission for Implementation of Article 143 of the Law on Labour, which upheld the company's decisions. Subsequent appeals to the Federal Commission for the Implementation of Article 143, to the FBiH Supreme Court, as well as civil proceedings initiated before the Mostar Cantonal Court are still pending or, to Amnesty International's knowledge, did not result in any decision in favour of the workers.

> "The time is not right for integrating Mostar. We are more divided now than before the war. The two sides have fought. […] The international community does not understand what has happened. It will not resolve quietly. It is not possible for the wounds to heal so quickly. It will take time. […] We did terrible things to each other. We need the economy to improve quickly, then perhaps people will forget what happened. We should wait before reintegrating with the other side".[168]

The company claims that when vacancies were advertised in the local media, only Bosnian Croat workers applied. However, Amnesty International has received reports that new posts have been advertised using only the Croatian variant of the local language and only in media targeted specifically at a Bosnian Croat audience. Moreover, the reports of harassment and discrimination of non-Croat workers in the company, and the deep ethnic divisions in Mostar in general have not created a situation conducive to the employment of minority workers at Aluminij, in the absence of a clear and unequivocal commitment by the company to encourage qualified non-Croat workers to apply for new positions, to ensure that such workers will have equal opportunity of career progression and to ensure that harassment and discrimination will not be tolerated. Reportedly, the director of Aluminij Mostar has instead gone on record declaring that the company was Croat and would remain so.[169]

Ongoing discrimination by large employers such as Aluminij, in the context of a stagnant economy, continues to be a serious obstacle to minority returns. Former Aluminij workers who had been unfairly dismissed on the grounds of their ethnicity and are refused full reparation are victims of continuing human rights violations.

Failure to realize the right to an effective remedy for discriminatory violations of the right to work is partly the result of the inadequacy of provisions included in the FBiH Law on Labour and of the fact that existing provisions are not fully implemented. Moreover, in the case of Aluminij, as in the case of many other companies and public institutions in the FBiH where discriminatory employment practices are still applied or tolerated, the FBiH and BiH have failed to ensure that FBiH labour code provisions prohibiting discrimination in access to employment are fully implemented.

Amnesty International also notes with concern that the authorities have failed to implement the ILO's recommendations in upholding the representation made by

[168] Interview with Aluminij executives, August 2003.
[169] Donais, Timothy, "The Politics of Privatization in Post-Dayton Bosnia", *Southeast European Politics*, Vol. 3, No. 1, pp. 3-19, 2002.

BiH trade unions with respect to discrimination in the Aluminij and Soko companies in Mostar. The BiH authorities have not provided ILO with "detailed information", including on the number of dismissed workers, their ethnic breakdown, the number of dismissed workers who have received severance pay and on proceedings for claims under Article 143 of the FBiH Law on Labour.[170]

Although agencies of the international community have generally played a positive role in promoting fair employment practices in BiH, including at Aluminij, pressure exerted to ensure the elimination of discrimination and the resolution of claims relating to unfair dismissals has been insufficient and has only produced limited results.

b) The Ljubija mines near Prijedor

"This was not a war; this was destruction of Muslims. This is not like any other dead mining town, but because of discrimination it has been killed" (Amnesty International interview with Beisa Hadžibajramović, a former employee of the Ljubija mines).

The Ljubija iron ore mines are located at three sites in Ljubija, Tomašica and Omarska, in the vicinity of Prijedor, a town in the RS to the northwest of Banja Luka. The mines were not significantly damaged by the war and appear to have considerable economic potential, although their post-war activities have been negatively affected by the disruption of markets in the former Yugoslavia.[171]

In 2004 the international corporation LNM Holdings[172] and the Ljubija Iron Ore Mines (RŽR Ljubija, Rudnici željezne rude Ljubija), entirely owned by the RS, signed a joint-venture agreement to establish a new company, the New Ljubija Mines. Fifty-one per cent of the new company is owned by LNM, while the RS retains the remaining 49 per cent. As part of the agreement, LNM has committed itself to make significant investments to restart and develop the mines which, after years of inactivity, resumed their operations in late 2004. By all economic indicators, the RS economy is faring worse than the FBiH's, and thriving iron mines could promote much needed economic growth in the RS.

[170] *Individual Observation concerning Convention No. 111, Discrimination (Employment and Occupation), 1958 Bosnia and Herzegovina*, 2005.
[171] Steblez, Walter, *The Mineral Industries of Bosnia and Herzegovina*, Reston VA, US Geological Survey, 1998.
[172] LNM Holdings was acquired in October 2004 by Ispat International, which was renamed Mittal Steel, today the largest steel company in the world.

War crimes and crimes against humanity in the Prijedor area

For years the Ljubija mines have been largely inactive not only because of political uncertainties surrounding doing business in the Balkans, the institutional weaknesses of the BiH economy, structural impediments, or global economic forces. The history of Prijedor and the role of the mines during the war have had a significant impact on the mines' operations in recent years. The area and indeed the premises of the mines were the site of some of the most horrific crimes, including torture and mass murder, committed during the war.

Prijedor and the surrounding area were of strategic importance to the Serbs during the war, as part of a corridor that would link Serbs in Croatia's Krajina region through BiH to Serbia. On 7 January 1992 the Bosnian Serb members of the Prijedor Municipal Assembly and the presidents of the local committees of the Serbian Democratic Party (Srpska Demokratska Stranka, SDS) proclaimed a parallel Assembly of the Serbian People of the Municipality of Prijedor.[173] Ten days later, the Assembly of the Serbian People of the Municipality of Prijedor unanimously voted to join "the Serbian territories of the Municipality of Prijedor to the Autonomous Region of Bosnian Krajina".[174]

During the night of 29-30 April 1992, the SDS led what was described by the Tribunal as an illegal *coup d'état* in Prijedor that had been planned and coordinated for months and had as its final goal the creation of an "ethnically pure" Bosnian Serb municipality.[175] On 20 May 1992, the Municipal Assembly was replaced by the Crisis Staff of Prijedor municipality, later known as the War Presidency, chaired by Milomir Stakić.[176] The Crisis Staff included key people from local enterprises, including the Ljubija mines.[177] As Bosnian Serb forces took over Prijedor, they launched a brutal campaign of "ethnic cleansing".[178] This, as already noted, often began with the dismissal of non-Serb employees, starting from those in key positions in the local administration and in large enterprises. Under a decision of the local Bosnian Serb authorities, armed attacks were launched against the non-Serb civilian population in the municipality, including against predominantly Bosniak villages and towns. Many

