

Annex 7 Compensation Fund Unrealised¹

During the early period of its mandate, CRPC stressed the importance of and pursued a compensation/property fund in the implementation of its mandate under Annex 7 of the Dayton Peace Agreement. Though CRPC actively investigated the possibility of self-funding, donations, real property management, leasing and valuation, it could ultimately not provide compensation, as an option other than return, to refugees and displaced persons (RDPs) who lost their property.

Annex 7 of the Dayton Peace Agreement provides that “[a]ll [RDPs] have the right freely to return to their home 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.”

Although according to Annex 7, Article I, compensation was only to be made available to those whose pre-war property could not be restored to them, Article XII(5) affords all RDPs the choice between return and compensation, providing that the owner has the right to compensation in lieu of return.

According to Annex 7, a fund was to be established in the Central Bank of BIH and administered by CRPC.

Article XII(5) provides that compensation may come in the form of a monetary award or a compensation bond for the future purchase of the real property. Funds for any compensation awards could come from either grants from the international community or the Parties of Annex 7, or the proceeds from the activities of CRPC selling or leasing the properties it received in exchange for compensation awards.

While CRPC was mandated to administer a compensation fund and to determine compensation awards for claimants, the establishment of such a compensation fund was an objective that CRPC alone could not bring to fruition. Numerous discussions were held with the Central Bank of BIH, the US Departments of State and Treasury and the Securities and Exchange Commission in Washington, DC, and the Federal Reserve Bank of New York. Despite this, the Annex 7 compensation plan failed to materialise.

The primary reason why CRPC could not establish a compensation program was that neither the Government of BIH, nor the international community provided the funds necessary to operate such a compensation scheme.

The failure of the international community to support the compensation plan of Annex 7 stemmed from a concern that allowing RDPs to choose between compensation and return of property would inhibit the re-creation of a multi-ethnic BIH and therefore undermine the fundamental goal of the Dayton Peace Agreement.

Critics of Annex 7's compensation plan asserted first that the option of receiving compensation would refrain RDPs from returning to their pre-war homes. They argued that a compensation option would provide already reluctant RDPs with yet another reason to resettle. Second, critics argued that a compensation plan would reward those groups who

¹ This Annex B is a part of and attached to the Commission for Real Property Claims of Displaced Persons and Refugees (CRPC): End of Mandate Report (1996-2003) (End of Mandate Report). Terms not otherwise defined in this Annex B are defined in the body of the End of Mandate Report.

obstructed the return of RDPs. Compensation would have cancelled the pre-war owner's ownership rights, leaving the temporary occupant, most likely a member of the majority ethnic group in the region, in control of the property.

Efforts to build support and raise the funds necessary to implement the compensation plan of Annex 7 were severely hampered by the fact that those local politicians who obstructed minority return tended to be the most vocal supporters for giving individuals the option of compensation.

Thus, the perception was that if the international community were to facilitate the exercise of the right to compensation enunciated in the Dayton Peace Agreement, it would weaken its efforts on minority returns, provide support for the nationalist leaders who were seeking to consolidate ethnic separation, and undermine the interests of the victims of ethnic cleansing - many of whom supposedly wanted to return. Yet, the international community's failure to focus on implementing the right to compensation undermined the interests of those victims who genuinely did not wish to return and whose property was not returned to them or was destroyed.

By early 1997, CRPC determined that neither the Parties to Annex 7 nor other governments were likely to contribute to the fund. There was the possibility that CRPC itself could self-finance a compensation scheme by buying, selling and leasing property, but this alternative also failed to develop due to the lack of support by the international community for the same reasons as above. In short, compensation was perceived as “anti-return”.

In addition to the lack of commitment to contribute funds to a compensation fund, and lack of political will to compensate RDPs in general, CRPC also encountered significant problems in formulating a methodology to evaluate property to prove the basis for compensation. It was close to impossible to determine how much a property was worth in 1992, who was responsible for any destruction/improvement and how much the property would be worth immediately after the war versus five or ten years later.

Annex 7, Article XII(4), describes a system of “fixed rates that may be applied to determine the value of all real property” subject to a claim before CRPC. The fixed rates are to be determined on the basis of a pre-war “assessment or survey”, if available, or “other reasonable criteria”. It was extremely problematic for the international community to agree on reasonable criteria given that since 1992 many homes had been destroyed or improved.

Once it was clear that no compensation fund would be established, it followed that several aspects of CRPC’s Annex 7 mandate could not be fulfilled: to decide claims for compensation in lieu of return; to assess the value of property; to administer a compensation fund; and to manage property that was declared abandoned by BIH law.

Chronology of Amendments to Laws on Repossession of Pre-war Property in the Federation of BiH and Republika Srpska¹

Federation of BiH

During the war in BiH, the *Law on Abandoned Apartments* was introduced. This law permitted the domestic authorities to declare socially-owned apartments whose occupants had left as “abandoned”, and to grant temporary occupancy rights to such apartments to other persons. On 22 December 1995, the law was amended to provide that if individuals did not claim and re-occupy their apartment by 6 January 1996, the apartment was declared permanently abandoned and could be permanently reallocated to a new occupant. This law blocked the return of tens of thousands of refugees and displaced persons (RDPs) to their pre-war homes.

Under a subsequent law imposed by the High Representative, the *Law on the Cessation of the Application of the Law on Abandoned Apartments*, which entered into force in April 1998, all decisions terminating the occupancy rights of RDPs were declared null and void. Pre-war occupants, or their authorized representatives, were required to file claims for repossession of their apartments.

The following is a chronology of amendments (in the form of Decisions issued by the High Representative) to the two laws regulating the repossession of socially-owned apartments and privately-owned real properties in the Federation of BiH, the *Law on the Cessation of the Application of the Law on Abandoned Apartments* and the *Law on the Cessation of Application of the Law on the Temporary Abandoned Real Property Owned by Citizens* (a chronology of amendments to the *Law on Implementation of the Decisions of the Commission for Real Property claims of Displaced Persons and Refugees* is also included).

- Decision extending until 4 April 1999 the deadline for filing claims to socially-owned apartments in the Federation of BiH (15 September 1998)
- Decision suspending decision-making on claims to apartments in the Federation of BiH for which a permanent occupancy right was issued after 30 April 1991, and imposing a moratorium on sale of apartments to persons who acquired their occupancy right after 30 April 1991 (5 November 1998)
- Decision extending for three months the 4 April 1999 deadline for filing claims to socially-owned apartments in the Federation of BiH (1 April 1999)
- Decision cancelling all permanent occupancy rights issued in the Federation of BiH during and after the war in BiH and converting them into temporary occupancy rights (14 April 1999)
- Decision extending the deadline for filing claims to socially-owned apartments in Drvar (30 June 1999)
- Decision on the *Law on Amendments to the Law on Cessation of Application of the Law on Abandoned Apartments* (4 July 1999)

¹ This Annex C is a part of and attached to the Commission for Real Property Claims of Displaced Persons and Refugees (CRPC): End of Mandate Report (1996-2003) (End of Mandate Report). Terms not otherwise defined in this Annex C are defined in the body of the End of Mandate Report.

- Decision on the *Law on Amendments to the Law on Cessation of the Application of the Law on Temporary Abandoned Real Property Owned by Citizens* (1 July 1999)
- Decision amending various provisions of the Federation of BIH *Law on Cessation of Application of the Law on Temporary Abandoned Real Property by Citizens* (2 July 1999)
- Decision amending various provisions of the Federation of BIH *Law on the Cessation of Application of the Law on Abandoned Apartments*, providing *inter alia* for the use of unclaimed apartments for humanitarian accommodation (2 July 1999)
- Decision on the *Law on Implementation of the Decisions of the Commission for Real Property Claims of Displaced Persons and Refugees* (27 October 1999)
- Decision on the *Law on Amendments to the Law on Cessation of the Application of the Law on Temporarily Abandoned Real Property Owned by Citizens* (27 October 1999)
- Decision on the *Law on Amendments to the Law on Cessation of Application of the Law on Abandoned Apartments* (27 October 1999)
- Decision extending the deadline for the enforcement of CRPC certificates related to socially-owned property in the Federation of BIH (28 October 2000)
- Decision enacting the *Law on Amendments to the Law on the Cessation of Application of the Law on Abandoned Apartments* (4 December 2001)
- Decision enacting the *Law on Amendments to the Law on the Cessation of Application of the Law on Temporary Abandoned Real Property Owned by Citizens* (4 December 2001)
- Decision enacting the *Law on Amendments to the Law on Implementation of the Decisions of the Commission for Real Property Claims of Displaced Persons and Refugees* (4 December 2001)
- Decision enacting the *Law on Amendments to the Law on Implementation of the Decisions of the Commission for Real Property Claims of Displaced Persons and Refugees* (16 May 2003)
- Decision enacting the *Law on Amendments to the Law on the Cessation of Application of the Law on Abandoned Apartments of Citizens of the Federation of BIH* (16 May 2003)
- Decision enacting the *Law on Amendments to the Law on the Cessation of Application of the Law on Temporary Abandoned Real Property Owned by Citizens of Federation of BIH* (16 May 2003)

Republika Srpska

The *Law on the Cessation of Application of the Law on the Use of Abandoned Property* (19 December 1998) applies to both private property (Articles 3 to 13) and socially-owned property (Articles 14 to 23). It essentially mirrors the provisions of the Federation of BiH laws.

The law supersedes the *Law on the Use of Abandoned Apartments*, which was introduced in 1996 (after the signing of the Dayton Peace Agreement). The 1996 law placed unacceptable conditions on repossession of the housing units. For example, repossession was only possible where the current temporary occupant left voluntarily or, alternatively, if the owner paid to the current occupant compensation for the property that the current occupant lost in the other entity or on the provision of a corresponding flat or property, or under negotiations for fair reimbursement between the entities and Croatia. Given these conditions, repossession was virtually impossible.

The following is a chronology of amendments (in the form of Decisions issued by the High Representative) to the *Law on the Cessation of Application of the Law on the Use of Abandoned Property* and the *Law on Implementation of Decisions of the Commission for Real Property Claims of Displaced Persons and Refugees*:

- Decision amending the *Law on Housing Relations in the Republika Srpska* and annulling all court-ordered cancellations of occupancy rights of refugees and displaced persons since April 1992 and re-allocations of apartments made on the grounds of space rationalization (14 April 1999)
- Decision cancelling all permanent occupancy rights issued in the Republika Srpska during and after the war in BiH and converting them into temporary occupancy rights (14 April 1999)
- Decision extending by six months the deadline for filing claims to socially-owned apartments in the Republika Srpska (15 June 1999)
- The High Representative's Decision on the *Law on Implementation of the Decisions of the Commission for Real Property Claims of Displaced Persons and Refugees* (27 October 1999)
- Decision on the *Law on Amendments to the Law on the Cessation of Application of the Law on the Use of Abandoned Property* (27 October 1999)
- Decision extending by four months the deadline for claiming socially-owned apartments in the Republika Srpska (10 December 1999)
- Decision extending the deadline for the enforcement of CRPC certificates related to socially-owned property in the Republika Srpska (28 October 2000)
- Decision enacting the *Law on Amendments to the Law on Implementation of the Decisions of the Commission for Real Property Claims of Displaced Persons and Refugees* (4 December 2001)
- Decision enacting the *Law on Amendments to the Law on the Cessation of Application of the Law on the Use of Abandoned Property* (4 December 2001)

- Decision enacting the *Law on Amendments to the Law on the Cessation of Application of the Law on the Use of Abandoned Property* (16 May 2003)
- Decision enacting the *Law on Amendments to the Law on the Implementation of the Decisions of the Commission for Real Property Claims of Displaced Persons and Refugees* (16 May 2003)

Evidence Collection and Types of Property Rights Confirmed by CRPC Decisions¹

Evidence Collection

During 1996, the first year of its operation, CRPC decided to accept claim applications without requiring evidence to be submitted by the claimant for decision-making. Given the nature of the conflict in Bosnia and Herzegovina (BIH), such evidence was often unavailable to claimants or had been lost as families fled their homes. Therefore, if there was no evidence presented by a claimant, or if the evidence presented was questionable in terms of its validity, it was necessary for CRPC to collect and/or verify evidence for decision-making. During the early period of CRPC's operation, it became obvious that a special unit should be formed to collect and verify evidence for the legal teams preparing draft decisions.

In the beginning of its operation, CRPC had no cooperation with most bodies keeping official records on real property. In order to expedite claims processing, therefore, CRPC developed an in-house electronic Cadastre Database, thus harnessing a primary evidentiary source. The Commission's Legal Department was then able to use Land or Real Property Cadastre data in the forms of either a possession list or a Real Property Cadastre extract in CRPC's Cadastre Database as evidence for lawful possession or an ownership right as of 1 April 1992.

Collecting and Verifying Data for CRPC's Cadastre Database

Summary History of Cadastre Types and Property Registration in BIH

The Property Book records in BIH were established between 1886-1911 on the basis of the Austro-Hungarian survey conducted between 1880 and 1884. During World War II and the most recent conflict, approximately 28% of the BIH Property Books were destroyed. In 1984, the *Law on Land Survey and Real Property Cadastre*² was adopted, which provided for a mechanism to integrate both cadastre and property book records into a Real Property Cadastre record. As a result of this new legislation, after 1984 approximately 13% of the Property Books were put out of use or out of force.

Approximately 59% of the Property Books were in use as of 2003. The fact that BIH changed political systems several times in the past hundred years, in addition to the effects of war, resulted in the Property Books being more and more in discordance with the actual situation on the ground, both technically and in the legal registration of ownership.

During CRPC's operation, most of BIH still operated under a dual property registration system. Ownership rights were registered in Property Books located in the courts. Because ownership registration was complicated and taxes due on the registration were high, many properties were unsurprisingly never registered in the Property Books. At times, this was a deliberate choice of the property holders. Furthermore, due to the destruction of property records during World War II and the recent conflict, it was estimated that about only one-third of these Property Book records registering ownership rights remained intact.

