

**TOO LITTLE TOO LATE:**

**Implementation of the  
Sarajevo Declaration**

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## TOO LITTLE TOO LATE: Implementation of the Sarajevo Declaration

### EXECUTIVE SUMMARY

Sarajevo's Bosniac authorities were given the opportunity to demonstrate their much-vaunted commitment to multi-ethnicity when, on 3 February 1998, representatives of the state of Bosnia and Herzegovina (Bosnia), the Federation of Bosnia Herzegovina (Federation), Sarajevo Canton and the international community adopted the Sarajevo Declaration. The Declaration stressed the importance of the Bosnian capital "as a model of coexistence and tolerance for the rest of the country" and made it clear that: "The international community will condition continuation of assistance for Sarajevo on fulfilment of the benchmarks set out in this Declaration and on adequate progress toward meeting the 1998 goal of at least 20,000 minority returns."

Seven months on, the Sarajevo authorities have failed to meet most of the Declaration's main benchmarks or take adequate, concrete steps to enable the return of anywhere close to 20,000 minorities this year. Indeed, as of early August, only 1,300 minorities -- 7 percent of the target number -- had actually returned. These failures are, in large part, due to stalling, incompetence and general lack of will on the part of Sarajevo authorities and officials of the ruling SDA (Party of Democratic Action).

The much-heralded "year of minority returns" has failed to materialise. Nonetheless, the low number of returns to Sarajevo are among the most shameful failures, in light of several factors: the large amount of foreign aid -- 500 million DM -- lavished on Sarajevo since the end of the war, augmented by huge sums injected into the local economy by thousands of foreigners living in Sarajevo; a low level of violence against returnees owing in substantial part to the large foreign presence; and the low number of minorities who have stayed in or returned to Sarajevo -- only 13 percent today, compared with 50 percent before the war. Even this percentage is jeopardised by the continued influx of Bosniacs, including tens of thousands who did not previously live in Sarajevo; the

outflow of minorities; and the fact that a large percentage of minorities who have returned (or remained) are elderly.

Sarajevo officials have argued that the main reason for the low number of minority returns is a lack of housing space, and have accused the international community of thwarting returns by not providing enough assistance for housing reconstruction. In fact, the number of people per home on average has declined from 3.6 before the war to 3.2. A major reason for the housing shortage is that many families that remained in Sarajevo during the war now occupy two or more homes. Bosniacs displaced from elsewhere have been treated shabbily; many have been evicted from their temporary accommodation in order to make them available for people with political connections, including those whose pre-war homes are habitable.

In response to threatened sanctions in the Sarajevo Declaration, Federation authorities did eventually amend the entity's property legislation in line with the demands of the Office of the High Representative (OHR). Although the amendments remove most legal obstacles to return, Federation authorities refused to make further reforms, citing the failure of Republika Srpska authorities to amend their property laws. Moreover, Sarajevo officials have applied the laws regarding socially-owned apartments so as to favour Bosniacs who remained in Sarajevo over minorities and even over Bosniacs displaced from elsewhere in the country.

- *In light of the slow progress in minority returns to both entities, and for numerous other reasons, the 4 October 1998 deadline for the filing of claims to recover socially-owned apartments should be extended for twelve months.*
- *The international community should condition further aid to Republika Srpska on adoption of non-discriminatory property laws; and should urge that entity's authorities to adopt property laws that do not suffer from the defects from which the Federation laws suffer, on the grounds that their greater obstruction of minority returns to date justifies demands for speedier progress now.*

The Sarajevo Declaration called on the Sarajevo Cantonal Police Force to hire more minority officers, and to develop a plan for hiring officers over the next two years so as to reach percentages that reflect the composition of the pre-war population. The current force has an adequate percentage of Croats but only 2 percent of officers are Serbs or "others", well below even the *current* population composition (5 percent Serb and 3 percent others).

Initial progress in identifying offensive passages in school texts and materials has not yet resulted in their deletion. The Cantonal Ministry of Education agreed to remove or black-out all offensive passages and accounts of the recent war, but by the start of the school year in September, had not yet done so.

In July of this year, because the Canton had failed to meet most of the Sarajevo Declaration's main benchmarks, the US suspended 9 million DM of reconstruction assistance, and the European Commission introduced clauses in reconstruction contracts totalling some 18 million DM stating that the projects would not be started pending advice from the OHR concerning the Canton's compliance with the Declaration.

Aid should continue to be withheld until the Cantonal authorities take at least the following steps:

- *They must accept the international community's definition of double occupancy.*
- *They must undertake a systematic investigation of the Canton's property records in order to root out abuse, in particular double occupancy, giving high priority to the records of the homes of the 7,100 non-Bosniac families that have registered to return.*
- *They must evict illegal occupants, especially where housing would thereby be made available for minorities who wish to return, and must find alternative accommodation for people who truly have no alternative accommodation available to them.*
- *They must resolve the 80 or so remaining priority cases (out of 166) brought to their attention by the UN High Commissioner for Refugees, the Federation Ombudsmen and the Jewish community.*
- *They must cancel permanent occupancy rights granted after 7 February 1998.*
- *They must process claims for socially-owned apartments expeditiously, without discrimination and consistent with the law.*
- *They must take concrete steps to hire immediately at least 100 Serb and "other" police officers.*
- *They must stop making false or misleading statements in the media suggesting that compliance with the demands of the international community would require them to throw people out on the streets who stayed in Sarajevo throughout the war.*

Sarajevans rightfully have urged that officials -- including members of the ruling SDA -- who are responsible for obstruction and are profiting from double occupancies should be punished. The OHR has not been sufficiently vigorous in pressing officials to live up to their obligations.

- *The Reconstruction and Return Task Force should appoint a team to investigate claims of housing abuse and identify the officials who are responsible for the failure to fulfil the commitments made in the Sarajevo Declaration and/or who are benefiting from double occupancies. This task should be made a top priority, and High Representative Carlos Westendorp should ensure that the investigatory team has the resources and political support to follow the evidence wherever it may lead.*

**Sarajevo, 9 September 1998**

# TOO LITTLE TOO LATE:

## **Implementation of the Sarajevo Declaration**

### I. INTRODUCTION

In December 1997 the Peace Implementation Council meeting in Bonn called for a high-level conference on returns to the Sarajevo Canton. Although there had been more minority returns to the Sarajevo Canton than anywhere else in Bosnia and Herzegovina (Bosnia), it was agreed that, as the capital of the country and the recipient of considerable financial aid, the Canton should have made more progress in facilitating minority returns.

The Sarajevo Conference, held on 3 February 1998, adopted a Declaration which called for the dismantling of specific obstacles to the return of minorities,<sup>1</sup> and set deadlines by which various benchmarks were to be achieved. Cantonal authorities exhibited little political will to achieve these goals. Implementation began only when sanctions were threatened; the suspension of 27 million DM of aid in July was followed by further small improvements. Nevertheless, these steps have been little and late.

In February 1998 ICG published a paper outlining factors in the Sarajevo Canton that thwart returns and putting forward a number of recommendations.<sup>2</sup> Here, in its second report on Sarajevo, ICG examines the progress and lack of progress made and offers recommendations which, if implemented, would facilitate greater minority returns to Bosnia's capital city and reverse the process of ethnic homogenisation which is already well underway.

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<sup>1</sup> The term minorities is used, in this paper, to refer to non-Bosniacs; in the Sarajevo Canton Bosniacs are in the majority, and the other ethnic groups can therefore be considered as minorities. The term is *not* used in the more narrow legal sense it has acquired within Bosnia to refer to members of groups other than those recognised as "constituent peoples". The Bosnian Constitution, Annex 4 of the Dayton Peace Agreement, in its last preambular paragraph, recognises "Bosniacs, Croats, and Serbs as constituent peoples [of Bosnia] (along with Others)." Thus, within Bosnia's legal system, Bosniacs, Croats and Serbs are all to be treated as constituent peoples rather than minorities.

<sup>2</sup> ICG report, *Rebuilding a Multi-Ethnic Sarajevo: The Need for Minority Returns*, 3 February 1998.

## **II. COMMITMENTS MADE IN THE SARAJEVO DECLARATION**

On 3 February 1998 the Office of the High Representative (OHR), the US Government and the European Commission hosted the Sarajevo Return Conference which produced the Sarajevo Declaration. The Declaration stressed the importance of Sarajevo "as a model of coexistence and tolerance for the rest of the country"<sup>3</sup> and outlined the greatest obstacles to return along with deadlines for their resolution. The Declaration conditioned future aid to the Canton on fulfilling a set of benchmarks and "adequate progress" in achieving at least 20,000 minority returns in 1998. The US Special Envoy to the Balkans, Robert Gelbard, stated at the conference: "The United States and its international partners are ready to continue helping you in absorbing refugees and rebuilding the economy ... . You must not fail. If you fail we will not be able to sustain the level of support we have to this point provided."

The Sarajevo Declaration identified five areas that hindered return and their remedies:

### **1. Legislative**

The Declaration called for the amendment of discriminatory property legislation, the implementation and dissemination of information on the *Law on Amnesty* and assurances that returnees would be able to acquire documents necessary for employment and return within a week of their registration.

### **2. Housing**

The Declaration called for all socially-owned apartments undergoing or planned for reconstruction to be allocated through a Sarajevo Housing Committee (SHC) and stated that the Reconstruction and Return Task Force (RRTF) and local authorities would work together to identify alternative accommodation for people displaced by returns.<sup>4</sup> It also called on the Canton's Ministry for Spatial Planning to identify 2,000 cases of double occupancy by 30 June 1998, and to resolve outstanding return cases, including priority cases identified by the Office of the UN High Commissioner for Refugees (UNHCR) and those of the Jewish community.

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<sup>3</sup> Sarajevo Declaration, p.1.

<sup>4</sup> The Reconstruction and Return Task Force, chaired by the OHR and comprised of international organisations and donors, publishes a quarterly review of progress in the Declaration's implementation.

### **3. Public Order and Security Issues**

The Declaration called on the cantonal police force to recruit more minorities, guarantee the safety of returnees, and enforce housing related orders, for which they were required to develop a detailed strategy. The Federation Mine Action Centre was called on to develop a detailed plan for de-mining to support returns.

### **4. Employment**

The Declaration called on Sarajevo authorities to form an Employment and Return Commission and remove obstacles to trade and investment, and on Federation authorities to pass anti-discrimination laws.

### **5. Education**

The Declaration called on Sarajevo educational authorities to establish an Education Working Group to create a non-discriminatory education programme to be utilised beginning in the 1998/99 school year.

