

**Extremely Vulnerable Individuals:
The Need for Continuing International Support
in Light of the Difficulties to Reintegration Upon Return**



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EXECUTIVE SUMMARY

With approximately 830,000 persons currently internally displaced in Bosnia and Herzegovina (hereinafter 'BH'), there continue to be extreme challenges for reintegration of returning refugees. These challenges include returning refugees finding themselves in situations of internal displacement, as well as limited accommodation to house returnees, problems associated with residence registration procedures and correlative access to scarce social services and pensions, high unemployment, absence of health services in some areas, overcrowded local social welfare institutions, and long delays for people seeking to repossess their pre-conflict home because it is either occupied, damaged and/or destroyed. For extremely vulnerable individuals ("EVIs"), these challenges are often insurmountable. Due to age, physical or mental disability, lack of support network (orphans or single heads of household), victims of violence (including sexual violence) and torture, ex-detainees, and other traumatised individuals, reintegration into local society becomes nearly impossible.

While the legal framework obliges the State of BH and the two Entity governments "to create in their territories the political, economic and social conditions conducive to the voluntary return and harmonious reintegration of refugees and displaced persons, without preference for any particular group", as well as to provide "short-term repatriation assistance ... to all returning refugees ... who are in need ... to enable families and individuals returning to re-establish their lives and livelihoods in local communities" (per Annex 7 to the General Framework Agreement for Peace in Bosnia and Herzegovina [hereinafter 'GFAP']), this is not generally the reality.

Broadly, the four main obstacles to return to one's pre-conflict property are that one's property is occupied by another person, one's property is damaged or destroyed and reconstruction assistance is required, or for employment or security considerations. Thus, many refugees cannot return to their pre-conflict homes immediately upon return and become internally displaced. The repatriation of refugees to situations of internal displacement has far-reaching consequences, which frustrates the search for durable solutions and forecasts future instability. One, it adds more individuals to the already large internally displaced population. Two, it increases pressure on limited housing available for temporary re-allocation and over-stretched absorption capacities. Finally, it means that generous repatriation grants are not invested in rebuilding new lives but rather, they are used for basic subsistence, such as paying rent. Interim solutions to the accommodation shortage has meant that persons must identify accommodation with family or friends, rent or be accommodated on a temporary basis in Transit Centres or unofficial centres. The slowness and obstructionism in the property return process means that many returnees find themselves in such a predicament for extended periods of time.

In spite the fact that at 31 August 1999, there were a total of 109 official Collective Centres (hereinafter 'CCs') operating in BH (50 in the Federation and 59 in the RS) housing a total population of 11,498 displaced persons (5,203 in the Federation and 6,295 in the RS), access to such CCs is not usually available to returning refugees. CCs were intended for the use of internally displaced persons who remained in BH throughout the war and not for returning refugees. With the current withdrawal of UNHCR financial support, most areas in the Federation and the RS are not admitting persons to CCs. Such displaced persons may find accommodation,

however, in a Transit Centre (hereinafter 'TC') in the Federation, although approval by the relevant authority is required.¹ Unfortunately, in the RS, no TCs exist, so there is usually a difficult struggle to locate some other form of accommodation, and CCs are used, on an exceptional basis, as the only available alternative, or unofficial CCs emerge. Some of the unofficial CCs, where returnees may find themselves, having been rejected from accessing official CCs or TCs, are over-crowded, poorly sanitised and they are not serviced (e.g. no electricity, no food assistance). In addition, many CCs (official and unofficial) and TCs are often geographically removed from cities and towns, which prevents residents from finding jobs, attending schools, or accessing medical treatment.

For EVIs, the issue of housing is critical. It represents stability and permanence, and a sense of community and security.

The accommodation shortage has also led to cases of *hostile relocation* as a result of internal displacement. *Hostile relocation* is the deliberate placement of groups of persons in housing belonging to another ethnic group in order to secure control over territory and to disrupt the minority return process. This practice is clearly contrary to the GFAP.

Registration of one's residence in a municipality is essential in order to access social and other services offered by that municipality. Material and social welfare problems ensue if one is denied the right to register, either as a displaced person/temporary resident or as a permanent resident. Complications arise as the procedures require proof of temporary or permanent accommodation in the municipality where the returnee wishes to register in order to access such aforementioned services. Many persons fear de-registering from one municipality to another, or changing their permanent residence address on their ID Cards, fearing that they will have difficulties in repossessing their property if they do so. In the RS, where returnees require accommodation and there is none available in their pre-conflict municipality, the authorities have the power to accommodate persons in areas where geographical and other conditions are the same or similar to those in their place of origin. While this serves as an interim measure, it can lead to forced relocation or local settlement, diminishing the rights of refugees to return to their pre-conflict homes. In the Federation a different problem arises with authorities often refusing to assist persons, or provide them with accommodation, who have returned outside organised return procedures. In addition, the registration process creates enormous difficulties with respect to pensions. In both the Republika Srpska and the Federation, entitlement to pensions is directly linked to permanent residence on the territory of the RS or the Federation (and in the Federation, it is also linked to actual repossession of property). A person who is returned to the Federation or who finds their pre-conflict home no longer on RS territory but in the Federation, will not be able to receive a pension from the RS. And this person will not be able to receive a pension from the Federation because s/he never paid contributions to a fund in the Federation.

Moreover, access to other social services for EVIs is limited and difficult. The World Food Programme stopped distributing food on 1 July 1999, and now Catholic Relief Services has taken over the role, although they are providing food assistance to only 11,900 beneficiaries accommodated in official CCs. Moreover, while social welfare legislation attempts to outline appropriate criteria for assistance, the municipalities and Cantons/regions do not have the finances to fulfil their obligations under the law. Social welfare institutions are under-resourced and places are limited.

¹ As at 31 August 1999, there were a total of 9 TCs in the Federation, housing a total of 530 displaced persons. With total capacity being 1072, there was only space available for another 542 persons. (UNHCR, Operations Unit, Office of the Chief of Mission, 31 August 1999)

Unless one is able to pay the full amount of such care, s/he will probably not be accommodated.

In addition, while there is a comprehensive framework for health insurance, the fact on the ground remains that only primary health care is covered, and not hospital or specialised treatment, and that often returnees and others are required to make a contribution to the cost even if they are insured. Moreover, public health facilities are under-staffed and poorly resourced, while private institutions require full payments. Due to the fact of age, disability or illness, health and medical services are vital to EVIs. In the current circumstances, EVIs may be denied the treatment which they require.

Threats to the safety of persons and property continues to be a real concern for persons returning to particular areas. For EVIs in particular, this is one of the most significant reasons for not wanting to return to pre-conflict municipalities, especially if they are without family and community support. For traumatised individuals, it is often an absolute bar to their reintegration upon return.

CONCLUSIONS

UNHCR encourages host States to pursue the following policy:

1. For EVIs who do not wish to return, to continue to provide protection to EVIs in the respective host country with a view to normalising their status, by reviewing the particular circumstances of individual cases and carrying out an assessment of their returnability. In that context, it must be noted that keeping their legal status uncertain or temporary only, exacerbates the vulnerability of EVIs. Protection in the host State should be extended in the spirit of humanitarianism and international co-operation.
2. Host States facilitate the return of EVIs wishing to return by providing them with accurate information; this in order to ensure an informed decision, in line with GFAP and by providing the required form of material assistance to ease the return process and to assure the economic sustainability of the returning EVIs. Host States should identify (where not already done) EVIs under their protection, appropriately liaise with the authorities in BH, actively involve UNHCR, together with local and other international organisations, as appropriate, to create conditions for return in safety and dignity and to formulate the required support structures for returning EVIs. Without such support networks, the reintegration process is seriously threatened. Where necessary, financial inputs should be made by host States to provide temporary accommodation while the returnees own houses are made habitable or while awaiting repossession, especially with the closure of CCs. EVIs are individuals in need of social assistance as a result of mental or physical disability or handicap, trauma, age, loss of spouse, combined with poverty. In order to make the return process sustainable, assistance and support should be provided.

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I. INTRODUCTION

During the conflict in Bosnia and Herzegovina (hereinafter 'BH'), approximately 1.2 million refugees fled abroad, mostly to countries of the former Yugoslavia and Western Europe. An additional 1.3 million persons were internally displaced. Of a pre-conflict population of 4.3 million people, close to 60% of the populace were displaced from their homes.

Since the signing of the General Framework Agreement for Peace in Bosnia and Herzegovina (hereinafter 'GFAP') in December 1995, many refugees have been returning home. Approximately 350,000 refugees have returned to BH since 1996.¹ However, many of these returnees return to conditions of internal displacement and not to their pre-conflict homes.² Under the GFAP, BH as well as the two Entities (hereinafter 'the Parties'), recognised the right of refugees and displaced persons to return to their pre-conflict homes. In pursuit of this right, the Parties agreed to "create the political, economic and social conditions conducive to the voluntary return and harmonious reintegration of refugees and displaced persons, without preference for any particular group."³ Moreover, the Parties also agreed to provide "short-term repatriation assistance ... to all returning refugees ... who are in need ... to enable families and individuals returning to re-establish their lives and livelihoods in local communities."⁴

While many of these refugees are motivated by a genuine desire to return to BH, others have been compelled to leave their host countries because protection is no longer extended. Host countries, such as Germany (which hosted nearly 400,000 refugees from BH at the height of the conflict) and Switzerland, consider that the end of the conflict and restoration of peace in BH no longer necessitate continuing protection. Such reasoning, however, overlooks the extreme challenges to reintegration many of these persons face upon return, including internal displacement, limited available accommodation, and lack of any viable social assistance, in spite of commitments made under GFAP. Return to situations with little or no prospects for re-integration is, by definition, not sustainable and inconsistent with the GFAP.⁵

In light of such challenges upon return, UNHCR maintains that certain categories of refugees from BH continue to be in need of international protection.⁶ One such category comprises extremely vulnerable individuals (hereinafter 'EVIs'), such as the elderly, mentally/physically handicapped, orphans and female-headed households, victims or witnesses of torture, including sexual violence, extremely traumatised individuals, ex-camp or prison detainees, and witnesses testifying before the International Criminal Tribunal for the Former

¹ UNHCR, Operations Unit of the Office of Chief of Mission, BH (31 August 1999).

² As at 31 August 1999, an estimated 487,000 persons were internally displaced in the Federation and an estimated 343,000 in the Republika Srpska (total estimated figure 830,000) (UNHCR, Operations Unit of the Office of the Chief of Mission, BH (31 August 1999)).

³ Article II of Annex 7 of the General Framework Agreement for Peace in Bosnia and Herzegovina (GFAP).

⁴ Article IV of Annex 7 of the GFAP. Note that the BH Constitution reiterates the provisions of Annex 7: Article II(5) guarantees the right of all refugees and displaced persons to return freely to their homes of origin in accordance with Annex 7, transforming the right of return under Annex 7 into a constitutional right. Domestic legislation has also been introduced to protect the rights of refugees and displaced persons with special needs.

⁵ See UNHCR, *A Regional Strategy for Sustainable Return of Those Displaced by the Conflict in the Former Yugoslavia* (1998).

⁶ See generally UNHCR, *Update of UNHCR's Position on Categories of Persons From Bosnia and Herzegovina Who Are in Continued Need of International Protection* (1999) (hereinafter 'Update of UNHCR's Position').

Yugoslavia. An additional concern is their poverty.⁷ It is the combination of their vulnerability, be it age or handicap, and their poverty that renders them particularly needy of protection.

When returned, repatriates encounter a myriad of administrative and socio-political obstacles in the following areas: property repossession, residence registration, ID Card, security, pensions, employment, food and medical services, and social welfare institutions. For EVIs these challenges are exacerbated due to their age, handicap, and lack of support network. While the legislative framework has been established in many of the aforementioned areas, implementation has been thwarted by a lack of political will and insufficient human and financial resources to cover the local and returnee populations. Many find themselves accommodated in under-resourced Transit Centres (hereinafter 'TCs') or unofficial Collective Centres, and some earlier returnees in CCs.⁸ Many EVIs have stayed in these CCs and TCs for several years, with little prospect for a durable solution. As such, UNHCR's request for continuing protection of EVIs is premised on both principles of humanitarianism and pragmatic considerations for making return sustainable.⁹

For refugees who choose to return to BH, often due to legal, language and cultural barriers in their host country, they also face the same problems outlined above. For these reasons, it is crucial that their decision to return be based on an informed choice -- that is, they should be aware of the many obstacles to reintegration. More importantly, in order to prevent later illegal movements back to host countries, host States should assist the refugees to ensure that their return will be sustainable. Such assistance should be in the form of infrastructural support, housing projects, professional/vocational training or special assistance for those in special need, that reflect the needs of the particular refugee or refugee population. This is particularly important given the lack of local capacity for supplying the needed support.

For refugees who find themselves forcibly or voluntarily returned to BH, the need for sustained social assistance, in the form of hospitals, health clinics and food distribution, is often paramount, and for EVIs it is critical. While social assistance legislation has been established in both the Republika Srpska (hereinafter 'RS') and the Federation of BH (hereinafter 'Federation'),¹⁰ municipalities responsible for its implementation suffer from

⁷ Their poverty also stems from having no support network in BH -- that is, no relatives who can provide help and assistance.

⁸ Transit Centres have been established for temporary accommodation purposes for returning refugees. It is intended that returning refugees would spend between one week and maximum 3 months before they identify alternative accommodation arrangements. In reality, returnees spend longer than the desired and intended time in TCs. TCs are not to be confused with Collective Centres (CCs) which were established during the conflict to house internally displaced persons, and are not generally used to house returning refugees, except in limited circumstances. It should also be noted that there is a national policy to find durable solutions for the long-term CC residents in order to reconvert CCs into schools and public facilities, and hence, it is increasingly difficult for returning refugees or others to find accommodation there.

⁹ Even though the majority of Bosnian refugees were only admitted under "temporary protection" measures of host States, certain provisions under the 1951 Convention should be invoked in assessing their current returnability. For instance, the Convention prohibits the application of cessation clauses where a refugee can "invoke compelling reasons arising out of previous persecution for refusing to avail himself of the protection of the country of nationality." (Article 1C(5)). Some form of determination to prevent the return of these particularly compelling cases should therefore occur.

