

## **Legacy of War: Minority Returns in the Balkans**

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In the territories that comprise the former Yugoslavia—notably Croatia, Bosnia and Herzegovina (hereafter Bosnia), and Kosovo—the failure of international and domestic efforts to promote the return of refugees and displaced persons has left substantially in place the wartime displacement of ethnic minorities. The Balkan experience offers an important lesson for other post-conflict situations: unless displacement and “ethnic cleansing” are to be accepted as a permanent and acceptable outcome of war, comprehensive and multi-faceted return strategies—with firm implementation and enforcement mechanisms—must be an early priority for peace-building efforts. Post-war efforts in the former Yugoslavia make clear that when these elements are present, minority return progresses; when they are absent, return stalls.

In all parts of the former Yugoslavia affected by ethnic wars during the 1990s, persons displaced by war from areas in which they now comprise an ethnic majority were able to return to their homes fairly soon after the end of hostilities. The true measure of effectiveness of the return policies pursued by national authorities and the international community, however, is the extent to which minorities have been able to return. By that measure return has been far less successful. Most minority members are still displaced, and it is increasingly evident that, even if the conditions for return improve in the future, most will not return to their homes.

In most areas of return, nationalistic politicians remained in power during the crucial immediate post-war period and either used that power to hinder the return of minorities, or did precious little to facilitate it. There was no physical security for prospective returnees, and they were unable to repossess their occupied homes or to have destroyed homes reconstructed. Rather than enhance prospects for reconciliation and return by bringing to justice war crimes perpetrators irrespective of their ethnicity, authorities directed their prosecutorial zeal against minorities, including returnees. The international community proved unable or unwilling to counteract this obstructionism.

By the time the authorities, under pressure from the international community or with its direct involvement, finally began to improve the security and housing situation for returnees, the willingness to return had faltered. Having spent months and years living elsewhere, the refugees and displaced persons had already become acclimated to their

new environment. At the same time, return to the place of pre-war residence promised discrimination in employment, education, and law enforcement. Given a choice between local integration and return under such conditions, many opted for the former.

Only a resolute response from the international community could have opened a way for successful minority returns. For the most part such resoluteness has been missing. The international community has been too tolerant of the excuses made by governments in the region to justify their failure to return properties to pre-war occupants. International peacekeepers in Bosnia and Kosovo too often showed themselves unwilling to confront the extremists responsible for ethnically motivated violence against minorities or to arrest high-ranking war crimes suspects.

Although inadequate policies made many refugees and displaced persons lose interest in returning to their homes, the international community and national authorities should do their utmost to assist those who do want to return or they run the risk of providing succor to those who believe that the forcible expulsion of a population is a legitimate objective of war. The following analysis sets out the obstacles to minority returns in the former Yugoslavia, current initiatives to facilitate return, and recommendations on the way forward.

### ***How Many are Still Displaced***

Between 300,000 and 350,000 Croatian Serbs left their homes during the 1991-95 war in Croatia, mostly for Serbia and Montenegro and Bosnia. The majority remain refugees. The total number of returns registered by the Croatian government as of July 2003 was 102,504. The actual number of returnees is significantly lower because, after a short stay in Croatia, many depart again for Serbia and Montenegro or Bosnia.

In the period 1995-99, the nationalistic Croatian Democratic Union of the late president Franjo Tudjman enacted laws and carried out policies with the clear intention of preventing the return of Serb refugees. In January and February 2000, parties and candidates with a professed commitment to democracy and human rights defeated the nationalists in parliamentary and presidential elections, and it appeared that the conditions for return would improve significantly. In reality the new authorities have been slow to amend the returns policy, and the overall conditions for return have barely improved.

By the end of the 1992-95 war in Bosnia, 1.2 million people had found refuge abroad and more than a million others were internally displaced. The Dayton-Paris Peace Agreement, which ended the war, guaranteed the return of all refugees and internally displaced persons. Between 1996 and July 2003, the United Nations High Commissioner for Human Rights registered 965,000 returns of refugees and displaced persons to their pre-war homes, while more than a million remain displaced. Of those who have returned, some 420,000 returned to the areas in which their ethnic group—Bosniac (Bosnian Muslim), Serb, or Croat—is a minority.