A Sarajevo Return Commission was established to implement the Sarajevo Declaration. It created several sub-groups: the Cantonal Employment and Return Commission, the Education Working Group and the Sarajevo Housing Committee. Aside from establishing these working groups, the Sarajevo Canton has been slow to implement other specific measures called for in the Declaration. The international community expressed its disappointment in the Chairman's Conclusions of the 16 April 1998 Federation Forum<sup>5</sup> and the 9 June 1998 meeting of the Peace Implementation Council in Luxembourg.<sup>6</sup>

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<sup>5</sup> "Participants were concerned that the Sarajevo Canton has not fully lived up to the commitments to implement measures under the Sarajevo Declaration ... ." Chairman's Conclusions, Federation Forum, 16 April 1998.

<sup>6</sup> "While welcoming the results of the Sarajevo and Banja Luka Returns Conferences, the Steering Board is disappointed by the insufficient progress toward the agreed targets. It urges the relevant authorities to accelerate implementation and remove immediately all remaining political, legal and administrative obstacles to minority returns." Declaration of the Ministerial Meeting of the Steering Board of the Peace Implementation Council, Luxembourg, 9 June 1998, p. 4.

### **III. PALTRY RETURN FIGURES**

The most glaring shortfall in the implementation of the Sarajevo Declaration are the return figures. Although some 7,100 minority families have registered to return,<sup>7</sup> according to UNHCR, only 1,292 minority persons (504 Croats, 692 Serbs and 96 "Others") moved into Sarajevo in the first seven months of 1998. In comparison, according to UNHCR figures, several municipalities during this period attracted a greater number of minorities in relation to their total populations.<sup>8</sup> In all, 5,204 minorities returned to the Federation (current population 2.3 million<sup>9</sup>) during this period, compared with only 859 minorities to Republika Srpska (current population 1 million).

Since the end of the war, 20,426 minorities moved to Sarajevo, 44 percent of all minorities (46,294) who moved to areas in the Federation; and 3,078 minorities moved to Republika Srpska. Taking into account the differential in overall population numbers, the return rate of minorities to the Federation has been nearly three times the return rate to Republika Srpska.

Despite the overall failure to achieve minority returns throughout the country, Sarajevo Canton's record cannot be considered as even relatively successful since it has also received far more assistance -- 500 million DM since the end of the war (about 1,400 DM per capita), including 80 million DM for housing -- than other areas.<sup>10</sup> Moreover, as the capital of Bosnia it is expected to serve as a genuine symbol of the country's multi-ethnicity, as well as the commitment of Sarajevo's leadership to regaining that multi-ethnic character. Today, unlike before the war, the vast majority of Sarajevo's inhabitants are Bosniac.

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<sup>7</sup> According to the Cantonal Ministry for Refugees, as of 14 August 1998, 12,004 families had registered to return: 4,899 Bosniac families, 2,062 Croat, 4,541 Serb and 502 "Others". "Others" are most likely to be non-Bosniacs (people of mixed marriages, Jews, Roma, Hungarians, etc.)

<sup>8</sup> 636 Bosnians returned to several municipalities where they make up the minority in the Herzegovina-Neretva Canton, the total population of which is 233,000; 513 Croats returned to minority areas in the Zenica-Doboj Canton, the total population of which is 328,00; and 1,909 Serbs returned to Croat-controlled Canton 10, the total population of which is 90,000.

<sup>9</sup> According to the Federation Statistics Institute, the 2.3 million population of the Federation is comprised as follows: 75.9 percent Bosniac, 21 percent Croat, 2.5 percent Serb and .6 percent other.

<sup>10</sup> More than twice as much aid, per capita, has gone to Sarajevo than to other areas in the Federation, other than to Mostar (which received large amounts of aid from the EU in 1994 and 1995, and Gorazde, owing to its high level of destruction and its importance to the DPA. Gorazde had received 857 DM capita by the end of 1997 (61 percent of the rate given Sarajevo), Konjic received 702 DM per capita; Sanski Most, 629 DM per capita; and Bihac, 496 DM per capita. ICG report, *Minority Return or Mass Relocation*, 14 May 1998, p. 15, based on figures provided by the Project Information Monitoring System of the International Management Group, dated 20 Jan. 1998.

**Pre-war and Present Population of Sarajevo Canton:**

Year	Bosniacs		Croats		Serbs		Others		Total
1991 <sup>11</sup>	252,000	50%	35,000	7%	139,000	28%	75,000	15%	501,000
12/97 <sup>12</sup>	310,000	87%	18,000	5%	16,000	5%	11,000	3%	355,000

Some 82,000 of the present Bosniac population are displaced persons from other regions in Bosnia.<sup>13</sup> About 228,000 people who fled the Canton had not returned by the end of 1997. This figure includes 24,000 Bosniacs, 17,000 Croats, 123,000 Serbs,<sup>14</sup> and 64,000 "Others".<sup>15</sup> As the following charts indicate, Bosniacs account for virtually all of the relocations (people who moved to Sarajevo who did not live there previously), 90 percent of returns in 1997 and the first half of 1998, and some 85 percent of all returns and relocations.<sup>16</sup>

**Registered Returns of Internally Displaced Persons and Refugees:<sup>17</sup>**

Year	Bosniacs		Croats		Serbs		Others		Total
1997	26,254	92.1%	1,409	4.9%	660	2.3%	194	0.7%	28,517
1/1/98-31/7/98	2,550	67.9%	479	12.7%	684	18.2%	46	1.2%	3,265
Total	28,804	89.2%	1,888	5.9%	1,344	4.2%	240	0.7%	32,276

<sup>11</sup> 1991 census. These figures do not include the entire pre-war City of Sarajevo, but rather only those areas that are currently under Federation control.

<sup>12</sup> Data provided by UNHCR.

<sup>13</sup> Ministry for Labour, Social Policy, Displaced Persons and Refugees, *Plan for the Return of Displaced Persons and Refugees to Sarajevo in 1998*, February 1998.

<sup>14</sup> After the Sarajevo suburbs, held by Serb forces during the war, were transferred to the Federation of Bosnia and Herzegovina in February and March 1996, more than 60,000 Serbs fled.

<sup>15</sup> The decline of 64,000 in the number of "Others" is likely to be accounted for in substantial part by re-identification by those people rather than flight. Thus, the actual numbers of Bosniacs, Croats and Serbs who have not returned is likely to be higher by up to 64,000.

<sup>16</sup> The term "returns" refers to displaced persons returning to their pre-war place of origin, and "relocation" refers to displaced persons relocating to a place from which they did not originate.

<sup>17</sup> Data provided by UNHCR.

**Registered Relocation of Internally Displaced Persons and Refugees:**

Year	Bosniacs		Croats		Serbs		Others		Total
1997	19,623	97.8 %	97	0.5%	294	1.5%	40	0.2%	20,054
1/1/98-31/7/98	2,519	96.8 %	25	1.0%	8	0.3%	50	1.9%	2,602
Total	22,142	97.7 %	122	0.6%	302	1.3%	90	0.4%	22,656

**Total of all Registered Returns and Relocations:**

Year	Bosniacs		Croats		Serbs		Others		Total
1996 <sup>18</sup>	64,898	79.8 %	11,794	14.5 %	4,646	5.7%			81,338
1997	45,877	94.5 %	1,506	3.1%	954	1.9%	234	0.5%	48,571
1/1/98-1/8/98	5,069	80.4 %	504	7.9%	692	10.9 %	96	1.5%	6,361
Total	115,844	85.1 %	13,804	10.1 %	6,292	4.6%	330	0.3%	136,270

The overall rate of return has been lower in 1998 than in the preceding two years, though minority returns as a percentage of overall returns have been increasing. According to the Cantonal Ministry for Refugees,<sup>19</sup> returns were negligible in January and February 1998, and minority returns averaged 75 families every two weeks between March and 17 July.<sup>20</sup> In the latter half of July, 151 minority families returned. In the first two weeks of August, 83 minority families returned. By 14 August 1998, according to the Ministry for Refugees, minority returns amounted to 517 Serb families (783 individuals), 339 Croat families (608 individuals) and 49 families described as "Others" (106 individuals). However, international

<sup>18</sup> UNHCR does not have the figures for 1996 broken down by ethnicity, and could only provide the total amount of returns and relocations. The figure for Croats and Serbs was derived by subtracting the number of returns in 1997 as shown above from the total number of these returns in 1996 and 1997 as provided in the UNHCR Statistics Package of 15 January 1998. The 1997 Croat and Serb return figures vary from source to source, and even within the UNHCR. The figures above were derived from the UNHCR databank while the 15 January 1998 Statistics Package lists 1,499 Croats and 923 Serbs. Moreover, a figure for the number of "Others" who have returned is not available; as a result the figure for Bosniac returns, derived from subtracting the Croat and Serb returns from the total, may be slightly greater.

<sup>19</sup> UNHCR figures were used in the above charts instead of the more recent figures from the Ministry for Refugees because they included figures on Bosniacs and differentiated between returns and relocations.

<sup>20</sup> The actual numbers were 392 Serb families (477 Serbs), 253 Croat families (365 Croats) and 26 families (34 persons) listed as "Others".

observers have noted that minorities are leaving the Canton in numbers that could offset returns.<sup>21</sup>

Most returning minority families consist of only one or two individuals.<sup>22</sup> One family member may return in order to assess the family's longer-term prospects, or only the elderly return. This suggests that housing problems are not the only obstacles to minority return. Minorities must also have opportunities to practice their religion, their children must be able to receive an unbiased education and working-age minorities need access to jobs on a non-discriminatory basis.

Interest of minorities in returning to Sarajevo far exceeds actual returns. As of 14 August, 2,062 Croat families had registered to return, and Kresimir Zubak, the Croat member of the Bosnian Presidency, estimates that 15,000 Croats wish to return; 4,541 Serbs had registered to return, and Mirhunisa Komarica, the President of the Union of Displaced Persons and Refugees of Bosnia and Herzegovina, states that 26,650 Serbs in the Federal Republic of Yugoslavia have also expressed their desire to return. This is more than one-third of the 72,117 refugees from Sarajevo Canton in Yugoslavia, as recorded by the Yugoslav census.

In addition, traffic between the Sarajevo Canton and Republika Srpska on the UNHCR bus lines has been enormous, suggesting that a great many displaced Serbs are interested in maintaining contact with the Sarajevo Canton. In October 1996, the bus line between Praca, Pale and Sarajevo and the line between Renovica and Sarajevo were launched and in that year carried approximately 10,500 and 850 passengers respectively in both directions. In 1997 the number of passengers travelling these routes grew to over 52,000 and 5,400, respectively. Additional bus routes were added in 1997. From March 1997 until the end of 1997 the route between Trnovo and Ilijza carried 17,000 passengers; the route between Ilijza and Visegrad, launched in May, carried 2,600 passengers; and the route between Ilijza and Foca carried 2,800 passengers. In 1998, by early August, the bus line between Praca, Pale and Sarajevo carried over 20,000 passengers; the line between Ilijza and Trnovo about 20,000 passengers; and the line between Ilijza and Visegrad about 15,000 passengers. Four more routes have been set up in 1998 between the Sarajevo Canton and Republika Srpska: the route between Ilijza in Republika Srpska and Sarajevo has so far carried about 400,000

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<sup>21</sup> *An Action Plan in Support of the Return of Refugees and Displaced Persons in Bosnia and Herzegovina*, Reconstruction and Return Task Force, March 1998, p. 4.

