Accession of Bosnia and Herzegovina to the Council of Europe: Progress Review # 13

Human Rights Co-ordination Centre

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:387-33-283-501 to the attention of Eric Fréjabue or Eleanor Gordon, or by e-mail to Eric.Frejabue@ohr.int*, or Eleanor.Gordon@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.**

- Following the third general elections, the establishment of institutions from the Canton to State level is underway, but proceeding at a slow and unsatisfactory pace. While the governments in the Federation have not been formed yet, the State Government was formed on February 22. The whole electoral process froze the work of the Parliamentary Assemblies.
- The Permanent Election Law is in the hand of a parliamentary working group that had been formed to overcome the political differences and to finalise the drafting of the law. It is expected that he draft law will be presented before the State Parliament in April or June.
- One of the concerns of the International Community relates to **minority return-related incidents**. While the past months saw an increasing number of minority returns, it is also noteworthy that violence against minorities has also increased recently. In parts of BiH, there appear to be 'orchestrated' campaigns of violence and intimidation directed at returnees. In the Eastern RS, the problem is the most acute with violent demonstrations directed against evictions and returnee visits, attacks with explosives upon returnees' property (leading to injury or, as was the case in Bratunac on the 14th of December, death) criminal damage and arson, physical attacks, and threatsand intimidation of returnees. The lack of response by local police, coupled with the lack of prosecution of the alleged perpetrators, illuminates the lack of willingness or ability of state organs to adequately deal with such incidents.
- Efforts are now underway to establish "a regional taskforce on education" with Croatia and the FRY in order to accelerate the adoption of European standards and devise a common approach to education geared towards reconciliation and peace building at school. This

illustrates potential openings that exist now that more co-operative officials sit in the neighboring Croatia and FRY. More constructive co-operation between the three countries is necessary in order to resolve burning issues, such as the return of Serbs displaced in the RS to Croatia and repossession of property in the Federation by Serbs currently living in FRY.

– Highlights of the Reporting Period –

- Negative change in assessment – **the adoption of Immigration and Asylum Law** criteria was down graded from "satisfied" to "partially satisfied" as the implementation of this legislation can occur to a very limited level only, as necessary by-laws still need to be elaborated and adopted and instructions at the State and Entity level issued, *page 7.*
- On the education front, the four religious leaders met on February 19 and acknowledged the importance of the teaching of a new subject presently called "culture of religions"" and expressed their desire to give their input to what should be taught in this subject. They will each nominate an educational expert who will forward their ideas and proposals to the Office of the High Representative, which will co-ordinate them, *page 16.*

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 established in Annex 6 and 7 be raised from 200,000 to the level of 600.000 KM. The year 2000 budget provided for 400.000 KM per institution, which remains below 600.000 KM, 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 BiH Ombudsman. The total amounts are still below KM 600,000 per institution, but do at least fulfill the amount of 200.000 KM per institution, which the state itself budgeted for 1999.

¨ To date, the three institutions have received 150.000 KM of the 400.000 KM required by the year 2000 budget.

The 2001 draft budget now provides for a projected amount of 100.000 KM each for the CRPC and the Human Rights Chamber, while 400.000 KM is allocated for the BiH Ombudsman. These amounts are unacceptably low, and do not meet the "adequate" amount required.

1-As of May 1st, 2000, the BiH Human Rights Ombudsperson changed its name into the BiH Human Rights 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.

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 67%.

Compliance with Human Rights Chamber Decisions:

	Implemented	Not implemented	Other	%
Federation	131 (89,7%)	15 (10,3%)	(9)	89%
RS	39 (58%)	28 (42%)	(39)	58%
Total	170 (79,8%)	43(20.2%)	(48)	80%

Compliance with BiH Ombudsman decisions:

	Implemented	Not implemented	Other	%
Federation	232 (66%)	120 (34%)	103	66%
RS	46 (45,5%)	55 (54,5%)	68	46%
Total	278 (61%)	175 (39%)	171	61%

	Implemented	Not implemented	Other	%
Overall	**448**	**218**	**219**	**67%**

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 graphabove) 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, BiH would be unable to satisfy this compliance requirement used by the Committee of Ministers, as many thousands of cases involving “possessions” (which comprise over 70% of the claims brought to the BiH Human Rights Ombudsman and the Chamber) are not resolved. About twenty 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 BiH Ombudsman in which the deadline has expired.