The large-scale return of refugee and displaced Bosnian minorities began only in 2000, after the Office of the High Representative (OHR) in Bosnia (created under the Dayton-Paris Peace Agreement in December 1995 to oversee implementation of the civilian aspects of the agreement) introduced well-devised property legislation and international agencies took a more robust approach toward local officials who had obstructed returns. The breakthrough also resulted from a series of arrests between 1998 and 2000 of persons indicted for war crimes by the International Criminal Tribunal for the former Yugoslavia (ICTY). While the number of minority returns was 41,000 both in 1998 and 1999, in 2000 the number rose to 67,500, in 2001 to 92,000, and in 2002 reached a peak with 102,000 returns. In the first eight months in 2003, some 34,100 minorities returned. In comparison to the same period in the previous year, the figure represents a 50 percent drop. Rather than suggesting a dramatic aggravation of the conditions for return, however, the decrease reflects the narrowing of the pool of persons willing to return, eight or more years after they had fled their homes.

In Kosovo, approximately 230,000 Serbs, Roma, and others not of Albanian ethnicity have fled since the end of the 1999 NATO war and the pullout of Serbian police and Yugoslav soldiers from the province. Only about 9,000 minority members have returned since 1999, about half of them Serbs and half Roma. Precarious security conditions remain the chief obstacle to return. The situation is similar in Serb-controlled northern Kosovo, only with reversed roles, with ethnic Albanians unable to return.

### ***Obstacles to Return***

Obstacles to the return of minorities have been similar in most parts of the former Yugoslavia. It has taken years for the security situation to become conducive to minority return. Some areas of return, notably Kosovo, remain unsafe. Those who do wish to return frequently find that their homes are occupied, yet administrative bodies and courts have often failed to evict temporary occupants, or proceeded slowly in doing so. The limited government funds available for reconstruction of damaged and destroyed

properties have mainly benefited members of the majority ethnic group. By the time other obstacles for minority return in the former Yugoslavia began to soften, international donors had shifted their focus elsewhere. Discrimination has also played a role in discouraging return. Judiciaries have been eager to prosecute minorities on war-crime charges and reluctant to bring to justice suspects from the majority. Local public enterprises have failed to employ returning minorities.

It is clear that political will on the part of local authorities can have a significant impact on minority return. Experience shows that when leaders engage in efforts to facilitate return, the situation on the ground improves. For example, the largest number of returns to mixed communities in Kosovo has been in the Gnjilane municipality, where ethnic Albanian officials have distinguished themselves by unequivocally condemning anti-Serb violence and encouraging dialogue between local Albanians and the prospective Serb returnees.

### ***Security Impediments***

Violence, harassment, and threats, coupled with police failure to arrest perpetrators, have frustrated the efforts of refugee and displaced minorities in the former Yugoslavia to return to their homes. The problem is particularly stark today in Kosovo, where Serbs and Roma are the primary targets. The vast majority of post-war ethnically motivated murders and other serious crimes in the province remain unpunished. By failing to deter organized violence from the very beginning, the international military and civilian missions in Kosovo have contributed to its proliferation, and set off a spiral of impunity that continues to feed extremism on both sides of the ethnic divide. In comparison to the period 1999-2001, the number of life-threatening attacks against minority communities declined in 2002-03, but this was at least in part due to reluctance of fearful Serbs to venture out of their enclaves into majority Albanian areas—hardly a sign of improved ethnic relations.

