Accession of Bosnia and Herzegovina to the Council of Europe: Progress Review # 11 July 28, 2000

The Human Rights Coordination Centre was tasked by the Human Rights Steering Board to draft an assessment on the progress to date of Bosnia and Herzegovina towards meeting the accession requirements identified by the Council of Europe in May1999. In this report the HRCC tracks progress on those requirements pertaining to Human Rights. The report is intended to provide factual updates but does not intend to provide an opinion on whether or when BiH should accede to the CoE.

® *Please note that the Council of Europe now distinguishes between the legislation passed by the local authorities and the legislation imposed by the Office of the High Representative, which was not the case in the previous assessment papers.*

Please contact HRCC if you would like copies of past reports. Please send information/comments to fax number: 387-33-283-501 to the attention of Jayson Taylor, Sirpa Rautio, or Eric Frejabue, or by e-mail to jayson.taylor@ohr.int, sirpa.rautio@ohr.int, or eric.frejabue@ohr.int.

UNHCR has contributed to, reviewed, and approved sections directly relevant to its mandate. The sections are noted by an asterix (*) in the text. The "®" symbol in the text indicates issues where changes have taken place since the last progress review.

Highlights

- Change in assessment. Amendments to the *RS Law on Citizenship* ensuring its full compliance with the *BiH Citizenship Law*, were approved this month by the RS National Assembly, *page 9*
- Entity Councils and Commissions have been formed to implement the *RS Law on Courts and Judicial Service, the Law on Public Prosecutor's Office and the Federation Law on Judicial and Prosecutorial Service, page 6*
- The partially resolved Mostar Gimnazija crisis this month shows that the beginnings of a gradual process of reintegration can be identified, though it is not as yet established. Utmost vigilance remains *necessary, page 14*
- While the registration of property claims is complete in both Entities, implementation of property legislation remains slow and difficult, *page 10*

3. Human Rights Institutions

BiH

- ***Commitment to adequate Funding of the Human Rights Chamber, Ombudsperson and Commission for Displaced Persons and Refugees***

Not Satisfied. The Council of Ministers of BiH proposed in October 1999 (for the first time) that the funding levels for the Institutions in Annex 6 and 7 be raised from the current KM 200,000 to the level of KM 600,000. The year 2000 budget provides for KM 400.000 per institution, which remains below KM 600,000, deemed to be "adequate funding". Note that the latter sum is less than each Institution pays for local salaries at BiH salary levels.

By 3 March 2000, the State government had completed outstanding payments towards the total funding committed for 1999 to the Human Rights Chamber, the CRPC, and the Ombudsperson. The total amounts are still below KM 600,000 per

institution, but do at least fulfill the amount of KM 200,000 per institution, which the state itself budgeted for 1999. As of 26 May, the institutions did not receive any payment for 2000, yet. ® Disbursements for the year 2000 have not been paid, due in part to a failure on the part of the Federation to pay its full contribution to the State

BiH, FBiH and RS

- ***Full compliance with decisions of the Human Rights Chamber and recommendations of the Ombudsperson***

In recent months, there has been a trend towards implementation of the decisions of the Chamber and the Ombudsperson. This has led, for example, to a current implementation rate of 65% of the 207 decisions of the Human Rights Chamber in which an order to a government was given and in which the deadline for reporting back has expired. The implementation rate for cases of the Ombudsperson in which a public recommendation was given is approximately 45% of 600. One reason for the discrepancy is that the Ombudsperson seeks and achieves implementation in many cases which are not made public and not included in these statistics.

However, the Entities have not demonstrated an ability to provide any assurance that the many thousands of remaining property repossession cases (see graph below) can be resolved within a reasonable time, and certainly not within the time limits established by law. BiH is therefore not currently in a position to be able to prevent future violations of the Convention, which is fundamental to the European Court of Human Rights system. Regarding this criteria, cases involving “possessions” (including property matters) comprising of over 70% of the claims brought to the Ombudsperson and the Chamber, BiH would be unable to satisfy this particular compliance requirement used by the Committee of Ministers, as many thousands of similar cases are not complied with. Less than fifteen percent of applicants to domestic housing bodies have

been able to repossess their house or apartment. Until this percentage increases significantly, under Human Rights Chamber / Strasbourg jurisprudence, large numbers (tens to hundreds of thousands) of admissible applications could reach the European Court of Human Rights upon BiH accession under the "continuing violation" principle.

BiH

Satisfied. The State (as opposed to the Entities) has been found to be in violation of the European Convention on Human Rights and other international conventions in very few instances, due to its limited competencies under the Constitution of BiH. The State has implemented all orders and recommendations of the Chamber and the Ombudsperson.

