

# CROATIA

## SECOND CLASS CITIZENS: THE SERBS OF CROATIA

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### Frequently Used Abbreviations

APN	Agency to Mediate in Transactions of Specified Real Estate
ECMM	European Commission Monitoring Mission
EU	European Union
FRY	Federal Republic of Yugoslavia (Serbia and Montenegro)
ICTY	International Criminal Tribunal for the Former Yugoslavia
JNA	Yugoslav People's Army
LTTO	Law on Temporary Takeover and Administration of Specified Property
NATO	North Atlantic Treaty Organization
NGO	non-governmental organization
OSCE	Organization for Security and Cooperation in Europe
ODPR	Croatian Office for Displaced Persons and Refugees
RSK	"Republika Srpska Krajina"
SDF	Serb Democratic Forum
SFRJ	Socialist Federal Republic of Yugoslavia
TPF	Transitional Police Force
UN	United Nations
UNDP	United Nations Development Program
UNHCR	United Nations High Commissioner for Refugees
UNPSG	United Nations Police Support Group
UNTAES	United Nations Transitional Administration for Eastern Slavonia, Baranja and Western Sirmium

## SUMMARY

On January 15, 1998, the United Nations transferred authority over Eastern Slavonia, Baranja and Western Sirmium (hereafter, Eastern Slavonia) to the Croatian government, bringing the last remaining Serb-held territory of Croatia back under Croatian control. United Nations Transitional Authority (UNTAES) had been tasked with the peaceful reintegration of the region, including the return of displaced Croats to Eastern Slavonia and displaced Serbs to other parts of Croatia. At the start of the UNTAES mandate, the region was home to some 127,000 Serbs, including around 55,000 displaced persons. Fewer than 60,000 Serbs remain in the region today. Even taking into account the return of between 17,000 and 21,000 displaced Serbs to their areas of origin elsewhere in Croatia, tens of thousands of Serbs have left the region since 1996. This silent exodus of the region's Serbs calls into question the success of the UNTAES mission beyond peaceful reintegration of the territory. More importantly, the continued flight of Serbs from the region illustrates one of Croatia's most pressing human rights problems: the poor treatment of its Serb minority.

Despite positive developments in terms of the repeal of some discriminatory legislation, and a generally stable security situation, Serbs remain second class citizens in Croatia. They are frequently unable to exercise the most basic rights: to live in their own homes, to receive pensions and social security benefits after a lifetime of work, to be recognized as citizens in the country of their birth, and in many cases, to return to and live freely in Croatia. As a result of discriminatory laws, and above all discriminatory practices, Croatian Serbs do not enjoy their civil rights as Croatian citizens. This is particularly true for Serbs living in the four former United Nations Protected Areas (UNPAs) in Eastern Slavonia and Western Slavonia, the Krajina, and Banija-Kordun (former Sector North), which formed the self-declared "Republika Srpska Krajina," and which are the focus of this report.

Serbs face many forms of discrimination in the area of housing. Displaced Serbs occupying Croat-owned housing in Eastern Slavonia face harassment and court evictions so that Croats can return to their homes, while in pre-war Serb majority areas, courts and administrative bodies refuse to remove current Croat occupants from Serb homes. Evicted Serb displaced persons are housed in collective centers or remote villages while they wait to return to their homes, but local authorities and administrative bodies argue that they cannot remove Croat occupants from Serb homes because there is "no alternative accommodation." Displaced and refugee Serbs who fled their homes have been stripped of tenancy rights by war-time legislation that leaves them no right to appeal, while some courts have accepted tenancy-right claims by Croats who fled their homes in similar circumstances. Under international pressure to address the legacy of a housing law that granted temporary use of Serb-owned homes to Croat refugees and displaced persons, Croatia has established housing commissions designed to allow Serbs to return to their homes. In practice, however, these commissions have made little progress in restoring homes to Serbs, even in cases where the current occupants are illegal or occupy multiple properties. Legislation governing the distribution of government reconstruction assistance sets a conditions for eligibility that de facto exclude Serbs, despite the fact that thousands of Serb homes were damaged or destroyed as a result of the war.

Measures designed to build confidence among Croatia's Serbs have been inadequately implemented. Some Croatian Serb refugees and displaced persons who lack citizenship have had their naturalization applications rejected on highly subjective grounds or simply because they fled their registered residence during the past five years. Those whose naturalization petitions are successful must pay an excessively high fee to become citizens. Ethnic Croats are exempt from the fee. Thousands of Serbs who supported the breakaway from Croatia have been amnestied for "participating in armed rebellion," but little effort has been made to inform those who have been amnestied. Some domestic prosecutions for war crimes have also caused concerns about fairness among international monitors. At the same time, a law allowing war-time Serb documents to be recognized by Croatian authorities has been only partly implemented, leaving the pension status of elderly Croatian Serbs who retired after 1991 unclear. A committee charged with promoting trust and reconciliation has made little progress, and many of its local subgroups do not function.

The treatment of Serbs inside Croatia continues to have a powerful impact on refugee flows in the region, especially for the more than 300,000 Croatian Serbs living as refugees outside the country. Since 1996, almost as many Serbs have fled Croatia have returned. In large part, this situation can be directly attributed to the discriminatory

treatment both of Serbs who remained in Croatia during the war, and those who fled and have since returned. The everyday difficulties associated with obtaining documentation, pensions and social assistance, the fact that many Serb homes are occupied or destroyed, security concerns in several districts, and fear of arrest on false war crimes charges make refugees unwilling to risk the uncertainties associated with return, especially as time passes and Serb refugees become more integrated in Serbia and Bosnia. Despite new mechanisms for return established during 1998, the process of applying for travel documents and receiving official clearance also remains lengthy and complex for many refugees, and Croatian consulates in Serbia and Bosnia seem unable to cope with demand.

Croatia's Serb population has been the subject of considerable international attention since the beginning of the UNTAES mandate in 1996. In addition to the U.N. administration of Eastern Slavonia, a mission of the Organization for Security and Cooperation in Europe (OSCE) has been deployed throughout the country since 1996. The presence of these large international missions, and pressure from the European Union and United States, led Croatia to conclude a wide range of agreements to respect the rights of Serbs, and to facilitate the return of Serb refugees and displaced persons, as well as measures designed to build confidence between Croatia's Serbs and Croats. Unfortunately, these agreements frequently have an ambiguous legal status and contradict existing legislation that remains in force, leading to uneven implementation by Croatian authorities. In addition, too much of the focus of international efforts has been placed on the return of refugees, without sufficient attention being given to the domestic factors which cause Serbs to leave and inhibit returns.

Time is running out for Serbs in Croatia. Most of those refugees who have returned so far have been elderly. Unless more confidence can be built among working-age Croatian Serb refugees that they have a real future in Croatia, many will prefer to remain in Serbia and in Bosnia's Republika Srpska. Mechanisms for return demand attention, especially where they relate to housing, but more attention must be given to the domestic situation of Serbs who are currently living in Croatia. The treatment of Serbs in Croatia is a major factor in any refugee's decision whether to return, and in the decision of long-term Serb residents in Eastern Slavonia whether or not to stay. As long as Serbs remain second-class citizens in Croatia, many will decide that they have no future there.

## RECOMMENDATIONS

### **To the Government of Croatia:**

#### ***Police and Security***

- Ensure that police seriously investigate harassment and abuse against Serbs and respond promptly to requests for assistance during illegal evictions;
- Establish a mechanism in the Ministry of Justice to investigate allegations of police abuse against civilians;

#### ***Legislative Changes***

- Enact legislation revoking all temporary occupancy decisions issued under the Law on Temporary Takeover and Administration of Specified Property;
- Repeal the Law on Areas of Special State Concern, which disproportionately benefits Croat refugee and displaced occupants and adversely impacts Serb property owners who fled their homes;
- Repeal discriminatory articles of the Reconstruction Act to ensure that Serbs are not substantially excluded from obtaining reconstruction assistance. In particular, its scope should be broadened to cover all property damaged or destroyed in connection with the conflict;

#### ***Housing***

- Create a national register of alternative accommodation and define precisely what constitutes acceptable alternative accommodation;

- Empower the Office for Displaced Persons and Refugees (ODPR) to dismiss housing commission members, including presidents, who obstruct the functioning of the property restitution mechanisms under the Program for Return;
- Designate a senior government minister as the focal point on tenancy rights and begin serious consultations with the Serb National Council and the Article 11 Commission on an equitable solution to lost tenancy rights throughout Croatia;

#### ***Citizenship and Documentation***

- Amend the citizenship law in line with the European Convention on Nationality to simplify acquisition of citizenship by long-term non-Croat residents of Croatia;
- Abolish the fee for naturalization for non-Croats;
- Simplify the procedure for return so that persons with documentation indicating residence in Croatia prior to 1991 will automatically be eligible for immediate issuance of travel letters (*putni list*);
- Ensure that adequate resources are made available to the Ministry of Foreign Affairs for Croatian consulates to function effectively in Bosnia and Hercegovina and the Federal Republic of Yugoslavia. In particular, increase the number of consular days in Banja Luka and Subotica;

#### ***Amnesty Law and War Crimes***

- Inform all persons who have been amnestied directly that they have been so amnestied, indicating whether or not they nevertheless retain a criminal conviction;
- Amend the instruction forbidding contact between court officials and international representatives in order to facilitate international monitoring of war crimes hearings and trials;
- Cooperate fully with the International Criminal Tribunal for the Former Yugoslavia (ICTY), including on cases involving Croatian citizens and members of the Croatian army; and
- Submit all new war crimes indictments to the ICTY for review prior to making the indictments public or issuing arrest warrants.

#### **To the International Community:**

- Support a continued OSCE presence in Croatia until such time as satisfactory progress toward the mission's mandate has been made;
- Ensure that all personnel seconded to the OSCE Mission to Croatia have an appropriate background in at least one of the following areas: human rights, refugee policy, international relations, regional expertise in the former Yugoslavia, international peace operations. Arrange for thematic and regional briefings for secondees prior to deployment; and
- Provide sufficient resources for the UNHCR mission in Croatia to continue its protection and assistance for returnees.

#### **To the Organization for Security and Cooperation in Europe Mission to Croatia:**

- Focus implementation efforts on the parliamentary repeal of existing discriminatory legislation and the implementation of existing agreements, rather than proposing new measures to facilitate implementation;

- Cease to regard the issuance of government decrees and instructions as conclusive indicators of progress until concrete progress toward their implementation has been observed;
- Issue comprehensive monthly public statements on Croatian compliance with international and domestic commitments in terms of actual performance;
- Designate human rights officers within field offices and introduce standardized human rights reporting systems into field offices and coordination centers; and
- Ensure adequate training of personnel in field monitoring, basic human rights law, refugee policy, the Croatian legal and political system, and internal and external reporting mechanisms.

**To the United Nations High Commissioner for Refugees:**

- Maintain current program of protection and assistance to returnees in Croatia.

**To the United States Government:**

- Continue to condition support for Croatian membership in the NATO Partnership for Peace program on the return of refugees and equal treatment for minorities.

**To the European Union:**

- Continue to condition full cooperation and partnership under the PHARE program on the return of refugees and equal treatment of minorities as outlined in the E.U.'s "regional approach" policy; and
- Continue to condition negotiation of a Trade Agreement with Croatia on the return of refugees and equal treatment of minorities as outlined in the E.U.'s "regional approach" policy.

**To the Council of Europe:**

- Maintain the Council of Europe Parliamentary Assembly monitoring procedure on Croatia until there has been substantial compliance with all membership commitments.

**To the United Nations Commission on Human Rights:**

- Retain Croatia in the mandate of the special rapporteur for the territory of the Former Yugoslavia; and
- Include monitoring of domestic war crimes prosecutions and application of the Amnesty Law in Croatia in the mandate of the special rapporteur for the territory of the Former Yugoslavia.

## **BACKGROUND**

As elsewhere in the territory of the Socialist Federal Republic of Yugoslavia (SFRJ), Croatia's transition to democracy and independence at the turn of the decade was fomented by nationalism. The country's majority population overwhelmingly voted in the first openly contested elections for the nationalist Croatian Democratic Union (HDZ) and its leader, Franjo Tudjman, for president. Many saw the collapse of the SFRJ as an opportunity to attain autonomy from Belgrade and what they viewed as Serb hegemony. Serbs occupied a disproportionate number of state posts throughout the SFRJ, including in Croatia, and dominated the Yugoslav People's Army (JNA). By contrast, Croatia's Serb minority viewed the nationalism that accompanied the Croatian independence movement with alarm, recalling Croatia's prior incarnation as a fascist puppet state during the second world war, and the thousands of Serbs, Jews, and Roma who had died in the Jasenovac concentration camp.

Croatian Serbs began to assert the desire for autonomy within a still-Yugoslav Croatia in 1990. In September 1990, Croatian Serbs proclaimed the Serbian Autonomous Region of Krajina (Srpska Autonomna Oblast Krajina). In

March 1991, the region's National Council declared Krajina's independence from Croatia. The assertion of Croatian Serb autonomy grew during the spring, as Serbs in Western Slavonia declared loyalty to the Serbian Autonomous Region of Krajina. Provocations by Croat nationalists in the area of Eastern Slavonia, Baranja and Western Sirmium (hereafter Eastern Slavonia) led to clashes between Serb rebels and Croatian police, including a Serb ambush that left a dozen police dead, shifting Croatian public opinion strongly against the Serbs.

Croatia's declaration of independence in June 1991 saw the beginning of a major military offensive by rebel Serb forces; with the support of the JNA, they gained control over parts of Western Slavonia and Eastern Slavonia and eventually declared the unified territory to be a single state, the "Republika Srpska Krajina." Heavy fighting in Eastern Slavonia in the last quarter of 1991 reduced Vukovar to rubble and led to the expulsion of over 80,000 ethnic Croats from the region. Vukovar was also the scene of grave violations of humanitarian law against Croat civilians, including the removal and murder of more than 200 patients from the town's hospital. By 1992, a peace plan had been agreed upon under the auspices of the United Nations, the JNA had withdrawn, and U.N. peacekeepers deployed in the areas under Serb control (the U.N. Protection Force or UNPROFOR) were charged both with the protection of Serb civilians and with facilitating the return of displaced Croats. The areas under U.N. protection were divided into four sectors, East (Eastern Slavonia), West (parts of Western Slavonia around the town of Pakrac), and sectors North and South, a contiguous area encompassing parts of the Banija-Kordun and Krajina regions, including Knin.

In early 1995, the Croatian government indicated that it was unwilling to permit further extensions to UNPROFOR's mandate in Croatia. A compromise mission with a more limited mandate and reduced troop strength was authorized in February by the Security Council and accepted by Croatia. Its deployment was effectively ended in May when the Croatian army launched an offensive against Serb-held territory in Western Slavonia ("Operation Flash") recapturing the territory. A similar action in sectors North and South ("Operation Storm") in August recaptured the remaining areas outside Eastern Slavonia. The two operations led to the flight of more than 200,000 Serbs into Eastern Slavonia, Bosnia, and Croatia, the single largest population displacement during the conflict in the former Yugoslavia. In the case of Operation Storm, the exodus was accompanied by the killings of Serb civilians and widespread arson and dynamiting of Serb housing.<sup>1</sup>

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<sup>1</sup> 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.

The threat of further conflict in Eastern Slavonia was averted by an agreement between the Croatian government and the Serb leadership in the region, brokered by the U.N. and the U.S. Under the November 1995 Basic Agreement on the Region of Eastern Slavonia, Baranja, and Sirmium (known as the Erdut agreement after the border town in which it was signed), the region would be demilitarized and placed under United Nations temporary administration pending its return to Croatian government control by January 1997, with the possibility of an extension for one year should either party demand it. The agreement allowed for the return of displaced persons, the right of the displaced to remain, respect for human rights, the creation of a transitional police force, and the holding of elections under the United Nations Transitional Authority for Eastern Slavonia (UNTAES). The mandate was later renewed until January 1998 at the request of the Serb leadership in the region. In June 1997, the Organization for Security and Cooperation in Europe (OSCE) decided to extend the mandate of its Croatia mission (deployed since mid-1996) to include facilitating the return of refugees and displaced persons, and minority rights protection, and to deploy a substantial field presence throughout the former U.N. sectors. An additional accord, the Operational Agreement on Return (generally referred to as the "Joint Working Group Agreement"), designed to facilitate the return of displaced Serbs in the region to their former homes elsewhere in Croatia, was concluded in April 1997.<sup>2</sup> After the expiration of the UNTAES mandate in January 1998, all Croatian territory was brought under government control. A small U.N. police monitoring mission remained in Eastern Slavonia until October 1998, when it was replaced by police monitors from the OSCE mission, which retains a substantial presence in the country.

Croatia is party to a full range of human rights obligations through its constitution and its membership in the Council of Europe, notably through ratification of the European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights), and its Additional Protocols 1, 2, 4, 7 and 11.<sup>3</sup> Croatia has also ratified the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination Against Women, and the Convention Against Torture.

## SECURITY

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<sup>2</sup> The Joint Working Group, which concluded the agreement, consisted of representatives from the government of Croatia, UNTAES and UNHCR.

<sup>3</sup> In connection to its membership in the Council of Europe, Croatia has also ratified the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, the European Convention for the Protection of National Minorities, and the European Charter for Regional or National Minority Languages, and has signed Additional Protocol 6 of the European Convention on Human Rights.

The insecurity that characterized the wartime and the immediate post-war period in Croatia has greatly diminished in most areas.<sup>4</sup> In the words of Milorad Pupovac, a member of the Croatian parliament (*Sabor*) and president of the Serb National Council, the “atmosphere is improving [and the] security situation is stable,” a view shared by most international observers and NGOs.<sup>5</sup> Nevertheless, security incidents are a matter of concern, particularly from the perspective of return, because in the words of the director of the Croatian Helsinki Committee “one concrete case sends shock waves through the entire community.”<sup>6</sup> Serbs, local NGOs, and international representatives interviewed by Human Rights Watch indicated that the response by police to incidents of abuse against Serbs is often inadequate (see section of standards of policing, below). Incidents fall into two categories depending on location.<sup>7</sup> In Eastern Slavonia, most incidents are so-called “soft evictions,” where Croat returnee owners attempt to pressure the Serb displaced who are occupants of their property to leave. According to the European Community Monitoring Mission (ECMM) office in the region, most of the fifty cases of intimidation reported on average each month in Eastern Slavonia are housing related.<sup>8</sup> In the Krajina and the Banija-Kordun area, incidents are generally the result of friction between Serb returnees and the Bosnian Croat refugees resettled by the Croatian authorities in the region (many of whom are now naturalized Croatian citizens).<sup>9</sup> Incidents during 1998 included the placing of mine booby-traps in and around reconstructed housing for Serb returnees, as well as periodic cases of arson and dynamiting of unoccupied Serb housing.

### **“Soft Evictions” in Eastern Slavonia**

According to the 1997 Operational Agreement on Return, displaced Serbs occupying Croat property in Eastern Slavonia can only be removed from it once alternative accommodation is found for them.<sup>10</sup> Many Croat returnee owners, reluctant to wait for such a procedure or to take the matter to court, have resorted to pressuring the current occupants into departing. While the repossession of property by owners is not itself illegal, harassment and intimidation of occupants is both a contravention of Croatian law and the legal guarantees under the Operational Agreement on Return. Yet available evidence suggests that police in Eastern Slavonia frequently fail to protect such displaced Serb occupants while they are still resident. The case of a Serb man displaced from Osijek who was forced out of his residence in Beli Manastir by the owner is illustrative. The man, who is unable to return to his home in Osijek because a displaced Croat is living in it, was first visited on January 8, 1998, by the owner of his current residence, accompanied by police and representatives from the municipal authorities, and told that he had fifteen days to leave the house, despite the fact that no eviction order had been issued by the court. The man described what followed:

On February 2 [1998], the owner came to get his hunting weapon and equipment without a court order [to enter the property]. Afterwards pressure and threats started. On May 19, I was attacked by weapons at 11.20 p.m. Windows were broken [shots were fired through them]...The owner of the house pulled my shirt and threatened me...The [owner] filed [a suit] with the court that I had left for Novi Sad and taken their things [property].<sup>11</sup>

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<sup>4</sup> For details regarding post-war insecurity, including murders and “disappearances,” see Human Rights Watch/Helsinki, “Croatia: Impunity for Abuses.”

<sup>5</sup> Human Rights Watch interview with Milorad Pupovac, Zagreb, July 19, 1998.

<sup>6</sup> Human Rights Watch interview with Bojan Munjin, Croatian Helsinki Committee, Zagreb, July 16, 1998.

<sup>7</sup> As noted above, this report focus on the four former United Nations Protected Areas (UNPAs) in Eastern Slavonia and Western Slavonia, the Krajina and Banija-Kordun (former Sector North). The reason for this focus is two-fold: prior to the war, these four areas were home to more than two-thirds of the Serb population of Croatia, and are hence the natural target of any attempt at large scale return of Serb refugees. In addition, while there are Serb populations elsewhere in Croatia, persons who remained in other areas tend to be much better integrated, particularly through marriage and, in some cases, religious conversion.

<sup>8</sup> Human Rights Watch interview with representative from ECMM Coordination Center Vukovar, Vukovar, July 21, 1998. The U.N. Police Support Group estimates that 75 percent of all incidents in Eastern Slavonia relate to property disputes.

<sup>9</sup> Human Rights Watch does not wish in any way to make light of the very difficult humanitarian situation faced by many Bosnian Croat refugees inside Croatia.

<sup>10</sup> Most Serbs are ineligible for protection against non-consensual eviction under the Law on the Status of Displaced Persons and Refugees, following an 1995 amendment to the law.

<sup>11</sup> Human Rights Watch interview, Beli Manastir, July 23, 1998. The interviewee wishes to remain anonymous.

When asked if he had reported the incidents to the police, the man replied “the police don’t do anything.” The resident moved out of the house on June 22, 1998 on the condition that the charges of removing the owner’s property be dropped. He is currently living in temporary accommodation, and his claim to reoccupy his property in Osijek is pending in the courts. In another case, Dragica Žunić, a Serb woman from Osijek, and her husband were violently assaulted by the Croat who had held the tenancy-right to the house in Beli Manastir that the Žunić family was occupying. The court in Osijek determined that Mr. and Mrs. Žunić had lost tenancy rights on their Osijek apartment since they were absent from the apartment for more than six months without justification. Following several heated exchanges of words between Mr. and Mrs. Žunić and the former tenancy-right holder, matters became violent. According to Mrs. Žunić:

On July 1, at 5 p.m. the father and son [the former tenancy-right holder] came here. They said they were going to stay here....They took the phone violently from my husband’s hand...but when I left I called the police from a neighbor’s house...when I returned I saw the ex-tenant taking the chairs. I asked him not to take the chairs until the police came. At that moment he hit me on the back with a chair and tried to hit me again. My husband was hit on the back with a chair. The father was yelling things about my mother and saying “I am going to slaughter you right now.” He was holding a knife fifteen centimeters from my neck...he cut my hand [with the knife]...My husband was lying on the ground. The son was beating his body....The police came at 5:30 p.m. when we had been beaten up and were covered in blood.<sup>12</sup>

The police took the two attackers into custody, but released them at 11 p.m. the same evening. Mrs. Žunić told Human Rights Watch that the police filed a misdemeanor charge and that the public prosecutor filed criminal charges against the men. She and her husband moved to Republika Srpska on August 1, 1998. Mrs. Žunić had lived in Osijek for twenty-five years, and her husband for forty-five years.

### **Harassment and Intimidation in Krajina**

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<sup>12</sup> Human Rights Watch interview with Dragica Žunić, Beli Manastir, July 23, 1998.

Tension between Bosnian Croat refugees and Serb returnees and “remainees” seems to lie at the heart of the security problems in the Krajina.<sup>13</sup> This is borne out by the location of incidents: problems are rare in areas with a homogenous population, uncommon in mixed communities of Croatian Croats and Serbs, and greatest in areas of mixed Bosnian Croat-Serb populations. “Whenever there is no new [i.e. refugee] population, there [are] no problem[s] other than humanitarian issues,” according to a Knin-based UNHCR official.<sup>14</sup> Serbs residents and local NGOs told Human Rights Watch that relations between Serbs and the domiciled Croat population tend to be good. The object of much of the harassment appears to be to prevent the large scale return of Serbs to the region, and in some cases to persuade returnee and “remainee” Serbs to leave. As in Eastern Slavonia, Serbs complain that the police fail to follow up reports of security problems against Serbs.

The case of an elderly Serb woman in the town of Knin provides a good example of the difficulties faced by some returnees. The woman, whose husband died eight years ago, fled to Nova Pazova, near Belgrade during the war and returned to Knin in May 1998. She told Human Rights Watch that when she returned she found that her house had been looted, along with building materials for an almost completed second house. The woman attempted to clean up the house so that she could move back in and moved in some furniture. But she claims that the Bosnian Croat refugees who occupy nearby houses have frustrated her efforts to clean and repair the house, destroying and removing furniture and fixtures, as well as harassing her in order to prevent her moving back into the property.

On July 31, 1998, Human Rights Watch accompanied the woman to the property, which she had not visited for several days. The house was in very poor condition, lacking windows, doors, and any kind of fixtures and fittings. Two new mattresses still in their original plastic covering had been slashed repeatedly. One bed had fresh, possibly human, excrement on the top. Curses and threats were written on the walls (possibly in excrement), including “bitch” (kujo) and “do not come back here alive” (prdo stara ne vračaj se živa). The woman explained that incidents with the neighbors frequently occurred during her visits to the house:

I used to visit the house every day but then they started sending their kids to beat me. The older [children] said “you should go back to Milošević, to Belgrade.” Whenever they see me, they do something. [They] threw fruit, apples at me and stones [and] threw water at me. When I first came back they said I shouldn’t come back because this is Croatia... I can’t live there if they beat me, because I’m old. I’ve been to the police ten or twelve times to be sure...[The] police do nothing. The neighbor [ex-military police from Sarajevo], told my son to sell the home, [saying] “you won’t regret it”....But this is my home, I left my youth here, how can I sell it?<sup>15</sup>

The security situation in the village of Benkovac became a focus of concern after two violent incidents directed against Serb returnees in a ten-day period in June 1998. Both illustrate the obstacles to the reintegration of Serb returnees in Bosnian Croat settled areas. Seven homes belonging to Serbs were reconstructed in the village by UNHCR through the American Refugee Committee. Five of the returnee families suffered verbal harassment. Two families, however, experienced more serious incidents. The Maričić family returned to Benkovac in October 1997 and moved into the house of a friend while reconstruction work was carried out on their own house. On July 8, Mr. Maričić went to the house as usual to continue repairs. The paths leading to and from the house had been booby-trapped. Mr. Maričić described the incident to Human Rights Watch:

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<sup>13</sup> The term “remainee” refers to long-term Croatian Serb residents who did not leave their areas of residence at any time during the conflict or post-conflict period.

