CROATIA:

Reforms come too late for most remaining ethnic Serb IDPs

A profile of the internal displacement situation

18 April, 2006

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OVERVIEW

Reforms come too late for most remaining ethnic Serb

The number of internally displaced people (IDPs) in Croatia has fallen significantly since the armed hostilities between the Croat majority and the Serb minority ended in 1995. By December 2005, the total was considered to be between 5,000 and 7,000 including 1,700 ethnic Serbs. These figures disguise a huge disparity in return patterns between ethnic Serbs and Croats. While 99 per cent of the over 220,000 ethnic Croats displaced by the conflict have returned, little more than one-third of the over 300,000 ethnic Serb IDPs and refugees have been able to do so. In addition, about two-third of past returns are not sustainable, according to spot-checks and estimates by international organisations and NGOs. For the remaining Croat IDPs, the main obstacle to return is the poor economic conditions in return areas. For Serb IDPs, the main barriers to return and reintegration are property, housing issues and lack of employment opportunities, as well as continuing discrimination.

However, significant progress has been made by successive governments since 2000 in reforming legislation and adopting measures in favour of Serb return. While implementation has been slow and is still subject to resistance at local level, repossession of private property is nearing completion; having been barred from reconstruction assistance in the past, Serbs represented 70 per cent of beneficiaries in 2005. One of the areas where little progress has been made relates to former occupiers of socially-owned apartments who are still not entitled to repossession or compensation. The housing care option available to them has only benefited 42 families since the programmes started in 2002 and 2003. After an average of ten years in displacement, interest in return has faded and political changes and progress have come too late for many. In 2005, out of 7,500 returns in Croatia, no return of Serb IDPs was registered and it is estimated that the majority of displaced people living in the Danube region of eastern Croatia wish to integrate locally. The measures needed to facilitate durable solutions for the displaced should combine economic support to the most vulnerable still accommodated in collective centres and fair compensation for former holders of occupancy rights.

Background and main causes of displacement

Croatia's independence from the former Socialist Republic of Yugoslavia in June 1991 was followed by armed conflict, which lasted until 1995 and resulted in hundreds of thousands of people being displaced from and within Croatia. During the same period, Croatia was faced with an influx of Croat refugees fleeing ethnic cleansing, mainly from Bosnia and Herzegovina. The Serb secession in eastern and western Slavonia, Banovina, Kordun, Lika and in the south-eastern Knin region (the “Republika Srpska Krajina”) resulted in the internal displacement of over 220,000 ethnic Croats. The recapture of most of these Serb-controlled territories by Croatia's armed forces during the “Flash” and “Storm” military operations in 1995 forced up to 300,000 ethnic Serbs to flee – primarily to eastern Slavonia (the Danube region), which was still under Serb control, and to Serbia and Montenegro and Bosnia and Herzegovina (UN CHR, 29 December 2005). The November 1995 Erdut Agreement provided for an interim transitional administration by the United Nations followed by the handover of eastern Slavonia to Croatia in January 1998. The first agreement to address the return of IDPs and refugees was the Agreement on the Operational Procedures of Return signed in 1997 by the United Nations Transitional Administration in Eastern Slavonia (UNTAES), UNHCR and the Croatian government, which confirmed the right of the displaced to return to and from the Croatian Danube region.

Most observers put the number of internally displaced people at around 7,000 (UN CHR, 29 December 2005). The official estimate as of February 2006 is lower and indicates a figure of 4,700 displaced people. Of these, some 3,000 are ethnic Croats, mostly from the Danube region and the town of Vukovar. The remaining 1,700 are Croatian Serbs living in the Danube region (MMATTD, 9 February 2006; UN CHR, 29 December 2005). Large numbers of Croatian Serb uprooted by the conflict did not seek refuge in Croatia, but fled to neighbouring countries. Over 108,500 Croatian Serbs still live in Bosnia and Herzegovina and Serbia and Montenegro (UNHCR, 1 January 2006). This number has significantly reduced in the past years due to the integration of refugees in their host countries.

The number of displaced people has gradually gone down in the past few years. There were concerns that a significant number of internally displaced Serbs had lost their IDP status as a result of the re-registration processes conducted by the Croatian authorities in 1997-1999 and 2003. According to several sources, IDPs were not adequately informed about re-registration procedures and the registration itself. Those IDPs who were not present at their place of temporary residence at the time of the registration were reportedly deregistered without further notice or opportunity of appeal (Center for Peace, Vukovar, 20 May 2004, email correspondence with UNHCR Croatia, 1 March 2006). More recently, the IDP figure decreased from 11,500 in May 2004 to approximately 7,000 as of early 2006 mainly due to progress in reconstruction assistance and repossession of private property (email correspondence with UNHCR Croatia, 1 March 2006).

Outside the Danube region, approximately 2,200 IDPs (ethnic Croats) are accommodated in collective centres and 3,000 in private accommodation. In the Danube region, an additional 1,700 (mainly Serbs) live either in collective or private accommodation (UN CHR, 29 December 2005, par.18). People still living in collective centres are among the most vulnerable who need particular social and economic support and who are often dependent on state services for housing, food and medical assistance (UN CHR, 29 December 2005, par.38).

Return of displaced Croats almost complete; Serb return stalled

Since the end of the conflict, the number of displaced ethnic Croats has significantly fallen, mainly as a result of return movements to the Danube region. Out of over 220,000 displaced Croats, approximately 218,500 had returned as of February 2006 (MMATTD, 6 February 2006). The return of displaced ethnic Croats is almost complete and the main obstacle to return is considered to be the poor economic situation in the Danube region and the fact that some of the displaced have decided to integrate locally (USDOS, 28 February 2005, p.11). The return rate has been much lower among the displaced Serb population. In fact, out of a total of 300,000 ethnic Serb refugees and IDPs uprooted since 1995, only 120,000 returns had been recorded as of February 2006. Among them, 23,650 were internally displaced people (MMATTD, 6 February 2006). This difference can be explained by the legislation and assistance programmes which until the early years of this century have largely discriminated against ethnic Serbs in areas such as property repossession, reconstruction, access to citizenship and pensions. Legislative requirements made it more difficult for displaced persons to obtain Croatian citizenship, prove their years of working experience during the war, and access full pension benefits which directly affect return since most returnees are elderly (The Independent, 4 February 2005). Moreover, the complexity of the legal framework, which makes rights differ depending on the region and conditional on specific deadlines, has limited the possibility of IDPs availing themselves of their rights and often had a discriminatory effect (UN CHR, 29 December 2005, par.42-43; JRS, p.371).

Poor return conditions have led some 60 per cent of returnees to go back into displacement (EU, 9 November 2005, p.27). Limited access to property, utilities, education, employment, as well as occasional security incidents against returnees have a negative impact on the sustainability of

return and prevent integration of returnees with the rest of the population. Widespread looting and devastation of repossessed properties combined with long delays for reconnecting houses to water and electricity make living conditions particularly harsh for returnees (OSCE, 18 November 2005, p.7-8). The persistence of segregated classes where children are separated based on their ethnicity in some schools in Vukovar remains problematic although such schools do not only reflect limited tolerance but also the exercise by Serbs of their right to education in their mother tongue and script. In addition, access to employment is severely limited for Croatian Serbs due to a high unemployment rate which can reach 90 per cent in some return areas and also to prevailing discrimination at local level (UNHCR, 1 September 2005). The Constitutional Law on the Rights of National Minorities which was adopted in 2002 provided for the proportional representation of members of minority groups in administrative and judicial structures. However, minorities remain under-represented (MRG, 1 July 2005, p.3) and private entrepreneurs have shown more interest in hiring Croatian Serbs than the authorities (HRW, January 2006). Although the overall security situation is quite stable for returnees, 2005 has seen an increase in incidents against ethnic Serbs, in particular in the most active return areas, the Dalmatian hinterland and in eastern Slavonia (HRW, January 2006; USDOS, 8 March 2006, p.15).

According to some observers, although the improvement of the political climate and support for return is undeniable, such progress has come quite late in the process and many IDPs have already rebuilt their lives elsewhere and given up on return. While refugees recently showed renewed interest in return as illustrated by an increased number of applications for reconstruction in 2004 (OSCE, 29 July 2005, p.5), the majority of IDPs seems to be more interested in local integration and a significant number of them asked for permanent housing solution in their area of displacement (the Danube region) rather than their place of origin (email correspondence with Center for Peace, 9 February 2006). Furthermore, according to government statistics there were no returns of ethnic Serb IDPs in 2005. Out of some 7,500 returnees, almost 2,800 were displaced Croats and the rest were ethnic Serbs returning from abroad (MMATTD, 9 February 2006).

Property and housing issues

Property repossession and housing is considered one of the main obstacles to return in Croatia. While progress regarding repossession of private property and reconstruction has been significant in the past three years, solutions for former occupants of socially owned flats remain inadequate and are hardly being implemented.

Repossession of private properties is almost complete. Out of almost 20,000 properties allocated for temporary use by the government, only 32 cases remained to be resolved as of February 2006 (MMATTD). However the impact of the repossession process on return remains limited. Physical repossession by owners has taken place in half of the resolved cases. Some 8,000 properties have been sold to the state which, particularly in return areas, has encouraged owners to do so in order to reallocate such properties to the current occupants (OSCE, 29 July 2005, p.7; Stability Pact, 30 June 2005, p.12). Looting of properties by temporary occupants also seriously compromises return since it renders the house uninhabitable and takes place in 30 to 55 per cent of repossessed properties monitored by the Organisation for Security and Cooperation in Europe (OSCE) (OSCE, 1 April 2005, p.5). Perpetrators are rarely prosecuted by State Attorneys who are mandated to do so under the law and the police have often been reluctant to intervene to stop the looting (HRW, 13 May 2004; USDOS, 28 February 2005, Sect.1.f). Following pressure from the international community, the government adopted in July 2005 a scheme to compensate owners of looted properties and implementation has started in 145 out of 600 cases identified as of November 2005 (OSCE, 18 November 2005, p.8). Another obstacle to return is the absence of administrative procedure to repossess agricultural land and business premises which is an essential component of self-reliance for returnees. The only option available is to initiate a lengthy

and costly court procedure which many displaced or returnees cannot afford (COE CHR, 4 May 2005).

Despite progress, several concerns remain regarding repossession of private property, reflecting a continuing bias against ethnic Serb owners. While displaced Croats were able to repossess their property in the former UNTAES area regardless of whether the (Serb) occupant had alternative accommodation, the Law on Areas of Special State Concern (LASSC) as amended in 2000 and 2002 subordinates the rights of property owners to those of temporary occupants by making property repossession conditional on provision of alternative accommodation for the occupant (Center for Peace, July 2004; US DOS, 25 February 2004). Several judicial decisions now threaten repossession by ordering (Serb) owners to compensate temporary users for investments made on the occupied property, even if these were made without the owners' consent. Unless the owners agree to pay the amount specified by the court, they risk losing their property (Stability Pact, 30 June 2005, p.13). There are currently 24 similar compensation claims before Croatian courts. (OSCE, 12 January 2006)

The acceleration of reconstruction has supported return, through provision of housing to owners or temporary occupants. As of February 2006, the government had reconstructed over 138,000 of the 200,000 destroyed houses and apartments (MMATTD, 9 February 2006; EU, 9 November 2005, p.27). The impact on return has been particularly significant in western Slavonia (HRW, 14 May 2004, p.9). Reconstruction of houses belonging to Croatian Serbs only started in significant numbers in 2002, after reconstruction of houses belonging to ethnic Croats was largely completed (ECRI, 14 June 2005, par.109). Croatian Serbs now represent 70 per cent of the beneficiaries of reconstruction (MMATTD, 9 February 2006) but inconsistent implementation of the law resulted in only 30 per cent of the claims being declared eligible for reconstruction assistance (OSCE, 29 July 2005, p.5).

Taking into consideration the progress regarding repossession of private property and reconstruction, former tenants of socially-owned flats are the most significant group without a housing solution. This category of housing represented 70 per cent of housing units in former Yugoslav cities (COE CHR, 4 May 2005). In contrast with countries of the region which allowed for repossession of socially-owned properties, the Croatian authorities considered that this type of public sector housing did not amount to property and therefore should not be subject to repossession. So far the only possibility for those who held occupancy rights on those apartments is to apply for housing care. During the war, up to 30,000 households, almost exclusively Serbs, lost their occupancy rights over their apartments. In urban centres, around 24,000 occupancy rights were cancelled following court decisions where the ethnic bias against Serb was evident. Occupancy rights were mainly cancelled because of unjustified absence from the apartment without taking into consideration compelling war circumstances. In war-affected areas which were under Serb control during the war, 5,000-6,000 Serb households lost their right *ex lege* (OSCE, 29 July 2005, p.3). While ethnic Croat occupancy rights holders (ORHs) were able to repossess and purchase their apartments, ethnic Serbs have been largely unable to repossess their formerly socially-owned apartments and have been provided with no possibility of legal redress or compensation. The Croatian government has consistently refused to consider compensation for lost occupancy rights and proposed a formula of housing care limited to those who want to return. In 2002 and 2003 the government put in place two housing schemes to which former ORHs can apply. Depending on the scheme, former ORHs can either rent or purchase the accommodation they receive. However the implementation has hardly started and, as of March 2006 in only 42 cases have former tenancy rights holders been provided with housing care. Attempts to challenge termination of occupancy rights before the European Court for Human Rights have so far been unsuccessful mainly because most cancellations took place before Croatia accepted the jurisdiction of the court.

National response

Up to 2000, the national framework and policy for return and property repossession favoured the return and resettlement almost exclusively of majority ethnic Croats rather than minority ethnic Serbs (UN CERD, 21 May 2002). The 2000 elections marked the end of the 10-year rule of the nationalist party led by the late President Franjo Tudjman, the Croatian Democratic Party (HDZ), and a significant change of the national policy towards return. The new government initiated wide legislative reform aiming at upholding minority rights and facilitating the return of Croatian Serb refugees and displaced people. Several discriminatory legislative provisions were amended or cancelled, including the Law on the Status of Displaced Persons and Refugees, the Return Programme, the Law on Reconstruction and the LASSC dealing with property repossession. The return of the HDZ to government in 2003 did not change this trend as illustrated by the cooperation agreement on measures to facilitate return signed between the HDZ and members of parliament representing Croatian Serbs in December 2003. Further to this agreement a Commission for the Return of Refugees and Displaced Persons and Restitution of Property was established in March 2004 to coordinate government activities on those issues (ECRI, 14 June 2005, par.103).

The accession process to the European Union (EU) has also been a significant incentive for Croatia to make statements and take measures more favourable to return since the EU considers the return of Croatian Serbs a pre-condition for deepening relations with Croatia (HRW, 13 May 2004; EU, 8 November 2005). In January 2005, a regional ministerial conference on refugees took place in Sarajevo and resulted in a joint declaration establishing principles and measures to facilitate the return of refugees and close the chapter of displacement by the end of 2006. Like the European Union, the Sarajevo declaration signed by relevant ministers from Bosnia and Herzegovina, Croatia and Serbia-Montenegro, focuses on refugees rather than displaced persons. However, since both are faced with the same obstacles prior to and upon return, a process addressing such obstacles also benefits displaced people.

Overall, Croatia's approach towards Serb return has been characterised by piecemeal legislation and measures obtained progressively under strong international pressure from the EU, OSCE and the office of the United Nations High Commissioner for Refugees (UNHCR). The result is that most reforms come at a stage where their impact on return is likely to be limited by the fact that, after ten years of displacement, people have become more hesitant to return. Despite an improved political climate at national level, significant resistance to return persists at local level and limits the impact of the new measures (UN CHR, 29 December 2005, par.34). To address this situation, the government and the OSCE Mission to Croatia launched a media campaign in November 2005 intending to raise public awareness on, and create an environment more favourable to, return (OSCE, 3 January 2006).

A number of outstanding issues still remain to be addressed by the government. The new legislation has not, in several cases, suppressed the violations of rights resulting from past legislation. Displaced persons and refugees who missed the deadline to apply for validation of pension-related documents are still unable to obtain full pension rights. Former occupancy rights holders who lost their apartments during and after the war are offered inadequate solutions which are not even being implemented. Funds for the housing care programme remained unspent in 2004 and 2005 (OSCE, 21 November 2004, p.4; OSCE, 29 July 2005, p.2). In addition, at a meeting of the task force resulting from the Sarajevo declaration on refugee return which took place in March 2006, Croatia refused again to consider compensation for former occupancy rights holders, as requested by Bosnia-Herzegovina and Serbia-Montenegro.

International response

The return of IDPs and refugees to Croatia has been carefully monitored by the international community. The EU and regional organisations such as the OSCE and the Council of Europe, including the European Court for Human Rights, have played a significant role in monitoring or upholding the rights of displaced people and minority groups. UNHCR has mainly focused on displaced people within the Croatian Danube Region which is where most Croatian Serb IDPs moved following the 1995 offensive of the Croatian army. Since the closure of its field offices at the end of 2003, UNHCR efforts have focused on finding durable solutions for refugees, IDPs and returnees by the end of 2006 in particular through provision of legal advice (UNHCR, 1 September 2005; UNHCR, 7 January 2004). The Return and Integration Unit of the OSCE Mission to Croatia has been mandated since 1997 to ensure and monitor the protection of IDP and refugee rights. The OSCE Mission has worked closely with the government, providing advice on property repossession and rule of law. Its in-depth reports on various issues have been an essential source of information and advocacy for the EU, the Council of Europe and other organisations following the situation
in Croatia. The combined efforts of the OSCE, the EU and UNHCR have been instrumental to convince the government to make reforms in favour of the return of Croatian Serbs. It is largely due to their efforts that the government agreed on several occasions to postpone legislative deadlines which were limiting access to the rights of displaced persons and refugees.

The EU is the main provider of assistance to Croatia. Between 1991 and 2004 Croatia received €631 millions to support democracy, the economy and the rule of law as well as reconstruction and support for the process of sustainable return of refugees and IDPs (EU, 9 November 2005, p.6). Within the framework of Croatia's application for EU membership, the EU's support to Croatia has shifted from humanitarian aid to regional development, including support for sustainable development of war-affected areas (EC, 6 May 2004). This last point has been identified by the Representative of the Secretary-General on the Human Rights of IDPs as essential to facilitate return. Further to his visit to Croatia in June 2005, Walter Kälin called on the international community to support the government's efforts to revitalise the economy of war-affected areas (UN CHR, 29 December 2005). Finally, given that EU pressure has been one of the main incentives to make reform in favour of return, many put their hopes on the EU to take on the issue of lost occupancy rights and advocate for measures in line with solutions adopted in neighbouring countries (Rhodri Williams, April 2005). Such measure, in favour of this group which concerns almost exclusively Serb refugees and IDPs would provide a remedy to their lost rights and remove one of the main remaining obstacles to return.

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CAUSES AND BACKGROUND

General

The conflict in Croatia: overview (1991-1999)

- 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
- End of 1991, Serbs declared the unified territory to be a single state, the "Republika Srpska Krajina", which includes the autonomous region of Krajina, Eastern and Western Slavonia
- 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
- Following a peace plan signed in 1992, UN peacekeepers (UNPROFOR) deployed in the areas under Serb control were charged with the protection of Serb civilians and with facilitating the return of displaced Croats
- In mid-1995 Croatia took back most of this territory in two large-scale military operations ("Flash" and "Storm", leaving only Eastern Slavonia in the hands of the Republika Srpska Krajina
- The two operations led to the flight of more than 200,000 Serbs into Eastern Slavonia, Bosnia, and Croatia, the killings of Serb civilians and widespread arson and dynamiting of Serb housing
- The Basic Agreement on the Region of Eastern Slavonia, Baranja, and Sirmium (November 1995) between the Croatian government and the Serb leadership placed the region under the mandate of the UN Transitional Authority for Eastern Slavonia (UNTAES)
- 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
- After the expiration of the UNTAES mandate in January 1998, all Croatian territory was brought under government control
- A small UN police monitoring mission remained in Eastern Slavonia until October 1998, when it was replaced by police monitors from the OSCE mission

"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 Autonoma 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." (HRW March 1999, "Background")

"According to the Croatian government, the number of IDPs in Croatia reached its peak on 22 November 1991, at 536,000. However, this figure seems excessively high and may include many who were counted twice or returned fairly quickly. UNHCR figures suggest that by late 1992, Croatia had 265,000 IDPs, which, together with 350,000 refugees from the fighting in Bosnia-Hercegovina, meant that more than 15 per cent of the population consisted of forced migrants." (Stubbs 1998, p. 195)

"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.

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. 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." (HRW March 1999, "Background")

See 1995 Erdut Agreement (full text) [Internet]

UNTAES Agreements for the Danube Region provide protection of the Serb minority (2000)

- The Government concluded 32 agreements with the UN Transitional Administration in Eastern Slavonia (UNTAES)
- The 1995 Basic Agreement (Erdut Agreement) affirmed principles of peaceful reintegration, including the right for displaced persons (DPs) to remain in the region and the right to return
- Other agreements provide for the protection of the public-sector employees, the representation of the Serb minority in key public institutions such as the police forces, education and cultural rights, political participation
- The Government agreed to the creation of the Joint Council of Municipalities (JCM) which functions as an umbrella organisation for elected Serb municipal representatives from the Danube Region and has a right to propose Serb candidates for some senior government positions

"In 1992, the United Nations (UN) established a peacekeeping mission in Croatia, with four regions in Croatia being declared UN Protected Areas (UNPAs), among them the Danube Region which was referred to as Sector East. Following the conclusion of the Basic Agreement in November 1995, the United Nations Transitional Administration in Eastern Slavonia (UNTAES) was established. It assumed full executive authority in the Danube Region until 15 January 1998. The Government of Croatia concluded 32 agreements with the UNTAES during the reintegration period in the Danube Region, providing a broad framework for equality and full participation of the Serb minority focusing on public institutions. Many of the principles embodied have not expired and crystallise international human rights law. UNTAES agreements generally have the status of important political commitments, while domestic law and international norms and standards remain applicable. Four groups of UNTAES agreements can be distinguished:

The Basic Agreement (Erdut Agreement) of 12 November 1995 separated warring factions and established UNTAES along with principles of peaceful reintegration, including the right for displaced persons (DPs) to remain in the Region and the right to return. Under Article 11 of this agreement, an international commission was formed for interested countries and agencies ('Article 11 Commission'). The Commission is authorised to monitor the implementation of this agreement and investigate possible violations. As a member of the Commission, the OSCE Mission to the Republic of Croatia actively participates in regular meetings and field visits.

The Agreements on Continued Employment were signed for public-sector employees in most administrative bodies and those in core public enterprises and institutions (the 'Affidavit' of 1996 and the 1997 Annex). State-firm employees received less specific guarantees but remained protected under Croatia's commitments to the ILO standards. Select institutions under UNTAES

supervision regulated integration through self-executing agreements (e.g. for Croatian Railways, Postal Service/Telecom).

The Agreements on Proportional Ethnic Representation were concluded for key public institutions to secure Serb employment beyond the immediate transition period. For instance, the Transitional Police Agreement of 1997 regulated the ethnic police force composition (50% Croats, 40% Serbs, 10% other ethnic groups), and alternating commander positions (heads and deputies). Similar agreements were concluded for the health care sector, schools and the judiciary.

The Special Additional Agreements are in force for the education sector. A group of amendments under the so-called Letter of Agreement dated 1997 ensure equitable and fair distribution of principals positions, as well as the right for minorities to be educated in their own language and script. A 5-year moratorium for Serb-language school units in the Danube Region is in place on the teaching of current history between the period of 1989-1997. Based on the Erdut Agreement (Art. 12) and a 1997 Protocol, the Government of Croatia is obliged to establish and co-finance the Joint Council of Municipalities (JCM), located in Vukovar. This is a sui-generis advisory and monitoring body with NGO status. It functions as an umbrella organisation for elected Serb municipal representatives from the Danube Region, and has a right to propose Serb candidates for some senior government positions. Serb municipal representation in the Region as well as at county and national levels is reaffirmed in the Government's Letter of Intent (13 January 1997), which also guarantees full participation in the electoral process, and draft deferment for Serbs from the Danube Region. Even after expiration of the deferment deadline on 15 January 2000, [a] follow-up transition period of one year was agreed between the Ministry of Defence and Serb representatives. The new Croatian authorities have shown more understanding for realising political minority rights." (OSCE Mission to Croatia September 2000, "UNTAES Agreements")

Government demonstrates commitment to human rights (2000)

- Election of a new government and president early 2000 end 10 year- long rule of the Croatian Democratic Union (HDZ) and the late president Tudjman
- Government's legislative programme includes democratic and human rights reforms, including measures to facilitate the return of the ethnic Serb populations
- Progress was registered in the cooperation with the International Criminal Tribunal for the former Yugoslavia

"The election of a new government and president in Croatia at the start of 2000, following the death of President Franjo Tudjman, marked a turning point in Croatia's post-independence respect for human rights. Attempts in late 1999 by the then-ruling Croatian Democratic Union (Hrvatska Demokratska Zajednica, HDZ) to affect the outcome of the vote through control of electronic media, redistricting, and curbs on freedom of assembly led many observers to fear that President Tudjman was unwilling to relinquish power to the opposition. With the death of Tudjman on December 11, 1999, two weeks prior to the parliamentary elections, those fears remained untested, and the opposition coalition captured a large parliamentary majority in the January 3 vote. The resultant change in political culture was so swift that both candidates in the second round of voting for president on February 7 were from opposition parties.

The new government headed by Prime Minister Ivica Racan, and the incoming president Stipe Mesic, moved quickly to demonstrate their commitment to human rights and respect for Croatia's international obligations. On January 28, Foreign Minister Tonino Picula acknowledged that the International Criminal Tribunal for the former Yugoslavia (ICTY) had jurisdiction over Operation Storm, the controversial 1995 action against rebel Serbs that left several hundred thousand

Croatian Serbs as refugees. On February 8, the government unveiled its legislative program, committing itself to reform state television, to uphold minority rights, and to carry out the legislative and administrative changes necessary to facilitate the return of Serb refugees. In a newspaper interview two days later, President Mesic invited all Serb refugees to return to Croatia. The new government submitted a U.S.$55 million proposal on February 21 to facilitate the return of 16,500 Croatian Serb refugees.

The government's human rights rhetoric was soon followed by concrete actions, notably in the area of cooperation with the ICTY, previously among the thorniest issues in Croatia's relations with the international community. On March 2, the ICTY deputy prosecutor announced that Croatia had acceded to its request to provide documentation related to Operation Storm and Operation Flash (another 1995 offensive against rebel Serbs). The transfer of Bosnian Croat war crimes suspect Mladen Naletilic, alias 'Tuta,' followed on March 21. In April, the government permitted ICTY investigators to examine the site of an alleged 1991 massacre of Serb civilians in the town of Gospic. By June, the ICTY prosecutor indicated that the organization had "full access" in Croatia. Further moves followed the August murder of Milan Levar, a Croatian veteran from Gospic present during the 1991 killings who had assisted the ICTY investigation. In early September, Croatian police arrested two Croatian army generals and ten others in connection with war crimes committed in Croatia and Bosnia. Ten suspects in Levar's murder were also arrested.

