



**UNHCR's POSITION ON CATEGORIES OF PERSONS FROM
BOSNIA AND HERZEGOVINA IN CONTINUED NEED OF
INTERNATIONAL PROTECTION**

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UNHCR'S POSITION ON CATEGORIES OF PERSONS FROM BOSNIA AND HERZEGOVINA IN CONTINUED NEED OF INTERNATIONAL PROTECTION

1. INTRODUCTION

1. This report is an update on UNHCR's assessment of August 2000 entitled *Categories of Persons from Bosnia and Herzegovina in Need of International Protection*.

2. It aims to provide to all interested parties, including asylum countries, reliable information and analysis of developments in Bosnia and Herzegovina (BiH) during the period under review (August 2000 – August 2001) affecting the prospects of return of BiH refugees. UNHCR has identified several groups of Bosnian citizens for whom non-voluntary repatriation is not yet feasible. This paper outlines the continued need for international protection of these categories of persons, for whom UNHCR strongly recommends that they must continue to benefit from it. Given the length of time of their displacement, durable solutions should now be found for these persons. Repatriation of members of these groups should only take place when an individual has decided to return out of her or his own free will and on the basis of an informed choice.

3. Almost six years after the signing of the General Framework Agreement on Peace (GFAP)¹, progress can genuinely be said to have been made in the implementation of the provisions contained in Annex 7 pertaining to the right of refugees and displaced persons (DPs) to freely return to their homes of origin, across the territory of BiH. Nonetheless, some 213,000 BiH refugees are estimated to remain abroad, and are still in need of durable solutions. Of these more than 75 per cent are located in the former Republics of the Socialist Federal Republic of Yugoslavia (SFRY) and some 25 per cent in other host countries, mainly European Union Member States. Moreover, of the estimated 379,000 refugees who have returned to BiH from abroad since 1996, more than 107,000 could only return to conditions of internal displacement within BiH and not to their pre-conflict homes.²

4. Since the signing of the GFAP in December 1995, some 390,000 displaced persons have returned to their pre-conflict homes. During the year 2000 alone, 77,954 of such returnees were registered (of whom 18,607 were returning refugees and 59,347 were returning displaced persons). Of this number, 67,445 were so-called minority returns:³ 34,377 returned to the territory of the Federation of BiH (the Federation), 27,558 to the Republika Srpska (RS), and 5,510 to Brcko District, the highest return figure to date since the signing of the GFAP.

¹ Also commonly referred to as the 'Dayton Agreement', 'Dayton Peace Agreement' or 'Dayton Accords', signed in Paris on 14 December 1995 by the Republic of Bosnia and Herzegovina, the Republic of Croatia and the Federal Republic of Yugoslavia.

² All figures from UNHCR Official Records. See also UNHCR Statistics Package, Sarajevo, 31 July 2001, available at www.unhcr.ba.

³ In other words, persons who were not of the majority 'ethnic' group upon return to their place of origin.

5. Between 1 January and 31 July 2001, 43,150 such registered minority returns took place to municipalities of origin. This figure was close to double that of the previous year for the same period, which was itself very significantly higher than that of the preceding period. In particular, there was a marked increase in returns to rural areas, especially in the RS. This was due to a combination of factors, including more effective implementation of the property laws, greater involvement of the authorities in the Federation in supporting return to the RS, an improved security environment, and almost total freedom of movement.

6. While repossessions of property continue to take place, powerful deterrents to return often remain in place. These include the deliberate withholding of employment opportunities to minority returnees (employment discrimination), the often-noted 'ethnic' bias in the school system, continuing prevention of the realization of returnees' pension rights, denial of access to health care in the place of return, and the manner in which publicly-owned utility companies in many areas continue to deny minority returnees access to services such as electricity, gas, and telephones. Moreover, the November 2000 elections, which resulted in the formation of governments in both Entities that are led by more moderate parties, appear to also have re-energized some nationalist sentiments among the population in BiH.⁴

2. FACTORS AFFECTING THE PROSPECTS FOR RETURN OF MINORITIES

7. Unless it can be ascertained that it is possible for such individuals to return to their pre-war homes of origin in safety and in dignity, a number of factors should be taken into account in considering the prospects for return of persons who originate from areas where they would not be in the majority upon return.⁵

2.1 Security Considerations

8. The security incidents that have occurred throughout the reporting period highlight the unsteady security situation faced by minority returnees throughout BiH. These incidents took place across the country, although the occurrence of incidents involving the security of individual returnees was higher in the RS, especially in the eastern and north-eastern parts. In the period 3 August 2000 to 3 August 2001, 290 minority return-related

⁴ International Crisis Group, *Bosnia's November Elections: Dayton Stumbles*, Sarajevo/Brussels, December 2000.

⁵ For additional information regarding the human rights situation and developments in BiH and its neighbouring countries more generally, see United Nations General Assembly, *Report of the Special Rapporteur of the Commission on Human Rights on the situation of human rights in Bosnia and Herzegovina, the Republic of Croatia and the Federal Republic of Yugoslavia*, 9 August 2000, A/55/282-S/2000/788; Helsinki Committee for Human Rights in Bosnia and Herzegovina, *Analysis of the State of Human Rights in BiH*, Sarajevo, June 2001; Human Rights Watch, *Human Rights Watch World Report 2001* (Section on BiH), available at www.hrw.org; U.S. Committee for Refugees, *World Refugee Survey 2001*, Washington DC, June 2001; U.S. Department of State, *Country Report on Human Rights Practices in Bosnia and Herzegovina - 2000*, 26 February 2001. See also, more generally, The Economist Intelligence Unit (EIU), *Country Profile 2001: Bosnia and Herzegovina*, June 2001; and EIU, *Country Report: Bosnia and Herzegovina*, November 2000.

incidents were reported to the International Police Task Force (IPTF) throughout BiH. Of these, 193 took place in the RS, 83 in the Federation and 14 in Brcko District.

9. Not only is the incidence of minority violence twice as high in the RS as compared to the Federation, it must be noted that the severity of these incidents is also far greater in the RS. While the majority of incidents in the Federation involved verbal harassment and occasional damage to property, the incidents in the RS involved shootings, significant damage to property, the use of explosives, physical injuries, and sometimes even death. Brcko District also encountered return-related violence over the last year.⁶ Additionally, many local police departments and the judiciary are not functioning properly, thus exacerbating the security situation facing minority returnees.⁷ Increases in the number of return-related incidents can be directly correlated with the growing number of minority returns.

10. Similarly, despite the inclusion in Article I (4) of the Constitution of BiH of a guaranteed right to freedom of movement, the introduction by the High Representative in 1998 of uniform vehicle license plates across BiH,⁸ and the ongoing activities of UNHCR bus-lines across key return axes, certain segment of the displaced population remain reluctant and uncertain to cross inter-Entity, and sometimes inter-Cantonal, boundary lines.

Republika Srpska

11. Since its establishment in January 2001 following the November 2000 elections, the new government in the RS has been under great pressure from the international community to demonstrate its commitment to implementing the GFAP. Despite the more moderate constitution of the new RS Government, violent incidents against returnees continue to occur regularly in the RS (particularly in the north-eastern areas around Bijeljina, Zvornik and Bratunac-Srebrenica), with apparently little effort being made on the part of local or governmental officials to prosecute those perpetrating these crimes.⁹

12. Municipalities with higher rates of Bosniac returns, such as Bijeljina, Prijedor, Zvornik and Janja were characterized by a particularly high number of incidents. Similarly, significant levels of violence directed towards minority returnees were

⁶ In October 2000, Bosnian Serb secondary school students protested minority return activities and educational curricular developments. 29 Bosniac shops were damaged and several homes of Bosniac returnees were stoned in the course of the three-day protests.

⁷ "Recent rioting by Dayton's Bosnian Serb and Croat enemies in Banja Luka, Trebinje and Mostar – and the increasing incidence of attacks on refugees seeking to return to their homes – demonstrate that radical elements have become more desperate and dangerous" in: International Crisis Group, *No Early Exit: NATO's Continuing Challenge in Bosnia*, Sarajevo/Brussels, May 2001, p. iii.

⁸ Office of the High Representative, *Decision on the deadlines for the implementation of the new uniform license plate system*, 20 May 1998.

⁹ For further details and cases of violations of the right to freedom of religion in the RS, see Helsinki Committee for Human Rights in the Republika Srpska, *Narrative Report on the Activities under NED Grant Project: Protection, Promotion and Monitoring of Human Rights in Republika Srpska*, Bijeljina, July 2001. Also, Helsinki Committee for Human Rights in Bosnia and Herzegovina, *Analysis of the State of Human Rights in BiH*, Sarajevo, June 2001, p. 19.

recorded in Trebinje and, in some instances fatally, in Banja Luka, Bratunac and Vlasenica.

13. Some examples of security incidents in the RS throughout the reporting period include:¹⁰

- Following a number of return-related security incidents in the area in October 2000, in December 2000 a hand grenade was thrown at an elderly Bosniac returnee couple in Janja.
- In January 2001, a number of minority return related incidents occurred in the Eastern RS, including stoning, firing at houses and car explosions. Incidents in Zvornik and Bratunac at this time resulted in a Bosniac returnee being killed by a hand grenade. Also in January 2001, a car belonging to a Bosniac returnee to Srebrenica was blown up. A Bosniac woman was murdered in Gradiska at this time.
- In February 2001, the reconstructed house of a Bosniac in Bileca Municipality was destroyed by an explosive device. NATO Stabilization Force (SFOR) reported that the device had been planted.
- On 21 February 2001, a riot took place in Visegrad, when a number of Bosniacs returned to the area to obtain information on the state of their property.
- On 5 May 2001, violent protests surrounded a ceremony honouring the reconstruction of a mosque near the centre of Trebinje. Guests at the ceremony were forced to seek refuge in the Islamic Centre and the head of the High Representative's Office in Trebinje suffered minor injuries in a scuffle with demonstrators. A journalist from TV Hayat in Sarajevo was also beaten. The ceremony was abandoned. On the following day a hand grenade was thrown at the home of the President of the Islamic community in Trebinje.
- On 7 May 2001, violence erupted at a ceremony held in Banja Luka to celebrate the commencement of reconstruction work on the downtown 'Ferhadija' mosque. A crowd of approximately 3,000 protestors threw stones at those gathered and burned seven buses used to transport Bosniacs to the ceremony and vehicles belonging to international officials. One Bosniac sustained serious injuries, slipping into a coma and later dying. 34 others were also injured.
- In the wake of the Banja Luka incident, verbal harassment of returnees increased in Janja. A group of youths was detained on 20 May 2001 for physically assaulting a Bosniac returnee. On 18 May, a hand grenade was thrown into the yard of a house that was occupied by Bosniacs. Minor damage was caused to the building, but no bodily injuries were reported. Stoning incidents, or worse, were reported as

¹⁰ Information regarding these and other security incidents are provided by UNHCR field offices throughout BiH, UNMIBH and the IPTF.

“common” in Janja during May. On 3 June, an explosive device was thrown into a Bosniac-occupied house, although only minor damage was caused to the property.