<sup>14</sup> Human Rights Watch interview with UNHCR representative, Knin, July 29, 1998.

<sup>15</sup> Human Rights Watch interview, Knin, July 31, 1998. The interviewee wishes to remain anonymous.

We didn't see anything because we were there five or six months already. We had been there the day before. I went there with this other man. I was driving my tractor and drove over the mine and the wheel of my tractor blew up. One person working there left the house and tripped another mine with the car. [As I result of the explosion] I cannot hear any more....A pyrotechnician came from Zadar. [He] told me that these were not military mines...[and that] they were full of buckshot...[L]uckily no one was injured but the explosion was terrible.<sup>16</sup>

Mr. Maričić reported the incident to the police but said "I don't know what the result will be." Fortunately, the workers present during the incident have told Mr. Maričić that they will continue work on his house.

The Skorić family temporarily lives next door to the Maričić family in another house belonging to the same friend. They returned to Benkovac on March 20, 1998. They, too, are reconstructing their house, which was burned and looted during their absence from the region. According to Mr. Skorić, on July 17, while workers were inside the Skorić house, someone "threw a hand grenade into the backyard...No one was injured since the yard was empty at the time."<sup>17</sup> When he went to report the incident, Mr. Skorić was told by police that "[the hand-grenade] was only meant to frighten people." At the time of Human Rights Watch's visit, work had been suspended on the Skorić house.

A spate of similar mine incidents directed against Serb returnees around Gospić in former Sector South (including five since September 1998) have led the area to be dubbed the "Arc of Terror." Two incidents, on November 6 and 9, badly injured a farmer walking in his garden and an elderly couple working in their field. OSCE Coordination Center Knin noted in a November 12, 1998 report that "it is highly likely that these recent incidents are systematically organized to create a climate of fear and insecurity to deter the return of Serbs, according to the Chief of County Police, who has also done virtually nothing to prevent such incidents."<sup>18</sup>

### **Police Concerns in Banija-Kordun**

Incidents against Serbs involving members of the police appear to be the main concern in the area of former Sector North. The head of the European Community Monitoring Mission office responsible for Banija-Kordun and former Sector South indicated to Human Rights Watch that he regards Banija-Kordun as the "more stable" of the two areas.<sup>19</sup> A representative from UNHCR in Sisak told Human Rights Watch that "security is not an obstacle to return [in the region]."<sup>20</sup> None of the returnees interviewed by Human Rights Watch identified security as a primary or even major concern. Nevertheless some observers, including OSCE representatives in Sisak and the president of the Serb Democratic Forum (SDF) in the region, expressed concern about multiple cases of police abuse against Serbs, which is rare in other sectors, and which may be linked to the number of Bosnian Croat police officers in the region.<sup>21</sup> Cases include the beating of a Serb at a police station in Glina and allegations of police officers' involvement in robberies from Serbs in Dvor, Kostajnica, and Obljaj (a border village).

### **Uneven Security in Western Slavonia**

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<sup>16</sup> Human Rights Watch interview with Mr. Maričić, Benkovac, July 31, 1998.

<sup>17</sup> Human Rights Watch interview with Mr. Skorić, Benkovac, July 31, 1998.

<sup>18</sup> OSCE Mission to Croatia, Coordination Center Knin, Weekly Report No. 45, November 12, 1998.

<sup>19</sup> Human Rights Watch interview with head of ECMM Coordination Center Knin, Knin, July 29, 1998.

<sup>20</sup> Human Rights Watch interview with UNHCR representative, Sisak, August 3, 1998.

<sup>21</sup> Human Rights Watch interviews with representatives from OSCE Coordination Center Sisak, Sisak, August 3, 1998; and with Ninko Mirić, President, SDF Banija-Kordun, Petrinja, August 3, 1998.

The security situation in Western Slavonia varies widely. In the Pakrac/Lipik area, which was a front line during the war, "the security was always and remains ok," according to a representative from the Committee for Human Rights in the area. A representative from the OSCE Field Office in the region concurred with this view, noting that the chief of police had been nominated for an international democracy award, and a returnee family interviewed by Human Rights Watch did not identify security as a concern.<sup>22</sup> On the other hand, while registering improvement, the town of Okučani still suffers from security problems involving harassment, threats, and occasional attacks directed against returnee Serbs from Eastern Slavonia by individual Croat refugees from Bosnia, Kosovo, and Vojvodina who have been resettled there. Nonetheless, monthly reports from the Serb Democratic Forum office in Okučani indicate that most of their clients have difficulties with administrative and legal discrimination rather than security concerns.<sup>23</sup>

### **Ethnically-Related Murders**

While it is important to emphasize that ethnically-related murders are rare, the small number that do occur have a magnified effect in creating fear among Serb refugee communities, in part because a handful of prominent refugees who wish to prevent return for their own political ends ensure that the cases are well known. The period following the handover of authority in Eastern Slavonia was marked by several murder cases. The January 1998 murder of a seventy-seven-year-old displaced Serb in Grabovac (near Beli Manastir) by a Croatian returnee who had spent seventeen years in jail was made doubly disturbing by the fact that one month prior to the murder the accused had thrown a hand grenade into a bar, killing a Serb patron, and had then been released by police on charges of disturbing the peace.<sup>24</sup> The following month, a sixty-nine-year-old Serb woman was stabbed to death by a Croat man in Šarengrad (near Ilok).<sup>25</sup> After the arrest of the alleged murderer of a mixed marriage couple in Topolje (near Beli Manastir) in July 1998, the police released a statement saying that the suspect had "a particular disliking toward people of Serb nationality."<sup>26</sup>

### **Standards of Policing**

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<sup>22</sup> Human Rights Watch interviews with representative from OSCE Field Office Lipik, August 4, 1998; and with returnee Serb family, Kusonje village (Pakrac Municipality), August 5, 1998.

<sup>23</sup> See, for example: "Report about work of SDF Legal Office in Okučani for the Month of June 1998," Serb Democratic Forum, Western Slavonia Branch.

<sup>24</sup> Zoran Radosavljević, "Murder of Serb Highlights Enclave Tension," Reuters, January 16, 1998. Additional information from Human Rights Watch interview with representative from U.N. Liaison Office, Zagreb, July 17, 1998.

<sup>25</sup> "Croats Questioned After Grenades Thrown at Serb," Reuters, February 21, 1998, and "Yugoslavia Says Croatia Practicing Ethnic Cleansing of Serbs in Eastern Slavonia," Beta news agency, February 27, 1998.

<sup>26</sup> Croatian Helsinki Committee, Bulletin No.12, August 20, 1998. See also, "Man Arrested Over Killing of Serb Couple," HINA news agency, July 30, 1998.

While the high-profile murder cases above led to arrests, Serbs are generally critical of the police in Croatia. International observers generally assess the behavior of the police as correct, but express concern about their commitment to investigate and prosecute cases, especially those involving Serb victims. Local police in Eastern Slavonia, maintained as a separate Transitional Police Force (TPF) during UNTAES, have remained ethnically balanced between Serbs and Croats, since their reintegration into Croatian police structures in January 1998.<sup>27</sup> Police in the region continue to be closely monitored. Until October 15, 1998, police monitoring was performed by the 180-strong U.N. Police Support Group (UNPSG), established for a nine-month period following the transfer of authority from UNTAES to the government of Croatia at the beginning of 1998. Since October, police monitoring functions have been performed by the OSCE Police Monitoring Group, which is part of the Mission to Croatia, with a reduced force of 120 monitors. Assessments vary as to the performance of police in Eastern Slavonia. Most Serbs in the region with whom Human Rights Watch spoke said that the police “do nothing.” The president of the Joint Council of Municipalities described the police as “professional in principle” but complained about a lack of “measures to prevent conflicts.”<sup>28</sup> A report from UNPSG notes that “police in the regional are generally professional” but adds that “[p]olice response to ethnically-related incidents, evictions, and housing intimidation is, however, not always satisfactory.”<sup>29</sup> The unsatisfactory performance of the police in terms of ethnically-related incidents may be partly explained by the fact that while the police force contains both Serb and Croat officers, the force is mixed only up to the level of station commander.

According to a June 1998 report by the U.N. Secretary-General, “Croatian police performance in the former U.N. Protected Areas [outside Eastern Slavonia] remains uneven....” It adds that “[t]his does not create a secure environment that is sufficient to give confidence to those considering return to other parts of Croatia.”<sup>30</sup> Complaints about the police are broadly similar to those in Eastern Slavonia, with “police inaction rather than bad behavior”<sup>31</sup> the major concern, although the standard of policing is somewhat lower, in part because of the lack of international police monitors. As the harassment and intimidation cases in former Sector South described above illustrate, Serbs lack confidence that the police investigate adequately and follow up cases, with concerns, in the words of a local human rights activist in Knin, that their cases “end up in the drawers [of a desk].” As noted above, the situation in Banija-Kordun is more problematic, since police officers have been implicated in violence and crime targeted against Serbs. Overall, however, reports of police harassment in the former U.N. sectors tend to be limited to complaints that Serbs are subjected to frequent identity checks and that Serb returnees are called in by police for so-called “informative talks.”

## HOUSING

In many ways it is entirely appropriate that a mechanism to resolve housing disputes is the centerpiece of the Croatian government’s Program for the Return of Refugees and Displaced Persons.<sup>32</sup> Housing is one of the most difficult questions facing post-war Croatia. As elsewhere in the former Yugoslavia, housing is simultaneously a cause

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<sup>27</sup> As of June 7, 1998 the police force in the UNTAES region comprised 794 Croats, 673 Serbs and forty-nine persons of other ethnicity. (Source: “Report of the U.N. Secretary-General on the U.N. Police Support Group,” June 11, 1998 (S/1998/500)).

<sup>28</sup> Human Rights Watch interview with Miloš Vojnović, President, Joint Council of Municipalities, Borovo, July 21, 1998.

<sup>29</sup> “Report of the U.N. Secretary-General on the U.N. Police Support Group,” June 11, 1998 (S/1998/500).

<sup>30</sup> “Report of the U.N. Secretary-General on the U.N. Police Support Group,” June 11, 1998 (S/1998/500).

<sup>31</sup> Human Rights Watch interview with UNHCR representative, Knin, July 28, 1998.

<sup>32</sup> The Program for the Return and Accommodation of Displaced Persons, Refugees and Resettled Persons (hereafter “Program for Return”), June 20, 1998.

of harassment and violence, a subject of ethnic discrimination, and an obstacle to the return of refugees and internally displaced persons. Current trends make clear that without a more equitable approach to the conflicting housing rights and demands of displaced and refugee Serbs and those of internally displaced Croats and refugee Croats from Bosnia and the Federal Republic of Yugoslavia (FRY), Serbs from the former U.N. sectors have little future in Croatia.

### **Uninhabitable Housing Stock**

A great deal of the housing stock in the former U.N. sectors is damaged or destroyed. The Croatian government has calculated that country-wide 171,705 apartments and houses have been damaged or destroyed as a result of the war, which amounts to around 10 percent of all housing stock (although the proportion in war-affected areas is much higher).<sup>33</sup> Fighting between Croatian government forces and the JNA and later, the Croatian Serb militia caused a great deal of destruction, particularly along confrontation lines, which is visible even today in towns like Pakrac, Kostajnica, and Vukovar. In addition, houses were deliberately destroyed by arson or explosives as part of efforts to prevent the return of Croats to Eastern Slavonia and Serbs to the Krajina and Banija-Kordun regions. The Krajina and Banija-Kordun suffered a wave of arson and explosions in the period following Operation Storm (the August 1995 offensive which brought the area back under Croatian government control and prompted the exodus of more than 150,000 Serbs from the region).<sup>34</sup> Traveling by road from Knin to Šibenik on the Dalmatian coast, Human Rights Watch observed one razed Serb village after another. The lack of artillery or bullet damage indicates that the destruction was not a by-product of fighting but the result of deliberate actions. Mixed villages contain untouched Croat houses (identified by Croatian flags or the words "Croatian house" painted on the side) next to gutted Serb ones. House burnings were reported as recently as March 1998, when a series of suspicious fires destroyed more than fifty homes in Krnjak, Vojnić, Gvozd, and Topusko in Banija-Kordun.<sup>35</sup>

### **Assignment of Private Property for "Temporary Use"**

Another factor complicating the housing question in the former U.N. sectors is the occupation of privately-owned housing by refugees and displaced persons (and, in some cases, other Croatian citizens). Following Operations Storm and Flash, the Croatian authorities passed a number of laws related to the management and use of private property. The most important of these laws are the 1995 Law on the Temporary Takeover and Administration of Specified Property (LTTO), which was repealed in July 1998, and the 1996 Law on Areas of Special State Concern.<sup>36</sup> The LTTO, which was passed less than one month after Operation Storm, permitted the Croatian government to place "abandoned" private property (including movable property such as furniture and appliances) under state administration and to grant temporary use of that property to other persons.<sup>37</sup>

In practice the law was applied to the property of Croatian Serbs who fled following Operations Storm and Flash and those who had fled earlier in the conflict. Temporary use was primarily granted to Croat refugees from Bosnia and FRY (Vojvodina and Kosovo) and to displaced Croats from Eastern Slavonia. Decisions about the assignment of property were made by housing commissions, municipal-level administrative bodies established under the LTTO to implement the law. The Law on Areas of Special State Concern (which remains in force) specifies the period of

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<sup>33</sup> Quoted in: Republic of Croatia, Ministry of Reconstruction and Development, "Reconstruction Programme for War-Impacted Areas," October 1998. (Officially promulgated on December 14, 1998.)

<sup>34</sup> For details on Operation Storm and its aftermath, see Human Rights Watch/Helsinki "Croatia: Impunity for Abuses." The report includes 1995 U.N. estimates that 60 percent of housing in former Sectors South and 30 percent in former Sector North were destroyed by arson during and after Operation Storm.

<sup>35</sup> United Nations High Commissioner for Human Rights Field Office for the Former Yugoslavia: Periodic Report, April 1998. See also "Krajina is Burning Again," *Feral Tribune* (Split), March 16, 1998.

<sup>36</sup> For more detailed analysis of the LTTO, see Human Rights Watch/Helsinki "Croatia: Impunity for Abuses," and Human Rights Watch/Helsinki "Croatia: Human Rights in Eastern Slavonia During and After the Transition of Authority," April 1997.

<sup>37</sup> Under the LTTO, part of the process of issuing a temporary decision involved the preparation of a inventory by the housing commission listing all movable property in the house at the time of assignment. Such lists were rarely made: Owners have often returned to their houses to find them empty of furniture and in some cases, windows, doors, and electrical fittings. In other cases, the current occupant contests ownership of movable property inside the house when the owner seeks to retrieve it.

occupation granted to temporary users under the LTTO.<sup>38</sup> It permits temporary use to be granted for up to ten years, and provides a mechanism allowing temporary users to obtain full property rights at the end of the ten-year period. According to the OSCE, no accurate estimates exist of the number of properties assigned under LTTO.<sup>39</sup>

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<sup>38</sup> A non-binding discussion paper (“non-paper”) issued by the Croatian government in November 1998 commits the authorities in principle to amend the law. As of early February 1999, little progress had been made on the introduction of legislation to amend the law in the Croatian Parliament (*Sabor*). (See section on “Donor Conditionality” below.)

<sup>39</sup> Human Rights Watch telephone interview with senior OSCE official, OSCE Mission to Croatia, October 6, 1998.

In addition to the assignment of property under the LTTO, there was also widespread occupation of property by refugees and displaced persons, especially by displaced Serbs in Eastern Slavonia (see section on “soft evictions” above).<sup>40</sup> Any person occupying property outside the framework of the LTTO is an illegal occupant and can be removed by court-ordered eviction. However, displaced persons and refugees in Croatia are protected from non-consensual eviction by the Law on the Status of Displaced Persons and Refugees which prohibits evictions until alternative accommodation can be found. A 1995 amendment to the law renders most Serbs ineligible for this protection.<sup>41</sup> Displaced Serbs in Eastern Slavonia, however, are protected by the 1997 Operational Agreement on Return (“Joint Working Group Agreement”), which obliged the Croatian authorities to provide alternative accommodation before the occupants can be removed from a property (hence the large number of “soft evictions” in the region).

The Croatian Parliament (*Sabor*) repealed the LTTO in July 1998. Although its repeal is a positive step (first recommended by Human Rights Watch in August 1996), the abolition of the LTTO only prevents further assignment of property for temporary use. It does not undo individual decisions giving permission to occupy, which under the Program for Return must be reviewed on a case-by-case basis at the request of the owner. Resolving the question of those properties already assigned under the law is made especially complicated by the failure to repeal the Law on Areas of Special State Concern, which still permits temporary users to remain for ten years and thereafter apply for property rights. In addition, the repeal of the LTTO has no bearing on illegal occupation. The mechanism intended under the Program for Return to address temporary use and illegal occupation, namely new municipal-level housing commissions with minority members, has been operational only for six months, and early signs are not positive (see below). Further, the general experience of Serb property owners and international and local organizations working on housing issues in the former U.N. sectors suggests that remedying the legacy of the LTTO will be a long and difficult process.

The case of J.M. is instructive. A Croat woman, J.M. is married to a Serb and remained in the Knin area during the “Republika Srpska Krajina.” After Operation Storm, she and her husband left Knin for several months, leaving their property unattended. Her father-in-law remained in the region. Some twenty or twenty-five days after Operation Storm, J.M.’s father-in-law visited the property in Knin. He found D.J., a refugee Croat from Vojvodina, occupying part of the property, and soldiers from the Croatian army occupying another part. J.M. returned to Knin in November 1995 but was unable to enter her property, although she contacted the (LTTO) housing commission on her return. In June 1996, the housing commission issued a temporary decision to D.J. authorizing his partial use of the property. J.M. explained to Human Rights Watch the steps undertaken by the family to have the property restored to them since 1995:

[By the time] the decision to D.J. was issued, we had already started the court procedure [in February 1996]. In October 1996, the court decided not to pursue [the court claimed that it lacked jurisdiction in the matter]. [We] appealed to the Ministry of Justice in October 1996 and February 1997, and then to the Administrative Court in April 1997 regarding administrative silence.... Nobody has ever answered us, not the court, not the

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<sup>40</sup> Displaced Serbs in Eastern Slavonia were sometimes issued with temporary decisions for occupation of properties by “RSK” authorities in the region. These decisions are not recognized by Croatian authorities.

<sup>41</sup> Article 2 of the 1995 amendment to the Law on the Status of Displaced Persons and Refugees limits the protection from non-consensual eviction offered by the law to persons already settled in temporary accommodation by March 1, 1995, thereby excluding Croatian Serb refugees and displaced persons who fled their homes after Operation Flash (May 1995) and Operation Storm (August 1995).

housing commission... We even contacted the Ombudsman who sent several letters to the municipality and to the mayor but no one answered.<sup>42</sup>

D.J. has refused the family's request to allow it to live in one part of the house. Several other people have since moved into the property at D.J.'s invitation, at least one of whom has received a temporary decision from the housing commission authorizing residence there.

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<sup>42</sup> Human Rights Watch interview with J.M., Knin, July 31, 1998.

J.M.'s case reveals important details about the difficulties faced thus far by those wishing to have their property covered by the LTTO restored to them. The first is that LTTO housing commissions issued decisions that were questionable and unauthorized even in the context of an already discriminatory law. This includes decisions issued on property that was not vacant or decisions issued to ineligible persons (Croats who were not displaced and had access to their own homes). An OSCE official in Knin told Human Rights Watch that the Croatian Ombudsman had advised OSCE staff that as many as half of all housing commission decisions are illegal according to the LTTO itself.<sup>43</sup> There are also reports that LTTO housing commissions continued to issue temporary decisions as late as May 1998, despite a government moratorium from March 1998.<sup>44</sup>

Second, J.M.'s case illustrates the administrative and legal merry-go-round that those wishing to have their property restored must experience. Housing commissions (under the LTTO) and municipal and national government offices so frequently fail to respond to inquiries and requests that Croatia has a term to describe it — “administrative silence” — and a theoretical judicial appeal mechanism, in the form of the Administrative Court, to remedy it. While administrative silence is a common feature of Croatian public administration and in part the legacy of a communist bureaucracy which affects many citizens, Serbs and those married to Serbs are disproportionately affected by it, especially in housing cases. Administrative silence is also aggravated by the long delays or nonresponsiveness on the part of the Administrative Court.

As in J.M.'s case, courts often decide that matters related to the decisions of housing commissions are purely administrative, and that courts are not therefore competent to hear such cases, leaving many property owners with no effective legal remedy, save an eventual appeal to the Administrative Court in the case of administrative silence. Even in cases of illegal occupation, where, for example, an occupant does not hold a decision granting temporary use or is occupying multiple properties, occupants often claim to have a temporary decision but refuse to show it to owners, necessitating an often-lengthy process of inquiry with the housing commission. These inquiries are often met by administrative silence.

The caseload of the Knin Legal Aid Project, a small team of internationally-funded Croatian lawyers who represent clients on a no-fee basis, reveals the plethora of problems faced by owners trying to regain access to their property. Most of the 400-some cases undertaken by the project to date are housing or property related. A majority are actions on behalf of owners whose property is subject to temporary decisions (including business premises and agricultural land as well as residential accommodation). Other common cases include lost tenancy rights, the refusal of LTTO housing commissions to provide copies of temporary decisions to owners, and property inheritance issues.<sup>45</sup> The caseloads of the Serb Democratic Forum offices in Western Slavonia and Banija-Kordun present a similar pattern, although they encompass a broader range of issues (see section on discriminatory laws and practices below).<sup>46</sup>

## Lost Tenancy Rights

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<sup>43</sup> Human Rights Watch interview with OSCE official, OSCE Coordination Center Knin, July 30, 1998.

<sup>44</sup> “Report of the OSCE Mission to the Republic of Croatia on Croatia’s Progress in Meeting its international commitments since January 1998,” May 20, 1998.

<sup>45</sup> Source: Knin Legal Aid Project monthly reports for December 1997 - May 1998.

<sup>46</sup> Human Rights Watch interviews with Ninko Mirić, SDF Banija-Kordun, Petrinja, August 3, 1998; and Obrad Ivanović, SDF Western Slavonia, Pakrac, August 5, 1998.

Of all housing-related problems in Croatia today, the wide-scale de jure termination of the right to the use of socially-owned apartments (frequently referred to as “tenancy rights”) is perhaps the most intractable.<sup>47</sup> The right to use a socially-owned apartment is a real property right that differs from ownership in one important respect: under limited circumstances the right can be terminated by the state. Despite the largely symbolic repeal of the Law on the Lease of Apartments in Liberated Areas in July 1998, the issue of lost tenancy rights is not effectively addressed by the Program for Return.<sup>48</sup> When considering claims for restoration of lost tenancy rights, courts in different parts of Croatia apply different standards depending on the ethnicity of the plaintiff. In addition, one category of former tenancy rights holders lacks even the possibility of legal recourse. Representatives of international agencies with whom Human Rights Watch spoke indicated that they regard the Croatian authorities as unwilling to compromise on matters related to lost tenancy rights and were pessimistic about the possibility of progress. In the words of a senior OSCE official charged with housing matters: “[most] socially-owned flats have now been privatized so it’s very easy for the government to suggest that it’s a non-issue.”<sup>49</sup> Tenancy rights were legally abolished in Croatia in 1996. In addition, the concept of tenancy rights (which do not exist in the same form in western countries) and the laws which regulated them are not well understood by most international actors in Croatia, making effective interventions more difficult.

During the Socialist Federal Republic of Yugoslavia (SFRJ), many workers and others were granted the exclusive right to the use of a state-owned or state-enterprise owned apartment. In Croatia, socially-owned property tended to be concentrated in urban and semi-urban areas, while most rural property was privately owned. Socially-owned property differs from the western concept of public housing in one important aspect: the right to use the property (the tenancy right) could be inherited or transferred to another family member as if it were private property. Unlike ownership of private property, however, an occupancy right could be lost: if the tenancy-right holder left the property vacant, without arranging for another family member to assume the tenancy right or failed to pay charges over an extended period, the state could take steps to terminate the right and grant it to another individual (usually through a court procedure).

As with other areas of housing law in Croatia, tenancy rights were enumerated in a series of complex and interwoven laws. Prior to the dissolution of SFRJ, tenancy rights in Croatia were governed by the Law on Housing Relations, a Croatian republic rather than SFRJ federal law. This law remained in force after Croatia’s independence. Under the law, tenancy rights could be terminated through a court proceeding if a person was absent from his or her apartment for more than six months, although exceptions were permitted in case of illness, military service or “other justified reason.” In practice, since socially-owned property was usually occupied by families, absence of all family members was unlikely, and prior to 1991 the provision was rarely, if ever, used.

One of the first housing measures undertaken by the newly-independent Croatia was a law to privatize socially-owned property. In 1991, the Croatian government adopted “the Law on the Sale of Apartments on which Tenancy Rights Exist,” which initiated a program of privatization allowing tenancy-right holders to purchase their apartments at a price substantially below market value. There was considerable overlap between the new law and the Law on Housing Relations, which remained in effect during the privatization process. Since its adoption, the Law on the Sale of Apartments has been revised at least thirteen times.<sup>50</sup>

The first systematic attempt by the Croatian authorities to strip users of socially-owned property of their tenancy rights also came early in the life of the new state, in the form of the 1991 Law on Abandoned Apartments. Under the

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<sup>47</sup> The question of apartments belonging to the Yugoslav People’s Army (JNA) is beyond the scope of this report. For information on evictions of JNA officers and their families from such apartments see: Human Rights Watch/Helsinki, *Civil and Political Rights in Croatia*, (New York: Human Rights Watch, October 1995.)

<sup>48</sup> The program uses highly qualified language: “In cases of persons who do not own an apartment or a house, specifically those who lived in socially-owned apartments, the Commission would, *where possible, endeavor* to find permanent accommodation *when this affects the return process*” (emphasis added).

<sup>49</sup> Human Rights Watch interview with OSCE official, OSCE Mission to Croatia HQ, Zagreb, July 20, 1998.

<sup>50</sup> Twice in 1992, twice in 1993, three times in 1994, twice in 1995, once in 1996, twice in 1997, and once in 1998. (Source: OSCE Mission to Croatia, Office of the Legal Adviser.)

Law on Abandoned Apartments, the apartments of tenancy-right holders who had fled as a result of the fighting or in fear for their safety were declared abandoned. Tenancy rights to the “abandoned” property could then be granted to someone else. In practice, the law was primarily applied to the apartments of Serb tenancy-right holders. Courts in Eastern Slavonia also continued to use the Law on Housing Relations to terminate tenancy rights between 1992 and 1994.