<sup>22</sup> For those families that returned between March and August 1998, the average number of members per family was 1.79 for Croats, 1.51 for Serbs and 2.16 for "Others"; for an average of 1.65 members per family for all minorities. During months when school is in session this is understandable. However, the trend has continued during the peak return period in summer-time. For example, in the second week of August, 59 minority families returned: 32 consisted of only one individual and 13 of two individuals. *Oslobodjenje*, 18 August 1998.

passengers; the route between Zvornik and Ilijas has carried over 2,500; the route between Brcko and Sarajevo about 450; and the line between Bratunac and Hadzici about 350.

## IV. PROPERTY LEGISLATION

### A. The Passage Of Non-Discriminatory Laws

A significant achievement spurred on by the Sarajevo Declaration was the passage by the Federation Parliament of property legislation consistent with OHR demands. The OHR had called for amendments to the property laws since 1996, and its human rights office had worked tirelessly with Federation authorities to reach acceptable language. The Sarajevo Declaration's warning that "non-compliance" measures would be imposed if the Federation failed to adopt the laws by certain dates<sup>23</sup> finally ensured their passage, although the deadlines were missed and implementation has been partial at best (as discussed in Section B, below). Moreover, several provisions of the new laws -- which the OHR reluctantly accepted as the price of compromise -- unfairly prejudice the rights of pre-war holders of occupancy rights to socially-owned apartments (as discussed in Sub-Section 3 of this Section).

The laws are discussed below in two categories: those concerning socially-owned homes, and those concerning privately owned homes. Some 80,400 of Sarajevo Canton's housing units, or 56 percent, are apartments that are currently socially-owned but are slated to be privatised soon; the remaining 63,000 homes are privately owned, mostly houses. Forty-two percent of the Federation's socially-owned apartments are located in Sarajevo.<sup>24</sup> Socially-owned apartments are owned by companies, government bodies or social organisations, which before the war awarded "occupancy rights" to people, usually employees, as an entitlement following a number of years of employment as specified by contract. Occupancy rights were almost as strong as ownership rights: occupancy right holders could pass on the right to their heirs, and could lease the home to others; they could not sell the home, however, and, if they abandoned the home for six months, the owner (company or other body) could reallocate the home to someone else. According to the Sarajevo Canton Housing Department, of the 80,400 socially-owned

<sup>23</sup> According to the Sarajevo Declaration: "*The Law on the Cessation of the Application of the Law on Temporarily Abandoned Real Property Owned by Citizens* must be finally adopted by 17 February 1998;... the *Law on Taking Over the Law on Housing Relations*...no later than 17 February 1998; and the *Law on the Cessation of the Application of the Law on Abandoned Apartments* must be presented to Parliament no later than 17 February 1998, and must be adopted by 1 March 1998 in a form acceptable to the High Representative."

<sup>24</sup> The Federation Ministry of Physical Planning reported in December that there were 191,566 socially-owned apartments in the Federation.

apartments in Sarajevo since the start of the war, 20,000 (or almost one-fourth) have been declared abandoned, 12,000 permanently and 8,000 temporarily.<sup>25</sup>

## **1. Laws Concerning Socially-Owned Apartments**

The most controversial property law in the Federation was the *Law on Abandoned Apartments*. According to this law, authorities could declare socially-owned apartments "abandoned" if the pre-war occupants had left, and could grant temporary occupancy rights to someone else. A 22 December 1995 amendment to the law stipulated that if the "abandoned" apartments were not reclaimed and reoccupied by 6 January 1996, they could be declared permanently abandoned and permanent occupancy could be granted to someone else. This measure blocked the return of thousands of displaced persons.

The *Law on the Cessation of the Application of the Law on Abandoned Apartments*, passed on 12 March, supersedes the *Law on Abandoned Apartments*. This law reverses all decisions which terminated the occupancy rights of displaced persons and requires pre-war occupants to file claims to return by 4 October 1998, within six months after the law came into force on 4 April 1998, and to cite an intended date of return within one year of the date of the claim.<sup>26</sup> Pre-war occupants who fail to submit a claim within the six-month period or do not return within one year after a decision on their claim is made stand to lose their occupancy rights.

The pre-war occupant may immediately move back into an apartment that is empty or illegally occupied. Concerning apartments legally occupied, the temporary occupant has 90 days to move out (and may stay even longer if the pre-war occupant plans to return at a later date), and authorities are responsible for finding alternate accommodation. In cases where the current occupant was granted permanent occupancy before 7 February 1998, the courts must decide whether the current occupant may stay in the apartment and the pre-war occupant must be found another place to live. Criteria for making this decision are being drafted.

Another pre-war law, the *Law on Housing Relations*, provided that, if occupancy right holders did not live in their apartments for a continuous

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<sup>25</sup> The figures released in December 1997 by the Federation Ministry of Physical Planning and Environment were lower: it reported that 17,839 socially-owned apartments had been declared abandoned.

<sup>26</sup> Claims are to be filed with municipal housing offices and can be mailed, or the occupancy right holder can file the claim orally at the housing department. Occupancy right holders can also designate individuals to file on their behalf. In the Sarajevo Canton claims are filed with the Cantonal Housing Department, but at its municipal branch offices.

six months, their occupancy right could be cancelled.<sup>27</sup> The amendment to this law, the *Law on Taking Over the Law on Housing Relations*, states that occupancy rights may not be automatically cancelled if the period of abandonment commenced after 30 April 1991 and the pre-war occupant is entitled to return under Annex 7. The amendment also states that people who left their apartments after 30 April 1991 are considered to be displaced persons, and thus entitled to return under Annex 7, unless they left their apartments for reasons that had nothing to do with the war. The law reiterates the 4 October 1998 deadline, set forth in the *Law on the Cessation of the Application of the Law on Abandoned Apartments*.

Another law that needed to be amended was the *Law on the Sale of Apartments with Occupancy Rights*. This law came into force on 6 December 1997 and stated that, as of 6 March 1998, applications to purchase socially-owned apartments could be filed and that occupancy rights holders would be given the first option to purchase. An amendment to the law was adopted on 4 March 1998 which excludes from the right to a first purchase option occupants who gained occupancy rights only after April 1991.

## **2. Laws Concerning Privately Owned Homes**

The *Law Regulating the Application of the Law on Temporarily Abandoned Real Property*, passed on 3 March 1998, supersedes the *Law on Temporarily Abandoned Real Property Owned by Citizens*, which was passed during the war and stated that authorities could declare private property abandoned and issue temporary occupancy to someone else if the owner left the premises after 30 April 1991. According to this old law, owners had the right to reclaim their property whenever they decided to return. However, the law did not adequately protect the rights of the temporary occupants, who were required to move out within eight days of being notified of the owner's claim. They were not given adequate opportunity to contest the claim, nor were they entitled to alternative shelter. Owing to these problems with the law, owners were rarely able to return to their homes if lawfully occupied.

The new law states that authorities must decide the claims of the owners to return to their property within 30 days. After a claim is decided upon, the owner may move back into the home immediately if it is empty or illegally occupied. If it is legally occupied, the current occupant must vacate the premises within 90 days. In negotiations before the law was passed it was agreed that this time period could be extended for up to one year if authorities could convince the OHR that alternate accommodation

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<sup>27</sup> This does not apply in cases where the occupant was absent to serve military service or undergo medical treatment.

for the temporary occupant could not be found. In the version of the law that was published in the Official Gazette and is therefore controlling, however, the requirement of OHR approval was not included.

### **3. Problems with the Amended Laws**

While these amendments constitute improvements over the old laws, they continue to burden unduly people's housing rights, in particular those of occupancy rights holders. First, the 4 October 1998 deadline is unreasonable in that it would extinguish a substantial property right at a time when it is still too early for many displaced persons to assess whether they want and/or are able to return to their pre-war homes. In any event, as discussed below, the deadline is likely to be extended because the Federation authorities have not taken adequate steps to file and process claims, or to notify occupancy right holders of the deadline.

Second, the laws require pre-war occupants to return to live in their apartments within one year of a decision on the claim's being made; if they fail to do so they stand to lose their rights. This is harsh indeed given the pervasive environment of discrimination against minorities throughout the Federation and the low number of minority returns to date.

Third, where the authorities awarded a permanent occupancy right to someone before 7 February 1998, a court may decide to allow that person to remain in the apartment rather than the pre-war occupancy right holder. The fact that the authorities are required to find the pre-war occupant another place to live is by no means an adequate substitute: this solution ignores the fact that the pre-war occupant built up rights to the apartment over years of use, and probably years of employment, and may have also made improvements to the apartment. The OHR must be vigilant in ensuring that the criteria for courts to apply in deciding whether to allow the post-war occupancy right holder to remain in an apartment are extremely limited, permitting the post-war occupant family to remain, for instance, only where it is substantially larger than the pre-war household.

Fourth, the authorities may allow a temporary occupant to remain in an apartment for up to one year after the pre-war occupant has declared his desire to return.

Fifth, under the *Law on the Cessation of the Application of the Law on Abandoned Apartments*, pre-war occupants who left their apartments may not purchase them unless they return and live in them for at least six months, and may not sell them for five years after the date on which they purchase the apartment. These are onerous burdens to impose, given

that the occupancy right is a fully vested right.<sup>28</sup> Moreover, the law has a discriminatory impact against minorities, who have returned in far smaller numbers than Bosniacs, in part because of measures by the Cantonal and local authorities. At the least, the requirement of return before purchase should be waived for minorities.

Sixth, the law on privately owned homes states that the authorities may decide to allow a temporary occupant to remain in a home for up to one year from the time when the pre-war owner declares his or her intent to return.

The OHR called on the the Federation authorities to include most of the above provisions in their amended laws, but the authorities refused, often linking their opposition to the lack of progress made by Republika Srpska authorities in amending their discriminatory property laws. While in principle, such arguments based on reciprocity should be rejected -- all Bosnian authorities are obliged to implement the Dayton Peace Agreement (DPA) regardless of the failure of others to do so -- there is a practical point that perhaps as many as 80,000 Bosniacs in Sarajevo are displaced from their homes in Republika Srpska, and have no possibility to return at this time.

