

Implementation of the Durable Solutions Process (Sarajevo Process) for refugees from Croatia displaced by the 91-95 conflict, including cessation of refugee status

A) Introduction

1. Twenty-two years after the violent break-up of the Socialist Federal Republic of Yugoslavia (hereinafter: Yugoslavia), peace and security have firmly taken hold in the region and economic and political progress is increasingly becoming visible. With considerable support by the international community, durable solutions have been found for many refugees from Croatia¹ displaced by the 1991-95 conflict.

2. To overcome the last remaining challenges and close the displacement chapter, Governments in the region, with the support of the EU, the US Government, UNHCR and the OSCE, adopted a regional durable solutions strategy first set out in the 2005 Sarajevo Declaration and confirmed in the 2011 Joint Declaration on Ending Displacement and Ensuring Durable Solutions for Vulnerable Refugees and Internally Displaced Persons. The strategy is currently being implemented through a comprehensive “Regional Housing Programme” (RHP) which is complemented with national reconstruction/housing programmes.

3. Given the advances made in this Regional Durable Solutions Strategy since 2005, refugees from Croatia displaced during the 1991-95 conflicts are, in general, able to access effective State protection. They are no longer in need of the protection provided by the international refugee protection instruments. The Office is, therefore, below providing to host countries² its recommendations for the cessation of refugee status of refugees displaced by the 1991-95. These recommendations build on the Sarajevo Declaration and the Joint Declaration, which include as core element and indicator for progress, the cessation of refugee status. In tandem, the Office is providing in this paper recommendations on how to resolve remaining displacement challenges and further advance the Regional Durable Solutions Process.

4. Cessation of refugee status and the process of finding durable solutions are two different, but interrelated processes. The successful integration of former refugees into their country of asylum or

¹ In line with UNHCR’s practice, the term “refugees from Croatia” as used in this paper includes both citizens as well as former habitual residents of Croatia, irrespective of whether the latter group at the time of the displacement held the nationality of another Republic of the former Yugoslavia.

² All countries hosting refugees from Croatia are party to the 1951 Convention relating to the Status of Refugees.

reintegration in their country of origin can be a long term process, well beyond the need for refugee status. A premature cessation of refugee status, on the other hand, could derail the durable solutions process. The following recommendations, therefore, seek to ensure the integration of cessation into the durable solutions process.

5. The Office is providing this guidance in line with its role to supervise the implementation of international refugee instruments in line with Paragraph 8 of the UNHCR Statute in conjunction with Articles 35 and 36 of the 1951 Convention. Following an overview of the refugee situation, the paper first outlines UNHCR's recommendations related to the application of the ceased circumstances application clauses in Article 1 (5) and (6) of the 1951 Convention relating to the Status of Refugees (hereinafter 1951 Convention). It then identifies remaining challenges to the achievement of durable solutions for all refugees displaced by the 1991-95 conflict and UNHCR's recommendations on how these could be overcome. These recommendations are further elaborated in Annex 1. Annex 2 provides guidance on categories of refugees who may need to be exempted from refugee status.

B) Overview of the refugee situation³

6. During the violent break-up of Yugoslavia, armed conflict and human rights violations in Croatia led to the displacement of ethnic Croats from areas controlled by ethnic Serb entities in 1991. At the same time ethnic Serbs in other parts of Croatia, experiencing or fearing violence and abuses, began fleeing into areas controlled by Serbs or outside the country. In 1991 alone, more than 200,000 refugees fled the country, and some 350,000 became internally displaced. At the peak of the refugee crisis, the number of refugees and displaced persons in Croatia exceeded 1.2 million people.

7. Fighting in Croatia flared up again in 1993, when the Croatian government sought to retake the occupied territories. This led to the displacement of ethnic Serb civilians, primarily to Bosnia and Herzegovina (hereinafter BiH) and Serbia. The ethnic Serb forces were able to keep military control until 1995, when the Croatian Government re-captured the territories. During and following these military operations severe human rights violations and crimes occurred. As a result, an estimated 250,000 ethnic Serbs were displaced from their homes. The majority became refugees in adjoining States.

8. At the time when the conflict in Croatia ended in 1995, 21,000 people had been killed and 950,000 people had been displaced from or within Croatia over the course of the conflict. According to government statistics, in 1996 Serbia and Montenegro⁴ hosted nearly 300,000 refugees from Croatia and it is estimated that BiH hosted between 30,000 and 40,000. The "*Basic Agreement on the Region of Eastern Slavonia, Baranja and Western Sirmium*" of 1995 and the subsequent UN Security Council Resolution 1037 of 15 January 1996 provided the United Nations with the mandate to facilitate and monitor the process of the peaceful reintegration of Eastern Slavonia. This was the

³ This Summary is restricted to events during the 91-95 conflicts that led to displacement from Croatia. It is not comprehensive and only refers to some events which are indicative of the reasons of the displacement.

⁴ At that time the Federal Republic of Yugoslavia.

starting point for the first returns of IDPs and it also triggered the adoption of a Return Programme which enabled refugee repatriation to Croatia.