- On 21 June 2001, a hand grenade was thrown at a Bosniac house used as a communal house for returnees in Gornje Polje, Srbinje Municipality.
- On 11 July 2001, a 16-year old female Bosniac returnee was shot and killed in a newly reconstructed returnee house in the village of Dzamdzici, near Vlasenica Municipality. This murder followed an earlier, non-fatal shooting of a returnee in the same area on 14 May.

Federation of BiH

14. In the Federation of BiH, the majority of security incidents took place in municipalities in Croat-dominated areas. Although Croatia has withdrawn key elements of its financial and political support for Croat extremists inside BiH, the HDZ (‘Croat Democratic Union’ – traditionally the most powerful Croat political party in BiH) held a ‘referendum’ on self-rule for Croat-dominated areas of BiH (i.e. on the creation of a so-called ‘third’ Entity) on the day of the General Election in November 2000, in what was generally considered an attempt to shore up the HDZ’s local powerbase.¹¹

15. Further rifts between the International Community and extremist Croat nationalists occurred when the High Representative and SFOR co-operated in attempting to cut off the financial lifeline of the HDZ and the territory of Herzeg-Bosna by forcibly ‘auditing’ the Hercegovacka Bank. The first attempt by international officials to seize the bank’s documents was met by violent HDZ-incited protests.¹² The current uncertainty surrounding the future participation of Croat-dominated Cantons in the Federation has significantly disrupted both the running of all joint Federation institutions, as well as the co-operation of these authorities with the international community, particularly on economic reform and implementation of return-related activities.

16. A few examples of security incidents in the Federation of BiH include:¹³

- On 4 April 2001, a recently reconstructed school building in Crni Lug in Bosansko Grahovo Municipality (Canton 10) was destroyed by an explosive device. The school was intended to be used temporarily as accommodation for returnees awaiting reconstruction assistance. No injuries resulted from this incident. Another serious

¹¹ Citing the results of the November referendum, the HDZ-dominated Croat National Assembly (HNS) decided in March 2001 to withdraw from the Federation constitutional structure. The leader of the HDZ and Bosnian Croat member of the BiH Presidency, Ante Jelavic, was subsequently removed from his Government functions in March 2001 by the High Representative for behaviour contrary to the GFAP. See also International Crisis Group (ICG), *Turning Strife to Advantage: A Blueprint to Integrate the Croats in Bosnia and Herzegovina*, Sarajevo / Brussels, 15 March 2001.

¹² See ICG, *No Early Exit: NATO’s Continuing Challenge in Bosnia*, Sarajevo / Brussels, 22 May 2001.

¹³ Information regarding these and other security incidents are provided by UNHCR field offices throughout BiH, UNMIBH and the IPTF.

incident occurred in the same Municipality on 6 April when an explosive device was thrown at the home of a returnee in Kazanovci.

- On 6 April 2001, following serious attempts by the leadership of the HDZ of BiH to secede from the legal and constitutional structures of the state, the OHR, SFOR, and the Federation Ministry of Interior collectively launched 'Operation Athena', which targeted the main office of the Hercegovacka Bank in Mostar (Canton 7) and several branches throughout the Federation, directed towards obtaining full access to the bank's files and records. This raid led to demonstrations by protestors outside the banks in Mostar and throughout Cantons 7 and 8. In Mostar the situation became violent and rioters moved into the bank itself. 20 members of SFOR, three police officers and two civilians were injured in Mostar. Attacks on peacekeeping forces were also reported in Medjugorje (Canton 7), Grude (Canton 8), Siroki Brijeg (Canton 8) and Tomislavgrad (Canton 10). In Grude, Hercegovacka Bank investigators associated with the operation were held hostage inside the bank.
- On 26 May 2001, an explosive device was thrown into the home of a Serb returnee in Humi, near Mostar (Canton 7), that was being constructed by a Bosniac company. The explosion caused minor damage to the house.

Law Enforcement Gaps

17. Given that potential returnees regard security in their place of origin as a basic precondition for return, it is essential that local police forces meet their obligations under the GFAP to provide a safe and secure environment for all persons in their respective jurisdictions. Local police forces have, in many instances, failed to provide effective protection to members of minority constituent peoples and reports continue to be received of returnees experiencing harassment that may be sanctioned by the local police. Widespread insecurity continues to prevail in certain areas, and perpetrators of criminal acts against minority returnees regularly go unpunished.¹⁴

18. IPTF continues to be responsible for the dismissal of officers who fail to provide adequate protection by the committal of acts not in accordance with the law. Between September 2000 and March 2001, 14 police personnel throughout BiH were de-authorized for "severe violations of law".¹⁵ It should be noted that, in some cases, de-authorized officers (including, in one case, a dismissed Chief of Police) have refused to turn in uniforms, firearms and official government vehicles. Despite the very important efforts by the IPTF to enhance the number of so-called minority police officers, only 258

¹⁴ See Human Rights Co-ordination Centre (HRCC), HRCC Quarterly Report: 1 September 2000–31 March 2001, pp. 17–19. The HRCC is an inter-agency centre and cooperative effort of OHR, OSCE, the Office of the High Commissioner for Human Rights (OHCHR), the United Nations Mission in Bosnia and Herzegovina (UNMIBH), UNHCR, the Independent Judicial Commission (IJC) and the Council of Europe (CoE).

¹⁵ Reform efforts were also underway during the reporting period regarding arrest, custody and search procedures.

minority officers could be deployed in the Federation between April 1999 and July 2001, and only 228 could be deployed in the RS during the same period.¹⁶

19. In order to support the effectiveness of police activities and to end the cycle of impunity that pervades some areas, it is also necessary to have in place an adequate and functioning criminal code. The criminal legislation and procedures still applied in the Entities were taken from the legal framework that existed within the former Socialist Federal Republic of Yugoslavia, and do not comply with international standards of due process of law.¹⁷ As noted by the UNMIBH Judicial System Assessment Programme (JSAP), whose mandate came to an end on 30 November 2000, “the BiH criminal justice system fails to uphold its primary responsibility to prosecute and to punish criminal behaviour while protecting the fundamental rights of the accused.”¹⁸ The functions of the JSAP were taken over by the Independent Judicial Commission (IJC), under the auspices of OHR, which began its work in March 2001.¹⁹

Mine Incidents

20. It is estimated that more than one million land mines and explosive devices remain in roughly 30,000 separate identified mine fields. These mine fields are scattered throughout BiH and represent a continuing threat to the safety of returnees and the population at large.²⁰ From 1996 to end June 2001, 1296 individual mine incidents have been recorded by the International Committee of the Red Cross (ICRC). From January to end June 2001, 49 mine related incidents were recorded and of these incidents, 32.7 percent involved fatalities, killing 16 persons.²¹

¹⁶ Figures obtained from UNMIBH.

¹⁷ See Final Report of the United Nations Special Rapporteur of the Commission on Human Rights on the situation of human rights in Bosnia and Herzegovina, E/CN.4/1998/63, 12 January 1998. Key international organisations have undertaken to reform criminal legislation and criminal procedures throughout BiH and to provide training to judges, lawyers and prosecutors to bring practices into line with international standards and, specifically, with the provisions of the *European Convention for the Protection of Human Rights and Fundamental Freedoms*. The CoE, OHR, the United Nations Development Programme, the American Bar Association and UNMIBH are involved in this process.

¹⁸ UNMIBH Judicial System Assessment Programme, *Prosecuting Corruption: A Study of the Weaknesses of the Criminal Justice System in BiH*, Sarajevo, March 2001.

¹⁹ In accordance with the directives of the Peace Implementation Council Steering Board in May and July 2000, the High Representative, in his *Decision on the Establishment of the Independent Judicial Commission*, 14 March 2001, established and defined the mandate of the IJC.

²⁰ For example, during December 2000, a Bosniac returnee was killed as a result of a landmine which exploded while housecleaning in Glogova, Bratunac Municipality. It is believed that the mine had been newly planted. On 18 March 2001, a male Bosniac returnee was killed by an anti-personnel land mine in the village of Prebiscalici, near Kratine, in Foca/Srbijne Municipality. On 7 May, a private vehicle hit an anti-tank landmine on the road from the village of Grugovici to Gacko. As a result one person was killed and another was slightly injured. On 21 May, a local man in Gornje Dubravice, near Brcko, was killed from detonating a mine while working in a field.

²¹ Statistics provided by ICRC.

2.2 Legal and Administrative Framework

Legislation on Displaced Persons and Returnees

21. For the first time since the signing of the GFAP, and in accordance with new legislation on DPs, at the end of 2000 a re-registration of displaced persons was simultaneously carried out in the two Entities and Brcko District. According to the results of the re-registration exercise, a total of 518,000 persons have applied for displaced person status within BiH.²²

22. The numbers of displaced persons in BiH in 2001, compared with those in 1996 (approximately 845,000), indicate that significant progress in the return of refugees and displaced persons has been made (both to majority and minority areas). The results of the re-registration exercise also indicate a notably high number of displaced persons in the Federation of BiH. This figure includes all those who have returned from Western European countries, but who have been unable to return to their places of origin in the RS, further adding to the problem of internal displacement.

23. Those who have their displaced person status confirmed, should be entitled to temporary accommodation, food, health care, education, psycho-social support and other basic rights in accordance with their needs and with the relevant Entity and/or Cantonal regulations and decisions. Nonetheless, despite the inclusion of such entitlements in the relevant laws and regulations, provision of these has generally been problematic, with local authorities often reluctant to commit scarce resources for this purpose.

Property Legislation Implementation

24. The unresolved problems related to property remain one of the major legacies of the war. More than 250,000 claims for residential properties (both private and socially owned property) have been submitted by pre-war owners and occupancy right holders since the passing of relevant Entity property laws in 1998 and amendments thereto imposed by the High Representative in October 1999. The homes of these people were occupied during the war or immediately thereafter when laws were adopted allowing for the reallocation to other persons of property left behind by refugees and displaced persons.

25. Given the broad recognition that the resolution of these 'property issues' was one of the essential requirements for returns to take place, the international community in BiH initiated a sustained campaign in 1996 to repeal wartime laws on abandoned property, and to create a legal framework for property repossessions.

²² UNHCR Press Release, *518,252 displaced persons Registered in BiH*, 22 December 2000. The starting date of the exercise was 25 July 2000 and the exercise was completed on 25 October 2000. The final figures indicated that a total of 518,252 persons had applied for displaced person status in BiH, of whom 263,375 applied in the Federation, 231,732 in the RS and 23,145 in Brcko District.

26. Following the eventual imposition by the High Representative of harmonizing amendments to the Entity property laws in October 1999, during 2000 the international community present in BiH developed the Property Law Implementation Plan (PLIP). The PLIP developed from collaborative relationships between UNHCR, the Organization for Security and Co-operation in Europe (OSCE), OHR, UNMIBH and the Commission for Real Property Claims (CRPC). Its objective is to ensure that all outstanding claims registered by refugees and displaced persons to repossess their properties are resolved.