¹⁰ See, *Law on Social Protection, Protection of Civil War Victims and Protection of Families with Children*, FBH Official Gazette, no. 36/99, entry into force on 14 September 1999 and see also *Law on Social Welfare*, RS Official Gazette, no. 5/93, and *Law on Amendments and Supplements to the Law on Social Welfare*, RS Official Gazette, no. 15/96. In the Federation, the Cantons have also passed laws regulating the provision of social welfare. See *Law on Social Welfare*, Una-Sana Canton Official Gazette, no. 9/98, at 237; *Instruction on Method of Payment and Use of One Instalment Social Assistance*, Zenica-Doboj Canton Official Gazette, no.

insufficient resources and many refugees are often denied access or are required to make a financial contribution for such assistance. In addition, in the Federation, few Cantons have enacted complementary legislation, as required. Social institutions, such as homes for the elderly and hospitals, are often full and have only limited financial means at their disposal. Their capacity to absorb and assist returning EVIs is clearly meagre. Furthermore, given the Entities' emphasis on reconstruction efforts, the improvement and further development of these institutions is a low priority.¹¹ The return of large numbers of EVIs would overwhelm and potentially destabilise these social support structures.

This report highlights the need for continuing international protection and assistance to EVIs in light of the challenges they face upon return. General return difficulties have been highlighted throughout this report, with specific attention to their impact on EVIs. By examining the obstacles to effective reintegration, including the very limited capacity of local institutions to service more repatriates, UNHCR recommends that host States either continue providing protection to this category of persons in the spirit of humanitarianism, or provide effective and ongoing assistance that eases and sustains the return process. Moreover, host States should provide accurate information about the conditions in BH for those volunteering to return.

15/97, at 1032; *Law on Establishing Public Institution House for Elderly*, Gorazde Canton Official Gazette, no. 10/97, at 40; *Decision on Social Welfare and Protection of Civil War Victims*, Middle Bosnia Canton Official Gazette, no. 7/98, at 164; *Law on Social Welfare*, West Herzegovina Canton Official Gazette, no. 10/98, at 438; *Decision on Permanent Assistance in Cash for Socially Vulnerable Categories of Population*, West Herzegovina Canton Official Gazette, no. 6/97, at 126; *Law on Social Welfare*, Sarajevo Canton Official Gazette, no. 14/97; *Law on Protection of Families with Children*, Sarajevo Canton Official Gazette, no. 4/98, at 69; *Law on Basic Rights of Civil War Victims*, Sarajevo Canton Official Gazette, no. 4/98, at 65; and the *Law on Social Welfare*, Canton 10 Official Gazette, no. 5/98, at 130. The other Cantons continue to follow the *Law on Social Welfare*, SRBH Official Gazette, no. 39/84.

¹¹ In a report by the Ministry of Health of BH, the Ministry itself stated that money earmarked for reconstruction must not be spent on running costs in health care facilities. See, Federation of Bosnia and Herzegovina, Ministry of Health, *Report of the Ministry of Health* (1997).

II. RETURN TO A SITUATION OF INTERNAL DISPLACEMENT

Since widespread ethnic displacement was a central objective of the conflict in BH, the right of refugees to *return to their pre-conflict residence* is essential to effective peace-building. Return to pre-conflict homes is a recognised right under the GFAP, however, many repatriates find themselves returned to situations of internal displacement. Politics has often influenced where a repatriate, unable to return to his/her pre-conflict home, will be settled, either temporarily or permanently.

Broadly, the four main obstacles to return to one's pre-conflict property are that one's property is occupied by another person, one's property is damaged or destroyed and reconstruction assistance is required, or for employment or security considerations. Thus, many refugees simply cannot return to their pre-conflict homes immediately upon return, and hence become internally displaced.

The repatriation of refugees who face internal displacement (because they cannot return to their pre-conflict home), has far-reaching consequences, the combination of which frustrates the search for durable solutions and forecasts future instability. One, it adds more individuals to an already large IDP¹² population in BH. Two, it increases the pressure on the limited housing stock available and over-stretched absorption capacities. Three, it overlooks the need for promoting minority returns that is needed to reverse the ethnic displacement caused by the war. Finally, it means that generous repatriation grants are not invested in rebuilding new lives but spent on basic needs for subsistence.

The interim solution that has emerged for repatriates facing internal displacement has been local settlement¹³ in an area where the returnees would belong to the majority ethnic group. Yet the decision to settle locally must be voluntary,¹⁴ based on an informed choice, and must not infringe on anyone else's property rights. When host countries seek to return refugees, they should ensure that the return does not result in *hostile relocation* as a result of internal displacement. *Hostile relocation* is the deliberate placement of groups of people in housing belonging to other ethnic groups to secure control over territory and to prevent minority return.¹⁵ Such a practice completely disregards the rule of law, and is clearly in breach of the GFAP.

¹² For purposes of this paper, a refugee who is displaced upon return will not be considered an IDP, but a returnee who is displaced. The term IDP refers to those who were *internally* displaced during the conflict, and remain so today.

¹³ This is also sometimes referred to as relocation.

¹⁴ For instance, local settlement through the sale or exchange of property is voluntary. It occurs with the consent of both the individual who has settled locally to a new property, and the original owner of the property. It is an exercise of the rights of individuals under the GFAP to choose a new place of residence. It is a natural incident of a functioning economy and legal system, and is the means by which population movements occur in any society. Marcus Cox, *UNHCR & Commission for Real Property Claims of Displaced Persons and Refugees, Return Relocation and Property Rights*, at 23 (1997).

¹⁵ *Id.*

III. PROBLEMS ENCOUNTERED UPON RETURN BY EVIs

A. REPOSSESSION OF PROPERTY AND SUSTAINABLE RETURN

i) Return to Housing which is Currently Occupied

The repossession of property is a crucial element to sustainable return. Property represents stability, permanence and security, particularly for the elderly and single heads of household.¹⁶ During the conflict, laws were passed in both Entities which enabled the authorities to formally declare or register both privately-owned property and socially-owned apartments as “abandoned” after a person had fled, and to grant temporary occupancy rights over these homes to other persons. In addition, allocation right holders filed cases before the Court requesting the cancellation of the occupancy right in accordance with Article 47 of the *Law on Housing Relations*.¹⁷ Once cancelled, the apartments were allocated to a new occupant on a permanent basis. Furthermore, in the Federation, a law was passed requiring persons to reclaim and re-occupy their socially-owned apartments by January 1996. If persons failed to do so, their apartments could be declared “permanently abandoned” and allocated to other persons on a permanent basis. Such policy has served to block the return of tens of thousands of refugees and displaced persons to their pre-conflict homes.¹⁸ In the Republika Srpska, a provision stating that premises would be vacated on the basis of reciprocity in relation to the Federation and the Republic of Croatia or that return was possible only if the owner paid the temporary user compensation for the property that the current occupant lost in the other “Entity”, successfully prevented the return of displaced persons and refugees.

While the legal framework for filing repossession claims has been established in both Entities,¹⁹ the implementation of the laws has been slow and difficult, and few have been able to repossess their property. In many municipalities, claimants have been inappropriately asked to provide extra documentation or required to pay fees for the processing of their claims, even

¹⁶ Many EVIs want to return to their homes largely because their property is a means of subsistence. For elderly EVIs, if and when they receive pension benefits, which average 150KM in the Federation and 50KM in the RS, the amount is not sufficient to pay for rent *and* living expenses (which includes medical costs). Similarly, female-headed households also need to return to their homes because they do not have the means to take care of their children, and make enough money to pay for rent and living expenses for an entire family.

¹⁷ According to Article 47 of the *Law on Housing Relations* (SRBH Official Gazette, nos. 14/84, 12/87 and 36/89), an occupancy right can be cancelled when the occupant has not resided in the apartment for a continuous period of six months, except in certain limited circumstances (e.g. the occupant is serving in the military or undergoing medical treatment). The situation was rectified through an amendment which provides that occupancy rights cannot be cancelled automatically for failure to use an apartment since 30 April 1991, if the occupancy right holder is a person with a right to return under Annex 7. A further amendment stipulated that all pending court proceedings applying Article 47 of the *Law on Housing Relations* are terminated and that all court decisions based on this very Article 47 and which were rendered since 1 April 1991 shall be cancelled (see the *Law on Amendments to the Law on Housing Relations*, RS Official Gazette, no. 12/99; the *Law on Amendments to the Law on Taking Over the Law on Housing Relations*, FBH Official Gazette, nos. 11/98 and 19/99).

¹⁸ This law has been over-turned by a decision of the High Representative of 13 April 1999 and makes permanent occupancy rights only temporary.

¹⁹ The *Law on Cessation of the Application of the Law on Temporarily Abandoned Real Property Owned by Citizens*, the *Law on the Cessation of the Application of the Law on Abandoned Apartments*, the *Law on the Taking Over of the Law on Housing Relations*, and the *Law Amending the Law on the Sale of Apartments with an Occupancy Right* came into effect on 4 April 1998. FBH Official Gazette, no. 11/98, 3 April 1998 and further amendments. The *Law on the Cessation of the Application of the Use of Abandoned Property*, RS Official Gazette, no. 38/98 and further amendments.

though a clear instruction prohibits this practice. Cases of misinformation, refusal to provide proper claim forms to applicants, or deliberate confusion with other procedures have also been reported.²⁰

According to the most recent survey of municipal authorities in the Federation, some 72,000 claims have been registered for socially-owned apartments, and 18,000 for private property. However, only 18,000 positive decisions have been made in relation to apartments, and 6,000 on private housing. Even when the housing authorities have recognised property rights and issued positive decisions, displaced persons and refugees have been unable to repossess their property due to a lack of enforcement of those decisions. In fact, only 2,800 reinstatements for socially-owned apartments, 2,600 reinstatements for private property, have occurred. For the Republika Srpska, some 19,000 claims have been registered for socially-owned apartments, and 56,000 for private property. Only 1,100 positive decisions have been issued in relation to apartments, and 6,300 in relation to private housing. Of these, only 177 and 2,400 reinstatements have occurred respectively.²¹ The reality is that many persons must remain internally displaced awaiting the repossession of the property. For instance, many Bosniacs who were expelled from their homes in the RS during the war, are unable to return because their homes are currently occupied by displaced Serbs originating from the Federation. Given that the lack of enforcement of decisions is often due to political factors beyond the control of individuals themselves, their physical presence in Bosnia is largely irrelevant to the decision-making process. Individuals are not generally able to place pressure on the authorities to make decisions. In fact, many claimants are intimidated by the whole process and are reluctant even to submit their applications in person or to attend oral hearings for fear of abuse. Therefore, the belief that physical presence in the territory of BH will assist applicants in enforcing their decisions is incorrect. The factors preventing return are largely beyond the influence of individual claimants, and this includes also their inclusion in shelter projects.

The slow implementation rate has been attributed to several factors. (i) One, there is a shortage of alternative accommodation for current occupants who are unable to return to their own housing. (ii) Two, even where temporary accommodation does exist, the authorities have failed to evict illegal and double occupants, as well as temporary occupants. (iii) Three, the authorities claim to be overworked, lacking staff and resources, and unable to render decisions within the deadlines stipulated in the property laws. (iv) Four, the authorities have also neglected the repossession claims relating to former JNA (Yugoslav National Army) flats. (v) Finally, and most importantly, there is a widespread lack of political will among the local authorities to implement the property laws.

ii) Return to Housing which is Currently Damaged or Destroyed and Uninhabitable

Those refugees whose property was damaged or destroyed during the war, making it uninhabitable, face a different set of challenges. In order to get reconstruction assistance for homes that are destroyed, individuals must apply to the municipal body responsible for reconstruction where they are placed on a list. When the municipality receives funds from the

²⁰ See Update of UNHCR's Position, *supra* note 6, at paragraphs 2.4 through 2.7 (referring to monitoring exercise conducted in summer 1998 and January 1999).

²¹ Note that these figures are based on information from municipal bodies compiled during a monitoring exercise carried out by OHR, UNHCR and OSCE. The figures are valid as at 31 July 1999 for the Federation. The RS figures were provided by the Ministry for Refugees and Displaced Persons, October 1999.

international community, it disburses money to those on the list in chronological order.²² Many individuals have been waiting for several years to receive such reconstruction assistance. Again, belonging to an ethnic minority will impact the ease with which one can obtain or not obtain such reconstruction assistance.

In addition, certain reconstruction projects require that refugees abroad first return to BH before their application for assistance will be assessed. This means that persons must first return to places of internal displacement, often in TCs or unofficial CCs, while waiting their application to be processed. Even then, there is no guarantee that their home will in fact be accepted into a reconstruction project.²³

iii) Interim Solutions while Awaiting Repossession

While repatriates are waiting either for a decision on repossession or reconstruction assistance, they are forced to find accommodation elsewhere, often in areas which are not their pre-conflict municipality. This means that many persons move into other people's homes illegally or they are forced to rent, or they are accommodated in TCs or unofficial centres, where space is available. In spite the fact that at 31 August 1999, there were a total of 109 official CCs operating in BH (50 in the Federation and 59 in the RS) housing a total population of 11,498 displaced persons (5,203 in the Federation and 6,295 in the RS), access to such CCs is usually only available to returning refugees in exceptional circumstances.²⁴ CCs were intended for the use of internally displaced persons who remained throughout the war and not for returning refugees. With the current withdrawal of UNHCR financial support, most areas in the Federation and the RS are not admitting persons to CCs.²⁵ Closed CCs are now being reconverted into schools and other public facilities. Such displaced persons may find accommodation, however, in a TC in the Federation, although approval by the relevant authority is required. Unfortunately, in the RS, no TCs exist, so there is usually a difficult struggle to locate some other form of accommodation, and CCs are sometimes used as the only available alternative. Some of the unofficial CCs, where returnees may find themselves, having been rejected from accessing official CCs or TCs by the relevant local authority, are over-crowded, poorly sanitised and they are not serviced (e.g. no electricity, no food assistance). In addition, many CCs (official and unofficial) and TCs are located away from cities and towns, which prevents residents from finding jobs, attending schools, or accessing medical treatment.

While the majority of the returning refugees were given repatriation assistance grants by their host States,²⁶ the IOM has found that only 30% of the money is used for home

²² For instance, the Central Bosnian Canton's municipalities of Travnik, Vitez, Donji Vakuf, Bugojno, and Jajce received US\$ 7.7 million through the EU and the German government for reconstruction of 475 damaged houses belonging to the internally displaced, as well as the reconstruction of communal and social welfare facilities. ONASA, April 15, 1999.

²³ This is the criteria used for the THW (Technisches Hilfswerk) reconstruction project in Kozarac, Prijedor Municipality. In Kozarac, there are approximately 3,500 destroyed homes requiring reconstruction assistance. THW only has funding to reconstruct approximately 1,000 of them. In this area, there is certainly no guarantee that one's home will be reconstructed.

²⁴ As at 31 August 1999, there were a total of 9 TCs in the Federation, housing 530 displaced persons. With a total capacity of 1072, there was only space available for another 542 persons. (UNHCR, Operations Unit, Office of the Chief of Mission, 31 August 1999).