9. Today there are 49,056 refugees from Croatia registered in the region, almost all ethnic Serbs. The massive decrease since 1996 is a testament to the fact that voluntary repatriation (see paragraph 37) and local integration have been successful. Serbia is hosting the largest number of registered refugees from Croatia (41,724), followed by BiH (6,726), Montenegro (567), as well as Kosovo (S/RES/1244 (1999))(39).⁵⁶

C) Application of the “Ceased Circumstances” Cessation Clauses to Refugees from Croatia

1. General

10. The 1951 Convention provides for the cessation of refugee status when positive changes have taken place in the country of nationality (or country of habitual residence) such that the causes of refugee flight no longer exist. The changes that have occurred must be of a fundamental and durable character.⁷ Cessation is not invoked in an open-ended manner. Rather, application of the cessation clauses is generally fixed to specific events, against which “fundamental and durable changes” can be measured.

11. All countries hosting refugees from Croatia are party to the 1951 Convention and have national asylum systems in place. It is upon them to apply the ceased circumstances cessation clauses and to establish the modalities for their implementation according to relevant domestic legislation.

⁵ According to Government statistics dating from end of June 2013. The last registration of refugees in all countries in the region took place during 2004/2005. The June 2013 statistics are the latest update and reflect the decrease of the refugee population since that time through repatriation or local integration.

⁶ References to Kosovo shall be understood to be in the context of Security Council Resolution 1244 (1999).

⁷ See Article 1 (C) of the 1951 Convention: “This Convention shall cease to apply to any person falling under the terms of section A if:...(5) He can no longer, because the circumstances in connexion with which he has been recognized as a refugee have ceased to exist, continue to refuse to avail himself of the protection of the country of his nationality; Provided that this paragraph shall not apply to a refugee falling under section A (1) of this Article who is able to invoke compelling reasons arising out of previous persecution for refusing to avail himself of the protection of the country of nationality;”. Article 1 (C)(6) 1951 Convention contains a similar provision for stateless persons. Further guidance on this cessation clause is provided by: UN High Commissioner for Refugees (UNHCR), *Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees*, December 2011, HCR/1P/4/ENG/REV. 3, available at: <http://www.refworld.org/docid/4f33c8d92.html>, paragraphs 135-139; UN High Commissioner for Refugees, *Guidelines on International Protection No. 3: Cessation of Refugee Status under Article 1C(5) and (6) of the 1951 Convention relating to the Status of Refugees (the “Ceased Circumstances” Clauses)*, 10 February 2003, HCR/GIP/03/03, available at: <http://www.refworld.org/docid/3e50de6b4.html>.

2. Rationale

12. Peace and security have firmly taken hold in the region and economic and political progress has become visible. Fundamental changes in Croatia have addressed the armed conflict and human rights violations that were the cause of the displacement. The country has seen extensive political changes since the end of the conflict, including democratic elections and the reform of the state. The country has adopted anti-discrimination legal frameworks and mechanisms, which provide a foundation for the prevention of discrimination in the future. The fact that Croatia joined the European Union on 1 July 2013 recognizes these changes and provides guarantees for further progress.

13. Although progress in terms of reconciliation in the country remains an on-going effort, the different ethnic groups have proven that they are, generally, able to co-exist peacefully. The vast majority of returnees did not encounter security incidents, even if a fraction of the majority population maintains and voices at times strong anti-Serb rhetoric. Effective State protection is provided against individual incidents of violence against minorities which occasionally occur. Minority returnees to Croatia are in general able to access effective protection in terms of physical safety and access to human rights. Returnees may face discrimination and administrative obstacles, often at community level, especially in access to socio-economic rights, but substantial progress has been made and legislation and mechanisms are in place to address this situation.

3. Scope of cessation

14. Based on an in-depth analysis of the fundamental developments that have occurred in Croatia over the past 20 years and consultations with the main countries of asylum and Croatia as country of origin, UNHCR considers that the refugee status of refugees from Croatia who fled the country as a result of the conflicts between 1991 and 1995 can now be brought to an end pursuant to the “ceased circumstances” cessation clauses contained in paragraph 6(A)(e) and (f) of the UNHCR Statute and Article 1C(5) and (6) of the 1951 Convention.

4. Implementation of cessation

(i) Declarations of cessation and entry into force of cessation

15. UNHCR recommends that host States start implementing all aspects of cessation of refugee status, including exemption procedures, in 2014, with refugee status to cease formally by 31 December 2014. However, if the reasons outlined in paragraphs 18 and 19, apply, the cessation of status could take place by the end of 2017. To this end, it is recommended that States declare cessation of refugee status without delay and inform refugees of the date of its entry into force. UNHCR is ready to provide technical advice to all concerned States in this regard, including in relation to the implementation of the exemption procedures.

16. In keeping with the objective that cessation supports and must not undermine the durable solutions process, Governments may consider providing a certain period of time until refugee status

formally ceases where local integration through naturalization is the preferred solution for many refugees and the recommended timeline for the implementation of cessation would not suffice to complete the naturalization processes for all concerned.⁸ Where a government makes use of this possibility, refugee status of naturalized individuals will cease *ipso facto* according to Article 1 C (3) of the 1951 Convention and their status should be canceled accordingly without delay.