27. Over the past year, slow but significant progress was made in the process of property repossession by displaced persons and refugees. As of 31 July 2001, out of a total of 255,271 claims for repossession, 140,854 claimants have received decisions on their right to repossess their property, of which 76,983 decisions have been implemented. The rate of implementation of the property laws for BiH thus stands at 30 per cent, with 39 per cent of all claims in the Federation implemented, but only 21 per cent of those in the RS.²³

28. Several obstacles stemming from the failure of local authorities to take full ownership of the implementation process prevented a state-wide breakthrough in repossessions of property. There continue to be widespread illegal acts encountered in the implementation of the property laws, including illegal allocation of private property, looting, violence against housing office employees and illegal revalidation and/or privatization, which have not been adequately addressed by local officials. There also remains a considerable problem with public officials occupying claimed space.²⁴

29. Some of the difficulties with repossession of pre-war property in urban areas can be highlighted by reference to the so-called 'floaters': approximately 300 families, mainly in the Banja Luka and Bijeljina urban areas of the RS, who were forcibly expelled during the war but who, despite having remained in their municipalities of origin throughout the war, had been, until very recently, unable to repossess their properties. They therefore continued to reside in extremely poor living conditions, often in garages, makeshift houses or worse. In many cases, the pre-conflict apartments/houses of these 'floaters' were occupied by displaced persons who required alternative accommodation. Over the past five years, the RS authorities made various commitments to reinstate these 'floater' families in their pre-conflict homes. However, the majority of cases were only resolved in the summer of 2001. The RS Ministry for Refugees and Displaced Persons has developed an operational plan to resolve the outstanding 20 'floater' cases by the end of October 2001.

²³ UNHCR, OHR, OSCE, UNMIBH, CRPC, *Statistics: Implementation of the Property Laws in BiH*, Sarajevo, 31 July 2001, available at www.unhcr.ba.

²⁴ Difficulties in repossession also tend to impact disproportionately on those whose homes of origin are in urban areas. While returnees to rural areas often face challenges related to reconstructing property that was destroyed or devastated during the war, return to urban areas may be considered more problematic as such returns are "usually...predicated on the eviction of members of the controlling majority occupying their properties and because of their higher profile, which galvanised greater political and popular opposition." U.S. Committee for Refugees, *World Refugee Survey 2001*, June 2001, p. 208.

30. Another primary obstacle to increased implementation is the failure of local officials to secure alternative accommodation. It is evident that the resolution of double occupancy cases alone will not be sufficient to ensure a swift implementation of the property legislation and of the return process. The absence of alternative accommodation in many municipalities has become the main barrier to the full implementation of the property laws. Many claims and decisions have been stalled for the simple reason that no alternative accommodation is available for current occupants who are so entitled. In these circumstances the claimant or decision holder is effectively prevented from, or faces tremendous delays in, returning. Local officials are responsible for ensuring that everyone with an entitlement to alternative accommodation receives it. However, these legal obligations remain mostly unfulfilled. Few municipalities have produced lists of unclaimed socially-owned property, and many state-owned companies have not provided records on property where occupancy rights changed during the war. Also, little effort has been made to use other structures, such as hotels, schools, army barracks and any other adequate structures as permissible under entity property legislation, as potential alternative accommodation.

31. It is evident that a great deal of progress has been made over the past year with regard to repossessions of pre-war property. Still, given the above considerations, UNHCR is of the opinion that refugee returns to BiH from abroad be encouraged only when repossession of a family's pre-war residence can be guaranteed to take place upon return to BiH. Return without repossession is likely only to exacerbate the problem of internal displacement, without facilitating durable solutions for those affected. As noted by one international human rights organization, "that returnees continue to face obstruction in regaining legal access to their property, renders them more vulnerable to violence against life and property", as well as undermines their access to basic and essential social and other services and means of protection.²⁵

32. It should also be noted that international efforts to accelerate implementation of property laws across the country have led to eviction orders being served on minorities who have already experienced severe persecution and trauma and who are still unable to return to their place of origin. Many such persons do not have any alternative accommodation, and in many cases the local authorities have taken no steps to identify suitable accommodation. The possible need for international protection of individuals in such circumstances therefore requires careful assessment.

Citizenship

33. Effective citizenship remains critical to the exercise of human rights and fundamental freedoms.²⁶ The *Law on Citizenship of Bosnia and Herzegovina* (the 'BiH Citizenship

²⁵ See Amnesty International, *Bosnia-Herzegovina - Waiting on the Doorstep: minority returns to eastern Republika Srpska*, July 2000.

²⁶ The Constitution of BiH stipulates that there shall be a citizenship of Bosnia and Herzegovina and a citizenship of each Entity. All citizens of either Entity are thereby citizens of BiH - hence the fundamental importance of the adoption of appropriate Entity citizenship legislation and accompanying regulations.

Law²⁷) entered into force on 1 January 1998.²⁷ Its provisions ensure the legal continuity of the internal citizenship of the former Socialist Republic of BiH and regulate the status of those who did not hold this citizenship but who had permanent residence in BiH.

34. The BiH Citizenship Law also provides for the adoption of citizenship laws of both Entities – a necessary precondition for an adequately functioning and fully implemented citizenship regime.²⁸ To date, only the RS has passed a law on citizenship.²⁹ The Ministry of Administration and Local Self-Government (MALSG) took over citizenship-related tasks from the RS Ministry of Interior (MOI) in September 2000.³⁰

35. The absence of a functioning legal citizenship framework in the Federation of BiH has prevented the overall implementation of the citizenship legislation in BiH.³¹ In particular, it currently prevents those former SFRY citizens who took up permanent residence in BiH before 1998 and who are now living in the Federation of BiH, from acquiring BiH/Federation citizenship, although according to the BiH Citizenship Law, such persons have been eligible for BiH citizenship as of 1 January 2000.³² The draft Federation Citizenship Law therefore needs urgent adoption.

Amnesty, Conscription and Draft Evasion

36. Implementation of Article VI of Annex 7 of the GFAP, which provides for the granting of an amnesty to all those who evaded the military draft, deserted or refused to answer a military call-up during the conflict, may be considered essential to allow for the safe and dignified return of male refugees from BiH. In order to facilitate implementation of this guarantee, both Entities adopted laws on amnesty.

²⁷ The High Representative first imposed the law in December 1997, on an interim basis, due to the inability of the State institutions to agree on an acceptable text (BiH Official Gazette, No. 4/97). The BiH Parliamentary Assembly then adopted the law in due form, without any additional amendments or conditions (BiH Official Gazette, No. 13/99, of 26 August 1999).

²⁸ According to Article 42 of the BiH Citizenship Law, all laws and by-laws regulating BiH citizenship became invalid with the entry into force of the BiH Citizenship Law.

²⁹ *Law on Citizenship of Republika Srpska*, RS Official Gazette, No. 35/99, 6 December 1999; entry into force on 14 December 1999. This law was later amended to ensure compliance with the BiH Citizenship Law: *Law on Changes and Amendments to the RS Citizenship Law*, RS Official Gazette, No. 17/2000, 27 June 2000.

³⁰ The RS authorities identified the MALSG as the competent body to deal with citizenship matters through amendments to the Law on Ministries and to the RS Citizenship Law, published in the RS Official Gazette Nos. 15/2000 and 17/2000, respectively. Such identification was of importance since the files of all persons who were, according to Article 40 of the RS Citizenship Law, eligible for citizenship as of 1 January 2000 could be processed only after the establishment of a competent body.

³¹ Although a draft Federation BiH *Law on Citizenship* was prepared in co-operation with local authorities, OHR, UNHCR and the Council of Europe in 1998, it has not yet been adopted due to disagreement on division of responsibilities between different levels of authorities.

³² Article 38 of the BiH Citizenship Law provides, under certain conditions, for the possibility of facilitated naturalization of citizens of the former SFRY. However, both facilitated and ordinary naturalization as well as many other competencies related to the acquisition of BiH citizenship are accorded to the Entity authorities. Thus, the absence of relevant Entity laws prevents the full implementation of the BiH Citizenship Law.

37. The *Federation of BiH Law on Amnesty* came into force on 11 December 1999, and provides amnesty to almost anybody who committed a crime (i.e. any of the crimes set out under the relevant criminal codes that were in force in the territory of the Federation of BiH) between 1 January 1991 and 22 December 1995, except for certain very serious crimes such as crimes against humanity and international law and those defined in the Statute of the International Criminal Tribunal for the Former Yugoslavia (ICTY), as well as certain specified crimes under the criminal code such as aggravated theft, rape and murder.³³

38. Similarly, albeit after considerable pressure by the international community, the *Law on Changes and Amendments to the Amnesty Law of the Republika Srpska* was eventually passed in the RS,³⁴ entering into force on 23 August 1999. This law grants amnesty to, *inter alia*, persons who in the period between 1 January 1991 and 22 December 1995 deserted or evaded a draft call from the RS Army. These amendments brought the RS amnesty regime into line with the GFAP requirements regarding amnesty.

39. A monitoring exercise was conducted in February and March of 2000 by UNMIBH's JSAP, and the findings were published in June 2000. Generally, the findings of this report were positive, as the general tendency was apparently for the RS courts to implement the law. However, the report also indicated that the judicial system in the RS remained inefficient and that the processing of cases was proceeding very slowly.³⁵

40. With regard to post-war conscription and draft evasion, the Sarajevo Declaration of February 1998 committed both Entity governments to the enactment of legislation on conscientious objection and on alternative service, and to the exemption of returnees from any form of conscription for a period of five years following return.³⁶

41. Unfortunately, it appears that neither Entity government has made any substantive provision for allowing either conscientious objection to military service or for performance of alternative service. It has been reported that there is a serious lack of awareness on the part of those liable to conscription of the possibility for them to opt for alternative service rather than military service. Of greater concern, in the absence of accurate citizenship records, is that the use of school and education records for

³³ Federation BiH Official Gazette, No. 48/99. In December 1999 the UNMIBH JSAP issued its third thematic report which included a brief survey of the implementation of the Federation Amnesty Law. The main findings of the report were that within the Federation, the law was generally applied, but that there has been considerable delay in the granting of amnesty by the courts: United Nations Mission in Bosnia and Herzegovina, Judicial System Assessment Programme, *Thematic Report III: On Arrest Warrants, Amnesty and Trials in Absentia*, Sarajevo, December 1999.

³⁴ RS Official Gazette No. 17/99, 15 July 1999.

³⁵ The report suggested that positive steps toward facilitating the return of draft evaders and deserters have been taken. The findings of the report cannot be considered exhaustive, however. For further details, see *Amnesty and Return: A Report on Implementation of Amnesty Legislation in the Republika Srpska*, UNMIBH, Judicial System Assessment Programme, Sarajevo, June 2000.

³⁶ The 'Sarajevo Declaration' of 3 February 1998 was agreed by representatives of the international community, BiH and Entity authorities, Consular and Diplomatic offices and others, under the chairmanship of the High Representative. Cited in Office of the High Representative, *Bosnia and Herzegovina: Essential Texts* (3rd revised and updated edition), October 2000.

conscription purposes at local level appears to have resulted in a number of recorded cases of conscription for military service of displaced persons.

42. It is widely recognized that the Entity legislation that would regulate conscientious objection and alternative service is unsatisfactory. The Federation Law on Defence requires significant amendments, including making it mandatory for a person liable to conscription to be made aware in advance of his/her right to conscientiously object to military service, and that the period of alternative service be reduced from an arguably punitive 24 months to (at least) the standard (in terms of length of regular military service) 12 months.³⁷ Nonetheless, despite the current legislative provisions, there is generally considered to be widespread popular ignorance of the possibility of opting for non-military service.