²⁵ Information compiled by UNHCR Field Offices throughout Bosnia and Herzegovina.

²⁶ Returnees from Germany typically receive amounts that range from 1350KM per family to a maximum of 9000KM per family. Paula M. Pickering, International Organisation for Migration, *Back to Bosnia and Herzegovina*, at 44 (1999) (hereinafter 'IOM Report').

renovation.²⁷ The difficulties in repossessing property and high level of unemployment²⁸ leaves many returnees without the means to meet immediate living expenses. As such, 59% of the grant money is spent simply to cover living costs, and little money for home renovation remains.²⁹ These grants therefore have a short-term effect and do not contribute to a durable solution. It is therefore important that host States supplement such individual grants with investments in the local infrastructure, which could help resolve the broader structural problems of limited available housing, high unemployment, and weak social welfare realities. Such assistance is necessary and effective given that the return of refugees strains the existing local institutions that are slowly rebuilding after a devastating conflict.

iv) Impact on EVIs

Unable to repossess their property and without the means to cover both rent and living expenses, EVIs often find themselves without permanent accommodation, so they may be accommodated in a TC in the Federation or in an unofficial CC. Clearly, crowded accommodation in CCs or TCs or unofficial CCs is not a satisfactory response for some EVIs and are not conducive to successful reintegration.

The slow implementation of the property laws serves to prolong their stay in such facilities. It must also be kept in mind that some groups of EVIs simply do not have the physical or mental stamina to persist in the face of bureaucratic obstacles.³⁰ They are more likely to give up, which simply continues the cycle of vulnerability. Without basic and stable accommodation, they are unable to rebuild a viable life. Return to such conditions is not consistent with the principle of safe and dignified return, and also fails to meet the requirements of Annex 7 of the GFAP.

B. RESIDENCE REGISTRATION, ID CARDS AND DP CARDS

i) The Procedure Generally

Residence registration in the municipality where a returning refugee seeks to live is mandated by law in both the Federation and the RS. Residence registration officially recognises an individual as a resident of a particular municipality, establishing a legal relationship between the returnee and the authorities. Residence registration is important in relation to accessing the public health scheme and food distribution (see later section) or any other assistance provided by the municipality, as well as receiving pensions (see later section). Many returning refugees face difficulties in registering as the procedures in both Entities require proof of accommodation in the municipality where an individual seeks to register. It should also be noted that registration in both Entities also takes place at local police stations ('MUP' or 'PSS'), which can be a difficult step to take for many returning refugees who are an ethnic minority in that municipality. Once someone has registered their residence, they will be entitled to be issued with an Identification Card (hereafter 'ID Card').

²⁷ *Id.* at 45.

²⁸ According to the Office of the High Representative's Economic Task Force Secretariat, there is 39% unemployment in FBH, and 36% unemployment in the RS (June 1999). Worse yet, an IOM study of returnees from Germany revealed that 89% of all the professionals and 92% of all skilled people among the returnees were unemployed. See IOM Report, *supra* note 26, at 46.

²⁹ IOM Report, *supra* note 26, at 45.

³⁰ Several elderly returnees in CCs in Tuzla expressed resignation at repossessing their homes in the RS. They have been waiting over two years.

- **Return to Pre-conflict Municipality**

For those returning to their pre-conflict municipality, a returnee will not be required to re-register unless s/he de-registered upon departure. However, if s/he is not returning to her/his pre-conflict residence, some municipalities require that s/he registers the change of address as a 'permanent address', before they will be issued with an ID Card. Such deregistration instils fear in some refugees, who believe that deregistration will somehow impair their ability to repossess their property. They therefore hesitate to do so, and choose simply not to register. As such, they do not receive their ID Cards.

An ID Card is necessary to access health care and other assistance provided by that municipality.³¹

- **Return to a Situation of Internal Displacement**

If a returnee returns to a municipality *other than* her/his pre-conflict municipality, s/he must register as a displaced person with the municipal body responsible for displaced persons and refugees in their area of displacement in cases where displaced persons are in need of assistance. In addition, s/he must also register her/his 'temporary residence' at the MUP or PSS and s/he will be issued with a special ID Card of 'temporary validity' upon request. Both the ID Card and the Displaced Person Card (hereafter 'DP Card') grant entitlements to different services in the municipality of displacement or temporary residence.

One of the basic rights associated with a DP Card is access to accommodation if one is in need. Theoretically, municipalities are responsible for identifying accommodation for such DPs. In practice, however, if the municipality is unable to find or to have any available housing, it will refer the individual to another municipality until some accommodation is found. For displaced persons who have already located accommodation, and yet who still have difficulties registering as a DP, often because municipalities do not want to recognise more DPs, they may be forced to search for a municipality to register them. This means that to access social services one must travel from her/his place of unregistered temporary accommodation to the municipality in which s/he is registered. This is an added burden and expense for families, especially for EVIs. In addition, sometimes the second municipality will require a displaced person to sign a document stating that they will never seek accommodation from that municipality.³²

In this context, it must be stated that UNHCR does recognise the rights of displaced persons and refugees to take up settlement somewhere other than their pre-conflict home (i.e. local settlement), provided the following criteria are taken into account:

- the property rights of others are respected;
- the return is voluntary;
- the return is based on an informed choice as to the desired place of residence, whether to newly built or existing accommodation;
- due consideration is given to the absorption capacity of a particular municipality against the number of persons to be integrated;

³¹ It should be noted that a DP Card entitles a person to obtain assistance as outlined under the *Law on Displaced Persons and Refugees*. In practice, however, an ID Card is demanded by the authorities when DPs want to exercise their rights.

³² This has certainly been the case in Tuzla Canton.

- and recognising the political objectives of local settlement and the avoidance of *hostile relocation*.

ii) **Registration Problems for Returning Refugees to the Federation**³³

• **Spontaneous Returnees**

According to the applicable legal framework, all Bosnian citizens have the right to return to Bosnia and Herzegovina without any procedures or pre-conditions. However, the Federation Ministry is not under a legal obligation to assist persons returning outside organised repatriation procedures.³⁴ Such persons are referred to as ‘spontaneous returnees’. Since the law does not oblige municipalities to accept and assist those refugees who return spontaneously, the municipal secretariats for refugees and displaced persons can reject a spontaneous returnee’s request to be registered, if the person does not have any accommodation, nor is it obliged to identify accommodation for this spontaneous returnee in that specific municipality. This is irrespective of whether the returnee originated from the municipality or has settled locally to the municipality.³⁵

A spontaneous returnee who cannot return to her or his pre-conflict residence and who has no accommodation or relatives in another municipality must go through a series of bureaucratic hurdles before registering. If s/he has no accommodation or links in the municipality where registration is sought, then s/he will be, **in theory**, referred by the municipal authorities to the Cantonal authorities to examine whether s/he has any links to one of the other Federation Cantons. If yes, s/he will be referred to that Canton. If not, s/he will be referred to the nearest Canton to her/his pre-conflict municipality, provided accommodation is available there. If no accommodation is available in the Canton nearest to the pre-conflict municipality, then the Federation Ministry will contact all other Cantons to find out where accommodation might be available. Identifying available accommodation, however, has become increasingly difficult since the passage of amendments to the property legislation (April 1998), which prohibits the authorities from declaring living units as abandoned and allocating them to displaced persons.³⁶ In some Croat-administered areas or municipalities, minority returnees face major problems obtaining or using Federation ID Cards (Cantons of Central Bosnia, Posavina, Neretva, and Herzeg-Bosnia).

Given the lack of actual absorption capacity, combined with the slow pace of reconstruction, it cannot be ruled out that many Cantonal authorities will limit access to their ‘territory’ to pre-conflict residents and their family members, and refuse access to internally displaced persons and persons who have settled locally.³⁷

• **Organised Returnees**

³³ See generally UNHCR, *Registration of Repatriates in the Federation of Bosnia and Herzegovina and Entitlement to Identity Documents, Food Assistance, and Medical Care* (November 1998) (hereinafter ‘Registration Study FBH’).

³⁴ For further details, please see pages 11 and 12 of the Registration Study FBH.

³⁵ Note that deportees are considered to be ‘organised returnees’.

³⁶ It should be noted that a subsequent decision of the High Representative (July 1, 1999) allows the authorities to allocate ‘unclaimed apartments’ to displaced persons in need of accommodation. Although the housing stock in this category has not yet been assessed (at the time of this report), given the number of claims filed, it is expected that the number of apartments made available will be minimal and are for persons who have to vacate accommodation they are currently occupying.

³⁷ For further problems, please see 15 to 31 of the Registration Study FBH.

In the immediate post-conflict period, a clear repatriation process was in place, for those who wished to return in an organised manner. Part of this process was a ‘clearance’ by the authorities that accommodation was available and such persons could return. In practice, however, only repatriates who could either return immediately to their pre-conflict residences or who could be received by relatives or friends, were ‘cleared’ by the municipal authorities. Currently, under the new State Instruction,³⁸ the right to return is unconditional and no prior clearance is necessary. However, if persons wanting to return to BH in an organised manner but are unable to return to their pre-conflict homes at this stage, BH authorities would need to identify temporary accommodation before their actual return. In practice, some host States arrange for the construction of facilities to house their returnees in co-operation with the BH authorities.

UNHCR supports such measures, provided the following criteria are taken into account:

- arrangement between host country and the respective authorities to ensure accommodation in a specific centre and to be registered and issued with the necessary documentation to have access to assistance;
- the return is voluntary;
- it is based on an informed choice;
- prospects for return in the near future are a reality;
- follow-up structures are set in place to assist refugees to return to their pre-conflict homes or to develop other durable solutions in cases where due to a change in the situation on the ground return is no longer feasible;
- centres are established in “acceptable” areas where they do not prevent the return of pre-conflict residents or pose a provocation for current residents (e.g. return area for minorities; Zone of Separation);
- secured funding to maintain the centre and assist refugees in need.

iii) **Registration Problems for Returning Refugees in the RS³⁹**

The currently applicable *Law on Refugees and Displaced Persons*⁴⁰ stipulates that the municipalities are obliged to receive refugees⁴¹ and displaced persons,⁴² provide for their registration and the regulation of their status, plan and provide assistance with regard to

³⁸ *State Instruction on the Return of Bosnian Refugees and Displaced Persons to/within the Territory of Bosnia and Herzegovina* - as at time of writing this paper, the State Instruction had been adopted by the Council of Ministers in July 1999, but has not yet been signed by all members as required.

³⁹ See generally, UNHCR, *Registration of Repatriates in the Republika Srpska and Entitlement to Identify Documents, Food Assistance, and Medical Care* (April 1999) (hereinafter ‘Registration Study RS’).

⁴⁰ *Law on Refugees and Displaced Persons*, RS Official Gazette, no. 26/95 (hereinafter 1995 ‘*Law on Refugees and Displaced Persons*’).

⁴¹ Under Article 2(1) of the 1995 *Law on Refugees and Displaced Persons*, refugees are defined as “citizens of Serb or other nationality who, owing to genocide threats, persecution and discrimination, religious or national tolerance or political opinion or due to a well-founded fear for one’s life, who have been forced to leave their homes, located in the parts of the Republika Srpska, which were held by the Muslim-Croat Federation, or in another state whose citizenship and protection they reject, and who have escaped to the territory of the RS.”

⁴² Under Article 2(2) of the 1995 *Law on Refugees and Displaced Persons*, a displaced person is defined as “citizens of the Republic who due to war activities, destruction of their homes, proximity to the front line or a well-founded fear were forced to leave their homes to find temporary accommodation in safer places in the RS.”

satisfying their basic needs, provide temporary accommodation and carry out other tasks which are important for the protection of refugees and displaced persons.

Not unlike the Federation, the RS also suffers from a lack of available accommodation to house displaced persons, and hence making it impossible in nearly all the areas to provide such accommodation. The result is that returning refugees to the RS who become internally displaced are often required to first identify their own accommodation (with relatives, renting) before they will be registered as DPs.⁴³

In theory, Article 8(3) of the 1995 *Law on Refugees and Displaced Persons* gives the authorities the right to accommodate refugees and displaced persons in areas where geographical and other conditions are the same or similar to those in their place of origin. But since the authorities are no longer legally entitled to allocate housing to such persons, the only available accommodation in RS municipalities are CCs, and with the current policy to find durable solutions for the long-term CC residents in order to reconvert CCs into schools and public facilities, these CCs are also not available without strong international intervention in individual cases.

Although the situation has improved for minority repatriates who wish to receive their RS Cards, the processing of the requests for issuance of ID Cards is still slow and interventions by the international community are necessary. One particular area of concern has been the ex-officio residence deregistrations in the Banja Luka area carried out in 1995/1996 based on lists of those who wished to leave the RS (mostly minorities), irrespective of whether they left the country or not. As a result, persons who now want to return or who remained in the area do not 'exist' for the RS authorities, and they face serious problems in regularising their status.⁴⁴

iv) Impact on EVIs

It is clearly recognised that being registered, either as a permanent resident or as a temporary resident/DP, is important in being able to exercise one's rights, but it is critical for EVIs. Without registration, EVIs face the probabilities of being denied medical care and other social services. For elderly residents or displaced persons, this can have very serious consequences. Their ability to receive much-needed assistance is sometimes hindered by a series of administrative and political obstacles, such as mandated residence registration that requires proof of accommodation or family ties. It is the absence of these two criteria that makes an already vulnerable individual even more needy of assistance.

C. REGISTRATION AS THE KEY TO SOCIAL SERVICES

i) Access to Food Assistance in the Federation and the RS - Impact on EVIs

From September 1997 until July 1999, the World Food Programme ('WFP') provided food aid to the most vulnerable individuals. In order to be eligible for food assistance, repatriates had to fulfil the criteria established by the WFP and be registered with the relevant local authorities.⁴⁵ With the end to WFP, Catholic Relief Services ('CRS') has taken over the

⁴³ The *Draft Law on Displaced Persons and Refugees*, which carries some vital amendments, passed the House of Assembly on 28 October 1999, but has not yet been published. How this will be implemented is yet to be seen.

⁴⁴ Further problems in relation to residence registration and issuance of ID Cards are outlined on pages 22 and 39 of the Registration Study RS.

⁴⁵ The WFP designated the following four categories as eligible beneficiaries:

role of food distribution to the WFP caseload, however, there have been substantial cuts to funding and beneficiaries.⁴⁶ CRS will continue distributing food baskets to a total of 11,922 beneficiaries until March 2000 (5,063 beneficiaries in the Federation housed in CCs, 6,499 beneficiaries in the RS housed in CCs, and 360 Bosniak returnees to Gacko and Nevesinje in the RS). CRS funding after March 2000 has not been secured, but CRS hopes to be able to continue providing food assistance to EVIs, with a total estimate of 20,000 beneficiaries. The criteria to be used would be persons earning/receiving 30KM⁴⁷ or less per month. Given that in June 1998, WFP distributed to 580,000 persons and in September 1998 until July 1999 to 175,000 persons, the fall to only 11,922 beneficiaries has created severe difficulties to hundreds of families, and to many EVIs.

