

**Land Tenure Issues
in Post-Conflict Countries
the Case of Bosnia and Herzegovina**

**Sector Project:
Land Tenure in Development Cooperation**

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Abbreviations

ABA	American Bar Association
ADR	Alternative Dispute Resolution
AFWM	Agriculture, Forestry, Water Management
ARC	American Refugee Committee
BiH	Bosnia and Herzegovina
CEELI	Central and Eastern European Law Initiative
CRPC	Commission for Real Property Claims of Displaced Persons and Refugees
DP	Displaced Person
EC	European Commission
ESI	European Stability Initiative
FAO	United Nations Food and Agriculture Organization
FBiH	Federation of Bosnia and Herzegovina
FRY	Federal Republic of Yugoslavia
GFAP	General Framework Agreement for Peace in Bosnia and Herzegovina
GTZ	Deutsche Gesellschaft für Technische Zusammenarbeit
IC	International Community
ICG	International Crisis Group
ICMPD	International Center for Migration Policy Development
ICRC	International Committee of the Red Cross
ICVA	International Council of Voluntary Agencies
IDIS	Ideja, Demokratija, Investicija, Subvencija
IFOR	Implementation Force
IMG	International Management Group
IOM	International Organization for Migration
IPTF	International Police Task Force
IRC	International Rescue Committee
LA/IC	Legal Aid/ Information Center
LACs	Legal Aid Centres
NATO	North Atlantic Treaty Organization
NGO	Non-Governmental Organization
OHR	Office of the High Representative
OSCE	Organisation for Security and Cooperation in Europe
PFD	Partners for Development
PIC	Peace Implementation Council
RRTF	Return and Reconstruction Task Force
RS	Republika Srpska
SFOR	Stabilisation Force
SHC	Sarajevo Housing Committee
U.S.	United States of America
UN	United Nations
UNCHS	United Nations Center for Human Settlements
UNDP	United Nations Development Programme
UNHCR	United Nations High Commissioner for Refugees

Executive Summary

The study was performed as part of the sector project Land Tenure in Development Cooperation. It hopes to contribute to a better understanding of specific *post-conflict* land tenure issues in order for programmes to take these into account, when trying to find solutions for the manifold problems. Cases studies relating to other countries will follow in close coordination with the FAO and the UNCHS.

The political situation

For land tenure issues in Bosnia and Herzegovina (BiH) the fact that the country is in transition from socialism to capitalism is just as important as the fact that there was a war. The report will outline both influences.

Before the war urban areas were generally ethnically mixed, but rural areas tended to be dominated by one ethnic group, closely linked through representation in the administrations of larger districts. Because of Bosnia's heterogeneity and tolerance, *ethnic cleansing* was the only way for extreme nationalists to consolidate their power. After almost 4 years of fierce fighting the Dayton Peace Agreement (1995) put an end to the war but embodied a contradiction in itself: it has created two ethnic statelets (the Federation of Bosnia and Herzegovina, which has a post-war Bosniak and Croat majority and the Republika Srpska populated after the war almost entirely by Bosnian Serbs) within one unified whole (Bosnia and Herzegovina), while at the same time calling for the right of the refugees and displaced persons to return to their pre-war home. The Dayton accords established a constitution for Bosnia and Herzegovina which includes a central government with a bicameral legislature and a three-member presidency (consisting of a Bosniak, a Croat and a Serb). In addition to this, each entity has their own government, which is responsible for operating its own law enforcement agencies. The Federation structures, launched in 1994, are still being implemented only gradually; divisions between Bosniaks and Croats remain.

Following the collapse of Yugoslavia, three nationalist parties in Bosnia took over economic and social control from the communist party. Nationalist leaders have a strategic interest in maintaining the conditions on which their power depends: pervasive separation, fear and insecurity among the population, personalised power over the organs of public order and the absence of institutions capable of controlling illegal economic activity. Corruption and the lack of good governance are also mentioned as impediments for implementation of property laws. It would be beyond the scope of this report to elaborate on this further. But it was pointed out that a distinction must be made between criminal Mafia-type practices on one hand and malpractice and favour-and-gratitude systems on the other. The latter spring up in any country where the administration works inefficiently, and result from a complex set of factors, rather than just a lack of will or criminal energy .

Refugees and Displaced Persons

It was largely through ethnic cleansing campaigns that 40% of the 4.4 million pre-war inhabitants became refugees or displaced persons.

About 1.2 million of those were granted asylum in other countries of the former Yugoslavia, western Europe and elsewhere. About another million individuals,

representing roughly a third of the remaining population, were displaced from their homes but remained within the territory of Bosnia and Herzegovina. In the summer of 1995 about 30,000 Croatian Serbs fled into the territory of the Republika Srpska due to military operations by the Croatian army to recapture the Kraijina and western Slavonia. Another 80,000 people were displaced in the early months of 1996, following the transfer of territory, which had been agreed upon in the Dayton peace accords, in particular the suburbs of Sarajevo. Just before and during the NATO bombing of Kosovo and the Federal Republic of Yugoslavia another estimated 68,000 fled into Bosnia and Herzegovina.

Destruction was surveyed by the International Management Group. They found out that some 60% of all housing in BiH was partly damaged, while 18% had been completely destroyed.

According to UNHCR figures, as of August 1999 only about 341,000 refugees have returned to Bosnia and Herzegovina. A further 270,000 displaced persons returned to municipalities within Bosnia and Herzegovina. The term 'return' is not clear though. The majority of those did not return to their pre-war home. In large these 'returns' are either to temporarily rented accommodation, to the homes of relatives or friends, or to properties which belong to other displaced persons or refugees, usually members of the ethnic minority. It is estimated that the number of the 'returns' of the minority, meaning where people returned to their pre-war home which is in a municipality where they do not belong to the majority group, is just over 100,000.

Reinstatement, Privatisation and Restitution

The constitution of the State of Bosnia and Herzegovina permits and guarantees private property (Article 2). Also it grants all refugees and displaced persons the right to freely return to their homes of origin (Article 3).

Property rights, which people have been deprived of in the course of ethnic cleansing, have to be restored or compensated in cases where they cannot be restored. All statements or commitments made under duress, particularly those relating to the relinquishment of rights to land or property, shall be treated as null and void (Article 4). At present these demands of the constitution are performed by the institutions of the state with varying degrees of intensity and effectiveness, to say the least. Again the reasons for inefficiency are complex.

Confirmation and implementation of occupancy rights on socially-owned apartments and property rights on land and houses for refugees and displaced persons

The claims on property and occupancy rights are being considered quickly (more than 80,000 of about 220,000 claims haven been decided); but the rate of implementation of these decisions, usually meaning an eviction by the municipality, falls well short of this figure (only a few thousand have been carried out so far).

Some of the reasons for this are:

- the lack of suitable alternative accommodation
- resistance on the part of the current owners
- ethnic consideration by the officials
- lack of manpower
- a lack of professionalism within the administration.

Privatisation of state property and state enterprises

Laws concerning privatisation have been in force since 1998 in the Federation of Bosnia and Herzegovina, as well as in the Republica Srpska. Privatisation as a main force for a positive economic development is hindered mostly by two circumstances.

- Clear evidence of the property title is missing because of incomplete and discontinued land books and real property cadastres.
- The Laws on Restitution are still not in place. That means that it is neither decided which objects will be subject to restitution nor what regulations will apply for those who are eligible. Because of this insecurity about 2,100 enterprises are currently on hold in the privatisation process.

Restitution of deprived property, including property nationalised under communism

The basic principles for restitution in Bosnia and Herzegovina are being worked out under the leadership of the OHR. The entities are required to adapt laws establishing an appropriate process of restitution, and to facilitate the establishment of administrative bodies necessary for the restitution of property located on their respective territory. Draft laws are already being discussed. This procedure will need more time, however, even if the legislatures of the two entities were to cooperate constructively.

Conclusion

Every change regarding property interests or *de facto* use of property (purchases, gifts, exchanges of privatised apartments, houses or land, claims for restitution ...) complicates the situation further and makes it even more difficult to achieve certainty about the property title. The incomplete and incompatible registers today cannot meet the demands of a modern and changing society. Economic progress will be obstructed until it becomes possible legally and de facto to own property. Not to mention the stability that clear ownership gives the thousands of households who do not know where they are going to live tomorrow. Therefore it is crucial that the necessary changes are made. Even if adapting the registration systems now seems costly, the costs of not doing so would be far greater.

Recommendations

1. Short term

- Organise a round table with all organisations and institutions involved, to form a 'Land Policy Discussion Forum'. (Possible organisations and Institutions are: CRPC, OHR, GTZ, RS and Federation Geodetic Administration, RS and Federation Ministries for Justice, OSCE, the Ombudspersons, The Human Rights Chamber, Norway Register Development A/S, swedsurvey and SIDA.)
- All of the above-mentioned bodies which are also operating as donors must form a coordination body to prevent duplication and foster synergy. Although some are already looking at developing a mortgage system, it might be advisable to include some of the development banks, in order to harness their expertise in fostering a free property market.
- Found a Land Commission with representatives of civil society, who should take part in the discussions.

2. Medium and Long Term

All the following recommendations have to be coordinated closely with local bodies and other donors

- Create a new GTZ 'security of property' programme working among other topics on reforming the laws concerning registration of property, to make legislation more consistent, especially the 1984 Law on Real Property Cadastres with a transition period and provisions regarding the organisation of the property book. One option would be to create a new 'Land Administration' including the property book and the real property cadastre. It should employ experts on cadastre and property rights. Property-book judges could become judges for land/property issues at the municipal courts.
- Help create a restitution administration, undertake a needs assessment, identify financial options.
- Work to speed up the laws on restitution and opt for 1945 as the final date.
- Change the Contract Law/create a Notary Law
Contracts need to be verified by a certified notary to be effective. Notaries need to be trained.
- Regulate tenancy and lease provisions, and how to value land, houses, and apartments.