Residence Registration of Displaced Persons and Returnees and Issuance of Identity Cards

43. The issue of residence registration and issuance of identity cards is crucial, since access to social services (social welfare, health care, and humanitarian assistance) and ultimately reintegration are conditioned by the fulfillment of this administrative requirement. In order to have a better understanding of the situation in this area, UNHCR carried out surveys in both Entities, analyzing the domestic legal framework and the practice of registration of returnees and displaced persons.³⁸ These studies *inter alia* indicated that returnees had encountered a variety of obstacles when applying for issuance of identity cards.

44. Recognizing that there was a clear need for the legal frameworks regulating identity card issuance and residence registration to be overhauled, a Working Group consisting of representatives of OHR, UNHCR, OSCE, UNMIBH and SFOR was established in 1999. In 2000 the Working Group produced a set of draft BiH laws on identity cards and Permanent and Temporary Residence Registration, accompanied by a new draft law on Identity Numbers (JMBs). These laws envision the operation of regimes governing the issuance of identity cards, residence registration and the issuance of personal identification numbers at state (BiH) level and have been the subject of much debate. Despite having been presented to and discussed by the BiH Council for Ministers on a number of occasions, no agreement has been reached to date on adoption of these draft laws.³⁹

³⁷ A series of proposed amendments to this Law, which would have reduced the former to four and a half months and the latter to nine months, purportedly on the basis that current service lengths were not maintainable on budgetary grounds, failed to be approved by the Federation parliament in April 2001. Similar changes would be required to be made to the RS Law on the Armed Forces.

³⁸ UNHCR Sarajevo, *Survey on Registration of Repatriates in the Federation of Bosnia and Herzegovina and Entitlement to Food Assistance and Medical Care*, May 1997 (Update in November 1998: *Registration of Repatriates in the Federation of Bosnia and Herzegovina and Entitlement to Identity Documents, Food Assistance and Medical Care*), and *Survey on Registration of Repatriates in the Republika Srpska and Entitlement to Identity Documents, Food Assistance and Medical Care*, October 1997 (Update in April 1999).

³⁹ Until such laws are in place, the High Representative on 30 July 1999 issued a *Decision on Identity Cards*. Under the Decision, all public documents issued by a competent body of the former SFRY and the

45. Nonetheless, reports continue to be received by UNHCR of returnees being unable or unwilling to apply for identity cards, or to register their residence in their place of origin. In many cases (e.g. in the Eastern RS) this may be due both to a general unease among minority returnees with regard to dealings with local representatives of the respective Entity Ministry of the Interior – generally the police station. Of more concern, however, is the complex and often burdensome application and issuance procedures currently in place in both Entities, which often provide local officials with ample opportunity to make life difficult for minority returnees, e.g. by levying excessive administrative fees or by making demands for hard-to-produce documentation.

46. As noted by one independent monitor of developments in BiH “[p]ublic administration [in general] in BiH is a labyrinth of pre-war, wartime and post-war institutions, often exercising overlapping administrative authority.”⁴⁰

Access to Documents and Recognition of Public Documents

47. In both Entities the situation regarding access to documents has continued to improve. The BiH *Law on Freedom of Information in Bosnia and Herzegovina* was adopted in October 2000,⁴¹ and establishes that every person has a right to access information in the control of public authorities in BiH, to the greatest extent possible consistent with the public interest, and that public authorities have a corresponding obligation to disclose information. It should also enable every person to request the amendment of, and to comment on, his or her personal information in the control of a public authority.⁴²

48. Nonetheless, individuals continue to face difficulties accessing personal documents due to registers having been destroyed or records having disappeared, as is the case, for example, in Drvar. The retrieval of records and documents is often subject to excessive bureaucratic procedures. There are still cases of excessive or illegal fees being charged for accessing personal records or other official documents, although the incidents reported have decreased dramatically.

49. Difficulties also continue to be encountered with regard to recognition in the Federation of BiH of documents issued in the Federal Republic of Yugoslavia (FRY). It is hoped that, in light of the recently established diplomatic relations between BiH and FRY (15 December 2000) these difficulties will eventually be overcome. Similar

former Socialist Republic of Bosnia and Herzegovina (SRBiH) are recognized as official proof of the facts stated therein and must be accepted by all public officials in BiH. Specifically, personal identity cards issued by a competent SFRY/SRBiH body, which were valid on 6 April 1992 may be exchanged until 5 April 2002, for new personal identity cards.

⁴⁰ International Crisis Group, *Rule of Law in Public Administration: Confusion and Discrimination in a Post-Communist Bureaucracy*, Sarajevo, 15 December 1999.

⁴¹ BiH Official Gazette, No. 28/2000, 17 November 2000.

⁴² The Federation *Law on Recognition of Public Documents on the Territory of the Federation of Bosnia and Herzegovina* (entered into force on 26 February 1998) provides for the recognition of public documents issued by the authorities of the then Republic of Bosnia and Herzegovina and the so-called ‘Herzeg-Bosna’ authorities. Although its implementation was difficult at the initial period, it appears that in practice, the previous problem of one Entity refusing to recognize documents issued by the other is no longer an issue of concern.

difficulties have also been encountered with regard to the mutual recognition of documents between the Republic of Croatia and the RS.⁴³

Functioning of the Judiciary and Human Rights Institutions

50. The new Independent Judicial Commission (IJC) has begun work in the development of a comprehensive inter-agency training programme for judges and prosecutors.⁴⁴ In fact, draft legislation to create judicial training institutes in each Entity has been completed and is expected to be adopted by the RS National Assembly and the Federation Parliament by the end of 2001. The IJC will assist in institutional and curriculum development of the training institutes to ensure sustainability and responsiveness to the needs of Bosnian judges and prosecutors.⁴⁵

51. The process of judicial reform is crucial for the respect and effective enforcement of human rights in BiH, as well as for the full restoration of effective national protection. Reports of human rights institutions also demonstrate a number of complaints concerning the functioning of the judicial system.⁴⁶ The most common problems relate to detained and missing persons, ill-treatment in police custody, fairness of criminal and other proceedings, length of court or administrative proceedings, non-enforcement of judicial or administrative decisions, inaction of local police, and discriminatory treatment. Moreover, the judicial appointment process⁴⁷ and the lack of qualified legal staff seriously hampers the independence and impartiality of the judiciary, which results in politically motivated appointments and allows for political interference in court proceedings.⁴⁸ In order to create an independent and impartial judiciary, judicial service laws have previously been adopted in both Entities that provide a merit-based, non-political structure for the appointment and dismissal of judges and prosecutors.

52. Annex 6 of the GFAP also stipulates that the BiH authorities must ensure the highest human rights standards and provides for the establishment of a Commission for Human Rights composed of a Human Rights Chamber (HRC) and the Office of the Ombudsman.⁴⁹ These domestic institutions complement the existing judiciary and are

⁴³ See section below on ‘pensions’ for one such example.

⁴⁴ The Independent Judicial Commission (IJC) took over from the UNMIBH Judicial Systems Assessment Programme (JSAP) the task of implementing judicial reform programmes in BiH. JSAP was reporting on the state of the judicial system in BiH over a two-year period.

⁴⁵ Human Rights Co-ordination Centre, *Human Rights Task Force: A Mid-term Review*, August 2001.

⁴⁶ See the Human Rights Chamber Summary of Activities dated November 1999 and the Human Rights Ombudsperson Fourth Annual Report, 1999. In a similar vein, despite the inclusion of the European Convention on Human Rights in the Constitution of BiH, it has also been noted that “the record of the BiH judiciary in invoking ECHR provisions has been extremely poor”: International Crisis Group, *European vs. Bosnian Human Rights Standards*, Sarajevo, 14 April 2000.

⁴⁷ See, for instance, UNMIBH JSAP, *Thematic Report IX – Political Influence: The Independence of the Judiciary in Bosnia and Herzegovina*, November 2000.

⁴⁸ See, for instance, OHR’s *Report on the Election and Appointment of Judges in Canton Sarajevo* of 21 May 1997, which explains how municipal judges have been elected and court presidents appointed in violation of the established voting rules.

⁴⁹ Regarding the state-level human rights institution, a Decision imposing the *Law on the Human Rights Ombudsman of Bosnia and Herzegovina* was taken by the High Representative on 12 December 2000. (BiH

composed of both local and international judges and lawyers.⁵⁰ In addition to these state-level human rights institutions, there is an entity-level Ombudsman for both the Federation⁵¹ and the RS.⁵² It should be noted that a significant increase in the number of applications and decisions by GFAP Annex 6 and Annex 7 human rights institutions in BiH occurred during the reporting period, although RS authorities reportedly continue to hinder implementation of key Human Rights Chamber decisions.

53. Finally, in order to further judicial reform and ensure that human rights are protected at the state level, the High Representative imposed the *Law on the State Court of Bosnia and Herzegovina* on 12 November 2000.⁵³ The establishment of a State Court of BiH is regarded as a pre-condition for the establishment of the rule of law in BiH, to provide for judicial remedies in matters within the competence of the State under the BiH Constitution and as the ultimate instrument to ensure legal certainty.

54. In a similar development, the BiH Constitutional Court found, in the ‘Constituent Peoples’ case (originally brought forward by former President Izetbegovic in February 1998), that “various provisions of the Entity constitutions violated the State constitution [...and that] Bosniacs, Croats and Serbs enjoy equal political rights in both Entities”.⁵⁴

Official Gazette, No. 32/2000, 26 December 2000.) This law provides for the transfer of responsibility for the continued operation of the BiH Human Rights Ombudsman from the Parties to Annex 6 of GFAP, namely BiH, RS and FBiH, to the institutions of BiH, and was imposed primarily as delays in its adoption had caused disruption in the work of the BiH Human Rights Ombudsman due to the lack of legal clarity surrounding the institution.

⁵⁰ GFAP Annex 6 and 7 Institutions Agreements were signed on 10 November 2000 which regulate the work of the CRPC, BiH Ombudsman, and HRC until December 2003. These agreements allow for a legislative framework for the merger of the Constitutional Court and the HRC and capacity building of the new institution, clarification of the position of the Agents of BiH to the HRC and international bodies, monitoring of the appointment of the Ombudsmen, and ensuring the sustainability of the institutions (state funding) required under the European Union (EU) roadmap and for BiH accession to the Council of Europe. To further support the eventual merger of the Human Rights Chamber and the Constitutional Court, draft legislation was prepared in June 2001 and meetings are scheduled for September 2001.

⁵¹ The *Law on Ombudsmen of the Federation of Bosnia and Herzegovina* was adopted in August 2000 and entered into force on 8 September 2000. (Federation BiH Official Gazette, No. 32/00, 30 August 2000.) However, several problematic amendments to the original draft presented to the Federation Parliament that affected the independence of the institution were included in the version eventually adopted.

⁵² The *Law on the Ombudsmen of the Republika Srpska*, prepared by the Venice Commission and other organizations, was adopted on 8 February 2000 and came into force on 17 February 2000. (RS Official Gazette, No.4/2000). The law includes the establishment of the Ombudsman as a multi-ethnic institution, conforms to European standards and is in accordance with the Venice Commission Draft Law. Despite initial difficulties in this law’s implementation, three Ombudsmen have now been appointed and the Office began working with cases on 30 November 2000, following the official presentation of the institution at a press conference in Banja Luka. (*Annual Report on the Activities of the Ombudsmen of the Republika Srpska 2000*, The Ombudsmen of the Republika Srpska, 2000.)