Clearly, the withdrawal of the WFP has repercussions on EVIs who relied on WFP for food assistance. For instance, in Berkovici, 397 persons were receiving food assistance from WFP, most of which were elderly. The municipality claims that they do not have sufficient funds to assist even the most needy. Presently, it is giving 28 KM per child per month to families with three or more children (84KM at a minimum). Another disturbing example is the withdrawal of Adventist Development Relief Agency ('ADRA') from Prijedor, where 9,270 received assistance from ADRA. The municipality there also states that it does not have funds.⁴⁸ And there are many other examples.⁴⁹

ii) Access to Health Care in the Federation

Generally, to be included in the public health scheme, repatriates returning to their pre-conflict residences or 'persons in need' under Article 5 of the Federation *Law on Displaced-Expelled Persons and Refugees*⁵⁰ must first register their residence with the MUP and/or approach the MUP for the issuance of an ID Card. Further, they have to fall into one of the

-
1. Elderly (over 65 years for men and 60 for women) living alone and without family support, and with a pension below 50KM per person per month and no possibility of additional income;
 2. Physically and mentally handicapped individuals incapable of working, and with a compound income (including invalid benefits) of less than 50KM per person per month, and without another member of the household capable of working (capable here denotes adults physically and mentally capable of undertaking productive activity);
 3. Single parents with a child or children below 15 years of age, without family support and with a total income (including child benefits) of less than 50KM per person per month; or
 4. Foster children or orphans in households with no members capable of working and with a compound income of less than 50KM per person per month.

⁴⁶ Other non-government organisations also distribute food assistance for different types of beneficiaries and different areas, however, it is usually on an periodic and ad hoc basis. For instance, Action Contra La Faim, Caritas BH and Merhamet distribute food on an ad hoc basis, while Hilfe Konkret distributes to between 1,500-2,000 elderly persons in the Tuzla Canton.

⁴⁷ KM stands for Konvertible Marks which have a value equal to one German Mark.

⁴⁸ *Cessation of WFP Aid Critical for 397 people in Berkovici*, ECMM Trebinje (July 21, 1999); *Red Cross in Prijedor Can't Support Refugees and DPs in Need Anymore*, ECMM Prijedor (July 20, 1999).

⁴⁹ For instance, in Bileca, both the WFP and some German NGOs (which were funding a public kitchen in Bileca) withdrew their programmes in July 1999. There were 420 beneficiaries of the WFP. No alternative option for these people has been introduced, and the local authorities cannot assist because of the lack of money in the municipal budget. The Director of the Centre for Social Help in Bileca expressed grave concern about the critical situation of 167 persons who are living in Bileca Municipality. Most of them are old persons with no family or other care. *Difficult Economic Situation in Bileca Affects the Social Situation*, ECMM Trebinje (July 30, 1999). Another example is Visegrad where 2,300 people relied on assistance from WFP, of which 500 were completely dependent on the aid (mostly elderly and children). *Withdrawal of WFP in Visegrad*, ECMM Rogatica (July 13, 1999).

⁵⁰ FBH Official Gazette, no. 2/95, 19 February 1995.

categories of citizens who have compulsory health insurance⁵¹ or have signed up for a voluntary health insurance. Upon return, the authorities look at the pre-conflict situation of the returnee concerned and check whether s/he can be re-instated in her/his pre-conflict health insurance scheme. If refugees had health insurance before going abroad and they are now unemployed upon return, then they must register as unemployed within 30 days upon arrival with the Employment Office.

Once displaced persons have regularised their status with the municipal office responsible for displaced persons and refugees, those who do not fall into one of the categories of citizens who have compulsory health insurance and are destitute will receive basic health care, depending on the Canton and the area. Usually, basic health care includes only access to primary health care, and does not include hospital treatment or secondary care. Access to and the type of assistance provided also varies among the Cantons. Some of the Cantonal Assemblies have already passed regulations stipulating that insured persons must contribute to their medical expenses.

Those persons who are not insured and not registered must pay for the full costs of their medical treatment. Access to health care in emergency cases is ensured at the Cantonal level under the *Law on Health Care*.⁵²

Impact on EVIs

Health and medical services are particularly important to EVIs who, due to their age, illness or disability, or trauma, are in great need of medical attention, and/or counselling. As shown above, even in practice access to health care in the Federation is difficult, and where persons cannot pay a proportion or the full amount of the treatment, even for basic health care, they may go untreated. For many EVIs, they simply cannot afford to pay and will be precluded from medical care.

iii) Access to Health Care in the RS

The *Law on Health Insurance*⁵³ guarantees compulsory health insurance to fourteen categories of individuals, including pensioners, unemployed persons and refugees and displaced persons.⁵⁴ Of course, this presupposes that the individuals have registered with the appropriate agency in order to first establish their status as a person who qualifies for compulsory health insurance.

Furthermore, the situation on the ground reveals that insured persons do not always obtain medical assistance according to the terms outlined in the Law. In some cases, persons have to pay the full amount of their treatment. This is often the case if the respective bodies, such as the employer, do not have the financial means to cover the compulsory contributions to the Public Fund of the Health Insurance. In some areas, insured persons have to pay for the full costs of medical services provided, and in other areas, only primary health services are free

⁵¹ Under Articles 19 and 20 of the *Law on Health Insurance* (FBH Official Gazette, no. 30/97), the following main categories of citizens have compulsory health insurance: employed citizens, farmers, pensioners, citizens registered as unemployed persons with the Employment Office, invalids, members of the Federal Army, Cantonal police officers, and the immediate family members of persons in these categories unless they enjoy health protection on some other grounds.

⁵² Article 9, *Law on Health Care*, FBH Official Gazette, no. 29/97.

⁵³ RS Official Gazette, no. 18/99.

⁵⁴ It should be noted that Articles 6, 7 and 9 of the 1995 *Law on Refugees and Displaced Persons* stipulate, among other rights, the right to health care to displaced persons and refugees, which brings them under the coverage of the *Law on Health Insurance*.

of charge. If patients are advised to go to private institutions because of the poor condition of State medical facilities, they will have to pay the full amount of their treatment.

Under the legal framework, to be covered by the health scheme, repatriates returning to their pre-conflict residences must first register with the local Public Security Station, if they deregistered, and/or they must approach the Public Security Station for the issuance of an RS ID Card. Then, they must either fall into one of the categories of citizens who have compulsory health insurance, or they must have enrolled for voluntary health insurance. Repatriates who cannot return to their pre-conflict residences but who are destitute and need assistance, must first regularise their status with the competent body in charge of refugees and displaced persons in order to receive health care. Once their status is regularised, these repatriates will be entitled to receive only basic health care. This means that they will not be entitled to receive treatment requiring specialists or hospitalisation, unless they can pay the full amount. Finally, non-registered and non-insured repatriates only have access to medical assistance free of charge in cases of emergency treatment.⁵⁵ Otherwise, they are required to pay the full cost of such treatment.⁵⁶

Impact on EVIs

The situation of the health system in the RS is similar to that in the Federation and EVIs will face the same possibility that they may be denied access to health services and treatment where they either cannot be registered, and even if they are registered, where they cannot afford to make a financial contribution, even if they are covered by the health scheme.

iv) The Standard of Health Care Available

The health of the population of BH suffered tremendously as a result of the conflict. Furthermore, the quality of health care services deteriorated and the health care infrastructure was severely damaged in many parts of the country. The ravages of the conflict produced the following:⁵⁷

- the wounding of more than 200,000 people (including 50,000 children);
- the permanent physical impairment of more than 13,000 people (including 5,000 who lost their limbs);
- a two-to-five-fold increase in the number of people with communicable diseases;⁵⁸
- a doubling of infant mortality and premature death rates;
- damage or destruction of 35 to 50% of the health-care infrastructure;
- loss of 35% of hospital bed capacity;
- critical shortages of essential drugs and supplies;
- a decrease in the number of active health personnel by 40 to 50%.

The non-existence of, or inadequate, health and social security programmes combined with unemployment, difficult life conditions, and a decrease in living standards, have led to an

⁵⁵ This covers individuals whose life is vitally threatened.

⁵⁶ For further details, please see pages 53 to 63 of the Registration Study RS.

⁵⁷ European Commission and the Europe and Central Asia Region of the World Bank Report, *Bosnia and Herzegovina Priority Reconstruction Program: Achievements and 1998 Needs*, at 33 (April 1998) (hereinafter 'Priority Reconstruction Program').

⁵⁸ For instance, between 1993 and 1997, the number of persons diagnosed with tuberculosis increased more than seven times. See Report of the Federation Ombudsmen, *Report on the State of Human Rights in the Federation of Bosnia and Herzegovina in 1998*, at 35 (April 1999).

increase in serious illness, particularly infectious diseases, and high mortality. Rural residents complain about the poor conditions of roads and lack of access to health facilities; basic health care is available to only 28% of the rural people surveyed, and only 13% of them have a pharmacy nearby.⁵⁹ As for those accommodated in CCs, 20% of the residents in CCs in the RS suffer some form of chronic illness.⁶⁰

Larger economic problems in BH also means that there is insufficient funding for sustaining the present, albeit basic, system. Employees at hospitals and pharmacies are often not paid for extended periods of time, and eventually choose to leave. This results in understaffed institutions in the face of increased demand following the conflict. For example, the lack of money for the Brcko hospital has led to the distribution of expired medication to patients and the postponement of non-emergency operations. Salaries have not been paid, and it was stressed that even if the employees worked for free, the Brcko hospital could continue to operate for two more months.⁶¹ Although the international donor community has provided some funding to rebuild the ruined health-care system, continued financial assistance will be needed before a functioning health-care system emerges.⁶²

The gap in health services has been filled partly by international non-governmental organisations. For example, Pharmaciens Sans Frontieres (hereinafter 'PSF'), which arrived in BH in 1992 immediately after the conflict began, have supplied certain types of medicine free of charge in BH to seven categories of extremely vulnerable individuals.⁶³ As of April 1999, a total of 289,667 individuals were receiving free medicine provided by PSF, of which 40% were elderly, 31% were families with income of less than 50KM per dependent, and 14% were physically and mentally handicapped individuals.⁶⁴

Yet PSF plans to phase out by the end of 1999, as many other international organisations have already done or are in the process of doing. It expressed some concern at the ability of the Ministry of Health to secure medicinal supplies independently. For example, PSF informed the Ministry of Health at the Cantonal levels that it would cease to provide insulin within one year. After one year, when PSF stopped supplying insulin, it discovered that the Ministry of Health had not taken any measures to prepare for the insulin cut.⁶⁵ Such lack of planning on the part of the Ministry of Health reveals their incapacity to provide for the people to whom they are responsible. With the departure of PSF, a large number of EVIs will be deprived of free medicine. Furthermore, as the Ministry of Health's response to the insulin cut indicates, it is unlikely that the shortage of supplies will be filled quickly, jeopardising the

⁵⁹ World Bank Report, *A Social Assessment of Bosnia and Herzegovina*, , at 17 (April 1999).

⁶⁰ *Collective Centres in Republika Srpska*, ARA (Agency for Refugee Assistance), August 1999.

⁶¹ *Brcko Hospital Will Close Due to Lack of Funding*, ECMM Doboju (July 8, 1999).

⁶² Priority Reconstruction Program, *supra*, at 33.

⁶³ The seven categories PSF identified are as follows:

- 1) Elderly (over 60 years of age for males and over 55 years of age for females) who receive a pension of less than 150KM per month.
- 2) Self-supporting parents with children, whose financial assistance is less than 50KM per month, per member of family (dependants).
- 3) Physically and mentally handicapped persons (such as, war invalids, paraplegics, dystrophic, and mentally retarded people) and life-long disabled persons.
- 4) Orphans or adopted children who live with a family that is in a situation of hardship.
- 5) Persons without income, except for basic financial assistance which is below 50KM per month.
- 6) Families that have an income of less than 50KM per month per dependent family member.
- 7) Persons who live in a specific institution or Collective Centre, who receive financial assistance of less than 50KM per month. See Pharmaciens Sans Frontieres, *Targeted Distribution Programme To The Most Vulnerable People: Current Balance Sheet*, Appendix III.2 (March 1999) (hereinafter 'PSF Report').

⁶⁴ PSF Report, *supra*, at Appendix III.2.

⁶⁵ PSF Report, *supra*.

health of many EVIs. Increased numbers of returning EVIs would simply add pressure to an already weak health-care system.

Impact on EVIs

The move to privatising health care in BH and the withdrawal of organisations such as PSF has further complicated access to medical treatment. EVIs simply do not have the financial means to pay, and are frustrated by what appears to be an unyielding new health care system.⁶⁶ Some Cantons have determined that refugees and retired persons with lower than an indicated amount of income are entitled to free health-care. Sarajevo Canton, for instance, stipulates that elderly with a pension of less than 50KM per month can receive free health-care. This, of course, presupposes registration and receipt of an identification card (as discussed above). However, in many other Cantons, EVIs, who due to their personal situation, which means that they are often most in need of medical care, may well be precluded from access to such care.

v) Difficulties in Obtaining Pension Payments

According to the World Bank's Social Assessment of BH, delays in pension payments are a major cause of hardship and anxiety for pensioners.⁶⁷ The delays stem in part from the fragmentation of the Pension and Invalid Insurance Fund of BH, which split into three separate funds during the conflict: the Sarajevo Fund (the original headquarters of the Fund), the Mostar Fund and the Republika Srpska Fund. Each fund became exclusively responsible for the pensioners living in its ethnically-determined area.⁶⁸ As a result, the right to receive a pension is perceived to be directly linked to one's post-conflict permanent residence. Furthermore, the division of the Fund into three ethnically-determined regions appears to politicise access to pensions, particularly since there is evidence of discriminatory practices against minorities.⁶⁹ Moreover, there is neither law nor agreement regulating relations between the Federation funds and the RS Fund, which can have the effect of denying access to pensions for some persons. While the pension problem affects many persons, for the elderly, in particular, but also for widows and single parents with children, it is crucial that they are able to access their entitlements as this is often the only source of income that is available to them.

