

# CROATIA

## HUMAN RIGHTS IN EASTERN SLAVONIA DURING AND AFTER THE TRANSITION OF AUTHORITY

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## SUMMARY

Eastern Slavonia, the only remaining Serb-held region of Croatia, is scheduled to revert to Croatian control by July 15, 1997. Some 120,000 to 150,000 Serbs living in that region will then come under the authority of their bitter opponent during the war. The transition of authority in Eastern Slavonia is designed to be carried out peacefully under the auspices of a United Nations peace-keeping operation. However, there remain concerns that the transition may be accompanied or followed by serious violations of human rights, as occurred after Croatia recaptured the Krajina, or by a mass exodus of Serbs in the region, repeating on a much broader scale the problems that arose during the transition of authority in Sarajevo's suburbs last year. The Croatian government has issued numerous widely publicized statements and pledges, enthusiastically welcomed by the international community, guaranteeing the rights of ethnic Serbs in Eastern Slavonia. Yet, it has failed to take the steps necessary to permit the exercise of some of the most fundamental of these rights. Nearly half of these Serbs have already been displaced once, after the Croatian military offensives in 1995 that recaptured the other Serb-held areas of Croatia. If another mass exodus is to be avoided and widespread human rights abuses prevented, the Croatian government must undertake concrete measures that will give meaning to otherwise empty declarations of the right of displaced Serbs to return to their original homes or to remain in Eastern Slavonia. In addition, the international community must pressure Croatia to fulfill its human rights obligations to facilitate the right of return as well to undertake measures necessary to enable ethnic Serbs to stay in Eastern Slavonia.

Rebel Serbs seized control of Eastern Slavonia after fierce fighting in the latter half of 1991, during and after which the Serbs expelled over 80,000 non-Serbs living in the region. In 1995, 60,000 of the 200,000 Serbs fleeing Croatian military offensives against the Krajina and Western Slavonia resettled in Eastern Slavonia. In November 1995, after the other Serb-held regions were recaptured by the government, the Croatian government and Croatian Serb leaders signed an agreement providing for the peaceful reintegration of Eastern Slavonia into the Republic of Croatia under the authority of what would become the United Nations Administration for Eastern Slavonia, Baranja and Western Sirmium (UNTAES), avoiding thereby a recurrence of the violent reclamation of the Krajina and Western Slavonia. The implementation of that agreement is now entering its final phase. Over the course of the next three and one-half months, elections will be held in the region, in conjunction with nationwide elections, and Croatian services and institutions will accelerate their deployment in the region. Under current agreement among UNTAES, the Croatian government and local Serb leaders, the region will revert fully to Croatian authority by July 15, 1997.

The 1995 agreement contained strong support for human rights, declaring that "[t]he highest levels of internationally recognized human rights and fundamental freedoms shall be respected in the region." The agreement also specified that displaced persons were to enjoy their right to return to their original homes or to remain in the region. It further provided for human rights monitoring by the international community during implementation of the agreement as well as on a long-term basis following the transition of authority.

It will be absolutely crucial to protect and closely monitor the human rights of former and present residents of Eastern Slavonia of all ethnicities in this final phase of the transition of authority. The complete failure of the Croatian government to create a mechanism to resolve property ownership disputes and facilitate the return of displaced persons to their original homes creates a significant threat to peaceful reintegration in a region where as many as 70,000 displaced Serbs nervously await the return of some 80,000 displaced Croats. Tensions and hostilities remaining from the armed conflict run high on both the Croat and Serb sides. Already, there has been a light flow of Serbs leaving Eastern Slavonia for the Federal Republic of Yugoslavia and Serb-controlled areas of Bosnia and Hercegovina. Departing Serbs are increasingly plundering with near impunity property from non-Serbs, or from the abandoned homes of non-Serbs, and moving it to Serbia. Tensions have only been exacerbated by the Croatian government's generation of lists of suspected war criminals which serve to intimidate the Serb population. Nor has UNTAES helped matters by engaging in negotiations over the size of the "official" government list of suspects, raising more questions about the validity of the list. Under such circumstances, human rights violations will perpetuate a cycle of violence threatening stability in Eastern Slavonia and beyond. This policy paper addresses some of these central human rights issues in the final phase of the transition of authority in that region.

## RECOMMENDATIONS

### To the Croatian Government

- The Croatian government should create a detailed plan for the comprehensive resolution of property disputes and issues relating to the return of displaced persons and refugees, ensuring equal treatment of both Serbs and Croats. Failure to establish soon a comprehensive and detailed mechanism for resolving these issues will only serve to heighten tensions and hostilities as the elections approach.
- The Croatian government should also take more vigorous steps to protect Serbs living in the Krajina and to facilitate the voluntary return of Serbs from Eastern Slavonia and elsewhere to those areas. These steps should include the following:
  - annul the "Decree on the Temporary Take-Over and Administration of Certain Property" and reverse the *de facto* expropriations of Serbian property by the Croatian government since the law's adoption in September 1995;
  - amend the Reconstruction Law by removing the law's restriction on applicability only to destruction resulting from Serb and Montenegrin forces, so that displaced Serbs in Eastern Slavonia may also apply for reconstruction funds;
  - arrest, prosecute and punish all those responsible for crimes committed during and after "Operation Storm," including those committed in early 1997, particularly by members of the Croatian military and police force. Trials should be conducted in public according to due process norms;
  - likewise, arrest, prosecute and punish those responsible for crimes directed at intimidating or harassing Serbs or members of other ethnic minorities who choose to remain in Eastern Slavonia. Croatian authorities should respond quickly and firmly to all abuses, especially those committed by authorities including the police;
  - release immediately any detainee arrested for war crimes who has already been amnestied and against whom there is no credible evidence on which to base new charges. Croatia should hold accountable all those who have committed war crimes regardless of their ethnicity. However, unfounded charges of war crimes violations must not become a tool of intimidation and harassment.

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

- The OSCE should, as a matter of urgency, organize and deploy a post-UNTAES human rights monitoring mission. Such an OSCE endeavor, which can be established within the current mandate for the OSCE's monitoring effort in Croatia, must be deployed well in advance of the expiration of the UNTAES mandate in order to facilitate effective continuity in human rights monitoring.
- The OSCE should give its human rights monitors, at a minimum, the authority to:
  - receive complaints from any person or group;
  - interview persons, including detainees, freely and without interference;
  - travel freely and visit any site, including prisons and places of detention;
  - provide adequate protection for witnesses;

- raise specific cases with national and local authorities, as well as with the appropriate intergovernmental organizations (IGOs); and
- monitor and assist in investigations by law enforcement authorities and report on progress, obstacles and cases of non-cooperation by local and/or government authorities.
- The OSCE, at its highest levels, should condemn human rights violations and other breaches of OSCE documents;
- The OSCE should ensure an adequate budget and a staff with field experience in human rights monitoring and law enforcement. Field staff must be well briefed on the local situation in Eastern Slavonia and on the norms they will be upholding and should always receive intensive training upon arrival "*sur place*."

#### **To the United States Government and to Members of the European Union**

Croatia was admitted to the Council of Europe on November 7, 1996. Its admission had been prefaced in 1996 by two sets of undertakings that Croatia needed to honor in order to qualify for admission. The first was a twenty-one-point document signed by Croatia on March 15, 1996; the second was a list of fourteen conditions created by the Council of Europe's Parliamentary Assembly and Committee of Ministers in late May and early June 1996. Both sets of undertakings included the protection of the rights of Serbs and facilitation of the return of Serbs to the Krajina, with the March 15 document specifying also facilitation of the recovery of Serbs' property or compensation for the loss thereof. On October 30-31, 1995, the E.U. Council of Foreign Ministers declared: "The granting of reconstruction assistance to Croatia should be linked to the creation of real return options by the Croat government for the Serbs . . . and to strict respect for human and minority rights." The E.U. and the U.S. should hold the government of Croatia to these earlier pledges and make them express conditions for further aid, including some US \$1.2 billion in foreign aid Croatia is currently seeking for the reconstruction of Eastern Slavonia.