Considerable progress was made in legislative reform during the first session of the parliament. Key reforms included the April annulment of article 18 of the law on internal affairs, which gave the police wide powers of surveillance over citizens, new laws on minority languages and education on April 27, and the mostly positive changes to the constitutional law on human rights and the protection of minorities on May 11. The long-awaited amendments to the reconstruction law on June 1 and to the law on areas of special state concern on June 14, for the first time offered the prospect of equal treatment for displaced and refugee Serbs seeking to return to their homes in Croatia. At the time of writing, necessary amendments to reform the telecommunications law and a new bill to reform the state broadcaster were pending before the parliament.' (HRW December 2000, p. 288)

International community acknowledges Croatia's more constructive role in the region (2000-2002)

- Efforts have also been made to establish normal relations with the Federal Republic of Yugoslavia, following the defeat of Milosevic
- International community has rewarded new Croatian authorities with closer political and economic ties (NATO, EU)
- Human rights international mechanisms ended or loosened their monitoring regime on Croatia (Council of Europe, UN Human Rights Commission, OSCE)
- Donor countries have become more responsive to Croatia's funding requirements to support refugee return

"As regards regional security, the new government has played a significantly more constructive role in the region than its predecessor. Croatian state transfers to the Bosnian Croats have been transparent and above board and relations with Bosnia set on a correct state-to-state footing. The previous government's practice of supporting, if not instigating, the anti-Dayton activities of the Bosnian HDZ has ended. The governing coalition also appears ready to abolish or drastically curtail the controversial 'diaspora' voting rights and members of parliament, which have been a cause of aggravation between Zagred and Sarajevo.

The Croatian authorities took early steps to explore ways of setting relations with the Federal Republic of Yugoslavia (FRY) on a normal footing following the defeat of Milosevic. As Croatia's participation in the Stability Pact has shown, it is ready to play a constructive role in international efforts to bring stability to the region. Croatia's active support for arms-control and demining projects within the Stability Pact is particularly commendable, and deserves international support." (ICG 26 April 2001, p. 169)

"The Role of the International Community

After years of conditioning improved relations on progress in Croatia's human rights record, the international community moved quickly to reward the new authorities in Zagreb for their reform agenda with closer political and economic ties. Croatia was granted admission to the North Atlantic Treaty Organization's Partnership for Peace on May 25 and to the World Trade Organization on July 18, and its U.S. $55 million refugee return proposal was fully funded through the Stability Pact in March [2000]." (HRW December 2000, p. 290)

United Nations

"The U.N. Commission on Human Rights decided in April 2001 to exclude Croatia from the mandate of its special representative on the former Yugoslavia. The Office of the High Commissioner for Human Rights maintained a field presence in Croatia, however, focusing primarily on technical assistance to the authorities. In March, the Human Rights Committee considered Croatia's initial report on implementation of the International Covenant on Civil and Political Rights. While commending Croatia on constitutional reforms, the committee criticized the continued impunity for killings and torture committed during the armed conflict. The U.N. observer mission in Prevlaka was extended until January 2002. In May, Croatia ratified the Statute of the International Criminal Court." (HRW 2002, p. 308)

"***Organization for Security and Cooperation in Europe (OSCE)***

Croatia's greatly improved relations with the OSCE were evidenced by the request of its foreign minister on March 23 that the mandate of the OSCE mission to Croatia be extended until the end of 2000, and by the positive tone of the mission's July 3 progress report, as well as the upbeat assessment of the OSCE high commissioner on national minorities during his May 25 visit. At time of this writing, the OSCE police monitoring group in the Danube region in Croatia was to cease operations on October 31.

Council of Europe

During a June 21 visit to Zagreb, Lord Russell-Johnston, president of the Parliamentary Assembly of the Council of Europe (PACE) indicated that Croatia had now met most of its outstanding membership requirements. On September 26, PACE voted to terminate the monitoring procedure for Croatia." (HRW December 2000, p. 290)

European Union

"The European Union signaled its major support for the Croatian government's efforts in March [2000] by upgrading its office in Zagreb into a permanent delegation. Even more significant was its decision in June opening the way for negotiations on a stabilization and association agreement with Croatia in October [2000], with a view to eventual integration into the E.U. Croatia also received 23 million euro (approximately U.S.$23.2 million) in E.U. financial assistance, including 13.5 million euro (U.S.$16.6 million) to support refugee return." (HRW December 2000, p. 290)

The Stabilisation and Association Agreement (SAA) between the EU and Croatia was signed in October 2001. In addition to the promotion of economic and trade cooperation, the agreement provides a framework for political dialogue, including human right, protection of minorities, refugees and displaced persons.

"Work on key parts of the [mandate of the OSCE Mission in Croatia] received an additional impetus as a result of the signing of a Stabilisation and Association Agreement (SAA) between Croatia and the European Union (EU) in October 2001. Many of the Mission's priorities, in particular those related to the judicial system and the return of refugees and displaced persons, have been identified in the SAA and the European Commission's (EC) first Progress Report on Croatia as preconditions for Croatia's progress towards negotiations on EU membership." (OSCE 21 May 2001, p. 2)

See "Croatia – Stabilisation and Association Report", 4 April 2002 [Internet]

See also:

"Presidents of Croatia and Yugoslavia issue joint statement on normalization of relations", OSCE, 4 June 2002 [Internet]

"Balkan presidents hold landmark Sarajevo summit", Reuters, 15 July 2002 [Internet]

New HDZ-led government declares support for return and ethnic reconciliation (2004)

- The new HDZ government, inaugurated in December 2003 is represented by Prime Minister Ivo Sander
- The Prime Minister has secured cooperation with ethnic minority representatives in Parliament
- The government policy emphasizes speeding up the return process, implementation of the Constitutional law on the rights of minorities and repossession of Serb property
- The new government also expressed a will to establish improved relations with neighboring countries and better cooperation with regard to international war crimes tribunals

“On 23 December 2003 Parliament approved (88 out of 152 voted in favour) the composition of the new Government as presented to it by HDZ leader Ivo Sanader. The new Prime Minister has agreed a formal coalition with the Democratic Centre (DC) and the Social Liberal Party (HSLS), both parties represented in the Government at cabinet minister level, while a number of other parties and representatives in Parliament have committed themselves, though at various degrees, to support the Government.

Most significant in this regard is the co-operation, which the Prime Minister has secured with the minority representatives in Parliament. Following intensive negotiations, HDZ concluded cooperation agreements with the three MPs of the Independent Democratic Serb Party (SDSS) and the MP of the Italian minority before the first session of the new Parliament on 22 December 2003. The remaining four ethnic minority MPs also demonstrated support of the Government by voting in favour of it when it was presented in Parliament by Sanader.

Initiatives

The Government has been in office just four weeks, but still a number of important initiatives have been taken. They are aimed at demonstrating the HDZ-led Government’s preparedness to depart

from the policies of the party in the previous decade. Notably, the Prime Minister has involved himself personally in most, if not all, the initiatives.

The cooperation agreements signed with the SDSS MPs and the Italian minority MP contain a number of points essential to each of these ethnic groups, reflecting the different concerns that they have. In both agreements Croatia's accession to the EU is highlighted as a common goal.

The SDSS agreement, which is the most comprehensive of the two, lists many essential points and deadlines which have been agreed on the issues of concern to the Serb minority. This includes return of refugees, implementation of the Constitutional Law on the Rights of National Minorities, repossession of Serb property, development of the Areas of Special State Concern, reform of the judiciary, and cooperation with neighbouring states.

The agreement with SDSS followed the call by Sanader during the election campaign on nonreturned Serbs to return to Croatia and was followed by the Prime Minister's surprise visit to the Serbian Orthodox Christmas reception in January 2004 where he even greeted the hosts in the traditional orthodox manner. The Speaker of Parliament, Vladimir Seks, who was also a prominent HDZ figure during the Tudjman era, continued with words of tolerance and respect for human and minority rights.

The Prime Minister also visited the Italian minority in Istria around New Year and earned a similar respect on this occasion, both for showing up, for speaking Italian and for demonstrating a convincing attitude.

In line with the good and seemingly constructive relations, which the Government - and the Prime Minister personally - have established with the ethnic minorities, a will to establish improved relations with neighbouring countries, notably Serbia-Montenegro, has been expressed. The Prime Minister and the Foreign Minister both emphasize the aim of obtaining a normalization of bilateral relations and stress that all authorities in Belgrade, irrespective of their political views, will find openness in Zagreb when it comes to the resolution of all remaining issues. At present, the formation of a new government in Belgrade is awaited before concrete steps can be taken in this regard.

On the ICTY issue, another key point in relations with the EU, Sanader has moved to streamline cooperation by transferring the field of competence to the Ministry of Justice. In the Prime Minister's words, the issue is a legal, not a political one and should be treated accordingly.

At a meeting last week between the Prime Minister and HoM the intention of Sanader to pursue a policy of reconciliation between the ethnic groupings in the country was confirmed. A number of joint initiatives to this effect between the Government and the OSCE Mission were discussed at this meeting.

Reactions

Reactions to Prime Minister Sanader's conciliatory tone, gestures and the cooperative mode vis-à-vis the ethnic minorities reflect that the HDZ leader has exceeded the expectations of many in this field.

Commentators known for their skepticism or even criticism with regard to HDZ have published columns in which they express their acknowledgement of the scene set by the Prime Minister. Like many observers, they now await the crucial stage of implementation to take shape before a more consolidated opinion on the Government's policies can be elaborated." (OSCE 20 January 2004)

See also "Croatia: New Government Must Address Refugee Return and War Crimes", HRW, 9 January 2004 [Internet]

See also section on Patterns of return and resettlements/Policy

European Commission adopts opinion on Croatia's application for EU membership (2004)

- The European Commission adopted its Opinion on Croatia's Application for EU Membership in April 2004
- The Opinion stresses that Croatia needs additional efforts in the field of minority rights, refugee return, judiciary reform, regional co-operation and the fight against corruption
- The European Council is expected to decide in mid-June whether Croatia will receive the status of an EU accession country and when negotiations should begin
- The Government of Croatia submitted Croatia's application for EU membership on 21 February 2003
- Initial efforts required for the EC Opinion were undertaken during the term of the previous Government, under the Social Democratic Party (SDP)
- In November 2003, the SDP-led coalition was replaced after four years in government by the Croatian Democratic Union (HDZ) following its victory at national elections
- The HDZ pledged to continue the previous Government's work and realize the country's strategic goals of EU and NATO membership, marking a positive shift in policy

"The European Commission today adopted its Opinion on Croatia's Application for EU Membership, recommending that the Council open membership negotiations with Croatia. On the basis of the Commission's analysis, the European Council will have to decide whether and when to open negotiations. The Commission also approved the proposal for a decision of the Council on the European Partnership with Croatia, which is inspired by the Accession Partnerships that have helped prepare countries for eventual EU membership in the past. The Partnership is based on the analysis in the Opinion.

[…]
Croatia presented its application for membership of the European Union on 21 February 2003 and the Council of Ministers asked the Commission in April 2003 to present its Opinion.

In its Opinion, the Commission analyses the Croatian application on the basis of Croatia's capacity to meet the criteria set by the Copenhagen European Council of 1993 and the conditions set for the Stabilisation and Association process, notably the conditions defined by the Council in its Conclusions of 29 April 1997 which included co-operation with the International Criminal Tribunal for the Former Yugoslavia (ICTY) and Regional co-operation.
[…]
On the **political criteria**, the Opinion concludes that Croatia is a functioning democracy, with stable institutions guaranteeing the rule of law. There are no major problems regarding the respect of fundamental rights. In April 2004, the ICTY Chief Prosecutor, Carla Del Ponte stated that Croatia is now cooperating fully with the ICTY. Croatia needs to maintain full cooperation and take all necessary steps to ensure that the remaining indictee is located and transferred to the ICTY. Croatia needs additional efforts in the field of minority rights, refugee return, judiciary reform, regional co-operation and fight against corruption.

The Commission confirms that Croatia meets the political criteria set by the Copenhagen European Council in 1993 as well as the conditionalities of the Stabilisation and Association Process established by the Council in 1997." (EC 20 April 2004)

"The European Council is expected to decide in mid-June whether Croatia will receive the status of an EU accession country and when negotiations should begin.

Background to Croatia's EU membership application

Croatia signed a Stabilization and Association Agreement (SAA) with the EU on 29 October 2001 […]. The Government of Croatia submitted Croatia's application for EU membership on 21 February 2003 […]. On 10 July 2003, the EC delivered its questionnaire to the Government in order to allow it to produce its *Opinion* […]. The Government provided its answers to the questionnaire on 9 October […]. Some additional follow-up questions and requests for clarifications were posed by the EC until before the *Opinion* was given.

The initial efforts required for the EC to give its *Opinion* were undertaken during the term of the previous Government, led by the former Prime Minster from the Social Democratic Party (SDP), Ivica Racan. In November 2003, the SDP-led coalition was replaced after four years in government by the Croatian Democratic Union (HDZ) following its victory at national elections. The HDZ President, Dr. Ivo Sanader, was appointed the new Prime Minister on 22 December with the support of a narrow parliamentary majority […].

Immediately upon taking office, and following its pre-election programme, the HDZ pledged to continue the previous Government's work and realize the country's strategic goals of EU and NATO membership. This undertaking marked a fundamental and positive shift in policy for the HDZ as a mainstream party. At the end of 2001, the entire HDZ parliamentary group had walked out during the vote on the SAA. The Government's pro-EU credentials were strengthened through a number of policy statements immediately after taking office. The new Prime Minister and other new Government officials announced a number of reconciliatory initiatives towards Croatia's national minorities, in particular the Serb minority with which it eventually signed an agreement of co-operation in areas such as housing reconstruction and property repossession […]. Further, the new Government announced initiatives designed to reach out to its neighbours, thereby fulfilling expectations from its potential EU and NATO partners." (OSCE 27 April 2004)

The Opinion on Croatia can be found on the website of the EC [Internet]

European Council recommends the start of accession negotiations and requires further efforts on return (2005)

- Further to indication that cooperation with ICTY was full, EU allowed opening of accession negotiations
- Political criteria to be met by Croatia includes respect of human rights, protection of minorities, rule of law and facilitation of return movements
- EU assesses that Croatia made progress but needs to address several outstanding issues
- Renewed emphasis of the EU on return issues is welcome by observers

UN CHR, 29 December 2005, par.11:
"Since the conclusion of the armed conflicts on the territory of the former Yugoslavia, the foreign policy of Croatia has reflected the long-term goal of membership in the European Union. On 29 October 2001, the European Union and Croatia signed an agreement for the Stabilization and

Association Process. On 18 June 2003, Croatia became a candidate country for accession to the European Union. On 3 October 2005, the European Union decided to open accession negotiations with Croatia."

EU, 9 November 2005, p.3, 10, 33-34:
"Following a positive assessment on 3 October 2005 from the ICTY Chief Prosecutor that cooperation was now full, the Council concluded on the same day that Croatia had met the outstanding condition for the start of accession negotiations and an IGC opening the negotiations was held. The Council agreed that less than full cooperation with ICTY at any stage would affect the overall progress of negotiations and could be grounds for their suspension. (…)

The political criteria for accession to be met by the candidate countries, as laid down by the Copenhagen European Council in June 1993, stipulate that these countries must have achieved "stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities." In the case of Croatia and the other Western Balkan countries, the conditions defined by the Stabilisation and Association Process are also a fundamental element of EU policy. In this section, the Commission therefore also monitors cooperation with the UN International Criminal Tribunal for the former Yugoslavia (ICTY), regional cooperation and other related issues such as developments in war crimes trials and refugee return. (…)

In the area of human rights and minorities an appropriate legal framework is in place. The position of minorities has in general continued to improve since the Opinion. However, implementation of the Constitutional Law on National Minorities in particular has been slow. Serbs and Roma continue to face discrimination and the need to improve their situation especially with respect to job opportunities and as well as creating a more receptive climate in the majority community is an urgent priority. Implementation of a new Roma strategy has begun, but major challenges lie ahead. Particular attention should be paid to ensuring all ethnically motivated incidents are properly investigated and those responsible prosecuted. On regional issues, while there has been good progress on refugee return in terms of repossession and reconstruction of housing, a number of foreseen deadlines have not been met. Progress has been particularly weak in implementing housing care programmes for former tenancy rights holders. On-going efforts to create the economic and social conditions necessary for the sustainability of refugee return need to be accelerated. (…)
Problems arose since the Opinion with respect to the requirement for full cooperation with the International Criminal Tribunal for the former Yugoslavia (ICTY), contributing directly to the postponement of the start of accession negotiations foreseen in March 2005. The situation has meanwhile improved, however, allowing the ICTY Chief Prosecutor to conclude in October 2005 that cooperation was full. This subsequently paved the way for the Council to conclude on 3 October 2005 that the outstanding condition for the start of accession negotiations had been met. Negotiations were formally launched the same day. In its conclusions, the Council confirmed that sustained full co-operation with the ICTY would remain a requirement for progress throughout the accession progress. Less than full cooperation with ICTY at any stage could lead to the suspension of negotiations."

Human Rights Watch, 18 January 2006:
"On October 3, 2005, the Council of the European Union decided to open formal negotiations on membership with the Republic of Croatia. The all-but-exclusive focus on the issue of ICTY cooperation has in the past prevented the E.U. from using its unique position to vigorously demand greater progress on other pressing issues such as refugee return, treatment of minorities, and domestic war crimes trials. However, on October 9, European Enlargement Commissioner Olli Rehn stressed to his hosts in Zagreb that the issues of refugee return, minority rights, and the rule of law would be critical in the European Commission's assessment of the progress Croatia made in meeting the criteria for E.U. membership. The same issues figured prominently in the Accession Partnership document, issued by the commission on November 9.

The new emphasis is welcome, although it has probably come several years too late to have any real impact—the process of refugee return is gradually coming to a halt, the memory of war crimes witnesses is becoming unreliable, and the availability of evidence is becoming increasingly problematic."

POPULATION FIGURES AND PROFILE

Global figures

Number of internally displaced persons ranges between 4,700 and 7,000 (2005)

- Government estimates the number of IDPs to 4,700
- Most observers consider that the number of IDPs in up to 7,000
- IDPs from the Croatian Danube region do not hold official IDP status

Number of IDPs:
Most observers estimate that the number of IDPs in Croatia is higher than the estimate made by the Government (see below for details)

9 February 2006	4, 706	UNHCR/ Government of Croatia ODPR
December 2005	7,000	UN RSG Walter Kalin
31 October 2005	4,918	UNHCR/ Government of Croatia ODPR
5 April 2004	11,493	UNHCR/ Government of Croatia ODPR

MMATTD, 9 February 2006:
"To date there are 3,049 displaced persons (2,465 from the Croatian Danube region and 584 from other areas), 2,881 refugees and 1,657 displaced persons settled in the CDR who remain to be solved; beside that there is a large number of refugees still residing abroad, mostly in SMN and B-H, who want to return to Croatia."

UN CHR, 29 December 2005, p2:
"All the interlocutors with whom the Representative spoke were in broad agreement that there remained a number of internally displaced persons on the order of up to 7,000 cases whose situation has yet to be resolved. The major difficulties facing this group are that they have yet to return to their places of original residence and recover or repossess properties from which they were driven. A key factor in the slow resolution of a number of cases continues to be an overburdened court system and haphazard execution of court judgements. A number of persons still live in camps a decade after the end of the conflicts."

USDOS, 8 March 2006, p.10:
"Authorities took an inconsistent and non uniform approach to minority IDPs, hampering their return. A significant number of IDPs remained in the country, although not all were under the government's direct care. At the end of November the UNHCR office reported that there were 4,847 IDPs in the country. Of these, 3,190 were mainly Croats originating from the Danube region, while 1,657 were ethnic Serbs in the Danube region who did not hold official IDP status."

Total number of internally displaced returnees nearly reaches 218,500 (2006)

- 65% of IDP returnees are Croats

- Some 23,600 ethnic Serb IDPs have returned since the end of the war
- Over 7,500 persons returned to Croatia in 2005, 37% were displaced Croats and almost no ethnic Serb displaced persons returned
- Return of ethnic Croat IDPs is almost complete but return rate of Serb IDPs has been much slower
- Decrease of IDP figures could be explained by the fact that GOC has provided reconstruction assistance to the vast majority of IDPs
- IDPs who repossess their property or have it rebuilt are no longer counted as IDPs
- Majority of displaced persons in the Croatian Danube region (ethnic Serbs) decided to locally integrate
- 65% of Croat IDPs have returned to the Danube region

Return of displaced persons as of 30 November 2005:

	Total to date	2004 only	Current year
Return of IDPs	241,535	5,292	2,768
Returns to the Croatian Danube Region (CDR)	89,895	3,487	2,046
Returns to other parts of Croatia	151,640	1,805	722
(i) Return from CDR (Croatian Serbs)	23,212	33	24
(ii) Return of Croats and other ethnicities	128,428	1,772	698

Source: UNHCR,Government of Croatia Office for Displaced Persons and Refugees (ODPR)

MMATTD, 9 February 2006:
Return of displaced persons and refugees
A total of 338,618 returnees :
- 218,478 are displaced persons, mostly Croats (65%), and
- 120,140 are ethnic Serb returnees (35%) – 87,688 from SMN, 8,807 from B-H and 23,645 displaced persons who had resided in the Croatian Danube region (CDR).
In 2005 a total of 7,537 returnees to Croatia have been registered, among them 37% formerly displaced Croats (2.792) and 63% ethnic Serb returnees who had returned from SMN and B-H (4,745). Out of that, some 3,676 returnees are still on the state welfare."

Center for Peace, 31 August 2004, par.20:
"While the return of displaced Croats (expellees) has almost come to its end, the problem of minority refugees and displaced persons (mostly ethnic Serbs) continues to be the greatest and the most serious human rights violation issue related to the violation of the rights of refugees belonging to minorities and discrimination in the Republic of Croatia. The Resolution of the UN Human Rights Committee adopted in 2001 also recognises the link between minority and refugee problems.39 The total number of the officially registered refugees in Serbia and Montenegro and Bosnia and Herzegovina is about 210.000 persons, which makes almost 1/3 of the whole minority population of the Republic of Croatia."

UN CHR, 29 December 2005, par.18-19:
"Since the end of the conflict, 211,510 ethnic Croatians had returned as of April 2004. (…) The return rate has been much lower among the displaced Serb population. Out of a total of more than 330,000 ethnic Serb refugees and IDPs uprooted since 1995, only 108,986 returns had been recorded as of April 2004.(…) Out of a total of approximately 330,000 Croatian refugees (mostly ethnic Serbs), 26,382 have repatriated with UNHCR assistance under the organized repatriation procedure and 108,194 have repatriated spontaneously according to the Government of Croatia, to make a total of 134,576 returnees as at 30 September 2005. With regard to IDPs, according to

government statistics, 241,358 have returned internally to their place of origin, of whom 23,204 are ethnic Serbs from the Croatian Danube region. As of 30 April 2005, UNHCR reported a total number of 19,183 refugees from Croatia in Bosnia and Herzegovina and 102,863 in Serbia and Montenegro. The total number of IDPs in Croatia was 6,934, of whom 5,256 were ethnic Croatians and 1,678 ethnic Serbs. Two thousand one hundred and ninety IDPs lived in collective centres, 3,066 were in private accommodations and 1,678 displaced persons were in the Croatian Danube region either in collective or private accommodations.(…)

In contrast to the return of refugees, many of whom are still unable to return to their homes for many reasons, including legal obstacles related to the recovery of their property and patterns of discrimination, (…) official figures of the Government of Croatia indicate that substantial progress has been made towards final resolution of IDP issues. Even accounting for possible underreporting of certain figures due to a combination of truncated registration and re-registration periods, lack of awareness of rights, administrative obstacles and other factors, the trend tends clearly and steadily downwards."

Situation of ethnic Croatian and ethnic Serb displaced persons, 1991 to March 2005

Situation at end of year (unless otherwise indicated)	Ethnic Croatian displaced persons (in Croatia)[a]	Ethnic Serb displaced persons (in Croatian Danube region)[b]	Total
1991	550 000	-	550 000
1992	260 705	-	260 705
1993	232 103	-	232 103
1994	199 807	-	199 807
1995	210 592	-	210 592
1996	138 088	-	138 088
1997	101 660	31 667	133 327
1998	72 676	10 503	83 179
1999	46 273	4 739	51 012
2000	30 647	3 487	34 134
2001	19 991	3 411	23 402
2002	13 748	3 352	17 100
2003 (July)	12 359	3 323	15 582
2005 (March)	5 256	1 678	6 934

[a] While described as ethnic Croatians, these figures include a small proportion of up to 6 per cent non-ethnic Croatians.

[b] While described as ethnic Serbs, these figures include a small proportion of up to 4 per cent non-ethnic Serbs.

Source: UN CHR, 29 December 2005, p. 11

Between 1997 and 2005 the number of ethnic Croatian and ethnic Serb displaced persons has reduced by 95 %.

UNHCR Representation to Croatia, email correspondence, 1 March 2006:
"The decrease of the number of IDPs could be explained by the fact that GOC has provided reconstruction assistance to the vast majority of IDPs, both in CDR and other parts of Croatia. Additionally, the repossession process of occupied private properties in CDR is also being finalized. Consequently, upon reconstruction and repossession, the IDPs have been de-registered by ODPR."

"A small number of IDPs who originate from other parts of Croatia opted for return to their places of origin pending reconstruction or housing care within and outside the areas of special state concern. Others expressed their intention to settle presently in CDR (under the provision of Erdut agreement), requesting housing care under the MATTD scheme.

At present, the majority of the former Croats IDPs, mainly assisted by the GoC, have returned to the Danube region. Moreover, the repossession process of private properties owned by Croat IDPs was finalized by 2000. The average return rate to the Danube Region was over 65%, except in Vukovar where the return rate is still around 50%, where displaced Croats are still reluctant to return due to reconstruction needs, war memories, lack of employment, or because they settled in other parts of Croatia. Regarding Serb IDPs returnees from the Danube Region to other parts of Croatia, a small number is still awaiting reconstruction of their damaged properties."