In Bosnia, security concerns remained a major impediment to return years after the conclusion of hostilities. A 1999 survey co-sponsored by the United Nations High Commissioner for Refugees (UNHCR) found that 58 percent of displaced persons and refugees who indicated a preference to sell, exchange, or lease their properties in Bosnia said that they would return to their former homes if the local authorities guaranteed their safety or if their pre-war neighbors returned. In recent years, however, security conditions have significantly improved. The breakthrough resulted in large part from the NATO-led Stabilization Force (SFOR) arrests of a dozen ICTY indictees in the critical

areas of Prijedor (western parts of Republika Srpska) and Foca (eastern part of Republika Srpska) between 1998 and 2000. Despite an improved situation overall, however, incidents directed against minorities still occur. In 2002 and 2003 the incidents included use of arms and explosive devices, as well as attacks on religious shrines and cemeteries.

By 2003, physical attacks against returnees in Croatia, already rare in comparison to Kosovo and Bosnia, had all but disappeared. However, in certain areas, including Benkovac, Zadar, Gospic, and Petrinja, Serbs continue to be concerned about their safety, due to general hostility from local populations or authorities.

### ***Impunity for War Crimes and Discriminatory Prosecutions***

It is clear that the failure to bring to justice war crime suspects, including those indicted by the ICTY, has weakened minorities' resolve to return and live as neighbors with their wartime foes. Where prosecutions have been carried out, authorities have taken a selective approach, prosecuting minorities in far greater numbers than members of the majority and sending a message to minorities that they are not equal citizens in the country of return. Rather than promoting reconciliation, ethnic bias in war crimes prosecutions has perpetuated the ethnic divide and deterred return.

While Croatia's cooperation with the ICTY with respect to provision of documents has earned it a passing grade from the international community, the government has nonetheless failed to hand over Ante Gotovina, a Croatian Army general indicted for crimes against Croatian Serbs between July and November 1995. The government claims that, since July 2001, when the ICTY prosecutor issued the indictment against Gotovina, the police have been unable to track him down. ICTY prosecutor Carla del Ponte and the Croatian press, however, have persuasively argued that Gotovina is at liberty in Croatia.

Croatia has demonstrated far more enthusiasm for the domestic prosecution of Croatian Serbs for war crimes. More than 1,500 have been indicted, often on ill-founded charges. The arrest of returning Serb refugees on war crimes charges has been particularly problematic. Although most arrests of Serb returnees ended in dropped charges or acquittals, the threat of arrest and prolonged detention has deterred the return of other refugees. At the same time, Croatian courts have dealt with only a handful of war crimes against ethnic Serbs, usually resulting in acquittals and absurdly low sentences. The Lora

trial from 2002, and trial for crimes in Paulin Dvor, ongoing at this writing, dramatically exposed the absence of adequate witness protection measures in Croatia, as frightened key witnesses declined to offer relevant testimony or even show up in court.

The authorities in Bosnia's Republika Srpska have yet to arrest a single individual indicted by the ICTY or to try any Bosnian Serb on war crimes charges. A dozen war crimes trials are ongoing in Bosnia's other entity, the Federation of Bosnia and Herzegovina, where Bosniacs (Bosnian Muslims) and Bosnian Croats are in the majority. Trials have often been marred by the reluctance of witnesses to testify, the absence of effective witness protection mechanisms, poor case preparation, and weak cooperation with other judiciaries in the region.

The justice system established by the international community in Kosovo has done little to hold individual perpetrators accountable and break entrenched perceptions of collective guilt. Kosovo's judiciary has been unable to bring to justice those responsible for anti-Albanian crimes, and this failure alienated and radicalized many Kosovo Albanians. At the same time, Kosovo Albanian prosecutors and judges manifested an ethnic bias at the expense of local Serbs, thus alienating the Serb minority.

In the four years since the end of the war, only four people have been found guilty of war crimes against Kosovo Albanians by a final judgment delivered by the Kosovo courts, three of them Kosovo Serbs and the other an ethnic Albanian. A dozen other Serbs have been prosecuted on war crimes charges in cases with Albanian prosecutors and investigating judges, and tried by trial panels consisting of Albanian judges alone—or sometimes with an international judge in the minority. Monitors from the Organization for Cooperation and Security in Europe (OSCE) and human rights organizations reported serious due process violations, as well as apparent or actual bias on the part of Kosovo Albanian judges and prosecutors. Most of these trials resulted in guilty verdicts, but the Kosovo Supreme Court, with an international-majority panel eventually quashed the verdicts. By June 2003 Kosovo courts had still not brought a single indictment for war crimes committed against ethnic Serbs.