## **B. Discriminatory and Other Forms of Inadequate Implementation**

Housing problems have long been epidemic in the Sarajevo Canton. 80 percent, or some 900, of the over 1,118 complaints filed with the Federation Ombudsmen's office for Sarajevo in 1997 dealt with the violation of the right to possession of an apartment or private property. This is twice the number of complaints received in 1996.<sup>29</sup>

Of all the complaints the Federation Ombudsmen received throughout the Federation in 1997, the Sarajevo Canton Ministry for Spatial Planning is one of the parties most frequently cited as the object of a complaint (with 214 cases), behind only the Mostar City Council (326) and the Capljina City Council (226).

Although passage of the amended property legislation removes a major obstacle to return in the Federation, because local authorities and officials have not fully implemented the laws, progress has been limited.

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<sup>28</sup> It is certainly true that, although the occupancy right is a fully vested right, it is subject to loss if the apartment is abandoned. Equity, however, would require that the right should be lost only if the abandonment and continued absence are voluntary. Under the current political circumstances, it cannot be said that failure to return is a fully voluntary choice, especially for people who would be minorities if they returned.

<sup>29</sup> *Report on Human Rights Situation in the Federation of Bosnia and Herzegovina for 1997*, Ombudsmen of the Federation of Bosnia and Herzegovina, March 1998, p. 53.

## 1. Retroactive Declaration of Abandonment

International monitors and the Federation Ombudsmen suspect that before the amended property legislation was passed some local officials retroactively declared apartments abandoned under Article 10 of the *Law on Abandoned Property*, a move that has been illegal since 6 January 1996.

## 2. Granting of Permanent Occupancy Rights after 7 February 1998

According to international monitors and the Federation Ombudsmen, local officials have granted permanent occupancy rights to people after 7 February 1998, in violation of Article 16 of the *Law on the Cessation of the Law on Abandoned Property*. This practice potentially prevents the pre-war occupancy right holder from returning.

## 3. Evictions of Temporary Occupants

Sarajevo officials often complain in the media that adherence to the Sarajevo Declaration and minority returns would result in their having to throw vulnerable groups onto the streets. The bulk of evictions appear to have been initiated by SDA-controlled companies that seek to regain apartments for privatisation. Many legal temporary occupants have been evicted so that permanent occupancy rights could be granted to someone else, often reportedly with SDA connections.<sup>30</sup> The Ombudsmen have repeatedly brought these cases to the attention of the Governor of the Canton and relevant Ministers, first in a letter dated 23 March 1998, followed by two meetings in which the Cantonal authorities provided assurances that the practice would stop. The practice nevertheless continued, and even increased after the *Law on the Cessation of the Law on Abandoned Apartments* came into force.<sup>31</sup>

## 4. Delay in Publishing Claim Form

Simply applying to return to one's home has also proved to be highly problematic. When the laws were published in early April 1998, the one-page claim form to return to socially-owned apartments was not yet finalised. One month elapsed before the Federation Minister of Urban Planning and Environment adopted instructions for filing claims on 30 April.<sup>32</sup> Several more weeks were then lost because the municipalities

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<sup>30</sup> Article 2(2) of the *Law* confirms the status of temporary occupants.

<sup>31</sup> *Newsletter*, The Federation Ombudsmen of Bosnia and Herzegovina, Number 10.

<sup>32</sup> The instruction designated the responsibilities of Cantonal and municipal authorities in the implementation of the law.

throughout the Federation expected the Federation Ministry to provide the forms, while the Federation Ministry claimed that the municipalities were responsible for printing and issuing the forms. Finally, in mid-May 1998, the Federation Ministry printed and issued the forms with the assistance of the OHR.

## **5. Refusal to Accept Proper Claims**

Claim forms were printed in newspapers, for wider distribution, at the expense of the OHR and in co-operation with UNHCR and other organisations, yet some housing officials have illegally refused to accept these copies. Some have, incorrectly, required that occupancy-rights holders reclaim their property in person, rejecting claims submitted on behalf of others. Some housing officials have also refused claims unless accompanied by certain documents, even though none are required by law, and potential returnees from Republika Srpska have been required to submit documentation to which they do not have access. This practice has been widespread even though the Ministry for Urban Planning issued instructions binding throughout the Federation clearly stating: "Competent authorities shall accept claims regardless of whether or not the necessary documentation is supplied."

## **6. Unlawful Fees**

According to international monitors, Sarajevostan, the public institution which holds records for socially-owned flats, had charged costly fees, of between 30 to 50 DM, in spring 1998 for copies of occupancy-rights documents and apartment contracts. Not only were the fees groundless, but they also violated Article 11 of the Sarajevo Declaration which states that: "The Sarajevo authorities will ensure free and fair access for all residents to official public records, such as ... housing records." In other parts of the Federation, authorities charged fees merely for filing the claims forms. The Property Working Group -- an inter-agency group including OHR, UNHCR, the Commission for Real Property Claims (CRPC), the Organisation for Security and Cooperation in Europe (OSCE) and the SHC -- pressed the Federation Minister of Urban Planning to issue instructions that fees were not to be charged, which he did on 4 July. Since then, complaints of unlawful fees in Sarajevo have all but stopped.

## **7. Delays in Issuing Decisions**

According to the *Law on the Cessation of the Law on Abandoned Apartments*, authorities must issue a decision on a claim within 35 days after it is filed to confirm pre-war occupancy rights, discontinue current temporary occupancy rights and fix a date by which the current occupant must vacate the premises. Few decisions were made within the requisite time, although decisions have recently been rendered at a quicker pace. As of 7 September 1998, some 5,000 of the 13,000 claims had been decided.<sup>33</sup> Decisions have often failed to include permission for the pre-war occupancy right holder to repossess the apartment and/or the deadline by which the temporary occupant must leave.

Moreover, many decisions issued to date are merely interim decisions in cases where the current occupant is found to have been legally awarded permanent occupancy rights; the “decision” in such cases consists of notice that the dispute will be resolved only once criteria for deciding between the competing claims have been adopted by the Federation Ministry, following guidelines from the OHR (which have yet to be finalised).

## **8. Intimidating and Unnecessary Hearings**

Hearings have been held in cases where current occupants and pre-war occupancy right holders are summoned to appear in court together, a practice which can easily be intimidating and provoke an incident. These hearings stopped in July, in response to complaints from the OHR and other international organisations.

The police and military have also on occasion conducted hearings in military headquarters, though they are not competent to do so, concerning flats owned or occupied by police or military personnel. These hearings, which have not been stopped, often subject claimants who are not police or military to harassment. Moreover, the police and military have not yet transferred their files concerning police and military flats to the municipal housing authorities who are responsible for handling all claims for socially-owned property.

## **C. The Need to Extend the 4 October 1998 Deadline**

Although 20,000 socially-owned apartments in Sarajevo Canton were declared abandoned, by 7 September, only 13,000 claims had been filed.

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<sup>33</sup> The start-up for issuing decisions was also very slow. According to the Ministry for Spatial Planning, as of 7 July, only 266 decisions had been issued.

With roughly one more month left to file a claim, a third of the holders of occupancy rights to abandoned apartments in the Sarajevo Canton have yet to file.

A Property Media Group was established to co-ordinate organisations that have launched campaigns to inform occupancy rights holders of their right to reclaim their abandoned apartments. The Group is chaired by the OHR and consists of the Stabilisation Force (SFOR), the United Nations Mission in Bosnia and Herzegovina (UNMIBH), the International Organisation for Migration (IOM), the OSCE and the CRPC. These organisations disseminate information throughout their offices in Bosnia as well as in host countries. The media campaign consists of television spots, radio jingles and newspaper advertisements. Claims forms are made available on UNHCR busses and distributed together with OSCE voter materials, including to out-of-country voters. Bosnian embassies abroad provide information about the amended legislation. Pamphlets explaining the legislation, claims process and recourse mechanisms were distributed beginning in August, and posters should be produced soon. Federation authorities have, however, failed to launch their own information campaign, even though the Steering Board of the Peace Implementation Council has called on them to do so.

In late August, the Property Media Group concluded that the information campaign had not sufficiently reached refugees abroad and internally displaced persons in Republika Srpska. Many were not aware of the amended legislation while others were confused about the claims process. The Group must immediately create and implement strategies to remedy this. A special effort should be made to contact the 50,000 or so pre-war occupancy right holders who registered their claims with the international Human Rights Ombudsperson through January 1998, many of whom incorrectly believe that they are not required to re-register.

The monitoring of the information campaign's implementation and effectiveness has been weak. The Property Media Group expected to complete a comprehensive evaluation of the campaign in the final week of August in order to assist in determining whether, and, if so, for how long, the deadline for filing claims for socially-owned housing should be extended.

Persons displaced in Republika Srpska and outside the country face particular problems in getting information since the Federation media clearly do not reach these people. Moreover, persons in Republika Srpska face difficulties in filing claims, since there is no postal exchange between most parts of the two entities (although exchange does exist between Banja Luka and Sarajevo) and, thus, most claims must be hand

delivered.<sup>34</sup> The Coalition for Return is helping to distribute information, and to transport completed claims from Republika Srpska.

Even if informational materials are widely distributed before the 4 October deadline, it is likely that a great many potential returnees will not have received adequate notice of their need to file a claim and/or will not feel sufficiently secure that the benefits of filing outweigh the risks. Potential minority returnees are likely to be disproportionately represented among those who fail to file, because they are more likely to believe that they will not be able to live without discrimination in their homes and many of those in Republika Srpska are likely to fear retribution from Srpska authorities if they file. The Federation Ombudsmen and US Embassy have called for an extension of the deadline. The Steering Board of the Peace Implementation Council also “urge[d] the Federation authorities to take immediate steps to ensure full implementation of the legislation. If this obligation is not met, the Federation authorities must extend the deadline for pre-war residents of socially-owned apartments to apply for the restoration of their occupancy rights.”<sup>35</sup> There is little disagreement among the international organisations that the deadline must be extended; the discussion rather now centres on the appropriate length of time of the extension.

## V. ABUSES IN ALLOCATION OF AVAILABLE HOUSING

Cantonal officials contend that the main reason for the low number of minority returns is a lack of available housing. This contention is belied by two circumstances. First, Bosniacs are returning in large numbers, and homes are being found for them. In the first seven months of 1998, 5,069 Bosniacs moved into Sarajevo, including 2,519 who had not lived in Sarajevo before the war, compared to only 1,292 minorities, virtually all of whom had lived in Sarajevo previously.<sup>36</sup> The differential between minority and Bosniac “returns” in 1997 was even starker: Bosniacs accounted for 94.5 percent of all people who moved into Sarajevo, including 19,623 who had not previously lived there.

Second, because of the decline in Sarajevo’s population, the Canton currently has more living space per capita than before the war: the habitable housing to population ratio is now 1:3.2, a decrease from 1:3.6 before the war.<sup>37</sup>

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<sup>34</sup> Moreover, several municipalities in the Federation do not have a housing office, or claims office, whatsoever.

