

# Accession of Bosnia and Herzegovina to the Council of Europe: Progress Review # 12, Nov 2, 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 May 1999. 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 assessment papers issued before July 28, 2000.*

*Please contact HRCC if you would like copies of past reports. Please send information/comments to fax number:387-71-447-420 to the attention of Sirpa Rautio, or Eric Fréjabue, or by e-mail to, [Eric.Frejabue@ohr.int](mailto:Eric.Frejabue@ohr.int), or [Sirpa.Rautio@ohr.int](mailto:Sirpa.Rautio@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.***

## In Perspective

*This section is intended to provide information on the latest developments that relates to the human rights situation in BiH. The issues mentioned in this part of the report are **not** part of the original list of requirements set by the Council of Europe in May 1999.*

- The national parliament has failed twice to adopt the *Election Law*. The Election Law is a clear indicator of BiH ability to sustain itself as a democratic state
- Creation of a State level Ministry for Human Rights and Refugees, in May. Real commitment from the side of the Ministry to effectively tackle human rights issues remains to be seen
- The BiH Constitutional Court's Decision ruling that certain provisions of the Entities' constitutions were unconstitutional has been published in the Official Gazette of BiH, on 14 September 2000. In its decision the Constitutional Court decided that parts of the Preamble to the RS Constitution. In addition the first Articles of the Entities constitutions referring to sovereign rights of the Citizens of one Entity or which characterize the RS as a sovereign state were declared unconstitutional. The Court further declared the exclusion of one of the constituent peoples from being constituent on the territory of an Entity unconstitutional.
- The Council of Ministers has failed to put the *Law on the Court of Bosnia and Herzegovina* on the agenda at its session held on October 26. The court would *inter alia* give BiH citizens a means to seek legal redress in matters such as passports, ID cards, illegal immigration, human trafficking and inter-Entity crime

## Highlights of the Reporting Period

- No change in assessment in the reporting period
- Implementation of the property laws has progressed most

slowly in Croat-majority areas of Cantons 7 and 10 and the Eastern RS. The highest rates of implementation remain in Cantons 6 and 10. Sarajevo, Mostar and Banja Luka remain well below average in implementation. Political stalling in the forms of active and passive obstruction is one of the major cause that hinders the implementation of the property legislation, *page 11*

- Entity Ministers allow the teaching of the Latin script in the RS and Cyrillic in the Federation. Full implementation of this agreement remains to be verified in the second semester of the 2000 – 2001 school year, *page 15*
- The politically motivated dismissal of the reformist Rector of Mostar (West) University, on September 5, highlights the absence of an acceptable legal framework for Higher Education based on European standards, *page 16*

### **3. Human Rights Institutions**

#### **BiH**

- ***Commitment to adequate Funding of the Human Rights Chamber, Ombudsperson<sup>1</sup> 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 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 nationals’ 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.

® To date, the three institutions have received KM 150,000 of the KM 400,000 required by the year 2000 budget.

### **BiH, FBiH and RS**

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

Compliance with the decisions and reports of the Annex 6 Institutions is now at 61%.

#### *Compliance with Human Rights Chamber Decisions:*

	Implemented	Not implemented	Other	%
Federation	130	16	(4)	89%
RS	19	41	(26)	31%
Total	139	57	(30)	71%

#### *Compliance with BiH Ombudsman decisions:*

	Implemented	Not implemented	Other	%
Federation	194	158	93	55%
RS	57	38	67	60%
Total	251	196	160	56%
	Implemented	Not implemented	Other	%
<b>Overall</b>	<b>390</b>	<b>253</b>	<b>190</b>	<b>61%</b>

Note that the term "other" refers to cases in which (1) the deadline has not yet expired, (2) cases in which all parties to the case deem the case "resolved" although the order or recommendation of the Chamber / Ombudsman was not implemented or (3) cases in which almost all of the requirements for compliance have been implemented.

The Entities have not demonstrated an ability to provide any reliable 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 over 70% of the claims brought to the Ombudsperson and the Chamber, BiH would be unable to satisfy this 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 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 in which the deadline has expired.