[173] *Prosecutor v. Milomir Stakic*, Judgement, Case No. IT-97-24-T, Paragraph 61.
[174] *Ibid.*, Paragraph 62. The Autonomous Region of Bosnian Krajina was proclaimed by the SDS in September 1991, in municipalities with a majority of Bosnian Serb population.
[175] *Ibid.*, Paragraph 84.
[176] In 2003 Milomir Stakić was found guilty by the Tribunal of extermination, murder, and persecutions committed against the non-Serb population and was sentenced to life imprisonment.
[177] Annex V (The Prijedor report) to the *Final Report of the Commission of Experts Established pursuant to Security Council Resolution 780* (1992), UN Doc. S/1994/674/Add.2 (Vol. I), 28 December 1994, Part two, V.B.
[178] See also ICG, *War Criminals in Bosnia's Republika Srpska: Who are the People in Your Neighbourhood?*, Europe Report No. 103, 2 November 2000, p. 38 and ff.

were killed in attacks of the Bosnian Serb Army (Vojska Republike Srpske, VRS), while thousands of others were forced to leave the Prijedor area. Bosnian Croat and Bosniak religious and cultural buildings were destroyed. The Tribunal found that in 1992 at least 1,500 non-combatants were unlawfully killed by Bosnian Serb forces.[179] Of these the Tribunal was able to identify by name 486 victims.

The municipality of Sanski Most, which borders Banja Luka to the west and Prijedor to the north, experienced similar attacks and "ethnic cleansing" campaigns. In early 1992, with support from the VRS Sixth Sanska Light Infantry Brigade, Sanski Most's SDS took control of the city and its surrounding villages, bombarding the homes of non-Serbs and forcibly removing, detaining, and murdering Bosniak and Bosnian Croat civilians.[180] Among the villages attacked by VRS forces was Stari Majdan, where many workers of the Ljubija mine lived.

Thousands of Bosniaks and Bosnian Croats were taken to detention camps in Omarska, which is part of the Ljubija mines complex, as well as to Keraterm and Trnopolje. Some were also detained in "improvised detention facilities made in the Ljubija iron ore mine" including in the main separator in the central mining area, which was allegedly used as a temporary place of detention.[181] There are reports that some members of the war-time management of the Ljubija mines were implicated in crimes committed during the "ethnic cleansing" campaign.[182]

While some of the executions were carried out in the Ljubija site of the mines,[183] mass killings usually took place in the bigger detention facilities run by the Bosnian Serbs. In Omarska and Keraterm, interrogations, torture and mass killings were carried out. In July 1992, on one single night, 128 men from the Brdo area of Prijedor were massacred in the Keraterm camp (the so-called "room 3 massacre").[184] The Tribunal found that "hundreds of detainees were killed or disappeared in the Omarska camp between the end of May and the end of August when the camp was finally closed".[185] At the end of July, more than 100 people were killed in the Omarska camp, including people from the village of Hambarine, who were initially

[179] *Prosecutor v. Milomir Stakic*, Judgement, Case No. IT-97-24-T, Paragraph 654.
[180] ICG, *War Criminals in Bosnia's Republika Srpska: Who are the People in Your Neighbourhood?*, Europe Report No. 103, 2 November 2000, p. 44 and ff.
[181] Annex V (The Prijedor report) to the *Final Report of the Commission of Experts Established pursuant to Security Council Resolution 780* (1992), UN Doc. S/1994/674/Add.2 (Vol. I), 28 December 1994, Part two, VII.D.
[182] HRW, *Bosnia and Hercegovina, The Unindicted: Reaping the Rewards of "Ethnic Cleansing",* January 1997, Vol. 9, No.1 (D).
[183] In *Prosecutor v. Radoslav Brdjanin*, Judgement, Case No. IT-99-36-T, the Tribunal has found that 48 people were killed in the Ljubija iron ore mine (see Annex C).
[184] *Prosecutor v. Milomir Stakic*, Judgement, Case No. IT-97-24-T, Paragraph 206.
[185] *Ibid.*, Paragraph 220.

detained in the so-called "white house", a building which is part of the Ljubija mines complex.[186] On 5 August at least 120 persons detained in the Omarska camp, were taken away in two buses and subsequently killed.[187] In Trnopolje conditions were not as appalling as in Omarska and Keraterm, but killings and torture including rape took place there as well.[188]

Those detained in Omarska and in other detention camps run by the Bosnian Serb authorities included Bosniak and Bosnian Croat intellectual, political and professional leaders. The aim appeared to be to strike a blow at the economic strength of the Bosniak and Bosnian Croat communities and to strip the non-Serb population of its resources. This happened through the taking over of banks and local businesses, and also simply through the looting of houses and the stealing of money and jewellery from men and women as they were forced to leave the area on convoys organized by the Bosnian Serbs.[189] The international human rights NGO HRW notes that:

> "a major motivating factor behind the Serb takeover of the town of Prijedor was to gain control of the financial assets of the community. During the Serb takeover of the town, prominent non-Serb community leaders, businessmen and women, and professionals were killed immediately, or detained in Omarska, where many disappeared and were most likely killed. These directors of companies, municipal officials, and others were replaced by Serbs, and many businesses were expropriated almost overnight".

HRW quotes the Final Report of the UN Commission of Experts which stated that the Bosnian Serbs detained in Omarska were almost the entire non-Serb elite, including political and administrative leaders, religious leaders, academics and intellectuals, as well as business leaders. The report notes:

> "Among the prominent citizens of Prijedor who had survived the initial phase of the devastation and were detained in Omarska, are long lists of identified persons whose names are not disclosed for confidentiality or prosecutorial reasons. Among them were (to mention but some): the mayor; politicians from

[186] *Ibid.*, Paragraph 209.
[187] *Ibid.*, Paragraph 211.
[188] *Ibid.*, Paragraph 242 and ff. See also HRW, *Bosnia and Hercegovina, The Unindicted: Reaping the Rewards of "Ethnic Cleansing"*, January 1997, Vol. 9, No.1 (D) where it is noted that "[t]he third [camp], Trnpolje, had another purpose; it functioned as a staging area for massive deportations of mostly women, children and elderly men, and killing and rapes also occurred there".
[189] Annex V (The Prijedor report) to the *Final Report of the Commission of Experts Established pursuant to Security Council Resolution 780* (1992), UN Doc. S/1994/674/Add.2 (Vol. I), 28 December 1994, Part two, X.D.