In addition, the E.U. and the U.S. should take the following steps to improve respect for the rule of law and human rights and to further reconstruction of infrastructure and the return of all displaced persons and refugees from Croatia:

- use economic and political leverage to urge President Tudjman and the Croatian government to end abuses in the Krajina and prevent abuses in Eastern Slavonia. Underscore that the failure to do so will adversely affect Croatia's full membership in regional military institutions, namely the Partnership for Peace, and future eligibility for reconstruction and economic aid;
- condition aid, including aid for the reconstruction of Eastern Slavonia, on the prompt creation of a comprehensive plan of property disputes and issues relating to the return of displaced persons and refugees that would give real meaning to the otherwise hollow declarations that displaced Serbs have the right to return to their homes or to remain in Eastern Slavonia;
- grant aid in a manner that facilitates the repatriation of persons displaced from various parts of Croatia, including Eastern Slavonia and the Krajina, and the rebuilding of homes and infrastructure ravaged by the war. However, such aid should be disbursed in a way that ensures that the monies are used proportionately to assist both displaced Serbs and Croats from Croatia; and
- monitor and assist the return of all persons to their homes in the former United Nations Protected Areas.

#### **To the United Nations Transitional Authority in Eastern Slavonia, Baranja and Western Sirmium (UNTAES)**

- The U.N.'s peacekeeping force in Eastern Slavonia should deploy a specific human rights monitoring component of UNTAES immediately, cooperating closely with other entities currently monitoring human rights in Eastern Slavonia including the United Nations Centre for Human Rights (UNCHR), Organization for

Security and Cooperation in Europe (OSCE), UNHCR, European Community Monitoring Mission (ECMM), International Committee of the Red Cross (ICRC), and nongovernmental organizations such as the Civil Rights Project and Oxfam. In addition, UNTAES should:

- emphasize the rule of law principles that must ultimately govern the validity of any list of war crimes suspects (e.g., the evidentiary bases for inclusion of suspects on a list), as well as any trials of these suspects. This entails emphasizing that anyone whose name appears on the list will be entitled to all due process protections in a fair trial before an independent and impartial tribunal, and that UNTAES and the international community will monitor these trials closely;
- refrain from demanding from the Croatian government a “final” list of Serbs suspected of committing war crimes, exclusion from which would guarantee that one has been amnestied. The indictment of persons suspected of being war criminals should be carried out on the basis of the sufficiency of evidence, rather than as the result of political negotiations. Only if the issue of persons suspected of being war criminals is addressed expressly under legal principles will the outcome of these proceedings have sufficient legitimacy to establish genuine finality; and
- ensure that the Transitional Police Force (TPF) and the UNTAES border monitors undertake stronger measures to stop the looting and theft of property by Serbs who are leaving or preparing to leave Eastern Slavonia. These measures should include increased patrols. It is critical that such measures be widely and vigorously implemented, as there is a significant danger that such looting will increase at the time of the elections and afterwards if the departure of Serbs from the region accelerates. Given that there have already been some threats from individual Serbs of widespread destruction of property before they leave the region, UNTAES must be prepared for the situation to worsen.

## BACKGROUND

Inter-ethnic tensions in Croatia, as in the former Yugoslavia, increased in the late 1980s and intensified after the Croatian elections in April and May 1990. The Croatian Democratic Union (HDZ) won a majority of seats in parliament and elected its leader, Franjo Tudjman, president of Croatia. With Tudjman's election, Croatian nationalism soared — mirroring a rising nationalism among Serbs living in Croatia who demanded political autonomy in areas of Croatia where they constituted a majority or a significant minority. In August 1990, Serbs declared an autonomous region in an area around the town of Knin and created their own government institutions. In October 1990, rebel Serb leaders declared the creation of the Serbian Autonomous Region of Krajina (Srpska Autonomna Oblast (SAO) Krajina, formerly referred to as the Community of Municipalities of Northern Dalmatia and Lika).

On March 16, 1991, the Serbian National Council (i.e., the parliament of the Knin-based SAO Krajina) declared Krajina's independence from Croatia. Meanwhile, tensions rose between Serb and Croat extremists in Eastern Slavonia, and armed conflict began in early May 1991, when rebel Serbs in Borovo Selo, north of the city of Vukovar, killed thirteen Croatian police officers who were seeking to rescue two other police officers taken hostage by the Serbs earlier. In June 1991, as Slovenia and Croatia declared their independence, militant Serbs launched offensives to establish control of the regions with a significant Serb population, including the eastern region of Croatia bordering Serbia across the Danube River — called Eastern Slavonia, and including parts of the counties of Baranja and Srijem. These areas were declared part of the Serbian Autonomous Region (SAO) of Eastern Slavonia, Baranja and Western Srem.<sup>1</sup> Serbian forces also assumed control over parts of Western Slavonia, eventually retaining control in and around

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<sup>1</sup>Baranja refers to the region in the north of Eastern Slavonia. The region of Srem (as Serbs spell it, or Srijem, as Croats spell it — UNTAES adopted in its title the Latin name for this region, Sirmium) straddles the Danube river and stretches over the south of Eastern Slavonia.

the town of Okučani. On December 19, 1991, Milan Babic, then president of the SAO Krajina, and Goran Hadzic, leader of the SAO Eastern Slavonia, Baranja and Western Srem, announced that the areas were being joined to form a single Serbian “state” in Croatia. In February 1992, the two areas officially declared their independence from Croatia and christened the new “state” the Republic of Serbian Krajina (Republika Srpska Krajina — RSK).

Throughout this period, the army of the Socialist Federal Republic of Yugoslavia (Jugoslavenska Narodna Armija — JNA) intervened ostensibly to separate Serbian troops and Croatian police forces, but such efforts supported Serbian forces and consolidated Serbian territorial gains. By September 1991, the JNA and Serbian paramilitary groups from Serbia were overtly coming to the military aid of rebel Serbian forces in Croatia. Intense fighting took place in Eastern Slavonia in late 1991. Between August and November 1991, Serbian forces from Serbia proper and the JNA jointly undertook the siege and destruction of Vukovar, a multi-ethnic city on the banks of the Danube and Eastern Slavonia’s largest city. Serbian forces eventually assumed control of over 30 percent of Croatia and systematically persecuted, imprisoned or expelled Croats, Hungarians and other non-Serbs living in areas they had captured. By late 1991, Serbs had established control over Eastern Slavonia, resulting in the expulsion of over 80,000 ethnic Croats from the region.<sup>2</sup> Many of these Croat displaced persons (or DPs) continue to live in temporary housing, including in centers for displaced persons and in many economy hotels in Osijek, Vinkovci, Zagreb and other Croatian cities.

This phase of the war in Croatia ended when the parties agreed to a peace plan after mediation by U.N. negotiator Cyrus Vance in late 1991 and early 1992. Under the plan, Yugoslav federal forces agreed to withdraw from the areas where Serbs had gained control, and U.N. forces (UNPROFOR) were stationed in those areas and charged with, among other things, protecting the non-Serb minority, disarming the Serb militias, protecting the Serbs from Croatian attack and overseeing the return of displaced Croats. Three areas came under UNPROFOR’s mandate: Sectors South and North, along the Croat-Bosnian border and including the towns of Glina and Knin; Sector West, around the town of Pakrac; and Sector East, comprising Eastern Slavonia. The UNPROFOR mission was initially authorized for twelve months but was renewed and extended seven times. The seventh renewal was agreed to on September 30, 1994, when the UNPROFOR mission was extended for an additional six months. In early 1995, however, the Croatian government stated that it would no longer agree to extend the mandate of UNPROFOR and that its presence in Croatia permitted the consolidation of rebel Serb territorial gains. Seemingly under pressure from the international community,<sup>3</sup> Croatian President Tudjman agreed to the maintenance of a smaller U.N. presence in Croatia with a revised mandate.

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<sup>2</sup>There is a wide range of estimates for the number of displaced persons from Eastern Slavonia. The Croatian government’s Office for Transitional Administration estimates that there are 80,000 to 90,000 displaced persons from Eastern Slavonia, 35,000 of whom live in Osijek. The Foreign Ministry claims that there are 96,000 non-Serbs displaced from Eastern Slavonia. “Foreign Ministry Statement on the Documents Program in the Danubian Region and on the Status of Serbs and Other Minorities in Croatia,” Zagreb, February 6, 1997.

<sup>3</sup>Some believe that the Croatian government never intended the U.N. withdrawal from the country and that its threats not to renew the U.N. mission’s mandate were aimed at redirecting international attention to the U.N.’s ineffectiveness in Croatia.

