

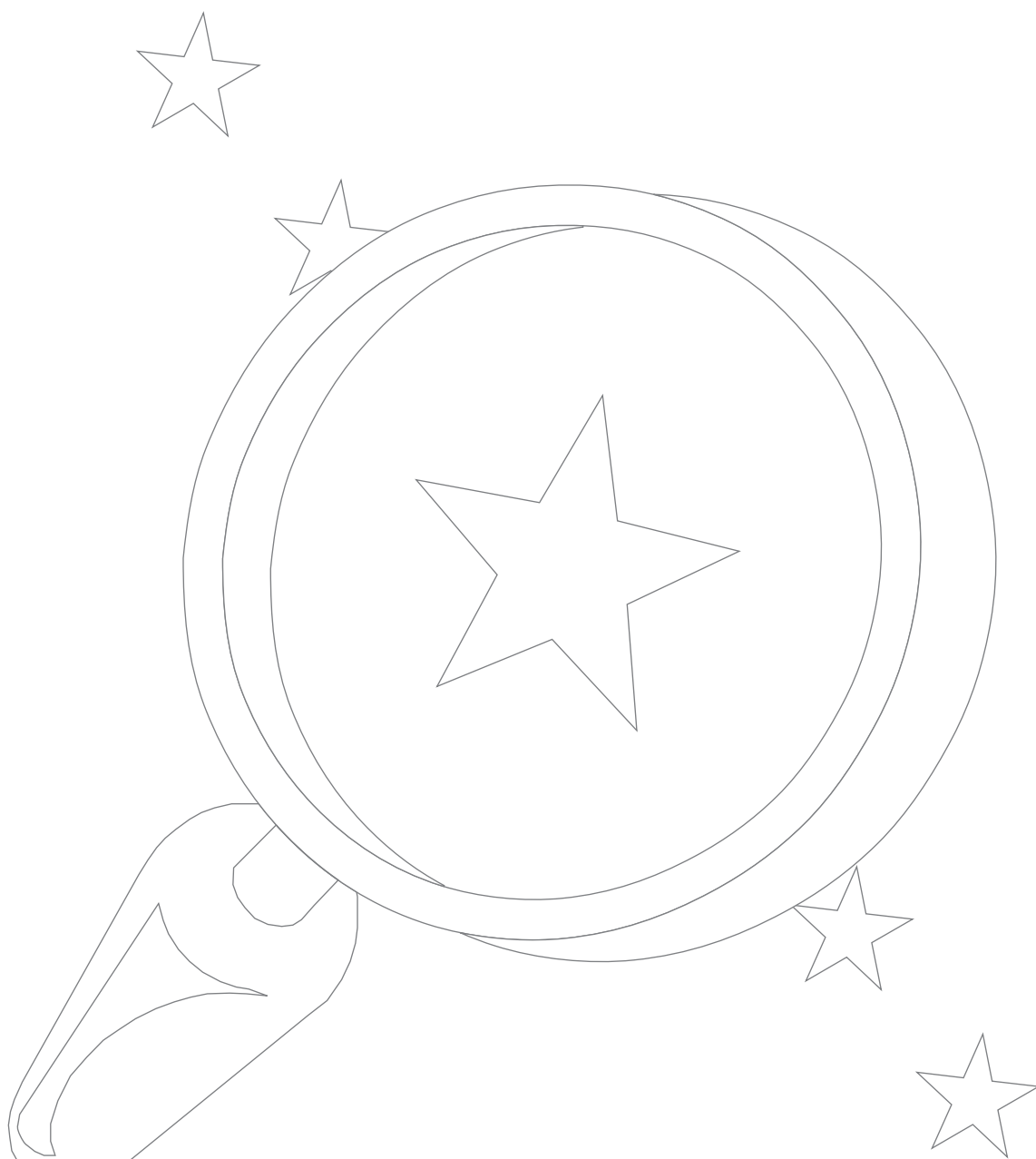
# Functional Review of the Return Sector in BiH



## Final Report

*Publication 6*





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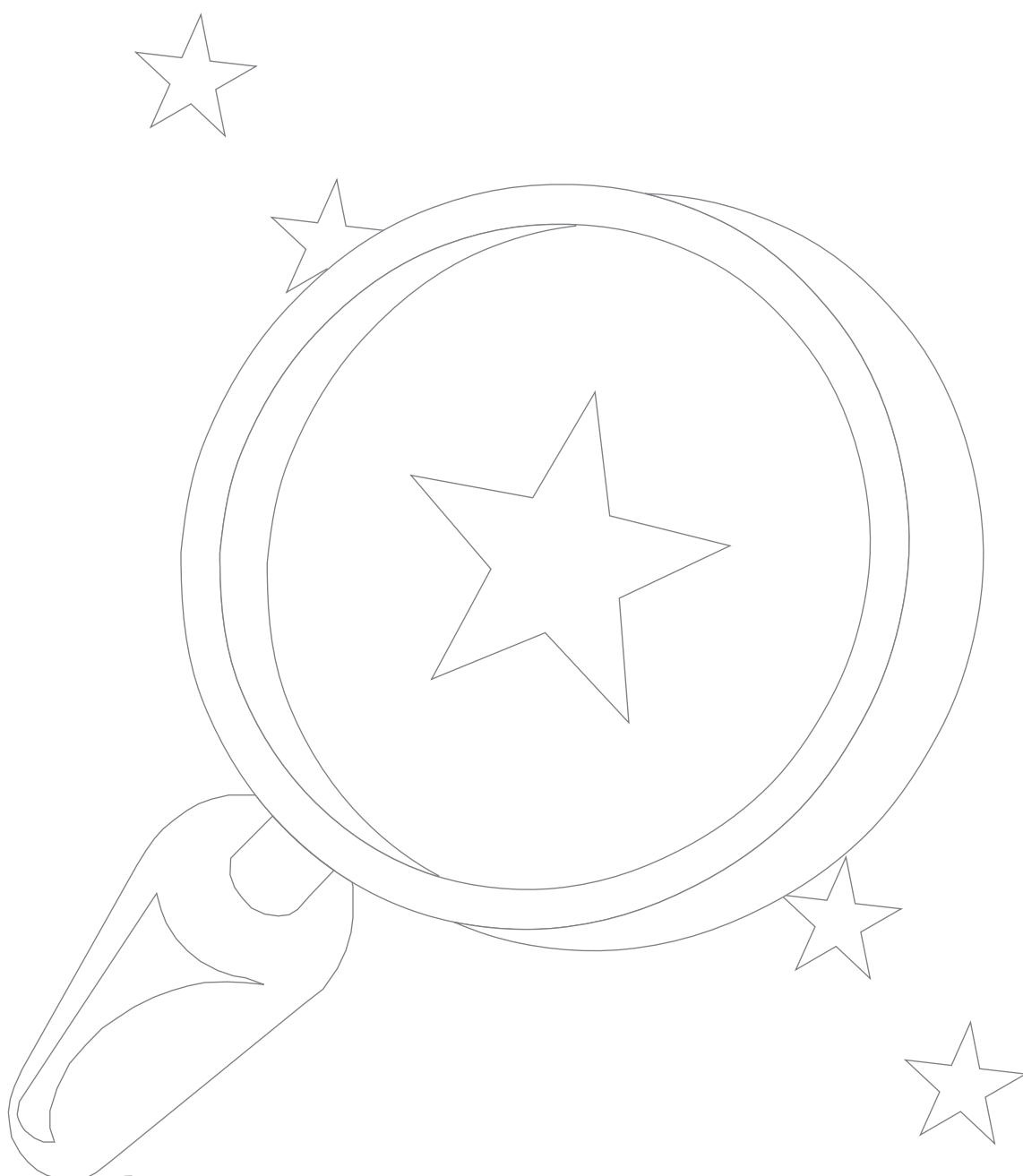


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# *Glossary*



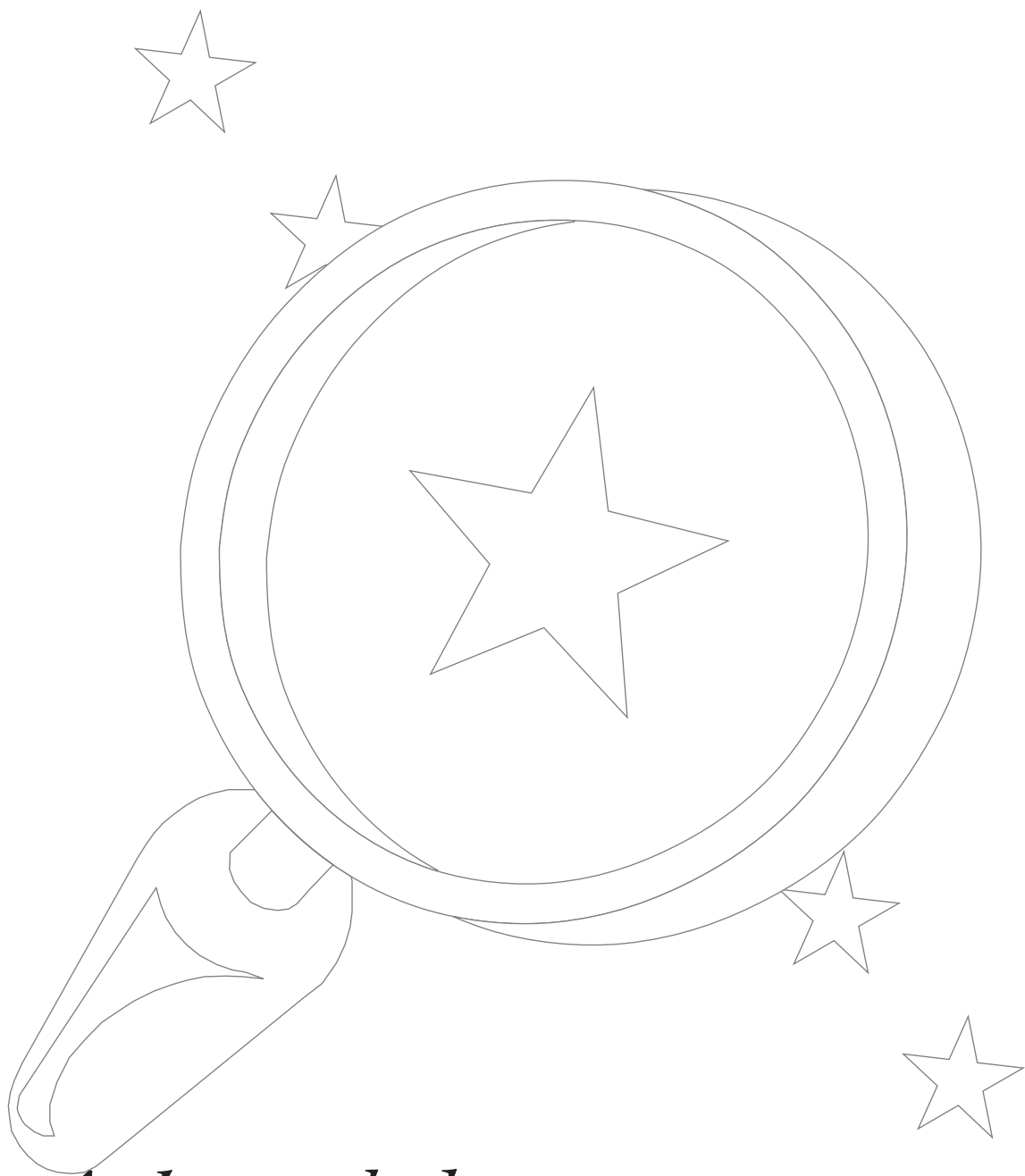
## *Glossary*

BD	Brcko District
BiH	Bosnia and Herzegovina
CEB	Council of Europe Development Bank
CoE	Council of Europe
DEI	Directorate for European Integration (BiH)
DIS	De-centralised Implementation System
DP	Displaced Person
EC	European Commission
ECD	Delegation of the European Commission to BiH
ECRMEU	EC Return Monitoring and Evaluation Unit
EU-RED	(EU-financed) Regional Economic Development (project)
FBiH	Federation of BiH
FRR	Functional Review of the Return Sector
GAP	Governance Accountability Project (SIDA/USAID)
GFAP	General Framework Agreement for Peace (a.k.a: ‘Dayton’)
HVM	Housing Verification Mission
IAS	International Accounting Standards
IBHI	Independent Bureau for Humanitarian Issues
MoCA	Ministry of Civil Affairs (State)
FBiH MDP	Ministry of DPs and Refugees (FBiH)
BiH MHRR	Ministry of Human Rights and Refugees (BiH)
RS MRDP	Ministry of Refugees and DPs (RS)
MoU	Memorandum of Understanding
OHR	Office of the High Representative
OMI	Representative office of the RS MRDP in the field
OSCE	Organisation for Security and Co-operation in Europe



PAR	Public Administration Reform
PIP	Public Investment Programme
RC	Regional Centre (of the BiH MHRR)
RDA	Regional (Economic) Development Agency
RF	Return Fund
RPI	Return Process Institution
RS	Republika Srpska
RRTF	Return and Reconstruction Task Force
SAA	Stabilisation and Association Agreement
SC	Steering Committee
SCDPR	State Commission for DPs and Refugees
SIDA	Swedish International Development Co-operation Agency
SUTRA	Sustainable Transfer to Return-related Authorities (project)
TL	Team Leader
ToR	Terms of Reference
UN	United Nations
UNDP	United Nations Development Programme
UNHCR	United Nations High Commissioner for Refugees
USAID	United States Agency for International Development





*Acknowledgement  
and Disclaimer*



## *Acknowledgement and Disclaimer*

Under contract with the European Commission, this report was written by a team of consultants, some with extended experience in Bosnia and Herzegovina (BiH), others with much sympathy for the country and its more recent history. Although the team, with some worthy exceptions, consisted of outsiders, chosen for their expertise in their respective fields, their positive attitude to the country and the difficult phase of transition it is in cannot be discounted. Should some of the recommendations in this report strike BiH citizens as untoward, they may be criticised on technical grounds, but never for reason of their authors being either ungenerous or unsympathetic.

However brief, the short history of the return process in this report will conjure up in the minds both of those who fell victim to the war and its aftermath and of those who merely observed, a picture, likely inadequate, of the traumatic experience displacement and return has been for over a quarter of the present population of BiH. The physical and mental suffering, the loss of home and hearth, the years of sojourning – sometimes tolerated, but more often unwelcome – amongst strangers, the painful re-acquaintance with places once so familiar, the like hurtful realisation that others had taken advantage of one's destitution and, finally, the inevitable appreciation of the difficulties faced by the local authorities to offer ready solace, cannot be adequately addressed by a report of this type. They are the material of poets and authors of good prose and cannot be properly rendered by most of those to whom the duty of arranging recovery falls.

This report is therefore flawed. Flawed, because it at looks at the return process from a merely administrative point of view. Flawed because, in the end, only the citizens of BiH can decide how to deal with that process – it would never do to accept the views of 'experts' as the be-all and end-all. However, it is not flawed because of any lack of help provided in its composition by a large number of citizens of BiH, as well as concerned professionals, who gave unstintingly of their time and energy, as well as patience with uninformed ideas to make this report possible. Indeed, it is impractical to list all the people who have contributed. But, credit is due where it's due, and we would like to express our special appreciation to the following: Mr. Mirsad Kebo, Mr. Edin Music, Mr. Jasmin Samardzic, Mr. Ilica Marinovic, Mr. Mario Nenadic, Mr. Mujo Jejna, Mr. Drago Kovac, Ms. Nermina Dzepar-Ganibegovic, Mr. Ivo Andjelovic, Mr. Mustafa Alikadic, Mr. Stjepan Macanovic, Mr. Sulejman Alijagic, Mr. Nenad Dokic, Mr. Suad Hadzialic, Mr. Drago Vuleta, Mr. Avdija Muhovic, Mr. Emir Fetahagic, Ms. Altijana Hatibovic, Ms. Denisa Sarajlic-Maglic, Ms. Katika Hajrulahovic, Ms. Faketa Mehmedovic, Ms. Mirhunisa Zukic, Ms. Emina Pasic, Ms. Halisa Skopljak, Ms. Vesna Vignjevic and the staff of the BiH MHRR's Regional Centres.

In addition, we would like to thank the following professionals with long experience in and heart for BiH: Ms. Margriet Prins and Ms. Elisabet Tomasinec, as well as Messrs. Gerard Ennis, Bob Sanders, Massimo Di-

ana, Gianni la Ferrara, Paolo Scialla, Rob Stockdale, Alexis Hupin, Bo Elding, Jason Matthews, Mark Priestley, Alexander Fritze, John Falvolden and Paolo Artini.

To assert that a report such as this can only be as good as the input given, would be facile and an injustice to all those who gave of their experience and knowledge. The responsibility for any errors and, consequently, misguided recommendations lies squarely with us. We gladly accept it, but hope, nevertheless, that this report will constitute a small contribution to bringing the process of return in BiH to its undoubted, ultimately successful, conclusion.

It is perhaps superfluous, yet important, to state that this report represents solely the views of the Functional Review of the Return Sector (FRR) team and not necessarily those of the European Commission, its Delegation in BiH or, for that matter, the BiH authorities.

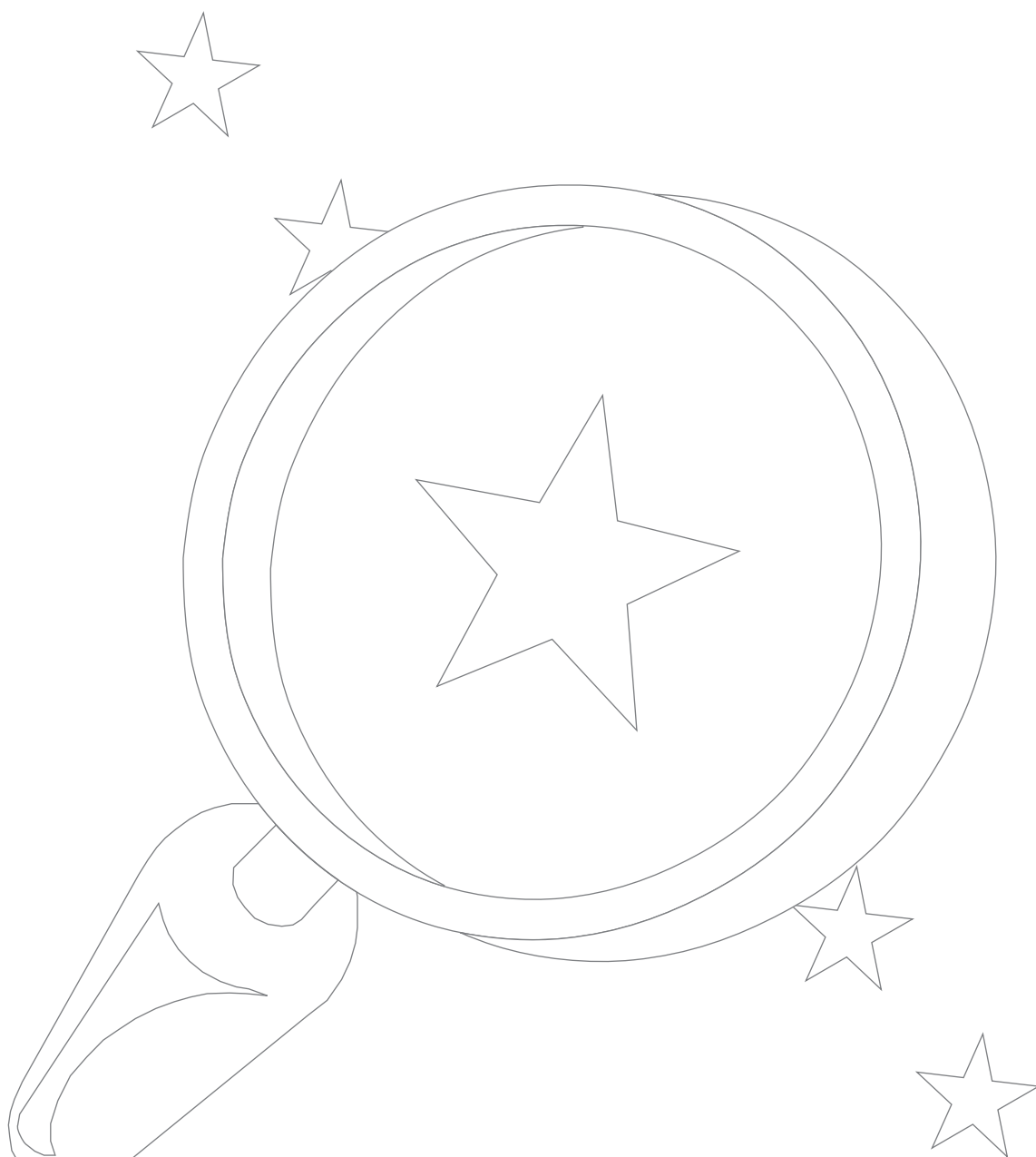
FRR Team<sup>1</sup>

Sarajevo, April 2005

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<sup>1</sup> The FRR Team consisted of: Derek Blink (Team Leader), Nuria Fouz Perez (Return Expert), Zlatko Saric (Public Administration Expert), Hans Blankert (Funding/Donors Expert), Ieva Belte (Project Development Expert), Ismeta Cardakovic (Financial Analyst), Per Iwansson (Housing Expert), Massimo Moratti (Legal Expert), Samir Sosevic (Translator/Economist), Alisa Hukovic (Office Manager), Tomislav Remeta (IT-Specialist), Enisa Maksumic (Survey Team Leader), Goran Bubalo, Robert Martic and Vlado Pijunovic (Survey Team). Editing and lay-out: Johan Verheyden.

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# *Executive Summary*



## *Executive Summary*

The Delegation of the European Commission (ECD) to Bosnia and Herzegovina (BiH) commissioned a number of functional reviews of the public administration in BiH. This ‘*vertical*’ review of the return sector commenced on 23 June 2004 and will be completed by 31 March 2005.

The Functional Review of the Return Sector’s overall objective is to recommend reforms that will allow the public administration in the return sector to perform efficiently and effectively, within its financial means, and in line with BiH’s commitment to EU accession. It should be seen as a tool for the BiH authorities to meet the criteria of the EC Feasibility Study, in particular the human rights provisions of its Priority 5. The review’s recommendations are both short-term (2005-2006) to improve efficiency in the return sector and long-term (2007-2010) to improve sustainability and management of public funds.

Currently, a myriad of institutions are involved in the return process – a ministry for refugees and displaced persons (DPs) in each of the entities, cantonal ministries with a return mandate, a state-level ministry for human rights and refugees and its regional centres, municipalities, the state-level Return Fund (RF) and the State Commission for Displaced Persons and Refugees (SCDPR). Though coordination exists, the review demonstrates that efficiency and efficacy are lacking, that transparency and best practices suffer and that overall resources could be allocated better.

The review finds that the current two-prong approach to return – an entity/cantonal and a state-level/municipal one – is not conducive to the objectives BiH has set for itself on the path towards accession to Europe. The tendency in public administrations is to move towards more centralised, state-level institutions. The review recommends that the return sector follow this trend.

In the short-term, the review recommends strengthening the state-level Ministry for Human Rights and Refugees (BiH MHRR) by transferring the competencies of the entity/cantonal ministries to the state. If the return process is to continue however, the transfer should be gradual as not to lose momentum. The entity ministries should provide support to the state-level; in the transition period, the entity ministries should mirror the methods used at the state-level. This transfer of competencies should be completed by 2006.

In order to phase out the role of the entity/cantonal ministries, BiH should redefine the role of the RF as an implementing agency for infrastructure and construction programmes in support of future EU pre-accession preparation measures. This would mean defining, within the RF, the organisational structure, procurement procedures and other modalities inherent of an implementing agency in accordance with EU regulations.

It is also advisable that the SCDPR be redefined as a policy co-ordination body to the BiH MHRR in the interest of a clear allocation of responsibilities in the return sector, to safeguard parliamentary prerogatives and to create a unified policy and implementation system. The competences of the SCDPR should be limited to policy issues, including budgetary co-ordination, as well as *ex post* control of project implementation, in-



cluding project and RF finances. The government of BiH is advised that, in the longer term, the SCDPR can be developed into a proto-sectoral monitoring committee, such as those operated in the newly acceded Member States of the EU between the EC and governments during the pre-accession phase.

Most stakeholders in the return sector agree that the return process should be brought to a rapid conclusion. The international community has put this view strongly in recent years. The former RRTP's Annex VII (GFAP) Strategy is based on the premise that it should be possible to finalise return-related housing (re-) construction by the end of 2006.

The EU can make a significant contribution to the exit strategy in both the short and long term. EU assistance in support of the exit strategy should concentrate on three areas, two of which should be addressed in the short term and one in the long term:

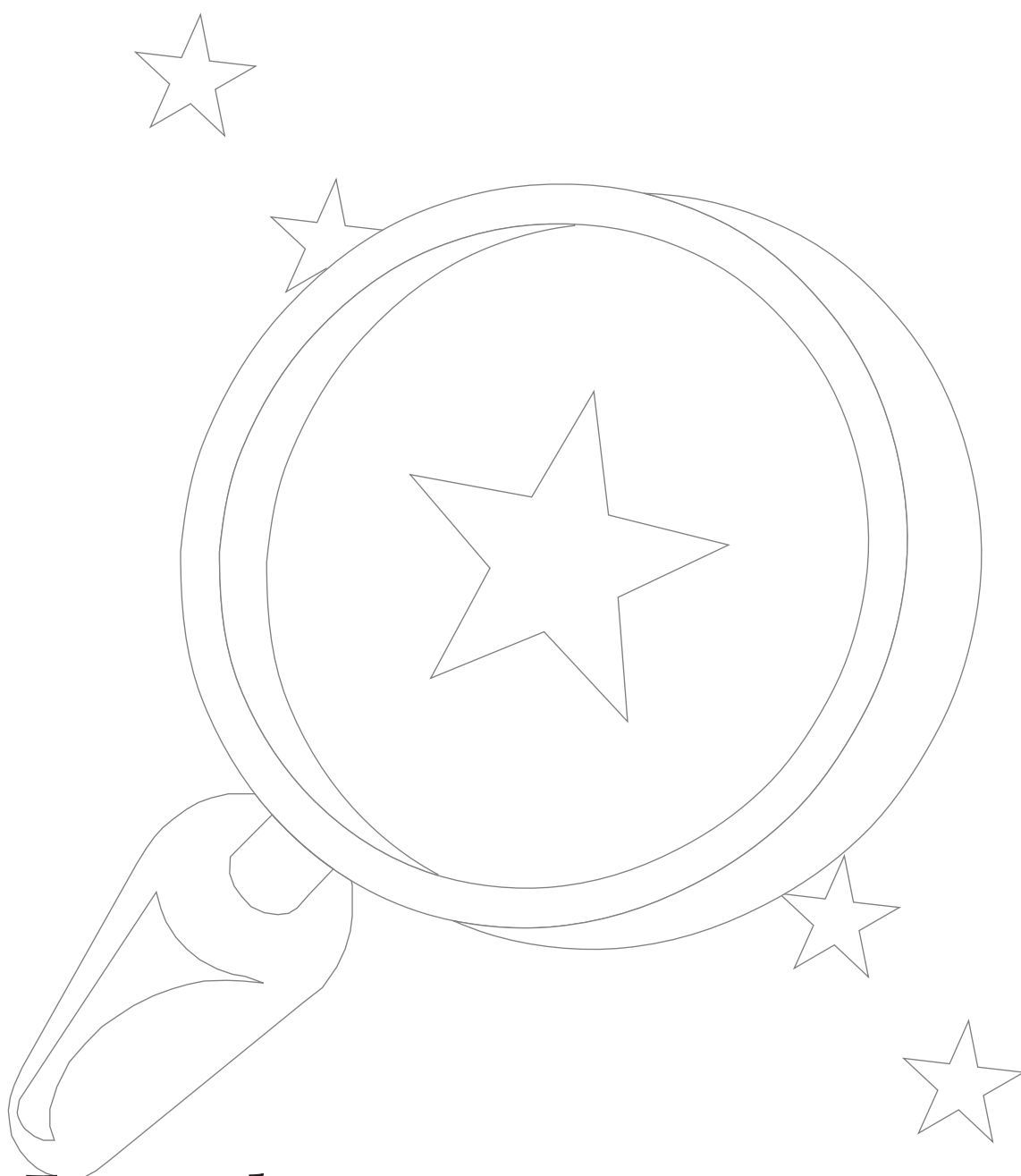
- technical assistance for the RF (short-term);
- technical assistance for the BiH MHRR in respect of housing policy (short-term); and
- technical and material assistance with regard to local administration capacity building (long-term).

This review provides recommendations and detailed Action Plans that address these two periods (2005-2006 and 2007-2010) that will assist all stakeholders in the return process – be they local administrations or international donors – to streamline the return process, to make it more transparent and (cost) effective.

These recommendations and Action Plans deal with all aspects of the return process and provide an integrated, cross-sectorial roadmap that, when implemented, will benefit those for whom the state has the greatest responsibility: helpless persons, socially vulnerable groups and all those who find it difficult to pick up the thread of their lives without assistance.

It is therefore recommended in this review that, as Bosnia and Herzegovina nears EU integration, the BiH MHRR takes on a larger role as it reorients itself towards protecting the welfare of the citizens of the country; at the same time, this will require the entities to relinquish some of their competencies – through a gradual transfer of their experience and capacity to the state.





# *Introduction*



## Introduction

## BACKGROUND AND OBJECTIVES

The November 2003 Feasibility Study<sup>2</sup> of the European Commission's (EC) noted that: if Bosnia and Herzegovina (BiH) is to make progress towards a Stabilisation and Association Agreement (SAA) it must develop a stable public administration based on a clear legal framework and characterised by efficiency, professionalism and independence.

Against this background, the Delegation of the European Commission (ECD) to Bosnia and Herzegovina (BiH) commissioned a number of functional reviews of the public administration in BiH (hereinafter 'reviews') in 2003-04. These reviews included the so-called *Systems Review*, looking at horizontal aspects of public administration, as well as eight '*vertical*' reviews covering a like number of key sectors: agriculture, the economic sector, education, environment, health, justice, police and the return sector.

The present Functional Review of the Return Sector (FRR) must be seen explicitly in the context of the Feasibility Study's 5th Priority<sup>3</sup>, concerning effective human rights provisions. It calls *inter alia* for the adoption and implementation of long-due legislation supporting refugee returns and urges the introduction, adoption and implementation of legislation on the BiH Refugee Return Fund. The FRR also addresses the practical implications of the concerns over public administration reform and the return process reform that the EC outlined in its 2002-2006 Country Strategy Paper for BiH.

The FRR's overall objective is:

*'The reform of the BiH PA results in an administration that is capable of efficiently and effectively performing its function as related to the needs of BiH and within its financial means, and which is coherent with BiH's commitment to EU accession. The project's specific objective is: the reform of the PA related to the return sector, in particular its rationalisation and re-organisation of functional competencies, is based upon a thorough and comprehensive analysis, is in accordance with EU best practices and prevailing government expenditure constraints, and appropriately prioritised.'*<sup>4</sup>

<sup>2</sup> Report from the Commission to the Council: On the Preparedness of Bosnia & Herzegovina to Negotiate a Stabilisation and Association Agreement with the European Union, EC, Brussels, 18 November 2003.

<sup>3</sup> Ibid, page 41.

<sup>4</sup> ToR – Functional Review of the Return Sector in BiH, ECD, Sarajevo

The FRR aims to provide:

- a completed functional review, of sufficient depth and quality to influence the direction and prioritisation of the public administration reform (PAR) process and to allocate resources accordingly; and
- short-term (2005-06) recommendations to improve efficiency in the return sector and long-term recommendations (2007-10) to improve sustainability and management of public funds.

## METHODOLOGY AND REPORTING

The FRR methodology focused on the assessment of seven key functions – legal drafting, policymaking, project planning, project implementation, monitoring of human rights, coordination and information management – of return-related public administration at the state, entity, cantonal and municipal level.

The review included a survey of 30 (sampled) municipalities, 10 cantons and 4 operational agencies. The sampling of municipalities was based on seven criteria on which municipalities tend to show substantial differences, namely: the total estimated population; the actual number of returnees and DPs; changed national structure; international funds dedicated to return; the level of civil society development and co-operation of same with local authorities; the level of administrative complexity related to return; and the number of housing reconstruction applications. The survey used the instrument of questionnaire-based interviews of cantonal/municipal authorities and members of cantonal/municipal administrations.

The FRR team also conducted a series of interviews with policy makers and administrative staff in the return sector at state and entity level. Finally, an extensive review of existing legislation, financial and audit reports, as well as other relevant documentation was carried out.

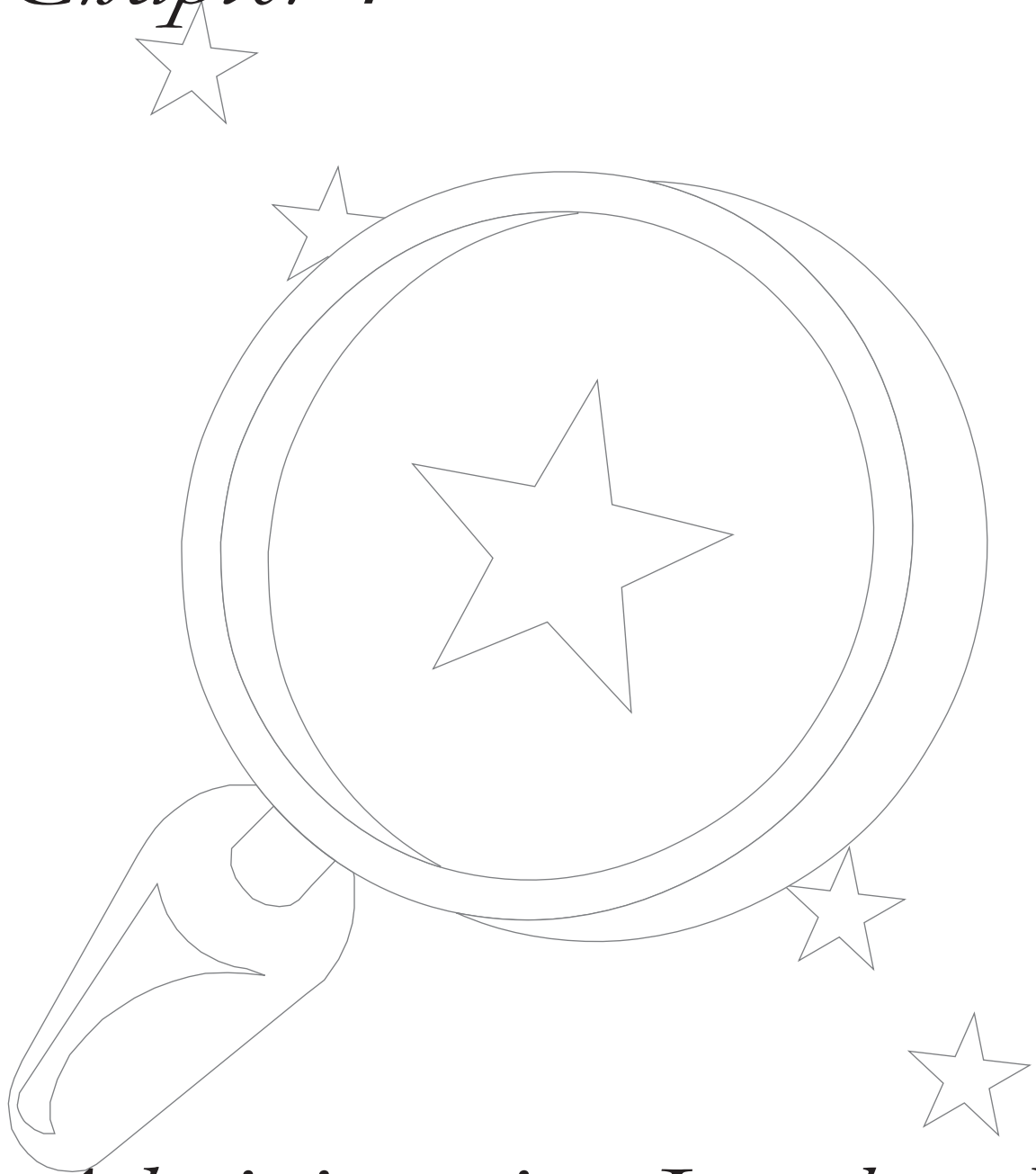
The FRR was presented to the public in two main reports<sup>5</sup>:

- a Summary Report which focused on the conclusions and recommendations generated by the Review and prepared as background documentation for the FRR's final conference, where same were presented to policy makers, other stakeholders and the general public. The final conference took place on 21 March 2005; and
- the present Final Report, containing the detailed analysis of the public administration in the return sector, underpinning the conclusions and recommendations. The Final Report has benefited from the outcome of in-depth consultations with and comments from policy makers and stakeholders following the publication of the Summary Report.

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<sup>5</sup> In addition to these two reports, the team produced a separate report for the ECD in relation to the programming of future CARDS assistance in the sector, entitled: CARDS Contribution (submitted in early February 2005).

# *Chapter 1*



## *Administrative, Legal and Policy Background*



## *Administrative, Legal and Policy Background*

### A BRIEF HISTORY OF THE RETURN PROCESS

During the war, from 1992 until the signing of the *Dayton Peace Agreement*<sup>6</sup> in late 1995, almost half of BiH's approximately 4.35 million inhabitants had fled or forcibly left their homes. Slightly less than a million persons remained in BiH as DPs. More than a million people became refugees in other countries. The neighbouring countries (Croatia, Serbia and Montenegro), as well as some western European states, were host to the largest number of refugees. The war, and especially ethnic cleansing, caused population movements along ethnic lines - at the end of the war, those still in the country were living in mono-ethnic areas defined by the frontlines and military zones of control.

Majority return – the return to areas where one's own ethnic group constitutes a numerical majority – started immediately after the war. Large-scale return areas were those that had changed hands at the end of the war and where the peace agreement led to territorial adjustments.

Despite the terms of Annex VII (*Refugees and Displaced Persons*) of the Dayton Agreement, political resistance to minority return – the return to areas where one's own ethnic group constitutes a numerical minority – paired with the fear to return prevailed in the first four years after the signing of the GFAP. Domestic institutions at entity, cantonal or municipal level did not actively support minority return and instead often tried actively to hinder it. On several occasions, breaches of the Annex VII principles prompted the High Representative to use his so-called *Bonn Powers* to remove officials from office.

For many years, the international community acted as, on the one hand, policy maker/enforcer [through the Refugee Return Task Force (RRTF)]<sup>7</sup> and, on the other hand, the implementer (for the EU and bilateral donor countries) of financially very substantial return programs with no or very little involvement from the different domestic authorities. Municipalities, for instance, were at best consulted on the choice of beneficiaries.

<sup>6</sup> The proper name of the agreement is 'General Framework Agreement for Peace' or GFAP, initialled in Dayton, Ohio on November 21, 1995 and signed in Paris on December 14 of the same year. The document is often also referred to as 'Dayton', the 'Dayton Agreement' or the 'Paris Agreement'. These terms will be used interchangeably in this document.

<sup>7</sup> The RRTF, co-chaired by the Office of the High Representative (OHR) and the United Nations High Commissioner for Refugees (UNHCR), was established in 1997, and further counted representatives of OHR, OSCE, UNHCR and UNMIBH among its members.



Only in 1999 and definitely by 2000 had the political situation changed enough to allow for a significant increase in minority returns. At the time of writing, relevant institutions say that some 440.000 refugees and more than 560.00 DPs returned to their pre-war homes.

The returnees themselves were an important driving force (often also returning to their pre-war places of residence without intervention – the so-called ‘*spontaneous returns*’) and as the return process accelerated, so did political support under their pressure. With the organisation of the Property Law Implementation Plan (PLIP) and an increased involvement by local authorities, which by then at least politically promoted return, the minority return process accelerated. This trend peaked in 2002, when over 100,000 people returned to areas where they were a numerical minority. The political attitude towards return rapidly and substantially changed pace to keep up with this trend. All places in BiH are now open for return and safety is rarely a concern. However, the remaining houses and related infrastructure that need reconstruction continue to pose an important obstacle for return, together with a lack of economic possibilities, a lack of access to local political life and problems related to education, pension and health systems.

## GENERAL ADMINISTRATIVE STRUCTURES – TWO SYSTEMS

At present there are two parallel systems for return (housing) assistance, one at state-level and one at entity/cantonal level. Both systems exist since the state, as well as the entities (and, in the case of the FBiH, cantons) are entitled to use public funds (i.e. their budgets) for return-related measures. The following table summarises the key features of each system.

Tasks	State/Municipality	Entity/Canton	
	BiH	FBiH	RS
Municipality Selection	SCDPR decides on municipalities of return.	FBiH MDPR presents plan with municipalities selected to Federation Parliament.	RS MRDP presents plan with municipalities to RS National Assembly for adoption
Public Calls for Applications	Municipalities of return announce public calls. BiH MHRR organises promotional campaigns.	Cantonal Ministries and authorized municipal bodies launch public call.	RS MRDP and municipalities launch public call.
First List of Potential Beneficiaries & Appeals procedure	Municipal commission.	Cantonal ministries, municipal bodies of displacement and return, and association of returnees.	Municipal commission.
Final Decision on Beneficiary List & Appeals procedure	Municipal commission. BiH MHRR reviews, through its databases.	FBiH MDPR makes the final decision and decides on appeals	RS MRDP makes the final decision and decides on appeals.
Damage Assessment	Municipalities.	FBiH MDPR.	RS MRDP.
Implementing Modalities	Municipalities decide on: donation of construction materials (self-help); or donation of construction materials + building (key-on-hand).	FBiH MDPR. Donation of construction materials (self-help).	RS MRDP, through Reconstruction Directorate. Donation of construction materials (self-help).
Construction Implementer	Municipal commissions decide if: - construction works are done by municipal services; or - by a contracted third party (construction company).	Final beneficiary.	Final beneficiary.



Contract Signatures	Final beneficiary and municipality, if they are implementers; or Final beneficiary, municipality and construction company (tri-partite agreement).	Final beneficiary, municipality of return and FBiH MDPR (tri-partite agreement).	Final Beneficiary, municipality of return and RS MRDP (tri-partite agreement).
Monitoring	BiH MHRR.	FBiH MDPR and municipalities.	RS MRDP and municipalities.

**Table 1: State/Municipality System vs. Entity/Canton System – Key Features**

The review findings make clear that the state-level system is not yet ready to channel substantial amounts of funds, mainly since procedures are not yet detailed enough and do not provide an adequate audit trail. Under these circumstances, external donors, including the EC, are not prepared to use it to channel grants. However, if BiH wants to a measure of control over the use of external funds for the return sector, strengthening the state-level system is the only way to do so. External donors have no confidence in the impartiality of the entity/cantonal administrations and the suspicion lingers, rightly or wrongly, that these administrations will accept (limited) return only as far as it does not threaten established ethnic and political power structures.