1. Specific Post-Conflict Land Tenure Issues/Conflicts in Bosnia and Herzegovina

1.1 The Political Situation in Bosnia and Herzegovina

Before the war urban areas were generally ethnically mixed, but rural areas tended to be dominated by one ethnic group, closely linked through representation in the administrations of larger districts. Research conducted just before the war suggests that the diversity of people in BiH was one of the critical factors making BiH citizens the most ethnically tolerant in all of Yugoslavia's population. (Sekulic, Massey, Hodson: 1994, pp1534-58) Bosnia's **heterogeneity** and tolerance meant that ethnic cleansing was the only way for extreme nationalists to consolidate their power.

Different techniques of making people leave their homes, generally involving violence and intimidation with the actual or tacit approval of authorities, became known as 'ethnic cleansing'. A widely held view, also mentioned in reports of the UN Special Rapporteur of the Commission on Human Rights, indicates that mostly Serb, and to a lesser extent Croat, extremists perpetrated ethnic-based forced evictions. While Bosniak extremists did commit ethnic-based atrocities and evictions the Bosniak-dominated BiH government did not engage in systematic ethnic cleansing.¹

Following the collapse of Yugoslavia, **three nationalist political parties** in Bosnia took over economic and social control from the communist party. General opinion holds that corruption and the lack of good governance play a big role in BiH today. Both were often mentioned during our investigations as an impediment to the effective implementation of property laws. It is beyond the scope of this report to elaborate on this further. The main thing we did notice is that a distinction must be made between criminal Mafia type practices (for example buying an occupied house cheap, using violent methods to make the current occupant leave and then selling very profitably) and the use of malpractice, favour-and-gratitude systems (for example accepting bribes for administrative procedures), which spring up in any country where the administration works inefficiently. The latter is more complex than merely the lack of will or criminal energy

The division of power within Bosnian society is highly complex: not only are the war-time leaders often still in power, which makes inter-ethnic tension the root cause of many local officials obstructing the peace process, but the country is also in transition from a communist to market economy. These two processes interact and reinforce the problems occurring. Nationalist leaders of all three groups have a strategic interest in maintaining the conditions on which their power depends: pervasive separation, fear and insecurity among the population, personalised power over the organs of public order, and the absence of institutions capable of controlling illegal economic activity.² Ethnically motivated hostilities are used to retain those conditions. It must be borne in mind, in the Bosnia and Herzegovina context, that many influential factors are **outwith the control of the country**. Croatia's former President Franjo Tudjman, for instance, urged Bosnian Croat refugees in Croatia's Kraijina region not to return to Bosnia (and vacate Croatian Serb houses in Croatia) in a speech in October last

¹ OSCE Special Report: Musical Chairs, 1996, p9

² ESI, Reshaping International Priorities in Bosnia and Herzegovina, Bosnian Power Structures, 1999, p.4

year. If they should decide to return, they should only go to areas where there is a Croat majority, otherwise they would not receive support from the Croatian government. (Oslobodenje, 19th of October 1999). Or again, at the beginning of the war, all foreign currency saving of private citizens of former Yugoslavia were frozen in Belgrade. Today Bosnians citizens will be compensated through privatisation in Bosnia, but it is unclear if and when Belgrade will return the money.

Another factor affecting the socio-economic situation of the inhabitants and their mobility is the level of **unemployment**, which is very high throughout the entire country.

Unemployment in the	Federation	RS
	43%	36%
Average wages in the	370 KM	210 KM

Sources: Economic Task Force Newsletter, September 99 Vol.2. Issue 8

If one is in the fortunate position of having a job, most likely in an urban area, it is very unlikely that one would jeopardise that by moving to another area, even if it is the area of origin. Chances of finding a job elsewhere are even worse if a returnee were to belong to the ethnic minority in that area.

We would like to conclude that even though the fighting has stopped, Bosnia and Herzegovina does not necessarily qualify as a post-conflict country yet. The conditions that fostered the war, nationalism and economic desperation are still present. Also the term 'post-conflict' does not incorporate the transition from socialist to market economy. Maybe the term '**post-war country in transition**' would include more aspects and not glorify the situation.

1.2 Displacement and Destruction

It was largely through ethnic cleansing campaigns **that 40% of the 4.4 million pre-war inhabitants became refugees or displaced persons**. About 1.2 million people were granted asylum in other countries of the former Yugoslavia, western Europe and elsewhere. UNHCR estimates that 570,000 people came from the territory of the Federation and 630,000 from the territory of the Republika Srpska. Comprehensive records of the entity of origin and ethnicity are not available but it is estimated that some 80% of Bosnian Serb refugees fled to the Federal Republic of Yugoslavia, 55% of the Bosnian Croat refugees fled to Croatia and 95% of the Bosniak refugees fled outside the former Yugoslavia.

The UNHCR published estimates which demonstrate the dimension of the shifts of population: before the war there were over 300,000 Bosniaks and Croats in eastern Bosnia and southern Herzegovina, excluding Gorazde. By the end of 1995 this number had shrunk to about 4,000. Parallel to this, the pre-war Bosniak population of Tuzla of about 316,000 more than doubled to 659,000. By contrast Tuzla's Serb population dropped from over 80,000 to an estimated 15,000. (UNHCR, 1995, 8) At the end of 1997 there was an overwhelming ethnic majority in all parts of the country, with the highest minority ratio of 13% in the Tuzla-Podrinje and Sarajevo canton (UNHCR, Statistics Package December 1997).

Over a million individuals, representing **roughly a third of the remaining population, were displaced from their homes** but remained within the territory of Bosnia and Herzegovina. In the summer of 1995 about 30,000 Croatian-Serbs fled into the territory of the Republika Srpska due to the military operations by the Croatian army to recapture the Krajina and Western Slavonia. Another 80,000 Bosnian-Serbs were displaced in the early months of 1996, following the transfer of territory, which was agreed in the Dayton peace accords, particularly the suburbs of Sarajevo, when they were declared Federation territory. Prior to and during the NATO bombing of Kosovo and the Federal Republic of Yugoslavia another estimated 68,000 Yugoslav citizens fled into Bosnia and Herzegovina; 18,000 mostly Muslims from Sandak and Kosovars to the Federation and about 50,000 Serbs to the Republika Srpska. They were mostly housed in private accommodation with family or friends, many of whom are displaced persons themselves.

The International Management Group (IMG) was appointed to investigate the degree of destruction. They reported that **60% of all housing in BiH was partly damaged, while 18% had been completely destroyed**. The IMG estimates that about one-quarter of all buildings are still damaged or destroyed. Costs of reconstruction range from DM 1,400 to about DM 35,000 for a complete renewal. Subtracting the efforts of the last years an estimated DM 3 billion will be needed for the reconstruction in Bosnia and Herzegovina.

In conclusion it is fair to say that politically Bosnian Serb nationalists have achieved their aims – an ethnically ‘pure’ territory. The fact that it is located within the international borders of Bosnia and Herzegovina is only a minor let down. The Croat nationalists have not fared so well.

The Croat-controlled territories do not have entity status. And their common goal of a partition of the country failed as well.

The Bosniaks have not reached their goal either: a multiethnic Bosnia and Herzegovina.

De facto Bosnia and Herzegovina has three mono-ethnic entities, three separate armies, three separate police forces and a national government that exists only on paper and operates at the mercy of the entities (ICG, 1999, 1). Economically the war has been disastrous for all three groups, with individual exceptions of war-profiteers on all sides.

1.3 The Illegal and Legal Allocation of Houses and Apartments

1.3.1 Methods of Eviction

Ethnic cleansing involves “a variety of methods with the aim to expel, including harassment, discrimination, beatings, torture, rape, summary executions, relocation of population by force, confiscation of property and destruction of homes and places of worship and cultural institutions.”(UN Dpt. of Public Info, 1995, 65-66)

Sometimes military and irregulars shelled houses to rubble and made sure that cultural and religious sites were destroyed to lower the incentive to return. As another example local nationalist political figures conducted ethnically-motivated evictions within a village, without destroying houses. During the war soldiers went from door to door in the entire village ordering minorities to leave, threatening them with death. In some towns authorities moved from house to house, during the evening hours, to

expel thousands of people belonging to what was now the 'enemy ethnic group', placing men in detention centres and forcing women out – sometimes providing transport to other cities. Subsequently authorities encouraged the movement of population of their own ethnic group into the residences of those that had been expelled. At other times houses of minorities who had left were destroyed to prevent them from returning. Before they were expelled people were often forced to sign papers in which they stated, that they had voluntarily relinquished their rights to the property (OSCE,1996,14ff).

One example:

Summary of an interview with a family originally from Bijeljina (RS) now living in Tuzla (Federation):

The Bosniak couple decided because of the tense situation in 1992 not to stay in Bijeljina. They looked around for alternatives. Then the husband was arrested. He had told his wife to go to Tuzla, that is where he would look for her, when he was released. The house was registered in her name, so she was able to do the following transaction alone.

A Serb from Tuzla walked around the predominantly Muslim areas of Bijeljina, looking at houses and offering houses in Tuzla, for a swap. He connected her with a house owner in Tuzla. He had a son in Bijeljina, with whom she could do business. Together they went to an attorney in Bijeljina and put together a contract for a house – swap. One of the clauses in the contract was that neither of the parties will pay additional costs. This contract was confirmed by the courts in Bijeljina.

The man who made the first contact between the son and the wife did not want a monetary fee, but he collected some of the valuable antique furniture of the family.

When the husband was released they were deported with 600 others to Tuzla on very short notice. They could only grab the most necessary. After arriving in Tuzla, they went to the house, where the owner expected them. The house was smaller, less well equipped and further away from the city centre, than their house in Bijeljina had been. In 1994 they went to see an attorney again, this time in Tuzla and they made the same contract again (both parties). At this time it could not be confirmed by the courts in Tuzla, but it was signed in the presence of two witnesses. A little later they were able to make a STATEMENT OF CONTRACT which could be confirmed through the courts in Lukavica. Each contract with an attorney cost the family 200 DM. In 1998 the swap was registered in the cadastre, to create a provision that it could not be sold to someone else and later also in the property books. Only here they found out that the house had proper papers, meaning that there was a building permit and the information in the cadastre and the property books is the same.

