

Human Rights Co-ordination Centre
a co-operative effort of
OHR, OSCE, OHCHR, UNMiBH, UNHCR, IJC and CoE
within the
OFFICE OF THE
HIGH REPRESENTATIVE

Human Rights in Bosnia and Herzegovina
Priorities for 2002

This document forms part of the yearly review process of the activities and actions of the International Community in Bosnia and Herzegovina (BiH). This document identifies the five main human rights priorities for the year 2002, set by the International Community members of the Human Rights Co-ordination Centre (HRCC: OHR, OSCE, UNMiBH, UNHCR, OHCHR, IJC and CoE), the BiH Ministry of Human Rights and Refugees and the Non-Governmental Organisation (NGO) community in BiH.

- I. Sustainable Return***
- II. Education***
- III. Reform of Police and Judiciary***
- IV. Capacity Building of National Partners***
- V. Minorities and Discrimination***

With each priority, an overview of the current situation is presented and an action plan suggested. This document is neither an exhaustive list of human rights concerns in BiH, nor does it fully encompass each agency's individual priority activities for 2002.

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- 1. Property**
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INTRODUCTION

The protection of human rights is the foundation of democracy and peace. Until fundamental human rights are fully respected, the peace process will be untenable and Bosnia and Herzegovina (BiH) will be marginalised in Europe.

Annex 4 of the Dayton/Paris Peace Agreement (DPA) obliges all Parties to secure to all persons within their jurisdiction the highest level of internationally recognised human rights and fundamental freedoms, including the rights and freedoms provided in the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols and fifteen other international agreements, which are listed in the Appendix to Annex 4 of the DPA. These rights and freedoms include the right to life, the rights to liberty and security of person, the right to a fair hearing in civil and criminal matters, freedom of thought, conscience and religion, the right to property, the right to education, and the right to liberty of movement and residence. The enjoyment of the rights and freedoms should be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status. Annex 4 also recognises the right of all refugees and displaced persons to freely return to their pre-war homes, in accordance with Annex 7 of the DPA.

Six years after the signing of the DPA, significant progress has been made in the field of human rights and BiH is progressing towards a multi-ethnic, democratic state. Nonetheless, a lot remains to be done. Whilst the past year has continued to witness an acceleration of the number of people returning to their pre-war homes, prospects for sustainability and the number of return-related violence incidents remain of concern. In general, respect for the rule of law and fundamental human rights remains poor, as does the ability of the responsible BiH institutions to address these concerns. Whilst the past year has seen an escalation in the number of transfers of indicted war criminals to the International Criminal Tribunal of the former Yugoslavia (ICTY), most alleged war criminals remain at large.

In 2002, it is vital that further measures are taken to ensure that the large-scale return movements that have occurred, in particular over the past 24 months, are sustainable. Governmental administrations and agencies of the criminal justice system should ensure that the rights of returnees are respected and obstacles for their **safe and sustainable return** removed. Returnees should have full and equal access to education, employment, social and welfare system, and utilities. With respect to education, whilst progress has been seen in this field in the past year, significant obstacles in the way of a non-discriminatory, modern education system remain in place. **Education** is not only vital in contributing to the prospects of sustainable return; it plays a crucial role in economic progress and the reduction of political tension and ethnic conflict.

The protection of human rights and civil liberties requires a competent and fair criminal justice system and governmental administration. In order to ensure that effective deterrents are in place against those who would violate rights of others, there has to be a well functioning **judiciary**, respect for the rule of law and effective non-discriminatory **law enforcement** structures. In this light, it is also essential that domestic **human rights institutions** receive full political and financial support from the authorities in BiH. It is also of vital importance that **civil society** is strengthened so that governmental administrations become more accountable and the people of BiH become less disenfranchised and have more of a stake in the future of BiH. Particularly in light of the decreasing resources of the International Community in BiH, and to ensure that the peace process is sustainable, it is essential that the relevant **government ministries assume full responsibility** to ensure indiscriminate respect for and protection of human rights and civil liberties in BiH.

It is unfortunate that work towards the protection of human rights can overlook those whose rights are violated the most, by dint of their relative lack of political power. Too often, those who are less easily seen or more easily ignored, are further **marginalised** or discriminated against and, sometimes blamed for their own persecution, such as is often the case with Roma communities. The rights of victims of trafficking, children, disabled people, national minorities, for instance, are often neglected or treated with less urgency and importance.

The context within which the International Community engages with BiH has changed in light of the events of 11 September and after, decreasing donor attention and other resources for the BiH mission and, from a positive perspective, an increasingly responsible, democratic government in BiH and the first concrete steps towards becoming part of Europe. Nonetheless, this does not detract from the

continued human rights concerns of the International Community and the citizens of BiH. It is, therefore, more important than ever that clear human rights priorities are defined and the domestic authorities within BiH increasingly assume responsibility for their protection.

The Parliamentary Assembly of the Council of Europe voted on 22 January 2002 in favour of recommending the accession of admitting BiH, following the recommendation and adoption of post-accession criteria by the Political Affairs Committee and the Legal Affairs Committee, on 27 September and 30 October, respectively. The decision was made upon the acknowledgement that BiH "recognises the principle of the rule of law and respect for human rights and that it is able and willing to continue the democratic reforms embarked upon." The Committee of Ministers is expected to issue a formal invitation to BiH to become the 44th member of the Council of Europe later this year. BiH State and Entity authorities agreed to these post-accession criteria, with the exception of the 'single army' related conditions. Whilst not all the pre-accession conditions have been met, especially in the field of human rights¹, progress has been made. In particular, the adoption of the Election Law on 23 August 2001 by the Parliamentary Assembly, marked an important milestone after years of delay due to obstructionist behaviour in Parliament. BiH now has the legal framework through which to sustain democratic governance and the passage of the Election Law brings BiH a significant step closer to accession to the Council of Europe. Moreover, it guarantees the basic democratic rights of the citizens of BiH. It would also grant its citizens access to the European Court of Human Rights, which would put additional pressure upon the authorities in BiH to ensure the protection of fundamental human rights and respect the rule of law, and is vital in light of the decreasing presence of the International Community in BiH. The pre-accession conditions that remain to be fulfilled are included in the list of post-accession criteria. The authorities should firmly commit themselves to fulfilling these conditions, which include better protection of human rights, the further strengthening of the state institutions, the harmonisation of the education systems and the creation of an independent judiciary.

The Ministry of Human Rights and Refugees (MHRR) participated in the process of identifying human rights priorities for the year 2002. The MHRR also attends to the actions recommended and, in general, ensures that the protection and promotion of human rights is paramount and work done in this regard is co-ordinated amongst all the players. The MHRR affirmed that noticeable progress was made in 2001 in the promotion and protection of human rights in BiH. The Ministry sees the progress as a result of three significant factors. Firstly, there is better synchronisation in the work and operation of all relevant subjects and factors, including the BiH authorities and institutions on all levels, but also the non-governmental sector and international representatives involved in the processes of human rights promotion and protection. Secondly, there is an increasing awareness and implementation of international legal conventions and norms from the field of human rights. Thirdly, there has occurred a quality change in social awareness about the significance of human rights, democracy, and the rule of law. Nonetheless, the Ministry acknowledges that there are numerous unsolved and open issues remaining to be dealt with. As such, in 2002 and beyond, it is essential that all players in the field of human rights act in a synchronised and organised manner on planning and operationalising activities in the field of human rights in BiH. Fundamentally, the protection of human rights and the rule of law largely depends upon increasing public awareness. Imminent accession to the Council of Europe, a strong civil society and a robust Ministry of Human Rights and Refugees significantly contributes towards reaching this goal.

I. RETURN OF REFUGEES AND DISPLACED PERSONS

Annex 7 of the DPA enshrines the right of all those displaced during the war to return to their pre-war homes. According to UNHCR, an estimated 600,000 refugees and displaced persons have yet to return to their pre-war war homes in BiH and have yet to have found a durable solution.

In 2001, 18,693 refugees and 80,172 internally displaced persons (98,865 persons in total) had returned to their place of origin in BiH. Of this number, 92,061 were so-called minority returns (i.e. persons who have returned to their pre-war homes in areas where another ethnic group constitutes the majority), a 36% increase over the same period last year, constituting the highest number of returns since the signing of the DPA. About 4,000 repossessions by minorities of their pre-war house takes place every month.

¹ Only 10 of the 40 pre-accession criteria related to human rights have been met: 6 of these necessitated imposition of legislation by the High Representative.

Nonetheless, return-related violent incidents continue and the severity of return-related incidents in the RS continue to be greater than in the Federation. Also, police investigations into the serious incidents in the RS remain poor, and few of the perpetrators have been identified or brought to justice. Other significant deterrents to return remain in place, including discrimination in the fields of education, employment, health and social welfare, and access to utilities.

1. Property

1.1 Repossessions

A Property Law Implementation Plan (PLIP) was developed through the collaborative efforts of OHR, UNHCR, OSCE, UNMIBH and CRPC to deal with the issue of return to contested property.

More than six years after the signing of the DPA and nearly a decade after many people were forced to flee their homes, approximately 40% of all property claims in BiH have resulted in repossession, and rates of repossession continue to accelerate by almost 2% each month in 2001. As of 31 December 2001, 49% of cases have been solved in the FBiH, 31% in RS, and 39% in Brcko District. In other words, out of 130,080 households that filed a claim in the Federation, 64,257 have reposessed their property, out of 116,341 claims in the RS, 35,649 have reposessed their property, and in the Brcko District, out of 6,940 claims 3,129 have reposessed their property. In total, 102,609 households out of 253,361 have reposessed their property. The implementation ratio from the end of 2000 until the end of December 2001 had increased to 21% throughout BiH.

Despite the insufficient results in some parts of the country, the PLIP-framework, operational since summer 2000, can be considered as one of the most successful examples of how joint strategies and well co-ordinated inter-agency action can enable progress to be made despite political obstruction. However, in the most hard line areas, even this has proven difficult so far and more needs to be done. Also, this approach has not been as successful when trying to enforce the "positive obligations" of the housing authorities, such as their duty to provide alternative accommodation or addressing the housing concerns of vulnerable groups such as Roma. The ultimate aim is to reinforce the rule of law and to create a self-sustaining, non-political property repossession process.

On 04 December 2001, the High Representative issued a package of thirteen Decisions comprehensively amending the property laws of both Entities. The amendments reduce the possibility of manipulation and delay, allow for the speedier eviction of multiple occupants, and ensure the full right of refugees and displaced persons to "freely return to their homes of origin", as guaranteed by the DPA. The amendments ensure full harmonisation of the laws throughout BiH, and seek to facilitate their swifter and more efficient implementation and limit the widespread failure to provide alternative accommodation.

The amended laws specifically take account of the fact that many categories of persons currently occupying other peoples' property may be considered to have had their housing needs met, including those who accept land plots or housing construction assistance and have sufficient time to build, and those who show no interest in filing a claim for their own pre-war property, or in pursuing enforcement of their claims. These categories should face expedited eviction, allowing the pre-war owners of the property they occupy to return. A specific income threshold is now established, which defines whether families may or may not claim that they have insufficient income to meet their housing needs: this threshold will be based on the standard "consumer basket" set by the competent statistics institutes.

All purchases of apartments where the purchase is based on a revalidated contract to an unclaimed apartment will be frozen, pending establishment of a proper review process. Unclaimed apartments are to be used as alternative accommodation, unless the temporary occupant meets strict criteria for revalidating the occupancy right. Previously, many individuals who did not meet the criteria were able to revalidate and then privatise. Thus, a large source of alternative accommodation for vulnerable individuals was lost. The new amendments provide for stricter review of all revalidations and subsequent privatisations. Instructions enabling the purchase of apartments in the Federation have been established following the receipt of numerous complaints from citizens who currently face excessive demands for documentation, and are unable to purchase their apartments following repossession. The instructions regulate the documentary requirements for purchase, and the obligations of the competent bodies. The documentary evidence that can be requested by the authorities is defined and limited by the new instruction for the Federation.

Other measures contained within the package include the following:

- People who are unable for reasons of their own to repossess their property in person do not have to miss the deadline for repossession but can send a proxy instead;
- The deadline for repossession of apartments is now reduced from 90 days to 30 days;
- Fines for multiple occupancy have been significantly increased;
- The appeals process has been tightened, with the claimant's case upheld if the appeals body does not respond before expiry of the deadline. This will eliminate the long periods - in some cases as much as a year or more - which some claimants have had to wait for cases to come back from the second instance body;
- The burden of proving that someone meets the criteria for alternative accommodation will be placed upon the current occupants. If they cannot prove they meet all criteria, they will be issued with 15-day decisions. This will also reduce the time previously spent by housing authorities attempting to document occupants' cases;
- Problems arising from property exchanges will be regulated. Contracts on exchange will be confirmed in cases where both parties agree the exchange was voluntary. If only one party claims, the other party will be deemed to have claimed even if a deadline has passed. In addition, apart from in the case of CRPC decisions, in cases of exchanges of property outside of BiH, the party outside of BiH will have to prove that the property they currently possess can be returned to the pre-war owner/occupant;
- There are new explicit provisions for the protection of owners/occupancy right holders from looting and stripping of their properties.

The High Representative has in these Decisions amended the following laws: the Law on Cessation of the Application of the Law on Abandoned Apartments, with the Law on Cessation of the Application of the Law on Abandoned Real Property Owned by Citizens, of the Federation, and the RS Law on Cessation of Application of the Law on the Use of Abandoned Property. Amendments have also been made to the RS and Federation Laws on Displaced Persons and Refugees, and to the Law on Implementation of the Decisions of the Commission for Real Property Claims (CRPC). A Federation Instruction on the purchase of apartments by occupancy right is also introduced under this package, together with a freeze on purchases where contracts have been revalidated after April 1992. The amendments were drafted in close partnership with the relevant Entity ministries, the State Ministry of Human Rights and Refugees and the PLIP agencies. They also contain suggestions from numerous housing offices and DP and refugee associations throughout the country.

However, as property legislation in BiH has changed to ensure stronger protection of the rights of refugees and displaced persons and speedier implementation of the laws, these same rights are not respected in Croatia. BiH will encounter difficulty succeeding in full implementation of its property legislation if a similar process is not in place in Croatia which will allow Croatian Serbs currently accommodated in BiH to full exercise their right to property.

A significant event in terms of partnership with local authorities was the finalisation and signing of an instruction on exchange of information throughout BiH on 05 December 2001. This instruction was developed jointly by the PLIP agencies and representatives of all relevant Ministries of the Entities, BiH State, and Brcko District. By quickly identifying temporary occupants who have lost their right to alternative accommodation in their place of displacement, by virtue of having repossessed their pre-war property elsewhere, this initiative has the potential to greatly facilitate the process of property law implementation throughout BiH.

The International Community is also continuing to assist the housing authorities in implementing administrative processing systems that are fair and transparent. One component of this effort has been the hiring, by OSCE, of short-term data entry clerks to assist in drawing up chronological lists of cases for processing. The work of these data clerks in various municipalities has assisted PLIP in identifying numerous cases in which claims for destroyed property had wrongly been counted in the PLIP statistics.