FBiH and RS

Despite ongoing non-compliance with respect to the *Human Rights Chamber's* decisions, some progress has been noted. The agents, who are undertaking much of the work, were appointed in early 1999. It may thus take up to mid-2000 to be able to assess whether the governments are respecting the decisions of the Chamber following the introduction of the agents' offices. It is evident however that the level of co-operation between the Agents and the Institutions is increasing. As a result, most cases appearing before the Chamber and Ombudsperson at least have received legal argumentation by the respondent governments. There has been a high degree of success regarding interim measures issued by the *Chamber* and the *Ombudsperson*, and an increasing number of amicable solutions found, especially in Ombudsperson cases.

RS

Partially Satisfied. The RS is not meeting all obligations with regards to compliance with *Chamber* decisions. The RS has not implemented orders issued by the Chamber in the June 11, 1999 Decision of *Islamic Community in BiH v. RS*, nor has it

implemented the Chamber's orders in the case of *Matanovic v. RS*, which has been outstanding since 1997. Broadly speaking, implementation has been achieved in most non-property Ombudsperson cases, but only in a minority of cases involving property repossession. In addition there has been non-compliance in a case of two disappearances, less than full compliance in cases of illegally threatened evictions, and non-compliance with regard to *Zvornik* 3 recommendations. Some improved implementation has been seen with respect to a series of property cases in the RS city of Gradiska, although this is still below 50%.

FBiH

Partially Satisfied. The Federation is moving towards compliance with decisions of the Human Rights Chamber (currently over 90%), although often with the assistance/involvement of OHR, the OSCE and other international organisations. As a result of OHR involvement in legislative amendments, the Federation has complied with requirements in several death penalty cases. There are only a few cases of non-compliance with decisions of the Ombudsperson, including, length of administrative proceedings, failure to deal with the "Liska Street Incident" which took place in 1997, ordered retrials, and ill-treatment by law enforcement officials. The issues of individual property and changes to JNA property legislation would not have progressed without OHR involvement. All five previously-reported promised repossessions have now taken place. The Federation currently has a limited number of Human Rights Chamber decisions to implement, but there remain many repossession cases filed with the Ombudsperson of BiH in which there has not been implementation.

FBiH and RS

- ***Establishment of a working group with OHR and Council of Europe for restructuring human rights protection***

mechanisms in accordance with recommendations of the Venice Commission

Partially Satisfied. Restructuring of the human rights mechanisms is currently under discussion with the Venice Commission, the OHR, the OSCE, the relevant institutions, and State bodies. On 1 April 2000, the Venice Commission adopted a plenary opinion on the future restructuring of the human rights institutions. The report was made public on 16 June 2000.

FBiH

- ***Passage of legislation on the Ombudsmen recommended by the Venice Commission and guaranteeing their continuing independence***

Partially Satisfied. On 28 July 1999, OHR, OSCE, and the Council of Europe proposed a draft to the Federation Minister of Justice. The draft law was on the agenda of the 9th Session of the House of Representatives of the Federation of BiH, which began on 5 October. The draft law has passed the first reading (of two) in the House of Representatives, with only minor changes. There have been delays, however, in advancement through the House of Peoples, passage by which is required for adoption of the legislation. On 21 March, the House of Peoples adopted the required legislation at first reading. The government must now review the comments of the two bodies and prepare the legislation for "proposal", the second and final reading. The backlog of legislation pending before the Federation Parliament could delay the adoption process. ® As of mid-July 2000, the draft law had not yet been brought back before Parliament for second reading.

RS

- ***Establishment of the Ombudsmen as a multi-ethnic institution***

Partially Satisfied. The *Law on the Ombudsman of the Republika Srpska* prepared by the Venice Commission and other organisations, which includes the establishment of the Ombudsmen as a multi-ethnic institution, was adopted on February 8, 2000 and came into force on 17 February 2000. The Law conforms to European standards and is in accordance with the Venice Commission Draft Law. It is important to note that this law remains to be implemented. Implementation will require action on the part of the RS authorities and will be closely monitored by OHR and OSCE. The three Ombudsmen have now been appointed. They are Mr Franjo Crnjac, Mr Darko Osmic and Ms Slavica Slavnic. However, measures to staff and equip the organization to ensure full functioning remains outstanding, and they have not yet begun to accept complaints.

4. Judicial System

Adoption of legislation to achieve professional and independent prosecutorial and judicial system

The goal of creating an independent and impartial judiciary in BiH has been promoted considerably by the adoption of judicial service laws in both entities that provide a merit-based, non-political structure for the appointment and dismissal of judges and prosecutors. It is now important that the laws be implemented fully and efficiently. Laws and regulations providing for a new budgetary and administrative mechanism for courts and prosecution offices must also be promoted in order to prevent the executive from unduly influencing judicial decision making through courts and prosecution office budgets.

Better means for the Federation and the RS courts and prosecution agencies to prosecute inter-entity and inter-ethnic crime must be created. Existing co-operative structures, including the 1998 *Memorandum on Inter-Entity Legal Co-operation and the Commission on Inter-Entity Legal Co-operation*, must be revitalized. In the Federation, a structure for prosecution and punishment of specific classes

of federal and inter-cantonal crimes has already been established pursuant to imposed amendments to the *Federation Law on the Supreme Court and the Law on the Federation Prosecutors' Office*. Its proper implementation requires further structural and institutional reforms.