17. Similar considerations apply for refugees who have initiated, but who have not yet completed the voluntary repatriation process. In such situations, delays in the implementation of the cessation decision could be considered such that persons concerned would continue to benefit from protection as refugees, until the pertinent arrangements are fully implemented. Refugee status will cease according to Article 1 (C) (1) of the 1951 Convention if the refugee has voluntarily re-availed himself or herself of the protection of Croatia or according to Article 1 (C) (4) of the 1951 Convention if he/she has voluntarily re-established himself or herself in the Croatia.

18. Host governments would have to ensure, that all aspects of cessation are implemented in 2014, with cessation latest to take effect by the end of 2017. This deadline has been chosen at the request of some host countries to align the cessation process with the commitments made by Governments in the 2005 Sarajevo Declaration and the 2011 Joint Declaration. Governments would have a maximum period of almost four years to bring refugee status of the concerned refugee groups to an end, be it through naturalization in the host country (Article 1 C (3) of the 1951 Convention); voluntary re-availment of the protection of Croatia; voluntary return and establishment in Croatia (Article 1 C (4) of the 1951 Convention); or the application of the ceased circumstances clauses (Articles 1 C (5-6)).

(ii) Exemption procedures

19. Based on the earlier-cited provisions of the 1951 Convention and other instruments, and in line with established principles of international law, there are two instances where exemption from cessation would apply: (a) in the case of an individual who continues to have a well-founded fear of persecution, and (b) in the case of an individual who has “compelling reasons arising out of previous persecution” for refusing to avail themselves of the protection of the country of origin.

20. In cases where UNHCR, government counterparts or partners have knowledge of specific individuals or groups of individuals who may continue to need international protection, they may affirmatively approach and counsel such persons regarding their right to seek exemption from the application of the cessation clauses.

21. A request for exemption has a suspensive effect on the application of the cessation decision. Accordingly, refugees from Croatia who have lodged such applications, but whose claims have not

⁸ One way of achieving this objective could be the suspension of the implementation of the cessation decision. For further information about the concept of suspension in the context of a cessation declaration, see UN High Commissioner for Refugees (UNHCR), *Note on Suspension of "General Cessation" Declarations in respect of particular persons or groups based on acquired rights to family unity*, December 2011, available at: <http://www.refworld.org/docid/4eef5a1b2.html>.

been decided by the effective date of cessation, will retain their refugee status pending the outcome of the exemption process, including exhaustion of appeals procedures.

22. UNHCR is ready to assist host countries to ensure that the necessary procedures are established within the existing legal/administrative frameworks to properly receive and decide on any such exemption applications that are lodged. In particular, information campaigns on cessation will need to be carried out.⁹

iii) Modalities for the implementation of cessation

23. UNHCR recommends that concerned States undertake appropriate preparations for the implementation of the cessation of refugee status in a transparent manner and as soon as possible. Host countries need to inform refugees in a comprehensive and impartial manner about the forthcoming cessation of their refugee status, possibilities to apply for an exemption and other options available to them. UNHCR stands ready to assist host countries in this respect directly and through NGO partners.

24. UNHCR urges concerned States to ensure that the manner of applying cessation fully takes into account the recommendations set out in the Annex, and reinforces the implementation of the RHP and other ongoing durable solutions efforts. This entails *inter alia* ensuring that individuals who currently hold refugee status continue to be entitled to the special support and privileged access to services and benefits (e.g. those related to housing, social assistance and health insurance), including under the RHP and the complementary national housing programmes, until their integration process has been completed. It also entails that Croatia provides durable housing solutions to returnees and refugees willing to return according to its commitment under the RHP (see also Annex I, paragraph 6) at a faster pace.

D) Status of the Regional Durable Solutions Process

1. Initiation of the Process

25. In 2005 UNHCR, the European Union and the OSCE initiated a Regional Durable Solutions Process (Sarajevo Process) to facilitate access to durable solutions for the remaining refugees from Croatia and BiH. BiH, Croatia and Serbia and Montenegro committed to uphold the human rights of the displaced and to facilitate durable solutions for them.

26. A 2010 International Conference on Durable Solutions re-launched the Regional Durable Solutions Process, placing it squarely within the context of EU accession negotiations for countries in the region. A “Joint Declaration on Ending Displacement and Ensuring Durable Solutions for Vulnerable Refugees and Internally Displaced Persons” was signed subsequently at a Ministerial Conference in Belgrade in 2011. The Joint Declaration reconfirmed governments’ commitment to

⁹ For further information see UN High Commissioner for Refugees (UNHCR), *Guidelines on Exemption Procedures in respect of Cessation Declarations*, December 2011, available at: <http://www.refworld.org/docid/4eef5c3a2.html>.

facilitating durable solutions and protecting human rights, and set out a framework for doing so. Governments identified the major obstacles to durable solutions and agreed that housing was the most urgent. They developed the RHP to respond to this need, with the support of UNHCR and its international partners. The RHP aims to provide housing to 27,000 refugee and IDP families.

27. In 2012, an international donor conference in Sarajevo raised nearly 300 million Euros for the RHP. With an understanding that housing is necessary, but not sufficient for durable solutions, UNHCR and OSCE were asked (in line with its country-specific mandate) to monitor that the end-beneficiaries of the RHP will be those qualified as most vulnerable, such as defined by the Partner Countries jointly with the UNHCR. It was agreed, that UNHCR and OSCE (in line with its country-specific mandates) may also support the Council of Europe Development Bank, when necessary, in monitoring that the housing solutions provided to the end-beneficiaries address their specific needs. UNHCR would assist to the Partner Countries to ensure that complementary protection measures would accompany housing support, as well as sustainability and access to rights for all RHP beneficiaries.