The next major effort took place in 1995 following Operation Storm. The *Sabor* adopted the Law on the Lease of Apartments in Liberated Areas (which was repealed in July 1998 along with the LTTO). By the force of the law, those who left apartments in war affected areas lost their tenancy rights if they did not return to them within a ninety-day period. Since the loss of tenancy rights took place by the force of the law, there was no need for an individual court procedure (as was necessary for loss of tenancy rights under the Law on Housing Relations). The apartments covered by this law were taken under state control and frequently given to new users, who later became eligible to purchase them under the privatization program. Most Serbs who had fled to Eastern Slavonia, Bosnia, or Serbia were not in a position to return and assert their tenancy rights within the ninety days and therefore lost them permanently.

In 1996, the Croatian authorities adopted new overarching legislation related to tenancy rights. The Law on the Lease of Apartments effectively abolished tenancy rights in Croatia, superseding most of the provisions of the Law on Housing Relations. The law specifies that some provisions of the old law are still applicable for court proceedings in cases of claims for restitution of tenancy rights. The effective abolition of tenancy rights in Croatia coincided with efforts to complete the privatization process, thereby moving most remaining socially-owned property into private hands. As noted above, occupants granted use of apartments obtained by the state under the Law on the Lease of Apartments in Liberated Areas were frequently offered the opportunity to purchase those apartments. In addition, many of the persons granted tenancy rights to so-called “abandoned” apartments under the 1991 law were permitted to purchase them under the privatization scheme.

The possibility to appeal the loss of tenancy rights depends upon the circumstances under which the former tenancy-right holder lost them. Those who lost tenancy rights through the Law on the Lease of Apartments in Liberated Areas have no possibility of legal appeal other than a civil suit. Persons who lost tenancy rights under the Law on Housing Relations, and particularly those who lost them in absentia, can appeal to the court which issued the decision confirming their loss of tenancy rights by requesting a renewal of proceedings. If such a request is accepted, the former tenancy-right holder has to prove that the reason for his or her absence for more than six months was as a result of medical treatment, military service or “other justified reason.” Given the intention of the war-time tenancy right laws, it is unlikely that Croatian authorities would consider *force majeure* a “justified reason” for absence. In contrast, in some eviction cases initiated by Croats displaced from the former UNTAES region, courts have implicitly recognized tenants’ rights without explanation, in effect accepting the *force majeure* argument. The municipal court in Beli Manastir, for example, has recognized several claims by Croat pre-war tenancy rights holders, using this as the basis to issue eviction notices against current occupants.<sup>51</sup>

At the same time that some courts in Eastern Slavonia recognize tenancy rights for Croat returnees, the efforts of displaced Serbs in the region to regain their tenancy rights meet with no success. The experience of an elderly woman interviewed by Human Rights Watch in Beli Manastir is a common one. The woman lived in a socially-owned property in Osijek (which remained under Croatian control) for twenty-five years with her husband and children. But in October 1991, she and her family left the property under duress. She explains: “on October 20, 1991, police came into the apartment (building). The Croats stayed and the Serbs had to leave...I left the apartment first, [then] my children left.”<sup>52</sup> The woman moved to Beli Manastir, where she currently resides with a friend. She would now like to return to her apartment, which is occupied by another person. Her appeal to the municipal authorities in Osijek to have her tenancy rights restored has received no response. “I have the contract for the apartment. [I have paid] for all bills — I have the

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<sup>51</sup> Cited in: Civil Rights Project, “Activities Report and Issues of Current Concern (August - September 1998).”

<sup>52</sup> Human Rights Watch interview, Beli Manastir, July 23, 1998. The interviewee wishes to remain anonymous.

receipts. Now, [the war] is over — so we should be able to go back...[but] the government says ‘why didn’t you come back in six months?’”

Even where a tenancy-right holder has followed the procedures set forth in the existing legislation, it is not guaranteed that his or her rights will be upheld. Human Rights Watch spoke to the Popov family in Lipik, Western Slavonia. The Popovs have a clear tenancy-right claim under existing legislation which they have been pursuing since 1995 without success. A married couple of mixed Serb-Croat ethnicity with an adult daughter, the family fled fighting in Western Slavonia in August 1991. The Lipik apartment to which they hold tenancy rights was on the front line, is in reconstruction category V (the second-highest level of destruction), and remains empty.<sup>53</sup> Although they are a mixed family, the Popovs did not move to an area under Serb control, but instead traveled to the northern Croatian coast in Istria (which remained under Croatian control throughout the war), staying there until their return to Lipik in May 1996. During the entire period of their displacement, the Popovs were in state-provided accommodation and were registered with the local authorities. They retained all documentation and applied on time in April 1995 to purchase their apartment after earlier unsuccessful attempts in 1993 to reaffirm their tenancy right. Mrs. Popov explains:

We came here to see the apartment — everything was ok. We didn’t realize someone would take it away. [The] first level court decided that the procedure [to purchase their apartment] should be reviewed, [but the] municipality appealed to a higher court. The municipality’s appeal was rejected, but the proceeding has not started. We have been waiting for two years already.<sup>54</sup>

The Popovs’ daughter, Tatijana, explained how their efforts to resolve the matter had been met by silence:

Everyone is saying that they are waiting for a court decision...[The] new judge doesn’t do anything — doesn’t schedule the dates [for a new hearing]....[The] lower court doesn’t answer. We wrote a letter to the Ministry of Justice last year. They told us that they had contacted the court. [There has been] no written communication from the court....Our problem is easy to solve if only the court would schedule the day [for a new hearing]. All the lawyers are saying that this is a clear case.<sup>55</sup>

The family has letters from the local authorities issued each time their displaced-persons status was renewed stating that their apartment was not “in an area for living” and that it was not possible for them to return to their accommodation. Yet the Lipik municipal authorities have argued that since they failed to reoccupy their apartment within six months they have lost their tenancy right under the Law on Abandoned Property. Since their return to Lipik in 1996 they have been living in “Topolik,” a former collective center consisting of prefabricated buildings. It is unclear how long they will be permitted to stay there, since they do not have “returnee” status.

As the above cases and many of the laws make clear, the period since Croatian independence has been characterized by repeated state discrimination against Serb tenancy-right holders who have fled their homes. Despite the difficulties surrounding the complexity of the law and de facto privatization of much of the socially-owned housing stock, the issue of lost tenancy rights should not be abandoned by the international community. The European Court of Human Rights has held that tenancy rights are protected under Article 1 of the First Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms (which Croatia ratified in November 1997 as a member of the Council of Europe). Judicial bodies in Bosnia (which as a successor state to SFRJ had similar tenancy-rights legislation) have also found that tenancy rights are protected as property rights under the convention. Bosnia has also enacted legislation in the Federation and Republika Srpska restoring pre-war tenancy rights. In the context of the convention, a number of Croatian citizens who have lost tenancy rights as a result of discriminatory legislation have brought petitions before the European Commission of Human Rights. At the same time, local and international NGOs in Croatia like the

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<sup>53</sup> Six reconstruction categories were established by the Croatian government and range between I (least damaged) and VI (most damaged).

<sup>54</sup> Human Rights Watch interview with the Popov family, Lipik, August 5, 1998.

<sup>55</sup> Human Rights Watch interview with the Popov family, Lipik, August 5, 1998.

Knin Legal Aid Project, Serb Democratic Forum, and Civil Rights Project, continue to pursue tenancy rights cases through domestic courts.

International interventions on the question of lost tenancy rights have been less compelling. A September 1998 letter to the Croatian prime minister from the heads of UNHCR, OSCE, and U.N. missions did little more than reiterate the international community's wish for the restoration of pre-war tenancy rights, or where that is not possible, the provision of alternative accommodation under similar terms or compensation. The letter failed to present legal reasons why Croatia should change its current position (that tenancy rights no longer exist), other than the unspecified charge that it "constitutes a continuing breach of Croatia's international commitments."<sup>56</sup> More focused and prescriptive international pressure on the Croatian authorities might bolster NGO and citizen efforts to challenge the status quo.

### **Housing and Internally Displaced Persons: "One-way Return"**

The combination of discriminatory and unevenly-applied housing laws have hindered the return of internally displaced persons to their homes inside Croatia. Despite the guarantees made in the 1997 Joint Working Group Agreement, designed to facilitate the two-way return of displaced Croats to Eastern Slavonia and of displaced Croatian Serbs from Eastern Slavonia to other former sectors, the contrast between the ability of Croat and Serb displaced persons to return to their homes (and to remain in their current accommodation until they are able to do so) has been so marked that many observers now refer to the process as "one-way return." The effect of official discrimination by courts and local authorities has been exacerbated by two factors: the practice of "soft evictions" by Croat returnees in Eastern Slavonia, and the large number of resettled Croat refugees from Bosnia and FRY living in Western Slavonia, the Krajina, and Banija-Kordun. And as the Popov case illustrates, the problem of one-way return is neither confined to Eastern Slavonia nor restricted to owners of private property.

While displaced Serbs in Eastern Slavonia are forced out of their current accommodation by returnee owners, or (increasingly) evicted by courts and housing commissions (see below), fewer than half have returned to their pre-war areas of residence in other parts of Croatia. Fewer still have been able to return to their own homes.<sup>57</sup> Of those who remain in Eastern Slavonia, some are living in temporary accommodation provided by local authorities while, in a disturbing trend, others have been moved into collective centers (such as the Gašinci camp, near Đakovo). Among those who have returned to their former areas, a growing number are being housed in temporary accommodation or collective centers (such as Barake "Tehnika" in Sisak) while waiting to reenter their pre-war homes. Other returnees have made informal arrangements, staying with relatives, friends, or in empty houses belonging to other Serbs. The number of people leaving Eastern Slavonia for FRY and third countries suggests that for many displaced Serbs further displacement is the final straw. As the director of the Civil Rights Project observed, in many cases "if a person is evicted and their house elsewhere in Croatia is occupied, they go to FRY."<sup>58</sup>

Human Rights Watch visited the Gašinci camp in late July to assess conditions there. Although a relatively small number of displaced Croatian Serbs are housed at the camp, Gašinci is important as a symbol of the unequal status of displaced Serbs compared to other displaced Croatian citizens (including recently naturalized Croats from Bosnia). In

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<sup>56</sup> Letter from the heads of mission of UNHCR and the OSCE, and the U.N. Representative of the Secretary-General to the Croatian Prime Minister Zlatko Mateša, September 17, 1998.

<sup>57</sup> ODPB estimates from late 1998 indicate that around 4,000 displaced Serbs remain in Eastern Slavonia. Most of the 55,000-60,000 displaced Serbs resident in the region at the start of 1996 have crossed the border into FRY, although estimates vary as to the number who have returned to their pre-war areas of residence in Croatia. ODPB estimates from July 1998 indicated that 21,000 displaced Serbs have returned to their former areas. UNHCR estimates from the same date are 17,000.

<sup>58</sup> Human Rights Watch interview with Mary Wyckoff, Civil Rights Project, July 20, 1998.

addition, the threat or possibility of having no alternative to Gašinci is playing a part in the continued exodus of Serbs from Croatia as government authorities and housing commissions in Eastern Slavonia increasingly appear to regard such collective centers as acceptable alternative accommodation for Serbs (see below).

A former army barracks with a July 1998 population of 560 (mostly long-term Bosnian Croat refugees), Gašinci is administered by the Croatian Office for Displaced Persons and Refugees (ODPR). It is located in an isolated area next to a military firing range, where live-fire exercises take place. Loud artillery explosions are common (on the afternoon that Human Rights Watch visited the camp, there were more than two per hour). The entrance to the camp resembles a military checkpoint, and visitors other than relatives require permission from ODPR, although the director of Gašinci stated that there are no movement restrictions on those resident in the facility, a fact confirmed by the residents and OSCE.<sup>59</sup> A daily bus service to nearby Đakovo is provided on weekdays. Residents receive three meals daily, including a hot lunch as the main meal.

Human Rights Watch spoke with a couple at Gašinci who married one another in the camp after the earlier deaths of both spouses. Both are in their early sixties and originate from Western Slavonia: the husband is from Slatina, and the wife from Zrinska, near Grubišno Polje. The wife fled Western Slavonia to Kozarac (near Beli Manastir, Baranja) in November 1991 with her first husband, while the husband left Western Slavonia for the village of Aljmaš (near Dalj, Eastern Slavonia) in July 1992. The husband was evicted from the house he occupied in Aljmaš by the returnee owner on January 15, 1998 (the day the UNTAES mandate ended in Eastern Slavonia). He explained how he found himself in Gašinci:

The police didn't care about [the eviction]. [The] owner of the house came [and] broke the doors of the main entrance to the yard - took all the bedclothes and clothing into the yard and burned [them]. The police did nothing. After he burned all the stuff he kicked me out. I went to the Croatian [government] office and asked them where to go. My house is burned and my wife was buried [died] in the house. They gave me a document saying I was being sent to Gašinci. I have had no answer on reconstruction assistance [so as to be able to rebuild my house]. I live here with my new wife. [It's] terrible in the camp...[We] have a small wood stove [but I] don't know how we will survive the winter.<sup>60</sup>

His wife had a similar story:

It's like this for everybody. All of them were pressured to leave, but it says on the paper [from ODPR] they voluntarily came here [to Gašinci]. I went to Baranja in 1991 to Kozarac. [I was] living there until March 1998 when my husband died. [We were] living in someone else's house. I was alone. Police came and were on [the owner's] side. There is still a house in Zrinska....A military official is living there. My husband, when he was alive, applied for compensation [for the house from the APN].<sup>61</sup> Now he [has] died so there is a court proceeding to determine the estate [and I cannot] reverse the process...[We receive] no help. Most of the

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<sup>59</sup> Meeting between OSCE officials and the director of Gašinci camp attended by Human Rights Watch, July 23, 1998.

<sup>60</sup> Human Rights Watch interview with married couple, Gašinci camp, July 23, 1998. The couple wish to remain anonymous.

<sup>61</sup> The Agency to Mediate in Transactions of Specified Real Estate (APN) is a Croatian government agency established to buy up vacant property from Serb owners who have left or plan to leave Croatia. Serbs have alleged that it offers prices at far below market value and makes verbal rather than written offers for property, the value of which are therefore hard for international and local observers to document or track.

people are elderly as you can see. No “hygiene”[toiletries] is offered — no toilet paper (seven or eight rolls in six months)... don’t even talk about detergents.<sup>62</sup>

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<sup>62</sup>Human Rights Watch interview with married couple, Gašinci camp, July 23, 1998. The couple wish to remain anonymous.

According to reports from international NGOs in Eastern Slavonia, housing commissions formed under the program for return and ODPR continue to offer Gašinci as alternative accommodation to displaced Serbs, including those who cannot return to their private property because it is occupied.<sup>63</sup> At the same time, Croatian authorities have argued that they cannot remove displaced and refugee Croats from Serb-owned property in other former U.N. sectors because no alternative accommodation is available. This logic would appear flawed to the Serb returnee families in the Barake “Tehnika” collective center in Sisak who are unable to return to their homes. Human Rights Watch interviewed three family groups in the center. Mr. Stambolija from Petrinja lives with his mother in a room in the barracks. He explained their situation:

After Operation Storm we went to FRY and then moved to Beli Manastir in October 1996. Then in 1997, [we] got all Croatian documents and came back through the two-way return program. In the meantime we were accommodated in the house of a Croat displaced person in Beli Manastir. In March 1998, we came here [to Barake “Tehnika”]. We were promised to be able to return to our homes but...ODPR Beli Manastir offered us this solution of being able to come to this center....Returnee status only lasts six months and we are spending that in barracks....In our home in Petrinja there is...a Croatian displaced person from Glina [who] didn't even let us see the house, so I don't understand this two-way return.<sup>64</sup>

Another family in Barake “Tehnika” told Human Rights Watch of similar circumstances. Originally from Topusko, the family (consisting of a married couple with elderly parents and young children) fled to Eastern Slavonia during the conflict, returning to Banija-Kordun on June 26, 1998, but cannot enter their property because it is occupied. The mother described their circumstances:

They [ODPR] told us to go home.....During the day the houses are empty [but] they [current occupants] come over to sleep sometimes. I called the current occupant on the phone. He told me “when you come here I'll kill your children.” Five times [we have] applied to Topusko [municipality] for the property to be returned. [We] received one answer: that the current occupant's home is not rebuilt.<sup>65</sup>

The father explained that they had been assigned two rooms in Barake “Tehnika” by ODPR. The most recent decision from the municipal authorities was on July 24, 1998. The grandmother summed up the family's sentiment by saying “they would probably like us not to come back.” Human Rights Watch also spoke to a family in the camp with nowhere to go. The Radišić family, a married couple with two young children, had tenancy rights to an apartment in Sisak until they fled the area in October 1991 “because of pressure — people would come in uniforms.” They now live in one room in Barake “Tehnika” with barely enough room for four single beds. Until April 1998, the family occupied a house in Beli Manastir belonging to a displaced Croat. After the owner decided to return home, ODPR arranged for their return to the Sisak area and accommodation in the camp. Before the war, Mr. Radišić was a train driver and Mrs. Radišić worked in a garment factory. Both are now unemployed. The husband told Human Rights Watch “We wanted to go to a third country but [they] refused us because we had Croatian citizenship.”<sup>66</sup>

The experience of the families in Gašinci and Barake “Tehnika” is mirrored in Western Slavonia, although most returnee families in former Sector South are accommodated informally in private housing. Human Rights Watch spoke to a returnee family living in the “Topolik” former collective center in Lipik (along with the Popov family). The father explained:

We came here from Eastern Slavonia on April 27, 1998....In April 1997, I applied for return [and] got confirmation for return. In 1997 they told me that no one can move me out of where I live until I can return to my house. Then the owner of the house came to me and threw me out; [the owner is a policeman]....Then the

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<sup>63</sup> Civil Rights Project “Activities Report and Issues of Current Concern (August - September 1998).”

<sup>64</sup> Human Rights Watch interview with Stambolija family, Sisak, August 3, 1998.

<sup>65</sup> Human Rights Watch interview, Sisak, August 3, 1998. The family wish to remain anonymous.

<sup>66</sup> Human Rights Watch interview with Radišić family, Sisak, August 3, 1998.

Croatian government offered me temporary accommodation here in Lipik....We had no other choice. A person from Daruvar who is a military chief or commander is living in our house. He has a temporary decision. The municipality moved him in.<sup>67</sup>

His wife added that the mother of the current occupant worked in the court. The family was unaware of the new housing commissions established under the Program for Return, but was very skeptical when informed about them by Human Rights Watch. The father said "I think that there is a law and then the practice is different" adding that "in these cases, no international community can help, because these people who are well regarded in Croatia will never be removed [from property]." Given his experiences, such a view is understandable.

### **Housing Components of the Program for Return**

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<sup>67</sup> Human Rights Watch interview, Sisak, August 3, 1998. The family wishes to remain anonymous.

At the time of its adoption by the Croatian *Sabor* on June 26, 1998, the Program for Return was hailed as a major breakthrough by international organizations in Zagreb.<sup>68</sup> Some of their officials, especially those in the field, were more skeptical. A senior OSCE adviser explained his reservations to Human Rights Watch: "there is new wording. [I'm] not sure if there is new thinking in government. It is even less clear if it will lead to new actions."<sup>69</sup> As promised in the program, the *Sabor* soon repealed the LTTO and the Law on the Lease of Apartments in Liberated Areas (although to date the other legislative changes committed to in the program have not been undertaken). However, the jewel in the program's crown is a new mechanism in the form of housing commissions, designed to resolve housing disputes between current occupants, many of whom were granted temporary use under the LTTO, and the owners of such properties, and thereby allow displaced and refugee Serbs to return to their homes in Western Slavonia, the Krajina, and Banija-Kordun, as well as displaced Croats. The program also established a Croatian government Return Commission to monitor implementation of the program and a Coordination Committee comprising representatives from the government and international community.<sup>70</sup>

According to the program, housing commissions have, among others, the following functions: "...to register the use of real estate; to issue certificates to the Return Commission and ODPR on ways the property is used; to record and issue information on damage to housing units; to receive applications [from owners] for the retrieval of real estate in which other persons are housed; to find temporary or alternative accommodation for returnees until their housing is restored through the system of reconstruction... [and]; to provide accommodation in state-owned apartments to persons currently housed in temporarily used property."<sup>71</sup> Housing commissions also have the power to order occupants to vacate temporary accommodation provided that alternative accommodation can be found prior to departure.

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<sup>68</sup> The heads of both the OSCE and UNHCR missions in Croatia have publicly praised the adoption of the program and the September 1998 progress report from the OSCE Mission describes the program as "a major step forward ...[that] was favorably received by the international community." Both agencies were intimately involved in negotiating the program.

<sup>69</sup> Human Rights Watch interview with senior OSCE official, OSCE Headquarters, Zagreb, July 20, 1998.

<sup>70</sup> The commission meets at the deputy ministerial level. It is meant to meet twice a month to monitor implementation of the program, but had met only four times by the end of 1998. The commission is also expected to submit periodic reports on the return process to a committee of Croatian government and international agency and government representatives. The committee is intended to meet every three months "or more frequently" if necessary.

<sup>71</sup> Program for Return.

Each housing commission has five members, “two of whom will represent the predominant minority population of the municipality.”<sup>72</sup> According to the program, the commission’s decisions about ownership, the availability of temporary accommodation and eviction “will be adopted by a majority vote with the support of at least one of the minority representatives.”<sup>73</sup> The program also specifies the time-limits for actions by housing commissions on taking decisions and referring matters to the courts, presumably to counter the possibility of administrative silence (although crucially no time frame exists for responses from central government agencies regarding alternative accommodation).<sup>74</sup> Housing commissions are instructed under the program to file actions for eviction with municipal courts in case the current occupant refuses to vacate the property, with the important caveat that if the occupant is a temporary user, alternative accommodation must be found prior to his or her removal.

International representatives in areas of potential Serb return interviewed by Human Rights Watch in July expressed reservations about the functioning of the housing commissions in cases of property occupied under temporary decisions under the LTTO, primarily because of concerns regarding the availability of alternative accommodation. An official from UNHCR in Knin, referring to refugees from Bosnia who had been granted temporary decisions under the LTTO, admitted that “part of the problem will not be solved by this law.”<sup>75</sup> This view was echoed by an OSCE official in the town who noted that “there is no alternative accommodation” in Knin.<sup>76</sup> The same officials were more optimistic that in cases where persons occupied multiple properties or lacked a temporary decision (i.e., illegal occupancy, which the program states “shall be terminated immediately”) the housing commissions would take action leading to evictions, thereby creating a “pool” of housing for returnees. However an OSCE official in Sisak pointed out that where courts had issued eviction notices in illegal occupation cases in Banija-Kordun prior to the program’s adoption, they had not been executed.<sup>77</sup>

### **The Functioning of Housing Commissions**

Most commissions were established quickly: by early October, 150 commissions had been established and a further twenty were in the process of being established.<sup>78</sup> By the end of 1998, all commissions had been established.

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<sup>72</sup> Program for Return, “Procedures for Return,” article 14. However, as a senior U.N. official in Vukovar pointed out, “in some municipalities there are no Serbs left.” (Human Rights Watch interview, Vukovar, July 20, 1998). There are also other minorities in Croatia, including Muslims, Hungarians, Slovenes, Italians and Roma.

<sup>73</sup> Program for Return, “Procedures for Return,” article 14.

<sup>74</sup> For example, for property occupied by a temporary user: Information on status of property: five days; decision to annul temporary occupancy: seven days; delivering such a decision: seven days; informing the Return Commission and ODPR that no alternative accommodation is available: five days; response from Commission, ODPR, or APN on the availability of alternative accommodation: no time frame given.

<sup>75</sup> Human Rights Watch interview with UNHCR representative, Knin, July 29, 1998.

<sup>76</sup> Human Rights Watch interview with OSCE representative, Knin, July 30, 1998.

<sup>77</sup> Human Rights Watch interview with OSCE representative, Sisak, August 3, 1998.

<sup>78</sup> Joint OSCE, U.N. Non-Paper - Preliminary Review in Preparation for an Assessment of the Return Process (October 7, 1998).

From an operational perspective, however, housing commissions have proceeded far more slowly and less successfully. A September report from UNHCR, OSCE, and the U.N. Liaison Office summarizes the situation:

Many housing commissions that have been formed are not yet meeting, while many of those housing commissions that are meeting are not yet functioning in an effective or practical way. Some housing commissions are still unwilling to start work without further guidance. Elsewhere, housing commissions are making arbitrary decisions to evict displaced persons.<sup>79</sup>

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<sup>79</sup> "Weekly Update by UNHCR, OSCE and U.N. Liaison Office on the Government of Croatia Programme for Return and Accommodation of Displaced Persons, Refugees and Resettled Persons (24-30 August 1998)," September 2, 1998.

Confusion among local authorities and housing commissions on how to interpret the program is clearly a significant obstacle to the effective functioning of the commissions themselves. Although the central government has now organized three workshops bringing together prefects, mayors, and housing commission members to explain how to implement the program, the "instructions for the work of housing commissions," issued by the government on August 10, amounted to nothing more than "a packet of forms," to quote a Western diplomat who attended the second workshop in Topusko at which they were issued. Confusion leads to widely differing interpretations of the program, the use of different forms, the exclusion of certain categories of people from the program (such as tenancy-right holders or Serbs in Eastern Slavonia lacking "RSK" temporary decisions), and in the most extreme cases leads housing commissions to take incorrect decisions on cases before them. An October 1998 report by the OSCE and the U.N. concluded that "inaction or inappropriate interpretation of the Programme by the housing commissions often relates to the lack of provision of clear concise instructions to the housing commissions."<sup>80</sup>

Another concern relates to the issue of coordination. This is particularly important in cases involving internally displaced Serb property-owners occupying houses belonging to Croat returnees where both parties are trying to regain access to their property. At present it appears that individual housing commissions consider only the case before them and do not take into account simultaneous cases involving the same parties before other housing commissions. This can lead to a new variation of "one-way return" where displaced Serbs are evicted from the property in Eastern Slavonia which they currently occupy by the decisions of one housing commission, while they are unable to return to their own homes because another housing commission determines that there is no alternative accommodation available and thus they cannot order the eviction of the current occupants of the recently evicted Serbs' property. This situation is far from theoretical: the Civil Rights Project has a displaced Serb client who had been occupying a house in Kneževi-Vinogradi and who owns property in Korenica occupied by someone else.<sup>81</sup> The person was ordered to vacate by the housing commission in Kneževi-Vinogradi and offered alternative accommodation outside the municipality in the Gašinci camp. As of October 1998, the person's requests to the Korenica housing commission for restoration of the house he owns there had met no response.