Draft laws for setting up Judicial and Prosecutorial Training Institutes are being prepared in both entities with the assistance of OHR experts. An Interim Inter Entity Co-ordinating Board for judicial and prosecutorial training has also been set up. This Board met at different locations in each Entity in order to discuss and further develop the proposed drafts. At a meeting held at Neum on May 3-4, 2000 the Interim Board and senior members of the BiH judiciary and prosecution finally agreed upon the structure and content of these draft laws. Final versions will now be prepared by the respective entity Ministries of Justice.

Efforts must continue at revising the existing Criminal Codes and Criminal Procedure Codes in both entities. These revisions will include changes affecting the structural relationships between courts, prosecutors and police, leading to a clarification of their roles and greater independence for judges and prosecutors. In the RS, the RSNA passed the Proposed Criminal Code on 22 June, 2000. Reform of the RS criminal procedure code is still in progress. In the Federation, the international community has already assisted in the first phase of criminal reform that has been in force since 1998. The second phase, aiming at further improving the criminal code and the code of criminal procedure, has been initiated, but no formal forum for this work has been established.

FBiH and RS

- ***Adoption of the laws to establish independent selection procedures for judges and prosecutors and priority to adequate judicial salaries***[1]

The adoption of these laws provides for the establishment of special judicial commissions/councils responsible for the appointment, discipline and dismissal of judges and prosecutors. In the Federation, judicial commissions have been established on both entity and cantonal level. ® The RS High Judicial Council held its inaugural session on July 18. The international community is currently monitoring the work of the commissions/councils to ensure that the structures and principles provided for in this legislation are properly implemented.

FBiH

The law was imposed by the High Representative. The draft *Law on Judicial and Prosecutorial Service* was passed in February by the House of Representatives, and after the House of Peoples failed to pass it, was imposed by the High Representative on May 17. The High Representative also amended the draft law as passed by the House of Representatives in order to provide for better Federal Commission oversight over the work of the Cantonal commissions; strengthened guarantees for multi-ethnicity and gender balance within the commissions and the judiciary; initial judicial and prosecutorial training; improved salary structures; and procedural rules for the extraordinary period of review under which all sitting prosecutors and judges are scrutinized. The Federation Commissions for Judges and Prosecutors held its inaugural sessions on 12 June, 2000. The Federation Commission also adopted a provisional book of Rules.

RS

Satisfied. The *Law on Courts and Judicial Service and the Law on Public Prosecutor's Office* were passed by the RSNA on April 24 and 25. The laws contain some elements of concern, i.e. on immunity, judicial co-operation with other countries, and the composition of the High Judicial Council, so the IC is currently considering various ways of promoting necessary

amendments. Books of Rules providing detailed provisions for the implementation of this legislation have been prepared with the support of the international community and adopted by the High Judicial Council.

5. Constitutional Court

BiH

- ***Commitment to adequate funding of the Constitutional Court in a manner which sustains its independence and implementation of its decisions***

Unsatisfied. The state has offered 50,000 KM towards the funding of the constitutional court. This is inadequate to ensure independence and implementation of decisions. Please note that while the assessment remains unchanged, the total amount of money allocated by the State to the Constitutional Court has changed but could not be determined with precision. That will be the case in the next issue of the assessment paper.

6. Compliance with the European Convention on Human Rights

Continued revision of legislation to ensure compliance with the ECHR:

BiH

- ***Adoption of Immigration and Asylum Law****

Satisfied. The House of Peoples, the second Chamber of the BiH Parliamentary Assembly, adopted the *Law on Immigration and Asylum* on December 3, 1999. The law was published in the BiH Official Gazette on 23 December 1999 and entered into force on December 31, 1999. The Law establishes the legal framework for the admission and stay of aliens, as well as the criteria and procedure for determining refugee status and granting asylum in BiH.

Outstanding issue: All necessary by-laws need to be adopted to ensure the implementation of the law. In particular, the following steps must be taken to achieve the full implementation of the law including: The issuance of comprehensive instructions at the State and Entity level, establishment of, and appointment of staff for the bodies foreseen in the law, i.e. an Appeals Panel under the Council of Ministers, and a unit fully qualified in refugee law within the Ministry of Civil Affairs and Communication; transfer of Entity-held records regarding decisions on entry and stay of aliens made prior to the entry into force of the law to the Ministry of Civil Affairs and Communications. UNHCR, OHR, EU Phare and the Ministry for Civil Affairs and Communication have established a joint working group to address the drafting of the by-laws. ® Due to the creation of a new State Ministry for Human Rights and Refugees, as well as the ensuing outstanding transfer of competencies from the Ministry for Civil Affairs and Communication, the implementation process will be somewhat delayed but it is still hoped that the drafting of by-laws can be finalised by the end of the year 2000. Appointment of relevant officials in the new Ministry is of utmost importance to continue with the drafting of by-laws in the joint working group.