Plan of Action: Increase number of property repossession decisions and reinstatements and increase the level of reconstruction assistance

- **Ensure adoption and implementation of the amended property laws** in both entities in order to accelerate its implementation and return of refugees and displaced persons.
- **Ensure chronological resolution of claims in the order in which they were received.**
- **Ensure adequate provision of alternative accommodation.**
- **Ensure control of war-contracts and their revalidation for privatisation purposes.**

- **Ensure routine implementation of CRPC decisions.**
- **Ensure implementation of instructions on entity privatisation laws.**
- **Reform entity housing fund laws**, to ensure resources are used to resolve housing needs of most vulnerable categories.
- **Reform military housing schemes.**
- **Implement information-exchange system between housing authorities throughout BiH**, in order to prevent multiple occupancy.
- **Increase co-operation and co-ordination between International Organisations, relevant Ministries and domestic human rights organisations** (Human Rights Chamber, Ombudsmen) on resolving property issues.
- **Increase co-operation on regional property issues** to ensure BiH the ability to fully implement BiH legislation.
- **Increase co-operation and co-ordination between International Organisations and relevant Ministries to enable the relevant Ministries to eventually assume full responsibility for the realisation of property rights and other related issues**, with the Ministry for Human Rights and Refugees assuming a lead, co-ordination function.
- **The co-ordinating structures of RRTF and PLIP, supported by organisations with field staff, needs to be maintained** to monitor and guarantee common approach and policy concerning the property law implementation and to co-ordinate return strategies and funding.
- **Complete expedited issuance of decision and eviction** of confirmed multiple occupants.
- **Develop Good Governance Project** in the area of administrative and financial sectors to provide for accountability of local authorities dealing with property issues (provision of funds in the budget for alternative accommodation, increased efficiency in property implementation).
- **Implementation of all decisions within deadlines specified by law**, even if authorities fail to provide alternative accommodation.
- **Ensure that collective centres are only inhabited by persons entitled to remain there and that all available space is allocated as alternative accommodation to evictees so entitled.**
- **Co-operate with national authorities in increasing the capacity of municipal authorities** whose understaffing and material deficiencies constitute serious obstacles to the process of property law implementation.
- **Launch regular media campaigns** to inform the public on the legal amendments and property-related strategies and developments, stressing the strictly legal, non-political character of property law implementation.
- **Continue to encourage the prosecution of housing officials for abuse of office/lack of commitment in egregious cases of obstruction.**

1.2 Reconstruction

The Return and Reconstruction Task Force (RRTF), co-chaired by OHR and UNHCR, has been set up as the mechanism to deal with the different aspects of the return of displaced persons and refugees, namely the problem of destroyed and occupied homes, security incidents and sustainability of return. An inter-agency approach is adopted in order to overcome the remaining obstacles to return. In particular, international funds for reconstruction are disbursed according to the priorities indicated by the RRTF.

Continued reconstruction assistance to families or individuals wishing to return, including provision of building materials, is still vital in view of the large number of heavily damaged or destroyed properties. National budgets and assistance by the International Community should continue to reflect this need.

Plan of Action: Facilitate return through identifying, soliciting and co-ordinating reconstruction assistance

- **Ensure the continuation of reconstruction assistance**, including the provision of building materials to those wishing to return.

1.3 The issue of property allocation

Allocations of state-owned, formerly socially owned, property and construction works on this property continue throughout BiH, in disregard of the Decision of the High Representative (27 April 2000) banning all such allocations unless made with the authorisation (waiver) of the OHR. Moreover, protests are being raised in many quarters regarding past allocations, for which in most cases OHR waivers have yet to be issued or requested, particularly mass allocations of land to groups for purposes of local integration.

In certain cases, such allocations of property also hinder return. Further, the conversion to construction land of land used for agricultural purposes before the war, and allocation thereof to groups of displaced persons for purposes of local integration or relocation, affects the sustainability of return. Allocation of property can also be an obstacle to property law implementation – and thus return – in that those who are allocated land for individual housing construction, in some cases, continue to occupy contested property until – and even after – construction on the land is completed. The non-transparent or discriminatory selection of beneficiaries of mass allocations can also solidify ethnic separation.

It is clear that the process of allocating property in both the Federation and the RS requires urgent review to ensure that all allocations are transparent, in the best public interest, and non-discriminatory. It is also necessary to address the issue of the rights of persons violated by allocations made, without OHR consent, since 06 April 1992.

The High Representative's Property Allocation Decision is due to expire in July 2002 and a dialogue has been initiated within the Working Group, recently established by the BiH state-level Commission for Refugees and Displaced Persons, to address these issues.

Plan of Action: Address the issue of illegal or discriminatory allocation of property

- **Review the problems related to property allocations and establish a legal framework and necessary monitoring mechanisms to ensure that future allocations are transparent, in the best public interest, and non-discriminatory.**
- **Establish a legal framework and/or mechanism for resolving the issues relating to past allocations in contravention of the High Representative's Decisions and for redressing the rights of persons violated by such allocations.**

2. Social and Economic Rights

As repossessions of pre-war homes and returns in general continue to accelerate, it is increasingly necessary to ensure that the conditions necessary for *sustaining* such returns are met.

Significant deterrents to return remain in place. These include discrimination in the field of employment, health care and social welfare, and access to utilities (such as electricity, gas, and telecommunications). Nevertheless, an increasing number of people are exercising the rights to return. However, because of widespread discrimination many so-called minority returnees often return back to their former place of displacement, to areas in which they constitute part of the majority, or attempt to migrate to third countries. As such, the International Community is focussing increased attention and resources upon ensuring that the return is sustainable.

2.1 Health

In the last years, returnees have experienced many difficulties to access health care due to the complexity of the health care system, including the inability of the system to allow for the transfer of coverage from one location to another, the non-payment of contributions into the health funds and the absence of inter- Entity co-operation on health insurance issues. This resulted in a situation wherein persons covered under the health insurance system were often required to pay high fees for health care and medication and generally experienced difficulties in accessing proper health care.

The year 2001 brought positive developments in this area - the conclusion of two agreements on health care: an Inter-Cantonal and an Inter-Entity Agreement (signed in December 2001). It is hoped that these developments will improve the situation in the area of health in BiH, particularly, with respect to returnees. The implementation of these agreements is therefore of primary importance. It is anticipated that access to health care institutions for insured persons outside their permanent residence, will be considerably facilitated as a result of the recently adopted (November 2001) inter-Entity Agreement on health care. However, there still might be certain categories of persons who might not be covered by the agreements and might still have difficulties in accessing health care services. The problem of access to health care remains for those employees without certified health booklets, which is a pre-condition. Numerous employers fail to pay monthly contributions to health insurance funds and the control of financial police appears insufficient and unsustainable. Close collaboration with the local authorities (e.g. with the recently created Health Expert Group under the state-level Commission for Refugees and Displaced Persons) should be continued. In addition, numerous complaints about unofficial fees for health services continue to be a problem in many hospitals throughout BiH. Requests for out-of-pocket payments for specific health services results in excluding vulnerable persons and the poor from accessing their rights to health protection. A plan of action from the Health Expert Group to combat corruption and bribery in the health care system should be urged.

Plan of Action: Ensure equitable health care provision for persons irrespective of their residence in BiH

- **Monitor the implementation of the Inter-Cantonal and Inter-Entity Agreements on Health Care Provision** for insured persons outside the territory where they are insured and address any identified problem in co-operation with the Commission established under these Agreements.
- **In co-operation with the authorities and NGOs, undertake an information campaign** to raise awareness among the targeted population concerning the applicability of these agreements.
- **Identify categories of persons encountering problems of access to health care services and advocate for solutions.**
- **Harmonise the existing legislation** pertinent to health insurance in both Entities and Brcko District.
- **Encourage the creation of a legal framework to allow for equal access to health care in BiH.**
- **Encourage the re-assessment of financing of the health care system in BiH,** prospectively fostering a nation-wide harmonisation of health care costs among health insurance funds.
- **Assist in the definition of national priorities.**
- **Ensure mechanisms are put in place to ensure that returnees have sufficient confidence in the Bureaux for Unemployment so that they register with them to receive the necessary healthcare and benefits.** In many return areas, there is perception that these bureaux are politically or ethnically biased.
- **Encourage a plan of action to address unofficial fees for services being charged to patients by health care workers.**

2.2 Pensions

The Agreement on the Mutual Rights and Obligations Regarding the Implementation of the Pension and Disability Insurance (Agreement on Mutual Rights and Obligations) between the Pension Funds of both Entities, signed on 27 March 2000, has overcome some of the major problems resulting from the fragmentation of the pre-conflict pensions fund, by ensuring access to pensions regardless of place of residence of the beneficiary within BiH. There is now a system in-place whereby returnees can collect their pension via the PTT/bank: information leaflets for pensioners have been distributed throughout BiH.

Despite this improvement, access to pensions continues to be problematic. For example, the unsatisfactory implementation of the exchange of documentation and data provided for in the Agreement on Mutual Rights and Obligations is resulting in applicants, in most cases displaced persons and returnees, to face cumbersome administrative procedures and to have to pay fees in order to obtain

information or documentation required for their entitlements, consequently delaying access to their pensions.

Moreover, although the signing of the Inter-Entity Agreement on Health Care in December 2001 (mentioned in the above section on health) has been an important step in resolving the problem of health insurance coverage for pensioners who return to their pre-conflict homes in the other Entity, implementation of the said agreement needs monitoring and solutions still need to be found for those categories of pensioners who are not covered by the said agreement.

A more general problem is the limited or insufficient financial resources of the Pension Funds in both Entities, which results in pensioners not receiving the full amount of their pension entitlements. What aggravates this general lack of funds and therefore also affects the amount of pensions that ordinary pensioners receive, is that it is not clear from which budget Entity governments are funding those pensions which are based on more advantageous calculation schemes, namely on the doubling of so-called 'special years of service', and which require additional budgetary resources as well as separate accounting or administration. Consequently, it seems that contributions of ordinary pensioners are being used to finance these preferential pensions granted to certain categories of persons, resulting in the additional reduction of the pensions which ordinary pensioners receive each month.

At the Regional level, the lack of adequate harmonisation in the recognition of pension rights, including the absence of any agreement on social insurance between the Federal Republic of Yugoslavia (FRY) and BiH, continues to prevent certain refugees and returnees from having access to their pension entitlements. As part of the Stability Pact, the third tri-lateral cross-border consultations took place in Belgrade on 11 September 2001. The main focus was to ensure the right to access pensions, jointly or on bilateral basis between BiH, Republic of Croatia (RoC) and FRY. Discussions focused on technical difficulties (calculations of payments) and the reciprocity of agreements to be reached. Harmonisation of the rules and regulations is needed to enhance the stabilisation in the Region. As the result of the meeting, a set of priorities was agreed upon with a view to resolving the problem of pensions between the three countries.

Plan of Action: Ensure equal access to pensions regardless of residence within BiH

Within the Federation of BiH

- **Monitor the implementation of the merger of the Mostar and Sarajevo Pension Funds, which was effective on 01 January 2002.**

At the inter-Entity and State level

- **Monitor the implementation of the Agreement on the Mutual Rights and Obligations in the Implementation of Pension and Disability Insurance between the Pension Funds of both Entities**, including with respect to administrative fees and payment procedures which may adversely impede or delay access by returnees to their pensions.
- **Promote the adoption of Entity or State legislation regulating and protecting the rights of persons to access their pension and other related social benefits** (health insurance in particular), irrespective of their place of residence (so that beneficiaries are not dependent solely on inter-Fund agreements).
- **Monitor the financing and proper administration of Pension Funds** and, in particular, encourage separate accounting and administration of pensions that require additional budgetary resources, and if necessary, adopt legislation with this respect.
- **Promote state-level framework legislation regulating basic rights related to pension**, for all citizens of BiH.
- **Exchange of information in order to facilitate the calculation of costs.**
- **Harmonisation of criteria for the acquisition of pensions** (initiated by the adjustment of legislation in RS).
- **Adjustment of different levels of payments in Entities to enhance the unity of the State.**

At the Regional level

- **Monitor the implementation of the Agreement on Social Insurance** (including pension) between RoC and BiH (signed in October 2000 but which entered into force only in late 2001), particularly with respect to the rights of refugees, and encourage the signing of a similar agreement on social insurance between BiH and FRY.

- **Common understanding that double entitlements should be avoided.** States should be urged to sign and ratify an agreement in this respect.

2.3a Fair Employment

Current discriminatory practices in employment are a significant deterrent to minority returns and an obstacle to the reconstruction of a multi-ethnic society. They constitute a serious breach of the DPA and of various international human rights treaties to which BiH is a party. A fair employment strategy aiming at preventing and redressing unfair employment practices has been in place since October 2000. It has three components: the conduct of information campaigns; the development of a litigation procedure; and the conduct of surveys in targeted municipalities. It notably encourages investors and donors to take into account the respect of fair employment practices when funding and implementing projects, in order to create incentives for employers to effectively adopt such international employment standards.

Plan of Action: Promote fair and equal employment practices and develop effective remedy against employment discrimination

- **Within the overall field of employment rights, attention should be focussed upon promoting and protecting fair employment principles and non-discrimination.**
- **Redress the grey economy and address ways in which to bring employment into the formal sector.**
- **Continue to contact relevant international and local organisations** (in accordance with the list established in 2001 by the Working Group on economic and social rights) **to explore ways in which the Fair Employment Strategy and related operational documents can be integrated within their programmes.**
- **Promote the concept of “conditionality” amongst investors.**
- **Finalise and distribute documents for a new round of public information campaigns.**
- **Provide technical assistance and advice to selected employers** to promote the implementation of equal treatment and fair employment principles and subsequently monitor.
- **Take steps to ensure that employers are directly responsible for the implementation of fair employment practices;** i.e. meet domestic and international labour standards.
- **Offer technical assistance in developing the litigation procedure** and related instructions or guidelines. Ensure that workers are aware of their rights and there is effective legal redress for breach of employment rights.
- Through OSCE proposed ‘Fair Employment Technical Advice’ Project, **execute surveys in selected public and private employers in high and potentially high minority return areas** to assess both the extent of discrimination and the knowledge and implementation of equal treatment and fair employment principles.
- **Publicly commend employers that implement fair and equal treatment employment principles.**
- **Promote the fair and equal employment principles amongst employers and workers with the assistance of the authorities, trade unions, NGOs and other parties.**
- **Continue to monitor the privatisation process** to ensure that it is carried out in a transparent and non-discriminatory way and intervene where necessary.

2.3b Employment - Article 143

Article 143 and 152 were included in the Federation and RS Labour Laws to remedy the discriminations that occurred during the war. The low implementation rate of those provisions - although the deadlines for processing the claims have passed - is however of particular concern.