Under no circumstances do they want to go back. The wife has been back a few times for visits, for the husband it is not possible even to think about visiting. They know a lot of people who have swapped their houses in the same manner as they did and only very few would like to swap back, because they have the feeling it was an unfair trade. But not necessarily to return, more so they could then sell it, for a just price. Today swapping of houses is something very normal – they say, lawyers have fixed prices (everybody has got their own scales). Despite the wife's ongoing treatment for depression and the husband's unemployment they consider themselves lucky.

The signing of the Peace Agreement was not the end of forceful evictions: during the early months of 1996 Serb military and irregulars went through the parts of Sarajevo that had been under Serb control and were now Federation territory expelling their 'own people' and often setting the houses on fire. In other parts of the country, Tuzla for example, Bosniak displaced persons who could not bear the conditions in the collective centres evicted minorities so as to move into their homes.

Motives for evictions vary from region to region. They seem to have been driven mostly by ethnic and to some degree political discrimination, since the ruling parties endorse ethnically-dominant political platforms. The perpetrators used evictions to punish or expel ethnic and political minorities, in order to silence opposition and consolidate their own power.

1.3.2 The Property Laws during and just after the War

Destruction and massive population movements caused immense housing problems. Large numbers of dwellings were forcibly emptied or destroyed, while at the same time large numbers of refugees and displaced persons came into the urban areas. Bosniak, Croat and Serb authorities passed legislation to handle the crisis. During the war property laws were passed by the “Republic of Bosnia and Herzegovina”, which were applied in the Bosniak-controlled parts of the Federation, the “Republika Srpska” and “Croat Republic of Herceg Bosna”. The latter was never internationally recognised. These laws were *de jure* invalid but *de facto* enforced in the Croat controlled territory of the Federation.

All three bodies passed laws which allowed the municipalities **to allocate empty space**, privately and socially owned. Apartments and houses were declared abandoned and then given to refugees or displaced persons for temporary use. Sometimes the practice was not to wait until the dwellings were abandoned, to declare them abandoned and place somebody in them. The laws had various provisions on return, making it difficult or practically impossible for the original occupant to repossess his or her property.

According to the Ombudspersons, the rationale behind at least the **Federation law on abandoned apartments** was a successful attempt to control existing lawlessness in the first year. However the practice was discriminatory. One of the biggest problems with the Republic of BiH law was an amendment passed in December 1995, which set the deadline for the pre-war occupant to reoccupy the apartment, one week after the amendment was published, two weeks if the original user is a refugee in another country. Of course this deadline could not be met by most people and meant that they lost their occupancy rights. The Republika Srpska Law made repossession subject to reciprocity, meaning that the rightful owner could only return, when the displaced person (or refugee from Croatia) occupying the space, could return or receive compensation for the property he or she used before the war, creating a deadlock. The Herceg-Bosna laws were somewhat similar to those of Republic of Bosnia and Herzegovina scheme.

The abandoned property regimes of both entities helped cement the ethnic consolidation. Both regimes favoured the rights of the current occupant (who usually belongs to the ethnic majority in the current conditions) over those of the original occupant (often members of the ethnic minority). It must, however, be said that members of the majority whose apartments have been declared abandoned and allocated to somebody else are no better off in the reinstatement procedures.

The political aspect of not allowing much opposition and, perhaps more importantly, the practice of giving party cadres preferential treatment, should not be underestimated.

All of these regimes have now been amended or abolished, because they violated the General Framework Agreement (Dayton Peace Agreement) and the fundamental principles of human rights.

1.4. Dayton and its Institutions with Relevance to Property Rights

After numerous attempts to broker a cease fire, a lasting end to the fighting was achieved in Dayton, Ohio in December of 1995. Alija Izetbegovic, leader of the BiH government at the time, and now part of the Tri presidency of BiH, Franjo Tudjman, Croatian President (†), and Slobodan Milosovic, President of the Federal Republic of Yugoslavia, signed the agreement in Paris on the 14th of December. 11 Annexes in the Accords are intended to reverse ethnic cleansing and are designed to create a new State. Central to the resolution of property issues are particularly Annexes 6 and 7, providing for a Human Rights Commission and the Commission for Real Property Claims of Displaced Persons and Refugees (CRPC).

The OSCE estimates that 70% of the human rights abuses are housing- and property-related.

The Commission for Human Rights

Annex 6 established the Commission for Human Rights to assist the parties in honouring their obligations under the Agreement. It consists of the Office of the Ombudsperson and the Human Rights Chamber. The Human Rights Ombudsperson for Bosnia and Herzegovina has been appointed by the OSCE, to document human rights abuses in both entities. As a general rule, to prevent duplication, the Office of the Human Rights Ombudsperson will not take on real property claims that fall under the jurisdiction of the CRPC or the Federation Ombudsperson (which was established under the terms of the Federation constitution). The other component of the Human Rights Commission is the 14-member Human Rights Chamber, composed of 6 BiH and eight international members. The chamber receives claims directly from the victim or indirectly through the Ombudspersons. The decisions of the chamber are to be final and binding, but most of the decisions have not yet been implemented.

The Commission for Real Property Claims (CRPC)

Annex 7 provides for an independent property commission to be established.

Chapter 1, Article 1 says:

All Refugees and displaced persons have the right freely to return to their homes of origin. They shall have the right to have restored to them property of which they were deprived in the course of hostilities since 1992 and to be compensated for any property that cannot be restored to them. The early return of refugees and displaced persons is an important objective of the settlement of the conflict in Bosnia and Herzegovina. The Parties confirm that they will accept the return of such persons who have left their territory, including those who have been accorded temporary protection by third countries.

In early 1996 the CRPC, Commission for Real Property Claims of Displaced Persons and Refugees was established to

... receive and decide any claims for real property in Bosnia and Herzegovina, where the property has not voluntarily been sold or otherwise transferred since April 1992 and where the claimant does not now enjoy possession of that property. Claims may be for return of the property or for just compensation in lieu of return.

Chapter 2, Article 11

The Commission will not recognise as valid any illegal property transaction, including any transfer that was made under duress, in exchange for exit permissions or documents, or that was otherwise connected to ethnic cleansing (Dayton Agreement, Annex 7, art. XII). Rightful claimants requesting the return of property shall be awarded its return or just compensation in lieu of return. To date the commission has received over 220,000 claims relating to over 240,000 properties.

They have issued about 80,000 decisions, but only a fraction of these have been implemented.

The Office of the High Representative (OHR)

Annex 10 provided for the designation of a High Representative, who should facilitate, mobilise and coordinate activities of the international organisations and agencies involved in the civilian aspects of the peace settlement. The High Representative is nominated by the Peace Implementation Council. (see Chapter – 2.2)

The Measurement for the Success of Dayton: Return

The return of refugees, (set in Annex 7) and yet more the return of minorities has become the measurement of success for the peace process. All other Annexes either depend on refugee return, or were created to assist in implementing refugee return. The creation of a fully functioning multi-ethnic Bosnia depends on Annex 7 and Article II:5 of the Constitution (Annex 4): All refugees and displaced persons have the right freely to return to their homes of origin. Because there was, and still is, so much resistance from local authorities the international community, which is not quite as homogenous as the term suggests, has focused entirely on the return of minorities.

According to UNHCR figures, as of August 1999, only about 351,000 refugees had returned to Bosnia and Herzegovina. A further 290,000 displaced persons returned to municipalities within Bosnia and Herzegovina. The term 'return' is unclear, as most of those did not return to their pre-war home. In large these returns were either to temporarily rented accommodation, to the homes of relatives or friends, or to properties which other displaced persons or refugees have rights to, usually members of the ethnic minority. It is estimated that the number of minority returns, where people returned to a pre-war home which is in a municipality where they now constitute a minority ethnic group, is just over 100,000.

As of the summer of 1999 about 13,000 Bosniaks and Croats had returned to their pre-war homes in the Republika Srpska. The authorities only seem to have allowed refugees and displaced persons to return this year. Within the Federation the situation varies greatly from region to region. Over 30,000 Croats and Serbs have returned to Sarajevo (and Sarajevo canton), while about 22,000 Bosniaks have returned to now Croat-dominated areas and about 40,000 Croats have returned to now Bosniak-dominated areas. The Croat returns have taken place in spite of the propaganda by the Croatian nationalist party in Bosnia (and Croatia). Nationalists fear that they will lose their power in two ways; firstly, because the voting member of their ethnic group has departed and secondly because a member of the other ethnic group will come and vote for someone else. At the moment the voting patterns are still quite nationalist, so that the loss of a member of the desired ethnic group means not only losing a vote, but also a gain of political opponents. It is interesting to note though that Croat resistance seems less fierce in Central Bosnia. The ICG suspect that this because the Croats could not realistically expect to gain military control there

in any future armed conflict. In contrast, Western Herzegovina is the area bordering Croatia and therefore should be kept 'pure' from Bosniaks. (ICG, 1999, 44).

Other obstacles to return include the accumulated case load that has amounted and the sometimes untrained but very often under-staffed and under-equipped offices in the relevant local bodies: the Ministry of Refugees and Displaced Persons in the Republika Srpska and the Housing Offices in the Federation. Even if individuals in the administration are willing to comply, they are in a very difficult situation. They would be acting against party policies, and the party has granted them the position they are in. On the other hand they could equally lose their post if they are too obstructive to the return process, since they could then be dismissed by the High Representative. We heard of quite a few housing officials who are on the brink of a nervous breakdown, as they try to find a way to deal with this kind of pressure.

2. Policy Framework

2.1 Different International Agendas within the International Community (IC) before and during the War

The International Community's inability to intervene earlier in the war stemmed largely from differing evaluations of the situation and attitudes towards the values of statehood as well as historical alliances and supposed cultural and religious sympathies. The assumed return to historic and cultural affinities (of the first and second World War) were used for speculation. Yet more influential were the different national interests of the players. They led to different suggestions for the resolution of this conflict. Different understanding and tradition of statehood and nation can only begin to explain the divergent attitudes towards the independence of former Yugoslav countries, among the west. France and the US for example interpreted statehood politically rather than ethnically. Germany on the other hand, having a tradition of deducing nationality by descent, had a greater understanding for the striving for independence. France, the UK and Spain also feared precedents for tiny nations within their own territory.