On February 4, 1995, the Security Council approved a new configuration for the U.N. mission in Croatia. Renamed the U.N. Confidence Restoration Operation (UNCRO), the new mission reduced U.N. troop presence in Croatia from 14,000 to 8,000. As suggested by the U.N. Security Council in February 1995, UNCRO's mandate was to include implementation of the aforementioned 1994 cease-fire accord and facilitate the implementation of an economic agreement between the Croatian and RSK authorities. The number of UNCRO troops was eventually reduced even further, but the details of its mandate were not set forth due to disagreements between the Croatian government and RSK forces.<sup>4</sup>

Such disputes became moot when the Croatian army launched offensives in May and August 1995 against Sector West and the Krajina (Sectors North and South), respectively, quickly retaking control of those regions and leaving Sector East (Eastern Slavonia) as the last of the Serb-held regions of Croatia. The military operations of 1995 resulted in the expulsion or departure of some 200,000 Serbs from those regions. Some 60-70,000 of these displaced persons went to Eastern Slavonia, with the rest going to Serbia, Kosovo, Serb-controlled areas of Bosnia-Herzegovina, or third countries.<sup>5</sup> After the August 1995 Krajina offensive, tensions rose as the Croatian army squared off against Serbian troops and JNA units in Eastern Slavonia. Fearing that another battlefield would open in Croatia and possibly involve the Yugoslav Army, the international community intervened to calm tensions in Eastern Slavonia and to resolve its status. Following talks co-chaired by Thorvald Stoltenberg, then U.N. negotiator for the former Yugoslavia, and Peter Galbraith, the U.S. ambassador to Croatia, RSK Serbs agreed, in principle, to return Eastern Slavonia to Croatian government control. For its part, the Croatian government agreed to a phased transfer of authority and to the maintenance of an international presence in the area during and after this transition period.

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<sup>4</sup>UNCRO was established by U.N. Security Council Resolution 981, March 31, 1995.

<sup>5</sup>There are no accurate data available for the number of displaced persons in Eastern Slavonia. UNTAES' working estimate is approximately 60,000 persons. Human Rights Watch/Helsinki interview, Vukovar, March 14, 1997.

The agreements were set forth in the Basic Agreement on the Region of Eastern Slavonia, Baranja and Sirmium (referred to as the Basic Agreement or the Erdut Agreement), signed November 12, 1995, in which the Croatian government and local Serb leaders agreed that Eastern Slavonia would return to Croat authority by January 15, 1997.<sup>6</sup> Among other things, the Basic Agreement called for demilitarization of the region, assured the rights of all persons to return to their original homes, assured the rights of those in Eastern Slavonia to remain, and provided for elections, a transitional police force, and human rights monitoring. The Security Council resolution approving the Erdut Agreement also created UNTAES, which would administer Eastern Slavonia with a military component (5,000 soldiers), as well as civilian police monitors, a transitional police force and civilian staff to handle election, refugee and other integration issues.<sup>7</sup> The Basic Agreement permitted an extension of the transition period, and on November 15, 1996, in response to a request by the local Serb community, the Security Council extended the transition period and UNTAES's mandate to July 15, 1997.<sup>8</sup> This resolution also raised the possibility of a reduced UNTAES presence which would remain after July 15, 1997 until January 15, 1998. More detailed plans for the implementation of the Basic Agreement were set forth in a Letter of Intent from the government of Croatia, dated January 13, 1997.<sup>9</sup> The Letter of Intent set forth general voter qualifications, provided for cultural and educational autonomy for Serbs and minorities and proportional representation in the police and the judiciary, set a two-year deferment from military service for Serbs, and assured that various senior government posts would go to Serbs.

Eastern Slavonia (Sector East) encompasses an area of 2,153 square kilometers with 159 settlements (i.e., including cities, towns, villages and hamlets). Prior to the conflict, it was a region of mixed ethnicity with Croats comprising the largest ethnic group, but including a significant Serb minority along with Hungarians, Slovaks and others. Of the 193,513 people who lived in the area at the time of the 1991 census, 86,096 or 44 percent were Croats, 67,567 or 35 percent were Serbs, and the 39,850 inhabitants who comprised the remaining 21 percent of the area's population were Hungarians, Slovaks, Ruthenians and others, including those who identified themselves as Yugoslavs. By the war's end, Eastern Slavonia had become majority Serb. Current population estimates range from 120,000 to 150,000, of which the significant majority are Serb.<sup>10</sup> Half of the Serb population have been living in Eastern Slavonia since prior to the war; the other half comprises Serbs displaced from the Krajina and other areas formerly controlled by Serbs.

## RESOLUTION OF PROPERTY DISPUTES AND THE RIGHT TO RETURN

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<sup>6</sup>For further background on the events leading to the signing of the Basic Agreement, see Human Rights Watch/Helsinki, "Croatia: Impunity For Abuses Committed During Operation Storm and the Denial of the Right of Refugees to Return to the Krajina," *A Human Rights Watch Short Report*, vol. 8, no. 13(D), August 1996, p. 40-42.

<sup>7</sup>U.N. Security Council Resolution 1037, January 15, 1996.

<sup>8</sup>U.N. Security Council Resolution 1079, November 15, 1996.

<sup>9</sup>Letter Dated 13 January 1997 from the Permanent Representative of Croatia to the United Nations Addressed to the President of the Security Council, attaching the Letter from the Government of the Republic of Croatia on the completion of the peaceful reintegration of the region under the Transitional Administration, Republic of Croatia, January 13, 1997, S/1997/27.

<sup>10</sup>There is no accurate data available for the total number of people in Eastern Slavonia or for the number of original residents who remain in Eastern Slavonia. The Croatian government estimates that there are 88,000 ethnic Serbs in Eastern Slavonia. "Foreign Ministry Statement on the Documents Program in the Danubian Region and on the Status of Serbs and Other Minorities in Croatia," Zagreb, February 6, 1997. (To arrive at a total population, one would have to add also the total number of non-Serbs currently living in the region.) Others suggest considerably higher numbers for the current population of Serbs in Eastern Slavonia. See, e.g., Jonathan Randal, "Last Serb Outpost in Croatia Is Skeptical Reintegration Will Succeed," *Washington Post*, February 11, 1997 (120,000 Serbs currently in Eastern Slavonia, of which half are displaced).



The resolution of disputes over property ownership and occupation in Eastern Slavonia is intimately linked to the resolution of such disputes throughout the former Yugoslavia. Fighting over the past five years has led to several waves of expulsions that have a direct impact on Eastern Slavonia. The Serbs in Eastern Slavonia most vulnerable to housing disputes are those who have already been displaced once, during and after the Croatian military offensives of May and August 1995 in the former Sector West and the Krajina, respectively. For many of these Serbs, return to their original homes has been difficult, if not impossible. Many of their homes have been destroyed or are now occupied by Croats displaced from other regions in Croatia and also from Bosnia-Herzegovina and the Federal Republic of Yugoslavia (FRY). For many of these displaced Croats, in turn, return to their original homes outside of Croatia is impossible because their houses too have been destroyed, or are now occupied by Bosnian Serbs.

Perhaps the most significant threat to the peaceful reintegration of Eastern Slavonia will be disputes over property ownership and the inability of displaced persons to return to their homes. Fundamentally, the issue may be summarized as follows — what will be the result when a family of displaced Croats returns to their home in Eastern Slavonia and finds that it is currently occupied by a family of displaced Serbs? Many representatives of the Croatian government, international organizations and NGOs recognize that the resolution of these issues is essential for a peaceful transfer of authority. Yet, only days before the elections, the legal regime governing these issues remains unclear. Despite Croatia's obligations under the Basic Agreement to protect the rights of all persons to return to their original homes, Croatian laws governing property issues arising from the conflict and subsequent population movements are either vague about their applicability to Eastern Slavonia or, in conjunction with government actions, clearly operate against a comprehensive solution by making it more difficult for displaced Serbs to return to their original homes, or otherwise dispose of their property.