Therefore, representatives of the International Community met with the Presidents and Vice Presidents of the Cantonal Commissions and the chairs of the Federation Commission for the implementation of

article 143 of the Federation Labour Law to raise concerns regarding the low implementation of the provision on 25 October 2001. The agenda of the working meeting was to discuss the work of the Federation Commission and the Cantonal Commissions and problems encountered in each of the Cantons. The meeting also aimed at discussing ideas on how to improve the work of the Cantonal Commissions and the Federation Commission as the Commission members complained on difficulties faced in resolving complex legal questions. The IC encouraged the Federal Ministry of Social Affairs, Displaced Persons and Refugees to assist the Commissions to resolve legal matters and provide interpretation of outstanding legal questions. The main impediment identified during the meeting was the lack of Federation/Cantonal resources for the Commission to complete its work. In particular, the lack of time, office space, equipment (such as computers) and compensation for the work was highlighted by the Commission members. On 08 November 2001, all Cantonal Ministers and the Deputy Federation Minister were reminded of their obligation under Article 143 b of the Federation Labour Law that reads as follows: 'The Federal Ministry and relevant Cantonal authority shall provide the Commissions with an operating budget'.

Plan of Action: Monitor the issuance of decisions by the Commissions and their implementation

- **Establish a regular system of reporting to measure progress in the implementation of the two provisions.**
- **Ensure more rapid processing of the claims by the Commission by facilitating the development of common interpretation of the provisions and by encouraging the Commission members to draft guidelines for all Cantonal Commissions.**
- **Follow up meetings with all Cantonal Ministers within the next two months in reference to their above mentioned obligations under article 143 b Federation Labour Law.**
- **International Community to provide assistance once draft is completed.**

2.4 Right To Conscientious Objection and Alternative/Civil Service

Despite renewed efforts in 2001 by the International Community to bring the issue of the non-functioning of the system with regard to Conscientious Objection (CO) to the attention of BiH authorities, no concrete steps were taken to change it. Individual cases have been reported by interest groups of continued violations. The case material that has been made available to the International Community showed that those interested in CO status and Alternative Service (AS) had not been properly informed about their rights. Applications were either rejected by the Defence Ministry or were not dealt with by the appropriate independent Commission for CO, as provided by the law in both Entities. There is a clear need for a public information campaign to raise public awareness in regard of CO/AS. A survey organised by a BiH NGO showed that 80% of young people wish to perform alternative service and that 70% did not know that the law provided for CO/AS.

Legislative changes of the FBiH Defence Law and RS Law on the Army were in the parliamentary process. Final amendments (passed in September 2001 in RS while changes of Federation new law proposal on CO were rejected) had insufficient provisions for a genuine alternative/civil service and the punitive character of CO/AS remained. The services (military and civil) were shortened (4 months and 9 months, respectively) but the punitive character of the civil service was not reviewed. The negative effects of the existing military recruiting system, where 16-17 years old were called by military commissions and were required to register, still prevail.

On 12 December 2001 an independent Commission on CO was inaugurated by the FBiH Ministry of Justice, as prescribed by the law, to deal with the applications for the status of conscientious objector. The Commission faced various difficulties due to lack of proper information, expertise and fact that the system of genuine alternative service has not yet been established in BiH.

Plan of Action: Ensure for the possibilities of conscientious objection and the availability of genuine civil service as alternative to military service in BiH

- **Monitor the work of BiH Federation Commission on CO:** ensure that an RS Commission is established. Support the Commission in the FBiH and provide information regarding the appropriate application forms for CO, data protection and advice in applying the alternative service (examples of contracts with relevant civil institutions etc) as well as laws and regulations from other countries where CO and alternative service are available.

- **Harmonise the existing legislation** on defence in both Entities in regard to CO and alternative service.
- **Address the problem of human rights violations** for applicants who tried to submit applications before the Commission on CO was established in the Federation. Where appropriate, submit individual cases of CO to the Human Rights Chamber.

2.5a Utilities

In many parts of the country, publicly-owned companies continue to problematise returnee access to services such as electricity, gas and telephone, through the imposition of excessive fees for reconnection or ordering the purchase of new electricity meters, for instance.

Lack of access to public utilities, including the supply of electricity, hinders sustainable return and is contrary to Annexes VI and VII of the DPA. The Inter-Agency Working Group on Utilities, established in May 2001 developed a questionnaire to be used for the reporting of cases of discriminatory application of laws and internal regulations by public utility companies. The results of the survey may indicate a need for changes to existing legal provisions and regulations. The questionnaire was distributed to members of the International Community throughout BiH in 2001. The reports were collected in November 2001 and the evaluation of the incoming results is ongoing. Representatives of the International Community have been meeting representatives of Entities' Ministries of Energy and Mining to discuss the continued problems in the provision of electricity supply.

Plan of Action: Improve equal access to utilities

- **Establish, in collaboration with the local authorities, a procedure to deal systematically with problems related to access to utility services.**
- **Develop accurate statistics on utility cases.**
- **Conduct a public information campaign.**
- **Monitor the laws and regulations pertaining to utility companies throughout BiH** and ensure equal access and non-discrimination.
- **Closely monitor the regulation of utilities throughout BiH.** Use the results of the survey on electricity supply as the basis for further action, including changes to existing laws and internal regulations.
- **Consider imposing conditionality of funding on state-owned companies that fail to support the needs of returnees to the basic supply in electricity and other utilities.**
- **Develop ground-rules for resolving disputes related to IC-funded projects (re: whether municipal authorities or electric companies have ultimate responsibility) and consider ways in which the cost of reconnecting utilities for returnees can be subsidised.**

2.5b PTT

The OHR PTT Advisory Committee, established two years ago, based on the High Rep's Decision from 30 July, 1999, continues to make recommendations and draft binding decisions in cases of disagreement between pre-conflict subscribers and the relevant PTT. This process is supported by the well organised network throughout the country for receiving and processing the claims (in case of disputes, the applicant addresses the closest LAIC who forwards it to the Committee in cases in which they were not able to reach the agreement with PTT).

Plan of Action: Improve equal access to the telephone network

- **Exert pressure on, and monitor, domestic PTT Companies to implement the High Representative Decision and to reduce discrimination against minority returnees.**
- **Remove unjustified impediments to the reconnection of minority returnees and pre-conflict subscribers to the telephone network.**

- **OHR HR/RoL PTT Advisory Committee to continue to make binding decisions in cases of disagreement** between pre-conflict subscribers and the relevant PTT.
- **Transfer responsibility**, to ensure the reconnection of minority returnees and pre-conflict subscribers to the telephone network, from OHR to Communications Regulatory Agency (CRA) in the interim period prior to assumption of full responsibility by the PTTs and Entity Ministries for Traffic and Communications.
- **By 2003, BiH authorities**, together with the Entity Ministries of Transport and Communications, should **provide the financial means for the reconstruction of the telephone networks** destroyed during the war in order to eliminate technical obstacles for the reconnection of the pre-conflict subscriber” and assume monitoring and decision making role entirely.
- **Exert pressure on, and monitor, domestic PTT Companies to implement the High Representative Decision and to reduce discrimination against minority returnees.**

3. Ensure appropriate responses to minority-related incidents affecting return

In 2001, IPTF received 314 reports of incidents directed against minorities, which thereby affects return and the sustainability of return. The number of incidents of minority violence continued to be twice as high in the RS than in the Federation. The severity of incidents in the RS also remained greater than in the Federation and Brcko District. While the majority of incidents in the Federation involved verbal harassment and occasional damage to property, the incidents in the RS involved the use of explosives, shootings, physical attacks, significant property damage, violent demonstrations, and deaths. Police investigations into the serious incidents in the RS have been poor, and attempts have not been made to investigate the ultimate organisers of this systematic violence.

In May, the Zvornik Basic Court issued a decision in the case against Bosnian Serbs who violently protested the return of Bosniaks to the village of Divic. Fourteen persons were found guilty of obstructing officials in performing their duties. Two people were sentenced to 45 days of imprisonment and fines were levied against the remaining Twelve. The outcome fell far short of the severity of the crime, but the case represents the first instance in Eastern RS in which Bosnian Serbs have been held criminally liable for inciting violence against minority return.

Plan of Action: Improve effectiveness of response to minority-related incidents affecting return

- **Ensure the provision of security and safe environment in places of return** before reconstruction phase and thereafter in sensitive areas.
- **Ensure those who attack or intimidate, or orchestrate attacks or intimidation, of returnees are severely punished in accordance with the law.**
- **Preventive measures:** Local police authorities, particularly in contentious return areas, must be pressed to implement operational plans to increase police presence to guard against possible return related violence. Priority will be given to monitoring the implementation of such plans.
- **Engaging public prosecutors:** Interventions will be made with public prosecutors, who are obliged to request investigations into serious crimes.
- **Criminal Investigations:** In particular, to press local authorities to investigate organisers of systematic violence.
- **Demand that law enforcement systems investigate and prosecute, and the judicial systems appropriately punish,** temporary occupants who loot apartments.
- **Systematic gathering of Information on occurring return-related violence (RRV)** incidents since they have negative impact on the return process. This statistical material should be elaborated and used when dealing with law enforcement officials inefficiently addressing the rule of law problems.
- **Increase field monitoring of LP response to RRV** and property law violations, including looting. Once the re-registration results are officially published, establish regional overview of DP and internal refugees’ chart for property/sustainable return problem areas.
- **Disciplinary action and IC sanctions against police chiefs and police officers;** An increase in the number removals of obstructive or ineffective police officials, de-certifications of police officers and use of non-compliance orders against police officers. More effective use of the

Internal Disciplinary Prosecutor and the Disciplinary Commission monitored by the IC including misuse of property.

- **Complaints against public prosecutors and judges** - Develop the work of the regional inter-agency Judicial Reform Working Groups for more thorough and systematic IC monitoring and scrutiny of the performance of judges and prosecutors in return related cases, submitting documented complaints where appropriate to the competent commissions and councils under the Comprehensive Review Process of Judges and Prosecutors. This should be complemented by further training of members of the judiciary (*see Priority III 2.1*)

II. EDUCATION

Whilst progress has been seen on in the field of education, particularly in the level of political support lent, significant obstacles in the way of a non-discriminatory, modern education system remain in place. Education plays an essential role in the sustainability of return, economic progress and the reduction of political tension and ethnic conflict. Only within the education system can the entire youth population learn to reconcile and value differences, rid themselves of prejudice and stereotypes, and thereafter contribute to the prospects of a multi-ethnic, democratic and prosperous society.

If BiH does not provide education of a quality comparable to European norms as soon as possible, an increasing number of young people are likely to permanently leave BiH, thus depriving this country of their potential contribution. A UNDP poll (2000) showed that – similar to other transition countries in Central and Eastern Europe - more than 60% of the younger generation intend to leave if given an opportunity to do so. One reason why young people want to leave BiH is the inadequacy of the country's education system, which is badly managed and thus plagued by poor facilities, old-fashioned teaching methods, and inadequately standardised qualifications, and divorced from research and teaching developments elsewhere in Europe. This is particularly regrettable, as “the experiences of other Central and Eastern European countries suggest that with a depressed labour market, it is more advantageous for the country to keep young people in training rather than letting them become unemployed.”² The proliferation of governance structures and approaches has led to the creation of twelve highly centralised mini education systems without any of the benefits which the trend towards decentralisation has brought in other European countries. The budgetary implications of the current education system are 4-5 times higher than in other European countries. Investment in salaries and wages takes up the vast majority of this budget. This level and balance of expenditure is unsustainable in the medium to long term.

However, since the signing of the 10 May 2000 Education Declaration and Agreement by the Entity Ministers of Education, with the aim of introducing shared or co-ordinated elements into the three parallel systems, several major steps towards a multi-ethnic, modern education system have been taken. Teaching of both the Latinic and Cyrillic alphabets has been compulsory in Primary and Secondary education since February 2001 in both entities. In addition, Literature modules reflecting the literatures of the three constituent peoples of BiH have been mandatory since September. Further, the “Human Rights and Civic Education” course (replacing the obsolete subject of “Civil Defence”) has also been mandatory since September 2001 in the two first grades of Secondary education. Another achievement is the acceptance by both entity Ministries of education of an EU sponsored Sector Development Programme aiming to thoroughly modernise all aspects of the existing Primary and General Secondary education systems in BiH and make them compatible with EU standards and norms (2001 - 2005). There has also been an on-going series of training seminars on history teaching (successful alternative methodologies and approaches).

Furthermore, the FBiH Ministry of Education produced and, in late December 2001, publicly presented new curricula for language, literature and history for primary and grammar schools in the Federation. They were produced on the basis of the principle that they would/ could be used throughout BiH. The new curricula are now offered for a public debate in the Federation. Following the discovery of a number of textbooks containing anti-Dayton, or otherwise objectionable or improper materials, OHR launched a new phase of the textbook review. On 14 December 2001, the Entity Ministries of Education signed a new Agreement on the textbook review, prepared by OHR, assuming the obligation

² For this and following see: European Training Foundation: Working Document – Labour Market – vocational education and training assessment. Bosnia and Herzegovina, October 2000, www.etf.eu.int/etfweb.nsf/pages/downloadbosnia

to establish their own Standing Textbook Commissions that would be tasked with review of the textbooks produced in their own Entity as well of those from the other Entity. OHR will also establish its own Independent Standing Textbook Review Commission.

Nonetheless, much more needs to be done. Whilst there are many professional, honest, hard-working, competent and principled educators and administrators, there are those who continue to deny some children their right to an education and those whose primary motives are not the welfare of students. There are still textbooks in usage that perpetuate vicious nonsense about ethnic separation. There are still children obliged to travel many miles to school because of discrimination, prejudice and fear.

While working towards a multi-ethnic modern education system in the long term, goals in the field of education include ensuring, in the short and medium term, that returnee children have access to education in a safe and non-discriminatory environment and that widespread ethnic discrimination and segregation through education is eradicated. It is also vital that education is depoliticised, i.e. not used by nationalists to maintain artificial ethnic division and segregation seen by them as furthering their own hold on power and the minds/lives of ordinary citizens. It is also essential to ensure, through political support of education development programmes offered by relevant IC organisations and NGOs, that multiethnic education and EU quality and rationality standards eventually underpin education provision in BiH at all levels of the system. Furthermore, political parties need to become more aware of the need to formulate meaningful – not ethnically biased - policies on education, vocational education and training in order to manage resources wisely and beneficially in particular for young people as main recipients of education delivered by the public sector.

The first informal tripartite meeting of Ministries of Education (MoE) of BiH, RoC and FRY (Serbia and Montenegro), that was initiated by the two entity MoE from BiH, and facilitated by OHR and the CoE, took place on 20 November 2001 in the Council of Europe, Strasbourg. This meeting presented a unique opportunity to tackle the most urgent issues in education in these neighbouring countries. Further co-operation has been agreed upon including the establishment of expert teams for co-ordination/ harmonisation of curricula, mutual recognition of school certificates and university diplomas, and preparations on signing bilateral protocols on education co-operation between the three countries to occur within the next six months.