Number of internally displaced persons still seeking solutions: 4,918 (as of 31 October 2005)

- The majority of IDPs are from the Danube region and the town of Vukovar (Croats)
- The majority of IDPs are female
- Most of the displaced population is being housed in private accommodation

Number of IDPs

31 October 2005	4,918	UNHCR
5 April 2004	11,493	UNHCR

Official Figures (as of 5 April 2004)
"The remainder of internally displaced persons and refugees awaiting a final solution is a total of **45,085 displaced persons and refugees** to return or to be locally integrated:
9,791 displaced persons residing in Croatia, the majority from Danube Region and town of Vukovar;
4,125 refugees from B-H and Kosovo still under refugee' protection in Croatia;
1,702 internally displaced persons in Danube Region;
some 5,465 returnees under ODPR welfare;
at least 12,845 refugees still residing in S-M and B-H with submitted claims for return to Croatia – majority of them are Croatian citizens of Serb ethnicity;

11,157 temporary occupants of private property they must abandon due to the repossession of property by owners – majority of them are refugees from B-H and SiCG and in need of housing solution." (Ministry of Maritime Affairs, Tourism, Transportation and Development 5 April 2004)

	Male	Female	Total
A. Internally Displaced Persons (IDPs)	5,378	6,115	11,493
1. IDPs in Collective Centres	1,523	1,709	3,232
2. IDPs in Private Accommodation	3,041	3,518	6,559
3. IDPs in CDR (ex-UNTAES)	814	888	1,702
	from BiH	from FRY	Total
B. Refugees	3,668	463	4,131
1. Refugees in Collective Centres	1,674	140	2,134
2. Refugees in Private Accomodation	1,994	140	2,134

SOURCES: GOC Office for Displaced Persons and Refugees (ODPR) and UNHCR (UNHCR 31 March 2004)

For most recent statistics from UNHCR, see "Estimate of Refugees and Displaced Persons still seeking solutions in South-Eastern Europe", UNHCR

Ethnic Serb internally displaced population may be higher than official figures indicate: IDP re-registration and status recognition procedures are problematic (2003-2004)

- Government of Croatia has consistently resisted registration of Serb IDPs in the Croatian Danube region and refused to give them rights similar to Croat IDPs
- There is concern that the numbers and status recognition for internally displaced people was manipulated by the responsible state institutions
- Almost 28,000 of 31,000 IDPs registered during the period 1997-1998 lost their status through re-registration undertaken by the Office for Displaced Persons and Refugees (ODPR)
- Many IDPs who lost their status were never informed of the fact and did not receive an official decision; preventing them from participating in the 2001 local election and from accessing other rights
- The most recent official re-registration process was undertaken during the first half of 2003 and was deemed fairly conducted by the international community
- The Center for Peace in Vukovar has received a number of complaints from IDPs in the Vukovar region
- The Center for Peace in Vukovar has expressed the concern that previously de-registered and non-registered ethnic Serb IDPs were effectively excluded from the 2003 re-registration process despite the fact that they continue to live in a situation of displacement

UNHCR Representation to Croatia, email correspondence, 1 March 2006:
"Ever since the first registration of Serb IDPs, their rights arising from the status were the subject of negotiations between the international community and issue of dispute with the GOC. As this group was registered during the peaceful re-integration of the CDR, after the issuance of the Law on Refugees which specified certain dates as of which the person had to be registered as displaced, the GOC used that as an excuse not to grant Serb IDPs the status that was given to Croat IDPs. Serb IDPs have never received the IDP card, heath insurance based on the status, exemption from some taxes, monthly cash grant, as Croat IDPs have. One of the arguments offered during the registration in 1996/97 was that Serb IDPs would be able to return to their

places of origin soon and receive the returnee status then, which would then be the same returnee status as given to Croat IDPs upon return. However, the process was not even finalized after the 7 years from the registration and these persons remained throughout this period without the full IDP status rights. It is assumed that more IDPs reside in the region but they were de-registered in the previous years because they failed to report the change of address and ODPR did not find them during de-registration exercises."

Center for Peace, 31 August 2004, par.20 and 29:
"The official number of displaced Serbs is 1.702 persons (…), but the real number is still under the question mark and presumably several hundreds higher than the official one. For example, Centre for Peace Vukovar, in mid 2003, collected information on about one hundred displaced persons currently living in two small villages near Vukovar who were not registered as displaced persons. (…) Certain problems also occurred with the cancellations of the status of displaced persons without any written decisions by the Office for Displaced Persons and Refugees (ODPR) that explained how these persons were not found in their registered addresses during the reregistration. It was noticed that some displaced persons lost their status despite the fact that they lived in the addresses they registered to, which could have been proven by police registration records of those people's temporary addresses but regional ODPR's offices did not take this into their consideration. Lost of the status lead towards lack of possibility to exercise certain rights, such as the right to vote in the elections in places opened for displaced persons and exercise of the right to adequate alternative accommodation if evicted from temporary occupied accommodation and similar."

Center for Peace, Legal Advice and Psycho-social Assistance, 20 May 2004:
"The citizens of the Republic of Croatia, expelled from different parts of the country that were administered by regular Croatian authorities during the 1991-1995 conflict and those internally displaced for the destruction of their homes within former UNTAES region, fall under the category of Internally Displaced Persons.

Internally Displaced Persons live in the areas of Vukovar-Sirmium and Osijek-Baranja counties and represent the category of citizens specific for the eastern part of the Republic of Croatia. The Center for Peace – Vukovar followed on the problems of Internally Displaced Persons ever since it was established in August 1996. On many occasions, the Center assisted, and it still does, to Internally Displaced Persons through counseling and accomplishing wide spectrum of different rights, provided technical assistance in relation with the return to prewar residence places and dealing with the issues of permanent solving of problems in places where they currently live.

Internally Displaced Persons present one of the most vulnerable categories of citizens in the eastern part of the Republic of Croatia. 30% of the total number of the Center's clients in 2002 were Internally Displaced Persons. The number itself, of those with the officially recognized status of internally displaced persons, is also questionable. Namely, the Center has noticed and, on many occasions, informed relevant state institutions, the OSCE, The UNHCR, etc. on different irregularities and manipulations in numbers and status recognition for internally displaced persons.

The number of displaced persons in period 1997 – 2003, according to the statistical data by the Administration and Regional Offices for expellees, returnees and refuges, was as follows:

1997 – 31.000 (first registration)
1998 – 11.000 (first re-registration)
1999 – 3.500 (second re-registration)
2003 - 1.600* unofficially, (third re-registration) approx. 714 persons in Osijek-Baranja and 915 persons in Vukovar-Sirmium county Almost 28.000 of 31.000 Displaced Persons registered during the period 1997-1998 lost their status through re-registration done by ODPR and never

have been informed on that or received official decisions. These decisions even not exist. Most of them couldn't vote on the past local elections held in 2001 and were prevented in achieving various rights due to re-registration.

The last re-registration of displaced persons was conducted during first half of 2003. The procedure was non-transparently conducted and there were a certain number of complaints against the way it was implemented. Certain number of people lost their status despite they still live in former UNTAES region and permanent solutions for them are still not found. The Center has registered great number of complaints from displaced persons on the work of the Regional ODPR in Vukovar for not providing them with the relevant information, rejecting clients and indecent behavior of its staff."

See also section on "Documentation"

Number of internally displaced persons still seeking solutions: 16,000 persons (as of 1 April 2003)

- 3,400 persons, mostly Serb, remain displaced in eastern Slavonia (2002)
- A third of the internally displaced population live in and around the capital Zagreb

IDPs still in need of durable solution in Croatia (as of 1 April 2003): 16,237 persons (UNHCR 1 April 2003)

"Displaced persons still awaiting final solution
18,567 displaced persons on MPWRC/ODPR welfare still residing temporary in other areas of Croatia out of their homes (14,028 IDP Croats from Danube Region and 4,539 from other parts of Croatia).
3,396 internally displaced persons in Danube Region, mostly of Serb ethnicity, awaiting return to their homes in other part of Croatia."
(Ministry for Reconstruction April 2002)

	Male	Female	Total
A. Internally Displaced Persons (IDPs)	10,442	11,945	22,387
1. IDPs in Collective Centres	2,772	3,172	5,944
2. IDPs in Private Accommodation	6,038	7,005	13,043
3. IDPs in CDR (ex-UNTAES)	1,632	1,768	3,400
	from BiH	from FRY	Total
B. Refugees	18,184	1,386	19,570
1. Refugees in Collective Centres	2,380	400	2,780
2. Refugees in Private Accommodation	15,804	986	16,790

SOURCES: GOC Office for Displaced Persons and Refugees (ODPR) and UNHCR databases
(UNHCR 31 March 2002)

"An estimated three-quarters of Croatia's 23,400 internally displaced persons orginated from eastern Slavonia. At year's end [2001], about one third of the total were displaced within eastern Slavonia, one-third in and around the capital, Zagreb, and one-third scattered around the remainder of the country." (USCR 2002, p. 204)

Number of internally displaced persons still seeking solutions: 31,358 persons (as of May 2001)

- The total IDP caseload has decreased by 36 percent between January 2000 and May 2001
- 53 percent of the internally displaced persons are women, while 23 percent are under 16

Government figures (as of 1 May 2001): 31,358 persons

· 27,893 displaced persons temporary residing in other areas of Croatia out of their homes (20,743 displaced Croats from Danube Region and 7,150 from areas liberated in "Flash" & "Storm" operations)

· Total of IDPs in Danube Region, mostly of Serb ethnicity, awaiting return to their homes in other parts of Croatia: 3,465 internally displaced persons
(MPWRC/Office for Displaced Persons, Returnees and Refugees, 8 May 2001)

UNHCR figures (As of 31 December 2000): 34,100 persons
53% of the internally displaced persons are women
23% of the internally displaced persons are under 18
(UNHCR June 2001, p. 394)

"In 2000, there were still over 49,000 IDPs in Croatia; most of them were located in eastern Slavonia and included 4,012 ethnic Serbs. UNHCR actively sought solutions for this group. Some 1,600 of them received legal assistance, mainly in relation to property issues. In addition, 5,000 vulnerable IDPs received basic relief items and social support. By the end of the year, the overall number of IDPs had decreased by 21 percent." (UNHCR June 2001, p. 395)

Official population census shows a significant decrease of the Serb minority in Croatia since 1991 (2001)

- The Serb minority only represents 4,5 percent of the population, a two-thirds decline since 1991
- The census results were contested by representatives of the Serb community
- The draft of the minority law and the implementation of other pieces of legislation will be affected

"On 17 June the Bureau for Statistics presented the official results of the 2001 census. Croatia now has a total population of 4,437,460, representing a six per cent decrease of the total population since 1991. Ethnic Croats represent approximately 90 percent of the total population in comparison to 72 per cent ten years ago. The total number of persons belonging to national minorities was announced at 7.47 per cent, half of the 1991 total. The most drastic reduction in this regard was seen within the Serb minority, which now only represents 4.54 per cent of the total population, a two-thirds decline since 1991.

Representatives of national minorities and various human rights organizations commented on the census results. The Serb People's Council (SNV), Milorad Pupovac, publicly refused to accept the census results. The President of the SNV demanded a review of the census to include all Croatian Serb refugees who registered for the census in Yugoslavia and Bosnia and Herzegovina, as well as those who returned following completion of the census on 31 March 2001. According to the SNV, an additional 68,000 Croatian Serbs should be considered in this regard. The Chair of the Parliamentary Committee for Human Rights and the Rights of National Minorities, Furio Radin, demanded further explanation of the census results and the reasons for

the reductions and advocated a new program for the development and protection of minority rights. The President of the Croatian Helsinki Committee, Zarko Puhovski, stated that the census results confirmed the need to prevent the assimilation and emigration of Croatia's national minorities.

The official 2001 census results directly impact the new draft Constitutional Law on the Rights of National Minorities as well as the implementation of several other pieces of legislation, including the Law on the Official Use of Minority Languages and Scripts and the Law on Local Elections." (OSCE 18 June 2002)

The Government estimates that around 300,000 Croatian Serbs were displaced internally or became refugees between 1991 and 1995. A part of these individuals fled to Eastern Slavonia, while others left the country, mainly to the Federal Republic of Yugoslavia (FRY) and the Republika Srpska (RS) entity of Bosnia and Herzegovina (BiH). Since late 1995, according to Government figures, over 80,000 Croatian Serbs have returned to their pre-war places of residence. About 58,000 were cross-border returns (about 54,000 from FRY and about 4,000 from BiH) and the remaining approximately 22,500 returned from the Danube Region to other parts of Croatia. However, the FRY office of the United Nations High Commissioner for Refugees (UNHCR) reports that some tens of thousands Croatian Serbs have arrived from Croatia since late 1995, mostly from the Danube Region." (OSCE 2002)

Constant reduction of the internally displaced population: 50,000 IDPs registered in 1999 (1996-1999)

- 191,000 internally displaced Croatians in areas controlled by the government end 1995
- Reduction of the internally displaced population partly due to the de-registration of internally displaced persons by the authorities and the departure of displaced ethnic Serbs to third countries (mainly Yugoslavia)

Total IDP (end of 1999): 50,000 persons
"[As of December 1999,] Croatia was also home to 50,000 IDPs including 38,000 ethnic Croats originally from eastern Slavonia, and 3,000 ethnic Serbs currently in eastern Slavonia and the Dalmatian Coast." (USCR 2000, pp. 224-225)

"In 1999, the Croatian government's Office for Displaced Persons and Refugees counted 43 percent fewer refugees and internally displaced persons than 1998. This reflected mainly the return of internally displaced ethnic Croats (particularly back to eastern and western Slavonia), the de-registration of many internally displaced ethnic Croats who decided not to move back to their repaired homes and the local integration of ethnic Croats refugees (primarily in the Krajina area)." (USCR 2000, p. 225)

"Some 3,000 ethnic Serbs displaced from other areas of Croatia remained in eastern Slavonia at year's end, about 1,000 fewer than one year earlier. In all, about 51,000 ethnic Serbs lived in the region, down from about 60,000 at the end of 1998. The pre-war Serb population had been 70,000, before peaking at 127,000 after the massive displacement of Serbs in 1995 from the Krajina region." (USCR 2000, p. 226)

Total IDP (end 1998): almost 61,000 persons
"The Croatian government's Office for Displaced Persons and Refugees (ODPR) continued to deregister refugees and internally displaced persons in 1998. […][T]he number of registered internally displaced ethnic Croats decreased 27 percent [from end of 1997 to the end of 1998].

ODPR's registration did not include an estimated 4,000 internally displaced Croatian Serbs living in eastern Slavonia whose numbers also decreased significantly.
[…]
By year's end [1998], about 50,000 ethnic Serbs had left eastern Slavonia, mostly to join the refugee ranks in Yugoslavia. Of that number, more than 6,000 were indigenous to eastern Slavonia, and about 40,000 to 45,000 were ethnic Serbs who had previously been displaced into eastern Slavonia from other parts of the Croatia. Only 4,000 internally displaced persons were still living in eastern Slavonia at year's end, and the total number of ethnic Serbs still living there was less than 60,000. The pre-war indigenous ethnic Serb population of eastern Slavonia was about 127,000, which swelled by more than 50,000 during the war because of internal displacement." (USCR 1999, pp. 185-186)

Total IDP (end 1997): more than 100,000 persons (up to 110,000 persons)
"The Croatian government's Office for Displaced Persons and Refugees (ODPR) rapidly deregistered refugees and internally displaced persons as 1997 ended, making final count difficult. At year's end, ODPR still registered about 78,5000 persons as internally displaced, a 31 percent decrease from the 114,000 at the end of 1996. ODPR registration did not include an estimated 32,700 internally displaced Croatian Serbs living in eastern Slavonia. […]
Although 32,698 ethnic Serbs in eastern Slavonia were registered as internally displaced at the end of 1997, estimates of the number of displaced Serbs in the regions ranged up to 60,000 during the year." (USCR 1998, p. 170)

Total IDP (end 1996): 185,000 persons
"ODPR estimated that about 114,000 persons remained internally displaced in government-controlled portions of Croatia at the end of 1996. Most were ethnic Croats who fled their homes in the Krajina and eastern and western Slavonia when ethnic Serb rebels wrested control of these regions from Croatia in 1991. […] Not figured in to ODPS registered's tally of internally displaced persons are an estimated 60,000 to 80,000 Serbs who were displaced from other areas of Croatia and currently reside in eastern Slavonia." (USCR 1997, p. 176)

At the end of 1995: 191,000 internally displaced Croatians in areas controlled by the government (USCR 1995)
"ODPR said that Croatia was caring for 180,000 internally displaced persons at the end of 1995. During 1995, ODPR recorded 6,466 newly displaced persons. This included about 1,000 ethnic Croats who were expelled from the Serb-controlled UN Protected Areas (UNPAs) mostly from eastern Slavonia, during the first six months of the year. The remainder of newly displaced persons were Croats who had returned from Germany and other third countries during the year, but who could not return to their original homes." (USCR 1996, p. 135)

Disaggregated data

Outside the Croatian Danube region, half of the displaced population lives in collective centres (2005)

	Male	Female	Total
Internally Displaced Persons (IDPs)	2.307	2,540	4,847
1. IDPs in Collective Centres	730	796	1,526
2. IDPs in Private Accommodation	783	881	1,664
3. IDPs in CDR (ex-UNTAES)	794	863	1,657

SOURCES: GOC Office for Displaced Persons and Refugees (ODPR) and UNHCR (UNHCR 30 November 2005)

Official statistics on women IDPs and refugees submitted to the UN Committee on the Elimination of Discrimination against Women (2003)

- Of 65, 872 IDPs and refugees in the year 2000, an estimated 52% of IDPs were women and an estimated 56%-63% of refugees were women
- According to data from July 2003, of 353, 137 persons with the status of a refugee, displaced person or a returnee, 189, 240 of them were women
- 14,188 IDP, refugee and returnee women continued to be housed in state-provided accommodation (as of July 2003)
- The National Policy, the Ministry of Public Works, Reconstruction and Construction is in charge of ensuring adequate help for displaced women, women returnees
- The Ministry is also in charge of facilitating their return and reintegration, and resolving housing problems of particularly vulnerable women (including single mothers, women with disabilities)

"The greatest number of displaced persons in the Republic of Croatia, 550, 000 persons, was recorded in 1991, and the greatest number of refugees, 402, 768 persons, in 1992. From 1993 to 2000 their number has been decreasing gradually, so that in 2000 total number was 65, 872. 52% of displaced persons were women, while the data about refugees differ from source to source, so that the number of refugee women is between 56% and 63%.

At the beginning of the 1990s women refugees and women victims of war were in the centre of attention of governmental institutions, as well as non-governmental organizations dealing with women's human rights. Different forms of help were then provided for those women, from accommodation to medical and psychological help, depending on the range of suffering they were exposed to. The Republic of Croatia informed the Committee (CEDAW) in detail about women victims of war, including refugee women, in its special report dedicated to that very topic.

According to the data from 4 July 2003, 353, 137 persons in the Republic of Croatia now have the status of a refugee, displaced person or a returnee. 189, 240 of them are women. Only 14, 188 of them still live in state- provided accommodation.

Due to the normalization of the situation, either through return or integration, issue of refugee women is no longer crucial in the Republic of Croatia. However, a line of measures is anticipated in the National Policy for the Promotion of Gender Equality that try to facilitate integration of displaced women and women refugees in everyday life, until the final resolution of the issue.

In accordance with the programme tasks of the National Policy, the Ministry of Public Works, Reconstruction and Construction is in charge of ensuring adequate help for displaced women, women returnees and women participants and victims of the Patriotic Defence War and facilitating their return and reintegration in the society, as well as consideration of possibility of introducing benefits in resolving housing problems of particularly vulnerable groups of women (single mothers, women with disabilities).

It must be pointed out that active policy of the Government of the Republic of Croatia regarding the return process and its significant financial investments in carrying out of the

return process in last two years resulted in great improvement in the return of displaced persons and refugees." (Republic of Croatia, Report submitted to UN CEDAW 27 October 2003)

Croatian law distinguishes two categories of internally displaced: the "expellees" and the "displaced" (2000)

- "Expelled" persons are mainly ethnic Croats of all age groups currently displaced outside the Croatian Danubian Region (47,000 persons as of February 2000)
- "Displaced" persons are mainly of Serb ethnic origin, mostly elderly and socially vulnerable Serbs currently displaced in the Croatian Danubian Region but originating from other parts of Croatia (3,000 persons as of February 2000)
- This distinction is not supported by international law

"As a result of the conflicts in Croatia, a large number of persons were displaced. Croatian legislation distinguishes between 'expelled' persons and 'displaced persons' forced from their homes at different periods of the conflict, a distinction not supported by international law. Approximately 16,000 'expelled' persons and 'displaced persons' were registered to vote at special polling stations (approximately 14,500 'expellees' and 1,400 'displaced persons'). Following the adoption of Mandatory Instruction X, the SEC established 299 polling stations for 'expellees' from Vukovar-Srijem County (part of Constituency V) and 10 polling stations for 'expellees' from Osijek-Baranja (part of Constituency IV). These voters are overwhelmingly ethnic-Croats. Although not specifically mentioned in Mandatory Instructions X, the SEC established only two polling stations for 'displaced persons' (overwhelmingly ethnic-Serbs)." (OSCE ODHIR 25 April 2000, sect. IV-b-2)

"Internally Displaced Persons (IDPs) in Croatia may be divided into two main groups:

a) **IDPs outside Croatian Danubian Region (CDR)**. Majority are of Croat ethnicity and according to Office for Displaced Persons and Refugees (ODPR), the total number by the February 2000 was some 47,000 persons. They are mostly residing in private accommodation. Relatively high number of persons who are internally displaced is due to the unfavourable economic situation in Croatia and insufficient funds allocated for the economic revitalisation in areas of return. Nevertheless, it is expected that the return will continue thus estimating that the number of IDPs outside of CDR will drop to roughly 15.000 throughout the year 2000.

b) **IDPs in Croatian Danubian Region (CDR)**. Majority of them are of Serb ethnic minority, their total number according to ODPR at the end of 1999 being 4,500 persons. Although a small number, this caseload might find their durable solutions as difficult one, since return to their places of origin is still linked to reconstruction efforts by the Government. A number of persons will locally integrate and will hopefully avail themselves of the reconstruction assistance in light of recent positive political changes and rescission of the discriminatory reconstruction related legislation. It is estimated that some 3.000 IDPs originally from other parts of Croatia will remain in the CDR." (UNHCR May 2000)

"The current overall figure [for the internally displaced population] is 43,000 persons. This includes some 5,500 elderly and socially vulnerable Serbs in the Danube Region, who fled military operations in 1995 and are unable to return to their homes which have been occupied, damaged/destroyed or privatized. (Another 40,000 of this group became refugees in the Federal Republic of Yugoslavia in 1998 at the end of the UNTAES mandate). In addition, there are also some 38,000 ethnic Croats, of all age groups, displaced from the Danube region in other parts of Croatia, and who are unwilling to return home for lack of employment opportunities." (UNHCR 20 June 2000)

For recent changes to the Law on Status of Displaced Persons and Refugees, see"The Law on the Status of Displaced Persons and Refugees: discriminatory distinction between displaced Croats and Serbs remains in effect (2006)" [Internal link]

See also section on Documentation

PATTERNS OF DISPLACEMENT

General

Two major waves of displacement occurred during the Croatian war (2005)

- The creation of the secessionist Republic of Krajina corresponding to areas with Serb majority led to displacement of some 220,000 ethnic Croats to other areas of Croatia
- The 1995 offensives of the Croatian army against the Republic of Krajina displaced an estimated 300,000 ethnic Serbs who fled abroad or to Eastern Slavonia, last pocked controlled by Serbian forces
- A UN mission (UNTAES) was established in November 1995 to administer Eastern Slavonia
- Eastern Slavonia reverted to control of Croatian authorities in January 1998
- Displaced persons seem disadvantaged compared to refugees in terms of assistance and social support network

UN CHR, 29 December 2005, par.8-10:
"8. Following a popular referendum in May 1991, the Croatian Parliament issued a declaration of independence from the Socialist Federal Republic of Yugoslavia on 25 June 1991. Following the declaration, armed conflict spread to the territory of Croatia, engaged by the Yugoslav People's Army and with the assistance of paramilitary forces from within and outside of Croatia. As a result of these conflicts, the Government of Croatia lost control of the areas of Eastern Slavonia, Western Slavonia and "Krajina", areas with a pre-war majority of ethnic Serbs or with a substantial ethnic Serb minority. In the course of this fighting, an estimated 220,000 ethnic Croatians fled these areas for other parts of Croatia. In Geneva, on 23 November 1991, and in Sarajevo, on 2 January 1992, ceasefire agreements were signed seeking to bring the fighting to an end.

9. On 15 January 1992, the member States of the European Community recognized the independence of Croatia. On 21 February 1992, the Security Council adopted resolution 743 (1992) establishing a United Nations Protection Force in the contested areas. On 22 May 1992, Croatia was admitted into the United Nations. In January 1993, fighting flared with Government of Croatia incursions into the contested areas. In May 1995, in a military operation named "Flash", government forces attacked Western Slavonia, recapturing significant amounts of territory. In August 1995, in a military operation named "Storm", government forces ecovered "Krajina". In the context of these operations, an estimated 300,000 ethnic Serbs were displaced from their homes, with the majority becoming refugees in adjoining States."

Eastern Slavonia was the last area still controlled by Serbian forces. The Erdut Agreement, concluded on 12 November 1995 and confirmed by a resolution of the Security Council, established a United Nations transitional Administration for Eastern Slavonia, Baranja and western Sirmium (UNTAES).

"In 1997, UNTAES, UNHCR and the Government of Croatia signed an Agreement on the Operational Procedures of Return [of refugees and internally displaced], which, inter alia, confirmed the right of the internally displaced to return to and from the Croatian Danube region. On 15 January 1998, Eastern Slavonia, Baranja and Western Sirmium were the last sectors to revert to the control of the Government of Croatia, with the final expiry of the UNTAES mandate."

JRS, September 2005, p.379:
"The effects of the war on refugee flows and the political course of the conflicts in the former Yugoslavia also conditioned the experience of refugees and their current options regarding return and reintegration. Those who settled inside Croatia generally experienced more dislocation than those who settled in Serbia. For example, those who fled their homes in 1991 were able to settle in Eastern Slavonia (where they enjoyed greater protection during the Serbian occupation) but (…) given the course of the war, the liberation campaigns waged by the Croatian Army, and the return of occupied land to the Croatian government following the withdrawal of the United Nations, these migrants were ultimately unable to put down extensive roots and develop networks of support. Moreover, since they were not refugees, they were among the last to receive assistance from refugee organizations and international agencies. Refugees who settled at least temporarily in Serbia, still have the opportunity to go back and forth, and thus preserve the option of integration in Serbia or return to Croatia."

Serb population leave Eastern Slavonia to the Federal Republic of Yugoslavia (1996-1999)

- 26 000 ethnic Serbs displaced in the Danube region had returned to their home in other areas of Croatia as of March 1999, according to the government, but OSCE doubts that the figure is so high
- Of the pre-war Serb population of the Danube region, according to UNHCR estimates, some 16,000 left, mainly for the FRY, between August 1996 and July 1998
- Between May and September 1998 these departures continued at an average rate of six families a day but the rate of departure declined in the course of 1999
- The ethnic Serb population in the region fell from a prewar number of 70,000 to about 50,000 at end of 1999

"On 15 January 1998 Croatia recovered full control over this region, after a two year process of reintegration under the mandate of the United Nations Transitional Administration for Eastern Slavonia, Baranja and Western Sirmium (UNTAES). The total population of the region according to the 1991 Yugoslav census was 201 400, of whom 86 700 Croats (43 %), 73 200 Serbs (36 %), 13 000 Hungarians (6.5 %) and 28 500 others (14 %).

In October 1996 a United Nations Military Observer survey showed that out of a total of 144 600 inhabitants of the region, the Croat population had fallen to 8 800 (6 %), the Hungarian to 6 700 (4.6 %) and 'others' to 8 500 (5.9 %), while the Serbs numbered 73 000 (50.5 %). The balance was accounted for by 47 600 (33 %) displaced persons (mainly Croatian Serbs who arrived following the Croatian army offensives in 1995).

In October 1998, UNHCR estimates gave a total population of 105 000, composed of 30 000 Croats (28.6 %), 55 000 Serbs (52 %), 7 000 Hungarians (6.7 %), 6 000 'others' (5.7 %) and between 6 000 and 8 000 displaced persons, depending on the source. Therefore, between October 1996 and October 1998 some 21 200 Croats must have returned, an approximate figure confirmed by ODPR (21 349 on 23.9.98 and 22 396 on 28.10.98). On 5 March 1999 ODPR gave the total number of Croatian displaced persons having returned to the Danube Region as 32 688. Nevertheless, OSCE estimated in its report of 8 September 1998 that only 10 000 Croat returnees reside in the region full time.

As for the ethnic Serbs in the Danube region displaced from other areas of Croatia, 26 039 had returned to such areas as of 5 March 1999, according to ODPR, but again OSCE doubts that the figure is so high, putting it at somewhere between 10 000 and 15 000.

However, UNHCR and OSCE estimate that in the two years since September 1996 some 28 000 displaced Serbs left the Danube region for the Federal Republic of Yugoslavia, mostly during the UNTAES mandate. Between May and September 1998 these departures continued at an average rate of six families a day. According to ODPR, indeed, only some 4 000 Serb displaced persons still live in the region, of whom 1 000 were originally domiciled there.

Of the pre-war Serb population of the Danube region, according to UNHCR estimates cited by OSCE, some 16 000 left, mainly for the FRY, between August 1996 and July 1998. According to the Serbian Commission for Refugees and the Joint Council of Municipalities (an institution set up under the UNTAES mandate to coordinate the interests of the Serb community in the Danube region), cited by UNHCR, some 47 000 Serbs have left the region since early 1996, of whom 18 000 were part of the domiciled population and 29 000 were displaced persons." (COE 9 April 1999, paras. 36-41)

"International monitors and NGO's assess that the rate of ethnic Serb departures from the Danubian region [during 1999] was somewhat less than in past years. However, monitors had difficulty tracking the departures because in January the Government stopped sharing relevant data. The ethnic Serb population in the region fell from a prewar number of 70,000 to about 50,000 at year's end. Approximately 60,000 persons displaced by the conflict fled to the Danubian region from other areas of the country, but most of these have since returned home or moved to the FRY. About 3,000 displaced persons remain in the region. An estimated 40,000 persons in the region have emigrated because of the poor economic conditions combined with discrimination directed at ethnic Serbs." (U.S. DOS 25 Feb 2000, sect. 2d)

See also Human Rights Watch report Croatia* Second Class Citizens: The Serbs of Croatia*, March 1999, chapter "The Return of refugees" [Internet]

PHYSICAL SECURITY & FREEDOM OF MOVEMENT

General

Incidents of violence against ethnic Serb returnees persist (2006)

- Violence against ethnic Serbs increased in 2005
- Incidents occurred mainly in return areas during the return season
- Police did not always remain impartial
- Authorities do not investigate and prosecute ethnically motivated incidents adequately
- Perpetrators of ethnic crimes are often charged with misdemeanor offenses rather than criminal offenses
- Reluctance to give land back to returnees was a source of inter-ethnic incidents in Dalmatian region
- Further to local elections in May, coalition with ultra-nationalist parties were made in Knin and Vukovar local boards
- Lack of elaborated legal definition of what constitutes interethnic incident prevents accurate assessment of security situation

USDOS, 8 March 2006, Section 5. p.15-16:
"Violence against Serbs continued particularly in the Dalmatian hinterland, the most active area of refugee return, and to some extent in Eastern Slavonia. Incidents occurred largely after the local elections in May and over the summer when many Serbs returned or visited their homes. The Croatian Helsinki Committee (HHO) reported that the number of interethnic incidents rose during the first six months of the year in comparison to the previous year.
In its annual report, released in December, the HHO asserted that authorities had not adequately investigated and prosecuted ethnically motivated incidents, some of which were particularly grave. In December, the police issued a report on approximately 50 incidents that occurred during the year and claimed to have identified suspects in a third of the cases. Both the media and NGOs expressed concern that the police had not been successful in identifying suspects of several of the most serious crimes." (…)

For further details on location and nature of ethnic crimes see same document, p.16
"The OSCE reported on several ethnically related incidents where the perpetrators were charged with misdemeanor offenses, such as disturbing public order, rather than criminal offenses. In a majority of the cases, police and prosecutors were reluctant to identify cases as ethnic discrimination. The largest Serb NGO, Serb Democratic Forum, ascribed the increased number of interethnic incidents in the Dalmatian region in part to persons who were reluctant to give back agricultural land they were occupying to the ethnic Serb owners. The NGO asserted that the police did not always remain impartial and uphold the law in property disputes between ethnic Croats and ethnic Serbs.

Authorities discriminated against ethnic Serbs in several areas, including in administration of justice, employment, and housing (see sections 1.e. and 2.d.). Ethnic Serbs in war-affected regions continued to be subject to societal harassment and discrimination."

HRW, 18 January 2006, p.1:

"A decade after the 1991-95 war in Croatia, tensions between the majority Croat population and the Serb minority have eased. However, there were some worrying trends in 2005 threatening to reverse the course. In the key multi-ethnic towns of Knin and Vukovar, local boards of the Croatian Democratic Union (HDZ) formed municipal governments in coalition with ultra-nationalist Croat parties following the May 15 local elections, while sidelining the centrist Independent Democratic Serb Party (SDSS). The SDSS nevertheless continues to support the minority HDZ government at the state level. Violent incidents directed at ethnic Serbs were more frequent in 2005 than in previous years."

EU, 9 November 2005, p.22:
"The position of the Serb minority in Croatia has improved since the Opinion, not least due to progress in terms of repossession and reconstruction of Serb-owned housing. However, a number of incidents in 2005 threatened to undo some of the advances made. For example, in May 2005, an elderly Serb man was murdered in Karin (near Zadar), apparently on account of his ethnicity. Also in May 2005 a bomb exploded in the building of a local Serb organisation in Vukovar followed one day later by two further bomb explosions in front of the Municipal Government buildings in the Serb-majority municipalities of Trpinje and Borovo near Vukovar. The government and all major political parties condemned these acts. Such incidents nevertheless highlight the need for greater efforts towards the objective of peaceful coexistence and reconciliation between ethnic groups. While ethnically motivated incidents are generally being investigated, it appears that prosecutions are few. Shortcomings in the judiciary, particularly as regards ethnic bias in war crimes trials, but also as regards severe backlogs of cases and difficulties accessing justice, weigh particularly heavily on the Serb minority."

OSCE, NIB, 13 February 2006, p.3:
"On 26 January, after two postponements, the Parliamentary Committee on Human and National Minority Rights finally discussed a Ministry of Interior report pertaining to incidents against members of the Serb national minority in Croatia during the course of 2005. A representative from the Ministry of Interior expressed regret, on behalf of the Ministry, that only 26 out of 65 incidents recorded last year were solved. However, the need for local communities to improve co-operation with the police, once incidents occur, was also highlighted. Independent Democratic Serb Party (SDSS) MP, Milorad Pupovac, did not question the effectiveness of the police but rather stressed the importance of raising this issue with the Parliament. Following distribution of a Mission position paper, the HoM underlined the importance of dealing seriously with ethnic incidents. He noted that unresolved or neglected cases not only hamper the return of refugees and the process of reconciliation but also harm Croatia's reputation internationally. Quoting Mission estimates, the HoM said the number of ethnic incidents had not decreased in recent years. He invited the authorities to introduce a clear legal definition of what constitutes an ethnically motivated incident. Croatian Democratic Union (HDZ) Committee members were clear in their condemnation of ethnically motivated incidents but argued that, precisely because no clear definition existed, it was impossible to say whether or not there had been a worsening of the situation. Consensus was reached with the Committee issuing a joint conclusion expressing concern about the situation in regard to ethnic incidents. The Government and public authorities at all levels were called upon by the Committee to intensify measures to combat violence of any nature, especially violence motivated by ethnic intolerance. The need to foster an atmosphere of tolerance and mutual trust within communities was also stressed."

OSCE, 18 November 2005, p.3-4:
"Since the beginning of the year the media has regularly reported an apparently increasing number of ethnic incidents. Although there is no specifically elaborated legal definition of what constitutes such an incident, due to the lack of specific legislation on hate speech and hate crime, Mission analyses indicate that there are at least as many, if not slightly more, ethnically motivated incidents as compared to last year. In most instances, local authorities failed to condemn the incidents."

USDOS, 28 February 2005
"Local and international NGOs reported a tangible improvement in the atmosphere for ethnic minorities during the year, attributed in part to the 2003 agreement with the ethnic Serb party. On several occasions, the Prime Minister and members of his cabinet visited the homes of ethnic Serb returnees and expressed the Government's commitment to ensuring returns of ethnic minorities and their equal treatment. However, violence against Serbs occurred occasionally. In March, two persons physically assaulted an elderly Serb in his house in Zemunik Gornji, injuring his shoulder, destroying furniture and stealing several household items. The police investigated and identified three minors from the nearby village of Skabrnja. The local population protested against the investigation; however, the perpetrators were charged. (…)
The OSCE reported on several ethnically related incidents where the perpetrators were charged with misdemeanor offenses, such as disturbing public order, rather than criminal offenses. In a majority of the cases, police and prosecutors were reluctant to identify the cases as ethnic discrimination."

See also: Incidents with ethnic background: The Republic of Croatia 2005, Serbian Democratic Forum, February 2006

Freedom of movement continued to be constrained for IDPs, particularly in Eastern Slavonia (2003-2006)

- Freedom of movement continued to be limited for IDPs and refugees, particularly in Eastern Slavonia, due to lost tenancy rights
- IDPs who lost tenancy rights experienced difficulties in regulating their legal status as they have no permanent residence which is required in order to acquire civilian identification

USDOS, 8 March 2006, Section 2.d:
"Refugees returning to the country encountered obstacles obtaining permanent residency status under favorable conditions. The law states that former habitual residents who returned by January could be reinstated to their prewar status as habitual residents without further requirements, such as meeting housing and financial criteria, and could subsequently apply for citizenship. The government extended the deadline to June. The interior ministry streamlined the application process after international observers complained that officials varied procedures and criteria for granting permanent residency from case to case. Also, due to poor communication, many potential claimants were unaware that they could regularize their status, and international observers suggested a further extension of the deadline. (…)
Government procedures to verify and document citizenship improved during the year. For example, authorities ceased rejecting applicants who listed a collective center as their permanent address. However, reports continued of obstruction by some local officials who applied procedures inconsistently."

USDOS, 28 February 2005, Section 2.d:
"Freedom of movement continued to be constrained for returning refugees and internally displaced persons (IDPs), who lost tenancy rights and experienced difficulties in regularizing their status because they had no permanent residence (domicile), which is a precondition for acquisition of a civilian ID"

U.S. DOS 25 February 2004, Sect.d:
"The Constitution provides for these rights, and the Government generally respected them in practice. All persons must register their residence with the local authorities and, under exceptional circumstances, the Government legally may restrict the right to enter or leave the

country if necessary to protect the 'legal order, health, rights, or freedoms of others.' Freedom of movement continued to be constrained for returning refugees and internally displaced persons (IDPs), particularly in Eastern Slavonia, where those who lost tenancy rights experienced difficulties in regularizing their status because they had no permanent residence (domicile), which is a precondition for acquisition of a civilian ID."

See also:
"Citizenship law impedes the integration of non-Croat long-term residents (1992-2003)" [Internal link]

"New 'Law on Foreigners' should enable regularisation of citizenship status to pre-war residents (2004)" [Internal link]

Unsubstantiated arrests and charges of ethnic Serbs for war crimes illustrate bias of the judiciary (2006)

- A review of lists of suspected war criminals led to a major reduction in the number of Serbs arrested for unsubstantiated charges
- Despite progress, ethnic bias in domestic war crimes prosecution persists
- Supreme Courts reverts 60% of first instance decision
- High reversal rate is a good sign that justice is finally done but also reflects very poorly on quality and professionalism of first instance Courts
- Risk of facing unsubstantiated charges is still cited by Croatian Serb refugees as an impediment to return
- absence, for the second consecutive year, of any new indictment against accused Croats raises serious concerns about the sincerity of the Croatian government's accountability efforts

EU, 9 November 2005, p.25:
"Croatia has also been active in trying war crimes cases on its own initiative. Until recently the vast majority of these cases had been against Serbs, with little appetite to try Croats, and many cases have been tried in absentia as well as based on unsubstantiated evidence. Croatia has made some progress since the Opinion in tackling the persistent ethnic bias that has tarnished much of its domestic war crimes prosecution. Serbs have been convicted at a lower rate than in previous years and unsubstantiated charges have been dropped at trial in a number of cases, including in about half of the cases brought in 2004. A review of lists of suspected war criminals initiated by the Croatian State Prosecutor has continued, leading to a major reduction in the number of Serbs against whom unsubstantiated charges had been made. The number of fully in absentia trials has remained low, although partially in absentia trials where only some of the defendants are present make up the majority of all trials. There has been noticeable progress on interstate cooperation, in particular on war crimes trials where bilateral agreements have been reached between the Croatian State Prosecutor and his counterparts from Serbia, Montenegro and from Bosnia and Herzegovina. This cooperation needs to be continued, as a number of issues hindering the prosecution of war crimes remain open, such as difficulties with the extradition of one State's nationals to the jurisdiction of another. Despite the recent progress, ethnic bias in domestic war crimes prosecution persists. In 2004, around 55% of local court verdicts in war crimes cases were reversed by the Supreme Court. In the first seven months of 2005, the figure stands at more than 60%. While a good sign that justice is eventually done, such a reversal rate reflects poorly on what is happening at the local level. Different levels of criminal responsibility are still pursued in domestic cases, with Serbs pursued in large numbers for less serious offences while Croats are pursued almost exclusively for killings. Witness security measures appear to be improving but are still not sufficient; despite the Law on Witness

Protection, which entered into force in early 2004, witnesses, particularly those called to testify against members of the Croatian army, still face intimidation, and further efforts are needed to address witness (particularly minority witness) confidence in police. In a recent case in Osijek, the identity of a protected witness was revealed by the media. Although a criminal offence, it appears no measures have been taken against those responsible. The risk of facing unsubstantiated charges is still cited by Croatian Serb refugees as an impediment to return."

USDOS, 8 March 2006, Section 1.c:
"Unwarranted arrests of Serbs for war crimes remained an ongoing concern, despite some improvement during the year. OSCE monitors reported that arrests of Serbs based on unsubstantiated charges continued, including some based on police reports. Of five Serbs apprehended in the country in the first seven months of year, two were arrested on the basis of the police reports rather than court orders. Authorities arrested one when he entered the country to vote in local elections; he was released after a few days as no charge was pursued. Police arrested the second when he was obtaining documents at a police station after returning to the country; he was released after three days when no one could identify him as a perpetrator of a war crime."

USDOS, 8 March 2006, Section :
"During the year domestic courts continued to try cases arising from the 1991-95 war, including several partially *in absentia* trials with large groups of defendants. State prosecutors continued to review all open war crimes cases, eliminating unsubstantiated charges. The most recent list contained about 1,200 individuals and covered approximately 369 open investigations, 290 suspended investigations, and between 550 and 580 pending indictments.

During the year the Supreme Court decided 18 appeals of war crimes convictions that were filed by 13 Serbs, 3 Croats, 1 Bosniak, and 1 Hungarian, confirming 6 of the convictions and reversing 12, for a 67 percent reversal rate. The number of domestic war crimes trials fell compared with past years due to the elimination of most *in absentia* cases. Despite the decreased caseload, observers questioned the criminal justice system's ability to conduct fair and transparent trials in complex and emotionally charged cases where witness intimidation was a problem.

Persons convicted *in absentia* regularly made use of their guaranteed right for a retrial. Some ethnic Serbs voluntarily returned to the country to be arrested for pending war crimes charges or *in absentia* convictions, since this was the only way they could challenge a conviction under the law. (…)
Many observers questioned the impartiality of trials in the jurisdiction where war crimes occurred, since judges, prosecutors, and witnesses may be more exposed to external influences there. Courts trying domestic war crimes continued to display bias toward defendants based on their ethnic origin, although the OSCE noted that Serb defendants had a better chance of receiving a fair trial than in the past. The most noticeable problem was the difference in charges filed against Serbs and Croats, with Serbs being accused of a wide range of conduct while Croats were almost exclusively charged for killings. In at least three cases, courts continued to prosecute Serbs for genocide on the basis of acts that were not of the gravity usually associated with verdicts of international tribunals ascribing genocidal intent and conduct. Most persons on trial for war crimes were ethnic Serbs, and, of those, nearly three-quarters were tried *in absentia* in group trials in Vukovar County where some defendants were present. Courts also were reluctant to prosecute some crimes involving Serb victims.

The OSCE reported that courts reached decisions in a total of 21 war crimes cases, convicting 13 persons (12 Serbs and 1 Croat). The courts acquitted 5 persons (4 Croats and 1 Serb) and dropped charges against 4 Serbs at trial (including convicting defendants on reduced charges, then amnestying them). Approximately 60 percent of all defendants were tried *in absentia*; 75 percent of those were Serbs."

HRW, 18 January 2006, p.2:
"The absence, for the second consecutive year, of any new indictment against accused Croats raises serious concerns about the sincerity of the Croatian government's accountability efforts. The six trials in 2005 were retrials of cases from the 1990s or the early 2000s: Mihailo Hrastov (originally opened in 1993, now re-tried for the third time); Pakracka poljana (1997); Bjelovar group (2001); Virovitica group (2002); Lora (2002); and Paulin Dvor (2003). Another remaining concern is the ability of the Croatian courts to conduct trials in a fair and effective way, given the high number of reversals of first instance judgments by the Croatian Supreme Court. Much progress is also needed in the protection of witnesses and inter-state cooperation, in spite of certain positive developments in those areas in 2005, related to the Lora retrial."

See also:
Background report, domestic war crime prosecutions, transfer of ICTY proceedings and missing persons, OSCE Mission to Croatia, 12 August 2005

AmnestyInternational's concern on the implementation of the "completion strategy" of the International Criminal tribunal for the former Yugoslavia, Amnesty International, June 2005

A shadow on Croatia's future: continuing impunity for war crimes and crimes against humanity, Amnesty International, 13 December 2004

Justice at risk: war crimes trials in Croatia, Bosnia and Herzegovina and Serbia and Montenegro, Human Rights Watch, October 2004

Summary of AI's concern in the region, Amnesty International,1 September 2005

Review of pending war crimes resulted in numerous abandonment of charges (2005)

- Despite progress, ethnic bias persists in the judiciary
- Ethnic Serbs represent the vast majority of those prosecuted, and ¾ are tried in absentia
- Review of pending war crimes was completed in October 2004
- In 1,900 cases, charges were either dismissed or re-qualified
- Considering that most cases were based on inadequate evidence, convictions resulting from trials in absentia should also be reviewed (500)
- Unsubstantiated charges for war crimes resulting in detention still occur
- Supreme Court plays an essential role in supervising war crime trials
- High reversal rate of trial decisions by the Supreme Court indicates the need to adjudicate war crimes in a professional manner

OSCE, 7 July 2005, p.9:
"Serb defendants in general have a better chance of receiving a fair trial than in the past. However, ***disparities on the basis of national origin*** remain. Serbs continue to represent the vast majority of those prosecuted, including those arrested in third countries, and no new prosecutions have been initiated against members of the Croatian armed forces in 2005. Nearly three-quarters of Serbs are tried *in absentia*. Serbs are accused for a wide range of criminal conduct while Croats are almost exclusively charged for killings. Serbs are prosecuted for genocide for acts that are not of the gravity associated with verdicts of international tribunals. While prosecutors have abandoned a significant number of cases against Serbs, some arrests

based on unsubstantiated charges continue. Further efforts are needed to avoid unwarranted arrests and detention. Some crimes involving Serb victims, as well as the effort to cover-up a crime such as the killing of civilians in Paulin Dvor, remain unprosecuted."

OSCE, 21 November 2004, p.20-21:
"Statistical data and substantive review of war crime procedures suggest that national origin of defendants and victims continued to have an impact on the adjudication of domestic war crimes proceedings in lower courts throughout 2004. The Supreme Court continues to have a key supervisory role and functions as a significant corrective.

Although the ***number of individuals facing war crime prosecution*** compared to 2002 and 2003 has decreased, Serbs continue to represent the overwhelming majority of individuals alleged to have committed war crimes in the 1991-1995 conflict(…). In contrast to past years, significant numbers of charges against Serbs have been abandoned and more Serbs on trial have been acquitted.

The Chief State Prosecutor in October completed a ***review of pending war crime proceedings***, resulting in the dismissal or re-qualification of charges against approximately 1,900 persons, predominantly Serbs, for which there was insufficient evidence (…). After this review, the Prosecutor has "substantiated" cases against approximately another 1,900 persons, including cases at all stages of proceedings from investigation to final verdict. In mid-November, during the visit of the Prime Minister to Belgrade, the Minister of Justice provided a list of these cases to her counterpart in Serbia and Montenegro. Given the recognition that a significant number of cases were based on inadequate evidence, a logical next step would be the review of *in absentia* convictions, of which there are approximately 500. The Chief State Prosecutor has expressed willingness to do so upon the request of persons affected, for possible initiation of new proceedings.

The review mechanism has not, however, prevented some ***unsubstantiated charges*** from being processed by the courts, often resulting in unnecessary detention. Improved coordination between the prosecution, the police, and the judiciary is required to avoid unnecessary arrests of individuals whose cases have been resolved through the review. Of the 23 Serbs arrested during the first 10 months of 2004, 21 were subsequently released, most of whom had their charges dropped or were amnestied62. Nearly 80 per cent (18 of 23) of those arrested so far in 2004 were Serb returnees, with some arrested at international border crossings. Six individuals were arrested for war crimes in third countries on the basis of international arrest warrants. In recent months, two requests for extradition have been refused at the first instance level by third countries, in at least one case on the grounds of fair trial concerns63. The ***Supreme Court*** continued to play a key role in ***supervising shortcomings in war crime trials***. In the first 10 months of 2004, the Supreme Court reversed 65 per cent (15 of 23) of trial court verdicts, including the acquittals in the "Lora" case, previously tried before the Split County Court (…). As in previous years the main reason for reversal was the trial court's failure to establish the facts sufficiently and correctly. The Supreme Court has also invalidated procedural decisions of the trial courts, mainly related to detention of war crime suspects, most notably in the "Lora" case (…). In August, the Supreme Court quashed a decision of the Vukovar County Court to conduct a war crime trial *in absentia*, finding that the court had not taken sufficient efforts to locate the defendant. Consistent with his instructions from 2002 to avoid *in absentia* proceedings, the Chief State Prosecutor has advised all local prosecutors of this decision and has instructed them to file similar appeals in any cases in which the trial courts seek to proceed *in absentia.* Compared to previous years, relatively few war crime trials were conducted *in absentia* during 2004 66.

The high reversal rate is an indication that additional measures are required to ***prepare all parts of the Croatian judiciary to adjudicate war crimes*** in a professional manner. Preliminary training efforts have been undertaken by the Ministry of Justice together with ICTY in the context

of potential transfer of cases from the Tribunal to Croatian authorities. Judges and prosecutors mainly from Zagreb, Osijek, Rijeka and Split where ***special war crime chambers*** have been created, have participated in training sessions from May onwards (…). However, in 2004, more than 80 per cent of all defendants facing war crime allegations in Croatia were tried by courts other than the four courts with special war-crime chambers."

Uneven progress reported in the implementation of the 1996 Amnesty Law (2005)

- The 1996 Amnesty Law amnestied acts of rebellion by ethnic Serbs
- Activities that should have qualified under the law were classified mistakenly and prosecuted as common crimes or war crimes
- Some courts continued the practice of convicting persons in mass and in absentia trials
- Many proceedings were characterised by notion of collective guilt rather than individualised guilt
- Convictions were in numerous cases based on lack of evidence or evidence of questionable quality.
- The chief state prosecutor initiated case-by-case reviews of war crimes cases
- At year's end, approximately 21 individuals remained incarcerated on war crimes or related charges based on politicized or nontransparent trials held under the previous regime

Stability Pact, MARRI-DRC, June 2005, p.32:

"Several thousands of proceedings against Serbs were initiated during or immediately after the conflict. In 1996, The Law on General Amnesty was adopted and in numerous instances where Serbs were originally charged with war crimes, the charge was later reclassified as one subjected to the Amnesty Law. At the same time, the number of cases was reclassified from "armed rebellion" to war crimes or common crimes. Some persons previously convicted of "armed rebellion" and granted amnesty continue to have criminal records. It was not until mid- 2001 that the State Prosecutor ordered a re-opening and modification of inappropriate indictments for war crimes to criminal acts, which are subject to amnesty. Consequently, the Minister of Justice said that more than 21.000 persons were granted amnesty. The information on the lists of persons who were amnestied should have served as re-assurance that there would be no charges pressed against them. In practice, many amnestied individuals have no way of finding out about their status and getting information whether they would be arrested upon their return to Croatia.
Many arrests are based on long-standing indictments after years of inactivity. The scope of proceedings for war crimes since 1991 varies depending upon the sources, but, according to some general observations, final verdicts have been passed against 800 to 900 persons. Procedures are pending against another 1400 to 1500 people and judicial investigation is in the process against another 850 to 900 persons. Many of these proceedings involved criminal allegations against large groups of individuals, (100 or more persons in same cases) which fail to specify an individual defendant's role in perpetrating of the alleged crime. Therefore, many proceedings were characterised by notion of collective guilt rather than individualised guilt under generally applicable standard of due process. In numerous cases, conviction and lengthy prison sentence, often in absentia, were based on lack of evidence or evidence of questionable quality."

US DOS 25 March 2004, Sect.1d:
"Activities that should have qualified for amnesty under the 1996 Law on General Amnesty were classified mistakenly and prosecuted as common crimes or war crimes, although this practice declined and was under review by the Public Prosecutor.

Some courts continued the practice of convicting persons in mass and in absentia trials; however, in July 2002, the chief State Prosecutor initiated a case-by-case review of war crimes cases and sought to limit the use of in absentia proceedings. While 293 cases were dropped as a result of this review by the end of August, local prosecutors and courts continued to conduct in absentia proceedings, which were used almost exclusively against ethnic Serb defendants. In cases monitored by the OSCE during the year, 85 percent of all ethnic Serbs convicted for war crimes were convicted in absentia proceedings. No ethnic Croat has been a part of a group in absentia proceeding, nor has any ethnic Croat been convicted in such a proceeding. The practice of in absentia proceedings placed an added burden on the courts, since defendants convicted in absentia regularly made use of their guaranteed right for a re-trial.

In February, an in absentia trial held at the Zadar County Court, 2 Serbs were sentenced to 9 and 10 years in prison respectively for the 1991 shooting of an ethnic Serb in Perusic, whom they suspected of collaborating with Croatian authorities. In August, the Osijek County Court convicted eight Serbs in absentia for crimes against civilians in the village of Luc in Eastern Slavonia in 1990. In September, the Vukovar County Court began trial proceedings against 18 former members of a Serb paramilitary unit who were charged with genocide and war crimes in the 1991 attack and subsequent occupation of the town of Lovas in Eastern Slavonia. Only one of the accused was present during the trial.

At year's end, approximately 21 individuals remained incarcerated on war crimes or related charges based on politicized or nontransparent trials held under the previous regime. For those who had exhausted their appeal procedures, there was no mechanism to review their cases other than seeking pardons."

See also "OSCE report: discrimination against ethnic Serbs in war crimes proceedings (2002-2004)" [Internal link]

Justice and police: reforms still needed to end discrimination against minorities (2006)

- Minority representation in the police is negligible except in Eastern Slavonia
- Government has not fully implemented provisions of the Constitutional Law on National Minority regarding representation in administration and judiciary
- There is a lack of experienced judicial officials in conflict-affected areas
- Enforcement of court decisions remain problematic, especially in the case of Serb owners of occupied properties
- Trust by minority communities in police performance continues to improve
- Some incidents are still not reported by victims of ethnically-related incidents
- The appointment of Serb police officers in the Danube region has not been accomplished

USDOS, 8 March 2006, Section 1.d:
"Minority representation in the police remained negligible except in Eastern Slavonia, and the government had not fully implemented the law requiring the hiring of minorities."

USDOS, 28 February 2005, Section 1.d:
"Some tension continued at reduced levels between ethnic Serb and Croat police officers, particularly in the Danube region. The Government appeared to fulfill its obligation under the 1995

Erdut Agreement to maintain proportionality in the numbers of ethnic Serb and Croat police officers in Eastern Slavonia; however, minority representation in the police outside Eastern Slavonia remained negligible, and the Government had not fully implemented provisions in the Constitutional Law on National Minorities that require the hiring of minorities by year's end. Approximately 3 percent of the force were minorities. Of the 277 police recruits that completed training during the year, 20 percent were women and ethnic minorities."

EU, 9 November 2005, p.22:
"In the Danube region, most of the provisions of the Erdut Agreement and the Government Letter of Intent have been implemented, with the important exception of proportional representation of Serbs in the judiciary""

ECRI, 14 June 2005, par.97:
" ECRI urges the Croatian authorities to take additional measures to ensure that the police do not engage in any reprehensible behaviour against members of minority groups. ECRI emphasizes the importance of setting up an independent investigative body empowered to investigate allegations of reprehensible conduct by police and, where necessary, to ensure that the suspects are brought to justice."

OSCE, 21 May 2002, p. 5:
"The problems faced by the judiciary, in particular judicial vacancies and the lack of experienced judicial officials, remain particularly acute in areas most directly affected by the conflict. A suggestion by the President of the Supreme Court to re-employ – albeit temporarily – judges who were summarily dismissed or retired in prior years has not yet been endorsed by the Government. Permanent re-employment of judges dismissed without explanation during the conflict, particularly those whose challenges were accepted by the Constitutional Court, would address both vacancy and capacity problems, and would correct inappropriate dismissals of the past.

A serious problem in the administration of justice continues to be the lack of enforcement of court decisions at all levels. On the local level, the lack of enforcement is frequently observed in the context of Serb owners of occupied property who encounter obstacles in their efforts to obtain and execute eviction orders."

OSCE, 21 May 2002, p. 15:
"A more stable security environment prevailed in most areas, allowing the [OSCE] Mission to reduce simple police monitoring during this reporting period [November 2001 – May 2002]. Local police continue to deal effectively with most ethnically-related incidents. Although trust by minority communities in police performance continues to improve, some incidents are still not reported by victims of ethnically-related incidents because of concerns about safety after reporting such incidents to the police. It is essential to increase awareness among some police officials of how a small number of ethnically-related incidents can disproportionately affect the perception of security and conditions for return. The police also have had to deal more with tendentious reporting by media outlets about incidents in ethnically-tense areas."

OSCE, 21 May 2002, p. 15:
"A formal decision by the Ministry of the Interior to reshape its recruitment and personnel management policies in order to achieve a demographic profile of the police that corresponds to that of the population has yet to be adopted. Both the Ministry of the Interior and the Ministry of Foreign Affairs have re-confirmed their commitment to the 1995 Erdut Agreement and the 1997 Letter of Intent, which provide minimum standards for minority representation in the Danube region. The appointment of Serb police officers and supervisors necessary for compliance with these agreements is continuing, but has not yet been accomplished."

U.S. DOS, 4 March 2002, sect. 1d:
"NGO and international observers in the Danubian region noted that police occasionally called ethnic Serbs to police stations for 'voluntary informative talks,' which amounted to brief warrantless detentions intended to harass Serb citizens."

For more information on the Constitutional Law on National Minority, its implementation and representation of national minority, see sections on Self-Reliance and participation, and Documentation

SUBSISTENCE NEEDS

Access to utilities

Lack of access to electricity is a serious obstacle to sustainable return (2006)

- The Serbian Democratic Forum (SDF) identified 300 Serb returnee villages without access to electricity network
- Advocacy efforts from the OSCE and the EU based on SDF report has led to inclusion of returnee villages into re-electrification plans
- Since 2004, an average of 25 per cent of the 300 villages have been reconnected with an additional 10 percent foreseen for 2006
- Remaining obstruction at local level slows down the process which might take 3 to 4 years before completion
- At the end of 2005, the MMATTD and the Croatian electricity company conducted a project of re-electrification of return villages
- 55 million HKN (EUR 7.5 millions) have been earmarked for re-electrification of such villages for 2006

OSCE, News in brief, 27 February 2006, p.3:
"Since mid-2004, with the help of data provided by the Serb Democratic Forum, a legal-aid NGO, the Mission has identified more than 300 Serb returnee villages without access to the electricity network more than a decade after the war. Through a series of analytical reports and field surveys, the Mission has increasingly advocated for the re-electrification of remote returnee villages, with both the Croatian Electric Company (HEP) and the Ministry for Maritime Affairs Tourism Transport and Development (MMATTD). Subsequently, at monthly meetings held between International Community principals and the Ministry, the Board Director of HEP reports on progress achieved in the villages identified by the Mission. For over a year HEP has included returnee villages in their re-electrification plans when the investment is proportional to the number of existing or expected households. On 13 and 14 February the Mission accompanied HEP officials on several field trips in Central Croatia as part of an effort to identify isolated villages and hamlets where the cost of reconnection would be disproportional to requirements. In such cases, alternative solutions are being sought, such as the provision of generators and solar panels. In some cases households are being relocated to less isolated areas. Since 2004, between 20 and 30 per cent of the 300 or so, villages identified have been reconnected with an additional 10 per cent foreseen in 2006. However, the process remains hampered by differing levels of obstruction still present in certain municipalities run by mayors opposed to the return process, and by structural and financial constraints facing the MMAATD and HEP at the central level. These factors could delay completion of the reelectrification process for another three to four years."

MMATTD, 9 February 2006, p.2:
"The Ministry and Croatian Power Supply Company (HEP) are implementing the program of electrification of approx. 50 places of return this year, primarily those with minority returnees – connections of 3,700 users to the low-voltage power network until the end of this year worth approx. KN 55 million. Beside this basic program, HEP had started the electrification of several additional places (Biljane Gornje and Biljane Donje), worth KN 7.855 million provided by HEP. Out of the overall number of connections approx. 65% have been realized until the end of the last year."

OSCE, 10 November 2005, p.9:
"In some refugee return areas, the persistent lack of access to basic infrastructures such as electrification and water supply undercut dignified living conditions for the returning population. The Government has increased its efforts, both operational (…) and financial, in the re-electrification of a progressive number of minority return villages that used to be connected to the power grid before the war. At present, the Mission notes that the complete re-electrification of the minority return areas might still take a decade unless more extensive financial commitments are undertaken by the Government. Similar financial and policy commitments are necessary for the adequate establishment of the water supply network to minority return villages (…).

At the end of 2005, the Ministry for Maritime Affairs, Tourism, Transport and Development (MMATD) and the Croatian Electric Company (HEP) are conducting a joint project of electrification of minority return villages following requests from the OSCE and EC delegation. In 2005, 62.5 million HRK was allocated to the reconstruction of the low voltage network for 3,700 beneficiaries, to be completed by the end of 2005. The HEP has announced the intention to earmark 40 million HRK for the re-electrification of minority return villages for 2006 which should be adequately integrated by additional funds coming from the MMATTD."

OSCE, 21 November 2004 p.13:
"The Government announced in September to the Mission and its International Community partners a plan to sign an agreement with the State electricity company (HEP) to carry out an ***electrification programme for minority villages*** or villages having return potential. The lack of access to utilities and infrastructure in minority return areas is one of the most powerful obstacles to sustainable return. The project relies on funds provided by the European Investment Bank (EIB) for regional development and is earmarked in the 2004 Croatian State Budget**.** The Government's initiative followed the Mission's report, *Lack of Electricity Supply in Minority Returnee Villages*, shared with the relevant Croatian authorities and the State electricity company (HEP) in early August (…)."

See also in sources below:
Shadow report on the implementation of the framework Convention for the Protection of National Minorities, Centre for Peace, 31 August 2004, p.14 (some returnees are requested to pay electricity bill of the temporary occupant to obtain reconnection to electricity)

List of return locations in areas of special state concern without electricity, Serbian Democratic Forum, September 2005

Shelter

A significant number of IDPs still live in collective centres (2005)

- 2200 IDPs live in collective centres outside the Danube region
- Majority of those in collective centres are among the most vulnerable individuals facing particular obstacles to return
- Many residents of centres are elderly or others depending on provision of state services to survive
- RSG Walter Kälin recommends consultation with residents to find adequate durable solutions including social housing or specialized institutions
- Transport to place of return should be provided for those who can and wish to do so

UN CHR, 29 December 2005, par.18, 38, 48:
"18. As of 30 April 2005, (…) [t]he total number of IDPs in Croatia was 6,934, of whom 5,256 were ethnic Croatians and 1,678 ethnic Serbs. Two thousand one hundred and ninety IDPs lived in collective centres, 3,066 were in private accommodations and 1,678 displaced persons were in the Croatian Danube region either in collective or private accommodations. (…)

38. For the most part those persons who wished to return and were able to return have done so, while those unable to do so form the bulk of the remaining persons. At the accommodation centres he visited, the Representative observed that few residents remained in centres constructed for much larger capacities. While in certain cases it was contended that individuals did not wish to leave the accommodation centres on account of the provision of services on the part of the State received there, the majority of persons remaining face considerable obstacles to return. Commonly, these are persons with particular vulnerabilities who depend on provision of State services such as housing, food and medical treatment. In particular, these are persons, often elderly, without known family members, conflict-traumatized individuals, the sick and female-headed households. In certain cases, persons wish to return or have resolved status issues, but are unable to in fact return on account of, for example, an absence of affordable transport. In the view of the Representative, it is no longer appropriate that the accommodation centres remain as catch-all facilities which, in practical terms, hold these groups of persons for what appears to be an indefinite future. Durable solutions need to be found for these especially vulnerable persons. (...)

48. A relatively small number of IDPs still live in collective centres, many of whom are particularly vulnerable. In this regard, the Representative makes the following recommendations:
(a) The Government should ensure that all persons still accommodated in collective centres are consulted and provided realistic alternatives concerning their future status, with an identification of their particular needs and the responsibilities of specific local government agencies to meet them;
(b) For particularly vulnerable persons such as the elderly without family dependants, traumatized and sick persons or female-headed households, the central Government should ensure that public specialized facilities, such as social housing, are made available to them, whether in their current area of residence or in the areas from which they fled;
(c) For persons who have identified places of return but are without the means to travel there, the Government should promptly procure the necessary transportation. For persons who have genuine alternatives in terms of housing but remain in accommodation centres from a desire to receive services that they would reasonably be in a position to provide for themselves, should be returned to the relevant areas. As a result, the definitive closure of the accommodation centres should be possible in the medium-term."

Vulnerable groups

Lack of programmes to support women victims of war, displaced and returnees (2006)

Women's network in Croatia, January 2006, p. 31-32:
"Within the population of war participants, victims, refugees and returnees, the specific interestsand needs of women have not been recognised at all. The accent is entirely on the military war participants, who have become a significant segment of activity for the Ministry of the Family, Veterans' Affairs and Intergenerational Solidarity. The consequences of such "denial" are multiple and dangerous to the entire society. There are no special programs or care for women victims of the war violence, women refugees and returnees. No research is being conducted,

there is no awareness of the relationship between militarism, nationalism and gender issues, no awareness of the link between increased violence and war consequences. Women are not included in peace negotiations, national initiatives or activities for normalisation of the regional circumstances. They are not a part of the peace process, although they have been behind a number of peace initiative and dialogues. There has been no research of, nor policy for alleviating the consequences of sexual violence against women during the war.

DEMANDS:

a.. Data collection and analysis of the consequences of war on the female population in Croatia, the state of women war victims' rights in the Republic of Croatia should be part of the Government Office for Gender Equality programmes and priorities;

b.. Collection of information and research of the situation and specific needs of women refugees and returnees; financial and organisational support of women's organisations on the war afflicted areas; specific assistance projects for women war victims, refugees and returnees.

c.. Croatian Employment Office will, in implementing employment measures give priority to the needs of women returnees. To this end their local offices shall be given appropriate access to the information on active measures in employment policies.

d.. The Government Office for Gender Equality shall complete guidelines to the bodies of local and regional government on recognising the special needs of women's NGOs in the areas of return, especially in the way of securing quarters.

e.. Including women in all public and political activities concerning regional co-operation, sustainable peace and security concept that is beneficial to women.

f.. Implementation and institutional assistance to the projects ofdocumenting, commemorating, truth and peacemaking; the importance of women participation

g.. Acquainting and continuous informing of the public on jurisdiction and activities of the ICTY and the International Criminal Court in Rome; prosecution of the war crime of sexual violence against women, analyses of ICTY and national courts' decisions; comparative analysis of war crime convictions of women versus those of men;

h.. Additional education on mines and other explosive devices,

i.. Securing continued education, further education or re-education of all interested women war victims, especially victims of mines and civilian victims;

j.. Systematic inclusion of women in peace missions in which Croatia is taking part as a UN member, systematic education of all members of such missions on women's rights and needs in war afflicted areas;

k.. Furthering knowledge on international humanitarian legislation and human rights, especially on preventing violence against women in war and armed conflict; introducing a study of international humanitarian legislation with emphasis on women's human rights, into the Croatian Military Academy.

l.. Securing greater presence of women in the Ministry of Defence (MORH) and Armed Forces of the Republic of Croatia (OSRH)

• Position of Non-Governmental Organisations for Promotion and Protection of Women's Human Rights

ACCESS TO EDUCATION

General

Eastern Slavonia has the highest percentage of students attending minority language classes (2006)

- Croatian legislation entitles members of national minorities to receive education in their native language and script
- Attendance in minority classes often leads to separation of children along ethnic lines
- Need to balance the right to education in minority language and integration of minorities within the country
- Eastern Slavonia has highest concentration of national minorities in Croatia amounting to 20%

EU, 9 November 2005, p.21
"As regards the use of the Serbian language and script in schools, according to a recent Council of Europe report there is a degree of legal uncertainty in the Croatian legislation concerning the conditions and procedures for the implementation of educational models envisaged in the Croatian Law on Education in Languages and Scripts of National Minorities."

ECRI, 14 June 2005, p.20-21
"ECRI notes that Croatian legislation allows members of national minorities, including the Serb minority, to receive education in their native language and script. ECRI welcomes the efforts made by the Croatian authorities over the last few years to implement these provisions. However, it notes that there are some public schools in the town of Vukovar where ethnic Croat children and ethnic Serb children receive exactly the same education but in separate classes and separate areas of the town. The authorities acknowledge that this is so and explain that it is the outcome of a request from the Serb community itself, which wants Serb children to receive education in the Serbian language. ECRI understands that the authorities wish to meet the Serbs' wishes, but is concerned at the method used, which might result in all contact being broken off between pupils within the same public school on the sole basis of their ethnic origin. Some NGOs, as well as representatives of the Serb community, have stated that opting for identical but entirely separate classes in the same school is a solution that may in the long term prove detrimental to relations between the two communities."

OSCE, 3 March 2006
Interview with OSCE Croatia Head of Mission asked about his opinion on separation of children at school in Eastern Slavonia:
"I spoke with Independent Serb Democratic Party (SDSS) representatives in Vukovar and they told me that, naturally, Serbs in Vukovar did not want apartheid, they did not want their children separated from Croat children, but they did request that their right to education in Serb language and script be respected, a right also exercised by Italian or other minorities in Croatia."

OSCE, Courier, December 2005
"Recognition of the right to education in minority language and script within the CLNM was commended, although the need for minorities to learn Croatian language and script was also stressed."

OSCE, NIB, 13 February 2006
"Further encouraging developments include the Government appointment of six minority education advisors - two for the Serb minority and one each for the Italian, Hungarian, Czech and Slovak minorities – and an obligatory annual survey that each school must conduct in order to evaluate parents' expectations regarding education in a minority language and script."

OSCE, Courier, December 2005
"The Vukovar-Sirmium (V-S) and Osijek-Baranja (O-B) counties are endowed with the highest concentration of national minorities in Croatia, making up nearly 20% of the V-S population and 13% of the O-B County. So it comes as no surprise to learn that these two counties have the highest percentage of students attending classes in minority languages. Of the 22 minorities in Croatia, seven practice education in respective minority languages, involving some 11,000 students. For a better understanding of minority education issues, FO Vukovar is currently working on an *Education Catalogue,* in close co-operation with county education officials both in Vukovar and Osijek. The Catalogue will group minority education schools geographically, organizationally, statistically, as well as according to models of teaching and languages. It is a little known fact that the Croatian education system offers three models of education in minority language and script. Model "A" means teaching in the language and script of national minorities, in addition to the compulsory teaching of Croatian language. The "B" model provides for social subjects in minority language and science subjects in Croatian. Finally, model "C" implies teaching in Croatian with minority language nurturing classes. On the whole, Serbs and Hungarians follow models "A" and "C"; Germans model "A"; while Slovaks, Ruthenians and Ukrainians have opted for model "C". Notwithstanding the positive results of Croatia's education-related laws, the OSCE maintains that the current state of affairs in some schools in this region could possibly lead to a certain form of self-isolation, with minority children remaining divided. Therefore, the question of balancing legal provisions on the one side, and integrating minority communities into society on the other, remains to be solved.

Progress towards respect of minority rights at school (2006)

- Conference on implementation of the CNLM reviews progress on minority rights
- Introduction of a unique history books in all Croatian schools in September 2005 is a major achievement
- New history book covers the period from the 1991-1995 war until present
- Ten new textbooks for primary schools have been translated into Serbian and in Cyrillic script for subjects such as geography, nature and society and history for the school year 2005-2006.
- History textbooks ends a moratorium on history teaching in Serbian language classes introduced in 1997 in the Croatian Danube Region

OSCE, Courier, December 2005
"(*A*) conference (*was*) standardised by the Mission on the Constitutional Law on the Rights of National Minorities (CLNM). Three years since its adoption, the conference was held in Zagreb on the 18th of October to review the implementation of the CLNM – its achievements and areas for improvement. (…)

Recognition of the right to education in minority language and script within the CLNM was commended, although the need for minorities to learn Croatian language and script was also stressed. The agreement between the Education Ministry and Serb representatives to introduce a common history textbook for all pupils was highly praised. Concern was expressed over the

physical separation of Serb and Croat pupils in some schools in Eastern Slavonia. It was recommended that this should be ended as quickly as possible."

OSCE, NIB, 13 February 2006
"With the introduction of the same history books in all Croatian schools this year, the Ministry considers the problem of a contested history curriculum resolved. (…) A supplement for history teachers will be finalized after the addition of remarks from the Croatian History Institute, the Faculty of Philosophy and the Croatian Academy of Sciences and Arts."

EU, 9 November 2005, p.21
"As regards *education*, some progress was made when following two years of discussions since the expiry of a moratorium on history teaching in Serb language classes in Eastern Slavonia, a Ministry of Education-appointed Commission of historians including minority members concluded work on a history supplement covering the period from the 1991-95 "Homeland War" until present. This history supplement was introduced as from the school year starting September 2005. Unfortunately, its introduction has not been short of controversy and led to negative reactions among the Croat majority community. In August 2005, the Ministry of Science, Education and Sport and representatives of the Serb minority agreed on the use of standardized history textbooks for all children regardless of their ethnicity as from the school year 2006/07. Implementation of these new provisions will need to be carefully monitored to ensure that minority issues are adequately covered in national curricula."

OSCE, NIB, 13 September 2005
"A moratorium on history teaching in Serbian language classes in the Croatian Danube Region had been introduced in 1997 because history teachers found the content of history textbooks inadequate and partial, and the language offensive to the Serbian minority. The Ministry of Education also informed the political representatives of the Serbian community that ten new textbooks for primary schools had been translated into Serbian and in Cyrillic script for subjects such as geography, nature and society and history for the school year 2005-2006.
The Mission notes that in his February visit, the High Commissioner on National Minorities offered assistance in the development of a curriculum reflecting the richness and diversity of the society as a whole."

OSCE, 18 November 2005, p.12-13
"The implementation of legislation related to minority education needs further attention, in particular in regard to the training of teachers and provision of teaching materials in minority languages. The physical separation between Croat and Serb pupils in some schools in Eastern Slavonia remains an issue of concern, however the Ministry of Education is preparing a plan to address the problem and the local authorities are beginning to express more understanding about the negative consequences of creating segregated educational conditions."

Obstacles to education

In Eastern Slavonia children go to school in separate classes (2006)

- Inter-ethnic relations at school in Eastern Slavonia are still a source of tensions
- 200 Croat parents protested against the appointment of Serb teachers in a school near Vukovar
- Concern over physical separation of children along ethnic lines was expressed by the High Commissioner on National Minorities

- OSCE Head of Mission considers such situation as unsustainable
- Ministry of Education's plan provides for mixed kinder gardens and primary schools

OSCE, NIB, 13 September 2005
"Issues affecting inter-ethnic relations at a school in Eastern Slavonia have been in the spotlight in the run-up to the start of the school year 2005-2006. Media reported that on 5 September, around 200 Croat pupils boycotted the first school day at the Dalj primary school, near Vukovar. A few days earlier, their parents had sent a petition to the Ministry of Education opposing the decision of the School Principal to assign three ethnic Serb teachers to their children because these teachers had allegedly participated in the war against Croatia in the 1990s. In a meeting with Croat parents, the teachers and the School Principal, representatives of the Ministry of Education decided to re-assign the three Serb teachers to different classes in the same school or other schools.

The physical separation of Croat and Serb pupils in some schools in Eastern Slavonia has been a topic of increased interest for the Mission since the last visit of the High Commissioner on National Minorities (HCNM) in February. During his meetings with top Croatian officials, the High Commissioner expressed concern over the physical separation of pupils along ethnic lines and emphasized the need to integrate national minority students in the Croatian society, while ensuring the right of minority students to minority language education. When he visited Eastern Slavonia and met with local authorities at the end of August, the Head of Mission continued to stress the importance of education issues. The physical separation is particularly evident in Vukovar where Croat and Serb pupils attend classes in separate buildings in the kindergartens and in some secondary schools, or have school in separate shifts. The result is the same: Croat and Serb pupils are deprived from the opportunity to meet and interact."

OSCE, 3 March 2006
Interview with OSCE Croatia Head of Mission:
"Eight years since its peaceful re-integration, Croat and Serb children still attend separate elementary and high schools in Vukovar. Do you consider such a situation normal and sustainable?
This issue causes me great concern. During my visit to the Croatian Danube Region, I talked to different officials, from the Mayor of Vukovar to Serb minority representatives, students, school principals, and none of them advocated the separation of children along ethnic lines. I presented my belief that it was necessary to avoid a system of parallel education of children of Croat and Serb nationality, because such a system could create a divided society. Today, children in Vukovar go to different kindergartens and, after that, to different schools. This parallel system could lead to the creation of two separate identities - two separate histories are taught and children are taught to have two separate visions of the world that surrounds them. Serbs and Croats do not want mixed marriages, they frequent separate Croat and Serb cafes, restaurants and clubs. We consider this situation unsustainable. (…)

When can we expect the establishment of the first ethnically mixed class in Vukovar?
In agreement with representatives of the Croatian government, it was decided that in the course of this month a working group would be formed to come up with proposals and suggestions, so that by the end of this school year, a specific plan for the following school year would be in place."

OSCE, NIB, 13 February 2006
"The Ministry of Science, Education and Sport has given full backing to a Mission project designed to encourage mixed primary schools in Eastern Slavonia. The project envisages the joint participation of Croat and Serb children in art, literary and sports contests. The Ministry is willing to provide expert assistance wherever necessary and send written recommendations to the schools in question encouraging full participation in the project. (…) Currently, distinct

facilities or a shift system serve to separate these children. The Ministry has subsequently updated the Mission about plans aimed at progressively phasing out the current arrangement. Following discussions between the Ministry and local authorities in Vukovar-Sirmium County, it was agreed that ethnically mixed kinder gartens will be promoted locally among parents. Efforts will also be made to rearrange the shift system in primary schools according to grades not ethnicity. The Ministry is prioritizing the construction of a new economic secondary school in Vukovar, which should make more space available for mixed education. Strong Ministry support for the new, mixed Polytechnic College in Vukovar was also expressed."

ISSUES OF SELF-RELIANCE AND PUBLIC PARTICIPATION

Self-reliance

Members of minority groups face discrimination and remain under-represented in the administration and the judiciary (2005)

- Constitutional law on the rights of national minorities is not implemented as regards participation of minorities in state administrative and judicial bodies
- Figures confirm under-representation of national minorities in administrative and judicial bodies
- Numerous example of employment discrimination against national minorities have been reported
- Discriminatory stereotypes prevent recruitment of minority members in legal profession
- Parliament recently adopted legal provisions to implement the CLNM's minority representation guarantee
- Discrimination occurs when passing a competitive examination for entry into the civil service and when a person is to be reinstated in their post following unfair dismissal

COE, 28 September 2005:
"The implementation of the Constitutional Law on the Rights of National Minorities has been regrettably slow in some key areas. Shortcomings are particularly manifest as regards the participation of persons belonging to national minorities in the state administrative and judicial bodies, where the monitoring of the current situation and the implementation of the legal guarantees are yet to be developed. Also, shortcomings in the effective participation in economic life continue to be a problem for many persons belonging to national minorities."

MRG, 1 July 2005, p.3:
"The Constitutional Law on the Rights of National Minorities (CLNM) guarantees the right to proportional representation of minorities in the state administration and judiciary. However, minorities remain under-represented in these areas. Minorities constitute 7.5 per cent of the Croatian population, but only 4.9 per cent of those employed by judicial bodies are from minorities (ethnic Serbs make up only 2.4 per cent of judicial staff). (…) In 2003, of 66 judges employed by judicial bodies, 65 are ethnic Croats, and all state attorneys are ethnic Croats.23 Serbs make up only 2.6 per cent of civil servants and employees in the courts and state prosecutor's offices.24
'Some ethnic Serbs who applied for a post for which they were fully qualified did not obtain it, even where no one else met the requirements ... the post remained vacant ...it would appear that ethnic Croat candidates are given preference over better-qualified ethnic Serb candidates...' 25

'My husband applied ... for posts in the judiciary but all of his applications were rejected or job interviews were cancelled.... Despite his skills and experience [a graduated jurist with 15 years' experience as a judge] my husband can't get a job all these years since our return [1997].' (Interviewee from Glina)"

OSCE, 21 November 2004, p.17:
"Despite the CLNM guarantees, significant ***under-representation of minorities in the judiciary and State administration*** continues. Government information as of October 2003 indicates that 95 per cent of all judicial personnel are Croats, while 2.5 per cent are Serbs (compared with 4.5

percent of the total population) and 2.6 per cent are from other national minorities51 (compared to 2.9 per cent of the total population). National minorities are also under-represented in the police, with all minorities combined comprising approximately four per cent of police officers. Serbs comprise 2.6 per cent of police officers (most are posted in the Danube region) and they constitute 1.4 per cent of those in managerial positions. However, in the most recently completed basic training course at the police academy in July 2004, all minorities combined constituted 8.3 per cent.

To address this under-representation, the Mission and representatives of the OSCE High Commissioner on National Minorities (HCNM) began discussions in October together with the Government and minority representatives regarding the development of prospective plans for ***recruitment and hiring of qualified minorities*** in the judiciary and State administration. The Ministry of Justice has convened a working
group composed of Government officials and NGO representatives to propose measures for combating all forms of discrimination, including against national minorities. The Government has announced that a National Plan for Combating All Forms of Discrimination should be approved by the end of 2004. The HCNM will continue these discussions during a visit expected in January 2005.

Access to the legal profession continued to be blocked to some Serbs, not only those who served as functionaries in the "occupying authorities". In July, the Constitutional Court invalidated for the second time a decision by the Bar Association denying membership to a Serb attorney who went to Hungary for more than six months in 1991-199252. The Bar Association had based its denial on the lack of "dignity to
practice law" and concluded that leaving the country during the conflict created a permanent bar to practicing law. The Constitutional Court reprimanded the Bar Association and ordered it to reconsider its negative decision. On the same grounds, the Bar Association also continued to deny membership to a Serb attorney who served in the judiciary as well as a private company during the so-called "Republika Srpska
Krajina."

OSCE, News in Brief, 22 November 2005:
"Adoption of legal provisions related to the appointment of judges and other judicial personnel has been delayed in Parliament pending further negotiation between national minority MPs and the Government. Specifically, the Parliamentary Committee for Human Rights and National Minorities has proposed amendments to the Government's drafts of the Law on Courts and the Law on the State Judicial Council in order to implement the guarantee of appropriate levels of minority representation in the judiciary contained in Article 22 of the Constitutional Law on the Rights of National Minorities (CLNM). Under-representation of national minorities, particularly Serbs, in the judiciary has been highlighted on numerous occasions. A lack of implementation of this CLNM guarantee was noted at the conference examining three years of CLNM implementation recently organised by the Mission [See Fortnightly No. 19/2005]. The European Commission included implementation of this guarantee as a key priority in the 9 November draft EU Council Decision on the Accession Partnership with Croatia, noting the need for the amendment of relevant legislation in its Progress Report issued on the same date. Finally, in September, the Committee of Ministers of the Council of Europe in its Resolution on the implementation of the Framework Convention for the Protection of National Minorities called on the Government to pay particular attention to the participation guarantee. Parliament recently adopted legal provisions to implement the CLNM's minority representation guarantee in state administration. Namely, the Law on Civil Service as well as the Law on Local and Regional Self-government require state bodies to develop employment strategies for ensuring appropriate levels of minority representation. Croatian law already provides employment preferences for veterans and their family members with regard to state employment."

ECRI, 14 June 2005, par.125-129:
"ECRI notes that Article 22-2 of the Constitutional Law on the Rights of National Minorities provides that members of national minorities shall be represented on judicial bodies in a manner proportional to their representation within the total population. Paragraph 4 also provides for the obligation to give priority to members of national minorities, under conditions of equality, when it comes to filling posts on judicial bodies. However, ECRI regrets that no practical positive measures have been taken to date to improve the representation of national minorities on judicial bodies. National minorities, especially the Serb minority, therefore remain under-represented. The Croatian authorities have indicated that they plan on adopting a series of measures intended to improve the situation in this area, particularly within the framework of the National Strategy for the Elimination of All Forms of Discrimination and judicial reform. As regards the dismissal of persons who are not ethnic Croats from judicial bodies, the authorities have informed ECRI that persons wishing to be reinstated can ask the Ministry of Justice to reconsider their cases, which the ministry does with great care. They have indicated that a large number of persons who had been dismissed from their posts, including ethnic Serbs, have been reinstated. However, ECRI is concerned at the numerous reports from NGOs and international organisations that ethnic Serbs still come up against insurmountable difficulties when it comes to reinstatement in their posts on judicial bodies or access to other posts even when they have all the required qualifications. On this point, see also below, “Serbs: access to employment and education”.

Recommendations:
ECRI strongly encourages the Croatian authorities to take all the necessary measures to ensure that the composition of judicial bodies reflects the ethnic diversity of the population as a whole, by implementing without delay Article 22 of the Constitutional Law on the Rights of National Minorities. ECRI recommends that the Croatian authorities investigate any allegations of racial discrimination concerning access to posts on judicial bodies, especially against ethnic Serbs, and take the necessary measures to put an end to any discriminatory practices identified."

ECRI, 14 June 2005, par.73-75:
“ECRI notes with concern that there are many allegations of discrimination against ethnic Serbs regarding access to public sector jobs. These allegations concern both ethnic Serbs who sought refuge elsewhere during the armed conflict and have returned and those who remained in Croatia during that period. The instances of discrimination reported by several sources occur primarily, but not exclusively, in the war-affected areas. Discrimination apparently occurs at several levels, both when it comes to passing a competitive examination for entry into the civil service and when a person is to be reinstated in their post following unfair dismissal. Some ethnic Serbs who applied for a post for which they were fully qualified did not obtain it, even where no one else met the requirements for the post. In such cases the post remained vacant. In other cases it would appear that ethnic Croat candidates are given preference over better qualified ethnic Serb candidates. ECRI notes that the problem of discrimination has been reported in particular regarding access to teaching posts, which has sometimes prompted the intervention of the Ombudsman to remedy the situation- in some cases successfully.

Recommendations:
ECRI strongly recommends that the Croatian authorities ensure that there is no discrimination against ethnic Serbs in access to public sectors jobs. It encourages the authorities to conduct investigations when there are allegations of discrimination and to take all the necessary measures if those allegations are confirmed. It also stresses the importance of implementing the constitutional and other provisions providing for representation of the members of national minorities, including ethnic Serbs, in public services such as the police, education and the judicial service.”

See below sources: OSCE, Status report No 17, 10 November 2005, p.11-12 and Stability Pact, MARRI-DRC, Overview of access to rights in Croatia, pp.25-26 and 35-36

Ethnic discrimination on the labour market (2003-2004)

- Despite the enactment of the Constitutional Law on the Rights of Minorities in 2002, there has been little progress in employment discrimination against Serb returnees
- The European Commission has called on the Croatian government to improve social and economic conditions in return areas (2003 Stabilisation and Association Report)
- Ethnic affiliation has been a key factor in employment practices, reflected in the degree to which state, municipal, or town-run services and institutions employ Serb returnees
- A number of returnees told Human Rights Watch, that they were explicitly told that they could not get a job because of their ethnicity
- In most areas of return, virtually no Serbs are employed in health and child-care centers, schools, post offices, courts, police, power-supply companies, customs services, or the local administration
- A bleak economic situation and high unemployment in the post-war period has undermined the sustainability of return and provided little incentive for return, particularly of young people
- In Knin, out of 30,000 current inhabitants only 3,000 held paid positions in 2001

HRW 13 May 2004, pp. 12-13:
"The European Commission's Stabilisation and Association Report of 2003 stressed the need for the Croatian government to create social and economic conditions aimed at improving the climate for returns and the acceptance of returnees by receiving communities.(…) There has been little or no progress in tackling the persistent employment discrimination documented by Human Rights Watch in its September 2003 report.(…)In most areas of return, virtually no Serb returnees are employed in state, municipal, or town-run services and institutions, such as health centers, schools, childcare centers, post offices, or powersupply companies.

The situation is identical in the judiciary, the police, and the state administration, despite the enactment of the Constitutional Law on the Rights of National Minorities in December 2002, which mandates proportional representation of minorities in these areas. [3] Those few Serbs who do manage to get employment in state or municipal institutions are usually teachers, nurses, or policemen who were displaced within Croatia (in the area of Eastern Slavonia, which remained under Serb control throughout the war), and were already employed there.[4]For the refugees, returning from Serbia and Montenegro and elsewhere, finding employment in public institutions or the judiciary remains all but impossible.

Serb returnees have been able to find some work in private businesses owned by Croat entrepreneurs, such as a sawmill and a brickyard in Gvozd,(…) a supermarket and a restaurant in Korenica,(…) screw factory in Knin,[7] fish processing factory in Gracac,(…) and the factory producing sparkling-water in Lipik.(,..) Even in those businesses, the number of employed returnees is in the dozens rather than hundreds. Many among them are employed as seasonal workers only."

[Footnote 3] The absence of Serb policemen in areas in which Serbs make half the population or more is particularly striking. Examples include Vojnic, Korenica, and Donji Lapac. Human Rights Watch interview with a representative of the Norwegian Helsinki Committee, Sisak, February 19, 2004 (Vojnic); Human Rights Watch interview with representatives of the Serbian Democratic Forum office in Korenica, February 19, 2004 (Korenica); Human Rights Watch telephone interview with an OSCE official in Korenica, February 20, 2004 (Donji Lapac). The situation is identical in areas such as Knin and Pakrac, where Serbs now make up less than half the population, but have returned in their thousands. Human Rights Watch interview with

representatives of the Serbian Democratic Forum office in Pakrac, February 17, 2004; Human Rights Watch interview with representatives of the Serbian Democratic Forum office in Knin, February 23, 2004.
[Footnote 4] At the end of 2003, two Serb policemen from Vukovar transferred to Gvozd. Human Rights Watch interview with a lawyer from the office of the Serbian Democratic Forum in Gvozd, February 19, 2004. Similarly, a Serb judge from Vukovar recently applied for the vacated post of a judge in her hometown of Korenica; the process of selecting the judge is still ongoing, but the Serb candidate received a positive opinion from the competent judicial council in the Licko-Senjska county to which Korenica belongs. Human Rights Watch telephone interview with an OSCE official in Korenica, March 24, 2004.

HRW September 2003, pp.53-55:
"One of the principal impediments to return lies is the bleak economic situation in the country. The unemployment rate is around 20 percent. A war-ravaged economy and post-war crony capitalism have made Croatia a country in which 'preconditions for transformation of the economy into a viable one were better in 1990 than in 2000.' (…)

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

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

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

Boja Gajica (53), a Serb returnee to Knin, applied eight times between 1996 and 2000 for the position of nursing attendant, for which she has an associate degree. (…) Each time a Croat candidate, with lower or different qualifications, was selected. (…) On one occasion, the manager of a child-care center allegedly told Ms. Gajica that she would be afraid of the local soldiers and policemen if she employed a Serb. (...)

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

In some instances it is clear that ethnic affiliation is the determining factor in employment practices. In Sibenik county, to which Knin belongs, the county prefect for educational issues has

allegedly made public statements that Serb teachers would not get jobs (allocated by the county council). (…) An unemployed Serb graduate in economics, who applied for fifteen vacancies in Western Slavonia 1995-97, told Human Rights Watch that at the job interviews he was often asked whether he took part in the Homeland War as a defender. (…) As it was overwhelmingly the Croats, and not the Serbs, who fought in the Croatian army against Serb rebels, giving priority to defenders clearly discriminates against Serb applicants.

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

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

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

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

See also: "Croatia - Economic Vulnerability and Welfare Study" World Bank, 18 April 2001 [Internet]

Access to full pension remains difficult for ethnic Serbs (2005)

- Ethnic Serbs have difficulties to validate documents issued by "Republika Srpska Krajina" during the war
- Law on Convalidation provided for recognition of such documents but a short deadline for application and uneven implementation have only allowed a few people to benefit from the law
- This situation constitutes an obstacle to return and deprives returnees from a needed income
- EU suggests that adverse decisions made on the basis of applications submitted after the deadline expired should be reviewed.

EU, 9 November 2005, p.29:
"The validation of documents issued by the so-called "Republika Srpska Krajina" (RSK) is still an outstanding issue. "Convalidation" is necessary for recognition of working years during the 1991-1995 period and, thus, pension rights. The Government accepts the principle that working years should be "convalidated" and pension rights ensured. However, there are a number of specific issues to be resolved. The original deadline for requests for convalidation expired already in 1999 and needs to be reopened for the many potential beneficiaries who could not reasonably have been expected to apply by then, a large number of whom were, and still are, abroad and, thus, could not submit applications. Moreover, all adverse decisions made on the basis of applications submitted after the deadline expired should be reviewed."

ECRI, 14 June 2005, par.41-42:
"ECRI is concerned at reports that ethnic Serbs who came under the authority of the "Republika Srpska Krajina" from 1991 to 1995 still face problems and administrative barriers when it comes to validating official documents issued during this period, These difficulties have a major impact on the economic and social rights of the individuals concerned, in particular on persons seeking recognition for years worked during this period in order to draw pensions. The failure to extend the official deasline beyond April 1999 has prevented many people from applying for validation, and even those who did apply in time are having trouble provind their entitlement to a pension.

Recommendations:
ECRi reiterates its recommendation to the Croatian authorities to take all the necessary measures to resolve the problems facing ethnic Serbs as regards the implementation of the 1997 Law on Convalidation."

OSCE, 7 July 2005, p.6:
"In addition to housing problems, other factors represent disincentives to minority refugee return. Lack of jobs and economic opportunities, including discrimination against minority members in return areas, represent a major impediment for sustainability of return. Appropriate administrative adjustments are still required to redress the persistent denial of recognition of ***working years*** (for pension benefits) in the former Serb controlled areas, a practice which is contrary to the Law on Convalidation of 1998. Administrative measures are also needed to address the difficulties that mostly displaced Croatian Serbs, who lost the status of permanent residence for foreigners after leaving the country during the armed conflict, still face to ultimately acquire Croatian citizenship."

For further information on the issue see: Stability Pact, MARRI-DRC, Overview of access to rights in Croatia, p27-29 and Centar Za Mir, Shadow report on the implementation of the

framework convention for protection of the rights of national minorities in the republic of Croatia, August 2004

See also section on Documentation and Citizenship, and Patterns of return and resettlement/ Obstacle to return

See also section Patterns of return and resettlement/ Obstacles to return

Participation

Progress in implementation of the Constitutional Law on the Rights of National Minorities although certain issues remain to be addressed (2006)

- OSCE organized a conference to review implementation of the CLNM in October 2005
- Collating of voter list should be reformed to address low minority turnout and update census data for election of minority representative
- Representation of minority group members in Parliament and local councils was assessed as a positive achievement of the Law
- Clarification of basis for calculation of minority quotas in local assemblies is needed
- Right to education in minority language and script as well as need for minority to learn Croatian language and script was stressed
- Government did not take updated voter lists into account in calculating the number of elected minority representatives

OSCE, Courrier, December 2005:
"(a) conference (was) organized by the (OSCE) Mission on the Constitutional Law on the Rights of National Minorities (CLNM). Three years since its adoption, the conference was held in Zagreb on the 18th of October to review the implementation of the CLNM – its achievements and areas for improvement. (…) Chairman of the Parliamentary Committee for Human Rights and the Rights of National Minorities, Furio Radin, stressed that the autonomy of minority MPs in Parliament was one of the main achievements of the CLNM. He nevertheless advocated a specific election law and transparent voter lists to address the deficiencies in the model of electing minority representatives and the low minority voter turnout. "The process of collating voter lists should be reformed, so that they can serve the purpose of updating census data for electing minority representatives, in line with the Constitutional Law," said Radin. (…)
The right to specific minority representation in Parliament and to proportional representation in local councils and assemblies was assessed as a positive achievement of the Constitutional Law. The participants raised the need to clarify, as part of electoral reform, the basis for calculating minority quotas in local assemblies. Positive marks were also given to the establishment of consultative and advisory mechanisms between local authorities and minorities, through the creation of local Councils of National Minorities (CNMs) and a national Council for National Minorities. The discussion identified that more attention in the future needed to be given to the status, functioning, financing and capacity-building of the CNMs. Participants stressed that particular attention was needed to ensure minority representation in state administration and judicial bodies, especially at local levels and in return areas. They welcomed the recent adoption by Parliament of a law on local self-government addressing the issue.

Recognition of the right to education in minority language and script within the CLNM was commended, although the need for minorities to learn Croatian language and script was also

stressed. The agreement between the Education Ministry and Serb representatives to introduce a common history textbook for all pupils was highly praised. Concern was expressed over the physical separation of Serb and Croat pupils in some schools in Eastern Slavonia. It was recommended that this should be ended as quickly as possible.

All participants agreed that the public broadcaster, HRT, covered minority issues well. However, they recommended more focus on the benefits of minority integration and on the problems they faced."

See also in sources below: "Constitutional Law on Rights of National Minorities, three years later", Serbian Democratic Forum, Presentation at the OSCE Conference, 18 October 2005

Procedure to determine representation of minority members in local assemblies needs to be clarified (2006)

- Voter lists have not been taken into account to calculate the number of minority representatives
- Difference between the 2001 census used to calculate minority representatives and 2005 voters list is considerable
- Use of voter lists would have allowed greater minority representation
- National Council of National Minorities claims that CLNM has been violated

USDOS, 8 March 2006, section 3:
"The law requires that ethnic minorities be represented in local government bodies if the census shows that a minority group constitutes at least a specified percentage of the local population. While authorities generally implemented this provision, the government did not take updated voter lists into account in calculating the number of elected minority representatives, as is also required by law. Use of the voters lists would have resulted in greater minority representation due to the return of refugees since the 2001 census.

In July the government instructed local governments to exclude voters lists in determining the proportion of minorities in local communities. In October the National Minorities' Council asked the government to withdraw its instruction on grounds that it contradicted the law. The Serb community and NGOs expressed similar criticisms. Observers estimated that additional minority councilors would be seated in over 12 towns if voters lists were taken into consideration. In October GONG challenged the government's instruction in the Constitutional Court. In December the opposition SDP appealed on the same grounds. The court had not reached a decision by year's end. However, minority elections were held in October in three municipalities, where additional councilors were elected albeit with minimal voter participation."

EU, 9 November 2005, p.12:
"Before and even after the local elections of May 2005 there was a serious lack of clarity on how to implement those provisions of the Constitutional Law on National Minorities concerning the allocation of reserved seats for minority representatives. According to a Government decision of 22 July 2005, it appears that the number of reserved seats for minority representatives was based on the 2001 census lists, without any adjustment to take into account the most recently updated voters lists. With regard to the Serb minority, the difference between the 2001 census and the 2005 voters list is considerable, particularly in return areas. It is therefore vital that the provisions of the CLNM are correctly applied in order to ensure minority rights are fully respected. More generally, there is a need in Croatia for consistent and permanent electoral legislation which

regulates issues such as the voters lists, out-of-country voting, and campaign financing in a transparent manner."

OSCE, 7 July 2005, p.12:
"The local elections *(in May 2005)* were the first to fully and simultaneously incorporate the election of ***minority representatives*** according to the 2002 Constitutional Law on the Rights of National Minorities (CLNM), which guarantees proportional representation in the local assemblies, when the share of a given minority in the population is above 5 percent (in the case of counties) or 15 percent (in the case of municipalities and cities). However, an important question regarding how "***proportional representation***" is to be determined remains unclear, and may have affected heavily on the number of minority representatives seated in local councils and administrations. In its 10 June session, the National Council of National Minorities asked the Government to establish who should be held accountable for the apparent failure to apply correctly the provision of the Constitutional Law pertaining to the update of minority quotas."

Progress for Serb IDP voting rights despite persisting difficulties to access documentation (2005)

- Further to March 2005 amendments national minorities can vote even without a permanent residence in Croatia
- 2003 elections were the first to provide equal voting rights to Serb and Croat IDPs
- OSCE did not note concerns specific to IDP voters in this election
- Difficulties for ethnic Serbs to obtain certain document could hinder the exercise of their voting rights

EU, 9 November 2005, p.12:
"In March 2005, Parliament adopted Amendments to the Law on Local Elections, the main element of which was the abolition of the provision that members of national minorities can participate in local elections only if they have their registered permanent residence in Croatia and actually reside there. With the aim of introducing a similar provision for all citizens, in March 2005 the Government also submitted draft amendments to the Law on Permanent Residence and Temporary Residence to Parliament in urgent procedure. However, it did not clarify who would check whether a citizen was actually residing at the place of his/her registered permanent residence or how, or according to what criteria. While the Government did eventually withdraw these draft amendments, the way in which they were prepared, submitted to Parliament, changed and, eventually, withdrawn is illustrative of the often ad hoc rather than systematic law-making process in Croatia."

Brookings, November 2004, pp.25-29:
"The ability of IDPs in Croatia to exercise their voting rights has depended on minority protection, which over time has significantly improved. Initially, a legal distinction between Serb and Croat IDPs resulted in discriminatory practices, in particular as regards polling arrangements and voter registration. In recent years, however, significant improvements in the electoral process and arrangements for absentee voting have facilitated IDPs' exercise of the right to vote. In the most recent parliamentary elections in 2003, no discrimination against Serb IDPs was observed. Ethnic Serbs nonetheless continue to experience difficulties in accessing documentation, which likely impedes their electoral participation. (…)

An earlier assessment of IDPs' right to political participation in Croatia concluded that "discriminatory practices against the displaced Croatian Serb minority in terms of access to documentation and voting procedures has been a notable feature of elections in 1997 and 2000

respectively." (…)These discriminatory practices were rooted in a legal distinction between "expellees," who were mostly Croats, and "displaced persons," who almost always were Serbs. This distinction posed particular problems in parliamentary elections. (…)

Parliamentary Election, 23 November 2003: Since the legal distinction between absentee and displaced voters was deleted from national legislation in 1999, the 2003 parliamentary election was the first in which no discriminatory differentiation between Serb and Croat IDPs was recorded. (…)
The OSCE did not note concerns specific to IDP voters in this election. Under the system of absentee voting used, displaced voters were entered into the electoral register of their temporary residence, but voted for the constituency in which they have permanent residence. (…) Displaced minority voters thereby had a choice between voting for the general list and casting their ballot as minority voters. Furthermore, no distinction was observed between the treatment of ethnic Croat and ethnic Serb voters. (…)

In early 2004, it was reported that ethnic Serbs continue to face difficulties in validating legal and administrative documents issued by the Republika Srpska Krajina between 1991 and 1995. Ethnic Serbs also face difficulties in obtaining recognition of birth certificates. Similar problems have been reported when Serb residents of Croatia seek citizenship. Given the importance of identity documentation for voting, the difficulties Serbs face in obtaining such documents could prove a problem in the exercise of voting rights. (…)"

Changes to election law should provide minorities with fairer representation (April 2003)

- On the 2nd of April 2003, the National Parliament adopted changes to Croatia's election law, Law on Election of Representatives in the National Parliament
- Along with changes to the election law, five members were appointed to the new national-level Council of Minorities
- The adopted changes are positive steps in the application of the Constitutional Law on National Minorities (adopted 2002)
- OSCE representatives urged the country's authorities to promptly apply the law, to ensure that minorities were not deprived of proper representation

"Ambassador Peter Semneby, Head of the OSCE Mission to Croatia, has welcomed yesterday's adoption of changes to Croatia's election law by Parliament, providing national minorities in the country with fairer representation.

At the same time, he called for the prompt application of other parts of the country's minority law.

'The adoption of changes to the Law on Election of Representatives in the National Parliament and the appointment of five members to the new national-level Council of National Minorities are positive steps in the application of the Constitutional Law on National Minorities,' Ambassador Semneby said.

The new law provides for increased representation of Serb and other minorities which previously were not represented in Parliament, including the Albanian and the Roma minority.

Ambassador Semneby also urged the Croatian authorities to take more determined action to apply other parts of its new minority law.

Additional minority representatives should have been seated in five counties, and 83 towns and cities by 23 March.

'The adoption of the Constitutional Law on National Minorities last December was an important move ahead,' he said. 'Its timely application is essential to secure minority rights in Croatia.'

The Government now needed to develop plans to ensure minority representation in the state administration and judiciary, he added.

The Head of Mission urged the country's authorities to promptly apply the law, to ensure that minorities were not deprived of proper representation." (OSCE, 3 April 2003)

See also, "Republic of Croatia: Parliamentary Elections 23 November 2003, OSCE/ODIHR Election Observation Mission Report" 20 January 2004 [Internet]

OSCE expresses concern over low voter turnout at minority elections (May 2003)

- The OSCE Mission urged the government to organise additional elections in areas where they were not held, as well as support minority associations' information and campaign efforts
- Although the elections were conducted in an open and well-organised manner, the OSCE expressed concern that the low voter turnout could negatively impact the legitimacy of the elections
- Elections were held for less than half of the 470 councils and 140 representatives to which minority groups were entitled
- The elections are a key step in the implementation of the Constitutional Law on the Rights of National Minorities, to ensure representation for minorities in local and regional government

"The OSCE Mission to Croatia has expressed concern today about the low turnout at elections for minority councils held in Croatia on Sunday and urged the Government to organize additional elections in areas where they were not held.

The Head of the OSCE Mission to Croatia, Ambassador Peter Semneby, says the elections were conducted in an open and well-organized fashion, however the low voter turnout could negatively impact their legitimacy.

'We urge the Government to organize additional elections in areas were elections were not held and assist minority associations in ensuring a higher turnout next time' Ambassador Semneby said. 'This would be facilitated by giving a longer lead time in which the elections could be prepared and by supporting the information and campaign efforts by minority associations.'

Elections were held for fewer than half of the 470 councils and 140 representatives to which minority groups were entitled (respectively 221 councils and 42 representatives).

Reports by GONG, the non-governmental organization (NGO) supported by the OSCE to promote and observe the elections, confirm the Mission's observations.

The elections are a key step in the implementation of the Constitutional Law on the Rights of National Minorities, which was adopted last December and welcomed by the OSCE, the EU and other international organizations.

‘The Government should also take immediate steps to implement overdue local and regional elections - originally scheduled to take place by 23 March 2003 - to ensure adequate representation for minorities in local and regional government, as provided by the Constitutional Law on the Rights of National Minorities,’ Ambassador Semneby said.” (OSCE 19 May 2003)

OSCE reports discrimination against the displaced ethnic Serbs during the elections in January and February 2000 (2000)

- Discriminatory treatment of the ethnic Serbs during the Parliamentary and presidential elections in January/February 2000 partly based on the legal distinction between the expellees, mostly Croats, and the "displaced persons", mostly Serbs
- Insufficient number of polling stations for the "displaced persons" forced the voters in question to travel long distances and endure long delays in order to vote
- There were a number of cases in which members of polling station committees were hostile towards displaced ethnic Serbs and in some instances even denied them their right to vote
- Voter lists prepared by the Office for Displaced Persons and Refugees were often inaccurate and many displaced ethnic Serbs were required to follow a burdensome administrative procedure to receive certificates to vote

"Problems were […] experienced by displaced Croatian Serbs during the parliamentary elections held in January 2000. The elections were conducted pursuant to a new election law of November 1999 which gives overall responsibility for the administration of elections to the State Election Commission (SEC). To fulfil its responsibilities, the SEC is empowered to issue "Mandatory Instructions". Pursuant to Mandatory Instruction X, the SEC established 200 polling stations for "expellees" from Vukovar-Srijem County and 10 polling stations for 'expellees' from Osijek-Baranja. Two polling stations were established for 'displaced persons' [1]. The distinction between the two groups of displaced persons is found in national legislation and reflects the date around which the displacement occurred but really reflects ethnic identity [2]. There are approximately 14,500 'expellees' who are overwhelmingly ethnic Croats, and some 1,400 'displaced persons' who are overwhelmingly ethnic Serbs. As there were only two polling stations for 'displaced persons', the voters in question sometimes had to travel long distances and endure long delays in order to vote. The distinction between the two is clearly discriminatory in nature.

According to ODIHR, during the elections there were a number of cases in which members of polling station committees were hostile towards 'displaced persons' and ethnic Serbs and in some instances even denied them their right to vote. Problems were also noted with regard to inaccurate voter lists as prepared by the Office for Displaced Persons and Refugees and many 'displaced persons' were required to follow a burdensome administrative procedure to receive certificates to vote. Many of those not on the list were told by voting committees that they were not entitled to vote [3].

Although ODIHR recommended that the distinction between 'displaced persons' and 'expellees' be removed in order to ensure equal treatment for all internally displaced persons, it remained in force for the two rounds of the presidential elections held in January and February 2000. Again voter lists for 'displaced persons' at their two assigned polling stations were inaccurate and some of the displaced were required to follow the same burdensome procedures as in the parliamentary elections in order to vote. The problem was also reported in the second round of the presidential elections in February, that is to say during the third election in a five week period. ODIHR noted that turnout among 'displaced persons' was also much lower than during the

parliamentary election, a possible indication that 'problems experienced by voters on 3 January acted as a disincentive to participate'. Again, ODIHR recommended that the distinction between 'displaced persons' and 'expellees' be removed [4].

[1] Election of Representatives to the Chamber of Counties of the Parliament and of Representative of Local Government and Self-Government Bodies of the Republic of Croatia, 13 April 1997, OSCE/ODHIR Report
[2] OSCE/ODIHR, Republic of Croatia - Parliamentary Elections (House of Representatives) 2 and 3 January 2000, Final Report (25 April 2000)
[3] Ibid.
[4] OSCE/ODIHR, Republic of Croatia - Extraordinary Presidential Elections 24 January and 7 February 2000, Final Report (31 May 2000)"
(Bagshaw September 2000, pp. 14-17)

DOCUMENTATION NEEDS AND CITIZENSHIP

Documentation

Complex administrative requirements impede IDPs access to documentation (2005)

UNGA, 7 September 2005
Extract from RSG on the Human Rights of IDPs, Walter Kälin, report on visit to the Balkans:
"*Lack of awareness of rights, coupled with administrative obstacles*. Many IDPs are marginally aware of the rights to which they are entitled, both under domestic and international law. Others are unable for practical reasons to access entitlements and remedies provided in Government offices. These disadvantages are coupled with local administrative systems which too often have cumbersome and complex requirements, particularly in the area of documentation and registration. This frequently results in aggravated helplessness, disorientation and disempowerment suffered by IDPs, who become even more firmly locked into their existing situations. Obstacles to access to health care, education, social security benefits and other State services or to the labour market can easily become insurmountable. Since there seems to be no social safety net for those who fall outside the system, those who have not managed to get into the system, owing to the burdensome administrative practices, are further marginalized and pushed into the informal economy. The Representative thus recommended accelerating administrative reforms with a view to simplifying the administrative registration requirements and processes for all people. He underlined that particular attention should be paid to the additional difficulties IDPs have to face when trying to regularize their situation."

Returnees face difficulties to obtain documentation necessary to open rights to certain benefits (2006)

- Returnee status is regulated by the Law on amendments of the law on the status of displaced persons and refugees
- Returnees living in collective centres or without property face obstacles to obtain their ID card which conditions access to returnee status benefits

UNHCR Croatia, 1 March 2006
“The Law on Amendments of the Law on the Status of displaced persons and refugees regulates the equal status and rights for returnees and displaced persons. A returnee has kept the basic rights he/she had as a displaced or refugee (financial support, humanitarian aid, help by social adaptation, health protection, settling down other necessary costs of living). A returnee also obtains, on the basis of particular regulations, the right to tax and customs benefits, with the aim to encourage persons to return.

The status of returnee can be obtained by displaced persons who:
- have obtained (or obtain) right to reconstruction of their war damaged or destroyed houses, in accordance with the Law on reconstruction;
- have made the contract on the apartment lease;
- have entered their house/apartment;
- have obtained the possession of a house/apartment in the liberated area.

1. PRACTICE: Implementation, recognition of returnee status, procedure, requirements and differences:
UNHCR recorded that returnees with ODPR's "Confirmation on Arrangements for Return" do not have access to the benefits of "Returnee Status" before obtaining personal documents in particular the ID card. Acquisition of the ID is already a time consuming process for the "normal" returnee (1 to 3 months and then another couple of months until first receipt of returnee grants). It is even more difficult if not impossible for the collective centers' residents, former habitual residents (returnees who are non-Croatian citizens), returnees without property (former occupancy/tenancy right holders), since it is not a rare case that these returnees are waiting for resolution of their personal status for more than a year."

IDPs, refugees and returnees are unable to obtain documentation to access employment and other social rights (2002-2006)

- The continued uneven implementation of the 1997 'convalidation' law has resulted in many displaced people and returnees being unable to have their pension rights recognized
- The 1997 law on Convalidation provides for the validation of employment and other social rights related documents issued between 1991-1995 during the conflict
- A restrictive deadline for applying and residency requirements under the law have prevented IDPs, returnees and refugees from having pension, employment and other rights recognised

USDOS, 8 March 2006, p.9
"The government did not take steps to recognize or "convalidate" legal and administrative documents issued by entities not under Croatian control from the period of the 1991-95 conflict. Without such recognition, citizens (almost exclusively ethnic Serbs) remained unable to resolve a wide range of problems in accessing pensions and disability insurance, establishing work experience, and other areas."

USDOS, 28 February 2005, p.10
"An ongoing impediment to the return and reintegration of ethnic Serb refugees was the frequent failure of the Government to recognize or "convalidate" their legal and administrative documents from the period of the 1991-95 conflict. Without such recognition, citizens (almost exclusively ethnic Serbs) remained unable to resolve a wide range of problems, including pensions, disability insurance, and the ability to establish work experience."

UNHCR/Stability Pact June 2002, p.3
"One of the major issues of concern to DPs and returnees in Croatia, is the recognition and realization of the pension rights of those who had been employed during the period 1991-1995 on territories of Croatia which were not under the Croatian Government's control during the conflict (i.e. Eastern Slavonia and other war-affected areas near the borders). Whereas the 1997 Law on Convalidation gave the possibility to validate (or 'convalidate') documents issued in these areas which proved such employment and related rights, the restrictive deadline for applying as well as certain residency requirements under this Law has resulted in the exclusion of several returnees and DPs, as well as refugees still abroad, from convalidating documents which would be necessary for the recognition and realization of their pension rights."

USCR 2003, p.188
"Continuing uneven implementation of the 1997 'convalidation' law deterred many elderly and disabled Serbs from returning. The law had sought to recognize acts and decisions of the Krajina Serb authorities, including documents issued by them during the region's brief secession from Croatia, and thereby allow holders of the documents to apply for public assistance and other state

benefits. Convalidation of documents also established work experience. However, most Serb refugees in Yugoslavia and Bosnia were not able to apply for welfare benefits within the limited period provided under the law since they were not in Croatia. Consequently, they risked losing their pensions or disability insurance proceeds—a major disincentive to return, given the bleak employment prospects for elderly ethnic Serbs."

See also:
Section on Self-Reliance regarding convalidation issues and pensions
The section on pensions, pp. 13-14 in "Croatia Returns Update", 13 May 2004 [Internet link]
"Failure to obtain validation of their documents required to access social benefits discourages return of minorities (2003-2004)" [Internal link]

IDPs and refugees face difficulties to obtain documentation (2006)

- Recent changes in procedure allow people living in collective centre to apply for documentation
- Displaced persons who lost their tenancy rights during the war face difficulties to obtain documentation because they lack a permanent address
- Until 2002 IDPs of Serb ethnicity living in the Croatian Danube Region had difficulty to register their permanent address

USDOS, 8 March 2006

"Government procedures to verify and document citizenship improved during the year. For example, authorities ceased rejecting applicants who listed a collective center as their permanent address. However, reports continued of obstruction by some local officials who applied procedures inconsistently."

USDOS, 28 February 2005

"Cases existed in which Serb returnees experienced difficulties in obtaining identity cards and other forms of documentation that would allow them to verify their citizenship status."

USDOS, 28 February 2005

"Freedom of movement continued to be constrained for returning refugees and internally displaced persons (IDPs), who lost tenancy rights and experienced difficulties in regularizing their status because they had no permanent residence (domicile), which is a precondition for acquisition of a civilian ID. "

Centar za mir, August 2004

"Upon pressures by international community, in September 2002, Croatian authorities agreed to recognise refugees / returnees who had permanent addresses in Croatia on October 8, 1991 (the date of termination of relations with former Yugoslavia) as foreigners with permanent address

status. Special problem related to permanent address which is to be declared when issuing all relevant documents affected displaced persons of Serbian ethnicity, former tenancy rights holders and members of their families that were already issued Croatian documents (ID cards and passports) during the UNTAES period on the basis of their pre-war permanent addresses. Upon the expiration of the documents issued within the UNTAES period, the above-mentioned persons were unable to get new documents using the old addresses of their pre-war permanent residence although they never cancelled their registrations. They were told that since their tenancy rights were terminated they needed to register on a different permanent addresses (which considers that they needed to either own a house or an apartment or conclude a lease agreement) in order to be able to get new documents."

The Law on the Status of Displaced Persons and Refugees: discriminatory distinction between displaced Croats and Serbs remains in effect (2006)

- Discrimination between "expellees" (mostly Croats) and other displaced (mostly Serbs) was abolished in November 1999 but remains practically in effect
- In May 2000 the Constitutional Court struck down provisions of the Law that prohibited evictions unless alternative accommodation was provided for the evictee

ICG 26 April 2001, p. 176
"[Another] law identified in 1998 as discriminatory, the Law on the Status of Expelled Persons and Refugees, was amended by the previous government in November 1999, the amendments eliminated discrimination in favour of one category of displaced persons, 'expellees' ('prognanici', almost always Croats), at the expense of other displaced persons ('raseljene osobe', almost always Serbs). However, the practical discriminatory effects of the law remained, as people retained the status and benefits that they had received under the original law, to the advantage of some (mostly Croats) and the disadvantage of others (mostly Serbs)."

U.S. DOS March 2002, sect. 2d
"In May [2000] the Constitutional Court struck down provisions of the Law on the Status of Displaced Persons and Refugees that prohibited evictions unless alternative accommodation was provided for the evictee. Despite this decision, courts and local housing commissions continued to rely on the quasi-legal 1998 Program on Return for guidance on eviction decisions. As a result, this had the effect of reinforcing the legal precedence of temporary occupants over that of property owners, and it provided an easy means for hard-line officials to obstruct the process of minority returns. The law continued to contain other discriminatory language, notably the failure of positive amendments enacted in November 1999 to be applied retroactively, and that therefore allowed existing discriminatory definitions of 'displaced person' and 'refugee' to remain in effect."

UNHCR Croatia, 1 March 2006
"With regards to the specific position of Serb displaced persons (DPs) in the Danube Region, some introductory points should be made. In the initial phase of the integration of CDR into Croatian legal and administrative system, UNHCR and other international bodies faced difficulties persuading the government to even register the individuals that were found in the CDR, but originated from other areas of Croatia, let alone grant them a status. During initial registration in 1997/98, displaced persons in CDR (*rasljene osobe)* were registered as a special category and were never incorporated as a group into the Law on Status of Displaced Persons (*prognanik)* and refugees. Although de facto they are in the same position as other DPs (*prognanici*) who are by

definition "….*persons who, individually or in an organized manner, fled from the place of residence from one area of the Republic of Croatia, endangered by war, in order to avoid immediate threat for life caused by the aggression and other war activities*….", Serb DPs (*raseljene osobe),* falling under the same definition were never given a status, but were treated as a special category and were only "mentioned" in the two documents – Erdut Agreement and Program of Return. The program gave them the opportunity to remain in the CDR, sell their property and leave or return to pre-war places of origin. Here is a brief comparison between the two "statuses" with regards to some rights originating from the DP (*prognanik)* status:

	PROGNANIK	RASELJENA OSOBA
DP card	Yes	No, registration form
Health insurance	Yes	No
Exemption of court fees	Yes	Selectively, differs from court official to court official
Cash grant	Yes	No
Transport upon return	Yes	Yes, if registered

Once returning to pre-war place of origin, according to our knowledge Serb DPs did not face any problems in obtaining returnee status. Finally, with respect to Croatian Serb IDPs in Croatian Danube Region, UNHCR is of the opinion that the discrimination in terms of DP status ('raseljene osobe' versus 'prognanik') should be discontinued, possibly in the context of ODPR's announced "exit strategy"."

UNHCR Croatia, 1 March 2006
"As of entering of the Law on Amendments to the Law on Status of Displaced Persons (*prognanika*) and Refugees (Official Gazette 128/99) into force, the status of **displaced person** (*prognanika*) and **refugee cannot be acquired** (since 8 December 1999)."

Legal status of minorities

The Constitutional Law on the Rights of National Minorities regulates status of national minorities (2003)

- The Constitutional Law on the Rights of National Minorities (CLNM) was adopted in December 2002 and published in the Official Gazette on the 23 of December 2002
- Implementation includes steps to remedy minority under-representation at county, municipality and town levels and the appointment of the Council for National Minorities at the national level
- Full implementation also requires harmonization of related legislation, such as laws relevant to parliamentary, regional and local elections, and laws relating to the judiciary and state administration
- One of the first steps in implementation taken by Parliament was to adopt on 11 March 2003 amendments to the law regulating election of local and regional representative bodies relevant to minority representation, as well as local and regional advisory minority councils
- Amendments to the law regulating parliamentary elections relevant to minority representation were adopted on 2 April 2003
- The OSCE Mission to Croatia has expressed concern about remaining ambiguities in the application of the adopted amendments which would delay implementation.
- The Council of Europe's Venice Commission welcomed the adoption of the CLNM

- However, the Commission noted that a number of issues require further clarification, particularly special laws whose adoption are still required for full implementation of the guarantees in the CLNM
- Several provisions in the CLNM on education and other rights remain to be fully addressed by relevant authorities

OSCE Mission to Croatia 12 May 2003
"The Constitutional Law on the Rights of National Minorities (CLNM) was adopted by the Croatian Parliament on 13 December 2002. As required by Article 82(1) of the Croatian Constitution, the CLNM was adopted by more than the required two-thirds majority (101) of all representatives (115 for, 4 against, 2 abstentions).

The CLNM was published on 23 December in the Official Gazette (NN 155/02). On the date of publication, the CLNM came into immediate effect (Article 45) and the prior CLNM was repealed (Article 44). Publication triggered two 90-day deadlines that expired on 23 March 2003; the first, remedying minority under-representation in 5 county and 83 municipality and town self-governments that resulted from the May 2001 elections; the second, Government appointment of the Council for National Minorities at the national level. The first deadline expired without substantial implementation at the local and regional level. The Government issued relevant decisions within a relatively short period after the expiration of the second deadline.

Full implementation of the CLNM will require harmonization of related legislation, *e.g.*, laws pertaining to parliamentary, regional and local elections as well as laws relating to the judiciary and state administration. As one of the first steps toward implementation, the Parliament adopted on 11 March 2003 amendments to the law regulating the election of local and regional representative bodies relevant to minority representation, as well as local and regional advisory minority councils. In late January and early February minority representatives spoke publicly about the need for the Parliament to act quickly so as to meet the 90-day deadline. Although the amendments have now been adopted, there are remaining ambiguities about the meaning and manner of their application that seem likely to delay implementation. Amendments to the law regulating parliamentary elections relevant to minority representation were adopted and published on 2 April in the Official Gazette (NN 53/03).

In its opinion of 25 March 2003, the Council of Europe's Venice Commission welcomed the adoption of the CLNM stating that it represents '… in many ways, a significant improvement as compared to earlier drafts commented upon by the Venice Commission'. However, the opinion went on to state that '… a certain number of issues still require further clarification', particularly special laws whose adoption are still required for full implementation of the guarantees in the CLNM'[1].

Implementation of the CLNM will also require clarification by relevant Government bodies of the manner in which particular guarantees are to be implemented, such as minority representation in the state administration and judiciary. To date, the Mission has observed few significant steps in that direction. Thus, four months after the adoption of the CLNM, a substantial number of open questions remain."

[Footnote 1] Opinion on the Constitutional Law on the Rights of National Minorities of Croatia, adopted by the Venice Commission at its 54th Plenary Session (Venice 14-15 March 2003), Opinion No. 216/2002, CDL-AD (2003) 9, 25 March 2003, paragraph 7 (hereinafter 'Venice Commission Opinion'). 'The Commission noted, among other, that full implementation of the guarantees provided by the Constitutional Law to ensure the effective protection of the rights of national minorities require the adoption of special laws and regulations … . The Commission

therefore reiterated its readiness to co-operate with the Croatian Government in the preparation of these laws …. However, the Croatian Government had not forwarded the draft amendments to the Law on the Local Elections to the Venice Commission and has not requested its co-operation in the revision of this law.' *Id.* At paragraphs 3, 5.

OSCE 12 May 2003, pp. 18-19
"Since the entry into force of the CLNM on 23 December 2002, some central developments have taken place with regard to amending related election legislation. On 11 March 2003 amendments to the Local Election Law were adopted in order to conform to Article 20 of the CLNM regarding minority representation in self-government units. The MP Election Law was likewise amended on 2 April in order to correspond *inter alia* with Article 19 of the CLNM with regard to adequate minority representation in the Parliament. Serbs, Croatia's largest minority, were granted the maximum number of parliamentary seats (3) allowed under the CLNM. Further, with regard to the creation of new representative and advisory mechanisms for national minorities set out in the CLNM, the Government appointed five members to the national-level Council of National Minorities shortly after the official deadline of 23 March.

However, many issues related to the implementation of election rights in the CLNM remain open. Although originally scheduled for 15 September 2002 under previous legal provisions, and then again for 23 March 2003 under the new CLNM, neither the appointment of minority representatives nor alternatively the holding of by-elections has taken place in a significant number of the 5 counties and 83 municipalities and towns in order to correct the underrepresentation of national minorities in these areas.

Further, it has not yet been announced how minority representation in state administration and judicial bodies as well as executive bodies will be secured in line with Article 22 of the CLNM. Laws regulating the judiciary must still be amended in order to come into compliance with the CLNM.

The Government published on 16 April the call for the first-time election of minority councils at the local and regional level to be conducted on 18 May 2003. Minorities nominated less than half the number of candidates to which they were entitled under the CLNM by the 28 April nomination deadline. It appears that at least a significant part of the under-nomination of minority candidates results from a lack of minorities being able to organize within the time allowed. Though the Government has fulfilled its obligation to appoint five members in the National Council, this Council will initially only comprise the Government's appointees and the minority Members of Parliament since the seven additional members have to be nominated by the still non-operational local and regional minority councils.

Finally, several provisions in the CLNM on education and other rights remain to be fully addressed by relevant authorities. Some of these rights have, however, already been implemented before the entry into force of the CLNM. The Mission will continue to monitor and report on these and other issues relevant to ensuring the full and timely implementation of the CLNM."

For an update on implementation of the CLNM see Section on Self-reliance and public participation
See also, "OSCE Status Report No.13", OSCE, paras. 1-7 on the "Rights of National Minorities and non-discrimination", December 2003 [Internet]
"Minorities in Croatia", Minority Rights Group International, pp.31-35 on IDPs and refugees, September 2003 [Internet]

New constitutional law on the rights of national minorities adopted with broad political support (13 December 2002)

- Parliament adopted the Constitutional Law on National Minorities in 2002 following extensive discussion with minority groups and political parties
- The law guarantees minority representation in local government bodies and creates minority councils to advice elected officials on minority rights
- The law also promotes the use of minority languages and symbols and provides for the election of up to eight minority representatives to parliament
- Implementation of the law has been slow and in some areas non-existent
- Elections were held for the new local minority councils in May 2003, but turnout was so low the elections were overwhelmingly judged to be a total failure
- It is presumed the less than 10 percent turnout was due to various factors, including short deadlines, an insufficient number of polling stations, and inadequate voter education

"In 2002, after extensive discussion with minority groups and political parties, Parliament passed a Constitutional Law on National Minorities with broad political support. However, implementation has been slow and in some aspects non-existent. The law assures minority representation in local government bodies, creates minority councils to advise elected officials on minority rights, promotes use of minority languages and symbols, and provides for the election of up to eight minority representatives in the parliament. Ethnic minority groups welcomed most of the law's provisions, but objected to the loss of generous affirmative action rights to elect representatives to parliament. In May, elections were held for the new local minority councils, but turnout was so low the elections were broadly judged to be a total failure. Reasons cited for the less than 10 percent turnout included short deadlines, an insufficient number of polling stations, and inadequate voter education." (US DOS 25 February 2004, Sect.3)

"The obligation to adopt such legislation dates from Croatia's 1996 accession to the Council of Europe. Recent calls for the fulfilment of this long-standing commitment include February 2002 Resolution of the Council of Europe Committee of Ministers on the implementation of the Framework Convention for the Protection of National Minorities,[1] the April 2002 European Commission Stabilisation and Association Report, and the Mission's June 2002 Status Report.[2]" (OSCE 20 August 2002, p.1)

Footnote [1] Croatia ratified the Framework Convention for the Protection of National Minorities in October 1997 and submitted its first report in 1999. In April 2001, the Advisory Committee issued an opinion that formed the basis for the 2002 resolution by the Committee of Ministers.

Footnote [2] Adoption of a revised Constitutional Law on National Minorities is also a condition for Croatia's accession to NATO as re-iterated by the NATO Secretary General in August 2002.

The English version of the "Constitutional Law on the Rights of Minorities", 13 December 2002, is made available by the OSCE Mission to Croatia [Internet]

For more information see "Background Report: Constitutional Law on National Minorities" OSCE Mission to Croatia, 20 August 2002 [Internet]

Political and legal context becomes more favourable to the protection of minority groups (2000)

- Newly elected national authorities emphasised the equal rights of all Croatian citizens regardless of their ethnicity
- Amendments to laws and constitutional provisions pertaining to minority rights were adopted in 2000

"The [January 2000 Presidential Elections] brought relief to members of minority groups: the atmosphere among the public and in the media grew more tolerant toward them. The authorities in all their public appearances emphasised the equal rights of all Croatian citizens regardless of their ethnicity and the respect for their rights. The Parliament amended the Law on the Use of Language and the Letters of Ethnic Minorities and the Law on Education and Upbringing. Changes to the Constitutional Law on Human Rights and Freedoms and the Rights of Ethnic and National Communities were adopted on condition that the authorities in the period of six months create a special model of autonomy acceptable for the most numerous ethnic minorities in Croatia. The [constitutional changes that were passed by the Parliament on 10 November 2000] introduced positive discrimination against the minorities regarding the voting rights: the minority members shall be given one more ballot to vote for both a candidate in general voting lists and another on the lists of the ethnic minorities." (IHF 2001, p. 104)

Nine new recognized minorities have been added to the existing of seven in the Constitution, including Muslims, Albanians, and Slovenes. (U.S. DOS February 2001, sect. 5)

Citizenship

Access to citizenship continues to pose problems to members of national minorities (2006)

- · Government procedures to verify citizenship improved in 2005 but reports of obstruction remain
- · Original nationality needs to be renounced to obtain Croatian citizenship
- · Non-Croats have to satisfy more stringent criteria to obtain nationality which has left many ethnic Serbs with citizenship and related rights

COE, 28 September 2005
"The requirements under the Croatian Law on Citizenship and their application continue to pose problems for persons belonging to national minorities. Persons whose citizenship status has not been clarified are particularly vulnerable to discrimination and face obstacles in the realisation of their rights, including in the economic, social and cultural ones. "

USDOS, 8 March 2006, p.9
"Government procedures to verify and document citizenship improved during the year. For example, authorities ceased rejecting applicants who listed a collective center as their permanent address. However, reports continued of obstruction by some local officials who applied procedures inconsistently."

ECRI, 14 June 2005
"Under the Law on Foreigners of July 2003, non-citizens who have resided in Croatia for a long time can apply up until June 2005 to have their permanent resident status in Croatia restored until such time as they obtain Croatian nationality. ECRI is concerned, however, to learn from a survey carried out by the OSCE mission in Croatia that 16 out of 18 police units surveyed across Croatia

are implementing the Law on Foreigners incorrectly, for example by demanding means of proof of residence in Croatia which the law does not require. The Croatian authorities have indicated to ECRI that the Ministry for the Interior has issued an instruction to the competent police departments clarifying the type of proof to be accepted. Some representatives of national minorities have said that the Law on Foreigners is not sufficient to solve the existing problems in acquiring Croatian nationality.

ECRI is concerned to learn that there are still serious problems when it comes to obtaining Croatian nationality. Numerous barriers to naturalization remain in place. For example, it is not possible to obtain Croatian nationality unless the original nationality has been renounced. There are exceptions to this rule, such as if person was born in Croatia or is married to a Croat. It is still not easy to obtain documentary evidence which proves that one has renounced the nationality of other former Yugoslav states. (…) ECRI attaches considerable importance to this nationality issue because persons without status are in a difficult situation which has knock-on effects in other areas, including access to public services, access to employment etc."