BiH, FBiH, and RS

- ***Adoption of Law on Associations and Foundations respecting independence of Non-Governmental Organisations***

Partially Satisfied. The draft state level Law on Associations and Foundations has been finalized by the OHR after the OHR departments decided that the law would cover only associations and foundations and not public legal persons (public corporations established by the institutions of BiH or by the institutions of District of Brcko), as reported earlier. It is expected that the draft law will be distributed to the Council of Ministers by the end of this month. The latter is to

forward it to the State Parliament.

® Concerning the draft Law on Associations and Foundations in the Republika Srpska the draft law was sent to the RS National Assembly in July, where the law passed the first reading without debate. For the final adoption of the law it will be necessary that the draft passes the second reading at he next RS National Assembly session.

® Finally, with respect to the Federation law, in July OHR, USAID and the International Center for Non-for-profit Law have held two meetings with the Federal Ministry of Justice and Ministry of Social Affairs, Refugees and DPas in order to present the draft. At the last meeting it was agreed that the ministers would send their comments on the draft by July 21st to OHR and have another meeting on 31st July to finalize the draft which would be consequently sent to the Federation Parliament.

RS and FBiH

- ***Establishment of groups to examine compatibility of legislation with ECHR, and regular consultation with OHR and CoE on legislative initiatives***

Partially Satisfied. The Ministry of Justice of the Federation and the Ministry of Justice of Republika Srspka established ECHR compatibility groups of five members each in 1998 (FBiH) and 1999 (RS) respectively. There is a coordinator in the Ministry of Foreign Affairs. However, while some members of the groups have taken part in a study visit to Hungary to discuss the compatibility procedure, the groups have not met officially or started their work of drafting reports assessing the compatibility of domestic legislation with the ECHR. The Council of Europe has therefore recently decided to change the composition of the groups. There is consultation with OHR and CoE on legislative initiatives, but this is predominantly initiated by the international organisations rather than by

government ministries.

RS and FBiH

- ***Legislation on Conscientious Objection and Alternative Service***

Unsatisfied. Legislation in both Entities falls short of ensuring the right to conscientious objection and alternative service to military service, both regarded as essential components of the right to freedom of thought, conscience and religion (article 9, ECHR and Recommendation No. R (87) 8, issued by the Council or Ministers of the Council or Europe in 1987).

RS

- ***Revised Law on Internal Affairs***

Unsatisfied. The RS National Assembly passed amendments to the *Law on Internal Affairs* in its session on 14 and 15 July. UNMIBH completed a preliminary review of the latest version of the Law and found serious inconsistencies with the Dayton Agreement, the European Convention on Human Rights, the Framework Agreement on RS Police Restructuring, Reform, and Democratization, as well as established policies which guide implementation of the police reform. Additionally, the Law was found to lack specificity in many areas.

UNMIBH proposed a full review of the law and requested the expertise of the CoE in its redraft. CoE Experts, OHR, and UNMIBH representatives met in Banja Luka on 18 November 1999 to discuss this issue, and agreed to proceed with redrafting the law. This redraft is to be led by OHR, in line with comments from the CoE and input from UNMIBH. The latter input consolidates the CoE comments with necessary changes to assure consistency with the *Framework Agreement on RS Police Restructuring, Reform, and Democratisation*.

FBiH

® By decision dated 25 March 1998, the Federation Constitutional Court struck down a number of articles in the Federation Law on Internal Affairs. The invalidated articles fall into two broad categories: those that interfered with the constitutional imperatives regarding federal versus cantonal jurisdiction, and those that conferred constitutionally impermissible powers upon the Deputy Minister. All of these articles became invalid as of the date the decision was published in the Official Gazette. In order to remedy the situation, the legislature must pass amendments to the Law on Internal Affairs that conform with Constitutional requirements. While amendments have been proposed, they have not made it through the legislative process due to political obstruction. The voided articles have not had the force of law since September 1998.

BiH, FBiH, RS

- ***Law on Citizenship****

BiH

Imposed by the High Representative and subsequently adopted by the Parliament. The *BiH Law on Citizenship* was imposed by the High Representative and entered into force January 1, 1998 on an interim basis, pending adoption by the BiH Parliamentary Assembly. On July 27, 1999 the Law was adopted by both Chambers of the BiH Parliamentary Assembly and was subsequently published in the Official Gazette on August 26, 1999.

Outstanding: The law still requires the adoption of implementing instructions, notably concerning subsequent registration of those who acquired citizenship on the basis of RBiH citizenship legislation. Also, the Madrid PIC urges BiH to conclude, with the assistance of the High Representative, bilateral agreements on dual citizenship with neighboring countries as soon as possible, but no

later than June 30, 1999.