In the RS, for instance, entitlement to pensions is linked directly to permanent residence on the territory of the RS. If a refugee, who worked in the RS before the conflict and made pension contributions to the RS Fund, is returned to the Federation, s/he is not able to receive her/his pension from the RS because s/he is no longer living there. One must have registered her/his *permanent* residence in the RS in order to receive pension payments. For returnees that are internally displaced in the RS, many of whom are in temporary accommodation facilities, registering a permanent residence is not possible and they are thus denied access to their pensions. This is also the case for persons who contributed to one of the Federation funds but who is returned to the RS.

⁶⁶ A study by PSF revealed that the main problem faced by humanitarian pharmacies is that patients think they are entitled to free medicine (71% of the pharmacies reported this as being their major problem), See Pharmaciens Sans Frontieres, Sarajevo, *Report Of Survey On The Humanitarian Pharmacies*, Federation, BH, at 12 (May/June 1999)

⁶⁷ World Bank Social Assessment, *supra*, at V, paragraph 7.

⁶⁸ OSCE, *Falling Through The Cracks: The Bosnian Pension System And Its Current Problems*, at 6 (1999) (hereinafter 'OSCE Report: Falling Through the Cracks').

⁶⁹ *Id.* at 13.

The situation in the Federation is equally cumbersome. Pension payments are contingent on repossession of property, as well as permanent residence registration. Therefore, until returnees to the Federation are able to regain possession of their pre-conflict home and register as permanent residents, they will not be able to receive a pension. Further, the Federation is currently applying an Instruction relating to the Sarajevo Fund,⁷⁰ according to which only persons who acquired pensions before 6 April 1992 (pre-war pensioners originating from the territory covered by the Sarajevo Fund), can re-establish their pensions upon return, provided they have repossessed their property.

There is also the category of returnees whose homes were previously located in RS territory, namely in Vogosca, Ilidza, Grbavica (municipality of Novo Sarajevo), Ilijas and Hadzici, but the drawing of the Inter-Entity Boundary Line means their homes are now located in the Federation. Such persons are not entitled to a pension from the Federation because they never contributed to that Fund,⁷¹ and they cannot receive a pension from the RS because they cannot register their permanent residence there.

Other problems prevail, such as difficulties in obtaining documentation to prove rightful claims. As the West Mostar Fund and the RS Fund separated from the original BH Fund, documentation on the pensioners and their contributions have remained in Sarajevo, where the Headquarters of the BH Fund was originally based. Access to pre-conflict information has consequently been disrupted, and the emerging Funds have had to develop different criteria, often preventing individuals from obtaining their pensions. The RS Fund, which was not granted access to the documents inherited by the Sarajevo Fund, had to develop new criteria based on level of education. The lack of communication among the Funds places the responsibility for accessing pension on the individual pensioners, who are often met with bureaucratic obstacles that include questionable financial arrangements which result in their not receiving the pensions promised to them.

Recent legislation on pensions in the Federation prohibits the accumulation of debt to pensioners if there are insufficient funds to pay full pensions.⁷² The Sarajevo Fund, for instance, is a few months behind in its pension payments. Pensioners view such policy as abridging their pension rights and eroding the State's guarantee of pensions. The rationale offered is that the conflict significantly altered the economic circumstances, permitting a reformulation of State benefits. However, the Federation is mitigating the harsh consequences of such law by distributing 0.7 billion KM-worth of privatisation vouchers to substitute for the inability to pay the pensions.

The RS has determined that it will only pay the percentage of the pension base it can, and will not accumulate a debt for the unpaid remainders. Unlike the Federation, however, the RS is not seeking to compensate for the amount that it is unable to pay. Such different practices produce confusion, and lead to discrepancies in the amount of pensions received, not to mention the fact that pensioners cannot therefore receive needed funds to stabilise their lives.

The economic instability caused by the conflict and the subsequent high unemployment has encouraged retirement age individuals to opt for the relative security, but lower income, of a pension.⁷³ Such individuals could have otherwise continued to work past the minimum age

⁷⁰ *Instruction on Modalities of Deciding upon Requests for Paying Pensions by the Social Fund for Pension and Invalidity Insurance in Bosnia and Herzegovina*, issued by the Directors of the Sarajevo Fund on 7 May 1999.

⁷¹ A person is entitled to receive a pension from the area in which contributions were made, such as place of employment.

⁷² OSCE Report: *Falling Through the Cracks*, *supra*, at 19.

⁷³ World Bank Social Assessment, *supra*, at 12.

of retirement. There has also been an increase in the number of disability pensions, veterans' pensions, and survivors' pensions, the combination of which drains the amount of money available in a Fund and reduces the ability of the Funds to make adequate pension payments.

The fragmentation of the pre-conflict pension fund has frustrated the proper payment of pensions, in addition to preconditions of access being linked to permanent residence or repossession of property thus preventing many returning refugees from accessing their entitlements. The inaccessibility of information on pensioners has further complicated the payment system in that amounts paid are not necessarily consistent with the contributions made. A clear lack of funds to make the necessary payments has caused the relevant authorities to discharge themselves of responsibility by prohibiting accumulation of debt to pensioners. Such a response, although arguably warranted by the economic crisis in BH and the additional pressure of increasing numbers of individuals on pensions, is a radical departure from the State's guarantee to provide pensions. Thus, the delays and the lost payments cause great anxiety to pensioners, and deny many their primary source of income.

Impact on EVIs

For EVIs, particularly the elderly, widows and single heads of household with children, the post-conflict pension system has serious consequences for their survival. First, the meagre amount paid is inadequate for covering basic living expenses. In the RS, the average pension amount paid is 50KM per month compared to the average salary which is 198KM. In the Federation, the average pension amount is 150KM per month compared to the average salary which is 365KM.⁷⁴ It also is insufficient for accommodation in a social welfare institution, such as an elderly home or home for disabled, the cost of which ranges from 300KM to 650KM. Second, the move towards privatised health-care requires some form of monetary contribution from the individual, which again is difficult to make given the small amount of the pension payment. Third, the delays and thereby loss of payments creates financial (and consequently emotional) insecurity, which can prevent EVIs from moving out of temporary accommodation where many of them currently reside.

D. THREATS TO SAFETY OF PERSONS AND PROPERTY

Many refugees, particularly minorities, fear returning to their pre-conflict residence due to pervasive security threats.⁷⁵ While the Ombudsmen of the Federation of BH reported that the overall safety of persons and property in 1998 had improved from the previous year, it noted that serious incidents have continued with fatal results, and these incidents have continued into 1999.⁷⁶

In the last month (October 1999), there were approximately 24 ethnic-based incidences of using explosives to damage property or to threaten life in several parts of BH. These incidences included a house damaged by explosives near **Capljina**, an explosion outside the house of a Bosniak while he was cleaning in **Mostar**, an explosion detonated at the home of a Bosniak in **Pale (RS)** as he entered his home, a Bosniak house in **Veliki Kablici near Bihac** was blown up by explosives (the house had been reconstructed by UNHCR), a local police officer near **Mrkonjic Grad** was shot at causing injury to his head and shoulder, an IPTF

⁷⁴ Office of the High Representative's Economic Task Force Secretariat's Newsletter (June 1999).

⁷⁵ See Update of UNHCR's Position, *supra*, at paragraphs 2.24 through 2.32.

⁷⁶ The Ombudsmen of the Federation of Bosnia and Herzegovina, *1998 Report On The Situation Of Human Rights And Freedoms In The Federation Of Bosnia And Herzegovina*, at 9 (1999) (hereinafter 'Ombudsmen Report FBH').

(International Police Task Force) officer was attacked in **Brcko**, an explosive device was thrown in front of the IPTF Station in **Zvornik (RS)** causing damage to five UN vehicles, an explosion occurred in the **Zvornik** bus station approximately 35 feet from the IPTF and SFOR patrol teams, threatening leaflets against Croat police officers by the Mujahedin (Hamas) group were found near **Travnik**, an explosive device exploded in front of a coffee bar in **Travnik**, an explosion occurred in a private garden in **Banja Luka**, a hand grenade was thrown near **Ilidza** municipality⁷⁷, and so on.

Murders and other serious crimes have gone unresolved and perpetrators have not been identified. For instance, violent incidences and other serious human rights violations have been reported in the municipalities of Cazin and Velika Kladusa, with 27 politically-motivated violent incidents reported between 29 July and 30 September 1998. Only after strong international pressure did the police engage in further criminal investigations.⁷⁸

The continuing possession of illegal weapons and explosives also threatens overall security, and in October alone, IPTF and local police recovered assorted rifles, bullets, grenades and other explosive materials in **Jablanica, Gradacac, Lukavica, Brcko, Teslic, Ilidza, and Modrica**. In addition, an estimated 750,000 mines and unexploded devices remain in some 30,000 separate mine fields in Bosnia and Herzegovina. From January until May 1999, 45 persons have been either injured or killed by land mines.⁷⁹

There is also tension between refugees who are returning and local IDPs.⁸⁰ There is a social distance that stems from a sense of betrayal and a perception that the refugees had an easier life because they did not suffer the hardship of the conflict and the first few years after Dayton when life was harsh. Such a perception exacerbates the tensions between those who stayed during the war and the returning refugees, and creates a hostile environment.

As a direct consequence of security threats, persons find themselves in situations of internal displacement or permanent local settlement. Local settlement undercuts the broader goal of encouraging minority returns, which is instrumental to undoing the ethnic displacement caused by the conflict and to creating peace. Clearly, the domestic fabric in BH is delicate, and the rapid and large-scale return of refugees can potentially upset the present political and socio-economic balances. Such destabilisation will only refuel tensions and renew forced migration.

Recognising that local settlement may be promoted by political objectives (e.g. Sanski Most), great care is needed in assessing its true motivation, particularly since the deliberate placement of groups of persons into housing belonging to another group has been used to secure ethnically based control over territory and thus prevents minority return (referred to as *hostile relocation*). UNHCR urges, therefore, host States and the local authorities to which return takes place to ensure that repatriation policies and deportations effected by the application of bilateral return agreements do not, in fact, result in *hostile relocation*.

Impact on EVIs

⁷⁷ Information provided by UN Mission in Bosnia and Herzegovina.

⁷⁸ See *Returnee Assessment Study in Velika Kladusa, Una Sana Canton, Bosnia and Herzegovina* (February 1999), UNHCR Sarajevo, Office of the Chief of Mission, Protection Unit.

⁷⁹ See Report of the *UNHCR Demining Programme in Bosnia and Herzegovina* (September 1999). Since January 1992, a total of 4,017 persons have been injured or killed by land mines.

⁸⁰ Anis Dani et al., *World Bank, A Social Assessment Of Bosnia And Herzegovina*, at 25 (1999) (hereinafter 'WB Social Assessment').

For EVIs, especially the elderly,⁸¹ female heads of household, the handicapped and victims of ethnic-based violence during the conflict (including internment in concentration camps, victims of sexual violence and torture), the threat to one's security is often the most significant deterrent to return. The possibility of re-traumatisation for such persons upon return to their pre-conflict municipalities necessitates that they receive continued international protection where this is considered to be the case. Security threats carry a double edge. Not only do they threaten life and limb, but seeking protection from local police (usually all of whose members form part of the ethnic majority) is unrealistic in many areas. As a result, EVIs will be isolated and they will lack protection from State actors.

E. HIGH UNEMPLOYMENT REDUCES THE LIKELIHOOD OF REINTEGRATION

⁸¹ Because of this reality, among other reasons, as well as for the welfare of the individual beneficiary, UNHCR promotes a policy of family reunion and home care. Unfortunately, the family members of many elderly returnees are also internally displaced, making home care not possible. *See* UNHCR, Report On Assistance To Older Refugees And Case Studies (UNHCR Inspection and Evaluation Service) (1998).

The Bosnian economy has suffered severe destruction as a result of the conflict.⁸² While the country is slowly recovering, the rate of unemployment remains extremely high at 39% in the Federation and 36% in the RS.⁸³ Furthermore, according to a report prepared by the European Commission and the Europe and Central Asia Region of the World Bank, returnees and displaced persons rank among the most disadvantaged groups with the highest unemployment rates. For instance, an IOM study of returnees from Germany revealed that 89% of all the professionals and 92% of all skilled people among the returnees were unemployed.⁸⁴ The reason being that they have reduced access to social networks and encounter more difficulties in finding employment.

Such difficulties are compounded by wide-spread discrimination based on ethnicity, political affiliation or sex. In addition, the reality of each ethnic region of BH operating as a distinct economic sphere, with separate enterprises, financial institutions, taxation systems, and custom areas prevents *minority* returnees from reintegrating into the employment market.⁸⁵ Pressure on the employment market is already high since the Bosnian economy does not generate enough jobs to absorb all or even a substantial part of the available workforce. The arrival of large numbers of induced returnees to the Federation or the RS is sure to create further social and political tensions.

Impact on EVIs

In the face of such scarce employment opportunities, EVIs are at a greater disadvantage by virtue of their age, disability or gender. Their inability to get a job precludes them from overcoming their poverty that amplifies their vulnerability. High unemployment rates also affect the families that may wish to accommodate and support EVIs. The financial strain of supporting an EVI relative in light of the difficult economic conditions in BH places such families in precarious situations, and many are simply unable to do so. Unable to find employment and conscious of the financial burden they may be on relatives, EVIs could experience a sense of uselessness and depression. Such psychological conditions can increase the already high levels of post-traumatic stress disorder identified among the elderly and female refugees, and further prevent reintegration.⁸⁶

⁸² As for the state of the economy, please refer to European Commission And The Europe And Central Asia Region Of The World Bank, *Bosnia And Herzegovina: The Priority Reconstruction Program: Achievements And 1998 Needs* (1998) (hereinafter 'Priority Reconstruction Program').

⁸³ See Office of the High Representative's Economic Task Force Secretariat's Newsletter in June 1999. Average nominal wages are 356KM in the Federation, and 198KM in the RS.

⁸⁴ IOM Report, *supra*, at 42.

⁸⁵ Marcus Cox, *Strategic Approaches to International Intervention in Bosnia and Herzegovina*, (Cluster of Competence, The Rehabilitation of War-Torn Societies: a Project Co-ordinated by the Centre for Applied Studies in International Negotiations), at 38 (1998).

⁸⁶ Bernard Jervis, Nermin Djapo, & Steve Powell, Institute of Victimology, *Survey on the Psycho-Social Needs of Refugees Returning from Germany and Displaced Persons During 1998*, at 11 (1999) (hereinafter 'Psycho-social Survey').