While confusion surrounding the program and a lack of coordination may go some way to explain the extremely poor results of the first six months of operation by housing commissions, experience with the Joint Working Group Agreement and with housing legislation and practice since 1991 suggests that much of the explanation lies elsewhere. An October 1998 analysis by the U.N. and the OSCE is clear as to the source of problems with housing commissions: "We perceive a lack of political will at the central and local level to implement this core element of the Programme concerning repossession of property."<sup>82</sup> This conclusion would come as no surprise to those working on housing and return issues with NGOs and international organizations in the field, who also questioned the decision to create an untested administrative mechanism to resolve legal matters. As an international lawyer working in Vukovar pointed out, "the program could have been done by law - [it] could have revoked all administrative decisions allowing people to live

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<sup>80</sup> Joint OSCE, U.N. Non-Paper - Preliminary Review in Preparation for an Assessment of the Return Process (October 7, 1998). The same concern is noted in the January 1999 Report of the OSCE Mission to the Croatia on "Croatia's Progress in Meeting International Commitments Since September 1998." (Housing Commission instructions were finally issued on February 18, 1999.)

<sup>81</sup> Civil Rights Project, "Activities Report and Issues of Current Concern (August - September 1998)."

<sup>82</sup> Joint OSCE, U.N. Non-Paper - Preliminary Review in Preparation for an Assessment of the Return Process, October 7, 1998.

in other people's houses. Instead each person has to go back and request their house back."<sup>83</sup> A Croatian legal adviser to the OSCE was equally emphatic: "Only a county or municipal court can make those decisions [regarding repossession] and maintain rule of law."<sup>84</sup>

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<sup>83</sup> Human Rights Watch interview, Mary Wyckoff, Civil Rights Project, Vukovar, July 20, 1998.

<sup>84</sup> Human Rights Watch interview with an OSCE Legal Adviser, July 1998.

If a lack of genuine commitment to the program by the Croatian authorities goes a long way toward explaining why housing commissions are not functioning as the international community intended, one would expect that housing commissions would be most active (whether appropriately or not) in areas of Croat return and least active in areas of Serb return. Reports from the field support this analysis: housing commissions in the Krajina are barely functioning, while those in Banija-Kordun and Western Slavonia are stuck over the issue of alternative accommodation. On the other hand, many of those in Eastern Slavonia, are actively engaged in eviction proceedings against Serb temporary occupants. This is especially ironic since international organizations consider the return of Croatian Serbs to Croatia as the program's major objective. As a western diplomat pointed out, the program was "not designed to keep people in occupied homes" but rather to facilitate the return of property to its owners.<sup>85</sup> One would therefore expect to see a natural bias toward owners in its execution. Instead, housing decisions continue to be driven largely by ethnic motivations, favoring ethnic Croats over ethnic Serbs, regardless of their status.

The picture in former Sector South, one of the main areas of pre-war Serb population, is especially bleak. An official from UNHCR in Knin contacted by Human Rights Watch in October indicated that UNHCR was not aware of a single repossession decision by a housing commission in former Sector South, even in cases involving multiple or illegal occupancy.<sup>86</sup> An OSCE representative in the region stated categorically that not a single person had been returned to occupied property through the program in former Sector South.<sup>87</sup> (Although Udbina housing commission has offered alternative accommodation to several temporary occupants, to date no owner has yet returned.) Both officials concluded that no progress had been made on property restitution since the adoption of the program. As noted above, courts in former Sector South frequently refuse jurisdiction in eviction actions brought by Serbs in the context of the LTTO, leaving many with no effective remedy. Small numbers of returns were taking place from FRY towards the end of 1998 through UNHCR, but only to empty houses, and not without the objections of some housing commissions (the president of the Knin housing commission has issued a statement describing the returnees' repossession of their property as "illegal" since they did not receive permission from the housing commission to enter the property).

Even in cases where alternative accommodation is not required, housing commissions show no willingness to act. One multiple occupancy case in Knin involved a house divided into three apartments belonging to a Serb returnee. The current occupant had a temporary decision for the first floor apartment only but was occupying the whole house. The owner, who returned in 1996, was willing to share the house with the current occupant by taking one apartment while the occupant remained in the apartment on which the temporary decision was issued. (OSCE has verified that the original decision refers only to the first floor of the house.) The owner had repeatedly applied for repossession, and did so again under the program. The response from the housing commission was that it could not act because no alternative accommodation was available, an unwarranted decision based on the false premise that the current occupant had a temporary decision for the entire property.

The nonfunctioning of housing commissions in former Sector South can be attributed to a combination of factors. Political will clearly plays some part: for example, the president of the housing commission in Knin, a Bosnian Croat refugee, is also the deputy mayor of the town, and held the post of president of the previous housing commission (which assigned properties under the LTTO). One would therefore expect some bias in favor of existing occupants, many of whom are Bosnian Croat refugees. At the same time, the presence of two minority members of each commission is not necessarily an effective guarantee of fairness in decision-making, since there are no criteria for membership other than minority status. Part of the explanation also lies in the definition of what constitutes acceptable alternative accommodation. Unlike in Eastern Slavonia, local authorities and housing commissions in former Sector South appear not to regard collective centers or refugee camps as acceptable alternative accommodation for current occupants. Ambiguities in the language of the program also provide part of the answer: the program fails to spell out

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<sup>85</sup> Human Rights Watch interview, Zagreb, July 1998.

<sup>86</sup> Human Rights Watch telephone interview, UNHCR representative, Knin, October 12, 1998.

<sup>87</sup> Human Rights Watch telephone interview, OSCE representative, Knin, October 12, 1998.

what is meant by multiple occupancy, and does not explicitly require housing commissions to seek out information regarding illegal occupancy, leading to inaction or incorrect decisions in such cases.

Housing commissions in Banija-Kordun and Western Slavonia, the two other major target areas of return for displaced and refugee Serbs, appear to be functioning better than those in the Krajina (with some exceptions, such as Okučani). Despite this, few Serb owners have been able to repossess their property from ethnic Croat refugees displaced persons who are the temporary occupants. In standard cases involving occupants with temporary decisions granted under the LTTO, housing commissions frequently find that the owner has a right to repossess and issue a so-called PP3 decision, annulling the temporary occupancy right. At the same time, they note that no alternative accommodation can be found and refer the matter to the Return Commission in Zagreb. Housing commissions generally meet the deadlines specified in the program, but since there is no deadline specified for action or a response by the Return Commission regarding the availability of alternative accommodation, little progress has been made.<sup>88</sup> A Serb owner in Topusko was told by the housing commission that he could repossess in April 1999, once the house of the current occupant was reconstructed, at the same time as he was subject to eviction from the property he was occupying.<sup>89</sup> The limited number of cases of successful repossession mostly involve either easy cases (unoccupied property) or cases where the current occupant decides to vacate the property voluntarily before a decision is issued by the housing commission (in some cases because the person had been given use of an APN house).

In the case of illegal or multiple occupancy, categories where housing commissions were supposed to have more freedom to act in order to create a pool of property for returnees, there has been little or no movement in either Banija-Kordun or Western Slavonia. There have been some annulments of multiple occupancy decisions but in most cases, interpretation of what constitutes a family unit (where different adult family members each have a temporary decision on a property) and lack of cooperation among housing commissions (where persons occupy multiple properties in different municipalities) has prevented movement. OSCE officials have been told by the Croatian government that no central register of temporary decisions exists, which inhibits cooperation between housing commissions. Housing commissions have generally been unwilling to consider illegal occupancy cases, arguing that since illegal occupants were not assigned property by LTTO housing commissions, the matter falls outside their competence. Owners have instead been instructed to pursue their case through the court system (although some Serbs have also been told by courts that all repossessions must be carried out through the housing commission mechanism). An OSCE official covering both regions suggested that the program is being carried out in letter but not in spirit.<sup>90</sup> The situation in the former Sectors North and West also demonstrates one of the major defects in the program: temporary occupants cannot be removed until alternative accommodation can be found, and no time limits exist for such accommodation to be located, so the process of repossession and hence return can be brought to a halt even where housing commissions follow the correct procedures.

In Eastern Slavonia, where the majority of temporary occupants are displaced Serbs, housing commissions have been far from sluggish. The housing commission in Beli Manastir began issuing eviction notices in July even before it had been formally constituted (although those early decisions were temporarily reversed after intervention by the OSCE). As the Kneževi-Vinogradi case (above) demonstrates, housing commissions in the region move forward quickly with decisions to remove current Serb occupants, and as under the Operational Agreement on Return, the regional ODPR office facilitates the provision of alternative accommodation in the region in collective centers or APN-purchased properties in remote areas. The status of the current occupant is immaterial to the operation of the housing commissions in the region, even in cases where the occupant is seeking repossession or reconstruction of property. One exception to this is where the case involves a Serb owner seeking repossession. In such cases, housing commissions act

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<sup>88</sup> The January 1999 Progress Report from the OSCE Mission to Croatia on "Croatia's Progress in Meeting International Commitments since September 1998" noted that "The Government Commission on Return does not function as foreseen in the Return Program." According to a senior OSCE official "we haven't received one report from them." Human Rights Watch telephone interview with OSCE official, February 1999.

<sup>89</sup> Based on information received from the Civil Rights Project.

<sup>90</sup> Human Rights Watch telephone interview with OSCE official, Sisak, October 1998.

slowly, if at all, and where current occupants refuse to leave no action is taken to evict. In a case in Osijek, the housing commission determined that the Serb owner had a right to repossess, but the current temporary users refused to vacate, despite having a habitable house in Baranja.<sup>91</sup> The case is pending.

With the population of displaced Serbs in Eastern Slavonia down to around 4,000, few cases of illegal or multiple occupancy remain that are not being addressed through the courts or “soft-evictions.” Although housing commissions in the region have taken prompt action in most temporary occupancy repossession cases, they nevertheless interpret the program in a narrow sense. The Vukovar housing commission has refused requests for alternative accommodation in cases where property requires reconstruction, indicating that the program only applies in cases where housing is occupied. In addition, some Croat returnees ignore the program and resort to preexisting remedies through the courts (encouraged by provisions which waive court fees for state-recognized displaced persons). Meanwhile, the practice of “soft evictions” continues in the region.

As noted in the section on tenancy rights (above) the Program for Return is extremely vague and highly qualified on the question of lost tenancy rights. The only reference to tenancy rights states that “in cases of persons who do not own an apartment or a house, specifically those who lived in socially owned apartments, the Commission would, where possible, endeavor to find permanent accommodation when this affects the return process.” In addition to the qualifiers “where possible,” “endeavor” and “when,” the use of the term “commission” is in itself ambiguous since it could refer either to the Return Commission or individual housing commissions. It comes as no surprise therefore that most housing commissions have refused to consider claims involving tenancy rights. Some housing commissions in Eastern Slavonia, however, have accepted applications from Croat returnees to restore lapsed tenancy rights. The Beli Manastir commission has gone so far as to issue eviction decisions to the current occupants in such cases. As with multiple occupancy cases, the lack of clarity in the language of the program permits widely differing interpretations and discriminatory application.

### **Legal Constraints on the Program for Return**

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<sup>91</sup> Civil Rights Project, “Activities Report and Issues of Current Concern (August - September 1998).”

In addition to the practical problems posed by incorrectly or nonfunctioning housing commissions, a number of legal commentators have noted that the program's status in relation to existing housing legislation is unclear. As with many other innovations developed in cooperation with the international community, the program contradicts existing Croatian law. (This is widely understood: a Zagreb-based Western diplomat admitted to Human Rights Watch in July 1998 that the program "contradicts other legislation."<sup>92</sup>) Under the Croatian legal system, the adoption of new legislation does not render previously applicable legislation obsolete, unless the old legislation is explicitly repealed. In that connection, the program's basic principles promise that the Croatian government will repeal contradictory legislation relating to the status of returnees within three months, and "frame legal regulations addressing the issues stemming from the abolition of the LTTO and the Law on the Lease of Apartments in Liberated Areas." Despite this commitment, reiterated in a November 1998 "non-paper" prepared by the Croatian government, virtually no progress has been made toward the repeal of outstanding discriminatory legislation (see "Donor Conditionality" section, below).<sup>93</sup> Nor has progress been made on the framing of regulations related to the abolition of the two laws.<sup>94</sup>

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<sup>92</sup> Human Rights Watch interview with Western diplomat, Zagreb, July 1998.

<sup>93</sup> According to OSCE officials, the interim "Binding Legal Interpretations" proposed by the government in the November non-paper have been shelved. Three government legal working groups are reportedly preparing drafts for changes to each of the three laws for adoption by the Croatian *Sabor*. (Human Rights Watch telephone interviews with OSCE officials, February 11, 1999).

<sup>94</sup> Joint OSCE, U.N. Non-Paper - Preliminary Review in Preparation for an Assessment of the Return Process, October 1998. A non-paper is a non-binding document for discussion.

Moreover, as a technical matter the program does not have the status of law, since it was not promulgated by the president of the Republic of Croatia within eight days of adoption by the *Sabor* as article 89 of the Croatian constitution requires. An operational problem arises in relation to the ability of housing commissions to file a suit requesting eviction with the Municipal Court. A number of domestic and international lawyers inside and outside the OSCE have noted to Human Rights Watch that under Croatian law only "legal persons" can bring a suit before a court, and that housing commissions do not meet the definition of a legal person. As a result, housing commissions can only legally refer a case to the court when the owner of a property has granted the housing commission power of attorney. Such a procedure is not taking place in most cases, thereby opening up the possibility of legal challenges to the court-ordered evictions that result. One Croatian lawyer working for the OSCE told Human Rights Watch that such concerns had been expressed to OSCE headquarters in Zagreb during negotiations over the program, but said "we were told to shut up because it [the program] is politically important."<sup>95</sup>

Although the program is in its early stages, and it is possible that a number of the problems with the functioning of housing commissions will be resolved in time, two factors should be borne in mind. First, when one considers the totality of legislation, state practice, and the degree of adherence to international agreements by the Croatian authorities in respect of housing for its Serb citizens, it is difficult to regard the optimism of some international officials in Zagreb as anything other than misplaced. Second, it is an established truth in refugee policy circles that the longer refugees remain outside their country of origin, the less likely they are to return, as they establish ties to their host community, put their children in school, and, if they are lucky, find work. Viewed from that perspective, the failure to permit the timely repossession of private property by Serbs may well have permanent demographic consequences in Croatia.

## **LAWS AND ADMINISTRATIVE PRACTICES**

While housing discrimination is one of the most visible and important issues in Croatia, Serbs in the country face a wide range of obstacles to the exercise of their rights through intrinsically discriminatory laws, the discriminatory application of law, and discriminatory practices by national and local authorities. Areas of discrimination faced by Serbs include access to government reconstruction assistance, citizenship and naturalization procedures, and the assignment of agricultural land. Taken together, these laws and practices offer further insight into the difficulties faced by Croatian Serb returnees and those who remained in war-affected areas and help to explain why so few Serbs refugees have sufficient confidence to return to Croatia.

### **Access to Government Reconstruction Assistance**

Lack of access to reconstruction assistance has been identified by Milorad Pupovac, MP and president of the Croatia's Serb National Council, as one of the main difficulties faced by Serbs in Croatia today. Croatia's war and its aftermath took a heavy toll on housing stock in war-affected areas, affecting all residents. Hundreds of villages were destroyed by artillery, bullets, dynamite, and fire. This has resulted in shortages of habitable housing in some areas and, along with economic devastation, has prevented the repopulation of large areas. Recognizing the need for state assistance to help in the reconstruction of war-damaged housing, the Croatian government enacted a Reconstruction Act in March 1996.<sup>96</sup> The act determines which properties are eligible for government assistance, and sets priorities by which individuals are granted such assistance.

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<sup>95</sup> Human Rights Watch interview with OSCE staff member, Croatia, July 1998.

<sup>96</sup> Reconstruction Act, promulgated by the President of the Republic of Croatia (Number 01-96-604/1) March 20, 1996.

Unfortunately, the effect of the Reconstruction Act is discriminatory, since it substantially excludes Serbs from receiving such assistance irrespective of their status. Its first article delineates the geographic areas covered by the law as “[s]egments of the territory...which have been temporarily occupied during the war waged against the Republic of Croatia, or which have been exposed to destruction and consequences of acts of aggressive Serb and Montenegrin military and paramilitary forces...”<sup>97</sup> The types of property eligible are enumerated in article four of the act. Priority is given to “property destroyed or damaged by war,” although the article does allow for reconstruction of “other destroyed or damaged material goods” provided that the owners are “Citizens of the republic of Croatia.”<sup>98</sup> Much of the damaged and destroyed Serb-owned housing in the Krajina and Banija-Kordun, however, was destroyed after Operation Storm and Flash as the result of arson or deliberate explosion rather than direct “war damage,” and some of it falls outside formerly occupied areas. (Contemporary accounts from U.N. monitors and international aid workers implicate Croatian soldiers and police in the destruction.)<sup>99</sup> Moreover, the question of citizenship remains unresolved for a significant minority of Croatian Serbs (see section on citizenship, below). The cumulative effect of the two articles in practice is to exclude Serb property from eligibility for government reconstruction assistance.

Article 6 of the law establishes priorities among the persons entitled to receive government reconstruction assistance under the law “depending on available funds.”<sup>100</sup> Category one is “family members of Croatian deceased, captured or missing defenders and civilians, and Croatian invalids of the homeland war.” Category two is “Croatian defenders who had spent in military units not less than three months.” While there are an additional five categories, the first two categories cover most of the ethnic Croat population of Croatia, since most Croat families contain an adult male member and almost all males between eighteen and fifty-five served either in the army or in some form of territorial defense unit. Few Serbs served in the Croatian army or territorial defense unit (and those that did were drawn from the Serb population that remained in Croatian government-held territory, most of which escaped the worst damage of the conflict). Persons convicted of “crimes committed in armed conflict and in war against the Republic of Croatia” are ineligible for reconstruction assistance, as are their families.<sup>101</sup> This includes persons granted amnesty who were nevertheless convicted prior to being amnestied.

Despite these restrictions, article 18 of the law nevertheless allows so-called “immigrants” (defined under article 7 as “Croats”- refugees from Republika Srpska and FRY, “Croatian emigrants who plan to return from abroad,” and internally displaced Croatian citizens) to qualify for reconstruction assistance on properties occupied under temporary decisions issued under LTTO in areas under the “Law on Areas of Special State Concern.”<sup>102</sup> Article 18 remains in effect despite the repeal of the LTTO. As a result, while most Croatian Serb property holders are de facto excluded from reconstruction assistance by various provisions of the act, Croat refugees from other countries and internally displaced Croats<sup>103</sup> occupying private property belonging to others under the LTTO are entitled to reconstruction assistance under the law, as the third priority group under Article 6.

In addition to the restrictions by geographic area, nature of damage, and status of applicant, the Reconstruction Act also contains a time-limit for reconstruction applications. A decree issued in September 1997 specified that all applications for reconstruction assistance under the law must have been received by October 15, 1997. Needless to say, many property owners, including those among the more than 300,000 Croatian Serb refugees in Bosnia and Serbia, were unable to submit their applications in time. On July 2, 1998, the government extended the deadline for submitting the necessary documentation to support reconstruction applications until July 31, 1998. However the extension applies

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<sup>97</sup> Article 1, Reconstruction Act.

<sup>98</sup> Article 4, Reconstruction Act.

<sup>99</sup> For details of the involvement of state forces in the destruction of Serb property in the aftermath of Operation Storm, see Human Rights Watch/Helsinki “Croatia: Impunity for Abuses.”

<sup>100</sup> Article 6, Reconstruction Act.

<sup>101</sup> Article 5 (1) (5) and Article 16 (6), Reconstruction Act.

<sup>102</sup> Articles 7 and 18, Reconstruction Act. Internally displaced Croatian citizens who are Serbs rarely, if ever, received temporary decisions under the LTTO.

<sup>103</sup> Internally displaced Croatian citizens who are Serbs rarely, if ever, received temporary decisions under the LTTO.

only to those who had *already* submitted an application prior to October 15, 1997. (Although it is theoretically possible to apply under the new reconstruction program described below.) Further, the July 1998 decision instructs ODPR to terminate the displaced person or refugee status of those existing applicants who do not submit necessary supporting documentation by the new deadline (a measure designed in part to encourage the return of displaced Croats to their reconstructed homes in Eastern Slavonia).

Given the eligibility restrictions in the act and the application time-limits, only a handful of Serbs in the former U.N. sectors have received reconstruction assistance from the Croatian authorities. Even in Eastern Slavonia, where Serb property would meet geographic eligibility requirements, a U.N. official estimated that as of July 1998 only twenty-four Serbs had actually received government reconstruction assistance.<sup>104</sup> By contrast, the signs of government reconstruction of Croat homes are visible throughout Eastern Slavonia, with large numbers of houses with new roofs and windows, and many others slated for reconstruction (indicated by a large number, and often the name of the owner, painted on the front of the house). In former Sector South, one UNHCR official in Knin noted that government reconstruction “was happening only in Croat villages” and was “not happening in terms of Serb housing.”<sup>105</sup>

Since in practice the reconstruction act excludes most Serbs from government reconstruction assistance, Serb home owners in the former U.N. sectors rely upon reconstruction assistance provided by international agencies, such as UNHCR and the European Commission, which is often implemented through international NGOs. Financial constraints limit such assistance to lightly damaged property (categories I-III of destruction) and restrict the numbers to whom assistance can be provided. In addition, local authorities often require that assistance provided to Serbs be matched by a similar level of assistance to reconstruct Croat housing, thereby compounding the imbalance.

Human Rights Watch spoke to the residents of Divoš village, Eastern Slavonia (between Antunovac and Ernestinovo) about their experience with government reconstruction assistance. The village, located next to power supply lines, was caught in fighting and all the houses were seriously damaged. Like much of the region, the area is heavily mined. The villagers fled, mostly to “Ernestinovo...Tenja and Dalj,” and occupied housing belonging to displaced Croats until the end of the UNTAES mandate.<sup>106</sup> When the owners returned and wanted to repossess their property, a villager from Divoš explained that they “were offered to go to Gašinci for six months by ODPR.”<sup>107</sup> She explained that they had “refused because we have farm land and equipment [in Divoš] and knew that [going back to Divoš] was the only solution.”

In June 1998, a temporary arrangement was made for twelve families (twenty-four persons) from Divoš between the U.S. Embassy in Zagreb and the Croatian authorities, whereby seventeen metal containers previously belonging to the U.N. mission to Croatia were moved onto the grounds of the destroyed houses in the village. The areas immediately surrounding the properties have been cleared of mines, but parts of the village and some of the agricultural land surrounding it remain mined. The containers, which have small windows, are commonly used in U.N. field operations for offices and sometimes accommodation. Fourteen of the seventeen containers were donated by the U.S. Embassy and three by the Croatian government. A woman explained that “each house has a well, but no running water.”<sup>108</sup> Until late 1998, the village lacked electrification.

While the donation of the containers has at least enabled the villagers to reoccupy the land on which their property stands, the approach of the Croatian authorities toward the village and its occupants remains much more in keeping with the spirit of the Reconstruction Act than with fairness or equality. The trees that shield the village from the Antunovac-Ernestinovo road are so overgrown that the village cannot be seen from the road. Nor is it signposted, a fact

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<sup>104</sup> Human Rights Watch interview with U.N. official, United Nations Liaison Office, Zagreb, July 17, 1998.

<sup>105</sup> Human Rights Watch interviews with UNHCR officials, Knin, July 28-29, 1998.

<sup>106</sup> Human Rights Watch interview with group of six residents from Divoš village, Divoš, July 22, 1998. The villagers requested that they not be identified further.

<sup>107</sup> Human Rights Watch interview with group of six residents from Divoš village, Divoš, July 22, 1998.

<sup>108</sup> Ibid.

that is jarring when one sees the plethora of new signs in the surrounding area, including brand new bilingual Hungarian and Croatian signs for the adjacent Hungarian village of Laslovo, although it is virtually uninhabited. Reconstruction of most houses in the nearby village of Ivanovac (around one kilometer away from Divoš) was completed almost one year ago, with the exception of a few houses belonging to Serbs. The two villages differ only in the ethnicity of their respective inhabitants.

After months of negotiation by international agencies in the region, agreement has been reached with local authorities to permit reconstruction of up to seventeen houses in Divoš. The reconstruction is to be carried out by the German NGO *Arbeit-Samariter-Bund* (ASB) with funding from the European Union. The consent of the municipal authorities to let the work commence was conditioned on an agreement that ASB would reconstruct fifteen further houses in the nearby village of Ernestinovo, of which only one belongs to a Serb. While sustained international intervention has produced a positive final outcome for the residents of Divoš, the village stands as a potent reminder of the inequities of access to reconstruction assistance in Croatia.

Croatian officials do not accept that the Reconstruction Act is discriminatory. Instead they argue that it is appropriate for Croats whose houses were destroyed “as a result of Serb aggression” to receive reconstruction assistance before those who “caused” the war. In an October 1998 interview in the Croatian daily *Vjesnik*, Deputy Minister of Reconstruction and Development Stjepan Šterc explained the logic behind the Croatian government policy on reconstruction: “How can we equalize aggressors and victims? Those who participated in the aggression cannot share the same priorities as the [homeland] defenders and [war] invalids.”<sup>109</sup> Similar views were expressed to Human Rights Watch in Strasbourg by the Croatian Ambassador to the Council of Europe and several members of the Croatian delegation to the Parliamentary Assembly of the Council of Europe.<sup>110</sup>

#### **Donor Conditionality and the Program for Reconstruction**

Despite the denials of the Croatian authorities, donor governments and the E.U. recognize the discriminatory nature of government procedures for allocating reconstruction assistance, and have limited their assistance to Croatia pending a change in the government’s approach (as well as progress on the return of refugees).<sup>111</sup> An international “donor” conference to assist Croatian reconstruction efforts that was intended to follow the April 1998 Banja Luka return conference was postponed due to lack of movement on issues of concern to the international community. Following the adoption of the Program for Return in June 1998, the governments that comprise the Article 11 Commission issued a non-paper setting out the criteria for donor participation at the conference.<sup>112</sup> The non-paper has

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<sup>109</sup> “Why is the Croatian law on citizenship now problematic to the international community?” *Vjesnik* (Zagreb) October 21, 1998 (Unofficial translation from UNHCR Public Information section).

<sup>110</sup> Human Rights Watch meeting with Ambassador Vladimir Matek, Permanent Representation of Croatia to the Council of Europe, Strasbourg, September 21, 1998. Human Rights Watch meeting with Zdravka Bušić, vice-president, Count Jacob Eltz, member, Croatian delegation to the Parliamentary Assembly of the Council of Europe, Strasbourg, September 22, 1998.

<sup>111</sup> The joint OSCE and U.N. Non-Paper “Preliminary Review in Preparation for An Assessment of the Return Process,” October 7, 1998, recommended *inter alia* amendment or repeal of articles 1, 2, 5, 6, and 18 of the Reconstruction Act.