Plan of Action: Ensure returnee access to safe and non-discriminatory education and eliminate widespread discriminatory practices

- **Survey the extent of the problems in terms of access to education for returnee children.**
- **Update the Overview of Educational Problems in BiH and Guidelines for Intervention in the Field, dated September 1999 (HRCC),** to include both short term and longer term field-level action or intervention in education matters.
- **Continue to put pressure on entity Ministers and other local actors so that all the items of the 10 May 2000 Education Declaration and Agreement are expeditiously implemented,** including through the dissemination of the Declaration to students, members of civil society and government authorities.
- **Address ways to ensure that all outstanding obstacles for returnee families as well as continuing widespread discriminatory practice are eliminated.**
- **Ensure access of national minorities, particularly Romani communities, to the education system** (*refer to Section V “Minorities and Discrimination”*).

Plan of Action: Solicit political support for joint multiethnic education

- Encourage a solemn declaration of the PIC Steering Board, in the presence of the Entity Prime Ministers and Presidents, saying that the Entities must now move towards **joint multiethnic education** (at all levels, across BiH), followed immediately by a declaration of ownership by the leaderships of both Entities. Such **public declarations** would contribute to the removal of widespread feelings of fear and intimidation amongst educators, which paralyse change and innovation in the education sector.
- In municipalities throughout BiH, work with school directors, local authorities, and Ministers of Education to **establish multiethnic school boards.**

- **Develop cost-benefit argument with respect to joint multiethnic education**, highlighting that resources can be used more efficiently with the aim to increase the quality of education, thus enhancing the life chances of young people and supporting economic redevelopment. Key target groups for this argument would be pupils/ students, parents, as well as members of the education system and government authorities.
- **Work with school directors, municipal authorities and Ministers of Education to ensure common extra-curricular activities, administrative unification, joint school boards, teachers, and parents associations.**

Plan of Action: Solicit public support for, and understanding of, joint multiethnic education

- **Initiate a public information campaign** to explain to the citizens of BiH what “joint multiethnic education,” based on the principles of the September 2000 ruling of the Constitutional Court on the constituent peoples, means. This campaign should also aim to foster acceptance of and support for the reform of education towards a multiethnic system. A period of 12 months could be devoted to showing that the nationalist ideologies which prevented substantive progress in the past actually glossed over the main problem in the education sector of BiH, i.e. the lack of adequate standards and overall quality that made any comparison with EU standards impossible. The primary targets of such a public information campaign would be the ordinary citizens of BiH, especially the stakeholders of the education sector, i.e. parents, teachers, pupils/students, administrators whose primary interest is to provide the BiH youth with the necessary knowledge, skills and know-how to function as effective citizens of a modern BiH.
- OHR have initiated an **Education Public Awareness Campaign** throughout BiH and will continue to support the campaign during 2002. The purpose of the campaign is to raise the visibility and awareness of positive education practices in schools, teacher education institutions, and communities that contribute to the quality of teaching and learning for all children. The campaign will help link BiH educators, schools, communities and the International Community through information and experience sharing that can lead to "Partnerships for Learning" that support learning achievements in all schools. Components of the campaign include a resource packet of information to support teachers, students and schools, an education directory to identify where BiH expertise exists related to "best practices" in education that can be shared and developed, and TV and radio spots to highlight and reinforce the need for all of us to become involved in the education process.

Plan of Action: Develop a joint core curriculum and reduce the number of curricula

- **Develop a joint core curriculum** allowing pupils to go to school together (to study most subjects jointly). Initially, within six to eight months, the present curricula of all subjects must be harmonised, using local expertise, as was done in the District of Brcko.
- This joint core curriculum would encompass 70 - 80% of the total curriculum; the remaining 20 - 30% would be left to the initiative of the Entities/Cantons to take into account the great cultural, religious and linguistic diversity that characterises BiH. Most of it would be used to conduct community, culture and language specific activities. However, a common policy should be implemented as far as language/literature, history and the “culture of religions” are concerned, i.e. **the same basic history** must be taught throughout the country. The pupils and teachers must be **entitled to use any of the three current linguistic standards**, both orally and in writing, and **they must learn both scripts**. Pupils and teachers must also be able to **learn about the literature of the other constituent peoples** in a balanced way. Further, the new subject of “**culture of religions**” must be developed and implemented throughout BiH.
- **The modernisation process of all the major components of the BiH education system must be allowed to continue with an adequate level of EU funding.** Modernisation of the education system is a necessity in order to foster participation, creativity and democracy in the classroom, where democratic practice will eventually take root. As such, the European Commission should be encouraged to continue its funding of the EU’ s “Shared Strategy for the Modernisation of Primary and General Secondary Education in BiH, “as initially planned (2001 to 2006). Although donor funding will remain crucial in the medium term, i.e. 4 to 5 years, the local authorities need to take ownership and responsibility for raising quality standards in all education sectors to EU levels.

Plan of Action: Reform all levels of education

- **Take steps towards ensuring the establishment of a high-powered, State-level Agency for educational standards, norms and assessment for all levels of education.** This Agency should be staffed by the best professionals, from BiH and abroad, in order for BiH to ultimately meet EU quality standards. It would be a benchmark setting agency and would also become the national assessment and testing agency for BiH. This agency could be established within 6 months, upon the basis of the now operational Standards and Assessment Agency funded by the World Bank with a very limited mandate for the period 2000 to 2004. Synergies should be sought with the European Training Foundation and the follow-up institution of the National Observatory.
- **Ensure adoption of new modern legal frameworks for Primary, Secondary and Higher Education.** The frameworks are currently being developed by OHR and the CoE. They have to be based on the Constitutional Court's ruling and on best European practice. It is estimated, however, that they will not be ready before the mid-2002.
- **Develop and implement a regional scheme to foster "education for peace and reconciliation at school"** in the three countries involved in the 1992 - 1995 war, possibly under the Stability Pact. An initial level of implementation could involve hundreds of school-to-school co-operation and exchange schemes, possibly funded by the EU and other donor agencies.
- Make visible, publicise and make available to all schools and education professionals the **valuable results of all the education development projects funded and carried out since 1996 by NGOs** involving hundreds of teachers and teacher trainers.
- **Push for the development of policies and legislation in terms of adult education and life-long learning.**
- **Push for the development of pre-school education. UNICEF is now actively engaged in this field.**
- **Provide all necessary support for the modernisation of the vocational education sector** (covered so far by an EU PHARE programme). Support the objective of the multi-annual indicative programme 2002-2004 of the EU in the field of vocational training and higher education. Support the conditionality, that both entities must adopt legislation by the end of 2003 based on the draft White Paper on Vocational Education and Training, which will bring the VET system in line with European standards. Both entities must co-operate fully in the implementation of the Agreement on the elaboration of a shared strategy for the modernisation of primary and general secondary education in BiH signed on 27 June 2001.

Higher Education

Higher Education is of particular significance for the development of a modern European BiH. The current reform process is extremely slow and subject to political obstruction and procrastination. Above all, the present system needs to be rationalised. Currently, public funding is allocated to faculties rather than universities as a whole. This results in money being used inefficiently and non-transparently. The Federation of BiH needs to urgently reform its higher education financing system on the basis of a voucher system whereby students could easily register in any FBiH university. For example, at the present moment, the University of Sarajevo has 44% of its student body originating in Cantons other than Sarajevo while these Cantons do not provide any financial contribution to their studies. Furthermore, the number of universities in BiH has to be reduced. The duplication of teaching courses offered by a fractured Higher Education system represents a scandalous waste of scarce resources. BiH cannot afford seven universities. The country does not have the facilities, the money, or the necessary numbers of qualified teaching staff.

BiH has yet to become a signatory to the Lisbon Convention on the recognition of Higher Education qualifications. If academic qualifications are not accepted, inside the country and outside, students' prospects for employment and study or work abroad are significantly reduced.

In 1999, 29 European education ministers signed the Bologna Declaration, committing themselves to the creation of a common European higher education space by 2010. The principal practical instruments of the Bologna process are the European Credit Transfer System and Quality Assurance schemes. In September, BiH agreed to prepare an implementation plan to be presented to the Secretariat of the Bologna process, which would eventually allow BiH to become a signatory to the

treaty (in autumn 2003). Implementation of the plan will allow BiH students eventually to take advantage of this system. The plan, which ought to be developed by all the universities, was supposed to have been co-ordinated by the Ministries and presented by now. It has yet to be completed.

BiH can literally not afford not to embrace such crucial European harmonisation and modernisation schemes.

The Ministry for Human Rights and Refugees emphasises the need for human rights education at all levels of the system of education. The education system of the previous social and political system precluded any instruction on human rights. Education reform in BiH has partly rectified that anomaly, in secondary schools, for instance, with the introduction of the subject of human rights and democracy. The reform should be extended to university education, at least to law faculties. By engaging all factors and subjects related to human rights in BiH, one should achieve a situation where there will be no lawyers in BiH without the proper knowledge of human rights conventions and issues.

Plan of Action: Solicit political support for joint multiethnic higher education

- Take steps to ensure that the **number of Universities is reduced** from the current seven to the pre-war four institutions (within 2 years) because the country cannot afford them.
- Take steps to develop an elaborate needs-assessment in terms of academic skills, know-how and knowledge, to be prioritised for fostering economic development.
- Ensure that the Higher Education Co-ordination Board, which has now been legalised, is upgraded to an executive body promoting university autonomy.
- Ensure that in FBiH, the Cantons devise a plan whereby universities **are properly and equitably financed; the finance system needs to be urgently reformed on the basis of the principle of “money follows the student”**.
- **Ensure the rationalisation of the present system, in which public funding is allocated to faculties rather than universities as a whole; universities need to be able to plan their strategic development at a central level.**
- Implement a wastage reduction scheme whereby the number of students who actually complete a degree is vastly increased.
- **Ensure proper and efficient management of state owned university property on the basis of actual Faculty needs.**
- **The role of co-ordination of the Federation Ministry vis-a-vis the Cantons should be affirmed through negotiation with the Cantons.**
- **Ensure that the legal personality of Faculties is removed**, (by September 2003 at the latest), following the example of Tuzla University. Only the Universities themselves should be legal bodies (thereby strengthening the Rectors' position).
- Pressurise the Ministries of Education to sign the Bologna Declaration **and develop adequate implementation plans (within 6 months)**.
- **Pressure the Ministries of Education to sign the binding Lisbon Convention** on the recognition of qualifications and to develop adequate implementation plans (within 12 months), including the creation of a National Academic Information Centre (NARIC).
- **Take steps to establish high level MBA and Masters in Public Administration degree courses with study periods in the three major universities of BiH.**
- **Ensure that adequate tools are developed to encourage young academics and applied research of a kind that will foster economic development.**
- **Ensure that specific Bosnian Studies (cultural, political, sociological) degree courses are developed based on the great diversity of the different communities in BiH.**
- **Take steps to develop and ODL capacity (Open and Distance Learning).**
- **Ensure that the academic and research network BIHARNET is set on a sustainable course with adequate funding from both Entities.**
- **Address the extent of discrimination in access to university and higher education** and develop a strategy to address any problems in conjunction with various international organisations and other stakeholders involved in higher education.

- **Advocate for students' participation in University and faculty matters**, through regulated and democratically functioning students' unions and councils.
- **Contribute to the fight against corruption in higher education.**
- **Extend human rights modules into university education, particularly in Law faculties.**

III. REFORM OF JUDICIARY AND POLICE

The protection of the rights of the citizens requires respect for the rule of law at all levels of government, effective non-discriminatory law enforcement structures and a well-functioning judiciary. Justice should be dispensed without undue delay by independent and impartial judges. If police officers, judges and prosecutors ignore, do not treat equally or are complicit in crimes against members of groups other than the dominant or majority political, ethnic or social group, they should be amenable to appropriate disciplinary measures.

1. Judiciary

The Independent Judicial Commission (IJC) was established in 2001 to guide and co-ordinate judicial reform and to monitor the functioning of the Commissions and Councils tasked with reviewing the suitability of serving judges and prosecutors and recommending candidates for appointment as judges and prosecutors.

1.1 Independence of the Judiciary

In 2000, legislation was passed in both Entities establishing bodies to review the suitability of all judges and prosecutors in office at the time the laws came into effect, in accordance with criteria set out in the laws. These Commissions and Councils also have roles in selecting judges and prosecutors for appointment. These laws provide a means to professionalise and de-politicise the appointment process, whilst also paving the way for the removal of unsuitable judges and prosecutors and thus improving the overall competence of the judiciary.

After a slow start, the review process is now producing concrete results. This results from intensive monitoring and support by IJC, improved work of the commissions and councils and greater co-ordination of efforts in the IC. The review process has been extended by the RS National Assembly until 31 October 2002 and exceptionally until 31 December 2002. The Federation House of Peoples voted to extend the process in the Federation until 30 June 2002 rather than 31 December 2002 as requested by the IJC. The Federation House of Representatives will vote on the issue in late January. The IJC is considering various ways in which to further intensify the process, including some radical measures.

The appointment process has also greatly improved, following development of standard interview and other procedures by the IJC. It is clear that the quality of appointees is much better than it was. The IJC will continue its work on the appointment process in 2002, further codifying systems and procedures and will also focus on disciplinary issues through clear and detailed ethics codes for judges and prosecutors and a proper disciplinary system. The latter will enable judges, prosecutors and the public to know in advance the standards to which the judiciary must adhere and also to facilitate proper action to be taken against those who do not adhere to it.

Regional inter-agency Judicial Reform Working Groups were established in 2001 to co-ordinate IC investigation of judicial and prosecutorial misconduct. This has resulted in the submission of documented complaints to the competent commissions and councils.

Plan of Action: Accelerate internal restructuring and reform measures to improve the effectiveness and professional standards of members of the judiciary

- **Ensure removal of unsuitable judges and prosecutors from office.** Key elements include maintaining IJC role in the process, including attendance and advice to the commissions and councils, and ensuring that complaints about judges and prosecutors are submitted by relevant national and IC bodies and dealt with appropriately.

- **Provide for the long-term regulation of appointment and discipline of judges and prosecutors through the adoption of legislation on these issues.** Key elements include the engagement of international experts to advise on possible models for the bodies that will perform these functions and the procedures and standards that will be used, agree on draft legislation with key local and IC actors and establish mechanisms for and assist with implementation of the legislation.
- **Develop the work of the regional inter-agency Judicial Reform Working Groups** for a more thorough and systematic IC monitoring and scrutiny of the performance of judges and prosecutors.
- **Continue monitoring Judges and Prosecutors who violate property laws.**

1.2 Increasing the quality and efficiency of Justice

The ability of the judiciary to provide adequate, timely and even-handed justice relies on a complex array of factors. These include the adequacy of the laws governing trial procedure to minimise the possibility for unnecessary delay, the efficiency of court administration to allow judges to spend as much time as possible doing judicial rather than administrative work, the provision of on-the-job training for judges and prosecutors to enable them to do their job as well as possible, and proper access to laws and other relevant legal material.

Plan of Action: Accelerate restructuring and reform measures to improve the effectiveness and professional standards of members of the judiciary

- **Complete drafting of modern procedural legislation in the fields of criminal, civil, enforcement and minor offence procedure that is fully compatible with human rights standards and that encourages greater efficiency of procedure.** Supplement drafting efforts with training and support for implementation as necessary.
- **Establish training institutes to provide, among other things, practical training for incoming and sitting judges and prosecutors.** From a human rights standpoint, among other things, the training institutes should provide training in judicial administration and case management, in order to improve judicial economy and to reduce delays and inefficiency within the judicial system.