The unwillingness of Serbian authorities to bring to justice those responsible for war crimes committed in 1998 and 1999 in Kosovo also has impeded the return of Kosovo Serbs. Since 2000, Serbian courts have tried only four Kosovo-related war crimes cases, only one of which dealt with mass killings of Kosovo Albanians. There has been no investigation into the killings in Gornje Obrinje, Racak, Suva Reka, Mala Krusa, Cuska, Dubrava prison, Izbica, Slatina, Meja, Vucitrn, and Bela Crkva, each involving dozens of

victims. In the eyes of Kosovo Albanians, the failure to prosecute betrays a continuing disrespect for Albanian victims and Serbs' refusal to confront the past. As a result prospects for reconciliation remain dim and the return of minority Serbs to Kosovo has been indirectly hampered.

### *Occupied Homes*

Most minority refugees and displaced persons have not been able to repossess their occupied homes, nor have they received alternative housing or monetary compensation. Repossession concerns both privately owned houses and so-called socially owned apartments. The latter are apartments previously owned by the state or state enterprises, in which hundreds of thousands of families lived in pre-conflict Yugoslavia. The right to use a socially owned apartment—frequently referred to as the right of tenancy—was a real property right, and had many of the attributes of ownership, though holders of tenancy rights could not sell the right and the state could terminate their rights in certain narrow circumstances. During the war and immediately afterward, authorities in Croatia and in Bosnia terminated the tenancy rights of tens of thousands of displaced minorities. In Kosovo, former tenancy rights holders are in a better position because they had been allowed to purchase their apartments and many had become full owners before the 1999 war.

Since the end of the war, Croatia has prevented virtually all Croatian Serbs who lost tenancy rights from reoccupying their apartments or receiving substitute housing. Successive Croatian governments have refused to recognize lost tenancy rights as an issue requiring resolution. Serb homeowners have fared better, repossessing 14,430 out of 19,270 homes abandoned during the war. More than 5,000 homes, however, remain occupied by Croats. Government efforts to return these homes to their owners have been limited to providing alternative accommodation for Croat temporary occupants, either by constructing new homes or purchasing homes from Serbs who do not wish to return. However, these methods require substantial state funding, and the government's ability to provide it has been limited, leading to substantial delays. In the meantime, many Serbs have grown disillusioned and decided to sell their houses.

In Bosnia, the principal role of the internationally appointed High Representative in the repossession process resulted in much higher repossession rates. As of August 2003, the rate for privately owned properties and socially owned apartments had been around 88 percent. Unlike Croatia, former tenancy rights holders in Bosnia have been able to repossess their pre-war apartments. This difference well illustrates the importance of

political will. In Croatia, authorities have favored the Croat majority and left tens of thousands Serb families dispossessed. In Bosnia, an ethnically neutral international administration devised legislation and set in motion practices that helped tenancy rights holders repossess their homes. Nonetheless most of those who repossess their pre-war homes in Bosnia then sell, exchange, or rent the property, rather than moving back in, preferring to remain in their new area rather than return to their former homes. This is particularly true in cities.

Associations of displaced Serbs from Kosovo claim that up to two-thirds of Serb properties in Kosovo are occupied. Funding for agencies responsible for property repossession continued to be insufficient long after the 1999 war. As a result, housing authorities as of early 2003 had issued decisions on only 1,856 claims for repossession of properties, some 8 percent of the total claims registered at that time.

### ***Access to Reconstruction Assistance***

Slow and often discriminatory reconstruction of damaged and destroyed homes and properties is another huge obstacle to return. While the government in Croatia has done impressive work in reconstructing the damaged or destroyed houses of ethnic Croats, reconstruction assistance to returning Serbs began only at the end of 2002, seven years after the end of the war.