FBiH and RS

Regarding implementation generally, , significant progress has been noted, especially in the Federation. The Agents, who are undertaking much of the work, were appointed in early 1999. It became clear in the year 2000 that the Agent of the Federation was, in large part, able to comply with the orders of the Human Rights Chamber, and was making progress in the implementation of the recommendations of the BiH Ombudsman. However, the RS Government has not demonstrated a similar ability. More work will be required in this respect in the year 2001. Co-operation between the Agents and the Chamber is generally at a good level, and has been supplemented by monthly meetings between the Agents, OHR, OSCE and the BiH Ombudsman.

RS

Partially Satisfied. The RS is not meeting its 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.

FBiH

Partially Satisfied. The Federation is moving towards complete compliance with decisions of the Human Rights Chamber (currently over 90%), although often with the assistance/involvement of OHR, 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 1997 "Liska Street Incident" (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, in consultation with the Venice Commission. It is expected that more work will be done in this respect in the Spring of this year.**

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 have proposed a series of amendments, which were discussed with the Venice Comission and the Ombudsmen at a meeting in Strasbourg on 12 January. Organisations will work with the Federation government in order to ensure that these provisions are implemented.

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, in particular the provision of substantive support of the RS Ombudsmen in the budget for 2001, and will be closely monitored by OHR and OSCE. The three Ombudsmen have been appointed on 30 April 2000. They are Mr Franjo Crnjac, Mr Darko Osmić and Ms Slavica Slavnić. They have been on study visits on three occasions, prepared their Rules of Procedure and employed and advised its staff appropriately. The Office began its regular work with applicants in November, 2000, and has established four field offices, Bijelina, Foca, Prijedor and Doboj, as well as its headquarters in Banja Luka.

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 suggested 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 Peoples. 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 period. This Board met most recently in Sarajevo on December 20, 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 Criminal Code entered into force on October 1, 2000. Reform of the RS Criminal Procedure Code is still in progress and ¨ the draft code is being reassessed in the light of CoE comments and the need for a consistent approach across the State and entity jurisdictions.

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 month period of "extraordinary review", the councils and commissions will scrutinise all sitting judges and prosecutors. Parallel to this, and after the 18 months 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 implementation of these laws **is not part of the criteria originally set** by the Council of Europe but is nevertheless discussed as a key rule of law element 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 the following: better Federal Commission monitoring of the work of the Cantonal commissions; 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 supervised and supported this work. The new Independent Judicial Commission assumed responsibility for this and other judicial reform tasks on 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 has improved but remains unsatisfactory. The sum of 1.516.430 KM approved by the Assembly for 2001 covers the material expenses of the Court, but still does not allow paying all the judges of the Constitutional Court salaries as high as those in the Entities. Also, from the approved budget for 2000 the sum of 54.000 KM was never transferred to 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*

¨ Partially Satisfied. The House of Peoples, the second Chamber of the BiH Parliamentary Assembly, based on a draft elaborated by OHR, 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.

However, implementation can occur to a very limited level only, as necessary by-laws still need to be elaborated and adopted and instructions at the State and Entity level issued. As the legislation represents a complete structural and administrative reform, the elaboration of such by-laws is taking time. Moreover, a number of legislative amendments will

be required in other legislation. Further, a number of bodies foreseen by the law must still be created and funded. These include an Asylum Unit fully qualified in refugee law and capable of undertaking refugee status determination within the Ministry for Human Rights and Refugees and an Appeals Panel under the Council of Ministers. 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 must still be transferred to the State Ministry, and Entity departments must be strengthened in order to handle immigration related issues. OHCHR (Office of the High Commissioner for Human Rights) and the Ministry for Human Rights and Refugees have established a joint working group to address the drafting of the by-laws. The entry into force of the by-laws is expected in the first half of 2001.

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 finalised by OHR and sent out to the Ministry of Civil Affairs and Communications. Two proceeding meetings were held in September and October, when the draft was discussed in the working group formed by the Ministry of Civil Affairs and Communications and OHR. Based upon the working group comments, OHR has incorporated certain changes in the draft and forwarded it to the Council of Ministers, which should propose the draft to the State Parliament.**

Concerning the draft *Law on Associations and Foundations* in **Republika Srpska (RS)**, the draft law passed the first reading without debate in July 2000. The RS National Assembly (RSNA) incorporated a few minor changes in the final version. The draft was sent to OHR for comments, which, in response informed the RSNA that the Law was not in compliance with the BiH Constitution. The corrected draft will be presented soon to the RSNA.