<sup>112</sup> The Article 11 Commission is so called because it was established by article 11 of the 1995 Erdut agreement. Members of

two distinct elements: first, it conditions international participation on the “expeditious and purposeful implementation of the Program for Return, both as regards the processing of applications for confirmation of citizenship and travel documents and executing the mechanisms for the repossession of property,” spelling out the specific measures necessary to create conditions for return. These include “fulfillment of the Government’s commitment, as stated in the Return Program, to propose to the Croatian State *Sabor*, by September 20, changes in legislation relevant to the Return Program.”<sup>113</sup> Second, the non-paper reiterates the need for the government of Croatia to develop a “comprehensive Program for Reconstruction.” It specifies that the program must be “state-wide,” linked to “the return of refugees and displaced persons,” and should “provide for equal treatment of all ethnic groups.”<sup>114</sup>

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the commission include Zagreb-based government representatives from the United States, European Union member states and Russia and the heads of OSCE and UNHCR missions.

<sup>113</sup> Article 11 Commission non-paper. Annexed to “Weekly Report 14 July - 20 July (No. 28/29)” OSCE Mission to Croatia, July 20, 1998.

<sup>114</sup> Article 11 Commission non-paper.

In October 1998, the Croatian Ministry of Development and Reconstruction presented the final version of the "Reconstruction Program for War-Impacted Areas."<sup>115</sup> The program was substantially revised in line with comments from international organizations and with the assistance of a German development expert seconded to the ministry by the United Nations Development Program (UNDP). Despite the revisions, and provisions which establish new deadlines for reconstruction applications (enabling those who have not previously applied to do so) the program remains problematic. Although the Croatian government revised the reconstruction program, it failed to propose the necessary legislative changes related to reconstruction at the same time, as the Article 11 non-paper had specified. The failure to do so substantially weakens the program's effectiveness because the program itself neither repeals nor amends the Reconstruction Act. As a result, references in the program to non-discrimination in the provision of reconstruction have little practical impact. Section 3.4.1.1 of the program, for example, states that "all returnees regardless of their ethnicity will be granted equal preference status regarding access to reconstruction assistance." Yet despite the quasi-legal status of the program, the *law* governing reconstruction is the aforementioned Reconstruction Act, which effectively prioritizes eligibility on the basis of ethnic criteria. These priorities and their legal definitions remain unaffected. The program remains limited to Croatian citizens and Croat refugees from Bosnia and FRY.

There are other problems: while the program is linked to the return of refugees and displaced persons throughout Croatia, an annex indicating target areas of return indicates that more than half of all return is expected in only two counties (Osječko-Baranjska and Vukovarsko-Srijemska), which together encompass the entire former UNTAES region.<sup>116</sup> According to table four of the program's annex, the two counties will receive 291.6 million kuna out of a total of 392.1 million kuna allocated for cash grants for reconstruction categories I-III, and 3.56 billion kuna out of a total of 5 billion allocated loans for organized reconstruction under categories IV-VI.<sup>117</sup> These figures suggest that the former UNTAES region (and other parts of Osječko-Baranjska), the major area of Croat return, will be the disproportionate beneficiary of the reconstruction program, compared to areas of Serb return, and that the program is therefore primarily designed to support the return of internally displaced Croats rather than refugee Serbs.

In response to its commitments to amend discriminatory legislation<sup>118</sup> and in the context of the proposed reconstruction conference, the Croatian government presented its own "non-paper" in early November which contained "recommendations on the changes of Croatian laws [that] had been adopted by the Cabinet of the government of the Republic of Croatia at the session on November 9, 1998."<sup>119</sup> The recommendations are proposed amendments to the Law on Areas of Special State Concern, Law on the Status of Refugees and Displaced Persons, and Law on Reconstruction. They were prepared in consultation with the international community, based in part on legislative changes proposed in a joint OSCE-U.N. paper assessing the return process issued in October 1998.<sup>120</sup>

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<sup>115</sup> Republic of Croatia, Ministry of Development and Reconstruction: "Continuing Program for the Reconstruction of War-Affected Settlements (Final Version)" Zagreb, October 1998.

<sup>116</sup> Section 5.3: Counties of Return, "Reconstruction Program for War-Impacted Areas." Part of Osječko-Baranjska county lies outside the former UNTAES area. (1 U.S. dollar is approximately equivalent to 6.7 Croatian kuna.)

<sup>117</sup> Table Four: Housing Accommodation Models, "Reconstruction Program for War-Impacted Areas."

<sup>118</sup> The Program for the Return states: "the Government will in the term of three months change the existing laws...in a way that all of the different categories to whom this program refers would be equal in their status of refugees."

<sup>119</sup> Government of Croatia non-paper (November 1998).

<sup>120</sup> Non-Paper (Preliminary Review in Preparation for An Assessment of the Return Process), October 7, 1998.

The long-delayed reconstruction conference was held in Zagreb on December 4-5, 1998. Although the reconstruction plan was praised by U.S. Ambassador to Croatia William Montgomery as “probably the best I’ve seen,”<sup>121</sup> and described by OSCE Head of Mission Tim Guldemann as “good,” international donor participation at the conference was limited. Donor pledges at the conference were limited to \$25 million (or 1 percent of the \$2.5 billion reconstruction program presented by the Croatian government), of which less than \$10 million represented new pledges. Most of the new funds pledged are earmarked for landmine clearance projects. The European Union and the U.S. government delayed their decision to attend the conference until December 3 pending the Croatian government’s adoption of “mandatory instructions” for the reconstruction program.<sup>122</sup> When the “instructions” were finally adopted, the E.U. issued a statement noting that they had been “adopted only after strong pressure from the international community and only after the very last day before the conference.”<sup>123</sup>

The “mandatory instructions,” which were published on December 14, 1998, describe in detail the procedures for reconstruction applications under the reconstruction program for “those who have not submitted requests or could not exercise the right to reconstruction pursuant to the provisions of the Law on Reconstruction.”<sup>124</sup> They do not, however, make clear the status of the reconstruction program in relation to the reconstruction law, nor do they specify how applications will be prioritized. As of early February 1999, the discriminatory provisions of the original reconstruction law remain in force.<sup>125</sup> Despite the government’s commitments in the June 1998 return program, and the November non-paper, no real progress has been made to repeal discriminatory provisions of key legislation affecting return.

The effect of the “mandatory instructions” on access to reconstruction assistance is unclear. What is certain is that only the repeal of the discriminatory articles by the *Sabor* can guarantee nondiscriminatory application of the reconstruction act. As with the resolution of housing disputes, the approach of the Croatian authorities to the amendment of discriminatory provisions of the reconstruction law merely adds extra layers of interpretation and increases, rather than limits, the possibility for confusion or uneven implementation. While it may be more difficult to repeal discriminatory articles of the reconstruction law through the *Sabor* than issue a government decree, repeal through parliament is much more likely to result in a clear and transparent outcome, the implementation of which can be measured.

Overall, the Reconstruction Program highlights the flaws in the international community’s approach toward the Croatian government with regard to resolving ethnically-based inequalities. In response to a genuine problem (in this case access to reconstruction), the international community proposes a new, often legally-based, solution to the Croatian

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<sup>121</sup> “Montgomery satisfied with Reconstruction Plan,” HINA, December 4, 1998.

<sup>122</sup> Mandatory Instructions “with the aim of complete and correct implementation of the Continuing Programme of Reconstruction of War-Affected Settlements,” December 14, 1998.

<sup>123</sup> E.U. representative Gerhard Jandl, quoted in “Croatia told to put words into action for aid,” Reuters, December 4, 1998.

<sup>124</sup> Mandatory Instructions “with the aim of complete and correct implementation of the Continuing Programme of Reconstruction of War-Affected Settlements,” December 14, 1998.

<sup>125</sup> Senior OSCE representatives told Human Rights Watch in early February that the “binding legal interpretations” proposed in Croatian government’s November 1998 non-paper had been shelved. Three government legal working groups are reportedly preparing drafts for changes to each of the three laws for adoption by the Croatian *Sabor*. (Human Rights Watch telephone interviews with OSCE officials, February 11, 1999.)

government and pressures it to adopt it. Yet new programs, laws or decrees adopted by the Croatian government under international pressure rarely contain language repealing or amending existing laws that contradict the new legislation.<sup>126</sup> What frequently results instead is contradictory legislation sharing the statute book. When the new solution fails to be implemented, the Croatian government claims that it is the result of confusion or intransigence on the part of local authorities, despite the fact that Croatia has a highly centralized political system with most local government controlled by the ruling party. Further international pressure over nonimplementation generally leads not to greater efforts by the Croatian authorities to implement the program or law, but instead results in the adoption by the Croatian government of “mandatory instructions” or other forms of decrees on implementation of the existing law, which are usually not adopted by the Croatian *Sabor* (and therefore lack the same legal weight as the laws passed by it).

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<sup>126</sup> The Program for Return is another example of this strategy.

International pressure on Croatia might be more effective if it was targeted exclusively at the repeal or amendment of existing legislation, rather than proposals which add to the ever-more-complex tangle of Croatian law, decrees, and quasi-legal programs. While such an approach might not yield such spectacular progress on paper, it would make it much easier to see where the obstacles to implementation truly lie, enhance rule of law, and perhaps permit more effective interventions by the international community to remove them. As Croatia's ombudsman has noted: "rights and obligations are not a matter of instructions but a matter of the law."<sup>127</sup>

### **Citizenship and Naturalization**

Croatia's citizenship law has been the subject of international scrutiny since its initial adoption in 1991. Aspects relating to the acquisition of citizenship by naturalization have received the most attention. In the simplest terms, the law makes it easy for most ethnic Croats to obtain citizenship, even where they have no prior residence in Croatia.<sup>128</sup> Conversely, most Serbs who did not obtain Croatian republican citizenship prior to 1991 (see below) can only become citizens through a complex naturalization process, even if they are long-term residents of Croatia. Serbs are also required to pay a naturalization fee if their applications for citizenship by naturalization are approved, while most Croats are exempt from the fee.

States are granted considerable latitude under international law to formulate citizenship laws as they see fit, including the right to base citizenship on the principle of blood (*jus sanguinis*) rather than birth and residence (*jus soli*). Nevertheless, the freedom of states to exclude certain groups from citizenship eligibility is limited by international law both by the need to avoid statelessness and the principle of nondiscrimination. The 1965 Convention on the Elimination of All Forms of Racial Discrimination (CERD), to which Croatia is party, allows states to determine legal provisions "concerning nationality, citizenship or naturalization, provided that such provisions do not discriminate against any particular community."<sup>129</sup> In addition, the Council of Europe has stated in the context of establishing citizenship rules in successor states that "citizenship should not be granted arbitrarily and in violation of the principle of non-discrimination."<sup>130</sup>

Part of the difficulty with citizenship in Croatia arises from the dual nature of citizenship in the old Socialist Federal Republic of Yugoslavia (SFRJ) prior to 1991, whereby citizens were registered in the citizenship books of one of the six republics (republican citizenship) in addition to having Yugoslav federal citizenship. Under the SFRJ, republican citizenship had no bearing on where a person could reside or work, and a significant minority of persons failed to change or obtain republican citizenship when moving from one republic to another. In the case of Croatia under the SFRJ, a child born in Croatia would receive Croatian citizenship automatically only when both parents were

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<sup>127</sup> Human Rights Watch interview with Ante Klarić, ombudsman, Zagreb, August 7, 1998.

<sup>128</sup> A detailed analysis of citizenship in Croatia and the Socialist Federal Republic of Yugoslavia is beyond the scope of this report. For further information see Human Rights Watch/Helsinki: "Civil and Political Rights in Croatia," pp. 8-15 (October 1995). See also, UNHCR Regional Bureau for Europe: "Citizenship and Prevention of Statelessness Linked to the Disintegration of the Socialist Federal Republic of Yugoslavia," European Series, vol. 3, no. 1, (June 1997).

<sup>129</sup> Article 1(3), International Convention on the Elimination of All Forms of Racial Discrimination.

<sup>130</sup> Council of Europe, "Comments on the Draft Citizenship Law of the Republic of Latvia," January 24, 1994. Quoted in Human Rights Watch/Helsinki, "Civil and Political Rights in Croatia," (October 1995).

Croatian citizens.<sup>131</sup> In other cases, the child would receive Croatian republican citizenship only if the parents consciously decided to pursue it. Since republican citizenship was legally unimportant and many Serbs identified with Yugoslavia, not all parents obtained republican citizenship for their children.

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<sup>131</sup>UNHCR Regional Bureau for Europe: "Citizenship and Prevention of Statelessness Linked to the Disintegration of the Socialist Federal Republic of Yugoslavia", European Series, vol. 3, no. 1, (June 1997). It adds that "for persons born during the period 1965-1977, automatic acquisition of the Croatian republican citizenship was not the rule when one of the parents had Croatian citizenship, even if the child was born in Croatia."

When Croatia became independent it adopted a new citizenship law based on the principles of the republican citizenship laws that it replaced. The new law on citizenship did not take into account the fact that many (mostly Serb) permanent residents of Croatia had failed to acquire Croatian republican citizenship. Instead, it required residents who did not hold Croatian republican citizenship under the SFRJ to apply for citizenship by naturalization. Exceptions were made for persons born in Croatia, provided that at least one parent was a Croatian citizen by birth, and for ethnic Croat residents lacking republican citizenship (who could obtain citizenship by declaration).<sup>132</sup> The effect of the new law was to turn many Croatian Serbs into foreigners in their own country. This development was exacerbated by the departure of large numbers of Croatian Serbs to Serb-held areas of Croatia, and later to Bosnia and FRY, before regularizing their citizenship status.<sup>133</sup> The citizenship status of displaced and refugee Serbs from Croatia has been further complicated by citizenship rules in FRY (which forbid dual citizenship) and Bosnia (which render refugees ineligible for citizenship until after the year 2000).

While no reliable estimates exist, a significant minority of Croatian Serbs lack Croatian citizenship. This is especially true of refugees in Republika Srpska. Lack of citizenship affects Croatian Serbs in a multitude of ways: in the case of refugees it restricts the right of return to Croatia. For Croatian Serb refugees in Bosnia, lack of Croatian citizenship restricts freedom of movement more generally: since they hold neither Croatian nor Bosnian travel documents, they cannot cross international borders. As a Serb refugee in Banja Luka told Human Rights Watch, "we have no nationality."<sup>134</sup> For returnee Serbs and those who remained inside Croatia, lack of citizenship affects access to reconstruction assistance, the right to work and the ability to get an official returnee status (the so-called ODPB issued "green card"). It also excludes such persons from the program for return, since obtaining "Croatian documents" is necessary prior to applying for repossession of property under the program.<sup>135</sup>

For most Croatian Serbs who lack Croatian citizenship, the only way to obtain it is through naturalization (as distinct from verification of preexisting citizenship). The eligibility requirements for naturalization for non-Croats are contained in article 8 of Croatia's citizenship law.<sup>136</sup> It states that "a foreigner can acquire Croatian citizenship by naturalization if he has submitted a request for Croatian citizenship, and if he fulfills the following requirements: (1) that he is 18 years old, and that he is not deprived of working capacity; (2) that he is dismissed from his foreign citizenship, or that he submits proof that he will acquire a dismissal, if granted Croatian citizenship; (3) that he has had a registered residence on the territory of the Republic of Croatia until the submission of the request for at least five consecutive years; (4) that he is familiar with the Croatian language and Latin alphabet; [and] (5) that it can be concluded from his behavior that he respects the legal order and customs of the republic of Croatia, and that he accepts

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<sup>132</sup> Act on Croatian Citizenship, Article 4 (acquisition of citizenship by origin); Article 30, paragraph 2 (acquisition of citizenship by declaration).

<sup>133</sup> By departing their registered residence, many Serb displaced persons and refugees were deemed by the Ministry of Interior to have broken the required five year permanent residence period, thus becoming ineligible for citizenship.

<sup>134</sup> Human Rights Watch interview with S.P., a Croatian Serb refugee from Kostajnica, Banja Luka, July 13, 1998.

<sup>135</sup> Program for Return, "Procedures for Return."

<sup>136</sup> Under article 16 of the Citizenship Law "a person who belongs to the Croatian nation with no domicile in the Republic of Croatia can acquire Croatian citizenship, if he fulfills the requirements of Article 8, paragraph 1, point 5 of this Act ["... respects the legal order and customs of the Republic of Croatia and...Croatian culture."], and if he gives a written statement that he considers himself a Croatian citizen."

Croatian culture.”<sup>137</sup> While there are exceptions from the first four provisions of article 8 for some categories of applicant (primarily for those married to Croatian citizens), there are no exceptions to provision 5 of the article, for which there are no publicly-defined criteria and is thus open to arbitrary interpretation.

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<sup>137</sup> Act on Croatian Citizenship, Article 8.

Naturalization claims by Croatian Serbs are often rejected on the grounds of provision 5, that the claimant's behavior does not indicate respect for Croatia's "legal order and customs" or acceptance of "Croatian culture." The imprecise and subjective criteria of the provision invite arbitrary and discriminatory rulings, and the government frequently fails to indicate the specific basis for denials based on provision 5, making its rulings extremely difficult to refute. It is provision 3 of the article, however, that has caused the most difficulty for Croatian Serbs seeking naturalization. While some international observers have argued that the article should be interpreted to mean *any* period of five continuous years of registered residence prior to the submission of the application, the Croatian government has interpreted the law to mean five continuous years of registered residence immediately prior to the submission of the application. Serbs requiring naturalization who fled Croatia *and* lost their permanent registered residence in Croatia are thereby rendered ineligible for citizenship by provision 3 until such time as they have resided in Croatia for a period of five years continuously. This provision has been used to deny large numbers of naturalization applications for Croatian Serbs. The Civil Rights Project in Eastern Slavonia has helped more than 500 Croatian Serb clients whose citizenship claims have been rejected on the grounds that they had failed the residency requirement in 8(3), as well as several hundred rejected under article 8(5).<sup>138</sup>

The use of article 8 provisions to deny naturalization applications is not the only discriminatory aspect of Croatia's citizenship procedures. Once a naturalization application has been approved, the applicant must pay a fee of 1,500 Croatian kuna (approximately U.S. \$225) in order to be granted citizenship.<sup>139</sup> Ethnic Croats seeking naturalization, characterized in the law as "members of the Croatian nation," are exempted by law from having to pay the fee.<sup>140</sup> A request by the Civil Rights Project to the government of Croatia's ombudsman to determine the constitutionality of such an openly discriminatory fee produced an official explanation from the Ministry of the Interior conveyed to the Ombudsman office that the fee was charged only to non-Croat applicants because the additional eligibility requirements (provisions 1-4 of article 8) must be determined in Zagreb thereby incurring higher costs, whereas ethnic Croats need satisfy only provision 5, which can be determined locally, and more quickly than the other provisions.<sup>141</sup> When one considers that a family of four Croatian Serbs would have to pay around U.S. \$1,000 in combined fees for naturalization however, while an immigrant Croat family would be exempt, it is difficult to conclude that there is no discriminatory intent behind the fee.

### **Assignment of Privately-Owned Agricultural Land**

In addition to assigning private accommodation (and sometimes business premises) belonging to Serbs for temporary use, local authorities have also assigned agricultural land to Bosnian Croat refugees and other users. Under the law on agricultural land, Croatian authorities are permitted to grant use of agricultural land currently lying fallow for a period of one to three years. While the law may have been designed to maximize agricultural production, it is also clearly open to discriminatory application. The assignment of agricultural land is also possible under the LTTO. As with the assignment of private residential property, local authorities have sometimes assigned to other users agricultural land belonging to persons who remained or have returned at the time that the property is assigned. Human Rights Watch has been informed of several cases in the village of Raškovići, near Knin, where two persons were assigned large tracts of land (15,000 and 14,000 square meters) by local authorities, despite the fact that part of the land belonged to persons who were present and intended to use it. These cases have been confirmed by OSCE

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<sup>138</sup> As of September 1998, the Civil Rights Project had more than 700 appeals against denial of citizenship against Serbs pending with the Administrative Court.

<sup>139</sup> Tariff 12.2 of the Law on Administrative Fees (See: Civil Rights Project, Activities Report August -September 1998).

<sup>140</sup> Ibid.

<sup>141</sup> Based on information received from the Civil Rights Project.

representatives in Knin.<sup>142</sup> A representative from the Knin office of the Dalmatian Solidarity Council, an NGO that provides legal advice, told Human Rights Watch that “authorities have not responded to appeals to restore the land [to its owners].”<sup>143</sup>

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<sup>142</sup> Human Rights Watch interview with OSCE representative, Knin, July 30, 1998.

<sup>143</sup> Human Rights Watch interview with Nevena Žunjić, DOS Split-Centar Knin, Knin, July 29, 1998.

According to an official from the OSCE coordination center in Knin, the most recent case of agricultural land assignment was May 19, 1998.<sup>144</sup> The decision to grant the use of the land, which was issued by local authorities in Knin and obtained by OSCE Knin, said that the land had been assigned under the LTTO. An OSCE lawyer who has seen the decision told Human Rights Watch that it contained contradictory information: in one place the decision indicated that the land belonged to the state and in another it said that the land belonged to persons living in Republika Srpska. Although Human Rights Watch is not aware of similar cases elsewhere in Croatia, lack of access to agricultural land in Knin by its Serb owners clearly presents a further obstacle to return in a part of Croatia where agricultural production is currently the only viable form of subsistence for most returnees.

## CONFIDENCE-BUILDING MEASURES

Since the beginning of the UNTAES mandate in January 1996, the Croatian authorities have undertaken a series of measures designed to enhance confidence among Croatia's Serbs. Much of the progress that has been achieved emerged as a result of the pressure exerted by the international community during the period of UNTAES, including the possibility that the operation's mandate would be extended beyond December 1997, as well as the authority exercised by UNTAES in Eastern Slavonia during the mandate period. Pressure has also been applied through the presence of the OSCE Mission to Croatia, and through linkages to possible closer ties to so-called Euro-Atlantic institutions (especially participation in NATO Partnership-for-Peace, ties to the European Union, and sustained membership in the Council of Europe). As a result, Croatia has undertaken important steps toward confidence-building, notably through the passage in 1997 of the Convalidation Law, the Program on the Establishment of Trust and the 1996 Law on Amnesty. Regrettably, the promise of these measures remains largely unfulfilled: major aspects of the Convalidation Law (which allows for the validation of documents issued by "Republika Srpska Krajina" authorities) have yet to be implemented on the ground, despite additional decrees and implementing instructions, confusion and uncertainty continues to surround the Amnesty Law and, as much of this report makes clear, little progress has been made in meeting the goals of the Program on the Establishment of Trust.

### Law on Convalidation

The Law on Convalidation, adopted by the Croatian *Sabor* in October 1997, is a critical component among Croatia's post-war confidence-building measures. Most Croatian Serbs who lived under the authority of the self-declared "Republika Srpska Krajina" (RSK) were issued official "RSK" documents at some time or other. The most important among them include birth, marriage, divorce, and death certificates, title deeds on properties, wills and inheritance documents, school attendance and graduation certificates, and stamps in the working books that all Yugoslavs carried indicating working time, valid for future pension claims. "RSK" courts also issued civil and criminal decisions and verdicts. Until the passage of the Convalidation Law, Croatian authorities refused to recognize such documents and decisions as valid, since Croatia recognized neither the "RSK" nor its authorities even for historical purposes. The new law created a mechanism for these documents and decisions to be recognized provided that they were consistent with Croatian law, pending the issuance, where appropriate, of official Croatian documents to replace them.

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<sup>144</sup> Human Rights Watch interview with OSCE representative, Knin, July 30, 1998.

After complaints from the international community about the failure of a number of state agencies and local authorities to implement the law, the Croatian government issued three decrees in April 1998, covering respectively judicial matters, administrative matters, and issues related to employment, pensions, and social welfare.<sup>145</sup> The decrees are intended to provide a framework for implementation of the law. Unfortunately, the decree covering employment, pensions, and social welfare also sets deadlines for submission of applications related to unemployment benefit eligibility (within sixty days of the decree coming into force) and for submissions related to consideration of working time as pensionable (within twelve months of the decree coming into force). Yet, according to the OSCE, as of September 1998 no public information campaign had been undertaken to explain the terms of the law and the processes for the validation of documents, adding to confusion among potential applicants as to eligibility procedures.<sup>146</sup>

In September 1998, following further criticism from the international community,<sup>147</sup> the Croatian government issued extensive implementation instructions related to pension, employment, and other issues covered by the third decree.<sup>148</sup> The instructions are extremely complex, and parts appear to contradict provisions of the Convalidation Law itself. The instructions state that working time during the period of the "RSK" can only be considered pensionable if the applicant was working at the time that the Convalidation Law was passed. This appears to contradict the law itself, which allows working time between 1992 and 1996 to be considered pensionable and makes no mention of the need to have been in employment at the time that the law was passed.

Despite these additional measures, the Convalidation Law, in the words of a September 1998 report by the U.N. secretary-general, "is not being implemented in a comprehensive manner."<sup>149</sup> The secretary-general's report adds that despite the April decrees and implementing instructions "overall, there is still no consistent administrative procedure for implementing the law." Since state agencies and local authorities have failed to implement the Convalidation Law, many Serbs continue to face problems having working time, and pension documents from the "RSK" period recognized.

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<sup>145</sup> Decree on Implementation of the Law on Convalidation in Subjects of Judicial Nature (April 9, 1998); Decree on Implementation of the Law on Convalidation of Acts Issued in Subjects of Administrative Nature (April 9, 1998); Decree on Implementation of the Law on Convalidation for the Administrative Field of Labor, Employment, Pension and Disability Insurance, Children's Allowance, Social Welfare and Protection of Military and Civil Invalids of War (April 9, 1998).

<sup>146</sup> "Report of the OSCE Mission to the Republic of Croatia on Croatia's progress in meeting international commitments since May 1998 (September 8, 1998)."

<sup>147</sup> See, for example, "Report of the OSCE Mission to the Republic of Croatia on Croatia's progress in meeting international commitments since May 1998 (September 8, 1998)."

<sup>148</sup> Instructions of Implementation of the Law on Convalidation and the Decree for Implementing the Law on Convalidation in the Field of Employment, Pension and Disability, Children Allowance and Social Welfare and Protection of Military and Civilian War Invalids.

<sup>149</sup> "Report of the Secretary-General on the United Nations Police Support Group," (S/1998/887), September 23, 1998.

The failure to recognize working time and “RSK” pensions leaves elderly Serbs who became eligible for pensions during or after the “RSK” period unable to collect the pensions to which they should be entitled. (Serbs who were already receiving state pensions prior to 1991 are generally receiving their pensions now, although sometimes not in the full amount to which they are entitled, and NGOs have reported delays of up to five months for applications to be processed.)<sup>150</sup> The issue of pensionable time is of pressing concern: Many Serbs who remain in former U.N. sectors, as well as the majority of those returning from outside Croatia as refugees, are elderly and rely on the pensions for which they contributed social security payments throughout their working lives.