28. The four partner countries of the RHP (Croatia, BiH, Montenegro and Serbia) have started to establish the structures and mechanisms for implementation of the RHP, under the guidance of the Council of Europe Development Bank, as the RHP Fund manager. With the support of UNHCR, the four partner countries are harmonizing their legal frameworks to ensuring that the selection of beneficiaries can, as agreed, be based on vulnerability. The first wave of sub-projects has been approved by donors and the implementation is expected in late 2014.¹⁰

2. The way forward

29. UNHCR has been supporting the governments in the region to implement the commitments they made and to take every necessary measure to ensure the legal, economic and social integration of refugees and returnees into society. This includes in the first place the continuing development and effective implementation at all levels (national, municipal) of laws, policies and programmes aimed at remedying the effects of displacement, reducing discrimination, and the removal of unnecessary administrative hurdles facing refugees and returnees differently from the general population, for example in obtaining nationality and regulating civil status, and accessing rights, including housing, acquired pension entitlements and rights, and basic services (water, electricity, healthcare etc.).

30. UNHCR, furthermore, encourages BiH and Serbia to withdraw documentation of refugee status of individuals who have acquired the nationality of these countries and de-register them as refugees accordingly. According to Article 1 C (3) of the 1951 Refugee Convention refugee status ceases

¹⁰ The Assembly of Donors approved EUR 61 million grant funds for altogether 12 projects, of which EUR 15 million for BiH; EUR 12 million for Croatia, EUR 10 million for Montenegro and EUR 24 million for Serbia.

automatically when a refugee “has acquired a new nationality, and enjoys the protection of the country of his new nationality”.¹¹

31. UNHCR remains committed to this effort to materialize durable solutions for persons displaced by the 1991-1995 conflicts in the Balkans in line with its mandate and the task with which the Office has been entrusted by the international community. The RHP is expected to play a catalytic role in this respect. UNHCR is thus working towards a progressive acceptance and assumption of responsibilities by the governments in the region for completing the process of solutions to remaining problems of displacement.

32. UNHCR will continue, in line with its commitments, to assist in and monitor until the end of 2017, the beneficiary selection in the RHP to ensure that beneficiaries are selected without discrimination on the basis of their vulnerability. Those refugees who have not been able to achieve a durable solution to date are typically among the most vulnerable populations, including elderly refugees, refugees with disabilities or serious health problems, single women with children and other “fragile families”. In addition, UNHCR’s monitoring seeks to support governments, including at municipal level, when taking adequate steps to ensure effective and timely access to basic rights for RHP beneficiaries and sustainability of voluntary repatriation or local integration for vulnerable populations.

33. UNHCR will monitor the implementation of its recommendation and of States’ commitments under the Regional Durable Solutions process and issue a progress report every six months.

34. The status of each of the main components of the Regional Durable Solutions Process for Croatian refugees and UNHCR’s recommendations are briefly outlined below. Annex I provides an analysis and UNHCR’s recommendations on how the remaining obstacles could be addressed.

3. Removing remaining barriers to voluntary repatriation and sustainable reintegration

35. Since the end of the conflict, several programmes and initiatives led to the repossession of more than 19,000 private houses in Croatia, mostly by ethnic Serb refugees and IDPs. Some 149,000 housing units were reconstructed for IDPs and refugees, up to one third of which for ethnic Serbs. Government figures indicate that, to date, some 389,557 refugees have returned to Croatia, including some 133,000 ethnic Serb refugees. For most of the 30, 000 refugee families who lost their OTR apartments neither repossession nor compensation has up until now been possible.¹²

¹¹ For further information on the application of this cessation clause see UN High Commissioner for Refugees, *Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees*, December 2011, HCR/1P/4/ENG/REV. 3, available at: <http://www.refworld.org/docid/4f33c8d92.html> , paragraphs 129-132.

¹² Occupancy/tenancy rights. These tenancy rights were constitutionally protected property rights which were transferable to household members. For ethnic Serbs these rights were often terminated by Croatian courts at the request of the social property owners during the period 1991 to 1995 in the absence of the right holder and have not been reinstated.

36. Spontaneous returns to Croatia continue to take place, albeit in small numbers.¹³ Since many refugees have indicated that they are not considering return, but would like to locally integrate, further returns are not expected to take place in greater numbers. Local integration is often chosen because it is considered to offer better economic opportunities than return to remote and destroyed villages in underdeveloped regions without infrastructure and employment opportunities. It remains to be seen, however, whether Croatia's recent accession to the EU on 1 July 2013 and expected economic development might encourage further returns or circular movements between the host country and Croatia.¹⁴

37. Some returnees from minority groups continue to face a number of challenges which can hinder their sustainable repatriation and reintegration. These include the continuous struggle against discrimination and bureaucratic hurdles to access rights and services (such as adequate housing, access to water/electricity, medical and social services, high costs for administrative demarches related to acquisition of civil documentation) and difficulties to economically integrate, demonstrated by a high and above average unemployment rate and widespread poverty among returnees. These challenges are further exacerbated for Roma returnees who belong to the most marginalized communities in the region. Another group that faces additional challenges is returning habitual residents. They can face difficulties to regularize their status despite the fact that the law provides them with a right to permanent residence and naturalization under favorable conditions. Many refugees, who returned to Croatia, therefore, did not settle permanently (for further information, see below, Annex I).