⁵³ BiH Official Gazette, No. 29/2000 dated 30 November 2000; entry into force on 8 December 2000. The 2000 Brussels Peace Implementation Council Declaration envisaged its adoption by September 2000. The High Representative was urged to impose this Law given the fact that the BiH authorities did not pass this Law in regular procedure before the elections in November 2000, although the draft was based on a Council of Europe Venice Commission draft Law of June 2000, and was harmonized by a Working Group comprised of the representatives of the relevant ministries and OHR in October 2000.

⁵⁴ Decision of the Constitutional Court, Case No. U 5/98 (Request for the evaluation of conformity of a certain number of provisions of the Entities’ constitutions with the Constitution of BiH), Third Partial

55. This required Entity constitutions to be amended to ensure the protection of these rights – a significant alteration of the post-Dayton *status quo* in BiH. Nonetheless, the ruling of the Court that “no ethnic group constituent on the territory of BiH shall be excluded from exercising its rights in the Entities” can only be considered as a significant measure towards supporting the return of refugees and displaced persons by ensuring that the vital interests of all ‘constituent peoples’ are considered in both Entities of BiH.⁵⁵

2.3 Considerations Affecting the Sustainability of Return

Access to Health Care

56. The provision of health care and the availability and quality of treatment in BiH does not sufficiently address the needs of the residents of the country, particularly those of displaced persons and returnees. This represents a significant problem for those who are chronically ill or in need of continuing medical care who may be returning either from abroad or from internal displacement. This predicament results from a myriad variety of problems and obstacles, although many are related to the overall complexity of the legislative and legal framework surrounding the provision of health care and the general lack of funds and resources attributed to the health care system of BiH. These problems are seriously compounded by the post-war situation in BiH, which includes refugee returns, internally displaced persons, and damaged infrastructure.

57. Regardless of the difficulties faced in providing health care to the residents of the country, the levels of health care currently provided are both significantly lower than that of other, more developed nations, as well as below the level provided in BiH prior to the conflict. Recognizing the scale and severity of this issue, UNHCR completed a detailed examination of the health care system in BiH in July 2001.⁵⁶

58. Aside from the difficulties created by the complexity of the compulsory health insurance scheme, primary problems also include geographic fixation of where health care can be provided, the inability to transfer coverage from location to location, non-payment of contributions into the health funds, and the absence of inter-Entity co-operation on health insurance issues. Various international agencies and key influential players have advocated an inter-Entity agreement between the health funds.⁵⁷ However, as of July 2001, no agreement had been signed. As a result of these difficulties, residents

Decision of 30 June and 1 July 2000, BiH Official Gazette, No. 23/2000, 14 September 2000. See also European Stability Initiative, *Reshaping International Priorities in Bosnia and Herzegovina*, 22 March 2001.

⁵⁵ OHR, *Report by the High Representative for Implementation of the Peace Agreement to the Secretary-General of the United Nations*, 12 March 2001.

⁵⁶ UNHCR, *Health Care in Bosnia and Herzegovina in the context of the return of Refugees and Displaced Persons*; Sarajevo, July 2001. This analysis of the health care system in BiH views the system from two perspectives; a legal perspective and a medical perspective. The legal perspective primarily examines the legislative framework related to the provision of health care and the difficulties involved in implementation. The medical perspective concerns the actual facilities available for treatment, the availability of treatment for specific chronic diseases, the quality of the available treatment, and problems that hinder the availability and quality of adequate treatment for specific diseases and conditions.

⁵⁷ See Human Rights Co-ordination Centre, HRCC Quarterly Report: 1 September 2000–31 March 2001.

who are covered under the current system must often pay high prices for treatment and medication and generally experience difficulty accessing proper health care.

59. When examining the health care system of BiH from a medical perspective, it quickly becomes apparent that adequate medical care is often not available. This is due in part to the complexity of the insurance schemes, but from a medical point of view, it results primarily from the absence of proper facilities, equipment and medication, as well as from a lack of essential funds. These major shortcomings are exacerbated by transportation problems resulting from rugged topography and damaged infrastructure, as well as by the fact that the war seriously affected the health of the population, resulting in unforeseen increases in demand on health care providers. Given these considerations, it is evident that it may not be possible for patients with chronic diseases to obtain the necessary treatment in the territory of BiH. At the current levels of treatment available, the lives of persons in need of medical treatment for chronic diseases or conditions, even if these would not ordinarily be considered life-threatening conditions outside BiH, may be jeopardized if they are forced to seek treatment in BiH.⁵⁸

Access to Pensions

60. There continue to be serious difficulties in obtaining pensions for returnees, mainly related to a fragmented pension system and unharmonized legislation, which can constitute a significant impediment to returns.

61. On 27 March 2000 the directors of the then three pension funds, the Social Fund of Pension and Disability Insurance of Bosnia and Herzegovina (the 'Sarajevo Fund'), the Bureau of Pension and Disability Insurance Mostar (the 'Mostar Fund') and the Public Fund of Pension and Disability Insurance of Republika Srpska (the 'RS Fund'), signed an *Agreement on Respective Rights and Obligations Regarding Implementation of Pension and Disability Insurance*⁵⁹ which provides for the mutual recognition of pension and disability insurance rights between the funds of the two Entities. This Agreement should overcome some of the major problems of the BiH pension system. In December 2000, however, pensioners continued to face serious difficulties in accessing their pension entitlements.⁶⁰

62. In particular, one of the important achievements of the Agreement, especially with regard to returnees, was that it enabled pensions that had been granted in places of displacement (i.e. generally in the 'other' Entity) to be paid in other places in BiH. Thus a person who had been granted a pension in Pale as a displaced person would now be able to collect that pension (paid by the RS fund) in Sarajevo upon return.

⁵⁸ It may be worth noting allegations of corruption encountered in the health care system. See *Bribing Doctors Doesn't Keep Anyone Healthy*, Bosnia Daily, 15 August 2000.

⁵⁹ Published in the RS Official Gazette No. 15/00 of 5 June 2000 and in the Federation Official Gazette, No. 24/00 of 30 June 2000.

⁶⁰ See also UNHCR, *Returnee Monitoring Study: Minority Returnees to the Republika Srpska – Bosnia and Herzegovina*, Sarajevo, June 2000, p.12.

63. Despite this improvement, the approach thus adopted was not entirely satisfactory, largely because pensions paid by the RS Fund remain significantly lower than those in the Federation. Thus even those persons who had held a pension in Sarajevo before 1992, but who had since been receiving payments from the RS Fund, would not be able to revert back to the Sarajevo Fund, and consequently would continue to receive only the amount they had been receiving in the RS. Furthermore, they would not qualify for the additional benefits (e.g. subsidized public transport) available to those whose pensions were paid by the Sarajevo Fund. Similarly, when the Agreement was signed, no consideration was given to the knock-on effect on health insurance coverage for pensioners.⁶¹ As a consequence, significant differences in pension amounts and the current non-transferability of health insurance (also funded by pension contributions) to anywhere other than the territory covered by the fund paying the pension, increases the difficulties faced by pensioners upon return and affects the sustainability of their return.⁶²

64. An additional obstacle to returnees accessing their pensions, however, has been the haphazard and often irregular amounts of pension payments. While the High Representative, in November 2000, further rationalized the pension system by amending the regulating framework for pension funds such that (provided they did not fall below a certain amount) the amounts of pensions to be paid would vary according to the amount of contributions collected for the relevant month, this decision, while reducing to a more reasonably deliverable level those pensions that were paid, did not resolve other significant problems still affecting the functioning of the pension system. There continues to be a lack of money in the funds. This is partly due to the inadequacy of the tax base and collection, but is also aggravated by the amounts paid in military pensions, which make up a disproportionate amount of the total paid out in pensions each month, and which are significantly higher than civilian pensions. Significant problems in the functioning of the pension system thus remain to be resolved.

65. On the other hand, a significant legal development during the past 12 months was a Decision of the BiH Constitutional Court on the issue of pensions, which ruled that pension-funds' refusal to pay pension entitlements for the period 1 April 1992 until 1 July 1997 constituted a violation of property rights.⁶³ This was the first binding decision in BiH confirming that pensions and disability insurance rights are equatable with property rights and that, consequently, pensioners have a right to a fair hearing (including the issuance of a formal decision) in the determination of their rights from their pension and disability insurance.

⁶¹ With respect to health insurance and other social benefits, see UNHCR Sarajevo report entitled *Health Care in Bosnia and Herzegovina in the Context of the Return of Refugees and Displaced Persons*, Sarajevo, July 2001.

⁶² These problems were rooted in the wartime fragmentation of the Pension and Invalidity Insurance Fund of BiH, which split into three separate funds: the Sarajevo Fund (the original headquarters of the Fund), the Mostar Fund and the RS Fund. Each fund then became exclusively responsible for the pensioners living in its controlled area. However, as a first step towards rationalization of this system, the High Representative, in November 2000, passed a Decision merging the two Federation funds into one, to be based in Mostar. Federation BiH Official Gazette, No. 49/00, 27 November 2000.

⁶³ See S. and Z. Elezovic. from Mostar vs. the Mostar Cantonal Court, 29 September 2000 (Case No. U 5/00), published in BiH Official Gazette, No. 1/01, 19 January 2001.

66. Other complications in the pensions system have included the absence of a pension fund for Brecko District, and, on a regional level, various problems resulting in the non-payment of pensions to Croatian Serb refugees temporarily resident in BiH, as well as to Bosnian Croats resident in Croatia.

67. While these problems affect many persons, it is crucial that the elderly in particular, as well as widows and single parents with children, are able to access their entitlements, as this is often the only source of income available to these categories of persons, and as these entitlements often also determine access to health care and other forms of social welfare benefits.

Access to Public Services

68. A number of problems have been identified with respect to access to public utilities and “obsolete debts”. In particular, a number of pre-conflict subscribers who have since repossessed their properties or who have had their homes reconstructed, are faced with discriminatory excessive charges for reconnection or are discriminatorily refused reconnection on the grounds of a lack of, for example, required telephone lines or materials. Additionally, a considerable number of persons were faced with bills incurred in their absence by displaced persons who had occupied their property during the period 1992-95. While the majority of these debts should have been considered obsolete, a number of persons paid portions under threat of disconnection, thereby canceling the limitation period.⁶⁴

69. Pre-conflict subscribers continue to encounter major difficulties in accessing public services, including electricity and gas services, in addition to telecommunications network reconnections. This affects in particular minority returnees. It should be noted that private lawsuits against public companies have been submitted to local courts (approximately 400 cases in Tuzla alone) where returnees were forced into living in inappropriate living conditions due to the disconnection of water, gas, and electricity supply.⁶⁵ It is evident, however, that the problem of discriminatory access to utilities is sustained by a number of recorded means, including the charging of inflated reconnection fees/war-time occupants’ usage costs to returnees, utility companies claiming a lack of ‘technical/network capacity’ to effect re-connections to returnees, and a deficient regulatory legal framework.