2. Police

2.1 Reform of Police Institutions

UNMIBH/IPTF will continue to press for structural reforms of police institutions, until their mandate ends in December 2002. Recognising the need to insulate police officials from political pressures, UNMIBH/IPTF has worked with local authorities to establish Police Commissioner posts. In monitoring local police conduct, UNMIBH/IPTF has found that internal control mechanisms within respective Ministries of Interior often fail to punish officers who violate work obligations. The failure of such systems represents a barrier to the development of democratic law enforcement agencies. Furthermore, it has been determined that basic police functions, such as arrest and search procedures, do not comply with international human rights standards. In Addition, UNMIBH/IPTF will be conducting a Systems Analysis of Law Enforcement Agencies (LEAs) in BiH. The aim will be to certify those LEAs that meet clear criteria for democratic police institutions. This will contribute towards increased professional competence, organisational capacity and institutional integrity. The Systems Analysis will comprise a five stage process involving the development desirable law enforcement standards and processes, pre-examination and analysis of relevant information on the institutions being inspected, self-assessment by LEAs together with on-site assessment audits by UNMIBH/IPTF, comprehensive recommendations following review of the findings, and compliance with the recommended measures by the LEAs.

Plan of Action: Reform police institutions

- **Promote de-politicisation of the police** by supporting the creation of police commissioner posts within each ministry of the interior.
- **Press local police authorities to unify ethnically divided police administrations.**
- **Press local authorities to improve and strengthen internal control mechanisms.**
- **Press local authorities to reform search procedures.**

- **Continue working with local police officials in the Federation and the RS to reform and improve arrest and custody procedures.**
- **Seminars/training for judges, prosecutors and police.** IC to support and encourage initiatives of Council of Europe, national training institutes, US Department of Justice, UNMIBH and the Independent Judicial Commission.
- **Systems Analysis of Law Enforcement Agencies (LEAs)** throughout BiH in order to accredit those institutions that meet the criteria for democratic police institutions, while recommending and monitoring implementation of remedial action for those that fail meet these standards.

2.2 Police vetting procedures

Through implementation of the policy on Registration, Provisional Authorisation, and Certification, UNMIBH evaluates the suitability of law enforcement officials. Those with unsuitable backgrounds are prohibited from serving as police officers. Additionally, through implementing its non-compliance policy, UNMIBH identifies officers whose conduct deviates from international standards.

Plan of Action: Support police vetting procedures

- **Vet Police Officers who violate property laws.**
- **Resolute implementation of IPTF policies on Registration and Non-Compliance**, with the intent of ensuring that officers with unsuitable backgrounds, or who display unsuitable behaviour, are not permitted to work as police officers.
- **Press local police authorities to initiate internal disciplinary proceedings against officers who receive IPTF non-compliance reports.**
- **Press MoIs to remove de-authorized police officers from the respective pay rolls.**

Of vital importance, of course, is the need for extensive planning with respect to the UNMIBH exit strategy and a lengthy hand-over period to the agency identified to carry on the work of UNMIBH.

3. War Crimes Prosecutions

The year 2001 has been highly productive for the International Criminal Tribunal for the former Yugoslavia (ICTY), with 17³ transfers of indictees to ICTY of a total of 65 persons transferred since April 1995. However, full co-operation of the authorities in BiH is still wanting. It is essential that the International Community continues to address concerns related to war crimes issues in an endeavour to facilitate the work of the ICTY and domestic war crimes prosecutions, thereby ensuring prospects for the sustainability of minority returns and stabilisation of the Region. Sustainable peace will be undermined until all aspects of the work of the ICTY are fulfilled and war criminals are brought to justice.

3.1 Domestic War Crimes Prosecutions

Under the 1996 Rome Agreement ('Rules of the Road'), signed by the signatories of the DPA, representatives of BiH Entities agreed to submit all cases of war crimes suspects for review to the ICTY prior to arrest by national authorities. Whilst Prosecutors in BiH abide by the Rome Agreement and seek clearance prior to commencing trials, a number of concerns remain prevalent in the judicial system throughout BiH with respect to war crimes prosecutions, as well as other sensitive trials, such as trafficking or fraud cases. There is a pressing need to address how best to expedite and improve the professional standards of war crimes prosecutions.

³ **8 voluntary surrenders** (Biljana Plavsic S Jan 10, Blagoje Simic Mar 12, Rahim Ademi July 25 C, Dragan Jokic S Aug 15, Sefer Halilovic B Sep 25, Pavle Strugar Oct 21, Miodrag Jokic S Nov 12, Pasko Ljubcic Nov 21), **7 arrests by national police forces** (Milomir Stakic Mar 23, Slobodan Milosevic S Apr 01 transferred to ICTY June 29, Mehmed Alagic B Aug 02, Enver Hadzihanovic B Aug 02, Amir Kubura B Aug 02 - note: all three surrendered to MuP and were transferred to ICTY Aug 04, Nenad and Predrag Banovic S Nov 08 transferred to ICTY Nov 09) **and 2 apprehensions by international forces** (Dragan Obrenovic S Apr 15, Vidosav Blagojevic S Aug 10).

Firstly, intensive training in all aspects of judicial and investigative work, in particular, is essential. With respect to domestic prosecutions of alleged war crimes, particularly regarding compilation of information and evidence gathering, there is an obvious need for training. Many of the cases submitted for which ICTY has said there is insufficient evidence or a lack of connectivity of the evidence for the case to go to trial, for instance, could have been approved by ICTY if further training on this issue occurs. It is important to note that such cases can be resubmitted to the ICTY if further evidence is obtained.

During the pre-trial investigation and the trial itself, many other serious concerns need resolution. In particular, the absence of any comprehensive witness protection programmes, cases being seen to be decided upon ethnic lines and the appeal process are recognised as serious problems which continue to hamper prospects for a fair trial. Other obstacles include political interference, insufficient will and resources, and the general lack of experience and knowledge of fundamental investigative and judicial procedures and international standards with respect to war crimes prosecutions. In addition, the ethnic constitution of many Cantonal and District Courts where war crimes may be prosecuted is not multi-ethnic, causing concerns related to questions of bias and intent.

ICTY developed a project proposal regarding remission of International Criminal Tribunal for the former Yugoslavia (ICTY) cases to a Special Court in BiH. Before presentation to the UN Security Council on 26 November, ICTY Prosecutor, Carla Del Ponte, presented the proposal for consideration to OHR, UNMIBH and the BiH Council of Ministers (CoM). The proposal was welcomed by OHR, UNMIBH and the CoM as an opportunity to address how best to expedite war crimes prosecutions, enhance the work of the ICTY and contribute to judicial reform in BiH. All three agencies agreed that the soon-to-be-established BiH Court appears to be the most appropriate institution for the prosecution of war crimes cases in BiH, rather than establishing an additional judicial institution in a country with so many already. This solution would be both time- and cost-effective and would bypass many of the legislative and logistical hurdles otherwise necessary. It is also the right constitutional solution (Article III.1.g BiH Constitution), with the State having an explicit competence in international and inter-entity criminal law matters, and would support State-building. This solution would also potentially resolve some of the concerns regarding domestic war crimes prosecutions, particularly the ethnic composition of judicial panels.

Aside from the problems entailed within many domestic war crimes prosecutions, there are also concerns with respect to the low number of indictments and trials that have emanated from cases which have received clearance from the ICTY Rules of the Road Unit. Only in less than 10% of all cases which have been given clearance have further criminal proceedings actually commenced. Additionally, there is a large number of alleged war criminals who have not been indicted and for whom case files have not been compiled, particularly those in positions of power or who remain influential over the local population, the political structures and the criminal justice system. This is an on-going concern within the International Community, which is hampering return, the concept of justice and prospects for reconciliation and peace in BiH.

Plan of Action: Expedite and raise standard of domestic war crimes prosecutions

- **Hire Team of Expert Consultants to address future strategy of domestic war crimes prosecutions**, and address what needs to be done to ensure that domestic war crimes prosecutions in the soon-to-be-established BiH Court (if this is deemed to be the most viable solution for exclusive jurisdiction over domestic war crimes prosecutions) can commence without delay, are expeditious and meet high professional standards.
- **Attract funds for realisation** of avenue recommended by consultants (*above*).
- **Ensure domestic compliance with Rome (Rules of the Road) Agreement 1996.**
- **Monitor domestic war crimes prosecutions and address concerns / needs**, ensuring that all domestic war crimes prosecutions are conducted professionally, in an impartial and non-discriminatory atmosphere.
- **Finalise comprehensive, sustainable strategy** to significantly increase the number and raise the standards of war crimes prosecutions in BiH.
- **Facilitate further judicial reform, to enable professional domestic war crimes prosecutions to occur, particularly in the field of witness protection mechanisms and victim support programmes.**

- **Finalise, in the context of the State Criminal Procedure Code, a law on Witness Protection.** In this context, address required appropriate and effective witness protection and victim support programmes.
- **Training of members of the criminal justice system to expedite and raise the professional standards of domestic war crimes prosecutions.**
- **Encourage prosecutors to expeditiously continue with cases given clearance by the ICTY Rules of the Road Unit.**
- **Address ways in which to rid the influence of the presence of alleged war criminals** in municipalities throughout BiH (particularly those in government or the criminal justice system or other positions of power) and ways in which the most powerful, persuasive or elusive alleged war criminals are brought to justice.

3.2 Co-operation of BiH authorities with the International Criminal Tribunal for the Former Yugoslavia (ICTY)

The level of co-operation of the authorities in BiH with the ICTY is still not ideal. Most importantly, there is a pressing need to arrest and transfer indictees without delay, especially the two most notorious alleged war criminals, Radovan Karadzic and Ratko Mladic, who remain fugitives from justice seven years after being indicted by ICTY. It would be particularly expeditious for Karadzic to be arrested and transferred to ICTY in The Hague in light of the forthcoming joint trial of Biljana Plavsic and Momcilo Krajisnik: as all three are charged with war crimes relating to the same events and facts it would be expeditious to try all 3 together.

The RS authorities, as yet, have not taken any concrete measures in locating and arresting any ICTY-indictees, nor have they forwarded information to SFOR that would lead to the apprehension of indictees. Lack of full co-operation of the RS authorities with ICTY has inevitable effects upon the way it is regarded by key international players. The voluntary surrender of Dragan Jokic on 15 August, was a step in the right direction. Also, the adoption of the RS Law on Co-operation with the ICTY on 02 October, which, whilst technically unnecessary, given the binding obligations of the DPA, BiH Constitution and UN Security Council Resolutions, emitted a good public message that the RS authorities have accepted their obligation and are ready to co-operate with the Tribunal. The International Community, however, is still waiting to see real progress made in locating, arresting and transferring indictees to The Hague Tribunal. Only this will send out a strong message that the RS authorities are sincere about their intention to co-operate fully with ICTY.

With respect to the issue of the authorities of BiH supporting the Liaison Officers to the ICTY, there have been some positive developments, but full political and financial support is still wanting. Nonetheless, the BiH Presidency accepted its responsibility to support the three Liaison Officers and recognised the need for each Liaison Officer to work independently of each other and the Embassy, with full staff and all necessary resources. On 31 May, the BiH Presidency adopted its Decision on the Status of Liaison Officers to the ICTY. The budget request was approved (1,364,400.00KM), but whether or not the full amount is realised is highly doubtful, considering the lack of funds at the disposal of the State Government. Another positive development occurred with the long-awaited appointment of the Croat Liaison Officer to the ICTY on 14 September.

Co-operation with ICTY improved during the year with respect to ICTY's ability to interview people and sharing of information. However, the level of outstanding ICTY Request for Assistance, particularly in the RS, is high. It is essential that the RS authorities co-operate fully and expeditiously with all requests/orders/warrants of the ICTY.

Plan of Action: Facilitate the work of ICTY and impress upon authorities in BiH to co-operate with the ICTY

- **Impress upon BiH authorities to fully co-operate with ICTY** (financial, political and logistical support, access to witnesses and information, legislative reform, constructive local authority liaison and co-operation with the ICTY, training and supporting development in the BiH criminal justice systems, public information campaigns) and develop working action plans to ensure co-operation is forthcoming.

- Ensure the BiH Government **financially supports the Bosniak, Serb and Croat Liaison Officers to the ICTY** (budget approved Sept 2001) and the **BiH Presidency** fulfils its obligations to be ultimately responsible for the Liaison Officers.
- **Impress upon the relevant State and Entity Ministries to politically and logistically support their Liaison Officers.**
- **Impress upon authorities in BiH to locate, arrest and transfer all indictees and/or pass information to SFOR without any further delay.**
- **Impress upon authorities in BiH to expeditiously meet ICTY Requests For Assistance.**
- **Assist with aspects of ICTY's work and prospective future work, such as contained within their non-paper and the establishment of a Truth and Reconciliation Commission in BiH.** Secure the adoption of the BiH Law on the Establishment of a Truth and Reconciliation Commission in BiH and support its implementation.

IV. CAPACITY BUILDING OF NATIONAL PARTNERS

It is increasingly vital that the International Community addresses ways and means of ensuring successful and sustainable transfer of their activities and responsibilities to the relevant Human Rights Institutions, Ministries and Non-Governmental Organisations (NGOs). It is, therefore, important that Human Rights Institutions and NGOs receive adequate support from the State and Entity Government and the International Community, and that this support is fully assumed by the State and Entity Governments within the next two years.

1. Human Rights Institutions

The year 2001 continued to witness significant increases in the implementation rates of the Human Rights Chamber and the BiH Ombudsman Institutions. The rate has not yet, however, reached 90%; equivalent to the rates seen for implementation of decisions of the European Court of Human Rights. International Organisations have been involved in the success in implementing these decisions, as have the Agents of the Federation, RS and BiH governments to the Annex 6 institutions. While progress has been made this year, full implementation of, for instance, four important outstanding decisions have not been effected, namely the Father Matanovic case, the Colonel Palic case, the Mostar "Liska Street" case, and Banja Luka Mosques.

In 2001, significant increases occurred during 2001 in the number of applications and decisions by all five major human rights institutions in BiH. Compliance with Decisions, particularly on the part of the Republika Srpska (RS), needs improvement. Full political and financial support from the authorities in BiH is also lacking.

Implementation of the BiH Human Rights Chamber decisions increased from 10% in early 1999 to the current 79%. The implementation rate in the Federation of BiH is at 92%, whilst in the RS the implementation rate is at 75%. However, if non-payment of interest as ordered by the Chamber is regarded as less than full compliance then the figure is 29%. The overall situation as regards compliance in the RS, therefore, remains far from satisfactory.

While the increase in implementation rates denote progress, there remain over 200,000 property repossession cases in BiH, all of which, under the Human Rights Chamber's jurisprudence, would be violations of the European Convention on Human Rights. Continuing progress in property implementation must be seen in order to decrease the caseload of the Human Rights Chamber.

With respect to Ombudsman cases, while until late 1998 none of three respondent parties were responsive, establishment of offices for representation of three Governments has resulted in 72% implementation-rate of Ombudsman cases in the RS and 47% in FBiH.