Different Agendas Persist

The core of the conflict was ethnic cleansing, therefore the focus of the international community was to reverse that. Because of refugee and displaced persons situation, return and housing was, and is, the focal issue to the detriment of all other factors. **Urbanisation and agricultural reform** as motivating factors seemed irrelevant and were largely ignored. In December 1997, a study examining **relocation and return** was published by CRPC and UNHCR. 1998 was declared the year of return and 1999 the year of minority return. The 'relocation-options' were no longer considered. This meant that in 1999 ongoing projects risked being discontinued, because they had a relocation component. They could only be continued once it was ascertained that the houses can be used only as 'temporary buffer accommodation', the argument being that relocation cements the boundaries created by ethnic cleansing, and will be abused by nationalists to lure people into areas where they will then support the majority. Of course, this argument has to be taken seriously. But ignoring economic and demographic factors will not help solve the many problems facing BiH.

With the same motivation, or rather because of the same concerns, the (grey) property transaction market has not been observed by the IC. One look at the local newspaper gives an idea of how much is going on. There are pages full of exchanges, via the inter-entity-boundary line advertised. The recent modification of property laws by the High Representative in October of 1999 harmonised legislation and minimised the risk of people losing their property titles when exchanging properties.

In June 1998, the United Nation High Commissioner for Refugees (UNHCR), Sadako Ogata, pointed out that **voluntary return**, although the most desirable option, is not the only solution to the problem of displacement envisaged in UNHCR's regional strategy. Local **integration** in places where people have sought refuge, resettlement to third countries and voluntary relocation are other possible options, and for some the preferred solution. In this context, she asked the host countries to refrain from exerting undue pressure on refugees to return. But she also confirmed that UNHCR is supporting return to areas other than the place of origin, if the relocation was freely chosen and does not block solutions for others. Long debates have been conducted over what constitutes a free and informed choice.

One important aspect of free choice is that an individual decides when to make that choice. This cannot mean blocking the decision of another individual until that time, but rather that those who promote free choice must make mechanisms available that serve all possible outcomes of this choice.

2.2 Strengthening the Role of OHR

After the signing of the Dayton Peace Agreement numerous governmental, intergovernmental and non-governmental organisations started work in Bosnia. In 1996 a German journalist estimated that 30,000 expatriates were trying to support the peace process. This number refers to the civilian side only. The IFOR (NATO-led Intervention Force, later renamed SFOR - Stabilisation Force) deployed 60,000 soldiers in addition. OHR took over the task of coordinating the civilian efforts.

But it is easy to see that different agendas and different resources cannot be streamlined so easily, especially because the OHR does not have funds of its own to start up projects to convince donors. The difficulties in the implementation of the Dayton Peace Agreement shaped the mandate of the High Representative. At the Peace Implementation Council (PIC) in Bonn in December 1997 the High Representative's power was largely extended. In the Agreement it said that the High Representative is the one to interpret what is fostering and what is hindering the process. In the Peace Implementation Council in Bonn the 'toothless tiger' got some teeth, and the permission to dismiss elected officials if they are obstructing the process. Still the High Representative has no strength beyond decisions recorded on paper and funding guidelines. The High Representative also has the ability to shape laws, which he did extensively in October 1999, harmonising the Federation and RS property laws. The new High Representative Wolfgang Petritsch, who replaced Carlos Westendorp in the summer of 1999 seems to accord greater emphasis to **individual rights**, whether the individual belongs to a minority or a majority. That is not to say that minority return is losing importance, but that there has been a shift in policy towards greater pragmatism.

2.3 Land Dispute Studies

Numerous efforts are being undertaken by different players to fill the picture with all the relevant information. The option of people living in another place permanently, after the war, has re-entered international interest. The term '**relocation**' has been replaced by '**regional integration**' which also covers all those who do not wish to return to their pre-war homes. The variety of bureaucratic obstacles, the efforts of the international community so far and the different reasons which move people to return or not return are looked at in more detail in some of the following studies³.

OSCE Special Report: Musical Chairs, Property Problems in Bosnia and Herzegovina, 1996

The report tries to identify property problems from a human rights perspective. It states that violation of property rights is one of the most significant human rights abuses throughout Bosnia and Herzegovina and that evictions continue, after the signing of the Dayton Peace Accords, at intolerable rates. Also, that both Entities have laws which contravene international standards. Authorities are either directly or indirectly denying people their rights or failing to protect them. The paper contains advice for NGOs working in the field on how to monitor an eviction, and how to gather and spread information about abuses. It provides a list of organisations that are already dealing with these issues and describes their merits and limitations. **It concludes that the IC needs to focus and provide more resources here.**

UNHCR/CRPC Return Relocation and Property Rights, 1997

The study, as mentioned earlier, gives a detailed account of the various options. About 1500 refugees and displaced persons who were not in possession of their property were surveyed by local staff. Among the results of the survey was that people were reluctant to participate because of 'survey fatigue'. The study found out that up to 70% of them are prepared to consider selling or exchanging their property to enable them to have a durable solution. It suggests that *'if displaced persons and those refugees who return into displacement are to be kept in temporary living conditions until large-scale return is possible, the normalisation of BiH may be held hostage indefinitely to an unattainable agenda'* (p.23). The study concludes that to obtain any progress in this deadlocked situation it is necessary to create some flexibility in the system. **Increasing the housing stock through repairs and new construction is one means of creating movement in the game of musical chairs. Facilitating private property transaction is another means of giving desperate people some element of choice in their future.**

³ The interested reader will find more information in the following reports:

- Amnesty International: 'Who's living in my House?' Obstacles to the Safe Return of Refugees and Displaced People. March 1997 <http://www.amnesty.org/ailib/aipub>
- Amnesty International: All the way home, Safe Minority Return as a Just Remedy and for a Secure Future; Feb. 1998 <http://www.amnesty.org/ailib/aipub>
- International Crisis Group: Bosnia: Minority Return or Mass Relocation? , Northern Balkans: May 1998, <http://www.intl-crisis-group.org>
- International Crisis Group: Going Nowhere Fast: Refugees and Internally Displaced Persons in Bosnia <http://www.intl-crisis-group.org>
- International Crisis Group: State of the Balkans, Bosnia and Herzegovina: 9 Billion Annual Holding Operation; Nov. 1998 <http://www.intl-crisis-group.org>
- Kumin, Judith: Rückkehr der Flüchtlinge nach Bosnien Herzegovina, in: Südosteuropa Mitteilungen, 1997
- UNHCR: Bosnia and Herzegovina; Repatriation and Return: Operation 1998, December 1997, Geneva

UNHCR Follow up Study: Return, Local Integration and Property Rights 1999

(published only in a summary version)

More than 3000 interviews were conducted throughout Bosnia and Herzegovina, in Croatia and in the Federal Republic of Yugoslavia. The results show that about 61% wish to return to their pre-war property. The predominant motivations were that it was their home and that their current living conditions are unacceptable. **The study concludes that more information on property rights in such cases must be made available, and that a legal and or regulatory framework must be established which creates a fair environment for real estate transactions.**

Eric Rosand: The Right to Compensation in Bosnia and Herzegovina: An Unfulfilled Promise and a Challenge to the International Law, Cornell International Journal of Law, Vol.32, 1999

The author's main points are the twin rights: the right to return and the right to just compensation. Annex 7 of the Dayton Peace Agreement clearly names the right to return together with the right to compensation in lieu of return. Until now neither of them have been adequately provided for. The implementation of the right to return has been a high priority for the IC as it is perceived as reversing ethnic cleansing. The right to compensation, meaning the right of refugees and displaced persons to receive compensation in lieu of return, has been largely ignored for fear it might interfere with the primary goal of return. Eric Rosand points out that **the availability of compensation would not only provide financial assistance to the thousands of dislocated people who wish to resettle, it would also offer these victims some redress for the violation of their property rights.**

CRPC Property Study: Realizing the Value of Property Interests by Improving Options Available to Interest Holders and Identifying an Appropriate Operational Framework. (ongoing)

The CRPC states that at the moment there seems to be a lack of adequate legal frameworks in place that would permit rights holders to use and dispose of their property freely, with adequate assurance of protection or recourse against fraud, deception and other forms of unconscionable conduct. It is widely believed that many vulnerable right holders enter into transactions for the transfer of legal interests without appropriate legal protection. Unequal bargaining power, misinformation and corruption have led to numerous problems. The current legal frameworks, the operation of the property market in practice, experiences and intentions of property right holders and problems with the way the market currently operates are described. The gaps in the property books and the cadastres are measured, and systems proposed for inserting the missing information as well as introducing systems on how to continue. **The CRPC concludes that an independent, transparent system is needed to regulate such transactions. The results of ongoing research will provide guidelines for this system.**

Economic Law Reform of the Deutsche Gesellschaft für Technische Zusammenarbeit (GTZ) Study on the Property Registration – (ongoing)

The GTZ was asked by the Ministry of Justice to propose improvements to the property books. Having surveyed the attributes of the property registration, which is quite similar to the German system suggestions will be made for the legal framework and a training schedule for employees of the relevant authorities.

3. The Regulatory Framework of Land Tenure Issues in Bosnia

3.1 Legal Order on Property

The Constitution of the Bosnian state permits and guarantees private property. Property rights of which individuals were deprived in the course of ethnic cleansing must be restored, or compensation paid where the property cannot be restored to the former owner. All statements or commitments made under duress, particularly those relating to the relinquishment of rights to land or property, shall be treated as null and void (Article 4).

The "Law on Property Relations" of March 9, 1998 (Official Gazette FBiH No. 6/98, enforced on March 17, 1998) contains concrete regulations on property. In accordance with Article 23 one acquires property by a law, by a legal transaction, by a legal decision or by inheritance (BIKIC 1999a); There is a difference between: "original acquiring" and "derivative acquiring" of property. The seller has to be registered as proprietor in the land register; the object has to be denoted by code of lot number. The claim for registration has to be made by the purchaser.

3.2 Authorities and Institutions

Real estate and other interests are registered in the Land Register/Land Book and the Real Estate Cadastre/Real Property Cadastre like in other countries in Western Europe; these terms are used synonymously by experts

Land Register

The Bosnian Land Register system was introduced by the Austrians at the end of the 19th century. The formal order of land register is based on laws dating back to 1930 (MOELLERS 1999). The Land Register is subordinated to the Ministry of Justice; it is established at municipal courts, in the Land Register Office. The Land Register is kept in folio-volumes and is updated in writing. The staff of Land Register Offices is professionally trained. The Land Register comprises

- A. property register,
- B. property ownership,
- C. rights and mortgages,
- D. property on houses and flats.

