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Bosnia and Herzegovina: Behind closed gates: Ethnic discrimination in employment Summary

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. The war took the lives of tens of thousands of people while driving millions away from their homes. Tens of thousands of workers in these territories were discriminated against and unfairly dismissed because of their ethnicity.

The General Framework Agreement for Peace in Bosnia and Herzegovina (Dayton Agreement) of 14 December 1995, which ended the war, established two semi-autonomous entities in the country, the Federation of Bosnia and Herzegovina (FBiH) and the Republika Srpska (RS).

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

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, to social security including access to social services, pensions and, above all, the right to work.

The 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, were in many cases the first step in aggressive campaigns of "ethnic cleansing" which included killings, forcible transfers and deportations.

International law and standards

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 International Covenant on Economic, Social and Cultural Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the International Labour Organization Convention No. 111 and Protocol No. 12 to the European Convention for the Protection of Human Rights and Fundamental Freedoms, 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.

Annex 6 of the Dayton Agreement committed the parties to secure to all persons within their jurisdiction the highest level of internationally recognized human rights and fundamental freedoms enshrined in a number of human rights instruments, many of which explicitly guarantee the right to be free from discrimination.

Annex 6 also 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. The Chamber considered the prohibition of discrimination as a central objective of the Dayton Agreement, to which it attached special importance. 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. This means that the differential treatment is discriminatory, 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.

The UN Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights (UN Norms for Business) set out a comprehensive list of human rights norms relevant to the activities of business. According to Article 2 of the UN Norms for Business, companies must ensure equality of opportunity and treatment for the purpose of eliminating discrimination.

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.

War-time discrimination in employment against non-Croats and non-Bosniaks in areas in today's FBiH and against non-Serbs in areas in today's RS were reported throughout the conflict. Discriminatory dismissals in some cases had no formal explanation and were simply justified by a "violation of working obligations" 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. 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.

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 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-controlled areas reduced the number of absence days to three. There are numerous reports to suggest that such provisions were used in a discriminatory way to dismiss members of a specific ethnic group.

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 internally displaced persons (IDPs). In many cases post-war dismissals have directly stemmed from the war-time period, in that they have affected workers who, because of their ethnicity, were in various ways prevented from working during the war, including by being placed on so-called "waiting lists" (placement of employees on waiting lists had also been widely used before the war to deal with the surplus of workers during times of decreased production).

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 waiting list 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 of proving 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.

From 1996 to 2003, the Human Rights Chamber for Bosnia and Herzegovina (the Chamber) played a crucial role in the implementation of international human rights law, offering interim protection and remedies to victims of discrimination. In a number of cases, it found that the authorities of the respondent party had discriminated (or tolerated discrimination). In 2002, more than 500 applications were still pending before the Chamber alleging discriminatory termination of labour relations, mostly on grounds of ethnic or national origin.

Both the FBiH and RS labour laws incorporate anti-discrimination provisions. Both entities have also 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 and have failed to provide an effective remedy to those affected by a discriminatory dismissal or transfer to waiting list.

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 for considering claims by former workers and for awarding compensation are not in place or are too limited. The vast majority of claims remain pending.

Case studies

The Aluminij factory in Mostar (FBiH)

One of BiH's most profitable enterprises, the aluminium manufacturing factory Aluminij, lies to the south-west of Mostar. Before the war, Aluminij was one of the largest state-owned companies in former Yugoslavia. Today, the factory employs approximately 970 workers, less than a third of its pre-war workforce. Aluminij lists as its business partners 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 Šbenik of Croatia.

The company, which before the war was entirely state owned, has since 1997 seen drastic changes in the ownership of its capital. However, 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.

In the divided city of Mostar, Aluminij pursued a policy of ethnic discrimination during the war, the effects of which continue to be felt, and elements of which continue to be practised. From being a company with a significant number of employees from each of the three major communities of BiH, Aluminij has become a company with an overwhelmingly ethnic Croat workforce (in 2003, ethnic Croats composed approximately 93 per cent of the workforce).

Nebojša Spajic, 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 Spajic says he has not worked for 11 years, after he was not allowed to return to his post at Aluminij.

Ongoing discrimination by large employers such as Aluminij, in the context of a stagnant economy, continues to be a serious obstacle to minority returns.

The Ljubija mines near Prijedor (RS)

The Ljubija iron ore mines are located at three sites in Ljubija, Tomasica and Omarska, in the vicinity of Prijedor, a town in the RS to the northwest of Banja Luka. In 2004 the international corporation LNM Holdings (now part of Mittal Steel), and the Ljubija Iron Ore Mines (Rudnici željezne rude Ljubija, RZR), 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 the foreign investor, while the RS retains the remaining 49 per cent.

For years the Ljubija mines have been largely inactive. The history of Prijedor and the role of the mines during the war have had a significant impact on the mines' operations. 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.

As Bosnian Serb forces took over Prijedor in 1992, they launched a brutal campaign of "ethnic cleansing" against the non-Serb population. After the company came under the control of the local Bosnian Serb *de facto* authorities, the then 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. Thousands of Bosniaks and Bosnian Croats were detained in detention camps situated in the Ljubija mines complex, including in the Omarska detention camp. There torture and mass killings were carried out.

Hasan Causevic, 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 Islamovic, 60, worked for 31 years at the mine in the maintenance department. "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.

Unfairly dismissed Ljubija workers have not been reinstated in their jobs, nor received other forms of reparation.

Conclusions and recommendations

The unresolved legacy of war-time ethnic discrimination in employment and a pattern of ongoing discrimination in employment constitute serious and continuing human rights violations, which particularly affect marginalized groups, such as minority and returnee communities. 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. 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.

In a series of recommendations, Amnesty International calls:

on the BiH authorities, to adopt a comprehensive and consistent action plan to address discrimination in employment and to ensure full reparation to all victims of discrimination in the enjoyment of the right to work;

on the FBiH and RS authorities, 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 and to devise and implement special measures or “affirmative action” plans to increase the representation of returnees belonging to ethnic minorities in the workforce (such steps may include setting quotas);

on the members of the international community who are in a position to assist or are already assisting BiH in its post-war stabilization and reconstruction, to continue and redouble their efforts to promote fair employment policies and practices and 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;

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;

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.

See: *Bosnia and Herzegovina: Widespread discrimination blocking refugee return*, (AI Index: EUR 63/002/2006) <http://web.amnesty.org/library/index/engeur630022006>

Bosnia and Herzegovina: Behind closed gates: ethnic discrimination in employment, (AI Index: EUR 63/001/2006) <http://web.amnesty.org/library/index/engeur630012006>

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