> the SDA and the HDZ in Prijedor; an imam; judges and lawyers; employees from the military and civilian sectors; a veterinarian, a physiotherapist, a dentist, and a number of medical doctors; an engineer and some economists; headmasters and teachers from schools at different levels; journalists and an editor of Radio Prijedor and of Kozarski Vjesnik; an author and an actor; directors and members of the Rudnika Ljubija management board; directors and managers of Bosnamontaža, Kozaraturist, Celpak, and the biscuit factory Mira Cikota; the director and the secretary of the Prijedor Red Cross, the president of Merhamet (the Muslim charity organization) in Prijedor; restaurant owners, business men and entrepreneurs; leaders of sports clubs and football players".[190]

A former shift leader at the Ljubija mines with 28 years' service told Amnesty International: "When the war began, the non-Serb intelligentsia was killed, including doctors, senior managers, engineers. The director of our mine, a professional engineer, Ibrahim Pavlović, is still missing. These were our pre-war colleagues".[191]

Mass graves and the Ljubija mines

The first reports on the presence of mass burial sites in the Ljubija mines complex appeared already before the end of the hostilities. The UN Commission of Experts, in the annex on mass graves to its 1994 final report on violations of international humanitarian law committed in the territory of the former Yugoslavia, reported that the mines in Omarska, Tomašica and Ljubija contained a great number of bodies of victims of the fighting in the Prijedor area, as well as of those who were killed during detention. The report notes:

> "The deep pits and shafts created by previous mining operations provided an easy way to carry out large-scale burials; evidence of which could be readily hidden from local villagers and the international community. Indeed, the Serbs regularly recruited local villagers and camp inmates to assist in disposing of the bodies and then killed them as well so as to eliminate any potential witnesses".[192]

[190] *Ibid.*, Part two, VIII.A.
[191] Interview with a former worker of the Ljubija mines. August 2003.
[192] Annex X (Mass graves) to the *Final Report of the Commission of Experts Established pursuant to Security Council Resolution 780* (1992), UN Doc. S/1994/674/Add.2 (Vol. V), 28 December 1994, II.24.

The document mentions reports of a specific episode, the massacre carried out in July 1992 in room 3 of the Keraterm camp.[193] The Commission of Experts' report states that the mass killing "resulted in a huge mass burial, most likely at one of the Omarska/Tomašica mine sites".[194] The document further mentions other reports that non-Serb victims of killings were buried in various sites at the Ljubija mines. The existence of mass graves at the Ljubija mine was later reported in *The New York Times*, in January 1996.[195] *The New York Times* reported that the mining complex was believed by residents there and Western officials to have been the central collection point and hiding place for thousands of corpses of victims of the Bosnian Serbs' campaign of "ethnic cleansing" in north-western BiH.

Subsequent reports confirmed the existence of mass graves in and near the Ljubija mines complex. In 2001, 373 bodies were exhumed from the mass grave of Jakarina kosa in the Ljubija mine[196] and other smaller mass graves have been exhumed in the area surrounding the mining complex. Between August and November 2004 the remains of 456 people were exhumed from one of the largest mass graves ever discovered in BiH in Kevljani, near the Ljubija mines. The bodies were believed to be of former Bosniak inmates killed in the Omarska and Keraterm detention camps. Allegedly, this was a secondary mass grave which was dug well after the killings took place and where mortal remains were transferred from a number of other burial sites. Esad Bajramović, a member of the FBiH Commission for Missing Persons, told the BiH daily *Nezavisne Novine* that such graves could have been excavated only using equipment such as the mining machinery in use at the Ljubija mines.[197] Exhumations in the area continue and, reportedly, in May 2005 a new mass grave was found in the vicinities of the Ljubija mine. Amor Mašović, the head of the FBiH Commission for Missing Persons, is reported to have stated that "there is no doubt whatsoever that there are bodies as yet unfound within the mine of Omarska and its vicinity […] We are not talking about dozens of bodies here, we are

[193] The Tribunal found that the massacre did occur. See *Prosecutor v. Milomir Stakic*, Judgement, Case No. IT-97-24-T, Paragraph 203 and ff.

[194] Annex X (Mass graves) to the *Final Report of the Commission of Experts Established pursuant to Security Council Resolution 780* (1992), UN Doc. S/1994/674/Add.2 (Vol. V), 28 December 1994, II.24.

[195] "Bosnian Mine Is Thought to Hold Evidence of Mass Killings", *New York Times*, 11 January 1996.

[196] "Željezna ruda obogaćena ljudskim kostima", *Bosanskohercegovački dani*, 15 April 2005.

[197] "Pronađeno 420 tijela u Kevljanima kod Prijedora", *Nezavisne novine*, 2 November 2004. The article mentions a figure of 420 bodies, which at the end of the exhumation reached the number of 456. See also "New battle breaks out over Serb death camp", *The Guardian*, 2 December 2004.

talking about hundreds".[198] Estimates suggest that the true number of people still buried in the area of operations of the New Ljubija Mines may be as high as 1,700.[199]

Former workers at the mine told Amnesty International that after non-Serb workers had been dismissed in 1992, the mine and its equipment were turned to the purpose of committing and covering up crimes against the non-Serb population.[200] There are credible reports that some of those who perished or were buried in the Ljubija mines were former employees of the mine.[201] Former workers testified to Amnesty International that they knew of other former workers who were called to help bury the bodies of murdered non-Serbs, and that they recognized some of the victims as their former colleagues.[202] Members of the local population told Amnesty International that most of the bodies were transferred to secondary mass graves in 1994, in a massive operation that lasted 16 days. In 2003 a former worker took Amnesty International delegates to a pit at the Ljubija mine. He said dead bodies were brought in trucks and tossed in the pit and then covered in sand by Serb soldiers.

LNM/Mittal Steel-appointed management of the mines have reportedly stated that "so far neither in Omarska, nor in any other area under the control of the New Ljubija Mines have any body or mass graves been found".[203] This appears to contradict overwhelming evidence to the contrary. The Ljubija mines' management told Amnesty International that should evidence of new mass graves, or of mortal remains, emerge during the mines' operations, the mines' activities would be immediately stopped and the relevant authorities would be informed.[204] However, the very fact that the mine has restarted its operations could result in damage or destruction or enable concealment of evidence of war crimes and crimes against humanity and of mortal remains buried in the mining complex.