4. Pursuing opportunities for local integration or alternative legal status in countries of asylum

4.1 Host countries in the region

38. Refugees from the 1991 -1995 conflicts have spent many years in countries of asylum and have developed family, social and economic ties to them. Many refugees in BiH and Serbia and some refugees in Montenegro have already acquired the nationality or permanent residence of their host countries, although the number of those who have been able to do so is not known. Many of those who have not obtained nationality yet, have taken steps towards local integration, including through an application for naturalization. It is important that the process of cessation of refugee status does not disrupt the dynamics of this ongoing local integration process.

39. The most important obstacles to local integration relate to the difficulties for many vulnerable refugees from minorities to ensure durable housing solutions, obtain employment and access to some other socio-economic rights. For some refugees, including Roma refugees, this is further

¹³ While only 132 individuals returned in 2012, in 2013 a total 500 refugees repatriated to Croatia, including 84 from Bosnia and Herzegovina, 7 from Montenegro and 409 from Serbia.

¹⁴ The extension of the deadline for the regulation of domicile (habitual residence) until 29 December 2014 for Croatian citizens residing abroad by the Government of Croatia on 27 December 2013 will provide individuals with additional time to decide where to settle permanently. With this amendment the Government aims to address gaps in the provision of information to concerned individuals.

compounded by difficulties to obtain documents necessary to regularize their stay and to apply for naturalization.

4.1.1 Host countries outside the region

40. Only a small number of refugees from Croatia left the region; most were ethnic Serbs. In 1996 they numbered 10,000, most being in Italy. Half of them have meanwhile returned. Those who stayed have often taken significant steps towards local integration and hold either permanent residence or citizenship of the country of asylum. A few refugees may have difficulty to locally integrate in countries outside the region because they hold temporary residence permits, which could expire and result in expulsion if no other legal basis for stay is secured or because their permanent residence may cease given a dependency on social assistance.

41. A concern is the community of Roma in Italy and their descendants, originating from countries in the former Yugoslavia. Most originate from BiH, but a few may be from Croatia. According to official statistics, a very limited number of these individuals have Convention refugee status. Most Roma from the former Yugoslavia who came to Italy during the conflicts hold different status or are without any residence permit (see further Annex 1).

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Annex I

Recommendations relating to the implementation of the Regional Durable Solutions Process

1. Removing barriers to voluntary repatriation and sustainable reintegration

- **Difficulties to regularize stay for refugees from Croatia without Croatian citizenship**

1. Obtaining citizenship upon return can be difficult for former habitual residents of Croatia. It first requires returnees to obtain a legal residence status which is only possible after prove of residence in Croatia on 8 October 1991, and the fact that a person is either beneficiary of the national housing care/reconstruction or Return Programme. While the law creates favorable conditions for former habitual residents in this regard, returnees continue to face administrative obstacles, high costs and long delays.

2. UNHCR recommends that **Croatia** introduces concrete measures to facilitate regularization of stay for returnees whether they have been citizens or habitual residents and naturalization for the latter group, including exemption from administrative fees for vulnerable individuals. UNHCR appeals to Croatia to ensure access for all returnees to returnee status and related rights and benefits, irrespective of cessation of refugee status. This includes, inter alia, access to free medical insurance and financial assistance for those in need of it.

- **Need for adequate housing**

3. According to information received from the Government of Croatia, around 11,000 families are waiting for the housing assistance in the country including around 33,000 individuals whose names were posted on the Government 2012/13 priority lists. UNHCR estimates that 17,000 of them are of concern to the Office. In 2005, the government of Croatia created a Housing Care Programme (HCP), which provides housing for rent or purchase at reduced prices for targeted groups. Refugee families who lost protected occupancy/tenancy rights (OTR)¹⁵ are eligible to benefit from this programme, but they are not a priority group and they tend to face more difficulties than others. This regulation does not take into account the fact that OTR apartments were handled differently from privately owned houses. They were not returned to their owners and the owners were also not recompensated for their loss. Furthermore, it is more difficult for refugees from non-war affected areas to benefit, as compared to those from war affected areas where the majority of OTR holders were coming from. According to a survey conducted by IOM and UNHCR, 21% of OTR holders wish to return to Croatia and 56% of those in Serbia and 62% in BiH are currently living in sub-standard housing and are in need of housing support.¹⁶

¹⁵ These are apartments which were socially-owned in the former Yugoslavia - known as former occupancy/tenancy rights (OTR).

¹⁶ International Organization for Migration: *Needs Assessment of Former Occupancy/Tenancy Rights Holder*, 2011.