⁶⁴ UNHCR, OHR and OSCE established a Working Group to address these issues, and OHR issued a decision specifically on telephone connections in 1999. The Decision issued by the High Representative obliges the telephone companies to reconnect pre-war users for a maximum fee of 50 DM and prevents companies from collecting fees for periods when the pre-war user was not using the phone: High Representative, Decision on the Reconnection of Pre-Conflict Subscribers to the Telephone Networks, on 30 July 1999, published in the BiH Official Gazette, No. 18/99 of 25 October 1999, Federation BiH Official Gazette, No. 33/99 of 9 August 1999; and RS Official Gazette, No. 38/99 of 27 December 1999.

⁶⁵ Human Rights Co-ordination Centre, HRCC Quarterly Report: 1 September 2000–31 March 2001.

Access to Education

70. Despite some progress having been achieved over the past year, discrimination, segregation and bias continue to dominate education in BiH. School curricula continue to reflect the nationalist ideology of the dominant national group in any locality and minority returnees are regularly denied access to educational facilities, thus strongly militating against the return of minority families. Similarly, given the ‘ethnically’ divided nature of the curricula in operation, it would seem that even following the official ‘return’ of some families, the children of these families will continue either to live, or at least to attend school in the ‘other’ Entity, where the curriculum being taught is that of ‘their’ ‘ethnic’ group.

71. Both Federation and RS Ministers on 10 May 2000 signed a Declaration and Agreement on Education in BiH. This agreement affirms the commitment of the authorities of both Entities to pursuing the dual strategy supported by OHR, which focuses on removing offensive and ethnocentric material from textbooks and the curriculum, and on eradicating ‘ethnic’ bias from the educational system as a whole. The agreement also provided for the establishment of a national Curriculum Harmonization Board (CHB). A national Higher Education Co-ordination Board for university-level education was also established.⁶⁶

72. Despite these positive steps, however, the review and expurgation of textbooks and supplemental annexes in the RS and Federation has proceeded slowly, due to ongoing negotiations over sensitive issues such as history and literature. The removing of barriers for successful minority returns has also been impeded by the effective division of education systems along nationalist lines following, to a certain extent, directly from the decentralization and the fragmentation of authority within BiH, particularly in the Federation. For example, in the absence of a relevant Entity or BiH law, education in the Federation is a Cantonal matter and, in cases where the dominant constituent people in a given municipality differs from that in the canton as a whole, authority over education is given over to the municipality.⁶⁷ Furthermore, Croat-dominated areas of the Federation have modeled their education system, including holidays, on that in operation in the Republic of Croatia. Similarly, in the absence of any state-level education law, the RS maintains responsibility for its own unitary education system, modeled on that of the Federal Republic of Yugoslavia.⁶⁸

⁶⁶ This Board has been tasked, in the first instance, with the modernization of BiH’s currently underfunded, poorly managed and poorly co-ordinated system of higher learning institutions.

⁶⁷ In the RS, in contrast, education is an entity-level responsibility.

⁶⁸ In 2000, Serb and Croatian classes still used textbooks from FRY and Croatia, respectively. According to the Helsinki Committee in Bosnia and Herzegovina, there cannot be reconciliation in BiH in the long run if school children have different curricula on the basis of nationality and religion: see Helsinki Committee for Human Rights in Bosnia and Herzegovina, *Report on the State of Human Rights in Bosnia and Herzegovina: January-December 2000*, Sarajevo, January 2001. See also International Helsinki Federation for Human Rights, *Human Rights in the OSCE Region: the Balkans, the Caucasus, Europe, Central Asia and North America—Report 2001 (Events of 2000)*, at p. 75.

73. In many places throughout BiH, nationalist manipulation of schools and acts of discrimination continue to take place. For example, in Velika Kladusa, four pupils were dismissed from their lessons for not wearing traditional Muslim clothing. Several cases of harassment of pupils were also reported in the Catholic school in the Sarajevo settlement of Stup.⁶⁹

74. The denial of access to educational facilities is a serious impediment to the return of minority families. Nevertheless, real progress towards eradicating ‘ethnic’ segregation from the education system has so far been minimal, and it is expected that the work of the Curriculum Harmonization Board in this regard will be obstructed within both the Federation and RS. Thus, it is not surprising that despite a number of recent successes in resolving school crises in the Federation, and the re-integration of primary schools in, for example, Stolac and Vares, it must be noted that the direct political intervention of the international community was required before these cases could be resolved successfully. There are currently indications that such direct involvement will continue to be necessary over the foreseeable future.

Access to Employment

75. The economies of both Entities remain in a fragile state, with unemployment hovering around 40 per cent in the Federation, and even higher in the RS.⁷⁰ International aid is decreasing, and living standards are also declining. Reductions in aid are resulting in greater pressure on national authorities to improve the economic situation of its citizens, and the extent of fraud and corruption at higher levels of government are becoming more apparent as greater moves towards openness and transparency are demanded by the international community in the course of the ongoing economic reform of the country.⁷¹ As noted by the International Crisis Group, “Bosnia’s economic situation is bleak... if the foreign investment on which the country must rely is to flow, the numerous obstacles to setting up businesses, making money legally and enjoying the fruits of success must be removed”.⁷²

76. The limited employment opportunities are compounded by widespread discrimination based on ethnicity, political affiliation or gender. In addition to political obstacles, the current state of the economy often does not allow minority returnees to reintegrate into the employment market. Pressure on the employment market is already high since the BiH economy does not generate enough jobs to absorb all or even a substantial part of the

⁶⁹ See International Helsinki Federation for Human Rights, *Human Rights in the OSCE Region: the Balkans, the Caucasus, Europe, Central Asia and North America—Report 2001 (Events of 2000)*, at p. 75.

⁷⁰ See EIU, *Country Profile 2001: Bosnia and Hercegovina*, June 2001; and also OHR Newsletter, *Economic Reform and Reconstruction in BiH*, Vol. 4, Issue 3, Sarajevo, July 2001.

⁷¹ On 22 September 2000, the United Nations Development Programme (UNDP) launched a second national human development report for BiH. See also UNDP, *The 2000 Report of the UN Resident Coordinator for Operations for Development, BiH*, available at www.undp.ba; and United Nations Security Council, *Report of the Secretary-General on the United Nations Mission in Bosnia and Herzegovina*, S/2000/1137, 30 November 2000.

⁷² International Crisis Group, *Bosnia’s Precarious Economy: Still Not Open for Business*, Sarajevo/Brussels, August 2001, p. 43.

available workforce. It is also feared that discrimination based on ethnicity, political affiliation and/or gender will affect the selection criteria of those who may lose their employment as a result of economic reform.

77. Discriminatory dismissal or recruitment based on ethnicity, political affiliation, membership in a particular trade union or participation in social movements is especially prevalent in local administrations at all levels, public enterprises, the legal profession, the medical field, schools and universities. Such discrimination, in particular on account of ethnicity, started during the conflict, when the employees who were displaced were either dismissed or put on waiting lists. There are also certain concerns that the privatization process in some parts of BiH is taking place in a corrupt fashion, and that the result may be that many companies come to be owned entirely by one ‘constituent people’, which may in turn have a negative impact on non-discriminatory employment practices.

78. Bearing in mind the above considerations, the international community has adopted a dual strategy towards eliminating the problems of ‘ethnic’ discrimination in employment, focusing on legislative reform of the RS⁷³ and Federation Labour Laws⁷⁴ to ensure that the shift from the pre-war socialist system to a free market economy is carried out in a non-discriminatory fashion, and on implementation of a joint, inter-agency anti-discrimination strategy, designed to support the adoption of a set of fair employment principles.⁷⁵ The key elements in this strategy are audits of the employment practices of selected enterprises, and encouragement on the part of donors to condition their aid and investment on the adoption by recipient enterprises of non-discriminatory hiring and firing practices.

79. To date, both the RS and Federation Labour Laws have been reformed. Anti-discrimination clauses have been included in both laws, and retro-active provisions have been included in both of the Laws to provide a measure of compensation, albeit largely symbolic (pre-conflict employers are, in the majority of cases, not obliged to re-hire those pre-conflict employees dismissed from their jobs) for discrimination and loss of jobs suffered during the conflict in BiH.⁷⁶

80. It is indisputable that a clear pattern of employment discrimination on ‘ethnic’ and political grounds appears to prevail in post-conflict BiH. The few existing economic opportunities are reserved for those who provide political support to the dominant political parties. As property re-possession continues to increase in pace, such discrimination – based on past experiences and on a currently justifiable fear of future discrimination – becomes an increasingly significant deterrent to minority return.

⁷³ *RS Labour Law*, RS Official Gazette, No. 38/00.

⁷⁴ *Federation BiH Labour Law*, Federation BiH Official Gazette, Nos. 43/99 and 32/00.

⁷⁵ *Prevention and Elimination of Discrimination in Employment-Fair Employment Practices Strategy Policy Paper*, OHR, UNHCHR, UNHCR, OSCE, December 2000.

⁷⁶ Article 152 of the RS Labour Law provides for compensation of persons whose employment was ‘illegally’ terminated after the commencement of the war in 1992. Articles 143 and 143a of the Federation Labour Law provide either for similar compensation or re-employment. Implementation of both sets of provisions, however, has been extremely problematic.

3. SPECIFIC FACTORS AFFECTING PARTICULAR CATEGORIES OF PERSONS IN CONTINUED NEED OF INTERNATIONAL PROTECTION

81. UNHCR continues to advocate for third country resettlement of refugees from BiH in need of special care, persons of mixed ethnicity/marriage, potentially stateless refugees, and other specific categories of vulnerable individuals including known witnesses testifying before the ICTY, whose return would raise serious concerns simply because no adequate protection or assistance regime is as yet in place.

3.1 Humanitarian Considerations

Compelling Reasons Arising out of Previous Persecution

82. Individuals who can invoke compelling reasons arising out of their past persecution for refusing to return to BiH continue to be in need of international protection. Some forms and experiences of persecution are so atrocious, and have such devastating psychological effects, that even after a fundamental change in circumstances, individuals should not be forced to return against their will. For BiH, this category of persons would include those who are severely traumatized, former camp or prison detainees, victims or witnesses of violence, including sexual violence, as well as persons testifying before the ICTY.

83. Persons who have suffered persecution, especially at the hands of the local population, cannot reasonably be expected to re-integrate into society. Such persons often suffer severe trauma and post-traumatic stress disorder, both conditions that are likely to be exacerbated by current conditions in BiH. These persons may face extreme challenges to re-integration, including internal displacement, lack of family or community support, limited available and adequate accommodation, and lack of any form of viable social assistance. Psycho-social services in BiH are inadequate for dealing with this type of war trauma. It is not only the lack of re-integration potential due to resource and service deficiencies, but the real potential for re-traumatization (and victimization) caused by return to the site of traumatic experiences, which may provoke severe psychological reactions.

84. In addition, potential threats arising from the continuing local presence and influence of indicted or other war criminals, many of whom are still living freely in Bosnia, is also a very real fear for many persons belonging to this category. It is therefore crucial that traumatized persons, especially ex-camp or prison detainees, victims of sexual violence and torture, as well as other traumatized persons are not forced to return against their will. Instead, they should be offered durable solutions outside BiH.