Survivors of the camps as well as relatives of the killed and "disappeared" have addressed the foreign investor and the new management of the mine asking that some of the mines' installations and land to be preserved to commemorate the dead and the victims of the other crimes committed in the mines' complex.[205] Edin Ramulić,

[198] *Ibid.*
[199] "Željezna ruda obogacena ljudskim kostima", *Bosanskohercegovački dani*, 15 April 2005. See also, "Kosturi Razdora", *Feral Tribune*, 24 February 2005
[200] Interviews with former workers of the Ljubija mines, August 2003 and February 2005.
[201] According to the UN Commission of Experts, by 1994 most of the Bosniak and Bosnian Croat workers in the mine had already been "killed or deported". See Annex V (The Prijedor report) to the *Final Report of the Commission of Experts Established pursuant to Security Council Resolution 780* (1992), UN Doc. S/1994/674/Add.2 (Vol. I), 28 December 1994, Part two, II.D.
[202] Interviews with former workers of the Ljubija mines, August 2003 and February 2005.
[203] "Željezna ruda obogacena ljudskim kostima", *Bosanskohercegovački dani*, 15 April 2005.
[204] Interview with Murari Mukherjee, New Ljubija Mines general manager, February 2005.
[205] "New battle breaks out over Serb death camp", *The Guardian*, 2 December 2004.

whose father had been killed in Keraterm and who is now a representative of Izvor, a local association for the tracing of missing persons, told Amnesty International that survivors and the relatives of the victims are demanding that the "white house" building at Omarska is preserved as a memorial. Mittal Steel management is aware of the issue and told Amnesty International that the company is in contact with local NGOs to discuss appropriate ways to commemorate the victims.[206] In December 2005, Mittal Steel declared the intention to finance the construction of a memorial site at the Ljubija mines with the "white house" as its focal point.

The Ljubija workers

At its peak in pre-conflict Yugoslavia, the Ljubija mines employed 5,393 workers. After economic reforms in the late 1980s and early 1990s, the numbers began to drop. By 1992, the number of workers had come down to 4,350. At the beginning of the war, after the company came under the control of the local Bosnian Serb *de facto* authorities, the management of the Ljubija mines systematically discriminated against at least 2,000 non-Serb workers, by dismissing them *en masse*, solely because of their ethnicity. In doing so, the management of the company was directly involved in one of the elements of a campaign of "ethnic cleansing" against the non-Serb population.

Former workers told Amnesty International that on 22 May 1992 they heard announcements on the radio informing them that in view of the war, Bosniak and Bosnian Croat workers must not report for work anymore. Within weeks, letters arrived, addressed to each worker, signed by the management, informing them that their services were terminated. Amnesty International has obtained copies of these letters which stated that the termination of employment in May 1992 was grounded, *inter alia*, on a June 1992 decision of the Prijedor Crisis Staff.[207] This decision stated that all executive posts, posts involving a likely flow of information, posts involving the protection of public property, that is, all posts important for the functioning of the economy could only be held by personnel of Serb ethnicity.[208] Although this discriminatory decision applied in theory only to certain categories of workers, the management of the mines apparently used them to dismiss all non-Serb workers. Those workers, who appealed against their dismissal to the company's commission for labour relations, had their appeals rejected and received written communication

[206] Telephone interview with Roeland Baan, LNM Central and Eastern Europe, Chief Executive Officer, March 2005.
[207] Such decision thus appears to have been applied retroactively, as employment was terminated in May 1992.
[208] *Prosecutor v. Milomir Stakic*, Judgement, Case No. IT-97-24-T, Paragraph 127.

that they could not continue to be employed because their position was reserved for employees of Serb ethnicity.

Hasan Čaušević, 65, worked at the Ljubija mine for 30 years. He was away on his annual leave from 4 May to 5 June 1992 and later received a communication indicating that his services as a team leader were terminated on 22 May. He told Amnesty International:

> "All of us were working, but then they announced on the radio and we were told not to report for work if you were a Muslim. We received the letters terminating our services in July. I wrote a complaint, but the [company's] Commission [for labour relations] rejected it".

The letter he received was identical to similar letters sent to hundreds of employees in the same period.

Hasan Islamović, 60, worked for 31 years at the mine in the maintenance department. He was an electrical engineer. "I was a craftsman, and they wanted to kill the intelligentsia, so I was not picked. I was taken to a camp because I was not important enough to be killed," he said. Then, in a convoy he was taken to Travnik with his wife, son and mother and from there they reached the border and fled to Austria. While in BiH, they had to keep paying bribes to spare their lives and some of their belongings. "My neighbour stood with a gun pointed at me while going through my things," he remembers. "If I had the money, I would take them to court".[209]

Beisa Hadžibajramović worked for nine years at the Ljubija mine in the metal production and forging unit. On 22 May 1992, she knew the war had started, so she did not report for work. She heard an announcement on radio, informing her, and others, that all Muslim employees had their jobs terminated. "This was not a war, this was destruction of Muslims," she told Amnesty International. "Everyone was too scared, so everyone stayed in their own home. People did not want to go out because they were being picked up and taken to the camps, so they stayed at home. Five of the six Muslim directors at the mine died".[210]

Ethnically motivated dismissals in Ljubija, as elsewhere in large state-owned enterprises, had a negative impact on access to a number of other economic and social rights, including the right to a pension. A machinery engineer, Sakib Islamović, worked at the mine for 23 years. He told Amnesty International he was detained in camps run by the Bosnian Serbs until late August 1992. After being released from

[209] Interview with Hasan Islamović, August 2003.
[210] Interview with Beisa Hadžibajramović, August 2003.

detention he managed to flee to Germany with his wife and children, following his son who had already gone there, as a refugee. In 2001 he returned to BiH. "I do not want a job. I want my pension from the state," he stated. "I want to live here […] but I do not feel safe in Prijedor. […] The flat I have in Prijedor is next to the flat of a man who had put me in the camp. The neighbours do not want to acknowledge what happened. They do not want to admit that there were camps. I do not believe history cannot repeat itself. Of the 16 senior managers at the mine, six were Muslims. I am the only surviving Muslim director".[211]

A former worker, who when interviewed by Amnesty International was still in Sweden where she was given protection as a refugee during the war and who had worked at the Ljubija mines as a typist, told Amnesty International:

> "I was sacked after only 12 years' service. […] Now there is nothing to live off in Sanski Most. Of course we would like the jobs and go back to the way it was, but it cannot be. There is no way to survive. I am not coming back. I have no money to build a house. […] I have no hope that I will be compensated. Life is the only thing that I have left to lose. This is killing me slowly. We are psychologically killed, and you cannot get compensated for that. Article 152 [of the RS Law on Labour]? That is symbolic, it is of no help".