4. In 2012, the Croatian authorities slowed the implementation of the HCP. Only 177 families benefitted, which is one tenth of the number who benefitted in 2011. In 2013, 81 returnee families received housing, including 35 in war affected and 46 in urban areas. This represents 4% of the 2011 number of 2,070 allocated housing units¹⁷ to returning refugees. According to the State Office for Reconstruction and Housing Care, the annual budget the national housing programme for 2014 only allows for the purchasing of 20 apartments. Currently, there are 1,191 OTR holders and their families whose application for housing was approved, but who have, nevertheless, not yet received a housing solution, despite the fact, that some have already been waiting for 6-7 years for it. Additionally, 10,992 families are on the Government's priority list for Housing Care. They are still waiting for an administrative decision on their application and housing. In total, around 12,200 Housing Care beneficiaries (including OTR holders) and their families are still in need of housing.

5. Under the RHP, the government of Croatia originally planned to provide housing assistance to some 3,541 refugee and returnee families (8,529 individuals), including families who lost OTR apartments.

6. UNHCR appeals to the Government of **Croatia**

- to uphold the commitments under the RHP to identify beneficiaries on the basis of vulnerability and needs, in a transparent and fair manner, and provide housing solutions for vulnerable returnees eligible for the RHP;¹⁸
- to continue implementing the National Housing Care Programme for returning refugees who permanently lost their pre-war housing rights (occupancy/tenancy rights-OTR) and are not included in the RHP until end of 2017;
- to increase the budget of the State Office for Reconstruction and Housing Care to ensure that Croatia's budgetary means are commensurate to the existing needs;
- to uphold all existing Housing Care entitlements, including buy-off benefits, irrespective of cessation of refugee status;
- to further simplify the application process for housing through the creation of a legal framework that would encompass both, the national and regional housing programme.

7. UNHCR appeals to the **European Union and other donors** to provide complementary resources to Croatia to enable to country to implement the above recommendations.

• **Access to basic public infrastructure**

8. According to a UNHCR commissioned 2011 study on minority return to Croatia,¹⁹ 15% of returning refugees do not have access to potable running water, 33% live without paved roads and 40% have no access to public transportation. There are three major reasons behind this state of housing infrastructure: the war and devastations in the areas affected by the conflicts; general

¹⁷ This was at the time the benchmark given by the EU for Croatia's accession to the European Union.

¹⁸ For beneficiary figures, see Joint Regional Programme on Durable Solutions for Refugees and Displaced Persons; Framework Programme; November 2011; page 7 Programme Planning Framework; Table 1. Beneficiary Population.

¹⁹ See Mesić & Bagić, *Minority Return to Croatia—Study of an Open Process*, 2011, available at: <http://www.kirs.gov.rs/docs/Minority%20Return%202011.pdf>.

underdevelopment of Croatian regions to which the returnees have mostly returned; the discouragement of returns of Serb refugees by local authorities in some areas.

9. UNHCR urges the Government of **Croatia** to further enhance easy access of returnees, in particular persons belonging to national minorities, to existing rights, basic services (such as adequate housing, access to water/electricity, medical and social welfare services), and public utilities without discrimination, including by eliminating remaining administrative obstacles.

- **Employment and basic means of subsistence**

10. According to the 2011 study on minority return, the unemployment rate for returning refugees is estimated to be 68% which is by 3.6 times higher than the national average. Even considering that most returnees live in less developed counties where the total unemployment rate is higher than the national average, the rate of administrative unemployment among the returnees is about 2.6 times higher even than the average.

11. Returning refugees are 13 times more likely than members of the community in general to survive with an income of less than 1000 Kuna (approximately 130 Euros) per month. One fifth of returnee families have no regular income (including pensions). Discrimination is prohibited by law in private sector employment and in the public sector, proportional representation of minorities is guaranteed by law. However in practice, further efforts are needed for minorities' representation both in private and public sectors.

12. UNHCR recommends taking steps to increase employment of returnees by ensuring implementation of employment and non-discrimination laws currently in force and by prioritizing returnee communities for economic development activities. UNHCR also recommends supplementing these measures by an improvement of the social welfare systems so that vulnerable returnees are a priority groups and having easier access to these programmes.

- **Difficulties related to private property repossession**

13. In Croatia the right to return included the right to recover privately owned housing and more than 19,000 refugee and IDP families, primarily ethnic Serbs, reposessed their pre-war privately owned housing. Today, the repossession process is near completion. Of remaining concern are 14 cases in which the ethnic Croat temporary occupants of private houses have sued the Serb refugee owners for repayment of material improvements of the house. Courts have ordered substantial financial awards to occupants for these "unauthorized investments" and often the refugees' repossession is blocked until they pay the occupant.

14. UNHCR encourages **Croatia** to resolve all the remaining cases related to private property repossession in Croatia, particularly the cases of unauthorized investments by temporary occupants who were permitted by the government to use these properties, at the earliest possible time in an efficient and just manner.

- **Access to legal aid**

15. The law on legal aid has been implemented in such a way that the most vulnerable people in need of legal aid have not had access to it. Its provisions have been interpreted restrictively and it is not implemented uniformly across the country. Importantly, people without a regulated legal status, which could include many returning refugees, are not eligible for legal aid. In 2012, the Croatian government covered legal aid in only 5,877 cases, while NGOs provided free legal assistance to over 15,000 returning refugees.

16. UNHCR welcomes the new Law on Free Legal Aid which entered into force on 1 January 2014. It introduced simplified proceedings for primary legal aid. It also includes a more liberal approach towards returnees who are former habitual residents of Croatia. This includes the abolition of the reciprocity requirement group of permanently residing foreigners.

17. UNHCR recommends ensuring free legal aid for vulnerable returning refugees to assist them in obtaining access to their rights, in line with existing legislation and without discrimination.

- **Representation of minorities**

18. Significant and tangible results have been achieved as regards the representation of minorities. However, further efforts will be required to ensure that minorities are adequately represented in public administration and the judiciary as required by the law. Very few ethnic Serbs work in the police force and judiciary in those counties with substantial ethnic Serb populations. This can undermine returnees' confidence in these institutions and their ability to undertake their functions with impartiality and independence. It can thus be an obstacle to return.

19. UNHCR recommends strengthening existing mechanisms ensuring full implementation of the Constitutional Law on the Rights of National Minorities, so that minorities can effectively access these rights.

- **Remaining security issues (ethnically based violence, mines, protection of war crime witnesses)**

20. Violence and tension have decreased in most areas and ethnically based security incidents are not common. They occur occasionally, primarily undertaken by non-state actors, mostly consisting of destruction of property and verbal abuse, but physical attacks sometimes also occur. Many such incidents are thought to go unreported and where they are, the police response is not always adequate.

21. According to the Croatian Mine Action Centre, 70,000 landmines and an unknown number of UXOs remain a threat in 615 km² of mine suspected areas, covering 90 towns and municipalities in 12 Croatian counties, most of which are areas from which refugees and other displaced persons originate (and could potentially return).

22. War crimes were widespread during the conflict in Croatia and many suspected perpetrators remain at large. Prosecutions have targeted very few ethnic Croat suspects. To date no individual has been convicted in Croatian courts of war crimes against ethnic Serbs in relation to the military

operation²⁰ which was the cause of flight for many of them. Deficiencies exist in cases where ethnic Croats are tried for war crimes.

23. Although Croatia has since adopted a Witness Protection Act in 2003, in practice, witnesses of war crimes were not always adequately protected. While UNHCR acknowledges, that progress has been made in providing witness support²¹, witness protection needs further strengthening.

24. UNHCR recommends to

- Address the remaining security incidents for individuals from minority groups which are sporadically reported by investigating without delay, prosecuting and documenting incidents of violence against members of such groups,
- Prioritize returnee villages for remaining de-mining activities, and
- Increase the prosecution of all war crimes, irrespective of their perpetrators, without discrimination;
- Further strengthen witness protection.

• **Discrimination of Roma returnees**

25. Roma belong to the most marginalized communities in the Western Balkans. The challenges that returnees are facing in general are further exacerbated for this refugee group who often lack birth registration, registration of residence and other personal status documents.

26. UNHCR recommends that **Croatia** provides specific support to ensure the effective re-integration and social inclusion of Roma refugees, taking into account the specific challenges they are facing due to the lack of proper documentation.

Pursuing opportunities for local integration or alternative legal status in countries of asylum

Host countries in the region

• **Regularize stay**

27. Most refugees from Croatia in BiH and in Serbia are eligible for citizenship of these countries and many probably have already obtained it and enjoy effective State protection, though this has not been officially confirmed in all cases by the authorities. The situation is similar for those that fled to

²⁰ With regard to common crimes committed during and in the immediate aftermath of the military operation “Storm”, criminal procedures have been initiated against 3,728 persons (out of which 395 were active members of the Croatian Army), which has resulted in the conviction of 2,380 persons. Further to this, in 2014, ICTY handed over to the State Attorney Office relevant documentation on possible war crimes committed during or after the mentioned military operation. This resulted in indictments being issued against 24 persons on charges of war crimes, out of which two proceedings are currently in the trial phase.

²¹ In 2012, witness support was provided to 782 witnesses in war-crimes related cases, including for proceedings before both, domestic and foreign courts. Positive results have also been achieved in the framework of regional cooperation concerning victim protection.

Serbia.²² Despite the fact that their refugee status will have ceased according to Article 1(C)(3) of the 1951 Convention, many hold documents proving refugee status as well as national identity cards.

28. UNHCR urges the authorities in **BiH and Serbia** to ensure that individuals who have obtained another nationality are no longer recorded as refugees and return documentation of refugee status.

29. Refugees with Croatian nationality need to have valid Croatian identity documents to apply for Bosnian citizenship. These documents can only be obtained in Croatia through long and cost intensive administrative processes which require costly periods of stay in Croatia. This can hinder refugees to obtain BiH citizenship.

30. UNHCR urges:

- **BiH** to remove obstacles for refugees from Croatia to obtain Bosnian citizenship, including through the reduction of administrative fees and requirements related to the documentation of their current citizenship.
- **Croatia** to continue to provide consular services in BiH, Montenegro and Serbia to ensure effective access to documentation and national identity documents from abroad.

31. Most refugees in Montenegro wish to locally integrate and since 2009 the government has provided them with privileged access to permanent residence. To date, approximately 750 refugees from Croatia have obtained permanently residing foreigner status in Montenegro. Some 200 are waiting for their applications to be processed and some 450 refugees from Croatia did not apply for the foreigner status, many because they were not able to complete the application and submit all necessary documentation, including a valid Croatian travel document. UNHCR is, therefore, pleased that the application deadline for the status has recently been extended until 31 December 2014 enabling more refugees to apply for permanent residence. However, additional measures may be necessary, both in Croatia and Montenegro, to ensure that vulnerable refugees are able to submit applications before the deadline. This includes exceptions to the prohibitive administrative costs and required documentation for vulnerable refugees (approx. 160 Euros, of which some 50 Euros of administrative taxes in Montenegro).

32. UNHCR recommends that **Montenegro** remove or reduce the high administrative fees preventing interested and extremely vulnerable refugees to apply for permanent residence for foreigners by the end of 2014. Croatia is called upon to remove or reduce the fees for the Croatian identity documents for all the refugees who wish to obtain permanent residence and/or naturalize in Montenegro.

- **Adequate housing**

33. Many of the most vulnerable displaced from Croatia have not yet secured a durable housing solution in their host countries, almost 20 years after the war they still live in temporary

²² Serbia allows dual citizenship. Subsequently, the vast majority of those that have naturalized in Serbia continue to maintain Croatian citizenship.

accommodations or collective centers. The RHP is expected to address this problem, but additional housing support will be necessary.

34. UNHCR urges **host governments in the region** to uphold their commitments under the RHP and, where necessary, complement these programmes with national housing programmes to facilitate socio-economic integration of refugees and former refugees. UNHCR appeals to **governments** to ensure that entitlements to housing support under these programmes do not cease with the cessation of refugee status.

35. UNHCR urges **donors** to fully fund the RHP until the end of 2017.

- **Employment**

36. Due to the severe scarcity of jobs, many refugees in BiH and Serbia have no formal employment and they turn to gray market activities or farming, if they have access to land. Poverty, in turn, has the effect of limiting access to other basic rights, for example health care and education.

37. In Montenegro, the Law on Foreigners gives permanently residing foreigners the right to work, but not in state administration or public institutions. Additionally, there are reports that permanent residents are also refused employment in apparently non-sensitive positions, like street sweepers.

38. UNHCR recommends that **host countries in the region** take steps to increase employment possibilities for refugees, including by lifting restrictions on employment based on their legal status where these exist, but also through income generation programmes.

- **Access to acquired pension rights**

39. Considering the advanced age of many refugees and the limited employment possibilities for refugees in the region, pensions often represent the only source of regular income for many vulnerable refugee families. A significant, but unknown, number of refugees from Croatia have not yet been able to obtain outstanding pensions from years spent working in Croatia due for the period 1991-1995 when payment was interrupted because of the armed conflict. Considering the advanced age of many refugees and the dire employment possibilities for refugees in the region, pensions often represent the only source of regular income for refugee families.

40. UNHCR urges **Croatia** and **Serbia** to intensify the dialogue to resolve the pension issue.

- **Social assistance and health care**

41. Foreigners with permanent residence in Montenegro have the right to social assistance according to the new Law on Social and Child Protection. However, in practice it will be difficult for them to qualify for it, due to burdensome and expensive administrative requirements, such as documentation from both the country of origin and country of asylum. Although the law provides that former refugees with permanent residence have access to healthcare, in practice the elderly among them may have greater difficulty than citizens to access it.

42. UNHCR recommends that **Montenegro** ensures that social assistance and healthcare, as provided today, is available to former refugees without discrimination, including after a cessation

declaration. A legal residence status in the process of local integration needs to include the right to social assistance and basic healthcare.

- **Host countries outside the region**

43. A small number of refugees may have difficulty locally integrate in countries outside the region. For example, in Germany a number of refugees may only hold temporary residence permits, which could expire and result in expulsion if no other legal basis for stay was secured.

44. Most refugees from Croatia of Roma ethnicity in Italy and their descendants have not formally been granted refugee status. While some may have received humanitarian protection, others have not regularized their status and have only minimal local integration possibilities. As reintegration prospects of this group in Croatia would be dim, solutions aiming at regularizing their legal status, including through acquisition of citizenship and recognition of statelessness status as well as facilitation of their integration in the host country, should be prioritized. Roma refugees from Croatia in other European countries may also need specific attention.

45. UNHCR recommends that

- **Host countries outside the region**, including inter alia, Germany, Italy and Switzerland, assist refugees from Croatia who wish to locally integrate and do not have yet required nationality or permanent residence. This would include, as a first step, the provision of an alternative legal residence status after the cessation of refugee status.

Annex II:

Examples of exemption cases

The following list provides a non-exhaustive list of cases that may need to be exempted from the application of the cessation clauses:

- **Witnesses of war crimes:** War crime trials, both at the International Criminal Tribunal for the former Yugoslavia and in domestic courts, are ongoing. They are likely to continue for many years and will depend on witness testimony. Thus far, Croatia has experienced difficulties in ensuring the protection of war crime witnesses. Witnesses of war crimes may, therefore, continue to be in need of international protection.
- **Persons who, if they return to their country of origin, would face measures of severe discrimination that lead to consequences of a substantially prejudicial nature** (e.g. serious restrictions to the right to earn a livelihood, access to normally available educational facilities etc.). This may particularly be the case for undocumented stateless refugees or refugees whose nationality has not been determined, often members of the Roma minority.
- **Refugees who suffered particularly severe trauma during the war**, including, but not limited to prison camp survivors, victims of rape or other forms of sexual or gender based violence and survivors of torture should be exempted from cessation in line with Art. 1(C)(5)(2) of the 1951 Convention.