RS

® Satisfied. Amendments to the Law on Citizenship, ensuring full compliance of the RS Citizenship Law with the BiH Citizenship Law, were approved by the RS National Assembly in its last session held on June 22, 2000. The RS Government committed itself to pass the necessary regulations for the implementation of the Law. In particular such regulations will enable those former SFRY citizens, who under the Law are entitled to BiH and RS citizenship, to apply for citizenship. As background information the RS Citizenship Law was passed by the RS National Assembly in December 1999 and entered into force December 14, 1999. However, during the RS National Assembly, some last-minute amendments were adopted which are not fully in line with the State Citizenship Law.

In addition, the RS National Assembly passed the Law on Changes and Amendments to the Law on Ministries, (published in RS Official Gazette, no. 15/2000). The amendments stipulate that citizenship and basic registration shall be taken over by the Ministry of Administration and Local Self-Government. This provision will become effective on July 30, 2000).

FBiH

Not satisfied. The adoption of the FBiH *Law on Citizenship* has been problematic. A working group comprised of representatives of OHR, UNHCR, the FBiH and the Council of Europe agreed upon the draft Law in April 1998. All provisions of the Law were in compliance with the BiH Citizenship Law. However, the FBiH Ministry of Interior subsequently, unilaterally, and without the knowledge of OHR revised certain provisions of the draft Law delegating the decision-making competence from the FBiH to the

Cantonal level. After OHR intervention the Ministry of Interior reverted to the previous draft in compliance with the BiH Law and submitted the draft to the FBiH Government for further procedure. The FBiH Government forwarded the draft Law to the FBiH Parliament December 3, 1999. it was only discussed in the House of Representatives May 24 and approved in its first reading by the House of Peoples on July 11. The Law still needs a second reading in both Houses before it can enter into force. The draft Law needs urgent adoption, since former SFRY citizens who took up permanent residence in BiH before 1998 are eligible for BiH citizenship as of 1 January 2000.

RS

- ***Adoption of the Criminal Code and Code of Criminal Procedure***

Partially satisfied. Efforts to revise the *Criminal Code* and *Criminal Procedure Code* are ongoing. The 11th session RS National assembly passed the proposed *Criminal Code* on June 22, 2000. The Criminal Procedure Code has undergone review by the Council of Europe experts and is being prepared with the working group for presentation to the Ministry of Justice. It is expected that this will be placed before Parliament before August for final passage.

7. ICTY

- ***Full co-operation with the ICTY***

Unsatisfied. The only arrests of war criminals so far have been conducted by SFOR, the limited involvement of the local authorities in this respect and their lack of co-operation has not changed since the beginning of the assessment exercise. There was no arrest of war criminals by SFOR during the reporting period. So far 8 indicted war criminals have been arrested by SFOR since October 25, 1999. In total, SFOR has now detained twenty one alleged

war criminals in BiH, which is to be added to the 18 who surrendered or have been apprehended in third countries. More than half of the public indictees who remain at large originate from BiH.

9. Property Laws (Return of Refugees and Displaced Persons)*

- ***Full co-operation and compliance with Annex 7 on Refugees and Displaced Persons of the Dayton Peace Agreement in the Implementation of the property laws***

Unsatisfied. The legal framework for return of refugees and displaced persons, including the implementation of decisions of the Commission for Real Property Claims of Displaced Persons and Refugees (CRPC), was set in place in both Entities by the High Representativeas Decisions of 27 October 1999. Although notable progress has been made over the past several months, also due to the pressure applied by the International Community (in particular OHR, OSCE, UNHCR, UNMIBH and CRPC) with the Property Legislation Implementation Plan (PLIP), implementation of the laws remains at an unacceptable level .

® The registration of claims is complete in both Entities (at this stage, only claims for the repossession of private property can still be filed given the fact that there is no deadline). As of end of May, 218,244 claims for houses and apartments have been registered in the two Entities. However, a combination of open political obstruction, lack of political support, and insufficient allocation of resources has meant that processing of the claims is very limited.

Most claimants have still not received decisions confirming their property rights. According to the PLIP May statistics, the Federation has issued decisions on approximately 44 % of the claims, resulting in repossession

by approximately 17% of the claimants. The Republika Srpska has issued decisions on approximately 20% of the claims filed in that Entity, resulting in repossession by approximately 7% of the claimants. Thus, in Bosnia and Herzegovina, 33% of the claims have been decided and 12% of the claimants have actually repossessed their property.

It is to be noted that the percentage of repossession does not necessarily reflect return. Repossession is complete when the pre-war title-holder regains legal possession over their private or socially owned property. Legal possession does not necessarily mean physical occupancy as municipalities include destroyed property for which they claim that Œrepossessiona is complete. Additionally, repossession does not necessarily mean that the pre-conflict household physically returned to the property as repossession may result in the physical return of only a part of the pre-conflict household while others continue to occupy a temporary accommodation elsewhere. However, despite these grim figures and the overall slow implementation of individual claims, there are signs that some housing authorities are starting to implement property laws and ensure the enforcement of their decisions. However, the Croat controlled Cantons 7, 8 and 10, have, and for all intents and purposes, almost completely failed to implement the property laws. This is in stark contrast with Canton 1, where all eight municipalities are processing claims and evicting illegal and temporary occupants at a relatively brisk rate.