The total number of Bosniak and Bosnian Croat returnees in the Prijedor Municipality is approximately 25,000.[212] Despite encouraging rates of returns in the area, which are also the result of the involvement of the international community in financing the reconstruction of damaged property, many such returns may not be sustainable in the long run given the difficult economic situation in the area and the continuing discrimination against non-Serbs. UNDP estimated in 2004 that over 90 per cent of returnees in Prijedor are not employed. However, returnees make up only 5.6 per cent of registered unemployed at the RS Employment Bureau Field Office in Prijedor which, according to UNDP, "demonstrates the lack of returnees' confidence toward the RS government institutions".[213]

Reportedly, throughout the post-war period (in the period which preceded the establishment of a joint venture with LNM), the Ljubija mines' management continued with a policy of ethnic discrimination. Although the mines' operations were

[211] Interview with Sakib Islamović, August 2003.
[212] UNDP and OHCHR, *Rights-Based Municipal Assessment and Planning Project (RMAP): Municipality of Prijedor*, October 2003-February 2004, p. 16n. The report (p. 11n) quotes figures from the 1991 Yugoslav census according to which, before the war, 112,543 people lived in the municipality, of whom 49,351 Bosniaks, 47,582 Bosnian Serbs and 6,316 Bosnian Croats.
[213] *Ibid.*, p. 18.

significantly scaled down and subsequently virtually halted, in 1999 the mines still had 1,409 registered employees. When, in 1999, 60 new workers were hired, they were all reportedly Bosnian Serbs.[214]

In 1998 approximately 300 former Ljubija workers organized themselves in a trade union to seek their reinstatement in their old jobs and to have their other rights as former workers, including pension rights, recognized. The trade union has mostly been active independently of the local branch of the RS Mine and Metal Workers Trade Union, which does not appear to have been supportive of the former workers' demands.[215] The struggle of the former workers (who have instead received support from the Sarajevo-based SSSBiH) involved contacts with the management of the mines, as well as with representatives of the international community and of OHR in particular, who were asked to put pressure on the management and on the local authorities. However, the workers' demands were not even partially met. Moreover, returnees who approached the company to collect their work booklet as proof of their previous employment were told that the company was not in possession of such documents.

In 2000, as already mentioned, the workers and their representatives sent a communication to the ILO relating to discrimination in employment at the Ljubija mines, which has repeatedly been referred to in individual observations of the CEACR concerning the application of ILO Convention No. 111, and to which the BiH authorities have not responded.

The New Ljubija Mines today

The 2004 joint-venture agreement between RŽR Ljubija and LNM has led to the establishment of a new company, the New Ljubija Mines. This resulted in the transfer of some of the mines' assets to the new company, which has also "inherited" some of the old liabilities of the mines.

To Amnesty International's knowledge, unfairly dismissed former workers of the Ljubija mines have been excluded from any negotiations between the RS and LNM, or any other investor, on the future of the Ljubija mines. Negotiations and discussions were instead conducted with the trade union of the current workers of the mines. A declaration issued on 30 April 2004, and signed by LNM, RŽR Ljubija, and the trade union (of the then workers of the mines), stated that:

[214] Interview with Hamdija Razić, local trade union and returnee leader, August 2003.
[215] Interviews with former workers of the Ljubija mines, August 2003 and February 2005; interview with RS Mine and Metal Workers Trade Union representatives in Prijedor, February 2005.

> "A mutual agreement was reached that the primary goal would be to form a long lasting, financially sustainable and profitable Company. In order to achieve that goal, it will be necessary to restructure the staff, postpone the negotiations about the salaries and to gradually pay off the unpaid obligations towards the employees".

The declaration further stated that the new company would "accept all employees of RŽR Ljubija, but not more than defined in the Contract on establishment".[216] However, it also stated that for the mines to operate efficiently there would be a need for between 600 and 750 employees, depending on the level of production (that is, significantly less than the 1,148 workers who were still employed at the mines before the joint-venture agreement was concluded). The founders of the New Ljubija Mines have committed themselves to carry out the entire process of staff restructuring in a "socially acceptable way" and in consultation with the trade union. LNM and its partner RŽR Ljubija have pledged to pay outstanding benefits to employees eligible for retirement in 2004 and to pay outstanding debts to the employees to the maximum amount of 7,087,207 Convertible Marks (equivalent to approximately 3,600,000 Euros or 4,300,000 US Dollars). Moreover, under the terms of the agreement, workers who opt for voluntary termination were promised a bonus of 1,000 Convertible Marks (approximately 500 Euros or 600 US Dollars) in addition to the full amount of their unpaid net salaries.

All these pledges, however, only relate to those workers who continued to be officially employed at the mines, and not to the mines' former workers. Nijaz Brkić, a former cashier at the mine who since 1998 has been involved in the former workers' struggle for recognition of their rights told Amnesty International that he has addressed the workers' demands to the new management of the mines, as well as to LNM/Mittal Steel representatives in the Netherlands, so far with no results.[217] Former workers realize that it would not be realistic to expect reinstatement for all the approximately 300 former workers who have organized themselves in a trade union. "If they hired 20 people, this would already be a symbolic gesture of good will", Nijaz Brkić said. Former workers also demand that in the future the company strictly adheres to non-discriminatory principles in its employment policies.

LNM/Mittal Steel-appointed management at the Ljubija mines told Amnesty International that the new company does not accept any liability for non-Serb workers who were unfairly dismissed during the war or, for that matter, before the joint-

[216] With the exception of ten employees.
[217] Interview with Nijaz Brkić, February 2005. See also "Preko 320 tužbi protiv Rudnika 'Ljubija'", *Nezavisne novine*, 25 February 2005.

venture agreement was concluded in 2004.[218] The new management also made it clear that in the short and medium term, New Ljubija Mines will not hire a significant number of new employees and instead will reduce its personnel in order to increase efficiency and make the mines economically viable. Moreover, company officials told Amnesty International that the New Ljubija Mines have little interest in the dismissed workers of the mines, many of whom are now close to retirement age and, according to the company's management, would mostly be unable to work in a modern mine. The management told Amnesty International that all questions relating to the old workers dismissed in 1992 should be addressed to the management of RŽR Ljubija which owns 49 per cent of the New Ljubija Mines and the old assets of the mines which were not included in the joint-venture agreement. As noted above, RŽR Ljubija is still totally owned by the RS.

The management told Amnesty International that those who will be hired by the mines in the future will be appointed solely on the basis of their merit and not on their ethnicity. Despite the fact that company officials were adamant that ethnic discrimination will not be tolerated, Amnesty International is not aware of active steps taken by the company in order to ensure that employment practices at the New Ljubija Mines are non-discriminatory. Given the recent history of widespread discrimination in employment at the mines, which was the prelude to a campaign of brutal "ethnic cleansing" culminating in mass killings carried out within the mines' complex, Amnesty International considers it vital that the company prohibit discrimination in employment and take concrete and targeted measures to ensure the elimination of discrimination in the workplace.