A comprehensive review of relevant laws is beyond the scope of this report; however, a brief analysis of a few laws illustrates the extent to which these laws have exacerbated the problem. The Law on the Temporary Takeover and Administration of Specified Property exemplifies some of the legal hurdles facing displaced Serbs seeking to regain their homes following the 1995 offensives. Passed in September 1995, this law places all homes and other property abandoned by their owners in the Krajina (among other places) in the "temporary administration" of the Republic of Croatia.<sup>11</sup> Under the law, temporary possession and usage of the property can be given to Croats, including displaced persons and refugees as well as families of killed or missing Croatian soldiers.<sup>12</sup> The law prohibits the sale or other disposition of the property by the owner once it has passed into government administration.<sup>13</sup> As passed in September 1995, the law permitted owners ninety days to "return to Croatia" and file a claim on their property in order to retain possession. For nearly all persons to whom the law applied, return to Croatia for filing such a claim by December 27, 1995 was impossible.<sup>14</sup> The law was eventually amended to remove the time limit for filing a claim. The law also calls

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<sup>11</sup>The law applies to houses in territory that had "formerly been . . . occupied, and are now . . . liberated" and that are owned by persons who "left the Republic of Croatia after August 17, 1990 or are staying in either the occupied areas of the Republic of Croatia or in the Federal Republic of Yugoslavia, or in occupied areas of the Republic of Bosnia-Herzegovina." The law also applies to unoccupied property anywhere in Croatia that is owned by citizens of FRY. Law on the Temporary Takeover and Administration of Specified Property, article 2, *Narodne Novine*, No. 73, September 27, 1995.

For further analysis of the Law on the Temporary Takeover and Administration of Specified Property, see Human Rights Watch/Helsinki, "Croatia: Impunity For Abuses Committed During 'Operation Storm,'" p. 27-28.

<sup>12</sup>The law dictates that the property may be given to: "displaced persons and refugees, returnees from abroad whose property was damaged or destroyed in the Patriotic War, invalids of the Patriotic War, families of killed or missing Croatian soldiers of the Patriotic War, as well as other citizens performing duties necessary for the security, renewal and development of the formerly occupied region." Law on the Temporary Takeover and Administration of Specified Property, article 5.

<sup>13</sup>Law on the Temporary Takeover and Administration of Specified Property, article 8.

<sup>14</sup>Thousands of Serbs who had applied during that time for return to Croatia at the Croatian liaison office in Belgrade or the Croatian embassy in Budapest faced unnecessary obstacles and delays regarding receipt of Croatian citizenship papers, or their entry into Croatia was obstructed by Croatian authorities at the Croatian-Hungarian border. Under such circumstances, it was

for municipalities and towns to create commissions that would implement the law and handle property claims. However, according to the U.N. Centre for Human Rights, as of early March 1997, not a single case brought before these property commissions had resulted in the Serb owner regaining possession of a property.<sup>15</sup> Even if the original owner were to win his case before a local housing commission, provisions of the law prohibit evictions of temporary residents until alternate accommodations can be found,<sup>16</sup> a protection also provided by other legislation (see below).

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unrealistic to expect Serbs from the Krajina to return to their homes in Croatia in ninety days. Human Rights Watch/Helsinki, "Croatia: Impunity for Abuses Committed During 'Operation Storm,'" p. 28. The ninety-day period was already an extension over a prior version that permitted only thirty days.

<sup>15</sup>Human Rights Watch/Helsinki interview, U.N. Centre for Human Rights, Zagreb, March 4, 1997. Those cases in which returnees have been able to reclaim occupied property were resolved through private negotiations, including property exchanges.

<sup>16</sup>Law on the Temporary Takeover and Administration of Specified Property, article 11.

The Law on the Temporary Takeover and Administration of Specified Property does not provide a time limit for how long such property may be occupied by a temporary resident. That issue is addressed in another law, the 1996 Law on Territories Under the Special Care of the State, which grants temporary residency to abandoned property for up to ten years. After ten years, the temporary occupant may obtain full ownership rights. The law does provide the original owner the opportunity to reclaim his or her property. However, in order to do so, the owner must go to the records office where the property is located, posing a significant obstacle. The 1993 Law on the Status of Displaced Persons and Refugees creates an additional hurdle to the recovery of such property. A 1995 amendment to that law prohibits the eviction of displaced persons and refugees from their temporary accommodations “until the conditions for their return are fulfilled, or until, with their consent, another appropriate lodging is provided in the place of their accommodation.”<sup>17</sup> As noted below, other elements of this 1995 amendment may mean that similar protections do not apply to many ethnic Serbs. Other laws that benefit displaced persons also appear to exclude the displaced Serbs in Eastern Slavonia from their application. For example, the 1996 Reconstruction Act states as its basic purpose the reconstruction of areas of the Republic of Croatia “which have been temporarily occupied during the war waged against the Republic of Croatia, or which have been exposed to destruction and consequences of aggressive acts of Serb and Montenegrin military and paramilitary forces.”<sup>18</sup> As the displaced Serbs’ arrival in Eastern Slavonia was triggered by Croatian military offensives, the Reconstruction Act would not apply to them.

Faced with this tangled skein of legislation, both Serb and Croat DPs have little idea what will happen with property disputes in Eastern Slavonia. As a result, Croat DPs in Osijek are determined to return to their houses, but do not know when they will be permitted to do so. Similarly, Serb DPs who are evaluating whether they should remain in Croatia have no idea how much time they have to make this decision, although several told Human Rights Watch/Helsinki that they believed Croats would be able to return to claim their houses — many currently occupied by the displaced Serbs — once elections are held. Mirko Tankosic, deputy head of the Croatian government’s Office for Transitional Administration, told Human Rights Watch/Helsinki in mid-March that there was still no schedule governing when Croats would be permitted to return or when Serb DPs would have to leave their current houses, stating only that he expected that population movements would not occur until after the elections, by which time the Croatian government would have promulgated its proposal for property and return issues (see below).<sup>19</sup> Serb DPs regularly receive telephone calls (or even visits, in some areas) from the original owners of the houses in which they are living demanding that they leave immediately. In the absence of a system for resolving these issues, Serb DPs have no recourse and expect the worst — eviction from their current houses after the elections. As long as return to their own homes remains difficult, such fears encourage Serbs to leave Eastern Slavonia.

### **A Comprehensive Solution**

In late February 1997, UNHCR and UNTAES drafted and sent to the Croatian government for comment a “start-up and recovery package” — essentially a draft proposal for a comprehensive resolution of property and return issues in Croatia. Among other things, the proposal recommends the creation of a property commission (modeled on the property commission currently operating in Bosnia and Hercegovina) and a “land bank” which would facilitate the exchange of real estate.<sup>20</sup> According to the Croatian government’s Office for Transitional Administration, the Croatian government has objected to many aspects of this proposal, and has promised UNHCR that it would offer its own detailed and complete proposal for a comprehensive resolution of property issues by late March.<sup>21</sup> No such detailed proposal had been announced as of the printing of this report.

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<sup>17</sup>Emphasis added.

<sup>18</sup>Reconstruction Act, article 1, March 15, 1996.

<sup>19</sup>Human Rights Watch/Helsinki interview, Osijek, March 14, 1997.

<sup>20</sup>Human Rights Watch/Helsinki reviewed a draft of the start-up and recovery package dated January 27, 1997.

<sup>21</sup>Human Rights Watch/Helsinki interview, Osijek, March 14, 1997.

After responding to UNHCR's start-up and recovery package, the Croatian government announced on March 25, 1997 that it intends to focus on a two-way return program, meaning the voluntary return of displaced Serbs to the Krajina and Sector West and the return of Croat DPs to Eastern Slavonia.<sup>22</sup> While such declarations are welcome, they do not advance beyond the commitments the Croatian government made in the Basic Agreement and serve to avoid creating the detailed mechanism for the resolution of property ownership and return that is already long overdue.

The government's plan to create a two-way return program is doomed to fail if it does not sufficiently address the Krajina side of the equation — the problems of Serb houses in the Krajina that are currently occupied by Croat DPs from Bosnia and the Federal Republic of Yugoslavia (Kosovo and Vojvodina). Even as the government makes promises to the international community regarding the return of Serbs to Krajina and Sector West, it is enticing ethnic Croats to settle in these same areas. For example, the government has passed several laws permitting ethnic Croats from outside Croatia to obtain temporary residential rights for empty houses in that area.<sup>23</sup> Human Rights Watch/Helsinki does not dispute the obligation of the Croatian government to meet the needs of refugees and displaced persons. However, adopting these particular arrangements makes it more difficult for displaced Serbs to return to homes in those areas and may well force them to leave Croatia for Serbia or Serb-controlled areas of Bosnia. This could, in turn, lead to further expulsions of non-Serbs in areas of Bosnia where they settle.

Property and housing disputes will be among the most serious issues arising from the transfer of authority in Eastern Slavonia. Nevertheless, only days before the elections are scheduled to take place, there is no plan in place for the resolution of such disputes. Failure of the Croatian government to clarify the framework for resolving these issues has unnecessarily fueled tensions and convinced many Serbs that their only option is to leave Eastern Slavonia. Disputes over property issues in the future could endanger stability in the region especially after UNTAES leaves, as returning Croats may seek to evict those displaced Serbs who have chosen to stay.