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<sup>150</sup> According to a Serb Democratic Forum representative in former Sector North, prior to making an application for restoration of pension rights Serb returnees must 1) go to the police for an “informative talk” (ten to fifteen days wait); 2) obtain a property ownership certificate (fifteen to thirty days wait); 3) obtain a letter from the police proving residence (up to fifteen days wait); 4) where necessary, obtain a citizenship certificate (*domovnica*) (fifteen days wait); 5) obtain a letter stating that they have no criminal record (seven days wait). After obtaining all necessary documentation, returnees can then apply. Source: Human Rights Watch interview with Ninko Mirić, President SDF Vojnić, Petrinja, August 3, 1998.

In July 1998, Human Rights Watch attended a legal clinic in the village of Trpinja (near Vukovar), organized by the Vukovar-based Center for Peace, Legal Advice, and Psycho-Social Help.<sup>151</sup> Two Croatian lawyers who work for the mobile clinic travel around Eastern Slavonia and provide pro-bono legal advice to (mostly Serb) village communities. Of the sixteen clients who came for consultations while Human Rights Watch was present, four had problems that were directly related to nonimplementation of the Convalidation Law. One case involved a woman who was unable to remarry because the court decision of her divorce was not recognized. Three other cases concerned persons who had become eligible for an "invalid pension" (a form of workers compensation which functions like social security) during the period of "RSK," but whose subsequent applications for restoration of the benefits in the post-war period were rejected because the original certificate of approval had not been "convalidated."

An additional case involved a common situation faced by Serbs in Eastern Slavonia: a person who was sent home from work in February 1998 without being formally terminated. His employer had refused to stamp his working book to indicate working time during "RSK" to the present, rendering him ineligible for unemployment benefit, as well as potentially delaying a future pension claim (since any working time with that employer would not be considered pensionable). When Human Rights Watch asked the two lawyers why the Convalidation Law had yet to be fully implemented, one responded that there was "no political will."<sup>152</sup>

Reports from other organizations providing legal assistance contacted by Human Rights Watch confirm that nonimplementation of the Convalidation Law continues to cause problems for Serbs in former U.N. sectors. A report for June 1998 from the Okučani office of the Serb Democratic Forum (a legal assistance NGO) indicates that they handled twenty-eight cases of working period verification (for pension purposes) related to the Convalidation Law during that month. The report notes that "until now, we do not have any feedback [from local authorities] about resolving of (sic) these issues."<sup>153</sup> The Civil Rights Project in Eastern Slavonia reports more than one hundred similar cases, and the Dalmatian Committee of Solidarity (known by its Croatian acronym, DOS) in Knin frequently deals with validation issues. Nevena Žunjić, the director of the DOS Split-Centar Knin, confirmed that in former Sector South substantial parts of the Convalidation Law are "still not implemented, especially not in the case of pensions or invalid insurance." DOS estimates that "12,000 people have claims for [verification of] pensionable time in Knin [area]."<sup>154</sup>

### **The Amnesty Law and the Prosecution of War Crimes**

From its bloody and horrific beginning in Vukovar to its silent end following the exodus of tens of thousands of Serbs from Croatia, the war in Croatia was punctuated by violations of international humanitarian law.<sup>155</sup> Those who ordered and committed war crimes must be held individually responsible for their actions and brought to justice. Regrettably, the process of rendering justice and establishing individual criminal responsibility for war crimes in Croatia has been tainted by political concerns. Domestic war crimes prosecutions have often failed to meet international standards and Croatia's cooperation with the International Criminal Tribunal for the Former Yugoslavia has been poor, except in cases involving Croat victims. At the same time there have been problems with the application of an amnesty for crimes that fall below the standards of humanitarian law violations, stemming in large part from the failure to inform persons covered by the amnesty that they have been so amnestied. Overall, the shortcomings in the application of the

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<sup>151</sup> Legal clinic organized by the Center for Peace, Legal Advice and Psycho-Social Help, at which Human Rights Watch was present. Trpinja (Eastern Slavonia), July 24, 1998.

<sup>152</sup> Human Rights Watch interview with Mr. Mikić, Center for Peace, Legal Advice and Psycho-Social Help, Trpinja, Eastern Slavonia, July 24, 1998.

<sup>153</sup> SDF Western Slavonia Branch: Okučani Office "Report about work of SDF Legal office in Okučani for the month of June 1998" (n.d.).

<sup>154</sup> Human Rights Watch interview with Nevena Žunjić, DOS Split-Centar Knin, Knin, July 29, 1998.

<sup>155</sup> For an account of humanitarian law violations committed during the Croatian war, see: Human Rights Watch/Helsinki letter to Slobodan Milošević, president of the Republic of Serbia, and General Blagoje Adžić, then acting minister of defense and chief of staff of the Yugoslav People's Army, January 21, 1992; Human Rights Watch/Helsinki letter to Franjo Tuđman, president of the Republic of Croatia, February 13, 1992; Human Rights Watch/Helsinki "The Croatian Army Offensive in Western Slavonia and its Aftermath," July 1995; and, Human Rights Watch/Helsinki "Impunity for Abuses Committed During 'Operation Storm' and the Denial of the Right of Refugees to Return to the Krajina," August 1996.

Amnesty Law and the politicization of war crimes prosecutions have undermined confidence in the judicial system among Serbs and inhibited the return of Serb refugees.

Many of those Serbs who fought in the movement to break away from Croatia, as well as political leaders and prominent citizens closely associated with the "Republika Srpska Krajina," were charged with participation in armed rebellion. Trials and convictions took place in military courts, often in absentia. Beginning in 1992, Croatia adopted several amnesty laws covering acts of armed rebellion, most recently the September 1996 Law on General Amnesty. International pressure played a significant part in the willingness of the Croatian government to introduce each of the laws. At the time of its adoption by the Croatian *Sabor*, the 1996 law was welcomed by the U.N. Security Council and generally praised by the international community as a positive development in Croatia's treatment of its Serb minority.<sup>156</sup> At the same time, the U.N. Security Council cautioned that the law must be "implemented without delay, in a fair and equitable manner."

The 1996 Amnesty Law contains positive elements and by and large, criticisms related to the law have focused not on the legislation itself but rather on its implementation. Article 6 of the law repeals previous amnesty laws and article 2 states that for those covered by the law "no criminal proceedings shall be instituted and no criminal charges shall be brought...[and that] criminal investigations already undertaken shall be canceled and criminal proceedings already underway shall be terminated ex officio by the court's ruling." Nevertheless, problems have arisen for those who were already convicted of the crimes covered by the law. The Amnesty Law does not overturn the conviction of such a person but merely suspends their sentence and any other criminal sanctions attached to it. As an OSCE legal adviser put it, the "legal consequences of the verdicts are not abolished by the court."<sup>157</sup> As a result, persons tried and convicted of "armed rebellion" still have a criminal conviction on record. For Serbs who were previously judges and lawyers, this means that they cannot return to legal practice: Croatia has refused to allow persons with such charges to be readmitted to the Bar, and they are prohibited from judgeships. When Human Rights Watch raised concerns regarding the practice with the ombudsman of Croatia, the deputy ombudsman of Croatia stated that "nobody has a right to mention that a person who has been amnestied has a criminal record," adding that "only if you commit a new crime can it [your previous criminal activity] be taken up."<sup>158</sup> This view, however, does not alter the fact that Serbs convicted of crimes covered by the Amnesty Law are excluded by law from legal practice and other occupations that require an absence of criminal convictions.

Croatian authorities have issued 13,757 decrees of amnesty under the law.<sup>159</sup> The issuance of the decrees should have served at least to reassure those persons explicitly amnestied that no case would be pursued against them. Unfortunately, many of those amnestied have no way of determining that they are among the 13,575. Despite a report on Croatian television in March 1998 that "individual official amnesty notifications will be sent to the home addresses of all those amnestied in a few days time," Croatian authorities instead presented boxes of decisions containing the names of those amnestied to the Joint Council of Municipalities in Borovo.<sup>160</sup> In many cases decisions listed persons

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<sup>156</sup> Quoted in UNTAES Bulletin, Special Issue, "New Amnesty Bill Passed by Croatian Parliament," September 1996.

<sup>157</sup> Human Rights Watch interview with OSCE legal adviser, OSCE Coordination Center Vukovar, July 20, 1998.

<sup>158</sup> Human Rights Watch interview with Ante Klarić, ombudsman, Marta Mukić, Deputy ombudsman, Zagreb, August 7, 1998.

<sup>159</sup> Human Rights Watch interview with Anne Burley, head of Croatia Office, U.N. Field Operation for the Former Yugoslavia, Zagreb, July 17, 1998.

<sup>160</sup> "Serbs Welcome Croatia's Decision on Amnesty for 12,000 Serbs," Croatian TV Satellite Service, March 13, 1998 (BBC

without sufficient identifying information, for example father's name (which serves as a middle name), date or place of birth, or identification number, making it impossible for two persons with the same first and family name to determine conclusively which of them is on the list. International efforts are under way to compile a searchable computer database containing the names of all those amnestied.<sup>161</sup>

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Monitoring Summary of World Broadcasts, March 16, 1998).

<sup>161</sup> The project is being carried out by the Civil Rights Project.

Human Rights Watch obtained a copy of one amnesty decision, prepared by the Osijek court. The decision, which has the case number "Kio-42/97-97" and contains approximately 1,000 names, consists of six pages of names, single-spaced and separated only by commas.<sup>162</sup> In all but a handful of cases, the only information available is the first and family name, making it virtually impossible to determine conclusively the identity of those on the list. Given the scanty information, it is hard to conclude that such a list is a good-faith effort to inform persons that they have been amnestied. Human Rights Watch showed the list to Assistant Minister of Justice Ivan Turudić during a meeting in Zagreb in August and asked whether he agreed that it would be difficult to confirm a person's identity from such a list. His response was that "the reason for this state of affairs is purely technical" and said that "if you apply to the Ministry of Justice we will communicate the information to the county courts and inform you."<sup>163</sup> He added that "it shouldn't be a problem to get further information about these people's father's name and date of birth, so they can be sure it's them," a statement which raises the question as to why such additional information was not provided in the first instance.

Minister Turudić, who has been actively involved in the implementation of the Amnesty Law, also told Human Rights Watch that as far as he was aware "there are no obstacles to its implementation." Yet the confusion over the identities of those included on the amnesty list is not the only concern observers have raised over the way the law has worked in practice. Part of the difficulties relate to what kinds of acts should be covered by the Amnesty Law. As a legal adviser with the (now defunct) UNPSG explained it: "the application of the Amnesty Law is very clear. What's not clear is what constitutes those crimes."<sup>164</sup> According to U.N. reports, at least four Serbs in Eastern Slavonia have been charged with common crimes for participation in paramilitary units during the war.<sup>165</sup> Common crimes are explicitly excluded from the list of crimes covered by the Amnesty Law, yet the nature of the charges brought against the four seem fundamentally no different than the charge of "participation in armed rebellion," which *is* covered by the law.

The domestic prosecution of internationally-recognized war crimes also remains a cause of concern. UNTAES reportedly obtained a verbal agreement from Croatian authorities in 1997 that there would be no new domestic war crimes prosecutions beyond the twenty-five already being pursued without them being first reviewed by the International Criminal Tribunal for the Former Yugoslavia (ICTY).<sup>166</sup> Some observers have also argued that as a signatory to the February 1997 Rome agreement, Croatia is bound by the so-called "rules of the road," which require that domestic war crimes prosecutions proceed only after the "order, warrant or indictment...has been reviewed and

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<sup>162</sup> The list is in the possession of Human Rights Watch.

<sup>163</sup> Human Rights Watch interview with Ivan Turudić, Assistant Minister of Justice, Zagreb, August 6, 1998.

<sup>164</sup> Human Rights Watch interview with a Legal Adviser from the U.N. Police Support Group, Vukovar, July 20, 1998.

<sup>165</sup> See "Report of the Secretary-General on the U.N. Police Support Group," (S/1998/500), June 11, 1998.

<sup>166</sup> This commitment was referred to in a January 1999 letter from the Deputy Head of the OSCE Mission to Croatia Helm Rau to Assistant Minister of Justice Ivan Turudić following a court decision sent in January 1999 to twenty-three Serbs in Dalj. The court decision assigned defense attorneys to the twenty-three for a case in which they were to be prosecuted for alleged war crimes.

deemed consistent with the International Tribunal [ICTY].”<sup>167</sup> Neither procedure has been followed by Croatian authorities: Croatian courts have continued to conduct war crimes investigations and issue war crimes indictments without reference to the ICTY, although in some cases the Ministry of Justice has intervened to quash the indictments after protests from international agencies.<sup>168</sup> According to an ICTY official, “Croatia has so far refused to accept [that] the ‘rules of the road’ [apply to it].”<sup>169</sup> Croatian officials argue that the Rome agreement applies only to the territory of Bosnia and Hercegovina, and not to the territory of other signatories.

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<sup>167</sup> The Rome Statement reflecting the work of the Joint Civilian Commission Sarajevo Compliance Conference, February 18, 1997. Cited in Human Rights Watch/Helsinki “Human Rights in Eastern Slavonia During and After the Transition of Authority,” (April 1997).

<sup>168</sup> In late 1997, Bjelovar County Court (Western Slavonia) issued forty-three indictments for war crimes against Serbs. The charges were later withdrawn. Periodic Report, December 18, 1997, U.N. Human Rights Field Operation for the Former Yugoslavia.

<sup>169</sup> Human Rights Watch interview with senior ICTY official, ICTY Liaison Office, Zagreb, July 27, 1998.

The uncertain status of domestic war crimes prosecutions of Serbs has not been assisted by the Croatian government's handling of several high profile war crimes cases involving Serbs. The trial and conviction on genocide charges of Miloš Horvat, a Serb from Baranja, following his extradition from Germany, drew widespread criticism from international observers, including the U.N. special rapporteur for the former Yugoslavia.<sup>170</sup> Horvat's conviction and five-year prison sentence for genocide in June 1997 was largely based on allegations that he had been a member of the "territorial defense headquarters" in his village, and that the group had organized the forcible expulsion of Croats from the village. International trial observers questioned both the appropriateness of a genocide charge and the evidence associating Horvat with the territorial defense unit: a U.N. human rights official in Zagreb familiar with the case told Human Rights Watch that there was "not enough evidence to convict on any charges, let alone genocide."<sup>171</sup> Horvat's defense appealed the case to the Supreme Court. On December 16, 1998, the Supreme Court heard the appeal but as of early February 1999 had not reached a judgment in the case.

Other high-profile cases have also caused consternation among Serbs and international observers alike, not because of the prosecutions per se but rather because the conduct of the cases raises concerns about the fairness of the proceedings. The cases of the so-called Šodolovci group have been notable in this regard. The "group" of nineteen prominent Serbs from the village of Šodolovci, Eastern Slavonia, were tried in 1995 for war crimes in absentia and all were convicted, although the sentences were never enforced. Only eight of the group are believed to remain in Croatia, including Pero Kliković, former mayor of Šodolovci. One member of the group, Goran Vušurović, previously surrendered himself and is now in custody being retried. The cases against Kliković and two others were renewed at the end of August 1998 by the Osijek County Court, and retrials were ordered by the Supreme Court. While retrials in person are certainly preferable to those in absentia, international observers question the strength of the cases against the Šodolovci group in the first place. A legal adviser from the United Nations Police Support Group summed up the Vušurović case by noting that the "evidence didn't match the charges,"<sup>172</sup> while an OSCE internal memorandum from Eastern Slavonia from July 1998 described the cases, along with those of Horvat and others in the region, as part of a "political game."<sup>173</sup> Indictments and arrests continue: in January 1999, twenty-three Serbs in Dalj, Eastern Slavonia, were notified by a decision of the Osijek county court appointing them defense counsel that they were "under suspicion of committing criminal acts specified in article 120, para. 1 of the Basic Criminal Law."<sup>174</sup> The acts covered under article 120 are war crimes. Most of the twenty-three fled Croatia, but three of those that remained were arrested by police on January 23.<sup>175</sup>

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<sup>170</sup> Report on the situation of human rights in the Republic of Croatia, submitted by Ms. Elizabeth Rehn, special rapporteur, pursuant to Commission resolution 1997/57, (E/CN.4/1998/14), October 31, 1997.

<sup>171</sup> Human Rights Watch interview with a senior official from the U.N. Human Rights Field Operation for the Former Yugoslavia, Zagreb, July 17, 1998.

<sup>172</sup> Human Rights Watch interview with Legal Adviser, U.N. Police Support Group, Vukovar, July 20, 1998.

<sup>173</sup> Internal memorandum, OSCE Coordination Center Vukovar, July 7, 1998.

<sup>174</sup> Decision of Osijek County Court, Case Number K-113/98-139, January 4, 1999

<sup>175</sup> "Croatia Arrests Three Serbs for War Crimes," RFE/RL Newswire, January 26, 1999.

The situation is mirrored elsewhere in Croatia, notably in Sisak, where a number of prosecutions, including those of Goran Pašić and Branko Matijašević, have come under criticism from OSCE observers.<sup>176</sup> Pašić is part of a group of five who were convicted in absentia by a Bjelovar military court on charges of participation in armed rebellion. The group was amnestied while the cases were on appeal at the Supreme Court, but the five were retried and convicted in Sisak county court (two in absentia) for war crimes against civilians under article 120 for allegedly tampering with the water supply. Pašić and two others remain in prison and a March 1998 appeal to the Supreme Court is pending. After witnesses were unable to connect Matijašević with the war crimes for which he was accused, the judge did not dismiss the case but instead allowed the prosecutor to amend the indictment at the end of the proceedings to include lesser crimes of armed rebellion (despite the lack of new evidence). Matijašević was then convicted of the lesser charges and amnestied, a procedure that contravenes article 2 of the Amnesty Law.<sup>177</sup> There were also concerns in Split, where the evidence provided in the trial and conviction of eight Serbs (three in absentia) on war crimes was deemed insufficient by some international observers.<sup>178</sup>

An additional difficulty over the conduct of war crimes trials arose during the summer of 1998. Citing concerns over interference with the independence of the judiciary, the president of the Supreme Court issued an instruction forbidding contact between court officials (judges and clerks) and representatives of international agencies, who are instead directed to make inquiries with the Ministry of Justice. While there is certainly a need to regulate contacts between international field staff and court officials to ensure noninterference, the ban on direct contact has made systematic court monitoring all but impossible for OSCE monitors in the field. While international observers are generally permitted to attend trials, under these instructions they cannot speak to clerks to request court calendars and trial dates and thus often are unaware of when particular hearings are scheduled to take place. As an OSCE lawyer who follows the courts put it, "I can attend a trial but [I] don't [always] know when it takes place."<sup>179</sup> The ban is a fundamental obstacle to the confidence-building that international monitoring of war crimes trials would provide.

Croatia's willingness to pursue prosecutions of Serbs accused of humanitarian law violations against ethnic Croats is unfortunately not matched by a willingness to prosecute alleged violations against Serbs by Croatian government forces and paramilitaries, or to cooperate with the ICTY on cases involving indictments against ethnic Croats. Despite a handful of prosecutions, Amnesty International confirmed in an August 1998 report that Croatian authorities have failed to investigate seriously and prosecute war crimes committed by Croatian forces in the aftermath of "Operation Storm" and "Operation Flash" in 1995.<sup>180</sup> And as language in the reconstruction law and periodic public statements by ministers make clear, the Croatian government continues to present the conflict in Croatia simply as an international war of aggression against it, with ethnic Serbs as aggressors (be they Yugoslav or Croatian Serbs) and Croats as victims.

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<sup>176</sup> Human Rights Watch interview with OSCE official, OSCE Coordination Center Sisak, August 3, 1998.

<sup>177</sup> Article 2 states that "no criminal proceedings shall be instituted and no criminal charges shall be brought against the perpetrators of criminal acts referred to in article 1 of this act."

<sup>178</sup> Amnesty International, "Concerns in Europe: January - June 1998: Croatia" (September 1998).

<sup>179</sup> Human Rights Watch interview with OSCE official, OSCE Coordination Center Sisak, August 3, 1998.

<sup>180</sup> Amnesty International, "Croatia: Impunity for killings after Storm," (August 1998). For information on the abuses committed during and after Operation Storm, see Human Rights Watch/Helsinki "Impunity for Abuses."

At first glance Croatia's record of cooperation with the ICTY seems good: Croatian authorities have been supportive of the ICTY's efforts to prosecute three JNA officers charged (along with the now-deceased former mayor of Vukovar) with the removal and murder of more than 200 patients from Vukovar hospital. In October 1997, the Croatian government also took the unprecedented step of facilitating the transfer of ten Bosnian Croat suspects to the Hague to face war crimes charges related to atrocities against Bosniak civilians in the Lašva valley in Central Bosnia. Despite these positive developments, however, Croatia's overall record remains poor. Croatia has refused to provide documents to the ICTY in cases involving ethnic Croat defendants, notably in the case of General Tihomir Blaškić, seriously hampering prosecutions. Senior government officials, including President Tudjman, continue to characterize the ICTY as biased against Croats. In a December 1998 speech at the opening of a military academy broadcast by Croatian state television, President Tudjman said: "I must tell you that bills of indictment are being prepared in the Hague [the seat of the ICTY] against you, against all of us. Their list includes five [or] six generals from Croatia, not only from Bosnia-Herzegovina. In view of this, what we need is unity from the army, no deviations from state policy, and unity of the army and the people...."<sup>181</sup> Since the president made his speech, the ICTY has been condemned as biased against Croats by several senior politicians in the ruling party. A January 1999 parliamentary debate in the *Sabor* on Croatia's cooperation with ICTY also provided an opportunity for attacks on the ICTY by government officials and parliamentarians from the ruling party.

The ICTY's mandate permits it to ask for a case to be deferred where a state initiates a domestic prosecution, if it is informed by the state. According to a senior ICTY representative in Croatia, the ICTY "is not being so informed [by Croatia]" and instead "relies on information from third parties to advise on cases."<sup>182</sup> The official added that "if Croatia would forward cases to the ICTY, it would be to their advantage because it would reduce the possibilities of cases being seen as political [and] even if the Tribunal said that they did not wish to proceed, it would not prevent the Croatian authorities [from doing so]."<sup>183</sup> When Human Rights Watch raised the possibility of such referrals (which would also bring Croatia into compliance with the "rules of the road") in a meeting with Assistant Minister of Justice Ivan Turudić, he replied that while he could not comment officially without consulting the minister, "in principle I think this would not be possible, because this would mean introducing a higher instance court that would be higher than the Croatian court."<sup>184</sup>

Croatia's handling of war crimes trials, its lack of cooperation with the ICTY, and its application of the Amnesty Law ultimately benefits neither justice nor reconciliation. While the Amnesty Law and domestic war crimes prosecutions have largely been abandoned as issues by the international community, their actual importance continues to rank alongside cooperation with the ICTY. The failure of Croatian authorities to take adequate steps to inform persons covered by the Amnesty Law and concerns over some domestic prosecutions of Serbs for war crimes, combined with its refusal to hold Croatian armed forces and paramilitaries to account for humanitarian law violations against Serb civilians, has shaken the confidence of Croatian Serbs that they have a future in Croatia. A refugee and psychologist from Rijeka now living in Banja Luka expressed anger that "not one person has been indicted [for Operation Storm and Flash]. How can people trust to go back when no one has been prosecuted for those crimes?"

Fear of arrest and detention on war crimes charges among the Croatian Serb refugee population in Republika Srpska and Serbia has also inhibited return. A number of the Croatian Serbs interviewed by Human Rights Watch in Banja Luka expressed fear of arrest should they try to return. A teacher originally from Kostajnica noted that "it's enough to send to prison one person from our municipality, and everyone is afraid."<sup>185</sup> This fear also affects him: "If I go to Croatia, I will go to prison. I would rather go to the Hague than to Croatia. I was never in the army."<sup>186</sup> An elderly

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<sup>181</sup> "Croatian President Says Hague Tribunal to Bring Charges Against Him," HRT1 TV, Zagreb, December 14, 1998, via BBC Monitoring Service: Central Europe and Balkans December 16, 1998.

<sup>182</sup> Human Rights Watch interview with senior ICTY representative, ICTY Liaison Office, Zagreb, July 27, 1998.

<sup>183</sup> Ibid.

<sup>184</sup> Human Rights Watch interview with Ivan Turudić, assistant minister of justice, Zagreb, August 6, 1998.

<sup>185</sup> Human Rights Watch interview with S.P., Banja Luka, July 13, 1998.

<sup>186</sup> Human Rights Watch interview with S.P., Banja Luka, July 13, 1998.

woman from Western Slavonia, now living outside Banja Luka, explained her fears: "I want to go back to live together with my mother-in-law, but for my husband I'm not sure if it would be safe [to go back]...because he was in the army."<sup>187</sup> Cases such as that of Miloš Horvat are well-known among refugee communities and make Serbs less likely to risk return to Croatia. These fears have certainly been exacerbated in some cases by misinformation by persons within refugee communities who wish to prevent return in order to maintain their political influence (as prominent Croatian Serb parliamentarian Milorad Pupovac has himself noted), but such negative influences would be limited by simple steps like a public information campaign about the Amnesty Law, referral of new war crimes prosecutions to the ICTY for review, and the facilitation of international monitoring of ongoing trials. Although only relatively few arrests and trials of Serbs on war crimes charges have taken place, the uncertainty and fear surrounding them is a significant obstacle to the return of refugee Serbs to Croatia.

### **The Program on the Establishment of Trust**

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<sup>187</sup> Human Rights Watch interview, Banja Luka, July 14, 1998. The interviewee wishes to remain anonymous.

In addition to the specific confidence-building measures described above, the Croatian government has also adopted a comprehensive framework to respond to the legacy of war in Croatia and to facilitate reconciliation among the country's Serb and Croat communities. The "Program on the Establishment of Trust, Accelerated Return and Normalization of Living Conditions in the War-Affected Areas of the Republic of Croatia" was adopted by the *Sabor* in October 1997. The program has seven overarching goals: 1) the creation of a general climate of tolerance and security; 2) realization of equality of all citizens with regard to the state administration; 3) the establishment of trust between all citizens of Croatia; 4) the creation of general social, political, security, and economic conditions for the normalization of life in the war-affected regions of the Republic of Croatia; 5) the speedy, secure, and organized return of all Croatian citizens to those regions of the Republic of Croatia from which they were expelled or displaced; 6) the inclusion of all citizens of Croatia in the building of democratic society within the framework of the existing democratic system; and 7) the creation of a political framework for the implementation of the relevant legal norms.<sup>188</sup>

In order to advance the objectives of the program, the government established a national Committee on Trust and Reconciliation, headed by Vesna Škare-Ožbalt, a senior adviser to President Tudjman. County- and community-level committees with ethnic Serb and Croat members were also created in order to facilitate local implementation. The national committee is explicitly instructed to cooperate with the Return Commission established by the Program for Return. The adoption of the program and the creation of the committee was broadly welcomed at the time of their introduction. Such activities are clearly necessary after such a bitter and divisive conflict. As one Vukovar-based human rights activist put it "the biggest problem is one of trust — a belief that the Croatian government want people [Serbs] to stay here."<sup>189</sup> By the same token, Škare-Ožbalt and others noted to Human Rights Watch that the events that took place in Vukovar in 1991 cannot easily be put aside by the town's current and former residents of Croat ethnicity.