In sum, former workers of the Ljubija mines who had been dismissed solely because of their ethnicity lack access to an effective remedy. They have been completely excluded from any discussion or negotiation on the future of the company, including on its privatization. The RS authorities, in this and other cases, have failed in their duty to fully implement existing anti-discrimination provisions and to actively promote anti-discrimination policies, including in large enterprises being privatized, or partly privatized. The resulting continuing discrimination in access to employment hinders sustainable returns for persons belonging to ethnic minorities. Moreover, the BiH authorities have not yet reported to the CEACR, as repeatedly requested in CEACR individual observations, any progress made in respect of the problem of Ljubija mines' workers who had been dismissed on ethnic grounds during the war.

[218] Interview with Murari Mukherjee, New Ljubija Mines general manager, February 2005.

5. Conclusions and recommendations

The unresolved legacy of war-time ethnic discrimination in employment and a pattern of ongoing discrimination in employment, as documented in this report, constitute serious and continuing human rights violations, which particularly affect marginalized groups, such as minority and returnee communities. The overall picture presented in this report, as well as the two case studies presented, of Aluminij in Mostar and of the Ljubija mines near Prijedor, illustrate a problem which is prevalent throughout BiH.

Discrimination in access to employment and the denial of the right to an effective remedy violate international standards and are contrary to the spirit and the letter of the Dayton Agreement. Ongoing discrimination is today one of the main obstacles to the sustainable return of minority refugees and IDPs. Ethnic discrimination in employment is not only legally impermissible but also economically inefficient in that it restricts the pool of potential candidates for any given job.

Victims of war-time discrimination are denied justice by the failure of the authorities to provide an effective remedy to workers affected by discriminatory dismissals. The BiH and entity authorities have done little to prohibit, prevent and eliminate ongoing discrimination in employment, including in the public administration. Other than in those professions where there was strong pressure from the international community to achieve a multi-ethnic balance among employees, such as in the judiciary and (with mixed results) in the police, workplaces have often remained largely mono-ethnic. Legal provisions prohibiting ethnic discrimination in employment, as well as those actively promoting a multi-ethnic public administration, are generally not effectively implemented in practice.

The FBiH and RS labour laws and the relevant provisions on compensation and severance pay are an attempt to provide partial reparation to the victims of discriminatory dismissals. However, such provisions remain insufficient. Among other problems, these legal protections do not apply to all workers who lost their jobs as a result of discrimination and severance pay, when awarded, is manifestly inadequate and generally regarded as "symbolic". Equally importantly, the mechanisms to consider claims by former workers and to award compensation are not in place or are too limited. The vast majority of claims remain pending.

The international community has invested considerable resources and effort to ensure that the effects of "ethnic cleansing" in BiH are reversed, promoting mechanisms to enforce decisions on housing and property restitution, as well as providing financial assistance for the reconstruction of damaged property. Despite attempts in the past few years to promote fair employment practices, which undoubtedly have achieved some positive results, international actors who are assisting BiH in its post-war stabilization and reconstruction appear to have taken a

"softer" stance on reversing the effects of ethnic discrimination in the workplace. This is especially true with respect to the rights of victims of past discrimination in employment, which have been sidelined as their realization is apparently considered a disincentive to much needed foreign direct investment. Indeed, the international community, through the OHR, has intervened to *reduce* the quantum of compensation payable to workers who had been subject to war-time discrimination in the RS.

The BiH economy is still suffering from the negative effects of the war and of the collapse of Yugoslavia, which resulted in a sharp reduction in economic output. In this context Amnesty International recognizes the importance of promoting economic growth which should result in an improvement in the enjoyment of human rights. The organization believes that eliminating discrimination in employment should be part of any strategy devised to promote the economic recovery of BiH. However, even in those cases where there is an apparent trade-off between the benefits of economic development and the costs of ensuring that human rights are respected, Amnesty International believes that economic growth cannot be achieved at the expense of human rights. This means that that all victims of war-time discrimination in employment should have access to reparation, including restitution, compensation, satisfaction, rehabilitation and guarantees of non-repetition.

Fear that adequate compensation may result in a disproportionate economic burden on new employers is no reason not to explore the range of possible remedies, many of which do not require large economic investment. In realizing its obligations related to the right to a remedy for violations of the right to work, the BiH, FBiH and RS authorities should be able to count on the support of those elements of the international community which are in a position to offer assistance, through supporting and providing resources to an effective system of reparations, including for example the creation of standing funds for compensation of those workers and their families affected by policies of war-time discrimination in employment. Such support is not an act of charity, but an obligation under international human rights law.[219]

Amnesty International also firmly stresses that even if the primary obligation to ensure protection of human rights is on the state, private companies also have a responsibilities to stem out ethnic discrimination within their sphere of influence and therefore should implement policies aimed at eliminating discrimination in employment practices and in the workplace.

As the case of the Ljubija mines makes clear, war-time discriminatory dismissals were sometimes the first step in aggressive campaigns of "ethnic cleansing" which included killings and forcible transfers or deportations. In such cases the rights of unfairly dismissed workers should be addressed as part of wider

[219] Article 56 of the Charter of the United Nations; Article 2[1] of the ICESCR.

efforts to bring justice to the victims and the families of the victims of war crimes and crimes against humanity. Many of the former workers of the Ljubija mines, for example, were later killed or buried in mass graves at the mines. Some of the buildings of the mining complex were used as detention facilities for the non-Serbs and were the scene of horrific crimes, including mass killings and torture. Credible reports point to the presence within the mining complex of unexcavated mass graves containing the remains of non-Serb victims from the Prijedor area.

In those cases, as in the restart of the Ljubija mines' operations, where economic activities may potentially destroy evidence of war crimes and crimes against humanity or may otherwise be an impediment to the realization of the rights of the victims and the families of the victims of serious human rights violations committed during the war, it is the duty of the authorities to take all necessary steps to ensure that economic priorities do not come before justice for the victims.

Recommendations

Amnesty International calls on the BiH authorities:

- to ensure that a state level labour code is adopted and implemented, prohibiting discrimination in employment on any grounds, including in hiring practices, dismissals, career progression and salary levels;
- to adopt a comprehensive and consistent action plan to address discrimination in employment and to ensure full reparation, including restitution, compensation, satisfaction, rehabilitation and guarantees of non-repetition, to all victims of discrimination in the enjoyment of the right to work;
- to respond without delay to the CEACR individual observations concerning ILO Convention No. 111 prohibiting discrimination in the workplace, with an investigation and a detailed report on the Aluminij and Soko factories in Mostar and the Ljubija mines near Prijedor.