¹ This Annex D is a part of and attached to the Commission for Real Property Claims of Displaced Persons and Refugees (CRPC): End of Mandate Report (1996-2003) (End of Mandate Report). Terms not otherwise defined in this Annex D are defined in the body of the End of Mandate Report.

² *Law on Land Survey and Real Property Cadastre* (Official Gazette SRBiH No. 22/84, 12/87, 26/90, 3/93 and 4/93); *Law on Land Survey and Real Property Cadastre* (Official Gazette RS No. 19/96).

In general, however, private property in BIH was correctly registered in the municipal cadastres, which substantiated possession rights. CRPC turned to the data in such cadastre records in order to fulfil the goals of Annex 7 of the Dayton Peace Agreement.

CRPC's Cadastre Database Development - Timeline

The first Land Cadastre data were obtained from the BIH Administration for Geodetic and Property Rights Affairs for 52 municipalities in July and August 1997, after which the Commission's IT Department developed specific software for CRPC's usage of this data. This software was designed to be easily usable in format and search functions, so that data could be imported into CRPC's Cadastre Database and used in the Legal Department as of July 1998. Data for 46 (out of 52) municipalities that were obtained from the former Geodetic Administration of BIH were included in CRPC's Cadastre Database. Six municipalities were unusable since the data contained changes that took place after 1 April 1992, so regional offices thereafter collected data for 6 more municipalities to replace these.

Between mid-1998 and 1999, CRPC's Cadastre Database was used with erratic success due to the frequent suspension of data from individual municipalities, due to CRPC's detection during this period that the data was inaccurate or unusable. When a geodetic and cadastral professional was employed by CRPC in 1999, mistakes in the software and data were identified and, as a result, data usage was suspended for 24 out of 52 municipalities then contained in CRPC's Cadastre Database.

In 1999, the Verification and Cadastre Unit was formed within CRPC to develop the Cadastre Database and to address early problems with the data. At this time, a software engineer was also engaged for the development of new Real Property Cadastre application.

By the end of June 1999, the following problems found in the data at that time were corrected:

- Missing data tables were completed.
- Cadastre types were established (Inventory, Austrian, and New Survey).
- Respective dates of data were identified for each municipality (the year of the last data update).
- Completeness of data was established (whether any cadastre municipalities were missing within each political municipality).
- New data were introduced in the report (bloc parcels and parts of plots).
- Land Cadastre data that did not suit the needs of CRPC in respect of the data update were replaced with suitable ones (databases with changes after 1 April 1992 included: Bihac-1993, Centar Sarajevo-1995, Gracanica-1997, Travnik-1993 and Zenica-1996, as well as databases for which data closer to 1 April 1991 was found, e.g., Maglaj - 1989, Gorazde - 1988).
- Land Cadastre data was completely suspended for Olovo (since computerisation of Land Cadastre was done poorly) and Gornji Vakuf (Inventory Lists were in use and not Land Cadastre data), because they did not suit the needs of CRPC.

By the end of 1999, there was substantial progress in the usage of the Land Cadastre data from CRPC's Cadastre Database, and Land Cadastre data was available to CRPC's Legal Department for 62 municipalities.

Substantial problems occurred in the takeover and implementation of cadastral data into CRPC's Cadastre Database. First, different software for data usage had been used in the

creation of cadastral data and many authors of such software had left BIH during the war. Consequently, CRPC had to engage a great number of external IT experts and companies to read the data and convert them into ASCCI format. In addition, data CRPC received were located on different storage media. Firms retaining old computer systems as well as software engineers were engaged by CRPC to address these problems. The Swedish Cadastre Project covered most of these expenses.

In addition to these problems, obstructions by Republika Srpska's Geodetic Administration regarding the takeover of cadastre data³ lasted from the beginning of CRPC's work until October 2000. The obstruction was ultimately resolved by the resignation of the Republika Srpska Geodetic Administration Director and the appointment of a replacement director who thereafter cooperated with CRPC.

By mid-2000, software for the usage of Real Property Cadastre data was developed and used for the first time for the Banja Luka. That year saw considerable progress in the development of CRPC's Cadastre Database, because at the same time, Real Property Cadastre data in digital form for other municipalities were found and taken over by CRPC, and Real Property Cadastre began to be used as evidence of rights in CRPC's issuance of decisions.

By the end of the 2000, CRPC's Cadastre Database contained Land Cadastre data for 67 municipalities; 4 of these municipalities partially included Real Property Cadastre (Banja Luka, Derventa, Doboje, and Orasje) and 2 municipalities included Real Property Cadastre (Hadzici and Trnovo).

Following an investigation in the field of the status of the Real Property Cadastre, it was found that it had been established in a great number of cadastral municipalities in both entities. Real Property Cadastre was, however, not electronically supported in most cadastral municipalities, because the Geodetic Administrations of the entities lacked funds for this purpose. Since Real Property Cadastre was the most updated and the best quality record on ownership, CRPC approached the Swedish International Development Agency (SIDA) to finance electronic support for these data to be added to CRPC's Cadastre Database. The result of this project was the addition to CRPC Cadastre Database of Real Property Cadastre data for seven new municipalities (Banovici, Kiseljak, Kresevo, Livno, Mrkonjic Grad, Olovo and Rogatica), improvement of data quality by replacing Land Cadastre with Real Property Cadastre in six municipalities (Kladanj, Lopare, Orasje, Sanski Most, Sokolac and Teslic) and the expansion of Real Property Cadastre data with new cadastre municipalities (Konjic). In addition, during this period, Land and Real Property Cadastre data for Bijeljina municipality were incorporated into CRPC's Cadastre Database.

By the end of 2001, CRPC's Cadastre Database included Land and Real Property Cadastre data for 80 out of 109 pre-war municipalities. Over the next year, CRPC added additional Land and Real Property Cadastre data for both political and cadastral municipalities, increasing the number to 86 pre-war municipalities in its Cadastre Database.

The details of data for the 86 municipalities ultimately incorporated into CRPC's Cadastre Database are as follows:

Land Cadastre data for 2 313 cadastral municipalities:

- 1 115 069 persons – possessors,
- 4 007 600 plots, and
- 1 196 749 possession lists (evidence proving lawful possession).

³ This was data that BIH Administration for Geodetic and Property Rights Affairs did not possess and CRPC therefore could only obtain from the Republika Srpska.

Real Property Cadastre data for 422 cadastral municipalities:

- 198 012 persons – owners,
- 770 721 plots,
- 221 441 buildings, and
- 198 691 RPC extracts (evidence for land ownership, buildings and special parts of buildings – apartment ownership).

The year of the last Land and Real Property Cadastre data update for the 86 municipalities in CRPC Cadastre Database:

- 47 municipalities updated as of 1991 or 54.65%.
- 18 municipalities updated as of 1990 or 20.93%.
- 19 municipalities updated as of 1989 or 22.09%.
- 2 municipalities updated as of 1988 or 2.33%.

New Land Survey Records Not Yet Entered Into Force Added as Evidence Source

During 2003, a significant number of partially decided or completely undecided claims from the categories of residences or residence/business buildings and business buildings were identified as lacking adequate evidence for decision-making. To address this situation, relevant amendments to CRPC's Book of Regulations were made that provided for New Land Survey Records that had not yet entered into force to be used as evidence to confirm rights. These records had gone through all necessary verification and registration steps except the final publication in an official gazette, and as such were deemed reliable as an evidentiary source.

Since a portion of this information was in electronic format, all such data were collected and a special Inventory List Cadastre Database was formed. Legal teams could thereafter obtain data from this database for resolution of partially decided or completely undecided claims.

In this new portion of the Cadastre Database, CRPC obtained New Land Survey data for 409 cadastral municipalities within 43 political municipalities:

- 176 746 persons – possessors
- 720 346 plots, and
- 185 710 Inventory Lists.

All data from CRPC's Cadastre Database was, for the most part, used for decision-making without collecting and verifying evidence in the field, particularly in the 47 municipalities where the last update was very close to the key date as of which CRPC confirmed possession – 1 April 1992. As a result, significant time and staff savings were accomplished and decision-making proceeded more rapidly as a result.

In addition to providing evidence for decision-making, CRPC's Cadastre Database augmented the work of CRPC's Reconstruction Unit in assisting reconstruction agencies who had requested verification of the legal interests of potential beneficiaries.

Collection and Verification of Evidence Relevant for Decision-making

Summary Statistics

In 1999, the first year for which detailed statistics were kept on evidence, CRPC's Verification and Cadastre Unit collected 15 923 positive and negative pieces of evidence for private property and 7 956 pieces of evidence for occupancy rights, for a total of 23 879 pieces. In 2000, 44 736 pieces of evidence for private property and 12 356 pieces of evidence for occupancy rights were obtained, for a total of 57 092 pieces. In 2001, 38 752 pieces of evidence for private property and 13 367 pieces of evidence for occupancy rights were obtained, for a total of 52 119 pieces.

During 2002, there was a reduction in CRPC's funding that caused the downsizing of a number of departments in CRPC. This impacted evidence collection for decision-making, and, as a result, in 2002 only 23 447 pieces of evidence for private property and 8 388 pieces of evidence for occupancy rights were collected, for a total of 31 835 pieces of evidence for the confirmation of claims.

During 2003, in order to increase evidence collection and verification for decision-making prior to the end of CRPC's mandate, verification officers who had been laid off during 2002 were rehired. By the end of July, 27 447 pieces of evidence for private property and 1 647 for occupancy rights were collected, for a total of 29 133 pieces of evidence, which was at an equivalent level to the results from the same seven-month period in both 2000 and 2001. These results were obtained despite the more time-consuming method of verification needed for the remaining claims.

With amendments to the Book of Regulations to accept evidence from the New Land Survey Records, verification in 2003 expanded to include this data. In the period between May–September 2003, 19 557 reports on the New Land Survey were made for decision-making purposes.

Between July 1999 to July 2003, 150 344 pieces of evidence for private property and 43 714 pieces of evidence for occupancy rights were collected, for a total of 194 058 pieces of evidence. Adding the 19 557 New Land Survey Record verification reports to this number, CRPC obtained and verified 210 229 pieces of evidence between July 1999 and September 2003.⁴

Obstruction by Municipalities to CRPC's Evidence Collection Activities

The early periods of CRPC's verification procedures were marked with significant obstructions by the organs issuing evidence, primarily in the Republika Srpska and in certain municipalities in the Federation of BiH.

In 1999, the capital and the largest city in Republika Srpska, Banja Luka, issued only 122 pieces of property evidence and 19 pieces of evidence for repossession of apartments. A similar pattern of obstruction occurred in the following municipalities in the Republika Srpska: Bosanski Brod, Bosanski Novi, Derвента, Kotor Varos, Mrkonjic Grad, Prnjavor, Prijedor and Ugljevik. CRPC was often told by representatives of these municipalities that relevant documentation had been destroyed, particularly evidence requested to verify

⁴ Detailed statistics on pieces of evidence (positive/negative; type of rights) based on RPC, Land Cadastre, etc., were compiled by CRPC beginning July 1999 through July 2003. During August and September 2003, verification reports based on the New Land Survey were the focus of CRPC's verification activities and the results from these months therefore do not include additional statistics on pieces of evidence based on RPC, Land Cadastre, etc.

possession of apartments. CRPC had positive cooperation, however, in obtaining evidence from a number of smaller municipalities in the Republika Srpska, including Bratunac (1 022 pieces of evidence), Cajnice (380), Foca (435), Rudo (773) and Zvornik (425).

In the Federation of BIH, CRPC was met with obstruction and non-cooperation in Bosanska Krupa, Capljina, Glamoc, Jajce, Sanski Most, Prozor and Stolac. Positive cooperation in obtaining evidence in the Federation of BIH, however, was provided by Donji Vakuf (662 pieces of evidence), Konjic (411), Lukavac (510) and Sarajevo (Grad/town) (4 175).

During 2000, CRPC's lobbying at the entity and municipal levels began to produce results, with the majority of municipalities ceasing obstruction in the access to data. Although documentation was found and certain problems regarding military apartments were solved, there remained a small number of municipalities that continued to delay verifications for apartments including Bosanski Brod, Bosanski Novi and Derventa in the Republika Srpska and Capljina as well as Glamoc in the Federation of BIH.

By 2001, however, full cooperation with CRPC was achieved due to the greater support and powers of the High Representative for the full implementation of Annex 7 of the Dayton Peace Agreement, so, other than minor delays, obstruction ceased.

Ultimately, Land Registry Departments of courts, municipal geodetic administrations as well as institutions managing housing funds all cooperated and contributed to the development of CRPC's Cadastre Database and the successful obtaining of evidence for decision-making.

The greatest number of pieces of evidence was collected in the following municipalities⁵:

- Town Sarajevo - 19 637
- Mostar - 9 785
- Banja Luka - 8 246
- Glamoc - 6 968
- Bratunac - 6 523
- Bijeljina - 5 555
- Zvornik - 4 912
- Bosanski Brod - 4 879
- Doboj - 4 876

Types of Property Rights Confirmed by CRPC

During the period before the recent conflict, BIH, as one of the former Republics of Yugoslavia, had primarily a socialist approach to property rights. Although a sizeable percentage of property was therefore socially-owned, Yugoslavian citizens also had private property rights to houses and land. Currently, BIH is privatizing property and abandoning social ownership.

Ownership Rights to Real Property

Ownership is the strongest of all private property rights. It is an absolute right, allowing the owner to possess, use and dispose of property in accordance with his or her free will.⁶ An ownership right can only be limited for reasons of public interest. An ownership right can be

⁵ Statistical totals from period of July 1999 through end of July 2003.

⁶ The right of ownership is governed by the *Law on Ownership Legal Relations* (Official Gazette SFRJ 6/80, FBiH 6/98).

obtained by origin (e.g., building a house); by legal action (e.g., by a purchase contract); by inheritance; or by decision of a state authority. In order to be the recognized owner of a house or land, the owner has to be registered either in the Property Books for the Registration of Ownership Rights or in the Real Property Cadastre. In order to be registered in either, the right holder had to meet various requirements, for example, paying all required taxes upon purchase.

Only owners may legally sell, exchange or otherwise dispose of an ownership interest. Given the state of the Property Books and the Real Property Cadastre as described in this End of Mandate Report, however, CRPC was only able to confirm ownership in approximately 21% of claims for real property. Decisions confirming ownership rights, co-ownership and joint ownership therefore resulted in only approximately 21% of CRPC's total decisions confirming property rights. CRPC, focusing on the aim of Annex 7 of the Dayton Peace Agreement and the primary goal of the return of displaced persons and refugees, therefore decided early in its mandate to accept and decide claims for lesser rights than full ownership.

Lawful and Legal Possession Rights to Real Property

In BIH, the terms “lawful” and “legal” possession are used to define the legal status of a possessor or user of real property. If there is no registration of ownership in the Property Books or the Real Property Cadastre, the interest holder is a possessor. In BIH, the possessor is considered to be the “legal possessor” under the *Law on Ownership Relations*, if he/she obtained his/her right through a legally valid contract but failed to register his/her right in the Property Books or Real Property Cadastre. Under the law, the possessor is considered to be the “lawful possessor” where a legally valid contract is absent but he/she has the *bona fide* belief that he/she owns the property and believes that he/she purchased the property from a *bona fide* owner; and lawfulness is therefore presumed.

After 20 years of lawful possession, the lawful possessor has the right to initiate court proceedings to prove his/her absolute ownership right and to have it registered in the Property Books or Real Property Cadastre.⁷ The legal possessor has the same right after 10 years of legal possession.

Upon receiving a claim for the confirmation of a private property right to a private home or piece of land, CRPC first inspected the Property Books or Real Property Cadastre to see whether the claimant was registered as the owner. If this check proved negative, CRPC then consulted the Cadastre records as well as building permits, decisions on land allocation and other types of evidence to confirm a right of lawful possession. Absent an ownership right, the most common private property right confirmed by CRPC was that of lawful possession. Approximately 60% of total decisions confirming property rights issued by CRPC were those confirming lawful possession and lawful co-possession.

In BIH, municipal cadastre offices only register users of real property. A person attempting to establish a user or possession right is required to provide the relevant municipal cadastre office with a minimum of one of three types of evidence, which is deposited into the archives of the municipal cadastre office.

The types of possible evidence to be deposited into the archives to prove a right as a user of real property are 1) sale contract on land; 2) court decision; or 3) decision on usurpation (when state-owned land was given to the user). Based upon any type of this evidence, the

⁷ Acquisition of the ownership right would be through adverse possession (by declaratory judgment of the court after the interest holder filed a claim to be declared as owner).

name of the user accompanying a description of the real property is added to a possession list in the municipal cadastre office. The evidence in the archives of the municipal cadastre office, however, is not entered on the possession list. These possession lists found in cadastre records were crucial for CRPC because they formed the basis for the majority of decisions by showing the names of the user(s) of the property and the description of the real property in use.

In the former Yugoslavia there were also other ways for users to have their name and description of property placed on a possession list in a municipal cadastre office. This occurred through a disclosure commission, which did not check legal evidence in the archives.⁸

For areas in which Property Books had been destroyed, a possession list was considered to be an evidence of lawful possession under domestic law, but such possession list could not constitute evidence for confirming ownership. CRPC also confirmed lawful possession on the basis of a contract on housing object construction concluded with the housing collective, if it was established in the procedure that the claimant was in possession of the claimed object as of 1 April 1992.

Apartments with Occupancy Rights

An occupancy right is the right belonging to a person who occupies a socially-owned apartment⁹ to use the apartment freely and permanently in accordance with the legal document representing the basis in law for the occupation.¹⁰ The state and its enterprises, as the right holders of the apartments, allocated the apartments to their employees through a decision on allocation.¹¹ On the basis of an allocation decision, the occupancy right holder factually moved into the apartment. Thereafter a contract on use was concluded between the occupancy right holder and the allocation right holder specifying the rent, maintenance details, liabilities, etc. Although only one member of the family household could be the actual occupancy right holder, all members of his/her family household were equally entitled to live in the apartment freely and permanently. Moreover, the right of the family household members did not cease to exist upon the death of the occupancy right holder or his/her permanent stop of use of the apartment.¹²

In the course of privatisation of socially-owned property, the occupancy right holder and his/her family household members were granted the right to purchase their apartment.¹³

In December 1998, CRPC adopted a Book of Regulations on Confirmation of Occupancy Rights of Displaced Persons and Refugees. Thereafter, upon receiving a claim for the

⁸ These “disclosure commissions” should not be confused with the Real Property Cadastre scheme begun where 2 210 disclosure commissions had been established and were proposed for the future in order to transfer lawful/legal possession from municipal cadastre offices into the property books.

⁹ A “socially-owned apartment” is an apartment at the disposal of the state or a state-owned enterprise to be provided for use of employees.

¹⁰ Art. 2 of the *Law on Housing Relations* (Official Gazette of the SRBH No 14/84). “Freely” in this context means “undisturbed” and not “without charge”.

¹¹ The state and its enterprises were not “owners” of the socially-owned property in the same sense that citizens could be owners of private property if registered as such in the Property Books or Real Property Cadastre. Although they were entitled to allocate the apartments to employees for use, they were only able to dispose of the apartment under very limited preconditions.

¹² Art. 21, 22 of the *Law on Housing Relations*. The rights of the family household members could cease in certain circumstances: if the occupancy right holder cancelled the contract on use, was allocated another apartment, or, e.g., built a house. Such occupancy right holder was not, however, able to cancel a contract on use if it disadvantaged members of his/her family household.

¹³ *Law on Purchase of Apartments with Occupancy Rights* (Official Gazette of the Fed. BIH, No 27/97).

confirmation of an occupancy right to a socially-owned apartment, CRPC verified whether the claimant was registered at the claimed address in the BIH Census of 1991 and whether he/she had concluded a contract on use for the claimed apartment (or was a member of the family household). In certain municipalities, however, the complete documentary evidence on occupancy rights had been destroyed. In these cases, CRPC's rules provided for the acceptance of other types of evidence to be used in conjunction with evidence submitted by a claimant.¹⁴

In addition, CRPC confirmed lawful possession of a claimed apartment on the basis of the confirmation of an allocation right holder (for example, Sarajevostan), that the claimant was not an occupancy right holder but was rather the apartment owner. Where there was a claim for an apartment for which a claimant had not concluded a contract on use, but only received the allocation decision or into which he/she had not yet moved, CRPC did not issue a decision confirming an occupancy right, because the occupancy right had not been acquired.

Possession Rights to Apartments

In 2001, CRPC, following a case decided by the BIH Constitutional Court, decided to confirm rights for the repossession of apartments in certain cases involving incomplete occupancy rights. CRPC issued 405 decisions confirming rights of possession for apartments where all elements required for occupancy rights were not present. These decisions relate to less than 1% of the apartments claimed at CRPC.

The BIH Constitutional Court, in Decision No. U 14/00, issued 4 May 2001, confirmed that the appellant had a right to repossess the claimed apartment regardless of whether he concluded a contract on use with the housing fund (and was therefore not an occupancy right holder).

During the proceedings the BIH Constitutional Court established the following:

- The appellant was in factual possession of the claimed apartment on 30 April 1991;
- The appellant moved into the claimed apartment on the basis of an allocation decision, and therefore had a legal basis to move into the apartment;
- The appellant considered the claimed apartment as his home;
- The appellant did not conclude a contract on use with the housing fund; and
- The appellant had used the apartment for four years before 30 April 1991 and during that period no one contested his right to use the apartment.

Having established these facts, the BIH Constitutional Court took the position that the aforementioned apartment should be considered the appellant's home within the meaning of Article 8 of the European Convention on Human Rights, and it ordered the competent administrative body to hand over the apartment to the appellant, for his possession and free disposal. The BIH Constitutional Court noted that one of the basic objectives of the Dayton Peace Agreement is the return of people to their places of origin in 1991, and the factual situation as at 30 April 1991 should therefore be the starting point from which all legal disputes for return of property to their pre-war users should be observed.

The BIH Constitutional Court stressed the obligation of the competent authorities to apply the Federation of BIH *Law on Cessation of the Application of the Law on Abandoned Apartments* in a manner consistent with the Constitution of BIH and the European Convention on Human Rights, and specifically to equate the status of such appellants with

¹⁴ For example, decision on allocation of the apartment, payment receipts for apartment rent, and the like.

that of an occupancy right holder because the apartment in question was the appellant's home within the meaning of Article 8 of the European Convention on Human Rights.

On the basis of the BIH Constitutional Court's decision, CRPC developed rules and amended its Book of Regulations on Confirmation of Occupancy Rights of Displaced Persons and Refugees. CRPC therefore follows the European Convention on Human Rights in awarding decisions in this area. Unfortunately, necessary changes in domestic law and enforcement of the BIH Constitutional Court's ruling in practice on the domestic level had not been put in place at the time of the writing of this End of Mandate Report, so CRPC's decisions for claimants such as these differed from the treatment and results by domestic bodies.

Strengthening the Property Law Framework - Land Registration Issues and Development

It is clear that economic development in post-conflict BIH was at least partially dependent on people of BIH returning to their pre-war homes to earn a living. This could not fully happen without a functioning commercial real estate market. The fact that most persons with confirmed rights to property were merely lawful possessors limits the movement of property and capital in BIH and ultimately limits BIH's economic development. A lawful possessor, for example, cannot generally use his/her property as sole collateral to apply for a loan or other credit or to refinance his/her property. In addition, a buyer who purchases property from a lawful possessor cannot become an owner by registering the transfer in the Property Books or Real Property Cadastre, without first completing complicated and lengthy procedures through the courts. A lawful possessor can only legally sell a lawful possession right to a buyer, which may impact on the selling price of the property.

Cognizant, therefore, that clear mechanisms for registering ownership rights to property are critical to BIH's economic future, CRPC focused funding and its efforts on developing its computerized Cadastre Database described above, which is an important source of evidence on property rights. In addition, as the specialist body with responsibility for property issues under the Dayton Peace Agreement, CRPC provided expert input and advice to other organisations and agencies involved in developing policy and legislative reform to strengthen the property law framework. CRPC provided advice and input on legislative reform and, together with the spearheading done by other organizations, for example GTZ¹⁵ and SIDA, worked to increase awareness among community groups, legal advisors and ordinary citizens about property rights. CRPC took on an important role in identifying the need for long-term reforms, which were aimed at increasing the available options of right holders as stipulated under Annex 7.

In early 2000, CRPC completed a seminal research project, entitled *Real Property Title and Entitlements in Bosnia and Herzegovina: Creating a Unified System for the Registration of Real Property Rights and the Development of the Real Property Market*, that was funded by the World Bank. The report called for a series of concrete reforms to land registry, taxation and banking laws, as well as advocated for the introduction of a regulatory framework for real estate professionals and an institutional framework to support a fair and transparent property market.

¹⁵ Deutsche Gesellschaft für Technische Zusammenarbeit GmbH.

Recognizing that land registration was of great importance to the full implementation of the Dayton Peace Agreement and compliance with the European Convention on Human Rights (with property as the most valuable asset for displaced persons and refugees and the protection of the right to dispose of property as well as repossess), CRPC advocated for BIH authorities to:

- Provide for a timeframe and funds for establishment of land registry (where it was destroyed or where it never existed) and replacement of land registry (where damaged).
- Provide for obligatory use of the new cadastre survey as a basis for establishment of land registry where destroyed and replacement of land registry where damaged.
- Harmonize old and new cadastre surveys when updating the existing land registry.
- direct takeover of real property cadastre data (new ownership record under the 1984 Law) without any review, adjusting it with land registry under the provisions of the *Law on Land Registry*.
- Computerize keeping of land registry where established anew or where replacing the damaged land registry.
- Consider development of land registration laws in BIH from a regional perspective, so that mistakes are not repeated.
- Set out a plan of action for implementation of land registration in BIH that included all budgetary requirements.

During its work in BIH, CRPC initiated amendments and additions of the prescriptions that enable all lawful possessors, therefore those who also have so far been in possession of real property, to be promoted into the owners of real property. This would have been done by making amendments and additions to the *Law on Ownership Relations*, the *Law on Land Survey and Real Property Cadastre*, and to other relevant regulations in order to allow each current lawful possessor to be registered in the real property register as the owner provided that: a) he/she lodged a valid request for registration with the competent body; b) he/she had already been registered in the Real Property Cadastre maintained by the competent municipal body; and c) there was no justified challenge to the decision for registration in the Real Property Cadastre within the period of time prescribed by the law.

The *Law on Land Registry*¹⁶ was imposed by the High Representative in late 2002 and the implementation phase was scheduled to end in 2003. Some, but not all, of the recommendations made by CRPC as detailed above were incorporated in the new law when it was imposed. At the time of the writing of this End of Mandate Report, the *Law on Land Registry* is in the implementation phase.

¹⁶ *Law on Land Registry in Federation of Bosnia and Herzegovina* (Official Gazette of FBiH, No. 58/02) and *Law on Land Registry in Republika Srpska* (Official Gazette of RS, No. 74/02).

CRPC: A Mass Claims Body¹

This Annex E provides a detailed description of CRPC as a mass claims processing body, from claims collection to delivery of CRPC's certificates following a decision on the property right in question being adopted. It is important to refer to the Glossary of CRPC Terms contained in Annex A in order to fully appreciate the terminology used in this Annex E.

Books of Regulations

Annex 7 to the Dayton Peace Agreement provides that the Commission shall promulgate such rules and regulations consistent with the Agreement, as may be needed to carry out its functions.² Pursuant to this authority, CRPC drafted and then initially adopted in 1997 a "Book of Regulations" covering administrative and organizational issues as well as procedural rules for claims collection and the decision-making process, including substantive legal standards.³ During its mandate, CRPC drafted two such Books of Regulations – the first primarily pertaining to claims for private property and the second supplementing those rules with specific ones governing occupancy rights claims.

Claims Collection

After a public information campaign was launched, CRPC worked very quickly to put in place a large number of regional offices and mobile teams in BiH as well as other countries. In the first three years of CRPC's operation, regional offices were opened in 16 locations and, by 1999, there were 23 regional offices in operation. In the years just after the end of the conflict when freedom of movement was not fully enjoyed by different ethnic and religious groups, CRPC staff was distinctive in its multi-ethnic character and it accomplished a great deal by being physically present where RDPs were living.

Claims collection was CRPC's primary activity in the initial years of its mandate. Given that freedom of movement was decidedly limited for a significant time period following the end of the conflict in the region, CRPC's outreach via its offices and mobile teams served claimants unwilling or unable to travel back to the municipality in which their property was located. CRPC's network of offices in Serbia and Montenegro and Croatia was one of its inherent strengths over the municipal claims system, allowing refugees to easily file a claim where they were living for their property in BiH – regardless of their citizenship status or place of residence.

CRPC's information administrators met with claimants in the regional offices and initially ascertained that the claimant was eligible to submit a claim in accordance with CRPC's Books of Regulations (e.g., was a natural person and had a claim for property located in BiH). A claim could be submitted whether or not the claimed real property was damaged or destroyed (partially or completely). The claimants were informed that CRPC did not provide funds to assist with reconstruction or reparation of damaged real property.

¹ This Annex E is a part of and attached to the Commission for Real Property Claims of Displaced Persons and Refugees (CRPC): End of Mandate Report (1996-2003) (End of Mandate Report). Terms not otherwise defined in this Annex E are defined in the body of the End of Mandate Report.

² Annex 7, Article XV.

³ Book of Regulations on the Conditions and Decision Making Procedure for Claims for Return of Real Property of Displaced Persons and Refugees (Final Consolidated Version, dated 29 November 2003) and Book of Regulations on Confirmation of Occupancy Rights of Displaced Persons and Refugees (Final Consolidated Version, dated 29 November 2003).

The information administrators were required to note the status of claimants who could submit claims. A refugee was defined as a person who had left his/her pre-war place of residence and was, at the time of the claim submission, living outside the territory of BIH. A displaced person was a person who had left his/her pre-war place of residence and was, at the time of the claim submission, living inside the territory of BIH. In addition, legal right to file a claim was granted any person who was temporarily working abroad or who lived abroad permanently but who had real properties in BIH inaccessible after the war and to which he/she was not able to exercise his/her rights.

Claim Applications – Procedures and Controls

Given that CRPC operated as a mass claims body, without the use of hearings, cross-examination and the like, it was important that the claim application and registration process be efficient and easily managed by computer. CRPC developed a highly-sophisticated set of computer programs and databases to allow claims registration and decision-making to proceed quickly. The claim application form itself was developed to be easy to use and comprehensive in its sections to allow for easy matching of claims with CRPC's evidentiary databases. In this way, legal advisors could prepare draft decisions for the majority of claims without the need for additional verification or collection of evidence in the field.

The personal documents of the claimant and the right holder were inspected by one of CRPC's information administrators before the claim application was filled in. Copies of these documents were made by the staff member recording the claim and they were submitted with the claim application, along with the signature of the information administrator on the copy verifying that he/she viewed the original document. Original documents were then to be returned to the claimant.

If more than one property was claimed, the principal place of residence would be placed in the first position in the claim application, with the other properties following. If there were several persons who claimed the same property right, and who chose to submit the claim for property at the same time, only one claim was filled out for all of these claimants. The claimant was allowed to choose the language in which a decision certificate would be printed (Serbian (Cyrillic), Croatian or Bosnian) and the information administrator was instructed to remain impartial on this choice.

The claim application included a section where the claimant noted his/her primary choice in action from CRPC – and included in these options was a request that CRPC assist in providing compensation for the real property following a decision being issued. It was eventually decided that the compensation fund envisioned by the Dayton Peace Agreement would not be realised, but having this option on the claim application may have encouraged claimants to include all possible property types in the hope that they would be compensated.⁴ The potential option of compensation contributed to the receipt by CRPC of a large number of claims for non-primary properties (e.g., barns, garages, sheds, summer kitchens and the like).

Given that each decision of CRPC only referred to one property and one claimant, it was important for the information administrators to properly segregate the claimed properties. One real property was defined by CRPC as being an object or land with main or supporting objects built on such land - all located within one cadastre municipality. Property units or parts of properties were considered the same property if physically linked, even if different parts of a property were supported by separate pieces of evidence. However, if parts of a

⁴ For more information on compensation see Annex B "Annex 7 Compensation Fund Unrealised".

real property were physically linked, but in different municipalities, they were considered two separate properties. Claims for occupancy rights to socially-owned apartments were always registered as a separate property within a claim application.

After a claimant submitted his/her claim application, it was sent to the Legal Department in Sarajevo to be registered. A copy of the claim was kept in the regional office in which it was filed, in order for the staff there to perform follow-up tasks as necessary (requests for statements, etc.). Before this registration, the Legal Department confirmed that all information written on the claim application corresponded with the evidence provided. In CRPC's regional offices and mobile teams, claim applications were numbered and strictly monitored. When they were compiled in the Legal Department, they were decided in chronological order.⁵

Deadlines for Submission of Claims to CRPC

In late 2000 and 2001, CRPC began considering both the operational and legal consequences of stopping claims collection. An analysis of statistics showed that CRPC saturated the potential claim base in BIH quicker than anticipated. There was a general downward trend in the number of new claim applications between 2000 and 2001, despite slight monthly variances (these variances were caused by different reasons, including holiday periods and prioritization of other duties by regional offices and mobile teams). In addition, by the end of February 2002, CRPC had received claim applications from 352 449 claimants, a high number considering there was an initial estimate of approximately 307 000 potential claimants for CRPC. Due to these facts, as well as due to reduced funding for CRPC's activities provided by its international donors, CRPC considered and then imposed a deadline for claims to be submitted.

Continuing claims collection past a certain date could have resulted in accepting a large number of claims that CRPC could not resolve before its mandate expired; involving high operational costs that would not have been supported by CRPC's donors. By imposing a deadline, the number of pending claims to be determined decreased, thus enabling CRPC's Legal Department to complete decision-making work on its pending claims before the expiration of CRPC's mandate.

CRPC considered the legal basis for deciding to suspend claims collection prior to imposing deadlines. The fundamental right to private property is recognised under international law as well as Annex 7 of the Dayton Peace Agreement and was the essence of CRPC's mandate. However, the jurisprudence of the European Court of Human Rights does not hold the right to private property to be an absolute right. Other factors are taken into account when deciding whether a person's right has been violated by an external interference.

In addition, the *Law on the Cessation of Application of the Law on Abandoned Properties Owned by the Citizens* (Federation of BIH) and the *Law on the Cessation of Application of the Law on Abandoned Property* (Republika Srpska) contained provisions under which an owner of a property may at any time submit a claim for repossession of the abandoned property to the competent municipal administrative body and CRPC. The right of an owner to submit a claim is therefore not subject to statute of limitations.

The High Representative imposed a deadline for socially-owned property claims to municipal housing bodies expiring fifteen months from entry into force of his Decision. The

⁵ Although chronological order was the general rule followed by CRPC, certain exceptions - for example, decisions on claims involving politicians, police or national staff of international organizations - were made when deemed essential to the international community and CRPC.

deadlines for claims to CRPC expired 60 days following the domestic deadline for submission of claims to the municipal housing bodies.

Since claim collection activities began in Serbia and Montenegro (1998) and Croatia (1999) after BIH, CRPC continued collecting claims in those countries longer than in BIH, in order to ensure saturation.

Setting a deadline also brought greater legal certainty to the private property situation in BIH. This approach was in line with CRPC's pre-transfer objectives and the High Representative's concept of BIH authorities taking "ownership" of the problems BIH faced, including property law implementation. Ceasing intake of claims also served to clarify CRPC's unique function as an impartial, international body providing RDPs a second avenue to repossess pre-war properties where denied by municipal housing bodies. In addition, it provided BIH authorities and PLIP organizations a finite list of CRPC claimants from which to decide if a RDP occupying someone else's property was entitled to alternative accommodation.

Statements and regional offices/mobile teams

If a legal advisor noted any formal mistakes due to information in the claim application failing to correspond with the evidence (e.g., due to the misspelling of a name), a copy of the claim would be returned to the regional office or mobile team where the claim was submitted along with a request for correction. The staff then invited the claimant to return to the office and issue a statement correcting the mistake.

When there was a discrepancy between evidence attached by the claimant or evidence obtained by CRPC (through verification or in CRPC's Cadastre Database) and the claimed property or right-holder, then a copy of the claim was also returned to the competent regional office with a request for action. The regional office staff would then contact the claimant and request clarification or additional evidence. All such movements of the claim in CRPC's decision-making process were logged in the Claims Tracking Software, so that the Legal Department could track where the claim stood at any time during the decision-making process.

In addition to the process of verification, which at times was time-consuming, delay in the decision-making process was caused by obtaining statements from claimants concerning mistakes in their claims or requesting new or additional evidence. Responding to this fact, this activity was prioritised during the initial years of CRPC's mandate over certificate delivery.

In areas covered by the Central Regional Office, Regional Office Tuzla and Regional Office Belgrade, mobile teams had a higher success rate in obtaining statements than other areas where claimants were invited to come into the regional offices. Mobile teams could locate claimants more easily and verify whether claimants really lived at the address stated on the claim application. Mobile teams also assisted in locating claimants whose claims were temporarily irresolvable to request additional evidence. It was cost-effective, therefore, to keep mobile teams operating and to downsize certain regional offices in order to increase the number of statements obtained from claimants.

Claims Resolution

If, on arrival at the Legal Department in Sarajevo, no formal mistake appeared in the claim application and the evidence submitted, the claim was registered and immediately forwarded to the teams of multi-ethnic and highly qualified lawyers to be reviewed and decided upon.

If a legal advisor determined that the provided documents and evidence did not state the situation as of 1 April 1992, but were, instead, either too old or too new, a verification of the status as of 1 April 1992 was needed. Verification officers then visited the competent administrative organs throughout BIH to request the needed evidence. During much of CRPC's mandate, the co-operation of these administrative organs was either poor or non-existent. Decisions on claims requiring this type of verification were therefore delayed, often for a substantial period, due to obstruction by or the lack of resources of the administrative organs.

Claims with adequate and verified evidence were decided by the legal advisors, each of whom was held to a quota of decisions to be prepared each day. Each type of evidence was assigned a code that would be entered by the data entry clerk into the Claims Tracking Software, so the basis for the decision was clear and transparent. The primary types of evidence used as the basis for CRPC decisions, often jointly with other types of evidence according to CRPC's Books of Regulations, were as follows⁶:

- Property Books, including property book extract confirming the owner or lawful possessor as of 1 April 1992, property book extract confirming the owner or lawful possessor before 1 April 1992 and other relevant property book extracts.
- Cadastre, including possession list on the claimed real property issued before 1 April 1992, a copy of the cadastral plan with complete data on the real properties and the user of those real properties, possession list on the claimed real property issued after 1 April 1992, CRPC cadastre database or other relevant cadastre information.
- Real Property Cadastre, including a decision on the real property presentation and determination of rights over real properties and real property cadastre extract for the municipalities where the real property cadastre entered into force before 1 April 1992.
- Contracts, including valid sales contract, valid gift contract (concluded before 1 April 1992), and contract on current maintenance of joint premises concluded before 1 April 1992, in a building with an apartment ownership, according to the allegations of the claimant.
- Permits, including building permits issued before 1 April 1992 and usage permit for the object issued before 1 April 1992.
- Court decisions on inheritance, including those with and without with the clause of validity; other court decisions by which the right to a property was established.
- Administrative decisions, including decisions made in an administrative procedure on the basis of which an agrarian based ownership was acquired (usurpation, redistribution of land, and etc.).
- Tax Payment Records, including records on payment of tax on real property transfer, tax on income from real property or tax on the real property itself.
- Evidence of an occupancy right (e.g., a contract on use of the apartment).
- 1991 Census data, which CRPC incorporated into its databases for efficient access by its legal advisors.

⁶ For additional information on evidence collection, the verification procedure and the different types of evidence used by CRPC to confirm property or occupancy rights, please see Annex D "Evidence Collection and Types of Property Rights Confirmed by CRPC Decisions".

After confirming that adequate evidence was available to prove a right to the claimed property or properties, each legal advisor would prepare a draft decision to be adopted by the Commissioners at the next plenary session of CRPC.

Quality Control and Review of Draft Decisions

Within the Legal Department of CRPC, each legal advisor was grouped under a Team Leader, who was responsible for the review of the draft decisions prepared by the legal advisors under him/her. Teams of legal advisors were separated by type of claims (Private Property, Occupancy Rights, and Reconsideration), with the result that the lawyers became specialized in their respective types of claims. In addition, the teams of lawyers were grouped using proportional ethnic representation, to ensure fairness and mutual oversight. Draft decisions were then passed to the Quality Control Unit, where a further check of the basis for the decisions was performed. Any questions or unclear cases would be brought to the Head of Claims Determination and then to the Deputy Director of the Legal Department – all prior to review by the Commissioners themselves. Such stringent oversight and quality control guarded against any external or internal pressure on the legal advisors to behave in an unethical or prejudicial manner in handling claims.

Immediately prior to each plenary session, Commission members of the Legal Working Group reviewed draft decisions and discussed any individual claims or types of claims brought to their attention by the Director of the Legal Department. If necessary, individual draft decisions were discussed at the plenary sessions with the full Commission present. The Commissioners adopted decisions by majority at each plenary session, after which the decisions were printed on numbered certificate paper with safety features and then sent to the regional offices, mobile teams or the field for delivery.

Balancing Limited Resources with Legal Obligations to Claimants in Resolving CRPC's Caseload – Strike Out

The Commissioners, after input received from the international community and CRPC's donors, decided in mid-2003 on broad strike out categories in order to drastically reduce the number of undecided claims to be transferred to domestic authorities. Given that the domestic authorities were simply not prepared to accept any large number of undecided cases from CRPC, different possible categories of potential strike outs were proposed in order to minimize the number of undecided transferred cases at the end of CRPC's mandate.

The main justifications for a strike out policy promoted by the international community involved the avoidance of duplication by CRPC and the domestic bodies. In addition, the view was that if claimants were reported as having repossessed their claimed property, then the time and resources to issue a CRPC decision should not be expended. Prior to finalising its strike out categories, CRPC analysed different strategies to address different claim types and problems with evidence.

CRPC decided to strike out claims, or property units within claims, in the following circumstances:

- if the claimant was tracked as having repossessed the claimed house or apartment through the domestic system;
- the claimant submitted a dual claim through the domestic system;
- a secondary property is related/connected to a primary property (residential or business) on which the Commission had already issued a positive decision;

- the claimant failed to respond to an invitation to correct deficiencies in their claim; and could not be located; or
- there was insufficient evidence for CRPC to issue a decision.⁷

After CRPC investigated all efficient sources of documentary evidence of property rights, it decided that it would also strike out certain claims (or the property or unit component of a claim) where CRPC could not find adequate evidence.⁸ Claims lacking in sufficient evidence to allow a mass claims body such as CRPC to decide on a claim were therefore struck out at the end of the mandate, instead of being rejected upon application for lack of evidence. Although provided for as an option in the Books of Regulations, these claims were not refused because the Commissioners determined that the domestic bodies, having more elaborate procedures such as hearings and cross-examination, had the ability to successfully resolve such claims. In order to protect claimants who chose to pursue their claims in the domestic bodies, CRPC made no statement on the merits of their claims in striking out. Due to the state of property registration after the signing of the Dayton Peace Agreement it was presumed that although many claimants lacked documentary evidence, properties claimed most likely did belong to them.

Claims at all stages of claims processing where the claimant repossessed the claimed house or apartment through the domestic system were deprioritised to increase efficient processing of solo, primary residential properties claimed at CRPC.

Review of Occupancy Rights Claims

Although claims for occupancy rights and apartments constituted a minority of decisions issued by CRPC (approximately 15%), they proved to be the most complicated legally and controversial politically. Specifically, with regard to claims for apartments formerly owned by the JNA (military apartments), the Commission formulated a policy over time that took into account domestic legislation, but also followed international human rights law and the European Convention on Human Rights. Despite support from the international community on its position, CRPC received resistance from the Federation of BIH authorities to its decisions on military apartments.

Taking into account the complicated nature of these claims, CRPC's Legal Department established an internal group of lawyers who only reviewed occupancy rights claims, including those for military apartments, and these draft decisions were given additional review by the National Commissioners and periodically discussed at plenary sessions.

Printing and Delivery of Decision Certificates

After adoption of the decisions at each plenary session, certificates were printed and then delivered to the relevant regional office or mobile team where the claimant filed his/her claim. Certificates were printed on special safety paper designed in Switzerland, to guard against forgeries, and each certificate was inscribed with its own serial number for proper tracking. All certificate paper was kept locked and access was controlled. After each

⁷ It is important to note that this strike out category only applied to private properties. As described above, there is no statute of limitations on private property claims in BIH, so a claimant whose claim was struck out due to insufficient evidence could still petition the domestic authorities for a remedy without being prejudiced. Apartments with insufficient evidence for CRPC to issue a decision were prepared undecided for transfer to the relevant domestic bodies. This distinction was made by CRPC to ensure that the evidence of timely filing was preserved for occupancy rights/apartment claims.

⁸ In terms of claims processing, all claims submitted at CRPC were reviewed at least once, and most went through multiple reviews in an attempt to issue decisions where evidence may have become available subsequent to the initial review of the claim.

certificate was printed, it was stamped with the seal of CRPC – using a dry embossing stamp. This also provided an additional safeguard against attempts to forge decisions of the Commission.

CRPC certificate registrars in BIH and in the regional offices in Croatia and Serbia and Montenegro notified claimants by attempting to contact them by phone as well as by sending a written invitation (a cable or a letter with a return receipt) to claimants whose occupancy right was confirmed. In addition, CRPC registrars sent a notification in writing in the event it was not possible to establish contact by telephone.

In each regional office, separate lists (for occupancy rights and private property rights) were posted conspicuously on a notice board with names of claimants and the dates of plenary sessions during which decisions were adopted. These were updated monthly in CRPC's regional offices and lists were also posted in the main Central Regional Office of CRPC in Sarajevo. CRPC worked periodically with UNHCR offices in Serbia and Montenegro and BIH, and UNHCR also posted lists of claimants who could not be found at the last known addresses in the possession of CRPC. Over time this process, however, did not enable CRPC to greatly increase the percentage of claimants that were successfully contacted. In addition, CRPC attempted to obtain updated addresses of claimants from the BIH government, but the information was not forthcoming.

The number of undelivered certificates increased in line with the difference of time between the claim submission date and the date of issuance of the decision. During the period of CRPC's operation, many claimants changed their addresses and failed to inform CRPC (although they were informed at the time of claim submission that they were required to do so). As refugee centres in the Federation of BIH and Republika Srpska closed, there was insufficient information to locate where persons in these centres had relocated. In the time period that elapsed between the submission of a claim and a decision being issued (after evidence was gathered and verified), a certain percentage of claimants repossessed or sold/exchanged their property and may have therefore been no longer concerned about picking up their CRPC certificate.

In the last year of its mandate, CRPC launched public information campaigns and projects in order to attempt to contact claimants who had not picked up their certificates. CRPC implemented a project whereby lists of undelivered certificates and the names of claimants with unknown addresses were posted in visible places at a significant number of municipal offices in major municipalities around BIH. This was accompanied by an information campaign directed at those specific claimants with undelivered certificates.

In addition, an information campaign was completed for the Sarajevo area to inform all claimants in the region who had not received CRPC certificates in Sarajevo to come to the CRPC Sarajevo office on a certain day. Unfortunately, this resulted in only a small number of certificate holders coming to CRPC's offices in Sarajevo, and this project was therefore not implemented in other large RDP population centres.

CRPC made verifiable attempts, at times multiple attempts, to deliver 311 352 certificates and successfully delivered 232 268 or 75% of them. The two most common reasons for delivery failure were unknown address (CRPC received notice from the postal service that claimant was no longer at address of record) and where CRPC notified a claimant (and did not receive an unknown address notification), but the claimant failed to subsequently collect

their certificate.⁹ Together, these two categories accounted for approximately 94% of undelivered certificates.

Viewing certificate delivery using data on repossession, dual claims and property reported as destroyed, however, provides a changed analysis. CRPC was able to successfully deliver approximately 86% of certificates pertaining to property that was neither repossessed, dual or reported as destroyed – all reasons for claimants to perhaps view a CRPC certificate as unnecessary. In addition, it is likely a certain number of claimants lost interest in collecting their certificates because they had been hoping for compensation for a destroyed property.

CRPC's staff responsible for certificate delivery followed strict record-keeping for all certificates delivered. Certificate delivery staff signed for all certificates (after they were counted in the presence of another staff member) and they were counted again when the delivery staff returned undelivered certificates to the Legal Department after attempting delivery.

During the hand-over of the certificate to the claimant, the field or regional office staff member recorded the claim number, the ID-card number or other identification document number of the claimant (or the individual holding the claimant's valid power of attorney) on the distribution list and the claimant then signed the list attesting that he/she received the certificate. Copies of the distribution lists were retained and rechecked against the certificates being returned to the Legal Department.

For those certificates that were not delivered, a note was written on the distribution list where the date and claimant's signature would otherwise appear. Post office certified mail receipts were then attached to the decision (noting the reason for the failure of delivery, for example, where a claimant's address was unknown, if the claimant had died, etc.). To ensure oversight of certificate-handling, certificates were not left in the field or in regional offices after attempts to deliver failed. They were brought back to Sarajevo for safe-keeping and newly-printed certificates were then sent to the field for delivery attempts.

In addition to the above precautions, CRPC performed random checks to ensure that the signatures from the claim matched the signatures on the distribution list that were returned to the Legal Department in Sarajevo.

Reconsideration Process

Annex 7 of the Dayton Agreement envisioned for decisions of the property commission it called for to be final and binding. Mindful of the European Convention on Human Rights and wanting to address any clearly incorrect decisions, however, CRPC instituted at the end of 1999 a reconsideration process. This process took into account the imperatives of a mass claims processing body (for example, the need for speed and the fact that original decisions were issued based only on documentary evidence presented by the claimant and obtained by CRPC (for example, Census and cadastre data)). The Commissioners therefore decided that where material evidence, unavailable to CRPC at the time of the original decision, was subsequently presented for evaluation, that it was correct to examine it and overturn the original decision if warranted.

⁹ The "notified" status of undelivered certificates may have, in fact, also involved claimants who had moved and not sent a change of address notice to CRPC, but without receipt of proof from the postal office, the status was not changed to "unknown address". In addition, given the high rate of decision-making in 2003 and the processing time between decision adoption and notification being sent out, a significant percentage of decision holders currently listed in the "notified" category most likely were unable to collect their certificates from CRPC prior to the end of its mandate, and will seek to obtain their certificates in 2004.

CRPC's Books of Regulations provide specifically that the Commission may reconsider a decision if the claimant or any other person with a legal interest in the real property designated in the original decision, within 60 days of learning of new evidence which could materially affect the decision, presents such evidence to the Commission, or gives indications of the new evidence. CRPC most commonly accepted reconsideration requests in letters from requestors, without an official form being required. The request for reconsideration was required to contain the details of the original decision, the reason for submitting a request for reconsideration, the new evidence or indications of new evidence which would materially affect the decision, the date on which the requestor learned of the decision or the new evidence and the signature of the requestor. A person who had one reconsideration request accepted but then decided against him/her by CRPC could not submit a subsequent request for hearing on the same property.

A Reconsideration Unit was formed in the Legal Department to review and draft decisions on reconsideration. The legal advisors in this unit were chosen for their expertise and experience, because the process involved weighing at times contradictory evidence. Upon receipt of a reconsideration request, the relevant legal advisor would evaluate all new evidence as well as the evidence that originally led to the first decision. A separate review process of reconsideration cases was set up for the National Commissioners in order for the complex legal analysis to be guided.

As of 10 December 2003, the total number of requests for reconsideration received by CRPC was 2 494 or 0.8% of decisions issued, of which 382 or 20% resulted in CRPC revoking its initial decision. The Commission therefore reversed only 0.12% decisions out of all the decisions it issued.¹⁰

The majority of reconsideration requests received by CRPC were against occupancy right decisions, attesting to the controversial nature of such claims. They were mostly lodged by current users on the following grounds: a) the right holders in the decision lost their occupancy right before 1 April 1992 in accordance with the *Law on Housing Relations*; b) the right holders in the decision did not have refugee status; or c) a claimant did not have the status of family household member. Reconsideration requests against private property decisions were made primarily by current users most commonly alleging that they acquired the claimed property through exchange/purchase after 1 April 1992.¹¹

CRPC's Books of Regulations also provided for *ex officio* review of any of its decisions if the Commissioners deemed it justified. This only occurred, however, in a very small minority of decisions (less than 50).

CRPC could, after examining any request for reconsideration, refuse the request as inadmissible, because not submitted in due time or because submitted by an unauthorised person; reject the request as being unfounded; or accept the request, revoke the original decision and then issue a new decision certificate.

¹⁰ Statistical totals on CRPC's reconsideration procedure include the following: The number of reconsideration decisions adopted - 264 in 2000, 530 in 2001, 472 in 2002 and 660 in 2003. CRPC, on average, received 90 reconsideration requests per month during 2003, a large increase compared to prior years – owing primarily to the increase in decision-making and greater awareness of the reconsideration process. The average backlog or carry-over of cases per year since the first reconsideration decisions were adopted in early 2000 was approximately 265.

¹¹ In addition, a small number of reconsideration requests alleged that the current user acquired the claimed property through exchange/purchase before 1 April 1992.

Decisions issued in the reconsideration procedure were delivered to the requestor and all persons who were entitled to receive the original decision, as well as to the administrative body responsible for enforcement.

Because of the time-sensitivity involved with the enforcement of CRPC decisions – resulting in evictions – the Commissioners, in 2001, granted the Executive Officer the right to request the relevant domestic bodies to suspend enforcement of the original decision (eviction proceedings) pending the adoption of the reconsideration request at an upcoming plenary session. In this way, CRPC endeavoured to protect the rights of the requestors and current inhabitants in between its plenary sessions.

In 2003, an internal CRPC study was completed on the majority of the reconsideration requests received. The results of the analysis of these reconsideration cases showed that the smallest period of time between the date the decision was adopted and the reconsideration request being received by CRPC was approximately 20 days. The longest period of time between the date the decision was adopted and the reconsideration request being received by the Commission was approximately 1 500 days (4 years). The longer periods of time were due to the years between when the Commission began issuing decisions (1997) and when the reconsideration process commenced (end of 1999). The average number of the days between the decision and reconsideration request was approximately 381, or just over 1 year (12.7 months).¹²

¹² The number of cases with more than 2 years between the date the decision was adopted and the reconsideration request being received by the Commission was 259. In most of those cases the first instance decision was issued before the reconsideration procedure was commenced. To take into account the delay between the Commission issuing decisions and the reconsideration process beginning, the average days if these 259 cases were removed from the calculations is approximately 284 days, or 8 ½ months.

The Final and Binding Nature of CRPC Decisions¹

The value of the CRPC decision lies in its final and binding nature.

This Annex F discusses 1) the final character and 2) the enforcement and binding nature of CRPC decisions. The former is an intrinsic issue with respect to the content of the decisions and the latter concerns the scope and effect of the decisions (the fact that CRPC decisions confirm property rights as of 1 April 1992 while the effect of the decision is to be given at a much later date).

Any analysis of the final and binding nature of CRPC decisions must have as its starting basis the rationale for creating CRPC in the first place.

The Parties to Annex 7, Bosnia and Herzegovina (BIH), the Federation of BIH, and Republika Srpska, are responsible for ensuring the return of refugees and displaced persons (RDPs) to their homes. Article I(2) of Annex 7 and Article II(5) of Annex 4 (the Constitution of BIH) of the Dayton Peace Agreement provide that RDPs have the right to return to their pre-war homes and to be compensated for any property that cannot be restored to them.

Chapter II of Annex 7 calls for the establishment of CRPC to “receive and decide any claims for real property in [BIH], where the property has not voluntarily been sold or otherwise transferred since April 1, 1992, and where the claimant does not now enjoy possession of that property....”²

According to Article XV, the Commission is mandated to “promulgate such rules and regulations, consistent with this Agreement, as may be necessary to carry out its functions. In developing these rules and regulations, the Commission shall consider domestic laws on property rights.”

According to Article XII of Annex 7, “Upon receipt of a claim, the Commission shall determine the lawful owner of the property with respect to which the claim is made....Any person requesting the return of property who is found by the Commission to be the lawful owner of that property shall be awarded its return....” CRPC’s mandate only concerns who had a property right on 1 April 1992.

Article XII also explicitly spells out that “Commission decisions shall be final... and shall be recognized as lawful throughout [BIH].”

Therefore, according to the plain wording of Dayton Peace Agreement, CRPC decisions confirming property rights are final and binding throughout BIH, “where the property has not voluntarily been sold or otherwise transferred since April 1, 1992.” In the context of Annex 7, the final and binding nature of CRPC decisions must be attributed to the primary objective of Annex 7 – the return of RDPs to their pre-war homes.

¹ This Annex F is a part of and attached to the Commission for Real Property Claims of Displaced Persons and Refugees (CRPC): End of Mandate Report (1996-2003) (End of Mandate Report). Terms not otherwise defined in this Annex F are defined in the body of the End of Mandate Report.

² Real property has been defined to include occupancy rights.

The Final Nature of CRPC Decisions

CRPC decisions are conclusive, decisive or unalterable for all institutions in BIH on the issue of who had rights to a property on 1 April 1992.

The Dayton Peace Agreement³

Annex 7 of the Dayton Peace Agreement is the primary legal source defining the legal effect of CRPC decisions. Article XII(7) explicitly states out that “Commission decisions shall be final....” and is completely silent on appeals.

CRPC Books of Regulations⁴

Article 68 of the CRPC Book of Regulations on Private Property explicitly provides that “[i]ndividual decisions on claims for return of real property...will become final and binding as of the day they are adopted.” CRPC may, however, reconsider its decisions under Article 77 of the CRPC Book of Regulations on Private Property if new evidence is presented which could materially affect the initial decision.

Pursuant to Article 34 of the CRPC Book of Regulations on Occupancy Rights, CRPC decisions confirming occupancy rights are final and binding for the claimant from the date of receiving it. CRPC may reconsider its decisions under Article 42 of the CRPC Book of Regulations on Occupancy Rights, if substantial new material evidence or information of new evidence is presented which CRPC has not considered at the time of making the initial decision.⁵

Therefore, according to CRPC’s Books of Regulations, CRPC decisions are final and limited only by CRPC's ability to reconsider its decisions. In other words, CRPC decisions are not necessarily final if new evidence or information emerges that was not considered at the time of issuing the decision, but only CRPC can reverse its initial decision.

Law on Implementation of CRPC Decisions⁶

On 27 October 1999, the High Representative imposed the *Law on Implementation of CRPC Decisions* with respect to repossession of property in both the Federation of BIH and Republika Srpska. The High Representative amended the *Law on Implementation of CRPC Decisions* on several occasions.⁷

³ The internationally-brokered Dayton Peace Agreement was negotiated by representatives of the parties involved in the 1992-1995 war in BIH, including the neighbouring Republic of Croatia and the Federal Republic of Yugoslavia, at US-led talks in Dayton, Ohio, in November 1995. On November 21, the parties successfully concluded the negotiations, and on December 14, they signed the Dayton Peace Agreement in Paris. The Agreement is formally referred to as the General Framework Agreement for Peace in Bosnia and Herzegovina (GFAP).

⁴CRPC adopted both a Book of Regulations on the Conditions and Decision Making Procedure for Claims for Return of Real Property of Displaced Persons and Refugees, Sarajevo, Final Consolidated Version dated 29 November 2003, incorporating all amendments (Book of Regulations on Private Property) and a Book of Regulations on the Confirmation of Occupancy Rights of Displaced Persons and Refugees, Sarajevo, Final Consolidated Version dated 29 November 2003 (Book of Regulations on Occupancy Rights).

⁵ If the evidence upon which the decision was made is somehow altered by a subsequent or unknown court or administrative decision, such evidence arguably impacts the CRPC decision in relation to a property right on 1 April 1992. The CRPC decision is still final and binding unless CRPC changes it pursuant to its reconsideration procedure and the *Law on Implementation of CRPC Decisions*.

⁶*Law on Implementation of the Decisions of the Commission of the Commission for Real Property Claims of Displaced Persons and Refugees* (published in the Official Gazette of Federation of BIH, Nos. 43/99, 51/00, 56/01 and 24/03 and in the Official Gazette of the Republika Srpska, Nos. 31/99, 39/00, 65/01 and 39/03).

⁷ The latest were imposed on 4 December 2001 and 16 May 2003.

Article 2 stipulates that CRPC decisions are final from the day of their adoption.

Article 10 entitles the property right holder or any other person who holds a legal interest in the property or apartment at issue to submit a request for reconsideration to CRPC. The request for reconsideration must be done in accordance with the CRPC Books of Regulations. Article 10 states that “[t]he regularity of the Commission decision may be reviewed only through the reconsideration procedures of the [CRPC].”

To summarize, in the context of the *Law on Implementation of CRPC Decisions*, CRPC decisions are final and binding as of the date of adoption and their validity can only be reviewed by CRPC in its reconsideration procedure.

The Human Rights Chamber

The Human Rights Chamber (the Chamber), was a temporary body established by Annex 6 of the Dayton Peace Agreement. Pursuant to Annex 6, the Chamber’s mandate is to consider and decide upon alleged violations of human rights as provided by the European Convention for the Protection of Human Rights and Fundamental Freedoms and the Protocols thereto (ECHR), as well as alleged discrimination in the enjoyment of rights defined by all international agreements, to which BIH has accessed.

The Chamber commenced solving cases it received at the end of 1997 and rendered decisions until the end of 2003.

The approach of the Chamber towards the return of property in general and CRPC decisions in particular evolved to significantly effect Annex 7 implementation, reacting to developments in the property laws and Property Law Implementation Plan (PLIP) policy.

During its first years of existence the Chamber most frequently dismissed cases involved CRPC claims on admissibility grounds.

Article VIII(2)(d) of Annex 6 reads:

The Chamber may reject or defer further consideration of a case, if it concerns a matter currently pending before any other international human rights body responsible for the adjudication of applications or the decision of cases, or any other Commission established by the Annexes to the General Framework Agreement.

On the basis of this provision, the Chamber during the course of 1999 and 2000 decided in several cases that the applications before it were inadmissible because of *lis alibi pendens* whenever the issue at stake in the application concerned the return of properties claimed also at CRPC (see CH/97/78 *Dubravic*).

In some cases the Chamber contacted the applicants to determine whether their applications raised matters essentially different from or additional to the subject matter brought before CRPC or if there were any other reasons why the Chamber should nevertheless consider the case. The applicants were warned that if they did not reply within two weeks from the date of the letter their applications would most likely be declared inadmissible, and indeed the Chamber struck them off their caseload (see CH/98/456 *Vajman*).

If discrimination may have been at stake (CH/98/756 *Đ.M.*) or the complaints were of a different nature (CH/97/93 *Matić*) the applications were admitted even if a decision by CRPC was pending.

According to the rules of the Chamber, it only dealt with a matter after all domestic remedies had been exhausted. In CH/98/1124 *Dizdarević*, the Chamber clarified that submitting a claim at CRPC could not be considered a domestic remedy for the requirement of exhaustion of domestic remedies. Therefore for the purposes of admissibility the Chamber did not have to determine if a claim had been submitted at CRPC in order to deal with applications concerning property repossession claims.⁸

As more and more CRPC claimants received their CRPC decisions, asked for their enforcement and were reinstated in their properties, several current occupants, attempting to avoid their eviction from the properties of CRPC decision holders, filed applications at the Chamber complaining that CRPC decisions were violating their human rights because they caused them to be evicted from the property they were currently residing in. The Chamber consistently refused to admit such applications since CRPC decisions are by nature final and binding, and the only procedure for reviewing them is clearly identified in the CRPC Books of Regulations and in the *Law on Implementation of CRPC Decisions*.

The Chamber also refused to admit challenges to CRPC decisions on the basis of Article VIII(2)(b) of Annex 6, which states: “The Chamber shall not address any application that is substantially the same as a matter which has already been examined by the Chamber or has already been submitted to another procedure of international investigation or settlement”. The Chamber confirmed in CH/01/7728 *V.J.* that CRPC fell within the ambit of this provision.

In CH/01/7728 *V.J.*, the applicant, supported by OSCE as *amicus curiae*, complained against a violation of Article 6 of the ECHR (right to a fair trial) with regards to CRPC’s procedures on issuing decisions. Specifically, the applicant complained that the interested parties are not heard by CRPC. The Chamber, in line with its previous decisions in which it ruled that it was not competent to determine possible violations by international organizations (OSCE, OHR and SFOR), declared that it was not competent to determine whether CRPC had violated the ECHR and ruled the application inadmissible. The Chamber also held that the Respondent party, the Federation of BIH, could not be held responsible for the alleged lack of compliance of CRPC with respect to Article 6 of the ECHR because its actions were bound by respect for Annex 7.

In CH/97/114 *Fatima Ramic*, the Chamber unanimously held that the failure to enforce a CRPC decision was a violation of the applicant's right to respect for her home and right to peaceful enjoyment of her possessions under the ECHR. The Chamber laid out the following principles giving further essence to the final and binding nature of CRPC decisions:

According to Article XII(7) of Annex 7 to the General Framework Agreement decisions issued by the CRPC are final and are to be recognised as lawful throughout [BIH]. Article 14 of the new [*Law on Implementaion of CRPC Decisions*] states that a decision of the CRPC is “final and binding”. Additionally, Article 14 of the new Law provides that a decision of the CRPC has the force of a decision of the competent domestic authorities made in accordance with the law. It follows, in the Chamber’s opinion, that any decision of a domestic authority that is given after a CRPC decision and is incompatible with it is unlawful unless it falls within the narrowly defined category of cases for which deviation from a CRPC decision is possible under the law (see Article 10 paragraph 2 of the

⁸ The Republika Srpska in this case tried to create a situation in which applying to CRPC would have constituted a step in exhausting local remedies for admissibility purposes. In this period the Republika Srpska Courts were consistently ruling that the return of property was an exclusively administrative matter, for which they did not have competence.

Therefore, according to the Chamber's ruling, any inconsistent decision of a domestic authority that is given after a CRPC decision is unlawful.⁹

Constitutional Court of BIH

The Constitutional Court of BIH (Constitutional Court), created under Article VI of Annex 4 (Constitution of BIH) of the Dayton Peace Agreement has in accordance with Article VI(3)(b) appellate jurisdiction for the matters which according to the Constitution of BIH come out "from the verdict of any other court in [BIH]".

In the *Mustafa Krivic* case (No. 21/01 issued 22 June 2001), the appeal challenged the merits of a CRPC decision, which confirmed Mihajlo Kisic as the occupancy right holder of an apartment in Sarajevo, Centar. The Constitutional Court unanimously rejected the appeal by Mr. Krivic as inadmissible for lack of competence and determined that CRPC decisions were not "verdicts issued by any other court in BIH" and thus not within the scope of Article VI(3)(b) of the Constitution of BIH.

The Constitutional Court turned to the Dayton Peace Agreement to interpret the legal foundation and competence of CRPC as well as the legal effect of its decisions. It noted that the Dayton Peace Agreement established several bodies in different Annexes and went on to explicitly declare that the Annexes and the institutions they establish complement each other and have equal standing.

The Constitutional Court considered whether under its appellate jurisdiction it could review a disputed decision of CRPC. Article VI(3)(b) of the Constitution of BIH permits jurisdiction over matters contained in the Constitution of BIH when they become issues of dispute due to a verdict issued by any court in BIH. Appreciating its previous decisions determining that the Constitutional Court was not competent to review decisions of the Chamber, the Constitutional Court found that CRPC is not part of the BIH national court system that it is competent to supervise.

Finally, the Constitutional Court "[found] that, in accordance with Article XII of Annex 7 of the Agreement and the Law on Implementation of the Decisions of the [CRPC], decisions issued by the Commission are final and binding ones."

In the context of this decision, the "final" character of the CRPC decision meant that even the Constitutional Court did not have jurisdiction to review the merits of CRPC decisions.

In the *Central Profit Bank d.d. Sarajevo* case (No. 32/01 issued 22 June 2001), the Constitutional Court similarly rejected the applicant's appeal against the CRPC decision citing the same reasons as in the *Mustafa Krivic* case: the Constitutional Court was not competent to review CRPC decisions because CRPC was not a part of the national court system of BIH.

These two decisions are very important because they were rendered by the highest permanent court of BIH.

⁹ Significantly, the administrative decision (19 January 2000) was issued a few months before the decision holder requested enforcement of the CRPC decision (16 October 2000) but after CRPC issued its decision (12 November 1998). The Chamber infers from the time difference between the issuance of the CRPC decision and the issuance of the administrative decision that "the Administration should not have been unaware of this decision."

The Enforcement and Binding Character of CRPC Decisions

The binding character of CRPC decisions imposes a duty or obligation on the institutions in BIH to acknowledge the existence, validity, character and claims of CRPC decisions.

The Dayton Peace Agreement

The Parties to Annex 7 of the Dayton Peace Agreement have an explicit obligation as per Article VIII of Annex 7 to respect and implement CRPC's decisions expeditiously and in good faith. Article XII(7) stipulates that "Commission decisions shall be final, and any title, deed, mortgage, or other legal instrument created or awarded by the Commission shall be recognized as lawful throughout [BIH]."

CRPC Books of Regulations

According to Article 89 of the Book of Regulations on Private Property "[t]he competent administrative and judicial authorities of the Entities and the municipality where the claimed real property is located are responsible for the enforcement of decisions...."

Pursuant to Article 34 of the Book of Regulations on Occupancy Rights, CRPC decisions confirming occupancy rights are final and binding for the claimant from the date of receiving it, and for the competent administrative body for enforcement of CRPC decisions as of the date of request for enforcement.

Law on Implementation of CRPC Decisions

CRPC decisions confirm rights to properties of the person(s) named in the decision, and require the responsible enforcement organs to take measures outlined in the *Law on Implementation of CRPC Decisions*. CRPC decisions also carry the force of legal evidence that may be used in administrative, judicial or other legal proceedings.

Article 2 stipulates that CRPC decisions are binding from the day of their adoption.

Article 3 explicitly places a legal obligation on the administrative bodies responsible for legal property affairs or housing affairs to enforce CRPC decisions upon request.¹⁰ Article 9

¹⁰Article 3 of the Federation of BIH *Law on Implementation of CRPC Decisions* states:

The enforcement of a decision of the Commission shall be conducted administratively, if the persons referred to in Article 4, Paragraphs 1 or 2 (requestor for enforcement) requests so.

The administrative body responsible for property legal affairs in the municipality where the property is located shall enforce decisions of the Commission relating to real property owned by citizens upon the request of persons referred to in Article 4, Paragraph 1 of this Law.

The administrative body responsible for housing affairs in the municipality where the apartment is located shall enforce decisions of the Commission relating to an apartment for which there is an occupancy right upon the request of the persons referred to in Article 4, Paragraph 2 of this Law.

Article 3 of the Republika Srpska *Law on Implementation of CRPC Decisions* states:

The enforcement of a decision of the Commission shall be conducted administratively, if the persons referred to in Article 4, Paragraphs 1 or 2 (requestor for enforcement) requests so.

broadly states: “The enforcement of a decision shall be conducted regardless of whether the property or apartment referred to in the decision was declared abandoned or not and irrespective of any other decisions or regulations relating to its legal status.” Under Article 5, requests for enforcement of CRPC decisions confirming occupancy rights must be made within 18 months from the date the decision was issued.

According to Article 11, pending reconsideration by CRPC, the initial decision remains final and binding (enforceable) unless CRPC notifies the administrative body requesting suspension of enforcement.

However, Article 10 also allows the conclusion on permission of enforcement issued by the competent administrative body to be appealed by a person with a legal interest in the property or apartment at issue acquired after the date (1 April 1992) referred to in the dispositive of the CRPC decision. This process must follow the provisions of this Law. The appeal procedure mentioned in Article 10 may not refute the substance of the CRPC decision.

Article 12a stipulates that the appellant must initiate proceedings before the competent court to prove that the right holder named in the CRPC decision voluntarily and lawfully transferred his or her rights to the appellant since the date (1 April 1992) referred to in the dispositive of the CRPC decision.¹¹

Initially the *Law on Implementation of CRPC Decisions* did not allow for courts to suspend enforcement proceedings regarding CRPC decisions pending the outcome of validity of transfer cases if the transfer occurred during the war period. It was subsequently amended in December 2001 to permit the competent court to order the suspension of the enforcement of a CRPC decision in such cases but only where the appellant could show evidence of a legally valid written contract on the transfer of rights and the resulting irreparable damage to the enforcer if the enforcement proceedings continued. In May 2003 the Law was amended again to allow the competent administrative organ to suspend enforcement proceedings and refer the parties to the competent court in cases where a person claimed a legal interest in the property or apartment at issue which was acquired after 1 April 1992, the date referred to in the operative part of the Commission decision, and could show a valid contract on exchange or transfer of rights.

Article 13 provides that if the validity of the transfer was determined by a court decision issued prior to 28 October 1999, this decision shall be null and void. The court may make whatever orders are necessary to enforce its decision, including setting aside legal transactions, making or erasing entries in the appropriate public books/registers, or lifting an order for suspension of the administrative proceedings. The responsible administrative body shall resume enforcement proceedings as required, or discontinue proceedings in accordance with the court’s decision.

Decisions confirming occupancy rights cease to be enforceable once the 18 month time limit (commencing from date of issuance of decision) for requesting enforcement lapses.

CRPC decisions are final and binding only in terms of a property right on 1 April 1992. If, however, there is an allegation of transfer of that property right after 1 April 1992, the court

The responsible body of the Ministry of Refugees and Displaced Persons in the municipality where the property is located shall enforce decisions of the Commission relating to real property owned by citizens or to apartments for which there is an occupancy right upon the request of a requestor for enforcement.

¹¹ It is important to note that some earlier CRPC decisions state 30 April 1991 as the relevant date.

has jurisdiction to make a determination on that issue or on the legality of the transfer. If a court decision dated after 27 October 1999 finds that the property was transferred according to the law, the CRPC decision may no longer be enforceable in terms of repossession of the property. However, if the court's decision regarding the post 1 April 1992 status was issued between 1 April 1992 and 27 October 1999 it is not legally valid and the CRPC decision may thus still be enforceable. Practically, it is possible that the court could make a post-1 April 1992 determination either before or after CRPC issues its decision.

Property Laws¹²

Article 14 of the Federation of BiH *Law on Apartments* confirms that “[a] decision of [CRPC] is final and binding.” The Article clarifies the meaning of final and binding in this context: “Following a decision of the Property Commission, the rights and obligations of the party referred to in Paragraph 1 of this Article shall be the same as if the decision of the Property Commission was a decision of the competent authorities made in accordance with this law.”

Article 14 of the Federation of BiH *Law on Private Property* is essentially the same as immediately above.

Articles 13 and 23 of the Republika Srpska *Law on Property* also confirm that “[a] decision of [CRPC] shall be final and binding.” Both Articles state the meaning of final and binding in this context: “In the light of specifying the rights and obligations of the party referred to [above], the decision of the Commission shall have the same legal force as the decision of any other responsible body issued in accordance with this Law.”

Therefore, according to the property laws, a CRPC decision is binding and enforceable as if the competent administrative body had issued the decision.

The Human Rights Chamber

From September 2000 to July 2002, the Chamber, in 15 decisions involving 53 applications, ruled that the non-enforcement of CRPC decisions constituted a violation of the rights of the applicants to peaceful enjoyment of their possessions (Article 1 of Protocol 1 to the ECHR) and to respect for home (Article 8 of the ECHR) under the ECHR.

In all of these rulings, the Chamber awarded the following remedies: the immediate reinstatement of the CRPC decision holder; compensation for the moral suffering with a lump sum ranging from 1200 to 2000 KM; compensation for expenses incurred for not being able to repossess their property (100 to 250 KM per month) starting 30 days after the request for enforcement was filed.

In May 2003, after summarizing all its previous rulings on the same issue above, the Chamber unequivocally ruled in CH02/1226 *Haziraj* that “the non-enforcement of CRPC decisions constitutes a violation of the right of the applicants to respect for their home within the meaning of article 8 of the ECHR” as well as “to the peaceful enjoyment of their

¹²*Law on the Cessation of the Application of the Law on Abandoned Apartments* (Official Gazette of the Federation of BiH, Nos. 11/98, 38/98, 12/99, 18/99, 27/99, 43/99, 56/01, 24/03 and 29/03) (*Law on Apartments*); *Law on the Cessation of the Application of the Law on Temporary Abandoned Real Property Owned by Citizens* (Official Gazette of the Federation of BiH 11/98, 29/98, 27/99, 43/99, 37/01, 56/01 and 24/03) (*Law on Private Property*); *Law on the Cessation of Application of the Law on the Use of Abandoned Property* (Published in the Official Gazette of RS, no. 38/98, 12/99, 31/99, 65/01, 39/03 and 96/03) (*Law on Property*).

possessions within the meaning of Article 1 of Protocol No. 1 of the ECHR". In this case, the Chamber awarded significant compensation in view of the prolonged and discriminatory suffering the CRPC claimants were forced to endure.

Despite the *Law on Implementation of CRPC Decisions* the Chamber issued provisional measures, in e.g., CH/01/7617 *Micic* and CH/01/7240 *Djurdjevic*, suspending enforcement proceedings regarding CRPC decisions.

During its last year of activity, 2003, the Chamber turned its attention to a few applications in which the current occupant had registered his/her ownership for properties confirmed by CRPC as belonging to the CRPC claimant on 1 April 1992. In order to protect post-war registered owners from dispossession, the Chamber decided to suspend enforcement proceedings of CRPC decisions pending a final court determination of the property rights.

In the first months of 2003, the Chamber issued three decisions (CH/02/9130 *Samardzic*, CH/01/7224 *Vuckovac* and CH/01/7257 *Borota*) in applications brought by current occupants of properties for which the CRPC decision holders (pre-war owners/occupancy rights holders) requested enforcement of their CRPC decisions. All three applications concerned properties that were exchanged during the war, where the new owner registered their ownership at the competent courts, but the pre-war owner or CRPC decision holder wished to be reinstated claiming that the exchanges were executed under duress. CRPC, in line with the landmark decision of the Constitutional Court, *S.Z.* (No.U/15/99 issued December 2000), has presumed that wartime transfers were performed under duress taking into account the general circumstances. CRPC decisions also only confirm claimants' property rights as of 1 April 1992, which is not disputed by any of the parties of a wartime exchange.

The Chamber ruled that there was an unjustified difference of treatment between these three applicants (current occupants) and other current occupants of properties what were exchanged in the same period but whose counterparts did not claim to CRPC but only at the local housing bodies. In the latter situation, the legislation envisages that enforcement proceedings have to be immediately suspended and the parties addressed to a Court which would rule on the legality of the exchange (with the burden of the proof on the party who claims that there was no duress). Regarding the enforcement proceedings of a CRPC decision, the Chamber found that while the Court was entitled under the law to issue a temporary measure to suspend enforcement, in this case the applicant had asked the court for a temporary measure but the Court failed to decide.

These decisions led the High Representative to impose legislative amendments in May 2003 which provided for the automatic suspension of the enforcement of CRPC decisions and reverting to the Courts to determine the issue of whether the transfer/exchange of property was voluntary and lawful. As a result the presumption of duress has been almost reversed. Moreover, the procedure had been unduly complicated because it made it almost impossible to repossess one's pre-war property through administrative means (the fast track mechanism). Currently in BIH it takes several years to obtain a first instance Court decision.

The Chamber in CH/01/7728 *V.J.* created a new situation, in all probability inconvenient both for the Chamber applicant and the CRPC claimant. In this case, the Chamber ruled that the pre-war occupancy right holder of the apartment was entitled to repossess his apartment pursuant to a CRPC decision. It also ruled that the eviction of V.J. from the apartment did not constitute a violation of her human rights even though she was the registered owner. The Chamber did not declare her ownership registration illegal. While V.J. was bound to have a tenant in her apartment because she had purchased an apartment that was burdened with an occupancy right (as confirmed by the CRPC decision), the CRPC decision holder was not

returned to a position in which he could purchase the apartment that he lived in prior to the war.

In the CH/02/9868 *Bukvic* case, the applicants had registered their ownership over a restaurant that they built on socially-owned land that they were allocated in 1996 by the municipality. The pre-war possessor of the land used to run a restaurant with the same name there and in 2001 he received a CRPC decision, the enforcement of which was subsequently suspended on two occasions by the municipal Court. The CRPC decision provided that “all legal documents of judicial and municipal bodies of BIH and entities issued after 1 April 1992, depriving or limiting property rights of persons mentioned [above] and all legal acts concluded after 1 April 1992 against the will of these persons, that served as a basis for change of the legal or factual situation on the mentioned property, are declared null.”

The Chamber recognised that according to the law at that time it was impossible to suspend the enforcement of the CRPC decision, but decided to issue a preliminary measure to suspend the enforcement of the CRPC decision, pending a final court determination of the right of the applicants to the property at stake. The motivation for such an extraordinary measure seemed to lie mainly in the quantity of money invested by the applicants that would have resulted in an excessive burden on them, not justifying the interference with the protection of their possession, and by the fact that the legislative framework was currently “uncertain”.

A few days after this decision was taken, the High Representative imposed entity laws on construction land.¹³ This land, which used to be socially-owned during the socialist Yugoslav period and was subsequently turned into state-owned, is privatized according to this law. Articles 86-90 enables those,

whose right of use was cancelled without their consent between 6 April 1992 and the date of entry into force of this law, may submit a request for revision before the municipal administrative organ competent for property legal issues within 2 years from the date of entry into force of this law...In the event that a bona fide third party has commenced construction on the land plot...the municipality shall compensate the claimant, either through a monetary award pursuant to Article 69 of this law, or by allocating an equivalent plot of land based upon size, function, value, location, etc., at the option of the claimant.

This legislation should solve such disputes as described above, and enable CRPC decision holders to initiate the procedure without the need for any further proof or evidence.

The Constitutional Court

In the *Mustafa Krivic* case, the Constitutional Court emphasized that there is a role for the regular courts:

In cases which do not concern the status of the holders of right as of 1 April 1992 the interested party can file an appeal against the conclusion on permission of enforcement issued by the administrative body. The administrative body in certain cases can advise the appellant to initiate a court procedure before the competent court. After a regular court procedure takes place these persons can, through appellate jurisdiction of the Constitutional Court of [BIH] with the scope of Article VI/3 b stipulated in the Constitution of BIH, request protection of their rights from the Constitution of BIH and European Convention for Protection of Human rights and Basic Freedoms.