A comprehensive solution to resolving issues of property ownership and returns will undoubtedly require financial assistance from the international community. Human Rights Watch/Helsinki calls on the U.S. government and members of the E.U. to provide aid to enable Croatia to resolve these issues. However, such aid should be given with the condition that it be disbursed in a way that ensures that the monies are used proportionately to assist both displaced Serbs and Croats from Croatia.

## **The Right to Return**

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<sup>22</sup>UNTAES Press Release, "Transitional Administrator Jacques Paul Klein and Madame Sadako Ogata, UN High Commissioner for Refugees Meet with President Tudjman to Discuss Displaced Persons," March 21, 1997.

<sup>23</sup>Law on the Temporary Takeover and Administration of Specified Property; Law on Property Under Special Government Care, *Narodne Novine*, No. 44, June 5, 1996.

The right of displaced persons to return to their homes, an issue closely linked to the resolution of property disputes and central to the Basic Agreement, is addressed several times in the Basic Agreement. Paragraph 4 states that the “Transitional Administration shall ensure the possibility for the return of refugees and displaced persons to their homes of origin.” Furthermore, paragraph 7 states that all “persons have the *right to return* freely to their place of residence *in the region* and to live there in conditions of security. All persons who have left the region or who have come to the region with previous permanent residence in Croatia have the *right to live in the region*.”<sup>24</sup> This latter provision grants both Croats who have left the region as well as Croatian Serbs who have moved into the region the right to live there. However, it also specifies that those who have fled the region (mostly Croats) have a right to return, without specifying a complementary right of Serb DPs currently living in Eastern Slavonia to return to their homes in areas outside of Eastern Slavonia, such as the Krajina. Paragraph 4 of the Basic Agreement provides that all refugees and DPs have the right to return to their homes. However, paragraph 4 assigns implementation of that right to UNTAES, rather than the Croatian government. Assigning this obligation to an entity other than (and not expressly in addition to) the government of Croatia creates a problem in itself, as the obligation for resolving the issue of returns must ultimately lie with the government of Croatia. This problem is compounded by the fact that UNTAES does not have the mandated jurisdiction (and, therefore, the means) to ensure return in safety and dignity to areas outside of the region. This flaw in the Basic Agreement has provoked serious uncertainty over the possibility of return for all displaced persons.

The link between the right to return and the resolution of property disputes is addressed directly in article 14(2) of Croatia’s 1993 Law on the Status of Displaced Persons and Refugees, amended in 1995: “All procedures regarding coercive removal of displaced persons shall be suspended until the conditions for their return are fulfilled, or until, with their consent, another appropriate lodging is provided in the place of their accommodation, or some other place.”<sup>25</sup> The apparent reassurances in this law are, however, seriously undermined by other portions of that law. A fundamental problem lies with the law’s temporal restriction. Article 2 of the June 1995 Amendment to the 1993 Law on the Status of Displaced Persons and Refugees, limits application of Article 14(2)’s protection from eviction only to those who were already settled into temporary accommodations by March 1, 1995. This time restriction essentially excludes displaced Serbs in Eastern Slavonia from this protection since the vast majority of them arrived in the region after the Croatian army’s May and August military offensives.

In the March 1997 issue of the *UNTAES Bulletin*, with only a month to go before elections, Mr. Klein and other unnamed senior U.N. officials could only cobble together a vague reply to questions from the Serbs in Eastern Slavonia regarding the return of displaced persons:

The return of displaced persons is not an issue over which UNTAES has full responsibility. But, in cooperation with UNHCR, UNTAES is working on a whole programme of reconstruction, compensation, and returns. This programme addresses both the issues of those who want to return home, and alternatives for those who are not able to return to their original homes.<sup>26</sup>

Displaced Serbs in Eastern Slavonia must make a decision whether to stay or take their families out of the region on the basis of just such vague, aspirational statements.

### ***Protection Concerns***

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<sup>24</sup>Emphasis added.

<sup>25</sup>Law on the Status of Refugees, *Narodne Novine*, No. 96, October 25, 1993, as amended, *Narodne Novine*, No. 39, June 9, 1995.

<sup>26</sup>*UNTAES Bulletin*, No. 28, march 1997.

Even when displaced Serbs have returned to their original homes, they have faced serious threats to their security. Groups of Serbs who have gone through UNTAES and UNHCR programs to visit their former homes in the Krajina have faced hostility from their neighbors and local officials, discouraging many from carrying through with thoughts of return. On March 26, 1997, the day after the Croatian government announced its accord on a two-way return, the first ethnic Serb family to return from Eastern Slavonia to their original home in the town of Kistanje, near Knin, was evicted within hours of arrival by a crowd of Croats.<sup>27</sup> As the family was leaving, representatives of the local housing commission asked them to sign a document saying that they were leaving voluntarily, which they refused to do.

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<sup>27</sup>"Returning Serbs Evicted from Croatia Home," Reuters, March 26, 1997; Human Rights Watch/Helsinki telephone interview with UNHCR, Vukovar, April 3, 1997.

On the whole, however, there have not been many incidents of abuse against Serbs returning from Eastern Slavonia for the simple reason that relatively few have returned — and the majority of the returnees have gone back to relatively good return conditions, mostly to the former Sector West. As of mid-March 1997, approximately 450 Serbs had returned to the Krajina and Sector West from Eastern Slavonia under United Nations administered programs.<sup>28</sup> Most of these returns were to family, friends, or to houses that were unoccupied and mostly intact.

Until early March 1997, returns had been conducted by both UNHCR and UNTAES Civil Affairs with only loose coordination. Since then, UNHCR and UNTAES have begun meeting more regularly in order to coordinate returns more closely. UNTAES told Human Rights Watch/Helsinki that the monitoring of returns will be conducted by a host of international organizations including ECMM, OSCE and UNHCR.

While Human Rights Watch/Helsinki welcomes the involvement of all organizations in the monitoring and protection of the human rights of returnees, we urge UNHCR to exercise its lead role in monitoring and other protection functions relating to Serbs who have returned to regions outside Eastern Slavonia. Such a role would be consistent with the U.N. secretary-general's recommendation that UNHCR operate as the lead agency in the "coordinat[ion] and control" of voluntary return of displaced persons and refugees.<sup>29</sup> With its institutional expertise and experience, as well as its network of protection officers in areas such as the Krajina, UNHCR would be the most appropriate agency for supervising the protection of returnees.

Ultimately, of course, the responsibility for protection of Croatian citizens lies with the government of Croatia. In addition to the Kistanje eviction (see above), the following examples illustrate the questions that have arisen about the willingness and ability of local Croatian government officials to implement the national government's pledges regarding displaced persons' right to return. The first involves a UNHCR pilot return project from the Baranja triangle region in the northwestern area of Eastern Slavonia. This pilot project envisioned the return of four displaced families (three Serb and one Muslim) from their temporary accommodations in the village of Novi Bezdán to their original homes — the original homes for three of the families were in Tvrdjavica, a suburb north of Osijek (just outside Eastern Slavonia), and for one displaced Serb man, in Petrinja (Sector West). The pilot project sought to encourage and facilitate return other than for family reunion. As described below, the project has run into significant difficulties and has stalled.

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<sup>28</sup>These returns have been carried out by both UNHCR and UNTAES. Human Rights Watch/Helsinki interview with UNTAES, Eastern Slavonia, March 14, 1997. There have also been spontaneous returns of Serbs to Krajina and Western Slavonia from Eastern Slavonia, as well as from outside Croatia.

<sup>29</sup>Secretary-General's report of December 13, 1995, paragraph 16, S/1995/1028.