The Commission for Real Property Claims of Displaced Persons and Refugees (CRPC) has collected claims relating to 305,196 properties in BiH, and has issued 194,239 decisions. In addition, 42,555 property records for houses and apartments have now been checked for reconstruction purposes since August 1997. Enforcement of CRPC Decisions is still problematic. CRPC has received over 12,092

complaints regarding non-implementation of CRPC decisions, with the greatest numbers relating to properties in Banja Luka, Brcko, Doboj, Mostar, Sarajevo, Pale, Tuzla, Zenica and Zvornik. In order to assist CRPC decision-holders, the CRPC has increased its focus on monitoring and implementation of CRPC decisions. The Human Rights Chamber ruled in several cases that the non-enforcement of the decisions of the CRPC constitutes a violation under the European Convention for the Protection of Human Rights and Fundamental Freedoms and awarded the CRPC decision-holders non-pecuniary damages. The Human Rights Chamber's decisions further protect the rights of CRPC decision-holders, and it could significantly increase rate of enforcement of CRPC decisions. An analysis of the repossession database shows that out of 28,000 repossession cases registered by CRPC in the database 38% are CRPC decision holders.

Although funding of the institutions is primarily responsibility of the Parties so far the OHR has, in large part, assumed responsibility for attracting external donors and pressurising the State into financially supporting the institutions. To date, the State budget is insufficient to cover such expenses. Sustainability of the institutions must be ensured through adequate State funding.

On 03 January 2001, the Law on the Human Rights Ombudsman of BiH entered into force following the ordering of the publication of the Law by the High Representative on 11 December 2000 (Official Gazette of BiH, No. 32/00). The Law regulates the activities of the Institution, including the relationship between the BiH Ombudsman and the Entity Ombudsman Institutions. All three Ombudsman Institutions are now governed by legislation drafted with the assistance of the Venice Commission, the European Commission for Democracy through Law.

Plan of Action: Increase compliance with Decisions of the Human Rights Institutions and ensure sustainability of the Institutions

- **Continue taking steps towards increasing the implementation rate of the Decisions of the BiH human rights institutions** (to over 90%), including the BiH Human Rights Chamber, the BiH and Entity Ombudsman institutions, and the Commission for Real Property Claims of Displaced Persons and Refugees (CRPC), as well as additional assistance to the Annex 8 Commission to Preserve National Monuments.
- **Ensure legislation is in place to ensure better implementation of the decisions of the Annex 8 Commission.**
- **Work with domestic partners in seeking workable strategies ensuring long-term respect for human rights bodies in BiH.**
- **Increase funding** for BiH human rights institutions and ensure sustainability of financing.
- **Work to find an appropriate place for the Dayton Human Rights (Annexes 6, 7 and 8) institutions in the domestic law** of BiH.
- **Continue to assist the State and Entity Government Agents** to the BiH and ECHR institutions, and of the BiH Agent to the European Court of Human Rights once BiH is granted accession to the Council of Europe, particularly to ensure co-operation between the Agents and the national authorities.
- **Build a sustainable system** for implementation of the Decisions of the BiH Human Rights Chamber and, in the future, of the European Court of Human Rights.
- **Address legislative issues with respect to the BiH Human Rights Chamber following accession of BiH to the Council of Europe and ratification of the ECHR**, in order to control the overlap in jurisdiction between Chamber and Constitutional Court of BiH. Continue the process to merge the Human Rights Chamber with the Constitutional Court - in order to entrust all final appeals in human rights cases to a single jurisdictional body at the level of the State.
- **Ensure sustainable long-term high-quality domestic human rights institutions**, through political support, training and monitoring.
- **Develop a regional approach to the work of the Ombudsman's institutions** - to strengthen the independence of those institutions in the Region, to improve the organisation's own ability to deal with similar, regional problems, and to increase co-operation at regional level.
- **Increase public awareness of the function of human rights institutions.**

2. Ownership – BiH Governmental Institutions

It is vital that the activities currently undertaken, and responsibilities assumed, by the International Community are gradually transferred to the relevant Ministries and authorities, to ensure that the work and effects are sustainable. Members of the International Community must ensure that all aspects of their work address and include their counterparts in the BiH administrations.

2.1 BiH Ministry of Human Rights and Refugees

Effective and co-ordinated work in the field of human rights is essential to reconciliation, prosperity and sustainable peace in BiH. It is important that human rights retain a high profile in BiH, work in the field of human rights is strategised and co-ordinated, and concerns immediately addressed or, conversely, positive developments immediately consolidated. Full and equal protection of human rights can never be assured until the domestic authorities fully assume their obligations.

The BiH Ministry for Human Rights and Refugees (MHRR) was created in April 2000 and took over some of the then competencies of the BiH Ministry for Civil Affairs and Communications (MCAC). The Ministry is responsible for human rights generally and activities related to the repatriation to BiH of BiH citizens who became refugees abroad and for co-ordination of inter-entity activities with regard to return (as regulated in the Law on Refugees from BiH and Displaced Persons in BiH, published in December 1999).

MHRR is additionally primarily competent for policy and regulation of immigration and asylum, an area where BiH is facing enormous pressures due to the considerable migratory flows transiting through BiH and the lack of a national migration or asylum system. BiH already hosts a considerable number of refugees from the Federal Republic of Yugoslavia (FRY) and from RoC, most of whom were recognised on a *prima facie* basis. In 2002, persons arriving from FRY will be recognised in individual status determination procedures only, as are asylum seekers from outside the region, whose number has also increased considerably (*see Priority V*).

The MHRR is responsible for legislative reform such as: Law on Gender Equality in BiH, Law on the Rights of National Minorities of BiH (the draft Law prepared by the MHRR on 18 April 2001). The MHRR is also responsible for drafting the various UN treaty body reports submitted by the BiH (*see Priority V*).

Plan of Action:

- **Pressure and support the domestic authorities to assume without delay their legally-binding obligations to ensure full and equal access to and protection of fundamental human rights**, as stipulated in Annex 4 of the DPA and its Annex, which lists 16 international agreements to which BiH are a signatory to and which provide for ensuring the highest level of internationally recognised human rights and fundamental freedoms.
- **Develop ways in which to promote the principles of freedom, tolerance, democracy and justice** amongst the authorities, as well as the general public, in BiH.
- **Accelerate the beginning of a more robust and high profile relationship between the domestic authorities and the International Community to deal with human rights issues in BiH.**
- **Take steps towards addressing ways in which the core functions of the inter-agency Human Rights Co-ordination Centre (HRCC), based within the OHR, may be successfully transferred to the Ministry for Human Rights and Refugees.** The core functions include report-writing, ensuring information exchange and information-sharing, operating as a clearinghouse for human rights information and contact point for human rights queries and concerns, raising the profile of human rights, informing actors and interested parties of the progress made in the field of human rights or the continuing concerns in the field of human rights in BiH, ensuring accountability of human rights activities, strategising and co-ordinating activities in the field of human rights, ensuring human rights priorities and concerns are adequately addressed.
- **Take steps towards addressing ways in which the core functions of the members of the HRCC may be successfully transferred to the Ministry for Human Rights and Refugees**, such as amending legislation and ensuring its full and correct implementation, and putting pressure upon the relevant authorities to bide by their obligations.
- **Strengthen MHRR as the main policy maker and co-ordinator in the ongoing legislative reform concerning immigration and asylum, gender equality** including the overall

implementation of the National Plan of Action to combat trafficking in human beings (*also see Priority V part 6 Immigration, Asylum Seekers and Refugees*).

- **Encourage MHRR to expand and consolidate its leading role in future inter-entity and tripartite agreements, especially those pertinent to social rights and harmonisation of entity legislation relevant to employment of aliens.**
- **Ensure MHRR will be able to assume full responsibility for the co-ordination of the implementation of property laws within the next two years.** The role of MHRR regarding return will need to be further strengthened during 2002. MHRR can play an important role in facilitating the exchange of information among Entities and states on return of displaced persons and refugees and the implementation of the property law.
- **Update and ensure realisation of January 2001 Protocol** between the MHRR, relevant Entity Ministries, UNHCR and OHR regarding the proposal to create a mechanism for the allocation of funds for priority return areas.
- **Support BiH Ministry of Human Rights and Refugees to produce its overdue reports to human rights treaty bodies**, and include NGO participation in the process.
- **Ensure that there is no duplication of work between the MHRR and the State-level Commission for Refugees and Displaced Persons.**

2.2 BiH Presidency

Plan of Action:

- **Facilitate, monitor and assist in the fulfilment of human rights related criteria with respect to Council of Europe membership (pre- and post-accession criteria) and EU Road Map conditions.**
- **Ensure and facilitate BiH Presidency support of ICTY Liaison Officers** (*see Priority VI part 4.2*).

2.2 Ministry of Foreign Affairs (MFA)

Plan of Action:

- **Ensure expeditious ratification of the European Convention on Human Rights.** Ratification of the Convention has been included in MFA Action Plan 2002. To ensure that the Convention can become effective on the date of Council of Europe accession, it is necessary that the MFA adhere to its plan to begin the process of ratification, with the planning stage, immediately.

2.3 Ministry of European Integration (MEI)

Plan of Action:

- **Encourage and consolidate the leading role of the MEI in the implementation of multi-year Stability Pact projects relevant to anti-trafficking activities and social cohesion.**

2.4 Ministries of Justice

The practical implications of the notion of judicial independence can be difficult to grasp, especially as it affects the relationship between the Ministry of Justice and the courts. While courts must be independent when they deal with individual cases, they should be answerable to the Government in terms of their efficiency and use of resources. The boundaries of responsibility between the twelve ministries of justice and the courts in BiH do not seem to be clearly, or at times properly, established. Some ministries appear hesitant to require full reporting or accountability from the courts. At the same time, courts complain about consistently late payments of salaries and operating costs.

Plan of Action: Assist the Ministries of Justice and the courts to establish an appropriate relationship that respects both judicial independence and the Ministry's needs to ensure the proper functioning of the court system as a whole and to account for the use of judicial resources.

- **Provide for the long-term establishment of an appropriate relationship between the Ministry of Justice and the judiciary.** Key elements include the engagement of international experts to advise on the issue in general and also on possible models, given the other changes proposed for the appointment and disciplinary systems for judges and prosecutors, draft any necessary legislation or provide advice and training as necessary.
- In the shorter-term, **work with Ministries to encourage them to take a more pro-active stance towards streamlining the judiciary**, in particular reducing the number of courts and court staff, and ensuring proper reporting from the courts.

2.5 Governmental support to the Missing Persons Commissions

In August of 2000, the International Commission for Missing Persons (ICMP) founded the Missing Persons Institute (MPI) for BiH. The Institute represents a genuine effort to integrate the BiH government into a national structure that represents all three ethnic/ religions groups in the pursuit of a common goal: to resolve the fate of persons missing from the conflicts in the Region, regardless of their religion or ethnic origin. On 01 January 2001 the Joint Exhumation Process was transferred from the Office of the High Representative (OHR) to the Missing Persons Institute (MPI). The MPI Supervisory Board was formed during the reporting period and convened for the first time in March 2001, chaired by Jakob Finci with 3 members from family associations and 3 representatives of the Federation and RS Commissions on Missing Persons (representing the 3 majority ethnicities).

In May 2001, funds were eventually released to the Missing Persons Commissions by their respective Governments, thus facilitating the release of funds (for equipment) from ICMP.

The first DNA laboratory dedicated to the humanitarian identification of the missing began bloodstain processing in Tuzla on 28 May 2001. On 16 November 2001, the first DNA assisted identification to be made in BiH was effectively processed in the Family Outreach. This breakthrough means that the process of identifying exhumed mortal remains will significantly speed up and will bring answers to all those for whom traditional identification would otherwise not yield results. This will help bring closure to a considerable number of the families still waiting for answers to the fate of their missing loved ones, and help the reconciliation process. On 05 December 2001, ICMP opened a second DNA identification laboratory in BiH, in Sarajevo, which is equipped to isolate DNA from victims' bone marrow.

To date ICRC has received tracing requests for a total of 20,6741 persons who disappeared during the course of the conflict. Over the last six-and-a-half years, the fate of 2,498 individuals has been clarified. Out of these, 300 persons were found alive. Another 2,198 missing persons were identified and their mortal remains handed over to their families. Finally, the families of an additional 867 missing persons have received reports about the death of their relatives but are waiting to recover the mortal remains to confirm this information. Consequently, families of 17,376 missing persons are still seeking answers to their tracing request (statistics as of 04 January 2002).

Plan of Action: Support and facilitate expedient exhumation and identification processes

- **Ensure political and financial support of the exhumation and identification processes.** The authorities must ensure that sufficient funds are allocated to the Missing Persons Commissions and to the Courts, to continue the Inter Entity Exhumation Program.
- **Support ICMP and MPI in attracting funds, raising profile, and in resolving any political barriers or obstacles.**
- **Ensure expeditious exchange of information with respect to missing persons and locations of gravesites.** The authorities must provide information on all persons unaccounted for according to their obligations under the DPA, Annex 7, Article V.
- **Assist ICMP in pressing upon Foreign Ministers of BiH, RoC and FRY to organise a joint meeting and sign a protocol on co-operation, which would accelerate the process of tracing and identification.**

- **Legal and political support to the International Committee of the Red Cross (ICRC).**
- **Raise profile and ensure protection of the human rights of families of missing persons.**

3. Participation - Civil Society

Active participation of NGOs, civic initiatives, youth and citizens in general, in all aspects of socio-political life, is becoming ever more necessary in BiH, since, at this particular moment, it is of the utmost importance that pressure be exerted on authorities at all levels in order to increase their efficiency and bolster democratic endeavours.

So far, this participation in general has not been significant, given that the political situation has not allowed for the expected input of the civil society actors. Although the situation has improved in certain areas, there are still a number of regions where the working environment for the civil sector, including political obstacles, has not proven to be conducive and, as such, has not offered sufficient opportunity for efficient work.

It is, therefore, necessary for the International Community to focus on the removal of these barriers in the way of a strong civil society and participatory citizenry, the success of which will bring about stability and prosperity, and will also bolster an unhindered return of refugees and democratic development in general throughout BiH.

3.1 Promotion of a strong Civil Society

A strong and inclusive civil society is an essential pre-condition for a democratic state, in which civil liberties and human rights are valued, and accountability and transparency are the norms. Furthermore, strengthening and supporting NGOs and civil society through legislative reform, political intervention, training is crucial for the stability, prosperity, vitality and democracy of BiH.

Legislative reform, in order to strengthen and support NGOs and civil society is first and foremost essential in this regard. The State- and Entity-level Laws on Associations and Foundations are envisioned in the PIC requirements. Freedom of association is an integral part of the ECHR, incorporated in the DPA (Annex 6). As yet, the authorities in BiH have failed to fully assume responsibility for ensuring a conducive atmosphere for the promotion and rejuvenation of civil society. The State Law on Associations and Foundations was eventually adopted at the end of 2001 (published in the Official Gazette, 28 December, Number 32). However, the necessary by-laws have yet to be adopted. The RS Entity Law on Associations and Foundations was adopted and entered into force on 17 October 2001. The governmental authorities in BiH are obliged to ensure their implementation and will have to provide human and financial resources in order to ensure efficient implementation.