### **FBiH and RS**

Despite ongoing non-implementation with respect to the *Human Rights Chamber's* decisions, significant progress has been noted, especially in the Federation. The Agents, who are undertaking much of the work, were appointed in early 1999. It may thus take up to the fall of 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 implementing interim measures issued by the *Chamber* and the *Ombudsperson*, and an increasing number of amicable solutions have been 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 yet implemented all 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 involving two disappearances. 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 at 89%), 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, and a failure to deal with the "Liska Street Incident" which

took place in 1997 (although a judicial investigation is now underway), and ill-treatment by law enforcement officers. The issues of individual property and changes to JNA property legislation would not have progressed without OHR involvement. 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. The OHR has prepared draft agreements regarding the transfer provisions in [Annexes 6](#) and [7](#) of the General Framework Agreements and is currently negotiating with the three governments. OHR has also drafted an outline of a law regulating the merger of the Human Rights Chamber and the Constitutional Court, and discussions in this respect have recently begun.

### **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. On 28 July 2000, the Parliament of the Federation

of Bosnia and Herzegovina adopted the Law on the Federation Ombudsmen. However, problematic amendments affecting the independence of the institution were included. OHR and OSCE will work with the Federation government in order to ensure that these provisions are reconsidered as necessary.

## **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 and have been on study visits on two occasions. They are Mr Franjo Crnjac, Mr Darko Osmic and Ms Slavica Slavic. However, measures to staff and equip the organization to ensure full functioning remains outstanding, and they have not yet begun to accept complaints, although this is anticipated by mid-November 2000.

## **4. Judicial System**

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

The implementation of the recently adopted judicial service laws, which provide for a non-political, merit-based, structure for the appointment and dismissal of judges and prosecutors, has now begun in earnest in both entities. Laws and regulations providing for a new budgetary and administrative mechanism for courts and prosecution offices are also being promoted in order to prevent the executive from



unduly influencing judicial decision making through courts and prosecution office budgets.

Draft entity laws providing for Judicial and Prosecutorial Training Institutes have been prepared in both entities with the assistance of OHR and CoE experts. The Federation law is now pending before the House of Representatives. An Interim Inter Entity Co-ordinating Board for judicial and prosecutorial training has assumed responsibility for the co-ordination of training initiatives in the interim. This Board met most recently in Banja Luka on September 25, 2000.

Efforts continue at revising the Criminal Codes and Criminal Procedure Codes in both entities. One of the most important goals of these reforms is to change 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 and the draft has been reviewed by the CoE experts who concluded that insufficient changes had been made. In the Federation, the second phase of criminal law reform (the first phase was completed in 1998), aiming at further improving the Criminal Code and the Code of Criminal Procedure, is under way, and the CoE has already provided comments on some proposed amendments to the Criminal Code.

### **FBiH and RS**

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

This much-needed reform provides for the establishment of special judicial commissions/councils in the entities responsible for the appointment, discipline and dismissal of judges and prosecutors. Under an 18 months period of

“extraordinary review”, the councils and commissions will scrutinise all sitting judges and prosecutors. Parallel to this, and after the 18 months period is over, the councils and commissions will be in charge of reviewing all new appointees for judicial and prosecutorial positions and present the successful candidates to the respective assemblies for appointment.

® The laws in both entities have either been imposed, in the Federation, or adopted, in the RS. The assessment of the implementation of those laws **is not part of the criteria originally set** by the Council of Europe but is nevertheless provided in this paper.

### **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, 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; provide for the consideration of 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 their inaugural sessions on 15 and 16 June 2000. The Federation Commissions also adopted provisional Books of Rules. All cantonal judicial commissions have also been established and have begun the process of extraordinary review and review of new appointments. UNMIBH/JSAP has supervised and supported this work. The new Independent Judicial Commission will assume responsibility for this and other judicial reform tasks, after November 30.

® The new law dramatically increases salaries for judges and prosecutors. After some initial resistance, all cantons have accepted their obligation to pay the higher salaries, and all but two have begun to do so.

## **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 RS High Judicial Council and High Prosecutorial Council have held their inaugural sessions and are now engaged in the process of extraordinary and regular review. ® Books of Rules providing detailed provisions for the implementation of the new legislation have been prepared with the support of JSAP and have been adopted by the High Judicial and Prosecutorial Councils. The RS government has begun paying the higher salaries required by the laws, retroactive to July 2000. The international community is monitoring the work of the councils to ensure that the structures and principles provided for in this legislation are properly implemented.