Land Registers exist nationwide, but some **30% were destroyed** during World War II and never fully replaced. The full extent of land books lost during the recent war has not yet been ascertained.

But the Land Register only partly reflects the actual situation concerning property: legal transactions on real estate were often **not registered** in the Land Register because of high purchase tax (up to 15 % of the value).

Furthermore Land Registers are manually updated, extracts on requests for information take a long time to be produced and are costly. NORWAY REGISTERS DEVELOPMENT AIS (NRD 1999) has made a proposal to computerise the Land Register.

3.2.1 Real Property Cadastre

The Real Property Cadastre was also established by the Austrians. It contains

- a Land Register with parcel numbers, areas of real property, nature of usage, property ownership and other information pertaining to ownership,
- cadastral map series with the cartographic documentation of real estate and
- numerical cadastre with all measures and computations and the geodetic basis concerning the ongoing matters.

Cadastral maps generally have a scale of 1:1000 for settlement areas, 1:2000/2500 for rural areas, and 1:5000 for forest and mountain areas.

Both entities have a special state administration responsible for the Real Property Cadastre; every municipality has its cadastre. Here, registers and maps are handled similarly and have to be updated manually.

- a) Between 1953 and 1984 the cadastre was updated with the help of photogrammetric procedures. This system was, however, introduced in only about 50 % of the territory. Ownership of apartments or flats was not registered in the cadastre.
- b) In 1984 the "Law on Land Surveying and the Real Estate Cadastre" was passed. That was the basis for the integration of Land Register and Real Property Cadastre into one single register for "Real Estate and Property Rights". It is already established in Hadzici, Visoko and Trnovo. The current cartographic computer system ("AUTOKA") was developed by the Swedish company SIDA. The computer system for land registry is self-developed.

3.2.2 Law on Land Surveying and the Real Estate Cadastre

Because of its far-sighted approach the "Law on Land Surveying and Real Estate Cadastre" from July 11, 1984 (Official Gazette SRBH No. 22/84) requires further consideration.

The law regulates

- surveying of land property, buildings and other objects,
- implementation and administration of a Real Estate Cadastre and
- Land Register and designation of rights on real estate.

The Real Estate Cadastre represents the comprehensive documentation of specifications of real estate and buildings with registered rights on real estate (Article 8). It is a public register which everyone can consult. The Real Estate Cadastre enjoys "good faith"/"public faith" (Article 14).

Land surveying and implementation of the Real Estate Cadastre are matters of the state (former: Socialistic Republic of Bosnia and Herzegovina - SRBH). Continuing and updating of surveys and of the Real Estate Cadastre is to be the responsibility of the municipality; therefore, they have to create independent administrative organs (offices) (Articles 17 and 18).

The Real Estate Cadastre contains

- cadastral maps produced on the basis of land surveys,
- cadastral register ("cadastral operate"), inventory land register of landed plots, buildings incl. facts pertaining to the nature of use as well as results of taxation, declarations to owners or users; the register has to be computerised implemented and continued and statistically evaluated every year (Article 87).
- Collection of documents, which contains rights on property and buildings (Article 97).

According to GALIC/MUGGENHUBER 1999 the Real Estate Cadastre was in progress in many municipalities, but at that time was fully functional for only about 10 % of the territory.

3.2.3 Commission for Real Property Claims (CRPC)

There are two ways to file a claim for the return of one's property. After filing a claim with the municipal authority (by mail or in person) an individual is entitled to file a claim to the Commission of Real Property Claims under the following circumstances:

- if he/she has filed a claim in person with the municipal authority, and has not received a decision within the statutory deadline,
- if he/she has filed a claim with the municipal authority by registered mail (posted from either entity), but has not received a decision within 45 days,
- if he/she has received a decision from the municipal authority, and is not satisfied with it,
- if he/she has filed an appeal with the Canton, as permitted under the law, and has not received any decision (or has received a decision and is not satisfied with it).

Using specially-designed software, claims are entered into a computer database in the presence of the claimants, who can check and sign for the accuracy of their claims. This ensures, as far as possible, that only correct data is collected.

A CRPC decision restores property rights to claimants, and is an important first step in gaining repossession. Wherever possible, CRPC will facilitate return. Where claimants cannot or do not wish to return into possession of their property immediately, a CRPC decision gives them authoritative confirmation of their rights in the form of a legally binding document which can be retained for future use.

CRPC is also empowered to receive and decide claims for apartments in Bosnia and Herzegovina from people who held occupancy rights (or members of their family household) before the war. Recent amendments to Federation legislation, and anticipated changes to Republika Srpska laws, confirm the legally binding force of CRPC decisions on occupancy rights, and clarify its jurisdiction.

3.2.4 Implementation of CRPC Decisions

The CRPC decision merely confirms that the claimant is the lawful owner, possessor or occupancy right holder. The local municipality is responsible for the implementation of the decision. Because of delayed implementation of CRPC decisions, the High Representative has enacted the "Implementation Law" which

imposes penalties on authorities and persons delaying implementation of CRPC decisions in October 1999. At the beginning of November 1999 about 60,000 of 220,000 requests filed had been decided by CRPC; nationwide only about 7 % to 8 % of decisions had been implemented (ESI 1999). Approximately 150,000 requests apply to the Federation Bosnia and Herzegovina and about 70,000 to the Republika Srpska. The process is still ongoing, because there is no deadline for lodging claims on **private property**. In the final analysis there may be more than 300,000 claims (OHR 1999).

For an effective elaboration and avoiding of double confirmations CRPC has established a "Cadastre Database"; it contains information on owners, users, tenancy right and occupancy right holders and information on the claimed objects (real estate, houses, apartments, flats).

3.3 Privatisation

Privatisation is part of a new social and property policy and is seen as an important factor for prosperous economic development in Bosnia. The "Framework on Privatisation of Enterprises and Banks in Bosnia and Herzegovina" is the legal basis, and was enforced by the High Representative. It came into effect on July 23, 1998, on an interim basis (Official Gazette No. 5/98). The corresponding law of Republika Srpska came into force in June 1998. Further details follow from Annex C 1 and (BIKIC 1999 b).

3.3.1 Procedure of Privatisation

Each entity has established a Privatisation Agency. In the Federation the offices are at cantonal level ("Law on the Federal Privatisation Agency" – Official Gazette No. 18/96). In the Republika Srpska this task will be executed by the "Privatisation Direction" in Banja Luka ("Law on Privatisation of Enterprises" – Official Gazette No. 27/97).

Every citizen gets vouchers/certificates (in the Federation and in the RS the systems are a bit different and confusing) but in general one can collect points for being a citizen, for work performed but not paid, unpaid pensions, unpaid military service, "nationalised" (expropriated) property, and frozen foreign savings. In FBiH the sum of points will be monetarised by a given factor to the amount of money for the voucher. These vouchers are thus saleable, contrary to the promissory note in Republika Srpska.

All enterprises which are to be privatised have to set up an opening balance sheet (on the basis of 1991) and submit this to the privatisation agency or privatisation direction. They decide on the procedure:

- Small-scale privatisation, for enterprises with a balance value of KM 300,000 (RS) or KM 500,000 KM (FBiH) are regularly privatised by auction. At knocking down, cash must be paid.
- Privatisation of so-called strategic enterprises, (energy, telecommunication, airports, broadcasting, mining, public transport, etc.); these enterprises total 42 in the state (25 in RS and 17 in FBiH) and are published in the Official Gazette.

The privatisation of these will be delayed until the reorganisation of the enterprises is finished.

- Privatisation by auction or by tender for all others. The procedure will be determined by the enterprises themselves. Up to 55 % of the offer can be paid by vouchers/certificates.

If neither tender nor auction are successful, the enterprise can also be sold offhand. Opening balance sheets also include real estate and buildings. The pertinent declarations of the enterprises are not examined by the privatisation agency or direction. **It is up to the purchaser to obtain clarification from the Land Register and Real Estate Cadastre.** In the case of “nationalised” (expropriated) property, claims on restitution cannot be excluded. Here the “Framework Law on Privatisation of Enterprises and Banks” stipulates:

“In any process of restitution, privatisation of enterprises and banks will not prejudice restitution claims that may be brought in accordance with applicable restitution laws.” In these cases privatisation will be delayed until clarification of restitution claims; **2,100 cases were affected as of November 1999.**

3.3.2 Privatisation of State-Owned Apartments

At present privatisation of state-owned apartments is a matter of specific socio-political relevance. The two entities have different laws that are either in preparation or in force (“Law on Sale of Apartments with Occupancy Rights” – Official Gazette No. 27/97 and 11/98). Accordingly someone can only purchase an apartment if he is the occupancy right holder in the sense of the “Law on Housing Relations” and is actually in possession of the apartment. It is intended that occupancy right holders or members of their family can purchase only one apartment. Also refugees and displaced persons have to occupy the apartment after reinstatement for a minimum of 6 months before they can purchase it. A subsequent sale is then possible after 2 years. This rule has to be monitored in practice, especially since a lot of people have not moved back, and the privatisation vouchers/certificates with which they can pay for the apartment have to be used within two years of issue.

3.4 Restitution

Restitution, the reinstatement of former rights of ownership, shall cancel the “nationalisation” of private property by the state or its organs during the period of communism, or in former times, or shall compensate expropriation. Essentially this pertains to the actions of government authorities on the basis of regulations in Annex C 2.

Restitution is to improve the economic development of Bosnia and Herzegovina and will be executed in accordance with principles of the current privatisation process. It must provide protection to enterprises and a favourable environment for investment. The Draft of a “Framework Law on Restitution in Bosnia and Herzegovina”, is being worked on by the High Representative; it shall be put into force by the state parliament. Then, the parliaments of both entities (FBiH and RS) must complete the framework law within 6 months. Authorities for restitution have to be established, and administrative procedures put in place which shall then provide for independent

judicial review of restitution claims in accordance with the requirements of the European Convention on Human Rights. Corresponding drafts already exist in both entities.