<sup>35</sup> Declaration of the Ministerial Meeting of the Steering Board of the Peace Implementation Council, Luxembourg, 9 June 1998, p. 6.

<sup>36</sup> See the charts on pp. 2-3 *supra*.

<sup>37</sup> This calculation was made for the post-DPA Sarajevo Canton boundaries. Analysis of the Housing Space (Shelter) in Canton Sarajevo, UNHCR, 17 October 1997.

According to UNHCR, before the war, Sarajevo Canton had 135,748 dwellings and 160,223 households; 24,475 of these households, or 15.28 percent, did not have their own homes and shared an accommodation with parents or another family.<sup>38</sup> The average number of household members ranged from 3 to 3.5. As of the end of 1997, there were 112,296 habitable homes in the Canton (83 per cent of the pre-war total).<sup>39</sup> Using the current population figure of 360,935<sup>40</sup>, the UNHCR points out that, assuming an average number of 3.5 members per household, there should actually be a surplus of 9,171 housing units. Assuming an average number of members per household of 3.25, there should be a surplus of 1,293 housing units.

In its February 1998 Cantonal Return Plan, Sarajevo authorities urged that 118,157 homes (almost 6,000 more) are needed to accommodate Sarajevo Canton's population.<sup>41</sup> These additional housing units would be needed only if the average household size were to be reduced to 3 people. Moreover, this calculation assumes that all households are entitled to their own home. Before the war, 15 percent of all Sarajevo households did not have their own home.

Clearly, habitable housing space in Sarajevo is adequate to support greater returns. The claimed housing deficit is, in substantial part, a result of what the international community calls double or multiple occupancies, when one family occupies more than one home. No sufficient analysis has been done in the Canton to determine how many such cases exist.

According to Cantonal figures, 45 percent of the pre-war population no longer lives in the Canton, and of the 272,994 pre-war inhabitants who still do live in the Canton, 47,652, or 17 percent, currently have new addresses. Even granting that a percentage of these people lost their homes, or did not have homes before the war, a conservative estimate is that at least 13,000 people who remained in Sarajevo during the war and currently have a habitable home in Sarajevo are now occupying additional housing to which they have no pre-war claim.<sup>42</sup> If one calculates that the

<sup>38</sup> *Ibid.*, p.2 and Annex 1.

<sup>39</sup> Canton Ministry of Spatial Planning, Infrastructure and Housing Affairs, and UNHCR Analysis.

<sup>40</sup> For the purpose of this study UNHCR uses this figure, even though it uses other figures for other purposes.

<sup>41</sup> Ministry of Labour, Social Policy, Displaced Persons and Refugees, *Plan for the Return of Displaced Persons and Refugees to Sarajevo in 1998*, February 1998, p.6.

<sup>42</sup> With an average number of household members at 3.25 before the war, the 23,452 homes rendered uninhabitable as of the end of 1997 affected 76,219 people who had their own homes before the war (this does not include the 24,475 households who shared accommodation before the war). Estimating that the population that fled and the population that remained in the Canton suffered equally from destroyed housing, this would leave 34,299 people whose homes were destroyed and remained in the Canton without habitable housing, which is 13,353 less than those who currently have new addresses, suggesting that many families are currently occupying more than one home.

24,475 households that did not have their own homes before the war (most of whom lived with relatives) do not have a priority claim to a home now, then the number of double occupancies increases substantially.<sup>43</sup> The available figures highlight the need for a thorough investigation to determine the extent of double or multiple occupancy.

The misuse of housing can occur in many forms. One family may occupy more than one home, a classic case of double or multiple occupancy. A family that did not have a home before the war may have moved into the home of someone who fled. Children who lived with their parents before the war may have married, had children and taken up a home that belonged to someone else before the war -- a practice known as dividing families. People with occupancy rights to a home before the war may have moved into a more desirable home, acquired occupancy rights to that home and relinquished occupancy rights to their pre-war home, which often were granted to someone else -- a practice known as upgrading.

#### A. Double Occupancy

The Sarajevo Declaration only addressed the issue of double/multiple occupancy. The OHR understandably regards upgrading and dividing families as forms of multiple occupancy, and therefore illegal, but local authorities do not. Furthermore, Sarajevo authorities have failed to conduct an adequate investigation into housing abuses of any kind, even multiple occupancies under this limited definition.

Before the Sarajevo Conference was held, the Sarajevo Cantonal authorities briefly printed advertisements in the local press urging “[t]he citizens of Sarajevo who know of individuals or families using two or more homes in the Sarajevo Canton to report these cases to the Ministry for Spatial Planning for the Canton of Sarajevo”. This gesture, as intended, did not go unnoticed at the Conference, and the Sarajevo Declaration states that: “The Conference welcomed initial efforts by the Sarajevo authorities to catalogue and verify cases of multiple occupancy, through regular public appeals and examination of existing public records, as well as their pledge to intensify these efforts.” The compilation of reported cases had not yet been verified by the Ministry, however, and the Declaration set a benchmark stating that, “the Cantonal Ministry for Spatial Planning will provide the Sarajevo Housing Committee with the

<sup>43</sup> Before the war the ratio of people to homes was 3.6. According to this figure, roughly 84,000 people were affected by destroyed housing. Proportionately this would be 46,000 of the people who remained in the Canton. This suggests that there is a great number of dividing families. If everyone were to remain where they lived before the war and destruction of housing equally affected both families that remained and families that fled, those that remained would be occupying 61,762 housing units, or 55 percent of the current habitable housing stock. This would leave a great many housing units, 50,533, for the 82,000 displaced persons in the canton.

addresses and names of pre-war residents of 2,000 such illegally occupied dwellings by 30 June 1998, with the first 500 of these by 1 April 1998."

The public appeals continued sporadically after the Declaration, and approximately 800 cases of double occupancy (as narrowly defined) were reported by the 1 April 1998 deadline. According to the Ministry for Spatial Planning, upon review of these reports, slightly more than 200 were deemed to be true instances of double occupancy. This number then dwindled to 148 by July 1998. By late August, all 23 pre-war occupants who had registered to return to these homes had done so. The remaining 125 pre-war occupants have not yet registered to return and have not been located, either by the Coalition for Return or through newspaper advertisements published throughout Bosnia and in the Federal Republic of Yugoslavia.

The Sarajevo Declaration called on the Canton authorities to undertake an overhaul of Sarajevostan records and Canton archives. Three weeks after the Sarajevo Conference, the OHR wrote a letter to the Minister for Spatial Planning reminding him of his obligation; and the 15 April 1998 Federation Forum reiterated the reminder. Nonetheless, Canton authorities have stated that they will only check the files on a case-by-case basis, when they are presented with reason to believe that there might have been abuse. Some members of the international community fear that were the international community to threaten to seize the archives, Canton authorities would destroy or alter the documents.

The only method planned by the Sarajevo authorities to find cases of double occupancy was public appeals. Other avenues for exposing housing misuse remain unexplored. The authorities, should, in particular, investigate the thousands of socially-owned apartments that were declared abandoned to ensure that they are not the objects of housing abuse, and should verify that the temporary and permanent occupancy rights issued to Sarajevo residents for socially-owned apartments were not given to those who are double occupants, dividing families or up-graders. The authorities should give priority to making determinations concerning homes to which pre-war owners or occupants have registered their desire to return.

The failure of beneficiaries to return to their homes rebuilt by international agencies is another common form of double occupancy. About a third of the 10,000 homes repaired with foreign aid in the Sarajevo Canton remain empty, or occupied by only part of the family. For instance, many beneficiaries of reconstruction programmes in Gorazde also remain in Sarajevo homes. These homes should be freed up for their pre-war occupants or used as "secondary allocation" for displaced persons

vacating homes for returnees or returnees awaiting the rehabilitation of their pre-war homes.

## **B. Resolution of Priority Housing Cases**

The Sarajevo Declaration called on the “Cantonal Ministry for Spatial Planning in co-operation with the Cantonal Ministry for Labour, Social Policy, and Refugees” to resolve “the remaining four cases of identified pre-war tenants prevented from returning to their UNHCR reconstructed apartments, and the 96 pending return requests lodged with Cantonal authorities since the summer of 1997... by 1 April 1998.”

Of the four UNHCR cases,<sup>44</sup> one remains outstanding. The current occupant in this case has invested a considerable amount of money in the home. The Sarajevo Declaration states that “Any expenses associated with the resolution of these cases will be borne by the Canton, unless otherwise established by court proceedings.” Cantonal authorities could pay the current occupant a reasonable sum for the repairs, as they have paid compensation in order to resolve two other such cases. Another of these UNHCR cases which has recently been resolved illustrates the Canton’s delaying approach. Over two months ago the occupant of one of the homes locked the apartment he was occupying, refused to hand the key over until reimbursed 3,000 DM he invested in the home, and left for an unknown location. The Ministry for Spatial Planning, after attempting to locate him, could have sealed the premises for a week, and the police, three days thereafter could have broken into the home. This procedure should have been undertaken once the occupant disappeared, but instead the Canton waited two months to take action.

The 96 pending return requests from the summer of 1997 are also being resolved sluggishly. At the time of the Sarajevo Conference only four had been resolved. According to the Ministry for Spatial Planning, another 44 pre-war occupants have so far been reinstated into their homes as of last August. Cantonal authorities have also repeatedly provided incorrect information as to the number of cases solved, as confirmed by UNHCR field visits.<sup>45</sup>

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<sup>44</sup> These cases are part of a US\$ 6 million shelter project financed by UNHCR in August 1996 to reconstruct 1,156 homes in cooperation with the Sarajevo City Development Institute (a municipal organ that deals with urban planning and construction) in the municipalities of Ilidza, Novi Grad and Novo Sarajevo on condition that the pre-war occupants return to their rebuilt homes. After the homes were completed in March 1997, the Ministry for Spatial Planning blocked the return of 24 minority pre-war occupants (and one Bosniac) and allowed others to move into the homes.

<sup>45</sup> *Sarajevo Declaration Quarterly Implementation Review*, Reconstruction and Return Task Force, 6 May 1998, p.6.

The Sarajevo Declaration called for the resolution of cases regarding Jewish homes,<sup>46</sup> whereby the Ministry for Spatial Planning and the Ministry for Refugees, along with city and municipal authorities, “shall ensure that the 29 priority cases in which members of the Jewish community are already waiting to reoccupy their pre-war homes are resolved by 1 April 1998.” Only four cases were solved by the deadline. According to the Ministry for Spatial Planning, as of mid-August, 19 pre-war occupants had returned to their homes.

The Ombudsmen also presented Cantonal authorities with 41 cases regarding socially-owned apartments, though these cases are not mentioned in the Sarajevo Declaration. A total of 21 pre-war occupants had been able to return to their homes.