The principal obstacle to return for the Baranja triangle families has been hostility from original neighbors of the DPs as well as from local authorities. At a meeting on February 12, 1997 between the DPs and residents and officials of Tvrdjavica, three men in Croatian army uniforms verbally abused and otherwise threatened the prospective returnees, and neighbors also made their hostility plain. In March, these neighbors told Human Rights Watch/Helsinki they still strongly opposed the return of the Serb families.<sup>30</sup> Such difficulties have, in turn, highlighted the problems with alternatives to return, including compensation for lost property. The Basic Agreement expressly provided for compensation for lost property.<sup>31</sup> However, many NGO and IGO workers believe that Croatia simply does not have enough money to offer sufficient compensation. And, in fact, by early March, Human Rights Watch/Helsinki learned from interviews with two of the four families that they had given up entirely on the possibility of return, only to find negotiations with the Croatian government deadlocked on the issue of the amount of compensation.<sup>32</sup>

Events in the village of Nijemci set a grim precedent for return and property issues. On November 1, 1996, UNTAES pulled back the zone of separation in the southern area of Sector East, shifting the border to the bridge linking the northern and southern halves of Nijemci. Croatian citizens were given access to the area south of the bridge, including several villages. Transitional Police Force (TPF) patrols and UNTAES Civilian Police monitoring was to continue; Croatian police are not yet permitted to enter the newly opened region. In response to the border shift, over 130 of the approximately 150 Serbs living in Nijemci fled, most of them to other villages in Eastern Slavonia. In early March, only seventeen Serbs remained behind. Several of the Serbs living and working in a small café near the bridge have received frequent threatening phone calls from Croats, and an article from a local newspaper urging Croats to boycott the café was posted on their front door. More seriously, the Serbs have faced harassment from officers of the Croatian special police force who, as noted above, are not supposed to be in the region.<sup>33</sup> In one of the most serious of these incidents, on the evening of December 10, 1996, two armed, uniformed officers of the Croatian special police force and a plainclothes police officer threatened and attempted to assault a young Serb man and an UNTAES Civilian Police officer from the United States. The following night, three plainclothes officers of the Croatian special police force again threatened and harassed the Serbs living there, including displaying their weapons and threatening to force the young Serb man to convert to Catholicism and change his name. Several Croat TPF members from other towns in Eastern Slavonia either stood by idly or took part in the harassment, later helping the special forces officers to flee the scene. (In these incidents, the Serb TPF members or a UNTAES Civilian Police monitor left the scene to seek assistance from other TPF officers and UNTAES Civilian Police monitors, as well as from soldiers of the Jordanian battalion stationed in the town. Each time, the offenders left before assistance arrived.) In response to protests from UNTAES, the Croatian special police force officers were allegedly transferred to posts in another area.<sup>34</sup> As the

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<sup>30</sup>Human Rights Watch/Helsinki interviews, Tvrdjavica, March 9, 1997. The neighbors claimed that these Serb neighbors should be held responsible for the shelling of Tvrdjavica in 1991 and for the deaths of Tvrdjavica residents killed during the war. Even while acknowledging that one of the Serb families had fled after the son had been shot while delivering newspapers, these neighbors stressed that these Serbs who had fled had later taken up arms on behalf of the Serbs rebels against the people of Tvrdjavica, making it impossible for them now to view the Serbs as potential neighbors. Other neighbors stated that the Serbs could return if they wanted to — but they should not expect any of their neighbors to ever talk to or interact with them. Several persons emphasized that there had been ethnic Serbs who had remained behind and fought on the side of the Croatian government.

<sup>31</sup>Basic Agreement, paragraph 8: “All persons shall have the right to have restored to them any property that was taken from them by unlawful acts or that they were forced to abandon and to just compensation for property that cannot be restored to them.” Basic Agreement, paragraph 9: “The right to recover property, to receive compensation for property that cannot be returned and to receive assistance in reconstruction of damaged property shall be equally available to all persons without regard to ethnicity.”

<sup>32</sup>Human Rights Watch/Helsinki interviews, Novi Bezdán, March 9, 1997. These families complained that the compensation offered, 240 deutschemarks per square meter, is insufficient.

<sup>33</sup>Human Rights Watch/Helsinki interviews, Nijemci, March 9 and 15, 1997.

<sup>34</sup>However, the Serb woman who operates the café told Human Rights Watch/Helsinki that the policemen who had



problems with returns discussed above make it clear that, if a comprehensive return program is to be successful, the government must take concrete, detailed steps to ensure that vigilante and terrorist acts by extremists on both sides do not frustrate the right of both Croats and Serbs to return to their original homes.

### ***Serb Exodus***

As Serbs in Eastern Slavonia face increasing pressure to leave the region, the basic question of where they can live gains increasing urgency. Between June 1996 and January 1997, some 650 Serb households left the region, while 450 households left in the first ten days of February 1997.<sup>35</sup> UNTAES has reported that as many as 2,000 Serb families left in all of February.<sup>36</sup> There are, however, no accurate counts of the number of Serbs who have left the region. UNTAES estimates are based on tabulations from brief conversations by border monitors with Serbs who are leaving. However, some of the Serbs, including those who have moved much of their furniture to Serbia in case they have to flee in earnest after the transition of authority, then return to Eastern Slavonia — so that they can adopt the wait-and-see approach UNTAES has called for. These border tabulations also omit statistics of Serbs who may leave the region through points other than the legal border crossings.<sup>37</sup> Nevertheless, the statistics appear to indicate an increase in the rate of exodus.

Most of the Serbs crossing the border points with their belongings have noted Vojvodina as their destination. However, an increasing number of Serbs are entering Republika Srpska, around Bosanska Gradiska and Banja Luka and in Brcko. It is not clear what sorts of arrangements Republika Srpska has made to accommodate the incoming Serbs.<sup>38</sup> However, in the February session of the Republika Srpska Assembly, a statement was issued welcoming Serbs leaving Eastern Slavonia for Bosnia. If critical issues including property and the right to return remain unresolved, more Serbs are likely to leave. As local Serb leaders in the town of Baranjsko Petrovo Selo (near the Hungarian border) told UNTAES, without answers to these fundamental questions, all the people in the town will have no choice but to leave. Several Serbs that Human Rights Watch/Helsinki spoke to said that without any idea of what their housing options are, they could not in good conscience keep their families in Eastern Slavonia.<sup>39</sup> The Croatian government's failure to offer a comprehensive solution to property and return issues is, *de facto*, compelling Serbs to leave the region.

By complying with the Croatian government's desire to hold elections while permitting these issues to remain unanswered, the international community risks unwittingly playing a role in a future Serb exodus. Furthermore, a massive exodus would not only represent a tragedy for Eastern Slavonia but would merely shift the possibility of conflict into Bosnia. If the international community is serious about protection of human rights in Eastern Slavonia and throughout the region, it must pressure Croatia to resolve these issues of property ownership and return quickly and, in the meantime, to assure the displaced Serb population that they will not face eviction until they are able to return to their original homes or can move into acceptable, alternative housing. If alternative housing is to be provided, the Croatian government must nonetheless facilitate the ultimate return home for displaced persons if that is what they choose.

## WAR CRIMES SUSPECTS AND APPLICATION OF THE AMNESTY

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<sup>35</sup>Reuters, February 17, 1997.

<sup>36</sup>Human Rights Watch/Helsinki interview with UNTAES, Vukovar, February 27, 1997. As with most statistics in Eastern Slavonia, figures for the number of departures vary widely. According to records of UNTAES border monitors, 1,599 families left the region for FRY during February 1 - 21, 1997, with 540 families leaving between, and including, June 1996 and January 1997. Mr. Klein stated in an interview with *Vjesnik* that 972 families departed in all of February 1997. *Vjesnik*, March 18, 1997, p. 3.

<sup>37</sup>The major border crossings are located at Batina, Erdut, Ilok and Tovarnik.

<sup>38</sup>There have been several reports of meetings between Republika Srpska leaders and representatives of Serbs from Eastern Slavonia.

<sup>39</sup>Human Rights Watch/Helsinki interviews, Eastern Slavonia, March 6-7, 1997

## Lists of War Crimes Suspects

Since the hostilities in 1991, the Ministry of Justice of the Croatian government has maintained lists of suspected Serb war criminals, numbering as many as 3,000 at one point. These “official” lists have frequently been criticized for inaccuracies and uncertainties. To add to the confusion, other “unofficial” lists of war criminals and suspects have been prepared (and occasionally published) by nongovernmental organizations and by the press. As late as February 1997, a Vinkovci newspaper published a list of suspected war criminals including 1,200 names. At the same time, the Croatian government has passed several laws granting amnesty for those who engaged in certain acts relating to the war in 1991 and thereafter. The most recent of these laws is the Law on General Amnesty passed on September 20, 1996 in response to pressure from the international community. This most comprehensive of the three laws grants amnesties all those who committed “criminal acts during the aggression, armed rebellion or armed conflicts, in or relating to the aggression, armed rebellion or armed conflicts in the Republic of Croatia . . . during the period from 17 August 1990 to 23 August 1996.”<sup>40</sup> The law expressly excludes those who have committed “flagrant violations of humanitarian law having the character of war crimes.”<sup>41</sup> The passage of the law was followed by the circulation of a list of ninety-six persons who were then in detention on charges of armed rebellion.