Individuals in Need of Special Care / Extremely Vulnerable Individuals

85. While the availability of the necessary treatment or facilities for meeting the particular needs of medical cases and socially vulnerable persons, such as mentally and physically handicapped persons or the elderly, must play a role in deciding whether or not to support the return of such persons, a number of other factors must also be borne in

mind. These include both the availability to an individual of adequate financial resources to fund necessary care (since the former social policy of free access to social services and health care, applied under the socialist system, has changed with the introduction of fees to access health care and social services), as well as the consideration that vulnerable returnees in general do not have access to proper treatment and to medical facilities.⁷⁷ Provided there are no other protection problems, the possibility of repatriation of individuals in need of special care should be assessed on a case-by-case basis. Returnees without prospects of re-integration run the risk of ending up in collective centres, which the local authorities and UNHCR are trying to phase-down by providing solutions to the displaced residents.⁷⁸

86. The reintegration of elderly persons without family support can also prove particularly difficult. The elderly in BiH represent close to 11 per cent of the total population as opposed to the 1991 figure of 6.5 per cent. UNHCR discourages the creation of new institutions for vulnerable persons, as these often do not allow those concerned to exercise their rights for a dignified return. Moreover, such institutions often represent an expensive model of care, for which the authorities in BiH are unable to provide the necessary funds to sustain in the immediate future. As in any repatriation, children separated from their families or traditional caretakers must be accorded special care and attention, particularly regarding their legal status and special protection needs.

87. UNHCR has also identified three specific obstacles to return affecting female-headed families, single women and extremely vulnerable women, as well as women with missing husbands, widows (civilian and military) and abandoned women,⁷⁹ survivors of sexual violence and torture and severely traumatized women.⁸⁰ These obstacles include a lack of family or community support, pronounced fears for personal security and psychological trauma.

3.2 Members of the Roma Communities

88. The pre-war Roma population in BiH numbered approximately 50,000 – 60,000 and may be higher as this figure does not include those who declared themselves as ‘Yugoslavs’, ‘Muslims’ or ‘Others’. No updated figures of the post-conflict population are available and accurate statistics on the Roma population in general are difficult to obtain.⁸¹

⁷⁷ Please see section above on ‘Health Care’.

⁷⁸ As of August 2001, there were 7,408 vulnerable displaced persons throughout the country accommodated in Collective Centres administered by the two Entity Governments. The majority of these persons have been living in these centres from the early phase of the war. With no houses and relatives to provide support, they remain the largest single group which have been left out from the post-conflict recovery. UNHCR Official Records, available at www.unhcr.ba.

⁷⁹ The term ‘abandoned women’, for the purposes of this study, refers to women who have been deserted by their husbands, as opposed to women who have agreed with their husbands to separate or divorce.

⁸⁰ For details, see UNHCR, *Daunting Prospects, Minority Women: Obstacles to their Return and Integration*, Sarajevo, April 2000.

⁸¹ See also *Europe’s Spectral Nation*, The Economist, 12 May 2001, p. 29.

89. Before the conflict, many Roma lived in what is now the Federation of BiH, especially in urban areas such as Sarajevo and Tuzla. Many Roma also lived in what is now the RS, predominantly in the eastern region near the areas of Bijeljina and Zvornik, as well as Brcko. Many of those displaced from this region are still living abroad or remain displaced in the Federation. Having been generally displaced during the war, Roma returnees often encounter extremely difficult conditions including widespread discrimination in terms of access to employment, to adequate education for children, to social services and health benefits, and to adequate housing. Roma in BiH can also be subjected to acts of violence perpetrated by residents of return areas.⁸² Attacks by Croat nationalists against returning Roma have been registered in eastern Bosnia and the return of Roma has also been seriously hindered by local authorities in the RS, one example being in Bijeljina, where municipal and Entity military and civil institutions had been situated in former Roma houses, including the Ministry for Displaced Persons and Refugees, the Military Court, and the RS Directorate for Privatization.⁸³

90. Roma constitute a large minority group in BiH and yet are often overlooked in all spheres of public life. The absence of ‘national minority status’ for Roma and a general lack of awareness that the Roma constitute a minority group add to the difficulties and prejudices encountered by Roma returnees. The Stability Pact for South-Eastern Europe has suggested that in the year 2001, which has been declared the International Year of the Roma, both governmental organizations and NGOs in the Region focus their efforts on the plight of the Roma.⁸⁴

3.3 Former Abdic Supporters

91. Due to the volatile political situation in BiH, returnees who were/are supporters of the Demokratska Narodna Zajednica (DNZ – also referred to as former supporters of Fikret Abdic), may encounter significant obstacles to return (such as threats to physical safety and employment discrimination) and may be considered as being in need of continued international protection. This applies both to those who were involved with the leadership and military of the DNZ during the war and also to general supporters of Fikret Abdic. While discrimination of Abdic supporters can occur throughout BiH, a particularly widespread pattern of discrimination against those who are, have been, or may have been imputed to have been Abdic supporters is noticeable in Velika Kladusa (VK) in Canton 1 of the Federation.

92. Generally, the frequency of problematic security issues involving Abdic supporters in VK has decreased since 1995. Localized incidents of violence and property damage still occur, however, on a regular basis. Despite the reduction in security incidents, Abdic supporters in the VK region continue to have little confidence in the local police. Due to

⁸² For relevant examples, please see European Roma Rights Centre, *In Bosnia, No Justice for Roma*, Budapest, May 2001.

⁸³ International Helsinki Federation for Human Rights, *Human Rights in the OSCE Region: the Balkans, the Caucasus, Europe, Central Asia and North America—Report 2001 (Events of 2000)*, p. 73.

⁸⁴ Human Rights Co-ordination Centre, HRCC Quarterly Report: 1 September 2000 – 31 March 2001.

their DNZ affiliation, they continue to fear discrimination by the police and acts of revenge.⁸⁵

3.4 Persons in Mixed Marriages and Persons of Mixed Ethnicity

93. It is UNHCR's position that the assessment of the possibility for the return of persons of mixed marriages or persons of mixed ethnicity will have to be conducted on a case-by-case basis. In many areas mixed couples and persons of mixed ethnicity continue to face discrimination in employment and access to housing and education possibilities for their children. Moreover, the children of mixed marriages can encounter particular problems in re-integration, including the difficulty of being forced to choose their own 'ethnic' identity. As noted by the Federation Ombudsmen, "[a] special form of discrimination related to [a] child's right to a name and identity occurs in schools where names of children are used for perfidious discrimination."⁸⁶ The return of these persons to certain areas can be confronted with violence or harassment, uncertainty, instability and also invokes the real possibility of re-traumatization.

3.5 Wartime and Post-War Draft Evaders and Deserters

94. As noted above, amnesty laws have now been adopted in both Entities. Nonetheless, as full implementation of the provisions of these laws remains uncertain, UNHCR recommends that special attention be given to deserters and draft evaders who claim a need for international protection, and that such claims should be considered on a case-by-case basis, taking into consideration the particular concerns each individual may put forward. It is important to point out, that even if the amnesty legislation is actually enforced by the relevant authorities, deserters and draft evaders might, in some instances, be faced by discrimination and harassment on the part of other individuals, without the assurance of effective national protection.

3.6 Potentially Stateless Persons

95. The SFRY was characterized by a double level of citizenship, i.e. all former SFRY citizens were citizens of the State and had also internal citizenship of one of the six SFRY Republics (BiH, Croatia, Macedonia, Montenegro, Serbia and Slovenia). However only SFRY citizenship had international significance.⁸⁷ The first BiH Law on Citizenship used the internal citizenship of the former Socialist Republic of BiH as a basis for determining

⁸⁵ It has been reported that the local IPTF station receives an average of ten complaints per week regarding discrimination of the local citizens by the police, although this number increases in times of political rallies. Alleged employment discrimination against former Abdic supporters occurs primarily within the educational system. The judicial system within Canton 1 also apparently discriminates against former Abdic supporters by delaying the judicial process, thus making it difficult for legal issues to be resolved. Additionally, DNZ affiliates may face threats to their personal security and experience discrimination throughout BiH.

⁸⁶ Ombudsmen of the Federation of BiH, *Report on Human Rights Situation in the Federation of Bosnia and Herzegovina for 2000*, Sarajevo, March 2001, p.31.

⁸⁷ According to the Citizenship Laws of the former SFRY, SFRY citizens could freely choose the citizenship of any republic with which they had a link (residency, employment, origin), irrespective of the republican citizenship they acquired at birth.

the initial body of citizens of the newly-independent State. However, the various citizenship laws adopted by the successor states were not all comprehensive and several individuals who lived in one of the former SFRY Republics but who had the internal citizenship of another Republic, are now facing difficulties in establishing their citizenship. In particular, due to the practical non-relevance of Republic Citizenship, citizens often did not change their Republic Citizenship despite residing for years in a different Republic. This is the main source of concern in evaluating the risk of *de facto* statelessness today. In BiH, as elsewhere, a “failure to acquire [legal] status...creates significant problems...including the right to vote, to own property, to have health care, to send one’s children to school, to work and to travel to and from one’s country of residence.”⁸⁸ Many of these difficulties are exacerbated by the lack of a fully implemented and adequately functioning citizenship regime in BiH.⁸⁹ Given these considerations, as well as the continued international support for the prevention of statelessness, UNHCR would recommend that the return of individuals who may be considered stateless not be undertaken without the prior resolution of these issues.

3.7 Journalists

96. While independent media sources are accessible in BiH, journalists critical of the government or of leading political officials or those connected with them have been attacked, received death threats, or were prosecuted for libel.⁹⁰

97. These politically motivated attacks on independent journalists illustrate a wider pattern of intimidation and harassment which has now developed and may affect other categories of persons, such as prominent members or leaders of non-nationalist political parties, intellectuals, judges, and lawyers who may experience human rights violations if voicing opinions contrary to those of the ruling parties.⁹¹

⁸⁸ Carol A. Batchelor, *Statelessness and the Problem of Resolving Nationality Status*, International Journal of Refugee Law, (Volume 10, 1998), Oxford University Press, pp. 182-3.

⁸⁹ See above section on ‘Citizenship’.

⁹⁰ OSCE reported in April 2000 that since the end of 1999, 65 cases had been reported where the civil rights of journalists had been violated. Many of these incidents occurred in March and April of 2000, which coincided with municipal elections. In May 2000, OSCE established a help-line for journalists experiencing violations of their rights and by August, 39 new incidents had been reported in the RS and the Federation. See also International Helsinki Federation, 2001 Report, p. 68-69.

⁹¹ In June 2000, Edin Avdic, a reporter for the Sarajevo-based independent weekly *Slobodna Bosna*, was beaten and threatened with death in front of his home in Sarajevo. He had been threatened a week prior to the incident by a local businessman affiliated with a nationalist political party because Avdic had apparently criticized the cultural policies of this party. Also in June, five men were arrested who were thought to be connected with a car bomb attack in October 1999 that caused Zeljko Kopanja, editor of the Bosnian Serb independent newspaper *Nezavisne novine*, to lose both of his legs. All five were later released without being formally charged. In March 2001, a car owned by a Bosniac returnee from Sanski Most, who works as a journalist and is the director of a TV station, was blown up in Prijedor. For other examples of harassment of journalists, see International Helsinki Federation, 2001 Report, p. 68-69.