3.4.1 Basic Principles of Restitution

Restitution is

- either the return to the former owners of property of which they were deprived by the state or its organs without any, or without fair, compensation
- or fair compensation in lieu of return.

Former owners include natural and legal persons (including religious communities), as well as their lawful heirs and legal successors. Property subject to restitution includes land, forest, buildings, objects of cultural, artistic, and historic value, and other objects of high value, as well as enterprises.

The entities still have to agree upon a date after which expropriation shall be subject to restitution. Informed sources say it is likely that this will be 01.01.1945. The other possible date is 01.01.1918.

In general it should be "**restitution in kind**", with following exceptions:

- Third parties which obtained property subject to restitution in good faith shall be protected against restitution in kind.
- Enterprises that were established before November 1999, that are subject to privatisation, and the land and buildings necessary for their present and future shall also not be subject to restitution in kind.
- The entity laws shall contain special provisions for the protection of business development and investments and
- shall determine the conditions for post-1989 property acquisition to be considered as acquired in good faith.

If there is a justification for not returning property in kind, full and effective compensation shall be awarded, reflecting the current market value of the property in the condition it was in at the moment of seizure. Claimants shall be given a minimum of twelve months to make their claim for restitution.

3.4.2 Magnitude and Relevance of Restitution

Expropriation of land was executed mostly in cities and surrounding areas (based on the "Law on Nationalisation of Tenement Houses and Construction Land" since 1945– Official Gazette SFRJ No. 52/58); this law declared all **urban plots** state-owned property. Natural and legal persons could obtain rights of use concerning this real estate)

- for acquisition of construction land and/or building of houses/ apartments,
- for business and industrial aims.

Under the provisions of the "Law on Socially-Owned Construction Land" (Official Gazette SRBiH No. 34/86, 1/90, 29/90, 3/93 and 13/94), municipalities are also able

to declare plots outside the city as socially-owned land or designate it as construction land. That means that when a plot became construction land, it was immediately nationalised. Socially-owned estates could not be purchased (1980 “Law on the Essential Legal Property Relations”).

In **rural areas** expropriation occurred through land reform, colonisation and collectivisation.

In the context of rural areas the following should be borne in mind: The legislation on land reform allowed a maximum of 10 ha for private agricultural farms and 25-35 ha for private forest farms.

Only larger properties were nationalised. Non-farmers could also hold up to 3 ha agricultural land; for forest land the limit was between 5 and 10 ha per household. Because of the agricultural structures in former Yugoslavia, with very small farms and fragmentation of the land only few cases of expropriation occurred.

Size and numbers of farms in 1991:

	private (%)	state-owned (%)
number of farms	571,207 (99.95)	300 (0.05)
total area farmed (ha)	2,376,000 (93.9)	155,000 (6.1)
average farm size (ha)	2.9	517

according to (MINISTRY/FAO 1999):

93.9 % of the area farmed is private property anyway; eventual claims for restitution concern a maximum of 6.1 % of agricultural land.

The return of property of cooperative societies, expropriated by legislation on collectivism, has to respect the principles of the restitution laws and shall be regulated by a special law (“Law on Cooperative Societies”, December 4, 1997, FBiH). In terms of magnitude, this sector is of secondary importance, because the collectivism also failed due to the resistance and refusal of the farmers. Countrywide only 2,700 farms are loosely connected in “cooperatives”.

Restitution claims will be **concentrated in urban** and commercial areas. And here claims are immediately linked with the privatisation process;

The land was often expropriated for definite purposes: residential construction, road construction, supply installations, construction of businesses and enterprises and so on.

The buildings, roads and pipes have been built and restitution in kind, does not seem practicable. Fair compensation must be found.

The time-lag in privatisation and restitution is turning out to be a major disadvantage. The delay and the obstacles in the privatisation process are consequently also **obstacles to investment** and sustainable economic development.

One way of braking the deadlock might be to introduce the legal concept of 'heritable building right' (German: Erbbaurecht). The annual building lease as operating expenses, computed on the basis of the expropriation compensation, might be more manageable for the current user than a one-off payment. This regulation should not be obligatory but rather an option, only used if both parties agree.

4. The Nature of Land Conflict

A micro-approach, examining individual views of and experiences with such conflict at grassroots level was taken for this part of this study. Legal experts were also interviewed. The aim of the interviews was to determine the main types/causes of land/ property disputes and the characteristics/ circumstances of disputants.

In BiH, as elsewhere in the world, people tend to be reluctant to discuss land disputes. They are aware that the resolution of such disputes will determine their future, personal security and economic prosperity. In a post-war situation such as in BiH, people are particularly aware that land/property issues were an underlying cause of war and a point of contention after war (refer to Annex B: Land Tenure Issues Which Arise in A Post-Conflict Country).

4.1 Overview of Land/Property Disputes

Pre-war

In BiH, pre-war land disputes can be categorised as private and social, as well as urban and rural. Private property, usually in the form of apartments or buildings, was predominantly held in rural areas, whereas social property, usually in the form of apartments, was predominantly held in urban areas. According to the legal practitioners interviewed (judges and lawyers), **pre-war disputes** about rural private land/property most commonly involved inheritance, boundary or access, and unauthorised building problems.

- **Inheritance problems** arose when heirs did not agree on the subdivision of the property (such cases are still common), when people built houses without filing required papers -- or when heirs themselves did not file papers with the court regarding transfer of ownership. In all cases, heirs found that they possessed but did not legally own their family land/property.
- **Boundary problems** occurred when someone tried to encroach upon the land of a neighbour or even a family member (boundary demarcations were/are not always clear). Sometimes right-of-way paths through or adjoining properties were points of contention. And sometimes properties were obstructed and thus not accessible or useable.
- **Unauthorised building** problems were described by several interviewees, including a man who had been a judge before the war; he commented that rural people commonly used land as a tool to lodge a complaint against their enemies in personal feuds. He went on to explain that someone on bad terms with his neighbour would report to government inspectors that the neighbour was building without authorisation on his land.

As a contrast, disputes involving **social property**, usually urban apartments, tended to involve allocations, primarily questions about fairness in the administration of a point system. This system allowed applicants to earn points toward an apartment based on company seniority and position, communist party membership, and special circumstances, such as single parenthood. Disputes about apartments also arose when occupancy rights were revoked, for example, when an occupancy right holder did not reside in his apartment for six months, when he lived in a private dwelling and rented out his apartment to another individual, or when he rented out his apartment as a business property.

Post-war

Similar to the pre-war situation, most post-war land/property disputes in BiH can be categorised as private and social, as well as urban and rural. The post-war disputes involve many of the same issues as in the pre-war period, but they are severely compounded by problems of population displacement and property destruction (see Section 2).

Post-war disputes about rural private land/property again involve inheritance, boundary, and unauthorised building problems, although more than one interviewee commented that people are so preoccupied with return issues that these problems seem less significant than in the past. In general, land/property disputes can be attributed to post-war conditions of population displacement, legal insecurity (regarding land/property ownership), economic hardship, infrastructure disruptions, and unemployment.

One new type of post-war dispute which was reported by nearly every person interviewed involves the unauthorised harvesting of fruit crops on private land for personal use and the unauthorised harvesting of timber on private land for personal use or for commercial sale.

Another new type of dispute which was reported by several interviewees involves farming or building on land without the owner's permission.

A final new type of post-war dispute, referred to by some observers as an "expropriation" dispute, was reported by several interviewees and has been discussed in legal case reports (e.g., Newsletter, 1/3, November 1999, prepared by the Ombudsperson's office). One issue in this type of dispute is municipal development plans which, according to allegations, were deliberately altered in some municipalities in order to take advantage of the absence of minority groups, or to make their return less likely. The new development plans called for roads to be built through the properties of people or for public buildings to be constructed on their properties. In some cases, the people affected by such war-time or post-war projects have brought legal action against their municipalities on the grounds that they were neither consulted about the projects nor offered fair compensation for damage to their land/property.

As already discussed at various points in this report, land/property records were not always systematically maintained at municipal level. The lack or inadequacy of land records was occasionally a source of dispute before the war, and since the war, has been a primary impediment to resolving serious land/property problems (see Section 3 for a discussion of land records in BiH).

Reports produced by various organisations give some indication of the **social impact of land/property disputes upon civil society**, including upon special groups, such as women (see “A National NGO Report on Women’s Human Rights in BiH 1999); the risks/potentials for conflict in various regions (majority vs. minority populations and urban vs. rural populations); and the economic impact of land/property disputes (investment, markets, production and development) at different political levels (national, regional and local). Special groups, such as women, the disabled, and the impoverished, may have trouble asserting their rights to land/property, but at the same time, they and other groups, such as war veterans, may be given special preferences, such as in legal aid funding and in requests for postponement of evictions. Minority populations and the rural poor, as various reports have indicated (see Cox 1997), are particularly likely to experience land/property conflict and not to have the group support or financial backing to defend their rights. Nearly everyone, at all political levels, suffers from the detrimental effects of land/property problems - loss of domestic and foreign investment, limited domestic and foreign markets, reduced production, and stagnating development (see the World Bank country studies, 1996 and 1997).

4.2 Specific Land/Property Disputes

Thousands of cases fill the rosters of judicial and administrative organs in BiH. The following specific land/property disputes are presented to illustrate different types of problems encountered by citizens, different procedures for dispute processing, and different legal interpretations. These case summaries, being purely illustrative, cannot represent all case types and cannot incorporate all possible case variables. The first four cases have been taken from Annual Reports issued by the Office of the Human Rights Ombudsperson; the full case descriptions are available in the Reports.