Amnesty International calls on the FBiH and RS authorities:

- to fully implement existing labour law provisions and Constitutional Court decisions addressing and prohibiting discrimination in general and discrimination in employment in particular;
- to take concrete and targeted measures to eliminate discrimination in hiring practices, dismissals, career progression and salary levels both in the public administration and in the private sector;

- to devise and implement special measures or "affirmative action" plans to increase the representation of returnees belonging to ethnic minorities in the workforce both in the public administration and in the private sector; such steps may include setting quotas;
- to introduce training and vocational education programmes targeted at minority and returnee workers who have been in a situation of long-term unemployment, including as a result of unfair dismissal or placement on a waiting list;
- to monitor the implementation of anti-discrimination provisions, including by collecting, analyzing and publishing statistical and other information on the ethnic composition of the workforce in the public administration as well as in the private sector;
- to amend existing labour law provisions to ensure that all workers who were unfairly dismissed or placed on a waiting list, including those that could not apply for compensation under current provisions, have access to full reparation, including restitution, compensation, satisfaction, rehabilitation and guarantees of non-repetition;
- in particular, to ensure that such reparation covers all human rights violations suffered by victims of discrimination and, where appropriate, their dependants, including those such as discrimination in the realization of pension rights, of other forms of social security and in access to healthcare;
- to amend existing labour law provisions to ensure that any compensation payable to victims of past discrimination in employment adequately covers all human rights violations suffered by victims of discrimination and, where appropriate, their dependants;
- to ensure that the public organs tasked with considering claims for compensation and severance pay for war-time dismissals and placements on waiting lists, including the existing commissions for the implementation of Article 143 and 152 of the FBiH and RS labour codes, are afforded adequate material and other resources to perform their activities in a speedy and efficient manner;
- to ensure that the privatization of state-owned companies is conducted in a manner which respects human rights, including by ensuring that it does not result in discrimination and that it respects the rights of all workers, including those who were unfairly dismissed or placed on a waiting list, to collective bargaining and other representations;

- to ensure that economic activity does not result in the concealment or destruction of evidence of war crimes or crimes against humanity, and does not thereby hamper in any way any criminal investigation of such crimes and the appropriate commemoration of the victims.

Amnesty International calls on the members of the international community which are in a position to assist or are already assisting BiH in its post-war stabilization and reconstruction, including the OHR, the OSCE, the relevant UN agencies, the European Union, the World Bank, and those states active in BiH through direct international cooperation or indirectly through intergovernmental organisations:

- to continue and redouble their efforts to promote fair employment policies and practices, in cooperation with local authorities and businesses, through a comprehensive and consistent action plan to address discrimination in employment;
- to monitor the implementation of anti-discrimination provisions and use their authority and influence to ensure that local authorities actively fight ethnic discrimination in employment;
- to actively and positively engage in efforts to find a solution to the problem of former workers who had been unfairly dismissed or placed on a waiting list on ethnic grounds, including by providing financial and other assistance for the training and compensation of such workers.

Amnesty International calls on the management of Aluminij, New Ljubija Mines and other BiH companies:

- to ensure equality of opportunity and treatment, as provided in the relevant national legislation and in the UN Norms for Business, for the purpose of eliminating discrimination in employment on any grounds;
- to monitor the implementation of measures to combat discrimination by collecting and maintaining statistical and other information on the ethnic composition of the workforce;
- to engage in a constructive dialogue with the trade unions representing current workers, as well as with trade unions and association of workers who had been dismissed during the war, to promote non-discrimination;

- to ensure that vacancies are widely advertised to members of all communities, including former workers and refugees and IDPs who had fled the area where the company is operating and are still displaced;
- to provide training targeted at former workers who were dismissed or placed on a waiting list and wish to be reemployed;
- to promote and foster a culture of inter-ethnic dialogue and tolerance and to adopt a policy of no tolerance towards any form of ethnically motivated harassment;
- to employ an officer tasked with receiving complaints relating to harassment and discrimination in the workplace, and with ensuring that appropriate action is taken where such complaints are substantiated;
- to fully and unconditionally cooperate with the relevant authorities in any investigation into war crimes and crimes against humanity in those cases where the company's sites or buildings may have been the scene of or contain evidence of such crimes, may be the location of mass graves, or where there are allegations that the war-time management of the company may have been involved in such crimes, or in their cover-up;

Amnesty International calls on the management of Mittal Steel and of other international companies which have invested significantly in BiH or are major business partners of BiH companies:

- to ensure that the relevant provisions on discrimination of the UN Norms for Business are applied in all contracts and other dealings with their BiH business partners, including companies where they have invested, subsidiaries, suppliers and subcontractors, guaranteeing equality of opportunity and treatment;
- to require that their BiH business partners, including companies where they have invested, subsidiaries, suppliers and subcontractors, implement the relevant provisions on discrimination of the UN Norms for Business and other recommendations by Amnesty International (outlined above) to fight ethnic discrimination in employment;
- to provide training to the local management of their BiH subsidiaries, to BiH companies where they have invested, and to provide information and examples of best practice to their other BiH business partners, to promote adherence to the principles of cultural diversity and non-discrimination.

Appendix: International and regional law and standards

Article 23[1] of the Universal Declaration of Human Rights (UDHR) states that:

> " 1. Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.
>
> 2. Everyone, without any discrimination, has the right to equal pay for equal work.
>
> 3. Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.
>
> 4. Everyone has the right to form and to join trade unions for the protection of his interests".

The right to work and to just and favourable conditions of employment is enshrined most explicitly in the ICESCR, adopted by the General Assembly in 1966.[220] Every state party to the ICESCR recognizes, according to Article 6[1], "the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts". In addition, Article 2[2] of the ICESCR stipulates that state parties must "guarantee that the rights […enunciated in the ICESCR…] will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status".[221]

The Committee on Economic, Social and Cultural Rights (CESCR), in General Comment 18 on Article 6 of the ICESCR, stated that the states' "core obligations" under Article 6 include ensuring "the right of access to employment,

[220] BiH became a part to the ICESCR by succession from the Socialist Federal Republic of Yugoslavia (SFRY) on 1 September 1993. The ICESCR is listed in Annex I of the BiH Constitution as one of the additional human rights agreements to be applied in BiH.