According to Vesna Škare-Ožbalt, successful reconciliation requires security, adequate economic conditions, and a permanent solution for the Bosnian Croat population in Croatia. She also pointed to outstanding concerns over the failure to bring to justice Milan Mrkšić, Miroslav Radić, and Milan Martić (prominent Serbs indicted by the ICTY for war crimes committed in Croatia) as partial explanation for difficulties related to the implementation of the Amnesty Law for Croatian Serbs: "My feeling is that the situation would be very different if those real war criminals were in the Hague." Overall, Ms. Škare-Ožbalt was confident that the process is well under way. While acknowledging that some local committees have been less effective than those at the county or national level and observing that reconciliation is a "process," her assessment is that "we are moving from psychological problems to economic problems. Reconciliation is going on... I think we have almost finished our main political role."<sup>190</sup>

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<sup>188</sup> Quoted in: "Report of the OSCE Mission to the Republic of Croatia on Croatia's progress in meeting international commitments since January 1998," (May 20, 1998).

<sup>189</sup> Human Rights Watch interview, Vukovar, July 21, 1998.

<sup>190</sup> Human Rights Watch interview with Vesna Škare-Ožbalt, Office of the President, Zagreb, August 6, 1998.

International observers told Human Rights Watch that they do not share Ms. Škare-Ožbalt's optimism about the work of the national, regional, and local committees. They also note the lack of progress toward some of the goals of the program, especially those relating to nondiscrimination and the return of refugees. Concerning the Committee on Trust and Reconciliation itself, a senior OSCE adviser complained that the committee "doesn't have a specific mandate, is not very active, [and] hasn't done much to create confidence," adding that there was "no equal representation [and that] NGOs are not involved in the process." The official concluded that the committee "needs a concrete program."<sup>191</sup> A July 1998 report by the U.N. secretary-general concluded "There has been almost no progress in reconciliation since my final report on UNTAES of January 1998." The report notes that "in many instances local authorities view reconciliation committees as a mechanism for solving problems related to returning Croat displaced persons rather than for re-establishing confidence between ethnic communities. In some areas of Serb return, reconciliation committees have not been formed."<sup>192</sup> In terms of the linkage to the Program for Return, an October joint U.N.-OSCE non-paper comments that "the Program on the Establishment of Trust has not engaged in the return program in the manner envisaged under paragraph seven of the introductory remarks to the Return Program."<sup>193</sup>

There are other difficulties: While the plight of Bosnian Croats is certainly a legitimate focus for concern by the Croatian Office for Displaced Persons and Refugees, and there has been friction and sometimes violence in communities with mixed Bosnian Croat refugee and Croatian Serb returnee populations, the program is primarily intended to foster reconciliation and trust among Croatia's originally resident Croat and Serb populations. There also appears to be an over-emphasis on economic obstacles to trust, reconciliation, and return. The economic climate in the former U.N. sectors is clearly poor, but economic growth alone will not prevent Croatian Serbs from leaving Eastern Slavonia, nor encourage them to return to Knin until the political climate in Croatia also changes. Moreover, the work of the committee on reconciliation and the program appear removed from the work of the state agencies charged with implementing refugee return, providing education, resolving housing questions, applying the Amnesty Law, determining citizenship status, and other core tasks related to the goals of the program itself. Few of the government officials, Serb leaders, international officials, and NGO activists interviewed by Human Rights Watch in Croatia made reference to either the work of the committee or the program. Given their importance to trust and reconciliation in Croatia, the committee and the program should occupy a more central space in Croatian political and civic life.

## THE RETURN OF REFUGEES

According to the final census of the Socialist Federal Republic of Yugoslavia, completed in 1991, the Serb population of Croatia numbered 581,663 persons, or approximately 12 percent of the total population of 4,784,265.<sup>194</sup> No commensurate figures exist for the population today, and given the political implications of population levels, it is impossible to determine accurately the current Serb population inside Croatia. UNHCR estimates from July 1998 indicate that there are 40-50,000 Croatian Serb refugees in Republika Srpska.<sup>195</sup> Estimates of the Croatian Serb refugee population in FRY vary between 280,500<sup>196</sup> and 330,000.<sup>197</sup> Assuming a median figure of 300,000 refugees in FRY,<sup>198</sup>

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<sup>191</sup> Human Rights Watch interview with OSCE human rights adviser, Zagreb, July 16, 1998.

<sup>192</sup> "Report of the Secretary-General on the U.N. Police Support Group," (S/1998/500), June 11, 1998.

<sup>193</sup> Joint OSCE, U.N. Non-Paper - Preliminary Review in Preparation for an Assessment of the Return Process (October 7, 1998).

<sup>194</sup> "Republic of Croatia Statistical Yearbook 1992," Central Bureau of Statistics of the Republic of Croatia, Zagreb, March 1993. It is possible that the Serb population was slightly higher since the census also includes 106,041 self-declared "Yugoslavs" who may be of any nationality.

<sup>195</sup> Human Rights Watch interview with Ayako Ito, UNHCR Banja Luka, July 13, 1998.

<sup>196</sup> UNHCR, "A Regional Strategy for Sustainable Return of Those Displaced by Conflict in the Former Yugoslavia," June 17, 1998.

<sup>197</sup> Human Rights Watch interview with representative from United Nations Liaison Office, Zagreb, July 17, 1998.

<sup>198</sup> Estimate in "Regional Return Conference, Banja Luka, Chairmen's Concluding Statement," April 28, 1998.

and 40,000 in Bosnia, the current Serb population in Croatia can be estimated at around 240,000.<sup>199</sup> Even by conservative estimates, half of all Croatian Serbs are refugees.

Until 1998, return to Croatia was difficult or impossible for many Serb refugees. In addition to inadequate security and material conditions for return, and fear among returnees, no mechanism existed to facilitate the return of Croatian Serb refugees. Most international attention was focussed on the situation in the UNTAES region and pressure on the Croatian authorities was limited to efforts to secure rights for displaced and resident Serbs in Eastern Slavonia. The Joint Working Group Agreement covered only two-way return of displaced persons inside Croatia, and efforts related to documentation and restoration of housing rights were limited to those inside the region. Some Croatian Serb refugees in FRY and Bosnia were able to benefit from the expedited issue of Croatian documents in Eastern Slavonia during the UNTAES period by traveling to the region in person or through use of a temporary address inside Croatia. Nevertheless, many refugees lacked Croatian documents (see section on citizenship above), and refugees without documents in Bosnia were unable to enter Croatia at all while new Bosnian citizenship rules rendered them ineligible for Bosnian citizenship and documents. Those able to cross borders feared arrest on unwarranted war crimes charges, attacks, or harassment from police or other residents, as well as the occupation of their property and housing by others, and a range of administrative obstacles related to documents, welfare, and pensions.

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<sup>199</sup> Since the estimate does not account for Croatian Serb refugees in third countries, the actual population is probably significantly below 240,000.

There have been some encouraging developments during 1998. A mechanism for refugee return now exists, in the form of the "Procedure for Individual Return" (with "Mandatory Instructions") and a framework for return, in the form of the "Program for Return" which establishes a means for repossession of private property.<sup>200</sup> An additional mechanism for organized return from FRY also exists in the form of the bilateral "Protocol on Procedures of Organized Return" between FRY and Croatia.<sup>201</sup> There has also been some progress in actual returns. In addition to the 17,000 to 21,000 displaced Serbs who have returned to their former areas of residence from Eastern Slavonia, more than 6,000 refugees have returned to Croatia from FRY and Bosnia.<sup>202</sup> There is also measured optimism among Serb leaders. Speaking about former Sector South, Milorad Pupovac noted "we can see people coming back and we can see life returning to villages."

Notwithstanding the progress toward the return of Serb refugees, a number of outstanding issues remain. As much of the preceding analysis has attempted to illustrate, commitments by the Croatian government are not always matched by action. The slow- or non-functioning of the mechanisms designed to facilitate return are more than a bureaucratic inconvenience. By limiting the rate of return, a government can ultimately reduce the total population that will attempt return. As noted in the section on housing commissions above, over time refugees assimilate and establish ties to the host community, making return more of a risk, and hence less likely. Speaking soon after the program for return was adopted, a leading Serb politician explained his concerns: "The problem is time. If the program had been accepted last year things would be different. But soon it will be fall, then winter [when return is unlikely]."<sup>203</sup>

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<sup>200</sup> "Procedure for Individual Return of Persons Who Abandoned the Republic of Croatia" (April 27, 1998) and "Mandatory Instructions for Acquiring Documents Required by the Individual Return Procedure for Persons Who Left the Republic of Croatia" (May 14, 1998).

<sup>201</sup> "Protocol on Procedure of Organized Return" (April 1998).

<sup>202</sup> UNHCR Croatia, Statistical Summary, Zagreb (November 29, 1998). As of November 29, the actual number of returns to Croatia was 6,289 (including returns with a *putni list* not submitted/cleared by ODPR). Among those with ODPR clearances, 3,955 returned from FRY and 82 from Republika Srpska. These figures do not include return of internally displaced persons.

<sup>203</sup> Human Rights Watch interview with Miloš Vojnović, President of the Joint Council of Municipalities, Borovo, July 21, 1998.

The narrow focus of efforts toward return is also a cause of concern. The international community's focus on the mechanics of return, which is reflected in the actions of the Croatian government, was undoubtedly prompted by the understanding that without documents and housing there would be no return. Such a focus is unlikely to be successful unless there is a concomitant focus on other factors which drive or inhibit return, such as fear of prosecution on political grounds, access to government reconstruction programs and social security, recognition of legal documents, adequate security, and equal treatment under the law. Being able to cross a border alone does not mean the conditions necessary to return successfully have been met. Facilitating return also means a focus on the treatment of Serbs inside Croatia, both of returnees and those who remained. The ongoing departure of displaced and domiciled Serbs from Eastern Slavonia should therefore be a cause of particular concern. As the January 1999 progress report from OSCE Mission notes: "The number of Serbs who have left Croatia over the three years since [the] Dayton and Erdut [agreements], is almost as large as the number who have returned."<sup>204</sup>

### **Mechanisms for Return**

Leaving aside the question of registration, transportation, and assistance, any refugee who wishes to cross the Croatian border must have Croatian documentation. If a person has a Croatian passport, there are no obstacles to entering Croatia. Such return would be classified as "spontaneous" where the person does not inform ODPH or UNHCR prior to their repatriation. Until the creation of the new mechanisms for return in 1998, if the person did not have a Croatian passport but did possess other documents proving citizenship which can be used to apply for a passport, such as a Croatian identification card or *domovnica*, they could apply for a passport at a Croatian Embassy or Consulate (provided he or she had access to such a facility) and return once the application was accepted (generally within three months).

Until 1998, however, a person lacking such documents had no possibility of entering Croatia through formal channels unless he or she was the holder of a passport from another country. The development of a new mechanisms for refugee return in the "Procedure for Individual Return" has created the possibility for Croatian Serb refugees to enter Croatia without passports or documents proving citizenship, provided that they can establish that they are eligible for citizenship. The breakthrough of the Procedure for Individual Return (with the Mandatory Instructions) is that, in the words of ODPH chief Lovre Pejković: "Each and every person can come to an embassy and apply for documents."<sup>205</sup> The procedure for individual return allows for refugees from Croatia who meet eligibility requirements to be issued with a *putni list* (travel letter) in lieu of a passport. The *putni list* is valid for thirty days and permits the bearer to enter Croatia (at which time they can apply and obtain a passport or other Croatian documents). Where a person has one of the documents that prove citizenship (passport, I.D. card, *domovnica*, or listing in the register of Croatian citizens), he or she can apply at an embassy or consulate and be issued a *putni list* immediately. Where persons do not have documents proving citizenship, they must submit other documents to support a claim for citizenship (such as an expired identity card, expired passport, military I.D. booklet of the former SFRJ, or certificate of birth).<sup>206</sup> The submission of one of these documents forms the basis of an application for return through an embassy or consulate, which is then sent to the Ministry of Interior for verification within "two months, as a rule, but not later than three months."<sup>207</sup> If approved, the person will then be issued with a *putni list*. The instructions also state that persons charged with "gravest violations of humanitarian law" will "be denied the acquisition of Croatian citizenship [by naturalization]."

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<sup>204</sup> "Report of the OSCE Mission to the Republic of Croatia on Croatia's Progress in Meeting International Commitments Since September 1998," (January 26, 1998).

<sup>205</sup> Human Rights Watch interview with Lovre Pejković, head of ODPH, Zagreb, August 7, 1998.

<sup>206</sup> "Mandatory Instructions for Acquiring Documents Required by the Individual Return Procedure for Persons Who Left the Republic of Croatia" (May 14, 1998).

<sup>207</sup> Mandatory Instructions.

Refugees in FRY can also apply for return without documents through the procedure developed by the bilateral protocol between FRY and Croatia and administered by ODPB.<sup>208</sup> Under that procedure, Croatian Serb refugees can submit repatriation applications for clearance by ODPB through local offices of the Serbian Commissioner for Refugees. The applications are forwarded to the Serbian Commissioner for Refugees in Belgrade, which passes them to UNHCR in Belgrade for processing. After processing, UNHCR Belgrade returns the completed application forms to the Serbian Commissioner for Refugees for submission to ODPB through diplomatic channels. Actual clearance entails verification of citizenship eligibility and criminal status by the Croatian Ministry of Interior in Zagreb, as well as checks into whether the applicant's property is vacant, damaged, or occupied. Under the protocol, ODPB has to inform the Serbian Commissioner for Refugees in ninety days as to the outcome of an application. Once an application has been cleared, the Serbian Commissioner for Refugees alerts UNHCR which notifies applicants and arranges for transportation. Although the procedure spares refugees the expense and difficulty of arranging multiple trips to the Croatian consulate in Belgrade or the weekly "consular day" in Subotica (when staff from the Croatian Embassy in Belgrade visit the town), the clearance procedure is more rigorous and complicated than simple verification of citizenship under the procedure for individual return.<sup>209</sup> As a result returns according to this procedure have been mostly limited only to so-called "easy cases" of family reunification or return to vacant property. UNHCR statistics from late November 1998 indicate that of the 15,721 applications submitted to ODPB for clearance, 4,037 persons had returned with clearance, with another 2,648 were cleared for return, while 3,734 cases had been deferred, 5,225 were pending and seven applications were closed.<sup>210</sup>

For refugees seeking Croatian documents or a *putni list*, at least one visit to a Croatian Embassy or consulate is a prerequisite. While diplomatic missions do not issue passports, they are the only offices outside Croatia that can process applications for Croatian documentation. Many refugees process applications through the Croatian Embassy in Belgrade, the new consular day in Subotica, and the Banja Luka consular days of the Croatian Embassy to Bosnia and Hercegovina. The speed at which these offices process applications determines the rate at which return can take place (outside the ODPB clearance procedure for refugees in FRY described above). The arithmetic is simple: if the offices issue one hundred travel letters per month, one hundred persons can return, and if they issue 1,000, a corresponding number can do so. Unfortunately, none of the consulates seems able to cope with demand, and multiple visits by refugee applicants are frequently required.

The Croatian Embassy to Bosnia's consular days in Banja Luka began in July 1998. The consular days, which were welcomed by refugees and international agencies alike, take place on Tuesday and Thursdays for four hours. They provide many Croatian Serbs in Republika Srpska with the first opportunity since their departure to apply for Croatian documents. Human Rights Watch visited the office on July 14, 1998, its first day of operation and spoke to an official from the Croatian Embassy to Bosnia. When asked why the embassy had such limited hours, the official explained that the embassy "would like to open a full consulate but can't get the office space."<sup>211</sup> The official added that they "would have liked to open the consulate before today but office space is a problem." The limited hours of operation restrict the numbers of appointments that the consulate can manage: a Croatian Serb refugee who tried to get an appointment on the opening day was told by Croatian Embassy officials that the consulate could only accept twenty appointments per day.<sup>212</sup> Since an estimated 40,000 to 50,000 Croatian Serbs reside in Republika Srpska, such a small number of

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<sup>208</sup> "Protocol on Procedure of Organized Return" (April 1998).

<sup>209</sup> The Croatian Embassy to the Federal Republic of Yugoslavia began a weekly consular day in Subotica in early 1999.

<sup>210</sup> UNHCR Croatia, Statistical Summary, Zagreb (November 29, 1998). The statistics include 552 applications for clearance from refugees in Bosnia and Hercegovina, of whom eighty-two had returned by November 29.

<sup>211</sup> Human Rights Watch interview with Croatian Embassy official, Banja Luka, July 14, 1998.

<sup>212</sup> Human Rights Watch interview with Croatian Serb refugee, Banja Luka, July 14, 1998.

appointments will sharply limit the potential rate of return of refugees from Bosnia. As of November 29, only eight-two persons had returned to Croatia from Republika Srpska.<sup>213</sup>

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<sup>213</sup> UNHCR Croatia, Statistical Summary, Zagreb (November 29, 1998).

The consulate at the Croatian Embassy in Belgrade is better established. It is larger, better staffed, and open five days a week, along with a weekly consular day in Subotica. Nevertheless, demand by Croatian Serb refugees appears to exceed the consulate's current capacity, creating a bottleneck in the return process. A visit by UNHCR during the summer revealed a number of the consular section's limitations. There are significant delays in the issuance of a *putni list* to persons with citizenship documents. According to UNHCR, the "applicant must wait a few months before traveling, despite having necessary papers."<sup>214</sup> In order to obtain a *putni list*, a person must go to the consulate with an original citizenship certificate (*domovnica*) or a photocopy verified in Croatia, and a refugee I.D. card, and duplicate copies of the documents. They are then issued an application form and an appointment date. Only ten appointments are scheduled per day. The *putni list* is issued the following day after the receipt of the application form. It must be collected in person, necessitating three trips.

For those without a *domovnica* or other documents establishing citizenship, the process is also cumbersome.<sup>215</sup> They must fill out three forms — a return request plus two questionnaires concerning citizenship and other documents required — and provide supporting Croatian documents (such as a military I.D., birth certificate, or expired I.D. card), plus their refugee I.D. card. Those without documents must bring two witnesses who hold new Croatian documents to vouch for them. At the time that the forms are issued to them, a date is scheduled for submitting the forms. After submitting the forms, applicants are told that they will be informed by cable within two to three months, once the Ministry of Interior has determined their eligibility and then have to return to the embassy. The consulate also continues with regular consular business, issuing visas to persons wishing to visit Croatia and assisting Croatian citizens working or traveling in FRY. The embassy's limitations translate into limited returns: as of late November 1998, only 6,207 Croatian Serbs had returned to Croatia from FRY, including 2,252 persons who returned with a *putni list* (each of whom therefore already possessed Croatian citizenship documents).<sup>216</sup>

Croatian government officials offer various explanations for the backlog of cases involving Croatian Serb refugees at consulates in neighboring countries. The delays in starting consular days in Banja Luka are attributed by Assistant Minister of Foreign Affairs Josip Paro (who is responsible for consular matters) to a lack of cooperation from local authorities: "It is obvious that twice a week is not enough to meet the potential number of applicants but we [were] hardly [able to obtain] permission for two days."<sup>217</sup> The head of ODPR Lovre Pejković told Human Rights Watch that efforts to open a permanent consulate in Republika Srpska have been complicated because the consulate's "area of responsibility can't be [limited] to Republika Srpska, since it's not a state."<sup>218</sup> Both officials pointed to limited resources in consulates. Mr. Pejković noted that "our consular offices do not have the capacity to accept large numbers of people," while Minister Paro admitted that in the case of the embassy in Belgrade "some of the problems are related to the number of applicants and the number of officials."<sup>219</sup> "I don't think equipment is a problem," he added.

To some extent, resource limitations are understandable. Few countries have consulates equipped to process thousands of applications simultaneously. Croatian government efforts to open additional consulates in Subotica and Kotor have been complicated by the dispute between FRY and Croatia over the Prevlaka peninsula, although the Croatian Embassy in FRY began a weekly consular day in Subotica at the start of 1999. The limited capacity of

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<sup>214</sup> Note for the File "Visit to the Consular Department of the Embassy of Croatia," UNHCR Belgrade, July 3, 1998.

<sup>215</sup> Information drawn from: Note for the File "Visit to the Consular Department of the Embassy of Croatia," UNHCR Belgrade, July 3, 1998.

<sup>216</sup> UNHCR Croatia, Statistical Summary, Zagreb (November 29, 1998).

<sup>217</sup> Human Rights Watch with Josip Paro, assistant minister of foreign affairs, Zagreb, August 6, 1998.

<sup>218</sup> Human Rights Watch interview with Lovre Pejković, head of ODPR, Zagreb, August 7, 1998.

<sup>219</sup> Human Rights Watch with Josip Paro, assistant minister of foreign affairs, Zagreb, August 6, 1998.

consulates raises questions about the wisdom of insisting that returnee applicants visit consulates in person. Nor can all problems be attributed to administrative shortcomings. The procedures at the embassy in Belgrade seem needlessly complex. Minister Paro argues that "it's not less complicated for Croats wanting to check citizenship," adding that "if a Croat applies in Bonn, [the applicant] cannot expect documents in less than two months."

The problem with the logic of patience has already been alluded to: return is a time sensitive process. If people do not return within a certain time frame, they are unlikely to return at all. A joint U.N.-OSCE non-paper on the return program from October 1998 was unequivocal: "...serious problems remain with the implementation of the Procedures of Return, as well as the issuance of Croatian travel documents..."<sup>220</sup> According to ODPR Secretary-General Sonja Lovrečić, "We are not blocking return. We only want to be organized and for conditions to exist."<sup>221</sup> Unfortunately, return that does not happen today is not equally likely to happen tomorrow. Unless further efforts are made to streamline the process of return for those without documents (and the issuance of a *putni list* for those who do), the effect of the document application process will be to block return, even if that was not the intention.

### Ongoing Obstacles to Return

Lack of documentation is not the only obstacle to the process of return. Even those with a passport or *domovnica* need encouragement, assistance with transportation for "go and see visits," assurances regarding returnee status, and information about housing prior to return. Serbs who decide to return to Croatia from FRY and Bosnia lose their refugee status in the host country (assuming that they enjoyed it), and as a representative from the refugee association in Banja Luka noted "you don't know what you are returning to."<sup>222</sup> While security is no longer a primary impediment to return (save in the "Arc of Terror" around Gospić described in the security section above), the occupation of Serb housing remains a major obstacle, with mechanisms developed under the program for return yet to have a significant impact on repossession, as does lack of access to reconstruction assistance. As noted above, refugees also have legitimate fears related to the application of the Amnesty Law and domestic war crimes prosecutions (which are unfortunately exploited by some members of refugee communities who wish to prevent return for their own political ends). Adequate mechanisms to help Bosnian Croats freely decide if they wish to return to Bosnia, and to facilitate the return of those who do, are also required.<sup>223</sup>

Croatian officials argue that the main impediment to the return of refugees is the state of the economy in target areas of return. According to Lovre Pejković, the "biggest obstacle is finding social and economic security for the people." Minister Paro considers "the biggest problem [to be] that of unemployment, which affects Croat and Serb returnees." There is no doubt that the economic situation in the former U.N. sectors is dire. The combination of war, the collapse of Yugoslavia as an internal market for goods, the flight of elites to other countries (the so-called "brain drain") and the transition to a market economy have reduced industrial production to a trickle. The Borovo shoe factory in Borovo, Eastern Slavonia, which provided employment for an estimated 18,000 workers in the town before the war, now has only a few hundred employees.<sup>224</sup> The Tvik screw factory in Knin, which employed 6,000 persons prior to the war, is now home to the UNHCR office in the region, and the factory itself retains only 200 staff.<sup>225</sup> The low rate of return by Croats to Eastern Slavonia and the demographics of return by Serbs (most of whom are elderly and therefore have some access to pensions) can also be attributed in part to economic conditions.

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<sup>220</sup> Joint OSCE, U.N. Non-Paper - Preliminary Review in Preparation for an Assessment of the Return Process (October 7, 1998).

<sup>221</sup> Human Rights Watch interview with Sonja Lovrečić, secretary-general, ODPR, Zagreb, August 7, 1998.

<sup>222</sup> Human Rights Watch interview with representative from the Association of Expelled Serbs from Croatia and Krajina, Banja Luka, July 13, 1998.

<sup>223</sup> The linkage is recognized by Lovre Pejković, who told Human Rights Watch, "We are going to show that Croatian Serbs are not an obstacle to return to Republika Srpska." Human Rights Watch interview with Lovre Pejković, Head of ODPR, Zagreb, August 7, 1998.

<sup>224</sup> Estimate from Human Rights Watch interview with Fedor Klimtchouk, UNPSG, Vukovar, July 20, 1998.

<sup>225</sup> Estimates from UNHCR Knin.

Economic factors should not be overstated, however. Most Croatian Serb refugees live in Republika Srpska or FRY, both of which are in economic circumstances comparable to those in war-affected areas of Croatia, and whose economies are in far worse shape than the Croatian economy as a whole. Further, much of the pre-war economy in the former U.N. sectors was based on agricultural production, which can be restarted in a modest way without major investment — provided that the land is not mined. Finally, Human Rights Watch interviews with life-long Serb residents in Eastern Slavonia planning to leave for FRY (detailed below) suggest that even if economic circumstances were better, return is unlikely in the present environment.

Human Rights Watch interviewed a number of Croatian Serb refugees and a representative from the Croatian Serb refugee association in Banja Luka in order to better understand their perceptions of obstacles to return.<sup>226</sup> Some are still traumatized by the circumstances of their departure and fearful of returning. Human Rights Watch spoke in Banja Luka with Mirjana B., a young journalist originally from Zagreb, about her experiences. As they fled Croatia on August 6, 1995, Mirjana and her family were caught in fighting around the Croatian town of Dvor, close to the Bosnian border. After describing the battle she had witnessed, Mirjana explained what she had subsequently experienced:

When we crossed the bridge [into Bosnia] I didn't have the feeling I would ever be free from the darkness [that I witnessed]. When we came I couldn't talk to anyone about it - it took me six months to come back...I still can't believe that things like this happen....After all that I don't feel safe to go back. Although I have friends here - Croats and Muslims - I don't know. When other refugees go to visit, many come back with negative stories...My parents are thinking about it, but I told them I don't want to return. If others went back and it was ok I would consider it.<sup>227</sup>

When asked what would have to change for her to consider return, Mirjana replied "In my opinion, I will have to change — it will take time for me to forgive things." She added that "old people want to go back because they want to die and be buried where they lived. Young people think in a different way. I meet lots of people through my work. Most are from Croatia — you can see only bitterness and empty looks."<sup>228</sup>

Some refugees in Banja Luka clearly do not wish to go back, in part because so much has changed. Human Rights Watch spoke to a woman of mixed family originally from Rijeka. A psychologist by training, the woman had a strong attachment to Croatia, noting that until 1991 "Serbs from Croatia felt like Croatia was our country....[but then] Serbs became a minority in the constitution."<sup>229</sup> She and her husband and children moved first to Hrvatska Kostajnica and then to Bosanska Kostajnica, until Serbs occupied Hrvatska Kostajnica in September 1991, at which point they returned to Hrvatska Kostajnica until Operation Storm in August 1995 when she and her family fled to Banja Luka. She told Human Rights Watch "it took me three years to forget Rijeka." Since moving to Banja Luka she has been able to find work as an instructor. She concluded by saying: "I don't want to go back. Here I have a good job."<sup>230</sup>

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<sup>226</sup> UNHCR estimates that 28,000 Croatian Serb refugees in Republika Srpska "have already shown interest in return to Croatia." "A Regional Strategy for Sustainable Return of Those Displaced by Conflict in the Former Yugoslavia," UNHCR, June 17, 1998.