## **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 situation is improving but remains unsatisfactory. The original 50,000 KM state budgetary provision has been increased but still does not allow paying the judges of the Constitutional Court salaries as high as those in the Entities. The EU's Phare program will run out in 2001 and the court will be entirely dependent for additional support on help from individual foreign governments. This support will be particularly necessary to cover the expenses of dealing with the increasing number of human rights cases before the court.

## 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, based on a draft elaborated by OHR, the CoE and UNHCR, 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: 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 for Human Rights and Refugees; 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 for Human Rights and Refugees. UNHCR, UNMIBH, IOM, OHR, EU Phare and the Ministry for Human Rights and Refugees and Communication have established a joint working group to address the drafting of the by-laws. Due to the creation of the 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 was somewhat delayed but it is still hoped that the drafting of by-laws can

be finalised by the end of the year 2000.

**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 had earlier been submitted to the CoE for comments and was forwarded to the Ministry of Civil Affairs and Communications on 14 October, 2000. 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 the next RS National Assembly session.

® Finally, the *Federation Draft Law on Associations and Foundations* has been finalised but has not yet been submitted to the Parliamentary procedure due to disagreement among the relevant Federation Ministries.

**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 Srsпка* 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).

The OHR and the CoE initiated discussions regarding proposals for amending this legislation in September 1999, but there has been no follow up from the relevant entity authorities since.

### **RS and FBiH**

#### **▪ *Revised Law on Internal Affairs***

### **RS**

Unsatisfied. The RS National Assembly passed amendments to the *Law on Internal Affairs* in its session on 14 and 15 July, 1999. After a preliminary review of the latest version of the

Law, UNMIBH raised a number of concerns, including inconsistencies with the Dayton Agreement and the European Convention on Human Rights. UNMIBH proposed a full review of the law and requested the expertise of the CoE, which completed a review in early 2000. In addition to the concerns raised previously, the CoE found that the Law lacked specificity in many areas, and that the Law delegated a significant amount of authority by overly deferring to non-legislative Books of Rules. The redraft of the Law is to be led jointly by OHR and UNMIBH.

### **FBiH**

Unsatisfied. By decision dated 25 March 1998, the Federation Constitutional Court struck down a number of articles in the *Federation Law on Internal Affairs*. The Court reasoned that the provisions in question unconstitutionally granted powers to Cantonal Ministries that were exclusively within the domain of Federal authorities. Additionally, the Court found that the powers granted the Federation Deputy Minister of Interior exceeded those envisioned by the Federation Constitution. Although amendments to the Law have been proposed, the Federation Parliament has failed to pass legislation that would bring the Law into compliance with the Constitutional Court decision. The voided articles have not had the force of law since September 1998.

OHR and UNMIBH are now in the process of reviewing the Law. The review process will include consultations with CoE, as well as with local legal experts.

### **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 published in the Official Gazette RS no. 17/2000 on 27 June and entered into force on 5 July 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.



## **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 draft was then reverted to the FBiH Ministry of Interior to incorporate acceptable amendments given by delegates in the FBiH Parliament. The FBiH Ministry of Interior has completed that task and re-submitted the draft to the FBiH Government on 18 September 2000. The FBiH Government has not yet forwarded the draft to the FBiH Parliament for final approval. 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 will be prepared with the international members of the working group for presentation to

the Ministry of Justice. ® It is expected that this will be placed before Parliament by the end of the year 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 ® The attempt to apprehend Janko Janjic failed when the indictee detonated a hand grenade and killed himself as peace keepers tried to arrest him. Janko Janjic was under indictment by the International Criminal Tribunal for the former Yugoslavia. Janjic had been indicted for war crimes committed between April 1992 and February 1993 in Bosnia in his capacity of sub-commander of the military police and a para-military leader in the Foca area.

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 Representative's Decisions of 27 October 1999. Although notable progress has been made over the past several months, due mostly 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 low.

The registration of claims for repossession of socially-owned property is complete in both Entities, while claims for the repossession of private property can still be filed. As of end of August, 242,825 claims for houses and apartments have been registered in the two Entities. However, a combination of open political obstruction and insufficient allocation of resources has meant that processing of the claims remains limited. Implementation has progressed most slowly in Croat-majority areas of Cantons 7 and 10 and the eastern Republic Srpska. The highest rates of implementation remain in Cantons 6 and 10. Sarajevo, Mostar and Banja Luka remain well below average in implementation.