With respect to **the Federation *Law*** on Associations and Foundations**, OHR, OSCE, USAID and the ICNL have had several meetings with the Federal Ministry of Justice and Ministry of Social Affairs, Refugees and Displaces Persons in order to finalise the draft. The draft has been finalised but the Ministry of Social Affairs, Refugees and Displaced Persons has been reluctant to relinquish the *Law on Humanitarian Organizations and Humanitarian Activities*. This Law is not in compliance with the European Convention on Human Rights (ECHR) and international standards in this field. Negotiations with the respective ministries will be necessary in order to have only one law which will provide a single legislative framework for all NGOs operating in the Federation and be in compliance with the ECHR and other international standards.**

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 alternatives 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 of Ministers of the Council or Europe in 1987).

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

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-Paris Peace Accords 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 now underway, incorporating the input of the CoE and being jointly led by OHR and UNMIBH.

FBiH

Unsatisfied.The Federation Constitutional Court decision of March 25, 1998, removed 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 to 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 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. To date, no such agreements have been concluded.

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.

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 Parliament 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, in the spring of 2000, forwarded the draft Law to the FBiH Parliament. The draft was then returned to the FBiH Ministry of Interior to incorporate acceptable amendments given by delegates in the FBiH Parliament. The FBiH Ministry of Interior completed that task and re-submitted the draft to the FBiH Government on 18 September 2000.

Unfortunately, prior to the resubmission of the Law to the Parliament in December of 2000, the Ministry of Justice inserted changes that are potentially in conflict with the *BiH Citizenship Law* and the Federation Constitution. OHR is now consulting with representatives within the Ministry of Justice and the Ministry of Interior to clarify the changes and to urge expedited passage of the Law. The draft Law requires

adoption as soon as possible, since many former SFRY citizens who took up permanent residence in BiH before 1998 became eligible for BiH citizenship as of 1 January 2000 and are unable to do so in the absence of a Federation Citizenship Law.

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 and the Law entered into force on October 1, 2000. *The Criminal Procedure Code* has undergone review by Council of Europe experts and will be prepared with members of an inter-agency working group for presentation and discussion to the RS working group in order to provide consistent approach across State and entity jurisdictions. ¨ It is expected that this will be placed before Parliament in the first half of 2001 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.

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 19 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. From May through December of 2000, the rate of implementation in BiH accelerated at a rate of approximately 1% per month. At this continued rate of implementation, it would take roughly six more years to fully implement the property laws. This is not acceptable, especially as some municipalities have shown that it is possible to reach better implementation rates by consistently increasing it by over 3% per month.

With a total number of claims standing at 248 110 countrywide (120 474 in the Federation of BiH and 119 794 in the Republika Srpska), the rate of implementation continues to vary widely throughout BiH – with from less than 5% to over 50% of claims having been realised in various municipalities to date. In Cantons 4 (Zenica-Doboj) and 6 (Central Bosnia) several municipalities are nearing completion of the implementation process, in direct contrast to areas where progress remains slow: the Croat-majority areas in Cantons 7 (Herzegovina-Neretva) and areas of the Eastern RS including Bratunac, Foca/Srbinje, Srpsko Gorazde and Visegrad.

Resolution of property claims in the RS continues to lag well behind that of the Federation of BiH: as of December 31, 2000, 29% of all claims in the Federation were processed, and 13% in the RS. In the five municipalities that account for 40% of the claims for repossession in the RS – Banja Luka, Prijedor, Doboj, Bijeljina and Zvornik – the average rate of implementation stands at merely 10%. This is despite considerable assistance received from the International Community, most notably through the over USD 1 million in budget assistance to the Ministry for Refugees and Displaced Persons to hire additional staff and upgrade housing offices.

Outstanding. While progress slowly increased throughout 2000, in a large part due to the efforts of the International Community (in particular OHR, OSCE, UNHCR, CRPC and UNMIBH, within the framework of the Property Legislation Implementation Plan), local authorities are still, in many cases, failing to take full ownership of the implementation process. In many cases, both in the Federation and in the RS, local authorities have provided neither adequate resources for the full functioning of housing offices, nor sufficient alternative accommodation to meet the needs of their area of jurisdiction.

Local officials are responsible for ensuring that everyone with the right to alternative accommodation receives it: these obligations remain mostly unmet. Only a few municipalities have produced lists of unclaimed socially owned property, and many state-owned companies have not provided records on property where occupancy rights changed during the war. Little effort has been made to use other structures as possible alternative accommodation, as permissible under entity property legislation.

There continue to be many illegal acts encountered in implementation of the property laws, including illegal allocations of private property, looting, violence against housing office employees and illegal revalidations/privatisations, which have not been adequately addressed by local officials. There also remains a considerable problem with public officials occupying claimed space. Overall, political obstruction remains the primary impediment to full compliance regarding implementation of the property laws.

Although the State-level Ministry for Human Rights and Refugees was created, a stronger role in the coordination of property issues between the Entities is necessary. The Property

Legislation Implementation Plan framework agencies (OHR, OSCE, UNHCR, CRPC and UNMIBH) are cooperating with the Ministry and the Entity Ombudsmen, in working to support and build the capacity of domestic bodies and to promote greater coordination and communication at both entity and municipal level.

As return continues to accelerate, closer attention must be paid to issues of sustainability: particularly regarding eliminating discrimination in employment, education and healthcare. A positive development in recent months is the increasing employment of minorities in housing offices. As of February 2000, the RS Ministry for Displaced Persons and Refugees will have employed nine minority officials in its municipal offices, under the US budget support programme, and is prepared to employ further candidates. In the Federation the number of minorities employed in housing offices has risen, reflecting the results of the November 2000 municipal elections.

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 April, 13 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 if displaced. 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 regard 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 July 1, 1999, agreed in advance with the Federation Government, establishes criteria for determining which former occupants of JNA apartments should be considered displaced persons with the right to return. For those granted the right

to return, procedures have been established for recognizing their pre-war contracts of sale. For those not permitted to return, they will be reimbursed for any money paid towards the 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 claims process in the Republika Srpska is now roughly complete, as in the Federation, with the similar exception of cases of private property, where the owner is currently not attempting to pursue the claims process. There are no further reports of individuals being completely prevented from making their claim in the RS in recent months. However, more adequate staffing levels have only been achieved as a result of the assistance from the US Government: the RS Government must now take steps to ensure the continuing provision of resources after the budget support programme ends.

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, on promoting multi-ethnicity and tolerance in the classroom, and on gradually working towards the adoption of a joint core curriculum.

- 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 Republika Srpska, and better 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, 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 becomes 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 protect 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, OSCE and 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. However, 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 May 10, 2000 the Entity Ministers of education endorsed this strategy by signing both a Declaration (formulated as a strategic plan) and an Agreement (formulated as an operational plan). The Agreement and Declaration itemise the short- and medium-term reforms to be implemented throughout BiH, with a view to desegregating existing education systems, harmonizing curricula and textbooks, establishing mechanisms for recognising diplomas, certificates and professional qualifications, and thereby facilitating the return of displaced 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 by the RS Minister and the Croat Deputy Federation Minister have been observed lately, , particularly with regard to the country-wide introduction of "curricular modules" on language, literature, culture and religion, reflecting the traditions of the three constituent peoples, which have to be taught to all children in 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. 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 (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. In addition, 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 in the first stage, its main task will be to adopt its work plan based upon the recommendations contained in the World Bank/ Council of Europe report, which identified the need for a long term strategic plan between the BiH universities to modernise their under-funded and under-managed system. The recommendations acknowledge the crucial importance of reforms to the university system for the future of a sustainable BiH.

¨ *Short term perspectives*

While there is no alternative to the slow process of the regular meetings of the Conference of Entity Ministers of Education, new political instruments have to be developed that will accelerate this process. Among them is the development in 2001 of a modern legal framework for primary and secondary education, which could eventually be imposed, as well as more

focused political attention.

Furthermore, efforts are now underway to establish “a regional taskforce on education” involving BiH, Croatia and the FRY, in order to accelerate the adoption of European standards and devise a common approach to education geared towards reconciliation and peace building at school.

¨ The four religious leaders met on February 19, 2001 and acknowledged the importance of the teaching of a new subject presently called “culture of religions” and expressed their desire to give their input to what should be taught under this subject. They will each nominate an educational expert who will forward their ideas and proposals to the Office of the High Representative, which will co-ordinate them. OHR and the religious leaders agreed to speedily proceed on the development of the subject. The decisions on the exact designation of the new subject and all implementation details will be taken immediately afterwards in close consultation with all concerned parties, including the Inter-Religious Council.

HRCC 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: 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 tel: 387-71-444-444

Dzenetica Cikma 2/4 fax: 387-665-236

Sarajevo, Bosnia 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 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: www.unhcr.ba

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