F. THE DOMESTIC LEGAL FRAMEWORK FOR SOCIAL WELFARE AND ASSISTANCE

i) The Delegation of Responsibility for Matters Relating to Social Welfare and Assistance to the Entities

Under the BH Constitution, those responsibilities not expressly assigned to BH are considered to fall within the domain of the two Entities,⁸⁷ with social welfare and protection being one responsibility delegated to the Entity level. In the Federation, the Cantons have responsibility for implementing Federation social welfare legislation, as well as implementing their own correlative laws. In contrast, there is just one law regarding social protection in the RS.

ii) The Law on Social Protection, Protection of Civil War Victims and Protection of Families with Children in the Federation of BH

Given its responsibility over social protection and assistance, the Federation has recently introduced the *Law on Social Protection, Protection of Civil War Victims and Protection of Families with Children* (hereinafter ‘*Law on Social Protection*’).⁸⁸ How this law will be implemented is yet to be seen.

The *Law on Social Protection* also authorises each of the ten Cantons of the Federation to draft more detailed regulations pertaining to social assistance. It remains the responsibility of the Federation to supervise the implementation of this law, and for the Cantons to supervise the implementation of their corresponding laws.⁸⁹ Since the Federation’s Constitution specifically vests the Canton with authority to *implement* social welfare policy and provide social welfare services as opposed to devising social welfare policy, it suggests that the *Law on Social Protection* will provide a baseline of social protection to be guaranteed by the Cantons.

a. Defining the Beneficiaries

The *Law on Social Protection* defines a social need as a permanent or temporary situation of a citizen or a family, caused by the events of war, natural disaster, general economic crisis, psycho-physical state of an individual or by some other reasons, and which cannot be overcome without the assistance of others.⁹⁰ Article 12 of the Law lists 9 categories of beneficiaries:

1. children who are without parental care;
2. neglected children;

⁸⁷ Constitution of Bosnia and Herzegovina, Article III(3)(a) states, “All governmental functions and powers not expressly assigned in this Constitution to the institutions of Bosnia and Herzegovina shall be those of the Entities.”

⁸⁸ FBH Official Gazette, no. 36/99, entry into force on 14 September 1999. Before this date, the Federation Cantons were applying the *Law on Social Welfare*, SRBH Official Gazette, no. 39/84 (1984), as well as laws introduced in individual Cantons. With the passage of this new law, the Cantons will be required to harmonise their laws, which at the date of this study, had not been completed.

⁸⁹ Articles 8-9.

⁹⁰ Article 11.

3. delinquents;
4. children stunted in development due to family problems;
5. invalids and persons with physical or mental development;
6. persons who are incapable of working and who have no source of income;⁹¹
7. elderly person without family care;⁹²
8. persons who behave in a socially unacceptable way;⁹³
9. other persons and families in social need, who due to special circumstances need appropriate forms of social protection.⁹⁴

While enumerating on the categories of persons and families who could benefit from social assistance, the *Law on Social Protection* recognises the right of Cantons to *expand* the list of potential beneficiaries as needed to suit the specific circumstances in each Canton.⁹⁵

b. Types of Assistance Available and Criteria

In light of the varying types and degrees of social protection needed, the *Law on Social Protection* outlines six different rights to assistance available,⁹⁶ as follows:

- financial and other material assistance;
- training for life and work;
- accommodation with another family;
- accommodation in an institution for social protection;
- social and other specialised services;
- home care and home assistance.

The Canton determines the amount of financial and other support to be provided to beneficiaries, as well as the conditions and procedures for acquiring these rights.⁹⁷

• Financial and Other Material Assistance

Permanent financial and other material assistance is provided to persons or families who meet three pre-conditions, as follows:

- s/he is incapable of working, or prevented from exercising their right to work;⁹⁸

⁹¹ Article 15 defines these persons as an adult who has no means of support, is unable to work, and cannot provide for him/herself by other means.

⁹² Article 16 defines an elderly person as 65 years or older for men and 60 years or older for women, who has no family members or relatives who are legally obliged to support them or if such persons do exist, they are not able to fulfil this obligation of support.

⁹³ Article 17 defines such persons as drug addicts, alcoholics, prostitutes, homeless, and vagrants.

⁹⁴ Article 18 defines such persons or families to be those in social need as a result of forced migration, repatriation, natural disasters, death of one or more family members, recovery from medical treatment, and/or release from prison or correctional institution.

⁹⁵ Article 12(1). None of the Cantons have expanded the list, however.

⁹⁶ Article 19.

⁹⁷ Article 19.

⁹⁸ Persons considered incapable to work include total incapacitation to work or to earn income on their own, elderly (over 65 for male, over 60 for woman), women in course of pregnancy, delivery and after delivery in accordance with labour provisions, parents, step-father, step-mother or adoptive parents taking care of one or more children up to one year old and if there are no family members or relatives who are obliged to help them

- s/he does not have sufficient income;
- s/he does not have family members who are obliged by law to support them, or if they do have such family members, such persons are not able to fulfil their obligation.⁹⁹

However, it should be noted that **persons can only exercise such rights** in municipalities **where they are a permanent resident**.¹⁰⁰ This means that for persons returned to situations of internal displacement, unless the Canton laws provide otherwise, permanent financial assistance will not be available to them.

The law also provides for the possibility to receive financial assistance to pay a family member or other person caring for the beneficiary.¹⁰¹ Other material assistance which may be provided includes temporary, lump sum and other financial or in-kind assistance for persons or families who find themselves in a situation of social need due to ‘special circumstances’ or adults who are without financial means and incapable of working.¹⁰² Note that the Canton is responsible for determining the amount of financial assistance to be provided (see below).

- **Accommodation in Social Institutions**

The *Law on Social Protection* establishes that accommodation in social institutions can be exercised by children and adults who need permanent care and assistance in satisfying their living needs and who cannot satisfy these needs on their own, or in another family, or in some other way.¹⁰³ A positive decision to accommodate a child or adult must be made by the Centre for Social Welfare in the territory **where the person has permanent residence**.¹⁰⁴ This creates difficulties for persons who only have temporary residence in a particular municipality and are in need of accommodation in a social institution, however, some of the Canton laws have loosened this criteria to also include temporary residents and displaced persons. However, such institutions can relieve themselves of their obligation to accept an individual if they are full or are unable to provide adequate services to the beneficiary.¹⁰⁵ If it becomes impossible to continue to accommodate an individual in a particular institution, the institution is obliged to inform the Centre for Social Welfare with maximum two months’ notice. The Centre for Social Welfare must then find an alternative solution.¹⁰⁶ The *Law on Social Protection* forbids all social welfare institutions from discriminating against a potential or actual beneficiary on the basis of territory, nationality, religion, political affiliation, race, skin colour, sex, language, and social origins.¹⁰⁷

In the Federation, only 21 social institutions¹⁰⁸ exist, which accommodate 2,575 individuals. Ten of the total institutions are orphanages, and with a total capacity available in the Federation for approximately 2,987 persons, the bulk of space available is also in the

by law, or if there are, they are not able to meet these obligations, children up to 15 years old or up to 27 years old if in regular education, persons with permanent psychological or physical condition, carers of invalids or seriously ill persons.

⁹⁹ Article 22.

¹⁰⁰ Article 22(2).

¹⁰¹ Article 21.

¹⁰² Articles 28 and 15.

¹⁰³ Article 41.

¹⁰⁴ Article 42.

¹⁰⁵ Article 43(3).

¹⁰⁶ Article 44.

¹⁰⁷ Article 50.

¹⁰⁸ The 21 social institutions are: 10 orphanages, one home for delinquent children, 6 elderly homes, 3 homes for handicapped persons, and one institution for invalids.

orphanages. There is only one home for invalids in the entire Federation, of which one third of the residents originate from the RS and the Federal Republic of Yugoslavia. Furthermore, during the conflict, some displaced persons took up residence in such institutions although they are not EVIs *per se*.

All of the established social institutions report a lack of financial means to maintain and improve the facilities, pay salaries, and purchase supplies (such as food and medicines). Some of these institutions were also part of the World Food Programme for food assistance, however, since July 1999, this is no longer continuing, and alternative humanitarian assistance has not been identified.

For EVIs requiring institutional care which is not available within their municipality of permanent residence, they must be 'referred' by their municipality to another municipality which has the required social care. It is often difficult to convince municipalities to make such referrals. However, it is even more difficult when someone is a displaced person and only has 'temporary residence' in the referral municipality, as the Centres for Social Welfare are only legally obliged to make decisions regarding persons with permanent residence in their municipality.

Moreover, costs of accommodation in a social institution are paid by the beneficiary accommodated, her/his parents, adoptive parent, guardian or relative who is obliged by law to support the beneficiary, or legal or physical entity, which by contract, undertakes this obligation to pay.¹⁰⁹ This is regulated under Cantonal laws. However, with the average monthly cost of such accommodation in the Federation ranging from 300 to 650KM per month,¹¹⁰ and the average salary being 360 KM,¹¹¹ and the average pension being 150KM,¹¹² it is easy to see that paying such costs will be difficult for many persons, and even impossible for many. The Federation Ombudsmen's Office reports that although the Federation is obliged to provide Cantons some funds for social security, it has failed to do so.¹¹³ The financial situation regarding access to social institutions is highlighted by the fact that total unpaid demands for 15 institutions as at August 1999 was over 9.1 million KM, with Federation Cantons owing 1.75 million KM and the municipalities 2.77 million KM.¹¹⁴

Apart from institutional care, there are some community-based or non-institutional care arrangements in the Federation, including placement in a substitute family, children's villages, socio-pedagogic communities, geriatric centres, home care and so on. There are 2,171 registered children without parental care being placed in substitute families. The majority of children are placed with members of their extended family or other kin relatives. Of the ten Cantons, currently only five pay substitute families (Una Sana, Posavina, Tuzla, Central Bosnia and Sarajevo Canton). The payments range from 100KM per month in Tuzla Canton to 525 KM in Posavina Canton. Other families continue to house such children without additional finances. For the elderly, home care has been arranged in some Cantons, providing food, house cleaning and other maintenance jobs and personal hygiene services. In the Federation, currently there are 9,000 persons benefiting from these schemes, but the

¹⁰⁹ Article 45(2).

¹¹⁰ Report of the Social Police Task Force of Bosnia and Herzegovina, *Continuum of Care*, September 1999.

¹¹¹ Economic Task Force Secretariat of the Office of the High Representative, June 1999.

¹¹² OSCE Report, *Falling Through the Cracks*, *supra*, at 24.

¹¹³ Ombudsmen Report FBH, *supra*, at 35.

¹¹⁴ Report of the Social Policy Task Force in Bosnia and Herzegovina, *Continuum of Care in Bosnia and Herzegovina*, September 1999.

majority of the funding is drawn from international and local non-government organisations, and not from the Cantons themselves.¹¹⁵

iii) **Laws on Social Assistance at the Cantonal Level in the Federation of BH**

Presently, four of the ten Cantons in the Federation have passed laws on social welfare. These four are: Canton 1 (Una Sana), Canton 8 (West Herzegovina), Canton 9 (Sarajevo) and Canton 10 (Herzeg-Bosnia). The remaining Cantons, for the time being, either continue to apply the SRBH 1984 law, or have issued some form of decision or instruction pertaining to social welfare. The following Cantons continue to apply the SRBH 1984 law: Canton 3 (Tuzla), Canton 4 (Zenica-Doboj), Canton 5 (Gorazde), and Canton 7 (Neretva). Others have also issued decisions, such as Canton 6 (Central Bosnia) and Canton 2 (Posavina) on social welfare.

a. **Canton 1 (Una Sana)**

The *Law on Social Welfare*¹¹⁶ recognises various rights to assistance, which essentially mirror those outlined in the Federation Law, as follows: financial and material assistance which include subsidies for rent, heating and funeral costs, training for life and work, accommodation with other families or in an institution for social welfare, and social or other specialised services.¹¹⁷

Una Sana's *Law on Social Welfare* outlines four general elements for eligibility for permanent financial assistance.¹¹⁸ First, the individual must have permanent or temporary residence in the territory of the Canton. A person who has registered as displaced and has resided in the territory of the Canton for **at least six months** can also apply for social assistance in the form of permanent financial assistance. This means that returning refugees to temporary accommodation in a municipality in Una Sana Canton, which is not their pre-conflict municipality, without a repatriation grant or other savings, may face a six month period in which they are not able to access any Canton-funded financial assistance. Second, the applicant must be incapable of working. Third, s/he must be destitute. Destitution is defined as having an income that is less than 40% of the lowest publicly identified salary in the Canton.¹¹⁹ Fourth and finally, s/he must have no relatives who are legally obliged to support her/him, or such relatives are simply unable to meet their legal obligations. Once determined that a person qualifies for such financial assistance, the assistance is calculated on 40% of the lowest publicly identified salary in the Canton, and this equates to 34KM per month for a single head of household, and an additional 2KM per month for additional family members.¹²⁰ Such an amount is unlikely to cover even basic living expenses, and with limited resources, the Canton is keen to restrict access to even these small payments.

Una Sana Canton law also provides for financial assistance as compensation for taking care of another person, lump sum financial assistance and subsidies for rental, heating and funeral costs, for persons falling within the ambit of the law. However, the Centre for Social

¹¹⁵ Such as the local Red Cross, Caritas, CARE, CRS, and old age homes. Report of the Social Policy Task Force in Bosnia and Herzegovina, *Continuum of Care in Bosnia and Herzegovina*, September 1999.

¹¹⁶ Una Sana Canton Official Gazette, no. 9/98, 22 July 1998.

¹¹⁷ Article 4.

¹¹⁸ Article 6.

¹¹⁹ Article 8.

¹²⁰ Centre for Social Welfare, Bihac (October 1999).

Welfare in Bihac is not currently providing any subsidies for rent or heating, although they do offer assistance with funeral costs.¹²¹

The Law does not stipulate conditions for access to accommodation into social institutions, except to state that the right is to be exercised in accordance with the Federation law. However, it should be noted that no social institutions actually exist in Una Sana Canton.