[221] Article 2[1] of the ICESCR also requires states parties to "take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights […recognized in the ICESCR…] by all appropriate means, including particularly the adoption of legislative measures".

especially for disadvantaged and marginalized individuals and groups, permitting them to live a life in dignity" [222] and avoiding "any measure which results in discrimination and unequal treatment in the private and public sectors of disadvantaged and marginalized individuals and groups or in weakening mechanisms for the protection of such individuals and groups". The CESCR also observed that "[m]any measures, such as most strategies and programmes designed to eliminate employment-related discrimination […] can be pursued with minimum resource implications through the adoption, modification or abrogation of legislation or the dissemination of information" and that "even in times of severe resource constraints, disadvantaged and marginalized individuals and groups must be protected by the adoption of relatively low-cost targeted programmes".[223]

The Convention against Racial Discrimination[224] sets forth the obligation of state parties to prohibit and eliminate "racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law" (Article 5). States parties are required to prevent, prohibit and eliminate discrimination, including in respect of "[t]he rights to work, to free choice of employment, to just and favourable conditions of work, to protection against unemployment, to equal pay for equal work, to just and favourable remuneration" (Article 5[e.i]). In General Recommendation XX to Article 5 of the Convention against Racial Discrimination, the Committee on the Elimination of Racial Discrimination (CERD) observed:

> "The rights and freedoms referred to in article 5 of the Convention and any similar rights shall be protected by a State Party. Such protection may be achieved in different ways, be it by the use of public institutions or through the activities of private institutions. In any case, it is the obligation of the State Party concerned to ensure the effective implementation of the Convention and to report thereon under article 9 of the Convention. To the extent that private institutions influence the exercise of rights or the availability of opportunities, the State Party must ensure that the result has neither the purpose nor the effect of creating or perpetuating racial discrimination".[225]

[222] CESCR, *The Right to Work. Article 6 of the International Covenant on Economic, Social and Cultural Rights. General Comment 18*, 24 November 2005. At the time of writing the document had not been assigned a UN document number.
[223] *Ibid.*
[224] BiH became a party to the Convention against Racial Discrimination by succession from the Socialist Federal Republic of Yugoslavia (SFRY) on 16 July 1993. The Convention against Racial Discrimination is listed in Annex I of the BiH Constitution as one of the additional human rights agreements to be applied in BiH.
[225] CERD, *General Recommendation XX. Non-discriminatory implementation of rights and freedoms (Art. 5)*, UN Doc. A/51/18, 15 March 1996.

Article 2[2] of the Convention against Racial Discrimination also requires states parties, when the circumstances so warrant, to "take, in the social, economic, cultural and other fields, special and concrete measures to ensure the adequate development and protection of certain racial groups or individuals belonging to them, for the purpose of guaranteeing them the full and equal enjoyment of human rights and fundamental freedoms".

The 1958 ILO Convention No. 111 [226] prohibits discrimination in the workplace and in access to employment. Under Article 2 of ILO Convention No. 111 state parties must "declare and pursue a national policy designed to promote, by methods appropriate to national conditions and practice, equality of opportunity and treatment in respect of employment and occupation, with a view to eliminating any discrimination in respect thereof". The ILO Constitution, which governs the functioning of ILO organs, in Article 24 provides for the possibility for industrial associations of employers or of workers to make representations to the International Labour Office[227] "that any of the Members has failed to secure in any respect the effective observance within its jurisdiction of any Convention to which it is a party".

The ECHR prohibits discrimination in the enjoyment of the rights enshrined in the Convention (Article 14). Protocol No. 12 to the ECHR contains a general prohibition of discrimination in the enjoyment of any right set forth by law (Article 1).[228] The European Court of Human Rights held that a difference in treatment violates Article 14 of the ECHR when it is established that other persons in an analogous or relevantly similar situation enjoy preferential treatment, and there is no reasonable or objective justification for this distinction.[229]

The Framework Convention for the Protection of National Minorities [230] prohibits any discrimination based on belonging to a national minority (Article 4[1]). States parties in particular are required to "adopt, where necessary, adequate measures in order to promote, in all areas of economic, social, political and cultural life, full and

[226] To which BiH became a party on 2 June 1993.
[227] The International Labour Office's functions include "the collection and distribution of information on all subjects relating to the international adjustment of conditions of industrial life and labour, and particularly the examination of subjects which it is proposed to bring before the Conference with a view to the conclusion of international Conventions, and the conduct of such special investigations as may be ordered by the Conference or by the Governing Body" (Article 10[1] of the ILO Constitution).
[228] BiH acceded to the Council of Europe in April 2002 and ratified the ECHR in July 2002, thereby enabling its citizens to bring applications to the European Court of Human Rights. Protocol No. 12 to the ECHR was ratified by BiH in 2003 and entered into force on 1 April 2005.
[229] European Court of Human Rights, *The National & Provincial Building Society, the Leeds Permanent Building Society and the Yorkshire Building Society v. The United Kingdom* of 23 October 1997, (117/1996/933-935), Paragraph 88.
[230] To which BiH became a party in 2000.

effective equality between persons belonging to a national minority and those belonging to the majority" taking due account of the specific conditions of the persons belonging to national minorities (Article 4[2]).

Abbreviations

ABiH	Armija Bosne i Hercegovine, Army of Bosnia and Herzegovina
ARC	American Refugee Committee
ARK	Autonomous Region of Krajina
BiH	Bosnia and Herzegovina
CEACR	Committee of Experts on the Application of Conventions and Recommendations
CERD	Committee on the Elimination of Racial Discrimination
CESCR	Committee on Economic, Social and Cultural Rights
CoE	Council of Europe
ECHR	European Convention for the Protection of Human Rights and Fundamental Freedoms
ECRI	European Commission against Racism and Intolerance
FBiH	Federation of Bosnia and Herzegovina
HDZBiH	Hrvatska demokratska zajednica Bosne i Hercegovine, Croatian Democratic Union of Bosnia and Herzegovina
HRW	Human Rights Watch
HVO	Hrvatsko vijeće obrane, Croatian Defence Council
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICG	International Crisis Group
IDP	Internally displaced person
ILO	International Labour Organization
JNA	Jugoslovenska narodna armija, Yugoslav People's Army
NGO	Non-governmental organization
OHCHR	Office of the United Nations High Commissioner for Human Rights

OHR	Office of the High Representative
OSCE	Organization for Security and Co-operation in Europe
RMAP	Rights-Based Municipal Assessment and Planning Project
RS	Republika Srpska
SDS	Srpska demokratska stranka, Serbian Democratic Party
SFRY	Socialist Federal Republic of Yugoslavia
SSSBiH	Savez samostalnih sindikata Bosne i Hercegovine, Union of Autonomous Trade Unions of Bosnia and Herzegovina
UDHR	Universal Declaration of Human Rights
UNDP	United Nations Development Program
UNHCR	United Nations High Commissioner for Refugees
UNMBIH/IPTF	International Police Task Force of the United Nations Mission in Bosnia and Herzegovina
VRS	Vojska Republike Srpske, Army of the Republika Srpska