Generally, there remains a lack of will on the part of housing authorities to tackle multiple occupancy and other forms of misallocation of housing stocks. While shortage of accommodation remains a major practical problem in many places, there is little sign that the responsible authorities are making efforts to maximize their use of housing stocks, and/or create the necessary

alternative/emergency accommodation to facilitate implementation of the housing law. There are indications throughout Bosnia and Herzegovina that there is ongoing misuse of municipal housing stock, which should otherwise be available for accommodation. In Sarajevo, for example, there are reports that secondary allocation of accommodation is provided by housing authorities to people who do not meet the criteria defined in the legislation. Similarly, many municipalities appear to be allocating available housing stock to local officials, instead of using the available stock for humanitarian and social housing.

The responsible authorities in both Entities, especially Republika Srpska, have not allocated the personnel and material resources that are necessary to resolve all property claims within a reasonable timeframe. Although some progress in the RS has been observed regarding identification and allocation of alternative accommodation, as well as the provision of personnel and material resources, the Entities have yet to "own" the process and remain unwilling to accelerate the process absent consistent pressure from he International Community.

Outstanding. The self-sustaining return process has not been achieved but appears attainable with the harmonized property legislation and an improved public tolerance for return in most parts of the country. To achieve this, the efforts of the International Community should focus on domestic institution building, specifically increasing the capacity and professionalism of housing administrations and limiting political interference in the administrative and adjudicative process. Close attention must also be given to budgetary processes, staffing decisions and training. Efforts will be made to build formal channels of communication between different municipalities and across the Inter-Entity Boundary Line, to enable coordinated

implementation.

FBiH and RS

- ***Revised laws to guarantee the right to return of individuals whose apartments have been permanently reallocated to another person***

Imposed by the High Representative. The High Representative issued a Decision on 13 April 1999, by which new permanent occupancy rights were 're-converted' to temporary occupancy rights, to be resolved through the administrative claims process. This Decision has been accepted by both Entities and published in the respective Official Gazettes. Implementation has begun slowly. However, as the category of new permanent occupancy right holders includes many well-connected people, there is strong resistance to evictions, and strong international pressure is required to achieve any progress.

FBiH and RS

- ***Revised Law on Housing Relations***

Satisfied in the Federation and imposed by the High Representative in the RS. Amendments to the problematic provisions were adopted by the Federation Parliament in January 1999, and imposed in Republika Srpska by a Decision of the High Representative on 13 April 1999. Following these amendments, it is no longer possible to cancel the occupancy rights of individuals owing to their displacement as refugees or displaced persons. Prior court decisions canceling occupancy rights on this basis have been annulled.

FBiH and RS

- ***Establishment of a mechanism to ensure access to and recognition of personal documents***

Unsatisfied. An advisory committee is preparing draft legislation regarding access to public administrative documents. Efforts by the competent authorities with regards to recognition of documents are at an early stage, and will require further concerted input on their part in the future.

In relation to documentary evidence for the property claims process, access to documents remains problematic in many parts of the country. Claims without supporting documentation are wrongfully refused at the filing stage, whilst copies of documentation remain extremely difficult or expensive to obtain from cadastral administrations and property book services. A number of municipal housing authorities have no access to the cadastre or housing records, either because they have been destroyed or because they are held elsewhere (usually across the IEBL).

FBiH

- ***Full implementation of the Decisions of the Human Rights Chamber concerning former Yugoslav National Army (JNA) apartments***

Partially Satisfied.A Decision of the High Representative on 1 July 1999, agreed in advance with the Federation Government, establishes criteria for determining which former occupants of JNA apartments should be considered refugees with the right to return. For those granted the right to return, procedures have been established for recognizing their pre-war contracts on sale. For those not permitted to return, they will be reimbursed for any money paid towards purchase of the apartment. Where the individual is unable to reach an agreement with the Ministry of Defense, the responsible court will have full jurisdiction to adjudicate.

The recognition of contracts of sale of those who remained

in possession of their apartment is proceeding satisfactorily. Repossession of JNA apartments, however, has made little progress due to insufficient administrative capacity in the Sarajevo Cantonal Housing Department.

RS

- ***Establishment of an effective property claims process***

Partially satisfied. This accession requirement refers explicitly to the establishment of offices to receive claims, including staffing, funding, and other resources. The issue of implementation is discussed above and is not part of this specific requirement.

The Republika Srpska Ministry of Displaced Persons and Refugees has established a network of municipal offices (OMIs), which are operational, although without sufficient capacity for the task. While there have been few reported incidents of individuals being completely prevented from making their claim in Republika Srpska recent months, there continues to be reports of administrative obstacles throughout the filing process. The Republika Srpska Government has agreed with the international community on budgetary and other measures to strengthen the administrative claims process. However, this has yet to be achieved and there are indications from the field that the funding remains inadequate in many parts of the RS.