## CONSTITUTIONAL AND LEGAL BACKGROUND

At the end of the war, with more than 2 million persons no longer living in their pre-war places of residence, it was imperative to ensure the same level of protection for DPs and refugees in both entities of BiH. Thus their rights were enshrined in the highest constitutional texts, in an effort to forestall differences in treatment between the entities.

The Dayton Agreement and its Annexes IV (Constitution of BiH) and VII (Agreement on Refugees and DPs), which form an integral part of it, deal extensively with the rights of DPs and refugees. Annex VII is dedicated in its entirety to this issue and its main provisions are replicated in Article 2 of the Constitution of BiH. Additionally, the 1951 Convention relating to the Status of Refugees and the 1967 Protocol are directly applicable in BiH. Furthermore, Annex 1 to the Constitution of BiH lists a series of international human rights instruments, which also apply.

Annex VII of the GFAP, signed by BiH, the FBiH and the RS, stipulates that:

### **Article I - Rights of Refugees and Displaced Persons**

*1.) All refugees and displaced persons have the right freely to return to their homes of origin. They shall have the right to have restored to them property of which they were deprived in the course of hostilities since 1991 and to be compensated for any property that cannot be restored to them. The early return of refugees and displaced persons is an important objective of the settlement of the conflict in Bosnia and Herzegovina. The Parties confirm that they will accept the return of such persons who have left their territory, including those who have been accorded temporary protection by third countries.*

*2.) The Parties shall ensure that refugees and displaced persons are permitted to return in safety, without risk of harassment, intimidation, persecution, or discrimination, particularly on account of their ethnic origin, religious belief, or political opinion.*

*(.....)*

*4.) Choice of destination shall be up to the individual or family, and the principle of the unity of the family shall be preserved. The Parties shall not interfere with the returnees' choice of destination, nor shall they compel them to remain in or move to situations of serious danger or insecurity, or to areas lacking in the basic infrastructure necessary to resume a normal life. The Parties shall facilitate the flow of information necessary for refugees and displaced persons to make informed judgments about local conditions for return.*

*(.....)»*

Similar provisions are reflected in the Constitution of BiH, which refers explicitly to Annex VII. The Constitution prescribes – in its Article II.5 on *Human Rights and Fundamental Freedoms*:

*Refugees and Displaced Persons - All refugees and displaced persons have the right freely to return to their homes of origin. They have the right, in accordance with Annex VII to the General Framework Agreement, to have restored to them property of which they were deprived in the course of hostilities since 1991 and to be compensated for any such property that cannot be restored to them. Any commitments or statements relating to such property made under duress are null and void. »*

The obligations arising from Annex VII and the Constitution imply that refugees and DPs will have the right to return to their pre-war homes and that the parties *shall not interfere with the returnees' choice of destination*<sup>8</sup> and *shall facilitate the flow of information necessary for refugees and displaced persons to make informed judgements about local conditions for return*<sup>9</sup>.

The parties also undertake to create in their territories the political, economic and social conditions conducive of the voluntary return and harmonious reintegration of refugees and displaced persons without preference for any particular group<sup>10</sup>.

At the same time, the parties are obliged to restore to refugees and DPs the properties of which they were deprived in the course of the hostilities<sup>11</sup>.

These are the main obligations enshrined in Annex VII. However, as the entities are signatories to the agreement, the fulfilment of those obligations has been mainly their responsibility, with the state of BiH retaining a rather limited role.

The Law on Refugees from BiH and DPs in BiH<sup>12</sup> sets out the general principles regulating the acquisition and cessation of the status of refugees and DPs and the rights of DPs and refugees, including the right for DPs and refugees to recover their property.

The state-level law, as such, establishes a framework, which requires the entities to pass their own laws, fully harmonised with the state's law and each other's. Otherwise, the state-level law risks not being applied by all those dealing with refugees and DPs<sup>13</sup>. It is to be noted, that the laws regulating the restitution of properties were never passed at the state level and were adopted solely at the entity level.

To date, the process of harmonising the entity laws on refugees and DPs is not yet completed. The RS still has to amend its law to bring it in compliance with the state-level law. Because of this, the current provisions of the state-level law do not apply in the RS. In the FBiH, the relevant law was harmonised with the state-level law in 2003, by imposition of the Office of the High Representative (OHR)<sup>14</sup>. This situation illustrates the weak position of the state of BiH *vis-à-vis* the competences of the entities. However, the state can be given the means to implement its decisions, because it is of a higher order than the entities and the latter must make their laws comply with those of the state (according to the BiH Constitution).

In spite of the different attempts of harmonisation, the legal texts in force in the entities differ significantly from each other. These are summarised in the table in *Annex 4 - Refugees, DPs and Returnees – Legal Definitions*. A salient example is that the FBiH Law on Displaced-Expelled Persons in the Federation does not provide a clear definition of a returnee. That law states the right of DPs to return to their pre-war homes or to a new place of residence and, without making any specific distinction, refers to all of them as returnees<sup>15</sup>. Another example concerns the cessation of returnee status. Whilst under the state-level law the status of returnee ceases after 6 months, the laws currently in force in the RS provide that the status of returnee be not subject to cessation. At the same time, in the FBiH, since there is no specific definition of returnee, it is implied that there is no definition of how and when such status ceases. The harmonisation of laws, which, according to

8 GFAP, Annex VII, Article 1.4.

9 Ibid.

10 GFAP, Annex VII, Article 2.1.

11 GFAP, Annex VII, Article 1.1.

12 Law on Refugees from BiH and Displaced Persons in BiH, BiH Official Gazette (OG) 23/99, 21/03 and 33/03

13 The practice at the field level is not uniform: while authorities located in the Federation, mainly in areas predominantly Bosniak, apply the State-level law even if the entity did not pass its law, this is not the case in Republika Srpska, where the authorities apply exclusively the entity law.

14 Decision Enacting the Law on Amendments to the Law on Displaced-Expelled Persons and Repatriates in the Federation of Bosnia and Herzegovina

15 Article 21, Law on Displaced-Expelled Persons and Repatriates in the Federation of Bosnia and Herzegovina, OG FBiH 19/00, 56/01(27/02) and 18/03.



the provisions contained in relevant state-level legislation should have occurred within 2 months from its entry into force, has not yet occurred. Consequently, the current legislative framework presents numerous inconsistencies. While this situation will soon be largely remedied, as new law texts have already been adopted in the FBiH (although not yet published) and should be soon adopted in the RS, it is worth noting that even now inconsistencies remain in the texts of both laws in spite of the fact that almost 2 years have passed since the adoption of the amendments to the state-level legislation. From a functional point of view, there are thus sufficient arguments to advocate that the state takes over these competences and regulates this issue directly.

The allocation of competences between the state and the entities is a constitutional matter, with clear political connotations, linked to the essence of the Dayton Peace Agreement and the Constitution of BiH. Which are the competences of the State and which those of the entities? What happens if entity legal provisions do not conform to State legal provisions? These topics are matter for constitutional debate. On the one hand, it is possible to argue that the obligations arising under Annex VII have an international character and the state therefore has the implicit powers to implement them, should the entities fail to do so. The Constitution itself, in article III.5 upholds this position, extending the responsibility of the state for matters provided in Annexes V to VIII of the Constitution<sup>16</sup>. On the other hand, the Constitution and the current allocation of competences, as interpreted so far, indicate that this issue is exclusive competence of the entities and, consequently, the role of the State in this area is limited.

Given this debate, which is not merely theoretical, but it is backed up by actual practice in some cases – as demonstrated by the fact that some FBiH authorities that apply the state law<sup>17</sup> – it might be possible to suggest a simpler way forward, in line with the current constitutional arrangements. State-level regulations might contain a provision specifying that, if an entity does not harmonise its laws within the prescribed time, State law should then become directly applicable in the territory of that entity. From a legal point of view, in the RS at least, this provision can be accommodated by the Law on Ministries<sup>18</sup>. The RS MRDP: *performs other activities in accordance with the law and other regulations of [the RS]*. This enables the MRDP to apply state-level law directly, even in the absence of harmonised legislation in that entity. This could be a practical solution for providing automatic harmonisation of laws, remedying the problems encountered so far with the different legal texts and strengthening the role of the State level.

## POLICIES AND STRATEGY

In January 2003, the RRTF and the BiH MHRR drew up an Annex VII (GFAP) Strategy<sup>19</sup> to create a sustainable framework and guidelines for domestic leadership in the management of the return process after the RRTF's disengagement. The RRTF did in fact disengage in December 2003 but the OHR maintained a small team — the Annex VII Verification Unit — to monitor the return process until the end of November 2004<sup>20</sup>. Although it is now two years old, the Annex VII Strategy remains the only fundamental document accepted by all stakeholders as the most comprehensive strategic orientation for the sector.

16 The recently published “Opinion on the Constitutional Situation in Bosnia and Herzegovina and the Powers of the High Representative” of the European Commission for Democracy through Law (Venice Commission) seems to be authoritative in this sense. Paragraph 23 of the Opinion, which refers to article III.5 of the Constitution reads: On the basis of such provisions the responsibilities of the State have already been extended. The Venice Commission contributed to this process in the past (.....) Nevertheless, it is obvious that the extensive interpretation of the of state responsibilities has clear limits. The whole report can be found at: [http://www.venice.coe.int/docs/2005/CDL-AD\(2005\)004-e.asp](http://www.venice.coe.int/docs/2005/CDL-AD(2005)004-e.asp).

17 As emerged during the Survey carried out in the course of the Review, municipal authorities in the FBiH were directly applying the directive on the selection of beneficiaries of reconstruction projects, as approved at State level, without the need for such instructions to be adopted at the FBiH level.

18 Article 18, RS Law on Ministries, OG RS 70/02.

19 A Strategy of Bosnia and Herzegovina and the RRTF for the Implementation of Annex VII with regard to the Return of Refugees and Displaced Persons and Building Capacity for a Transfer of Responsibilities to Domestic Institutions, MHRR, OHR and UNHCR, Sarajevo, 15 January 2003.

20 The 26th Report by the High Representative for Implementation of the Peace Agreement to the Secretary-General of the United Nations, Sarajevo, 18 November 2004. To be found at: [www.ohr.int](http://www.ohr.int)



It does not diminish, in any way, the considerable achievement of its authors to assert that the Annex VII Strategy is more an annotated list of goals to be achieved than a full-fledged strategy. The document sets out commonly agreed objectives, but it is less detailed on how to achieve these goals. At the time of drafting, it was considered impossible to achieve consensus on the ways and means towards the stated objectives. However, the Strategy's clear, agreed goals and its comprehensive appreciation of the political, administrative and socio-economic framework of the return process are very useful in themselves, in particular because they were lacking before the adoption of the Strategy.

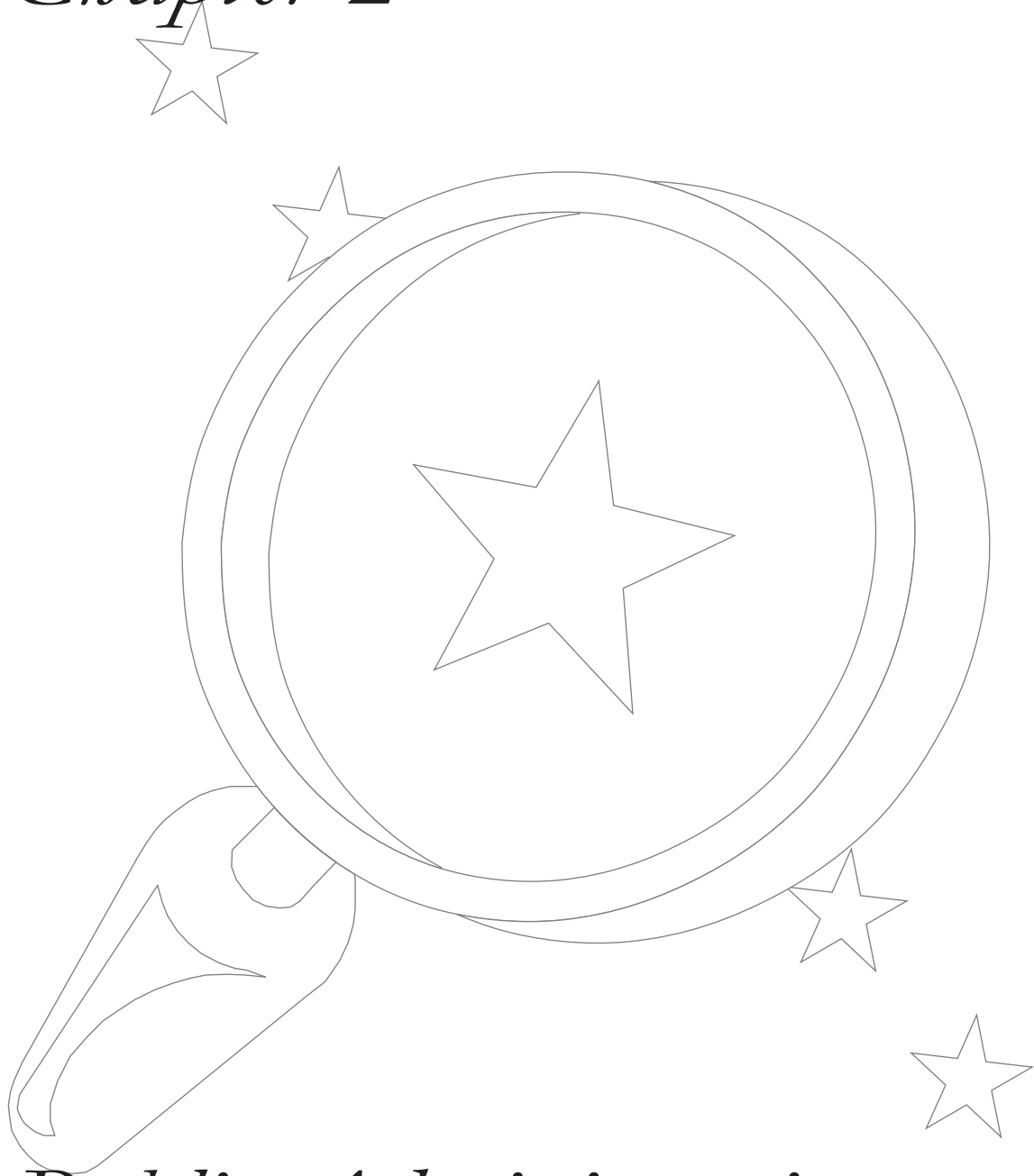
The single most important statement in the Strategy is the observation that, according to the BiH MHRR, **the majority of requests for voluntary return to and within BiH could be realised in the following two to three years**, i.e. by end-2006. However, the Strategy notes that this goal can only be achieved through securing resources for the reconstruction of housing units for refugees and DPs, by merging and rationalising available reconstruction and return funds in BiH and through continuing the positive trend in property law implementation (i.e. finalising the PLIP). In addition, it would be necessary to undertake a number of return and reconstruction related reforms and reorganisations, such as:

- further harmonisation of legislation at all BiH levels of authority, including harmonisation of legislation in the fields of education, health, pensions and disability insurance, and socially-owned land allocation;
- the elimination of parallel structures in the field and strengthening, through sub-ordination, the relations between different institutions and levels of authority engaged in return and reconstruction. This would involve, in particular, the restructuring of the BiH MHRR itself, to clearly define its competences *vis-à-vis* the entity ministries and the systematisation of services and positions;
- strengthening the role and expanding the membership of the SCDPR to enhance the harmonisation and streamlining of the policies of the state and the entities in one forum;
- transferring the responsibilities of the entities' regional offices to the Regional Centres of the BiH MHRR;
- developing a functioning, unified database for the BiH MHRR to enhance its co-ordinating role and its ability to implement its strategies, define state-level policies on return and its relations with neighbouring countries;
- ensure that the RF becomes a fully functioning institution to underpin and follow-up on the launch of 'Joint Projects' in the return sector, funded by the state, the entities and international donors;
- stricter implementation of the property laws and the criteria for selecting beneficiaries for reconstruction projects, combined with the acceptance within the SCDPR of harmonised regional priorities, to contribute to the reconstruction of 50,000 housing units in the four-year period 2003-06; and
- consultations of the BiH MHRR with other state-level ministries and with the entities, to develop policies on returnees' employment and security (including de-mining).

Having set out the above reforms in general terms, the Strategy then continues to describe a set of desired results and, to a lesser extent, necessary activities at the state-, entity- and municipal level, as well as in the areas of the courts system, civil society, donor support and international monitoring.

The final component of the Strategy consists of an Action Plan for capacity building and transferring the core responsibilities of the former RR'TF. The Action Plan further sets out, in general terms, the necessary efforts at the state-, entity- and municipal level with regard to the transfer of databases to the state-level and enhancing operational capacities amongst civil society organisations.

# *Chapter 2*



## *Public Administration in the Return Sector*



## *Public Administration in the Return Sector*

### KEY INSTITUTIONS

#### **BiH Ministry of Human Rights and Refugees**

The BiH MHRR's competencies are set out by the Parliament of BiH in the Law on the Council of Ministers of Bosnia and Herzegovina and the Ministries of Bosnia and Herzegovina.

The BiH MHRR [current organisation in Annex 3], created in April 2000, took over some of the then competencies of the BiH Ministry for Civil Affairs and Communications. In addition to immigration, asylum<sup>21</sup> and human rights, the ministry is responsible for activities related to the repatriation to BiH of BiH citizens who became refugees abroad and for the co-ordination of inter-entity activities with regard to return (as regulated in the Law on Refugees from BiH and DPs in BiH). In addition, the BiH MHRR has been instrumental in the re-registration of DPs and of more than 6,000 Serb refugee families from Croatia who have settled in the RS and Brcko District.

The BiH MHRR operates four regional centres and the first one opened in Sarajevo in December 2003. Additional centres were established in Banja Luka, Mostar and Tuzla to maintain and facilitate the return process. The Regional Centres were intended as the core of an implementation programme that will create a comprehensive, nationwide structure.

#### **FBiH Ministry of Displaced Persons and Refugees**

The FBiH Ministry for Displaced Persons and Refugees (FBiH MDPR) performs administrative, technical and other tasks as prescribed in the FBiH legislation related to DPs, refugees and returnees [the ministry's current organisation is depicted in Annex 3]. It is in particular responsible for:

- gathering and processing data on refugees and DPs;

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21 Until 2004, when the immigration and asylum mandate (status determination) was transferred to the Ministry of Security. Assistance to these categories of beneficiaries (after status determination) remains the responsibility of the MHRR.



- coordination of reconstruction activities;
- registration and supervision of the NGOs;
- creation of conditions for return of DPs in their pre-war places of residence, including construction and reconstruction; and
- recovery and repair of homes and other housing units for the accommodation of refugees and DPs.

## RS Ministry of Refugees and Displaced Persons

The RS Ministry for Refugees and Displaced Persons (RS MRDP) was established immediately after the cessation of hostilities in BiH [the current organisation of the ministry is presented in Annex 3]. It is in charge of:

- implementation of property law;
- human rights;
- reconstruction and development; and
- management of collective centres.

The RS MRDP also oversees 14 territorial sub-offices or OMIs<sup>22</sup>, covering a number of towns and villages, and which:

- maintain information on pre-war property of refugees and DPs;
- keep records on the applications for voluntary return; and
- collect and update the records of the registration of refugees and DPs.

## Brcko District – Sector for Refugees, DPs and Housing Policy

The Brcko District administration's Sector for Refugees, DPs and Housing Policy was founded in 2001. It is responsible for all problems in the area of return. Currently there are two departments in the Sector, i.e.: the Department for the Implementation of Property Law and Management of Housing Fund; and the Department for the Reconstruction and Building of Housing Units. The latter was added to the Sector in 2004.

## State Commission for Displaced Persons and Refugees

The State Commission was envisaged as a coordination body and created by decision of the BiH Presidency of 21 February 2000. Its creation was foreseen in the initial version of the BiH Law on Refugees from BiH and DPs in BiH<sup>23</sup>.

Article 23 of that Law reads:

*«In order to provide a follow-up on co-ordination and inter-Entity consultations regarding the implementation of the programme referred to in Article 10 Section 3 of this Law and other BiH and Entity laws relating to refugees from BiH and displaced persons, as well as other issues with relation to creating conditions for the return and regarding the return of refugees from BiH and displaced persons, the BiH Council of Ministers and the Entity Governments shall nominate members of the Commission for Refugees and Displaced Persons which shall be appointed by the Presidency of Bosnia and Herzegovina within 30 days from the day of passing this Law. The seat of the Commission shall be placed in Sarajevo, while its offices might be located in different places, on a need basis.»*

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<sup>22</sup> OMI - Odsjek Ministarstva za izbjeglice, Departments of the RS MRDP.

<sup>23</sup> Law on Refugees from BiH and DPs in BiH, Official Gazette of BiH 23/99 and 21/03.

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Although Article 10 of the Law determines the role of the BiH MHRR and tasks the ministry with drafting a programme for the return of refugees from BiH and DPs, in cooperation with the entities and UNHCR, it does not specify a formal link between the SCDPR and the BiH MHRR.

When the Annex VII (GFAP) Strategy was written, the SCDPR, then still more a discussion forum, was seen as having the potential to become a credible body for the coordination of domestic and international efforts aimed at the full realisation of Annex VII. By February 2005, the SCDPR had met more than 25 times.

The SCDPR has generally lived up to the expectations of the Strategy, following the streamlining, in early 2003, of its functions and its relationship with the BiH MHRR, through amendments to the Law on DPs and Refugees and the Law on Ministries and Other Administrative Bodies of BiH<sup>24</sup>. Article 12 of the Law on Ministries states that the BiH MHRR *shall be responsible for*:

- (...) *formulating and implementing the BiH policy in the field of return of refugees and displaced persons in BiH, reconstruction projects and ensuring conditions for sustainable return;*
- *within the [SCDPR] co-ordinating, directing and assessing the activities of the Entities and other institutions in BiH responsible for issues related to the implementation of the policy in this field.*

Similar provisions are contained in the Law on Changes and Amendments to the Law on Refugees from BiH and DPs in BiH, which, consistently with the Law on Ministries, regulates the same issue. Sections 5 and 7 of its Article 21 read, respectively:

- *co-ordinate inter-Entity co-operation, in particular with regard to the return of refugees from BiH, and evaluate, within the [SCDPR], the activities of the Entities, Brcko District of BiH, and other levels of authority in the realization of the [Annex VII (GFAP) Strategy];*
- *maintain documentation on refugees from BiH who have returned to BiH, maintain and manage all relevant databases, and ensure that relevant data are shared with the Entities and Brcko District of BiH through the [BiH MHRR], through the [SCDPR], and in other ways, in accordance with the applicable data protection standards.*

In the original version of the law, the relationship between the ministry and the Commission was less defined. The amended Law on Refugees and DPs acknowledges the increased mandate of the SCDPR and the regulations defining the role of the Commission are set out more clearly. Article 23 of the amended Law in spells out the competences of the SCDPR: *The Commission shall, in particular, be responsible for*:

- *approving return and reconstruction projects collected and forwarded for its consideration by the [BiH MHRR];*
- *approving joint projects that shall be implemented through the [RF];*
- *authorising the financial realization of approved reconstruction and return projects through the [RF];*
- *supervising the financial realization of approved reconstruction and return projects, including the preservation of the [RF] assets;*
- *providing guidance in drafting of by-laws regulating the work and organization of the [RF];*
- *reviewing quarterly and interim reports of the [RF] Director on the management of assets and financial realization of approved reconstruction and return projects*

The link between the BiH MHRR and the SCDPR is formulated in Article 23a of the amended Law, which defines the role of the Ministry in the appointment procedure and its participation in the work of the Commission. The BiH MHRR, in agreement with the CoM, nominates four members of the Commission, while the entities nominate two members each and Brcko District one. The formal appointment of members is the prerogative of the Presidency of BiH. The entity ministers for DPs and Refugees and the state-level BiH MHRR are, by law, members of the commission. The Commission has therefore 9 members, three from each of the constituent peoples of Bosnia and Herzegovina<sup>25</sup>.

Because of these provisions, which were not included in the previous version of the Law, the BiH MHRR is given a formal role in the Commission. A permanent liaison is ensured through the presence of the BiH Min-

<sup>24</sup> BiH Official Gazette 05/03.

<sup>25</sup> Law on Refugees from BiH and DPs in BiH, Official Gazette BiH 23/99 and 21/03, article 23a



ister for Human Rights of Refugees, and through the administrative (secretariat) and technical support roles of the BiH MHRR <sup>26</sup>.

The Commission has adopted a Book-of-Rules for the SCDPR (25 March 2004). It regulates the work of the Commission, its internal organisation, the rights and obligations of its members, the role of the departments supporting the SCDPR and the operational modalities of its working groups. The Commission adopts decisions and conclusions by public vote of all its members.

As intended by its creators, the SCDPR can now be considered a body that aims to co-ordinate the efforts of the entities in the realisation of Annex VII. Although its role has become more defined through the amendments to the law, the consensual approach still prevails. The nature of the decisions and conclusions reached by the SCDPR is not defined in the law, which negatively affects its effectiveness. Its members, in particular the entity representatives, often meet difficulties in implementing the conclusions of the Commission, because of opposition faced at entity level, which does not necessarily consider the conclusions of the SCDPR as binding. The same applies to the financial commitments by the entities to the RF. Thus, the actual outcomes of the SCDPR's deliberations too often depend on subsequent lengthy negotiation with the entities. On more than one occasion, one or the other entity has failed to implement decisions of the SCDPR.

## Cantonal Systems with Return Mandate

Each of the ten cantons in the FBiH has a ministry responsible for return-related issues, although these are in most cases not single-mandated ministries; they often combine the return portfolio with other tasks.

There are substantial differences between the cantons in the administrative arrangements on return issues: on one side of the spectrum, Sarajevo and Tuzla have assigned 20 or more officials to return-related issues; on the other end of the range, West-Herzegovina and Bosnia-Podrinje have assigned only one or two officials. Although partly the result of the size of these cantons and the number of refugees and DPs there, these differences are also indicative of varying degrees of importance attached to return-related issues.

The role of cantonal ministries in both the reconstruction of housing and the implementation of sustainability measures is largely an administrative one, limited to the procurement and delivery of materials for self help-based reconstruction. The FBiH MDPR tends to take the lead in the co-ordination of project implementation.

Typically, the contacts between the FBiH and the municipalities involved in project implementation do not involve the cantonal ministries much and contacts between cantonal ministries and the state-level BiH MHRR are infrequent and not institutionalised. Most contacts between these two levels go through the FBiH MDPR. Although representatives of the cantonal ministries participate in periodical meetings at the BiH MHRR's Regional Centres, there is no profound collaboration between them and cantonal ministries tend not to be involved in the implementation of projects executed under the state/municipality system.

## Municipalities

### Legal background

BiH has currently 164 municipalities. The Constitution of BiH does not contain guidelines for the system of local self-governance. Local self-governance in BiH is regulated by the entities' constitutions and legislation. Both entity constitutions define the citizens' right of self-governance and identify the municipality as the basic unit for local self-government. All municipalities have an identical constitutional and legal position; there are no differences between municipalities located in rural and urban areas.

The RS has a centralized administrative structure and an entity ministry of local governance to regulate RS municipalities, while in the FBiH a very de-centralized system exists, under which Cantons are given taxation and regulatory powers to municipalities in their jurisdictions.

<sup>26</sup> Article 23b, state-level Law on Refugees from BiH and DPs in BiH.

The legislative and regulatory powers at municipal level are vested in the municipal assembly, while the executive powers rest with the municipal mayor and the bodies he manages.

The municipal assembly adopts the statutes of the municipality and takes decisions on the organisation and composition of the municipal administration. In addition, municipal assemblies have decision making powers in the sphere of social, economic and urban development, for instance with regard to the adoption of economic and social development plans. Municipal assemblies confirm all appointments inside municipal bodies and communal public institutions and can, on the grounds of a set policy not being executed, initiate a vote of no confidence in the municipal mayor.

The municipal mayor's main competences include proposing development policies, appointing leading functionaries within the municipality, and representing the municipality and its interests. The mayor is accountable for the activities of the municipal administration and is held to inform both the municipal assembly and the public of his activities.

## Municipal Return Competences

Most municipalities in BiH have departments for refugees and DPs and these are the ones that have taken over the responsibility on return-related issues from the RRTF structures after 2003. It is to be noted that municipalities have tended to give more attention to their internal DP than their returnee caseloads.

With regard to the administrative handling of property restitution, municipalities in the FBiH played a major role, through their housing departments. In the RS, this function was carried out by the RS MRDP's OMI's at municipal level.

Until 2003, municipalities did not have much of role in return-related reconstruction and sustainability projects, as these were mainly funded and implemented mainly by international organisations. Initially there were attempts to involve municipalities in project implementation. However, especially in the earlier projects, municipal structures turned out to be unable to perform their allotted roles properly, mainly because the return issue was not high on their political agendas.

After the 2003 handover of RRTF responsibilities to national structures – and in line with Annex VII (GFAP) Strategy recommendations – a state/municipal system for return project implementation was formed, with the help of the EU/UNDP SUTRA-project. Under this system municipalities have the main responsibility for beneficiary selection and technical implementation of reconstruction projects.

It is difficult to forecast the level of the success of the state/municipality system, which will become be fully operational only in the course of 2005 (SUTRA I, implemented during 2004, involved selected municipalities, but saw the UNDP in charge of financials and management). It will only be possible to make definitive statements after a proper evaluation of project implementation during 2005.

On the basis of the results of the Survey of municipalities carried out in the course of the FRR, a number of conclusions can be drawn, as follows:

- although the formal linkage between municipalities and the state BiH MHRR remains weak, this has improved with the creation of the BiH MHRR's Regional Centres. This effect is more obvious in the selected priority municipalities<sup>27</sup>. The relations between municipalities and the return-related entity ministries vary and depend largely on whether reconstruction projects are being implemented on a municipality's territory;
- municipalities differ a lot where returnee and DP related administrative structures are concerned, as well as the number of staff involved. There are also many differences in the way municipalities coordinate between their departments involved in return measures, which seem to depend mainly on mayoral decisions;
- municipalities have not been much involved in the planning of return projects, due the more prominent role of international organisations and higher administrative layers (entities and cantons). However they played a role in the gathering of data necessary for the design of projects;

<sup>27</sup> Municipalities approved by the SCDR for reconstruction assistance projects in 2005.



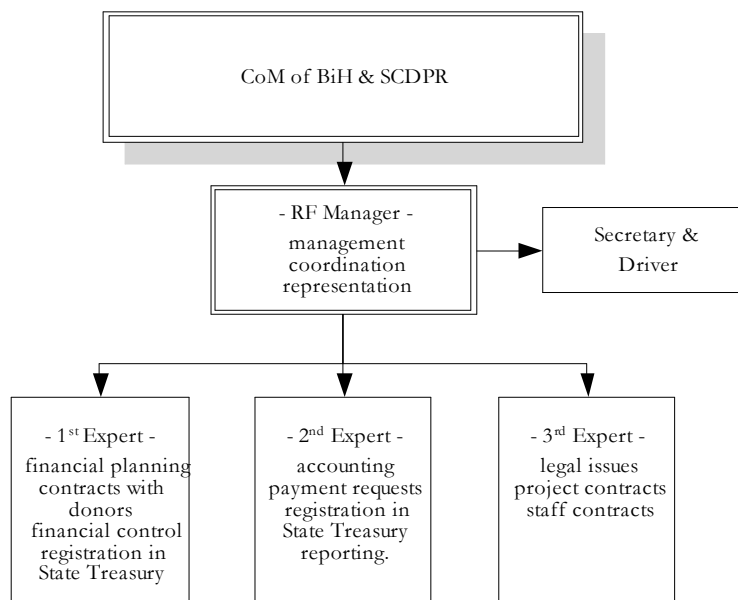
- municipalities have not, so far at least, been much involved in beneficiary selection, although they do sign tri-partite agreements with different implementers;
- municipalities have not been, so far, much involved in the technical implementation of projects, although designated departments have done damage assessment of dwellings to be reconstructed. Municipalities have, under applicable legislation, the function of developing and implementing urban and housing policy and perform activities related to local infrastructure works;
- municipalities generally have no monitoring functions apart from final technical checks on reconstruction projects, nor have they been involved in checking the actual number of (returnee) occupants of reconstructed housing unit; and
- most municipalities keep some sort of database on returnee and DP issues, which they may share with canton-, entity and state level ministries upon request. There is no organised and structured system of information exchange the municipal and higher levels of administration.

## Return Fund

The Annex VII (GFAP) Strategy considers an operational Return Fund (RF) a pre-condition for the success of the capacity building strategy for the return sector, since:

*... if revived and endorsed by the (international community), [it] will have the potential to increase transparency and efficiency in the expenditure of funds and ... encourage municipalities to co-operate directly with the State.*

The RF was established in 2000<sup>28</sup>, to support the sustainability of return and reintegration of refugees and DPs throughout BiH. However, the RF did not become operational until late 2004, with the appointment per 1 November of that year of its Director. At the start of 2005, the RF had six full-time staff members. The following organisational chart summarises the RF's current staffing.<sup>29</sup>



**Chart 1: Current Organisational charts of the RF**

<sup>28</sup> By Decision of the Council of Ministers (CoM) of 22 November 2000.

<sup>29</sup> The current – limited – staffing of the RF reflects that fact that, according to one of its Books-of-Rules, the RF is not required to perform technical monitoring and control of project implementation. The MHRR, through its Regional Centres, is responsible for this function on behalf of the RF.

Securing domestic funding for the RF has proven to be a difficult process. In 2004, the four domestic partners in the RF made financial pledges for 18.25 million convertible marks (BAM)<sup>30</sup>: the state (BAM 2.5 million), the two entities (BAM 7.2 million each) and Brcko District (BAM 1.35 million). Subsequently, most partners reduced their respective pledges to BAM 10.2 million, of which BAM 3.35 million had been paid in by 31 December 2004 and BAM 6.8 million by 01 February 2005<sup>31</sup>.

Although it also appears to have been the intention to channel external grant assistance through the RF, such financing has not yet materialised to any significant degree, as the donors still need convincing that the RF's procurement and payment procedures are sufficiently solid. By February 2005, these procedures existed in draft, but had not yet adopted by the SCDPR. The EC has provided funding in support of the operations of the RF, channelled through the SUTRA I and II projects, both of which are implemented by the United Nations Development Programme (UNDP). Under a November 2004 Third-Party Cost Sharing Agreement<sup>32</sup>, the RF is held to pay BAM 9.3 million to the UNDP, as the domestic counterpart contribution to the SUTRA II project. The RF also hopes to attract loan financing. Negotiations with the Council of Europe Development Bank (CEB) for an eight million EUR loan (matched by 4 million EUR in domestic funding) for a housing reconstruction project<sup>33</sup>, were in an advanced stage by February 2005 and await the acceptance of the RF's procedures by the CEB.

The delays in honouring the domestic financial pledges to the RF imperil its liquidity position, which threatens the implementation of the SUTRA II project and, possibly, securing the CEB loan.

The current and planned interventions of the RF fall under a number of sectoral policies implemented by the entity ministries dealing with human rights, DPs and refugees, health and social affairs. The SCDPR provides co-ordination in this respect. In addition, the SCDPR is charged with the authorisation of projects and supervision of the RF's project implementation.

The RF has prepared procedures for project implementation. These currently envisage the involvement of three institutions: the RF, the BiH MHRR and municipalities. Since, at the time of writing, implementation of projects had hardly started, this Review's assessment is based primarily on the available working documents, which are subject to change. The most important documentation encompasses the RF Books-of-Rules on the internal organisation of the RF and on the management of RF resources respectively.

## Local NGOs in the Return Sector

It is necessary to emphasise that BiH does not have a long-standing tradition with civil initiatives and NGOs. The political system of the former Yugoslavia did not encourage citizens to take initiatives, nor did it attach much importance to civil society. The break-up of the Federal Socialist Republic of Yugoslavia brought about (political) change, and especially after the war, civil society took root in BiH. NGOs sprang up, often supported by the international community, because of needs identified by the people of the country. Because of the large number of refugees and DP's, with their specific needs and aspirations, these categories organised themselves early on, often to be able to voice their concerns and to formulate their needs when returning to their pre-war residences.

The role the international community played in the return process stimulated the formation of local NGOs even further. These organisations were instrumental in overcoming resistance on the part of national institutions and administrations, in particular during the first years. They played a major role drawing attention to return-specific problems and they also were among the first to prepare lists of potential beneficiaries for return-related assistance.

30 BAM stands for the Bosnia and Herzegovina convertible mark: exchange rate: EUR 1 = BAM 1.95583.

31 The FBiH did not, after a re-balancing of its 2004 budget, manage to transfer its contribution for that year.

32 Between the RF (on behalf of the donor) and the UNDP BiH office (on behalf of the executive agency) and witnessed by the Minister of Human Rights and Refugees of BiH, the Minister of DPs and Refugees of FBiH, the Minister for Refugees and DPs of RS, the Mayor of Brcko District and the Chairman of the SCDPR.

33 The project is entitled: "Sustainable Return for Residents of Collective Centres and Alternative Accommodations and for Spontaneous Return Cases: Housing Stock Reconstruction". According to a CoE press release, the loan (now for a total of 850 houses, approved on



In the immediate post-war period, associations of returnees were viewed with scepticism by local authorities, especially at municipal level and political parties often tried to politicise the associations of returnees and DPs, a tendency that has been significantly reduced in the last few years.

In the first years of the return process, most organisations focused on providing information, humanitarian aid and generating public awareness. Gradually their focus has changed and some of the organisations turned to economic projects trying to make the returns sustainable. In this context, the Independent Bureau for Development from Modrica/Gradacac is a noteworthy example of emancipating returnees as well as the entire local community through the implementation of development programs. The Independent Bureau for Development Modrica/Gradacac initiated the idea of small business incubators, a model that was applied in many municipalities in BiH at a later stage.

Since the civil society/NGO sector has matured and developed, the need arose to empower it and to include it in decision-making processes.

The SUTRA Project promoted the idea of a local consortium with its roots in three different sectors, i.e. public governance, business and civil society. This gave NGOs an opportunity to participate in the decision-making process: they were to draw up lists of potential beneficiaries, but the lack of a well-defined network of NGOs, many of which did not have a sufficiently developed capacity, made for difficulties. In major cities, where the first phase of the SUTRA Project was implemented, such as Mostar and Tuzla, the participation of NGOs was more significant than in the other cities, while in the communities such as Bosanski Brod or Travnik such participation was low-level.

Joint NGOs - local institution projects were not only promoted through the SUTRA Project; the EU CARDS 2003 Programme also teamed up with NGOs. The selection of four NGOs to attend SCDPR meetings as observers was a significant step towards acknowledging the importance of NGOs in the return process.

The future of NGOs dealing with return will depend to a great extent on their readiness for organisational empowerment, as well as on their ability to take on more return-related tasks. Their work is to focus more on the sustainability of the returns, a process that requires higher standards and more transparency than are currently displayed.

## Human Resources Analysis

### Staffing of Return-related Institutions

Institution	Number of Staff	%
BiH MHRR	67	21%
RS MRDP RS	137	43%
RS MRDP FBiH	76	24%
Brcko District	38	12%
Totals	318	100%

**Table 2: Number of Staff at end-2004**

The above table shows that the BiH MHRR has significantly less staff than both entity ministries. Further taking into account the fact that not all BiH MHRR staff is involved in return-related issues (including reconstruction for return), it is clear that the BiH MHRR is significantly understaffed on return issues.

The largest ministry in terms of staffing is the RS MRDP. This is a consequence of the existence under that ministry of 14 OMIs, which employ more than half of the ministry's staff complement.

Given its total population and the size of Brcko District, rather a large number of administrative staff is involved in return-related issues there.



Institution	Bosniak	%	Croat	%	Serbs	%
BiH MHRR <sup>34</sup>	17	52%	5	15%	11	33%
RS MRDP RS	3	2%	1	1%	133	97%
RS MRDP FBiH	59	78%	14	18%	2	3%
Brcko District	18	47%	7	18%	13	34%
Totals	97	34%	27	10%	159	56%

Table 3: Ethnic Structure

Whilst the staffing of the BiH MHRR and the relevant Department of the Brcko District administration show a relative well balanced mix of constituent peoples, the same cannot be said for the entity ministries. The staffing of both the FBiH MDPR and the RS MRDP still reflects the constituent peoples' mix of directly after the war and certainly bears no relation to the mix in the 1991 Census. In the FBiH MDPR, work only two Serbs, while the RS MRDP employs but 3 Bosniacs and 1 Croat. It is clear therefore that little has been done to implement the Decision of the Constitutional Court on the constituency of the peoples and its implementation (ref: footnote 64).

## Staff Gender and Qualifications

Institution	Male	%	Female	%
BiH MHRR	39	58%	28	42%
RS MRDP RS	57	42%	80	58%
RS MRDP FBiH	41	54%	35	46%
Brcko District	18	47%	20	53%
Totals	155	49%	163	51%

Table 4: Gender Structure

The data presented in the above table might lead to the conclusion that there exists a satisfactory gender mix in all institutions considered. However, its female staff rarely occupies management positions. For example, in Brcko District only the Sector for Refugees, DPs and Housing Policy is headed by a woman and in the other institutions, the higher-level positions are almost exclusively filled by men.

Institution	University degree	%	Semi-university degree	%	High school	%	Elementary qualification	%
BiH MHRR	40	60%	4	6%	23	34%		
RS MRDP RS	53	39%	20	15%	62	45%	2	1%
RS MRDP FBiH	40	53%	6	8%	30	40%		
Brcko District	2	5%	1	3%	26	68%	9	23%
Totals	135	42%	31	10%	141	44%	11	3%

Table 5: Qualification Structure

The qualifications structure within the BiH MHRR and the entity ministries is satisfactory. In all three cases, there is over 50 staff with a university degree or semi-university degree. In relative terms, the BiH MHRR is the best off in this respect. The Sector for Refugees, DPs and Housing Policy of the Brcko District admini-

<sup>34</sup> Includes only civil servants in the MHRR (33).

stration however, employs only two staff members with a university degree and five with a semi-university degree. This is not satisfactory, particularly bearing in mind that the number of return-related staff is relatively large when compared with the population and territorial extent of the District.

## FINANCIAL ANALYSIS

### Basis

The FRR's financial analysis envisaged covering the following return process institutions (RPI):

- the BiH MHRR;
- the RS MRDP;
- the FBiH MDPH;
- relevant departments and ministries in the ten cantons of FBiH;
- the Department for DPs, Refugees and Housing Affairs, Brcko District; and
- relevant departmental services in 30 municipalities in both entities.