### **C. Bodies Responsible for Housing Matters in Sarajevo**

The Cantonal Ministry for Spatial Planning is the Ministry with primary responsibility for sorting out Sarajevo’s housing problems. Minister Munib Buljina thus is the official who, by virtue of his post, should bear the major onus of responsibility for the slow progress in achieving the Sarajevo Declaration’s benchmarks. While he has not been openly obstructive he has failed to act with the determination called for by the crisis. He has failed to adequately mobilise or offer support to build the capacity of the under-resourced Housing Department, nor has he sought funds to do so. Governor Midhat Haracic bears ultimate responsibility.

The Ministry is responsible for setting policies. For instance, the Ministry is responsible for developing a procedure for the secondary allocation of apartments (to which the pre-war occupants have not returned) that fully respects the pre-war occupant’s right to return. This it has yet to do.

The Housing Department of the Ministry is responsible for (a) deciding claims for recovery of abandoned socially-owned apartments by pre-war occupants and owners, (b) allocating temporary occupancy rights, and (c) carrying out evictions and other housing-related orders.

One great weakness of the Housing Department is the field commissions which are supposed to monitor the housing situation on the ground. These commissions, which consist of four or five inspectors in each

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<sup>46</sup> In 1992, in an effort to secure the possibility of return, the Jewish community signed a contract with the Mayor of Sarajevo agreeing that the socially-owned apartments belonging to the Jewish community would be protected and would not be declared abandoned for however long the occupancy right holder remained away. The contract allowed the City to grant temporary occupancy to others during the pre-war occupant’s absence. Nevertheless, the City Secretariat for Housing declared the apartments abandoned and, until recently, most temporary occupants have refused to leave.

municipality, have repeatedly reported incomplete or inaccurate information, as demonstrated by UNHCR and other field checks. They are not properly held accountable by either Minister Buljina or Governor Haracic.

Positive developments have, however, occurred in the last several months. In late May, the head of the Housing Department, Haris Trnka -- who outranked Buljina in the SDA (*Stranka demokratske akcije*, the ruling Bosniac nationalist party) and was well-known for obstructing minority returns -- resigned, reportedly under pressure from the international community. His replacement, Aida Haznadarevic, is performing her duties with greater professionalism, has personally intervened to resolve housing cases and has hired 20 new employees, some ten of whom are minorities. These hires bring the number of staff up to 98, all of whom are Bosniacs except for the recent hires. While very few claims for socially-owned apartments had been decided by the end of June, by 7 September, claims were being decided at the rate of more than 400 a week (although, as noted above, many of these were interim orders).<sup>47</sup>

The Sarajevo Housing Committee (SHC) was established after the Sarajevo Conference to monitor and help implement the laws concerning socially-owned apartments. Its Secretariat is, in particular, tasked with overseeing the appropriate allocation of apartments, and working with Sarajevan authorities to reduce multiple occupancies.<sup>48</sup> It follows different procedures for dealing with returns to (a) vacant apartments to be reconstructed, (b) apartments that are temporarily occupied but will be freed up by eliminating multiple occupancy, and (c) apartments temporarily occupied by displaced persons with no immediately available alternative accommodation.

The SHC Secretariat is headed by an international Executive Secretary seconded by UNHCR, who has two Bosnian support staff. The SHC is supposed to receive funds from the EC for four more staff members, who will form joint teams with Housing Department staff to monitor the Department's field commissions and verify returns to repaired homes.

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<sup>47</sup> According to the Ministry for Spatial Planning, only 266 claims had been decided by 7 July. By 20 July, the number had risen to 1,451; by 24 August, to about 3,500; and by 7 September, to about 5,000.

<sup>48</sup> The Steering Board is chaired by the Personal Representative of the Chairman of the Presidency of Bosnia and Herzegovina and members consist of personal representatives of the Co-Chair of the Council of Ministers, the Governor of the Sarajevo Canton, the Cantonal Ministry for Refugees, the Cantonal Ministry for Spatial Planning, the Cantonal Ministry of Interior, the Cantonal Ministry of Justice and Administration, UNHCR and OHR. The CRPC, UNMIBH, EC and Coalition for Return hold permanent observer status. The Secretariat is chaired by the UNHCR and consists of most of the members of the Steering Board, other than representatives of the Bosnian Presidency and Council of Ministers.

Cantonal authorities have not fully co-operated with the SHC: Governor Haracic delayed in signing the SHC's Memorandum of Understanding with the result that the SHC could not begin operating until May (three months later than planned), and the Ministry has been slow in presenting it with cases of multiple occupancy.

With regard to rebuilt homes that remain empty, the Canton has claimed that the municipalities bear responsibility for evicting double occupants, pointing to, among other things, the fact that reconstruction agencies have used tripartite agreements for the repair of homes signed by the agency, the municipality and the beneficiary. Under international pressure, however, the Canton has become more involved and the Governor has promised that, upon being informed of beneficiaries who have not returned to their homes, he will ensure that they do vacate the homes they currently occupy within two weeks. The US Bureau for Population, Refugees and Migration has already taken advantage of this promise and secured the return of some two dozen families to their rebuilt homes. The UNHCR has now drafted model tripartite agreements to be signed by the Sarajevo Canton instead of the municipalities to formally shift the onus of responsibility, and reconstruction agencies are encouraged to use these agreements.

The Cantonal Ministry of the Interior and, ultimately, the Governor are responsible for ensuring that the Cantonal police offer the necessary assistance to the Housing Department and courts in carrying out eviction orders. According to international monitors, about 99 percent of successful evictions benefit Bosniacs. Moreover, the police fail to prevent many lawful occupants, particularly minorities, from being forcibly expelled from their homes by other people.<sup>49</sup> For this discriminatory treatment and other derelictions of duty, Minister Ismet Dahic and Governor Haracic must be held accountable.

A municipality may enlist police protection or assistance in carrying out an eviction. The police are required by the Law on Preventing Official Persons from Performing their Official Duties to arrest anyone who obstructs a legal eviction, whether or not they use or threaten violence. Moreover, the Sarajevo Declaration requires the police to enforce "duly authorised housing related orders". According to international monitors, the police have failed to carry out these duties. In particular, from early August to early September, police officers have failed to attend evictions even when requested. According to a judicial authority and several field monitors, it is believed that the Minister of Interior issued a memo

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<sup>49</sup> For instance, In Vogosca (in Sarajevo Canton), which was declared an Open City by the UNHCR in July 1997, over a dozen Serbs are currently displaced within the municipality because they were expelled from their homes by people threatening violence.

instructing police not to attend evictions unless 14 criteria, which virtually never occur, are met. The Minister denies having issued such an order.

The mayors of some municipalities also bear some responsibility for obstructing evictions. In July 1998, according to international observers, the mayors of Novo Sarajevo, Stari Grad, and Novi Grad (all of which are split, with some territory in Republika Srpska) declared that illegal occupants would not be evicted unless alternate accommodation could be found. Such a policy flies in the face of the current law which provides that pre-war home owners and occupancy right holders have the right to reclaim their homes immediately if illegally occupied; they are required to wait for the occupants to find alternate accommodation only if the occupants had been lawfully granted occupancy rights.

## **VI. PUBLIC ORDER AND SECURITY**

### **A. Police Strategy to Support Return**

The Sarajevo Declaration called for the Sarajevo Cantonal police to develop a strategy by 1 March 1998 detailing how they will (a) guarantee the security of all citizens, with a focus on returnees, (b) incorporate more minorities into the force, (c) respond to public disorder, and (d) enforce authorised housing-related orders. The Declaration called on the police to engage in public relations and launch information campaigns.

The Minister of Interior, several days after the deadline had passed, instructed the police departments in the Canton to draw up plans. On 13 March 1998 these plans were presented to UNMIBH, which includes the International Police Task Force (IPTF). The various plans were not uniform and failed to address key components set forth in the Sarajevo Declaration. IPTF then drew up a generic plan the police departments were instructed to follow and adapt to their particular needs. The Ministry finally completed a Cantonal strategy in early May.

The 1996 Bonn-Petersberg Agreement called for a Sarajevo Cantonal Police Force of 1,702 officers: 846 (50 percent) Bosniacs, 485 (28 percent) Serbs, 117 (7 percent) Croats and 254 (15 percent) "Others". The force currently consists of 1,244 officers: 1,121 Bosniacs (90 percent), 101 Croats (8 percent) and 22 "Others" (2 percent), which includes Serbs. Not only is there a shortfall of at least 460 Serbs (even assuming that all of the 22 "Others" are Serbs) and 254 "Others," but there is an overall shortfall of 458 officers. IPTF has called on Minister Dahic to propose a plan for "moving towards this multi-ethnic goal during 1998 and 1999." Simply to increase the percentages of minorities to reflect their current representation in the population would require the

immediate recruitment of 65 Serbs and 39 Others. Nevertheless, the Minister has not taken any serious steps to make these recruitments. Instead, in early 1998, the force recruited 156 candidates as short-term police officers, most of whom are Bosniacs, without the direct involvement of IPTF, and hopes to merge them into the force.

Moreover, far from “guarantee[ing] the safety of returnees” as required by the Sarajevo Declaration, the Cantonal police have actively discouraged returns by erecting illegal checkpoints on the main roads into Sarajevo from Pale in Republika Srpska. Between 30 October 1997 and 29 March 1998, IPTF dismantled 50 illegal police checkpoints on or near this road, and issued non-compliance reports in 43 of these cases.

## **B. De-mining**

The Sarajevo Declaration called for the Federation Mine Action Centre (MAC), with the support of the United Nations, to develop a detailed plan for increased de-mining in support of returns by 15 March 1998. The Federation MAC was recently established and, with the help of UNMIBH, has produced a plan. International organisations have begun de-mining projects in Sarajevo but a lack of funds jeopardises the realisation of the Federation MAC plan.

## **C. Confidence Building**

The Sarajevo Declaration asserts that “Free and responsible media [are] essential in the creation of the necessary conditions for return. The Federation, cantonal, city and municipal authorities will accelerate their efforts to implement the confidence-building spelled out in Annex 7 of the Peace Agreement, and inform the Office of the High Representative of their plans to develop an appropriate media plan to this effect.”

According to the OHR, authorities have more often engaged in confidence destruction than in confidence building. Authorities have not to any significant extent used the media to welcome minorities back, or publicise the *Law on Amnesty*.<sup>50</sup> Rather, authorities have often stated in the media

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<sup>50</sup> The Sarajevo Declaration called on “relevant authorities to take immediate steps through mass media and other channels to ensure that returnees, and all citizens, are made aware of the existence of the Federation *Law on Amnesty* and that this law is fully implemented and applied without discrimination” and to “ensure that returnees shall be exempted from military service for a minimum period of five years...[and] to “respond favourably to requests for exemption from military service for persons who are in the minority where they live and conscious objectors.” The Ministry of Defence has since the existence of the Sarajevo Declaration issued a conscription notice to a Serb returnee to Sarajevo and against the wishes of another minority who remained in Sarajevo during the war.

that Serbs cannot return to Sarajevo until non-Serbs can return to Republika Srpska, and accuse minorities of returning to Sarajevo only to sell or rent their homes.<sup>51</sup> Authorities exaggerate the costs of minority returns and claim that such returns would result in the eviction of vulnerable groups such as displaced persons and families of fallen soldiers. Newspaper articles often juxtapose stories of minority returns to Sarajevo with those of displaced persons in Sarajevo unable to return to their homes in Republika Srpska. A wide range of Federation, cantonal and municipal authorities have also falsely accused the international community of thwarting minority returns by not providing enough assistance for housing reconstruction.