The Law also addresses exceptional circumstances where an individual who is not of Una Sana Canton¹²² or whose permanent residence cannot be identified¹²³ can still be provided with some form of social welfare. Where an individual is not from Una Sana Canton, s/he must be in a state of “extraordinary social need” in order to seek assistance, and s/he will also receive help to return to his or her permanent residence.

b. Canton 8 (Western Herzegovina)

The *Law on Social Welfare*¹²⁴ for Canton Western Herzegovina defines a social welfare beneficiary as a “destitute single person or family, who is unable to fulfil the necessities of life by his/her own work or income acquired from his/her property or other resources.”¹²⁵ Social welfare beneficiaries are also physically, mentally or psychologically handicapped children and adults, elderly and other persons who are unable to fulfil their basic necessities due to a permanent change in their health condition, and other persons found in difficult circumstances due to disturbed relations with family, addiction to alcohol, drugs or other narcotics, or due to other forms of socially unacceptable behaviour.¹²⁶

In order to exercise the right to social welfare in the Western Herzegovina Canton, an individual must either be a permanent resident of the Canton, or a properly registered displaced person or refugee who has been residing in the Canton. It should be noted that, unlike Canton 1, there is no required period of residency before a registered refugee or displaced person can exercise the right to social welfare. In exceptional circumstances, a non-resident or unregistered person may “temporarily” exercise the right to social welfare “if so demanded by their living conditions.”¹²⁷

The *Law on Social Welfare* recognises the following types of assistance to beneficiaries: counselling, assistance in overcoming special difficulties, support assistance, lump sum assistance, out-of-a-personal-family care, and other forms of appropriate assistance.¹²⁸ It should also be noted that, in spite of extensive provisions, there are no social institutions in Western Herzegovina Canton or counselling services, and that financial assistance is low. For instance, in Grude municipality, beneficiaries receive 50KM once every three months, irrespective of the number of family members.

c. Canton 9 (Sarajevo)

Sarajevo Canton’s *Law on Social Welfare* considers “persons in the state of social need” to qualify for social assistance.¹²⁹ Individuals that qualify for social assistance

¹²¹ Centre for Social Welfare, Bihac (October 1999).

¹²² Article 43.

¹²³ Article 44.

¹²⁴ Western Herzegovina Canton Official Gazette, 10/99, 30 September 1999.

¹²⁵ *Law on Social Welfare*, Western Herzegovina Canton Official Gazette, no. 10/98, Article 14.

¹²⁶ Article 14.

¹²⁷ Article 15.

¹²⁸ Article 16.

¹²⁹ *Law on Social Welfare*, Sarajevo Canton Official Gazette, no. 14/97, at Article 3 (1997).

essentially mirror those outlined in the Federation Law, such as elderly persons without family care, children without parental care, persons without incomes and who are incapable of work, persons with asocial behaviour, invalid persons, and other persons in the state of social need.¹³⁰

The law provides for a wide range of assistance, such as material assistance,¹³¹ accommodation in an institution of social welfare,¹³² and counselling.¹³³ It is well known that counselling facilities in all Cantons are virtually non-existent, except some centres funded directly by international non-government organisations. For persons suffering severe trauma, return to unstable and unsettled conditions serves to exacerbate their trauma, and without counselling facilities available, they will remain untreated.

In terms of financial assistance, the Social Welfare law, unlike other Cantons, only provides for *permanent financial assistance*,¹³⁴ however, it is available to both permanent and temporary residents, who are incapable of working, destitute,¹³⁵ and have no relatives who can support them,¹³⁶ or who are in “exceptional social need”.¹³⁷ For displaced persons or refugees, they must be registered as such and have resided in the Canton for **at least six months**. Financial assistance in Sarajevo Canton amounts to only 34KM per month for a single person household, and increases by 4.25KM for each additional family member. Lump sum financial assistance is 34KM per month, and support for home care of other persons is 34KM per month.¹³⁸

The law also stipulates that reception centres for adults shall provide temporary accommodation and meals until they can join their own or another family, or return to either a social institution or their place of permanent residence which would assume responsibility for them.¹³⁹ Sarajevo Canton has the majority of the social institutions in the Federation, with two orphanages, one centre for delinquent children, one centre for mentally handicapped persons, one elderly home, and one centre for invalids. There are only 18 spaces remaining in the elderly home which has a total capacity of 275. The home for mentally handicapped persons is full to capacity with 356 inhabitants, while the centre for invalids has only one space out of a total capacity of 165 persons.¹⁴⁰ It is clear that Sarajevo Canton, while being the largest and richest Canton, is also short of places in social institutions.

¹³⁰ Article 3.

¹³¹ Article 4.

¹³² Article 37.

¹³³ Article 43.

¹³⁴ Article 5.

¹³⁵ A person is considered destitute if his or her income is lower than 40% of the lowest publicly recognised salary in the Canton.

¹³⁶ Under the *Law on Social Welfare* for the Sarajevo Canton, a relative is discharged of his or her obligation to support an EVI if his or her income is less than 80% of the lowest publicly recognised income in the Sarajevo Canton. See Article 10.

¹³⁷ Article 21.

¹³⁸ Centre for Social Welfare, Sarajevo (October 1999).

¹³⁹ Article 104.

¹⁴⁰ UNHCR Social Services Unit, as at 31 August 1999.

d. Canton 10 (Herzeg-Bosnia)

Canton 10's *Law on Social Welfare* recognises a person who is unable to realise necessities of life by his or her own work, income, property or other resources as a social welfare beneficiary.¹⁴¹ This definition includes children without parental care, physically or mentally handicapped children, physically or mentally handicapped adults, terminally ill, elderly, drug addicts, alcoholics, and those with asocial behaviour.¹⁴²

In order to qualify for social welfare, a beneficiary must be either a permanent resident of Canton 10,¹⁴³ or a registered displaced person or refugee and be residing in Canton 10.¹⁴⁴ There is no 6 month restriction to access these social services for displaced persons or refugees, unlike other Cantons. A person who is not registered in Canton 10 may temporarily exercise the right to social assistance "if so demanded by his or her living circumstances."¹⁴⁵ For instance, if a person has arrived in Canton 10 "due to natural disasters or similar reasons," until the conditions for his or her return materialise, that person falls under the territorial jurisdiction of Canton 10 for purposes of seeking social assistance.¹⁴⁶

The *Law on Social Welfare* recognises various types of assistance, which include counselling, assistance in overcoming special difficulties, support assistance, assistance for payment of accommodation costs, lump sum assistance, allowance for home care and help, personal invalidity allowance, preparation for independent life and work, out-of-personal-family care, and other forms of assistance.

In Herzeg-Bosnia Canton, financial assistance is termed "support assistance" and unlike other Cantons, it expressly denies social assistance to certain persons, such as those persons who do not want to seek support from a person obliged to do so, who do not want to realise income under a contract for life, or who can realise income by sale of property or lease.¹⁴⁷ The amount available under support assistance is 50KM per month per family, irrespective of the number of family members.

Herzeg-Bosnia Canton also provides for rent assistance,¹⁴⁸ lump sum assistance for persons not able to fulfil, partially or completely, her/his basic necessities for life, due to current situations (e.g. child-birth, illness or death of a family member, natural or other disasters).¹⁴⁹ But, like the other Cantons, the law does not reflect the reality. There is only one social institution in Herzeg-Bosnia Canton which is an elderly home in Tomislavgrad, which has a total capacity for only 42 persons, with current residents at 38. Persons in this Canton, therefore, have to rely on the referral mechanism to another Canton, but with most social institutions nearing full capacity in all Cantons, it is difficult to convince another Canton to accept residents of Canton 10.

¹⁴¹ *Law on Social Welfare*, Canton 10 Official Gazette, no. 5/98, at Article 14 (1998).

¹⁴² Article 3.

¹⁴³ Article 15(1).

¹⁴⁴ Article 15(2).

¹⁴⁵ Article 15(4).

¹⁴⁶ Article 166.

¹⁴⁷ Articles 25 and 26. Note there are also exceptions to these identified under Article 28, such as pregnant women, children between 15 and 18, etc.

¹⁴⁸ Articles 40 - 45.

¹⁴⁹ Article 46.

e. Other Cantons

The SRBH 1984 *Law on Social Welfare*¹⁵⁰ applied throughout BH prior to its fragmentation as a result of the conflict, and while awaiting the introduction of individual Cantonal laws, some Cantons continue to apply this law: such as, Canton 3 (Tuzla), Canton 4 (Zenica-Doboj), Canton 5 (Gorazde), and Canton 7 (Neretva).

Under the SRBH 1984 *Law on Social Welfare*, the law protects the elderly, disabled and other persons in social need, and is essentially the same as the new Federation Law.¹⁵¹ Beneficiaries include orphans, children who are physically or psychologically disturbed, unemployed, invalids, elderly without family, and individuals who are prostitutes, alcoholics, drug addicts or vagabonds.¹⁵² The *Law on Social Welfare* also recognises specific circumstances that could render a person in need of social assistance, such as by reason of an accident due to natural forces, migration, repatriation, death of one or more household members, return from medical treatment, return from prison, and impossibility of finding employment.¹⁵³ Assistance can be provided through material aid, vocational training, accommodation in a social welfare institution or with another family, home care, and social and professional services.¹⁵⁴

In order to qualify for permanent financial assistance, an individual must be a permanent resident of the municipality in which s/he is seeking assistance, incapable of working, unemployed, not a pension recipient, not have any or insufficient property, and not have any relatives who are legally obliged to support him or her (or who cannot meet their legal obligations).¹⁵⁵ Permanent financial assistance in Tuzla Canton amounts to 34KM per month per family, irrespective of how many family members live in the one household. And, while in theory the payment is meant to be made on a monthly basis, the reality is that it is made every 2 to 4 months, with the last payment made in July 1999 in Tuzla.¹⁵⁶ In East Mostar, under which six municipalities are covered, no permanent financial or lump sum assistance has been provided to any beneficiaries since January 1999. The required funding has not been transferred from the relevant budget to the municipalities for payment. Before January 1999, beneficiaries were receiving 10KM per month for a single member family, 20KM for a family of four persons and 30KM for families with greater than four members. In West Mostar, lump sum assistance of 60KM is provided for special cases, three times per year only. In exceptional cases, the Centres for Social Welfare may pay between 100-500KM for medical or other treatment in individual cases.¹⁵⁷

Given that this is a 1984 law, it did not envisage the current fact that there are 830,000 displaced persons in BH. Hence, it only provides material assistance to permanent residents, and essentially denies many persons in need from accessing such assistance. In order to access this assistance as a displaced person, someone would need to argue that they are in social need due to specific circumstances. They find themselves in a municipality of which they are not a resident and who are in a “momentary and extremely difficult situation which demands immediate . . . form of social welfare”. Article 123 of the 1984 *Law on Social Welfare* stipulates that such persons will be provided with the needed type of assistance.

¹⁵⁰ *Law on Social Welfare*, SRBH Official Gazette, no. 39/84.

¹⁵¹ Article 1.

¹⁵² Article 14.

¹⁵³ Article 24.

¹⁵⁴ Article 25.

¹⁵⁵ Article 33.

¹⁵⁶ Centre for Social Welfare, Tuzla (October 1999).

¹⁵⁷ Centres for Social Welfare in West Mostar and East Mostar (October 1999).

This provision can serve as the legal basis for displaced individuals in the Cantons following the SRBH 1984 *Law on Social Welfare* to request social assistance. However, with scarce public resources, it allows these Cantons to legally deny providing financial assistance to displaced persons or other temporary residents. One of the most difficult elements to receiving social assistance is proving one's claim.

Under Article 49, the right to accommodation in a social institution or with another family can be exercised by the following: a child who is educationally neglected, without parental care, or disturbed due to family circumstances; elderly persons without family care; and the chronically ill.¹⁵⁸ Invalids who cannot live independently may also be accommodated in a social institution. Noting that the only institution for invalids is in Sarajevo Canton would mean that invalids from other Cantons would need to be referred, and would then have to live away from their families. Presently, Tuzla Canton has four orphanages, but no other social institutions, including no elderly home. Zenica-Doboj Canton is also in the same predicament with two orphanages and no other social institutions. Gorazde has no social institutions of any kind, while Neretva has two orphanages and two elderly homes. Of these two elderly homes, they are currently over-crowded with 213 residents, while the total capacity is for 199 residents. Although a social institution is obliged to admit a beneficiary directed to it by the Centre for Social Welfare, in exceptional circumstances, it can refuse to admit a beneficiary in the case of over-capacity as well as inability to provide the services needed by the beneficiary.¹⁵⁹

iv) **The Law on Social Welfare in the RS**

Not unlike the situation in the Federation, the RS also has social welfare legislation, but the reality is very different to the rights guaranteed by the written text.

a. **Defining the Beneficiaries**

Almost an identical list of beneficiaries as those in the Federation are identified in the RS *Law on Social Welfare*.¹⁶⁰ Beneficiaries of social welfare are those who lack the capacity to work, are without financial resources, and without relatives who are obliged to provide them support, or to individuals and families who despite having the capacity to work and property, are unable to satisfy their everyday needs due to 'special circumstances'.¹⁶¹ Broadly, under Article 10, beneficiaries of social welfare according to the law are those individuals 'in need'. Specifically, Article 10 recognises the following as individuals who would be in need:

- minors who are without parental care;
- physically handicapped or mentally disturbed children;
- children hindered in their development due to family circumstances;
- neglected children;
- adults who lack financial resources and the capacity to work;
- elderly without family care;¹⁶²

¹⁵⁸ Article 49.

¹⁵⁹ Article 81.

¹⁶⁰ RS Official Gazette, nos. 5/93 and 15/96.

¹⁶¹ Article 3.

¹⁶² Under Article 16, an elderly is a male over the age of 65 years or female over the age of 60 years who is self-supporting and whose family-members and relatives are obliged to take care of him/her under the law, but are not able to provide the necessary support.

- invalids;
- persons with negative social behaviour;¹⁶³
- persons in need of social welfare due to ‘special circumstances.’

‘Special circumstances’ are described as war, unemployment, natural disasters, migrations, repatriation, death of one or more family members, long medical treatment in a health institution, as well as release after serving a prison sentence.¹⁶⁴ This would appear to cover other EVIs, such as severely traumatised persons, who would not otherwise fall within one of the groups in Article 10, unless they are covered by other laws.

The municipalities are responsible for disbursing the material assistance, developing appropriate programmes for social welfare in light of the municipality’s particular needs, directing the work of the social institutions, and co-ordinating activities for social welfare in order to meet the needs of its citizens.¹⁶⁵

b. Types of Assistance Available and Criteria

Article 20 of the *Law on Social Welfare* lists the rights to the following types of assistance:

- material assistance;
- allowance for home care;
- assistance for vocational training needed by youth and children;
- accommodation in the social welfare institution or with another family;
- social welfare services.

In the RS, the municipalities are charged with meeting the needs of persons relating to social welfare.¹⁶⁶ Material assistance should be provided to those individuals or families who have an income below subsistence level, as defined by the law.¹⁶⁷ In order to qualify for ‘material assistance’, the individual must be one of the beneficiaries listed above and a) have permanent residence or temporary accommodation¹⁶⁸ in the municipality where s/he is seeking material assistance; b) be incapable of work; c) have no property or property that is insufficient for providing support; d) not have relatives that are either obliged to support her/him or who cannot meet their obligations; and e) fall into one of the ‘special circumstances’ described in Article 19.¹⁶⁹ The Banja Luka Centre for Social Welfare provides annual payments of up to 80KM to its beneficiaries, which began in 1999. Before September 1999, no monthly

¹⁶³ Under Article 18, a person with negative social behaviour is a person who indulges in idleness, vagrancy, begging, prostitution, alcoholism, and narcotics.