® The primary impediment to increased implementation of property legislation remains political obstruction in the forms of active obstruction (canceling of evictions, failure to follow administrative procedures, failure to solve double occupancy, harassment of claimants, instigating violent incidents) and passive obstruction (failure to provide adequate staffing/funding resources to housing offices, failure to secure alternative accommodation). Local officials have not yet taken ownership of the process. For these reasons, the High Representative dismissed 15 local officials in September.

® Most claimants have still not received decisions confirming their property rights. According to the **PLIP August statistics**, the Federation has issued decisions on approximately 51% of the claims, resulting in repossession by approximately 23% of the claimants. The Republika Srpska has

issued decisions on approximately 26% of the claims filed in that Entity, resulting in repossession by approximately 10% of the claimants. Thus, in Bosnia and Herzegovina, 38% of the claims have been decided and 17% of the claimants have actually reposessed their property.

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.

May 2000	June 2000	July 2000 <sup>2</sup>

#### **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 IEHL).

## **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 or subsequently. Obstructionist tactics had 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 were then taken to a higher political level and eventually, at an entity Ministers' meeting on September 26, 2000, the Croat Deputy Federation Minister agreed to allow the teaching of the second alphabet on the terms that had already

been agreed to by the two other sides, and the three Ministers also agreed to proceed with the substantive preparation work of the curricular modules. UNESCO agreed to take the lead in this respect, and assigned one curriculum expert to this task which is financed by OHR. It is anticipated that the 36 modules which have to be developed should be completed by March 2001.

The international community has also focused these past few months on resolving a certain number of school crises in the Federation, i.e. Stolac, Vares, Bugojno Gornij Vakuf, Vitez et al. 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, Vares and Bugojno are now shared by the Croat and Bosniak 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; ® furthermore, the Central Bosnian Canton recently issued a decision on the rational use of school facilities throughout the Canton which mandates the implementation of the Bugojno agreement principle of " two schools under one roof " as an interim solution to tackle the serious school accommodation problems that the Canton is faced with; a gradual process of reintegration is thus being made possible but utmost vigilance remains necessary.

### *Higher education developments*

The Higher Education Co-ordination 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.

® The crisis which affected the University of Mostar (West), and which culminated in the politically motivated dismissal of its reformist Rector on September 5, once again highlighted the absence of an acceptable legal framework for Higher Education in BiH. The International Community has now taken the lead to develop a legal framework for Higher Education in BiH based on European standards; this framework could subsequently be used in both entities to develop appropriate laws.

Accession of Bosnia and Herzegovina to the Council of Europe:  
Progress Review # 12 ([Chart](#))

### **HRCC<sup>3</sup> 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	tel: 387 33 283 500
Elmerika Bluma 1	fax 00 387 33 283 501
71 000 Sarajevo, Bosnia and Herzegovina	web: <a href="https://www.ohr.int">https://www.ohr.int</a>

**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	tel: 387-71-444-444
Dzenetica Cikma 2/4	fax: 387-665-236
Sarajevo, Bosnia	web: <a href="http://www.oscebih.org">http://www.oscebih.org</a>

**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 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	tel: 387-71-666-160
Unis Building Tower A	fax: 387-71-470-171
Fra Andela Zvizdovica 1	web: <a href="http://www.unhcr.ba">http://www.unhcr.ba</a>
Sarajevo, Bosnia	

**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	tel: 387-71-496-265
Aleja Bosne Srebrene bb	fax: 387-71-496-539
71 000 Sarajevo	
Bosnia and Herzegovina	

**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	tel: 387 71 49 6402, 6403
Aleja Bosne Srebrene bb, 71000 Sarajevo	fax: 387 71 49 6438
Bosnia and Herzegovina	

### *Notes:*

1. As of May 1st, 2000, the Ombudsperson changed his name into Ombudsman. For the sake of consistency the name Ombudsperson has been kept throughout the document for developments that have occurred until May 1st. After that date, the term Ombudsman is used.
2. Data for August, September and October are not yet available
3. 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 and Herzegovina, supports the work of the Human Rights Steering Board and links with the Local and Regional Human Rights Working Groups throughout the country.

## **OHR Human Rights/ Rule of Law Department**