## VII. EMPLOYMENT

The Employment Working Group was established by the Cantonal Ministry for Refugees by 30 June as stipulated in the Sarajevo Declaration. The Working Group is considering compiling lists from various sources of highly-qualified minorities who wish to return. The group plans to organise seminars held by international and local organisations on micro-credit and assist the Cantonal Ministry for Interior in the recruitment of minority police officers. The Group is also examining credit opportunities for businesses owned by minorities. The Group has not yet developed an anti-discrimination code of employment practice.

## VIII. EDUCATION

The Sarajevo Education Working Group was formed on time, by 1 March 1998, as stipulated in the Sarajevo Declaration. The Group has exhibited excellent cooperation among Bosnians and international experts and organisations. Four sub-groups are functioning. The Sub-Group on Textbooks has identified passages in books and teaching materials deemed to be offensive to any ethnic group, and agreed that all accounts of the recent war should be deleted. An outline on points to be made concerning the war is to be drafted in consultation with all parties for use by teachers. The plan was that the Cantonal Ministry for Education, working in conduction with an expert team led by UNESCO, would remove materials and black out offending passages by the start of this school year in early September. This has not yet happened.

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<sup>51</sup> Indeed, a number of unscrupulous people try to persuade minorities to sell their homes, often at "fire sale" prices. For instance, one lawyer in Vogosca and member of the municipal council encourages minority returnees who seek his help in reclaiming their homes to instead sell their homes.

The Sub-Group on Discrimination has distributed information to all schools and several non-governmental organisations about impermissible forms of discrimination and has invited them to bring to the Sub-Group's attention cases of possible discrimination against students or teachers. SFOR has assisted by creating posters and pamphlets, which it will begin distributing in September. The Sub-Group on Democracy and Tolerance-Building has so far received 90 proposals for projects, three of which have been funded. The Sub-Group on Resources is awaiting the outcome of a World Bank project to analyse the financial needs of the entire education sector.

## **VIII. SANCTIONS**

Because the Sarajevo Canton failed to meet most of the main benchmarks in the Sarajevo Declaration, the US Agency for International Development (USAID) froze US\$ 5 million (9 million DM) of reconstruction aid in early July. The European Commission inserted a clause in three reconstruction contracts with non-governmental organisations for a total of some 9 million ECU (18 million DM) stating that commencement of the projects would be delayed pending advice from the OHR. These moves were initiated independently; the OHR has not formally called on donors to impose sanctions against the Canton.

Cantonal officials quickly condemned the sanctions in the local media, arguing that reconstruction financed by international assistance is required to facilitate additional returns and that, in the end, potential returnees will suffer most. They made no mention of their failure to fulfil obligations set forth in the Sarajevo Declaration, nor the shortfall in the number of minority returnees. Other local groups, such as the Alternative Ministerial Council of Bosnia and Herzegovina and the Association of Independent Intellectuals "Circle 99", also disapproved of the sanctions, stating that they render Sarajevo citizens the victims of nationalist politics, and suggested that individual obstructive officials should be punished rather than the city and its people as a whole.

The 27 million DM of frozen or "delayed" assistance constitutes a proportionate reaction to the Canton's non-compliance in implementing the Declaration, especially given that the Sarajevo Canton has already received 500 million DM in aid since the end of the war, including 80 million DM for the repair of 10,000 homes. With a 1998 budget of more than 500 million DM, the Canton is capable of assuming greater responsibility for financing return projects itself.<sup>52</sup> Moreover, given that the

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<sup>52</sup> According to the World Bank, the 1998 budget of the Sarajevo Canton is greater than the budget of Republika Srpska, which is 365.2 million DM. The 1998 budget of the Federation is 822 million DM.

Canton does not suffer from a housing crunch, but rather dire mismanagement, further assistance for housing reconstruction without the identification and resolution of housing abuse would allow such problems to persist.

The limited sanctions and conditioning of aid on compliance appear to have had some positive effect although, predictably, authorities claim that they had already initiated the improved measures. The number of minority returnees has increased in recent weeks, Governor Haracic has promised to ensure that beneficiaries return to their rebuilt homes and that evictions will proceed at an accelerated pace, and 62 out of 125 priority housing cases mentioned in the Sarajevo Declaration or raised by the Federation Ombudsmen, have been resolved after many months of little or no progress. The Canton spent 4.5 million DM in July 1998 to rehabilitate 169 apartments in Dobrinja, including 60 owned or occupied pre-war by non-Bosniacs.

Unofficial sanctions have been successful in the past as well. The four UNHCR priority housing cases specified in the Sarajevo Declaration actually belonged to a group of 25 disputed cases that the Ministry for Spatial Planning made no move to solve until UNHCR threatened to withhold US \$4 million for a reconstruction project near the airport if the cases were not resolved by 20 December 1997. The Cantonal Ministry for Spatial Planning then solved almost all of the cases by the deadline, but since others remained problematic UNHCR did not proceed with the project.

## IX. CONCLUSIONS AND RECOMMENDATIONS

### A. Property

#### 1. **The deadline for re-claiming socially-owned apartments should be extended by at least 12 months**

The current deadline for pre-war occupants to file claims for their socially-owned apartments throughout the Federation is 4 October. There is general agreement among the international community that the deadline should be extended, owing to several factors: the authorities were slow to start the claims process and claims continue to be processed slowly; some offices charged unlawful fees or required unnecessary documents before they would accept claims; some required hearings which often were intimidating and in any event caused further delays; and the information campaign has not yet reached all pre-war occupancy right holders, especially those in Republika Srpska and outside the country.

The main issue now under discussion is the length of time the deadline should be extended. Most Federation authorities want a short extension, claiming that it is important to promote durable solutions as speedily as possible. ICG fundamentally disagrees and calls for a 12-month extension for several reasons:

First, the six-month deadline was initially set based on the expectation that Republika Srpska would adopt property legislation fairly rapidly. The failure of Republika Srpska to do so has prevented any progress on returns there. The failure reflects the tenacity of, and has helped reinforce, the “fortress” mentality: no one moves into Republika Srpska, and no one moves out. This mentality has discouraged pre-war Federation residents, especially those now living in eastern Republika Srpska, from filing to reclaim their homes, for fear that even the act of filing will result in harassment. Owing to the obduracy of Srpska’s authorities, the deadline should be extended for at least 12-months, with the possibility of further extension if Srpska has not made adequate progress towards adopting and implementing non-discriminatory property laws.

Second, an extended deadline will strengthen the position of the international community in pressing Republika Srpska to include an equally long deadline in its law, which will certainly be warranted in light of that entity’s more adamant obstruction to minority returns over the past almost three years since the DPA’s signing.

Third, a short deadline serves the interests of the nationalist parties, all of which want to freeze the status quo, and basically keep people where they are now, with their own majority groups in territories that are substantially ethnically homogenous.

Fourth, the six-month deadline from the start did not give fair acknowledgement to the weightiness of the occupancy right. The private ownership right can not (and should not) be extinguished simply because of failure to return within a given time; there is no legal justification for according occupancy rights such radically different treatment.

- *The international community initially accepted the six-month deadline as a compromise; owing to the slowness of progress on property issues in both entities, and for all of the above reasons, it should now press for at least a 12-month extension.*
2. **Reform of property laws in Republika Srpska must be made a high priority, and provides an opportunity for further reform of the Federation laws**

The Federation authorities link their slow progress in reforming and implementing the property laws to the even greater recalcitrance of the Republika Srpska authorities. While arguments based on reciprocity should be rejected (all Bosnian authorities are obliged to implement the DPA regardless of the failure of others to do so), there is a practical point that as many as 80,000 Bosniacs in Sarajevo are displaced from their homes in Republika Srpska and have no possibility to return under the current political and legal conditions.

The OHR has called on Republika Srpska authorities to amend their property laws along the lines of the Federation laws. Given that the Srpska authorities have delayed so long in adopting the laws and have been so obdurate in obstructing minority returns, a strong argument can be made that the OHR should press them to adopt laws without the problematic provisions. Adoption of laws in Republika Srpska with the problematic provisions would provide major loopholes by which Srpska authorities could continue to block returns and prevent the purchase of apartments by non-Serbs. On the other hand, adoption of laws that better implement the right to return would send a welcome signal to the international community in general and donors in particular that the new Republika Srpska National Assembly is willing to cooperate with the international community in implementing the DPA's return-related provisions.

- *The international community should condition further aid to Republika Srpska on adoption of non-discriminatory property laws.*
- *The OHR should urge the Srpska authorities to adopt property laws that do not suffer from the defects from which the Federation laws suffer, enumerated below.*
- *The OHR should urge the Federation authorities to adopt the following reforms. It would then be in a stronger position to press for the reforms with Srpska authorities. Once the Srpska authorities amend their laws, the OHR should work to persuade both sets of authorities to make the following reforms, if they have not yet done so.*

**Regarding both private homes and socially-owned apartments:**

Once the pre-war owner or occupant declares his or her firm desire to return, if the home is legally occupied, the current Federation laws require the temporary occupant to vacate within 90 days, although this period may be extended by up to one year.

- *The laws should be amended to allow such an extension only in clearly defined, exceptional cases, and pursuant to a court order.*

**Regarding socially-owned apartments:**

- Given that 1998 has fallen far short of expectations as “the year of minority returns,” the requirement that pre-war occupants must return within one year of their claim’s being decided or else stand to lose their apartment should be dropped, or at least extended.

The new laws authorise the courts to allow a family granted permanent occupancy rights post-war to remain in an apartment to which a pre-war occupancy right holder has filed a claim to return. The authorities then are obliged to find another home for the pre-war occupant. The Federation Ministry of Urban Planning and the Environment is to adopt criteria, consistent with criteria drafted by the OHR, to guide the courts’ decisions.

- The OHR must ensure that the grounds for allowing post-war occupants to remain in apartments to which the pre-war occupants seek to return are extremely limited, permitting the post-war occupant family to remain, for instance, only where it is substantially larger than the pre-war household.

The current Federation law provides that pre-war occupants who left their apartments may not purchase them unless they return and live in them for at least six months and may not sell them for five years after the date of purchase. These are onerous burdens to impose.