Unequal aid allocation also impacts reconstruction in Kosovo, where Albanians have had better access to funding. For example, in the municipality of Klina, more than half of the Albanian houses had been reconstructed as of the end of 2002, contrasted with only 6-7 percent of Serb-owned houses. In Bosnia, funding constraints rather than discrimination have proved the main impediment to reconstruction assistance. UNHCR and OHR estimate that, at the beginning of 2002, reconstruction funding was available for 20 percent of 66,500 devastated properties whose owners had expressed an interest in returning.

### ***Discrimination in the Enjoyment of Social and Economic Rights***

Discrimination against minorities in Croatia, Bosnia, and Kosovo persists in various forms. In most areas of return, virtually no minority returnees are employed in public services and institutions, such as health centers, schools, child-care centers, post offices, courts, police, power-supply companies, customs services, or the local administration. Limited opportunities for employment are often aggravated by employment



discrimination. Educational policies have also hindered return in Bosnia and in Kosovo, with access to schooling for returnee children often limited to schools with ethnically or linguistically biased curricula and textbooks. Few parents have been willing to send their children to such schools. To avoid them, parents have often kept children in the displacement community, housing the children with relatives or with one parent who remained behind for the purpose; other families have opted not to return at all. In some parts of the former Yugoslavia, discrimination against returnees also affects their enjoyment of social services, pension rights, and health care.

### ***Shared Responsibility of Local and International Actors***

The multitude of actors involved in returns-related activities often makes it difficult to identify those responsible for impeding minority returns. Local authorities in the areas of return are often even more nationalistic than the central government, and central governments are only too willing to point to local opposition as the explanation for ill-functioning returns policies. The substantial international presence in Bosnia and Kosovo, both military and civilian, can also serve as pretext for local actors to leave hard decisions and hazardous actions—including war crimes arrests and the prevention of inter-ethnic violence—to foreigners. Nonetheless, it is safe to conclude that all actors—international and domestic—bear some of the responsibility for the limited success of minority return in the region.

In Croatia, rates of ethnic Serb return since the end of the war have depended primarily on policies of the national government. While the pre-2000 government blocked return, the government constituted after the 2000 elections has tolerated it within certain limits, defined by the government's fear of alienating broad sectors of the nationalistic electorate. The role of the international community in promoting the return of refugees has taken the form of political conditionality linked first to Croatia's membership in the Council of Europe, and more recently to its desire to join the European Union and to the ongoing presence of an OSCE monitoring mission in Croatia. The limited involvement of the international community and its unwillingness fully to exercise what leverage it did possess has enabled successive Croatian governments to discriminate against Serbs and impede returns.

In Bosnia, return-related responsibilities have been shared by international agencies on the ground and the local authorities. The Office of the High Representative has had a key role in return activities. The High Representative imposed relevant legislation and removed from their posts numerous Bosnian officials who obstructed its

implementation—but such robust practices began only three years after the war, by which time many among the displaced had already lost faith in returning. The contribution of domestic actors in Bosnia has consisted mainly in implementation of housing legislation by municipal housing commissions. Nonetheless, the key for continued return of minorities is in the hands of the Bosnian politicians. The willingness of displaced Bosnians to return depends largely on how they anticipate and experience reception in the areas of return. The role of Bosnian politicians in fostering a climate and policies conducive to return cannot be substituted by any outside actor.

In Kosovo, responsibility for return of minorities is shared by a number of actors. The Special Representative of the United Nations Secretary-General (SRSG) who heads the United Nations Interim Administration in Kosovo (UNMIK), has the main executive authority, legislative power in certain areas, as well as veto power over legislative acts of the Kosovo Assembly. UNMIK includes an international police force. The NATO-led Kosovo Force (KFOR) conducts peacekeeping activities. Provisional institutions of self-government include the Assembly and ten ministries. In addition to elected municipal assemblies and administrations, since October 2000 UNMIK local community officers have operated to enhance the security of minorities and to assist them in access to public services. The unwillingness of UNMIK and KFOR to confront local actors involved in forcing out minorities created a climate of impunity in Kosovo which has been difficult to overcome, notwithstanding subsequent international efforts to facilitate return.