11. Education

Overall progress in the current education system in BiH remains unsatisfactory for a number of reasons, including lack of material resources, lack of access or facilities for disabled children and the gender imbalance that exists in relation to male-dominated directorial positions in schools. However, the major problem lies in the effective division of the education system along ethnic lines, which acts to inhibit sustainable minority return and ethnic re-

integration; further, it encourages future destabilisation through radicalising, and thus polarising, another generation of citizens. To address this issue the international community focuses on excising offensive materials from text-books and on promoting multi-ethnicity and tolerance in the classroom.

- ***Substantial progress in the amendment of textbooks, including withdrawal of all offensive materials by beginning of 1999/2000 school year***

Partially satisfied. Some progress has been made towards removal of offensive materials from all textbooks. This ongoing exercise, involving extensive negotiations with local education authorities and substantive work by local teams of experts followed by consultations with an International Independent Commission, is an interim step, to be followed by substantial further improvement of textbooks to ensure that they eventually meet European standards. Continuous pressure from the international community remains necessary. Extensive spot checks carried out in schools throughout the country between late October and late December (whereby approximately 10% of all the schools were actually visited) revealed that the level of compliance is generally acceptable. However, compliance is better in the Federation than the RS, and higher in primary than secondary schools. Schools following the Bosniak curriculum have the highest compliance level, followed closely (except in some problematic mixed areas of the Herzegovina Neretva and Central Bosnia Cantons) by schools with the Croat curriculum. Schools following the Serb curriculum have the lowest compliance levels, partly because the Ministry issued a different instruction from that issued by OHR leading to the surreptitious introduction of a new set of textbooks into the Republika Srpska in September 1999. Those textbooks were not reviewed by the expert teams of the other constituent peoples of BiH

before they were actually introduced.

- ***Review of the education system in order to eradicate all aspects of ethnic segregation***

Unsatisfied. In most cases the education system in BiH is effectively entrenched along ethnic lines. Eradication of all aspects of ethnic segregation can only be achieved over the long term through continuous pressure from the international community and growing involvement of the civil society in the education system and provided the political will exists on the part of the national and local authorities. Under the Federation constitution, education is within cantonal competence, except where the municipality has a different majority ethnic population from the canton as a whole, when it is a municipal competence. In the Republika Srpska, however, education is an Entity responsibility. In the Federation, the Deputy Minister continues to see ethnic segregation as necessary to protecting the rights of the Croat constituent people whose numbers were reduced from 750.000 before the war to about 400.000 now. In this respect, the OSCE and the report of the International Human Rights Law Group have reported several cases of physical segregation.

A symposium on the curricula of the "national" subjects was held in Sarajevo on February 7 and 8 where the participants agreed to adopt the Swiss model. The plan, which, allows a great degree of autonomy for each canton, also requires a sophisticated level of co-ordination and exchange between the cantons and between the Entities. The symposium was designed to pave the way towards a sustainable education system. No joint curriculum can be envisaged in the short term but a process has now been initiated which will produce gradual change that should eventually lead to a more integrated education system in BiH on the basis of accepted European standards and norms.

On 10 May 2000 the Entity Ministers of education confirmed this strategy by signing both a Declaration (formulated as a strategic plan) and an Agreement, (formulated as an operational plan). The Agreement and Declaration itemize the short term and medium term reforms to be implemented all over BiH with a view to desegregating existing education systems, harmonizing curricula and textbooks, establishing mechanisms for recognizing diplomas, certificates and professional qualifications, and thereby facilitating the return of refugee families throughout the country.

Under the terms of the 10 May 2000 Agreement, a "Curriculum Harmonisation Board" was formed; several meetings were held by its members and Entity Ministers are now called upon to make decisions regarding the concrete measures to be implemented by September 2000. Obstructionist tactics have been observed lately on the part of both the RS Minister and the Croat Deputy Federation Minister, particularly with regards to the introduction throughout the country of "curricular modules" on language, literature, culture and religion reflecting the traditions of the three constituent peoples which have to be taught to all the children of BiH, as well as the introduction of the second alphabet. ® Negotiations will now be taken to a higher political level but the use of drastic measures may become the only alternative to the present stalling.

The international community has recently focused on resolving a certain number of school crises in the Federation, i.e. Stolac, Vares and Gornij Vakuf. While the recent Agreement provides the necessary framework for solving such cases, direct political intervention and pressure remains indispensable. Thus, the Primary schools of Stolac and Vares are now shared by the Croat and Bosniak returnee children, ® and an agreement was recently signed in Mostar on the highly symbolic Gymnasija which in the

future will be shared by the two communities; a gradual process of reintegration is thus being established but utmost vigilance remains necessary.