- Pre-war occupants should be allowed to purchase their apartments without having to meet any further conditions.
- At the least, people who would be minorities if they returned to their apartments, should not be required to do so in order to resell them. More should be done to enable minorities to return to their homes in security and without discrimination; however, given the current political realities, they should be given the option to obtain some value for their homes if they choose to start a life elsewhere.
- The minimum period of ownership necessary before pre-war occupants may resell their apartments should be reduced to two, or at most three years (as initially urged by the OHR).

### 3. The Sarajevo Canton must make substantial progress in resolving double occupancy and other priority housing cases

Conservative estimates suggest that at least 13,000 people who stayed in Sarajevo during the war are now occupying two or more homes. In addition, some 3,000 homes repaired with foreign aid (including some outside of Sarajevo) remain unoccupied, while many of their pre-war owners occupy other, more desirable homes in Sarajevo. These are the easiest housing cases to resolve, as homes can be freed up for their pre-

war occupants or owners without needing to move current occupants into temporary accommodation. The Sarajevo Declaration called on the Cantonal authorities to identify at least 2,000 cases of double occupancy by 30 June 1998. In fact, the Canton has identified only 148 such cases. There are several reasons for this failure including that: (a) the Canton defines "double occupancy" more narrowly than does the international community; (b) the Canton has not taken any measures to identify double occupancies other than launching public appeals for information; (c) Cantonal authorities lack the political will to take action concerning most kinds of cases of double occupancy, especially where the persons benefiting from the abuse are people with connections and/or who remained in Sarajevo throughout the war; and (d) the Cantonal Ministry of Spatial Planning lacks an adequate number of properly trained and motivated staff.

*The Canton, in particular the Governor and the Ministry of Spatial Planning, must be pressed, as a matter of high priority, to take the following measures:*

- *They must accept the international community's definition of double occupancy, which includes "divided families" and "up-graders" as well as families which are occupying two or more homes.*
- *They must undertake a systematic investigation of the Canton's property records. They should begin by checking each of the homes of the 12,000 families that have registered to return, giving priority to the homes of the 7,100 families that are non-Bosniac, in light of the low number of minority returns to date. They should work to make these homes available, by (a) promptly evicting "double occupants" who have other homes to which they can move; (b) making a list for donors of vacant homes that require repairs; and (c) finding alternative accommodation for occupants who have no alternative accommodation of their own, even if they were never granted legal occupancy rights.*
- *They must resolve the 80 or so remaining priority cases (out of 166) brought to their attention by UNHCR, the Federation Ombudsmen and the Jewish community.*
- *They must verify, through an overhaul of the housing records, that people who have received occupancy rights to a home do not have another one at their disposal.*
- *They must cancel permanent occupancy rights granted after 7 February 1998, and should compensate those people who relied on the rights in good faith (who had no reason to know that the rights were illegal) for any improvements that they made to the homes.*
- *They must substantially increase their efforts to notify pre-war occupants or owners of homes that are found to be doubly occupied*

*that their homes will be made available as soon as they give notice of their intent to return on a date certain.*

- *They must process claims for socially-owned apartments expeditiously, without discrimination and consistent with the law. They must ensure that the Cantonal Ministry of the Interior turns over records on police apartments to the Cantonal Ministry of Spatial Planning.*
- *They must ensure that the Cantonal Ministry of Spatial Planning, in particular, the Housing Department, has an adequate number of properly trained and qualified staff, including substantially more minorities.*

**4. Limited sanctions should be maintained until substantial, concrete steps are taken**

Since the end of the war, Sarajevo Canton has received 500 million DM in foreign assistance, including 80 million DM for reconstruction. Because the Canton failed to meet most of the Sarajevo Declaration's benchmarks, in July USAID suspended 9 million DM of assistance intended for reconstruction. The European Commission introduced clauses in its reconstruction contracts that have been signed but not started stating that the projects are to be delayed pending advice from the OHR. While there clearly are substantial difficulties in resolving housing issues in Sarajevo, the Canton has not taken the minimum good faith steps necessary to move the process forward.

- *Until the eight steps outlined in Recommendation 3 above have been taken, USAID should continue to suspend aid to Sarajevo Canton.*
- *The European Commission should continue to include "trigger" clauses in reconstruction contracts, conditioning the start of projects on OHR advice regarding the Canton's level of compliance. Other donors should follow suit by including similar clauses.*
- *The OHR should recommend that donors refrain from starting new reconstruction projects until the eight steps outlined in Recommendation 3 above have been taken.*

Many Sarajevans condemned the sanctions, claiming that they hinder minority returns and render Sarajevans the victims of nationalist politics. The reality, however, is that the aid, as currently misapplied, has done little to benefit minority returns.

**5. Obstructive officials at all levels should be held accountable**

Sarajevans rightfully have urged that officials -- including officials of the ruling SDA -- who are responsible for obstruction and are profiting from

double occupancies should be punished. The difficulty with implementing this suggestion is that no organisation has taken on the task of documenting who the obstructive officials are. The Sarajevo RRTF, charged with assisting implementation of the Sarajevo Declaration, met only two or three times since the Declaration's adoption, and devoted an inordinate amount of time to procedural matters. This summer, a new chairperson was appointed.

- *The RRTF should set up a team to investigate claims of housing abuse; and should identify the officials who are responsible for the failure to meet the benchmarks set forth in the Sarajevo Declaration and/or who are benefiting from double occupancies. This task should be made a top priority, and High Representative Carlos Westendorp should ensure that the investigatory team has the resources and political support to follow the evidence wherever it may lead.*

One model for the composition of such a team is the Election Appeals Sub-Commission of the OSCE which is comprised of Bosnian judges, an international judge and a small team of international investigators.

**6. The SHC must collect information on evictions.**

Enforcement of duly authorised eviction orders is a key component of freeing housing space for minority returns, and careful monitoring by the international community clearly is necessary to ensure proper enforcement. However, no international organisation knows even roughly the number of eviction orders that have been issued or successfully enforced. Compiling data is complicated by the fact that both the courts and the Cantonal Ministry for Spatial Planning issue eviction orders.

- *The SHC must collect information on the number of eviction orders issued, the number successfully executed, and the number of these that enable minorities to return.*

**7. The Coalition for Return should be funded to help notify displaced persons about their property rights**

The Coalition for Return is the most effective mechanism for notifying persons displaced from Sarajevo of their rights, including property rights and their need to file claims for socially-owned property.

- *The Coalition should be provided with increased funds, from UNHCR or the Canton, to assist them in notifying displaced persons of their rights.*

- *The Serb Civic Council, a member of the Coalition, should be helped to open offices in Brcko and Banja Luka in order, among other things, to be able to provide legal advice to displaced persons wishing to return to Sarajevo and elsewhere.*

## B. Security and Confidence Building Measures

### 1. The Sarajevo Canton Police Force should hire more Serbs immediately and establish a long-term plan for further hires

The Canton police force currently is comprised of 1,244 officers, more than 450 short of the target set in the April 1996 Bonn-Petersberg Agreement. While an adequate percentage are Croats, only 22 (2 percent) are Serbs and others, far short of the Bonn-Petersberg target of 712 (43 percent). The current population of Sarajevo is 5 percent Serb and 3 percent others. Far from making efforts to recruit more Serbs, the police force, in early 1998, hired 156 officers, most of whom are Bosniacs, as short term officers, without any IPTF involvement.

- *The Cantonal Ministry of the Interior should work out a plan, together with IPTF, for the immediate recruitment of 65 Serb police and 39 others, in order to bring their numbers up to the current population figures. The next phase could involve the hiring of additional recruits, including those of the already recruited officers whom IPTF certifies, so long as the minority numbers are adequate to raise the percentage of Serbs to at least 10 percent.*
- *The international community should make clear to the Ministry that aid to the police force will be suspended if these steps are not taken within a time frame established by IPTF.*

### 2. Police officers should enforce duly authorised eviction orders

The Sarajevo Declaration calls on the police to “enforc[e] duly authorised housing-related orders.”<sup>53</sup> While there have been successful evictions, virtually all of them benefit Bosniacs. Until August, the police at least attended evictions, although they rarely intervened, even when violence was threatened, in cases where the person trying to reclaim the home was a minority. From early August until early September, police officers did not attend evictions. As a result, fewer people who were served with eviction orders actually left their homes.

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<sup>53</sup> Sarajevo Declaration, para. 29.

- Given the Sarajevo Declaration's call for police enforcement of housing related orders, the poor enforcement record of orders that would benefit minorities, and the possibilities for violence, Minister of the Interior Ismet Dahic must issue instructions that police are to attend all evictions.
  - Where "duly authorised housing-related orders" have been issued, the police must ensure that they are carried out without discrimination.
3. Authorities should use the media to welcome minorities back to the Sarajevo Canton
- Authorities should stop making statements that mislead the public into believing that non-Bosniacs are able to return only if the Canton's most vulnerable residents -- persons displaced from homes to which they cannot return or who have no homes -- are thrown out on the street. Authorities should make clear that evictions will not result in anyone's being rendered homeless.

## C. EDUCATION AND EMPLOYMENT

### 1. Cantonal authorities must implement the decisions of the Working Group

The initial progress made by the Education Working Group in identifying offensive passages in textbooks and other school materials has been among the most positive developments prompted by the Sarajevo Declaration. Steps have also been made to put in place a process by which students and teachers may lodge discrimination complaints. However, Cantonal authorities have failed to implement some of the Working Group's decisions, such as that offensive passages were to be blacked out of textbooks before the start of this school year.

- Cantonal authorities must fully implement the decisions of the Education Working Group.

Ninety proposals have been submitted for school projects to foster democracy and tolerance. So far only three have been funded.

- More donors should support projects to foster democracy and tolerance, and the RRTF should help find funding for priority projects.

### 2. The Bosnian Constitution's prohibition of discrimination should be enforced

The Constitution of Bosnia, which forms Annex 4 of the DPA, states that “Bosniacs, Croats and Serbs are constituent peoples (along with others) of Bosnia.” The Bosnian Constitution supersedes the Federation Constitution, which recognises only Croats and Bosniacs as constituent nations within the Federation. There has been no study of the extent of employment discrimination in Sarajevo, or the Federation.

- *Chairman of the Bosnian Presidency, Alija Izetbegovic, should remind all levels of government throughout the country that the Bosnian Constitution, and in particular the provision regarding constituent peoples, supersedes all other inconsistent laws. He should take the necessary steps, as head of state as well as head of the SDA and the Coalition which governs most of the Federation, to ensure that the provision is enforced and that inconsistent laws are repealed.*
- *The Governor of Sarajevo Canton must issue instructions to the various ministries that they are not to discriminate, and are to employ minorities, including at the top levels, at least at a rate that reflects their current numbers in the population.*

**Sarajevo, 9 September 1998**