¹⁶⁴ Article 19.

¹⁶⁵ Article 102(7).

¹⁶⁶ Article 102(5) of the Constitution of the Republika Srpska.

¹⁶⁷ Article 21.

¹⁶⁸ Article 44. The language ‘temporary accommodation’ reflects an amendment to the *Law on Social Welfare* passed in 1996. The amendment is provided in Article 2 of the *Law on Amendments and Supplements to the Law on Social Welfare*.

¹⁶⁹ Persons with working capacity in need of social care, due to special circumstances, are persons whose need is caused by war, unemployment, natural disasters, migrations, repatriation, death of one or more family members, long medical treatment in a health institution, as well as persons released after serving a prison sentence.

payments were made to qualifying persons, but since September, 15KM have been paid on a monthly basis to social welfare cases nominated by local community leaders.¹⁷⁰

Such individuals are also entitled to allowance for home care if they need care by another person in order to meet their daily needs, provided they cannot exercise this right on another basis under other legislation and they cannot find accommodation in an institution for social assistance.¹⁷¹ In spite of these generous legal provisions, however, only 10 social welfare institutions (of which 3 are for elderly, 6 are for children (orphans or mentally handicapped), and 1 is for chronically ill persons) exist in the RS, accommodating a total of 1319 beneficiaries. Of these institutions, five are in Banja Luka, two in Prijedor, and one in each of Lukavica, Derвента and Modrica. Many are over-crowded or have little capacity.¹⁷² For instance, the Home for Pensioners and Elderly in the RS (Lukavica) is completely full and has a waiting list of 500.

Part or total accommodation costs in a social institution or with another family are paid by the beneficiary, her/his parent or relative obliged to support the beneficiary, competent institution or another organisation or persons accepting responsibility for covering costs, except for persons who are partly or fully mentally handicapped, fully or partly physically handicapped, suffer from autism, or who are mentally handicapped and who are under guardianship.¹⁷³ These latter individuals do not have to cover the costs of such accommodation. The Centres for Social Welfare maintain the right to seek reimbursement for the costs of assistance provided.¹⁷⁴ Finally, those individuals accommodated in social institutions without any income are entitled to financial resources necessary for satisfying their personal needs.¹⁷⁵ However, like the Federation, RS institutions find themselves in critical situation, with lack of food, medication, clothing and shoes for beneficiaries. Usually these goods are provided by donations of the international community, and not from the RS budget. In fact, it is estimated that almost 60% of expenses are covered by donations, and beneficiary contributions range from 160-350KM per month.¹⁷⁶

Financial responsibility for the operation of social welfare institutions is divided between the Republic and the individual municipalities. Under Article 79, the municipality is responsible for providing financial means to the Centres for Social Welfare for home care allowance, care of another person, accommodation in a social welfare institution or another family, and social services. The Republic is to allocate funds for the construction, maintenance and furnishing of social welfare institutions, as well as the vocational training of physically and mentally handicapped children and youth.¹⁷⁷ Where a municipality simply does not have the means to finance its local social welfare institutions, it can request the Republic for financial assistance.

Home care and substitute families have rapidly developed as concepts in the RS, especially given the lack of public facilities and resources. More than 80% of children without parental care are placed in other families, mostly those of close relatives. However, this model

¹⁷⁰ Further information on the method by which persons become beneficiaries in practice was not possible to obtain from the relevant authorities.

¹⁷¹ Article 27.

¹⁷² See Statistics from the State Ministry for Social and Children's Protection as of 31 August 1999. There are three institutions for the elderly (585 persons), five children's institutions (306 persons), one institution for the chronically ill and mentally ill patients (216 persons), and one miscellaneous welfare institution (45 persons).

¹⁷³ Articles 41 and 42.

¹⁷⁴ Article 74.

¹⁷⁵ Article 42.

¹⁷⁶ See Report of the Social Policy Task Force, *Continuum of Care in Bosnia and Herzegovina*, September 1999, at 8-10.

¹⁷⁷ Article 79.

of care is much less often used for the care of people with disabilities or the elderly.¹⁷⁸ There is a programme for home care of the elderly in the RS, including distribution of food and wood, home nurses, physicians and patronage visits. This programme is almost fully funded by the international community through the non-government sector, and beneficiary contributions range from 30KM to 50KM per month.¹⁷⁹

Other social services include diagnostic and therapeutic examinations, and counselling, which are meant to be provided free of charge except where otherwise stipulated under law.¹⁸⁰ The municipality, however, can impose fees for certain social services unrelated to family protection or preventive services.¹⁸¹

v) **Need for Legal Reform?**

As the above survey of the laws on social welfare in both the Federation and the RS indicate, there is little need for legal reform in this area. While the new constitutional arrangements, the delegation of responsibilities, and accountability need better co-ordination, this problem does not suggest an inadequacy of the substantive law. The laws on social welfare are generous in the beneficiaries they recognise and the types of assistance available, however, some Cantons do not recognise displaced persons as beneficiaries, while other Cantons still need to introduce any form of social welfare legislation. The waiting period of six months for temporary residents before assistance is provided in some Cantons can prove onerous to some families.

vi) **The Reality of the Right to Social Protection - Impact on EVIs**

Outlining the legal framework was a necessary undertaking in order to illustrate that social welfare does not require legal reform, but political and economic reform. As the laws indicate, a wide range of beneficiaries qualify, and an array of assistance plans are outlined. These laws are ambitious, and they demonstrate a broad commitment to protecting extremely vulnerable individuals.

Yet, in light of the economic reality of BH, a country focused on post-conflict reconstruction and development, such laws are nearly impossible to implement.¹⁸² The lack of available funding for an effective social welfare programme is an even greater threat now as the international community slowly withdraws from BH.¹⁸³ For the past several years, the international community has filled the gap in social services by providing food, medicine, medical treatment and donations to the large extremely vulnerable population in BH.¹⁸⁴ The

¹⁷⁸ See Report of the Social Policy Task Force, *Continuum of Care in Bosnia and Herzegovina*, September 1999, at 12.

¹⁷⁹ CARE's Reach programme and other home visitation programmes are implemented by ADRA, ARE and the Red Cross, relying on donations from UNHCR, ECHO, CIDA, and DFID. See Report of the Social Policy Task Force, *Continuum of Care in Bosnia and Herzegovina*, September 1999, at 13.

¹⁸⁰ Article 43.

¹⁸¹ Article 43.

¹⁸² In the Explanation for passing the *Law on Social Welfare* for the Federation, the World Bank expressed scepticism at the capacity of FBH to finance such an ambitious programme.

¹⁸³ For instance, in a report by UNICEF, the director of the Children's Fund in the RS doubted the future of local NGOs which rely heavily on the support of international organisations. After these organisations leave, he predicted that the local NGOs would not last much longer. UNICEF Report, *supra*, at 29.

¹⁸⁴ For example, the World Bank provided 92KM per month to families in the RS that adopted orphaned children. Such assistance has now ceased. *Id.* at 23.

absence of organisations like PSF and WFP will deprive a significant needy population of basic food and medicine.

Furthermore, the new constitutional arrangement that delegates responsibilities to Cantons and municipalities creates a confusing division of labour that allows the various authorities to shirk their responsibilities. Municipalities claim they await funding from Cantons who respond that the Federation has not yet made the necessary budget allocations.¹⁸⁵ Power struggles between the State's Ministry for Civil Affairs and Communication and the authorities responsible for refugees and displaced persons at the Entity levels complicate the possibility for smoother co-ordination. Lack of co-ordination, co-operation, and accountability frustrate the provision of social services.

While there is a legal commitment to provide for extremely vulnerable individuals, there are political and economic obstacles preventing EVIs from receiving needed services. Registration that requires proof of accommodation is a primary example. Many Cantons and municipalities are cash-strapped and are reluctant to extend their list of beneficiaries to include displaced persons. These persons are more likely to have their claim for social assistance rejected by the Centre for Social Welfare. While counselling services are guaranteed under some of the laws, it is well known that these services are virtually non-existent in almost all areas and are mostly funded independently by the international community. Moreover, the state of social welfare institutions is desperate with few places and a general lack of resources. Some Cantons do not even have a single social institution. Payments for permanent financial assistance are being made in some municipalities, but getting on the list of beneficiaries is difficult, especially for elderly persons and others without assistance. Further, the payments vary from Canton to Canton, and from Entity to Entity, with some municipalities providing about 30-35KM per month for a single person household, with additional family members receiving an extra 2-4KM, while others have not distributed monthly payments since December 1998, and others still which only provide one-time lump sum payments and nothing more. Where amounts are paid, they would barely be sufficient to cover basic living costs, and in municipalities where no financial payments are made, it can have devastating consequences and place persons in severe circumstances of poverty.

¹⁸⁵ The Ombudsmen Report FBH states that although the Federation is obliged to provide Cantons some funds for social security programmes, it has failed to do so. The Ombudsmen Report FBH, *supra*, at 35.

IV. CONCLUSIONS

Return of individuals to situations where they have no durable solution is short-sighted. It is a destabilising factor in a country which has emerged from a devastating conflict, and which is economically and politically fragile. Such destabilisation could also refuel tensions, and renew forced migration. International protection for EVIs should continue as part of a long-term vision to provide for sustainable peace and return in Bosnia.

EVI refugees returning to Bosnia face an accumulation of various challenges. One, the problems associated with registering in a particular municipality in order to access needed social services. While for many refugees, particularly those returning under organised repatriation procedures, registration will not prove difficult, for many others, the need for showing proof of accommodation or relatives will be difficult if not impossible. Accommodation relates to the complex issue of repossessing property that is tightly linked with political objectives of maintaining the ethnic composition of certain areas, the reluctance to create another displaced person, and the lack of available accommodation to house those who are displaced. Many have also lost their families during the conflict, or have relatives who are no longer in a position to support an additional relative.

Once a person registers and becomes entitled to access social services, a devastated economy, high unemployment, inadequate health services, and overcrowded social welfare institutions make the availability of social assistance scarce. Quite simply, the demand far exceeds the supply. Many of the institutions and organisations already serve a large internally displaced population, and the addition of returning refugees further strains the existing welfare system. The return of EVIs to such a fragile system not only places additional pressure on the system, but could have serious health and psychological consequences for an EVI who is denied such social assistance and support. The scarcity of social services available has a greater impact on EVIs. Therefore, the particularities of the challenges faced by EVIs upon return need to be considered by host States before return takes place.

Host States can pursue two policies with regard to their EVI refugee populations. One, they can continue to provide protection to EVI refugees in their territory with a view to normalising the status of such individuals, by reviewing the particular circumstances of individual cases and carrying out an assessment of their returnability. In that context, it must be noted that keeping their legal status uncertain or temporary only, exacerbates the vulnerability of EVIs and runs counter to principles of humanitarianism. UNHCR has identified EVIs as a category of individuals in continuing need of international protection.

Alternatively, host States can facilitate the voluntary repatriation of EVIs, many of whom want to return to their home country, by providing them with accurate information; this in order to ensure an informed decision in line with GFAP¹⁸⁶ and by providing them required form of material assistance to ease the return process and to assure the economic sustainability of the returning EVIs. Such assistance, however, should be designed to meet the unique needs of individual EVIs. Host States should identify (where not already done) EVIs under their protection, appropriately liaise with the authorities in BH, actively involve UNHCR, together with local and other international organisations, as appropriate, to create conditions for return in safety and dignity and to formulate the required support structures for returning EVIs.¹⁸⁷

¹⁸⁶ According to a report done on the psycho-social condition of refugees returning from Germany, 78% of the refugees sampled in this survey stated that either they had not received any information prior to return or that the information given was incorrect. Psycho-social Survey, *supra*, at 20.

¹⁸⁷ An example of such co-operation would be the return of 34 mentally and physically retarded children refugees temporarily hosted in Germany during the conflict. Before the return took place, German ministers came to visit the Vladimir Nazor School for mentally and physically retarded children in Sarajevo which the

One of the key factors to consider is the availability of some form of support structure for returning EVIs. Optimally, EVIs should not be returned to situations of internal displacement, where they face unfamiliar surroundings, are often housed in unsatisfactory transit centres or other unofficial centres or are required to lease property, none of which addresses their specific concerns as EVIs. It is preferable that they are able to repossess their property. Alternatively, return to relatives who are in a position to foster children or provide home care for adults, is advisable. Yet, given the reality, many families are themselves not financially secure and are unable to support their relatives. In addition to improving the availability of institutions for social welfare, host States could also organise returns to clusters of houses that would permit the creation of a community, which would provide mutual help and understanding, a sense of security, and increase the sustainability of return.¹⁸⁸ Where necessary, financial inputs should be made by host States to provide temporary accommodation while the returnees own houses are made habitable or while awaiting repossession, especially with the closure of CCs. Where these programmes result in local settlement, they should be balanced with a broader view that recognises the need for minority returns. Although people may not want to return to their pre-conflict residence, and therefore voluntarily choose to settle locally, it is important that such local settlement does not decrease the capacity in a given area of absorbing returning minorities.

UNHCR recognises the rights of displaced persons and refugees to take up settlement somewhere else other than their pre-conflict home (i.e. local settlement), provided the following criteria are taken into account:

- the property rights of others are respected;
- the return is voluntary;
- the return is based on an informed choice as to the desired place of residence, whether to newly built or existing accommodation;
- due consideration is given to the absorption capacity of a particular municipality against the number of persons to be integrated;
- and recognising the political objectives of local settlement and the avoidance of *hostile relocation*.

Without the assurance of some support network for a returning EVI, the reintegration process is seriously threatened. EVIs are individuals in need of social assistance as a result of physical or mental handicap, age, and/or loss of spouse or parents, trauma, combined with poverty. Return to a place where their access to needed assistance is severely curtailed undermines their survival and possibility for integration. In order to make the return process sustainable, assistance and support should be provided. For those who prefer not to return, protection should be extended in the spirit of humanitarianism and international co-operation and the principle of burden sharing.

children had attended prior to leaving for Germany. Although the ministers felt the conditions were not ideal for the children, they agreed with the parents or relatives that it would be in the best interest of the children if they were returned to BH. The German government provided a one-time donation to the school. Interview at Vladimir Nazor School, Sarajevo, BH (25 June 1999).

¹⁸⁸ For instance, the German authorities co-ordinated with CRS to construct a building of seven flats that was used to house seven female-headed households returning from Germany. The female heads had been counselled by a Croatian psychologist while they were still in Germany. She accompanied them when they returned to Bosnia, creating a sense of continuity for these women and providing therapy for the return process. The women were also given small plots of land to produce vegetables and other food. The women also had each other as they readjusted to life in Bosnia.