After promulgation of the amnesty law, the Croatian government continued to retain a list of 311 war crimes suspects. This list too was criticized for inaccuracies and errors.<sup>42</sup> The existence of this list of war crimes suspects has weighed heavily on the Serb Executive Council (the assembly of the Eastern Slavonia Serb leadership) and on the minds of many Serbs in Eastern Slavonia who must decide whether to remain in Croatia. As a result, Transitional Administrator Jacques Paul Klein requested the Croatian government to produce a smaller list, with those who are not on the list being de facto amnestied. In March 1997, Mr. Klein received a new list of 150 names which he passed on to the Serb Executive Council, which, in turn, notified those on the list. This list contains the names of those who have been convicted *in absentia* for crimes against international humanitarian law, those who have been indicted for such crimes, and those who are otherwise suspected of having committed such crimes.<sup>43</sup>

The negotiations over the lists and amnesty laws raise several fundamental human rights concerns. First, throughout negotiation over the size of the list, the standards for inclusion on the war crimes list were never made clear. Even now, after the list has been given to Mr. Klein, the grounds for inclusion on the list remain unclear, especially for those who have not already been indicted or tried *in absentia*. An effective safeguard would be for Croatia to refer war crimes indictments to the International Criminal Tribunal for the former Yugoslavia (ICTY) for prior review. Some have argued that Croatia is already obligated to do so under the Agreed Measures, pursuant to the Rome Statement (the Rome Agreement), which states that

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<sup>40</sup>Law on General Amnesty, September 20, 1996. The Law on General Amnesty expressly repeals the two previous amnesty acts — the 1992 Amnesty Act Applicable to the Perpetrators of Criminal Acts Committed in the Armed Conflicts and War against the Republic of Croatia, *Narodne Novine*, No. 58, 1992, and the 1996 Amnesty Act Applicable to the Perpetrators of Criminal Acts Committed in the Temporarily Occupied Areas of Vukovar-Sirmium and Osijek-Baranja, *Narodne Novine*, No. 43, 1996..

<sup>41</sup>Law on General Amnesty, article 3. Article 3 specifies, as flagrant violations, crimes described in articles 119 through 137 of the Basic Penal Code of the Republic of Croatia, including acts of genocide and crimes against civilians and prisoners of war.

<sup>42</sup>Criticisms include allegations that the list included names of persons already dead.

<sup>43</sup>“Amnesty,” *UNTAES Bulletin*, No. 28, March 1997.

Persons, other than those already indicted by the International Tribunal, may be arrested and detained for serious violations of international humanitarian law only pursuant to a previously issued order, warrant, or indictment that has been reviewed and deemed consistent with international legal standards by the International Tribunal.<sup>44</sup>

Designed to prevent the misuse of arrests of alleged war criminals solely to harass certain ethnic groups, the review of indictments and arrest warrants by the ICTY would have enhanced the legitimacy of war crimes prosecutions in Croatia.

Croatia has argued that it is not bound by the Rome Agreement, on grounds that the Rome Agreement, which does in fact address issues pertaining to Bosnia, cannot create any obligations for Croatia. But even if Croatia were not bound by that agreement, a review by the ICTY would still function as an important means of allaying concerns of bias in Croatian war crimes trials and bolster confidence in their results. Human Rights Watch/Helsinki calls on UNTAES to emphasize that such rights must be observed in any trials of these suspects. In order to ensure that due process protections are observed, Human Rights Watch/Helsinki also calls on the international community systematically to monitor the trials.

UNTAES's insistence that the government of Croatia provide a "final" list of suspects also raises serious human rights concerns.<sup>45</sup> If those who commit war crimes are to be held accountable for their crimes, it is unclear in what sense any list of suspects provided by the Croatian government can be considered final. If sound legal principles are to govern the indictment and trial of suspected war criminals, the Croatian government must indict those against whom sufficient evidence of such crimes is gathered, regardless of whether this evidence comes to light before or after a "final" list is prepared. Indeed, several Croats, including relatives of those who were killed or "disappeared" during and after the siege of Vukovar told Human Rights Watch/Helsinki of their discomfort over what they perceived to be private negotiations between UNTAES and the Croatian government regarding the length of the list of suspects.<sup>46</sup> They feared such negotiations might result in the removal of war crimes suspects from the list, as a matter of political expediency, rather than through a judicial process that would have determined the absence of an evidentiary basis for prosecution.

Human Rights Watch/Helsinki recognizes, of course, that the list of suspected war criminals has powerful political force: it intimidates Serbs in Eastern Slavonia while appeasing Croats who have lost family members in that region. Given the political nature of the list, UNTAES may have felt compelled, as the administrative body of the region, to address it in a political context. However, entering into (or appearing to enter into) negotiations over who will or will not be prosecuted for war crimes, politicizes a process that should be subjected solely to legal considerations. These negotiations run the risk of compromising not only UNTAES's credibility but also the legitimacy of any future proceedings against suspects, as there will be suspicions that some Serbs were dropped as suspects in a political "deal" engineered by UNTAES. At the least, the controversy and negotiations over the number of names on the list has distracted attention from the fundamental rights to due process and fair trial.

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<sup>44</sup>The Rome Statement reflecting the work of the Joint Civilian Commission Sarajevo Compliance Conference, February 18, 1997.

<sup>45</sup>In fact, UNTAES Legal Unit officials told Human Rights Watch/Helsinki that because of deepening confusion and unsatisfactory features surrounding such a "final" list, UNTAES had concluded it was best not to press for such a list. Human Rights Watch/Helsinki interview, Vukovar, April 4, 1997. Nevertheless, numerous press articles have reported Mr. Klein's insistence on a final list, and UNTAES itself in its official public information bulletin printed an interview in which Mr. Klein called for a final list, exclusion from which would indicate an amnesty: "Now, we have asked the Croatian Government for a final list very soon and before the elections. The list should have those names who, we believe, would possibly be indicted by the War Crimes Tribunal at The Hague if there was enough evidence. By that definition, everyone else is automatically amnestied." "Elections announced for 13 April: an interview with TA Jacques Klein," *UNTAES Bulletin*, No. 25, February 1997.

<sup>46</sup>Human Rights Watch/Helsinki interviews, Zagreb, February 23, 1997.

The list, in the meanwhile, continues to raise more questions than it answers. Only in early March 1997 did it become clear that the list comprises only those who face indictments in the courts of Osijek and Vinkovci. As a result, Serb DP's in Eastern Slavonia who are not included on the "final" list may still be indicted on charges relating to serious violations of humanitarian law for acts carried out in other jurisdictions, such as those of Knin and Sisak.

### **Application of the Amnesty: *Non bis in idem***

The application of the amnesty has also raised some concerns as a result of the re-arrest of at least twenty-seven of the ninety-six persons who were granted amnesty. Each of these twenty-seven was reportedly released in accordance with the 1996 Law on General Amnesty and then immediately arrested again accused of war crimes. As of mid-March 1997, three of the twenty-seven had been re-released, while the others remained in detention pending investigation.<sup>47</sup>

The re-arrests raise concerns over whether additional charges may result in a violation of the principle of international law, *non bis in idem*, or double jeopardy.<sup>48</sup> This legal principle does not prohibit the trial of a defendant for a different crime arising from the same set of circumstances<sup>49</sup>; however, any new and different charge arising from the same facts as the original charge must be observed closely to ensure that there is credible evidence for the new charge and that it is not different in name only. While it is impossible to assess the grounds for these re-arrests before the completion of investigations and the filing of charges, Human Rights Watch/Helsinki urges the international community to follow these cases closely and calls on the Croatian government to release promptly those detainees against whom there is no credible evidence on which to base new charges. As with the war crimes suspects discussed above, Human Rights Watch/Helsinki believes the Croatian authorities should seek prior review by the ICTY of indictments and calls on the international community to monitor the trials of those among the twenty-four against whom charges are filed.