<sup>227</sup> Human Rights Watch interview with Mirjana B., Banja Luka, July 13, 1998.

<sup>228</sup> Human Rights Watch interview with Mirjana B., Banja Luka, July 13, 1998.

<sup>229</sup> Human Rights Watch interview with refugee from Rijeka, Banja Luka, July 14, 1998. The interviewee wishes to remain anonymous.

<sup>230</sup> Human Rights Watch interview with refugee from Rijeka, Banja Luka, July 14, 1998. The interviewee wishes to remain

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anonymous.

Mr. S.P. and Mrs. M.P. from Kostajnica want to leave the region altogether. Mrs. M.P. left Hrvatska Kostajnica for Dobrinja on June 26, 1991, and her husband joined her seven days later. Both returned to Hrvatska Kostajnica when it was occupied by Serb forces in September 1991, and remained there until Operation Storm in August 1995. They fled initially to Serbia, before learning of an empty house in Banja Luka, which they occupied later that year. They continue to occupy the same property. S.P. told Human Rights Watch that “the owner of this house died. We still have threats. A small shed in the yard was burned... We don’t want to go in someone else’s property but we don’t have any other way.”<sup>231</sup> The couple, who have neither Croatian nor Bosnian citizenship documents, showed Human Rights Watch applications for Canadian citizenship, which they cannot complete without passport numbers. They “want to emigrate to Canada but can’t get passports.”<sup>232</sup> S.P. explained why: “My parent’s house is all gone. There is no chance for me to get employment. My school friend from Croatia has no contact with me because it would cause problems for him with other Croats.”<sup>233</sup>

Some refugees have tried to return without success. Human Rights Watch met an elderly woman in Banja Luka whose efforts to return to her home have been frustrated by its current occupants. Originally from Blinjski Kut (near Sisak), the woman explained that “my grandparents were born in Croatia - it’s my country.”<sup>234</sup> She was able to get a passport from Vukovar during the UNTAES period by paying someone to allow her to be listed as resident of their property (and hence of the region). She told Human Rights Watch “we are forced to return because here we are so poor” and explained her efforts to go home:

I have tried to return to my former home. [I have] tried to go twice. [First visit March 9, 1998; second visit May 18, 1998.] I have a very old mother-in-law. She returned to [our] house but they [the current occupants] pushed her out. When I came to do something about my mother-in-law, I heard only threats. I have tried for more than one year to get the house back. Bosnian Croats are living in the house. The Bosnian Croat family doesn’t need to occupy the house because they have a house in Zagreb. They threatened to kill me with a scythe. I didn’t report it to the police — they can’t do anything — but I have made a petition to the court. I have documents for the house [proving ownership] but the lady living in the house is a cousin of the police chief...[My] mother-in-law went to court to ask about the case...[and was told] the problem can’t be solved unless alternative housing can be found.<sup>235</sup>

In her case, there is some possibility that an effective housing commission could resolve the situation, but early experiences with new commissions are discouraging. There was little optimism from a representative of the Croatian Serb refugee association in Banja Luka. She explained that refugees from Croatia “are in very difficult economic circumstances, but also have other needs. [They] don’t have voting rights either in Republika Srpska or Croatia; don’t have Croatian documents or I.D.s...[and] can’t realize other rights related to property and pensions.”<sup>236</sup> She also noted the amnesty and convalidation laws were “not being applied,” as well as “problems getting citizenship.” Fear and uncertainty among refugees may be harder to address than lack of documents or repossession of property, but they are perpetuated by the negative experiences of Croatian Serb returnees and the departure of Serbs from Eastern Slavonia.

### **Refugee Return in Former Sector South**

To date, most of those Serbs who have returned to their former areas of residence have been internally displaced, not refugees. While 17,000 to 21,000 displaced Serbs have returned to their former areas of residence, UNHCR estimates from late November 1998 are that only 6,289 Serb refugees have returned. The range of difficulties enumerated above, including security, housing, reconstruction, citizenship, documentation, and pension issues, affect

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<sup>231</sup> Human Rights Watch interview with S.P. and M.P., Banja Luka, July 13, 1998.

<sup>232</sup> Ibid.

<sup>233</sup> Ibid.

<sup>234</sup> Human Rights Watch interview, Banja Luka, July 14, 1998. The interviewee wishes to remain anonymous.

<sup>235</sup> Human Rights Watch interview, Banja Luka, July 14, 1998. The interviewee wishes to remain anonymous.

<sup>236</sup> Human Rights Watch interview with representative of the Association of Expelled Serbs from Croatia and Krajina, Banja Luka, July 13, 1998.

both refugee and displaced returnees alike. However, given the additional logistical difficulties for refugees and the time spent outside Croatia, it is perhaps not surprising that most refugees willing to return so far are so-called “easy cases” — people with Croatian documents and a residence of some kind to move into.

Human Rights Watch spoke to a number of refugee families in the category of “easy cases” who had returned to their home villages in former Sector South.<sup>237</sup> All regarded return as preferable to remaining displaced, although several were not yet living in their own homes. A returnee interviewed in the village of Raškovići, just outside Knin, fell into this category. The former construction company director lives with his wife in a house belonging to his mother-in-law. The couple returned spontaneously from Serbia to the Knin area in November 1996 on the “first bus from Belgrade to Zagreb,” having left in August 1995. He explained that when he first returned “I was afraid, I thought that I would not have the freedom here, but I thought I would have more work. My experiences after twenty months are something else. I understand that there are no jobs for Croats...[but] the fact is that there is no Serb who works — not even a simple job — whose wife or mother is not Croat.”<sup>238</sup> Since his house is occupied, the man naturally identified occupation of housing as a problem, along with pension problems and tensions with Bosnian Croats living in the village (whereas he suggested that among “people who are born here.... there are no incidents”). When asked if they regretted returning, the man replied “I don’t have a choice — I worked for twenty-five years [and] this is my homeland.”<sup>239</sup>

The Rašković family, a working-age married couple with four children who live in the same village, are also unable to return to their home. The family returned spontaneously from Subotica, Serbia, in September 1997. According to the father, Ilija, “we knew more or less how the situation was — but I thought it was a little bit better [than it in fact is]....I wanted to go home mostly.”<sup>240</sup> The family, who live in an old house without plumbing that also belongs to their family, receive welfare benefits of between 250 and 300 kuna per person per month (approximately U.S. \$37-45). They cannot access their agricultural land, because it is being used by a refugee whom they are afraid of, and are concerned about employment prospects: “If only one of us was working,” lamented Vesna, the mother.<sup>241</sup> She added that without electricity, running water, and a telephone it was as if “we went back fifty years in time.” Their house, which is occupied by a Croat refugee from Vojvodina, is 200 meters away. Ilija noted that there have been problems between neighbors in the village but added, “I personally didn’t have any incidents because I [have] tried to keep to myself.” He concluded that “it’s hard, but again we are happy we came back.”

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<sup>237</sup> Urban return has been limited: Most town residents had tenancy rights rather than private property, and towns were favored for resettlement of refugees and displaced persons.

<sup>238</sup> Human Rights Watch interview with married couple, Raškovići, August 1, 1998. The interviewees wish to remain anonymous.

<sup>239</sup> Ibid.

<sup>240</sup> Human Rights Watch interview with Ilija and Vesna Rašković, Raškovići, August 1, 1998.

<sup>241</sup> Ibid.

Others have returned to their own homes, but found the furniture gone.<sup>242</sup> In the village of Golubić (near Knin), Human Rights Watch met an elderly married couple who returned spontaneously from Serbia in April 1997 and waited an additional seven months before being able to move into their property, which was occupied by a refugee from Bosnia. The husband, who was director of a agricultural company, explained that when they finally entered the house “there was nothing inside” except “stuff belonging to my neighbors.”<sup>243</sup> He claims that during the seven months they were waiting to return to their house, the temporary occupant “was selling stuff from my house,” and that he paid the then-occupant “800 Deutsche marks” (approximately U.S. \$445) for the remaining furniture. Human Rights Watch spoke with an elderly woman in the village of Radučić (near Knin). The village has only Serb residents, most of whom are retired. The woman, who lives with her adult son, “came back on her own” in May 1996 from Serbia.<sup>244</sup> She was able to return to her own home, but found it empty. “They took everything,” she remarked. Despite her empty house, and the fact that her son’s house in Knin town is occupied, she told Human Rights Watch that she and her son “haven’t had any problems since we came back. Nobody bothers us.” She lives on her pension of 420 kuna per month (approximately U.S. \$63).

### **Domiciled Serbs Leaving Eastern Slavonia**

The final transfer of authority from the United Nations to the government of Croatia in Eastern Slavonia, Baranja, and Western Sirmium took place on January 15, 1998.<sup>245</sup> The departure of Croatian Serbs from the region nevertheless continues. The two-year United Nations Transitional Authority (UNTAES) had been tasked with the peaceful reintegration of the region, including the return of displaced Croats to Eastern Slavonia and displaced Serbs to other parts of Croatia. At the start of the UNTAES mandate, the region was home to some 127,000 Serbs,<sup>246</sup> including around 55,000 displaced.<sup>247</sup> Estimates from mid-1998 indicated that around 61,000 Serbs<sup>248</sup> remain in the region, of whom

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<sup>242</sup> As noted above, temporary decisions under the LTTO also covered the use of movable property, but inventories were rarely kept as required by the law, making it virtually impossible for returnee owners to reclaim furniture from departing temporary occupants. Movable property in Serb-owned property was also looted during the wave of arsons and explosions that followed Operation Storm (see housing section, above). There was also looting of Croat movables in Eastern Slavonia by Serbs who left Croatia for FRY, especially prior to the termination of the UNTAES mandate.

<sup>243</sup> Human Rights Watch interview, Golubić, August 1, 1998. The interviewee wishes to remain anonymous.

<sup>244</sup> Human Rights Watch interview, Radučić, August 1, 1998. The interviewee wishes to remain anonymous.

<sup>245</sup> For more information on the UNTAES period, see Human Rights Watch “Croatia: Human Rights in Eastern Slavonia During and After the Transition of Authority,” April 1997.

<sup>246</sup> Human Rights Watch interview with monitor from European Commission Monitoring Mission (ECMM) Coordination Center Vukovar, Vukovar, July 21, 1998.

<sup>247</sup> Human Rights Watch interview with Fedor Klimtchouk, U.N. Police Support Group (UNPSG), Vukovar, July 20, 1998.

around 6,000 were displaced from other parts of Croatia.<sup>249</sup> Although 17,000 to 21,000 displaced Serbs have now returned to their former areas of residence from the region since 1996 (see housing section, above), at least 29,000 left for Serbia or Bosnia as refugees. The pattern among the domiciled Serb population in the region is less extreme but perhaps even more troubling. Compared to a pre-UNTAES population of 72,000, it is estimated that around 55,000 domiciled Serbs remain in Eastern Slavonia.<sup>250</sup> Those who leave depart almost exclusively for Serbia or third countries. Long-term residents cross the border on a daily basis, as the president of the OSCE Parliamentary Assembly discovered on a January 1999 visit to the region.<sup>251</sup> The silent exodus of the region's Serbs calls into question the success of the UNTAES mission beyond peaceful reintegration of the territory. More importantly, it is a microcosm of the situation of Serbs in Croatia. Confidence among refugees to return is undermined by new departures, especially of long-term residents.

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<sup>248</sup> Human Rights Watch interview with Fedor Klimtchouk, UNPSG, Vukovar, July 20, 1998.

<sup>249</sup> Estimate by Croatian Office for Displaced Persons and Refugees (ODPR), quoted in "Report of OSCE Mission to the Republic of Croatia on Croatia's Progress in Meeting International Commitments," September 8, 1998. More recent estimates from ODPR cited by the Council of Europe indicate that fewer than 4,000 displaced Serbs remain.

<sup>250</sup> Human Rights Watch interview with Fedor Klimtchouk, UNPSG, Vukovar, July 20, 1998.

<sup>251</sup> "Diplomat Questions Reconciliation in Croatia," Reuters, January 13, 1999. The January 1999 progress report from the OSCE Mission to Croatia quotes Croatian Border Police statistics that "over 600 families departed with their household effects between July and October 1998."

In order to understand the motivations for these departures, Human Rights Watch spoke to long-term Serb residents in the village of Tenja who were planning to leave Croatia permanently. Tenja was given temporary municipal status for a one-year period during the UNTAES period in order to ensure political representation for its Serb inhabitants.<sup>252</sup> This status was revoked by Croatian authorities (allegedly for budgetary reasons) and the village was subsumed into Osijek municipality on July 24, 1998, the day before Human Rights Watch visited. The five Serb residents interviewed all intended to leave as soon as their houses were sold. None were willing to give their names. A middle-aged woman, who had lived in Tenja for more than thirty years said that she “had no problems with neighbors or police” but explained that she “decided to leave four months ago” citing “financial reasons.”<sup>253</sup> Her neighbor, a man with two grown-up sons was more concerned about security: “We don’t feel so safe. That’s the reason we want to leave.” Both planned to go to Serbia, but are under no illusions. “We know that it’s hard in Serbia,” the man explained “you’re here without a job or there without a job but you feel safer there.”<sup>254</sup> Human Rights Watch asked another resident of Tenja for more than thirty years why he was leaving. “The reason is that they don’t need us here, the Serbs...I’d like to stay here [but] now I don’t have hope...,” the former railway worker replied, adding that his “family had been threatened by neighbors.”<sup>255</sup> Although residents cite economic concerns as a factor driving departure from the village, those interviewed stated that they would not remain even if they were able to find employment.

There is another factor driving departures and inhibiting returns that is difficult to pin down. In his penultimate report to the Security Council on the work of the UNPSG, the secretary-general noted that the “wide gap between the actual security provided by the police and the perception of security held by many Serb residents has been an important factor leading to the continuing departure of Serbs from the region.”<sup>256</sup> The gap results from a lack of confidence that “the law will be the same for everybody no matter the nationality,” as a member of the Serb displaced persons association in Eastern Slavonia expressed it.<sup>257</sup> Aside from prosecutions and serious security issues, which are rare, most of the everyday difficulties — related to housing, documents, citizenship, and pensions — faced by Serbs are relatively minor when considered individually. Taken together, they cause people to give up hope for the future in Croatia. This underscores the need for an effective program of trust and reconciliation, as well as equal treatment for all Croatian citizens.

## THE ROLE OF THE INTERNATIONAL COMMUNITY

### The United Nations

The United Nations Transitional Authority for Eastern Slavonia, Baranja and Western Sirmium (UNTAES) concluded its two-year mandate in January 1998. With the termination of the United Nations Police Support Group on October 15, 1998, a small liaison office, staff from the Office of the High Commissioner for Human Rights and the ICTY in Zagreb, and UNHCR are all that remain of the U.N.’s former presence. Croatia remains in the mandate of Special Rapporteur for the Former Yugoslavia Jiri Dientsbier. As noted above, the success of the UNTAES mission in the peaceful reintegration of Eastern Slavonia, Baranja, and Western Sirmium was not matched by the mission’s efforts to prevent the exodus of Serbs from the region, with more than 45,000 leaving Croatia altogether since the start of the UNTAES mandate, including upwards of 17,000 long-term residents.<sup>258</sup> Efforts to create a multi-ethnic police force were more successful, with standards of policing generally higher in the region than elsewhere in Croatia, although Serbs complained about frequent identity checks and the failure of police to investigate adequately crimes reported by

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<sup>252</sup> Tenja was sometimes referred to as a “Klein municipality,” after Gen. Jacques Klein, the head of UNTAES.

<sup>253</sup> Human Rights Watch interview with two neighbors, Tenja, July 25, 1998.

<sup>254</sup> Ibid.

<sup>255</sup> Human Rights Watch interview, Tenja, July 25, 1998.

<sup>256</sup> “Report of the Secretary-General on the United Nations Police Support Group,” (S/1998/887), September 23, 1998.

<sup>257</sup> Human Rights Watch interview with representative of the Association of Displaced and Refugee Serbs, Vukovar, July 21, 1998.

<sup>258</sup> UNHCR Belgrade estimates that 47,000 Croatian Serbs have arrived in FRY since the start of the UNTAES mandate. “Report of the OSCE Mission to the Republic of Croatia on Croatia’s Progress in Meeting in International Commitments since September 1998,” January 26, 1999.

them. The mission's legacy is difficult to assess, but many of the achievements during the mandate period, including the Operational Agreement on Return (the "Joint Working Group Agreement"), the Program on Trust, and the amnesty and convalidation laws, have failed to live up to their potential.

### **OSCE Mission to Croatia**

The OSCE Mission to Croatia has become the preeminent international organization in Croatia since the departure of UNTAES. The mission's mandate, which expires in December 1999, includes assisting with and monitoring "Croatian legislation and agreements and commitments ... on: two-way return of all refugees and displaced persons and on protection of their rights, and the protection of persons belonging to national minorities,"<sup>259</sup> as well as assisting and advising in "the protection of human rights" and assisting, advising, and monitoring "the proper functioning and development of democratic institutions, processes and mechanisms."<sup>260</sup> Since the termination of UNPSG in October 1998, the mission has also undertaken police monitoring functions in Eastern Slavonia. With 280 international personnel (including 120 police monitors) and 320 national staff deployed in twenty field offices and three regional coordination centers as well as the Zagreb headquarters, the mission is well placed to engage in pro-active human rights monitoring and to facilitate the return of refugees and displaced persons to their homes.

Unfortunately, the mission has functioned more like a diplomatic mission than an international field operation.<sup>261</sup> Senior staff in the mission's Zagreb headquarters explained to Human Rights Watch that the purpose of the mission's offices and personnel in the field is to provide data to enable the headquarters to make more effective diplomatic interventions with the Croatian government in the capital. At the same time, human rights protection has been given an inadequate priority in the mission's day-to-day activities. There are few designated human rights officers outside headquarters and few field officers have a background in human rights. Training is also inadequate, as senior staff have admitted to Human Rights Watch. Field staff lack clear terms of reference to monitor or document human rights abuses, and rely on office hours and complaints received rather than seeking out and documenting patterns of violations. There is no standardized system of human rights reporting in the mission, making case trend analysis difficult. Recently, the mission has displayed more willingness to publicize concerns regarding Croatia's noncompliance with its commitments and obligations. The January 1999 Report on Croatia's Progress in Meeting International Commitments is the mission's most critical assessment to date, and includes a stronger emphasis on the legal and political obstacles to improvements in human rights than previous reports.

### **The United Nations High Commissioner for Refugees**

UNHCR remains the leading international agency for matters related to the return of refugees and displaced persons in Croatia, despite a dwindling budget.<sup>262</sup> Budget constraints have played a large role in UNHCR's decision to consolidate its operations in Croatia within three field offices in Osijek, Sisak, and Knin and reduce international personnel. Other field offices, including Vukovar, have been closed. This contraction comes at a time of growing need for the protection of Serb returnees, and higher demand for assistance with return from Serbia and Bosnia, created in part by the new mechanisms for return. Officially, UNHCR Croatia has welcomed the adoption of the program for return, while stressing the need for its full implementation. Privately, some officials are more skeptical. A staff member in UNHCR Knin admitted that it "will be very hard to implement the program."<sup>263</sup> Others note an improved cooperation with ODP: "Their...attitude is better [and] much more pro-active," explained another UNHCR staff member in the same office.<sup>264</sup>

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<sup>259</sup> Decision of the OSCE Permanent Council, 26 June 1997, Journal No. 121 (PC.DEC/176).

<sup>260</sup> Decision of the OSCE Permanent Council, 18 April 1996, Journal No. 65 (PC.DEC/112).

<sup>261</sup> The mandate and functioning of the OSCE mission are reviewed in more detail in a Human Rights Watch paper entitled "Assessment of the OSCE Mission to Croatia," December 1998. The paper is available on request from Human Rights Watch.

<sup>262</sup> The financial year 1999 budget for UNHCR in Croatia is \$18.5 million, of which \$13 million is allocated for program activities. (Source: UNHCR Zagreb.)

<sup>263</sup> Human Rights Watch interview, UNHCR official, Knin, July 1998.

<sup>264</sup> Human Rights Watch interview, UNHCR official, Knin, July 1998.

UNHCR has also worked to facilitate the return of those Bosnian Croats who express a desire to return to their homes in Bosnia, publicizing Bosnia's new property and tenancy right laws and arranging "go and see visits" as well as assisting with transportation. Similar public information and "go and see visits" are being arranged for Croatian Serbs in Republika Srpska and Serbia, where UNHCR is working with refugee associations to create registers of refugees and assist with return applications. Nevertheless, coordination between its offices in Croatia and those in Bosnia and Serbia could be improved, particularly in terms of direct lateral coordination between field offices, for example between Banja Luka-Sisak and Osijek-Novi Sad.

### **The Return Facilitation Group**

The regional dimension of return in Croatia was explicitly acknowledged by international participants at the April 1998 regional return conference in Banja Luka. The linkage to resolution of the situation of Bosnia's internally displaced is especially clear, since Croatian Serbs in Republika Srpska often occupy the homes of Bosnian Croats, some of whom are refugees in Croatia. The high degree of international involvement in Bosnia's administration also creates potential to address jointly the situation in both countries. In recognition of this linkage, and the need for international participation to implement the return program, a Return Facilitation Group was established in September 1998. Members include the OSCE Croatia and Bosnia missions; UNHCR Croatia, UNHCR Bosnia, and UNHCR FRY; the International Office for Migration; the Office of the High Representative (OHR) in Bosnia, the European Union, and its Monitoring Mission; the United States, and the NATO-led Stabilization Force (SFOR). The group "aims to ensure adequate coordination of activities between its members...to facilitate the implementation of the return program by the government of Croatia."<sup>265</sup> It includes area return facilitation groups in Knin, Sisak, and Osijek. Whether such a body is a necessary addition to the plethora of international coordination bodies in the region — which already includes in Croatia, the Joint Working Group, the Article 11 Commission, and the Return Program Coordination Committee — or a distraction from the actual business of inter-agency coordination remains to be seen.

### **The European Union**

Closer integration into so-called "Euro-Atlantic structures," including the European Union and NATO, are key elements of Croatian foreign policy. The European Union therefore plays an influential role in Croatia. E.U. relations with Croatia are governed by the union's "Regional Approach to Countries of South-East Europe," which conditions the granting of trade concessions, reconstruction assistance, and other relations with all countries in the region on a comprehensive set of human rights criteria, including the creation of conditions for the return of refugees and displaced persons and respect for the rights of minorities. There are also country-specific criteria which, in Croatia's case, include cooperation with OSCE and UNHCR and compliance with the Erdut agreement. Periodic reports on compliance with the criteria are prepared by the European Commission, based on reports from its monitoring mission (ECMM) which has offices in Zagreb, Vukovar, and Knin. These reports form the basis of a six-month review of relations with each country by the E.U. Council of Ministers.

At the last review in October 1998, the council decided that relations should remain unchanged, citing "a discrepancy between statements of intent and their practical implementation" as well as "problems...with respect to the treatment of minorities" and a "very slow" return process.<sup>266</sup> Croatia currently enjoys autonomous trade measures (ATMs) with the E.U., but was suspended from the PHARE reconstruction assistance program soon after it originally became eligible in 1995 due to the military actions "Storm" and "Flash."<sup>267</sup> Aid during 1998 was limited to 6.65 million ECU of humanitarian assistance and 2.7 million ECU in support to independent media. The threat by the E.U. to suspend ATMs is widely regarded as instrumental in the decision of the Croatian government to adopt the Mandatory Instructions for the procedure on individual return in May, and the return program in July.<sup>268</sup> As noted above, the E.U.'s

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<sup>265</sup> Joint UNHCR Croatia/OSCE Mission to Croatia Press Release "Establishment of Return Facilitation Group of International Representatives," September 17, 1998.

<sup>266</sup> European Union General Affairs Council: "Council Conclusions, Western Balkans: Conditionality," (12516/98 Annex), October 29, 1998.

<sup>267</sup> In addition to its economic impact, the granting of PHARE has political significance, since it indicates greater convergence with E.U. membership criteria.

<sup>268</sup> See, for example, Mark Turner, "New Croatian Law Delays Sanction Threat," European Voice, May 20, 1998 and "E.U.

threat not to participate in the December reconstruction conference helped persuade the Croatian government to adopt "mandatory instructions" on the eve of the conference (although its significance is far from clear). There is disagreement among E.U. member governments as to how much progress toward the regional approach conditions is required before Croatia should become eligible once again for its PHARE program assistance.

#### **The United States**

The United States maintains a close relationship with Croatia. There are strong links between the two countries' armed forces: U.S. Defense Secretary William Cohen delivered a eulogy at the funeral of his Croatian counterpart Gojko Šušak, Croatia received \$425,000 through the International Military Education and Training (IMET) program, and the U.S. has indicated a willingness to support Croatia's admission to the NATO Partnership for Peace program provided that progress can be made on refugee returns, Dayton implementation, and internal democracy. Although U.S. Secretary of State Madeline Albright was critical of Croatia's progress in these areas during her visit to Croatia in August 1998, the focus of her criticism was related to Dayton implementation and democratization rather than the return of refugees and the treatment of Serbs. The State Department and the U.S. Embassy in Zagreb generally take a more conciliatory line than the European Union toward the Croatian government on the obstacles to the return of Serbs and their rights in Croatia. U.S. and European diplomats in Zagreb speak of good cooperation, however, and the U.S. reportedly joined the E.U. in threatening nonparticipation in the December 1998 reconstruction conference. The U.S. Agency for International Development is undertaking a two-year reconstruction assistance program targeted at the return of refugees and displaced persons into their former communities.

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Executive Urges Croatia to Focus on Refugees," Reuters, July 30, 1998.

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Europe and Central Asia Division*

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