Eviction of Applicant from Private House by DP (Application No. (B)5/96; S.A. v. the RS, 29 July 1998)

“The late applicant and his family (a wife and a daughter, who after the applicant’s death continued the application before the Ombudsperson) were evicted from their privately owned house in September 1995 by some displaced persons. On 10 November 1995 the late applicant commenced civil proceedings before the Court of First Instance in Banja Luka. However, the squatter in the house changed and the applicant commenced new court proceedings on 30 April 1996. On 23 January 1997 the Court ordered the squatters to vacate the applicant’s house. However, in the appeal proceedings the defendants submitted a decision issued by the Banja Luka Commission for the Resettlement of Refugees and Administration of Abandoned Property (“the Commission”) on 3 March 1997 by which they were allocated the applicant’s house for use as abandoned property. On 23 April 1997 the late applicant appealed that administrative decision before the Ministry for Refugees and Displaced Persons (“the Ministry”). On 9 June 1997 the Ministry upheld the applicant’s appeal, quashed the first instance decision and ordered re-examination of the case. In the meantime, the District Court of Banja Luka quashed the appealed first instance judgement of 23 January 1997 and referred the case back in its decision of 17 June 1997. The Court of First Instance, however, adjourned the proceedings for an indefinite period pending the outcome of the administrative proceedings. On 13 February 1998 the Commission allowed the squatters to stay in the applicant’s house on grounds of surplus of housing space pursuant to Article 17 of the Law on

Abandoned Property of the Republika Srpska. On 18 May 1998 the Ministry, upon the applicant's appeal, declared the decision of 13 February 1998 as null and void."

The Ombudsperson concluded that the applicant's rights to have a civil claim decided within a reasonable time, to respect for the home, and to the peaceful enjoyment of her possessions had been violated. She recommended that a hearing be scheduled before the Court of First Instance of Banja Luka without further delay.

Failure of Authorities to Enforce Judgement about Eviction from Private House (Application No. (B)7/96; Satric v. the RS, 22 January 1999)

"The applicant is of Bosniak descent, residing in Banja Luka. In 1995 the applicant and her spouse decided to leave Banja Luka and on 21 August 1995 she entered into a lease contract with Mr. M.V. concerning her privately owned house. Insofar as the convoy in which the applicant and her spouse were travelling was stopped and ordered to return to Banja Luka, they moved back to their house and shared the house with a leasee. On 2 November 1995 five unidentified uniformed men robbed the applicant and her spouse and evicted them from the house. On 11 December 1995, after the applicant and her spouse spent some time in the temporary accommodation provided by the ICRC and the local orphanage, they attempted to regain the possession of their house. However, Mr. M.V. refused them access to the house. On 29 December 1995 the applicant initiated civil proceedings before the Court of First Instance in Banja Luka with a view to have Mr. M.V. being evicted and obtained judgement on 12 February 1998 in which Mr. M.V. was ordered to hand over to her the vacant possession of the house at issue. The District Court in Banja Luka upheld the first instance judgement on 9 September 1998. Thereafter, the Court of First Instance in Banja Luka ordered forcible enforcement of the aforesaid judgement. The enforcement of the eviction order was attempted on several occasion, i.e., on 6 November 1998, 23 November 1998, 7 December 1998 and 18 December 1998. None of the eviction attempts were successful due to the resistance of Mr. M.V. and people gathered on the spot, supporting him."

The Ombudsperson concluded that the failure of the authorities to enforce the final and binding judgement of the Court of First Instance in Banja Luka constituted a violation of the applicant's "right to a court" and to peaceful enjoyment of possessions. She recommended that judgement be enforced.

Apartment Exchange by Municipality (Application No. (B)6/96; Juriskovic v. the RS, 9 April 1998)

"The applicant is of Croat descent residing in Banja Luka. Until 1993 she lived with her parents in a three-room apartment in Banja Luka. When her parents died the Municipality of Banja Luka, as the owner of the apartment, offered the applicant a smaller apartment. In May 1996 the applicant accepted the offered apartment. However, the subject apartment was squatted and could not be allocated to the applicant until the illegal user was evicted. These proceedings to resolve the applicant's housing problem have already lasted two years and five months. The applicant is still residing with her relatives without her own home in spite of the assurances of the respondent Government in their letter to the Ombudsperson of 25 September 1997 that the squatter would be evicted in October 1997."

The Ombudsperson concluded that an occupancy right constitutes a "possession" and therefore recommended that the respondent Party grant the applicant a permanent occupancy right either to the accepted apartment or to another suitable apartment.

Apartment Double Occupancy (V.P. v. the Federation)

V.P. is a tenancy rights holder, possessing valid documentation, for the apartment in St. No. 8/III in Sarajevo. She lived in the apartment from 1958, first with her parents and later with her daughter, until April 1992, when she was forced to leave Sarajevo with her daughter for settlement as a refugee in Novi Sad, FR Yugoslavia. In her absence, the apartment was declared abandoned and allotted to the married couple R. from Sarajevo for temporary use. R. is the tenancy rights holder to another apartment in St. Voje Dimitrijevic NO. 14 in Sarajevo, which was not damaged during the war. In fact, they are currently renting out the latter apartment to a third party. After the war, V.P. returned to Sarajevo but was not able to enter her apartment which was occupied by R. On 23.7.1996 she submitted a claim for return of her apartment to the City Department for Housing Affairs. On 29.4.1997, the Administration for Deciding on Housing in Sarajevo refused her claim on the grounds that it was late. V.P. then lodged an appeal to the second instance body, which has still not decided on the case. In accordance with the Law on Cessation of Application of the Law on Abandoned Apartments, V.P. again submitted a claim for return of her apartment, which was again received by the above Administration. The Administration has still not decided on the case. V.P. continues to move from friend to friend in Sarajevo, while she submits applications to the competent ministries, second instance bodies, and commissions.

This case involves “silence of the administration” and obstruction of laws. V.P. is unable to repossess her pre-war apartment, while R. is benefiting from possession of two apartments.

5. The Role of Political and Economic Interest Groups

As in other transitional and post-war countries interest groups can play a major role in the dispensing of goods and justice, depending on the strength of the state and the involvement of the international community. It was not possible for us as outsiders to get a full picture of who is dealing with property. We did collect some superficial data and gossip that one can expand on.

5.1 Farmers

Before the war some farmers were organised to promote their collective economic and political interests. Then the war severely disrupted rural communities. Following the war, a few farmers were organised within Farmer's Associations. Although their organisations are still embryonic, the members are hopeful that they will be able to work collectively to put the problems of the war behind them and to forge a productive future. They plan to influence economic policy as well as to push for laws that affect farm activities. They talk about working together to promote and protect markets, to acquire credit for small-scale projects, and to develop training programs.

5.2 Politicians and Officials

Following the collapse of Yugoslavia three nationalist parties in Bosnia took over economic and social control from the communist party. Nationalist leaders have a strategic interest in maintaining the conditions on which their power depends:

pervasive separation, fear and insecurity among the population, personalised power over the organs of public order and the absence of institutions capable of controlling illegal economic activity.

Bosnia is a small country, with an even smaller political elite most of whom were in the communist party before the war and have split up into more or less nationalist elites now representing the spectrum of political parties. Every ethnic group has their strategic interest, though one of the stronger dividing lines in the society shifts from ethnic groups to **winners and losers**. It is very difficult to evict illegal occupants if as much as one-third of the police force (who should carry out the eviction) are themselves staying illegally in temporary accommodation. The same applies to employees of the housing administration. A lot of the people who now have bigger, or better located apartments are either in political positions themselves or have good connections. This topic is **discussed publicly** now; during our research period one very well reputed politician was interviewed on television about the status of his apartment. He had to confess, that he is living there only temporarily, the pre-war inhabitant has filed a claim to return and the politician will move out soon. The independent weekly DANI and the daily newspaper OSLOBODENJE have started publishing lists of who is living in whose house in Sarajevo. The public pressure on this issue is rising.

5.3 Religious Communities

Other important interest groups are the religious communities, as they owned large pieces of land, and still own some. They are particularly interested in the restitution law that is being prepared at the moment. It would be well worth investigating further, especially in the urban and inner-city areas.

5.4 Displaced Persons Associations

One could also consider the displaced persons associations as influencing interest groups. Though they have different interests, depending on their situation: some get together to promote and support the return, others want to stay where they are at the moment. From the outside there seems to be cooperation between the ethnic groups but also amongst the people who want to stay, and the ones who want to return. Again it would be interesting to look further into their motivations and who and what they are influenced by.

5.5 Strategic Alliances

We were only able to gain initial insights into strategic alliances, for example in Bugojno (Federation), with a Bosniak majority. The municipality gained importance and power through the war. With the return of Croats (second largest group before the war) this power is jeopardised. The return of Serbs does not constitute much of a risk since they were always few in number, so returning Serbs face fewer obstacles than returning Croats.

6. Dispute Settlement Structure

6.1 Pre-War (Domestic) Land/Property Dispute Settlement Structures

The legal system of the former Yugoslavia was based on Continental law. During the 1970s, there was a trend to decentralise various aspects of the law, as manifested, for example, in a 1974 law which turned over control of social apartments from the nation to each republic. By the late 1980s, the republics had started making their own laws, with the result that legal decisions rendered in one republic were often not valid in another republic. Legal analysts have argued that pre-war laws were sufficiently laden with protections and appeal mechanisms to allow a defendant either to indefinitely prolong court proceedings or to benefit from the inability of courts to enforce their decisions.

Before the war, the **court system** consisted of the following courts: Municipal Courts (first instance); County Courts (second instance, although first instance for some types of cases); Supreme Court of BiH; Supreme Court of Yugoslavia; Supreme Court of the Republic; Supreme Court of each Republic; and the Constitutional Court of Yugoslavia.

A special kind of “court,” the **“Sud Udruzenog Rada,”** was entrusted with hearing a person’s complaints about the allocation of social apartments to individuals by the company commission. If this person was dissatisfied with the commission’s decision about allocations, most often when he suspected favouritism in apartment distribution, he could go before this court and lodge a complaint. This court, which served the special function of mediating disputes between companies and their employees, no longer exists. The possibility of using its expertise for today’s cases should be examined. Although the content matter of the disputes has changed, the methods of dealing with them could still be useful.

6.2 Post-War (Domestic) Land/Property Dispute Settlement Structures

After the war, many problems of the pre-war legal system were magnified, while new problems developed. Among the old problems that continued: a weak judiciary that ceded much control to the police, and a weak prosecutor’s office that assumed a limited role in investigation. Add on to these problems those of discriminatory decision-making, corruption, and limited enforcement of decisions, and the overall picture is characterised by limited rule of law, limited legal security and limited justice. Currently, the court system consists of the following:

In the Federation	In the RS
Municipal Courts; Canton Courts; Supreme Court; and Constitutional Court	Municipal Courts; County Courts; Supreme Court; and Constitutional Court.