In Kosovo, the government of Serbia and Montenegro has maintained parallel judicial, administrative, health, and educational institutions in Serb municipalities in the north and in enclaves in the center and the south. Such an approach has thwarted integration of Kosovo Serbs into economic and social life in the province, a necessary condition for sustainable return.

## ***Recent Initiatives to Improve Minority Return***

### ***Addressing Insecurity***

In Kosovo insecurity remains the key obstacle to return, and persists to some extent in Bosnia. In Croatia, security for returnees is no longer a significant obstacle. There are some recent signs that UNMIK is taking a tougher stance on crimes against minorities in Kosovo. In uncharacteristic moves in October and November 2003, UNMIK arrested six Albanian suspects for the murder of four Serbs earlier in the year. It remains to be

seen whether these arrests mark a definitive departure from what had been UNMIK's passive approach to crimes against non-Albanians.

In Bosnia and in Kosovo, the international community has relied on creating a multi-ethnic structure for the municipal police as a means for improving both the perception and the reality of security for minorities. The results have been modest at best. Despite commitment by international agencies and Bosnian officials in both the Federation and Republika Srpska that local police forces should reflect the pre-war ethnic balance, the numbers of minority officers remain small. The most recent U.N. report stated that by May 2002 only 16 percent of the targeted 28 percent in the Federation were minorities, while only 5 percent of the force in Republika Srpska were minorities compared to a 20 percent target. In Kosovo, minorities comprised 16 percent of the Kosovo Police Service in October 2003. However, minority police are barely present in the areas with an Albanian majority, and it is precisely in those areas where obstacles to return are greatest.

### ***Accountability for War Crimes***

The Chief State Prosecutor in Croatia formally instructed local prosecutors in June 2002 to review pending war crimes cases and drop charges where evidence against the suspects was insufficient. Possibly as the result of the state-wide review, the number of arrests of Serbs fell from 59 in 2001 to 28 in 2002. In addition, half of the arrested Serbs were provisionally released during pre-trial proceedings. In 2002 and 2003 the authorities also began prosecuting ethnic Croats for war crimes against Serbs. Still, the number of arrested, tried, and convicted Serbs remains far higher than that of ethnic Croats.

The past year saw modest signs of improvement in Bosnia in the process of establishing accountability for war crimes. An all-Bosnian State Court came into existence in January 2003. Some of the deficiencies present in earlier war crimes prosecutions before local courts are expected to be remedied when the court's humanitarian law chamber becomes operative in 2004. At this writing, Republika Srpska was also expected to begin its first war crimes trial against Serb indictees by the end of 2003, in a case of the abduction and disappearance of Roman Catholic priest Father Tomislav Matanovic in September 1995.

The most controversial development in Kosovo during 2003 was the July 16 conviction of former Kosovo Liberation Army commander Rustem Mustafa and three collaborators for illegally detaining and torturing eleven ethnic Albanians and one Serb,

and executing six Albanians suspected of collaborating with the Serb regime, during the 1998-99 conflict. The men received sentences ranging from five to seventeen years. The convictions caused deep resentment among Kosovo Albanians and triggered a wave of violent attacks against UNMIK. In June, the departing UNMIK chief Michael Steiner promulgated a new criminal code for Kosovo, giving more powers to international prosecutors to investigate atrocities and other serious crimes, and providing for more effective witness protection.