## **IRREGULARITIES IN THE ISSUANCE OF CROATIAN DOCUMENTS**

Under the terms of the Croatian government's Letter of Intent, "members of the local Serb community, as well as all other Croatian citizens, are eligible for local elections if they were resident at the time of the 1991 census" in Eastern Slavonia. In addition, Croatian Serbs who settled in Eastern Slavonia prior to January 15, 1996 have the option of voting either in their present voting districts or in the voting districts where they resided in 1991. Those who arrived in the region after the cut-off will be able to receive documents and vote in their place of prior residence. By giving the right to vote to all such persons, the Croatian government gives full effect to the Basic Agreement's guarantee that displaced Croatian Serbs living in the region will enjoy the same rights as all other residents of the region. The April 13 elections cannot be deemed free and fair unless all eligible voters who seek to exercise their right to vote are able to do so.

In order to be entered onto voter registers, one must first obtain the Croatian citizenship document (*domovnica*) as well as an identity card (*osobna iskaznica*). Twenty-one documentation centers throughout Eastern Slavonia process applications for these documents. To ensure that all eligible voters have the proper documents, the Croatian government has, among other things, agreed to respond to all applications for the citizenship and ID documents within

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<sup>47</sup>Croatian law permits detention of suspects without charges for a total of sixty days (a thirty day period that is renewable once) before authorities must either press charges or release the suspect.

<sup>48</sup>"No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country." International Covenant on Civil and Political Rights, article 14(7). See also The Statute of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia Since 1991, article 10; Draft Statute of the International Criminal Court, article 42, in Report of the International Law Commission on the Work of its Forty-Sixth Session, A/49/355, September 1, 1994.

<sup>49</sup>See Commentary on article 42 of the draft Statute of the International Criminal Court in Report of the International Law Commission (46th Session), 1994, General Assembly 49th Session, Supplement No. 10, A/49/10.

seven days, an expedited processing period. However, in mid-March, mere weeks before the elections, irregularities in the issuance of these documents were raising concerns that not all eligible voters seeking the documents would receive them in time for the elections, if at all. Among problems noted by international organizations working in the region, including NGOs, are the following: the issuance of documents to all but a few members of a family, inconsistencies in requirements for documentation of identity and residence in the region, and unexplained delays in the issuance of documents. Human Rights Watch/Helsinki urges the Croatian government to undertake all measures to issue documents and correct previous inconsistencies in sufficient time so that those who are eligible may participate in the April 13 elections. Human Rights Watch/Helsinki also calls on the Croatian government to continue the expedited issuance of documents after the elections to all eligible persons. Such documents are fundamental to enjoying the full rights of citizenship in the Republic of Croatia as well as to receiving benefits as displaced persons, and are thus critical to the peaceful reintegration of Eastern Slavonia. An UNTAES election official also told Human Rights Watch/Helsinki of harassment by extremist Serbs in one town in Eastern Slavonia directed against other Serbs who seek Croatian documents, rendering it impossible for those Serbs to apply for documents at the relevant documentation center. UNTAES must be able to protect those who wish to apply for documents if the elections are to be deemed free and fair.

### **HUMAN RIGHTS VIOLATIONS IN EASTERN SLAVONIA**

For many of the non-Serb, as well as some of the Serb, civilians who remained in Eastern Slavonia after Serbs seized control of the region in 1991, the past five and one-half years have been a period of relentless fear of abuse and humiliation at the hands of Serb authorities and civilians. On the whole, non-Serbs living in Eastern Slavonia still remained, in mid-March 1997, fearful and hesitant to talk in detail about the conditions under which they had lived since 1991. Nevertheless, certain aspects of life during this period are evident.

In many areas, Serb leaders forced mostly non-Serbs into labor gangs that worked primarily to dig trenches near front-line positions. The use of labor gangs seem to have ceased before the arrival of UNTAES. Former members of these labor gangs who were interviewed by Human Rights Watch/Helsinki reported that they were not paid for their work and were poorly fed and clothed, even during winter. In some towns, men were taken away from their families for up to three months at a time to dig trenches and carry munitions in these labor gangs; in other towns, the men were permitted to return to their home each night. While Human Rights Watch/Helsinki did not hear allegations that these labor gangs were forced to work in combat areas, we did hear that they regularly worked near the front lines. In 1993, three persons on their way to digging trenches at front lines near the town of Ilok were killed and six were wounded when their transport tractor ran over an anti-tank mine.<sup>50</sup> In at least one town, even men in their sixties were pressed into these gangs.<sup>51</sup>

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<sup>50</sup>Human Rights Watch/Helsinki interviews, Eastern Slavonia, March 1997.

<sup>51</sup>Human Rights Watch/Helsinki interview, Eastern Slavonia, March 1997.

While Human Rights Watch/Helsinki was told that only men were forced into these labor gangs, many civilians, especially older non-Serb women who were living alone, were forced to accept Serb “boarders” into their houses. These women were then forced to cook and clean for the boarders, without pay.<sup>52</sup> The boarders were typically displaced Serbs from the Krajina and Sector West.

Non-Serbs were regularly beaten and had their property stolen. Several people alluded to more serious abuses, such as killings and rapes, but were too fearful to discuss them in detail. In general, non-Serbs who opposed Serb rule of the region expressed hope that the period of occupation was coming to an end, but also expressed sharp awareness that they remained extremely vulnerable to such abuses during the period leading up to the transition of authority.

This historical context is important to understanding the significance of the steady movement of property from the region into Serbia. Serbs who are planning to leave Eastern Slavonia have been moving furniture, farming equipment and houses out of Eastern Slavonia — including materials not belonging to them. Even in early 1997, there were numerous reports of trucks leaving Eastern Slavonia loaded with materials, much of them plundered from the houses of displaced Croats. The events of the past five years make it all the more important that UNTAES prevent this final round of abuse against non-Serbs in the region, and also prevent the additional resentment and hostility that would be generated among Croats inside and outside the region at a time when a spirit of reconciliation will be critical.

UNTAES Civilian Police monitors report that TPF has arrested looters in some instances, such as those involved in the plunder and attempted removal of factory equipment and the removal of the fruits of illegal logging. Such actions are to be applauded. However, trucks continue to pass daily through the UNTAES-monitored border checkpoints with material, much of it allegedly looted. UNTAES acknowledges that looting is going on but argues that there is little that can be done. Each truck loaded with property passing through the checkpoints must produce a “title” document issued by municipal authorities which lists the property that is being taken across the border. However, this document is essentially a rubber-stamp, requiring only two witnesses to state that the items listed on the document belong to the person claiming them. There is no means or attempt to ascertain title to any of the property. Once this document is shown to TPF and UNTAES border monitors, the holder of the document is free to take his shipment into Vojvodina. When Human Rights Watch/Helsinki went to the Erdut border crossing, a truck with a large trailer passed through without even cursory inspection by either TPF or the border monitor; the driver needed only to show the UNTAES border monitor’s translator the title document to cross. In this particular case, the border monitor tried to justify his cursory review of the shipment by saying to Human Rights Watch/Helsinki that the truck driver was making a partial move, although we had already spoken to the driver and learned that he was moving permanently to Serbia.<sup>53</sup>

At other crossings, Human Rights Watch/Helsinki did encounter UNTAES border monitors who were significantly more engaged in their task. In Ilok, for example, border monitors were gathering considerably more data about those leaving the region, including asking the reasons why they were leaving. While many of these questions elicited only brief, formulaic responses, the more detailed approach also produced some detailed answers, including in one case the names of persons who the departing family believed were behind the telephoned threats that ultimately convinced them they would not be safe after the transition of authority.

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<sup>52</sup>For these women, leaving their house was not an acceptable option as that would effectively mean losing their house.

<sup>53</sup>The statistics tabulated at this particular checkpoint provided for one line of information for each departure, including the notation whether the move was partial (the owner had not yet fully decided to leave Eastern Slavonia) or full (the owner was leaving the region).

It is crucial that UNTAES make greater efforts to stop looting as the transition process continues. Otherwise, all of Eastern Slavonia may face the problems that arose during the transfer of authority of the suburbs of Sarajevo in February and March 1996, such as the widespread destruction of houses.<sup>54</sup> In some regions of Eastern Slavonia, individual Serbs are already threatening to wage a scorched-earth campaign when they leave the region. As a practical matter, the looting of property with impunity also increases the anger and resentment among displaced Croats who are waiting to return and are well aware that little will be left by the time they arrive.

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### *Human Rights Watch/Helsinki*

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<sup>54</sup>See "Bosnia-Herzegovina: A Failure in the Making — Human Rights and the Dayton Agreement," *A Human Rights Watch Short Report*, vol. 8, no. 8, June 1996.