Higher education developments

The Higher Education Coordination Board was finally established formally in June 2000; it had been under discussion for over two years and World Bank funding and EU technical assistance was conditioned upon its creation. In its first stage, its main task will be to adopt its work plan based on the recommendations contained in the World Bank/ Council of Europe report that identified the need for a long term strategic plan between the BiH universities to modernize their under-funded and under-managed system. The report acknowledges the crucial importance of reforms to the university system for the future of a sustainable BiH.

- Accession of Bosnia and Herzegovina to the Council of Europe: Progress Review # 8 (Chart)

HRCC[2] Member Organizations

OHR: Under the Annex 10 of Dayton Agreement, the Office of the High Representative is tasked with co-ordination of civilian aspects of peace implementation in Bosnia. OHR maintains a regional human rights presence, and works closely with other agencies who monitor the human rights situation, to develop strategies and co-ordinate interventions. For more information about the OHR generally or about human rights specifically, please contact:

Office of the High Representative Emerika Bluma 1 Sarajevo, Bosnia	tel: 387-71-447-275 fax: 387-71-447-420 web:www.ohr.int

OSCE: Human Rights Department (HRD) The OSCE mandate

derives from Article XIII of Annex 6 of the Dayton Agreement. HRD has staff in OSCE's 27 Field Offices and 4 Regional Centers, which allow the OSCE to ensure full coverage of the territory of BiH and makes the organisation a direct actor in addressing human rights issues. The HRD focuses on property and other return related issues; education; employment and; rule of law. The Human Rights Department interprets its mandate to include inter alia: monitoring, investigating and intervening on allegations of human rights abuses.

OSCE Human Rights Department Dzenetica Cikma 2/4 Sarajevo, Bosnia	tel: 387-71-444-444 fax: 387-665-236 web:www.oscebih.org

UNHCR: The United Nations High Commissioner for Refugees is the lead organisation for the implementation of Annex 7 of the Dayton Agreement, which guarantees the right of displaced persons and refugees to return to their homes of origin. Protection Unit: UNHCR Protection Unit provides international protection and assistance to refugees abroad, displaced persons, as well as other persons of concern through its offices throughout Bosnia and Herzegovina and the network of Legal Aid/Information Centres. To create a framework conducive to safe and dignified return and to promote return opportunities, UNHCR has been involved in various human rights areas: return, property, citizenship, customs, travel documents, amnesty, pensions, gender. Tools of involvement range from assisting in the creation of an appropriate legal framework, monitoring the situation on the ground, interventions, producing reports and issuing position papers in relation to persons still in need of international protection.For more information about UNHCR in Bosnia, please contact:

UNHCR Unis Building Tower A Fra Andela Zvizdovica 1 Sarajevo, Bosnia	tel: 387-71-666-160 fax: 387-71-470-171 web: www.unhcr.ch

UNMIBH/IPTF Human Rights Office: The existence of International Police Task Force is mandated by Annex 11 of the Dayton Agreement. Under Security Resolution 1088, the IPTF's work includes "investigating or assisting with investigations into human rights abuses by law enforcement personnel." The main objectives of the Human Rights Office are to: investigate human rights violations by law enforcement agents; design remedial measures to correct such violations; and to monitor and ensure the implementation of corrective measures. To implement these objectives, the Human Rights Office carries out investigations into serious incidents of police misconduct and conducts comprehensive inspections of law enforcement agencies to address persistent endemic institutional deficiencies. The Human Rights Office is comprised of 145 International police and 17 international civilian staff, deployed throughout the country.

UNMIBH Mese Selimovica 69 Sarajevo, Bosnia	tel: 387-71-496-265 fax: 387-71-496-539

OHCHR: As of December 1998, the OHCHR in Bosnia and Herzegovina is part of the Office of the Special Representative of the Secretary General (SRSG, in charge of the UNMIBH). It focuses its activities on human rights training and on issues of gender and discrimination, with particular emphasis on social and economic rights. It

continues to support the mandate of the Special Rapporteur of the Commission on Human Rights and participates in the work of the Human Rights Co-ordination Centre (HRCC) of the OHR. The legal authority for its presence is based on annual resolutions of the Commission on Human Rights as well as Article XIII of Annex 6 of the Dayton Agreement.

Office of the High Commissioner for Human Rights PTT building, Mese Selimovica 18, Sarajevo, Bosnia	tel: 387 71 49 6402, 6403 fax: 387 71 49 6438

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1 According to JSAP's findings, the independent control of finances for the judicial system is absolutely essential to ensure genuine independence of decision-making. At this point, efforts to secure independent financing for the judicial system have moved forward in Sarajevo, where the courts will no longer be dependent on the Ministry of Justice, but will instead be financed through the Cantonal Court.

2 The HRCC is an interagency body staffed by representatives of the OHR, OSCE and OHCHR. It produces quarterly and ad hoc reports on the human rights situation in Bosnia, supports the work of the Human Rights Steering Board and links with the Local and Regional Human Rights Working Groups thoughout the country.

OHR Human Rights/ Rule of Law Department