

13 March 2013

Subject: **Draft Law on Refugees from BiH, DPs and Returnees**

Dear Ms. Pandurevic,

We wish to take this opportunity to commend the institutions of Bosnia and Herzegovina (BiH) for their commitment to ensuring full implementation of the goals set out in the Revised BiH Strategy for the Implementation of Annex VII of the Dayton Peace Agreement (Revised Strategy) as well as to affirm our long-standing support to BiH in all matters related to displacement and, in particular, to ensuring sustainable return. While the eventual adoption of the Draft Law on Refugees from BiH, DPs and Returnees (Draft Law) could mark an important step towards meeting the stated goals of the Revised Strategy, we are concerned that, in its current form, it does not contain all the necessary elements to ensure sustainable return as envisioned by the Revised Strategy. With this in mind, we have outlined our main concerns below and have attached technical comments as an annex.

- *The Draft Law does not fully incorporate the recommendations of the Revised Strategy*

The Revised Strategy contains many recommendations for addressing identified problems in sustainable return. These recommendations, if transposed into the Draft Law, could greatly enhance its efficacy. For example, the Draft Law's handling of the issue of damage compensation does not reflect the recommendations in the Revised Strategy. In addition, there are lacunae in the Draft Law on a variety of related issues, such as the definition of "other types of assistance" available to returnees, which is not clearly specified in a manner consistent with the recommendations of the Revised Strategy.

- *References to the participation of observers in the Commission are missing in the Draft Law and should in our view, be restored*

It appears that the Commission for Refugees and Displaced Persons as envisaged by the Draft Law would not include international organizations and domestic civil society associations as observers. We hope that observers will continue to be included in the Commission for Refugees and DPs, as has been the case in the past, as we believe such inclusion will contribute to the success, efficiency and transparency of the process.

Ms. Aleksandra Pandurević, Chair of the Joint Committee for Human Rights, Rights of the Child, Youth, Immigration, Refugees, Asylum and Ethics

Cc.: Joint Committee for Human Rights, Rights of the Child, Youth, Immigration, Refugees, Asylum and Ethics,
Minister of Human Rights and Refugees

- *We recommend that the Draft Law clearly specify a satisfactory coordination mechanism for the implementation of the Revised Strategy*

We note that Chapter VII, Article 18 of the Draft Law seeks to clarify the role of the Ministry for Human Rights and Refugees (MHRR) in coordinating implementation of the Revised Strategy. In our view this Chapter offers an important opportunity to clearly specify a satisfactory coordination mechanism for the implementation of the Revised Strategy, including with respect to the role of the MHRR, together with key international partners, in establishing regular coordination meetings with relevant ministries at State and Entity level to resolve the remaining obstacles faced by IDPs and returnees. Such a mechanism could result in more comprehensive implementation of measures recommended in the Revised Strategy.

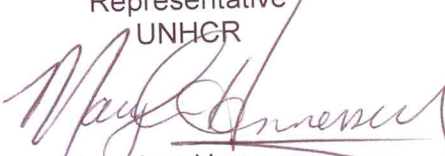
We hope that you will find our observations in this letter, as well as those in our annex, helpful during the course of revising the Draft Law in the parliamentary procedure. Our comments have been agreed upon by our respective organizations on the basis of prior consultations with MHRR, and are based on international "best practices."

We would value the opportunity to consult with the Joint Committee for Human Rights, Rights of the Child, Youth, Immigration, Refugees, Asylum and Ethics on the Draft Law on these issues. Your co-operation and commitment are, as always, much appreciated. Please be assured of our continuing availability for technical support and feedback on this and related legislation.

Yours sincerely,


Andrew Mayne

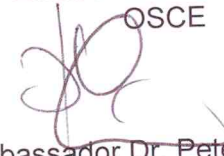
Representative
UNHCR


Mary Ann Hennessy

Head of Sarajevo Office
Council of Europe


Ambassador Fletcher M. Burton

Head of OSCE Mission
OSCE


Ambassador Dr. Peter Sorensen

Head of the Delegation and EU
Special Representative

Attachment: Technical annex

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ANNEX

- In addition to including actors from the international community on the Commission for Refugees and DPs, we strongly urge you to include representatives of the “Others” and of refugee, DP and returnee associations. Their inclusion could signal the government’s commitment to non-discrimination and inclusive decision-making as well as contribute to the transparency and effectiveness of the process;
- We suggest aligning the law’s definition of compensation and of who is eligible to receive compensation with the Revised Strategy, including by ensuring that it reflects the “Identified problems and recommendations for improvements relating to the right of damage compensation” outlined therein. It should also make reference to the concerns discussed in the *Concept Note for Addressing the Issue of Damage Compensation for Property Which Cannot Be Restored to Refugees and Displaced Persons in Terms of the Rights Ensured in Annex VII of the Dayton Peace Agreement*, which appears in Annex II of the Revised Strategy, and should reflect Principle 21 of the *Pinheiro Principles*, which provides that: “all refugees and displaced persons have the right to full and effective compensation as an integral component of the restitution process;”
- We believe it is important that Article 2 define refugee in keeping with international law, in particular the 1951 Refugee Convention regulating the Status of Refugees and its additional 1967 Protocol, and that, therefore, the five Convention grounds of persecution, including race, should all appear in the definition;
- In defining “return” we strongly encourage the committee to adopt the language of the EU Returns Directive,ⁱ which provides for persons “to be returned in a humane manner and with full respect for their fundamental rights and dignity;”
- We urge you to revise the definitions of “property” and “property which cannot be restored” so that they are precisely defined in a manner consistent with the Revised Strategy. We recommend that the Draft Law provide sufficient guidance to the entities in defining DP status (Article 4.2) and cessation of DP status for “other reasons” (Article 5.c) so as to avoid inequitable or capricious outcomes which may lead to different treatments in each Entity; the conditions for acquisition and termination of refugee, returnee and displaced persons status should be precisely defined and should support the harmonization of these conditions and definitions throughout the territory of BiH;
- We note that it is not clear whether “other rights” as stated in Art. 7.3 refers to RDP legislation at lower levels or to general legislation; if the latter, then other BiH legislation should be included, so as avoid disparate and inequitable application of the law at the entity and cantonal levels. Such an approach would be in line with MHRR’s role in creating and directing a policy that ensures a uniform and harmonized realization of the goals of Annex throughout the territory of BiH;

- When describing the right to return (Article 8.1), we suggest making reference to informed and voluntary choice;
- Article 11.1.a should provide for the issuance of bylaws to regulate the provision of assistance for reconstruction of damaged and destroyed property;
- Article 11.1.c should clearly state what is meant by “other types of assistance” and should ensure that the assistance envisioned by the Revised Strategy is included in the definition;
- We urge the committee to ensure that Article 11.2 does not impermissibly restrict the freedom of movement of returnees receiving return assistance in special circumstances;
- We propose that the “prescribed standards” for provision of assistance for construction of housing units in new permanent residence - as referred to in Art. 12.1.b - be clearly defined in the Draft Law;
- Art. 14 should include the main criteria for the selection of beneficiaries.

ⁱ **DIRECTIVE 2008/115/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals**