



CROATIA

Broken Promises

Impediments to Refugee Return to Croatia

HUMAN
RIGHTS
WATCH

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BROKEN PROMISES: Impediments to Refugee Return to Croatia

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INTRODUCTION

Between 300,000 and 350,000 Serbs left their homes in Croatia during the 1991-95 war. This report describes the continued plight of displacement suffered by the Serbs of Croatia and identifies the principal remaining impediments to their return. The most significant problem is the difficulty Serbs face in returning to their pre-war homes. Despite repeated promises, the Croatian government has been unwilling and unable to solve this problem for the vast majority of displaced Serbs. In addition, fear of arbitrary arrest on war-crimes charges and discrimination in employment and pension benefits also deter return. Human Rights Watch believes that these problems are a result of a practice of ethnic discrimination against Serbs by the Croatian government. The report concludes with a list of recommendations to the government of Croatia and the international community to deal with these persistent problems and finally make good on the promise of return.

Precise statistics for how many of the more than 300,000 displaced Serbs have returned do not exist. According to the United Nations High Commissioner for Refugees (UNHCR), by June 2001, between 100,000 and 110,000 Croatian Serbs had returned.¹ The number of returns registered by the Croatian government in November 2002 was 96,500.² Both UNHCR and the government figures overrate the actual number of returnees, because, after a short stay in Croatia, many depart again for Serbia and Montenegro or Bosnia and Herzegovina.³ Among those who stay in Croatia, most are elderly. Families with children rarely decide to return, and, unless the trend changes in the near future, it is likely that within a decade or two, the Serb population in most parts of Croatia will all but disappear.⁴ While in 1991 Serbs made up 12.1 percent of Croatia's population, the 2001 census showed their number had fallen to a mere 4.5 percent.⁵

At first sight, one might expect that responsibility for the failure of refugee return lies with the Croatian nationalist parties now holding power locally in many former Serb communities, rather than with the central government currently dominated by moderate political parties. Certainly serious problems persist at the local level: local courts and administrative bodies have failed to evict Croat occupants of houses belonging to returning Serbs; the local police and state prosecutors carry out arrests of Serbs on often-frivolous war-crime charges; and local public enterprises fail to employ returning Serbs.

¹ "Croatia Pledges to Solve Refugee Problem by End of 2002," *Agence France Presse*, June 8, 2001 (statement by Robert Robinson, then-head of the UNHCR mission to Croatia).

² OSCE Mission to Croatia, *Status Report no. 11*, November 18, 2002, p. 12 (quoting Ministry for Public Works, Reconstruction and Construction, Department for Expellees, Returnees and Refugees).

³ A February 2001 field survey conducted by the OSCE field office in Gracac found that "out of a sample of 351 names on UNHCR returnee lists for seven outlying villages in Gracac municipality, only about 60 percent are still in the area, most of the rest having moved back to FR Yugoslavia or other areas." [OSCE Field Office in Gracac,] "Gracac Municipality: Overview," February 2001, p. 3. OSCE officials in Pakrac (Western Slavonia) told Human Rights Watch in June 2002 that in the Brodsko-Posavska county only one third of the returnees stayed. Human Rights Watch interview with OSCE officials in Pakrac, June 18, 2002. Based on regular visits to the returnees in the municipality, the Benkovac office of the Serbian Democratic Forum established that, as of May 2003, there were only 1,230 returnees in the area, although government statistics put the figure at 2,220. Serbian Democratic Forum office in Benkovac, statistics on returns, May 2003 (on file with Human Rights Watch). (The Serbian Democratic Forum, the leading association of Croatian Serbs, is an implementing partner with the UNHCR on returns issues.)

⁴ The Croatian Ombudsperson Ante Klaric recently observed that "the Serb youth does not return, and for that reason some parts of Croatia have become depopulated." Snjezana Canić Divic, "Ne vraćaju se mladi Srbi, zbog čega su neki hrvatski krajevi opustjeli" ("Parts of Croatia Have Become Depopulated Because Young Serbs Do Not Return"), *Vjesnik* (Zagreb), June 10, 2003 [online],

<http://www.vjesnik.com/html/2003/06/10/Clanak.asp?r=unu&c=15> (retrieved June 20, 2003) (statement by Ante Klaric).

⁵ Croatian Bureau of Statistics, *Census of Population, Households and Dwellings, 31st March 2001* [online], <http://www.dzs.hr/Eng/Census/census2001.htm> (retrieved June 20, 2003).

On closer inspection, however, the role of the central government emerges as equally, if not more, important. Most importantly, the central government has failed to create a political climate conducive to return. This failure has been a disappointment to observers sympathetic to the democratic changes in Croatia at the beginning of the decade. In the parliamentary elections held on January 3, 2000, and the presidential elections of February 7 of the same year, a coalition of parties with a professed strong commitment to democracy and human rights defeated the then-ruling Croatian Democratic Union of the late president Franjo Tudjman.⁶ On February 8, 2000, the new government unveiled its legislative program, committing itself to uphold minority rights and to carry out the legislative and administrative changes necessary to facilitate the return of Serb refugees. In April 2000, the new parliament adopted laws on minority languages and education; in June, amendments to the reconstruction law and the law on the so-called “areas of special state concern” for the first time offered the prospect of equal treatment for displaced and refugee Serbs seeking to return to their homes in Croatia.⁷ In recognition of Croatia’s progress toward democratization, in May 2001, the European Union entered into a Stabilization and Association Agreement with Croatia, establishing favorable economic and trade relations and cooperation in justice and internal affairs.⁸

Notwithstanding the early positive signs, hopes that the new government would truly commit to the return of Serb refugees have remained unfulfilled. The government has never genuinely attempted to build a public atmosphere in which the populace would welcome return of Croatian Serbs. Instead, the authorities have consistently prioritized the needs and rights of ethnic Croats—including Croat refugees from Bosnia—over the rights of Serb refugees and returnees. This official posture both reflects and reinforces public opposition to refugee return.⁹ Only in June 2003, eight years after the end of the war, did the Prime Minister of Croatia for the first time publicly invite Serb refugees to return to the country.¹⁰

The central government has made little headway toward resolving the issue of tenancy rights stripped from tens of thousands of Croatian Serbs during the war. While the government has done impressive work in reconstructing the damaged or destroyed houses of ethnic Croats, reconstruction assistance to returning Serbs began only at the end of 2002. A web of return-related laws and regulations, often mutually exclusive or overlapping, has for years created a legal conundrum utterly incomprehensible to prospective returnees. The competence of various agencies involved in the returns process is also ill-defined, further hindering return. In the words of an international official in Croatia, due to the complicated and contradictory legislation “even an official with the best will in the world finds

⁶ Tudjman died on December 11, 1999, three weeks before the parliamentary elections.

⁷ Human Rights Watch, *World Report 2001*, chapter on Croatia, at <http://www.hrw.org/wr2k1/europe/croatia.html>.

⁸ Human Rights Watch, *World Report 2002*, chapter on Croatia, available at <http://www.hrw.org/wr2k2/europe7.html>. Croatia and the E.U. signed the Stabilization and Association Agreement on October 29, 2001. As of this writing, ratification by some E.U. member state parliaments was still pending. The Netherlands decided in December 2002 not to ratify the agreement due to Croatia’s refusal to fully cooperate with the International Criminal Tribunal for the former Yugoslavia.

⁹ A majority of the population continues to harbor strong anti-Serb sentiments. In a poll administered in early 2002, just slightly over a half of the Croatian respondents (54.2 percent) said they would not object to a marriage between a family member and a Serb. Substantially more respondents said they would approve a marriage of a family member to members of other ethnic groups: 86.7 percent were in favor of marriage to Italians; 80.9 to Hungarians; 80.7 to Slovenes; 68.7 to Bosnians; and 62.9 to Montenegrins. Irena Kustura and Maja Pejkoć-Kacanski, “Madjari najdrazi susjedi, Talijani najbolji za brak” (Hungarians Favorite Neighbors, Italians Best for Marriage), *Vecernji List* (Zagreb), January 28, 2002 [online], <http://www.vecernji-list.hr/2002/01/28/Pages/PLUS-NAJ.html> (retrieved June 20, 2003).

¹⁰ Dada Zecic, “Racan pozvao izbjegle Srbe da se vrate u Hrvatsku” (“Racan Invited Refugee Serbs to Return”) *Vjesnik* (Zagreb), June 13, 2003 [online], <http://www.vjesnik.com/html/2003/06/13/Clanak.asp?r=unu&c=5> (retrieved June 20, 2003).

it difficult to help a Serb who wants to return.”¹¹ The parliament has failed to enact a number of reforms required to facilitate return, and the measures it has adopted have been belated or flawed.

Beyond the unconstructive role of the local and national authorities in Croatia, an additional obstacle to Serb return to Croatia is the attitude of the authorities in Serbia and Montenegro, where many Croatian Serb refugees reside. While paying lip service to the right to return, in practice the authorities of Serbia and Montenegro have subtly discouraged it, or at least kept the issue low on their agenda. Both the national and Serbian governments have shown much greater interest in receiving foreign funds for the integration of refugees in Serbia and Montenegro than in facilitating their return to their country of origin.¹²

Eight years after the end of the war in Croatia, the continued displacement of hundreds of thousands of Croatian Serbs remains one of its most lasting scars. This report surveys the principal impediments to return. Below are recommendations to the Croatian government and the international community to redress this situation. Notwithstanding progress on reform in other areas, to date the government has lacked that essential political leadership to effectively facilitate minority return and rebuild Croatia as a multi-ethnic state.

RECOMMENDATIONS

To the Croatian Government

On Repossession of Property

- Temporary occupants who refuse the housing care of temporary alternative accommodation offered by the government should be evicted after prompt proceedings meeting due process standards.
- Courts should use expedited procedures for resolving repossession cases, irrespective of whether these have been initiated by the state prosecutor or the property owner.
- Temporary occupants’ use of Serb houses for business purposes should be promptly eliminated.
- Temporary occupants who use the property only occasionally, while living and working elsewhere, should be deemed multiple occupants and evicted without prior provision of alternative accommodation.

¹¹ Human Rights Watch interview with Robert Becker, deputy head of OSCE mission in Croatia, Zagreb, August 22, 2001.

¹² The Serbian government, for example, still holds birth and residence registers from the municipalities of Plaski, Dvor, Drnis and Glina, which were Serb-controlled during the 1991-95 war. V.R., “Odnese matične knjige iz Plaskog, Dvora, Drnisa i Gline” (Registers from Plaski, Dvor, Drnis and Glina Taken Away), *Vjesnik* (Zagreb), June 4, 2003 [online], <http://www.vjesnik.com/html/2003/06/04/Clanak.asp?r=tem&c=5> (retrieved June 20, 2003) (statement by Slobodan Ljubisic, Assistant to the Minister for General Administration and Civil Affairs). This hinders issuance of identity documents for the Serb refugees from these areas. Human Rights Watch interview with Sanda Raskovic-Ivic, then-Serbian Commissioner for Refugees, Belgrade, Aug. 21, 2001; Human Rights Watch interview with Mirko Vukcevic, lawyer at the Serbian Helsinki Committee for Human Rights, Belgrade, December 11, 2002.

- Where members of a family lived in the same household before the war and now occupy two or more houses of Serb owners, it should be considered a case of multiple occupancy and the temporary occupants should be evicted without prior provision of alternative accommodation.
- Temporary occupants who are determined to be financially or otherwise able to make other housing arrangements should be subject to eviction without prior provision of alternative accommodation.
- The government should vigorously implement the new legislation, which denies entitlement to alternative housing care to temporary occupants who own vacated property in Bosnia and Herzegovina or Serbia and Montenegro.
- If the owner of a sizable property is willing to share it with the temporary occupant, the government should allow the owner to repossess one part of the property for the period of time required to obtain permanent alternative accommodation for the temporary occupant of the remainder of the house.
- The Ministry for Public Works, Reconstruction and Construction should also offer alternative accommodation in nearby municipalities from the one in which the temporary occupant currently lives. Refusal of such accommodation should be deemed as forfeiture of the entitlement to state-provided housing care, and the temporary occupants should be evicted.
- Owners of temporarily occupied property should receive just rent from the state for continued deprivation of the use of property, as well as compensation for deprivation of the use of property in the past.
- The Ministry for Public Works, Reconstruction and Construction should explore the possibility of making arrangements with owners who repossessed their houses but do not use them, whereby these houses could be rented by the state to provide temporary accommodation to those evicted from other properties.

On Tenancy Rights to Socially Owned Properties

- Government authorities should publicly acknowledge the housing problems that have arisen since tenancy rights to socially owned properties were discontinued in 1996, and commit to addressing them.
- Courts should reopen cases of termination of the tenancy rights. Given the circumstances at the time, the courts should adopt a rebuttable presumption that the holders left against their will, which, by virtue of the then applicable legislation, justified the absence from the apartment in excess of the authorized six-month period.
- Where the apartments have not been privatized, the original tenancy rights should be reinstated, and the rights holders should be offered an opportunity to purchase the apartments on terms comparable to other privatizations.
- Where the apartments have not been privatized because they were destroyed after the termination of the pre-war tenancy rights, the pre-war rights holders should be beneficiaries of the building reconstruction or should receive a tenancy right to a similar apartment in another location.

- Where the temporary occupant has privatized the apartments, the former tenancy rights holder should receive a tenancy right to property of equivalent value.
- If the former tenancy rights holder does not choose any of the solutions from the above, he should be given fair compensation.

On Reconstruction

- The government should live up to its commitments to treat all applicants for reconstruction equally; it should ensure that government assistance is provided without discrimination based on ethnicity.
- The government should pressure the county offices to speed up the procedure for assessing the degree of damage and other elements of application processing.
- All county offices for reconstruction should approve requests for reconstruction assistance when the house was destroyed or damaged by “terrorist acts.” The Ministry for Public Works, Reconstruction and Construction should vigorously use its oversight power to ensure that county offices abide by its instructions.
- The government should enact laws enabling property owners to sue for pecuniary and non-pecuniary loss when damage or destruction to their homes resulted from acts of violence or terror that the state was under a duty to prevent.

On Looted and Devastated Properties

- Croatia should introduce looting and devastation as criminal offenses, rather than acts prosecutable in civil proceedings.
- In court proceedings, courts should not require that the plaintiffs produce original receipts to prove ownership of stolen items. Statements of witnesses should be considered to create a rebuttable presumption of ownership.
- The Ministry for Public Works, Reconstruction and Construction/ODPR should include a notice or warning to a temporary occupant about the criminal sanctions for looting or devastation.
- State prosecutors should prosecute temporary occupants who intentionally damage or loot property that has been allocated to them.

On War Crimes Prosecutions

- As part of the government’s ongoing, statewide review of the outstanding war-crime indictments and supporting evidence, those indictments for which the state prosecutor does not have a *prima facie* case should be dropped.
- Given the high number of dropped charges and acquittals in war crimes cases against Serb returnees in recent years, the authorities should in all possible cases pursue provisional release as an alternative to detention of indictees pending trial.

- The government must end discriminatory practices in war crimes prosecutions, and ensure that prosecutions against members of the Serb minority and the Croat majority are treated the same way.
- The government-owned media in Croatia and Serbia and Montenegro should publicize dropped charges against and acquittals or releases of war-crimes suspects, to better inform the public, including Serbs abroad, of the situation facing those who return.

On Employment

- The government should closely monitor employment practices in state institutions and enterprises. Pertinent ministries should intervene in cases in which discrimination on ethnic grounds is apparent.
- The government should end discriminatory practices and ensure fair employment opportunities for Serb returnees in the state administration and state-owned enterprises, if necessary by employing affirmative action policies.
- The government should offer tax exemptions and other financial incentives to owners of private businesses who employ minority returnees.

On Pensions

- The government should establish a new deadline for submitting requests for the validation of work completed between 1991-95 in the so-called Republika Srpska Krajina.
- The authorities should decide on the claims for validation that were submitted prior to the last deadline (April 1999).
- The government should relax the requirements for proving 1991-95 employment status, by eliminating the requirement that only witnesses who have validated their own employment status can testify that the applicant was employed in the same company. Witness statements should be considered to create a rebuttable presumption of the applicant's wartime employment.
- The government should pay pensions covering the 1991-95 period to Croatian Serbs who lived outside government-controlled territory during that time. If they were receiving pensions from the Republika Srpska Krajina fund, they should receive pension installments reduced by the amount of such installments received.

To the International Community

- In all appropriate bilateral and multilateral meetings, urge the Croatian authorities to ensure non-discrimination and full respect for the rights of minorities, and to guarantee their right to return.
- Condition enhanced political, military, and trade relations with the government of Croatia on its improving its record in the areas of refugee returns and non-discrimination.
- Increase the level of assistance earmarked for reconstruction of returnee homes damaged or destroyed during the war.

- Monitor Croatian laws governing returns to ensure they are applied effectively and in a non-discriminatory manner.
- In the context of the Stability Pact regional return initiative's Agenda for Regional Action (AREA), ensure that assistance aimed at encouraging and supporting the return of refugees by creating a sustainable economic development in return areas truly benefits those wishing to return rather than reinforce existing ethnic cleavages in society.
- The World Bank and the European Bank for Reconstruction and Development should make non-discrimination and the right to return prominent elements of their country assistance strategies.

To the United Nations High Commissioner for Refugees

- Maintain a sufficient presence in Croatia to engage the Croatian authorities on key issues affecting the right to return, including access to housing, pensions, and employment on a non-discriminatory basis.

To the United Nations

- The U.N. treaty bodies (in particular Committee on the Elimination of Racial Discrimination, Human Rights Committee, and Committee on Economic, Social and Cultural Rights) should follow up on the conclusions and recommendations they have issued following their reviews of Croatia and urge the government to make progress in meeting its international treaty obligations, guaranteeing equal treatment of minorities and the right to return. Persistent lack of progress on the part of the Croatian government should, where appropriate, warrant the request for additional information on measures taken by the Croatian government to remedy the shortcomings identified by the U.N. in its compliance with international law.

To the Organization for Security and Cooperation in Europe (OSCE)

- Resist downsizing the OSCE presence in Croatia and reducing the number of offices in the country until visible improvements in the return process and the treatment of minorities have been achieved.
- The OSCE presence in Croatia should continue regular and public reporting on conditions and policies related to refugee returns and non-discrimination.
- The Office for Democratic Institutions and Human Rights should appoint a senior official mandated to monitor and enhance the treatment of refugees and displaced persons in Croatia and elsewhere in the OSCE region.
- The High Commissioner on National Minorities should carry out a mission to Croatia to investigate the situation of refugee returnees of ethnic minority origin and press for implementation of any recommendations that such a mission yields.

To the European Union

- Condition full cooperation and partnership under the Community Assistance for Reconstruction, Development and Stabilisation program (CARDS) on measurable progress in the areas of refugee return and non-discrimination.

- Emphasize the necessity of significant progress in the areas of refugee return and non-discrimination in the run-up to the next review of Croatia's implementation of the Stabilisation and Association Agreement, as spelled out in the April 2003 progress report.
- The European Parliament-Croatia Joint Parliamentary Committee should maintain the questions of refugee returns and discrimination high on its agenda and, in particular, promote adequate representation of minorities in Croatia's political landscape.
- Progress on return—including specific demands regarding repossession of homes; resolution of the tenancy right issue; non-discrimination in reconstruction assistance, employment, and pension benefits; and an end to abusive war-crime prosecutions—should be required of Croatia for purposes of satisfaction of the Copenhagen political criteria for any progress on Croatia's E.U. accession application.

To the Council of Europe

- The Parliamentary Assembly's post-monitoring dialogue with the Croatian government should emphasize refugee returns and non-discrimination, underscoring that the government's failure to take specific steps to address this persistent problem could result in the reopening of its monitoring procedure. In so doing, the Assembly should take particular note of the Committee of Ministers Reply of September 18, 2001 to the Assembly's Recommendation 1473(2000) on the issue of refugee returns.
- Building on Recommendation 1406(1999) on "Return of refugees and displaced persons to their homes in Croatia," and its accompanying report (Doc. 8368), the Parliamentary Assembly's Committee on Migration, Refugees and Demography should appoint a rapporteur to investigate the current situation and treatment of refugee returnees, and produce a report on its findings on the ground.
- The Committee of Ministers should ensure adequate implementation of the recommendations of the European Commission against Racism and Intolerance (ECRI), addressed to the Croatian government in its second report on Croatia, published in July 2001.
- The Commissioner for Human Rights should carry out a visit to Croatia with the view to investigating the situation of refugee returnees and displaced persons in the country.

BACKGROUND: THE RIGHT TO RETURN

People who flee their homes as a result of war are entitled to return to their home areas and property, a right known as the “right to return.” The right to return to one's former place of residence is related to the right to return to one's home country. This latter right is expressly recognized in the Universal Declaration of Human Rights and international human rights conventions.¹³ The right to return to one's place of origin within one's country, or at least the obligation of states not to impede the return of people to their places of origin, is implied. For example, article 12 of the International Covenant on Civil and Political Rights (ICCPR) recognizes the right to choose freely one's own place of residence, which incorporates the right to return to one's home area.¹⁴ In some cases, the right to return to one's former place of residence is also supported by the right to family reunification and to protection for the family. Recognizing these various rights, the U.N. Sub-Commission on the Promotion and Protection of Human Rights has reaffirmed “the right of all refugees ... and internally displaced persons to return to their homes and places of habitual residence in their country and/or place of origin, should they so wish.”¹⁵ Numerous resolutions of the U.N. General Assembly and of the Security Council as well as several international peace agreements also recognize the right to return to one's home or property.¹⁶

International law provides for restitution as a remedy for persons who have lost their homes or property because they were victims of war crimes, crimes against humanity or other serious human rights violations. The Commission on Human Rights has often recognized the need for property restitution as an effective remedy for forced displacement.¹⁷ In 1996, the European Court of Human Rights recognized the right of a displaced Greek Cypriot to reclaim her property, despite the fact that she had not resided

¹³ Article 13 (2) of the 1948 Universal Declaration of Human Rights (UDHR) states that “Everyone has the right to leave any country, including his own, and to return to his country.” Universal Declaration of Human Rights, G.A. res. 217A (III), U.N. Doc A/810 at 71 (1948). This language is reflected in Article 5 of the 1965 International Convention on the Elimination of all Forms of Racial Discrimination (CERD) which guarantees “the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights: . . .” These include in article 5 (d) (ii) “The right to leave any country, including one's own, and to return to one's country.” International Convention on the Elimination of All Forms of Racial Discrimination, 660 U.N.T.S. 195, entered into force Jan. 4, 1969.

¹⁴ International Covenant on Civil and Political Rights (ICCPR), G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force Mar. 23, 1976, article 12. Croatia ratified the ICCPR in October 1992.

¹⁵ See Sub-Commission on the Promotion and Protection of Human Rights, Housing and Property Restitution in the Context of the Return of Refugees and Internally Displaced Persons, Resolution 1998/26.

¹⁶ With regard to Bosnia, see U.N. Security Council resolutions 947 (1994) and 859 (1993). See also Report of the Committee on the Elimination of Racial Discrimination, U.N. Doc. A/50/18 (1995) (requiring that “persons be given opportunity to safely return to the places they inhabited before the beginning of the conflict.”). With regard to Kosovo, see U.N. Security Council resolutions 1199 (1998), 1203 (1998), 1239 (1999), and 1244 (1999). With regard to Israel, see U.N. General Assembly resolutions 3236 (1974), 3089(D) (1974). With regard to Cyprus, see U.N. General Assembly resolutions 253 (1983), 30 (1979), 3212 (1974), and U.N. Security Council resolutions 774 (1992), 361 (1974). With regard to Cambodia, see Agreements on a Comprehensive Political Settlement of the Cambodia Conflict (1991). With regard to Guatemala, see Agreement on Identity and Rights of Indigenous Peoples (1995) and Agreement on Resettlement of the Population Groups Uprooted by the Armed Conflict (1994). With regard to Rwanda, see Arusha Peace Agreement (1993).

¹⁷ See, e.g. Commission on Human Rights Resolutions 2000/41 and 1999/33 (recognizing the “right to [property] restitution ... for victims of grave violations of human rights.”). In addition, Annex 4 of the Dayton Accord, the peace agreement ending the 1991 war in the former Yugoslavia, recognizes the right of all displaced persons to return to their former homes.

there for twenty-two years.¹⁸ The Rome Statute of the International Criminal Court (ICC) authorizes restitution as a remedy for victims of war crimes and other international offenses, stating that “[t]he Court shall establish principles relating to reparations to, or in respect of, victims, including restitution, compensation and rehabilitation.”¹⁹

When displaced persons are unable to return to their homes because their property has been destroyed or claims against a current occupant are unsuccessful, they are entitled to compensation. International human rights instruments do not specifically mention compensation for deprivation of the use of property, but the right to compensation is embraced in the right to an effective remedy for human rights abuse, contained in ICCPR article 2(3).²⁰ In the Cyprus case mentioned above, the European Court of Human Rights recognized the plaintiff's right to compensation for the years that she had been denied access to her property.²¹

While the ethnic Serbs displaced during and after the war in Croatia have a right to return to their homes and receive compensation for their losses, it is important that this right is implemented in a manner that does not cause additional human rights abuses. The Tudjman government had brought ethnic Croat populations to the territories formerly inhabited by Serbs, and many of those ethnic Croats now live in the former homes of Serb refugees and displaced persons. The right to repossess private property must be balanced against any rights these secondary occupiers may have in domestic or international law, using impartial and efficient procedural safeguards.²² In Bosnia and Herzegovina, property claims administrators have attempted to resolve these disputes in a manner that respects the rights of the second occupier as well as the first possessor.²³

The government of Croatia has a key role to play in fulfilling the right of ethnic Serb refugees to return. This report discusses in detail the domestic laws of Croatia and their adherence to international standards, as well as the implementation of those laws since the end of the war in 1995 up to the present.

REPOSSESSION OF PROPERTY

Occupied property, along with destroyed property and cancelled tenancy rights over socially-owned apartments, is the main impediment to the return of displaced Serbs to their homes in Croatia. In a

¹⁸ See *Loizidou v. Turkey*, 23 EHRR 513 (1996). This decision was based on article 1 of protocol 1 of the European Court of Human Rights (ECHR), which provides that “every natural or legal person is entitled to the peaceful enjoyment of his possessions.”

¹⁹ See Rome Statute of the International Criminal Court, UN Doc. No. A/CONF. 183/9, (July 17, 1998), 37 I.L.M. 999, article 75, para. 1; online at <http://www.un.org/law/icc/statute/romefra.htm> (retrieved June 17, 2003) (hereinafter “Rome Statute”).

²⁰ Article 17(1) of the ICCPR states that “[no] one shall be subjected to arbitrary or unlawful interference with his ... home.” Article 2(3)(a) obligates each state party “to ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity.”

²¹ See *Loizidou v. Turkey*, 81 Eur. Ct. H.R. 1807 (1998).

²² For example, in 1998, the Sub-Commission on the Promotion and Protection of Human Rights urged “all States to ensure the free and fair exercise of the right to return to one's home and place of habitual residence by all refugees and internally displaced persons and to develop effective and expeditious legal, administrative and other procedures to ensure the free and fair exercise of this right, including fair and effective mechanisms designed to resolve outstanding housing and property problems.” See Sub-Commission on the Promotion and Protection of Human Rights, Resolution 1998/26, August 26, 1998.

²³ For example, the Dayton Agreement set up the Commission for Real Property Claims (CRPC) and the Office of the High Representative Ombudsperson to resolve property disputes. See Dayton Agreement, Annex 7 (1995).

UNHCR-sponsored survey conducted among refugees from Croatia currently residing in Serbia and Montenegro, 90 percent of the respondents said that they faced problems repossessing their property in Croatia.²⁴ The authorities at different levels of government in Croatia—central, county, and local—have pursued policies that severely limit the ability of Serb returnees to reoccupy their pre-war houses and apartments.

The majority of returnees in Croatia interviewed by Human Rights Watch said that other members of their families would return to Croatia if they could get a job and repossess their homes. A woman in Korenica, who has been unable to repossess her family home since 1997, said that her two sons would return from Serbia and Republika Srpska, because “they don’t have a job there either”;²⁵ a returnee to Knin stated that his brother would like to return from Serbia, but it was impossible because his house near Knin was devastated;²⁶ an elderly woman from a village near Knin said that her son, daughter-in-law, and three grandchildren would immediately return from Serbia if their house were vacated.²⁷

In late 2001 and early 2002 the government repeatedly stated that it would facilitate the repossession of all Serb houses by the end of 2002.²⁸ The Action Plan for implementation of repossession of property by the end of 2002, adopted by the Croatian government in December 2001, also included this commitment.²⁹ As the deadline approached, it became increasingly clear that the stated goal would not be achieved. Government officials started to talk in mid-2002 about the end of the year as a deadline for issuance of administrative decisions on return of property, rather than for the actual physical repossession of property by the owners. Major legislative changes in July 2002 made this new and less ambitious commitment explicit, stating that by the end of 2002 the government would issue decisions on return of property. If by that time the applying owner were not to physically repossess the property, the law obligates the government to pay him or her an unspecified compensation, at an unspecified time.³⁰ As this report went to press in August 2003, even this latest promise remained unfulfilled. The following discussion details the laws, policies, and practices that have for years impeded returnees from repossessing their property.

Property Rights Under Croatian Law

Croatian Serbs left their properties in two large waves during the first half of the 1990s. On the eve of the war and in its early days in 1991, many Serbs left properties located in government-controlled territory. Those who lived in the Serb-controlled parts fled four years later, in 1995, as a result of the

²⁴ Human Rights Watch interview with Mary Jane Meierdiercks-Popovic, UNHCR Mission in Serbia and Montenegro, Belgrade, August 20, 2001.

²⁵ Human Rights Watch interview with Zora Vojvodic, Korenica, August 27, 2001.

²⁶ Human Rights Watch interview with Borko Raskovic, Raskovici (near Knin), August 25, 2001.

²⁷ Human Rights Watch interview with Simeuna Trisic, Orlici (near Knin), August 25, 2001.

²⁸ Statement of Goran Granic, Croatian Deputy Prime Minister, quoted in “Hrvatska vraca svu imovinu” (Croatia Returns All Property), *Vecernje Novosti* (Belgrade), September 25, 2001; statement of Goran Granic, quoted in M.Pe., “Do kraja godine vraćanje imovine vlasnicima” (Return of Property to Owners By the End of the Year), *Vecernji List* (Zagreb), June 11, 2002, and in Karlo Blaha, “Granica: Sva imovina bit će vraćena vlasnicima” (Granica: All Properties Will Be Returned to Their Owners), *Vjesnik* (Zagreb), June 11, 2002 [online], <http://www.vjesnik.com/html/2002/06/11/Clanak.asp?r=unu&c=9> (retrieved June 20, 2003).

²⁹ The first sentence in the Action Plan announces the following: “The government of the Republic of Croatia decided in its session held on 20 September 2001 to conclude the process of repossession of all occupied property by the end of 2002.” Government of the Republic of Croatia, *Action Plan for Implementation of Repossession of Property by the End of 2002*, December 31, 2001 (version in English), p. 1.

³⁰ Law on Areas of Special State Concern (amended and consolidated version), *Narodne novine* (official gazette of the Republic of Croatia), no. 26/2003, January 28, 2003, article 27 (4).

Croatian army offensives “Flash” and “Storm,” aimed at regaining control of Serb-held lands in Western Slavonia and Krajina.³¹

In September 1995, the Croatian government adopted the 1995 Law on Temporary Takeover and Administration Of Specified Property (1995 Law on Temporary Takeover), pertaining to the status of abandoned property. The law provided that the Republic of Croatia would administer the abandoned property.³² Commissions for temporary takeover and administration of property, at municipal and town level, could allocate the property to various categories of people: refugees and displaced persons; returnees; war invalids; families of perished and missing Croatian soldiers; and, “other citizens who perform activities necessary for the security, reconstruction and development of the previously occupied territory.”³³

A year after the enactment of the 1995 Law on Temporary Takeover, parliament passed the Law on Areas of Special State Concern, which specifically dealt with the areas previously controlled by the Serb rebels, where most of the Serb-owned property is located. The new law reiterated the authority of the state to allocate abandoned private property to refugees and certain other groups.³⁴ The 1995 Law on Temporary Takeover was the legal basis for allocation of a significant majority of Serb properties to temporary occupants.³⁵

Croatian law has persistently favored those who were allocated abandoned Serb homes over their returning owners. The 1995 Law on Temporary Takeover provided that legal occupants could be evicted from Serb houses only if the local authorities provided adequate alternative accommodation for them, in Croatia, often referred to as “housing care.”³⁶ In a decision rendered in September 1997, the Constitutional Court of Croatia struck down this provision as unconstitutional; the Court observed that the provision contained no deadline for the reinstatement of the owner, which could prevent him from exercising his ownership rights protected by article 48(1) of the Croatian constitution.³⁷ In July 1998,

³¹ On May 1, 1995, Croatian Army troops launched the offensive known as “Flash,” aimed at regaining control of Serb-held lands in Western Slavonia, an area designated as a “United Nations Protected Area.” By May 4, Croatian government troops had recaptured the area. During the fighting, Serbs fled Western Slavonia for Bosnian Serb-held regions. Human Rights Watch, “The Croatian Army Offensive in Western Slavonia and Its Aftermath,” *A Human Rights Watch report*, July 1995, Vol. 7, No. 11. Over 10,000 civilians and military personnel from the area crossed into Bosnia and Herzegovina during the first days of the offensive. A further 2,139 Croatian Serbs left in the following weeks. United Nations, “The Situation in the Occupied Territories of Croatia,” *Report of the U.N. Secretary-General*, A/50/648, October 18, 1995, para. 9. On August 4, 1995, the Croatian forces launched the military offensive “Storm” to retake the Krajina region, which had been held by Serbs since 1991. The offensive lasted a mere thirty-six hours. According to the indictment against Croatian general Ante Gotovina before the International Criminal Tribunal for the former Yugoslavia, an estimated 150,000-200,000 Serbs from Krajina fled during and in the aftermath of the operation. *Prosecutor v. Gotovina, Indictment*, Case No: IT 01 45 I, May 21, 2001, para 20.

³² Law on Temporary Takeover and Administration Of Specified Property, *Narodne novine*, no. 73/1995, September 27, 1995, article 2.

³³ Law on Temporary Takeover and Administration Of Specified Property, article 5(1).

³⁴ Law on Areas of Special State Concern, *Narodne novine*, no. 44/1996, June 5, 1996, article 8(3). The areas of special state concern are the areas that were under the control of Serb rebel forces during the war. Most of the Serb refugees and returnees are from that area; also, most Croat refugees from Bosnia were settled in the areas of special state concern, where many of them currently occupy Serb houses.

³⁵ Human Rights Watch interview with an official from the OSCE Mission to Croatia, Zagreb, June 17, 2002.

³⁶ The Law on Temporary Takeover and Administration of Specified Property, September 27, 1995, as amended on January 23, 1996, *Narodne novine*, no. 7/1996, article 11 (4).

³⁷ Decision of the Constitutional Court of the Republic of Croatia, no. U-I-1037/1995; U-I-179/1996; U-I-639; U-I-839; U-I-948, September 25, 1997, *Narodne novine*, no. 100/1997. The Court also found that the 1995 law violated the provisions of the Constitution guaranteeing the right to return to one’s home country (article 32 of the

parliament repealed the 1995 Law on Temporary Takeover³⁸ but in the same month enacted the Program for Return and Housing Care of Expelled Persons, Refugees, and Displaced Persons (1998 Program for Return),³⁹ containing an identical provision that made temporary occupants safe from eviction as long as a local housing commission failed to provide alternative accommodation for them.⁴⁰ Moreover, the Program limited alternative accommodation to houses or apartments owned by the State,⁴¹ and it stopped short of defining “adequate” alternative accommodation, which temporary occupants would have no right to reject. In the same vein, the 1998 Program for Return prohibited temporary occupants from inhabiting more than one home, but gave no guidelines on what constituted proscribed “multiple occupancy.”⁴² As is detailed in this report, the local housing commissions and courts interpreted these vague laws in a manner most prejudicial to the interests of returning refugees.

In July 2002, the Croatian parliament adopted amendments to the Law on Areas of Special State Concern, repealing the key provisions of the 1998 Program for Return and making some progress toward securing returnees’ property rights.⁴³ The amendments disbanded the inefficient local housing commissions and transferred decision-making from the local level to the central government.⁴⁴ Instead of the housing commissions, now the state prosecutor has responsibility for filing lawsuits against temporary users who refuse to vacate occupied property.⁴⁵ Moreover, the property owner is, for the first time in return-related laws, authorized to bring a lawsuit in order to protect his ownership rights.⁴⁶ The amendments also introduced the concept of temporary alternative accommodation for temporary occupants for whom the authorities are unable to provide more permanent accommodation.⁴⁷ Finally, the July 2002 amendments provided that owners or protected renters of vacated and inhabitable property in the territory of the former Yugoslavia are not entitled to housing care in Croatia.⁴⁸ These new provisions should provide a basis to accelerate evictions from occupied houses.

Nonetheless, the July 2002 amendments failed to address a number of other issues that have had a direct impact on the repossession of property: the financial ability of the temporary occupant to rent

Constitution), equality before the law (article 14(2)), and the provision forbidding limitation on ownership not warranted by the protection of State interests (article 50(2)). As developments since 1997 attest, this decision has been completely ignored by the Croatian parliament and courts.

³⁸ Law Repealing the Law on Temporary Takeover and Administration of Specified Property, *Narodne novine*, no. 101/1998, July 28, 1998, article 1.

³⁹ *Narodne novine*, no. 92/1998, June 26, 1998.

⁴⁰ These were not the same commissions as those established under what was by then the defunct 1995 Law on Temporary Takeover. The housing commissions under the 1995 Law on Temporary Takeover had allocated abandoned property to new occupants; the task of the housing commissions under the Program for Return was to receive applications for repossession of occupied property, seek alternative accommodation for persons currently housed in temporarily used property, and issue eviction decisions once they provided the accommodation.

Each housing commission under the Program for Return had five members, of which two represented the predominant minority population of the municipality. The commission’s decisions about eviction were to be adopted by a majority vote with the support of at least one of the minority representatives. Program for Return, “Procedures for Return,” article 14.

⁴¹ Program for Return, “Procedures for Return,” article 9 (1).

⁴² Program for Return, “Procedures for Return,” article 10.

⁴³ Amendments to the Law on Areas of Special State Concern, *Narodne novine*, no. 88/2002, July 24, 2002.

⁴⁴ *Ibid.*, article 15 (2).

⁴⁵ Law on Areas of Special State Concern (amended and consolidated version), *Narodne novine*, no. 26/2003, January 28, 2003, article 18 (4).

⁴⁶ *Ibid.*, article 18 (5).

⁴⁷ The law defines temporary alternative accommodation as accommodation in a state-owned house or apartment where housing space is “below adequate size,” or accommodation in property rented by the state. *Ibid.*, article 17 (1).

⁴⁸ *Ibid.*, article 7 (3) and article 38.

alternative accommodation; the temporary occupancy of several homes by members of a family that lived together before the war; temporary occupants' occasional use of property; temporary occupants' refusal to use properties jointly with the owner; and, deadlines by which the government should provide alternative accommodation to temporary owners and free the properties for the owners. In addition, the law in itself is not a guarantee that the agencies in charge of implementing it—the Ministry for Public Works, Construction and Reconstruction, the State Prosecutor, and the courts—will implement it with the requisite determination that has been all but completely absent in the previous period. As is detailed below, the first year of the new law's implementation has seen no improvement in the repossession of property.

Impediments to Repossession of Property

Municipal housing commissions, established under the 1995 Law on Temporary Takeover,⁴⁹ assigned approximately 18,500 abandoned properties to temporary occupants between 1995 and 1998, when the Croatian parliament repealed the law.⁵⁰ Virtually any Croat could get a decision authorizing use of abandoned property. Years later, thousands of Serb properties remain occupied by Croat refugees from Bosnia and Herzegovina and Serbia and Montenegro, Croats displaced from other parts of Croatia during the war, and Croats who had housing elsewhere in Croatia but were given abandoned Serb property under the law's catch-all rubric of "other citizens who perform [necessary] activities." In July 2003, according to the government, 5,200 Serb properties that had been allocated by virtue of the 1995 Law on Temporary Takeover were still occupied.⁵¹

Croatian law roughly divides those currently living in Serb houses in two groups: lawful temporary occupants entitled to alternative accommodation prior to eviction, and unlawful temporary occupants who do not enjoy this right. The government has considered up to 15 percent of the temporary occupancies cases of either illegal (unauthorized) occupancy⁵² or "multiple occupancy," the latter being the cases in which the government has determined that the occupants possess other accommodations to which they could move.⁵³ Consideration of only those cases in which the temporary occupancy was authorized by the government in the first place certainly understates the problem of illegal occupancy, since hundreds, perhaps thousands, of Serb-owned houses were occupied without a government decision ever authorizing that use. In addition, hundreds of cases are not considered cases of multiple or unlawful occupancy of Serb property, although any reasonable standard should warrant such determination. The following discussion describes these various categories of current occupants of Serb homes and in each case details the different ways in which Croatian law has been manipulated to bar repossession of Serb homes.

⁴⁹ *Narodne novine*, no 73/1995.

⁵⁰ In the process of revision of the decisions on temporary allocation of private property in accordance with the 1995 law, the government has offered differing statistics. By June 2001 it had registered decisions on allocation of 18,650 housing units; in December 2001 the number was 18,342, and in May 2002 – 18,865.

⁵¹ Ministry for Public Works, Reconstruction and Construction/Office for Displaced Persons, Returnees and Refugees, *Progress in the Process of Return of Displaced Persons and Refugees in the Period from 2000 – end June 2003 (Report from 01 July 2003)*, p. 2 (on file with Human Rights Watch).

⁵² Of 9,543 properties occupied at the end of 2001, in 705 cases, properties were used without authorization (the person who received a certificate of temporary occupancy eventually moved out, and a new temporary occupant moved in without authorization). Government of the Republic of Croatia, *Action Plan for Implementation of Repossession of Property by the End of 2002*, December 31, 2001 (version in English).

⁵³ In 523 cases, occupants had their own houses reconstructed, while an additional thirty-one occupants received housing from the state. *Ibid.*

Problems Relating to Legal Occupants' Right to Alternative Accommodation

Croatian law has in the postwar period consistently maintained the right of lawful temporary occupants to receive government-provided alternative accommodation prior to eviction. This right has proved a significant obstacle to returnees' repossession of their property. The 1998 Program for Return did not set forth any time limit within which the local housing commissions had to find alternative accommodations for a temporary occupant. In practice, housing commissions simply failed to offer such accommodation or to force temporary occupants to accept it when they did, and temporary occupants continued to occupy Serb property indefinitely. The owners had no rights under the law to initiate proceedings against the housing commissions for failing to offer alternative accommodation to temporary occupants. Although the July 2002 legal reform shifted responsibility for identifying alternative accommodation to the Ministry for Public Works, Reconstruction and Construction/Directorate for Expellees, Returnees and Refugees (usually referred to as "ODPR"), efforts to relocate temporary occupants have not improved significantly.

During the period that local housing commissions had responsibility for relocating temporary occupants, they often explained their failure by arguing that alternative housing was lacking. But, as a general rule, the commissions defined alternative accommodation very narrowly and neglected creative options to house temporary occupants. Temporary occupants could in some cases, for example, temporarily share property with Serb owners, at least in the cases in which the house comprises two or more floors or flats. In other cases, temporary occupants could be required to move into vacant houses or apartments in neighboring communities. The housing commissions did not generally try these options, nor did the central government ever suggest them as a matter of policy.

The 1998 Program for Return failed to address situations where houses were large enough to accommodate both the owner and the temporary occupant, and the owner wished to share the house until such time as proper alternative accommodation was found for the occupant. This led to absurd situations in which the temporary occupant used only one part of a spacious house, and the owner, unable to move into the remaining part, lived elsewhere with friends and relatives, paid rent as a tenant, or lived in a collective center (a government-built settlement consisting of prefabricated huts).

In a case registered by the Croatian Ombudsman, the housing commission in Hrvatska Kostajnica refused to allow a returnee, identified by the Ombudsman as "V.K.," to use an uninhabited floor of his own house in the town. In a letter to the Ombudsman, the commission wrote that the owner could not use any part of the house as long as the temporary user was on the property. Also, according to the commission, since the temporary user had a small child, "it would not be desirable that V.K. should disturb the family with respect to the restitution of the property."⁵⁴

In June 2002, Human Right Watch observed the court proceedings on repossession of another property, in which the defendants—a Bosnian Croat wife and her Muslim husband, occupants of a three-story Serb house in Karlovac—explained that they opposed sharing the house temporarily with the owner because, in the husband's words, "He cannot live with us. We were at war with *such like him* for four years." The owner, Dusan Vilenica, returned to Karlovac in 1998 and has been unable to reoccupy the house or move into its uninhabited parts since.

The housing commissions and courts were equally accommodating of temporary occupants unwilling to move to a neighboring community. In fact, all housing commissions and courts interpreted the law as if the vacant or illegally occupied property in other municipalities did not constitute alternative accommodation, and therefore they refused to order the temporary occupant to move there.

⁵⁴ Republic of Croatia Ombudsman, *2001 Annual Report*, p. 33.

There was nothing in the law that prevented housing commissions from providing alternative accommodation in areas outside the municipality in which temporary occupants were currently living. If alternative accommodation in the municipality was lacking, the 1998 Program for Return obligated housing commissions to inform the government's agencies for displaced persons and refugees of this fact.⁵⁵ The agencies might have taken this cue to start looking into possibilities for accommodation in other parts of Croatia. Housing commissions themselves could have established data-exchange mechanisms, and municipalities with surpluses in housing could have offered space to municipalities lacking sufficient housing.

These arrangements were never realized in practice. Temporary occupants were usually unwilling to leave the areas they had chosen as their new place of residence, and the authorities made no attempt to relocate them. For example, during Human Rights Watch's visit to the area in 2001, a number of municipality-owned apartments in Udbina were vacant.⁵⁶ This housing space could have been used as alternative accommodation for temporary occupants in nearby Korenica, where housing space was lacking. A member of the then-housing commission in Korenica told Human Rights Watch in June 2002 that "we can suggest to the temporary occupants to move into those apartments, but they don't want to go there. And they have the final word."⁵⁷ This official acknowledged that the housing commissions in Korenica and Udbina did not have a mechanism for information exchange, so the commission in Korenica did not even know which apartments in Udbina were empty.

In another characteristic case, a married Bosnian Croat couple living in the village of Orlic, near Knin, told Human Rights Watch that they did not want to vacate the Serb house they were occupying because the house offered as alternative accommodation to them and to the family of their daughter was several miles further away from Knin. The family also found it unacceptable that the offered house did not have two separate apartments.⁵⁸

As is evident from the cases detailed above, the housing commissions persistently failed to confront temporary occupants over their unrealistically high standards for "adequate" alternative accommodations. In one striking case, the temporary occupant of the house of Petar Cubrilo, returnee to Gracac, rejected three offers for alternative accommodation. On the second occasion, in July 2001, she objected that two faucets, the shower, and a window frame were not in a state she found satisfactory. After five years of waiting, Petar Cubrilo finally repossessed his house in February 2002.⁵⁹

In February 2001, the government adopted a decree that for the first time stipulated that a person who rejects an offer of adequate housing care should lose any right to such assistance.⁶⁰ In practice, however, temporary occupants still continued to decide whether the accommodation offered to them was "adequate." At a meeting of the Slunj town council in May 2002, during which the case of Tomislav

⁵⁵ Program for Return, "Procedures for Return," article 9 (2).

⁵⁶ Human Rights Watch interview with a representative of the OSCE field office in Korenica, Korenica, August 27, 2001.

⁵⁷ Human Rights Watch interview with Nikola Lalic, member of the then-housing commission in Korenica and president of the local branch of the Serbian Democratic Forum, Korenica, June 16, 2002.

⁵⁸ Human Rights Watch interview with the Livaja family, Orlic (near Knin), August 25, 2001.

⁵⁹ Human Rights Watch interview with Radmila Andric, head of the Gracac office of the Dalmatian Committee of Solidarity, Gracac, August 28, 2001; Human Rights Watch telephone interview with Radmila Andric, December 9, 2002.

⁶⁰ Decree on Conditions and Criteria For Housing Care in The Areas of Special State Concern, *Narodne novine*, no. 10/2001, February 6, 2001, article 4.

Turek was discussed,⁶¹ the president of the housing commission told the councilmen: “I asked Turek to say what it is that he wants, so that we can resolve the issue. He does not want alternative accommodation such as an apartment, but a house with a piece of land. I am not sure that we can offer something to him at this stage.”⁶²

The July 2002 amendments to the Law on Areas of Special State Concern held out the promise that some of the problems relating to relocating temporary occupants would be addressed. Unfortunately, progress in the first year of implementation of the new law has been disappointing.

The amendments were silent on the joint use of houses and the provision of alternative accommodation in other areas, leaving to the implementing authorities—now the Ministry for Public Works in lieu of the housing commissions—the discretion to promote joint use or relocation to alternative accommodation in other areas. As of mid-2003, however, little had been done to pursue these more expansive approaches to alternative accommodation.

The July 2002 amendments to the Law on Areas of Special State Concern also stipulated that a temporary occupant who rejects the permanent housing care or the temporary accommodation offered to him forfeits the right to housing care.⁶³ A year after the adoption of the amendments, nothing suggests that the authorities enforce this provision and initiate eviction procedures against uncooperative beneficiaries. The temporary occupants do not see the threat of losing the entitlement to alternative accommodation as serious.⁶⁴ One temporary occupant told Human Rights Watch as a matter of course that he had refused to move from a comfortable Serb house in the vicinity of Karlovac to the [wooden hut] settlement “Gaza” in the town.⁶⁵ In addition, the process in which the authorities offer alternative accommodation to temporary occupants lacks transparency, because regional offices of the Ministry for Public Works, Reconstruction and Construction/ODPR often offer the accommodation only verbally.⁶⁶ The property owners, as well as the international agencies and Croatian nongovernmental organizations (NGOs) monitoring the repossession of properties, cannot effectively track down such offers and react when the authorities fail to evict the obstructionist occupants.

Finding alternative accommodation for temporary occupants and reinstating returning owners in their property boils down to a question of political will on the part of the responsible authorities. In Eastern Slavonia—where the temporary occupants were Serbs and the displaced were Croats—the local housing commissions and courts have evicted thousands of Serbs from Croat properties since 1998. Many of those evicted moved to other properties, where they paid rents as tenants or shared housing space with

⁶¹ Local human rights groups and the OSCE officials told Human Rights Watch that Turek, son of a state official from the Tadjman era, at the time occupied two houses owned by ethnic Serbs in the municipality of Slunj, and prevented a Serb family from using two other houses owned by the family members. Turek was formally designated as temporary occupant of only one of these four houses, and as such the law entitled him to alternative accommodation.

⁶² D. Kundic, “Rendulic: Turek ce se seliti kad mu nadjemo alternativni smjestaj” (Rendulic: Turek Will Move Out When We Find Alternative Accommodation For Him), *Karlovacki list* (Karlovac), May 4, 2002 (statement by Miroslav Rendulic, president of Slunj Housing Commission).

⁶³ Law on Areas of Special State Concern (amended and consolidated version), *Narodne novine*, no. 26/2003, January 28, 2003, article 17 (4).

⁶⁴ Human Rights Watch interview with a representative of the OSCE field office in Karlovac, June 11, 2003.

⁶⁵ Human Rights Watch interview with S.Dz., Popovic brdo (near Karlovac), June 11, 2003. The owner of the house, Ranka Vidnjevic, sued him in April 2002, but the court has not rendered a decision. Human Rights Watch interview with Ranka Vidnjevic, Popovic brdo, June 11, 2003.

⁶⁶ Organization for Security and Cooperation in Europe & United Nations High Commissioner for Refugees, *3rd Report on Issues of Property Repossession under the July 2002 Amendments to the Law on Areas of Special State Concern (February 2003-May 2003)*, June 12, 2003, p. 7.

friends and relatives, lived in collective centers, or bought a house or an apartment.⁶⁷ The practice in Eastern Slavonia shows that it is entirely possible to return occupied properties to their owners, when there is the requisite political will.

Unauthorized and Unlawful Use of Property

Although, as discussed above, provision of alternative accommodation to lawful occupants of Serb homes has proven a significant impediment to Serb return, repossession of a home unlawfully occupied has also been difficult. As detailed in this section, three types of unlawful occupancy have prevented Serb owners from repossessing their properties since the end of the war: use of property without authorization; use of property for purposes other than housing; and, multiple occupancy. Croatian legislation has failed to recognize as unlawful some other circumstances in which the temporary occupant could himself obtain alternative accommodation. Human Rights Watch believes that reasonableness and the practice in neighboring Bosnia and Herzegovina, which faces property problems similar to Croatia's, mandate considering such cases as constituting unlawful occupancy akin to multiple occupancy. The following discussion details the ways in which Croatian laws and practice have barred Serb returnees from repossessing their homes from unlawful occupants and others who should have no right to alternative accommodation prior to eviction.

Use of Property without Authorization

There are many hundreds, perhaps thousands, of cases of individuals who occupy Serb property although they never received a decision authorizing temporary use.⁶⁸ These are clear cases of illegal occupancy. Under Croatian law, local housing commissions—until August 2002 the main agency for implementation of laws relating to abandoned property—were under a duty to issue eviction orders promptly in such cases.⁶⁹ If users refused to obey and the case reached the court, the court was under an obligation to rule in a shortened procedure and the appeal could not suspend the execution of the decision.⁷⁰ In spite of these provisions, however, in the period between June and December 2001 the number of cases identified by the government as unauthorized use of property decreased by only twelve percent, from 803 to 705.⁷¹ Lack of political will accounted for the slow resolution of a problem that was uncontroversial from the legal perspective.

The July 2002 legislation disbanded the local housing commissions and vested the authority to seek evictions with regional ODPRs and state prosecutors. These have not proved to be more effective in evicting illegal occupants than the housing commissions had been (see Eviction Procedures, below). In addition, the state prosecutors do not apply the July 2002 law outside the areas of the special state concern, although in these areas there are also Serb houses illegally occupied by third persons.⁷² In such cases, owners can only initiate private lawsuits, which are usually expensive and result in the case dragging before the court for many years.

⁶⁷ See below, chapter "Eviction of Serbs from Croat Homes in Eastern Slavonia."

⁶⁸ As of the end of 2001, the government had identified 705 properties used without authorization, in cases in which first temporary occupants had had such authorization, but subsequently another family moved in without obtaining government's authorization. Government of the Republic of Croatia, *Action Plan for Implementation of Repossession of Property by the End of 2002*, December 31, 2001 (version in English). There is an additional unknown number of houses that from the start have been occupied without a government certificate.

⁶⁹ Program of Return, "Procedures for Return," article 10.

⁷⁰ Program for Return, "Procedures for Return," article 9 (3) and article 10.

⁷¹ Government of the Republic of Croatia, Revision of Decisions on the Law on Temporary Takeover (Final Revision Results, June 2001); Government of the Republic of Croatia, *Action Plan for Implementation of Repossession of Property by the End of 2002*, December 31, 2001 (version in English).

⁷² Human Rights Watch interview with a representative of the OSCE Mission to Croatia, Zagreb, June 12, 2003.

Use of Property for Purposes Other than Housing

The 1998 Program for Return explicitly stipulated that “any case of illegal use, [...] when the [occupant] uses the object for any other purpose than principle accommodation of his/her family, shall be promptly eliminated.”⁷³ There have been, however, numerous cases in which temporary occupants used properties for business or other purposes, and yet the authorities have failed to evict them.

In such cases, the temporary occupants are typically using Serb houses, not to resolve a genuine housing problem, but rather for business operations. A number of temporary occupants, most of whom had settled from other parts of Croatia, have been using Serb houses as restaurants or motels for years. The use of Serb houses for business purposes is particularly striking along the road connecting the capital Zagreb with the Dalmatian coast. This is the main route for hundreds of thousands of tourists who visit Croatia during the summer.

The town of Korenica is located on this road, ten miles from the national park Plitvice Lakes, another tourist attraction. An internal working paper by the OSCE office in Korenica, dated from August 2001, identified eight cases in which temporary occupants used private houses of ethnic Serb returnees for purposes other than accommodation: for example, the house of Milan Zigic was a café; the house of Neven Jerkovic was transformed into a church; the house of Jovan Rapaic became a pizzeria and video store; and the house of Branko Funduk was used as an office for the private building company “Ante-Gradnja.” The OSCE document identified an additional six cases in which the persons allocated abandoned houses kept these empty. A year later, only the six empty houses had been repossessed by their owners.⁷⁴ The remaining cases, in which the properties were used as business premises, were still pending.⁷⁵ As of June 2003, the only change consisted in Neven Jerkovic having sold his house to the state-run Agency for the Mediation in the Sale of Immovable Properties (*Agencija za pravni promet i posredovanje nekretninama-APN*).⁷⁶

In fact, Human Rights Watch did not learn of a single case, out of dozens documented throughout Croatia, in which property used for business purposes had been returned to the lawful owner.

A prominent illustrative case is that of Ivan Kovac, a Bosnian-born Croat who lived as an immigrant in Australia, until he came to Croatia in 1995. Since 1997, Kovac has run a restaurant in Gracac in a home owned by Danilo Stanic, a Serb. Stanic and his wife returned to Gracac in 1998, but the local housing commission ignored their repeated requests that the commission evict Kovac.⁷⁷ In July 2002, pursuant to Stanic’s private lawsuit, Gracac municipal court ordered that Kovac vacate the part of the house used as a restaurant,⁷⁸ but the restaurant continued operating as of June 2003, pending a court decision on Kovac’s appeal.⁷⁹

⁷³ Program for Return, “Procedures for Return,” article 10.

⁷⁴ Human Rights Watch interview with Nikola Lalic, member of the then-housing commission in Korenica, Korenica, June 16, 2002.

⁷⁵ Human Rights Watch reviewed each individual case with Nikola Lalic during the June 16, 2002 interview.

⁷⁶ Human Rights Watch interview with Nikola Lalic, head of Korenica branch of the Serbian Democratic Forum, Korenica, June 10, 2003. APN buys houses from refugees unwilling to return to Croatia, who usually sell at a below-market price because of the urgent need of money for accommodation in Serbia and Montenegro or in Bosnia and Herzegovina (Republika Srpska), the countries of refuge for most refugees.

⁷⁷ Letter from Danilo Stanic to the Ministry of Justice, Local Administration and Self-Administration, June 15, 2001; request by Danilo Stanic for repossession of property, submitted to the Ministry for Public Works, Reconstruction and Construction, February 6, 2001.

⁷⁸ Judgment of the Gracac Municipal Court, no. P-51/01, July 26, 2002.

⁷⁹ Human Rights Watch interview with Radmila Andric, head of the Gracac office of the Dalmatian Committee of Solidarity, Gracac, June 10, 2003.

Multiple Occupancy and Other Circumstances that Should be Considered Unlawful

The 1998 Program for Return, which until July 2002 was the main legal source for repossession of the occupied property, stated that multiple occupancy was contrary to the law, but it gave no guidelines on what constituted multiple occupancy.⁸⁰

In neighboring Bosnia and Herzegovina, the housing laws imposed by the Office of the High Representative (OHR) defined several categories of multiple occupants, including a temporary user (of a home of a displaced person or a refugee) who can safely repossess a livable house or apartment in which he lived, without owning it, before the war; or a temporary user who owns another livable home occupied by him or a member of his original household to which they could return; a temporary user whose parents or members of household occupy another housing unit in the same city, municipality, or place; and, a person who rejects alternative accommodation or aid in reconstruction of his home, offered by the authorities.⁸¹

In Croatia, the housing commissions and courts interpreted the concept of multiple occupancy in the narrowest sense, as a situation in which the temporary occupant, in addition to occupying a home of a refugee or a displaced person, owns another livable house or an apartment, most frequently one that has been reconstructed with state funds. According to the Croatian authorities, temporary occupants who use homes only periodically while regularly residing elsewhere are not considered multiple occupants. Moreover, those who before the war lived as one family in a single household and then moved into two or more Serb houses are not considered multiple occupants, as long as different members of the same family received certificates authorizing them to use different houses. Similarly, those who are determined to be financially or otherwise able to make other alternative housing arrangements are entitled to continuously occupy another person's house. Under the July 2002 amendments to the Law on Areas of Special State Concern all of these situations remain legal, with the temporary occupants entitled to housing care or temporary alternative accommodation before they will be expected to vacate a Serb-owned house. The only improvement the law brings is in regards to those who repossessed their houses or apartments in Bosnia and Herzegovina, but who continue to live in a Serb house in Croatia: they are now considered multiple occupants. The following discussion describes how the Croatian government's continued failure to recognize these various forms of "multiple occupancy" disadvantages Serb returnees in their efforts to repossess their property.

Occasional Use of Property by the Temporary Occupant

The 1998 Program for Return did not provide for eviction of temporary occupants who used the property assigned to them only periodically. Some temporary occupants of Serb homes in fact keep the house empty, while living and working elsewhere. Housing commissions, relying on the 1998 Program for Return, failed to take any action against these occupants. The July 2002 amendments to the law on areas of special state concern do not address the issue.

In a typical case, returnee Simeuna Trisic (age 76) from the village of Orlic, near Knin, could not enter her property from 1997 to 2002, although the supposed temporary occupants, a Bosnian Croat

⁸⁰ Program for Return, "Procedures for Return," article 10.

⁸¹ Article 16 (4) of the Law on the Cessation of the Application of the Law on Temporary Abandoned Real Property Owned by Citizens, *Official Gazette of the Federation of Bosnia and Herzegovina*, no. 11/98, 29/98, 27/99; article 11 (3) of the Law on the Cessation of the Application of the Law on Abandoned Apartments, *Official Gazette of the Federation of Bosnia and Herzegovina*, no. 11/98, 38/98, 12/99, 18/99, 27/99; article 24a (4) and article 34 (3) of the Law on the Cessation of Application of the Law on the Use of Abandoned Property, *Official Gazette of Republika Srpska*, no. 38/98, December 11, 1998, with amendments on April 13, 1999, and October 27, 1999.

family, had since late 2000 been reportedly spending most of their time abroad.⁸² Trisic returned to her apartment only in January 2002, after the Croat family definitively left the country.⁸³

Family Split

Another form of multiple occupancy considered legal in Croatia involves cases of young men and women who lived with their parents before the war, moved into Serb houses during or after the war, and continue to live in them. In numerous cases these persons have now established their own families and refuse to vacate the Serb property they currently occupy.

Housing commissions failed to issue eviction orders in any such cases. The 2001 Annual Report of the Croatian Ombudsman reported a case from Petrinja where, in a letter to the Ombudsman, the housing commission conceded that the temporary occupant lived in his parents' house before the war, but "he has his own family now, with four members," and therefore could not be evicted before the authorities provided alternative housing for him.⁸⁴

Human Rights Watch learned about a number of cases in which an extended Croat family occupied two or more Serb houses. In one such case, in 1995, the family of Bosnian Croat Bozo Juko was allocated a Serb house of 140 square meters in Licko Petrovo Selo. His son and two daughters have since married, and the Korenica housing commission allocated one Serb house to each of them, each a minimum 100 square meters in size.⁸⁵ Bozo Juko and each of his children are still entitled to alternative accommodation and the Serb owners of the four homes this extended family occupies are unable to repossess their homes until they get it.⁸⁶

Formally, such cases do not constitute multiple occupancy, because different persons are designated as occupants of different housing units. Even where the family split resulted in occupation of several large houses—as in the example of Bozo Juko—the housing commissions had no legal ground to evict the temporary occupants without first providing them with alternative accommodation. The Ministry for Public Works, Reconstruction and Construction, in charge of implementation of the housing legislation after the July 2002 amendments, faces the same constraint.

Ownership of Additional Property In Bosnia

More than half the temporary occupants of Serb property are Bosnian Croats who came to Croatia as refugees during the war.⁸⁷ A significant proportion of them still possess property in Bosnia; many others

⁸² Human Rights Watch interview with Simeuna Trisic, Orlic (near Knin), August 25, 2001. Human Rights Watch also interviewed the parents of the wife whose family occupied Trisic's house. The parents confirmed that their son-in-law worked in Germany, although they said that he did it only "from time to time." Human Rights Watch interview with Mr. and Mrs. Livaja, Orlic, August 25, 2001.

⁸³ Human Rights Watch interview with Iris Vasiljevic, Knin office of the Croatian Helsinki Committee, Knin, June 11, 2002; Human Rights Watch interview with Simeuna Trisic, Orlic, June 9, 2003.

⁸⁴ Republic of Croatia Ombudsman, *2001 Annual Report*, p. 37. To strengthen the occupant's case, the commission found it necessary to add that the person at issue "chose to fight against the [Serb] aggression."

⁸⁵ Human Rights Watch interview with Nikola Lalic, member of the then-housing commission in Korenica and president of the local branch of the Serbian Democratic Forum, Korenica, June 16, 2002.

⁸⁶ Human Rights Watch telephone interview with Nikola Lalic, December 12, 2002; Human Rights Watch interview with B.B., M.K., and D.S., returnees to Licko Petrovo Selo, Licko Petrovo Selo, June 7, 2003.

⁸⁷ Sixty-one percent of the users are families from Bosnia and Herzegovina, 29 percent from Croatia, 6 percent from Serbia and Montenegro, and 4 percent from other countries. Ministry for Public Works, Reconstruction and Construction/Directorate for Expellees, Returnees and Refugees (ODPR), "Revision of Decision on the Law on Temporary Takeover, Final Revision Results," June 6, 2001. An estimated 128,000 persons from Bosnia and

sold property in Bosnia, the proceeds of which could finance acquisition of property or a tenancy in Croatia.

In June 2001, after reviewing the status of occupied properties in the country, the Croatian government announced for the first time that “families who in B[osnia]-H[erzegovina] received reconstruction or repossessed property shall not be beneficiaries of the provision to alternative accommodation.”⁸⁸ The Action Plan for Implementation of Repossession of Property by the End of 2002, which the cabinet adopted in December 2001, stipulated that Bosnian Croats who had vacant property in Bosnia should not retain the right to housing in Croatia.⁸⁹ Nonetheless, throughout this period there was no law stipulating that temporary occupants who repossessed property in Bosnia were multiple occupants. On the contrary, the Law on Areas of Special State Concern stipulated that the government had to provide for “housing care” for all temporary occupants except those who owned another apartment or family house in Croatia.⁹⁰ Implicitly, the law provided that if a temporary occupant owned a house abroad, he was nonetheless entitled to housing care prior to eviction. In practice, housing commissions and courts did not consider such cases multiple occupancy.

In July 2002, the amended Law on Areas of Special State Concern finally spelled out that these cases do constitute illegal multiple occupancy. The law specifies that the government does not have to provide alternative housing for those temporary occupants of property who are owners or protected renters of a vacated and inhabitable house or apartment in the territory of the former Yugoslavia, or who sold or gave away the house or the apartment after October 1991.⁹¹ Many Croats from Bosnia and Herzegovina or Serbia and Montenegro are unlikely to return to live in these countries, but they could rent or sell their properties there and use the funds to provide for accommodation in Croatia.

Although this amendment to the Law on Areas of Special State Concern represents a welcome step, its impact has been very limited. During a June 2003 follow-up mission in Croatia, Human Rights Watch heard of only seven cases, all in the town of Vojnic, in which the regional office of the Ministry for Public Works, Reconstruction and Construction/ODPR notified temporary occupants that they should vacate the house because they have livable properties in Bosnia and Herzegovina.⁹² Elsewhere, the temporary occupants who possess such properties in Bosnia or have sold them continue to freely occupy Serb houses in Croatia.⁹³

Since the amendment came into force, temporary occupants who have applied for housing care with the regional ODPR offices have been required to enclose declarations, made under penalty before a notary

Herzegovina currently live in Croatia. A majority—120,000—obtained Croatian citizenship and lost their refugee status. OSCE Mission to Croatia, *Status Report no. 11*, November 18, 2002, p. 13.

⁸⁸ Ministry for Public Works, Reconstruction and Construction – Department for Expellees, Returnees and Refugees, Revision of Decisions on the Law on Temporary Takeover, Final Revision Results, June 6, 2001.

⁸⁹ Government of the Republic of Croatia, *Action Plan for Implementation of Repossession of Property by the End of 2002*, December 31, 2001 (version in English), para. 3.2.

⁹⁰ Amendments to the Law on Areas of Special State Concern, *Narodne novine*, no. 73/2000, July 21, 2000, article 8 (2).

⁹¹ Amendments to the Law on Areas of Special State Concern, July 24, 2002, article 5 (3) and article 27. Only if the house or apartment is occupied and the person is unable to repossess it does the Croatian government have to provide housing care for him in Croatia.

⁹² Human Rights Watch interview with representatives of the OSCE field office in Karlovac, Karlovac, June 11, 2003 (the office monitors the returns process in several municipalities in the Kordun region, including the municipality of Vojnic).

⁹³ See Organization for Security and Co-operation in Europe, Mission to Croatia, Status Report No. 12, July 3, 2003, p. 5.

public, that they do not own a house or an apartment and have not sold any since October 1991.⁹⁴ The Ministry has yet to effectively check the statements declaring the lack of housing in other parts of the former Yugoslavia, and to take action upon obtaining any such information. In some cases in the past OSCE offices in Croatia have informally obtained pertinent information from OSCE offices in Bosnia, but local Croatian authorities have refused to accept it.⁹⁵ In December 2002, the Bosnian Ministry for Human Rights and Refugees agreed to submit to the Croatian Ministry for Public Works, Reconstruction and Construction/ODPR information on reconstructed properties in Bosnia; the Bosnian ministry was not, however, in possession of a complete database on other properties repossessed by owners.⁹⁶ The Housing Verification and Monitoring unit (HVM) in Bosnia and Herzegovina has also submitted information about repossessed Bosnian properties to the Croatian Ministry for Public Works, Construction and Reconstruction/ODPR, which it could use to identify illegal multiple occupants.⁹⁷ A spokesperson for the Croatian Ministry for Public Works, Construction and Reconstruction told Human Rights Watch that the HVM findings require additional verification by the Bosnian Ministry for Human Rights and Refugees, in order to serve as a piece of information potentially relevant and admissible in court. The spokesperson explained that eviction for those with property in Bosnia had been slow in coming because of the time-consuming verification procedure and the lack of a centralized database at the Bosnian Ministry for Human Rights and Refugees.⁹⁸

The Croatian government's exclusive reliance on the Bosnian Ministry for Human Rights and Refugees is unjustified. The Ministry for Public Works, Reconstruction and Construction/ODPR should give due consideration to OSCE and HVM data, along with information from the housing commissions in Bosnia and Herzegovina, or the local land-registry offices. Some owners of occupied property have also provided photos showing that the occupant's house in Bosnia is inhabitable. The government should in principle consider all such evidence as having considerable—even if rebuttable—probative value.⁹⁹

Ability to Provide Independently for Alternative Accommodation

Like those who have sold property in Bosnia, some temporary occupants have the financial means and ability to rent or buy accommodation/housing elsewhere, but they continue to occupy Serb houses instead. At the same time, the Serb owners—most of whom are impoverished—pay rent to live in someone else's house or apartment, or live in one of the several collective centers for returnees in Croatia. Neither the 1998 Program for Return nor the amended Law on Areas of Special State Concern addresses such cases. As with other lawful temporary occupants, those who could afford to provide for their own alternative housing are nonetheless entitled to receive that assistance from the state before vacating the

⁹⁴ Human Rights Watch telephone interviews with OSCE representatives in Knin (December 12, 2002), Korenica (December 13, 2002), and Pakrac (December 18, 2002).

⁹⁵ Human Rights Watch telephone interview with an OSCE representative in Pakrac, December 18, 2002.

⁹⁶ Human Rights Watch telephone interview with Medzid Lipjankic, Head of the Department for Monitoring of the Realization of Rights of Refugees and Displaced Persons, Ministry for Human Rights and Refugees of the Republic of Bosnia and Herzegovina, January 6, 2003.

⁹⁷ Again, this information pertains primarily to reconstructed properties in Bosnia and Herzegovina, excluding other properties that temporary occupants in Croatia may own there. Human Rights Watch telephone interview with Edin Dzumhur, operations manager, Housing Verification and Monitoring unit, January 6, 2003. Formally a nongovernmental organization, HVM works closely with the Reconstruction and Return Task Force (RRTF) in Bosnia and Herzegovina. RRTF coordinates return efforts in Bosnia and Herzegovina of international organizations, the United States, Germany, and the Netherlands.

⁹⁸ Human Rights Watch telephone interview with Ana-Marija Radic, spokesperson for the Croatian Ministry for Public Works, Reconstruction and Construction, June 24, 2003.

⁹⁹ If the temporary occupant refused to vacate the house and the state prosecutor brought the case before the court, the court should be able to establish the authenticity and the value of such evidence.

home they occupy. The Croatian authorities' failure to consider such cases unlawful thus impedes Serb repossession of their homes.

Eviction Procedures

Under the 1998 Program for Return, returning property owners could apply to local housing commissions for reinstatement of their property, and the housing commissions were authorized to issue decisions canceling earlier decisions on allocation of abandoned property.¹⁰⁰ As previously noted, however, legal temporary occupants were not required to vacate the property until the housing commissions provided them with alternative accommodation.¹⁰¹ Once the commission found such accommodation, it was supposed to inform the temporary occupants of the deadline by which they would be required to vacate the property. If the temporary occupants failed to vacate by the deadline date, according to the law, the housing commission was duty bound to file a lawsuit for eviction within seven days.

The 1998 Program for Return specified further that occupants using property in breach of the law did not enjoy the right to alternative accommodation.¹⁰² Within fifteen days after finding out about a case of illegal or multiple occupancy, the housing commissions were obliged to order eviction from the property. If the user refused to obey, the housing commission had a duty to file a lawsuit before the municipal court, although the law set no deadline by which such cases should be filed.¹⁰³

In either case, when the municipal court received the lawsuit it was supposed to rule in a shortened procedure; the law provided that the decision would become effective immediately, and any appeal would not suspend the execution.¹⁰⁴ The housing commission had to request the execution from the court.¹⁰⁵

Although the eviction procedure specified or established in the July 2002 amendments to the Law on Areas of Special State Concern introduces some new actors in the eviction process—state prosecutors and the Ministry for Public Works, Reconstruction and Construction/Directorate for Expellees, Returnees and Refugees (ODPR)—the basic procedure remains unchanged. Once the Ministry for Public Works, Reconstruction and Construction/ODPR provides alternative accommodation, the temporary occupant has to vacate the property within fifteen or ninety days, depending on the type of alternative accommodation arrangement. If the temporary occupant fails to vacate, the state prosecutor has to file a lawsuit for eviction within fifteen days. The court has an obligation to rule in a shortened procedure.¹⁰⁶ However, the amended Law on Areas of Special State Concern contains no deadline by which the government should provide housing care or temporary accommodation to temporary owners. This means that to trigger the eviction procedures may again take months, if not years.

¹⁰⁰ Program for Return, "Procedures for Return," article 9 (1).

¹⁰¹ *Ibid.*

¹⁰² As discussed above, there were various grounds on which the local housing commissions could request eviction of the temporary occupants without providing alternative accommodation for them. One such ground was that the occupant never received a decision authorizing him to use the abandoned property. Similarly, an occupant who used the property for business purposes rather than to accommodate his family should have been evicted immediately. Also, if the occupants had a house that had been damaged during the war, and the state had reconstructed the house in the meantime, they were obliged to return to the owner the property they had been allocated.

¹⁰³ Program for Return, "Procedures for Return," article 10.

¹⁰⁴ Program for Return, "Procedures for Return," article 9 (3) and article 10.

¹⁰⁵ Law on Implementation, *Narodne novine*, no. 57/1996 and no. 29/1999, article 3.

¹⁰⁶ Law on Areas of Special State Concern (amended and consolidated version), *Narodne novine*, no. 26/2003, January 28, 2003, article 18 (6).

The law, as amended in July 2002 provides further that illegal occupants, who are not entitled to alternative accommodation, should be sued within sixty days after the state prosecutor receives relevant documentation from the Ministry for Public Works, Reconstruction and Construction/ODPR. The deadline for bringing a lawsuit against a multiple occupant (whose property has been reconstructed by state funds) is thirty days. Again, the court procedure is shortened.¹⁰⁷

In the four years during which the Program for Return governed repossession procedures (1998-2002), few evictions were effected. A May 2002 report by the OSCE mission in Croatia notes that “in the majority of cases where occupants have disobeyed administrative orders to vacate occupied properties, the authorities have not sought eviction orders in court.”¹⁰⁸ In the sixteen municipalities of Western Slavonia, for example between 1998 and September 2001, local housing commissions allegedly took an eviction case to court on only one occasion.¹⁰⁹ Likewise in Zadar, as of July 2001, the housing commission had identified ninety-four cases of illegal occupancy, but it had filed only eleven cases with Zadar’s municipal court.¹¹⁰

In the few cases that went to court on the basis of the Program of Return and yielded an eviction order, the housing commission often postponed indefinitely the next step of requesting that the court enforce the eviction order.¹¹¹ Even if the commission requested execution of the eviction order, the court was authorized to suspend the process if the situation of the temporary occupant made “it probable that the execution would cause him irreparable or hardly reparable damage or that postponement is necessary to avoid violence.”¹¹²

Under the July 2002 amendments, state prosecutors have taken over the proceedings initiated by the disbanded housing commissions.¹¹³ The prosecutor must rely in the first instance, however, on the Ministry for Public Works/ODPR for documentation of cases appropriate for eviction. Although the now defunct housing commissions handed over relevant documentation to the Ministry for Public Works/ODPR by September 2002,¹¹⁴ the ministry was still in the process of transferring cases to the state prosecutor as late as February 2003, and in some counties, such as the Sibensko-Kninska county, even in April.¹¹⁵ In a number of key return areas that Human Rights Watch visited in June 2003,

¹⁰⁷ *Ibid.*, article 31 (4).

¹⁰⁸ OSCE Mission to the Republic of Croatia, *Status Report no. 10: Assessment of Issues Covered by the OSCE Mission to the Republic of Croatia’s Mandate since 12 November 2001*, May 21, 2002, p. 12. Nongovernmental organizations in Croatia shared this assessment. See, e.g., Croatian Law Center, “Property Rights of Expelled Persons and Refugees in the Republic of Croatia,” July 2001, p. 15.

¹⁰⁹ Human Rights Watch interview with Simo Kurusic, lawyer with the Serbian Democratic Forum in Daruvar, Pakrac, September 3, 2001; a lawyer at the OSCE office in Pakrac (Western Slavonia) was also unaware of any case in which a housing commission sued temporary occupant for refusing to vacate the property. Human Rights Watch telephone interview, January 13, 2003.

¹¹⁰ OSCE Field Office in Zadar, *Return And Integration In Zadar, The Balance As Per 19 July 2001*, p. 9.

¹¹¹ In December 2001 and February 2002, for example, a court in Karlovac rendered judgments against the temporary occupants of the houses owned by Nikola Madzar and Stevan Malic, in Karlovac and Krnjak respectively. But, the housing commissions failed to request eviction based on the judgments. Memorandum by the law office Rozman & Oredic, April 17, 2002 (Rozman & Oredic represented the owners, who participated as interveners.); Human Rights Watch telephone interview with Mirjana Oredic, Rozman & Oredic law office, January 13, 2003.

¹¹² Law on Implementation, *Narodne novine*, no. 57/1996 and no. 29/1999, article 61.

¹¹³ Law on Areas of Special State Concern (amended and consolidated version), *Narodne novine*, no. 26/2003, January 28, 2003, article 40.

¹¹⁴ Organization for Security and Cooperation in Europe & United Nations High Commissioner for Refugees, *1st Report on Issues of Property Repossession under the July 2002 Amendments to the Law on Areas of Special State Concern (August-October 2002)*, October 31, 2002, p. 7 and 10.

¹¹⁵ Human Rights Watch interview with a staff member in the OSCE field office in Knin, Knin, June 9, 2003.

nongovernmental and international organizations were unaware of any case in which the state prosecutor had initiated eviction procedures in court,¹¹⁶ or knew of only a handful of such cases.¹¹⁷

Thus, the first year of the implementation of the July 2002 amendments has seen no improvement in the repossession of property. The authorities still avoid evicting those temporary occupants who are not entitled to housing care or refuse alternative accommodation, and decline to use temporary accommodation as a transitional step for the temporary occupants who are entitled to permanent alternative accommodation (housing care). A June 2003 report by the OSCE and the UNHCR concludes that “the average of return of occupied properties per month is even lower than in the period prior to the adoption of the Amendments.”¹¹⁸ In the municipality of Vojnic, only seven houses had been returned to their owners in the first half of 2003, out of 200 outstanding requests.¹¹⁹ In Benkovac, out of 118 cases of occupied property known to the Dalmatian Solidarity Committee as of February 2003, five had been resolved by end-April.¹²⁰ In Plaski, there were forty-one outstanding repossession claims in August 2002 and thirty-seven in May 2003.¹²¹ When repossession occurs, it is more often due to the temporary occupant’s own efforts to find other housing than a result of the government’s involvement.¹²² The government has focused on two methods of facilitating repossession—provision of housing care for the temporary occupants or reconstruction of their property. Both methods have limited application, as the falling repossession rate illustrates.

Owners’ Suits Against Temporary Occupants

Before the beginning of 2002, most courts in Croatia allowed only the housing commissions to file lawsuits for eviction of temporary occupants who had originally obtained official permission to use the property. Owners were unable to seek a legal remedy for violations of their right to peaceful enjoyment of property.

In excluding such cases, the courts, especially in the central and southern parts of Croatia, ignored the Law on Ownership and Other Real Property Rights, which grants owners access to courts when they are prevented from using their property.¹²³ Instead, they relied on the 1998 Program for Return, which

¹¹⁶ Human Rights Watch interview with Nikola Vukas, head of the office of the Serbian Democratic Forum in Benkovac, Benkovac, June 8, 2003; Human Rights Watch interview with Mirela Bilokapic, head of the Benkovac office of the Dalmatian Committee of Solidarity, Benkovac, June 10, 2003; Human Rights Watch interview with Nikola Lalic, head of the local branch of the Serbian Democratic Forum, Korenica, June 10, 2003.

¹¹⁷ In Knin, where the transfer of the cases from the ODPR/Ministry for Public Works to the state prosecutor took place only in April 2003, the state prosecutor had brought lawsuits in “five or six cases” as of early June. Human Rights Watch interview with a representative of the OSCE field office in Knin, June 9, 2003.

¹¹⁸ Organization for Security and Cooperation in Europe & United Nations High Commissioner for Refugees, *3rd Report on Issues of Property Repossession under the July 2002 Amendments to the Law on Areas of Special State Concern (February 2003-May 2003)*, June 12, 2003, p. 2.

¹¹⁹ Human Rights Watch interview with Mile Djuric, secretary general at the office of the Serbian Democratic Forum in Vojnic, Vojnic, June 11, 2003.

¹²⁰ Letter from the Dalmatian Committee of Solidarity-office in Benkovac to the Knin office of the United Nations High Commissioner for Refugees, April 22, 2003 (on file with Human Rights Watch).

¹²¹ Human Rights Watch interview with a representative of the OSCE field office in Karlovac, June 11, 2003.

¹²² Human Rights Watch interview with Jelka Glumicic, Committee for Human Rights, Karlovac, June 6, 2003; Human Rights Watch interview with Nikola Vukas, head of the office of the Serbian Democratic Forum in Benkovac, Benkovac, June 8, 2003.

¹²³ Law on Ownership and Other Real Property Rights, *Narodne novine*, no. 91/1996, October 28, 1996. According to article 30, “The right of ownership is a real property right over an object which entitles its bearer to use that object and do whatever he pleases with those uses, and to exclude any other person from it, provided that it is not contrary to the rights of others and to restrictions imposed by law.”

provided only that the housing commissions could sue for eviction from the houses once declared abandoned and then allocated to temporary occupants.

The courts' interpretation was reinforced by an August 1999 memorandum from the president of the Supreme Court of the Republic of Croatia to all county courts in Croatia instructing them that the 1998 Program for Return should be implemented instead of the Law on Ownership and Other Real Property Rights. The memorandum stated that "the owner is not competent to file a claim for the eviction of a person who took possession of this property on the basis of a [decision] of the housing commission. In an action for eviction the owner may have only the position of an intervener on the side of the plaintiff (housing commission)." ¹²⁴

Croatian human rights groups, Serb associations, and the OSCE criticized this approach as incompatible with respect for the right of property. At the beginning of 2002, the Croatian Supreme Court had come to accept that the competence of the housing commissions to seek eviction of the temporary occupants does not preclude the owner from seeking the eviction himself. Abandoning the position from the August 1999 letter of its president, the Court took the position that the lower courts should process lawsuits filed by the owners against temporary occupants. ¹²⁵

The Supreme Court's change of position came too late for numerous owners who had been worn out by years of futile efforts to repossess their property. In the one case in which Human Rights Watch was able to obtain a copy of a Supreme Court decision reflecting its new position on the ability of the owner to sue, the disillusioned co-owners sold their house near Karlovac two months after receiving the decision. ¹²⁶

In contrast to other parts of Croatia, in some parts of politically more moderate Western Slavonia, courts not only have accepted owners' lawsuits against temporary occupants but have also often granted the request. The courts considered that the Law on Ownership and Other Real Property Rights entitled the owner to limit any other person from possession and use of his property. In this view, since July 1998, when the 1995 Law on Temporary Takeover ceased to exist, the government has had no competence over the property. ¹²⁷ These courts have held that owners do not have any obligation toward temporary occupants and their right to repossess the property is independent of the provision of alternative accommodation for temporary occupants. ¹²⁸ The obligation taken by the government to provide alternative accommodation was to be resolved between the government and the temporary occupants, but not at the expense of the dispossessed owners. ¹²⁹

In general, the judgments in these jurisdictions in Western Slavonia have been implemented, in some cases even with the assistance of the police. ¹³⁰ The state usually provided alternative accommodation to

¹²⁴ Ombudsman of Croatia, 2001 Annual Report, p. 35 (quoting a translation of the memorandum of the president of the Supreme Court of the Republic of Croatia).

¹²⁵ See, for example, the Decision of the Supreme Court of Croatia, no. Rev-268/02-2, March 20, 2002.

¹²⁶ Human Rights Watch interview with Ninko Miric, legal counsel at the Norwegian Refugee Council, Sisak, June 14, 2002. The two women, Dusanka Kosanovic and Svjetlana Topic, from Karlovac area, had a house in the village of Tocak. They sold the house in June 2002 to the state-run Agency for the Mediation in the Sale of Immovable Properties (APN). The house has been occupied and used as a restaurant since 1996 by Tomislav Turek. Human Rights Watch telephone interview with Dusanka Kosanovic, June 23, 2003.

¹²⁷ This argument is made for example in the judgment by the Municipal Court in Daruvar, no. P.269/98-10, May 4, 1999.

¹²⁸ Judgment of the Bjelovar County Court, no. Gz.10/2000-2, February 3, 2000.

¹²⁹ Judgment by the Municipal Court in Daruvar, no. P.269/98-10, May 4, 1999.

¹³⁰ Human Rights Watch telephone interview with a lawyer at the OSCE office in Pakrac, January 13, 2003; Human Rights Watch telephone interview with Obrad Ivanovic, head of the office of the Serbian Democratic Forum in

temporary occupants before they vacated, but provision of such accommodation was not requested by the court, and it did not significantly delay the reinstatement.¹³¹ In most cases, the state offered the evicted temporary occupants the so-called APN houses.¹³²

In other parts of Croatia, even where courts have accepted private lawsuits and decided in favor of the owner, their judgments have established that temporary occupants should vacate the property only when alternative accommodation is provided for them.¹³³ A memorandum by the law office of Rozman & Oredic mentions four such cases in the Karlovac area, in which the office represented the plaintiffs; the courts rendered the judgments in their favor in February 2002, but it was only in March and April 2003 that three plaintiffs managed to repossess their homes, once the temporary occupants found alternative accommodation, with state assistance or through their own initiative. The fourth plaintiff was still unable to move into her house as of mid-August 2003.¹³⁴

The July 2002 amendments to the Law on Areas of Special State Concern explicitly authorize owners to sue temporary occupants, independent from the state prosecutor's actions.¹³⁵ The amendments fail to clarify, however, whether the courts should follow the Law on Ownership and Other Real Property Rights and order eviction irrespective of the availability of alternative housing care, or impose such conditions in reliance on the Law on Areas of Special State Concern. One year after the enactment of the amendments, court practice has been to resort to the housing care provisions in the July 2002 law and condition eviction on the provision of alternative accommodation for the temporary occupant.¹³⁶ Thus, although the amended law now gives owners the right to sue, this prerogative remains without any practical effect.

Looting And Devastation

In cases in which temporary occupants do vacate houses, looting and devastation of the house prior to their departure is a regular occurrence. A lawyer working on property repossession cases in Western Slavonia told Human Rights Watch that he was unaware of a single case in which a Serb refugee returned to an undamaged house.¹³⁷ A member of the housing commission in Korenica knew of only one case, out

Pakrac, June 24, 2003. In a number of cases, however, the owners sold the property before the procedure reached the implementation stage. *Ibid.*

¹³¹ Human Rights Watch telephone interview with a lawyer at the OSCE office in Pakrac, January 13, 2003; Human Rights Watch telephone interview with Simo Kurusic, lawyer with the Serbian Democratic Forum in Daruvar, January 14, 2002; Human Rights Watch telephone interview with Judge Ranka Mikelic-Varga, January 14, 2002 (Mikelic-Varga, now a misdemeanor judge in the town of Garesnica, represented as a lawyer a number of private plaintiffs in Western Slavonia who won repossession cases).

¹³² See above, footnote 76.

¹³³ Human Rights Watch interview with an official from the OSCE Mission to Croatia, June 17, 2002; Human Rights Watch interview with Ninko Miric, legal advisor, Norwegian Refugee Council, Sisak, June 14, 2002. See, for example, the Judgment of the Municipal Court in Glina, no. P-124/00-8, July 9, 2001 (repossession conditioned by the provision of alternative accommodation on the part of the Ministry for Public Works, Reconstruction and Construction, for the temporary occupants).

¹³⁴ Memorandum by the law office Rozman & Oredic, Karlovac, April 17, 2002 (describing the cases of Draginja Uzelac, Marko Klipa, Milka Vucinic, and Dragica Breberina); Human Rights Watch telephone interview with associate of Mirjana Oredic, Rozman & Oredic law office, August 18, 2003.

¹³⁵ Law on Areas of Special State Concern (amended and consolidated version), *Narodne novine*, no. 26/2003, January 28, 2003, article 18 (5).

¹³⁶ Organization for Security and Cooperation in Europe & United Nations High Commissioner for Refugees, *3rd Report on Issues of Property Repossession under the July 2002 Amendments to the Law on Areas of Special State Concern (February 2003-May 2003)*, June 12, 2003, p. 12.

¹³⁷ Human Rights Watch interview with Simo Kurusic, lawyer with the Serbian Democratic Forum in Daruvar, Pakrac, September 3, 2001.

of 200 repossessions between the end of the war and June 2002, in which the returnee found the house in such a condition that he was able to stay overnight.¹³⁸

Human Rights Watch investigated a typical case that occurred in the town of Knin. Petar Djuric returned to Knin in 1997. Since a family of Croat refugees from Bosnia occupied his house, Djuric found accommodation with relatives in a nearby village. On August 8, 2000, Djuric learned that the Croat family was about to vacate his house. The next day, Djuric and two members of the Knin housing commission inspected the house and found it emptied of usable furniture, windows, doors, toilet bowls, boilers, and other items.¹³⁹ The house was uninhabitable, and Djuric had no means to repair it, so he started looking for donor assistance. On August 10 or 11, however, another Croat family took possession of his house without any authorization, and the authorities have shown no willingness to evict them.¹⁴⁰ In August 2001, when Human Rights Watch interviewed Petar Djuric, he lived with relatives in a village ten miles away. In June 2002, Djuric's lawyer told Human Rights Watch that Djuric was still unable to return to his house;¹⁴¹ the situation was unchanged as of June 2003.¹⁴²

The 1995 Law on Temporary Takeover provided that the local housing commissions established under that law were required to make inventory of the property at the time of its allocation to temporary occupants.¹⁴³ Owners who wish to sue for looting and devastation of property are unable to obtain these inventories, primarily because in practice they were rarely made. Where the inventories do exist, they fail to describe in detail the condition of the property or to list the pieces of furniture and other items in the house.¹⁴⁴

A great majority of owners who repossess their property do not even try to initiate court proceedings for compensation of damage or for the criminal act of looting. Former temporary occupants usually continue to live in the same area, and the returnees are afraid or feel uncomfortable to sue them. Also, court proceedings are expensive, and returnees feel that chances for obtaining justice through such proceedings are nil. In Korenica and Knin, local and international officials told Human Rights Watch that as of the end of 2002, no returnee had ever initiated court proceedings on this basis.¹⁴⁵ A lawyer at the OSCE office in Pakrac was not aware of any such case in Western Slavonia either.¹⁴⁶

The relatively few cases filed for compensation for looting appear to be nearly always, if not always, unsuccessful. In two years of monitoring return to Croatia, Human Rights Watch has not heard of a single case in which Serb returnees have successfully sought such compensation. In one case in which a returnee to Croatia sued, the court required the plaintiff to prove ownership of the stolen items with the original receipts, even where decades had passed since the piece of furniture or other item was bought. The court's assumption was that the temporary occupant was the owner of the items, and the burden was

¹³⁸ Human Rights Watch interview with Nikola Lalic, member of the then-Korenica housing commission and president of the local branch of the Serbian Democratic Forum, Korenica, June 16, 2002.

¹³⁹ Human Rights Watch saw the minutes, signed by Djuric and the two members of the housing commission, describing the poor state of the house as determined during the inspection.

¹⁴⁰ Human Rights Watch interview with Petar Djuric, Plavno (near Knin), August 24, 2001.

¹⁴¹ Human Rights Watch telephone interview with Ratko Gajica, lawyer, June 11, 2002.

¹⁴² Human Rights Watch interview with Jovo Tisma, president of the Knin branch of the Serbian Democratic Forum, June 9, 2003.

¹⁴³ Law on Temporary Takeover, article 5 (3).

¹⁴⁴ Human Rights Watch interview with a representative of the OSCE field office in Knin, June 9, 2003.

¹⁴⁵ Human Rights Watch interview with Nikola Lalic, member of the then-Korenica housing commission and president of the local branch of the Serbian Democratic Forum, Korenica, June 16, 2002; Human Rights Watch interview with an OSCE official, Knin, June 12, 2002; Human Rights Watch telephone interview with Jovo Tisma, president of the Knin branch of the Serbian Democratic Forum, December 13, 2002.

¹⁴⁶ Human Rights Watch telephone interview, December 18, 2002.

on the property owner to prove the opposite.¹⁴⁷ In other cases, the plaintiffs were unable to prove that the last temporary occupant, and not somebody else, had emptied the house of the furniture and appliances.¹⁴⁸

Croatian returnees to Eastern Slavonia, to the houses previously occupied by Serbs, have faced a similar problem, and in most cases have failed to get compensation from the temporary occupants.¹⁴⁹ The failure of the government to enforce the law on behalf of majority Croats as well as for minority Serbs is of little relevance to those who have lost property. The government cannot ignore devastation and theft just because it has been a regular occurrence in all parts of the country.

Under the July 2002 amendments to the Law on Areas of Special State Concern, state prosecutors have an obligation to sue for looting or devastation of property when the temporary occupant declines to compensate the owner.¹⁵⁰ As of June 2003, Human Rights Watch interlocutors in nongovernmental organizations and the OSCE were unaware of any case in which a state prosecutor had initiated a lawsuit for damages. The beginning of such a practice could conceivably affect the conduct of departing occupants. In the few areas in which regional ODPs have started to admonish the occupants in writing that they risk prosecution for damaging the property, looting and devastation have reportedly decreased.¹⁵¹ Actual prosecution, and introduction of criminal prosecution in lieu of lawsuits for damages, could only reinforce such comportment.

Repossession of Property by Ethnic Croats in Eastern Slavonia

The experience of displaced Serbs trying to return to their pre-war homes in Croatia contrasts sharply with that of displaced Croats returning home to Vukovar and other parts of Eastern Slavonia, Baranja and Western Sirmium (collectively referred to hereafter as Eastern Slavonia), near the border with the Federal Republic of Yugoslavia, which were under Serb control during the war. Specifically, Serb temporary occupants have been rapidly evicted from Croat homes, even when no alternative accommodation was provided for them.

During the war, local Serb authorities expelled around 80,000 Croats to other parts of the country.¹⁵² At the same time, thousands of Serbs from Croatia who fled from the government-controlled territory settled in Eastern Slavonia—around 50,000 of them as of the end of war in 1995.¹⁵³ They moved into the

¹⁴⁷ Human Rights Watch interview with Ninko Miric. A lawyer employed in the Norwegian Refugee Council, Miric attempted—to no avail—to get compensation for the looting of his furniture, upon return to his house in Vojnic in 1998.

¹⁴⁸ Human Rights Watch interview with Ninko Miric.

¹⁴⁹ Human Rights Watch telephone interview with Dusko Simic, Legal Adviser, Norwegian Refugee Council-Vukovar, December 13, 2002.

¹⁵⁰ Law on Areas of Special State Concern (amended and consolidated version), *Narodne novine*, no. 26/2003, January 28, 2003, article 18 (9).

¹⁵¹ This has allegedly been the case in Korenica, since April 2003. Human Rights Watch interview with Nikola Lalic, head of Korenica office of the Serbian Democratic Forum, June 9, 2003.

¹⁵² Human Rights Watch, *Human Rights In Eastern Slavonia During and After the Transition of Authority*, A Human Rights Watch report, April 1997, Vol. 9, No. 6 (D).

¹⁵³ Human Rights Watch interview with Milos Vojnovic, then-advisor at the Joint Council of Municipalities, Vukovar, September 4, 2001. The Joint Council of Municipalities was foreseen in the November 1995 Basic Agreement on the Region of Eastern Slavonia, Baranja, and Sirmium, which created legal grounds for temporary U.N. administration over the region pending its return to the Croatian government; the Council was to represent the interests of the local Serb community with the Croatian authorities.

houses of the expelled Croats. The then-Serb authorities in Eastern Slavonia issued them decisions on temporary use of property, similar to the practice in the areas controlled by the central government.¹⁵⁴

After the war, the Serb population remained in the area. A temporary U.N. administration was established to administer the area before it was returned to the Croatian government. In January 1998, Eastern Slavonia was fully reintegrated into the Croatian state. The 1997 Operational Agreement on Return stipulated that displaced Serbs occupying Croat property could only be removed from it once alternative accommodation was found for them.¹⁵⁵ However, in the second half of 1998, when Croats began to return to the region, courts started to evict Serb temporary occupants without providing alternative accommodation.¹⁵⁶ At the same time, Serb owners in other parts of the country were—and still are—unable to repossess their homes under similar circumstances. What became evident was a practice of ethnic discrimination against Serbs at the state level in the process of administering the post-war property regime.

After 1998, a majority of Serb temporary occupants left the area, and, according to local Serb leaders, less than 5,000 of them were still in Eastern Slavonia in 2001.¹⁵⁷ Citing a Croatian Ministry for Public Works' estimate, a May 2001 OSCE report states that not more than 3,465 displaced Serbs remained in the region.¹⁵⁸

The widespread evictions of Serb temporary occupants in Eastern Slavonia are legally based on the government's refusal to recognize wartime decisions for temporary use issued by the Serb authorities of the so-called Republika Srpska Krajina, to which the area belonged.¹⁵⁹ In a typical case, on November 19, 1999, the Municipal Court in Vukovar ordered Petar Pajic, a Serb, to move out of the house of Milan Kordic, a Croat then living as a displaced person on the Adriatic coast. Pajic had received a decision on the temporary use of Kordic's apartment in June 1992. The court found that the decision, "being an act of an occupying power, cannot authorize possession of another person's property." The court concluded: "The owner can ... request repossession of his property... and he does not have to wait for the person in possession of his property to be provided other adequate accommodation."¹⁶⁰ The Vukovar county court eventually confirmed the municipal court's decision and Milan Kordic repossessed his house.¹⁶¹

The authorities have been very efficient in evicting Serb occupants of Croat properties, and by the second half of 2001 the process was more or less completed.¹⁶² The Serbs who came to Eastern Slavonia during the war and still live in the area—up to 5,000 of them—have moved to other houses or apartments

¹⁵⁴ Human Rights Watch interview with Milos Vojnovic, Vukovar, September 4, 2001; Human Rights Watch interview with Dusko Simic, Legal Adviser, Norwegian Refugee Council, Vukovar, June 22, 2002.

¹⁵⁵ See Human Rights Watch, "Second Class Citizens: The Serbs of Croatia," *A Human Rights Watch report*, March 1999, Vol. 11, No. 3 (D), p. 9 and 14.

¹⁵⁶ Human Rights Watch interview with Dusko Simic, Legal Adviser, Norwegian Refugee Council, Vukovar, June 22, 2002.

¹⁵⁷ Human Rights Watch interview with Milos Vojnovic, then-advisor at the Joint Council of Municipalities, Vukovar, September 4, 2001.

¹⁵⁸ OSCE Mission to the Republic of Croatia, *Report on Croatia's Progress in Meeting International Commitments Since 18 April 1996*, May 24, 2001, para. 56.

¹⁵⁹ Republika Srpska Krajina comprised the parts of Croatia controlled by Serb rebels, in center-south (Krajina), center-west (Western Slavonia), and east (Eastern Slavonia, Baranja and Sirmium).

¹⁶⁰ Judgment of the Vukovar Municipal Court, no. VI P-603/98, November 19, 1998.

¹⁶¹ Human Rights Watch interview with Dusko Simic, Legal Adviser, Norwegian Refugee Council, Vukovar, June 22, 2002.

¹⁶² *Ibid.*; Human Rights Watch interview with Milos Vojnovic, then-advisor at the Joint Council of Municipalities, Vukovar, September 4, 2001.

that they bought or rent, or to government-run collective centers. For a tiny fraction of them, the authorities secured alternative accommodation in so-called APN houses.¹⁶³

In this manner, the authorities have discriminated against enjoyment of the basic human rights to property and a place to live. Ethnic Croats in other parts of Croatia enjoy an almost absolute protection from eviction, while ethnic Serbs in Eastern Slavonia have been evicted promptly without regard for the availability of alternative accommodation or other considerations.

TENANCY RIGHTS

Before the war, tens of thousands of urban Serbs lived in apartments owned by the state or state enterprises, often referred to as socially owned apartments. The right to use a socially owned apartment—frequently referred to as the right of tenancy—was a real property right, and in most aspects it amounted to ownership, except that holders of tenancy rights could not sell the right and the state could terminate their rights in certain narrow circumstances. During the war and immediately afterward, the government terminated tens of thousands of tenancy rights belonging to displaced Serbs.¹⁶⁴ Ever since the end of the war, it has been virtually impossible for these persons to repossess their apartments, get other homes as a substitute, or receive compensation for the past and current deprivation of the use of the possessions. Tenancy rights have been the issue in which the attitude of the post-Tudjman government most resembled that of its nationalistic predecessor. The consistent failure to address the problem of lost tenancy rights has substantially hampered the process of refugee return, particularly to the cities.

Termination of Tenancy Rights

Some 23,700 tenancy rights held by Croatian Serbs were terminated in court proceedings during and after the war.¹⁶⁵ In four out of five cases, the termination was based on article 99 of the pre-war Law on Housing Relations, providing that tenancy rights were to be terminated if the rights holder was absent from the apartment for longer than six months without a justified reason.¹⁶⁶ The state or the state enterprises, as the owners of the apartments, initiated court proceedings for termination of tenancy rights, and in most cases the courts ruled in their favor.

The court decisions terminating tenancy rights were in most cases both substantively and procedurally flawed. Although most of the displaced fled in the face of a real threat to their safety, the courts did not find that this justified their absence in excess of six months. In other cases Serbs were forcibly expelled from their apartments.¹⁶⁷ Even when that was the case, and the former tenancy right

¹⁶³ Human Rights Watch interview with Milos Vojnovic, then-advisor at the Joint Council of Municipalities, Vukovar, September 4, 2001.

¹⁶⁴ It is estimated that of all residential properties in urban areas in the former Yugoslavia, 70-80 percent were under the tenancy rights regime. OSCE Mission in Croatia, "Prethodne informacije po pitanju izgubljenih stanarskih prava u Hrvatskoj" (Background Information Concerning Lost Tenancy Rights in Croatia), November 26, 2001 (version in Croatian), p. 2.

¹⁶⁵ See Organization for Security and Co-operation in Europe, Mission to Croatia, Status Report No. 12, July 3, 2003, p. 6. The Legal Service Coalition, which includes six leading civic groups and human rights organizations in Croatia, found that 18,567 tenancy rights were cancelled between 1991 and 1998. The figure is based on the information from municipal courts throughout Croatia. The survey did not include Split, the second largest city in Croatia. The cities with the highest number of cancellations were: Zagreb (4,478), Osijek (2,766), Karlovac (1,834), Zadar (1,762), Sisak (1,239), Pula (702), Rijeka (549), Gospić (434), and Slavonski Brod (398).

¹⁶⁶ According to the Legal Service Coalition, courts invoked article 99 in 14,752 cases.

¹⁶⁷ The Legal Service Coalition, "Circumstances and Consequences of the Tenancy Rights Termination," press release, December 2000. The OSCE mission in Croatia counts the cases of forcible expulsion into the "hundreds."

holders asked for the re-opening of the proceedings after the war, courts only exceptionally struck down the wartime termination decisions.¹⁶⁸

In almost all cases in which tenancy rights of Serbs were terminated, the tenancy right holders were absent from the court proceedings.¹⁶⁹ In most cases, they were not even aware that the proceedings were taking place; in still other cases, they were unable to return to the area to attend the proceeding. The courts appointed, *ex officio*, “guardians for special cases” (*staratelj*) to represent the tenancy right holders’ interests in the proceedings. In practice, however, the appointed representatives did not present any evidence in favor of the tenancy right holders, did not make any effort, or failed, to get in touch with the departed tenancy right holders, and often failed to lodge an appeal on the court decision canceling the rights.¹⁷⁰

In addition to those who lost their tenancy rights in court proceedings, thousands of tenancy rights ceased to exist by virtue of a law enacted in September 1995. The law stipulated that tenancy rights in the areas previously held by Serb rebels would be terminated if the tenants did not return to the apartment within ninety days after the law became effective.¹⁷¹ Only a month earlier, after Operation Storm, hundreds of thousands of Serbs had fled from Croatia; many elderly Serbs who had stayed were killed.¹⁷² It was obvious that a genuine fear of insecurity would prevent Serb refugees from returning within ninety days to repossess their apartments.

During and after the war, the state and the state enterprises allocated the apartments left by displaced Serbs to Croat displaced persons and refugees, or to other individuals. In the areas controlled by the government during the war, the new occupants acquired tenancy rights in place of their predecessors; in the areas previously held by Serb rebels, the new occupants became protected lease holders under the Law on Lease of Apartments in Liberated Areas, enacted in September 1995.

As with the repossession of property by its pre-war owners, practice relating to tenancy rights in Croatia has varied along ethnic lines. Ethnic Serbs who had left their apartments lost tenancy rights. In contrast, the state enabled ethnic Croats who had left their apartments to preserve their tenancy rights. In the areas controlled by the Serb rebels during the war and abandoned during the 1995 operation Storm, ethnic Croats were able to return to their empty pre-war homes within the ninety days prescribed by the 1995 Law on Lease of Apartments in Liberated Areas. In the area administered in the immediate post-war period by the United Nations Transitional Administration for Eastern Slavonia (UNTAES) in

OSCE Mission in Croatia, “Prethodne informacije po pitanju izgubljenih stanarskih prava u Hrvatskoj” (Background Information Concerning Lost Tenancy Rights in Croatia), p. 2.

¹⁶⁸ One such exceptional case occurred in Osijek, where a number of leading members of the Serb community were expelled from their apartments by force. Human Rights Watch interview with Jaroslav Pecnik, head of the office of the Croatian Helsinki Committee in Osijek, Osijek, September 4, 2001; Human Rights Watch interview with Milos Vojnovic, then-advisor at the Joint Council of Municipalities, Vukovar, September 4, 2001; Human Rights Watch interview with Biserka Milosevic, Center for Peace, Non-Violence and Human Rights – Osijek, Osijek, September 4, 2001.

¹⁶⁹ The Legal Services Coalition goes so far as to claim that “the tenancy rights termination procedures were conducted, in 99% of the cases, with no defendant present.” The Legal Service Coalition, “Circumstances and Consequences of the Tenancy Rights Termination,” press release, December 2000.

¹⁷⁰ Human Rights Watch interview with Biserka Milosevic, attorney and Program Director at the Center for Peace, Non-Violence and Human Rights, Osijek, September 4, 2001.

¹⁷¹ Law on Lease of Apartments in Liberated Areas, *Narodne novine*, no. 73/1995, September 27, 1995. There are no reliable estimates on the number of the tenancy rights terminated by virtue of the law. The number was probably smaller than in the areas controlled by the government, where major urban centers are located.

¹⁷² Human Rights Watch, “Impunity For Abuses Committed During ‘Operation Storm’ And the Denial of the Right of Refugees to Return to Krajina,” *A Human Rights Watch report*, August 1996, Vol. 8, No. 13 (D).

Croatia's east, when returnees—most of them ethnic Croats—request reinstatement, the courts in the area have treated them as “constructive owners” and ordered eviction of the temporary occupants, most of them ethnic Serbs.¹⁷³ Finally, in the areas controlled by the government during the war, ethnic Croats as a rule stayed in their apartments and the companies owning the apartments could not in any event request termination of their tenancy rights.

Tenancy rights to socially owned apartments ceased to exist in Croatia on November 5, 1996, when a new law on the lease of apartments came into force. Since then, the legal regime over the apartments has differed in various parts of Croatia. In each area, however, the law effectively benefited ethnic Croats while indirectly penalizing ethnic Serbs. In the areas controlled by the government during the war, tenancy right holders purchased, at below-market value, the socially-owned apartments they occupied and became owners; among the purchasers were also those (mostly ethnic Croats) who occupied apartments previously held by Serb tenants. In the areas controlled by Serb rebels during the war, the occupants—comprising the Croats who had the right of tenancy before the war and the Croat newcomers who moved into the abandoned Serb apartments—remain protected lessees and pay a below-market rent. The Law on Areas of Special State Concern provides that they can become owners of the state-owned apartments after residing in them continuously for ten years, or, exceptionally, even before the expiration of the ten-year period.¹⁷⁴

Impediments to Repossessing Apartments Through Courts

The post-Tudjman government has done virtually nothing to address the issue of terminated tenancy rights. The highest representatives of the government have claimed that lost tenancy rights are a non-issue and that the government does not have any obligation toward former tenancy right holders.¹⁷⁵ As detailed in this section, recourse to the courts has been equally unfruitful. Such policy has made return of Serbs to urban areas virtually impossible.

A number of Croatian NGOs and the Norwegian Refugee Council have for years been trying to reverse court decisions terminating tenancy rights. The Law on Civil Procedure provides that proceedings may be reopened under certain circumstances, including when an unlawful act prevented a party from participating in the proceedings; if a party was not represented by a competent person; or if the party is in a position to offer new facts or use new evidence in his favor.¹⁷⁶

Faced with requests to reopen tenancy right termination cases, courts have as a rule postponed their decision or denied the request.¹⁷⁷ The reopening of a case is generally subject to a five-year deadline that

¹⁷³ Human Rights Watch interview with Dusko Simic, Legal Adviser, Norwegian Refugee Council, Vukovar, June 22, 2002. The United Nations Transitional Administration for Eastern Slavonia (UNTAES) administered the region of Eastern Slavonia from the end of 1995 to the beginning of 1998, as part of the transition of authority from local Serb structures to the central government in Zagreb.

¹⁷⁴ Law on Areas of Special State Concern (amended and consolidated version), *Narodne novine*, no. 26/2003, January 28, 2003, article 7(9) and article 7(10).

¹⁷⁵ Statement by Lovre Pejkoć, Head of the Directorate for Expellees, Returnees, and Refugees (ODPR) in the Croatian Ministry for Public Works, Reconstruction and Construction, in “Srbi-povratnici u Hrvatsku: Sporno stanarsko pravo” (Serb Returnees to Croatia: Contentious Tenancy Right), *Radio Free Europe-Radio Liberty*, March 10, 2002 [online], <http://www.danas.org/programi/most/2002/03/20020310113941.asp> (retrieved December 10, 2002).

¹⁷⁶ Law on Civil Proceedings, article 421.

¹⁷⁷ As of May 2002, the Norwegian Refugee Council had filed requests to reopen in 417 cases; 162 requests had been rejected for failure to satisfy the criteria for re-opening, and more than 200 cases were pending, of which three quarters for more than six months. Norwegian Refugee Council, *Triumph of Form Over Substance? Judicial Termination of Occupancy Rights in the Republic of Croatia and Attempted Legal Remedies*, May 18, 2002, p. 9.

runs from the date that the decision on termination became effective. In most cases, termination occurred more than five years ago. Even if courts overlook this issue, they reject the argument that the former tenancy right holder was not given an opportunity to participate in the tenancy rights termination proceedings, concluding instead that the guardians for special cases protected the rights holders' interests.¹⁷⁸ In other cases, former tenancy right holders have been unable to prove that they were forced to move out of the apartments, because witnesses were reluctant to testify in court. An elderly Serb couple from Nova Gradiska, whom Human Rights Watch interviewed in June 2002 in a collective center in Sisak, left their hometown in 1991 at the beginning of war because of telephone threats and threatening markings at the entrance to the apartment. The couple moved to Banja Luka, in Republika Srpska, Bosnia and Herzegovina. Their tenancy right was cancelled in 1994, but it was only in 1997 that they learned about it. In March 1998, they filed for retrial, but the court in Nova Gradiska denied the request because the applicants were unable to present new facts and new evidence. The wife, R.S. (65), told Human Rights Watch, "A Croat married couple originally agreed to testify and confirm our claims about the threats. But then they told us that they received threats themselves, and they changed their mind."¹⁷⁹

Given that it is virtually impossible to achieve reinstatement through court proceedings, recent statements by Croatian politicians recommending the judicial path sound like an attempt to shrug off the problem rather than to address it. Then-deputy prime minister Zeljka Antunovic (now Minister of Defense) acknowledged in November 2001 that "there are cases in which tenancy rights were terminated on the basis of erroneous application of the law," and she found it "entirely logical that the higher judicial authorities would decide in favor of these people. There is nothing disputable about it."¹⁸⁰ The practice has not confirmed this laconic judgment, however. In an overwhelming majority of cases courts did not even admit the cases, let alone find erroneous application of article 99 of the Law on Housing Relations. At the same time, former Serb inhabitants of "Republika Srpska Krajina," who fled after the 1995 Operation Storm and lost tenancy rights as a matter of law, are in an even worse position: they cannot even request the courts to strike down earlier court decisions, because these were not made in the first place.

The Government's Failure to Resolve the Tenancy Rights Issue Through Other Means

The government has not come up with any set of initiatives and proposals for the genuine resolution of the tenancy rights issue. The position of the government has all along been that it has no legal obligation toward the former tenancy rights holders. According to the government, the provision of housing assistance, in this context, would not be a form of reparation or substitution for the past dispossession, but rather an act of benevolence. Then-deputy prime minister Antunovic has explained that the state has only a "moral obligation towards all categories of Croatian citizens who lack housing"; this moral obligation extends only to those who "choose Croatia as their home."¹⁸¹ With regard to those who "wish to cash in their former tenancy rights, and then live who-knows-where in the world, we cannot allow any such abuse."¹⁸²

¹⁷⁸ As detailed above, "guardians" uniformly failed to present evidence in favor of the tenancy rights holders, did not attempt to reach them during the proceedings, and did not appeal against the decisions. See above, "Termination of Tenancy Rights."

¹⁷⁹ Human Rights Watch interview with R.S. and M.S., Sisak, June 9, 2002.

¹⁸⁰ Milan Jelovac, "Antunovic: Ne dolazi u obzir obestecenje bivskih stanara" (Antunovic: Compensation for Former Tenants Out of Question), *Vjesnik* (Zagreb), November 17, 2001 [online], <http://www.vjesnik.com/html/2001/11/17/Clanak.asp?r=unu&c=8> (retrieved June 20, 2003) (interview with Zeljka Antunovic).

¹⁸¹ Mile Francicevic, "Zeljka Antunovic: SDP ne nastavlja HDZ-ovu politiku" (Zeljka Antunovic: SPD Does Not Continue the Policy of HDZ), *Vjesnik* (Zagreb), November 25, 2001 [online], <http://www.vjesnik.com/html/2001/11/25/Clanak.asp?r=unu&c=1> (retrieved June 20, 2003).

¹⁸² "Antunovic: Ne dolazi u obzir obestecenje bivskih stanara," *Vjesnik* (Zagreb).

The Program of Return contained a very weak provision, without any practical effect, specifying that “when possible, the [housing] commission will endeavor to find permanent accommodation for persons who do not own an apartment or house, especially to those who lived in socially-owned apartments.”¹⁸³ Similarly, a July 2000 amendment of the Law on areas of Special State Concern stipulated that the government would provide housing care to people without an apartment or family house in Croatia, if they lived in the areas of special state concern, or if they lived elsewhere but could contribute to the economic and social development of the areas of special state concern.¹⁸⁴ Former tenancy rights holders, having no apartment or family house in Croatia, were among the purported beneficiaries of this law, but the Law did not give them any priority over other categories in obtaining housing care. Indeed, during a research mission in June 2002, Human Rights Watch did not learn of a single case in which former tenancy rights holders were beneficiaries of the housing care provision contained in the July 2000 amendments.

The most recent amendments to the Law, from July 2002, reiterate the goal of providing housing care in the areas of special state concern to the former inhabitants in the area and other Croatian citizens.¹⁸⁵ The law is still of extremely limited use to the former tenancy right holders. Over 20,000 tenancy rights were terminated in Zagreb, Split, Rijeka, Pula, and other large towns that are not located in the areas of special state concern. The former tenancy right holders are unlikely to settle in the rural environment that predominates in these areas. They may not even qualify for housing care in the areas of special state concern at all, unless there is a need for the ill-defined “contribution to the economic and social development of the areas.”¹⁸⁶ Most critically, the former tenancy right holders are on the bottom of the list of priority groups for housing care. The law gives highest priority to the temporary users of claimed private properties, followed by other temporary users. The heterogeneous group of “other housing care applicants,” to which former tenancy rights holders belong, rank the last.¹⁸⁷ In a separate document (“Rulebook”), the Ministry for Public Works, Reconstruction and Construction established priorities among the “other housing care applicants” in the 2002 amendments; the Rulebook explicitly places former tenancy rights holders at the bottom of the list.¹⁸⁸ Predictably, in the first year of the implementation of the law, not a single Serb former tenancy right holder, either from the areas of the special state concern or from other parts of Croatia, is known to have obtained housing by virtue of the July 2002 law.

Finally, in June 2003, the government adopted a Conclusion on the Housing Care For the Returnees Who Are Not Owners of a House or an Apartment, And Who Lived in Socially-Owned Apartments in the

¹⁸³ Program for Return, “Procedures of Return,” article 5 (2).

¹⁸⁴ Amendments to the Law on Areas of Special State Concern, *Narodne Novine*, no. 73/2000, July 21, 2000, article 6 (amending article 8). There were two possible forms the housing care could take: provision of a lease of a state-owned apartment or family house, or a construction plot and basic building material for construction of a family house.

¹⁸⁵ Law on Areas of Special State Concern (amended and consolidated version), *Narodne novine*, no. 26/2003, January 28, 2003, article 7. This time, however, the right to housing care does not belong to those who own property in other parts of the former Yugoslavia. By virtue of this provision, former holders of tenancy rights in Croatia who found refuge in FR Yugoslavia (now Serbia and Montenegro) or Bosnia and Herzegovina and at some point acquired property there, cannot benefit from housing care in Croatia. *Ibid.*

¹⁸⁶ The law provides that the Republic of Croatia will stimulate settlement of the individuals from other parts of Croatia who can contribute to the economic and social development of the areas of special state concern. *Ibid.*

¹⁸⁷ *Ibid.*, article 9.

¹⁸⁸ Rulebook on the Housing Care Priorities in the Areas of Special State Concern, *Narodne novine*, no. 116/2002, October 3, 2002, article 3.

Areas of the Republic of Croatia Outside the Areas of the Special State Concern.¹⁸⁹ These persons, according to the Conclusion, can rent or purchase government-built apartments in Croatia, provided that they definitively return to Croatia and that they do not own, or have not sold after October 1991, a house or an apartment in Croatia or other parts of the former Yugoslavia.¹⁹⁰ The Conclusion clarifies that the beneficiaries can purchase the state-built apartments “in accordance with the Law on the Socially Subsidized Housing Construction” (*drustveno poticana stanogradnja*).¹⁹¹ In practical terms, this means that the beneficiaries would have to pay an amount ranging from 15 to 50 percent below the market price.¹⁹² Other former tenancy right holders, whom the government had not divested of the right, had been able to privatize apartments for a far lower price, at about one third of the market value. The purchase at the new rates will be beyond the financial means of most returnees. They are also unlikely to obtain a loan from the bank in order to purchase an apartment, because their income prospects do not guarantee an ability to pay off the loan.¹⁹³

Under the terms of the June 2003 Conclusion, only a minority of the former holders of tenancy rights in the urban areas that remained under Croatian control during the 1991-1995 war will be able to benefit from the socially subsidized housing construction. The government’s scheme is clearly not a form of reparation or compensation for the past dispossession, which remain unavailable to Serb former tenancy right holders.

Priority for a Comprehensive Solution of Lost Tenancy Rights

A coalition of nongovernmental organizations in Croatia, joined as the Legal Service Coalition,¹⁹⁴ has devised a set of recommendations to the Croatian government on the just solution of the tenancy rights issue.¹⁹⁵ Human Rights Watch fully supports the recommendations, which are as follows:

1. In those cases in which the apartment has not been purchased by a subsequent holder, former tenancy rights holders should be given priority over the temporary occupants so that:
 - a) they can purchase the apartment at a reduced price and under the same conditions under which other Croatian citizens were able to buy their apartments, or
 - b) they are given the status of permanent protected leaser; or

¹⁸⁹ Conclusion on the Housing Care For the Returnees Who Are Not Owners of a House or an Apartment, And Who Lived in Socially-Owned Apartments in the Areas of the Republic of Croatia Outside the Areas of the Special State Concern, *Narodne novine*, no. 100/2003, June 17, 2003.

¹⁹⁰ *Ibid.*, article 2.

¹⁹¹ *Ibid.*, article 4.

¹⁹² OSCE representatives interviewed by Human Rights estimated the price at 15-20 percent below the market price. Watch interviews with OSCE officials in Zagreb and Knin, June 2003. In a letter submitted to Human Rights Watch in June 2003, the Ministry for Public Works, Reconstruction, and Construction maintained that a monthly payment for an apartment purchased through Socially Subsidized Housing Construction was 40-50 percent lower than in the market.

¹⁹³ Human Rights Watch interview with a representative of the OSCE field office in Knin, June 9, 2003.

¹⁹⁴ The following organizations belonged to the Coalition: Center for Peace, Non-violence and Human Rights (Osijek); Center for Peace, Legal Advice and Psycho-social Assistance (Vukovar); Dalmatian Committee of Solidarity (Split); Organization for Civil Initiative (Osijek); Serbian Democratic Forum (Zagreb); and “Baranja”-Association for Peace and Human Rights (Bilje).

¹⁹⁵ The mission of the OSCE has put forward a set of proposals very similar to those of the non-governmental organizations. See OSCE Mission in Croatia, “Prethodne informacije po pitanju izgubljenih stanarskih prava u Hrvatskoj” (Background Information Concerning Lost Tenancy Rights in Croatia), November 26, 2001 (version in Croatian), p. 8.

- c) the members of the former tenancy rights holder's household, who used the apartment with him, should be given an opportunity to buy the apartment, use it, or lease it in case the holder's tenancy rights have been terminated.
2. If the apartment is uninhabitable due to damage or destruction, the former tenancy rights holder should be given reconstruction assistance or permanent accommodation in a similar apartment owned by the state, with the same opportunities and rights as under 1;
3. If the apartment has been purchased by the subsequent tenancy rights holder, the former holder should be given accommodation in the same locality in a similar apartment owned by the state, with the same opportunities and rights as under 1;
4. If the former tenancy rights holder does not choose any of the solutions from above, he should be given a fair compensation, in accordance with general principles of international law.¹⁹⁶

COMPENSATION FOR THE USE OF PROPERTY

The Croatian state, through its failure to enforce their property rights and through deprivation of tenancy rights in violation of international human rights law, has effectively deprived both the owners of temporarily occupied property and former tenancy right holders of the use of their property. And it has not compensated them for the violation.

As discussed above, while compensation for deprivation of the use of property is not specifically mentioned in international human rights law, the right to compensation is embraced in the general right to a remedy for human rights abuse, contained in the ICCPR and the ECHR.¹⁹⁷ The jurisprudence of the European Court of Human Rights,¹⁹⁸ the Inter-American Commission on Human Rights,¹⁹⁹ and the Human Rights Chamber in Bosnia and Herzegovina²⁰⁰ supports claims for compensation. The World Bank also provides for compensation for losses at full replacement cost for persons displaced involuntarily as a result of development projects.²⁰¹

The Croatian constitution provides that limitation on, or deprivation of, ownership rights can be permitted but only for a fee at market rate.²⁰² Although the limitations on ownership date from the mid-1990s, it was only in 2000 that the parliament enacted a law providing for compensation. Amendments to the Law on Areas of Special State Concern adopted in 2000 established an obligation on the part of the Ministry for Public Works, Reconstruction and Construction to conclude, at owner's request, a lease

¹⁹⁶ Legal Service Coalition, Conclusions from a roundtable discussion on Solution of the Problem of the Terminated Tenancy Rights, held in Osijek on December 7, 2000 (on file with Human Rights Watch).

¹⁹⁷ See above, text accompanying footnotes 20 and 21.

¹⁹⁸ See *Loizidou v. Turkey*, 23 EHRR 513 (1996) (judgment on the merits), and *Loizidou v. Turkey* (Article 50), 1998-IV (judgment on just satisfaction).

¹⁹⁹ Report on the situation of human rights of a segment of the Nicaraguan population of Miskito origin, OEA/Ser.L/V/II.62, doc. 10, rev. 3, November 29, 1983. In the Miskito case, the Inter-American Commission on Human Rights recommended payment of just compensation to returning internally displaced persons for the loss of their property, including homes, crops, livestock, and other belongings.

²⁰⁰ *Medan et al. v. the State and the Federation of BH*, Decision of November 7, 1997, CH/96/3; *Kalinčević v. the State and the Federation of BH*, Decision of March 11, 1998, CH/96/23; *Kevesević v. Federation of BH*, Decision of September 10, 1998, CH/97/46; *Eraković v. Federation of BH*, Decision of January 15, 1999, CH/97/42; *Gogić v. Republika Srpska*, Decision of June 11, 1999, CH/98/800; *Pletilic et. al ("20 Gradiska Cases") v. Republika Srpska*, Decision of July 8, 1999.

²⁰¹ The World Bank, *Involuntary Resettlement*, Operational Directive 4.30 (1990); see also The World Bank, *Involuntary Resettlement*, Draft Operation Policy 4.12 (1999), available at <http://www.worldbank.org/html/extdr/projects.html>.

²⁰² Constitution of the Republic of Croatia, article 50.

contract with owners who apply for repossession of the property, but after six months have been unable to repossess the property due to the Ministry's failure to provide alternative accommodation for the temporary occupant.²⁰³ Under such lease agreements, the state would have paid owners a fee for the use of property. This provision pertained only to the privately owned property allocated to temporary owners on the basis of the 1996 Law on Areas of Special State Concern, however, whereas most properties were allocated by virtue of the 1995 Law on Temporary Takeover. During field research in August/September 2001 and June 2002, Human Rights Watch did not come across a single case in which the owners received rent payments from the state for the use of their property.

The amendments to the Law on Areas of Special State Concern from July 2002 obligate the government to compensate the owners who applied for repossession before August 1, 2002, but did not physically repossess it by October 31, 2002, or who applied after August 1 without getting the property back by the end of 2002.²⁰⁴ This obligation pertains to the property allocated on the basis of the 1995 Law on Temporary Takeover. As of mid-2003, however, applicants had made little headway toward obtaining compensation. Only in May 2003, did the government begin to send compensation agreements (*nagodba*) to owners, offering a monthly seven Croatian *kuna* per each square meter of the property's living space, provided that the owner renounces the interest accrued since the law began obligating the government to pay owners compensations.²⁰⁵ Most owners are reluctant to accept such stipulation, and, as of June 2003, the compensation scheme had yet to effectively start.²⁰⁶

The compensation scheme foreseen in the July 2002 amendments would compensate applicants for current lost enjoyment of their property. Croatia's obligation to compensate property owners should also cover the past period in which the government interfered with the individual's use of his property. The OSCE mission in Croatia has endorsed this view.²⁰⁷ The jurisprudence of the European Court of Human Rights also supports claims for compensation, even if the court has not dealt with an entirely analogous situation.²⁰⁸ In the judgment on the merits of the case of *Loizidou v. Turkey*, the Court found that the Turkish government owed compensation to a Greek Cypriot who had been refused access to her land in the Turkish-controlled part of Cyprus since 1974, thus effectively losing all possibilities to use and enjoy her property. In the opinion of the court, the denial of access amounted to interference with the peaceful enjoyment of possession under Protocol No. 1 to the European Convention on Human Rights. The Court explained:

It has not ... been explained how the need to rehouse displaced Turkish Cypriot refugees in the years following the Turkish intervention in the island in 1974

²⁰³ Amendments to the Law on Areas of Special State Concern, July 19, 2000, *Narodne novine*, no. 73/2000, article 14 (5).

²⁰⁴ Law on Areas of Special State Concern (amended and consolidated version), *Narodne novine*, no. 26/2003, January 28, 2003, article 27 (4).

²⁰⁵ Human Rights Watch has reviewed a number of the government-issued compensation settlement (*nagodba*) proposals.

²⁰⁶ Organization for Security and Co-operation in Europe, Mission to Croatia, Status Report No. 12, July 3, 2003, p. 4. In Sibensko-Kninska county and Zadarska county, for example, there was not a single case of a property owner receiving the compensation. Human Rights Watch interview with a representative of the OSCE field office in Knin, Knin, June 9, 2003.

²⁰⁷ "The Mission recalls that the right to compensation for current use does not eliminate legal claims for compensation for the State's past use of private property for temporary accommodation." OSCE Mission to Croatia, "OSCE welcomes Croatia's refugee project, recalls compensation deadline for non-returned properties," press release, October 31, 2002 [online], http://www.osce.org/news/generate.php3?news_id=2851 (retrieved June 20, 2003).

²⁰⁸ Croatia acceded to the European Convention for the Protection of Human Rights And Fundamental Freedoms on November 5, 1997.

could justify the complete negation of the applicant's property rights in the form of a total and continuous denial of access.²⁰⁹

In the subsequent judgment on just satisfaction, the Court awarded the applicant both pecuniary and nonpecuniary damages, the latter “in respect of the anguish and feelings of helplessness and frustration which the applicant must have experienced over the years in not being able to use her property as she saw fit.”²¹⁰

Similarly, the need to house Croats from Bosnia or other parts of Croatia proper in Serb properties does not justify the total and continuous denial of owners’ access to the properties, beginning with the moment in which the owner requested repossession. Likewise, the damage caused to owners has both pecuniary and nonpecuniary aspects.

A similar rationale should in principle apply to deprivation of tenancy rights. Meaningful interpretation of Protocol No. 1 to the European Convention of Human Rights and Fundamental Freedoms leads to the conclusion that a tenancy right, while not identical to ownership, is a property interest (“possession”) protected by international human rights law.²¹¹ As such, tenancy right holders would be entitled to the peaceful enjoyment of the tenancy right and protection from its deprivation.²¹²

Most tenancy rights were terminated before Croatia signed the European Convention for the Protection of Human Rights and Fundamental Freedoms in November 1997. The deprivation of the tenancy rights without compensation may, however, constitute a continuing violation, which would make the European Convention on Human Rights and Protocol I to the Convention applicable to these cases, from the date that the Convention came into force in Croatia.²¹³ The European Court of Human Rights had found that there had been a continuing interference with the property rights in the case in which the Greek state *de facto* appropriated an applicant’s land twenty-six years before the case was submitted to the court.²¹⁴ Similarly, the Human Rights Chamber in Bosnia and Herzegovina found a continuing violation of the right to respect for one’s home and the right to the peaceful enjoyment of one’s possessions in a case in which the authorities failed to decide in time about the applicant’s claim for repossession of an apartment declared abandoned four years earlier, thus preventing him from returning to

²⁰⁹ Loizidou v. Turkey, 23 EHRR 513 (1996), para. 64.

²¹⁰ Loizidou v. Turkey, (Article 50), 1998-IV (1998), para. 39. The Court stressed that the case concerned an individual complaint related to the applicant’s personal circumstances and not the general situation of the property rights of Greek Cypriots in northern Cyprus.

²¹¹ In neighboring Bosnia and Herzegovina, where the pre-war tenancy right system was identical to that in Croatia, the Human Rights Chamber has found that tenancy rights constituted “possession,” protected as such by the European Convention for the Protection of Human Rights and Fundamental Freedoms. See Ivica Kevesevic vs. The Federation of Bosnia and Herzegovina, Decision of 10 September 1998, Case No. CH/97/46.

²¹² The pertinent part of Protocol 1, article 1 provides: “Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.”

²¹³ The European Court of Human Rights has held that it could not be seized of a case regarding whether proceedings to terminate tenancy rights violated the convention, because they “were concluded prior to the entry into force of the Convention in respect of Croatia, and . . . thus, the request for the re-opening of those proceedings cannot bring into play the Court’s competence *rationae temporis*.” European Court of Human Rights, Rudan v. Croatia, Application no. 45943/99, Decision on Admissibility, September 13, 2001. In this case, however, the court did not consider whether the deprivation constituted a continuing violation.

²¹⁴ Papamichalopoulos and Others v. Greece (1993), 16 EHRR 440, para. 46. In the Papamichalopoulos case, Greece transferred parcels of privately-owned land to the Greek Navy Fund in 1967, and the land owners lost the ability to make use or dispose of the land in issue.

his apartment.²¹⁵ The absence of any legal avenue through which a person could repossess an apartment in Croatia constitutes, if anything, a further violation of property rights.

In the vast majority of cases, tenancy rights in Croatia were terminated in violation of international human rights law. The Croatian government should not only do its utmost to redress that violation in the future: it should also pay fair compensation for the violation in the past, covering the period that started with the former tenancy right holder's attempt to return to the apartment.

RECONSTRUCTION

The precise number of Serb-owned properties destroyed or damaged in the war is not known. As of December 2001, when the deadline for submitting applications for state-funded reconstruction expired, Croatian Serbs had submitted 42,000 applications.²¹⁶ However, some owners applied more than once for the same property, and as of June 2003 the Croatian Ministry for Public Works, Reconstruction and Construction was operating with a figure of 26,000 outstanding reconstruction applications.²¹⁷ According to the Serbian Democratic Forum, a leading association of Croatian Serbs that has acted as implementing partner for the United Nations High Commissioner for Refugees and has liaised between the Ministry for Public Works and the Serb applicants, a vast majority of the requests pertain to Serb-owned properties.²¹⁸

As of February 2003, the government claimed it had reconstructed 118,580 housing units in Croatia since the end of the war.²¹⁹ Statistics on the ethnic composition of the beneficiaries are not available because the government claims it does not differentiate among Croatian citizens on the basis of their ethnicity.²²⁰ This noble rhetoric obscures the small number of Serb houses actually reconstructed by the government. For example, according to the Serb Democratic Forum, as of August 2001 the government had reconstructed 140 Serb houses in twenty-four municipalities in Western Slavonia, out of 4,041 requests.²²¹ In Donji Lapac, an all-Serb municipality before the war, out of 645 destroyed houses the government had reconstructed only thirteen as of April 2002.²²² In Vukovar, the government had reconstructed some 4,000 houses by the end of 2001, none of them Serb.²²³ In Gracac, as of August 2001,

²¹⁵ Erakovic v. Federation of BH, Decision of January 15, 1999, paras. 52 and 60. In March 1995, a municipal secretariat for housing affairs in Sarajevo had declared abandoned Erakovic's apartment, over which he enjoyed an occupancy right, and in April 1995 allocated the apartment to another person.

²¹⁶ International Crisis Group, *A Half Hearted Welcome: Refugee Returns to Croatia*, December 13, 2002, p. 8 (information from the Ministry for Public Works, Reconstruction and Construction).

²¹⁷ Human Rights Watch telephone interview with Marko Brajko, Assistant Minister of Public Works, Reconstruction, and Construction, June 24, 2003.

²¹⁸ Human Rights Watch telephone interview with Miroslav Grozdanic, Western Slavonia branch office of the Serbian Democratic Forum, June 24, 2003.

²¹⁹ "Ove godine jos 24.000 osoba u obnovljenim kucama i stanovima" (This Year, 24,000 More Persons in Reconstructed Houses and Apartments), website of the Ministry for Public Works, Reconstruction and Construction, February 27, 2003, http://www.mjr.hr/stranica.asp?id_stranice=269&trazi=obnova (retrieved June 24, 2003).

²²⁰ Ljubomir Herceg, head of the Directorate for Reconstruction in the Ministry made such statement in a newspaper interview in Spring 2002. Milan Jelovac, "Iduce godine obnova 4000 kuca vlasnika srpske nacionalnosti" (Next Year, Reconstruction of 4,000 Houses Owned by Serbs), *Vjesnik* (Zagreb), April 8, 2002 [online], <http://www.vjesnik.com/html/2002/04/08/Clanak.asp?r=unu&c=12> (retrieved June 20, 2003) (interview with Ljubomir Herceg).

²²¹ Serb Democratic Forum, Western Slavonia branch office, Data on Reconstruction, August 2001, on file with Human Rights Watch.

²²² Human Rights Watch interview with a representative of the OSCE field office in Korenica, Korenica, June 13, 2001.

²²³ Human Rights Watch interview with Milos Vojnovic, then-advisor at the Joint Council of Municipalities, Vukovar, September 4, 2001; Ljiljana Pekic, "Jednaki i jednakiji gradjani," *Dnevnik* (Novi Sad, FR Yugoslavia),

the government had not reconstructed a single Serb house, although 1,000 applications had been submitted.²²⁴ As of August 2001, the government had not reconstructed a single Serb home in the part of the Kordun region that stretches between the cities of Karlovac and Slunj, which encompasses several municipalities.²²⁵

Until recently, it has been almost solely the international community that has financed the reconstruction of Serb houses, with much still to be done. In Western Slavonia, as of August 2001, foreign donors had funded reconstruction of 826 Serb houses, while the government rebuilt 140.²²⁶ In Zadar and the surrounding area, international donors had funded the reconstruction of some 200 to 250 Serb houses as of July 2001, while the OSCE field office in the area had “never seen a single such house rebuilt by the [county] office [for reconstruction].”²²⁷ Moreover, to reduce expenses and liability, international agencies primarily reconstruct those houses that have not been destroyed or severely damaged. Serb owners with severely damaged homes have received little assistance from either domestic or international sources.

The situation began to change in the second half of 2002, when the near-completion of the reconstruction benefiting Croat owners coincided with the beginning of the state-funded reconstruction of Serb houses. The county offices for reconstruction for the first time signed reconstruction contracts with a number of Serb beneficiaries, and in most areas they began the reconstruction as well. In June 2003, the number of heavily damaged or destroyed Serb properties under state-sponsored reconstruction was several times higher than in the entire preceding seven post-war years. For example, the state was reconstructing 840 Serb houses in the five counties in Western Slavonia,²²⁸ 280 houses in Sibensko-Kninska county,²²⁹ 280 in Zadarska county,²³⁰ and 60 in the municipalities of Korenica and Udbina.²³¹ Deputy Prime Minister Goran Granic stated in mid-June that Serbs own 75 percent of the houses to be reconstructed during 2003.²³² These recent developments represent a welcome improvement in government’s approach to reconstruction, previously impeded by discriminatory aid laws and impediments to legal redress described below.

April 28, 2002; Human Rights Watch telephone interview with Sasa Lalic, office of the Croatian Helsinki Committee in Vukovar, January 14, 2003.

²²⁴ Human Rights Watch interview with Radmila Andric, head of the Gracac office of the Dalmatian Committee of Solidarity (DOS), Gracac, August 28, 2001. Until the December 2001 deadline for applications for reconstruction assistance, DOS gathered reconstruction applications and submitted them to the county office for reconstruction in Zadar.

²²⁵ Human Rights Watch interview with a representative of the OSCE field office in Karlovac, Karlovac, August 29, 2001; Human Rights Watch interview with Djuro Milosevic, Committee for Human Rights, Karlovac, September 3, 2001.

²²⁶ Serb Democratic Forum, Pakrac Office, Data on Reconstruction, August 2001 (on file with Human Rights Watch).

²²⁷ OSCE Field Office in Zadar, *Return and Integration in Zadar, The Balance as Per 19 July 2001*, p. 14 (July 2001). The report adds that reconstructed houses belonging to minorities are “allegedly to be found in Zemunik,” a village near Zadar.

²²⁸ Human Rights Watch telephone interview with Miroslav Grozdanic, Western Slavonia branch office of the Serbian Democratic Forum, June 24, 2003.

²²⁹ Human Rights Watch interview with Jovo Tisma, head of Knin office of the Serbian Democratic Forum, June 9, 2003.

²³⁰ *Ibid.*

²³¹ Human Rights Watch interview with Nikola Lalic, head of Korenica office of the Serbian Democratic Forum, June 9, 2003. In the previous year, only three houses had been reconstructed, and in 2001 only one. *Ibid.*

²³² Olga Ramljak, “Racan: Srbi, vratite se u svoju domovinu!” (Racan: Serbs, Return To Your Homeland!), *Slobodna Dalmacija* (Split), June 13, 2003 [online], <http://www.slobodnadalmacija.com/20030613/novosti03.asp> (retrieved on June 20, 2003).

Discriminatory Reconstruction Aid Laws

The slow pace of reconstruction of Serb homes has to a great extent been a function of discriminatory laws. Under the 1996 Law on Reconstruction, only the areas subjected to attacks from Serbian and Montenegrin forces qualified for reconstruction assistance,²³³ and only Croatian citizens were entitled to such reconstruction.²³⁴ This meant that damaged or destroyed Serb houses in areas that were under the government's control during the war and were not attacked by Serbian and Montenegrin forces could not be reconstructed, and non-citizens and those unable to prove citizenship (most of them Serbs) could not get reconstruction assistance.

A further basis for discrimination against Serbs in reconstruction assistance was found in the 1996 Law on Reconstruction's limitation of assistance to repair of damage caused "in the war."²³⁵ Through a reference to the Law on War Damage Assessment, the Law on Reconstruction recognized as war damage eligible for reconstruction aid only the damage inflicted by one of the warring parties—"the illegal enemy groups, legal bodies of the Republic of Croatia, or the allies of these groups and bodies."²³⁶ The county reconstruction offices maintained that homes in government-controlled areas had been destroyed by "terrorist acts"²³⁷ whose perpetrators were unknown and could not be considered a "warring party" in the meaning of the term in the Law on War Damage Assessment. In practice, this interpretation of the law had a discriminatory impact, disproportionately barring Serb-owned property from reconstruction assistance.

The new, post-Tudjman government changed the Law on Reconstruction in June 2000. The amendments provided for reconstruction assistance in all areas exposed to destructive activities during the war, irrespective of who carried out the activities.²³⁸ The amendments also granted the right to reconstruction assistance to all those who were residents in 1991, rather than to citizens only.²³⁹ In addition, the amended law purportedly expanded the scope of reconstruction assistance to all properties damaged in Croatia from 1990 to 1998, irrespective of the cause of damage (war activities or "terrorist acts"). The amendment specified: "This law regulates reconstruction of destroyed or damaged material goods in the Republic of Croatia which were exposed to destructive activities and effects from the beginning of the Greater Serbian aggression until the completion of the peaceful reintegration [January 1998]."²⁴⁰

The amended law continued to refer to the Law on War Damage Assessment for guidance in interpretation of war damage, however.²⁴¹ That law, as explained above, could be used to argue that arson or mining of a Serb house was "a terrorist act" and thus its owner was not eligible for assistance, even

²³³ Law on Reconstruction, *Narodne novine*, no. 24/1996, March 26, 1996, article 1.

²³⁴ *Ibid.*, article 4 (1).

²³⁵ *Ibid.*

²³⁶ The Law on Reconstruction stated that "war destruction of, or damage to, material goods, within the meaning of this Law, shall be recognized according to the Law on War Damage Assessment." (article 9(1)). The Law on War Damage Assessment defines as war damage only the damage caused by "enemy, illegal groups, legal bodies of the Republic of Croatia, and the allies of these groups and bodies, if it was inflicted directly or indirectly during the [period from August 15, 1990, to the cessation of war activities]." Law on War Damage Assessment, *Narodne novine*, no. 61/1991, November 19, 2001, article 2 (2).

²³⁷ The term is not mentioned in either the Law on War Damage Assessment or the Law on Reconstruction, but the county offices for reconstruction routinely use it.

²³⁸ Act Amending the Law on Reconstruction, *Narodne novine*, no. 57/2000, June 9, 2000, article 1 (amending article 1).

²³⁹ *Ibid.*, article 3 (amending article 4).

²⁴⁰ *Ibid.*, article 1 (amending article 1).

²⁴¹ The Law on Reconstruction, Article 9 (1).

under the amended reconstruction law. Some county offices for reconstruction seized upon this ambiguity and continued to turn down Serb requests for reconstruction.²⁴² They claimed that the Law on War Damage Assessment, to which the Law on Reconstruction refers, precluded the responsible county commissions from assessing damage not caused by warring parties. As a result, potential applicants could not obtain official county assessments of the level of damage, a requirement for submission of a reconstruction claim.²⁴³

Faced with the continued obstruction of a number of county offices, in May 2001, the Minister of Public Works sent written instructions to the county offices demanding that they approve requests for reconstruction assistance even if the house had been destroyed or damaged by a “terrorist act.”²⁴⁴ The ministry now considers all offices cooperative, in that they all approve requests for reconstruction of the damage caused by terrorist acts.²⁴⁵

Impediments to Civil Claims for Damaged or Destroyed Property

Before January 1996, Serb owners of houses destroyed or damaged could file a civil claim against the state. Article 180 of the Civil Obligations Act (*Zakon o obveznim odnosima*) allowed for compensation from the state when property damage or destruction resulted from acts of violence or terror that the State was under a duty to prevent.²⁴⁶ This provision in the law could have been of particular help to Serbs whose property did not qualify for reconstruction under the 1996 Law on Reconstruction because it was destroyed or damaged by “terrorist acts.” In January 1996, the Croatian parliament repealed Article 180 and stayed all pending compensatory damage proceedings until enactment of new pertinent legislation.²⁴⁷ The Law on Reconstruction adopted two months later in March 1996 rendered it virtually impossible for Serbs to receive government-assisted reconstruction.

Separate amendments adopted in October 1999 suspended all pending cases for compensation of damage caused by members of the Croatian Army.²⁴⁸ The amendments also required that by May 2000 the government should submit new draft legislation regulating the issue to the parliament.²⁴⁹

It took a full seven and a half years before, in July 2003, the parliament finally passed pertinent legislation replacing the repealed Article 180,²⁵⁰ and three and a half years before the parliament enacted

²⁴² Human Rights Watch interview with Axel Jaenicke, head of Return and Integration Unit, OSCE Mission to the Republic of Croatia, Zagreb, August 22, 2001.

²⁴³ *Ibid.* Articles 16 (2) and 34 (2) of the Law on Reconstruction provide that an applicant for reconstruction has to provide an attestation from the county office for war damage assessment on the level of damage.

²⁴⁴ Human Rights Watch interview with Axel Jaenicke, Head of Return and Integration Unit, OSCE Mission to the Republic of Croatia, Zagreb, August 22, 2001.

²⁴⁵ Human Rights Watch telephone interview with Marko Brajko, Assistant Minister of Public Works, Reconstruction, and Construction, June 24, 2003.

²⁴⁶ Article 180 of the Civil Obligations Act provided: “Responsibility for damages caused by death or bodily injury or by damage or destruction of another’s property, when it results from violent acts or terror or from public demonstrations or manifestations, lies with the authority whose officials, under the law in force, were under a duty to prevent such damages.”

²⁴⁷ The Act Amending the Civil Obligations Act, *Narodne novine*, no. 7/1996, January 26, 1996, articles 1-2.

²⁴⁸ Law on Amendments of the Law on Obligatory Relations, *Narodne novine*, no. 112/1999, October 29, 1999, article 1 (introducing articles 184.a and 184.b). The parliament adopted the amendments because the January 1996 amendment pertained only to damage caused by unknown perpetrators; if the owner knew the perpetrator, and the perpetrator was a member of the Croatian Army, the owner could sue the State and, in theory at least, receive compensation.

²⁴⁹ *Ibid.*

²⁵⁰ Law on Liability for Damage Resulting from Terrorist Acts and Public Demonstrations, *Narodne novine*, no. 117/2003, July 23, 2003.

new legislation on damage caused by members of the Croatian Army.²⁵¹ These delays appear to have been aimed at divesting Serbs of any remedy for the destruction of their homes and preventing their return. The government has argued that it did not have the budgetary means to compensate those whose property had been destroyed or damaged.²⁵²

In the judgment in the case *Kutic v. Croatia*, rendered on March 1, 2002, the European Court of Human Rights found that Croatia had violated the European Convention of Human Rights in respect to the applicants' right to access to court, by suspending compensatory damage proceedings under former article 180. The Court ordered Croatia to pay the applicants Euro 10,000 jointly as non-pecuniary damage.²⁵³ The applicants' house had been destroyed following an explosion in December 1991, and their garage and the adjacent storage room had been destroyed in November 1994, also after an explosion.²⁵⁴

Legislation adopted in July 2003 still fails to address monetary compensation claims for property damaged by terrorist acts. The law on liability for damage resulting from such acts limits damage claims to personal injury, and provides that the State should compensate for property destruction or damage only through property reconstruction pursuant to the Law on Reconstruction.²⁵⁵ Such restriction also pertains to the cases for compensatory damage initiated before January 1996, when Croatia stayed the proceedings.²⁵⁶ The July 2003 legislation in that way eliminates the actions for damages that had been lodged before January 1996. In addition, the law fails to provide for any compensation in line with the *Kutic* judgment, for the denial of access to court in the period 1996-2003.

WAR CRIMES ARRESTS

Accountability for war crimes punishes those who have committed atrocities, provides a measure of respect for the victims of serious abuse, and helps societies come to grips with the past and move forward. Human Rights Watch strongly supports the work of the International Criminal Tribunal for the former Yugoslavia (ICTY) and considers it the obligation of the authorities in the territory of the former Yugoslavia to hold accountable those responsible for wartime atrocities. Such accountability efforts must of course comport with international fair trial standards. Unfortunately, to date, many of the Croatian authorities' war-crime prosecutions of Croatian Serbs have been ill-founded, reflecting an apparently discriminatory and abusive exercise of prosecutorial authority that has had a detrimental effect on minority return.

Cases against Croatian Serbs often do not reach the trial stage at all, because the prosecutors drop charges against the arrested person during the investigation. Of the total of forty-one arrests in 1999,

²⁵¹ Law on Liability of the Republic of Croatia for Damage Caused by Members of the Croatian Military and Police Forces During the Homeland War, *Narodne novine*, no. 117/2003, July 23, 2003.

²⁵² Sergej Abramov, "Za minirane kuće naknada" (Compensation for Mined Houses), *Novi List* (Rijeka), April 27, 2002 (citing Ingrid Anticevic Marinovic, Croatian Minister of Justice); also, in proceedings before the European Court of Human Rights, the Government argued that it was seeking a solution "compatible with ... the State's resources." European Court of Human Rights, *Kutic v. Croatia*, Applications no. 48778/99, Judgment of March 1, 2002, para. 22.

²⁵³ European Court of Human Rights, *Kutic v. Croatia*, Application no. 48778/99, Judgment of March 1, 2002.

²⁵⁴ The applicants had lodged two actions for damages against the Republic of Croatia before the enactment of the January 1996 amendments. *Ibid.*, paras. 9 and 15.

²⁵⁵ Law on Liability for Damage Resulting from Terrorist Acts and Public Demonstrations, July 14, 2003, *Narodne novine*, no. 117/2003, articles 7 and 8.

²⁵⁶ *Ibid.*, article 10.

2000, and the first half of 2001, thirty-one persons were released.²⁵⁷ Of fifty-nine Serbs arrested in 2001, only twenty were in prison as of December 2002, according to the Serb refugee organization Veritas.²⁵⁸ That many of the charges against Serbs are eventually dropped, might reflect a measure of judicial integrity. Nonetheless, the apparent abuse of prosecutorial discretion by the Croatian authorities has created a perception among Serb refugees that at least some of the arrests and trials are pursued solely to deter return. In addition, only arrests (and not subsequent acquittals) have been publicized, both in Croatia and in Serbia and Montenegro. The thought of a possible arbitrary deprivation of liberty discourages many Serbs from returning.

The number of war crimes arrests of Croatian Serbs increased substantially in 2000-2001 and has been a major deterrent to return for Serb male refugees, most of whom at some stage of the war fought against government forces. In the words of a Croatian Serb who was arrested on war crime charges that were subsequently dropped, "After my arrest and the months I spent in prison, my friends say they are unwilling to take a risk and return. I was thinking about returning, but not anymore."²⁵⁹

Many arrests are based on long-standing indictments after years of inactivity. Around 2,000 war crimes indictments were outstanding in the second half of 2001.²⁶⁰ The indictments were dormant under the government of Franjo Tudjman, but the new government began to act upon these indictments in the second half of 2000. While in 1999—the last year of Tudjman's rule—there were only five war-crime arrests in Croatia,²⁶¹ in 2000 the number rose to around twenty,²⁶² and in 2001, according to Veritas, there were fifty-nine war crimes arrests, of which several took place abroad, on the basis of Interpol arrest warrants. In 2002 the number of arrests fell: as of November, according to Veritas, twenty-seven Croatian Serbs had been arrested on war-crime charges in Croatia, of which nineteen were returnees;²⁶³ the OSCE mission in Croatia identified twenty-eight arrests in 2002, including arrests of fifteen returnees.²⁶⁴

The most significant problem with the war crime arrests in the past three years has been that credible evidence against the indictees generally has been lacking. As an international official in Knin observed: "Almost every Serb man, who at the time of the war was between eighteen and sixty years old, wore a uniform at some stage of the war. That makes them [to ethnic Croats] already 'guilty' in some way and

²⁵⁷ Human Rights Watch interview with Mathijs le Rutte, UNHCR Mission in FR Yugoslavia, Belgrade, August 20, 2001.

²⁵⁸ Human Rights Watch telephone interview with Savo Strbac, Veritas Director, December 13, 2002. Veritas is a documentation center of Serb refugees in Croatia. While the organization has a well-established cooperation with the ICTY Office of the Prosecutor in providing witnesses and evidence of war crimes, some Croatian media consider it biased. The Veritas data on war crimes arrests appear credible. For example, the OSCE mission in Croatia registered twenty-eight arrests of Serbs on war crimes charges in 2002, while Veritas independently registered twenty-seven cases as of November that year. Human Rights Watch interview with a representative of the OSCE Mission to Croatia, Zagreb, June 12, 2003; Human Rights Watch telephone interview with Savo Strbac, December 13, 2002.

²⁵⁹ Human Rights Watch interview with Momcilo Draca, Belgrade, December 19, 2002.

²⁶⁰ Human Rights Watch interview with Rob Robinson, then-head of the UNHCR mission to Croatia, Zagreb, August 23, 2001 (the figure came from the Croatian government).

²⁶¹ OSCE Mission to the Republic of Croatia, *Report on Croatia's Progress in Meeting International Commitments Since September 1999*, July 3, 2000, fn. 19.

²⁶² Alun Roberts, spokesperson for the United Nations mission in Bosnia and Herzegovina, stated in February 2001 that twenty-two Serbs had been arrested on war crimes charges in 2001 in Croatia. See "Dismissals in Police Stations," *Glas srpski* (Banja Luka, Bosnia and Herzegovina), February 21, 2001. An internal document by an international organization in Croatia, made available to Human Rights Watch in August 2001, used the figure of fifteen.

²⁶³ Human Rights Watch telephone interview with Savo Strbac, Veritas Director, December 13, 2002.

²⁶⁴ Human Rights Watch interview with a representative of the OSCE Mission to Croatia, Zagreb, June 12, 2003.

creates a pressure. And then, if they hear that somebody was arrested who everyone believes could never commit a crime, or that another person was arrested during his seventh trip back to Croatia, it will definitively have an impact on the person's willingness to return."²⁶⁵

The tide of arrests came at the end of 2000, after a decision of the Chief State Prosecutor to task the county prosecutors with reviewing all the war crimes cases that involved arrest warrants that had not been acted upon, although the accused lived in Croatia.²⁶⁶ While some charges were dropped during the review process,²⁶⁷ most arrest warrants were confirmed.²⁶⁸ Subsequently, as detailed below, the police have arrested dozens of returnees without sufficient evidence for bringing charges.

Guilt by Association

A major problem with the war-crime cases against Croatian Serbs has been the use of group indictments that fail to specify an individual defendant's role in the commission of the alleged crime.²⁶⁹ A number of Serbs have been indicted as a member of the responsible unit, or merely by virtue of being present at the location where a war crime was committed. Often in such cases, when the defendant is arrested and interrogated, it turns out that the prosecution lacks evidence linking him directly to the crime and drops the charges. What remains, however, is the negative effect of the arrest on other male refugees who fought in Serb formations during the war.

Human Rights Watch received a number of reports of apparently ill-founded indictments of large groups of Serb men. In August 2001, Human Rights Watch interviewed two men from a group of twenty-one individuals indicted in 1993 for war crimes in the Sisak area. The indictees were accused of committing crimes as prison guards in the town of Glina during the war. Both men interviewed by Human Rights Watch were returnees. Rade Vekic (41) and Branko Ljiljak (35) were arrested on March 1-2, 2001 and tried between April and July 2001. Vekic and Ljiljak had both worked in the juvenile center that was used as a detention center during the war, but at the time of the abuses neither was working in the center. Of ten prosecution witnesses, none recognized them as being present in the prison.²⁷⁰ The court acquitted both of the defendants on July 17, 2001.²⁷¹

In another case, Hungarian police arrested Momcilo Draca (35) on May 31, 2001 at a border crossing between Serbia and Montenegro and Hungary. He was one of twenty-seven suspects in killings of Croat civilians in 1991 in the village of Skabrnja.²⁷² Hungary extradited Draca to Croatia in October 2001. On

²⁶⁵ Human Rights Watch interview, Knin, June 12, 2002.

²⁶⁶ The State Prosecutor reasoned that the majority of war crimes charges were filed during the war, when the data regarding perpetrators and potential witnesses were often not available; in contrast, by 2000 it had become "possible... to compile additional data regarding [these issues]." Letter by the Deputy State Prosecutor of the Republic of Croatia Mr. Slavko Zadnik to the county prosecutors' offices, October 10, 2000, no. 0-16/00, on file with Human Rights Watch.

²⁶⁷ Human Rights Watch interview with Robert Becker, deputy head of OSCE mission in Croatia, Zagreb, August 22, 2001.

²⁶⁸ As of December 2000, about 1,000 arrest warrants had been reconfirmed. OSCE Mission to the Republic of Croatia, *Report on Croatia's Progress in Meeting International Commitments Since 18 April 1996*, May 24, 2001, para. 35.

²⁶⁹ Human Rights Watch interview with Branka Sesto, then-human rights assistant at the Office of the U.N. High Commissioner for Human Rights, Zagreb, August 23, 2001.

²⁷⁰ Human Rights Watch interview with Rade Vekic and Branko Ljiljak, Glina, August 28, 2001.

²⁷¹ Judgment of the County court in Sisak, no. K-16/01, July 17, 2001.

²⁷² Lada Kalmeta, "Za masakr u Skabrnji Momcilu Draci prijeti 20 godina zatvora" (Momcilo Draca Faces Up 20 Years In Prison for Massacre in Skabrnja), *Slobodna Dalmacija* (Split), June 2, 2001.

December 20, 2001, Draca was released after the county prosecutor dropped the war-crime charges.²⁷³ In August 2001, German police in the city of Broemerworde arrested Mile Grbic (42), pursuant to an arrest warrant issued by Croatia and forwarded through Interpol. The German authorities released Grbic in mid-January 2002.²⁷⁴ On March 4, 2002, the county court in Gospić, Croatia, withdrew the charges against Grbic and fifty-seven other persons contained in a joint indictment.²⁷⁵ On June 4, 2001, Croatian police arrested Djuro Djuric (47) at a border crossing between Croatia and Bosnia and Herzegovina. Along with thirty-four other Serbs, Djuric was suspected of having participated in the killings of civilians in two villages near Dvor na Uni.²⁷⁶ Djuric was released on August 17, 2001.²⁷⁷

Frequent Acquittals and Dropped Charges

According to the U.N. Commission for Human Rights, in 554 verdicts for war crimes and genocide reached by Croatian courts between 1991 and 1999, 470 individuals were sentenced *in absentia*.²⁷⁸ Some Serbs who had been convicted *in absentia* returned to Croatia and were arrested and retried. In most cases, the defendants have been acquitted after the retrial.

In 1996, a Croatian court sentenced Croatian Serb Sava Grulovic *in absentia* to serve five years in prison for alleged war crimes. Upon returning to the Knin area in 2000, Grulovic (then 65) was arrested, retried, and acquitted.²⁷⁹ Dragan Jakovovic (41), sentenced *in absentia* to twenty years in prison and arrested in February 2001,²⁸⁰ was released in April 2001 after the state prosecutor amended the charges to armed rebellion, to which an amnesty applies. Natasa Jankovic was sentenced *in absentia* to six years in prison in 1996, arrested in January 2001, and acquitted after a retrial in June 2001.²⁸¹ Zeljko Bjedov, arrested in December 2000, faced retrial in June 2001, during which the 1992 verdict *in absentia* was overturned due to lack of evidence.

As of July 2001, there had been only three cases in which returnees were found guilty in a retrial following previous conviction *in absentia*. Dragoljub Vasiljevic, sentenced in 1997 to two-and-a-half years in prison, arrested in October 2000, was sentenced to one year in prison at a retrial in May 2001; Slavko Drobnjak (30), arrested in July 2000 and retried in November that same year, was sentenced to twenty years in prison; and Nebojsa Jelic (40), arrested in April 2000, was retried in November 2000, and sentenced to five years in prison.²⁸²

The higher number of acquittals than convictions in retrials is not surprising, because a person would be unlikely to return to Croatia if he had indeed committed a war crime. Rather than proving the

²⁷³ "Pusten iz pritvora Momcilo Draca" (Momcilo Draca Released), *Hina*, December 20, 2001.

²⁷⁴ "Pusten Mile Grbic" (Mile Grbic Released), *Veritas Bilten*, January 2002.

²⁷⁵ "Amnesija" (Amnesty), *Veritas Bilten* (Belgrade, FR Yugoslavia), March 2002; Human Rights Watch telephone interview with Savo Strbac, Veritas Director, December 13, 2002.

²⁷⁶ "Uhicen srpski pobunjenik, osumnjicen za ratni zlocin" (A Serb Rebel, War Crimes Suspect, Arrested), *Vecernji list* (Zagreb), June 5, 2001, and "Hrvatska policija uhapsila Srbina na granici sa BiH" (Croatian Police Arrested a Serb at the Border Between Croatia and B-H), *Danas* (Belgrade, FR Yugoslavia), June 6, 2001.

²⁷⁷ Human Rights Watch telephone interview with Savo Strbac, Veritas Director, December 13, 2002.

²⁷⁸ Ivica Dikic & Boris Raseta, "Judicial Sadism," *Feral Tribune* (Split, Croatia), January 13, 2001 [online], <http://www.cdsp.neu.edu/info/students/marko/feral/feral153.html> (retrieved June 20, 2003).

²⁷⁹ See "Tko je u vrhu vlasti spriječio pritvaranje ratnog zlocinca" (Who At the Top Prevented Detaining a War Criminal?), *Slobodna Dalmacija* (Split), November 28, 2000; "Zadarski zupanijski sud oslobodio optuzbe srpskog povratnika" (Zadar District Court Acquitted Serb Returnee), *HRT* (Croatian Radio Television) website, February 2, 2001 [online], <http://www.hrt.hr/vijesti/arhiv/2001/02/02/KRV.html> (retrieved June 15, 2003).

²⁸⁰ "Croatian police arrest two more Serbs," *Glas javnosti* (Belgrade), February 8, 2001.

²⁸¹ Human Rights Watch telephone interview with Savo Strbac, December 13, 2002.

²⁸² Human Rights Watch telephone interview with Savo Strbac, December 13, 2002.

responsibility of the defendant, an earlier war-crime conviction reached *in absentia* in Croatia usually indicates little about the extent of the evidence against him. Human rights lawyers in Croatia are nevertheless reluctant to suggest to those who are convinced that they are innocent to return for retrial. The Croatian judiciary is not devoid of political bias, all the more so as the judges appointed after the Tudjman government's purges still hold their posts. In one case, in May 1999, several Serbs from the so-called Sodobolovci group voluntarily appeared before the Osijek county court for retrial, only to be convicted again. In November 1999, the Supreme Court annulled the judgment.²⁸³

Human Rights Watch interviewed Jovanka Nenadovic, a woman from Pakrac, who was arrested in October 2000 and spent three months in detention before the state prosecutor dropped war crimes charges against her. Nenadovic was accused of committing the murders of seven Croatian soldiers in 1991. Her age and physical condition should have signaled to a well-intentioned state prosecutor that the charges were spurious—she was 58 years old at the time of the alleged crime, and she had difficulties moving due to bayonet wounds by Croatian Ustasha (pro-Nazi fascists) in World War II. According to the indictment, “during the investigation a witness stated that he had heard that Jovanka Nenadovic participated in torture of prisoners.”²⁸⁴ Such hearsay was sufficient to keep the elderly woman in prison for three months.

Vaso Gavrilovic, from Dalj, was arrested in January 1999. The Special Rapporteur of the Commission on Human Rights on the situation of human rights in the Federal Republic of Yugoslavia (Serbia and Montenegro), the Republic of Croatia and Bosnia and Herzegovina visited him one month later.²⁸⁵ In subsequent months, no hearing was held or scheduled, nor did Gavrilovic see a judge or a state prosecutor. A year after the arrest, he was simply told that he was free, without further explanation.²⁸⁶ Gavrilovic was 70 years old at the time of the arrest; he had refused to flee the area even though his name was on the posters anonymously hung up in Dalj, containing the names of twenty-seven alleged war criminals from the municipality.²⁸⁷ Although most ill-founded cases end in acquittal or dropped charges, the threat of arrest and prolonged detention is enough to deter return of refugees.

Discriminatory Prosecutions

The perception that war crime prosecutions are manipulated to deter innocent Serbs from returning has been reinforced by the authorities' apparently discriminatory approach to war crime accountability. There are currently 1,467 pending war crimes cases, 99 percent of which involve non-Croat suspects.²⁸⁸ Starting in 2001, the government has prosecuted ethnic Croats as well as Serbs for war crimes. Still, in 2002, eighteen Serbs and only three Croats were convicted on war crimes charges, while three Serbs and fourteen Croats were acquitted.²⁸⁹ With one sole exception,²⁹⁰ Croatian judicial authorities still have not

²⁸³ Human Rights Watch interview with Biserka Milosevic, attorney and Program Director at the Center for Peace, Non-Violence and Human Rights, Osijek, September 4, 2001; Human Rights Watch telephone interview with Savo Strbac, December 13, 2002.

²⁸⁴ Ivica Dikic & Boris Raseta, “Judicial Sadism,” *Feral Tribune* (Split, Croatia), January 13, 2001 [online], <http://www.cdsp.neu.edu/info/students/marko/feral/feral153.html> (retrieved June 20, 2003).

²⁸⁵ Situation of Human Rights in Bosnia and Herzegovina, the Republic of Croatia and the Federal Republic of Yugoslavia (Serbia and Montenegro), Note by the Secretary-General, Addendum, A/54/396/Add.1, S/1999/1000/Add.1, November 3, 1999, para. 17.

²⁸⁶ Ivica Dikic & Boris Raseta, “Judicial Sadism,” *Feral Tribune* (Split, Croatia), January 13, 2001 [online], <http://www.cdsp.neu.edu/info/students/marko/feral/feral153.html> (retrieved June 20, 2003).

²⁸⁷ Human Rights Watch interview with Branka Sesto, then-human rights assistant at the Office of the U.N. High Commissioner for Human Rights, Zagreb, August 23, 2001.

²⁸⁸ Organization for Security and Co-operation in Europe, Mission to Croatia, Status Report No. 12, July 3, 2003, p. 14.

²⁸⁹ Organization for Security and Co-operation in Europe, Mission to Croatia, Status Report No. 12, July 3, 2003, p. 15.

dealt in a credible way with cases in which ethnic Croats were responsible for the killing of dozens of Serbs, as in the cases of the Pakracka Poljana,²⁹¹ Sisak,²⁹² or Korana bridge.²⁹³ The proceedings against Croats so far have as a rule pertained to crimes that resulted in significant loss of lives.²⁹⁴ In contrast, the Croatian authorities have in some cases indicted Serbs for relatively minor violations of the laws of war, such as the theft of flour from a house (pillage) or the knocking out of a tooth (inhuman act).²⁹⁵ Depending on the circumstances of the case, such actions could possibly amount to war crimes. However, Human Rights Watch is unaware of any case in which an ethnic Croat was prosecuted on war-crime charges for abuses of this kind. Taken together, these prosecutorial practices amount to discriminatory enforcement of the law.

Alternative: Provisional Release Pending Trial

In the past two years, most arrests and war-crime trials of Serbs have resulted in dropped charges or acquittals. The record warrants greater resort to provisional release of indictees during pre-trial proceedings. Such a policy would reduce the appearance of a manhunt against male Serb returnees, reinforced by the extensive media coverage of every arrest. The risk that the suspect would flee justice unless promptly arrested would seem limited, since the mere fact of his return to Croatia attests to either his innocence or, at minimum, a willingness to have guilt or innocence established in court proceedings.

ENJOYMENT OF SOCIAL AND ECONOMIC RIGHTS

Discrimination suffered by Croatian Serbs in obtaining access to employment, pensions, and other retirement benefits has for many served as an additional powerful deterrent to return to Croatia. As

²⁹⁰ On March 24, 2003, the county court in Rijeka sentenced three Croatian army officers to fifteen, twelve, and ten years in prison for the murder of fifty civilians, most of them ethnic Serbs, near Gospić in October 1991. Damir Herceg, "Oreskovicu 15, Norcu 12, Grandicu 10 godina zatvora" (10 Years of Imprisonment to Oreskovic, 12 To Norac, 10 To Grandic), *Vjesnik* (Zagreb), March 25, 2003 [online], <http://www.vjesnik.com/html/2003/03/25/Clanak.asp?r=unu&c=1> (retrieved June 20, 2003).

²⁹¹ Between October 1991 and March 1992, Croatian Special Police allegedly killed dozens, possibly hundreds, of Serbs in the detention camps in Marino Selo and Pakracka Poljana, in Western Slavonia. Ljiljana Maric, "Haagu popis s Vekicem, Seksom i Mercepom zbog 3000 nestalih" (Documents for The Hague, Implicating Vekic, Seks and Mercep in the Disappearance of 300), *Vecernji list* (Zagreb), October 22, 2000; see also Viktor Ivancic, "Dossier: Pakracka Poljana, Part 1," *Feral Tribune* (Split, Croatia), August 21, 1995 [online], <http://www.cdsp.neu.edu/info/students/marko/feral/feral13.html> (retrieved June 20, 2003).

²⁹² Nongovernmental groups in Sisak maintain that in 1991 Croat extremists killed more than 90 Serb civilians in the town. The Sisak county prosecutor has been investigating twenty-one murders. See B. Pavelic, "Krim-obrađa pri kraju, počeće istrage?" (Police Investigation About to Finish, Court Investigation Begins?), *Novi List* (Rijeka), November 12, 2002. On June 23, 2003, the police arrested two individuals in connection to the Sisak crimes. "Uhapsene ubice srpskog civila" (Killers of a Serbian Civilian Arrested), *B92* website (Belgrade, Serbia and Montenegro), <http://www.b92.net/news/indexs.php?start=40&order=priority&dd=23&mm=6&yyyy=2003> (retrieved June 23, 2003).

²⁹³ On September 21, 1991, members of the Croatian special police allegedly executed thirteen reservists in the former Yugoslav People's Army after disarming them at the entrance to Karlovac. Zeljka Pulez, "Nuzna odbrana isključuje krivnju" (Self-defence Excludes Guilt), *Novi List* (Rijeka), September 19, 2002.

²⁹⁴ In the Gospić case, the defendants are accused of killing at least 42 Serb civilians; in the Sibenik case, the accused were indicted for killing sixteen Serb civilians; the Lora indictment includes two cases of killings of prisoners in a military camp, but the number of killed in the prison is known to have been significantly higher; in the Bjelovar case, the indictment dealt with the killings of six Serb war prisoners; and, in the Virovitica case, the defendants were accused of killing one person.

²⁹⁵ Human Rights Watch interview with a lawyer at the OSCE field office in Pakrac, Pakrac, June 18, 2002.

detailed in the following discussion, the Croatian government has in many cases been responsible for the discriminatory treatment of Croatian Serbs, and it has generally failed to combat it.

Discrimination In Employment

One of the principal impediments to return lies in the bleak economic situation in the country. The unemployment rate is around 20 percent. A war-ravaged economy and post-war crony capitalism have made Croatia a country in which “preconditions for transformation of the economy into a viable one were better in 1990 than in 2000.”²⁹⁶

Further complicating the sustainability of return is the fact that many Serbs lived in economically disadvantaged areas before the war, or in remote areas in which former communist governments built factories based on political, rather than economic, considerations.²⁹⁷ Even where pre-war employment was high and the economy was functioning, unemployment has been skyrocketing in the post-war period. In Knin for example, out of 30,000 current inhabitants only 3,000 held paid positions in 2001.²⁹⁸ In nearby Kistanje, where about 700 people worked before the war, in 2001 there were about forty employed individuals, mostly administrative staff at the municipality.²⁹⁹ In Gracac, 90 percent of able-bodied persons were registered as unemployed at the beginning of 2001.³⁰⁰ Immediate economic recovery in such areas is unlikely, and employment opportunities for potential young returnees are scant, unless the person is willing to engage in agriculture or cattle raising, or if he speaks a foreign language and finds employment with an international organization working on returns in the area.

Bosko Raskovic, a man in his mid-thirties whose family returned to the village of Raskovici, near Knin, in August 2001, told Human Rights Watch at the time that bleak employment prospects were his main concern. He had to support the family and fund the education of his two daughters, but he had spent his last pennies on obtaining various types of Croatian identity documents.³⁰¹ When Human Rights Watch again visited the village in June 2002, Bosko Raskovic and his family had returned to Serbia.

Employment discrimination on ethnic grounds is difficult to prove since unemployment among Croats is also high. A number of returnees told Human Rights Watch, however, that they were explicitly told that they could not get a job because of their ethnicity.

Boja Gajica (53), a Serb returnee to Knin, applied eight times between 1996 and 2000 for the position of nursing attendant, for which she has an associate degree.³⁰² Each time a Croat candidate, with

²⁹⁶ Human Rights Watch interview with Robert Becker, deputy head of OSCE mission in Croatia, Zagreb, August 22, 2001.

²⁹⁷ Human Rights Watch interview with Robert Becker, Zagreb, August 22, 2001.

²⁹⁸ Human Rights Watch interview with Andrej Mahecic, then-assistant public information officer, UNHCR office in Zagreb, Zagreb, August 23, 2001.

²⁹⁹ Human Rights Watch interview with Marko Kadrum, head of the Kistanje municipality, August 24, 2001.

³⁰⁰ A paper by the OSCE field office mentions this assessment by the employment offices from Gracac. [OSCE Field Office in Gracac], “Gracac Municipality: Overview,” February 2001, p. 4.

³⁰¹ Human Rights Watch interview with Bosko Raskovic, Raskovici (near Knin), August 25, 2001.

³⁰² Boja Gajica had received a diploma for preschool education at a teacher training college in Split. Human Rights Watch interview with Boja Gajica, Knin, August 24, 2001.

lower or different qualifications, was selected.³⁰³ On one occasion, the manager of a child-care center allegedly told Ms. Gajica that she would be afraid of the local soldiers and policemen if she employed a Serb.³⁰⁴

Ljupce Mandic (55), from Kistanje near Knin, holds an M.S. in electrical engineering and worked in the Knin power supply company before the war. When he made inquiries about reinstatement to his previous job, he was told that “your side lost the war and you can’t come back.” Mandic continues to work in Serbia, while his wife splits her time between Kistanje and Belgrade.³⁰⁵

In some instances it is clear that ethnic affiliation is the determining factor in employment practices. In Sibenik county, to which Knin belongs, the county prefect for educational issues has allegedly made public statements that Serb teachers would not get jobs (allocated by the county council).³⁰⁶ An unemployed Serb graduate in economics, who applied for fifteen vacancies in Western Slavonia 1995-97, told Human Rights Watch that at the job interviews he was often asked whether he took part in the Homeland War as a defender.³⁰⁷ As it was overwhelmingly the Croats, and not the Serbs, who fought in the Croatian army against Serb rebels, giving priority to defenders clearly discriminates against Serb applicants.

Human Rights Watch also interviewed returnees who unsuccessfully applied for jobs even though they were the most qualified or the only qualified candidates, as measured by the requirements from the job announcements. The employers in these cases decided to annul the announcements rather than hire the competent Serb applicants. In January 2003, Dusan Karanovic, an occupational safety engineer with fifteen years work experience, applied for a position as chief of the town’s fire brigade in nearby Knin. According to Karanovic, the staff of the Knin employment agency informed him that he was the only candidate who had passed the state exam, which was required by the job announcement. In March, however, the Knin town hall notified Karanovic that the job announcement had been cancelled.³⁰⁸ Seka Tica, an economist with a university degree, applied in June 2002 for a post at the Korenica branch of the Karlovacka Bank. The job announcement specified that the candidate had to have a degree in economics. In July the Bank notified Tica that it had selected another candidate. According to Tica, the other woman, of Croat ethnicity, had told her that she had only a high school degree. In August 2002, the Karlovacka Bank responded to Tica’s formal complaint and notified her that the Bank annulled the job announcement, with a vague explanation that the job ad had been “incomplete.”³⁰⁹ In April 2003, according to Tica, during a trial of a case initiated by her against the Karlovacka Bank, the Bank produced

³⁰³ Human Rights Watch interview with Boja Gajica, Knin, August 24, 2001. The account by Boja Gajica was confirmed by Olga Simic, then-head of the Knin office of the Croatian Helsinki Committee, in Human Rights Watch interview, Knin, August 24, 2001.

³⁰⁴ Human Rights Watch interview with Boja Gajica, Knin, August 24, 2001.

³⁰⁵ Human Rights Watch interview with Ljupce Mandic, Kistanje, August 24, 2001; Human Rights Watch interview with Mandics’ neighbors, Kistanje, June 9, 2003.

³⁰⁶ Human Rights Watch interview with Iris Vasiljevic, then-lawyer at the Knin branch of the Croatian Helsinki Committee, Knin, August 24, 2001. Ms. Vasiljevic’s husband, a gym teacher, has been unable to get a job since 1996.

³⁰⁷ Human Rights Watch interview with Predrag Miscevic, Pakrac, September 3, 2001.

³⁰⁸ Human Rights Watch interview with Dusan Karanovic, Knin, June 9, 2003. Karanovic returned to Croatia in 1996 and, in spite of his university degree, he has only been able to get a seasonal job as guard at a garbage heap, for two months in 2002. In contrast, when Karanovic resided as a refugee in Serbia, in 1995, he was immediately able to get an executive position in a state-owned company. *Ibid.*

³⁰⁹ Human Rights Watch interview with Seka Tica, Korenica, June 10, 2003. Human Rights Watch examined and confirmed the contents of the documents referred to in the description of the case.

a document announcing a vacancy for the same post. This time, however, the announcement stated that the Bank would accept applicants with less than a university degree.³¹⁰

According to the OSCE, in some localities in Croatia—including in Dvor, Grozd, Vojnic, and Hrvatska Kostajnica—Serbs have been the only candidates since November 2002 for judicial vacancies, but the vacancies have remained unfilled.³¹¹ The persistence of vacancies may constitute further evidence of discrimination.

One measure of discrimination is the degree to which state, municipal, or town-run services and institutions employ Serb returnees. In most areas of return, virtually no Serbs are employed in health centers, schools, child-care centers, post offices, courts, police, power-supply companies, customs services, or the local administration. Such is the case of Korenica, for example, including in the nearby national park Plitvice Lakes, which receives thousands of foreign tourists and employs hundreds of people.³¹² Around 2,000 Serbs have returned to the area, and few of them have jobs.³¹³ In Gracac, where 1,500-2,000 Serbs had returned as of August 2001, only one returnee was employed in municipal institutions or enterprises.³¹⁴ As of June 2003, there were no Serbs employed in the police and the court in Vojnic, although Serb returnees outnumbered local Croats and Croat settlers by 3,500 to 2,500.³¹⁵ In the sixteen municipalities in Western Slavonia, as of August 2001 there was only one person—a nurse in the hospital in Pakrac—working in a state-run institution.³¹⁶

Under the Constitutional Law on the Rights of National Minorities, enacted in December 2002, the State has to ensure proportional representation of minorities in the administration and the judiciary at state, county and municipal level.³¹⁷ The obligation to ensure proportional representation does not extend to public institutions, such as schools, universities, and hospitals, or to the police. The lack of legal obligation to pursue adequate minority representation in public institutions and enterprises does not augur well for a marked increase in the employment of Serbs returnees.

Pensions

The government has raised numerous obstacles to enjoyment of pension rights for displaced Serbs. Such obstructionism has been a significant impediment to those refugees who, deprived of pensions in part or altogether, do not have sufficient means to subsist upon return. Between 1995 and 2002 living

³¹⁰ Human Rights Watch interview with Seka Tica, Korenica, June 10, 2003.

³¹¹ Organization for Security and Co-operation in Europe, Mission to Croatia, Status Report No. 12, July 3, 2003, p. 11.

³¹² Human Rights Watch interview with Nena Zigic, head of the Korenica office of the human rights organization “Homo,” Korenica, August 27, 2001; Human Rights Watch interview with Nikola Lalic, member of the Korenica housing commission and president of the local branch of the Serbian Democratic Forum, Korenica, June 16, 2002.

³¹³ Human Rights Watch interview with Nikola Lalic, president of the local branch of the Serbian Democratic Forum, Korenica, June 10, 2003.

³¹⁴ Human Rights Watch interview with Radmila Andric, head of the Gracac office of Dalmatian Committee of Solidarity, August 28, 2001. The one person employed was Nedeljko Vojvodic, a forestry engineer in the Public Utilities Service, Gracac.

³¹⁵ Human Rights Watch interview with Mile Djuric, secretary general at the office of the Serbian Democratic Forum in Vojnic, Vojnic, June 11, 2003.

³¹⁶ Human Rights Watch interview with Obrad Ivanovic, head of the office of the Serbian Democratic Forum in Pakrac, Pakrac, September 3, 2001.

³¹⁷ Constitutional Law on the Rights of National Minorities, *Narodne novine*, no. 155/2002, December 23, 2003, article 22. See OSCE Mission to Croatia, “Implementation of the Constitutional Law on the Rights of National Minorities (CLNM) and Related Legislation,” May 12, 2003, p. 9-11.

expenses were significantly lower in Serbia and Montenegro than in Croatia, and it was only natural for such persons to remain in Serbia and Montenegro.

Government Failure To Validate Employment Status Between 1991-95

One significant impediment to return has been the government's unwillingness to validate the number of years of working experience in parts of Croatia controlled by Serb rebels (the so-called Republika Srpska Krajina - RSK) in the period 1991-95.³¹⁸ The government has rejected most requests for validation, claiming that the documents of the RSK pension fund, proving employment status, were lost or destroyed, or that the applicant missed the deadline for submitting the documents and other evidence.

Persons adversely affected by these policies are those who had not been retired before the war and who now lack a sufficient number of years of employment for retirement. If they are sixty-five-year-old men, or sixty-year old women, they can acquire the right to an old-age pension instead. The value of such a pension is smaller, however, than that of regular pensions.

Human Rights Watch interviewed a number of returnees who worked in RSK during the war, and most of them did not have the wartime years recognized in their employment status. A head of a human rights organization in Knin told Human Rights Watch that "nobody has had the 1991-95 period recognized; nobody ever will."³¹⁹

Many individuals did not even have a fair chance to submit requests for validation. On April 10, 1998, the government of then President Tudjman issued a decree setting out a one-year deadline for submission of claims for recognition of working time during the war.³²⁰ The claims could have been submitted only if the person had a registered residence in Croatia.³²¹ Many potential claimants still lived abroad at the time and did not even know about the deadline.³²² They could not meet the deadline and the residence requirement. The current government should issue a new decree with a new deadline.

For those who did apply before April 1999, in many instances it took years before the regional offices of the Croatian Pension Fund made a decision.³²³ In most cases, proving employment status was extremely difficult due to stringent conditions set out by the government. The pension fund requests that the applicant shows written proof of wartime payments into the RSK retirement fund, and that two witnesses confirm that the applicant was indeed employed. The demand for cumulative evidence runs contrary to the Law on Pension Insurance, which explicitly states that witness statements can be accepted as the sole evidence of the status of an insured person and the number of years of working experience,

³¹⁸ See above, footnote 159.

³¹⁹ Human Rights Watch interview with Nevena Zunjic, head of Knin office of the Dalmatian Committee of Solidarity, Knin, June 11, 2002. In Benkovac, out of several hundred requests, the pension fund has approved "only two or three." Human Rights Watch interview with Mirela Bilokapic, head of the Benkovac office of the Dalmatian Committee of Solidarity, Benkovac, June 10, 2003.

³²⁰ Decree on Enforcement of the Law on Validation in the Areas of Labor, Employment, Pension and Disability Insurance, Children Allowances, Social Welfare, and Protection of Military and Civilian Invalids of War, *Narodne novine*, no. 51/1998, April 9, 1998.

³²¹ *Ibid.*, article 5 (4).

³²² In Gracac, for example, more than 60 percent of the potential claimants did not submit a claim. Human Rights Watch interview with Radmila Andric, head of the Gracac office of the Dalmatian Committee of Solidarity, Gracac, August 28, 2001.

³²³ A lawyer dealing with the issue told Human Rights Watch in August 2001 that he was unaware of a single case in his area in which the applicants had received a decision. Human Rights Watch interview with Dusko Cvijetkovic, then-lawyer with the Serbian Democratic Forum office in Slunj, Slunj, August 28, 2001.

when other relevant information cannot be obtained “because of the circumstances caused by the Homeland War.”³²⁴ In addition, only those who validated their own employment status and worked in the same company as the applicant can testify.³²⁵ In most cases, applicants could not satisfy these requirements.

Unpaid Pension Installments For the Period After 1991

As described above, the government has been unwilling to validate the employment status and pension documents in RSK for the period 1991-95, where the validation would benefit the applicants who lack the employment years for retirement. At the same time, the authorities are eager to admit as legally relevant the RSK lists of pension installments paid between 1991 and 1995, when the government can use the lists to deny back payment of pension installments for the wartime period. The failure to make these payments adversely affects the financial lot of returnees, many of whom are of retirement age.

Those claiming unpaid pension installments after 1991 are refugees and returnees who acquired their pensions before the war but did not live in the government-controlled territory when the war began. During the war, most of them lived in RSK. These individuals could not receive pensions from the Croatian pension fund because financial transactions between the RSK and the rest of the country were halted. Instead, an RSK pension fund paid them installments that in most cases barely sufficed for a few portions of staple goods

In its initial decision after the war, in July 1996, the Central Service of the Croatian Retirement Fund instructed the regional offices to disburse unpaid installments to the pensioners who lived in the RSK.³²⁶ In some areas, those rare individuals who had the courage to return to their homes in the immediate post-war period did receive installments for the 1991-95 period.³²⁷ Possibly driven by financial constraints, the Retirement Fund suspended the implementation of the instruction in October 1996. In September 1998, the Fund voided altogether the right to installments that the Croatian Retirement Fund had not been paying between 1991 and the year in which the person applied for continued payment of the pension.³²⁸

³²⁴ Law on Pension Insurance, *Narodne novine*, no. 102/1998, July 29, 1998, article 110(4) and article 99(2).

³²⁵ Human Rights Watch interview with Simo Kurusic, lawyer with the Serbian Democratic Forum in Daruvar, Pakrac, September 3, 2001; Human Rights Watch interview with Nikola Lalic, member of the then-housing commission in Korenica and president of the local branch of the Serbian Democratic Forum, Korenica, June 16, 2002; *Pension Rights*, briefing paper prepared by “Homo”-Association for Human Rights and Civil Liberties (Pula), April 2001.

The requirement that the witnesses validated their own employment status and worked in the same company as the applicant is allegedly contained in government’s instructions which have not been published in the *Narodne novine*. Human Rights Watch interview with Jovo Knezevic, lawyer in the Dalmatian Committee of Solidarity, Knin, June 11, 2002. The regulations published in the *Narodne novine*—the Law on Validation and the decree on its enforcement in the area of employment and pension insurance—do not include this requirement.

³²⁶ “Baranja”-Association for Peace and Human Rights (Bilje), *Socijalno osiguranje, socijalna i zdravstvena skrb izbjeglica i prognanika u Republici Hrvatskoj* (Social Security, Social and Health Protection of Refugees and Expellees in the Republic of Croatia), July 2001, p. 16.

³²⁷ This was the case in Western Slavonia, for example. Human Rights Watch interview with Simo Kurusic, lawyer with the Serbian Democratic Forum in Daruvar, Pakrac, September 3, 2001.

³²⁸ The Central Service sent internal instructions to that effect to the regional offices on July 10, 1996. See “Baranja”-Association for Peace and Human Rights (Bilje), *Socijalno osiguranje, socijalna i zdravstvena skrb izbjeglica i prognanika u Republici Hrvatskoj* (Social Security, Social and Health Protection of Refugees and Expellees in the Republic of Croatia), July 2001, p. 16.

The Fund has used the following argument: the RSK “para-fund” had been paying pensions to all pensioners living in its territory; the 1997 Law on Validation validated the decisions authorizing these payments; therefore the pensioners cannot receive new payments for that same period.³²⁹

This argument is flawed for at least three reasons. Firstly, even if the person was receiving a pension from the RSK para-fund, the Croatian Fund should cover the difference between that small amount and the amount to which the person had been entitled from the Croatian Pension Fund. Secondly, the Fund denies installments not only for the period 1991-95, but also for the period after 1995, up to the date in which the person applied for reinstatement of the pension—even though the RSK para-fund ceased to exist in 1995 and the argument of “double payments” cannot apply. Thirdly, the Croatian Pension Fund often declines to establish facts in individual cases; copies of some of its decisions obtained by Human Rights Watch do not specify the amount of the pension the claimant had been receiving from the RSK para-fund and fail to identify the period in which the RSK payments were made.³³⁰

Government Failure to Verify Pre-1991 Contributions to Retirement Funds

Compounding their difficulties establishing employment and benefit records for the wartime period, many refugees who lived in the former Republika Srpska Krajina have difficulties proving that they were making payments to the Croatian retirement fund even prior to the war.³³¹ As a result, they lack a sufficient number of years for retirement, or they can only obtain an old-age pension.

In these cases, regional offices of the national pension fund claim that documents proving payments to the retirement fund before the war had been destroyed or removed during the war. However, as human rights groups dealing with the issue of pensions claim, before the war it was impossible in public enterprises to receive salaries unless the employees paid retirement and social security payroll taxes first. It should therefore be presumed that the person was making the payments. Also, the relevant information on pension contributions was collected in Zagreb, so even if documents from the regional offices are indeed missing, they should be in the possession of the central bureau of the Croatian Retirement Fund.³³² Indeed, a Serbian Democratic Forum lawyer specialized in the issue has been able to use personal connections in the central bureau to obtain information about the “missing years” for a number of interested individuals.³³³

CONCLUSION

Faced with a host of obstacles, many Serb refugees from Croatia have decided not to return to the country. More than three years after the arrival of a post-Tudjman government to power, improvement

³²⁹ *Ibid.*, p. 18.

³³⁰ Alternatively, the decisions indicate such a period in a clearly arbitrary way, by assuming that the payments were ceased to be made on the day when the person applied with the Croatian Pension Fund for reinstatement of pension payments.

³³¹ In the areas visited by Human Rights Watch, lawyers and returnees emphasized this problem in, among other places: Korenica (Human Rights Watch interviews with Nena Zigic, head of Korenica office of “Homo,” August 27, 2001, and a representative of the OSCE field office in Korenica, August 27, 2001); Slunj (Human Rights Watch interview with Dusko Cvijetkovic, then-lawyer at the office of the Serbian Democratic Forum in Slunj, August 28, 2001); and Knin (Dusko Cvijetkovic, lawyer at the office of the Serbian Democratic Forum in Knin, telephone interview, January 16, 2003).

³³² *Pension Rights*, briefing paper prepared by “Homo”-Association for Human Rights and Civil Liberties (Pula), April 2001; Human Rights Watch telephone interview with Dusko Cvijetkovic, lawyer at the Knin office of the Serbian Democratic Forum, January 16, 2003.

³³³ Human Rights Watch interview, June 8, 2003.

has been so slow that many have lost their initial hopes for the new government's policies regarding return. In most parts, the returnees have been elderly farmers whose houses were not destroyed or occupied and who receive pensions from the government. In contrast, return to urban areas hardly occurs, primarily because the refugees cannot repossess the apartments in which they lived before the war or obtain substitute housing. Also, lack of employment opportunities and, for men, fear of arbitrary arrests on war crimes charges, prevent the young and middle-aged refugees from returning to either urban or rural areas.

The Croatian government must reform its laws and policies to ensure such returnees an opportunity to repossess their homes or obtain compensation for lost property, and equal access to employment and pension benefits. Until it does so, hundreds of thousands of Croatian Serbs will be unable to realize their right to return home.

ACKNOWLEDGEMENTS

This report was written on the basis of field research carried out in Croatia in August and September 2001, June 2002, and June 2003, and information gathered through ongoing telephone communication. Interviews were conducted with returned refugees, temporary occupants of their houses, Serb civic associations, representatives of the Croatian government and local authorities, and representatives of international governmental organizations and Croatian human rights groups. The report was written by Bogdan Ivanisevic, Human Rights Watch researcher on the former Yugoslavia, who carried out the research, and edited by Elizabeth Andersen, executive director of the Europe and Central Asia division of Human Rights Watch, James Ross, senior legal advisor for Human Rights Watch, Iain Levine, program director for Human Rights Watch, and Alison Parker, acting director of the Refugee Policy division. Johanna Bjorken, consultant to Human Rights Watch, contributed research and reviewed the manuscript. Production assistance was provided by Leslie Smith and Dorit Radzin, associates for the Europe and Central Asia division; Fitzroy Hepkins, mail manager for Human Rights Watch; Andrea Holley; and Veronica Matushaj, photo editor and associate director of creative services for Human Rights Watch.

This report would not have been possible without the help of the many organizations and individuals who shared their knowledge and experiences. Human Rights Watch would like to thank the following organizations and institutions for their assistance throughout Human Rights Watch's research: the Dalmatian Committee of Solidarity, the Serbian Democratic Forum, the Center for Peace, Non-violence and Human Rights - Osijek, the Committee for Human Rights - Karlovac, the Croatian Helsinki Committee for Human Rights, the Organization for Security and Co-operation in Europe – Mission to Croatia, the United Nations High Commissioner for Refugees, and the Norwegian Refugee Council.

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Serb returnees to Croatia, Smiljana and Pavao Cakic, in front of their occupied house, Popovic brdo, April 2003.
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Broken Promises

Impediments to Refugee Return to Croatia

Seven years after the end of the war in Croatia, the continued displacement of hundreds of thousands of Croatian Serbs remains one of its most lasting scars. Faced with a host of obstacles, many Serb refugees from Croatia have decided not to return. This report describes the continued plight of displacement suffered by the Serbs of Croatia and identifies the principal remaining impediments to their return.

Between 300,000 and 350,000 Serbs left their homes in Croatia during the 1991-95 war. Less than 100,000 have returned by mid-2003. In most parts, the returnees have been elderly farmers whose houses were not destroyed or occupied and who

receive pensions from the government. In contrast, return to urban areas hardly occurs, primarily because the refugees cannot repossess the apartments in which they lived before the war or obtain substitute housing. Also, lack of employment opportunities and, for men, fear of arbitrary arrests on war crime charges, prevent the young and middle-aged refugees from returning to either urban or rural areas.

The report concludes with recommendations to the Croatian government and the international community to redress this situation and finally make good on the promise of return.



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