### ***Property Repossession and Reconstruction***

Repossession of property remains a major impediment to return in Croatia and Kosovo, while insufficient reconstruction assistance hinders returns in Croatia and Bosnia. The Croatian cabinet recently adopted laws and decrees purportedly aimed at providing housing for dispossessed tenancy rights holders. Legislation adopted in July 2002 stipulates that the government will provide alternative accommodation in “areas of special state concern” (areas controlled by Serb rebels during the 1991-95 war) to Croatian citizens without apartments or houses in Croatia or other parts of the former Yugoslavia. However, in its first year of implementation, not a single Serb former tenancy right holder is known to have obtained housing by virtue of the law. In June 2003, the cabinet adopted a decree enabling individuals returning to places outside areas of the special state concern to rent or purchase government-built apartments at below-market rates. Even the purchase rates stipulated by the June 2003 decree, however, will be beyond the financial means of most prospective returnees, and other forms of reparation or compensation for past dispossession remain unavailable to them.

Resolution of property claims finally made limited progress in Kosovo in 2003. As of September 2003, housing authorities had issued decisions on 31 percent of claims for restoration and confirmation of residential property rights (in contrast to only 8 percent at the start of the year). However, temporary occupants were slow to vacate the properties, and effective enforcement mechanisms were lacking. As of September, the number of actual repossessions still barely exceeded 2 percent of all claims.

After having reconstructed more than 100,000 Croat houses in the second half of 2002, the Croatian government has started to reconstruct Serbs homes with state funds. Then-Deputy Prime Minister Goran Granic stated in mid-June 2003 that 75 percent of the houses to be reconstructed during 2003 are Serb-owned. All reconstruction is scheduled to be completed by 2006.

In Bosnia, foreign funding for reconstruction continues to diminish, a trend which began in late 1990s. In Kosovo, the funding available for reconstruction of Serb homes has been sufficient, possibly because of the low number of those who are seriously considering return in light of safety concerns.

### ***Tackling Discrimination***

The efforts of the High Representative and other international agencies in Bosnia are shifting from property repossession toward combating discrimination and further integrating Bosnian political and social structures. The policies are intended to stimulate return of those whose ethnicity has made them feel like second-class citizens. In 2003, the most significant effort toward ending discrimination was directed at ending segregation in public education. Minority children have been able to share school buildings with majority children since 2000, but classes, curricula, and teaching staff, and even shifts in some cases, remained separate. On August 8, 2003, the educational authorities of Republika Srpska, Federation BH, ten Federation cantons, and the independent district of Brcko, signed an agreement on Common Core Curriculum, which incorporates the curricula of all entities and cantons. Pursuant to the agreement, schools which until recently functioned as “two schools under one roof” are to register as single legal bodies with one school director and one school board. The agreement, if implemented, should give a decisive blow to segregation in Bosnian schools, while leaving room for separate studying of the so-called “national subjects” that reflect the cultural distinctiveness of each constituent people.

In December 2002 the Croatian parliament enacted the Constitutional Law on the Rights of National Minorities. Under the law, the state has to ensure proportional representation of minorities in the administration and the judiciary at state, county, and municipal levels. However, the obligation to ensure proportional representation does not extend to public institutions, such as schools, universities, and hospitals, or to the police. Given the history of persistent discrimination against Serbs in post-war Croatia, the lack of legal obligation to pursue adequate minority representation in public institutions and enterprises does not augur well for a marked increase in the employment of Serb returnees.

In Kosovo, UNMIK has enacted regulations on the minimum employment of minorities in central institutions and public enterprises, but the 10 percent figure achieved by October 2003 remains far below the targeted 18 percent. In contrast to Croatia and Bosnia, however, the low level of minority participation in Kosovo is more often caused

by the unsafe environment and limited freedom of movement for potential employees than by employment discrimination as such.