¹³ Decision Enacting the *Law on Construction Land of the Federation of BIH* and the Decision Enacting the *Law on Construction Land of the Federation of BIH* were issued on 16 May 2003.

Administrative Court Decisions

By 2001, CRPC was generally satisfied with the treatment of CRPC decisions in decisions of the Administrative Courts. In the majority of cases known to CRPC the Administrative Courts applied the *Law on Implementation of CRPC Decisions*, recognizing that CRPC decisions are final and binding. For example, in the case of U-420/2000 the Cantonal Court of Mostar had to issue three decisions in order for the CRPC decision to be implemented. In this case, the CRPC decision holder had requested implementation of his decision but the competent administrative organ refused to act. In its first decision dated 28 December 2000 the Cantonal Court of Mostar ordered the competent administrative organ to decide the case. In the second decision dated 21 April 2001, after the organ still had not acted, the Court issued a conclusion on the execution of the CRPC decision, including an order to the temporary user to vacate the property within 90 days, in accordance with the *Law on Implementation of CRPC Decisions*. Finally, after the organ failed to implement the conclusion on execution, the Court in a third decision dated 20 February 2002 ordered the organ to execute the conclusion under a threat of a fine of 300KM for the Head of the organ and a request for his dismissal and replacement by the authorized municipal organ.

Civil Court Decisions

The decisions of the civil courts in BIH dealing with CRPC decisions concern mainly issues related to the validity of contracts on transfer of property confirmed as belonging to the CRPC decision holder during and after the war. CRPC decisions only confirm rights as of 1 April 1992. The civil courts in BIH were given under the *Law on Implementation of CRPC Decisions* the jurisdiction to determine the validity of post 1 April 1992 transfers of property. Initially the *Law on Implementation of CRPC Decisions* did not allow for courts to suspend enforcement proceedings regarding CRPC decisions pending the outcome of validity of transfer cases if the transfer occurred during the war period. Regardless that it was contrary to the Law at that time, the civil courts in many cases ordered provisional measures suspending enforcement proceedings regarding CRPC decisions. This was no longer an issue after the *Law on Implementation of CRPC Decisions* was amended to automatically suspend enforcement proceedings of CRPC decisions when court proceedings on the validity of a post 1 April 1992 transfer had been initiated.

In conclusion, the discussion above illustrates that through the legislation and court decisions of BIH, CRPC decisions have become embedded within the domestic legal system.

[Attachments internal to this Annex G are not included.]

**Our
reference:**
Your
reference:
Date:

7 November 2003

Paddy Ashdown
High Representative
Office of the High Representative

Your Excellency,

It is now 6 November 2003, six weeks before CRPC closes down its operations under its present mandate. The current CRPC does not have funds nor a legal mandate to exist in 2004.

As you know, the Government of BiH must assume responsibility of the CRPC by the end of this year according to Annex 7 of the General Framework Agreement for Peace in BiH (“GFAP”). This was wisely envisioned by the drafters of Annex 7, since, while the work of the CRPC as initially established is by and large completed, there are certain components that need continuation beyond 2003.

In order to ensure an orderly transfer as envisioned by the GFAP the BiH Council of Ministers on 3 April 2003 tasked the BiH Ministry of Human Rights and Refugees (“MHRR”) and the BiH Ministry of Justice (“MOJ”) to prepare a proposal on an agreement on the transfer of competencies of the CRPC to the institutions in BiH.

It is of the highest importance to the international community that there is a successful transfer of CRPC to BiH, as demonstrated by a letter dated 20 October 2003 from Werner Wendt, SDHR and Robert M. Beecroft, Head of OSCE Mission to the Federation Ministers of Defense and Urban Planning and Environment (see Annex 1). In their letter they clearly lay out the expectation that the overall transfer agreement should be approved and an agreement signed by the required levels of government before 31 October 2003.

As of today the deadline has passed and the agreement on transfer of competencies has not even been forwarded to the BiH Council of Ministers for their consideration.

Therefore, the present state of affairs compels me to bring to your attention an overview of the actions taken by CRPC to facilitate the transfer of our functions to the Government of BiH.

CRPC’s primary mandate is to make final and binding decisions confirming property rights for refugees and displaced persons (“RDPs”) who lost their property because of the war. There are numerous functions that have been performed by CRPC for us to have issued over 300 000 decisions since 1996. This has required the establishment of a number of departments within CRPC performing numerous functions. Some of these functions have to

fit within the structure of the BiH Government and Entities.

Realizing the complexity of this transfer, in September 2002, CRPC prepared and distributed a paper entitled “Transfer of CRPC – Discussion Paper” (see Annex 2) to various international organizations, including OHR, and all of our donors. This paper initiated substantive discussions early on in order to ensure that a proper transfer would take place at the end of 2003. In that paper CRPC made it clear that a legal framework, including an agreement signed by the Parties to Annex 7 and implementing legislation, would be required to ensure a proper transfer.

From December 2002 CRPC has been actively engaged in discussions with the domestic authorities, who are responsible under Annex 7 of the GFAP for assuming responsibility of CRPC after 31 December 2003.

In negotiations up to now it has been agreed, in principle in certain cases and by formal agreement in other cases, that the following functions will be transferred:

1. Undecided claims These are claims that will require a hearing (about 1 300) which CRPC as a mass claims body did not have the capacity nor time to resolve. It is envisioned that these claims will be transferred to the entities but it has not been formally agreed to as yet.

2. Reconsideration of CRPC decisions Even though Annex 7 states that CRPC decisions are “final and binding” CRPC established a procedure to reconsider its own decisions whenever new evidence was introduced that was not available to CRPC when making its initial decision. Out of more than 300 000 decisions issued, only 363 first instance decisions have been overturned as a result of a reconsideration request. It is envisioned that this function will be taken over by a continuation of CRPC as a newly constructed body under the Government of BiH.

3. Integrated Property System - databases These are CRPC databases developed over an eight year period. The integrated databases contain claims, decisions issued and properties repossessed within a system that can be accessed via a user-friendly interface. This will be transferred to the MHRR. Training of MHRR personnel by CRPC has already begun. A bilateral protocol was signed on 5 November 2003 (see Annex 3).

4. Cadaster databases These are databases of cadastre records BiH-wide developed by CRPC and integrated into an easy to use system that is being transferred to the Federation Geodetic Administration, RS Geodetic Administration and the BiH Ministry for Civil Affairs. A bilateral memorandum of understanding was signed on 5 November 2003 with each of these bodies (see Annex 4).

5. Undelivered decision certificates These are being transferred to the BiH Archives. A system has been developed to allow individuals who did not for whatever reason receive or pick up their certificate from CRPC to do so from the BiH Archives. A bilateral contract was signed on 5 November 2003 (see Annex 5) and undelivered certificates are now in the process of being organized and delivered to the BiH Archives.

6. CRPC Claim files and documentation All documentation of CRPC collected over its course of operation such as 240 000 claim forms, evidence on decisions, financial documentation and other pertinent documents will be transferred to the BiH Archives. A bilateral contract was signed with the BiH Archives (see Annex 5).

* * *

It was also agreed that the legal basis for the transfer would be an overall framework agreement. After ten months of negotiation the text of “The Agreement between BiH, FBiH, and RS on the Transfer of Competencies, and Continuation of Financing and Operations of the CRPC pursuant to Article XVI of Annex 7 of the GFAP” (“Framework Agreement”) (see Annex 6) was finalized among relevant stakeholders. This agreement must now be signed by the actual Parties to Annex 7, who are the Republic of BiH, Federation of BiH and Republika Srpska. The Framework Agreement is the governing document which sets out the to whom various functions of the CRPC will be transferred to. The following covers in more detail the functions to be transferred under the presently formulated Framework Agreement:

1. Undecided claims

Within the presently proposed Framework Agreement, in order for undecided CRPC claims to be effectively transferred to the competent administrative organs which are under the jurisdiction of the Entities, the Entities must pass implementing legislation in order to legally assume responsibility for resolving these claims. The relevant text of such legislation was finalized months ago among CRPC, OSCE, OHR, UNCR, MHRR, MOJ, the Federation Ministry of Urban Planning and Environment (“FMUP”), and the RS Ministry of Refugees and Displaced Persons (“MRDP”). Both the RS and the Federation have initiated procedures to pass such legislation (see Annex 7 and 8) but it is uncertain when they will be passed. Regarding Brcko, an amendment to their relevant law has not been drafted nor discussed.

In the meantime, the CRPC has obtained written confirmations from the MRDP, Brcko Mayor’s office and 9 Cantons in the Federation of BiH (there are no undecided claims for 1 Canton) that they will physically takeover undecided CRPC claims and distribute them to the competent administrative bodies.

2. Reconsideration of CRPC decisions

After several months of discussions and debate on identifying an appropriate body to takeover the reconsideration function of the CRPC, it was decided that the Framework Agreement would provide for the continuation of the CRPC. However, the sole purpose of the body (“future domestic CRPC”) would be for, domestic Commissioners chosen by the BiH Government to reconsider CRPC decisions over a period of one year.

This was decided as a result of there being no institution in BiH that currently performs this function and that could be ready to take over this function by January 2004 since major legislative changes would be required. The other reason for this is because OHR Legal stated that Annex 7 actually foresees the continuation of the CRPC with the main difference being that the Commissioners would be appointed by the Presidency and that BiH would be responsible for its operations and financing.

Without this Framework Agreement being signed CRPC’s two most critical functions - reconsidering CRPC decisions and deciding claims - cannot be transferred properly, which would compromise the rights of certain RDPs. Under the presently proposed Framework Agreement the future domestic CRPC would be charged with deciding upon reconsideration cases and the municipalities would be in charge of resolving undecided CRPC claims which require a hearing.

With respect to the Framework Agreement CRPC has two major concerns. The first is that the Framework Agreement may not be signed in time, and the second regards the Agreement itself which as now proposed needs some alterations to ensure efficiency and impartiality.

If the Framework Agreement is not signed we are very concerned that a domestic CRPC

created by the government on their own could use the reconsideration function to unravel certain CRPC decisions. Our distress has increased due to recent events. Even though we are an independent body we have been pressured in writing by the Federation Minister of Defense and the Federation Minister of Urban Planning and Environment to change our rules and to reverse certain decisions confirming rights to JNA/military apartments (see Annex 9). Moreover, the Secretary to the BiH Minister of Justice in two meetings in October, where OHR, RRTF was also present, suggested that a substantial number of CRPC decisions (specifically those related to JNA apartments and occupancy rights) could be reversed in the future. CRPC responded in writing to the specific legal challenges brought up by these Ministries (see annex 10).

Furthermore, our concern on the probability of the unraveling of CRPC decisions remains even if the Framework Agreement is signed because no international presence to guarantee independence and impartiality in the future reconsideration work of the CRPC after 2003 is anticipated. I have to underline that the successful work of CRPC has had a lot to do with the mix of National and International Commissioners. The Chairman of our Legal Working Group, Professor Hans Van Houtte, who is an international lawyer, would be willing to serve the CRPC for one year, with only expenses paid, in order to complete the reconsideration work. Given his other professional obligations this is a very generous and responsible offer. One International Commissioner familiar with the history and rules and regulations of the CRPC in our opinion would be enough to ensure impartiality and efficiency in the future CRPC.

Without an international serving on the future CRPC we are afraid that you may face an unraveling not only of CRPC decisions but also the property law implementation process that has so far been a success, in part due to CRPC decisions, which are final and binding as well as impartial. It would be unforgivable and embarrassing if the international community would allow this to happen after the tremendous effort and resources that have been put into implementing Annex 7.

3. Integrated Property System - databases

Concerning the transfer of our databases we signed a bilateral Protocol with MHRR on 5 November 2003. Our cooperation with this Ministry has been exceptional but we are concerned about whether they will be able to successfully assume responsibility for maintaining these databases, which will be a valuable resource for future reconstruction activities, because of lack of trained staff.

4. Cadaster databases

On 31 October 2003 we signed three bilateral memorandums of understanding on the transfer of CRPC's cadastre databases with the Federation Geodetic Administration, the RS Geodetic Administration and the BiH Ministry of Civil Affairs. CRPC's cadastre databases provides the most comprehensive snapshot of prewar property records in BiH that may hopefully serve in establishing a viable property registration system in the future.

5. Undelivered decision certificates

On 31 October 2003, CRPC also signed a bilateral contract with the BiH Archives on the transfer of CRPC undelivered certificates, pursuant to which the BiH Archives will act as a depository where claimants can go post 2003 to pick up their CRPC certificates if they have been issued one.

6. CRPC claim files and documentation

The contract with the BiH Archives also provides that the BiH Archives will safeguard more than 240 000 claim files, evidence on decisions, financial documentation and other pertinent documents. The agreement also covers access to claim files for claimants and the domestic CRPC that will reconsider CRPC decisions.

* * *

The above outlines what CRPC has tirelessly been doing to ensure a proper transfer, yet in spite of numerous meetings that CRPC representatives and various representatives of OHR and others from the international community have attended in moving forward the transfer process the transfer is incomplete (see Annex 11).

Various representatives of OHR have assisted the CRPC over the past year in moving forward the transfer process. I thank you for this and for the assistance that the OHR is currently providing us in helping us to recover 250 000 Euros that the Government of BiH owes us from 2001.

At this stage, as there are only six weeks left until the end of our operations and there are still major transfer issues to be resolved, I have no alternative but to turn to you and your office as the caretaker of the GFAP to ensure that the transfer is fully completed by the end of the year.

I am afraid that some quarters among BiH authorities are taking advantage of the fact that CRPC has reached the very final stage of its mandate with the aim to delay further the signing and implementation of the Framework Agreement on transfer.

I firmly believe that you are, Excellency, the only authority who can bring forward the immediate signing of this crucial handover document.

CRPC remains at your assistance if we can help you in any way before the completion of our mandate.

With our highest consideration,

Jean-Pierre Hocke
Chairman