3.8 Other Categories of Persons at Risk

98. The aforementioned categories of persons in continued need of international protection have been analyzed primarily from the perspective of a previously recognized need of international protection, and are not exhaustive. There may be categories of persons at risk other than those listed above. Given this consideration, it is UNHCR's position that persons from BiH who lodge an asylum application today should, like all other asylum-seekers, be afforded full access to regular status determination procedures, for consideration of their applications on a case-by-case basis.

4. OVERALL ASSESSMENT

4.1 The Need for Case-By-Case Assessment

99. Although the general situation in BiH has improved considerably with the increasing number of minority returns and improved freedom of movement, serious security incidents (involving grenades, explosions of houses and cars, attempted mobbing, etc.) are from time to time reported in minority-return areas. Serious obstacles to sustainable re-integration remain and continued discrimination results in the denial of basic civil, political, economic, social and cultural rights. In contested minority return areas, the climate of mistrust, and the effectiveness of the police, judiciary and local authorities to protect the human rights and security of members of minorities, remains especially weak.

100. Given this consideration, asylum claims should continue to be individually assessed, not only with regard to the individual circumstances of the claimant (ethnicity, violence/trauma suffered, ICTY witness, etc.) but also with regard to the particular place of origin (municipality, village etc.), as the security situation and possibility to return in safety and dignity may vary significantly from place to place in BiH. The impossibility of providing a blanket assessment of the conditions that asylum seekers, if rejected, would face if returned to BiH confirms the need for a case-by-case analysis.

4.2 The Internal Flight Alternative

101. It is UNHCR's position that the application of the so-called "Internal Flight Alternative" or "Relocation Principle" – determining when a person could successfully avoid a risk of persecution which may be present in one part of the country by moving to another location inside the country of origin - cannot be used to by-pass a substantive assessment of the asylum claim. Rather, such an assessment may, in certain circumstances, be part of the holistic analysis of the claim. Such considerations should therefore not lead to 'accelerated admissibility' or 'manifestly unfounded' procedures.⁹² Due attention must be paid in the course of the refugee status determination to the circumstances in the place of origin and to the reasonableness of relocating internally as

⁹² UNHCR Position Paper, "Relocating Internally as a Reasonable Alternative to Seeking Asylum – (The So-Called "Internal Flight Alternative" or "Relocating Principle", February 1999. See also UNHCR Position Paper "Interpreting Article 1 of the 1951 Convention Relating to the Status of Refugees", April 2001, at par. 12 and 13.

opposed to seeking asylum abroad.⁹³ Many of the issues outlined in this document may be of relevance in assessing the reasonableness of the relocation for the person concerned. For example, the assessment should include not only an analysis of the person's individual circumstances, but also other elements such as the absorption capacity in the area of displacement as well as the prospects of finding accommodation, legally, durably and without undue hardship.

4.3 Return of Rejected Cases

102. Attention should also be paid to the parameters within which assessments are made of the possibilities for return to BiH of BiH citizens who are not in need of international protection. To the extent possible, returns should be voluntary and based on an informed choice. Thus, the provision of return counseling, also by non-governmental organizations, and all other measures which could ensure a "soft landing" of such persons, is important. As reiterated by UNHCR's Executive Committee, "returns should be undertaken in a humane manner and in full respect for their human rights and dignity and without resort to excessive force."⁹⁴ The efficient re-integration of persons not in need of international protection can help in preventing future migration.

103. The preferred sustainable solution for these persons is clearly that of voluntary return to their pre-conflict homes. This is the very heart of Annex 7 of the GFAP and should be pursued by all means if the persons concerned want to return to their pre-conflict homes and the security situation on the ground allows for such return. Host countries should be fully aware, however, of the possible effect of forced or induced repatriation into situations of displacement, which generally provide few or no prospects for sustainable re-integration. In addition, as the current acceleration in the implementation of the property laws in BiH has increased the need to find alternative accommodation for temporary occupants who are evicted, increasing pressure has been placed on the housing stock available. As a consequence, the absorption capacity in many areas for returning refugees has also decreased.

104. The problem of housing space in BiH is acute. The homes of origin of most persons who are displaced are either destroyed or occupied. At the present rate, the property repossession process will take several years to be completed. The possibilities of reconstruction assistance are also limited, as indicated by UNHCR's assessment in August 2000 of a reconstruction gap of more than 18,000 housing units for returnees

⁹³ "In UNHCR's view, the use of this notion to deny access to refugee status determination, rather than situating it within the framework of the status determination analysis, risks seriously distorting refugee law. Moreover, even when examined in the context of substantive determination procedures, this notion is often applied without due regard for the circumstances in the displacement area, and the reasonableness of relocating internally as opposed to seeking asylum. This is particularly pertinent in the case of so-called "failed States" where political fragmentation means that it is no longer possible to equate a State with its constituent parts", Executive Committee of the High Commissioner's Programme, *Note on International Protection*, UNGA A/AC.96/914, 7 July 1999, at p. 6, par. 26.

⁹⁴ UNHCR's Executive Committee, Conclusion No.85 (XLIX) of 1998.

already existing then. This gap has increased to 22,000 during 2001.⁹⁵ The situation of a person returned to BiH while his/her house of origin is occupied or destroyed may well become desperate, leading to further displacement.

105. Furthermore, and as mentioned, the GFAP enshrines the right of every refugee and displaced person from BiH to return to their place of original residence (as opposed to merely their country of origin). For this right to be effectively enabled, it should be underlined that returnees from abroad must be able to respect the property rights of others, and cannot be forced to occupy contested property, as may result from forced repatriation. These inter-linkages between rights are very specific to BiH, and should be taken into account by authorities in countries of asylum if they are to avoid playing into the hands of nationalist authorities who desire the prevention of minority returns and seek to ensure the continued 'ethnic' separation.

106. Finally, the modalities of return of displaced persons within BiH should be carefully considered. The dynamics of return to minority areas (especially in the RS) have been such that only once several families from any given village decide to return will others consider joining them. This pattern of 'group return' is logical when one considers the security concerns and the often-justified apprehensions generally borne by returnees until a 'critical mass' is achieved. This pattern also implies, however, that it is extremely rare for one family to return alone to a village in a rural area. Therefore, although returns to rural areas are possible, UNHCR strongly recommends against the induced return of a family to a village in which no prior returns have taken place.

4.4 Prospects for Local Integration

107. The same considerations apply to the local integration of displaced persons. Article 1, paragraph 4 of Annex 7 of the GFAP provides that "choice of destination shall be up to the individual or family", thereby allowing persons so displaced the right to choose to locally integrate in their place of current residence. UNHCR has underlined that to be acceptable, local integration must respect the property rights of others, must be voluntary and must be based on an informed choice as to the desired place of residence. In fact, it should also be noted that the fact that persons who have been displaced within the Federation of BiH for a number of years now resolve to flee abroad might be seen as anticipatory of the possible prospects for persons who are repatriated into a situation of internal displacement. Although these persons survived the conflict, local integration is for many evidently not a viable durable solution.

108. During the reporting period, UNHCR has noticed that the construction of new housing to settle displaced persons in the place of displacement commenced in certain areas. The areas most affected are the RS⁹⁶ and the Croat-controlled areas of Canton 7.

⁹⁵ UNHCR/OHR, *BiH Housing Requirements by Municipality for On-Going Minority Returns for the Year 2001* (Map), Sarajevo, June 2001. See also UNHCR, *Winterization Programme in BiH 2001-2002*, Sarajevo, 31 August 2001.

⁹⁶ A DM 43 million project of the RS Government to provide new housing to Collective Centre residents was implemented between 1998 and 2000. This resulted in the ongoing construction of 1400 apartments, 291 of which have reportedly been completed.

Of particular concern is that many of these new housing projects, approved by the present municipal local authorities, are initiated on private land belonging to potential minority returnees, or on socially-owned land. In order to limit this growing phenomenon, the High Representative in April 2000 passed a decision whereby state-owned real property, including former socially-owned real property, may not be disposed of by the local authorities without a written exemption granted by OHR.⁹⁷ The High Representative's Decision has been largely ineffective, however, as many municipalities either have not requested waivers, or have failed to provide the required documentation.

109. At this point in time it is difficult to assess how many displaced persons have indeed decided to settle in their places of displacement within BiH. However, according to the re-registration of displaced persons carried out by the authorities in the last quarter of 2000, out of a total of 518,000 applicants, a significant number in the RS indicated that they would like to permanently settle in their place of displacement.

4.5 Categories of Asylum Seekers

110. UNHCR does distinguish between different categories of asylum-seekers from BiH. BiH citizens who left during the conflict, who have left BiH shortly after having been forced to repatriate from countries where they had benefited from international protection until recently, and who are arriving directly from other countries where they had benefited from international protection, are assumed *prima facie* to be in need of international protection.

111. In relation to BiH citizens who have been living as displaced persons in BiH and who recently left the country, this position would not automatically apply. The claims of these new arrivals should also be substantively assessed on their merits, and many of the issues outlined in this document may be of relevance in assessing whether such individuals are in need of international protection. In particular, the assessment of the "Relocation" option should look at whether this option is reasonably available now and for the foreseeable future.

4.6 Investing in the Future

112. Although returns are taking place in virtually all municipalities of BiH, repatriation to BiH must continue to take place, whenever feasible, on a voluntary basis and only after

⁹⁷ Office of the High Representative, *Decision on the re-allocation of socially-owned land*, 27 April 2000, (BiH Official Gazette No. 13/00 of 12 May 2000; Federation BiH Official Gazette, No. 17/00 of 15 May 2000; RS Official Gazette, No. 12/00 of 4 May 2000). According to this Decision, state-owned real property, including former socially-owned property (but excluding socially-owned apartments), may not be disposed of by the BiH authorities. Any decision on the allocation of socially-owned land made after 6 April 1992, which affects the rights of displaced persons and refugees, was declared null and void. This Decision was valid until 31 December 2000, and was later extended twice, first until 30 March 2001 and then until 31 July 2002 (see respectively High Representative's *Decision extending by three months, until 30 March 2001, the validity of the 27 April 2000 Decision on the re-allocation of socially-owned land*, 20 December 2000; and *Decision extending the validity of the 27 April 2000 Decision on the re-allocation of socially owned land until the authorities pass appropriate legislation or latest until 31 July 2002*, 30 March 2001).

careful consideration of all relevant facts. Not only is pressure on available housing stock severe, but moreover, protection and other humanitarian considerations, as detailed in this report, strongly speaks against the involuntary return of BiH citizens from asylum countries into situations of internal displacement in BiH. This, unfortunately, has been the case for a high number of minorities, originally from the RS, who have been returned to BiH, only to further swell the numbers of those remaining displaced within the Federation. Aside from the physical limitations on accommodation available for these persons, should the conditions not be met for return to the places of origin of these persons, it is possible that induced repatriations may simply serve to jeopardize the future chances for re-integration of these individuals, further destabilizing the fragile social and political fabric of BiH.

ANNEX I : MAP OF BOSNIA AND HERZEGOVINA