After collecting data on all RPIs, it was concluded that, due to a lack of data, or their being unreliable, the following RPIs could not be included in the financial analysis:

- relevant departments and ministries in the ten cantons of FBiH; and
- relevant departmental services in 40 municipalities in both entities.

The financial analysis is based on data yielded by special questionnaires, information contained in the financial documentation of RPIs and data obtained through semi-structured interviews with RPI managers<sup>35</sup>. For the RS, the analysis used data contained in financial reports of the RS MRDP as audited by the RS Office for Audit of Budget Users<sup>36</sup>.

During the analysis, the collected data were repeatedly checked and compared. The following could be established:

- RPIs do not provide evidence of business expenditure and project implementation expenditure in accordance with International Accounting Standards (IAS);
- RPIs have not developed and do not use cost accounting for the projects they implement;
- the results of implemented projects are recorded by the specialised organisational units concerned with reconstruction. There are no consolidated summary results on reconstruction projects for specific financial periods;
- the numbers of housing units reconstructed cannot be ascertained on the basis of available financial reporting;
- financial reporting is typically neither reliable nor comprehensive.

### Total Public Spending in the Return Sector

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<sup>35</sup> The following RPIs and Administrative Institution's documents were analysed: strategies, work programmes and plans, Official Gazettes (of BiH, FBiH, RS, and cantons) and reports of the Audit Office of BiH and Entity Institutions.

<sup>36</sup> Main Department for Audit of the Public Sector of the RS; reports of the independent auditor for 2002 and 2003.

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Ultimately, after revision in the course of budget execution, the various RPIs budget allocations for the period 2003-04 were as follows:

REVISED RPI BUDGETS (in BAM)	Budget 2003			Budget 2004		
	Total	RPIs	%	Total	RPIs	%
BiH	529,870,505	9,390,338	1.8%	480,568,875	8,025,960	1.8%
District Brcko	224,393,000	7,780,203	3.5%	202,878,500	8,074,471	4.0%
RS	1,020,307,870	28,091,286	2.8%	1,072,156,620	28,592,397	2.7%
FBiH	1,217,400,000	31,000,000	2.6%	1,185,000,000	15,422,013	1.3%
Canton 1 – Una-Sana (USK)	117,336,641	1,550,000	1.3%	129,438,271	550,000	0.4%
Canton 2 – Posavina (PK)	22,997,701	20,000	0.1%	24,850,000	20,000	0.1%
Canton 3 – Tuzla (TK)	204,341,700	5,375,800	2.6%	227,486,600	5,602,500	2.5%
Canton 4 – Zenica (ZE-DO)	150,000,000	1,400,000	0.9%	172,000,000	1,400,000	0.8%
Canton 5 – Gorazde (BPK)	19,625,432	180,000	0.9%	21,000,000	180,000	0.9%
Canton 6 – Travnik (SBK)	83,371,900	3,000,000	3.6%	98,271,600	3,200,000	3.3%
Canton 7 – Mostar (HNK)	110,000,000	570,000	0.5%	110,000,000	570,000	0.5%
Canton 8 – Ljubuski (ZHK)	48,500,000	180,000	0.4%	48,800,000	150,000	0.3%
Canton 9 – Sarajevo	459,230,300	3,700,000	0.8%	482,570,433	3,700,000	0.8%
Canton 10 – Livno (LK)	37,560,000	300,000	0.8%	34,907,000	50,000	0.1%
<b>Totals</b>	<b>4,244,935,049</b>	<b>92,537,627</b>	<b>2.2%</b>	<b>4,289,927,899</b>	<b>75,537,341</b>	<b>1.8%</b>

Table 6: RPIs budget allocations for the period 2003-04

The following can be observed:

- the relative level of funds allocation for return-related measures from the total budgets of some BiH administrative units varies. Certain units allocated up to 40 times more funds than others for the return sector (e.g. in 2004, Posavina Canton allocated 0.1% and Brcko District 4.0%, rounded).
- in absolute figures, the allocations for the return sector vary from BAM 20,000 (Posavina Canton, in 2003 and 2004) to BAM 31,000,000 and 30,739,990 (FBiH, in 2003 and in 2004).
- overall, the allocations for the return sector show a downward trend (2.2% in 2003; 1.8% in 2004). This downward trend is most pronounced in FBiH (from 2.6% in 2003 to 1.3% in 2004) and in Canton 1 (from 1.3% in 2003 to 0.4% in 2004).

The reduction of allocations to the return sector does not correspond to the need for further return-related investment. If the Annex VII Strategy's aim to solve the problem of DPs and refugees is to be achieved<sup>37</sup>, allocations should be increased in the very short term. Please refer in this context to the section entitled "The Gap", below.

TOTAL BUDGET (in BAM)	2002	2003	2004
FBiH			
• Approved	51,177,874	32,941,341	15,422,013
• Executed	51,158,088	32,754,991	15,101,147

<sup>37</sup> Annex VII (GFAP) Strategy – A Strategy of BiH and RRTF for the Implementation of Annex 7 With Regards to the Return of Refugees and Displaced Persons and Building Capacity for a Transfer of Responsibilities to Domestic Institutions, Sarajevo, 15 January 2003.

BD			
• Approved	1,258,930	7,780,203	8,074,471
• Executed	1,181,845	6,473,277	6,457,684
RS			
• Approved	34,674,953	29,098,521	28,592,397
• Executed	46,309,985	24,410,419	6,948,458 <sup>38</sup>
BiH			
• Approved	9,249,693	9,390,338	8,025,960
• Executed	8,789,839	7,248,087	3,261,870 <sup>39</sup>
<b>Totals</b>			
<b>Approved</b>	<b>96,361,450</b>	<b>79,210,403</b>	<b>60,114,841</b>
<b>Executed</b>	<b>107,439,757</b>	<b>70,886,774</b>	<b>31,769,159</b>
<b>Index: Approved / Executed Budget</b>	<b>112%</b>	<b>89%</b>	<b>53%</b>

Table 7: Budgets; allocations and spent, 2002-04

### Structure of RPI budgets

Budgets typically consist of operational expenses and project expenses. The operational expenses include salaries and compensations for employees, as well as sundry fixed and variable costs (travel, transport and petrol; utilities, rent of premises and equipment and maintenance).

Budget planning methodology is based on instructions by the Ministries of Finance. These instructions set the overall framework in terms of the total of funds available for operational expenses.

Current RPI practice shows that the budgeting for operational expenses is related to neither the number nor the nature of planned return-related measures. The RPIs make annual work plans<sup>40</sup> that generally do not contain (except in the case of Brcko District) quantitative indicators related to the human and material resources necessary for the realisation of planned projects. The RPIs' accounting records are not based on cost accounting. Often no distinction is made with regard to expenditure on individual return-related projects. Return-related project expenditure tends to be presented in budgets under a single budget line: 'transfers', 'grants' or 'capital expenditures'. Apart from the reconstruction of housing units, part of these budget lines are dedicated to the reconstruction of infrastructure, 'sustainable return' projects, and projects for the provision of health services and education.

EXECUTED BUDGET	2002		2003		2004		Total 2002-04	
	BAM	%	BAM	%	BAM	%	BAM	%
FBiH								
• Budget executed	51,158,088	100	32,754,991	100	15,101,147	100	99,014,226	100
• Operational costs	2,787,276	5	1,915,979	6	1,744,747	12	6,448,002	7
• Project costs	48,370,812	95	30,839,012	94	13,356,400	88	92,566,224	93
• Expenditure coefficient of project realisation <sup>41</sup>		6		6		13		7

<sup>38</sup> Execution relates to period 01/01 – 30/06/04.

<sup>39</sup> Execution relates to period 01/01 – 30/09/04.

<sup>40</sup> Only the government of Brcko District makes plans for a five-year period.

<sup>41</sup> The expenditure coefficient of project realisation shows the relationship between operational expenses and project expenses for the budget period. A lower coefficient might be indicative of more efficiency in project realisation.

BD								
• Budget executed	1,181,845	100	6,473,277	100	6,457,684	100	14,112,806	100
• Operational costs	892,887	76	1,221,632	19	961,148	15	3,075,666	22
• Project costs	288,958	24	5,251,645	81	5,496,536	85	11,037,140	78
• Expenditure coefficient		309		23		17		
RS								
• Budget executed	46,309,985	100	24,410,419	100	6,948,458	100	77,668,862	100
• Operational costs	7,243,665	16	6,465,433	26	1,494,146	22	15,203,244	20
• Project costs	38,991,806	84	17,944,986	74	5,454,312	79	62,391,104	80
• Expenditure coefficient		19		36		27		24
BiH								
• Budget executed	8,789,839	100	7,248,087	100	3,261,870	100	19,299,796	100
• Operational costs of reconstruction, human rights protection and asylum projects	2,193,097	25	2,172,701	30	1,416,778	43	5,782,576	30
• Human rights protection and asylum project cost	3,304,525	38	2,586,949	36				
• Reconstruction project cost	3,292,217	37	2,488,437	34				
<b>Total BH Project Costs</b>	<b>6,596,742</b>	<b>75</b>	<b>5,075,386</b>	<b>70</b>	<b>1,845,092</b>	<b>57</b>	<b>13,517,220</b>	<b>70</b>
<b>Expenditure coefficient</b>		<b>50</b>		<b>49</b>				<b>43</b>
<b>TOTAL BUDGET EXECUTED</b>	<b>107,439,757</b>	<b>100</b>	<b>70,886,774</b>	<b>100</b>	<b>31,769,159</b>	<b>100</b>	<b>210,095,690</b>	<b>100</b>
<b>TOTAL OPERATIONAL COSTS</b>	<b>13,116,925</b>	<b>12</b>	<b>11,775,745</b>	<b>17</b>	<b>5,616,819</b>	<b>18</b>	<b>30,509,488</b>	<b>15</b>
<b>TOTAL PROJECT COSTS</b>	<b>94,248,318</b>	<b>88</b>	<b>59,111,029</b>	<b>83</b>	<b>26,152,340</b>	<b>82</b>	<b>179,511,688</b>	<b>85</b>

Table 8: Structure of RPI budgets

In the FBiH, the expenditure coefficient of project realisation – the ratio between operational and project (investment) costs – shows a tendency to increase. It moves from 5.76% in 2002 and 6.21% in 2003 to 13.06% in 2004 however, the 5.76% expenditure coefficient for 2002 should be disregarded. The FBiH financial police confiscated the FBiH MDPR's financial documentation for 2002 and the data in the documentation made available are not reliable.

In Brcko District, the Department for Spatial Planning implemented return projects (until May 2003). It was not possible to obtain complete data for 2002 on the projects implemented by that department. Given that the total of operational expenditure, but only part of project expenditure are included in the above table, the expenditure coefficient of project realisation for 2003 is, at 309%, unrealistically high.

For the period 2002-03, the expenditure coefficient of project realisation in the RS was on the increase. The RS MRDP could not provide data for the whole of 2004, but available data for the first six months of that year indicate that this tendency was maintained.

Over the period 2002-04, expenditure coefficients for project realisation are generally higher for the BiH MHRR than for other RPIs, with a tendency to increase during the first nine months of 2004. The BiH MHRR implements its own projects and co-ordinates the implementation of Joint Projects. The relatively high expenditure coefficient for project realisation of the BiH MHRR is explained by the fact the Joint Projects require the engagement of additional human and material resources, leading to increased operational expenses of that ministry.

## Development of Operational Costs

AVERAGE MONTHLY GROSS WAGES AND COMPENSATIONS	2002	2003	2004
	BAM	BAM	BAM
FBiH			
• Operational expenditures	2,787,276	1,915,979	1,744,747
• Gross wages and compensations	2,161,381	1,020,845	1,198,432
• Number of employees	139	66	70
• Average monthly gross wages and compensations	1,296	1,289	1,427
BD			
• Operational expenditures	892,887	1,221,632	961,148
• Gross wages and compensations	652,479	622,020	727,390
• Number of employees	24	26	39
• Average monthly gross wages and compensations	2,266	1,994	1,554
RS			
• Operational expenditures	7,243,665	6,465,433	1,494,146
• Gross wages and compensations	4,384,626	3,799,651	927,608
• Number of employees	439	378	144
• Average monthly gross wages and compensations	832	838	537
BiH			
• Operational expenditures of the reconstruction projects and the human rights protection and asylum projects	2,193,097	2,172,701	1,416,778
• Gross wages and compensations	1,814,847	1,799,567	1,147,978
• Number of employees	70	69	71
• Average monthly gross wages and compensations	2,160	2,137	1,347
<b>TOTAL OPERATIONAL EXPENDITURES</b>	<b>13,116,925</b>	<b>11,775,745</b>	<b>5,616,819</b>
<b>TOTAL GROSS WAGES AND COMPENSATIONS</b>	<b>9,013,333</b>	<b>7,242,083</b>	<b>4,001,408</b>
<b>TOTAL NUMBER OF EMPLOYEES</b>	<b>672</b>	<b>539</b>	<b>324</b>
<b>TOTAL AVERAGE MONTHLY GROSS WAGES AND COMPENSATIONS</b>	<b>1,118</b>	<b>1,120</b>	<b>1,029</b>

Table 9: Development of Operational Costs

The overall tendency for falling allocations for projects benefiting DPs and refugees directly, is accompanied by a relative increase in operational expenditures.

Fixed costs (rent of premises, utilities and maintenance) form a significant part of total operational expenditure. For this reason, a reduction of project related expenditure cannot be expected to lead to a proportional reduction in operational expenditure.

Variable costs (salaries and compensations for employees, travel expenses, petrol, communications and the like) in practice also seem to behave like fixed costs. Much of variable expenditure does not move up or down with a growth or reduction in project related expenditure. For example, the number of people involved in implementation does not necessarily move in line with the number and nature of the projects implemented.

## Development of Reconstruction Costs

PROJECTS OF HOUSING UNITS RECONSTRUCTION	2002		2003		2004		TOTAL	
	BAM	%	BAM	%	BAM	%	BAM	%
FBiH								
• Executed budget	51,158,088	100	32,754,991	100	15,101,147	100	99,014,426	100
• Project expenditures	48,370,812	95	26,487,248	81	9,421,274	62	84,279,509	85
BD								
• Executed budget	1,181,845	100	6,473,277	100	6,457,684	100	14,113,006	100
• Project expenditures	288,958	24	4,251,548	66	5,175,086	80	9,715,682	69
RS								
• Executed budget	46,309,985	100	24,410,419	100	6,948,458	100	77,669,062	100
• Project expenditures	15,616,737	34	16,097,344	66	5,092,522	73	36,806,703	47
BiH								
• Executed budget	8,789,839	100	7,248,087	100	3,261,870	100	19,299,996	100
• Project expenditures	3,292,217	37		0		0	3,292,254	17
<b>TOTAL EXECUTED BUDGET</b>	<b>107,439,757</b>	<b>100</b>	<b>70,886,774</b>	<b>100</b>	<b>31,769,159</b>	<b>100</b>	<b>210,095,890</b>	<b>100</b>
<b>TOTAL PROJECT EXPENDITURES</b>	<b>67,568,724</b>	<b>63</b>	<b>46,836,141</b>	<b>66</b>	<b>19,688,882</b>	<b>62</b>	<b>134,093,875</b>	<b>64</b>

Table 10: Development of Reconstruction Costs

The preceding chart contains values for Joint Projects (reconstruction), as follows:

Joint Projects	2002	2003	2004	Total
FBiH	1,350,000	6,430,000	0	7,780,000
RS	1,650,000	3,450,000	3,350,000	8,450,000
BiH	823,105	2,468,000	2,431,500	5,722,605
Brcko District	0	0	1,000,000	1,000,000
Others	5,111,388	6,944,200	0	12,055,588
<b>TOTALS</b>	<b>8,934,493</b>	<b>19,292,200</b>	<b>6,781,500</b>	<b>35,008,193</b>

Table 11: Values for Joint Projects (reconstruction)

The tendency towards lower investment in return-related projects over the period 2002-04 has already been remarked upon.

The implementation ratio of return projects differs between RPIs. The FBiH and BiH ministries mainly finance return projects addressing the problems of refugees and DPs, through investments in the reconstruction of returnees' pre-war housing units. The RS and, Brcko District to a certain extent, focus on the construction of new housing units for the temporary accommodation of refugees and DPs.

In Brcko District, 320 housing units have been built and records on their new users have been kept and are updated. For the RS, there are no reliable data on the number of housing units constructed. According to audit reports, the RS MRDP has built new housing units and allocated them for use by DPs and refugees, families of casualties and war invalids. The newly built houses have been registered as expenditure only and are not recorded as assets. In 2002 and 2003 both, auditors recommended that these houses, after transfer from the RS Ministry of War Veterans, be listed as assets of the RS MRDP. In February 2005, the registration of newly built houses was still in progress. According to verbal statements by the responsible authorities, the total number of houses in question amounts to 1200.

In all RPIs, except for Breko District, keeping track of the results in terms of persons who have actually returned is difficult. The BiH MHRR currently does not keep records on the results of return-related projects.

At the beginning of 2003, the OHR appointed a Special Auditor for the FBiH MDPR. Further to recommendations in the Special Auditor's report, the OHR subsequently appointed temporary auditors for both entities' ministries. The temporary auditors were to establish working procedures and to design the modalities for planning, realisation, monitoring, recording, reporting and procurement.

The FBiH adopted the recommendations of the Special Auditor and the temporary auditors. Consequently, the functioning and record keeping of the FBiH MDPR improved considerably.

RESULTS OF RECONSTRUCTION PROJECTS - in numbers of housing units; project expenditure (in million BAM, rounded); and cost per housing unit (in BAM)	2002	2003	2004
BiH			
• Reconstruction in BiH		424	352
• Return in the FBiH		10	
• Joint Projects (BiH MHRR )			45
<b>Total BiH</b>		<b>434</b>	<b>397</b>
<b>Project Expenditure (BiH)</b>	<b>3.3</b>	<b>0</b>	<b>0</b>
<b>Cost per housing unit (BiH)</b>	<b>n/a</b>	<b>n/a</b>	<b>n/a</b>
FBiH			
• Reconstruction of housing units		2,859	1,330
• Joint Project via SCR		296	15
• Joint Projects with cantons and municipalities		318	48
• Srebrenica		41	40
<b>Total FBiH</b>		<b>3,514</b>	<b>1,433</b>
<b>Project Expenditure (FBiH)</b>	<b>48.4</b>	<b>26.5</b>	<b>9.4</b>
<b>Cost per housing unit (FBiH)</b>	<b>n/a</b>	<b>7,541</b>	<b>6,560</b>
RS			
• Rebuilding of houses	1428	648	174
• Alternative accommodation			
• Collective centres			
• Humanitarian aid			
• Joint Projects (BiH MHRR )	185	851	55
<b>Total RS</b>	<b>1,613</b>	<b>1,499</b>	<b>229</b>
<b>Project Expenditure (RS)</b>	<b>15.6</b>	<b>16.1</b>	<b>5.1</b>
<b>Cost per housing unit (RS)</b>	<b>9,671</b>	<b>10,740</b>	<b>22,271</b>

Table 12: results of reconstruction projects

## Development of Sustainable Return Costs

SUSTAINABLE RETURN PROJECTS	2002		2003		2004		Totals	
	BAM	%	BAM	%	BAM	%	BAM	%
FBiH								
• Executed budget	51,158,088	100	32,754,991	100	15,101,147	100	99,014,426	100
• Project expenditures	0	0	4,351,764	13	3,935,126	26	8,286,903	8

BD								
• Executed budget	1,181,845	100	6,473,277	100	6,457,684	100	14,113,006	100
• Project expenditures	0	0	1,000,097	15	321,451	5	1,321,563	9
RS								
• Executed budget	46,309,985	100	24,410,419	100	6,948,458	100	77,669,062	100
• Project expenditures	23,375,069	50	1,847,642	8	361,790	5	25,584,559	33
BiH								
• Executed budget	8,789,839	100	7,248,087	100	3,261,870	100	19,299,996	100
• Project expenditures	3,304,525	38	5,075,386	70	1,845,092	57	10,225,111	53
<b>TOTAL EXECUTED BUDGET</b>	<b>107,439,757</b>	<b>100</b>	<b>70,886,773.85</b>	<b>100</b>	<b>31,769,159</b>	<b>100</b>	<b>210,095,890</b>	<b>100</b>
<b>TOTAL PROJECT EXPENDITURES</b>	<b>26,679,594</b>	<b>25</b>	<b>12,274,889</b>	<b>17</b>	<b>6,463,459</b>	<b>20</b>	<b>45,417,984</b>	<b>22</b>

Table 13: Development of Sustainable Return Costs

Expenditures on sustainable return measures vary widely between the RPIs. The above table shows such expenditure to be only 8% of the total return-related expenditure in FBiH and more than half at state level. There are differences in the definition of what constitutes expenditure for sustainable return. The figures for 2002-04 do not indicate a pattern of increase in sustainable return measures to the detriment of housing reconstruction.

The records kept by the BiH MHRR do not allow distinction between amounts spent on human rights and asylum related projects, on the one hand, and reconstruction projects, on the other hand. In addition, the financial reporting does neither allow proper safeguarding of assets nor an assessment of the results from the expenditure incurred.

## External Financing

In the years since 1996, the lion share of investments in the return process came from the international community. It is estimated that they have contributed, until and including 2004, some EUR 2.5 billion; during the same period, BiH authorities at all levels have made some EUR 100 million available for this goal. Given this dominant role of the donor community, it is relevant here to discuss their activities planned for the future, and relate this to the expected and needed actions of the BiH authorities.

Against this background, the aim of this subsection and the following is to:

- provide a global picture of the future size and form of the contributions to the return process by the international donor community;
- analyse the needs for further external financial support to the return process;
- elaborate on the issue of sustainability of return, and its financial ramifications.

### Bosnian investigative commission fails to establish exact amount of donations

[Anchor] The investigative commission of the House of Representatives of the Bosnia and Herzegovina Parliamentary Assembly established to assess how donors' funds in BiH have been spent, has not managed to establish exactly how much has been donated and spent in BiH since 1996, even after more than one year of research and investigation. The investigation refers to an amount of BAM 12 billion in donations. However, it is estimated that the actual amount of donors' funds could be up to one-quarter higher.

[Reporter, Branka Kusmuk] Tihomir Gligoric, the chair of the investigative commission, said that the state-level Ministry of Foreign Trade and Economic Relations is, since three years, managing a database of donors' funds at the level of BiH, entities and Brcko District for the past two years. For the time being, the project does not include data on how donated funds are used. However, Gligoric pointed out, based on the information currently available, it cannot be established whether the funds were spent for the designated purpose or whether there was abuse.

Source: RTRS, Banja Luka, 21/02/05.

Unfortunately, there are in BiH no comprehensive statistics on the activities and investments of the international community in the return sector. This is partly so because in the early years after the war, there was no infrastructure within the country allowing for the co-ordination of donor activities. The establishment of the RTFF and the IMG's involvement filled this gap to some extent, but this has not led to a comprehensive database on financial inputs for return. Many bilateral donors developed policies on return-related activities rather independently from each other.

## Donor Contributions

Donor contributions to the return sector in the wider sense are declining, not only in comparison to the top years 2002 and 2003, but also in relation to the average contributions to the return sector over the entire period since 1996. This is a reflection of two general views among donors:

- led by the OHR, UNHCR, EC and OSCE, as the opinion leaders in this field, most donors believe that the bulk of the return, in terms of numbers of refugees and internally DP's, has been accomplished. Insofar there is still a need to finance the reconstruction of housing units, this need should – in their opinion – be largely covered by domestic funds; and
- there is a general fatigue among donors to continue funding a country that seems to lack the political will to solve the persistent internal restraints on social and economic development, notably its large and costly public administration system.

These general views lead to the expectation that future assistance by the international community to the return sector will steadily diminish. Despite considerable research efforts, it has not been possible to confirm this expectation through a detailed forecast of the funding that can be expected in the near future. Many of the donors have not yet finalised their financial plans for the year 2005, let alone for a longer period. However, discussions with a number of bilateral and multilateral donors have produced at least qualitative information on their intentions for future support to the return sector in BiH.

## Selected Donors: Future Strategies

The most important donors in terms of financial contributions to the return sector in the past decade are set out in the following table.

Multilateral donors	Bilateral donors
European Union	Germany
United Nations institutions	Japan
World Bank	Netherlands
	Saudi-Arabia
	Sweden
	United States

**Table 14: Important Donors in the Return Sector**

The **European Union** has provided up to 2004 over EUR 1.3 billion to the return sector, predominantly in the form of grants. This amount includes some EUR 900 million donated by the EC Humanitarian Office, ECHO, while the remainder was distributed through the OBNOVA and CARDS programmes. The Commission is preparing to exit the return sector; 2004 has been the last year to include projects for the reconstruction of housing units and other return-related issues. If the CARDS programmes for 2005 and 2006 are to comprise projects for returnees, the amount will probably not exceed EUR 1 million. After 2005, no further direct support for the return sector is foreseen.

**UN institutions** altogether have supported the return of refugees with some EUR 30 million during the period 1996-2002. Since then, no budget was available for this purpose and for the future, there are no plans for further support.



The **World Bank**, after providing some USD 60 million of grant and loan assistance to reconstruction for return in the first three years after the war, has not contributed to the sector since 1999. The Country Assistance Strategy of the World Bank and the International Development Association for the fiscal years 2005-2007 foresees credits to the amount of USD 79 million in a low case scenario, with the possibility for a total lending of USD 152 million in a high case scenario. These scenarios are based on the reform performance of the BiH authorities. The credits are earmarked for investments in the sectors of health, education, public sector reform, social service delivery, social/rural development, and energy. No assistance is foreseen for the return sector.

**Germany** has also provided extensive funding for the return sector, especially for the reconstruction of housing units. German reconstruction projects always comprise other activities, such as small infrastructure rehabilitation, winter help, starter kits, etc. German funding is slowly shifting away from housing reconstruction to assistance to people in collective centres, many of which will never return to their original domiciles. In 2003, Germany spent some EUR 2.6 million on return issues; in 2004 this amount was EUR 3.4 million. Between 2001 and 2004, German support has facilitated the reconstruction of 3,073 housing units. The budgets for 2005 and 2006 are not known yet, but it is certain that they will be substantially lower than in earlier years. The official position of the German government is that, if there will not be a new or renewed Stability Pact by the end of 2006, the German assistance will cease.

**Japan** has invested some EUR 40 million in the return sector, mainly in infrastructure, rehabilitation of schools and sustainability programmes. No reconstruction of housing units has been financed. The Japanese contribution to BiH, not only to the return sector, amounts to USD 500 million, pledged during the first international donor conference in 1996. To date, some USD 350 million has been spent on assistance to BiH. The remaining USD 150 million will be spent in the coming years, at a rate of some USD 40 million per year. After that, Japan has no intentions to continue the support to BiH. Already since 2001, the focus of Japan's assistance has shifted from reconstruction to socio-economic development. This tendency will continue.

**Saudi Arabia**, through various channels, has supported BiH with some EUR 90 million in the period 1996-2003; return-related activities made up some 50% of this assistance and focused on the reconstruction of houses, communal infrastructure and educational facilities.

**Sweden** is active in many fields of support to BiH. As for the return sector, the country has financed the reconstruction of 15,284 housing units in the period 1996-2004, representing a budget of EUR 813 million and a yearly average of 1,700 houses. The plans for 2005 provide for another 2,553 units. Contrary to the other bilateral donors, the yearly number of houses reconstructed with Swedish assistance has been constantly growing. Sweden is currently investigating options for its exit strategy for the return process in the next three years, which may include transfer of responsibilities to national authorities and in particular the Return Fund.

**The Netherlands** has provided substantial support to the return of refugees and DPs in BiH, since 1996. There are no exact numbers available for the period before 2002, but the total assistance provided is in the range of EUR 200-250 million. The budgets for 2002, 2003 and 2004 were EUR 33, 17 and 16 million respectively, and it is estimated that more than 70% of these budgets (and those in previous years) were spent on the reconstruction of houses and accompanying measures for returnees. For the period 2005 through 2008, the expected total assistance budgets are on average EU 14.5 million per year, 75% of which is return-related. The tendency is to diminish direct support to reconstruction slowly, in favour of economic sustainability measures. Dutch government officials expect that development support to BiH will be discontinued by 2010.

Since the end of the war in 1995, the **United States**, through USAID, have spent more than USD 1 billion in BiH. Significant resources were channelled into supporting macroeconomic reforms, fiscal policies, banking, the judiciary, media, and public administration reform. USAID has been and still is facilitating the return of minorities to their communities through the provision of basic services such as the repair or rehabilitation of water and electricity supply, schools and transport infrastructure (streets, small roads and bridges). Projects are implemented only in areas where actual returns have taken or are taking place and are done in partnership with other donors providing housing repair or reconstruction. Other return-related actions include small income-generation grants and loans to individuals, community groups, businesses and legal aid services, as well as the facilitation of linkage between producers in minority communities and internal and external markets. It is estimated that the support to date has enabled over 60,000 sustainable minority returns throughout the country. No explicit information has been found on USAID's strategy and plans for future support to BiH. Nevertheless, the various documents and publications suggest that the coming years will see a continuation of the present support to the country, without major changes in volume and direction.

The State Ministry of Human Rights and Refugees has recently identified some new sources of financing. The **Council of Europe Bank (CEB)** will provide a credit of EUR 8 million, provided that the BiH authorities match this loan with EUR 4 million (50%) from their own resources. The funds are earmarked for the reconstruction of 1,100 housing units for people still accommodated in collective centres and implementation of the reconstruction process will take place over a three-year period, one quarter in the first year, 50% in the second year and again one quarter in the third year. Although ostensibly the domestic co-financing for at least the first two years has been approved, it is expected that the actual implementation of the project will not start before 2006.

The **OPEC Bank** plans to lend USD 7 million (11 million KM, EUR 5,5 million) to the BiH Return Fund for the same purpose. Here too, co-financing will be required, to an amount of approximately EUR 800,000 (15%). The project will be implemented in two yearly phases of equal size, the first one to be started in 2006.

The information collected from a sample of international donors confirms, without doubt, that starting in 2005, BiH authorities will have to take into consideration a rather sharp decline in external financial contributions to the return process. Financial support to the reconstruction of housing units can still be expected from Sweden (2,553 units in 2005), the Netherlands (1,000 units), Germany (some 300 units) and Saudi-Arabia (some 800 units). After 2005, these numbers will quickly diminish, but the expectation is that until the end of 2007, the same donors will still finance the reconstruction of 2,000 housing units. On a rough estimate, other donors will be good for the reconstruction of an additional 500 units, while the agreements with both banks mentioned above together cover 1,800 units. Assuming equal numbers in 2006-07, table 15 sets out reconstruction financing available until end-2007.

Year	2005	2006	2007	Total 2005-07
Estimated N° of housing units financed	4,653	2,150	2,150	8,953
Potential N° of returnees accommodated <sup>42</sup>	18,500	8,600	8,600	35,700

Table 15: Reconstruction Financing Available, 2005-07

## Estimated Future Financing Needs (Reconstruction)

The responsibility for the organisation and coordination of the return process was transferred, in the beginning of 2003, from the RRTF to the state level BiH MHRR. During the past two years, the BiH MHRR has steadily worked to master these tasks; one of its achievements is the set-up of a database on return, which is now in use for – among other things – checking the eligibility of potential returnees for a contribution to the reconstruction of their houses. The BiH MHRR has collected statistical data, which were published in its Bulletins for 2003 and 2004.

Although the ministry's publications state otherwise, until now there has not been much co-ordination of donor activities, as was practised by the RRTF. In May 2004, the UNHCR took the initiative in organising a donor co-ordination meeting. A first donor meeting organised by the ministry has taken place recently, on 2 March 2005. The outcome is yet unknown.

## Housing Units

The best tangible indicator for the status of the return programme is the number of housing units reconstructed, with the related number of refugees or DPs returned. It is acknowledged, however, that other activities, such as infrastructure rehabilitation and economic sustainability measures, are at least equally important.

In spite all analysis performed, it is very difficult to assess with any precision how much return-related reconstruction remains to be done. The public call for applications - launched in 2004, and still accepting applications – so far shows that perhaps between 20,000 and 30,000 families might still wish to apply for financial

<sup>42</sup> Assuming an average household size of 4 persons; rounded to '00.

assistance for reconstruction<sup>43</sup>. Additionally, the BiH parliament has ruled that there will be no time limit to the right of return, which again would imply that over time, financial support might be needed to the reconstruction of a considerably larger number of housing units.

Somewhat surprisingly, none of the international institutions in BiH, i.e.: the OHR, OSCE, UNHCR and the ECD, appear to have made any hard calculations or estimates of the remaining need for return assistance in the form of housing unit reconstruction. Insofar they have considered the matter, they copy the estimates of the BiH MHRR, based on the preliminary results of the public call. However, the multilateral organisations had already decided in 2002 or earlier – before any estimate was available – to withdraw their active involvement in the return process, be it as co-ordinator or as financier. Some bilateral donors did ponder the question of remaining reconstruction needs. Their estimates vary between 10,000 and 30,000 housing units.

A further problem is that the Annex VII (GFAP) Strategy lacks clear indicators for measuring the completion of the return process. Based on the current calculations and publications of the BiH MHRR, it would seem that the return process is deemed completed once between 41% and 43% of the destroyed and damaged housing units will be reconstructed. This rather begs the question what is to be done with the remaining 260,000 to 270,000 destroyed or damaged houses, and by whom.

The situation as regards the need for future reconstruction funding is consequently unclear. Although the current calls for applications are laudable initiatives to establish the immediate, short-term need for reconstruction for return, it must be expected that more requests for return support will be submitted in the years to come.

For the period until end-2007, an acceptable, though admittedly intuitive, working hypothesis might be that, until the end of 2007, at least 25,000 housing units will have to be reconstructed for returnees eligible for assistance.

## Cost per Unit

Many factors influence the reconstruction costs of housing units. The first and most important one is the extent of the damage. BiH MHRR data suggest that of the houses still to be reconstructed, 13% fall in category II (damage level 25%-40%), 16% in category III (damage level 45%-65%) and 44% in category IV (damage level 75%-100%). This indicates that the majority of the units still to be reconstructed are in the high damage, and therefore the most costly, category.

A second factor is the method of reconstruction: self-help or contracted. To date, many projects have been realised using the self-help principle. The beneficiaries receive building materials and have to deliver their own labour for actual reconstruction. In such cases, some expert work (like installation of electricity and gas) is often contracted out to certified companies. The more costly method is that of contracting the works out to a building company. Nearly all reconstruction projects financed by the international donor community have combined both methods. The projects financed by the BiH authorities were for 95% of the self-help type.

There is plenty of information available on both domestic and donor-funded reconstruction projects that allow for a calculation of the average cost per housing unit. Nearly all of these projects concerned a mix of the various damage categories and a mix of self-help and contracted work. Some examples are given below:

- SIDA has calculated an average of EUR 5,318 per unit, for all their reconstruction projects executed in BiH since 1996;
- the financial analysis in the present report shows that the cost per housing unit for projects financed by domestic authorities vary between EUR 6,560 and EUR 22,271;
- the BiH MHRR, in its Bulletin 2004, arrives at many different unit costs. The lowest value found is EUR 6,000, while the highest is EUR 16,750; and
- according to reports of the EU Return Monitoring and Evaluation Unit (ECRMEU), the average cost per reconstructed housing unit within EU financed programmes (calculated for a total of 19,971 units reconstructed between 1996 and 2002) amounted to EUR 7,700.

<sup>43</sup> The ultimate number can only be established after cross-checking of applicants' status and eligibility for assistance against the MHRR's data bases, which has not yet been done.



Looking at these historical figures, and bearing in mind that the remaining stock of houses to be reconstructed is mostly heavily damaged, it would appear that for calculation purposes an average cost per unit of EUR 8,500 is appropriate.

The funding need for reconstruction of housing units for the period until the end of 2007 would then be (in EUR), as is shown below.

Housing Units	Unit Cost (EUR)	Financing Needed (EUR)
25,000	8,500	212,5 million

**Table 16: Total Reconstruction Financing Needed, 2005-07**

## The Gap

In 2003, the governments of the entities, Brcko District and the State engaged in the preparation of a Public Investment Programme (PIP), with technical assistance from UNDP. The PIP lists the intentions and wishes of the BiH authorities related to the country's development, as per end-2003. It contains all projects, divided over high priority, medium priority, committed and ongoing.

It is somewhat surprising that the return of refugees and DPs, for which very considerable budgets are needed, is not treated as a separate sector in the PIP. Yet more surprising is that the plan for 2004-2006 mentions merely two return projects, with a total budget of BAM 16,3 million, of which 8 million to be invested by the BiH authorities, through the RF.

No other sources of information are available that would help make even a rough estimate of the domestic budgets available for the return process. What is known is the following:

- an amount of EUR 4 million has been provided as co-financing for the EU SUTRA II project, which will realise the reconstruction of some 480 housing units in 2005;
- the BiH authorities have pledged EUR 4.8 million as co-financing for the loan to be received from the Council of Europe Development Bank (CEB) and from OPEC; these projects are good for the reconstruction of some 1,800 housing units;
- the BiH authorities at all levels have spent some BAM 92 million in 2003 and BAM 75 million in 2004 on the return process, an estimated 80% of which was directly used for reconstruction of housing units. The working hypothesis is that the budgets in 2005, 2006 and 2007 will remain at the 2004 level.

Description	# of Units	Amount (EUR)	Remarks
Reconstruction needs	25,000 <sup>44</sup>	212,500,000	
Identified resources			
• projects committed before 2005	715	6,077,500	SUTRA II, other CARDS allocations
• known contributions 2005-07	8,953	76,100,500	CEB, EU, Germany, Netherlands, OPEC, Sweden, Saudi-Arabia and others
• domestic budgets	10,588	89,998,000	
Total identified resources	20,256	172,176,000	
Additional finance needed	4,744	40,324,000	

**Table 17: Reconstruction and funding needs**

The above calculation appears to indicate that to complete the reconstruction of housing units will need additional financing in the order of EUR 40 million until the end of 2007.

<sup>44</sup> Adjusted downwards from the figure of 50,000 housing units mentioned in the Annex VII (GFAP) Strategy, in view of updated information not available at the time of formulation of same.

## Sustainable Return, Durable Solutions

The general idea propagated by the international donor community is that the reconstruction of houses alone is not sufficient to make sure that refugees and DPs will actually return and, more importantly, that they will decide to stay in their places of return. It is clear that the war has not only destroyed or damaged houses, but also, in many areas, the entire technical, social and economic infrastructure around them.

Without exception, donors have therefore chosen to spend their money on so-called ‘integrated return programmes’, comprising the reconstruction of houses, rehabilitation of basic infrastructure and utilities, repair of schools, and assistance for income generation and job creation. Some donors, e.g. Japan and the United States, have largely focused on such sustainability measures, leaving the reconstruction of houses to other donors. A process of inter-donor coordination was initiated in an attempt to ensure that sustainability measures were closely aligned with actual reconstruction of housing units.

With the exception of the FBiH MDPR – which has a department for sustainable return – there is no evidence that the sustainability issue has so far played a significant role in the funding allocations made by BiH authorities. The financial investments from state, entities and cantons are purely aimed at rehabilitation of housing units. As far as plans for the future exist, they refer to the sustainability issue only in terms of accessibility to health care and insurance, pensions, education and social security arrangements.

Given the above, the return process can only really be deemed completed when sustainable solutions have been provided to the entire eligible returnee population. Reconstructing houses is merely a first step.

### Planned Sustainability Measures

As mentioned above, the Public Investment Programme (PIP) 2004-2006 for Bosnia and Herzegovina contains only very few projects that are directly return-related. However, it lists many projects and programmes aiming at general socio-economic development, sectoral as well as regional. In the tables below, information is given on a number of ‘support’ sectors, selected for their relevance to socio-economic development of the country and its regions.

Sector	Planned investments 2004-2006, in EUR million		
	Domestic resources	External resources	Total
Agriculture	8.4	19.9	28.3
Labour market	1.9	2.6	4.5
Industry	1.5	35.5	37.0
SME development	0.0	0.0	0.0
Local development	3.1	40.2	43.3
Totals	14.9	98.2	113.1

Table 18: PIP, 2004-06 – Ongoing projects

Sector	Planned investments 2004-2006, in EUR million		
	Domestic resources	External resources	Total
Agriculture	4.6	16.6	21.2
Labour market	0.0	0.0	0.0
Industry	0.0	3.2	3.2
SME development	0.0	0.0	0.0
Local development	0.0	0.0	0.0
Totals	4.6	19.8	24.4

Table 19: PIP, 2004-06 – Committed Projects

Sector	Planned investments 2004-2006, in € million		
	Domestic resources	External resources	Total
Agriculture	6.1	15.1	21.2
Labour market	0.2	0.2	0.4
Industry	3.8	9.8	13.6
SME development	1.0	2.8	3.8
Local development	15.6	15.1	30.7
Totals	26.7	43.0	69.7

Table 20: PIP, 2004-06 – New Projects

The information found in the PIP is by no means complete. Various contributions from bilateral donors are not yet included. Nevertheless, it shows a general trend. The total planned investments according to the PIP for the period 2004-2007 amount to EUR 1.9 billion. Investments in infrastructure, environment and energy supply make up for EUR 1.34 billion or almost 70% of the total. The sectors listed in the tables above may all be considered to affect – directly or indirectly – the economic well being of returnees, albeit that the investments do not discriminate between returnees and other groups of the population. In the combined plans of the BiH authorities and external donors, these sectors make up for some 11% of the total planned investments. This is not much, but it should be considered that under the infrastructure sector there are many projects that aim at facilitating regional or local development, which ultimately also benefit returnees.

## The Cost of Durable Solutions

The costs per job created are, according to ECRMEU, between EUR 1,840 and EUR 2,380 under the CARDS programmes in 2001, 2002 and 2003. The total amount spent on job creation under the OBNOVA and CARDS programmes 1999-2003 was about EUR 6 million, while some EUR 2.6 million was spent on income generation. During this period and with this money, some 3,700 jobs were created. Consequently, the average cost of creating jobs amounts to some EUR 2,000 per job.

According to statistics provided by the BiH MHRR, the number of families that have actually returned until now is 169,000 (based on the number of houses reconstructed). The assumption is that the absolute minimum is one job per family but that a long-term sustainable minimum would require on average 1.2 jobs per family. Data from the Housing Verification Mission (HVM) show that of the returned people, some 74% are not employed, despite the investment in job creation and income generating measures by the international community.

***Consequently, the task ahead is:***

***Some 170,000 families have returned. Their need for employment is  $170,000 \times 1.2 = 204,000$  jobs. Around 26% have found a job; the remaining need thus concerns 151,000 jobs.***

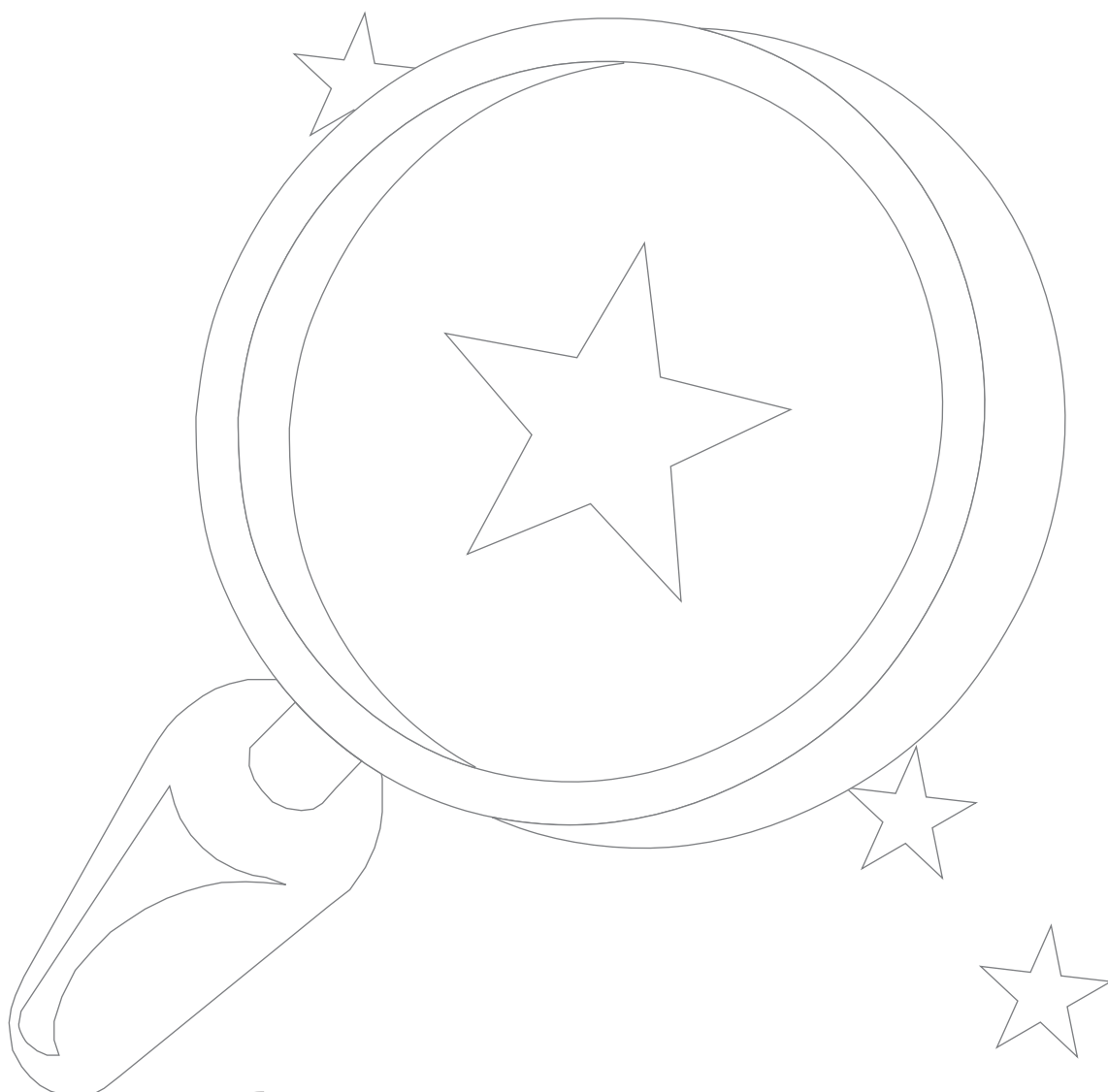
***The public call is expected to indicate that some 25,000 families are still willing to return, leading a number of jobs needed of  $25,000 \times 1.2 = 30,000$ .***

***In order to provide for economic sustainability of actual and potential returnees, a financial investment would therefore be needed in the order of:  $181,000 \text{ jobs} \times € 2,000 = € 362,000,000$ .***

Ongoing and committed projects in the field of socio-economic development add up to some EUR 137 million [ref: tables 15 and 16 above] Check. These projects are not specifically return-related; they apply to the entire territory of BiH. Assuming that about 50% of the funds for ongoing and committed projects will be deployed in return areas, they would provide for about € 68 million. The amounts depicted in table 17 above should be seen as a wish list; there is no certainty at all that these projects will be actually funded, be it through donor contributions or from domestic budgets.

In summary, for the sustainability of return an additional investment in job creation and income generation measures of EUR 294 million would still be needed.

# *Chapter 3*



*Conclusions*





## *Conclusions*

### ON THE ANNEX VII (GFAP) STRATEGY

The Annex VII (GFAP) strategy defines six strategic actions needed to reform key aspects of process of return and reconstruction:

- 1) legal reform and harmonization of regulations;
- 2) structural and organizational reform;
- 3) enabling and implementing a uniform database;
- 4) de-registration of DPs and update of indicators;
- 5) creation of pre-conditions for return; and
- 6) promotion of reintegration for return

#### Legal reform and harmonization of regulations

The process of legal reform and the harmonisation of laws pertinent to the return sector have not yet ended. Amendments to the BiH Law on Refugees from BiH and DPs in BiH came into force on 13 November 2003. The amendments enabled setting up the RF and regularised the work of the BiH MHRR's four Regional Centres.

The RS has not yet passed a law on amendments on the Law on DPs, Refugees and Returnees in the Republika Srpska, harmonising its legislation with that at state level. The RS MRDP prepared a draft, within the statutory 60-days period, which was refused twice by the RS government and later blocked in Parliament. The main issue of contention concerned the status of Serbs from Croatia, which the RS defines as refugees, although granting the right of asylum is a state, not an entity, prerogative.

The FBiH, following the OHR's 2003 initial imposition of changes to the Law, passed amendments on its Law on Refugees and DPs in August 2004. Brcko District has stated that, although it has not passed specific legislation, it will apply the relevant state-level legislation.

The Annex VII (GFAP) Strategy proposes a distribution of responsibilities between the state and entity levels with regard to inter- and intra-entity return; i.e.: state-level institutions will be primarily responsible for inter-entity return and return from abroad, while the entities will be primarily responsible for intra-entity returns, property repossession and care of collective centres. Such a clear distinction of responsibilities is however not clearly defined in the state-level legislation in force.

## Structural and organisational reform

The results of the Review suggest that, if only for reasons of efficiency, it would be better to adopt one return assistance system to replace the present parallel structures. The current deplorable state of BiH's finances provides a further argument for doing away with intensive parallel structures that use up vast (human) resources. In addition, rationalisation seems advisable in the longer-term context of preparation for accession to the EU (upon the signing of an SAA).

Strengthening the state-level system for policy preparation, decision-making, implementation and monitoring is the only way to achieve economies-of-scale and to reduce the waste of resources inherent to return-related institutions at entity level.

The Annex VII (GFAP) Strategy considers the establishment and strengthening of a strong hierarchical relationship between different institutions and the BiH authorities dealing with return and reconstruction issues, as well as the elimination of parallel structures, a key issue. In this sphere, the Strategy includes the following actions:

- internal re-organization of the BiH MHRR;
- strengthening the SCDPR;
- creation of the RF; and
- creation of four Regional Centres of the MHHR

All four of these actions have been given follow-up in the two years since the adoption of the Strategy and procedures developed for the implementation of projects through a state-level system. The main difference between the state system for return-related reconstruction projects and those operated by the entities is that the state arrangements allot significant responsibilities to municipalities: for beneficiary selection, procurement and implementation. It should be noted however, that 2005 will be the first year during which these newly introduced elements will be put to the test.

The SCDPR has been strengthened and according to Article 23 of the amended Law on Refugees from BiH and Displaced Persons in BiH, it has the mandate to:

- approve reconstruction and return projects compiled by the BiH MHRR and submitted to the SCDPR for consideration;
- approve joint projects to be implemented through the RF;
- authorise the financial realisation of reconstruction and return projects through the RF;
- monitor the financial management of approved reconstruction and return projects, including RF resources;
- guide the RF in the development of regulations and legislation regulating that institution; and
- consider reports by the RF Director, in particular with regard to the management of funds and the financial implementation of approved reconstruction and return projects.

The SCDPR is the sole platform where the state, entity and district representatives meet to discuss return-related issues. So far, the SCDPR, under the state-level project procedures and based on the selection methodology prepared by the BiH MHRR, decided which municipalities would be prioritised in reconstruction projects. It has thus far played a very limited role where measures related to the sustainability of return are concerned. In addition, the SCDPR has not been able to remedy the situation in which entities control their own reconstruction budgets.

BiH MHRR staff sees it as an important task to strengthen municipal capacities in relation to beneficiary selection, procurement and implementation and rely in this context on assistance provided by the Governance Accountability Project (GAP, funded by SIDA/USAID) and the EU/UNDP-financed SUTRA project.

In respect of municipal involvement in return-related project implementation, two scenarios are possible. In the first, municipalities acquire sufficient and qualified staff to carry out the related tasks<sup>45</sup>. In the second, municipalities use contractors to implement projects, retaining just sufficient staff to supervise contractor's activities. It remains unclear, which body, at either state- or entity-level, will decide which scenario should apply. Nor is it clear which body will – or is even able to – determine whether a municipality has achieved the capacity to apply one or the other of these scenarios.

The responsibility for monitoring return-related reconstruction rests with the BiH MHRR and its regional centres. The division of monitoring tasks between the ministry and the Regional Centres appears insufficiently defined. In addition, the ministry's monitoring staff seem focussed on improving the management of own projects to the detriment of elaborating monitoring and evaluation methods in support of policymaking.

Rather than establishing and strengthening a hierarchical relation between the different institutions and the BiH authorities levels, as indicated by the Strategy, the current situation sees a state system operating next to and separate from the entities' systems.

The Annex VII (GFAP) Strategy strongly advised the withdrawal of the BiH MHRR, the FBiH MDPH and the RS MRDP from direct reconstruction project implementation. Specifically it states that:

*... the facilitation of return after downsizing of (the international community's) field presence requires the BiH MHRR to coordinate, monitor and guide donors at a central policy making level.*

Simultaneously, the Strategy advises the BiH MHRR to limit its role in direct project implementation. Within this framework, the role of entities (and to some extent cantons) in direct project implementation should be limited to reporting and the provision of policy input through the SCDPR, whilst municipal administrations, contractors and domestic and international NGO's should be the main implementers of return-related reconstruction projects.<sup>46</sup>

This concept seeks to improve municipalities' implementing capacities, whilst strengthening the state-level policy making function from a return perspective:

*In general, it is regarded by the OHR that a central monitoring and facilitating role of the BiH MHRR will be crucial in order to ensure continuation of equal and harmonised opportunities for refugees and displaced persons in both entities regardless of their national affiliation.<sup>47</sup>*

The concept gives entity ministries, through their being represented on the SCDPR, an important role in policy formulation.

At the beginning of 2005, entities still implemented their own systems for return reconstruction projects. Although the state level has developed, in co-operation with the SUTRA project, a procedure that tries to follow the spirit of the Strategy, by giving implementation powers to municipal bodies, this is not the case under both entities' systems. The latter maintain the principal role on all aspects of project preparation and implementation.

Furthermore, the entities set aside part of their own return-implementation budget for participation in the state-level system. However, this is solely based on goodwill and subject to the signing of a Memorandum of Understanding every year.

The Survey carried out during the Review found intra-municipal coordination to be a substantial problem. For example, in some municipalities there is no coordination between the department responsible for return and that responsible for public infrastructure. The municipal commission typically formed for implementing reconstruction projects would not necessarily be the appropriate instrument for implementing infrastructure and sustainability projects.

<sup>45</sup> In any case, the first scenario can apply only in cases where minor repairs are involved and the municipality can avail of competent personnel already employed by the municipality.

<sup>46</sup> Annex VII (GFAP) Strategy.

<sup>47</sup> Idem.



## Enabling and implementing a uniform database

The Database Department in the BiH MHRR's Sector for Refugees and DPs, manages a number of databases:

- 1) the Census of Internally Displaced Persons (IDPs) in BiH, which resulted from re-registration exercises carried out in 2000. This database was updated end-2003. It will undergo another update in the first half of 2005, using the results of a new re-registration carried out by the entities (deadline for applications: 31 March 2005);
- 2) reconstruction applications resulting from a public call by the BiH MHRR, launched in the summer of 2004 and still open. The data supplied by applicants have not yet been checked for eligibility against the state system's beneficiary selection criteria;<sup>48</sup>
- 3) the database on property re-possession [the former CRPC database], which undergoes regular updates;
- 4) the database on beneficiaries from reconstruction projects implemented by entities;
- 5) the database on beneficiaries of social land allocation, which contains information supplied by municipalities;
- 6) the database of statistics pertaining to municipalities, containing a miscellany of information; and
- 7) the HVM database. Currently, HVM provides the ministry with data on a 'read-only' basis. The BiH MHRR has signed a MoU with the HVM stating that upon expiry of the latter's mandate (end-2005), the database will be handed over to the ministry.

BiH MHRR staff is satisfied with the way the databases operate and consider that the crosschecking function allows them to access and provide accurate information on potential return project beneficiaries. In the context of the ongoing re-organisation of the BiH MHRR it is envisaged to establish a single, unified database, encompassing information relevant to all the BiH MHRR's functions, i.e. projects implemented as well as human rights issues. It is to be noted, that entities, cantons and municipalities maintain their own databases on return issues and that the links between these and the BiH MHRR ones are not always clearly defined.

## De-registration of DPs and update of indicators

With an end-March 2005 deadline for applications for return-related assistance, re-registration of DPs is being undertaken by the entities. The role of the state BiH MHRR is relatively limited in this undertaking and consists mainly of its Regional Centres drawing potential applicants' attention to the possibility of re-registering.

In the FBiH, the re-registration process is handled at municipal level, with municipalities transferring cases to the FBiH MDPH for decision-making. In the RS, the OMIs have formed mobile teams to cover geographical areas under their responsibilities. The OMIs transfer applications to the RS MRDP.

Only new applications will be reviewed by both entity ministries. DPs already in the system will automatically be granted DP-status upon re-registration. It is generally expected that the process of re-registration will lead to a drastic reduction of the number of DPs entitled to assistance. Provisional data available for the RS seem to support this expectation.

## Creation of pre-conditions for return

Pending the outcome of the re-registration process, the BiH MHRR bases itself on an older estimate of some 50,000 dwellings remaining to be reconstructed.<sup>49</sup> Generally, these dwellings are in the category of 70-100% damage, which has implications for the cost of reconstruction per dwelling.

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<sup>48</sup> Ref: footnote 32.

With regard to the Property Law Implementation Plan (PLIP), statistical data currently being compiled suggest an implementation rate of 93%, with around 200,000 inhabitable housing units having been returned to their pre-war owners or occupants. The implementation rate concerns only positive decisions. The remaining 7% represent negative decisions, either final or pending appeal. Another indicator of the completion of the process is that only Banja Luka is still processing cases. All the other 133 municipalities in BiH have both completed and verified their case load (124 municipalities) or are in the process of verification (9 municipalities).<sup>50</sup>

## Promotion of reintegration for return

Further to the Strategy, the improvement of conditions in support of the reintegration of returnees remains an important issue. Generally referred to as ‘sustainable return’, such improvement goes beyond the reconstruction of housing. This aspect of the Strategy takes a longer-term view and focuses on ensuring returnees’ access to education, health, pensions and employment. Improving infrastructure generally also forms part of sustainability measures.

With some exceptions, relatively little attention so far has been given to funding sustainable return projects, although some interventions have included job creation schemes, as well as livestock provision and other small-scale agricultural development support. A structured approach, including the definition of relationships between return ministries and other line ministries at both entity and state level, responsible for issues such as health and pensions, has not yet been developed.

The concept of sustainability during the return process in Bosnia has been widely discussed and remains an important issue. There are two main points with regard to sustainability that the international community addressed, under the overall co-ordination of the RRTF (until end-2003).

The first point was the realisation that assistance in the form of reconstruction of returnees’ housing alone might not be sufficient to ensure return to the place of origin. For that reason, projects tended to include supporting measures aiming to make it more attractive to return. These measures focused on: (a) reconstruction in returnee areas, and (b) grants to individuals. The latter were provided because the lack of employment possibilities made returnees especially vulnerable in terms of family income generation and typically consisted of agricultural inputs for rural returnee families and small business grants for urban families. The grants were designed to help returnees families generate some income or produce their own foodstuffs in order to begin the process of re-integration in their home areas. However, these initiatives were not, indeed could not be, seen as in support of longer-term economic development.

The relevance of this type of individual grant assistance has been much debated and continues to give rise to concern among policy makers and funds providers. However, as long as the socio-economic situation in BiH has not improved, new returnees will require, in addition to housing reconstruction, assistance of this type to help them find their feet. It is therefore necessary for the state/municipality delivery system to develop initiatives for sustainable return.

The second point concerns the fact that returnees typically face difficulties with regard to access to social services such as pension and health systems, the labour market and un-biased education. Especially returnees crossing inter-entity lines and returning to areas where their constituent people form a numerical minority, sometimes face discrimination in respect of such access. Enabling access is therefore key to ensuring sustainable return.

Although there are signs of improvement, this type of discrimination does not appear to have eradicated. For example, the FBiH Ombudsman’s report for 2003 states that:

*...there is discrimination of constituent peoples that are numerical minority in communities where they return in particular in employment, social protection, scope of health services and access to communal services.*

49 Estimate dating from 2003; to be amended following the closure of the MHRR’s public call for applications (ref: footnote 31).

50 In order to implement the same standard across the country, the PLIP Cell drafted (in 2003) a series of guidelines to harmonise the procedures of all 134 municipalities dealing with the implementation of the laws on cessation. Practices did in fact differ significantly between areas and the final verification harmonises the compliance of all municipalities against the same standards. For more information on this issue: [www.ohr.int/plip/key-doc](http://www.ohr.int/plip/key-doc).

It is therefore important that the state/municipality system devises a strategy for sustainable return measures enhancing access to social services and combating discrimination.

The issue of return versus local integration and compensation for property that cannot be returned has been lingering since the beginning of the return process. The issue is coloured with political overtones and in fact it was symptomatic of the different attitudes of the nationalist parties towards return. For this purpose, local integration was in certain cases advocated by some parties as a way of preserving the outcome of the war and to some extent the ethnic control of certain areas. For other sides, return was seen as a way of re-establishing their predominance over other areas. The story of the return process and the difficulties that it faced in the course of these years are the best proof of the fact that the question of return was highly politicised and that its contents went beyond the pure humanitarian dimension.

Ten years after the end of the war it is however legitimate to expect that the initial aversion to return has diminished and that political agendas behind return may have disappeared. Moreover, the complete freedom of movement and the improvement of relationships between the constituent peoples in the country, with the almost complete absence of ethnic clashes, allow concluding that the conditions for a free and informed choice of the DPs and refugees have been achieved. In this context, local integration of DPs and refugees would not be subject to pressure on and manipulation of DPs and refugees and it would no longer to be considered taboo.

While the freedom to choose the place of domicile is spelt out clearly in Dayton, there is more uncertainty about the provisions concerning property. Annex VII reads that refugees and DPs

*... shall have the right to have restored to them property of which they were deprived in the course of hostilities since 1991 and to be compensated for any property that cannot be restored to them.*

This provision is subject to different interpretations. In fact the state of the property is not defined, nor is the liability for the compensation of those properties defined. Returning a destroyed property to the pre-war owner satisfies the provisions in the Annex, but only partially solves the situation of that family, as they would still be in need of reconstruction assistance. In case they want to sell the property, they will be able to do so, but the value will be definitely lower than if the property were intact. If this provision were interpreted in a strictly formal manner, even receiving a pile of rubble would amount to restoration of property.

If instead we interpret this provision in a more flexible manner, then compensation would mean compensation for any type of war damage that properties suffered. If such is the case, then who should pay that compensation? Some parties, in the past, considered this as an obligation imposing on the international community and were claiming resources from donors to compensate those properties. Or should be compensation be part of a reciprocal settlement between the different warring parties?

In practice, neither option has been pursued in the years since the war. The compensation provisions have remained largely unimplemented. It would be probably too much to expect that the parties at Dayton could foresee all possible future developments and put them to paper. At the time stopping the conflict was the main concern. Over recent years, the overwhelming majority of refugees and DPs could repossess their properties, regardless of their state. The ones who did not want to return could exchange or sell their property, even if destroyed, and this might legitimately be considered as a compensation scheme. It would be unfair to award any compensation to these cases or to provide them with free housing.

Other categories of DPs and refugees are not in a position to go back to their homes for a variety of reasons, i.e. they are elderly people who are no longer self sufficient, the houses are simply too remote and isolated to be rebuilt, there are no sources of income in the area, others are ICTY witnesses or a limited number of vulnerable cases that for security reasons can not return to their homes.

At the same time, there are also categories who, for one reason or another, failed to claim their socially owned property within the specific deadline and thus could not become private owners and eventually sell it. Would it be fair to now provide these persons with free housing, especially since they voluntarily gave up their rights? The answer to this question is not clear, as it is true that in many cases DPs and refugees were misled not to claim their property or made to believe that they would never be evicted from the property they occupied. Reality proved them wrong.

The above would suggest that there now exists an urgent need for an overall housing policy that encompasses not only DPs and refugees but also social cases and persons in need of overall housing care. The key to this policy would have to be a strict means test to verify the eligibility of the applicants to be provided with hous-



ing care, i.e. only those families who do not have an income to provide for their housing needs (buying/building properties or paying the rent) would be entitled to this type of assistance. Similar means tests are already present in the laws on DPs and refugees and the local authorities are applying them. Improving and seriously verifying the evidence brought by the applicants would be the first step towards implementing a housing policy. The second step would be to address all the illegal allocations of socially owned properties that occurred in recent years. The legislative framework in this sense is already in place; it is only a matter of applying it.

According to both the BiH MHRR and the international donor community, the return of an additional 25,000 families during the period until the end of 2007, would largely complete the return process. However, the BiH MHRR and UNHCR statistics indicate that even after that, some 200,000 refugees and DPs (or about 50,000 families) will not have returned.

It may be safely assumed that many of these families will have decided by now to stay in the locations of displacement, be it in BiH or abroad. During the ten years that have elapsed since the end of the war, many of them have been able to build an economic existence and social networks in their present locations. On the other hand, as stated by the BiH parliament, the return process cannot be deemed completed as long as there are still refugees and DPs who could at any moment use their right to return. It may be assumed that a considerable number of families have not registered as potential returnees during the ongoing public call because they see no economic possibilities in the places of return. There is no statistical data on this category whatsoever and any estimate would be speculation.

Against this background, and taking into consideration that both donor and domestic return process institutions experience increasing difficulty identifying eligible returnees, it may be contemplated to abandon the traditional return assistance process and replace it by a new approach. The idea would be to focus domestic and international efforts on reinforced socio-economic development of the most important return regions, in order to create the conditions for – more or less spontaneous – return to those areas. Recently, the CoM has given the BiH MHRR the responsibility for “reconstruction, development and monitoring”, which would suggest that the ministry will in the near future assume a role in co-ordinating and stimulating regional economic development including reconstruction.

There is considerable ongoing and planned international assistance for the (regional) development process. As indicated above, these activities do not discriminate between returnees and other parts of the BiH population. The BiH MHRR should ensure giving special status to selected return areas (in particular those where the return rate is low), with the specific aim to channel national and international development funding to these regions. This, however, should not merely take the form of redistribution of existing funds away from non-return regions. Additional funding will be needed to the tune of EUR 50-100 million.

## ON LEGISLATION AND REGULATORY FRAMEWORK

This section highlights the main competences of the institutions involved with return in the FBiH, the RS and Brčko District and provides the basis for the way those competences can be redistributed in the short and long period, taking into account the need to rationalise the return efforts in the short period and to adapt the ministries in the long run to the new situation arising when return is completed or reduced to the point where the involvement of a dedicated ministry is no longer necessary and, where applicable, its functions can be absorbed by other administrative units.

### FBiH: Current Allocation of Competences

For the purpose of streamlining the competences between state, entities, cantons and municipalities, it is useful to define those competences as they are currently foreseen in the different applicable laws. It is also inter-



esting to highlight the relationship between cantonal authorities, in most of cases cantonal ministries for refugees and DPs and the FBiH ministry.

In the FBiH, at entity level, the Law on Federation Ministries<sup>51</sup> and the Law on Displaced-Expelled Persons and Repatriates in the Federation of Bosnia and Herzegovina<sup>52</sup> regulate this issue.

The relevant provisions in FBiH legislation, based on the distribution of powers between entity and cantons, as defined in the FBiH Constitution, provide extensive consultation and co-ordination between Federation of BiH and cantonal bodies. While this arrangement is respectful of the Constitution, it automatically creates duplication of roles, requiring co-ordination effort and with no particular advantage from the point of view of exercising technical functions. The fact that cantons and the Federation are not necessary governed by the same political constellation further contributes to inefficiency.

The advantage of having a unified line of command at least at the Federation of BiH level appears therefore undeniable as it would save on co-ordination energies and provide unity of intent between the Federation and the cantons.

The role of the FBiH MDPR is described in article 12 of the Law on Federation Ministries and Other Bodies of Federation Administration, as follows:

*The Federation Ministry of Displaced Persons and Refugees shall carry out administrative, professional and other tasks from within the competence of the Federation referring to: collection and data processing on refugees and DPs, coordination of reconstruction activity together with the registration and supervision of NGOs, creation of conditions for returns of DPs to the places of their residence including building, reconstruction, rehabilitation and repair of houses and other housing facilities for accommodation and refugees and DPs, the maintenance of regional centres to facilitate these activities and other tasks as stipulated by law.*

The practical implementation of the law suggests that these functions could be summarised in three groups: collection and management of information on the DP population; carrying out reconstruction projects; and the provision of alternative accommodation. The fourth function described, i.e. maintaining regional centres, is no longer performed after the FBiH MDPR centres were closed down.

A similar set of functions can be found in the FBiH Law on Displaced-Expelled Persons and Repatriates in the FBiH. Article 27 outlines the competences of the bodies dealing with the rights of displaced or expelled persons and repatriates. Amongst these is the competence for drafting return plans. However, the Survey carried out by this Review revealed that many cantons no longer draft such return plans.

Close examination of the article reveals that the MDPR has a coordinating role with regard to the work of the cantons in that it follows up the implementation of cantonal plans for return and repatriation and keeps the central records. The ministry also liaises with the Federation government for the purpose of drawing up the yearly repatriation plan. In respect of the procedure for determining the status of DPs and Refugees, the Federation of BiH ministry acts as the body of second instance and deals with appeals filed by individuals against decisions made by the body of first instance, i.e. the competent cantonal ministry<sup>53</sup>.

The only exclusive competence of the Federation of BiH ministry vis-à-vis the cantons, is that it manages housing units and settlements which, in accordance with the law, fall within the competence of the FBiH.

The relationship between the cantons and the Federation of BiH ministry are even more evident when it comes to supervising the application of the law: *The application of this Law, as well as of the regulations governing its application, shall be supervised by the Ministry and the competent Cantonal Body, each within its own jurisdiction*<sup>54</sup>. This highlights the fact that the Federation of BiH ministry cannot supervise the work of the cantons in the sense of monitoring whether they comply with the law and agreed steps forward. Its role is in fact similar to the one of the State BiH MHRR: a co-ordinating body, but without actual supervisory powers or instruments to coerce entity structures.

<sup>51</sup> HR Decision Enacting the Law on Federation Ministries and Other Bodies of Federation Administration, FBiH OG 58/02.

<sup>52</sup> FBiH OG, 19/00, 56/01, 18/03

<sup>53</sup> Article 7, of the Law on Displaced-Expelled persons, Repatriates in the Federation of Bosnia and Herzegovina.

<sup>54</sup> Ibid; Article 31.



## RS: Current Allocation of Competences

In the RS, the relationships of the RS MRDP are much more linear, since that ministry has its own field structure, which covers the whole territory of the RS. Consequently, co-ordination of effort is easier than in the FBiH. However, compared to the FBiH MDP, the RS MRDP performs another important function, namely the implementation of property laws and the related provision of alternative accommodation in the cases prescribed by those laws.

The legal framework regulating the work of the RS MRDP is defined by the RS Law on Ministries, the RS Law on DPs and Refugees, the RS Law on Cessation of the Application of the Law on the Use of Abandoned Property and, of course, the RS MRDP Book-of-Rules. Article 18 of the RS Law on Ministries<sup>55</sup> sets forth the responsibilities of the RS MRDP:

*the [MRDP] performs administrative and other expert jobs related to: ensuring accommodation, cooperation with the [BiH MHRR of BiH], repatriation and re-socialisation of refugees and DPs in the RS; manages all the activities related to appropriation of the construction and other sorts of the materials; building, reconstruction, overhauling and maintenance of the refugee facilities for refugees and displaced population accommodation needs on the RS territory; co-ordination of the work with the [BiH MHRR of BiH] and with the international humanitarian and other organisations that implement programmes for re-socialisation of refugees and DPs property issues, communicate the information on its work via media and by use of other publicity and performs other activities in accordance with the law and other regulations of Republic of Srpska and [BiH].*

According to the ministry's Book-of-Rules, it is up to the Property-Legal Department of the RS MRDP<sup>56</sup> to follow up on the situation regarding implementation of the property laws in the RS. The implementation of these laws, after the substantial completion of the property restitution process in almost all municipalities of the RS, no longer takes the time and energy that it used to in the past and is now a marginal activity for many of the ministry's OMI's.

As long as the laws are still in force<sup>57</sup>, the RS MRDP needs to have a structure that will deal with any possible future claims of private property. However, such a structure, composed of a first and second instance body, does no longer need to be spread across the RS, but could be handled from the RS MRDP headquarters in Banja Luka. As a result of the implementation of the property laws, the RS MRDP, is currently providing alternative accommodation to approximately 6,000 families and has at its disposal around 1,200 flats. Entitlements to alternative accommodation are reportedly reviewed regularly, which will continue until the completion of the current caseload.

The RS Law on DPs, Refugees and Returnees in the RS<sup>58</sup> tasks the RS MRDP with the determination and cessation of the status of DPs, refugees and returnees through its field offices. The Law on DPs and Refugees in its current text neither foresees a reconstruction role for the RS MRDP nor its involvement and coordination with the counterparts in the FBiH MDP and the BiH MHRR in reconstruction projects.

Amendments to the law, which have been pending for some time and now before the RS National Assembly, envisage this new role of the MRDP and its cooperation with the SCRDP. The National Assembly is expected to adopt the amendments before mid-2005.

<sup>55</sup> RS OG 70/02.

<sup>56</sup> Book-of-Rules on Internal Organisation and Systematization of Job Position of Ministry for Refugees and Displaced Persons, Art. 4.

<sup>57</sup> The Law on Cessation of the Application of the Law on the Use of Abandoned Property, like the corresponding laws in the Federation, is to be considered as a transitional law that served the important function of restituting abandoned properties to their pre-war legitimate owners. The Laws on Cessation in fact set up an administrative procedure allowing DPs and Refugees to repossess their properties avoiding lengthy proceedings in the courts. Upon substantial completion of the process, the need for such an administrative procedure appears no longer to be justified and therefore an hypothetic Law on Cessation of the Law on Cessation, eliminating the administrative procedure, and de facto restoration of full competence of the courts in this matter, could also serve the purpose of removing a competence from the MRDP which is no longer that necessary. Such a proposal, raised within the PLIP Cell some time ago, deserves proper consideration.

<sup>58</sup> RS OG 33/99 and 65/01.

## Brcko District

The situation in the Brcko District appears already streamlined, as there are no intermediate structures between the state level and the District government. There is no need to consider the short and longer term, as the competences are already allocated to the municipal level. All the functions highlighted above, i.e. application of the property laws, the determination and cessation of refugee status, as well as the implementation of reconstruction projects are implemented by the District administration. The self-regulatory functions of the District would allow the authorities to address any additional changes independently from other constitutional arrangements. Mirroring the experience in the RS, Brcko District would have to put out of force the Law on Return of Abandoned Property in the Brcko District of Bosnia and Herzegovina and restore full competence to the Courts for any claimed property. At the same time, no further changes would be needed to the Laws on DPs and Refugees: Brcko District is already applying the state law on DPs and refugees. However, if need be, the competence to implement those laws could be differently allocated within the municipalities. The body in charge for both these laws is the Department of DPs, Refugees and Housing Issues of the Brcko District.

## BiH MHRR

As entities and cantons progressively lose their competences, the BiH MHRR will progressively assume them. In particular, if it is envisaged that the BiH MHRR will take over new functions for housing policy, both in terms of the construction of new settlements and of management of the existing housing fund for social housing purposes, these two functions should be adequately reflected in the Law on Ministries and Other Bodies of Administration of Bosnia and Herzegovina<sup>59</sup>, which regulates the work of the BiH MHRR in its Article 12. Article 12 lists the competences of the ministry and therefore the new competences on social housing should be spelt out clearly in an amendment of Article 12.

This additional role for the BiH MHRR would be best dealt with through a special legal act regulating the housing policy competence of the BiH MHRR. Such act should set out the role of the BiH MHRR with regards to housing policy. This would be a two-fold role. On the one hand, it will outline the competence of the BiH MHRR in the construction of new housing settlements in both entities and the monitoring of the relevant projects as it occurs now for reconstruction projects. On the other hand, the Ministry will identify the type of existing housing units that shall be used by the municipalities to implement the social housing policy<sup>60</sup>; will define the criteria for the allocation of those apartments, i.e. develop a means test to make sure that only needy families receive them; and it will serve as second instance and supervisory body for the allocation of those apartments by municipalities. In this regard, the new law should foresee a direct line of command between the BiH MHRR and the municipalities, i.e. bypassing the existing cantonal and Federation of BiH bodies that are currently dealing with these types of housing units.

The BiH MHRR and in general other state institutions find themselves in the impossibility of implementing their obligations because of the resistance of the entities at their own level. The case with the RS Law on DPs, Refugees in RS and Returnees to RS is a good example where provisions passed by the state are blocked at the entity level. This issue becomes even more problematic when the state of BiH finds itself in violation of international obligations like Annexes VI and VII of the GFAP, because of a lack of co-operation of the entities.

While a bolder approach of the BiH MHRR and state bodies in general towards the entities could be advisable, there is also the need for positive provisions in both state and entity legislation to avoid, as much as possible, situations where state obligations can not be fulfilled because of the resistance of the entities.

<sup>59</sup> BiH OG, 5/03.

<sup>60</sup> In spite of the reduced housing stock resulting from the war, misallocation and illegal allocation of apartments in post-war BiH has been frequent. Apartments, which were not claimed, apartments resulting from the construction of new housing blocks to close down collective centres, apartments that were returned to municipalities as there were no inheritors, are the potential sources of a significant housing stock (only in Sarajevo there is evidence about 4000 such apartments) which could be used to serve a social housing policy.

Having in mind this objective, a possible solution is not out of reach. In some cases, state legislation provides for the obligation on the part of entities to amend their relevant laws within a specified period of time<sup>61</sup>, for the purpose of harmonisation with state level legislation. However, no alternative mechanisms, or measures to force compliance are foreseen in the case of non-compliance by entities. In view of the increased role of the state level authorities in the return sector and as a mechanism to overcome this stumbling block, it could be advisable to include in future state legislative texts provisions allowing for the state law to become directly applicable in the entities in the case the entities do not harmonise their laws within the prescribed deadline. This solution would allow the state laws to enter directly into force, at least on an interim basis, while the entities are amending their laws.

## ON THE ORGANISATION, COMPETENCES AND FUNCTIONS OF KEY INSTITUTIONS

### On Human Resources

In addition to the analysis carried out in the context of the present Review in respect of human resources in the return sector, the findings of the assessment of the state-level BiH MHRR, conducted by the Independent Bureau for Humanitarian Issues (IBHI)<sup>62</sup>, remain relevant.

The 2003-2004 IBHI assessment, conducted within the framework of the SUTRA project, made concrete recommendations with regard to *inter alia* human resources issues. The most important recommendation on human resources focused on the need to enhance the capacity the BiH MHRR by strengthening staffing levels in all sectors except for the asylum sector. Though the IBHI recommended the urgent hiring of an additional 23 employees (an increase of 38%), this process is slower than anticipated in spite of the fact that the principle was agreed to by all concerned. Budgetary restrictions and the procedures of the Civil Service Agency are among the reasons for this delay.

The BiH MHRR also has difficulties in attracting qualified staff, although it must be said that the entity ministries face even more problems in this regard. One of the solutions could be that the Ministry institutes its own educational training program; the fact that the Civil Service Agency is statutorily responsible for the training of civil servants, need not prevent the BiH MHRR to develop own initiatives.

The RS MRDP currently has 137 employees, which is significantly more than the state-level BiH MHRR (66 employees) or the FBiH MDPR (76 employees). The main reason for the discrepancy lies in the RS MRDP's Department for Property and Legal Affairs, which has 79 employees, most of which are attached to the 14 OMIs throughout the RS. The OMIs' main functions are:

- 1) gathering information on the pre-war property of refugees and DPs;
- 2) keeping records of applications for voluntary return to the pre-war place of residence of refugees and DPs; and
- 3) collecting, from the responsible bodies, all information about changes in the status of dwellings and property in the RS. Because the PLIP will be finished very soon and many OMI activities can be transferred to the municipal level, there is space for decreasing the number of RS MRDP staff, through decreasing the number of OMIs.

61 E.g.: Article 29 of the Law on Refugees from BiH and Displaced Person in BiH reads: «The Entity authorities shall, within 60 days from the day of entering into force of this Law, harmonise their laws and by-laws with this Law».

62 The IBHI, part of a larger UN supported network of IHBIs, began its activities in Bosnia in 1995, among others issues focusing on: strengthening and capacity building of institutions within the governmental and non-governmental sector; supporting municipalities in capacity building for planning and policy development, in particular in the field of social policy; capacity building of local NGO's with aims to improve their sustainability, including advisory services and technical support to local authorities and NGO sector regarding to policy development issues; improvement of the return process.

At present, the RS MRDP has but three Bosniacs and one Croat on its staff. Similarly, the FBiH MDPH employs 59 Bosniacs, 14 Croats, but only 2 Serbs. The resulting ethnic mix does not meet with the provision of the 2002 Decision of the Office of the High Representative<sup>63</sup>, which stipulates that public institutions should ensure that the nationality of staff in all sectors and departments of ministries reflects the ethnic balance of the 1991 Census.

The decision of the state-level BiH MHRR to establish Regional Centres (RC) has increased the presence and visibility of, and access to, this Ministry and has enhanced its monitoring capacity. The mandate of the RCs is however rather limited and monitoring is restricted to projects directly implemented by the BiH MHRR (e.g. the SUTRA project). There is room to broaden the mandate of the RCs, turning them into resource centres for local administrations, giving them a role in enhancing institutional capacities at the municipal level.

Broadening the RCs' mandate would imply a considerable need in enhancing staffing levels and capacities in the RCs. Currently, RCs typically employ only two civil servants on a permanent basis, augmented with temporary staff based on the requirements of projects under implementation.

The RCs currently have little manoeuvring room for independent action. They are instructed directly by the BiH MHRR's Sector for Programmes and Projects. This does not foster taking initiatives. The current tight hierarchical link with the Sector additionally hampers the development of efficient procedures at RC level, in that they cannot follow-up efficiently on requests emanating from their areas of operation, thus enhancing the public perception that the RCs are of little significance.

In Brcko District, the Sector for Refugees and DPs and Housing Policy employs 38 staff, 23 of which – apart from the Head of Sector and a technical secretary – work in the Department for the Implementation of the Property Law and Management of Housing Fund and 13 in the Department for the Reconstruction and Building of Housing Units. Although the implementation of the property laws (restitution of properties) had been completed at the end of 2003, the number of staff within the Department for the Implementation of the Property Law and Management of Housing Fund and their job descriptions remain the same as during the period of implementation of the property laws. For example, the Department employs 10 investigators (inspectors for the implementation of the property laws), the larger part of whose work, according to the Sector's Book-of-Rules, directly refers to property legislation implementation.

The Sector for Refugees and DPs and Housing Policy of Brcko District is advised to consider and propose to the Government of the Brcko District a decrease of the number of the employees in the Sector by 20% or 7 to 8 employees. This should be realised reducing the number of staff in the Department for Implementation of the Property Law and Management of the Housing Fund, whose current staff complement of employees no longer complies with the scope of work of the Department.

## On Financials

The budgets of the return process institutions (RPI) tend to comprise two basic elements: (1) the institutions' operating expenses; and (2) grant funding earmarked for the actual return (mainly reconstruction) projects.

Operating costs include salaries, fringe benefits and other fixed or variable expenditure (travel, transportation, fuel, utilities, rent, equipment and supplies and maintenance). The level of operating costs appears to have little or no relationship to the level activity of institutions as reflected in the size of their annual grant funding for projects. The budgets of the FBiH MDPH are illustrative in this context. The annual budget of that ministry decreased from some BAM 50 million in 2002, to BAM 32 million in 2003 and some BAM 15 million in 2004. In the last two years, the grant elements went from BAM 31 million in 2003 to BAM 14 million in 2004. In spite of these decreases, the ministry's salary costs increased from BAM 0.7 million to over BAM 0.9 million. Thus, in relative terms, these costs increased by at least a factor 2 in the period 2003-04. It is doubt-

63 Decision on the Implementation of the Constituent Peoples Decision of the Constitutional Court, Art. IV, on proportionate representation in all public authorities, including courts: *Constituent peoples and members of the group of Others shall be proportionately represented in public institutions in the Federation of Bosnia and Herzegovina and in Republika Srpska. As a constitutional principle, such proportionate representation shall follow the 1991 census until Annex VII is fully implemented, in line with the Civil Service Law of Bosnia and Herzegovina. Further and concrete specification of this general principle shall be implemented by entity legislation. Such legislation shall include concrete time lines and shall develop the aforementioned principle in line with the regional ethnic structure in the entities and the cantons. 'Public institutions', as mentioned above, are the ministries of the Federation of BiH government, the RS government and cantonal governments, municipal governments, cantonal courts in Federation of BiH and district courts in RS, and municipal courts in Federation of BiH and RS.*

ful, that this increase is due to staff increases necessitated by increased levels of activity. In addition, some departments still have staff on the roster responsible for once necessary, but now obsolete functions, e.g. 'escorting convoys'.

Budget planning processes tend to be based on instructions from the relevant ministries of finance, which primarily reflect budget limitations. Consequently, the return-related ministries' budgets are typically not based on an operational plan for the year ahead and are thus not 'results-oriented'.

A key budget line item concerns 'transfers'<sup>64</sup>. Transfers are the funds for activities directly benefiting returnees and DPs, for the purpose set out in annual activity plans drawn up by the institutions. However, the relationship between the activity plan and the budget figures often cannot be clearly traced, e.g. the budget figures are not supported in terms of the number of housing units to be (re-) constructed or the number and qualifications of institutions' personnel.

The reduction in size of the return sector allocations does not correspond to the need for further return-related investment. If it is the aim to achieve a solution of the problem of DPs and refugees, as envisaged by the Strategy<sup>65</sup>, allocations should be increased considerably. The Strategy estimates that, for the purpose of priority return in BiH, some 50,000 housing units should be rebuilt at an average cost per unit of BAM 20,000.<sup>66</sup> Assuming that only domestic budgetary resources would be used and further assuming that the resources for the return sector remain at the 2004 level (i.e. around BAM 75 million), reconstructing that number of units could be completed only in 2017.

Assuming that the currently ongoing re-balancing of the number of housing units needed would lead to a total number of units to be reconstructed of 25,000, this would require – at an (adjusted) cost of EUR 8,500 per unit – some EUR 213 million. Current projects in the pipeline, funded both domestically and externally, cover a total of 20,538 units at a cost of some EUR 175 million. In order to complete the housing reconstruction process in line with the Strategy, an amount of EUR 38 million – for approximately 4,500 houses – would be needed until end-2007, over and above the financing currently estimated to be available.

The amount of EUR 38 million or BAM 76 million would in principle not pose an insurmountable obstacle towards achieving the Strategy, since it would merely require doubling the domestic allocations for the return sector in one financial year, e.g. in 2006.

The legal framework for the budget execution is BiH/entity Law on Budget Execution, the Law on Treasury Operations and the Law on Public Procurement.

The legal mechanism determines budget fund spending, procedures for budget revision, accounting policies and working procedures for every RPI.

BH practice has shown up irregularities financial including<sup>67</sup>:

- expenditure not in line with budget line items or beyond budgeted limits;
- no recording of outstanding obligations in the Treasury;
- payment of remunerations without valid legal foundation;
- avoidance of paying taxes on additional earnings by employees;
- avoidance of following applicable public procurement procedures

Some institutions in the return sector<sup>68</sup> use a unified accounting system, which enables reliable control of budget execution; in particular it ensures that no commitments are entered into for which no funds have been budgeted. The system enables the generation of some 50 specifically designed forms of financial reports. These reports are accessible to these institutions at any time and allow them to be aware of the balance of funds still available against any particular budget line, as long as the system is updated on a daily basis and each transaction is recorded in the Treasury General Ledger.

<sup>64</sup> The "Joint Projects" are partly financed by the 'transfers' from the entity and Brčko District budgets.

<sup>65</sup> Strategy: "Annex VII (GFAP) Strategy – A Strategy of BiH and RRTF for the Implementation of Annex 7 With Regards to the Return of Refugees and Displaced Persons and Building Capacity for a Transfer of Responsibilities to Domestic Institutions", Sarajevo, 15 January 2003.

<sup>66</sup> Idem. It has been clear for some time that this figure needs adjusting downwards, possibly by as much as 50%. To this end the re-registration process referred to in other chapters of this Review was carried out, with an (extended) deadline of 31 March 2005.

<sup>67</sup> As set out in the reports of the state and entity audit offices.

<sup>68</sup> Only the FBiH MDPR, the FBiH cantons, the RS MRDP and some municipalities are currently included in this accounting system.

It is noticeable however, that many institutions do not use the possibilities offered by this system, in spite of having spent time and money on training their staff. In particular, practice shows that institutions do not record their liabilities, i.e. the financial reporting focuses on amounts paid, but overlooks commitments made but not disbursed. To give but one example, the resultant discrepancy amounted to BAM 5 million in the case of the RS MRDP for fiscal 2003.

Another example concerns the FBiH MDPR. The FBiH government approved a 2004 budget for that ministry in the amount of BAM 30.7 million. However, commitments already entered into in fiscal 2003, for some BAM 16 million, were subsequently held to be included in former figure, effectively reducing the 2004 budget by a factor 2.

## ON THE STATE COMMISSION FOR DPS AND REFUGEES

The SCDPR - as the single forum where the state, the entities and Brcko District meet – has an important function in reaching agreement on return-related issues, including sustainable return. However, experience since its mandate was enlarged in early 2003, has shown that the SCDPR has difficulty enforcing decisions, in particular where it concerns ensuring that the partners represented meet their financial commitments towards its most important mandate areas, the RF and, to a lesser extent, the Joint Projects.

This difficulty is the result of a number of factors:

- the position of the SCDPR *vis-à-vis* its constituent partners is insufficiently clear. Although the SCDPR is equipped with decision making powers, the members clearly have difficulty in taking decisions without going back to entity government or parliament;
- the powers given to the SCDPR are too broad. They seem to cover decision making on policy issues, as well as supervision of (financial) implementation. By the letter of the law, the SCDPR has the power to approve, for instance, the financial operations of the RF on an *ex-ante* basis. The relevant formulation<sup>69</sup>:

*supervising the financial realisation of approved reconstruction and return projects, including the preservation of the RF assets,*

might be interpreted as applying *ex post* only, but not necessarily. There is some danger that this formulation could be used to make the execution of each payment by the RF subject to prior approval by the SCDPR;

- the relationship and therefore the relative distribution of powers between the SCDPR and the state-level BiH MHRR, is ambiguous. If the SCDPR was intended to be a consultative body at ministerial level, than it should deal only with policy co-ordination. In that case, the BiH MHRR would merely be *primus inter pares* vis-à-vis the entity ministries and the Brcko District government. However, because its mandate also covers project implementation, it would be more proper to subordinate the SCDPR to a single ministry. The choice of the ministry of competence in that case, would clear: the BiH MHRR. At present, the BiH MHRR and the SCDPR both have implementation related powers, which, from the legal point of view, implies that duplication is built into the system. By reserving implementation powers to the BiH MHRR, the SCDPR would attain more the character of a policy co-ordination body.

<sup>69</sup> Article 23, Law on Refugees from BiH and DPs in BiH, BiH Official Gazette 23/99, 21/03 and 33/03)





Another factor, which might cause awkwardness in the future, lies in the arrangement chosen to ensure balance between the constituent peoples in the decision making process in the return sector and which involves both the SCDPR and its main mandate element, the RF. This arrangement is that the state-level Minister for Human Rights and Refugees, the chairperson of the SCDPR and the Manager of the RF must belong to different constituent peoples. Since ministers and high-level officials tend to change and there being no guarantee that a minister or official of the same constituent people would replace them, the Manager of the RF also might have to be replaced. This is not appropriate with regard to a body such as the RF, which, moreover, is still at the first stages of its development into an implementing institution.

The details of the future relationship between the BiH MHRR and the SCDPR shall have to receive particular attention in the course of strategy development following the completion of this Review.

## ON THE RETURN FUND

### Role and Responsibilities of the RF

The Annex VII (GFAP) Strategy envisages that overall, the return process will be completed by end-2006. It is assumed that the international community will consider this as the cut-off point to terminate, or at least drastically limit, its support to the return sector in BiH. The continued existence of the RF beyond 2006 will therefore depend on its ability to attract other funds (primarily loans) or to provide management services to other forms of intervention (such as social and economic development projects). The current implementation arrangements under the SUTRA project however, do not give much of a management role to the RF and do not contribute sufficiently to increasing the RF's capacity, also because project money is managed directly by the UNDP.

However, making return sustainable will undoubtedly be a long-term undertaking, involving a broad number of institutions and measures, although these will not necessarily be termed "return-related". This undertaking will put serious demands upon capacities of local administrations to manage and implement relevant measures. We have used the principles underlying the EU fund management system as a benchmark for the assessment of future development needs of the BiH fund management structures. It is understood that other donors (both international and national) could require establishment of additional or different structures and procedures. These possible variations are not considered in this review.

Overall there can be some four stages distinguished in the project management cycle:

- programming;
- project identification and planning;
- project implementation;
- monitoring and evaluation (continuous monitoring and periodic evaluation).

During the **programming** phase one needs to establish wider objectives, indicators of achievement, as well as the means and resources required. The programmes should directly contribute to the implementation of the adopted policies and strategies. In the context of return projects the inputs for the programming primarily should be the responsibility of the BiH MHRR. The SCDPR should ensure inter-institutional coordination and safeguard the interests of the entities.

The **project identification** and **planning** stage is concerned with definition of specific objectives, planned results, indicators of achievement, activities, beneficiaries, implementation arrangements, and the financial and human resources needed to implement the designed programmes. For the return projects this should primarily be responsibility of the BiH MHRR, with adequate technical inputs and support provided by entity and line ministries.

The **implementation** stage is dealing with the management of means and resources in order to achieve the planned project objectives and results. This stage normally involves a large number of institutions and individuals – beneficiaries, implementers and managers – as the execution of certain activities can be duly sub-contracted to private companies and public bodies (i.e. municipalities in case of housing reconstruction projects). Nevertheless, the body signing the agreement with the fund provider retains the overall responsibility for the implementation of programmes/projects, i.e. acts as a fund manager. It is considered that the Return Fund has the principal prerequisites to undertake the fund management role.

**Monitoring** is a continuous and systematic review of the progress in mobilisation of means, utilization of resources, implementation of activities and results. The intention is to provide transparent and verifiable information and correct any deviation from the operational objectives, and thus improve the performance of the project or programme. However, monitoring should be distinguished from management. Usually the institution charged with the programming is responsible also for monitoring. Hence the BiH MHRR should be in charge of this task for the return projects. The SCDPR should be the recipient of the information gathered during monitoring, in order to review the contribution of the projects and programmes towards the achievement of policy goals.

**Evaluation** is a periodic assessment of the efficiency, effectiveness, impact, sustainability and relevance of a project or programme in the context of stated objectives. It is usually undertaken as an independent examination of the background, objectives, results, activities and means deployed, with a view to drawing lessons that may guide future decision-making. The responsibility for commissioning and utilizing the evaluation results should rest with the BiH MHRR and the SCDPR for the return projects.

The Return Fund has certain pre-requisites for becoming the **manager** of national and international funds in the return sector. Nevertheless, there are substantial gaps observed in the present system, which in the short term would not allow receiving moneys from the international, particularly the EC funds. We have analysed the current state of play in detail in **Annex 2**. A short summary of the analysis is presented in the following table.

Principles to be observed	Current state
Segregation of duties, including those for planning, contracting and paying is ensured among the structures and individuals. The responsible officers should be of the same hierarchical status.	The SCDPR, the Return Fund and the BiH MHRR all exercise a mixture of tasks related to planning, contracting and payments, without a clear division of responsibilities.
Clearly defined organisational structure, management and control system.	Reportedly the RF internal procedures are being elaborated. Still some aspects, like establishment of a control system (i.e. the “four-eyes” principle) need to be further elaborated.
The functions are clearly defined and accompanied with written internal procedures (i.e., check lists and reporting forms).	Reportedly the RF internal procedures are being elaborated. However, some basic issues, e.g. the responsibilities of the institutions need to be clarified beforehand.
The internal procedure defined and enforced for implementation of calls of proposals – submission of applications, evaluation and selections, approval, verification of invoices and reports, execution of payments and control.	There are domestic procedures regarding the housing reconstruction projects. Based on these, the RF internal procedures are being elaborated. However, it is observed that some tasks appear to be transferred to other institutions, without sufficient control being exercised by the RF (e.g. the Regional Centres of the BiH MHRR perform the verification of the evaluation reports on beneficiary selection, the BiH MHRR is in charge of approval of the reports on executed works). Procedures for other types of grant projects have not been elaborated.
There is an information management system in place.	The BiH MHRR Regional Centres will take over the database from the EU Monitoring Mission project. However, the Information Management System of the RF still needs to be built up, adequately encompassing the former.
The responsibilities of the structures and employees are clearly defined.	Currently the RF Director is held responsible for the operations of the RF. Further responsibilities and liabilities of the institution and its employees still need to be defined.





The existence of national independent external audit institution.	The BiH external audit system is reportedly operational.
The accounting system is in line with international accountancy standards (IAS) and there are procedures for presenting separate project accounts demonstrating use of funds and an officially certified annual report.	There have been problems on the part of municipal partners with regard to the opening separate project accounts and obtaining statements.
There is an independent internal audit system established, in line with the international standards.	There are no internal audit system and related procedures in place.
A risk management system designed and applied.	No risk management system has been designed within the RF.
There is sufficient institutional capacity for the management of the funds, including the necessary human and financial resources (a human resources development plan needs to be elaborated and executed).	The current capacity of the institutions involved in fund management is considered to be deficient in terms of staffing numbers and training levels (no direct exposure to training on project cycle management and EC and BiH procurement rules).

## System for implementation of projects funded through the RF

Current procedures for project implementation were developed exclusively for housing reconstruction projects and they appear to be adequately elaborated and detailed for that purpose. There is, however, confusion over the responsibilities and roles of various institutions involved in the process. For the purpose of this review, the EC's standard procedures have been adopted as a reference.

**According to the EC Practical Guide to Tendering and Contracting (May 2003):** In all cases, the Contracting Authority assumes full responsibility for its actions and will be accountable for these in any subsequent audit or other investigation. The current MoU, as signed by six parties (the BiH MHRR, the FBiH MDPR, the RS MRDP, Brcko District, the municipality and the RF), leaves the respective responsibilities of the signatories unclear, namely:

- **the role of the municipality:** while the municipalities are nominated as implementers of the Joint Projects, their liability for the implementation of projects' funds is not clearly determined;
- **the role of the SCDPR:** while the SCDPR is involved in the decision-making (e.g. it approves the projects for funding), it has also the supervisory role over the RF (along with the CoM)<sup>70</sup>. This raises two issues of concern: First, such combination of decision-making and supervisory roles does not fulfil the requirements of sound financial management. Second, it may cause a number of operational problems, since the SCDPR members are all high-level officials (ministers and assistant ministers) who are primarily tasked with policy issues rather than with project implementation. The Annex VII (GFAP) Strategy recommends that ministries steer clear from direct involvement in the implementation of projects; the involvement of ministers in the project approval process is therefore not in line with the development of the sector as set out in the Strategy;
- **the role of the BiH MHRR :** it has been stated that the BiH MHRR should provide monitoring of return projects. The tasks performed by the BiH MHRR are a mixture of external monitoring tasks and of management functions. In fact, the BiH MHRR provides a sort of *ex-ante* technical and financial approval on behalf of the RF and the SCDPR. On the other hand, there is no recognition of the need to analyse the data for the purpose of an overall assessment of Annex VII Strategy implementation;
- **the role of the RF:** whilst having overall responsibility for the management of its resources, it has no or only limited involvement throughout the stages of beneficiary selection, tendering, contracting and implementation of projects. In addition, the reporting lines of the RF are not fully clear since it is simultaneously responsible to both the CoM and the SCDPR<sup>71</sup>.

The internal organisation of the RF reflects the confusion with regard to its role in project implementation. There is no clear division between the authorisation, execution and accounting functions.

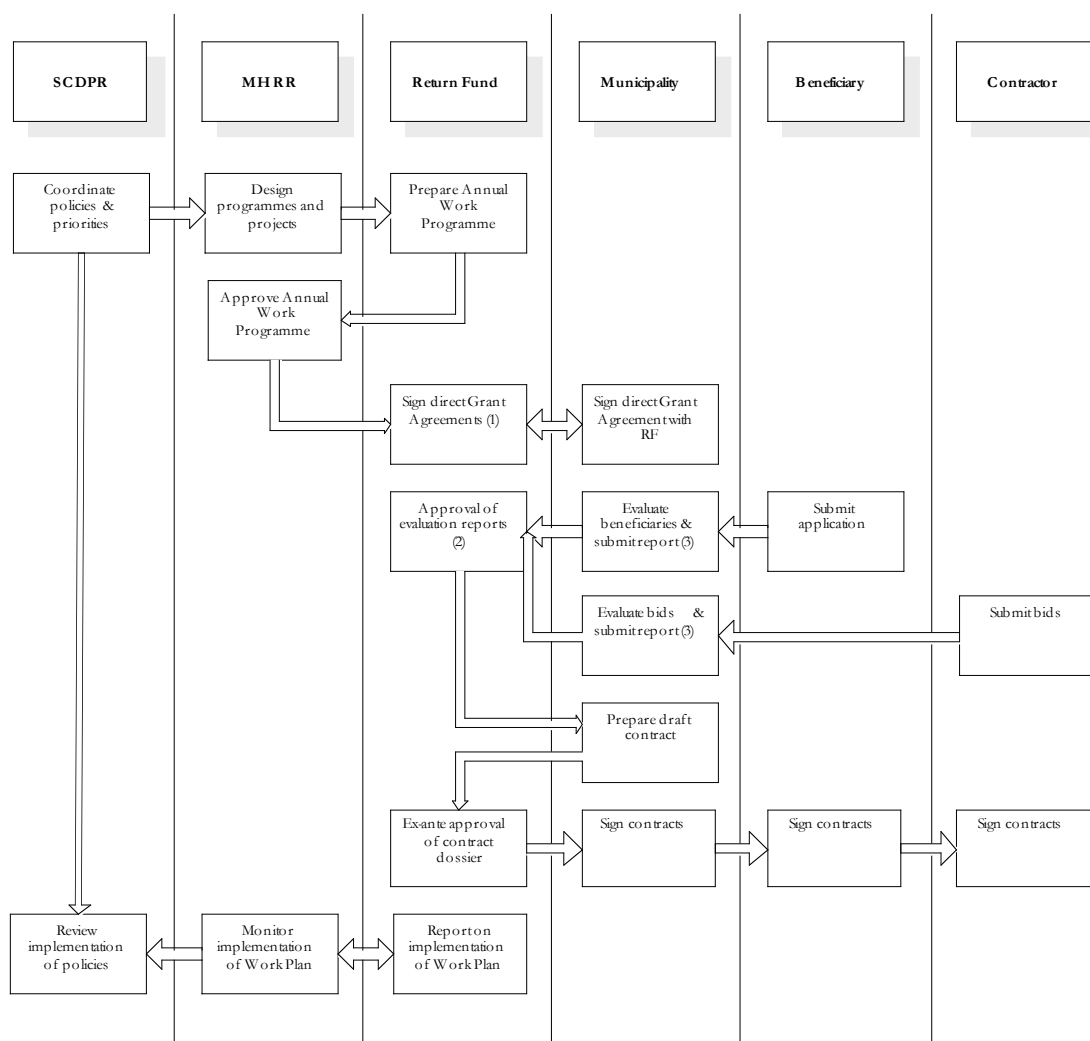
<sup>70</sup> Article 5, Amendments to the Law on Refugees from BiH and DPs within BiH.

<sup>71</sup> Amendments to the Law on Refugees from BiH and DPs within BiH and the Book-of-Rules of the Return Fund.

Furthermore, the overall mandate of the RF is not fully clear, since it is responsible both for the implementation of projects<sup>72</sup> and for the execution of payments. This latter function is normally assumed by the state Treasury. It should be noted however, that the ‘hands-on’ role of the SCDPR *vis-à-vis* the RF indicates that the RF is seen by the BiH authorities as primarily a ‘treasury’ and not a manager or funds in the proper sense.

The following three charts set out the desired separation of functions and tasks for the implementation of projects through the Return Fund.

### Tendering and contracting of projects through the RF



1) The tender procedure should be determined in the programme or project documentation. In case of housing reconstruction projects there can be direct grant agreements signed with the selected municipalities.

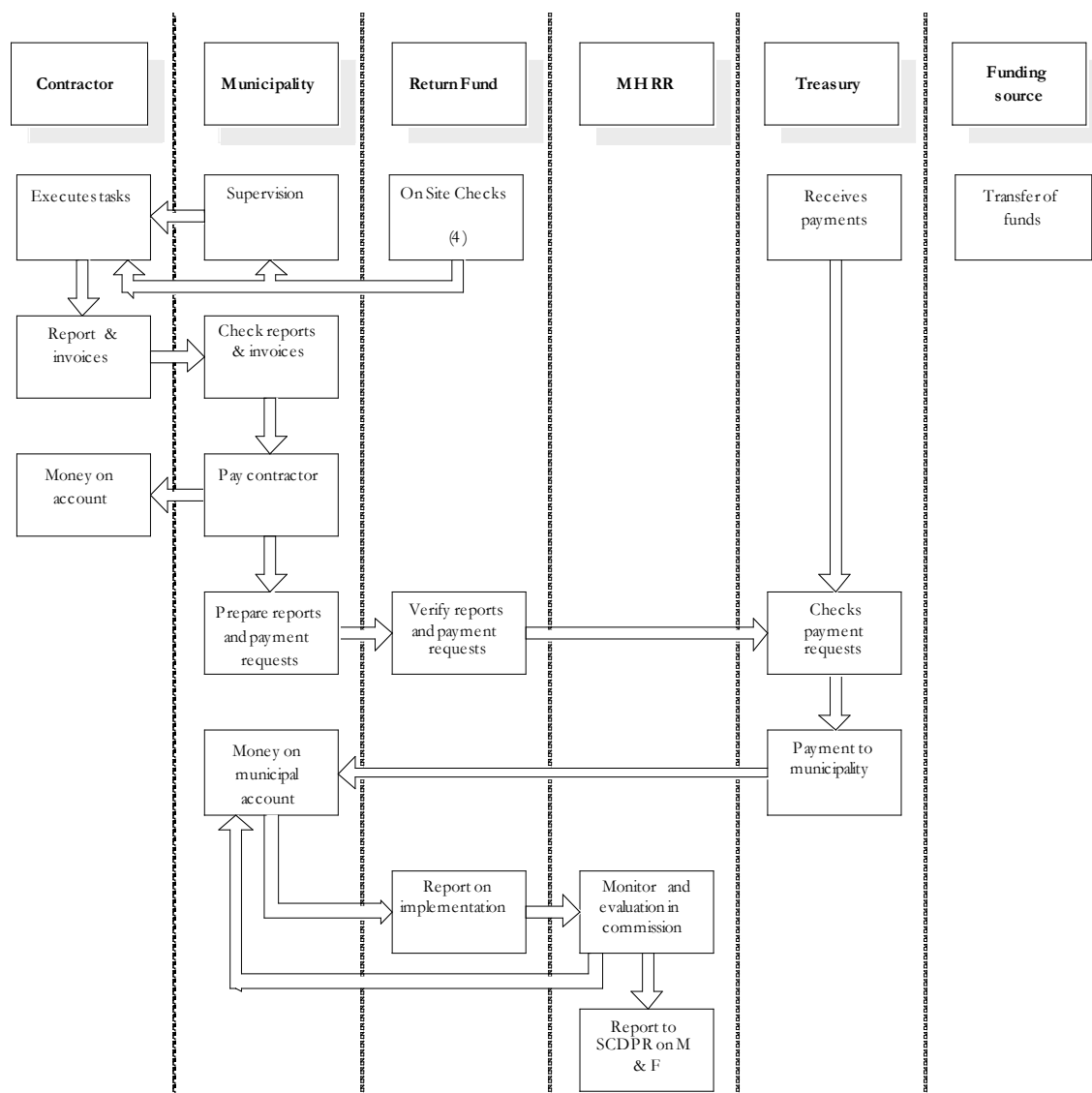
2) The Regional Centres of the BiH MHRR could participate in the Evaluation Commission meetings as observers on behalf of the RF. The RCs reports would serve to assist the RF take the decision on approval or otherwise of the evaluation reports.

3) For the selection of final beneficiaries and contractors, the municipalities should establish Evaluation Commissions comprising voting members, a non-voting chair and a secretary.

Chart 2: Tendering and contracting of projects through the RF

<sup>72</sup> E.g., according to Article 8 in the Book-of-Rules (October, 2004), the Director of the RF is liable for the financial implementation of return related reconstruction projects.

## Implementation, monitoring and payment for the projects funded through the RF



4) The Regional Centres of the BiH MHRR could perform on-site checks on behalf of the Return Fund.

Chart 3: Implementation, monitoring and payment for the projects funded through the RF

## Reporting and payment system

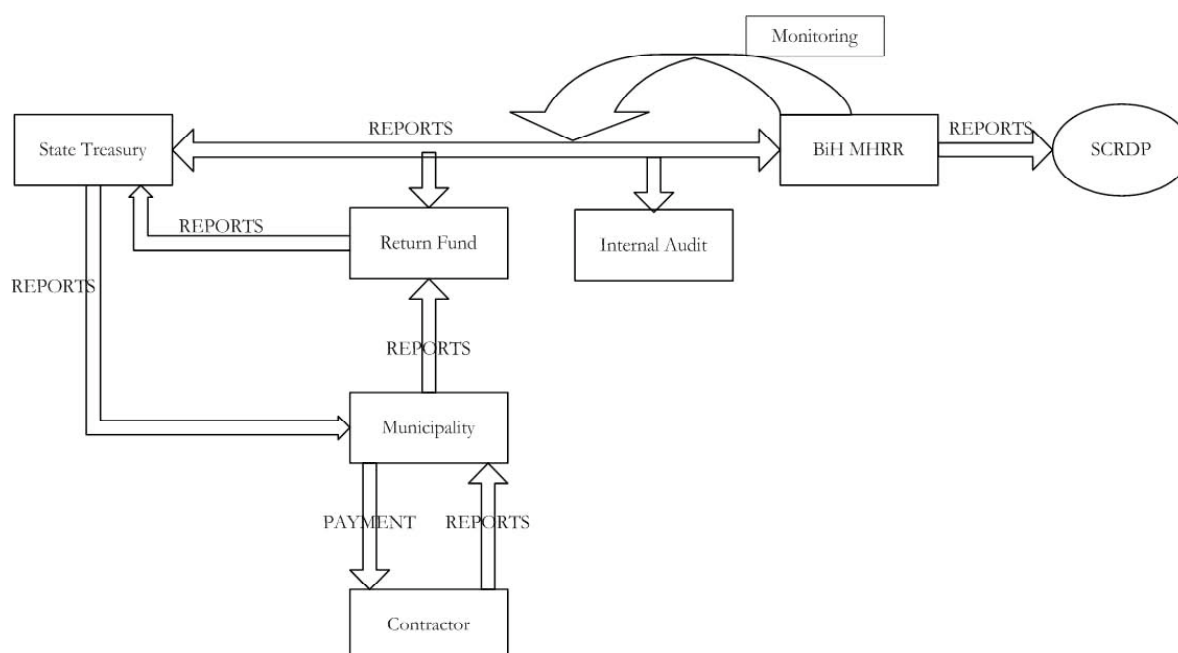


Chart 4: Reporting and payment system

The reports from municipalities and contractors are the technical and financial reports, which provide the basis for the payment requests.

The RF submits separate financial reports and requests for payments to the State Treasury, and technical reports to the BiH MHRR.

The Internal Audit unit should provide independent reports on the execution of operations to the State Treasury.

The SCRDP receives reports for monitoring and coordination purposes.

## ON RETURN AND HOUSING POLICY

Housing standards for return-related reconstruction appear to have been set lower than what would generally be considered a *liveable* house. To take the FBiH as a practical example, the reconstruction standards there seem to include construction materials up to a value of BAM 12,500 for severely destroyed houses and up to BAM 5,000 for less damaged houses. A good self-help system does not only involve the distribution of materials. It should also offer some management and other assistance (including the provision of a cement mixer or the use of a diesel-powered aggregate). Under the state system, as implemented with the help of the SU-TRA project, contractor work on a single house averages some BAM 18,000. Both the self-help and state system figures are probably on the low side for a *liveable* house.

In the entities, beneficiary selection, the choice of areas of intervention, purchases, financial and technical monitoring is handled according to good procedures. These procedures are the same as those used by the state-level (BiH MHRR) system. There is considerable municipal involvement and the municipalities are the main interface between higher levels of government and the returnees. However, there remain unanswered

questions about the final selection of projects. Only an in-depth analysis would be able to reveal if anything untoward is hiding behind the apparently good procedures and their application.

Overall, the state/municipal system is much more elaborate than the entity/cantonal system, with procedures and methods that are more transparent. On the other hand, in spite of the lack of transparency, the entity/cantonal systems appears to meet the, rather limited, efficiency criterion, particularly concerning achieved return results. The entity/cantonal system is good at what it was designed to do: purchasing reconstruction materials and delivering them to the beneficiary.



# *Chapter 4*



## *Recommendations*





## *Recommendations*

### ANNEX VII (GFAP) STRATEGY

#### Over-arching Recommendation

The Council of Ministers of BiH is advised that achieving the goals set out in the Annex VII (GFAP) Strategy will require (1) considerable streamlining of the public administration in the Return Sector in the short-term, and (2) the development of broader policies to address the needs of disadvantaged groups in society, including returnees, in the longer term.

#### Short Term Recommendations

The government of the RS and the administration of Brcko District are advised to finalise the harmonisation of return-related legislation during the first half of 2005.

The Council of Ministers is advised that state-level legislation should take into account the partition of tasks suggested in the Annex VII (GFAP) Strategy, with regard to the distribution of responsibilities between the state and entity levels.

The Council of Ministers of BiH, the BiH MHRR and the return-related entity ministries are advised that there is a need to create a unified system of return-related project implementation, under the aegis of the BiH MHRR, which shall be responsible for policy formulation. The SCDPR should consider the policies proposed by the BiH MHRR and, following a positive opinion of the SCDPR, the implementation of such policies should be binding upon entities (within the framework of applicable legislation).

The BiH MHRR and the entity governments are advised that there is a need to frame the assessment and approval procedures for (state-level) sustainable return-related projects, i.e. those going beyond reconstruction of housing. The relative position and functions of both the SCDPR and the BiH MHRR need to be considered in this context.

The BiH MHRR is advised that a policy needs formulating with regard to municipalities' rights to implement projects themselves or rely on contractors for implementation.

The Council of Ministers of BiH is advised that a decision is required with regard to which body will determine whether and when a given municipality has achieved the capacity to implement projects by itself.

The BiH MHRR is advised that a clearly defined monitoring and evaluation methodology is to be created and the format of monitoring reports established by mid-2005. This monitoring and evaluation methodology should be used to shift the focus of the state-level ministry from implementation to policy preparation.

The Council of Ministers of BiH is advised to undertake an evaluation of return reconstruction projects in the course of 2005, based upon monitoring reporting elaborated by the BiH MHRR (through its Regional Centres). The evaluation should focus on the efficiency, effectiveness and impact of the state-level system's procedures.

The entity ministries are advised to harmonise their own procedures with state-level procedures for their 2005-2006 return reconstruction projects, in order to create the beginning of a unified system and help strengthen municipal structures to implement reconstruction projects successfully.

The entity ministries are advised to channel, until 2006, an increasing part of their return-related budget through the state-level system and the RF and utilise the forum of the SCDPR for ensuring compliance with entities' specific interests.

The BiH MHRR is advised to follow-up on UNDP's IBHI recommendations<sup>73</sup> on setting up a separate Sector for database management.

The BiH MHRR is advised that a system for regular updates of the information available at state level, involving the municipal level, should be designed and put in place by mid-2006.

The entity and cantonal ministries are advised to merge their own databases with the BiH MHRR unified database and putting their access on a 'read only'-basis.

The Council of Ministers of BiH is advised to formulate a state-level DP policy. This policy should be subject of discussion within the SCDPR. The policy should describe a unified approach to DP status determination procedures and the entitlements of holders of that status. The policy should be based on a realistic assessment of available budgetary resources and take into account the need to balance DP policy with return policy.

The Council of Ministers of BiH is advised that it is unlikely that the Strategy deadline (end-2006) for completion of return-related housing unit reconstruction will be achieved, in view of the fact that allocations for return-related projects in the state and entity budgets show up considerable variation and a trend towards reduction. In addition, it is to be noted that the allocations for return-related ministries generally do not exceed 2% for the period 2002-2004 of the relevant overall budgets, a level insufficient to achieve the Strategy deadline. However, based on an adjusted number of housing units needed of 25,000, additional funding in the amount of EUR 40 million (BAM 80 million) over and above financing currently in the pipeline, could achieve the closure of the reconstruction process by end-2007. The Council of Ministers of BiH is therefore advised that there is a need to earmark additional financing of BAM 80 million under the state and entity Budgets for return-related reconstruction projects until the end of 2006.

The BiH MHRR is advised that the monitoring of returnees' human rights situation is a function missing from the return monitoring system currently in place; this should be added to the Regional Centres' monitoring role. In addition, there is a need to gather information about how returnees re-integrate in their places of origin, a function until 2003 performed by different international organisations and now taken on by local authorities.

## Long Term Recommendations

The municipalities of BiH are advised to establish a co-ordinated approach towards planning and management of investment projects. Rather than establishing several administrative units in charge of different sec-

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<sup>73</sup> Assessment of the Ministry for Human Rights and Refugees of Bosnia and Herzegovina, UNDP BiH, 2003. Available on: [www.undp.ba](http://www.undp.ba).

tors of investment (e.g. return and public utilities), municipalities should bundle human resources and create single technical units for project preparation and implementation. Project management, including procurement, contracting and monitoring requires specific knowledge, in addition of technical skills.

The Council of Ministers of BiH is advised that a broader approach to ensuring the sustainability of return is required. The socio-economic position of returnees needs to be considered in the context of an assessment of the position of disadvantaged groups in society. This implies that relatively well-positioned returnees will have to forego benefits in order to ensure that the less well-off are better served. The BiH MHRR should be directed to develop policies in this context, in consultation with the SCDPR.

The Council of Ministers of BiH is advised that, in view of the need to develop policies with regard to sustainable return that touch upon the competences of other ministries, there is scope for revising the functions of the SCDPR as a policy co-ordination body to the MHHR on developing reintegration measures. These measures should be developed under the auspices of the CoM, in liaison with the ministries responsible for employment, health, education, social security, economic affairs and business development, and infrastructure. Implicit in this is that the MHRR take a pro-active role on initiating re-integration policies.

## LEGISLATION AND REGULATORY FRAMEWORK

### Over-arching Recommendation

The Council of Ministers is advised that there is a need to redistribute the competences of institutions involved with return in the FBiH, the RS and Brcko District in both the short and long term, taking into account the need to rationalise the return efforts in the short period and adapt the ministries in the long run to the new situation arising when return is completed or reduced to the point where the involvement of dedicated return-related ministries at entity level is no longer necessary and, where applicable, their functions can be absorbed by other administrative units.

### Short Term Recommendations

#### Federation of BiH

A reallocation of competences should aim at smoothening the relations between bodies at the cantonal and Federation of BiH levels, while at the same time eliminating redundancies. The FBiH government is therefore advised to eliminate the intermediate stage of the cantons and link the municipalities directly with the FBiH MDPR, at least during the intermediate phase, where determination of DP and Refugee status is concerned. This would make it easier for the BiH MHRR, in that it had to deal only with the FBiH ministry, which would have all necessary information to hand, and would no longer have to depend on the cantons. Municipalities appear to be better placed than cantons in respect of keeping basic records of DPs and refugees. In the case of the provision of alternative and emergency accommodation, this is a function already carried out at municipal level.

The FBiH MDPR would retain its second instance function with regard to the determination of the status of DPs and refugees. With regard to project implementation, it would add to efficiency and save costs to transfer those competencies to the state level and eliminate the role of the Federation of BiH ministry. However, for the transitional period, i.e., up to mid-2007 at the latest, a reduced unit within the MDPR could ensure the completion of the on-going projects and provide for a smooth transition.

The management of emergency and alternative accommodation units, currently also the responsibility of the FBiH MDPR would remain with that ministry. The state level BiH MHRR has not yet managed alternative



accommodation units and consequently this function should not be transferred to that ministry in the short term, i.e. the transitional period.

The municipalities can determine by themselves, which are the most appropriate bodies to deal with these types of issues, within their own structures. In each municipality there is a department that deals specifically with refugee and DP issues, often combined with or placed within the department responsible for social welfare. At the same time, there generally is also a department for public works, which could take on the responsibility for housing unit reconstruction. In that case, the BiH MHRR would not only supervise municipal reconstruction activities, but it would also ensure technical support through its RCs. Redistributing competences from the cantonal to the municipal level is not a cumbersome task. On the basis of the Federation of BiH constitution, responsibility for DPs and refugees is already shared between the cantons and the Federation. Such competences can be exercised jointly or separately, as coordinated by the FBiH government. With regard to the cantonal constitutions, cantons can decide on transferring some of their competences to the FBiH government if this serves the purpose of ensuring a more effective and rational implementation<sup>74</sup>. However, problems of a political nature could arise in case of a lack of consensus on the transfer of these competences. Cantons in disagreement with the line upheld by the FBiH government could refuse to transfer competences and stall the process. As this is a political rather than constitutional problem, the FBiH MDPR is advised that consensus should be sought in advance.

With regard to the municipalities, the Federation of BiH Law on Self Governance foresees that municipalities shall provide for conditions for the human rights and fundamental freedoms protection and respect in accordance with the Constitution, ... *satisfy the local needs of citizens in the field of (...) social care (...) unless otherwise determined by the law and conduct urban and housing policy relevant for the municipality and its development*.<sup>75</sup> The FBiH MDPR is advised that this is the legal basis for the municipalities to deal with the competences that under current legal arrangements are those of the cantons.

## Republika Srpska

No major reallocations of competences are foreseen within the RS return administration in the short term, with the exception of the transfer of the responsibility for project monitoring to the state level BiH MHRR. However, this is in conflict with the MRDP's current vision (formulated in January 2005) on its future mandate, which continues to envisage involvement in reconstruction. In terms of rationalising the structure, there are in the RS, unlike the FBiH, no intermediate levels to be eliminated. Were the ultimately five remaining OMIs to remain open until the end of 2006, these would be able to perform the necessary functions in terms of property law implementation and implementation of the Law on DPs and Refugees. The same applies for the provision of alternative accommodation, where the MRDP is constantly obliged to revise the status of potential beneficiaries in order to determine whether they continue to be entitled to this type of accommodation.

## Long Term Recommendations

### Federation of BiH

In the longer term, the residual competences of the FBiH ministry would necessarily be transferred one level higher, i.e. to the state level, similar to the competence in respect of project implementation. Once the return process is largely over, determination and cessation of refugee status would no longer be needed and any residual cases could be dealt with by the municipal departments for social welfare, under the supervision of the BiH MHRR. The competence to oversee ongoing projects will necessarily be with the BiH MHRR or its successor body and it will be exerted through its RCs. The competence of determining DP and Refugee status would already be with municipalities and therefore no changes need to be made in this context.

If, in the long term, a political decision were taken with regard to the abolishment of the FBiH MDPR or a possible merger with another ministry, then Article 12 of the Law on Federation Ministries and other bodies

<sup>74</sup> Constitution of Canton Sarajevo, Article 15, OG Canton Sarajevo.

<sup>75</sup> FBiH Law on Bases of Local Self Government, FBiH OG 6/95.

of Federation Administration would have to be modified<sup>76</sup>. The residual competences of the MDPH could in that case be taken over by the FBiH Ministry of Labour and Social Welfare, which is foreseen under Article 11 of the same law.

The FBiH Law on Displaced-Expelled Persons and Repatriates will have to be amended, identifying different roles for the actors involved. In particular, Chapter 5 of the current law will require extensive amendments to reflect the new roles of the FBiH ministry and of the municipalities as outlined above. If, in the long run, it is decided that the FBiH Ministry for DPs be merged with the Ministry on Social Labour and Social Welfare, Article 11 of the law will have to reflect this. The Ministry for Social Welfare will then have to adopt a new Book-of-Rules to address its internal organisation and the way the new competences are allocated.

More amendments will be necessary to the law on Displaced-Expelled Persons and Repatriates in order to clarify the relationship between the competences of the entity and the cantons level and to redistribute competences between cantons and the FBiH MDPH.

## Republika Srpska

In view of the need to reduce the competence of the RS MRDP prior to its possible phasing out, some of the tasks that the ministry is now performing should be eliminated, but this should be done without negatively affecting the rights of DPs and refugees. In respect of property legislation, it might be wise to transfer the competence on this issue to the courts and eliminate the parallel administrative procedure. The Law on Cessation of the Application of the Law on the Use of the Abandoned Property could be put out of force by a similar law, re-establishing the jurisdiction of the courts over properties that might be claimed at a later stage by their pre-war owners. The now likely low number of future cases would justify the abolishment of the parallel administrative (i.e. not through the courts) procedure. The law on Cessation was, in any case, a transitional law adopted specifically to deal rapidly with hundred of thousands of claims. Now that the emergency phase is over, it would make sense to eliminate the administrative procedure. However, since the right to repossess private property is not limited by time, there are still properties that can be claimed by their own owners and in fact, the RS MRDP has confirmed that claims for repossession are, although in a very low number, still being filed with the OMIs. This factor should be taken into account when drafting future strategies.

It is likely that even once return is over, there would still be people entitled to alternative accommodation, but these long term needs could be satisfied by a social housing policy at state level in order to permanently solve the problem of those families.

Reconstruction projects and housing policy would fall under the BiH MHRR which would provide its support to the RCs. The determination and cessation of DP status, in those residual cases, should be allocated to the municipalities, and in particular to those offices that deal with social welfare issues, which could set up similar procedures to assess the needs of DPs and Refugees, in terms of housing and social assistance both.

It will be necessary to amend Article 18 of the Law on Ministries of Republika Srpska to reflect the new role of the RS MRDP in the short term, if this ministry has to continue its existence, while in the longer term, Article 18 could be removed. The current draft of the RS Law on DPs, Refugees and Returnees to RS and Refugees from BiH should also be amended to reflect these recommendations. The amendments in the law will have to indicate which municipal bodies are competent to deal with residual cases of determination of DP status and set out the distribution of competences between them and the BiH MHRR. As this law was supposed to have been passed quite some time ago, it appears advisable to introduce these changes to it immediately and so remove this competence from the RS MRDP and transfer it to the BiH MHRR. This would likely have a domino effect by accelerating parallel changes in the FBiH.

A new law will have to be passed to phase out the Law on Cessation of the Application of the Law on the Use of the Abandoned Property. The new Law should simply state a cut off date, i.e. 1st January 2007. After such date, OMIs would no longer receive claims for property, and by default, only the Courts would be competent. The OMIs would remain in charge of completing the caseload, i.e. solving any those claims that had

<sup>76</sup> FBiH OG, 58/02

been filed with them before the cut-off date and still be pending in their offices. This would avoid any disruption caused by the phasing out of the administrative procedure.<sup>77</sup>

## ORGANISATION, COMPETENCES AND FUNCTIONS OF KEY INSTITUTIONS

### Over-arching Recommendation

The Council of Ministers of BiH is advised to: (1) clarify the relationship between the BiH MHRR and the SCDPR, by making the latter a policy co-ordination body to the former; (2) strengthen the policy preparation, implementation supervision and monitoring role of the BiH MHRR; and (3) build up municipal advisory capacity at the BiH MHRR's Regional Centres.

### Short Term Recommendations

Based on the Amended Law on Refugees from BiH and DPs in BiH, it is understood that the BiH MHRR is responsible for establishing and monitoring the policies regarding the implementation of Annex VII<sup>78</sup>. The Council of Ministers of BiH is advised to encourage and institutionalise the policy-making role of the BiH MHRR.

The entities are encouraged to cede this policy-making role to the BiH MHRR voluntarily and to participate in the process through the SCDPR structure, in order to bring the development of the sector more in line with the Annex VII Strategy.

The BiH MHRR is advised to prepare an updated Action Plan for the implementation of the Annex VII Strategy on an annual basis. This process should be undertaken in a consultation with the entities and the international community through the SCDPR. It is recommended to task a dedicated working group under the SCDPR, which could meet more often and undertake the operational preparatory work, with this.

As stated in the amended Law on Refugees from BiH and DPs in BiH, the BiH MHRR should monitor all programmes related to the implementation of the Annex VII Strategy<sup>79</sup>. For this purpose, the BiH MHRR should build a strong results-oriented monitoring department. There should be no separate results monitoring structure at entity level. The monitoring department shall include or be closely linked to: (1) a housing policy analysis and research department; and (2) a public information department.

The BiH MHRR and the entity governments are advised that the position of the SCDPR and the powers assigned to it, however useful from the point of view of guarding ethnic and entities' interests, will be unsustainable in the long-term, because:

- the current mandate of the SCDPR as per Article 23 of the relevant law, creates a decision making structure appealing to the will of entities, but the decisions of which are not necessarily ultimately binding upon entities;

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<sup>77</sup> A similar law exists in the FBiH and it is in fact implemented mostly at the municipal and cantonal level. In the interest of ensuring the same rights for refugees and DPs, it is recommended that changes are made in the FBiH along the same lines as in the RS.

<sup>78</sup> Article 1: MHRR will set, follow up and monitor (implementation of) aims regarding to implementation of Annex VII.

<sup>79</sup> Article 1: *The MHRR will set, follow up and monitor (implementation of) aims in relation to implementation of the Annex VII.*

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- the powers of the SCDPR include both supervisory and decision making elements pertaining to the same issue, such as that of payments to municipalities, beneficiaries or contractors through the RF;
- the wording of the legal provisions establishing the SCDPR and describing its powers is ambiguous and leaves issues unresolved; in particular it is unclear what the status of SCDPR conclusions is, as well as what means exist to resolve disputes in the case of entities disagreeing with or not implementing those conclusions.

The BiH MHRR and the entity governments are advised that the status of the SCDPR should be redefined as that of a policy co-ordination body to the BiH MHRR in the interest of a clear allocation of responsibilities in the return sector, to safeguard parliamentary prerogatives and to create a unified policy and implementation system.

The SCDPR should also have a special brief in respect to assessment and evaluation of the implementation of BiH MHRR-initiated policies. The BiH MHRR should be held to seek the opinion of the SCDPR; this opinion should not however be binding where it concerns issues under ministerial responsibility.

The BiH MHRR and the entity governments are advised that the competences of the SCDPR should be limited to policy issues, including budgetary co-ordination, as well as *ex post* control of project implementation, including project and RF finances. The SCDPR should not have *ex ante* approval and decision making powers with regard to project implementation and financial issues, these being subject to state-level ministerial responsibility under a harmonised return project implementation system.

This means that the BiH MHRR is held to consult the SCDPR, with regard to:

- 1) the budget for Joint Projects and the RF; and
- 2) concrete programmes for projects as formulated by the BiH MHRR, in consultation with the entities and Brcko District.

In addition, the BiH MHRR will regularly, at least quarterly, report to the SCDPR on project implementation and consult the SCDPR in case of project budget shortfalls and surpluses.

The BiH MHRR and the entity governments are advised that at least the position of the Director of the RF should be separated from current arrangements, centring on the SCDPR, of ensuring an appropriate balance of constituent peoples in the process of policy formulation in the return sector.

The BiH MHRR and the entity governments are advised that the SCDPR needs strengthening through the formation of working groups, in accordance with Article 13 of the SCDPR Book-of-Rules. These working groups would be the instrument for producing the documentation needed by the SCDPR for its co-ordination function.

The BiH MHRR and the entity governments are advised that the currently '*ad hoc*' Co-ordination Team should be established as a permanent Working Group of the SCDPR. The secretariat of the Working Group should be the responsibility of the BiH MHRR.

## Long Term Recommendations

The BiH MHRR should broaden the mandate of the RCs to include support to local administrations, in particular of municipalities, with regard to *inter alia*, the preparation of project proposals, information collection on and monitoring of the sustainability of returns (pensions, health, education, employment), and to develop co-operation with NGOs.

In light of their broadened role, the RCs should be given a higher degree of freedom of action within their (increased) mandate, to be able to provide services to local administrations efficiently.

Additionally, the BiH MHRR is advised that more attention should be given to enhancing both the level and capacities of RC staff. Capacity building through training should among others focus on project cycle management and procurement.



The Council of Ministers of BiH is advised that the SCDPR should be developed into a proto-Sectoral Monitoring Committee, as operated jointly between the EC and the government during the pre-accession phase of the newly acceded Member States of the EU. This would serve to introduce and gain experience with a *modus operandi* that would apply with the introduction of de-concentrated EU programmes in BiH in the course of 2007.

## HUMAN RESOURCES

### Over-arching Recommendation

The Council of Ministers of BiH and the governments of the entities are advised that, in view of the cost of the present return sector institutional structure and the need for a unified return policy and implementation environment, the state-level BiH MHRR should be strengthened. Additionally, cantonal return institutions should be abolished in the short term and entity-level return institutions in the long term.

### Short Term Recommendations

At the state-level, the BiH MHRR should accelerate the implementation of the recommendations in the IBHI study, most importantly to strengthen the BiH MHRR through hiring specialist staff for all Departments.

In addition, another priority for the BiH MHRR is the full implementation of the decisions of the CoM, i.e. to:

- modify its organisational structure to include an Agency for Gender Issues (an independent Agency located in the BiH MHRR, but directly answerable to the Chair of the BiH Council of Ministers); and
- appoint a liaison officer to the European Court of Human Rights in Strasbourg who will ensure adequate protection of individual human rights.

At entity-level, the RS MRDP and the FBiH MDPR should ensure that the nationality of staff in all sectors and departments of the ministries reflects the national balance of the 1991 Census, in accordance with the 2002 Decision on the Implementation of the Constituent Peoples Decision of the Constitutional Court.

In addition, the RS MRDP is advised that it is both possible and desirable to reduce staffing levels by 30% (45 persons). A first step towards such reduction would be to reduce the number of OMIs to five, each covering a larger geographical area, e.g. in Banja Luka, Bijeljina, Doboje, East Sarajevo and Trebinje. In a second phase, OMIs should be dissolved completely.

The government of FBiH is advised that the present structure of return-related institutions is too costly. In the short-term, the cantonal responsibilities related to return should be centralised in the FBiH RS MRDP.

The governments of FBiH and RS are advised that, in line with the development of the state level system, preparations for the reduction in size and ultimately the closure of the housing reconstruction project departments of the FBiH MDPR and the RS MRDP should be in an advanced stage by mid-2006 for completion by no later than mid-2007.

The Administration of Brcko District is advised to change the Book-of-Rules of the Sector for Refugees and DPs and Housing Policy in respect of the job descriptions and the required qualifications with a view towards strengthening the qualification structure of the Sector, by including with more employees with a university education. Human resource strengthening through the raising educational levels will create opportunities for re-orientating the Sector in the direction of implementing measures in support of sustainable return.



## Long Term Recommendations

The RS MRDP is evaluating the feasibility to take on additional responsibilities in the fields of development, social affairs and human rights. A limited number of OMIs could thus be transformed, albeit with a different staffing profile, into outlying departments implementing these new responsibilities. The RS government and the RS MRDP are advised that in implementing this recommendation, possible additions to its mandate should be taken into account. In the long-term, all return-related responsibilities of the RS MRDP should be transferred to other RS line ministries or to the state level.

The government of the FBiH and the FBiH MDPR are advised that, in the long term, the present return-related responsibilities of the FBiH MDPR will have to be transferred to other line ministries or to the state level.

The Council of Ministers of BiH are advised that part of the knowledge and skills developed in the FBiH MDPR and the RS MRDP will be useful for the BiH MHRR in both the long and short term. Such knowledge and skills concern in particular, beneficiary selection and control, and procurement methodology. The future public administration reform strategy for the return sector should therefore encompass a plan for transferring these skills and the human resources concerned to the BiH MHRR and its Regional Centres.

The BiH MHRR is advised that, in the longer term, the Department for the Development of Programmes and Projects within the Sector for Programmes and Projects could be moved to the RF, in order to enhance that body's involvement into an implementing agency in the context of the pre-accession process.

With the conclusion of the return process, a number of options exist with regard to the future of the BiH MHRR. These include:

- Option A, under which a downsized BiH MHRR apparatus charged with human rights policy and having shed its implementation arms, could be moved to the Ministry of Civil Affairs. This option is not recommended;
- Option B, under which the BiH MHRR would include a Sector for Social Housing Policy and retain the responsibility for the monitoring and evaluation of return-related projects, particularly sustainable return, as well as a role in municipal development through the Regional Centres; and
- Option C, under which the BiH MHRR would gradually evolve into a ministry with a policy brief in respect of social protection or social development, i.e. a state level ministry for Social Affairs. In that guise, the – likely renamed – ministry could be made responsible for the development of social policy, in close co-operation with relevant state and entity level line ministries responsible for health, education, pensions, employment and other social issues affected disadvantaged individuals and groups in society.

The third option – Option C – can be seen as an longer term extension of the somewhat shorter term Option B. The organisational consequences of options are depicted in Annex 3.

## FINANCIALS

### Over-arching Recommendation

The Council of Ministers of BiH is advised that the financial systems of all return process institutions (RPIs) are in need of urgent improvement, especially with regard to (1) financial reporting and (2) results-oriented and needs-based budgeting.

## Short Term Recommendations

The BiH MHRR is advised that increasing the relative share of 'Joint Projects' in the total number of reconstruction projects to be implemented in the period 2005-06, is likely to enhance the strengthening of state-level institutions in the return sector, thereby honouring the spirit of the Annex VII (GFAP) Strategy.

The BiH MHRR, the FBiH MDPR and the RS MRDP are advised that there is a need to improve financial reporting with regard to return-related projects, in line with international accounting standards (IAS). Financial reporting has to be accurate, complete, supported by appropriate documentation and offer a verifiable 'audit trail'.

The BiH MHRR is advised that the information contained in its various databases should include beneficiaries' ID numbers in order to reduce the risk of benefiting over and beyond entitlements.

The RS MRDP is advised that it should record an approximate number of 1,200 housing units, financed from the ministry's budget or by municipalities, in accordance with IAS, i.e. as assets, rather than items of expenditure. This would enable proper asset management. Additionally, the RS MRDP is advised that it should prepare a plan for the end-use of these housing units upon completion of the return process.

The BiH MHRR is advised that it should provide annual financial reports on the 'Joint Projects', in accordance with applicable legislation, to the institutions which transferred funds from their respective budgets for such projects.

The Council of Ministers of BiH is advised that all institutions in the return sector should produce 'result-oriented and needs-based' budgets in accordance with their activity plans for the next fiscal year. In particular, financial reporting should set out clearly the activities implemented, the amounts spent, the number of housing units reconstructed and the number of actual returnees.

The Council of Ministers of BiH is advised that all institutions in the return sector need to strengthen their capacities in the process of budget preparation, execution and reporting. In the planning phase, the budget needs to match activity plans, budget execution needs to demonstrate financial discipline and reporting needs to reflect what has been done and how much it cost. Budget execution and transaction recording have to comply fully with the Law on the Budget.

The Council of Ministers of BiH is advised that all institutions need to take advantage of the financial control features offered by the unified accounting software and ensure daily updates of transactions, including liabilities entered into.

The Council of Ministers of BiH is advised that all return-related transactions should be incorporated into the Treasury General Ledger.

All institutions in the return sector are advised of the need to apply the accrual accounting principle with regard to committed, but as yet un-disbursed funds from previous fiscal periods.

All institutions are advised that budgets should be used not only as planning tools, but also for controlling purposes. In particular, no commitments should be entered into without the necessary funds being available under the relevant budget lines.

The Council of Ministers of BiH and the BiH MHRR are advised that there should be a clear division of responsibility with regard to financial monitoring of the state-level interventions in the return sector, including those implemented through the RF. Financial monitoring is the primary responsibility of the institution responsible to parliament and subject to audits by the court of auditors. The current supervisory role of the SCDPR in this respect is inappropriate because its activities are not subject to parliamentary control or audit.

As illustrated by the financial analysis important savings in return sector are possible only through a rationalisation of those operative costs that are contingent upon the number of staff involved in reconstruction project implementation.

Through reorganisation, mainly involving the closure/scaling down of the entity/canton system's reconstruction units and departments, it will be possible to reduce the current number of project implementation staff from the existing total of 324 to around 85, as long as the value of the implemented projects remains in the

order of BAM 75 million. This reorganisation should result in the establishment of trained teams, led by experienced experts.

The operational costs for 85 implementing staff would amount to some BAM 2.1 million per year, at an average gross salary of BAM 1,555 per month, with related other operational costs amounting to 30% of the same, i.e. BAM 467 per month. This means that following such reorganisation, savings of around BAM 5.8 million per annum could be achieved.

The Council of Ministers of BiH is advised that, in order to complete the reconstruction of housing units in line with the Annex VII (GFAP) Strategy, as amended by estimates resulting from the present public calls for applications for reconstruction assistance, and subject to some delay due to reconstruction project mobilisation, additional financing will be needed in the order of the EUR 40 million until end-2006.

## RETURN FUND

### Over-arching Recommendation

The Council of Ministers of BiH is advised that: (1) in the short term, there is an urgent need to strengthen the capabilities of the RF; and (2) for the long term, the opportunity exists to turn the RF into a body able to assume the responsibilities of an implementing agency in the context of implementation of the Stabilisation and Association Agreement, once signed.

### Short Term Recommendations

It is considered that the current RF arrangements need to be significantly strengthened at relevant administration levels, i.e. the state and the municipal ones. The EC is advised to consider providing technical assistance to the RF and the BiH MHRR to establish sound financial management capacities. The technical assistance might *inter alia* deliver support to and advise the RF on:

- 1) designing and enforcing functions necessary to ensure sound financial management of the funds, *inter alia*, authorisation of commitment and payments; execution of payments through issuing requests to the State Treasury; and accounting for commitments and payments;
- 2) elaboration of a detailed description of all tasks and relevant responsibilities within the RF, including substitutes for officials who are absent (deputising);
- 3) establishing the function and subsequently a unit that would perform the functions of internal audit of the RF. This could be a unit inside the RF or, alternatively, within the supervising institution.
- 4) ensuring an audit trail for all decisions made and actions implemented by the RF. All decisions need to be supported by documents. For this, templates for all relevant documents should be developed and used.

### Long Term Recommendations

There are several scenarios for the future evolution of the RF:

- 1) the RF remains a **separate legal entity**, as is the case today. However, the current system has several weaknesses. Currently, the SCDPR serves as a supervisory body of the RF and it is involved in fund management at the same time. This neither sits well with EU requirements nor conforms to



applicable best practice. Furthermore, the involvement of the SCDPR in decision-making in projects can become cumbersome and open to political influence, which would constitute severe handicaps for the RF if there were to be a significant increase in funding and in the number of its activities.

- 2) the RF is placed **inside a sectoral line ministry**, which has a major involvement in return sustainability issues, *inter alia*, social security, health, education, and economic development. Whereas placing the RF within a sectoral ministry would likely infuse strong ownership of the RF in the ministry concerned, doing so would likely limit the RF's scope of operations in the future. For example, were the RF to be put within the ambit of the Ministry for Social Affairs, any involvement of the RF in projects in the sphere of public infrastructure or economic development would seem illogical and probably be viewed negatively by the ministries primarily responsible for that sphere. Also, a proliferation of separate funds, should, in line with EU practice, be avoided.
- 3) the RF is placed **under the supervision** of a strong horizontal ministry (e.g. the Ministry of Finance and Treasury). If the RF was to develop capacities for the implementation of projects (both domestically and externally funded), these could conceivably be applied regardless of sectoral affiliation, giving the RF sufficient operational flexibility. A further and important argument in favour is the likelihood that BiH will be expected to match funds provided by the EC (at least partially), as soon as the pre-accession process gets underway. Experience in the new Member States has shown that a long period of preparation of the so-called 'Implementing Agencies' was necessary before these institutions operated satisfactorily, especially for procedural and financial controls. The RF could well evolve into such an Implementing Agency and a close relationship with the institution in charge of the national budget would therefore be desirable.

In the long-term, based on the complexity of devolving return-related measures to other ministries, this Review leans towards alternative (3). However, it would be possible to combine the alternatives (2) and (3).

In view of the foregoing, the Council of Minister of BiH is advised that for the long term, the RF can be made responsible to the state level Ministry of Finance in respect of fund management and to the BiH MHRR in respect of policy and strategy. The internal procedures of the Return Fund should reflect this separation of lines of responsibility.

The Council of Minister is advised that making the BiH MHRR responsible for the RF's policy and strategy would only apply under the option B and C with regard to the future development of the BiH MHRR. In that case, the BiH MHRR should have a department responsible for policy preparation and liaison in respect of the RF.

The Council of Minister of BiH is advised that future strategy development in the return sector should look at these alternatives and consider them once again in the light of evolving events, including entering into an Stabilisation and Association Agreement with the EU and the likely introduction of 'de-centralised' EU assistance programmes in BiH from 2007 onwards. Whichever choice is made, the *acquis communautaire* should be taken into account.

## RETURN AND HOUSING POLICY

### Over-arching Recommendation

The Council of Ministers of BiH is advised that there is an urgent need for one, unified state level system for return-related measures centred on the BiH MHRR, which should include the development of capacity at this ministry for the framing of an effective, equitable housing policy.

## Short Term Recommendations

The Council of Ministers of BiH is advised that assistance to returnees should be based on a single delivery system at state level. This system should be fully operational by mid-2006. Until the emergence of a single delivery system, the entity and cantonal systems should adopt the procedures of the state-level system and allow co-ordination of efforts through the BiH MHRR's Regional Centres.

The BiH MHRR is advised that the most important common elements of the system of reconstruction assistance are: (1) the policies and procedures with regard to the choice of beneficiaries and priority areas; and (2) the housing (reconstruction) policies (including standards, costs and differences according to beneficiaries' own resources). The BiH MHRR is further advised that it should draft the in this context necessary amendments to procedures by end-2005 for consultation and approval.

The Council of Ministers of BiH is advised that the programming of annual programmes of return-related measures is a state-level task to be undertaken by the BiH MHRR, but not without due consultation with the other levels of administration. However, the logic of the return process means cross-entity and cross-canton return along geographic axes and within geographic areas. The entity/cantonal administrative division is not always able to support this logic. The co-ordination of return-related policies and measures is therefore primarily a task of the BiH MHRR, to be executed through its Regional Centres.

The Council of Ministers of BiH is advised that, for the short term, entities and cantons should not do their own programming of return-related interventions and measures, but implement the programmes formulated by the BiH MHRR in consultation with entity administrations and co-ordinated through the SCDPR.

The Council of Ministers of BiH and the BiH MHRR are advised that future financial allocations for return-related measures targeting municipalities should include a flexible element that can be used for beneficiaries who have been in municipal reconstruction assistance queues for some time. This should be independent of whether these municipalities are located in priority areas or not, or whether the beneficiaries concerned belong to a specially deserving disadvantaged group.

The Council of Ministers and the governments of the FBiH and the RS are advised that, in the interest of arriving at an effective, equitable housing policy (including a housing policy for the return sector), the BiH MHRR should be giving the mandate for developing such housing policy. The policy should cover *inter alia* standards, methods (self-help, contractor-based or municipality-implemented) and possible differentiation of levels of assistance between various groups of beneficiaries (on the basis of own resources). Entity governments should voluntarily relinquish their mandates in this regard.

The BiH MHRR is advised that it should commission an expert group to undertake a study outlining the various alternatives existing with regard to a viable housing policy suitable for the allocation of domestic, public funds. In the longer term, this expert group should become the housing policy research unit within the BiH MHRR entrusted with the task of evolving housing policy in line with experience.

The Council of Ministers of BiH and the entity governments are advised that the current practice of entities financing and implementing projects on another entity's territory should be terminated. Only state-level financing and joint funds should be used for interventions and measures crossing entity borders.

The BiH MHRR is advised that it should strengthen its monitoring capabilities and widen the monitoring mandate to also include (in addition to legal compliance and technical reconstruction monitoring) the monitoring of expected, agreed results of the return process. The capabilities of the monitoring unit or department should at least cover the following: housing policy, civil engineering, financial and monitoring methodology expertise.

## Long Term Recommendations

The Council of Ministers of BiH is advised that, where housing reconstruction is concerned, technical monitoring of the implementation of return-related measures should rest at the municipal level. In the case of municipalities with limited human resources, combinations of municipalities should be allowed to be formed. Preferably, municipalities should pool resources for the acquisition of independent technical monitors with

civil engineering qualifications. The role of the technical monitors should be to ensure that beneficiaries are provided with a certain minimum quality of assistance in the case of housing reconstruction projects using the services of commercial contractors, as well as a minimum quality of the materials and components provided under self-help projects.

# *Chapter 5*



*Action Plans*





## *Action Plans*

This chapter sets out the Action Plans necessary to implement the Review's recommendations; a short-term Action Plan for 2005-06 and a longer term one for 2007-10. It is to be noted that it is impossible to make a clear dividing line between the two Plans; some activities commenced in the short term will only be finalised in the first year of the long term while some activities in the long term will need preparation during the short-term Action Plan.

### ACTION PLAN 2005-06

#### Exit Strategy

The Action Plan for the period 2005-06 is based on the recommendations in this report and addresses:

- the issue of exit from the Return Sector, as envisaged in the Annex VII (GFAP) Strategy;
- the conclusion of return related housing reconstruction (given sufficient funding) by end-2007; and
- laying the bases for the mandate shifts of current return-related institutions at state and entity level envisaged in the long-term Action Plan.

#### Annex VII (GFAP) Strategy

##### Re: Harmonization of Laws

**Recommendation:** State-level legislation should take into account the partition of tasks suggested in the Annex VII (GFAP) Strategy, with regard to the distribution of responsibilities between the State and entity levels.

Task N°	Task	Description	Responsible	Duration	Deadline
1.	Draft law	Draft state level law amendments in order to define clearly the distribution of competencies between State and entities	MHRR CoM	2 months	06/2005
2.	Approval process	Approve amendments	BiH Parliament	3 months	09/2005

**Recommendation:** The government of the RS and the administration of Brcko District are advised to finalize the harmonization of return-related legislation.

Task N°	Task	Description	Responsible	Duration	Deadline
1.	Draft law	Draft amended laws in accordance with relevant State level legislation	RS MRDP and Brcko District government	2 months	09/2005
2.	Approval process	Approve amendments	RS National Assembly and Brcko Council	2 months	11/2005

## Re: Structural and Organisational Reform

**Recommendation:** The MHRR is advised that a clearly defined monitoring and evaluation methodology is to be created and the format of monitoring reports established by mid-2005. This monitoring and evaluation methodology should be used to shift the focus of the state-level ministry from implementation to policy preparation.

Task N°	Task	Description	Responsible	Duration	Deadline
1.	Methodology	Elaborate a monitoring methodology in line with EC standards	MHRR, Sector of Return, De- partment of Projects and Monitoring	3 months	07/2005
2.	RC staff needs assessment	Define staff needs of RCs, based on workload analysis, taking into consideration additional responsibilities (human rights monitoring)	Idem	3 months	07/2005
3.	MHRR staff needs assessment	Define staff needs of the Department of Projects and Monitoring inside the MHRR	Idem	3 months	07/2005

**Recommendation:** The Council of Ministers of BiH is advised to undertake an evaluation of return reconstruction projects in the course of 2005, based upon monitoring reporting elaborated by the MHRR (through its Regional Centres). The evaluation should focus on the efficiency, effectiveness and impact of the state-level system's procedures

Task N°	Task	Description	Responsible	Duration	Deadline
1.	Data collection	RC to begin collecting data on on-going projects	Regional Cen- tres	On-going	Idem
2.	Evaluation and reporting	Evaluation of data and preparation of reports	MHRR Sector of Projects and Monitoring	On-going	12/2005

## Re: Enabling and Putting a Uniform Database in Function

**Recommendation:** The MHRR is advised to follow-up on the UNDP's IBHI recommendations on setting up a separate Sector for Database Management.

Task N°	Task	Description	Responsible	Duration	Deadline
1.	MHRR staff needs	Define staff needs for internal re-organisation of MHRR	MHRR	On-going	-
2.	Database department	Create dedicated Sector for Database Management	MHRR and CoM	2 months	06/2005
3.	Book-of-Rules	Amend MHRR Book-of-Rules	MHRR	3 months	09/2005

**Recommendation:** The MHRR is advised that a system for regular updates of the information available at state level, involving the municipal level, should be designed and put in place by mid-2006.

Task N°	Task	Description	Responsible	Duration	Deadline
1.	Questionnaire preparation	Create appropriate questionnaire to be completed by municipal bodies in accordance with defined monitoring methodology	MHRR Data-base Sector	1 month	08/2005
2.	Questionnaire distribution	Define exchange system and distribute questionnaires to municipal bodies	MHRR and RCs	2 months	10/2005
3.	Analysis and reporting	Analysis of returned questionnaires; Preparation of reports for MHRR management and the SCDPR	MHRR	Recurrent (6-months)	-

## Re: Creation of Preconditions for return

**Recommendation:** The entity ministries are advised to harmonise their own procedures with state-level procedures for their 2005-2006 return reconstruction projects, in order to create the beginning of a unified system and help strengthen municipal structures to implement reconstruction projects successfully.

Task N°	Task	Description	Responsible	Duration	Deadline
1.	Instructions for adoption	The entity ministry to formalise instructions adopting state level system procedures	RS MRDP and FBiH MDP	3 months	07/2005

**Recommendation:** The MHRR is advised to standardise reconstruction policies by 2006.

Task N°	Task	Description	Responsible	Duration	Deadline
1.	Experts group	Form experts group from MHRR and entity ministries	SCDPR	2 months	06/2005
2.	Evaluation of implementation	Evaluate project implementation on the basis of monitoring reports from state and entity projects	Experts group	3 months	09/2005
3.	Policy development	Formulate a unified state reconstruction policy	MHRR	3 months	12/2005

## Re: Promotion of Reintegration for Return

**Recommendation:** To include sustainability components on reconstructions assistance projects at state level system for 2006.

Task N°	Task	Description	Responsible	Duration	Deadline
1.	Project formulation	Include sustainability components into state projects	MHRR Sector for Projects and Monitoring	6 months	12/2005

**Recommendation:** To create returnee human rights monitoring system.

Task N°	Task	Description	Responsible	Duration	Deadline
1.	Create returnee human rights monitoring function within Regional Centres	Develop appropriate links with municipal bodies and human rights NGOs (VASA PRAVA, ICHR, etc.) NGOs to participate in regional/local meetings organised by RC	MHRR and RCs	3 months	09/2005
2.	Project definition	Formulation of appropriate terms of reference for technical assistance to would improve RCs' role in human rights monitoring and reporting.	MHRR and ECD	3 months	12/2005
3.	Project Implementation	Implement technical assistance to RCs Formal and on-job training of RC and relevant MHRR staff	MHRR and Contractor	12 months	12/2007

**Recommendation:** To develop re-integration policies.

Task N°	Task	Description	Responsible	Duration	Deadline
1.	Priority identification	Identify priority issues in respect of returnee reintegration based on monitoring outcomes	MHRR, Sector of Return	On-going	Idem
2.	Measures elaboration	Elaborate measures and present them to CoM/SCDPR for implementation at state/entity level	MHRR, Sector of Return	On-going	Idem

## Organisation, Competences and Functions of Key Institutions

**Recommendation:** The Council of Ministers is advised to:

- clarify the relationship between the MHRR and the SCR by making the latter a policy co-ordination body;
- strengthen policy preparation, implementation and supervisory role of the MHRR; and
- build up municipal advisory capacity at the MHRR's Regional Centres.

Task N°	Task	Description	Responsible	Duration	Deadline
1.	Streamline MHRR-SCDPR relationship, emphasising SCDPR policy co-ordination role	Revise the State Law on DPs and Refugees Revise the Book-of-Rules of the SCDPR	MHRR proposes COM prepares draft amendments BIH Parliament approves	6 months	10/2005
2.	Strengthen the role of MHRR	Revise MHRR Book-of-Rules to create a two-way system of communication between MHRR and its regional centres. RC will monitor the situation in the field and report to the MHRR MHRR provides guidance for monitoring	MHRR and Regional Centres	6 months	10/2005
3.	MHRR to elaborate policies on reintegration	MHRR (Sector for Return), relying on the input from the RCs, prepares and drafts policies to facilitate reintegration, covering different aspects (job creation, economic and social rights)	MHRR and Regional Centres	On-going	12/2005
4.	Create advisory capacity for municipalities	Revise MHRR Book-of-Rules to include the Regional Centres and a specifically trained advisory service for municipalities MHRR advises municipalities in drafting projects	MHRR – External trainers for a «train the trainers programme»	3 months	12/2005

**Recommendation:** Entities cede policy-making role to the MHRR voluntarily and participate in the policy preparation process through the SCDPR.

Task N°	Task	Description	Responsible	Duration	Deadline
1.	Entity Ministers to pass internal regulation (instruction, directive) that future policy making will be done under the responsibility of the MHRR and that MHRR regulations should be implemented by the ministries	Internal regulation for the entity ministries, instructing the units of each ministry that future policies and directives of the MHRR are directly applicable by them.	Competent entity ministries in co-operation with the MHRR	2 months	06/2005
2.	Entity Ministers participate in the SCDPR and implement those initiatives that are within their ambit.	Entity Ministers commit to attendance	Entity Ministers	Until 2006	Immediate

**Recommendation:** MHRR to prepare an updated action plan for the implementation of the Action 7 Strategy on an annual basis – MHRR to develop a result-oriented monitoring Department.

Task N°	Task	Description	Responsible	Duration	Deadline
1.	Appointment of working groups to prepare annual action plan	MHRR appoints a team with the participation of entities and the international community Preparation of annual action plan (recurrent)	MHRR entity ministries	2 months	06/2005
2.	Adoption of action plan	SCDPR adopts action plan	SCDPR	1 SCDPR session	07/2006

3.	Monitoring Department for MHRR	MHRR creates a results oriented monitoring department within the Sector for Return	MHRR, with the support of external trainers	5 months	09/2006
4.	MHRR and SCDPR review progress	SCDPR with the input of the entities and RCs reviews progress in implementing the annual action plan	SCDPR RCs	Every SCDPR session	12/2006

**Recommendation:** Position of Director of the RF should be separated from the current constitutional arrangements.

Task N°	Task	Description	Responsible	Duration	Deadline
1.	Exclude position of RF Director from ethnic balance mechanism	Amend Article 24a, 2nd paragraph, of the State Law on DPs and Refugees	MHRR prepares draft COM proposes BIH Parliament adopts	6 months	10/2005

**Recommendation:** SCDPR to be strengthened through the formation of working groups to produce necessary documentation for decision-making.

Task N°	Task	Description	Responsible	Duration	Deadline
1.	Creation of SCRPD Working Groups	SCDPR identifies the thematic areas of the working groups. At least one working group should be dedicated to reintegration and sustainability of return, another working group should be the current Co-ordination Team with a proper secretariat.	SCDPR; MHRR, Sector for Support	1 month	05/2005
2.	Resource Input	After formulating the needed Working Group member profiles, the SCDPR identifies competent staff in the MHRR and entity ministries	SCDPR, Entities, Brcko District, MHRR	4 months	08/2005
3.	Working Groups activities	Working Groups meet before each SCDPR session, define their work plan for the next period and report back to the SCDPR	SCDPR Working Groups	Every SCDPR session	On-going

## Human Resources

**Recommendation:** At the state-level, the Ministry for Human Rights and Refugees should accelerate the implementation of the recommendations in the IBHI study; most importantly to strengthen the MHRR through hiring specialist staff for all Departments

Task N°	Task name	Description	Responsible	Duration	Deadline
1.	Priorities defined	Define priorities related to strengthening human resources within MHRR departments	MHRR	2 months	06/2005
2.	Identification of potential employees	Identify potential candidates for employment in the MHRR, through open and transparent procedure	MHRR	3 months	09/2005
3.	Opening employment procedure	Request the Civil Service Agency to open employment procedure	MHRR	3 months	12/2005

**Recommendation:** At entity-level, the RS MRDP and the FBiH MDPR should ensure that the nationality of staff in all sectors and departments of the ministries reflects the national balance of the 1991 Census, in accordance with the 2002 Decision on the Implementation of the Constituent Peoples Decision of the Constitutional Court.

Task N°	Task name	Description	Responsible	Duration	Deadline
1.	Plan to implement decision of the Constitutional Court	Prepare plan for the implementation of the Constitutional Court's decisions	RS MRDP FBiH MDPR	3 months	07/2005
2.	Implementation of the Constitutional Court's decision	Implement the plan to achieve adequate ethnic balance	RS MRDP FBiH MDPR	5 months	12/2005

**Recommendation:** The RS MRDP is advised that it is both possible and desirable to reduce staffing levels by 30% (45 persons).

Task N°	Task name	Description	Responsible	Duration	Deadline
1.	Strategy for reducing the number of OMIs	Define the timing and ways of closing down 9 OMIs	RS MRDP	3 months	08/2005
2.	Closing OMIs and reducing the number of staff	Close down 9 OMIs and transfer all tasks to the remaining five OMIs ( Banja Luka, Bijeljina, Dobo, Trebinje and East Sarajevo)	RS MRDP	6 months	12/2005
3.	Definition of future responsibilities of the RS MRDP, including additional responsibilities in the fields of development, social affairs and human rights	Define the role of the remaining OMIs and their transformation into field departments of the MRDP, in line with the changed mandate of the MRDP	RS MRDP	6 months	12/2005

**Recommendation:** The MHRR should broaden the mandate of the RCs to include support to local administrations, in particular of municipalities, with regard to *inter alia*, the preparation of project proposals, information collection on and monitoring of the sustainability of returns (pensions, health, education, employment), and to develop co-operation with NGOs.

Task N°	Task name	Description	Responsible	Duration	Deadline
1.	Adoption of a new organisational scheme with a wider role of the RCs	Define the new role of the Regional Centres with their broadened role clearly indicated	MHRR	4 months	09/2005
2.	Strengthening the RCs	Define needs for personnel in accordance with the new role of the RCs	MHRR	3 months	12/2005
3.	Definition of new RC procedures	Define the operational procedures of the RCs with a broader mandate (human rights monitoring and advising municipalities)	MHRR	4 months	04/2006

**Recommendation:** The MHRR is advised that more attention should be given to enhancing both the level and capacities of the RC staff. Capacity building through training should, among others focus on project cycle management and procurement.

Task N°	Task name	Description	Responsible	Duration	Deadline
1.	Municipality assessment	Define fields of action in which RCs might help the work of municipal administrations	Regional Centres	4 months	09/2005
2.	Training plan for RCs personnel	Define training needs in accordance with RCs broadened mandate	Sector for Projects and Programming	2 months	11/2005
3.	Engagement of consulting and training organisations to carry out training plan	Through an open and transparent procedure select the most favourable offer from training and consulting organisations	Sector for Projects and Programming	1 month	12/2005

**Recommendation:** The Council of Ministers of BiH are advised that part of knowledge and skills developed in the FBiH MRDP and RS MRDP will be useful for the MHRR in both the long and short term.

Task N°	Task name	Description	Responsible	Duration	Deadline
1.	Adoption of procedures for additional criteria to be followed when recruiting staff	Create procedures under which experience and skills gained in entity ministries will be verified and taken into account whilst recruiting MHRR staff	CoM MHRR	5 months	10/2005
2.	Drawing up a list of qualified personnel from entity ministries	Pre-selection of qualified entity ministry personnel for possible recruitment by the MHRR	MHRR Entity ministries	2 months	12/2005

## Return Fund

**Recommendation:** It is considered that the current RF arrangements need to be significantly strengthened at relevant administration levels, i.e. the state and the municipal ones. The EC is advised to consider providing technical assistance to the RF and the MHRR to establish sound financial management capacity.

Task N°	Task	Description	Responsible	Duration	Deadline
1.	Project Preparation	Prepare the ToR for the "Technical Assistance to the RF" project to be funded under the CARDS 2005 programme	ECD MHRR RF	3 months	07/2005
2.	Tender Procedure	Undertake and complete the international restricted tender procedure for implementation of the "Technical Assistance to the RF" project	ECD	9 months	03/2006
3.	Project implementation	Implement the "Technical Assistance to the RF" project	Contractor RF ECD	12 months	03/2007
4.	Book-of-Rules	Design the organisational and functional set-up of the RF (the Book-of-Rules)	Contractor RF	2 months	06/2006
5.	Approval of Book-of-Rules	Obtain approval of the organisational and functional set-up of the RF (the Book-of-Rules)	RF Director	1 month	07/2006



6.	Design of Procedure Manual	Elaborate the tasks and responsibilities for management of the projects through the RF (Procedure Manual)	Contractor	3 months	09/2006
7.	Approval of Procedure Manual	Obtain approval of the Procedure Manual	RF Director	1 month	10/2006
8.	HRD	Prepare the HRD plan for the RF staff on the basis of the designed organisational structure and functions.	Contractor	1 month	11/2006
9.	Training	Provide formal and on-job training to the RF, MHRR, RC staff on the management of funds (i.e., EC project cycle management, procurement procedures and monitoring and evaluation)	Contractor/RF/MHRR	4 months	02/2007
10.	Information system	Design and install the Information Management System to collect, analyse and utilise data on the projects funded through the RF	Contractor/RF	6 months	02/2007
11.	On-job support	Provide on-job assistance to the RF, MHRR staff in management of pilot projects	Contractor	5 months	02/2007
12.	Preparation of internal audit	Elaborate internal audit function/procedures	Contractor	5 months	09/2006
13.	Establishment of internal audit unit	Take decision on establishment of the internal audit unit within the RF/or within a supervisory institution (depending on the decision on the long term future of the RF)	RF	5 months	02/2007
14.	Audit mission	Perform internal and external audit of the fund management system	ECD RF	3 months	06/2007
15.	Accreditation	Agree on channelling funds through the RF	CoM ECD	3 months	08/2007

## ACTION PLAN 2007-10

### Rationalisation and Mandate Shifts

The long-term Action Plan focuses on the mandate shifts of the state and entity level ministries, including cost cutting exercises at entity level. In particular, this Action Plan reflects:

- the measures necessary to transform the current MHRR into a social affairs ministry, with the capacity to assist municipal capabilities development;
- the finalisation of the closing down of the reconstruction arms of the entity level ministries; and
- related matters.

### Organisation, Competences and Functions of Key Institutions

**Recommendation:** To widen the RCs' mandate to support municipalities to prepare project proposals for sustainable return. The RCs are to be given a higher degree of freedom and a wider mandate. The MHRR to

enhance services and the capacities of RC Staff; including training and capacity building focussing on project cycle management, procurement and basic human rights monitoring.

Task N°	Task	Description	Responsible	Duration	Deadline
1.	Broadening the RCs' Mandate	As return issues would become less burning, the role of the RCs should progressively move towards providing assistance to municipalities in developing their return-related and social programmes and assisting them in project preparation and implementation. Adequate training, possibly abroad, should be given to RC personnel, with a focus on project cycle management, procurement and basic human rights monitoring	MHRR	Ongoing	2007
2.	RCs to be given more freedom	RCs should be supported by adequate budget allocations, from a permanent budget line.	MHRR	Ongoing	2007

**Recommendation:** The MHRR to develop a social housing policy based on a means test and aiming to address current misallocations of housing space.

Task N°	Task	Description	Responsible	Duration	Deadline
1.	Testing entitlement to social housing	MHRR develops a means test to verify eligibility of potential beneficiaries of social housing	MHRR – Sector for Social Housing Policy	On-going	After 2007
2.	Defining criteria for allocation of social housing	MHRR defines the criteria for municipalities to allocate social housing	MHRR – Sector for Social Housing Policy	3 months	After 2007
3.	Monitoring the work of municipalities	MHRR monitors the work of the municipalities concerning the allocation of social housing units and the choice of beneficiaries	MHRR Regional Centres	On-going	As soon as possible

**Recommendation:** SCR to become a proto-sectoral monitoring committee (SMC).

Task N°	Task	Description	Responsible	Duration	Deadline
1.	Definition of the functions of an SMC	In the light of then current practice in other Candidate Countries, define the functions of the SMC and its relation with the Joint Monitoring Committee and relevant authorities	MHRR (or its successor ministry)	4 months	06/2006
2.	Development of procedures, including monitoring and evaluation	Develop the procedures of the SCDPR in the light of its transformation into an SMC	MHRR (or its successor ministry) in co-operation with the Directorate for European Integration (DEI)	6 months	12/2006
3.	Adoption of procedures	Guide the process of adoption of procedures through the CoM and Parliament	DEI	6 months	06/2007
4.	Training programme on procedures	Develop and implement training programme on SMC-related procedures, including monitoring and evaluation.	DEI	6 months	12/2007

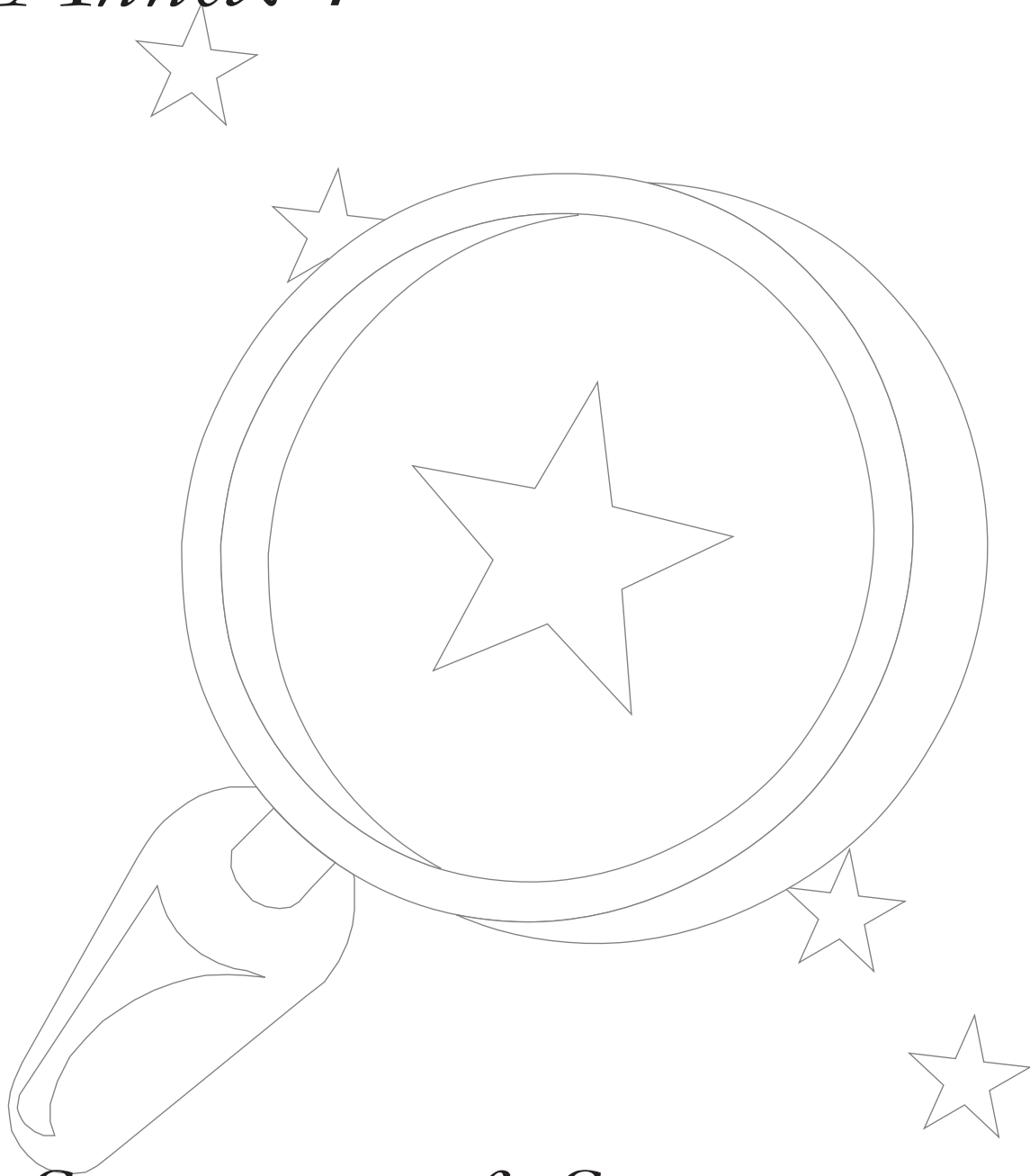
## Return Fund

**Recommendation:** The Council of Minister of BiH is advised that future strategy development in the return sector should look at the alternative scenarios for the institutional set-up of the Return Fund and consider them once again in the light of evolving events, including entering into an Stabilisation and Association Agreement with the EU and the likely introduction of “de-centralised” EU assistance programmes in BiH from 2007 onwards. Whichever choice is made, the *acquis communautaire* is to be taken into account.

Task N°	Task	Description	Responsible	Duration	Deadline
1.	Inter service consultation	Undertake consultations with the BiH institutions, the ECD and other donors on their intentions to support return related projects in 2007-10	RF/MHRR	6 months	09/2005
2.	Draft Law amendments	Elaborate draft amendments to the “Law on Refugees from BiH & DPs within BiH” regarding the new institutional set-up of the RF	RF/MHRR (depending on RF’s placement)	3 months	12/2006
3.	Amendments to the Law	Submit the draft amendments to the “Law on Refugees from BiH & DPs within BiH” to the Council of Ministers of BiH	MHRR/RF (depending on RF’s placement)	3 months	04/2006
4.	Adoption of Law amendments	Submit draft amendments to the “Law on Refugees from BiH & DPs within BiH” to Parliament	CoM	4 months	08/2006



# *Annex 1*



## *Summary of Survey Results*



## *Annex 1 – Summary of Survey Results*

Municipality	Konjic
Administrative structure	Dept for Social Policy, Refugees and DPs
Legal framework/ Public Calls	Beneficiary selection on the basis of both the State directive and the FBiH Law on Displace and Expelled Persons and Refugees
Organisational Issues	Contacts with State and FBiH ministries according to needs, but not formalised. RC referred to.
Project Planning & Monitoring	No project planning and monitoring function.
Re-integration Issues	Returnees are generally only self-employed. Pensions mostly obtained in place of displacement.
Database Information Flow	Own database; shared with others when required.
Other	Merge Dept for Social Policy, Refugees and DPs with Dept for Development and Reconstruction.
Municipality	Bugojno
Administrative structure	Dept for Return and Reconstruction
Legal framework/ Public Calls	Beneficiary selection on the basis of both the State directive and the FBiH Law on Displace and Expelled Persons and Refugees
Organisational Issues	Contacts with State and FBiH ministries according to needs, but not formalised. No mention of RC.
Project Planning & Monitoring	No planning function. Monitoring (technical) function, when required. No reporting system.
Re-integration Issues	Returnees are generally only self-employed. Pensions mostly obtained in place of displacement. Schools separated; depending on nationality.
Database Information Flow	Own database; shared with cantons monthly and with others upon request. See the need for a unified database.
Other	Too many intermediates on projects; municipalities should have main responsibility.
Municipality	Travnik
Administrative structure	Dept for DPs, Refugees and Reconstruction. Municipal council appoints president and member of a Board for refugees, DPs and Diaspora.

Legal framework/ Public Calls	Beneficiary selection by State directive, and FBiH and cantonal legislation. Three public calls in 2004: from state, canton and RS (only targeting Serb returnees)
Organisational Issues	Contacts with State and FBiH ministries according to needs, but not formalised. No mention of RC.
Project Planning & Monitoring	No planning function. No reporting system in place, only technical monitoring.
Re-integration Issues	Returnees are generally only self-employed. Pensions mostly obtained in place of displacement.
Database Information Flow	Own database; shared with others when required. See the need for a unified database.
Other	
<b>Municipality</b>	<b>Stolac</b>
Administrative structure	Department for Social Affairs
Legal framework/ Public Calls	Beneficiary selection by FBiH legislation (Amended Law on DPs and Refugees).
Organisational Issues	Weak and not formalised contacts with State only, through RC. Good relations with Entity and canton. Coordination problems with other municipal departments (Dept of Building and Reconstruction).
Project Planning & Monitoring	No planning function. No monitoring function, only technical checks prior to hand-over, for the purpose of municipality license.
Re-integration Issues	Fourteen returnees employed by municipality (out of 60). None in other public firms or institutions. Separate primary schools and health centres (Croat and Bosniac)
Database Information Flow	Own database; shared with others when required.
Other	
<b>Municipality</b>	<b>Jajce</b>
Administrative structure	Department for housing-communal affairs, reconstruction, development and refugees
Legal framework/ Public Calls	Four public calls for applications (two from FBiH, two from the canton).
Organisational Issues	Weak and not formalised contacts with State only, through RC. Contact with FBiH ministry in relation to projects.
Project Planning & Monitoring	No planning function. No monitoring function, only technical checks prior to hand-over, for the purpose of municipality license.
Re-integration Issues	Separate primary schools and health centres (Croat and Bosniac). Returnees are generally only self-employed. Pensions mostly obtained in place of displacement.
Database Information Flow	Own database; shared with others when required
Other	
<b>Municipality</b>	<b>Kupres</b>
Other	No questionnaire returned, in spite of several visits
<b>Municipality</b>	<b>Mostar</b>
Administrative structure	Department for Social Affairs
Legal framework/ Public Calls	Beneficiary selection by State directive Federation of BiH and cantonal legal framework
Organisational Issues	Weak and not formalised contacts with State only, through RC. Contact with FBiH ministry in relation to projects.
Project Planning & Monitoring	No planning function





	Technical checks of housing units
Re-integration Issues	No information provided from municipality officials
Database Information Flow	Own database; shared with others when required
Other	Consider the lack of unified database as important problem for return
<b>Municipality</b>	<b>Gradacac</b>
Administrative structure	Department for Refugee and DPs.
Legal framework/ Public Calls	Federation of BiH and cantonal legal framework FBiH MDPH procedures are applied for beneficiary selection.
Organisational Issues	No relevant comments provided.
Project Planning & Monitoring	No planning function Technical checks of housing units
Re-integration Issues	Pensions mostly obtained in place of displacement
Database Information Flow	No relevant comments provided.
Other	
<b>Municipality</b>	<b>Bosanski Petrovac</b>
Administrative structure	Return Department
Legal framework/ Public Calls	No relevant data provided.
Organisational Issues	No relevant comments provided.
Project Planning & Monitoring	No project planning and monitoring function.
Re-integration Issues	No relevant comments provided.
Database Information Flow	No relevant comments provided
Other	
<b>Municipality</b>	<b>Tuzla</b>
Other	No relevant information provided.
<b>Municipality</b>	<b>Lukavac</b>
Other	No relevant information provided.
<b>Municipality</b>	<b>Kakanj</b>
Administrative structure	Department for Soldiers, Invalids Protection, Refugees, DPs and Returnees; Department for Reconstruction
Legal framework/ Public Calls	Federation of BiH and cantonal legal framework FBiH MDPH procedures are applied for beneficiary selection.
Organisational Issues	Weak contact reported with State and entity ministries. No mention of RC
Project Planning & Monitoring	No project planning and monitoring function
Re-integration Issues	Pensions mostly obtained in place of displacement
Database Information Flow	Own database; shared with canton and FBiH ministries upon request.
Other	
<b>Municipality</b>	<b>Drvar</b>
Other	No questionnaire returned; in spite of several visits.
<b>Municipality</b>	<b>Prozor</b>
Administrative structure	Department for Social Affairs and General Governance
Legal framework/ Public Calls	FBiH and cantonal legal framework
Organisational Issues	No contacts reported with BiH MHRR No mention of RC. Poor feedback from entity level reported.

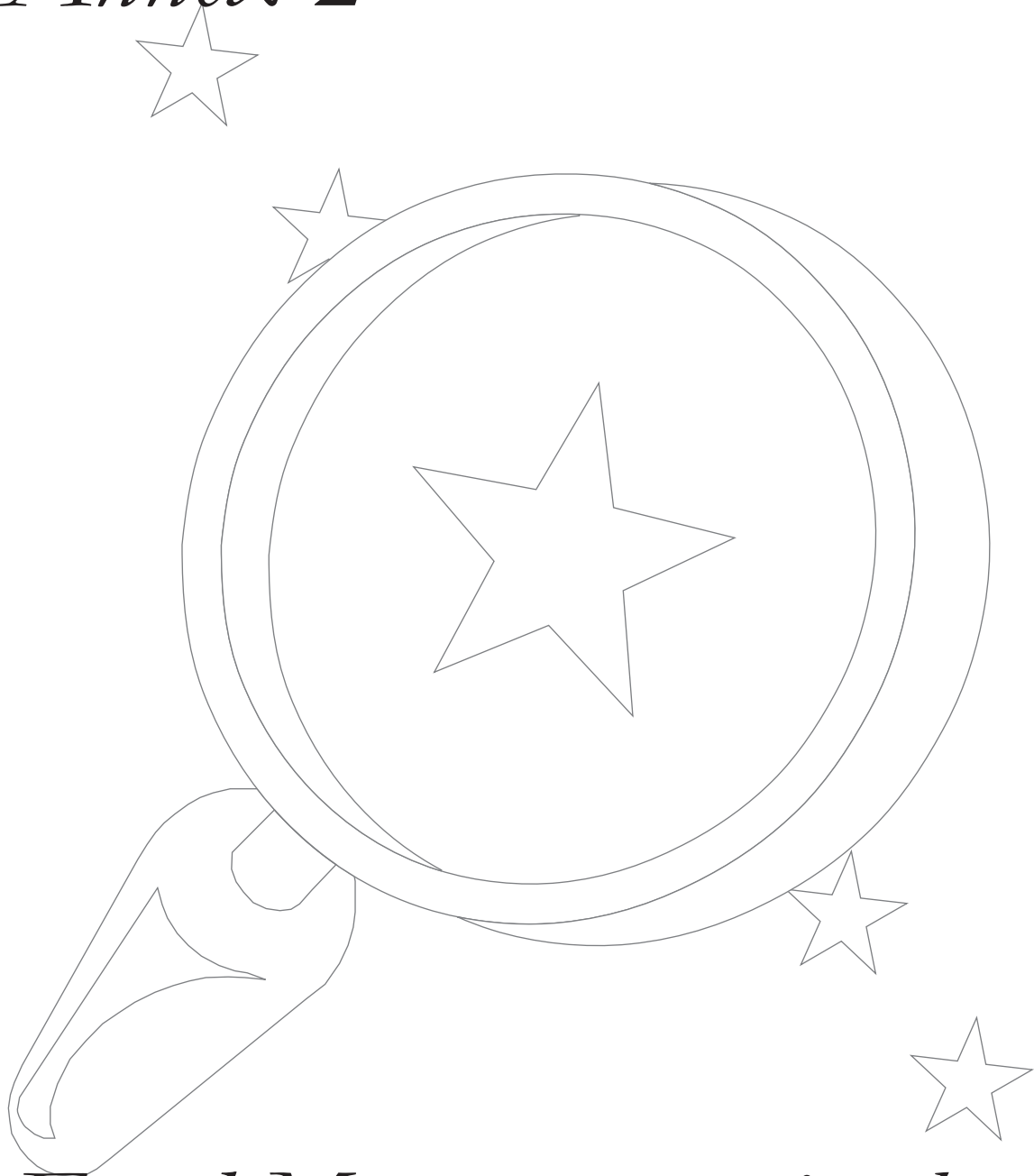
Project Planning & Monitoring	No data provided.
Re-integration Issues	School problems; two schools under one roof Pension problems
Database Information Flow	Own database shared with others upon request.
Other	
<b>Municipality</b>	<b>Sanski Most</b>
Administrative structure	Return Department
Legal framework/ Public Calls	FBiH and cantonal legal framework
Organisational Issues	No data provided.
Project Planning & Monitoring	No project planning and monitoring function
Re-integration Issues	No data provided.
Database Information Flow	No data provided.
Other	
<b>Municipality</b>	<b>Rogatica</b>
Administrative structure	No municipal structure dealing with return; an urbanisation department, to be created this year, will be responsible.
Legal framework/ Public Calls	RS legal framework.
Organisational Issues	Contacts with BiH MHRR through RC. Contacts on projects with FBiH ministry, as RS are not active on returnee projects.
Project Planning & Monitoring	No project planning and monitoring function.
Re-integration Issues	Pension problems.
Database Information Flow	No database.
Other	Rogatica is one of the 30 priority municipalities for under the BiH MHRR 's state/municipality delivery system. There are problems with regard to the formation of the municipal commission.
<b>Municipality</b>	<b>Trebinje</b>
Administrative structure	No municipal structure dealing with return.
Legal framework/ Public Calls	RS legal framework
Organisational Issues	No contact with MHHR; only with entity institutions.
Project Planning & Monitoring	No project planning and monitoring function.
Re-integration Issues	Pension problems.
Database Information Flow	No data provided.
Other	
<b>Municipality</b>	<b>Zvornik</b>
Administrative structure	Department for Refugees and DPs.
Legal framework/ Public Calls	RS legal framework
Organisational Issues	No data provided.
Project Planning & Monitoring	No project planning and monitoring function
Re-integration Issues	Pensions mostly obtained in place of displacement
Database Information Flow	No data provided
Other	
<b>Municipality</b>	<b>Nevesinje</b>
Other	No questionnaire returned.
<b>Municipality</b>	<b>Bosanski Brod</b>

Other	No questionnaire returned
<b>Municipality</b>	<b>Bosanska Gradiska</b>
Administrative structure	Return Department
Legal framework/ Public Calls	RS legal framework
Organisational Issues	Poor contact with state BiH MHRR; RC not referred to
Project Planning & Monitoring	No project planning and monitoring function
Re-integration Issues	employment problems Pensions mostly obtained in place of displacement
Database Information Flow	No information maintained
Other	
<b>Municipality</b>	<b>Doboj</b>
Administrative structure	Return Department
Legal framework/ Public Calls	RS legal framework; Two public calls (one from the RS MRDP and one from an international NGO)
Organisational Issues	No contact with state BiH MHRR; no mention of RC made. Good contact with entity institutions Problems with regard to intra-municipality coordination
Project Planning & Monitoring	No planning function Monitoring limited to technical checks of construction Assessment of housing unit damage level
Re-integration Issues	Returnees are self-employed. Pensions mostly obtained in place of displacement
Database Information Flow	Own database; not linked.
Other	Problems: money, training and equipment
<b>Municipality</b>	<b>Foca</b>
Administrative structure	Return Department
Legal framework/ Public Calls	RS legal framework
Organisational Issues	Frequent contacts with BiH MHRR; through RC
Project Planning & Monitoring	No project planning and monitoring function Assessment of housing unit damage level
Re-integration Issues	employment problems for returnees Pensions mostly obtained in place of displacement
Database Information Flow	No database maintained
Other	
<b>Municipality</b>	<b>Bratunac</b>
Administrative structure	Department for Refugees and DPs
Legal framework/ Public Calls	RS legal framework
Organisational Issues	Contact with BiH MHRR; through RC
Project Planning & Monitoring	No planning function; Monitoring limited to technical checks of construction Assessment of housing unit damage level
Re-integration Issues	Returnees are self-employed. Pensions mostly obtained in place of displacement
Database Information Flow	Own database; not linked.
Other	



Municipality	Modrica
Other	No questionnaire returned
Municipality	Srebrenica
Administrative structure	Department for Reconstruction and Return
Legal framework/ Public Calls	RS legal framework
Organisational Issues	Contact with BiH MHRR; No reference made to RC
Project Planning & Monitoring	Limited planning function in place; Monitoring limited to construction quality
Re-integration Issues	Returnees are self-employed. Pensions mostly obtained in place of displacement
Database Information Flow	Own database; not linked
Other	More implementation powers to municipalities desired
Municipality	Visegrad
Other	Not done
Municipality	Prijedor
Other	Not done
Municipality	Banja Luka
Administrative structure	Return Department
Legal framework/ Public Calls	RS legal framework
Organisational Issues	Weak contact with BiH MHRR, through RC Poor intra-municipal coordination
Project Planning & Monitoring	No project planning and monitoring function
Re-integration Issues	Returnees are unemployed; Pensions mostly obtained in place of displacement
Database Information Flow	No data provided
Other	
Municipality	Kotor Varos
Administrative structure	No dedicated Return department; two officials from another department deal with return issues
Legal framework/ Public Calls	RS legal framework
Organisational Issues	Weak contact with BiH MHRR; no mention of RC; Good cooperation with RS MRDP
Project Planning & Monitoring	No project planning and monitoring function
Re-integration Issues	Returnees are unemployed. Pensions mostly obtained in place of displacement.
Database Information Flow	No data provided.
Other	Staff training necessary

# *Annex 2*



## *Fund Management in the Return Sector*



## *Annex 2 – Fund Management in the Return Sector*

It is assumed that BiH will continue activities to enable EU accession and that the structures and procedures will be expected to evolve in accordance. Therefore the European Commission procedures for management of public funds in pre-accession countries have been taken as a reference for the assessment of the existing system particularly the European Commission Practical Guide to Contract Procedures (PRAG) published in May 2003 has been used.

The analysis of Functions and Procedures for management of public funds in BiH is performed on the basis of relevant Laws and regulations, notably the Council of Ministers' of BiH Decision on Public Procurement Procedures regarding Goods, Services and Works, the Instructions on the Implementation of the Procedure for Selection of Beneficiaries of the Housing Units Reconstruction Aid Programme for Return passed by the BiH MHRR on 6<sup>th</sup> April 2004 and the Books-of-Rules of BiH institutions.

During this analysis the two systems in BiH have been considered a) implementation of the joint projects through the Return Fund and b) the procedures developed and proposed under the SUTRA projects implemented by UNDP. We have discussed the conformity of these domestic procedures with the European Commission's PRAG procedures under the comments column.

I	FUNCTION REQUIRED BY EC PRAG UNDER DECENTRALISED IMPLEMENTING SYSTEM	FUNCTION REQUIRED BY BIH LEGISLATION/BOOKS-OF-RULES	COMMENTS
1	CONTRACTING AUTHORITY (PRAG, May 2003).	RETURN FUND	
1.1	The Contracting Authority appointed by the government of the beneficiary country, in the case of decentralised programmes.  In all cases, the Contracting Authority assumes full responsibility for its actions and will be accountable for these in any subsequent audit or other investigation.	a) The Manager of the Return Fund is liable for the financial realisation of the return/reconstruction projects, approved by the decision of the State Commission of Return. [Book-of-Rules, October 2004]  b) Under the SUTRA project UNDP is the signatory of the Contract with the European Commission.	a) The respective liabilities of the Manager of the RF and the SCDPR are not distinctively defined.  b) UNDP acts as the Contracting Authority with full responsibility towards the European Commission
1.2	The Contracting Authority must submit the annual work programmes, call for proposals notices and Guidelines for Applicants to the European Commission	a) The Work Programme of the Return Fund is prepared in consultation with the Ministry of Finance and Treasure.  b) n/a	a) The BiH procedure conforms to the EC principles.

	for approval.		
1.3	On the basis of decisions thus approved, and in close consultation with the European Commission, the Contracting Authority is responsible for publishing annual work programmes.	a) The Work Programme is sent for approval to the State Commission of Returnees and DPs (SCDPR) and to the Cabinet of Ministers (CoM) of BiH. b) n/a	a) The decision making power regarding the WP is not clearly determined, i.e. who has the supremacy in the approval process.
1.3	The Contracting Authority is responsible for issuing calls for proposals.	a) The Municipalities for implementation of joint projects are approved by the SCDPR. The Municipalities launch the Call for Proposals following the SCDPR's approval b) The Municipalities for implementation of the SUTRA project are approved by the SCDPR. The Municipalities launch the Call for Proposals following the SCDPR's approval.	a) and b) The RF has no decision making power regarding the process.
1.4	The Contracting Authority is responsible for receiving proposals.	See 4.2 – 4.4.	a) and b) The RF has no decision making power regarding the process.
1.5	The Contracting Authority is responsible for chairing evaluation sessions and deciding on the results of calls for proposals. The Contracting Authority must submit the Evaluation Report, details of the proposed grants and, where appropriate, the draft contracts to the European Commission for endorsement.	See 4.2 – 4.4.	a) and b) The RF has no decision making power regarding the process.
1.6	Once the grant has been approved, the Contracting Authority will sign the contract and notify the European Commission accordingly. As a general rule, the European Commission will be represented as an observer when proposals are opened and evaluated and must always be invited.	a) The Memorandum of Understanding (MoU) is signed between RF, BiH MHRR of BiH, MDPR of FBiH, MRDP of RS, Brčko District and municipalities regarding the implementation of joint projects, whereas the municipality is responsible for selection of beneficiaries, tendering and implementation of projects, the BiH MHRR is responsible for monitoring and the RF will execute payments. b) Under the SUTRA project there are agreements signed between UNDP, the Municipality and the final beneficiary. No payments are executed on this basis.	a) The MoU does not clearly determine the respective liabilities of parties: there is ambiguity regarding the responsibilities of the entities and none is assuming the overall responsibility for implementation of projects. b) While the project encourages more involvement of the Municipalities the UNDP acts as the Contracting Authority vis-à-vis the contractor.
2	<b>GRANT BENEFICIARY</b>	<b>BENEFICIARY</b>	<b>COMMENTS</b>
2.1	The body signing a grant contract is known as the grant beneficiary and should not be confused with the final beneficiary of the operation which is generally the target group or the people living in the country where the operation is taking place. A grant beneficiary is responsible for implementing the operation and retains ownership of its results.	a) A Beneficiary is a budgetary entity who orders the good, services or works to be performed (CoM of BiH, Decision on Public Procurement Procedures, 4.11.2004). b) Under the SUTRA project UNDP is the signatory of the grant contract with the European Commission.	a) For the purpose of implementation of joint projects the municipalities are considered to be de-facto beneficiaries. b) Formally UNDP is the beneficiary of the EC direct grant contract, although de-facto the municipalities are considered as grant beneficiaries.
2.2	If the implementation of an action which is supported by a grant from the Community in the context of external actions requires procurement by the grant beneficiary, the contract must be awarded to the most economically advantageous tender (i.e., the tender offering the best price-quality ratio), in accordance with the prin-	a) The Municipality is allowed to choose whether to subcontract the implementation to the commercial operator or to implement itself. In case of subcontracting the most favourable offer is considered to be an acceptable offer which satisfies completely the kind, quality and characteristics of	a) The procedure for selection of the implementation method is not regulatory determined. This uncertainty may lead to question whether the best value for money principle was always ensured. Also, the Works Contractor, the Engineer Representative (i.e. supervi-



	<p>ciples of transparency and fair competition for potential contractors and taking care to avoid any conflicts of interest.</p>	<p>required goods, services or works.</p> <p>b) Under the SUTRA project the Evaluation Committee performs selection of the Contractor. The Contract is signed between the Municipality, the Contractor and UNDP. Payments are executed directly by UNDP to the Contractor.</p>	<p>sor) and the Employer represent the same legal entity, which should not be the case under the standard FIDIC rules.</p> <p>b) The procedure is designed to give more involvement to the Municipalities. However, UNDP acts as de-facto Contracting Authority vis-à-vis the Contractor since it executes the payments to the latter.</p>
2.3	<p>The tender documents must be drafted in accordance with best international practice. Grant beneficiaries may use the models (in particular the tender dossier) published on the Commission's web site relating to external actions.</p>	<p>a)The beneficiary is requested to:</p> <p>issue an announcement (in Official Gazette, at least 2 newspapers in FBiH and RS and international journal;</p> <p>prepare appropriate documents on conditions and terms of procurement;</p> <p>set place, deadline for submission of bids;</p> <p>inform bidders on results;</p> <p>conclude a contract with most favourable bidder</p> <p>b) Reportedly the SUTRA project follows the BiH procurement procedures.</p>	<p>a) In principle the BiH tendering procedures correspond to the EC ones. In practise, the quality of the tender documentation varies from good to very poor, and it would help if there were standard forms applied.</p> <p>b) Reportedly the SUTRA project follows the BiH procurement procedures.</p>
3	<b>SUBCONTRACTOR</b>	<b>EXECUTOR</b>	<b>COMMENTS</b>
3.1	n/a	<p>Executor – a person who has been accepted according to the contract to perform the agreed works (CoM of BiH, Decision on Public Procurement Procedures, 4.11.2004)</p>	n/a
II	<b>PROCEDURES DEFINED BY EC PRAG UNDER DECENTRALISED IMPLEMENTATION SYSTEM</b>	<b>PROCEDURES DEFINED BY THE PROCUREMENT LAW/LOCAL PROCEDURES</b>	<b>COMMENTS</b>
4	<b>LAUNCHING CALL FOR PROPOSALS FOR GRANT APPLICATIONS</b>	<b>LAUNCHING CALL FOR PROPOSALS OF GRANT BENEFICIARIES FOR RECONSTRUCTION PROJECTS (BiH MHRR instructions 6/04/2004)</b>	<b>COMMENTS</b>
4.1	<p>The annual programme must be published, by budget heading or programme, on the Internet site of the Contracting Authority (or any other appropriate media) and of the Commission as appropriate.</p> <p>The annual work programme must specify the legal basis, the objectives, the schedule of calls for proposals with the indicative amount and the results expected.</p>	<p>a) The BiH MHRR directly informs the selected municipalities regarding the approval.</p>	<p>It would be useful to have information on the selected municipalities published along with the results from the previous years (with a proper care taken regarding the individual names, etc.) Also it would help improve public relations of the ministries.</p>
4.2	<p>The Guidelines for Applicants (which include an Application Form and other annexes) explain the purpose of the Call for Proposals, the rules regarding the eligibility of applicants and partners, the types of action and costs which are eligible for financing, and the evaluation criteria. They also contain instructions on how to fill in the application form, what to annex to it and what procedures to follow for applying. They give information on the evaluation process that will follow (including an indicative timetable) and the contractual conditions which will apply to</p>	<p>a) After the approval given to the reconstruction aid programme for the municipal territory, the municipality shall publish a public call inviting the aid beneficiaries whose pre-war place of residence was in the municipal territory to file their requests.</p> <p>The public call shall be posted on the municipal bulletin board and no less than one daily newspaper in each Entity. Municipalities shall exchange information with other municipalities for which they have information that the largest number of beneficiaries lives</p>	<p>In principle the BiH selection procedures are in line with those applied by the EC.</p>

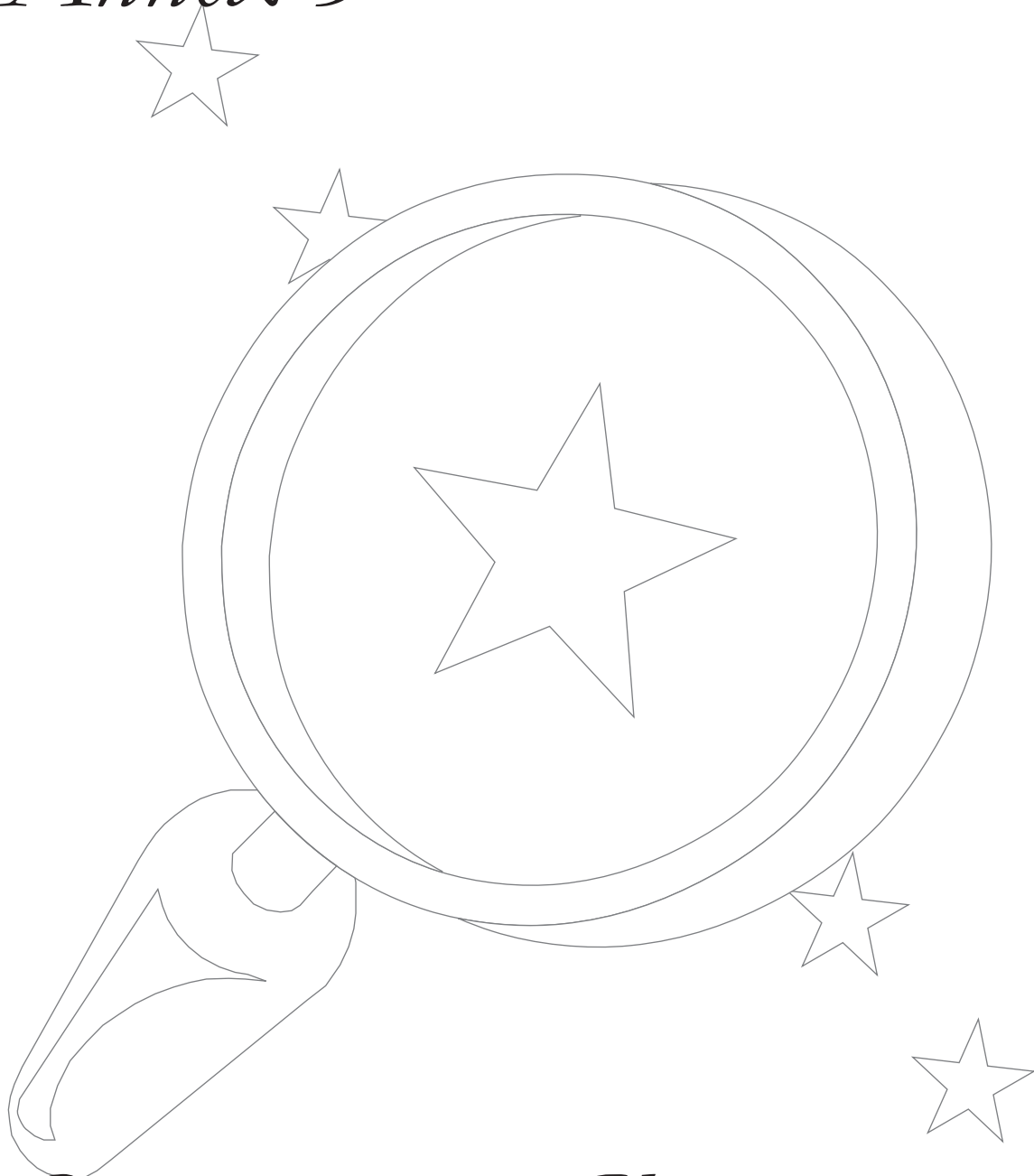
	successful applicants	there. The public call information must include: General and special criteria for selection of beneficiaries; Total value of the project and round number of housing units planned for reconstruction. b) Reportedly the SUTRA project follows the BiH procedures. UNDP provides de-facto approval of the selected beneficiaries.	
4.3	The minimum period between the date of publication of the Call for Proposals and the deadline for receipt of proposals is 90 days	a) The public call lasts not less than 30 days from the day of publication in daily newspaper. b) Reportedly the SUTRA project follows the BiH procedures.	The duration of the BiH public call is somewhat short. It is understood that the project time frame is a limiting factor in case of the SUTRA project.
4.4	Each proposal must be placed in a sealed parcel or envelope.	a) The application along with evidence of meeting criteria shall be delivered to the municipality in a sealed envelope. b) Reportedly the SUTRA project follows the BiH procedures.	The requirements for the applicants are rather strict and one could question the capacity of the latter to meet these without an outside legal assistance.
5	<b>EVALUATION OF THE PROPOSALS RECEIVED UNDER THE CALL FOR PROPOSALS FOR GRANT APPLICATIONS</b>	<b>EVALUATION OF THE PROPOSALS RECEIVED UNDER THE CALL FOR PROPOSALS FOR RECONSTRUCTION</b>	<b>COMMENTS</b>
5.1	Proposals are opened and evaluated by an Evaluation Committee appointed by the Contracting Authority comprising a non-voting Chairman, a non-voting Secretary and an odd number of voting members (minimum of three). The voting members must possess the technical and administrative capacities necessary to give an informed opinion on the proposals. They must represent at least two organisational entities of the Contracting Authority with no hierarchical link between them, unless the call for proposals is organised by a delegation of the European Commission	a) The Beneficiary selection Commission shall be appointed by the Municipal Board. The composition of the Commission shall include the representatives of municipality, civil society (where possible it is necessary to ensure representation of associations of returnees and/or displaced persons) and authorised representative of the donor. The Commission shall distribute the minutes and the records to the competent municipal body for further processing of requests for those beneficiaries who have met the requirements b) Reportedly the SUTRA project follows the BiH procedures.	In principle the BiH procedures are in line with those applied by the EC.
5.2	The evaluation process includes: i) Receipt and registration of the proposal; ii) Opening and drafting Proposal Opening Report; iii) Sending acknowledgement letter; iv) Assessment of administrative compliance and eligibility; v) Assessment of technical and financial quality; vi) Drafting the Evaluation Report to be signed by the Chairman, the Secretary and all voting members of the Evaluation Committee and submitted to the Contracting Authority, which must decide whether or not to accept its recommendations. The Contracting Authority must then submit the Evaluation Report and any award proposals to the European Commission for approval.	a) The Evaluation process includes: opening of applications and registering; verifying of data received from the reconstruction applicant; interviews according with the standard Beneficiary Questionnaire approximate assessment of the damage extent and reconstruction costs by competent municipal body; official note on public infrastructure status; propose the final list of beneficiaries. The Commission shall send the list to BiH MHRR for final review. The Commission shall attach a list of written information on possible assistance in terms of creating incomes and jobs as part of the project. b) Reportedly the SUTRA project follows the BiH procedures.	In principle the BiH procedures are in line with those applied by the EC.



5.3	After the Contracting Authority and the European Commission have given their official approval to the final list of grants to be awarded, the Contracting Authority notifies the successful applicants in writing that their applications have been selected.	a) The final list of beneficiaries shall be posted on the municipal bulletin board with the deadline for appeal. b) Reportedly the SUTRA project follows the BiH procedures.	In principle the BiH selection procedures are in line with those applied by the EC.
5.4	n/a	a) The contracts shall be signed by the beneficiary and the municipality if the latter is implementing agent for the project. If the project is implemented by different partner, then a contract shall be signed between the beneficiary, implementing agency and the municipality. b) Under SUTRA the agreements were signed between UNDP, the municipality and the beneficiary.	a) and b) These agreements hardly appear to evoke any legally binding implications on the part of the beneficiaries.
6	<b>PROCEDURES FOR PROCUREMENT OF SERVICES UNDER GRANT CONTRACT</b>	<b>PROCUREMENT OF SERVICES REQUIRED BY THE DECISION ON PUBLIC PROCUREMENT PROCEDURES</b>	<b>COMMENTS</b>
6.1	Service contracts worth EUR 200,000 or more must be awarded by means of an international restricted tender procedure following publication of a procurement notice.	For procurement of value more than KM 1,000,000 a pre-tender procedure can be performed.	Not applicable for the purpose of this review.
6.2	n/a	For procurement of value more than KM 50,000 the Beneficiary shall perform a public (open) tender procedure.	Not applicable for the purpose of this review.
6.3	Service contracts worth less than EUR 200,000 must be awarded by means of a negotiated procedure without publication, in which grant beneficiaries consult at least three service providers of their choice and negotiate the terms of the contract with one or more of them.	For procurement of less than KM 50,000, with the previous approval by the Ministry of Finance, a restricted procedure (by invitation) and it is being selected among three best offers.	Not applicable for the purpose of this review.
6.4	For services of a value of EUR 5,000 or less, the beneficiary may place orders on the basis of a single tender	For less than KM 15,000 a direct agreement with the one bidder is allowed with a previous agreement by the Ministry of Finance.	Not applicable for the purpose of this review.
7	<b>PROCEDURES FOR PROCUREMENT OF SUPPLY UNDER GRANT CONTRACT</b>	<b>PROCEDURES FOR PROCUREMENT OF SUPPLY (GOODS)</b>	<b>COMMENTS</b>
7.1	Supply contracts worth EUR 150,000 or more must be awarded by means of an international open tender procedure following publication of a procurement notice	For procurement of value more than KM 1,000,000 a pre-tender procedure can be performed.	Not applicable for the purpose of this review.
7.2	Supply contract between 30,000 and 150,000 EUR are awarded by means of an open tender procedure published locally.	For procurement of value higher than KM 50,000 the Beneficiary shall perform a public (open) tender procedure.	Not applicable for the purpose of this review.
7.3	Supply contracts worth less than EUR 30,000 must be awarded by means of a negotiated procedure without publication, in which grant beneficiaries consult at least three suppliers of their choice.	For procurement of less than KM 50,000, with the previous approval by the Ministry of Finance, a restricted procedure (by invitation) and it is being selected among three best offers.	Not applicable for the purpose of this review.
7.4	For procurement of a value of EUR 5,000 or less, the beneficiary may place orders on the basis of a single tender	For less than KM 15,000 a direct agreement with the one bidder is allowed with a previous agreement by the Ministry of Finance.	Not applicable for the purpose of this review.
8	<b>PROCEDURES FOR PROCUREMENT OF WORKS UNDER GRANT CONTRACT</b>	<b>PROCEDURES FOR PROCUREMENT OF PUBLIC WORKS</b>	<b>COMMENTS</b>

8.1	Works contracts worth EUR 5,000,000 or more must be awarded by means of an international open tender procedure following publication of a procurement notice.	For procurement of value more than KM 1,000,000 a pre-tender procedure can be performed.	Not applicable for the purpose of this review.
8.2	For contracts of value between EUR 300,000 and 5,000,000 a local open tender procedure must provide other eligible contractors with the same opportunities as local firms.	a) For procurement of value more than KM 50,000 the Beneficiary shall perform a public (open) tender procedure. b) Reportedly the SUTRA project follows the BiH procedures.	BiH procedures appear to be more strict than the EC ones. These are believed to help ensure the best-value-for-money principle.
8.3	Works contracts worth less than EUR 300,000 must be awarded by means of a negotiated procedure without publication, in which grant beneficiaries consult at least three contractors of their choice.	a) For procurement of less than KM 50,000, with the previous approval by the Ministry of Finance, a restricted procedure (by invitation) and it is being selected among three best offers. b) Reportedly the SUTRA project performs the open tender procedure.	BiH procedures appear to be more strict than the EC ones. These are believed to help ensure the best-value-for-money principle.
8.4	n/a	For less than KM 15,000 a direct agreement with the one bidder is allowed with a previous agreement by the Ministry of Finance.	Not applicable for the purpose of this review.
10	<b>TECHNICAL AND FINANCIAL MANAGEMENT OF GRANTS</b>	<b>TECHNICAL AND FINANCIAL MANAGEMENT OF THE JOINT PROJECTS</b>	<b>COMMENTS</b>
10.1	The first pre-financing payment, which covers either 80% of the amount of the contract or 80% of the first annual budget, is paid after both parties have signed the contract and the Contracting Authority has received a standard payment request from the beneficiary. Subsequently, in the case of contracts for large amounts, an interim report (technical and financial) and payment request must be sent once a year as soon as 70% of the previous payment (and 100% of earlier ones) has been used up. A new payment of pre-financing is made on that basis. The balance is paid on approval of the final report. The beneficiary must not send documents in support of its request to the Contracting Authority but must keep them in case of inspection or audit for a period of seven years after payment of the balance	a) The Book-of-Rules of the RF does not clearly state the procedure for the execution of payments. It states that the SCDPR will authorise the financial implementation of the projects and that the RF will pay to the Contractor on the basis of invoice accompanied by the BiH MHRR monitoring reports. b) Reportedly UNDP performs direct payments to the Contractor upon provision of supporting documentation. The Municipalities are required to perform a sort of technical approval of the Contractors' documents.	a) There is an ambiguity about the financial management of the funds, i.e. the respective responsibilities of the SCDPR, the RF and the BiH MHRR for the verification of documents, the authorisation and execution of the payments. b) While the project encourages more involvement of the municipalities the overall financial responsibility for management of the funds remains with the UNDP.
11	<b>AUDITING OF THE GRANT CONTRACTS</b>	<b>AUDITING OF THE JOINT PROJECTS</b>	<b>COMMENTS</b>
11.1	Contracting Authorities must retain all selection and grant documentation for a period of seven years after the completion of an action. These documents must be made available for inspection by the European Commission, OLAF and the Court of Auditors.	a) Not specified. b) There is an overall Global MoU between UNDP and the EC, renewed in June 2004. Therefore UNDP is not a subject of an external audit since as a UN agency it is the subject to the internal UN Office of Audit and Control.	a) It is not specified which BiH institutions should retain the documentation for the subsequent audits. b) n/a
11.2	An external audit of the accounts of the action is attached to the request for payment of the balance where the grant is of more than €100,000, to a request for payment of additional pre-financing when the cumulated pre-financing exceeds €750,000, or to any request for payment exceeding €75,000 per financial year in the case of an operating grant.	a) Not specified. b) There is an overall Global MoU between the UNDP and the EC, renewed in June 2004. Therefore UNDP is not a subject of an external audit since as a UN agency it is the subject to the internal UN Office of Audit and Control.	a) The documents make a general reference to an audit. However, there is no link between the audit provisions and project amount, time frame or payment schedule. b) n/a