The two separate legal systems in BiH have only nominal central institutions and functions, even if the BiH Constitution allows for the formation of more State court institutions. Some Cantonal courts in the Federation refuse to recognise the authority and jurisdiction of the Supreme Court, thus containing all court functions within the jurisdiction of that Canton. Federation-level judges may find it hard to try cross-cantonal crimes. In the case of land/property disputes, a Municipal or Cantonal Court may reach a decision that is not recognised in another municipality, canton, or entity.

Judges, who may be selected for political leanings more than for expertise, and who are grossly underpaid, are susceptible to the pressures of ruling nationalist parties. They may experience difficulties in exercising judicial independence. Moreover, they may be discouraged by the inadequacy of material resources, including educational materials (see ICG report, Rule Over Law, 1999).

Local Authorities

Since July 1999, property disputes have been referred directly to municipal authorities in the Federation. In the RS, such disputes involving social apartments must be referred to the local branch of the Ministry for Refugees and Displaced Persons. It is clear that local rather than regional/national interventions are being attempted and that administrative rather than judicial solutions are being sought. Some observers have argued that this trend toward decentralisation and toward delegalisation makes for reduced accountability of local-level interventions. Other observers have argued that this trend streamlines property case processing, making it faster, cheaper, and more efficient than processing property disputes in the first instance courts (see Section 3 of this report which discusses the real property books and the cadastre system).

Ombudsperson's Office

The Ombudsperson's Office was created after the war as one of the independent institutions of the State of BiH, under Annex 6 to the GFAP. Its main task was to put into practice the principles of the European Convention on Human Rights as well as a number of other international instruments in BiH. Its activities have included educating citizens about the Convention and bringing the domestic legal situation into line with standards set forth in other legal documents. Its duties have been to safeguard the individual's rights to proper governance and to monitor the actions of public authorities. The cases heard by the Ombudsperson cover a broad range of subject matter, predominantly land/ property issues. In general, the decisions reached by the Ombudsperson, who is a foreign national possessing substantial legal credentials (she is assisted by local legal professionals), are not legally binding, unlike those of the courts. Currently, the Ombudsperson's Office is focusing on mediation and negotiation as the preferred forms of conflict resolution (see Office of the Ombudsperson reports, 1998 and 1999). The Ombudsperson's Office serves a valuable role as a legal watchdog, drawing attention to problems of judicial independence and "silence of the administration" (i.e., failure of authorities to implement and enforce laws") It has been suggested that the role of the Ombudsperson, still in the experimental stage in BiH, should be expanded and given more powers (i.e., powers of enforcement) in the future.

Legal Aid Centres/ Legal Information Centres

UNHCR, among other donors has funded an extensive network of Legal Aid Centres (LAC). The LACs dispense free legal advice to beneficiaries, help them submit

applications to the administrative settlement procedure, and help them lodge complaints and petitions before the courts and human rights institutions (e.g., the Office of the Human Rights Ombudsperson and the Human Rights Chamber). Housing/ property cases comprise the overwhelming majority of cases. The staff of LACs are lawyers, barristers, and judges.

The clients of LACs tend to be members of minority groups, although members of majority groups may also seek assistance when they are not able to enter their former dwelling -- usually when the current occupant is unable or unwilling to move out (Cox 1997). Many people, regardless of their educational backgrounds or current situations, need help in navigating their way through the complex maze of laws and legal institutions.

Despite the important role played by the LACs, they may reasonably be criticised on the grounds that their operations are not subjected to rigorous monitoring and evaluation. In fact, all representatives of LACs interviewed indicated that they rarely succeeded in obtaining a favourable outcome for a client; they attributed this high failure rate to the unwillingness of municipal officials or judges to decide on cases, as well as the unwillingness of municipal or judicial police to enforce decisions.

The Sarajevo Housing Committee

The Sarajevo Housing Committee (SHC) was established in 1998 to facilitate the return of 20,000 minority returnees to social property in Sarajevo, although more recently it has also become involved in claims to private property. The SHC is a joint body, comprising members of the international and local communities.

At present the SHC is acting as a transitional body, assisting the cantonal housing authorities with property claims. Its international member describes it as an important "shadow" to the cantonal housing committee, i.e., as an important mechanism to assist cantonal and municipal authorities in taking hard decisions about property claims. This member also describes the SHC as a "political top cover" to the municipal authorities -- that is, a fallback when decisions against the personal interests of politically connected people need to be made. In his words, it provides the "carrot and the stick" -- support to cantonal authorities to make difficult decisions but sanctions through negative reports to OHR about poor performances.

The SHC's role as an "agency of interface" arguably promotes accountability and transparency in Sarajevo's property claim system, which has been characterised by observers as easily manipulated by powerful players, as invisible to the ordinary citizen, and as closed to public scrutiny.

Municipal and Judicial Police

After the war, judicial police were appointed to help the courts enforce decisions. According to the IPTF officers interviewed in Ilidza, when enforcing an eviction from a property, the local police are generally responsible outside the house, and the judicial police are responsible inside the house.

6.3 Post-War Role of the International Community in Land/Property Dispute Settlement

As the ICVA Directory of Humanitarian and Development Agencies in BiH indicates, hundreds of international and national organisations are engaged in development agendas. Many of these organisations have been, and still are, at the forefront of designing and implementing programmes that focus on or have components related to land/property issues, primarily strategies to improve this sector (e.g., see FAO 1999 a and b; World Bank 1996 and 1997). In particular, many such programmes deal with housing reconstruction, farmers' associations, market development, credit provision, and rural income generation. Some organisations may remain for years to come, but many organisations have already departed, having provided emergency development funds. Of the many, we would like to outline the role of the CRPC and the IPTF.

The Commission for Real Property Claims (CRPC)

The Commission for Real Property Claims (CRPC), through its Book of Regulation, is entrusted with regulating "... the conditions and decision making on claims for the return of real property of displaced persons and refugees and other persons with a legal interest in order to confirm rights to real property which is not in their possession." (Book of Regulations, Dayton Peace Agreement - Annex 7) When the CRPC accepts the evidence submitted for a property claim and subsequently decides in favour of the claimant, it issues a summary of an individual decision which includes the number of the decision, the property description, and information on the holder of the right to the real property. The property claimant can use the decision certificate from the CRPC as proof of his/her real property claims at hearings before administrative or judicial bodies. As such, the CRPC is not a part of the land/property dispute settlement structure, but it provides legal evidence that is essential for receiving a favourable outcome within that structure (for a more in-depth discussion of the CRPC see Section 3).

The International Police Task Force (IPTF)

Throughout this report, discussion has centred on the inability and/or unwillingness of local authorities to decide upon return issues or to enforce return once decisions have been reached by the responsible bodies. The IPTF acts as a counterbalance to the local authorities and police, pressuring them to act on difficult land/property issues. In the case of land/property disputes, the IPTF officers perform numerous functions: they receive applications from citizens regarding housing problems (the forms are forwarded to the local authorities); they monitor local authorities to make sure that they are handling land/property issues; they make sure that an area is secured before an awkward eviction; they attend evictions, making sure that the local/ judicial police carry out their duties; and they write detailed reports regarding evictions.

7. Conclusions

Every change regarding property interests or *de facto* use of property (purchases, gifts, exchanges of privatised apartments, houses or land, claims for restitution ...) complicates the situation further and makes it even more difficult to achieve certainty about the property title. The incomplete and incompatible registers today cannot meet the demands of a modern and changing society. Economic progress will be obstructed until it becomes possible **legally and de facto** to own property. Not to mention the stability that clear ownership gives the thousands of households who do not know where they are going to live tomorrow. Therefore it is crucial that the necessary changes are made. Even if adapting the registration systems now seems costly, the costs of not doing so would be far greater.

Therefore: **Privatisation** of state- or socially-owned businesses and enterprises has to contain regulations concerning the land they stand on. At the date of privatisation it has to be clarified who is owner of the respective land, whether or not there are **restitution** claims and who should be future owner of the land. It has to be determined which cases are eligible for restitution in kind and which would be subject to monetary compensation. In the current situation of Bosnia: the laws on restitution have to be enforced by the entities and restitution authorities need to be established in both entities. To create a **transparent market** the prices of real estate, houses and apartments, as well as rents of flats and businesses need to be collected and publicised (see also WESSELY 1999). Also there are few some professional real estate agencies; most of the actors are increasingly incompetent, unreliable or fraudulent (WESSELY 1999).

8. Recommendations

All the following Recommendations have to be coordinated closely with the local bodies, international organisations and donors

Short/Medium Term

- Organise a round table with all organisations and institutions involved, to form a 'Land Policy Discussion Forum'. (Possible organisations and Institutions are: CRPC, OHR, GTZ, RS and Federation Geodetic Administration, RS and Federation Ministries for Justice, OSCE, the Ombudspersons, The Human Rights Chamber, Norway Register Development A/S, swedsurvey and SIDA.)
- All of the above-mentioned bodies that are also operating as donors must form a coordination body to prevent duplication and foster synergy. Although some are already looking at developing a mortgage system it might be advisable to include some of the development banks, in order to harness their expertise in fostering a free property market.
- The round table should facilitate the creation of a Land Commission with representatives of civil society, who should take part in the discussions.

Medium and Long Term

- Create a new GTZ 'property security' programme working among other topics on reforming the laws concerning registration of property to make legislation more consistent, especially the 1984 Law on Real Property Cadastres with a transition period and provisions regarding the organisation of the property book.
One option would be to create a new 'Land Administration' including the property book and the real property cadastre. It should employ experts on cadastre and property rights. Property- book judges would become judges for land/property issues at the municipal courts.
- Help create a restitution administration, undertake a needs assessment, identify financial options.
- Work to speed up the laws on restitution and opt for 1945 as the final date.
- Change the Contract Law/create a Notary Law.
Contracts need to be verified by a certified notary to be effective. Notaries need to be trained.
- Regulate tenancy and lease provisions, and how to value land, houses, and apartments.

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