The UNHCR network of Legal Aid and Information Centres (LAICs) continues to be the main provider of legal aid to individuals in BiH. Further capacity building of LAICs is necessary to enable them to assume full responsibility for resolving disputes related to property claims and other instances where legal information and assistance is required, once the International Community leaves BiH.

Plan of Action: Support the development of civil society

- Ensure the immediate **adoption FBiH Law on Associations and Foundations**, in order to ensure the existence of freedom of association and conducive legal framework for NGOs throughout the country.
- **Closely monitor and ensure implementation** of the State and Entity Laws on Associations and Foundations.
- Work with the BiH Ministry of Civil Affairs and Communications, the FBiH Ministry of Justice and the RS Ministry of Administration and Local Self-Governance on **drafting the relevant by-laws** that will facilitate the implementation of the Laws on Associations and Foundations at the State- and Entity-level.
- Work with State and Entity authorities to ensure drafting, adoption and implementation of the **legislation covering financial issues** that will provide conditions for the self-sustainable development of civil society in BiH. This should include ensuring adoption of amendments to the laws on taxation, customs and other administrative obstacles, which constitute obstacles for NGOs and hamper the development of civil society.

- **Ensure co-operation and co-ordination of the agencies** working to advance the ability of NGOs and other members of civil society in order to avoid the overlapping of international efforts, projects and donations, through the Civil Society Co-ordinating Group that includes all international agencies involved in this field.
- **NGOs and Associations should be encouraged to take a more active part in the activities of the International Community**, becoming partners in the field of human rights and rules of law, eventually assuming many of the tasks currently fulfilled by the International Community. As such, efforts to ensure sustainability and effectiveness of NGOs should be made, to include training in aspects of donor liaison, lobbying, PR and PI.
- **Education of authorities and the general public** on the importance and value of civil society and functioning NGOs.
- **Extensive training of LAICs on legal issues, human rights principles, litigation and advocacy** as well as issues related to NGO management and fundraising.

3.2 Youth

Young people's understanding of human rights remains incomplete if human rights education is only delivered in the formal education sector. Particularly, in light of the unsatisfactory human rights situation in the formal education sector, it is important to include the whole youth population, also outside the education system, in human rights activities. The introduction of "Human Rights and Civic Education" in the curriculum is too be welcomed. However, curriculum changes do not necessarily change teachers, which for a variety of reasons might not be fit to deliver the course (due to lack of training, undemocratic and intolerant attitudes, and corruption, for instance). Out-of-school human rights education needs to be strengthened to reach out to the whole youth population through youth associations and political party youth branches.

Plan of Action: Strengthen out-of-school Human Rights Education and increase the participation of youth in civil society and political life

- **Create awareness about the necessity of out-of-school human rights education among members of the International Community and their counterparts in the BiH administration.**
- **Co-operate with the Council of Europe Youth Directorate's Human Rights Education programme.**
- **Develop Human Rights training modules for youth associations and political party youth branches.**
- **Facilitate and support the work of youth groups, societies, NGOs and young politicians in an endeavour to encourage participation of the youth in civil society and political life, the future of BiH and, thus, contribute to a more vibrant and tolerant political and social system.**

3.3 Free and Independent Media

The year 2001 was proclaimed the International Year of Mobilisation Against Racism, Racial Discrimination, Xenophobia and Related Intolerance and 03 May celebrated World Press Freedom Day. In a joint message, UNSG Kofi Annan, UNESCO DG Koichiro Matsuura and UN OHCHR Mary Robinson called upon decision-makers at all levels to do whatever they can to ensure that journalists can pursue their work unhindered and undeterred, so that people throughout the world can benefit from the free flow of ideas. The statement read: "We urge journalists to Adhere to the highest standards of their profession; to refuse to lend their skills to hate-mongering; and always to uphold the principle of impartiality... Free, independent and pluralist media have an indispensable role to play in rooting out racism and xenophobia". The message also reminded people that a free press is one of the most essential components of a democratic society. In BiH, whilst the independence and quality of the media have significantly increased over the last few years, indicating that BiH has made progress on the way to a free and democratic society, threats and attacks against critical journalists still occur in BiH. Aside from ensuring that a climate conducive for the development of a free and independent media exists, it is essential the journalists respect the human rights and civil liberties of others and adhere to high professional standards and codes of conduct. Further, a strong, free and independent media can be used

to facilitate accountability and transparency in the work of governmental authorities and public institutions.

Plan of Action: Ensure and protect a free and independent media, that adheres to codes of conduct and high professional standards

- **Ensure the FreeMedia Help Line continues to provide** direct assistance to journalists and media outlets that have experienced threat or interference, and to document actual instances of threats to freedom of the media, establishing the scope and magnitude of the problem in BiH.
- **Ensure journalists' compliance with Press Council Statute and a Press Code.** High professional standards and codes of conduct need to be met in order to both foster a free and professional press as well as ensure the protection of others' human rights and civil liberties in the media.
- **Promote and ensure transparency and accountability in the work of governmental authorities and public institutions.** Governmental authorities and civil servants, in particular, should be encouraged to provide the media with full and accurate information pertaining to their activities, particularly when in the public interest (finalise the entity legislation in this regard).
- **Strengthen the mechanisms of protection against information abuse/dissemination of misinformation and increase awareness about the accountability of those who disseminate incorrect information or conduct themselves unprofessionally or violate ethical codes of conduct.**
- **Further Utilise the possibilities of the media, particularly the electronic media, for the purposes of education, particularly in the field of human rights,** through special broadcasts on human rights theory and practice, for instance (*see Priority II and Priority IV part 3.2*).

V. MINORITIES AND DISCRIMINATION

Groups in BiH, as elsewhere, tend to be disadvantaged, neglected and abused, if they are relatively politically powerless. Hence, vulnerable groups such as ethnic minorities, stateless people and asylum seekers, children, disabled people, and victims of sexual and domestic violence, are further disadvantaged by dint of their relative lack of a strong political voice. Particularly in a country that is governed by party politics, which are intrinsically involved with the majority ethnic divisions, groups which do not have political clout tend to be overlooked by political representatives and members of the general population. They are also often overlooked by the International Community, which is properly intent upon ensuring that ethnic divisions and political abuse do not spark renewed conflict. It is vital that work towards the respect and protection of human rights for the citizens of BiH does not overlook vulnerable groups. The relevant Ministries, other authorities and public services should take steps to ensure that the rights of vulnerable groups are respected and protected and to identify their specific and actual needs. All communities in BiH need to be educated into recognising groups, which, in the main, tend to be invisible on the public and political stages. Vulnerable groups should be encouraged to vocalise their needs and be granted a forum in which to do so.

1. Law on Protection of National Minorities

Two draft laws concerning the protection of National Minorities were adopted by the Council of Ministers: one proposed by the Minister for Human Rights and Refugees (MHRR), and the other by Ibrahim Spahic, a delegate in the House of Peoples. At the 5th session of the House of Peoples (14 June 2001), the Draft Law on Rights of Ethnic and National Communities or Minorities, proposed by delegate Spahic, was adopted. The MHRR's Law was adopted by the Council of Ministers on 19 April is currently pending before the BiH Parliamentary Assembly.

The MHRR draft Law is broadly inspired by the Framework Convention on the Protection of National Minorities and provides an extensive list of guarantees of minority rights, mainly based on the current body of international standards, in most cases going beyond the established minimum. However, aspects of the draft might pose some problems especially regarding provisions on participation of national minorities in governmental bodies.

The International Community sent to the MHRR comments on the MHRR Draft Law on Minorities, constituting the first comprehensive legal commentary of the draft law in the light of current international standards on the issue. The commentary is based upon the opinion of the Venice Commission of the CoE adopted at its 47th Plenary Meeting (Venice, 06-07 July 2001).

Two further Draft Laws on the Protection of National Minorities have since been proposed by the HDZ and Dr. Zlatko Lagumdžija, Chairman of the BiH Council of Ministers. Neither of the Drafts has entered the parliamentary procedure yet.

Plan of Action

- **Follow up the legislative process regarding the Law on Protection of National Minorities and work with the domestic actors to ensure that the amendments/comments of the High Commissioner for National Minorities and the Venice Commission of the CoE are incorporated.**

2. Roma and other National Minorities

As the largest minority in BiH and as a socially, economically and politically marginalised group, the issues of concern to Roma are diverse, ranging from education and employment discrimination, to housing and property needs, to the revival of Romani culture and language. The property situation of Roma is particularly problematic, as many Roma did not have legal entitlements to property before the war and experience difficulties in accessing international assistance for reconstruction. It is essential that Roma are given the necessary political and financial support to strengthen their capacity and co-ordination in order to facilitate their involvement in the elaboration, implementation and assessment of policies and programs aimed at improving their situation and status in BiH. Supporting and strengthening the capacity of Romani NGOs and increasing their access to governmental authorities and human rights institutions is a priority.

On 09-12 November 2001, the project “Opening Doors: Strengthening Roma Capacity and Ensuring Access to Government” was launched by the OSCE, in co-operation with OSCE-ODIHR, the Council of Europe and the Roma Participation Program (OSI-Budapest). Twenty-two Bosnian Romani NGO representatives attended, with the support and assistance of international Romani experts, developed a National Platform for BiH and elected a nine-member representative body. This body will become the partner of the government in implementing a national strategy on Roma issues and will co-ordinate all activities of Romani NGOs in BiH. On 12 November 2001, the second phase of the project was implemented, a meeting between the group of elected Romani representatives and inter-ministerial governmental representatives where the National Platform of Roma was presented and discussed. It was also at this meeting that the BiH Ministry of Human Rights and Refugees committed itself to take the lead in establishing a National Advisory Board on Roma.

Plan of Action: Ensure the respect and protection of rights of national minorities, particularly Roma

- **Improve the status of national minorities**, particularly Roma, in BiH under the Framework Convention for the Protection of National Minorities through the Implementation of the Framework Convention for the Protection of National Minorities in BiH (Early 2002).
- **Assist the Council of Europe**, within the framework of the Roma under the Stability Pact project, **in their fact-finding visit in Tuzla Canton in January 2002 on education and health issues.**
- **Ensure Roma communities are able to participate in defining and addressing their own concerns and needs and that a Roma-to-Roma approach is adopted by the IC whenever possible.**
- **Ensure that the National Advisory Board on Roma is established within the Ministry for Human Rights and Refugees by February 2002** (based on the commitment the Ministry made at the meeting between Roma and governmental representatives on 12 November 2001).
- **Attract funds for the support of the prospective Secretariat** of the newly-established (November 2001) National Advisory Board on Roma based on the budget developed and submitted by the Ministry of Human Rights and Refugees.

- Assist the elected nine-member Romani representative body in **transforming their National Platform into a National Action Plan for Roma**, to include comprehensive narrative and statistical overview of the problems encountered by Roma in BiH.
- Assist the National Advisory Board on Roma and relevant Ministries in the **realisation of the National Platform Recommendations** developed at the Assembly Meeting of Romani NGOs in BiH (09-11 November 2001), to include the following –
- **Ensure the full and effective participation of Roma in governmental policy bodies and structures, particularly those dealing with matters that directly affect them.**
- **Combat prejudice and stereotypes in the media** and ensure equal access to the media for Roma and other minorities.
- Conduct a public information campaign within Roma communities to encourage the **self-identification of Roma in the next population census.**
- **Ensure non-discrimination in the field of education** by ensuring access for Romani pupils and teachers, ensuring that the curricular addresses the specific needs of Roma communities (including language, culture, history) and ensuring that non-Romani groups become educated about Romani language, culture and history. Organise Roma-to-Roma training workshops for Roma willing to assist teachers in schools.
- **Ensure non-discrimination in the field of employment** with respect to Roma and other ethnic minorities and ensure effective measures are taken in cases where discrimination occurs (whether restricted access to employment, abuse of working hours, unfair dismissal, discrimination in payment of social insurance benefits, or lower/delayed payment of salaries). Introduce public work programmes for Roma and other minorities, providing incentives for traditional small businesses or training in other fields, and assisting Roma with income-generation projects.
- **Ensure non-discrimination in the field of housing**, ensuring that reconstruction (property and infrastructure) projects for Roma focus on integration rather than segregation, are given sufficient political and financial support, and priorities are identified by Romani communities. Develop a welfare-housing programme for Romani families living in abject poverty and for those suffering the consequences of the problems surrounding property ownership by Roma.
- **Ensure non-discrimination in the field of health**, improving access of Roma to health services and health insurance. Increase awareness of the health care system amongst Romani communities. Increase number and training of medical personnel working with Roma, particularly those from Romani communities.
- Organise an information campaign amongst Romani communities and others regarding the importance of, and procedures pertaining to, **registration for displaced person status or to ensure other rights.**

3. Rights of the Child

The UN Convention on the Rights of the Child is incorporated by reference into the DPA and has the effect in law in both Entities. Nonetheless, fundamental human rights of children continue to be violated since the war. During the war, 17,000 – 22,000 children were killed (of a total of 200,000 people killed), approximately 52,000 were injured and over 1,800 permanently disabled. Still today, disabled children lack adequate medical care and educational facilities. Aside from the general and widespread lack of social and welfare services for children and others, the primary issue of concern regarding the rights of children is in the sphere of education (*see Priority II*).

Due to the massive demographic and political changes, economic and physical infrastructural damage, huge loss of life, together with continued economic difficulties (scarce governmental financial resources and impoverished families), many of the rights enshrined within law are not protected, particularly basic rights to life, survival and development. However, a large factor in the lack of protection of children's rights, and basic human rights in general, continues to be a lack of political will to afford protection of children's and citizen's rights, coupled with political agendas that perpetuate ethnic divisions, discrimination and persecution.

Plan of Action:

- **Assist the implementation of the joint Action Plan for Children 2001-2010 of the FBiH, RS and Brcko District.**
- **Assist in the realisation of the recommendations contained within the first treaty body report on the Rights of the Child compiled by the Ministry for Human Rights and Refugees** (with the assistance of UNICEF), submitted June 2001, which include promoting 'co-ordinated, planned and strategic approaches to this issue [so as] to achieve social and economic development of the social community.'
- **Assist in the realisation of the recommendations contained within the FBiH Ombudsmen Report** (written with the assistance of UNICEF), *Summary Report on the State of Protection on the Rights of the Child in FBiH (May 2001)*, which include the adoption of legislation in the fields of education, health care and social protection of vulnerable groups, and on the status of social welfare/protection institutions.
- **Ensure the human rights and civil liberties of those under eighteen years of age are recognised and protected, regardless of their age or any other prospectively discriminating factor, such as ethnicity, social status, gender.**

4. Religious Communities/Freedom of Religion

Without addressing sources of inter-ethnic or religious conflict, the peace and reconciliation process will not be sustainable and, due to the strong ties between religious and political communities, political stability is undermined.