# *Annex 3*



## *Organisation Charts*



## Annex 3 – Organisation Charts

### BIH MHRR AT PRESENT

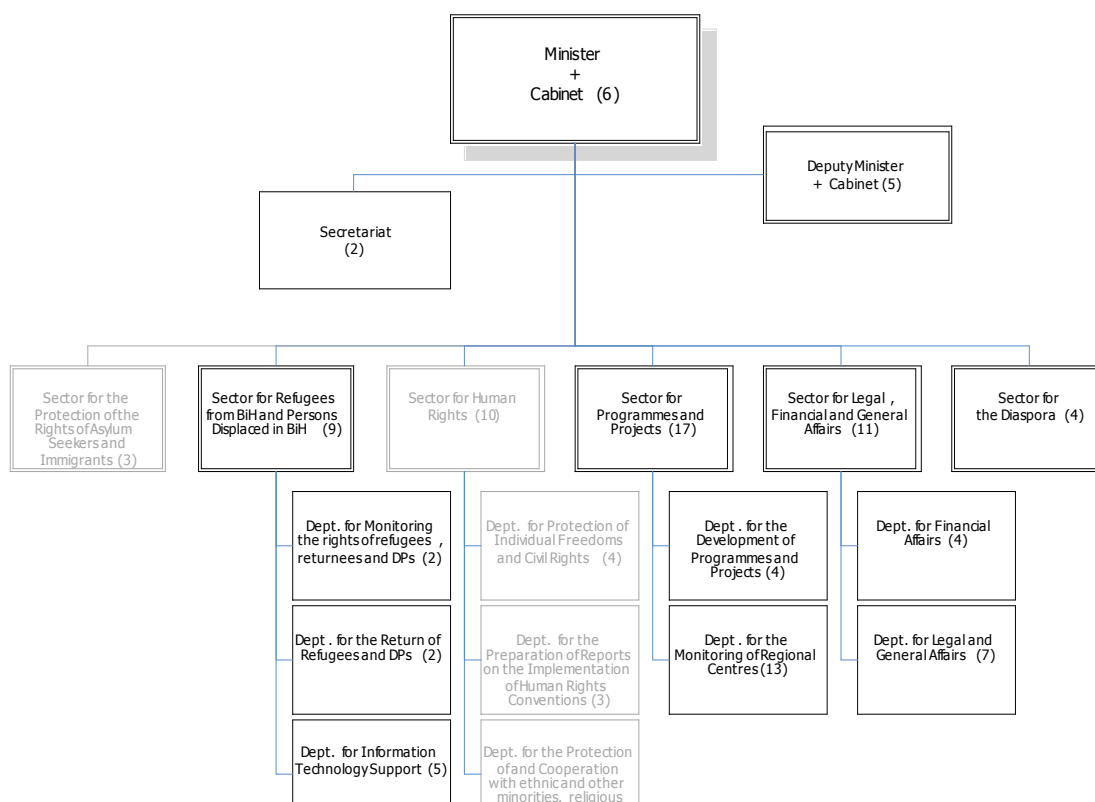
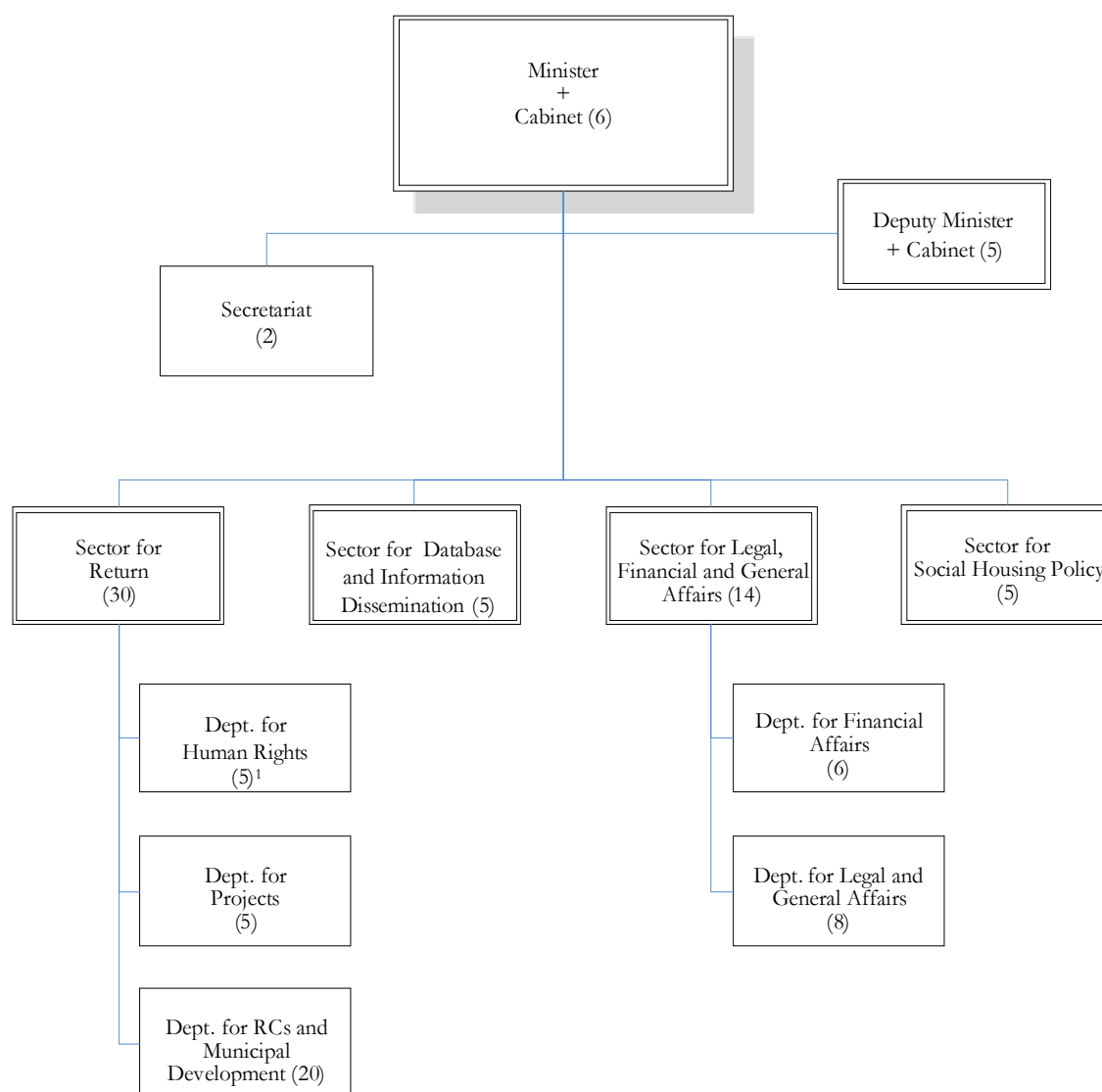


Chart 5: BiH MHRR - Current structure

## BIH MHHR, PROPOSED ORGANISATION (UNTIL 2007)

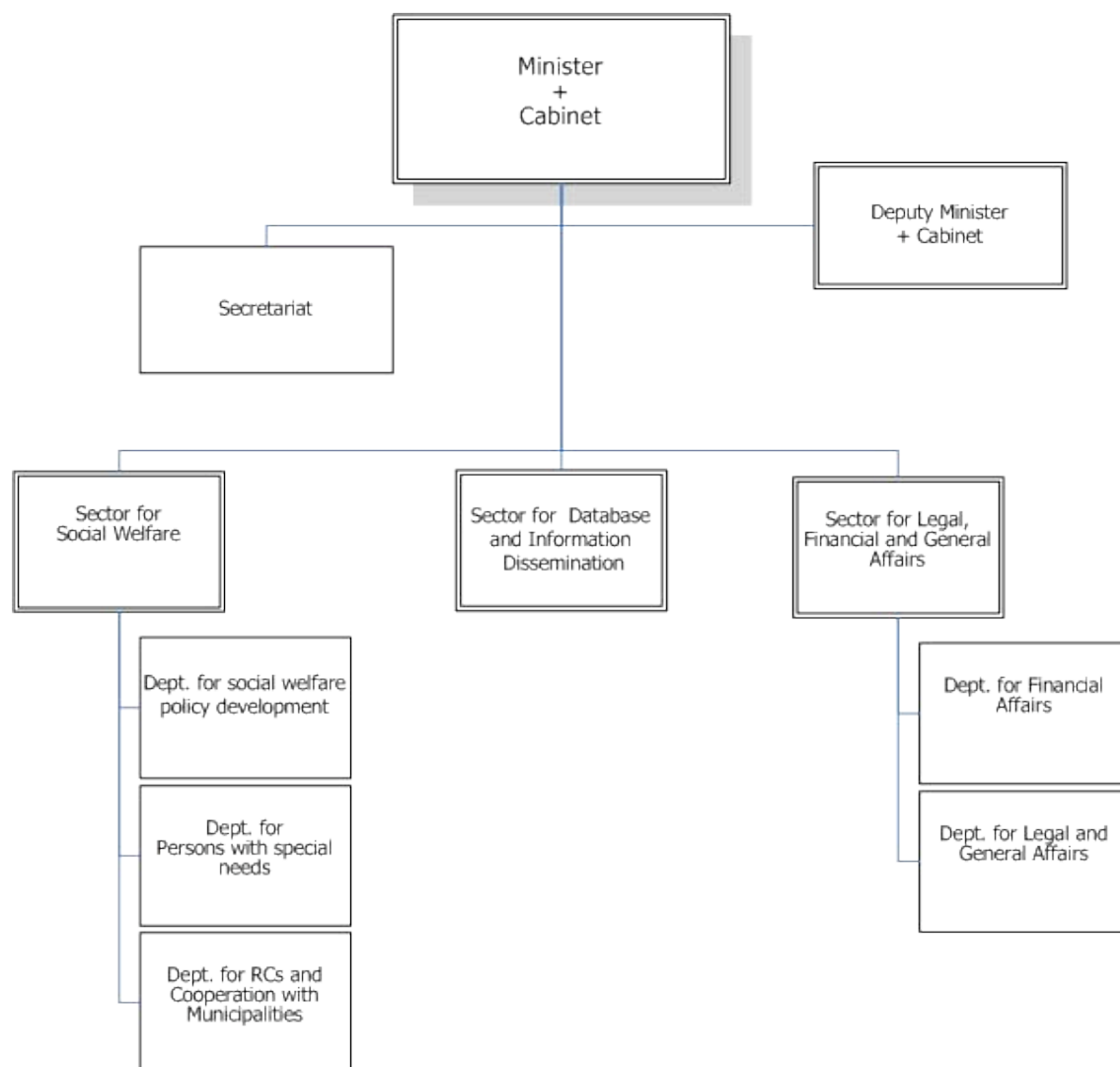


<sup>1</sup> The current Sector for Human Rights to be transferred to the Ministry of Justice . The current Sector for Diaspora to be transferred to the Ministry of Foreign Affairs .

Chart 6: BiH MHHR, Proposed New Organisation (until 2007)



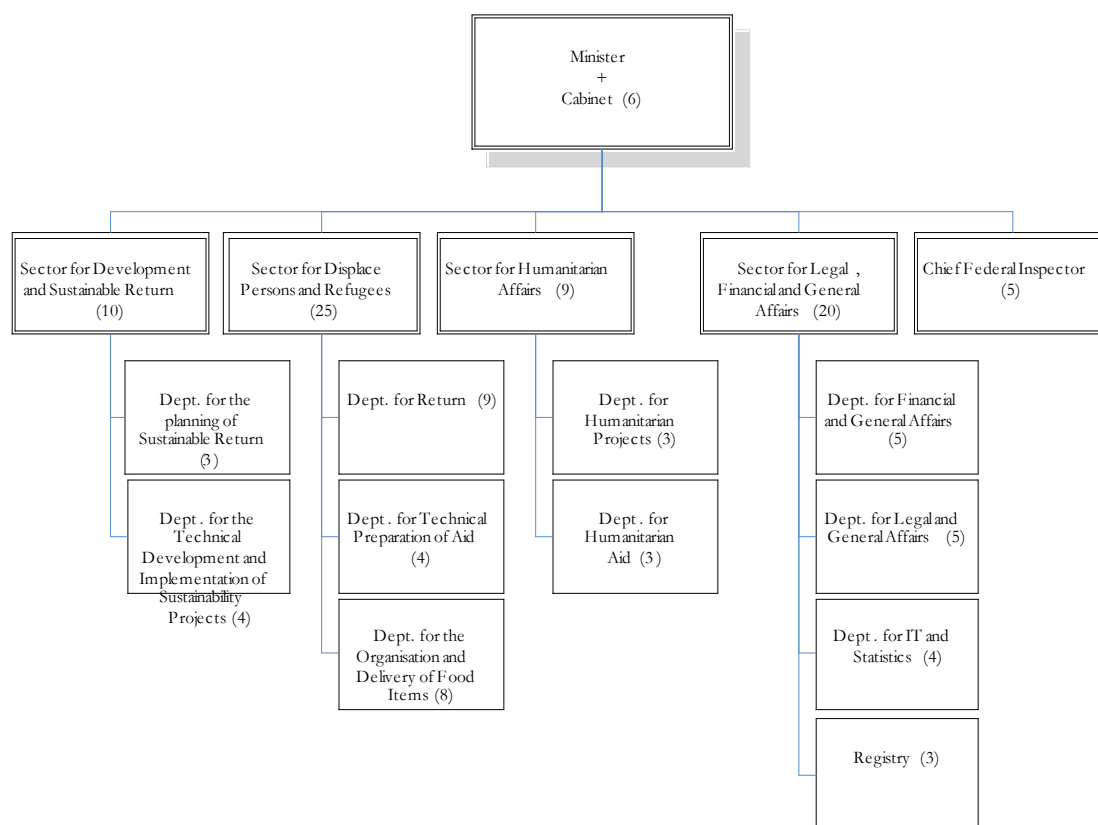
## MINISTRY FOR SOCIAL WELFARE (AFTER 2007)



<sup>1</sup> The current Sector for Human Rights to be transferred to the Ministry of Justice. The current Sector for Diaspora to be transferred to the Ministry of Foreign Affairs.

Chart 7: Ministry for Social Welfare (After 2007)

## FBIH MDPR AT PRESENT

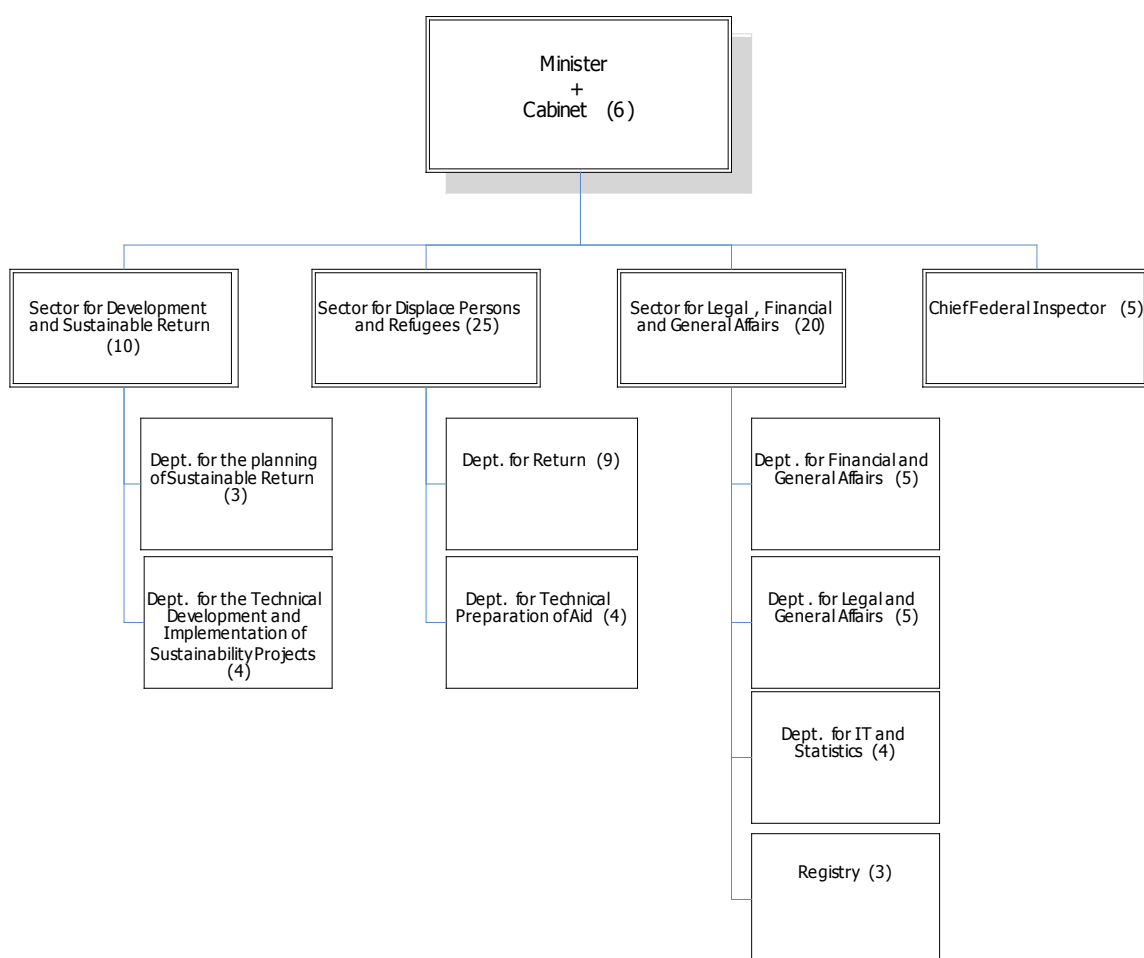


**Note :** In addition to the staffing levels indicated for each of the departments within the sectors, each Sector also has an Assistant Minister, a Secretary and a Driver.

**Total Staffing :** 76 Employees

Chart 8: FBiH MDPR – Current structure

## FBIH MDPR, PROPOSED ORGANISATION (UNTIL 2007)

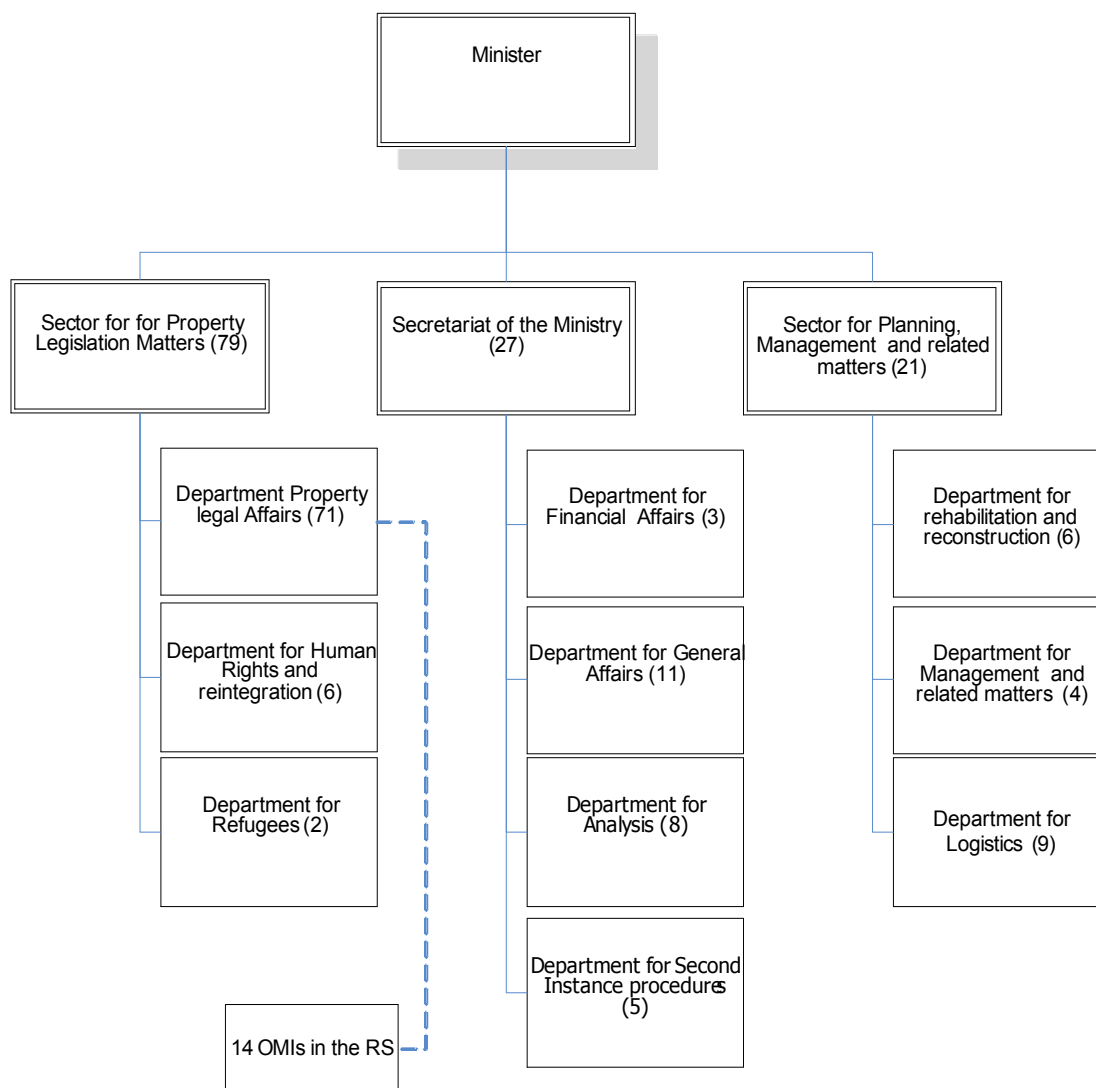


**Note :**

The structure proposed for implementation by 2006. The possibility to abolish the ministry altogether or to redefine its role to be investigated during the strategy development period 2005-2006. In addition to the staffing levels indicated for each of the departments within the sectors, each Sector also has an Assistant Minister, a Secretary and a Driver.

Chart 9: FBiH MDPR - Proposed organisation (Until 2007)

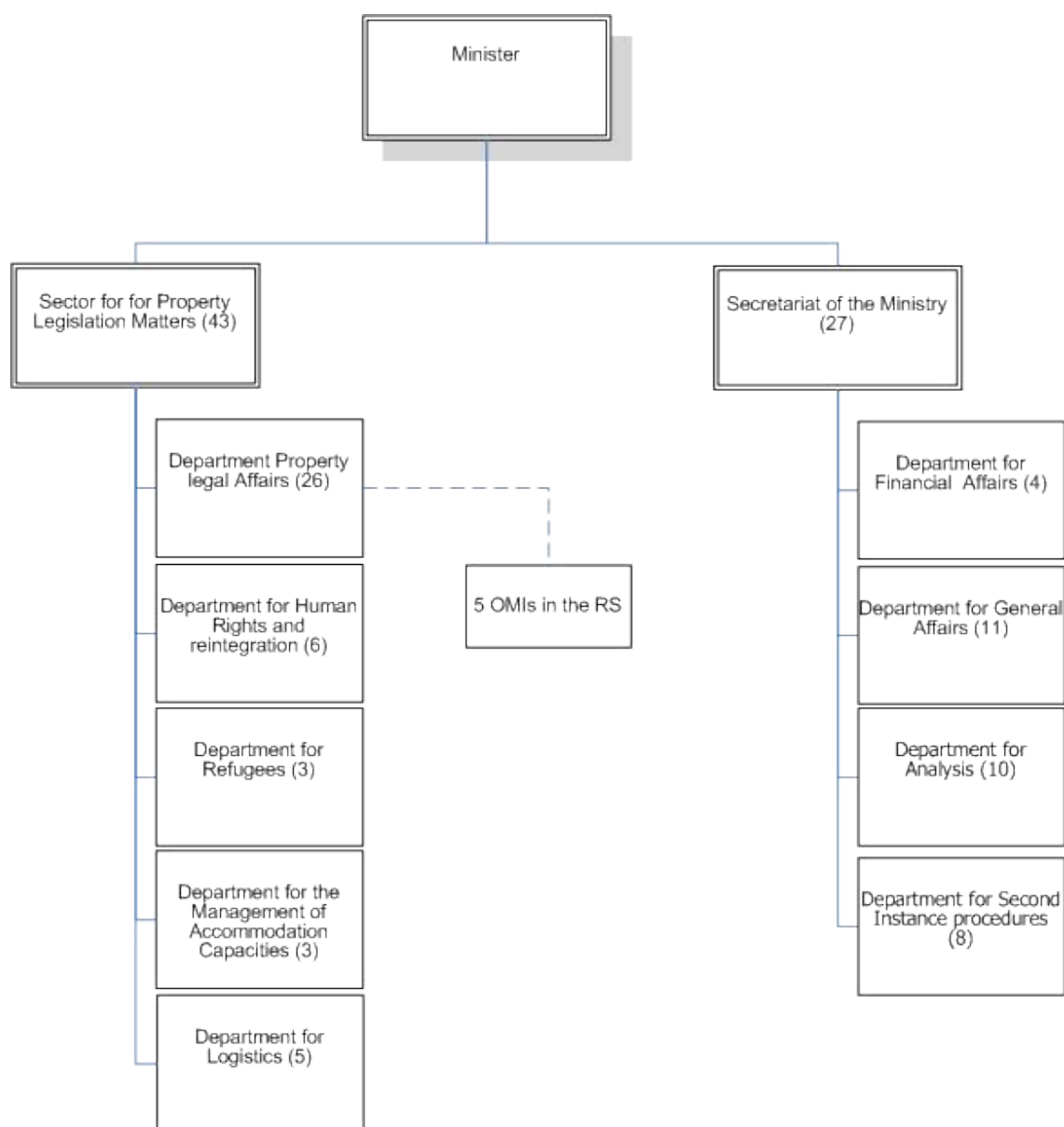
## RS MRDP AT PRESENT



**Total Staffing:** 137 Employees

Chart 10: RS MRDP – Current structure

## RS MRDP, PROPOSED ORGANISATION (UNTIL 2007)



**Note:**

The structure proposed for implementation by 2006. The possibility to abolish the ministry altogether or to redefine its role to be investigated during the strategy development period 2005-2006.

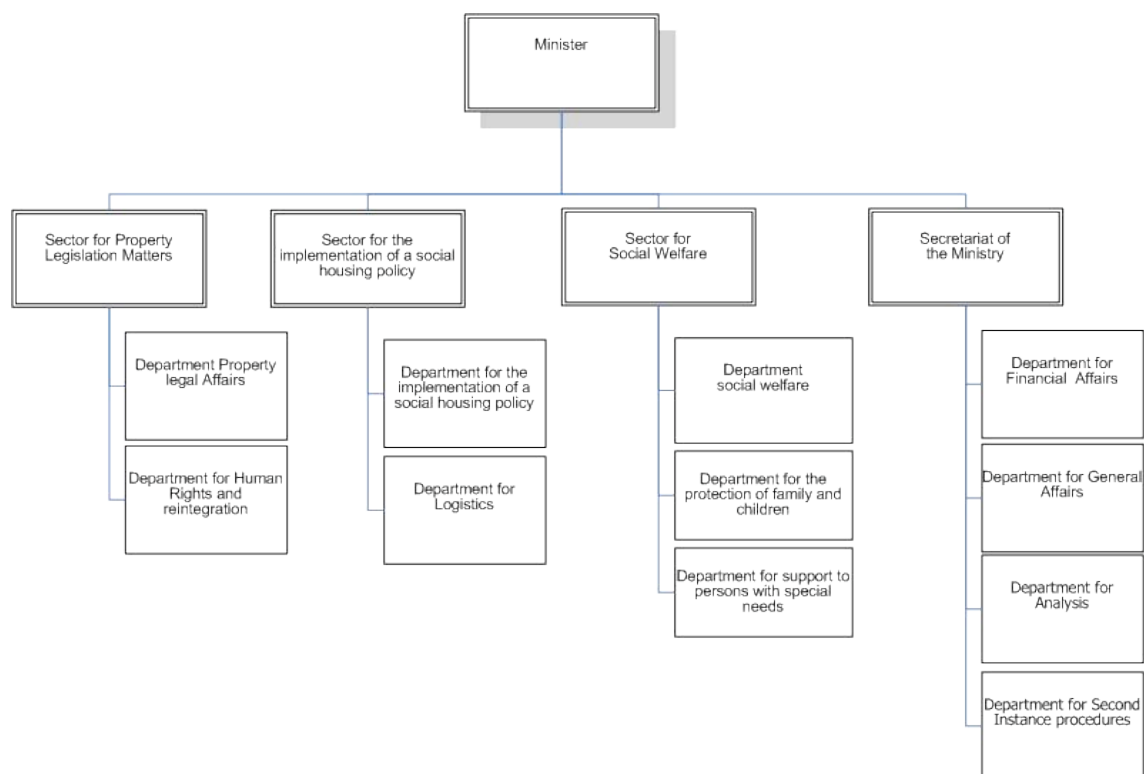
The number of OMIs to be reduced from 14 to 5 by the end of 2006 and later fully abolished or to become field offices in accordance with a possible new role for the ministry.

**Total Staffing:**

70 Employees

Chart 11: RS MRDP, Proposed organisation (Until 2007)

## RS MRDP, NEW ORGANISATION (AFTER 2007)

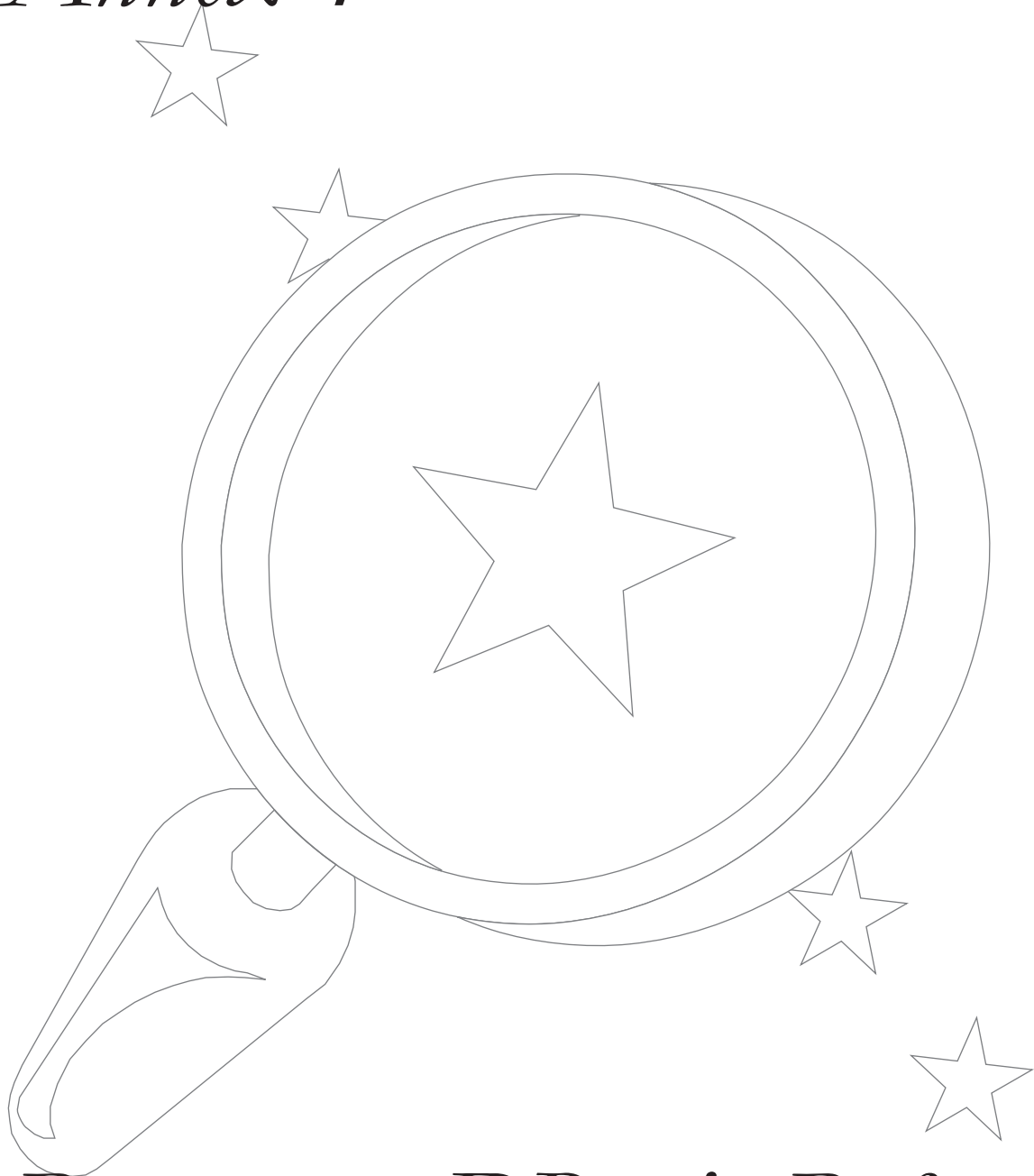


**Note:**

The structure proposed for is based upon documents provided by the RS MRDP

Chart 12: RS MRDP, Proposed organisation (After 2007)

# *Annex 4*



## *Returnees, DPs & Refugees - Legal Definitions*





## *Annex 4 – Refugees, DPs & Returnees – Legal Definitions*

	REFUGEE from BiH	DP, inside BiH	RETURNEE
	Regulated at state level (Law on Refugees from BiH and DPs in BiH)	Regulated at the: State (Law on Refugees from BiH and DPs in BiH); Entity (Law on Displaced-Expelled Persons and Repatriates in the FBiH and Law on DPs, Refugees and Returnees in the RS); and Canton levels	State Level , entity level
	STATE «A refugee from BiH is a citizen of BiH who is outside BiH and who has been expelled from his/her habitual residence as the result of conflict or left his/her habitual residence in BiH and escape abroad after 30 April 1991, owing to a well-founded fear of being persecuted for reason of race, religion, nationality, membership to a particular social group or political opinion, and who is neither able to return in safety and with dignity to his/her former habitual residence nor has voluntarily decided to settle permanently elsewhere outside of BiH» - Article 3.	STATE «A DP is a citizen of BiH residing within BiH, who has been expelled from his/her habitual residence as the consequence of the conflict, or left her/his habitual residence after 30 April 1991, owing to a well-founded fear of being persecuted for reason of race, religion, nationality, membership to a particular social group or political opinion and who is neither able to return in safety and with dignity to his/her former habitual residence nor has voluntarily decided to take up permanent residence elsewhere» - Article 4 ENTITY/FBiH «a DP is a citizen of BiH who has been displaced in the territory of the Federation as a result of conflict, persecution, or a well-founded fear of being persecuted or having his rights violated within the territory of BiH while there do not exist conditions for safe and dignified return to her/his former place of residence, nor has she/he voluntar-	STATE “Returnees are refugees from BiH, or DPs, who have, to the competent bodies, expressed their wish to return to their former habitual residence, and who are in the process of return, as well as refugees from BiH and DP who have already returned to their former habitual residence” - Article 8 ENTITY/ RS “A returnee under this law, is a citizen of Bosnia and Herzegovina, who has, as a refugee from abroad, or a DP in BiH, returned to the territory of the Republika Srpska to his/her former place of permanent” - Article 2 ENTITY/FBiH No provisions.

		<p>ily decided to settle in a new place of living» - Article 4</p> <p>ENTITY/RS</p> <p>«A DP is a citizen of BiH who has been displaced in the territory of the Republika Srpska a result of conflict, destruction caused by war, well founded fear of being persecuted or having his/her rights violated in the territory of BiH while there do not exist conditions for safe and dignified return to his/he former permanent residence» - Article 2</p>	
	<p>STATE</p> <p>“The status as refugee from BiH shall cease if a person:</p> <ol style="list-style-type: none"> <li>1. returns to his/her former habitual residence in BiH in safety and dignity</li> <li>2. voluntarily decides to take up another permanent residence in BiH or outside of BiH on the basis of overall and objective information relevant for choice of the place of permanent residence</li> </ol> <p>A refugee from BiH who returned to BiH but has not returned in his former habitual residence, nor has chosen to take up permanent residence elsewhere in BiH shall acquire the status of a DP according to the procedure regulated by entity laws» - Article 6.</p>	<p>STATE</p> <p>“The status of a DP shall cease if a person:</p> <p>Voluntarily returns to his/her former habitual residence;</p> <p>Refuses to return to his/her former habitual residence, although return to the place of his/her former habitual residence, in safety and with dignity, is possible, and if there are no compelling reasons arising out of previous persecution or other strong humanitarian reasons</p> <p>Take up, in safety and with dignity, permanent residence elsewhere in the place of his/her voluntary choice</p> <p>And if there are other reasons regulated by entity laws”-article 7</p> <p>ENTITY/FBiH</p> <p>The status of DP shall cease:</p> <ol style="list-style-type: none"> <li>1. upon return to her/his former place of residence</li> <li>2. when there is a possibility for safe and dignified return to his/her former place of residence but a DP has not returned yet</li> <li>3 When DP has voluntarily decided to permanently settle in another place within the territory of Federation» -Article 10</li> </ol> <p>ENTITY/RS</p> <p>The status of DP shall cease:</p> <ol style="list-style-type: none"> <li>1. upon return to her/his former place of residence;</li> <li>2. when there is a possibility for safe and dignified return to his/her former place of residence but a DP has not returned yet;</li> <li>3. when DP has voluntarily decided to permanently settle in a place of his/her free and voluntary choice;</li> <li>4. when a DP has freely disposed of his/her property in the place of his/her previous permanent residence, thus creating conditions for his/her permanent settlement in a place of his/her free voluntary choice» - Article 17</li> </ol>	<p>STATE</p> <p>“The status of a returnee shall cease upon expiration of a six month period, counting from the day of his/her re-establishment in his/ her former habitual residence” - Article 8</p> <p>Entity RS</p> <p>No provisions</p> <p>Entity Federation</p> <p>No provisions</p>

	<p>STATE</p> <p>“Rights to return to former habitual residence</p> <p>Right to choose another permanent residence</p> <p>Right to have their property returned</p> <p>Right to recover occupancy right” - Articles 9-15.</p>	<p>STATE</p> <p>“Rights to return to former habitual residence</p> <p>Right to choose another permanent residence</p> <p>Right to have their property returned</p> <p>Right to recover occupancy right” - Articles 9-15.</p> <p>ENTITY/FBiH</p> <p>“DPs shall have the right to return freely to their former place of residence or to a new place of living, without the risk of intimidation, terrorizing, persecution and discrimination” - Article 21</p> <p>ENTITY/RS</p> <p>«DPs and returnees shall enjoy in full equality, the same rights and freedom under international law as do other citizen of RS. They may not be discriminated against in the enjoyment of any grounds whatsoever, and particularly not on the ground that they are or were displaced. DPs and returnees have the right to freedom of movement and freedom to choose his/her permanent residence. » -Article 5</p>	<p>STATE</p> <p>“The return shall be done in a safe, organised and phased manner, with respect for their freedom of movement and full protection of their personal safety and their property.” Article 10</p> <p>ENTITY/RS</p> <p>«DPs and returnees shall enjoy in full equality, the same rights and freedom under international law as do other citizen of RS. They may not be discriminated against in the enjoyment of any grounds whatsoever, and particularly not on the ground that they are or were displaced. DPs and returnees have the right to freedom of movement and freedom to choose his/her permanent residence. » - Article 5</p> <p>ENTITY/FBiH:</p> <p>“Right to freedom of movement, compliance with human rights and elementary freedoms, increased residing security in the place of return, return of property to owners, construction and reconstruction of houses apartments, creation of new jobs and other conditions affecting safe and dignified return of displaced-expelled persons and repatriates” - Article 21</p>
	<p>STATE</p> <p>“Right to be informed on situation of BiH and in particular on situation of former habitual residence</p> <p>Right to additional education organised by competent FBiH and RS services in host countries through the Ministry of Foreign Affairs and the BiH ministry of Human Rights.” - Article 16.</p>	<p>STATE</p> <p>“DPs shall, while holding the status, enjoy entitlements established and exercised in pursuance with the regulations of the competent Entity, cantonal or municipal bodies, particularly those relating to economic and social security, health care as well as freedom of religious expression and political activity” article 17</p> <p>ENTITY/FBiH</p> <p>«A person whose status of a DP has been recognized, as well as a repatriate, shall temporarily provided with:</p> <ol style="list-style-type: none"> <li>1. accommodation;</li> <li>2. food supplies;</li> <li>3. social reintegration and psychological support;</li> <li>4. health care;</li> <li>5. education of children and youth; and</li> <li>6. other necessary living essentials» - Article 11</li> </ol> <p>«the extent of rights prescribed in article 11 points 2 to 6 shall be determined depending on whether a person is employed or not. Whether she/he is pensioner or not, a social welfare beneficiary, a dependant, or whether she/he makes income based on any other grounds» - Article 19</p>	<p>STATE</p> <p>“1. assistance in the necessary reconstruction of their private houses or apartments</p> <p>2. use of credits to start business in order to make income for themselves and their families</p> <p>3. adequate financial assistance</p> <p>4. essential food</p> <p>5. necessary clothing</p> <p>6. primary health care</p> <p>7. primary education</p> <p>8. social welfare providing that they are unemployed” – Article 18</p> <p>ENTITY/RS</p> <p>No provisions.</p> <p>ENTITY/FBiH</p> <p>No provisions.</p>

		ENTITY/RS “All DPs have the right to an adequate standard of living, right to temporary basic accommodation, health care, social security, education and vocational training” - Article 6	
	STATE “BiH budget Entity budget Host countries from BiH UNHCR and other International organizations Donations and credits received from international financial institutions Other resources” -Article 24.	STATE “Entity budget Cantonal and municipal budgets; UNHCR and other International organizations; donations and credits received from international financial institutions; and other resources» - Article 25 ENTITY/FBIH «Federation Budget Cantonal Budgets Financial assistance from Host countries accommodating refugees Donations and credits of International financial organisations Other sources in accordance with this law and cantonal regulations» - Article 29 ENTITY/RS “shall be provided for from the budget of RS and other resources, according to their needs” - Article 25	STATE “BiH budget Entity budget Host countries from BiH UNHCR and other International organizations Donations and credits received from international financial institutions Other resources” - Article 26 ENTITY/RS No provisions. ENTITY/FBiH No provisions.