### ***Recommendations***

In territories of the former Yugoslavia, insecurity, limited tenancy rights, failures of justice, and discrimination are the central barriers to return of refugees and displaced people. While some of the basic preconditions for return in Bosnia—including physical safety and the ability to repossess pre-war homes—have been satisfied, there is still wide room for improvement in the reconstruction of houses. The continued failure to arrest ICTY indictees and to pursue domestic prosecutions of war crime suspects have also created a climate less than hospitable to return. Croatia has yet to start resolving the tenancy rights issue or to bring Croat war criminals to justice, and its long-term commitment to the reconstruction of Serb homes is an open question. In Kosovo, improved security is a precondition for addressing all return-related problems. In all parts of the former Yugoslavia, effective measures to combat employment discrimination have to be devised and implemented. Only when all these changes are in place will minority refugees and displaced persons have a fair chance to opt between return and a permanent integration in their current place of residence. For the changes to materialize, both domestic actors and the international community will have to redouble their efforts to facilitate minority return.

To adequately address security problems in Kosovo, the international community must maintain pressure on local political leaders to promote ethnic tolerance. KFOR and UNMIK must themselves marshal the political will necessary to pursue full accountability for ethnic violence and create measures to effectively coordinate criminal investigations. Local police should strengthen patrols in areas in which returnees report security problems or an increased sense of insecurity. UNMIK should speed up the recruitment of minority police officers in ethnically mixed areas, and all Kosovo Police Service members who show ethnic bias in the conduct of their activities should be disciplined or dismissed. In Bosnia, the European Union Policing Mission (EUPM) should robustly discipline and dismiss local police officers who obstruct efforts to resolve inter-ethnic violence and discrimination against ethnic minorities.

In all parts of the former Yugoslavia, cooperation with the ICTY and domestic war crimes prosecutions should be significantly improved. Croatia should arrest indicted Ante Gotovina and surrender him to the custody of the ICTY, and Serbia and Republika Srpska authorities should do the same with respect to the two dozen Serb indictees who live in those areas. Most importantly, authorities should show a greater commitment to

bringing to justice and fairly trying war crimes suspects irrespective of their ethnic origin. Cooperation between states in war crimes prosecutions should include providing requested documents and allowing access to all witnesses sought by the court. Governments in the territory of the former Yugoslavia should facilitate testimony of witnesses from other jurisdictions, including by videoconference. The legislation providing for witness protection measures in Croatia, Bosnia, and Kosovo should be vigorously implemented, and Serbia should enact a detailed witness protection law. Legislation criminalizing intimidation of or threats to witnesses and other participants in the proceedings should be adequately enforced.

There is a pressing need for enhanced international support for accountability efforts in the former Yugoslavia. International donors should assist domestic judiciaries with technical and financial support for effective war crimes prosecution; allocate sufficient funds for effective implementation of witness and victim protection measures; and assist in out-of-region relocations of those in need of protection. NATO-led SFOR remains the only credible force in Bosnia able to arrest the wartime leader of Bosnian Serbs, Radovan Karadzic, and should do so. The international community should also put pressure on the authorities in Serbia and Montenegro to cooperate with war crime investigations in Kosovo, in particular by handing over suspects to UNMIK.

Croatia should vigorously implement the July 2002 legislative changes addressing property repossession, and introduce and implement rules that would remove the many remaining obstacles to effective repossession. In particular, Croatia should reconsider its existing policies on cancelled tenancy rights. It should give original tenancy rights holders an opportunity to repossess apartments which have not been privatized by subsequent occupants, and, where the apartments have already been sold, it should help them to obtain property of equivalent value or financial compensation. In Kosovo, the housing authorities should substantially speed up repossession procedures.

In all parts of the former Yugoslavia, evictions of temporary occupants often have been accompanied by the looting and destruction of the property by the outgoing occupants. Governments should enact legislation making such targeted looting and destruction a separate criminal offense and prosecute those responsible. Housing authorities should include a notice or warning to temporary occupants about the criminal sanctions for looting or destruction of property.

Finally, authorities in all parts of the former Yugoslavia should closely monitor employment practices in state institutions and enterprises. Pertinent ministries should

intervene in cases in which discrimination on ethnic grounds is apparent and develop a proactive strategy for recruitment and hiring of qualified minority candidates. Discriminatory practices for minority returnees in government positions and state-owned enterprises should end, and authorities should ensure fair employment opportunities.