At the beginning of May 2001, freedom of religion suffered a setback after the outbreak of violence in RS during ceremonies to mark the beginning of reconstruction of mosques destroyed during the war. Although the fundamental right to freedom of religion is guaranteed by the Constitution of the Republika Srpska (RS), the authorities failed to take necessary and reasonable precautions to ensure this freedom, by providing a secure environment for the observance of religious ceremonies and events. The reconstruction of the Ferhadija mosque and other mosques in Banja Luka was ordered by the Human Rights Chamber in 1999 and strongly supported by the Peace Implementation Council (PIC) in subsequent meetings. After long overdue issuance of an urban permit for the reconstruction of Banja Luka's Ferhadija Mosque on 24 March, by RS authorities, on 07 May the ceremony to mark the commencement of reconstruction was violently disrupted by several thousand people. This was the second time in three days that small groups of extremists have managed to disrupt ceremonies marking the beginning of the reconstruction of mosques in the RS. On 05 May, the symbolic cornerstone laying ceremony for the reconstruction of the Osman-pasha mosque in the southeastern BiH town of Trebinje was also violently disrupted. These incidents provoked a number of minor, but potentially dangerous incidents across BiH, such as street protests in Sarajevo, a bomb attack on the Orthodox Church in Sanski Most, damage to an Orthodox cemetery in Tuzla and the distribution of inflammatory leaflets in several towns in the country. On 15 May 2001, the RS Government announced resignations and dismissals of senior officials in the RS in connection with the Trebinje and Banja Luka riots. They included the RS interior minister, Perica Bundalo, deputy RS interior minister Brano Pecanac, the RS security chief, Dobrislav Planojevic, and the Head of the Banja Luka Public Security Centre, Vladimir Tutus. On 26 May Murat Badic, a Bosniak who was injured during the riots in Banja Luka on 07 May and had since been in a coma, died. The ceremony to mark the laying of the foundation stone for the Ferhadija Mosque in Banja Luka was held successfully on June 18, despite demonstrations against the event organised by several hundred Serb nationalists who clashed with RS police.

The Ministry of Human Rights and Refugees has recognised the human rights violations of ethnic, national and religious minorities and has taken steps to address these violations and ensure that mechanisms are established to protect the human rights of these groups. Their initiatives to draft the Law on the Protection of the Rights of National Minorities, to begin to draft the Initial report on the Implementation of the Framework Convention on the Protection of National Minorities, and to establish a National Advisory Board on Roma are to be commended. Further, the Ministry recognises and draws attention to minorities often overlooked. For instance, the Ministry notes that the public is not aware that, besides the four so-called major or traditional religious communities (Jewish, Islamic, Orthodox and Roman Catholic), there exist several minor religious communities, which have been overlooked and discriminated against.

Plan of Action:

- **Continue to facilitate religious and ethnic reconciliation**, targeting critical conflict areas and events that may lead to disruption of peace process and ongoing reconciliation tendencies in the country.
- **Promote solutions to inter-ethnic and religious problems through dialogue and consensus.**
- **Facilitate the peaceful reconstruction of religious facilities** in accordance with existing laws and regulations.
- **Ensure that the respective Entity Ministries** dealing with religious affairs and urban planning, assisted by the re-established Commission to Preserve National Monuments, **take full responsibility for the management of inter-ethnic and religious conflict.**
- **Ensure that those who disrupt the reconstruction of religious monuments or incite religious or ethnic hatred or violence are severely punished in accordance with the law.**
- **Acknowledge and facilitate awareness of religious groups other than the four majority religious groups in BiH.** Ensure their equal treatment and participation in civil society.

5. Violence against Women

Gender-based discrimination continues unabated throughout BiH mainly due to weak national gender equality mechanisms, increasing economic decay, lack of political will for women's political empowerment and slow legal reform of relevant legislation.

5.1 Domestic Violence

Domestic violence remains omnipresent in the post-war period throughout BiH. Nevertheless, a relatively small number of cases are reported, partly due to unsustainable and insufficient protection of victims, lack of prevention mechanisms, rather hostile grass-root environment based on male domination and victims' economic dependence. The final version of the Draft BiH Law on Gender Equality was presented to the Council of Ministers in December 2001 and has yet to be adopted.

Plan of Action:

- **Once adopted, monitor the BiH Law on Gender Equality.**
- **Assist the Ministry of Human Rights and Refugees in drafting the National Plan of Action** within the gender mainstreaming.
- **Assist the NGO 'Nas Most'** with their project on addressing institutionally-based violence against women and children.
- **Ensure that victim support mechanisms and appropriate deterrent sanctions are part of the on-going review of criminal laws and criminal procedural legislation in BiH.**
- **Attract funds for the Legal Aid project** for the year 2002.
- **Support to 'SOS' telephone**, which assists victims of domestic violence.
- **Consider the proposal to establish special departments within the criminal justice system to treat domestic violence cases.**
- **Support NGOs in the field of education** on the issue of domestic violence and trafficking, and encourage education from school-aged pupils.

5.2 Trafficking

Domestic authorities have been given primary responsibility for responding to the problem of trafficking in human beings. The Ministry for European Integration and the Stability Pact was tasked by the Council of Ministers to take the lead in ensuring that BiH draw up a National Action Plan to combat trafficking. A primary concern is that local authorities have not established shelters for trafficking victims, instead relying on the UNMIBH/IOM repatriation project. With the assistance of UNMIBH and IOM, MHRR has prepared a draft project proposal to assume operational and financial responsibility for the shelters. The fact that victims are so quickly repatriated, however, has

complicated or prevented prosecutions of traffickers, as victims are unable to provide testimony to courts.

It is of a great importance that NGOs have been anticipated by the Government as partners in both the creation and the implementation of the National Action Plan. Therefore, in order to facilitate full NGO participation and effective engagement in the implementation of the National Action Plan, efforts to strengthen the capacity and co-ordination of NGOs are crucial. It is for this reason that on 13-14 December 2001, the International Human Rights Law Group in BiH (IHLRG BiH), in co-operation with the OSCE Mission to BiH organised and implemented a regional workshop to strengthen the organisation and the structure of the BiH NGO network, the RING. An outcome of the workshop was the creation of a Secretariat of the network, which the Law Group will work with to develop a fundraising strategy to ensure the long-term sustainability of the Network beyond the initial six-month period.

Between 31 January and 05 February 2002, a training workshop for defence lawyers about trafficking in human beings and promotion of the development of legal strategies relying on human rights arguments will be implemented by the IHLRG-BiH, in co-ordination with the OSCE Mission to BiH. Following the training, a network of defence lawyers specialised in trafficking issues, who can provide legal assistance to trafficked persons, will be established and guidelines on the protection of trafficked person will be drafted and distributed to all courts and prosecutors' offices in BiH.

On 14 May, the Ministers of Interior of BiH, FRY and RoC signed an agreement on the fight against organised crime in the region, corruption and the trafficking of people, and on joint police activities.

Plan of Action: Press local authorities to effectively combat trafficking and adequately protect victims of trafficking

- **Further Legal Review in line with the National Plan of Action.**
- Once adopted, **monitor the implementation of the BiH Criminal Code and Criminal Procedure Code** with respect anti-trafficking legislation.
- **Ensure that victims of trafficking are treated in accordance with the law, their rights are not violated and they are afforded protection if required.**
- **Ensure the authorities of BiH incorporate comprehensive witness protection programmes and victim support mechanisms.**
- **Attract funds for the realisation of the shelter project for victims of trafficking.**
- **Assist the Ministry of Human Rights and Refugees**, as well as the Ministry for European Integration, in capacity building, in attracting investment for projects protecting victims of trafficking, and through legal advice and support.
- **Review** of other relevant laws such as the Law on Immigration and Asylum, including the relevant rulebooks, laws on employment and laws on minor offences (adoption of the Law on Minor Offences Procedure at the state level.
- **Press local authorities to expedite criminal proceedings in trafficking cases.**
- **Press local authorities to open shelters and to provide protection for victims**, so that they can testify against traffickers; press local authorities to seek funding for such shelters.
- **Ensure the authorities of BiH facilitate the full participation and effective engagement of NGOs** in the implementation of the National Action Plan.

6. Immigration, Asylum Seekers and Refugees

Over the past two years, BiH has become an attractive transit country for traffickers, smugglers, irregular migrants and asylum seekers. Reasons for this development include *inter alia*, the improved security situation, a relatively liberal visa policy, porous borders, and a number of legal *lacunae* with respect to migration and asylum. However, due to a more efficient BiH State Border Service, which covers 75 per cent of borders since January 2001, UNMIBH stated that so far this year 6,800 persons have been prevented from illegally entering the country. Of continuing concern, however, is the number of those who require international assistance and protection.

The new Ministry for Human Rights and Refugees (MHRR) is responsible for all issues relating to human rights, immigration and asylum in BiH. However, it must be noted that matters relating to immigration and asylum are a relatively new domain for BiH, and that MHRR is severely under-funded and under-resourced. Extensive capacity-building is therefore required well beyond 2001.

While the focus has been on “illegal” or irregular migration, a significant number of these may have legitimate reasons for fleeing from their country of origin, including asylum seekers, who must be assured protection in accordance with international refugee and human rights law. Although the *Law on Immigration and Asylum* is technically in force since 31 December 1999, it represents a complete institutional and structural reform of earlier legislation. Extensive by-laws and instructions are still needed and the required national institutions are not yet in place. UNHCR is in the meantime undertaking refugee status determination as well as making available extensive technical expertise and limited financial resources to the MHRR. UNHCR has also conducted an extensive series of seminars for the State Border Service and local police and UNHCR Legal Aid and Information Centres.

Plan of Action:

- **Ensure respect for fundamental international refugee law principles**, including the principle of non-*refoulement* and access to the territory (refoulement is the return to countries and territories where a person may fear serious harm – the principle also applies when return is likely to take place indirectly both within the territory as well as at the border).
- **Ensure rights of asylum seekers and refugees are respected include, where necessary, through provision of adequate reception facilities, access to healthcare and education amongst others.**
- **Address the needs of vulnerable groups and those at most risk of torture and abuse, such as trafficked persons (see above), and ensure adequate protection.**
- **Ensure access to the asylum procedures** in BiH by developing a mechanism for the identification and referral to UNHCR of potential asylum seekers and refugees.
- **Support training and capacity-building in refugee law and handling of asylum and refugee issues** with the MHRR, State Border Service, local police, judiciary and others.
- **Seek durable solutions** for refugees from FRY and RoC and support MHRR in developing the legal and operational framework to do so.
- **Foster the elaboration and adoption of a revised Law on Immigration and Asylum** and assist the MHRR in drafting the relevant rulebooks.
- OHR and IOM to organise a **seminar for the national authorities dealing with immigration issues** in February/March 2002.
- **Initiate a sustainable campaign with potential donors to ensure the establishment of a migration Centre.**

7. Disabled People and Social Institutions

Disabled people are particularly disenfranchised in a country rife with unemployment and lacking functional health and welfare systems. Social institutions in BiH are barely functioning. Due to arrears in payment of contributions (exceeding 4M KM) from almost all social centres, bar the Sarajevo Canton, the issue is at crisis point. The debt has recently been slightly reduced after certain cantonal ministries settled some arrears. The current status of social institutions in BiH also reveals the unresolved legal status of social institutions, non-uniform social policies and mostly the lack of commitment of respective authorities to meet their obligations towards all social institutions.

Plan of Action:

- **Monitor the implementation of the 2002 Inter-Entity Agreement on mutual rights and obligations towards the beneficiaries of social institutions**, and ensure **sufficient funds** are allocated for the social protection of disabled persons.
- **In FBiH, ensure the establishment of the legal status of social institutions** of special state concern through adoption of the 1999 draft law on transfer of ownership to the Federation.

- **Amend Family Laws in both Entities** in order to ensure regular payment for child allowance and unrestricted exercise of parental rights after divorce.
- **Address barriers in the fields of education and employment with respect to disabled people.**
- **Take steps to ensure that disabled people, and other vulnerable groups, are not overlooked by the relevant Ministries, other authorities and public services,** through, for example, public information campaigns, pressurising Ministries to comply with their obligations and to take steps to identify the needs of disabled persons, encouraging disabled people to demand that their rights are respected.

HRCC Member Organisations

OHR: Under Annex 10 of Dayton/Paris Peace Agreement (DPA), the Office of the High Representative (OHR) is tasked with co-ordination of civilian aspects of peace implementation in Bosnia and Herzegovina (BiH). OHR maintains a regional human rights presence, and works closely with other agencies that monitor the human rights situation, to develop strategies and co-ordinate interventions. For more information, please contact:

Office of the High Representative	tel:	387-33-283-500
Emerika Bluma 1	fax:	387-33-283-501
Sarajevo, BiH	web:	www.ohr.int

OSCE: The mandate of the Organisation for Security and Co-operation in Europe (OSCE) derives from Article 10 of Annex 6 of the DPA. The Human Rights Department advances civil, political, social and economic rights including property, return, education, employment. The Human Rights Department interprets its mandate to include *inter alia*: monitoring and investigating allegations of human rights abuses and training of national NGOs. Its 28 Field Offices and 4 Regional Centres allow the OSCE to ensure full coverage of the territory of BiH and makes the organisation a direct actor in addressing human rights-related issues.

OSCE Human Rights Department	tel:	387-33-444-444
Dzenetica Cikma 2/4	fax:	387-665-236
Sarajevo, BiH	web:	www.oscebih.org

UNHCR: The United Nations High Commissioner for Refugees (UNHCR) is the lead organisation for the implementation of Annex 7 of the DPA, which guarantees the right of refugees and displaced persons to return to their homes of origin. UNHCR provides international protection and assistance to refugees and displaced persons, and other persons of concern.

UNHCR	tel:	387-33-666-160
Unis Building Tower A, Fra Andela Zvizdovica 1	fax:	387-33-470-171
Sarajevo, BiH	web:	www.unhcr.ba

UNMIBH/IPTF Human Rights Office: The existence of International Police Task Force (IPTF) is mandated by Annex 11 of the DPA. Under Security Resolution 1088, 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 officers and 17 international civilian staff, deployed throughout the country.

UN House	tel:	387-33-496-265
Aleja Bosne Srebrenice b.b.	fax:	387-33-496-539
Sarajevo, BiH		

OHCHR: As of December 1998, the OHCHR in BiH 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 DPA.

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IJC: The Independent Judicial Commission (IJC), while initially being created under the auspices of OHR, carries out its pivotal role of directing judicial reform in BiH independently. The IJC is responsible for initiating, guiding and co-ordinating a comprehensive judicial reform strategy and professional training measures. It also assists and advises the judicial and prosecutorial commissions/councils in both entities on matters related to the appointment, discipline, and review of judges and prosecutors. This concentration of judicial reform responsibilities is expected to achieve more uniform and accelerated reform measures that directly impact on and improve the conduct of judges, prosecutors and other legal professionals as well as the institutional operations of the justice sector.

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CoE: The Council of Europe (CoE) has instituted a multi-faceted co-operation programme with BiH, aimed at assisting the country in meeting the organisation's standards of pluralist democracy, human rights and rule of law. To support and monitor the implementation of these co-operation activities, the CoE has a field presence in Sarajevo and Mostar

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