USDOS, 28 February 2005, Sect.2.d
"The law distinguishes between those who have a claim to Croatian ethnicity and those who do not and requires non-Croats to satisfy more stringent requirements. These requirements prevented some ethnic Serbs from obtaining citizenship, which led to discrimination in other areas, such as housing return. While their citizenship applications were pending, applicants were denied social benefits, including medical care, pensions, free education, and employment in the civil service. "

For a review of implementation of the Law on Croatian Citizenship see: Overview of access to rights in Croatia, drafted by Ankica Gorkic MARRI-DRC, June 2005

New "Law on Foreigners": implementation and procedures varies from case to case (2006)

USDOS, 28 February 2005, Section 2.d.
"The new Law on Foreigners entered into force on January 1*(2004)*. The law's transitional provisions enabled former habitual residents to return and regularize their status. The law states that if they return within 12 months, they will be reinstated into their pre-war status as former habitual residents without any further requirements, such as meeting housing and financial criteria, and could subsequently apply for citizenship. During the year, the MUP issued 160 identity cards to foreigners and conducted a review of 76 permanent residency documents of Croatian Serb returnees who were habitual residents of the country prior to 1991. However, international monitors reported that the Ministry followed different procedures and varied its interpretation of its own internal guidelines from case to case. In December, the Government extended the deadline for applications to regularize status. Due to a lack of information, many potential claimants were unaware of the possibility to regulate their status. The Ministry initiated a procedure to cancel the permanent residency status of 2,700 persons."

UNHCR Croatia, 1 March 2006, p.2
"The Law on Foreigners does not require evidence of secured housing or financial means for living. Unfortunately, one of the preconditions for the permanent residing foreigner status is a proof of health insurance which is not in accordance with the spirit and overall objective of the transitional provision of the Law. In addition to this, the police requested all former habitual residents to present their country of nationality passports (!) as well as a need to have a residence address in Croatia upon return."

See: "The Law on Foreigners", 3 July 2003 in English translation [Internet]

Citizenship law impedes the integration of non-Croat long-term residents (1992-2003)

- The citizenship law distinguishes between people of Croatian ethnicity and those who are not
- Even those previously lawful residents of the former Socialist Republic of Croatia were compelled to provide proof of previous residence and citizenship not demanded of ethnic Croats
- Obstacles to ethnic Serbs' documenting their citizenship has led to discrimination in other areas, including the right to vote
- While a citizenship application is pending, the applicant is denied social benefits including medical care, pensions, free education, and employment in the civil service
- Denials of social benefits frequently were based on Article 26 of the law that stipulates that citizenship can be denied to persons otherwise qualified for reasons of national interest
- There is a need to facilitate the naturalization of non-ethnic Croats who were permanent residents until the conflict

“The Citizenship Law distinguishes between those who have a claim to Croatian ethnicity and those who do not. Ethnic Croats are eligible to become citizens, even if they were not citizens of the former Socialist Republic of Croatia, so long as they submit a written statement that they consider themselves Croatian citizens. Non-Croats must satisfy more stringent requirements to obtain citizenship through naturalization after 5 years of registered residence. Even those who previously were lawful residents of the former Socialist Republic of Croatia were compelled to provide proof of previous residence and citizenship not demanded of ethnic Croats. Obstacles to ethnic Serbs' documenting their citizenship led to discrimination in other areas, including the right to vote […]. While a citizenship application is pending, the applicant is denied social benefits including medical care, pensions, free education, and employment in the civil service. Denials frequently were based on Article 26 of the Citizenship Law (which stipulates that citizenship can be denied to persons otherwise qualified for reasons of national interest) and on Article 8 (which requires that a person's actions demonstrate that they are ‘attached to the legal system and customs of Croatia’ and that they have maintained a registered residence on the territory of Croatia for the 5 years preceding the application for citizenship). The Interior Ministry recognizes the period that mostly ethnic Serbs spent outside the country as refugees as applicable to the 5-year residency requirement.” (US DOS 25 February 2004, Sect.5)

"Croatian citizenship legislation contains provisions that discriminate on the basis of national origin. These provisions impede the sustainable return of refugees and the integration of non-Croat long-term residents who remained in the country following Croatia's independence.

For example, the 1991 Law on Croatian Citizenship provides for citizenship by naturalization to non-resident Croats under more lenient standards than to individuals of other ethnic groups who were permanent residents until the conflict. For this reason, the Council of Europe's Venice Commission recommended in March 2002 that the Law on Croatian Citizenship be revised. In addition, the Ministry of the Interior's insistence upon formal renunciation of another citizenship by non-Croat permanent residents, even in cases where such renunciation is not reasonably possible, effectively leaves such individuals unable to obtain Croatian citizenship.

Further, the Law on the Movement and Stay of Foreigners, which is closely linked to the acquisition of citizenship by naturalization of non-Croats, subjects non-Croat pre-conflict residents, whose permanent residence has been terminated by the Ministry of the Interior, to the

same legal requirements as new immigrants. The draft proposal for a new Law on Foreigners should properly take into consideration the distinction between pre-conflict residents who became foreigners upon independence through operation of law on the one hand, and newly-arrived foreigners on the other hand." (OSCE 21 May 2002, p. 7)

ISSUES OF FAMILY UNITY, IDENTITY AND CULTURE

General

At least 1,842 persons remain missing from the conflict (2003-2004)

- The search for missing persons through exhumations is now adequately managed by the Croatian government
- Official figures through June showed that 1,235 ethnic Croats and 607 ethnic Serbs remained missing in unresolved cases from the 1991-95 military conflict

"The Mission has concluded that the search for missing persons through exhumations is now adequately managed by the Government Office for Missing and Detained Persons, and that the exchange of information and mortal remains with the Office's counterparts in the Federal Republic of Yugoslavia and Bosnia and Herzegovina has improved. The Mission can therefore limit monitoring of exhumations to particularly sensitive cases." (OSCE 21 May 2002, p. 8)

“Government figures through June showed that 1,235 ethnic Croats and 607 ethnic Serbs remained missing in unresolved cases from the 1991-95 military conflict. The Government's Office of Missing Persons had information on 500 sites where missing Croatian Serbs might be located. Of the 3,924 victims that have been exhumed from mass and individual graves since the war 3,054 have been positively identified.

During the year, the bodies of 55 victims missing from the 1991-95 war were exhumed from mass and individual graves; the Government explained the relatively low number of exhumations by the fact that frequently partial remains were unearthed at one site only to discover that the actual bodies were moved to another yet undiscovered site. With the ICTY and international experts serving primarily as monitors, the Government handled all exhumations and identifications itself.

The International Commission on Missing Persons worked in the country on recovery, identification of remains, and assisting the families of missing persons. The Government Office for Missing initiated cooperation with counterpart agencies in Bosnia and Herzegovina (BiH) and Serbia and Montenegro, in collaboration with the International Red Cross and local Red Cross offices, for the purpose of data collection and information sharing designed to establish more precise figures on the missing.” (U.S. DOS 25 February 2004, Sect. 1b)

For more information, see also the section titled “Unresolved disappearance” in “Concerns in Europe and Central Asia January to June 2003” Amnesty International, October 2003 [Internet]

PROPERTY ISSUES

General

Law and policy

The complexity of restitution mechanisms hinders access to rights (2005)

- Restitution regimes vary depending on the region and type of property
- Courts interpretation of the legislation has added another layer of complexity
- Complexity of the legislation also reflects intention of authorities to target certain ethnic groups usually to benefit ethnic Croats and discriminate against ethnic Serbs.
- Administration apparatus implementing the law is characterized by changing competencies depending on national, regional and local level
- The establishment of deadlines combined with insufficient information has deprived many people from their right
- Displaced persons face difficulties to avail themselves of their rights in this complex set up

UN CHR, 29 December 2005, par.22-23; 27; 42-43:
"22. At the level of domestic law, the applicable regimes have in the past been, and remain, of considerable complexity. The legal position applicable to a particular situation could be affected by numerous laws, ordinances and government decisions and mandatory instructions, which have been amended on numerous occasions. The jurisprudence of the courts in interpreting these provisions has added an additional layer of complexity. Broad distinctions have often been formally drawn in law between "areas of special State concern", that is, areas which in the course of armed conflict were de facto removed from the control of the Government of Croatia, and other areas in the country. Further distinctions were also effected with respect to areas formerly under UNTAES control. Additional complexities were introduced by legislation dealing specifically with property rights deriving from tenancy/occupancy regimes applicable in the former Yugoslavia. Thus, for example, the Housing Act provided that so-called "specially protected tenancies" could be terminated in the occupant's absence without justification for a six-month period. In turn, the Supreme Court's jurisprudence held that "war events" as such did not justify non-use of a flat, and that moreover, "the fact that a flat that is not being used by its tenant is illegally occupied by a third person does not, per se, make the non-use [of the flat by the tenant] justified".(…) As a result of these provisions, many displaced persons lost rights with respect to properties they had occupied, despite, in numerous cases, having taken considerable steps to recover them.

23. Against this background, some key stages in the evolution of the legal framework warrant specific mention. From 1993 onwards, the major legislation concerning the legal position of displaced persons has been the Act on the Status of Displaced Persons and Refugees, as repeatedly amended. From 1992 to 1996, reconstruction of housing damaged or destroyed by conflict, State participation therein and individual eligibility thereof were governed by the Act on the Financing of Reconstruction, the Act on Loans for Reconstruction of Properties Damaged and Destroyed in the War, and the Act on the Designation of War Damage, accompanied by Regulations on areas where funds were to be spent according to the Financing Act, and on organizing and financing reconstruction of war-damaged family homes and economic facilities

which sustained the most severe damage. Amendments in 1996 repealed these two regulations, with the regime being further adjusted by later regulations and amendments. The combined effect of these regulations was widely regarded, both nationally and internationally, as possessing an indirectly discriminatory effect against Serb minorities on account of the limitations on coverage of damage inflicted at different times, or on the time of return. (…)

27. This complex legal regime was twinned with a similarly complex administrative apparatus, with differing and changing competencies at national, regional and local levels concerning implementation and administration of the relevant laws. At the central level, dominant roles were played by the Ministry for Development and Reconstruction, subsequently the Ministry for Public Works, Reconstruction and Construction and then the Ministry for Maritime Affairs, Tourism Transport and Development. Within ministries, core functions were administered by the Directorate for Regional Development and then the Directorate for Displaced Persons, Refugees and Returnees. Alongside these units, specialist administrative bodies were established in the form of the Commission for Implementation of the Programme of Return and later the Coordination Commission for Areas of Special State Concern and the Commission for the Return of Refugees and Displaced Persons and the Restitution of Property. In conjunction with the complex mesh of legal instruments and decisions, extensive administrative instruments provided additional detail, notably the Programme of Return and Accommodation of Expellees, Refugees and Displaced Persons (1998), followed by the Action Plan for Implementation of Repossession of Property (2002). (…)

42. A second and related issue is the awareness of entitlement to certain rights and accompanying administrative “gatekeeping” requirements for the vindication of rights. As has been set out above, the applicable legal and administrative mechanisms for the resolution of property issues in Croatia have been, and remain, of a singular complexity and it is almost a matter of course that experienced legal advice would be required in order to provide individual applicants with a full assessment of their relevant rights. In a society emerging from serious conflict and where most of the remaining displaced persons continue to be particularly vulnerable, it cannot be expected that these persons will have the resources or otherwise have the faculties to apprise themselves fully and fairly of the relevant law and policy. While NGOs and international organizations have done very important work in raising awareness of rights and in informing displaced persons of their entitlements, the primary obligation lies with the State to empower citizens and others within the State’s jurisdiction to be able, as a practical matter, to vindicate their rights. In particular against the background of decreasing international engagement in Croatia, the Representative is of the view that it is particularly incumbent upon the State to proactively engage in the provision of comprehensive and accessible advice to persons whose situations are not yet resolved.

43. Closely linked are procedural “gatekeeping” requirements conditioning access to rights, notably registration with particular authorities within certain deadlines. Again in the context of a post-conflict society, with a complex legal regime regulating enjoyment of fundamental rights such as the right to housing and property, the unfairness of excluding persons through the vehicle of registration deadlines from rights of which they were unaware is manifest. While recognizing on the one hand that legal certainty requires a measure of finality and on the other that in recent years relevant registration deadlines have been extended, the Representative notes that the deadlines have generally been absolute ones not permitting of exceptions. In his view, the requirements of justice in this context require a valve permitting late registration in particular circumstances of hardship or difficulty, the onus of showing such a situation lying if necessary with an applicant. The courts would be an appropriate arm of Government - subject to the timely resolution of claims discussed above - to oversee such a process.”

New procedures for property repossession adopted in July 2002

- 2002 amendments to the Law on Areas of Special State Concern (LASSC) establish the framework for repossession of certain kind of private property
- The deadline for repossession of property fixed to 31 December 2002 was not respected and repossession is still ongoing
- The LASSC provides for compensation from the State regarding properties not repossessed within the deadline
- No compensation is provided in the law for period of occupation preceding the deadline
- Responsibility for repossession has been transferred from municipal housing commissions to the Ministry for Reconstruction
- A new category of temporary accommodation has been created
- The interest of temporary users continues to prevail over the owners' rights
- Despite the fact that those amendments represent a progress, implementation has been slow and authorities have failed to use all the provisions aiming at accelerating repossession

Stability Pact, MARRI-DRC, 30 June 2005, p.8-9:
"The Law on Temporary Administration and Take-over of Specified Property was repealed in 1998 shortly after the Programme of Return was adopted**,**. (…) And, ever since, the procedures related to the temporary occupancy, administration and supervision of the property taken over by that Law shall be ruled according to the provisions set up in the Programme.
• **Law on the Amendments to the Law on the Areas of Special State Concern. (…)** [*passed by*] the Croatian Parliament in August 2002, That law*, inter alia,* regulates the repossession of property seized on grounds of the Law on Temporary Take-over and Administration of Specified Property and, thus, replaces respected provisions of the Programme on Return. Although the Government that took power in the January 2000 was fully aware of the fact that both the 1998 legal and administrative procedures set in the Programme of Return, as well as Housing Commissions, as executive bodies, represented completely inefficient legal tool for the property repossession, the Amendments to the LASC were not adopted until 2002. Instead of establishing concise and sufficiently transparent law in accordance with the constitutional rights and the rights given by the Law on Ownership and Other Property Rights, the Government decided to regulate the property repossession issues with the Amendment to Law on Areas of Special State Concern (since 1996. it was fifth amendment to the same Law). Although the Law on the Amendments contains some legally questionable provisions and number of obscurities, the new regulation made some progress towards securing property rights: (a) The key provisions of the Programme of Return regarding the repossession of the properties were repealed; (b) Local housing commissions previously responsible for repossession of properties were cancelled, and their jurisdiction, since September 2002, was taken over by the Government (Ministry for Public Works, Construction and Reconstruction); (c) The Law sets a time limit for repossession of properties by rightful owners to 31 December 2002 and «compensation of damage» if the property is not returned within that time. However, compensation for the property does not include the right described under the article 50 of the Croatian Constitution (…) but only recognises the possibility of the rent payment for a lease of a house (without other property) from the end of 2002 until repossession of the property, if owner applies for it under the conditions set by the Ministry. Compensation for the years of unlawful occupancy is not recognised. (d) The property owner is, for the first time, authorised to file a lawsuit in order to protect his/her ownership rights; (e) The concept of temporary alternative accommodation is introduced for temporary occupants for whom authorities are unable to provide permanent accommodation; (f) Temporary occupants who are owners/co-owners of the residential property and those who sold or disposed of such property after October 1991, or who hold the status of protected lessee are not eligible for the

alternative accommodation; (g) the individuals who reject offered housing care (alternative accommodation) should lose any eligibility for the state assistance in housing. (…)

After the jurisdiction from Housing Commissions was transferred to the Ministry for Public Works, Construction and Reconstruction (now Ministry of Sea, Tourism, Traffic and Development), situation has improved in general but, still, for the shortcomings of the new regulation on one hand, and complicated and demanding administrative procedure on the other hand, the owners face a number of difficulties in its practical enforcement."

The 2002 amendments to the LASSC still fail to address a number of issues:
"The deadline for the repossession of the property (end of 2002) prescribed by the law related only to administrative procedure of cancellation of the decision granted to temporary occupants but not to physical repossession of property by the lawful owner. Actually, refugees were cheated because the law provision says that property shall be repossessed before the end of 2002, and they believed it would be returned to them within the deadlines set by the Law. Although the deadline was extended twice - to the end of 2003 and than to the end of 2004, these deadlines were not met. The Government approved very small compensation for the owners who did not come in possession of their property within legally prescribed period (0,93 Euro per square metre of living space)
Bodies competent for the implementation of the regulations often failed to act in favour of the owner. Some Law provisions that might accelerate the repossession of property are not implemented in practice, particularly the provisions regulating the issue of alternative accommodation and illegibility of temporary occupants for such accommodation. Possibility of providing temporary alternative accommodation for the occupant is not exercised in practice."

OSCE, 16 July 2002:
"New procedures will speed up property repossession, but fall short of providing full guarantees for ownership
On 12 July Parliament adopted the Law on Amendments to the 1996 Law on Areas of Special State Concern. The 1996 Law established incentives for municipalities, companies, and persons in the areas most directly affected by the armed conflict in order to re-vitalize and re-populate these areas. The amendments expand the purpose of the 1996 Law beyond conflict-related rehabilitation by including a new category of localities based on non-conflict-related criteria relating to under-development. The amendments also expand the geographic scope of the 1996 Law beyond the Areas of Special State Concern by establishing new procedures for the repossession of occupied Serb-owned residential property in all parts of Croatia. The amendments suspend the property repossession scheme contained in the 1998 Return Programme and transfer this responsibility from municipal housing commissions to the Ministry for Public Works, Reconstruction and Construction. A 31 December 2002 deadline for final administrative decision-making in individual cases of property repossession is also introduced. The amendments also introduce the category of 'temporary accommodation' which will be granted until (permanent) alternative accommodation is made available. Finally, provisions are contained in the amendments that render occupants who own and possess habitable property in other parts of the former Yugoslavia ineligible under certain conditions for alternative accommodation in Croatia. The amendments, if properly implemented, may accelerate the pace of property repossession. Nevertheless, they are questionable from a constitutional and human rights perspective, in particular the fact that the interests of temporary users of property belonging to others still prevail over the rights of the owners. In 1997, the Constitutional Court invalidated a similar 'alternative accommodation requirement' for occupants as a precondition for property repossession by owners. Consequently, the amendments are likely to face swift legal challenges. The amendments also fail to address other types of property that had also been declared as 'abandoned' and taken-over and administered by the State, including business premises, agricultural land, forests and moveable property and agricultural equipment."

Prevalence of occupant's interest over owner's discriminates against ethnic Serbs and delays possibility for return (2006)

- LASSC provides that temporary occupant is entitled to temporary or permanent accommodation
- The owner cannot repossess his property before the temporary occupant has been provided with accommodation which delays his return
- Delays in repossession have led many owners to sell their properties further to offers from State bodies
- In UNTAES region, where displaced temporary occupants were ethnic Serbs and owners ethnic Croats, provision of alternative accommodation was not a pre-condition to repossession by the owner
- Provisions of the law to limit entitlement to alternative accommodation are not fully used
- No efforts have been made to check availability of housing in neighbouring countries
- Provision of alternative accommodation to the occupant is not conditioned by his income
- Authorities will to provide alternative accommodation to categories which are not eligible to it has delayed the restitution process

USDOS, 8 March 2006, p.5:
"During the year the government continued to facilitate repossession of illegally occupied homes; however, the property law implicitly favors ethnic Croats over ethnic Serbs. The law gives precedence to the right of temporary occupants, who are mainly ethnic Croats, to that of original owners, predominantly ethnic Serbs. Owners generally could not repossess their property unless housing was secured for the temporary tenants."

Stability Pact, MARRI-DRC, p.6:
"From 1995 to the present days, the ownership rights of Serb refugees are regulated by separate laws and decrees rather than within the regular legal framework set up in the Constitution of Republic Croatia and the Law on Ownership and Other Property Rights. (…) [*The]*law has persistently favoured those who were allocated abandoned property over the rightful owners. Although the Constitutional Court2 struck down such provisions as unconstitutional in 1997, The Programme of Return adopted a year later, and some other laws, contained identical provisions that made temporary occupant safe from eviction as long as he/she was not provided with an alternative accommodation. Also, some other laws contained similar provisions that protected the temporary occupants from the eviction. After 2002 law revision a number of discriminatory provisions were removed but the law continued to prevail the right of temporary occupant above the right of owner. Prior to the eviction, the government must provide an alternative accommodation to temporary occupant, thus the right of the owner depends of availability of the houses or funding for alternative accommodation. Government's ability to provide alternative accommodation has been limited and it resulted with substantial delays in property repossession. Waiting for years, many refugees have grown disillusioned and decided to sell their houses for rather small prices. Also, some local authorities keep addressing Serbs to sell their houses. Even certain criminal acts have been noticed in reference to purchase of those houses by the State agency."

Center for Peace, 31 August 2004, p.13:
"Although this opposes the Constitution and property related laws, the Government continues to give priority to the temporary users (ethnic Croats from B&H) over the owners (exiled and displaced ethnic Serbs) by preventing evictions of those persons until they are provided with an alternative accommodation which is also affected by the slowness in the work of courts, legal bodies, delays and balking of the evictions of temporary users who, in some cases, have, at their

disposal, another accommodation or are using several apartments at the same time. The courts in former UNTAES area, in cases in which displaced ethnic Serbs were occupying properties owned by ethnic Croats, were passing decisions on evictions of temporary users regardless of their being provided an alternative accommodation. This example shows that there was an obvious discrimination on the basis of ethnicity."

COE, 4 May 2005, par.42 to 46:
"42. Following the displacement of the population as a consequence of the conflicts, a great number of accommodation belonging to members of Serb community were occupied, with or without legal authorisation, by Croat displaced persons or refugees mostly from Bosnia and Herzegovina. In accordance with the Law on Temporary Take-Over and Administration over Specified Properties adopted in 1995, municipal Housing Commissions could declare the house unoccupied. As a result of this law, all Croat citizens – members of the Serb minority did not benefit from this law due to ethnic division of the country during the conflict – who submitted a claim could be allocated new housing. Thus, 18,500 housing units were granted to Croat displaced persons or to refugees coming from neighbouring countries.

43. Even though the law of 1995 was abolished, the decisions taken by municipal Commissions were not declared void and the occupiers were allowed to stay in the allocated residencies until an alternative solution was found for them. In this way, the authorities gave priority to the right of occupancy before the right of ownership. This system of restitution avoids placing temporary occupants in a difficult situation but consequently strongly slows down the return of Serb owners.

44. I was surprised to find out that even though temporary occupants possess sufficient resources to rent or construct another accommodation, they can only be evicted once an alternative accommodation has been offered. According to the law, legal occupation should end once the occupant has been offered with alternative solution or if he/she owns a property in the territory of former Yugoslavia. This legal provision often generates unacceptable situations where temporary occupant occupies an accommodation not necessarily needed while the owner and his family are forced to live with friends or relatives or in a shelter due to their lack of means.

45. It should however be pointed out that practically none of the eviction procedures is implemented on grounds of possession of property abroad. This is due to the lack of co-ordination between Croatia and the States concerned, notably Bosnia and Herzegovina. According to the information provided by NGOs, the relevant administrative agency refuses evidence that owners could bring concerning the occupant's ownership of property abroad – testimonies, written statements of neighbours, etc. – accepting only official documents. Furthermore, this administration does not take the necessary steps to obtain such official documents. The Serb owners are consequently forced to wait for an alternative accommodation to be offered to the occupant even though the latter possesses accommodation abroad. In my exchanges with the Government, I was informed that Croatia, as a state respecting the rule of law, will only recognise official documents. I was informed that Croatian diplomats might intervene to examine the veracity of other circumstantial evidence. Official documents are obviously the best means of proving title to foreign property; however one ought not to exclude other conclusive proofs or to verify information offered by interested parties.

46. As already mentioned, the law stipulates that occupant loses his/her title of occupation when he/she refuses alternative accommodation. It seems that the implementation of this provision by local administrations meets difficulties. Thus, I was informed of cases where an occupant had refused accommodation because it was not located in the same municipality or because the alternative accommodation offered was too small. I was also informed of a case where two refusals of alternative accommodation and a decision of the Ombudsman were not sufficient for the owners to repossess their property."

OSCE, April 2005, p.5:
"The Ministry has continued in the reporting period to provide alternative housing to occupants that htave been previously declared ineligible for housing care. (note 5) This mainly refers to: a) occupants whose private houses have meanwhile been reconstructed by the State and who should therefore leave the property; b) occupants whose decision on temporary use has been cancelled and who did not leave the property, despite being ordered to do so by the Ministry; c) occupants who received alternative housing from the Ministry but still refuse to vacate the property. The Ministry considers that they have been simply provided with temporary accommodation until the conditions are ripe for the return to their original properties."

Law on Areas of Special State Concern does not address repossession of various types of property, including agricultural land and business (2005)

- Owners of properties illegally occupied or occupied based on decisions other than the law can only repossess their property through lengthy and costly Court procedures
- There are many cases where the State allocated land and business premises to Croat settlers who were not displaced by war
- Council of Europe Commissioner for Human Rights suggests a fast extra-judiciary procedure to facilitate repossession

Stability Pact, MARRI-DRC, 30 June 2005, p.9-10:
"[*The 2002 amendments to the Law on Areas of Special State Concern*] fail to address a number of issues that affect the repossession of property such as repossession of business premises, farming land, farming equipment as well as an unknown number of residential properties which were taken over by means other than the law in 1995 (based on decisions by army or police, and different county commissions). Owners who wish to file a lawsuit against the occupant are about to face very lengthy court proceeding. (…)
The Government which came into the office in 2003 has intensified its efforts to return private properties according the 2002 Amendment to LTTSP nevertheless, only residential properties (houses) shall be returned in that respect, while the repossession of other types of properties was not addressed yet. There are many cases of illegal occupancy of privately owned business premises and farming land, most of which the State allocated to Croat settlers for temporary use although they came from all over Croatia and had never lived in the areas of armed conflict, and, therefore can not be considered as internally displaced persons"

COE, 4 May 2005, par.62:
"62.During my visit, my attention was drawn to the fact that some commercial premises and agricultural land belonging to owners of Serb origin continue to be used illegally by Croat occupants. Although the 1995 law concerning the temporary use and administration of certain properties authorised such practices, its repeal in 1998 legally put an end to these authorisations. However, owners willing to recover their properties have to initiate expensive and time-consuming judicial proceedings. The establishment of a fast and extra-judiciary procedure could be foreseen in order to allow owners to recover as quickly as possible full enjoyment of their properties."

OSCE 18 December 2003, p.6:
"Repossession of other types of property remains unaddressed. This includes business premises and agricultural land as well as a number of residential properties which were taken over by occupants by other means than by law in 1995. In addition, long-standing property restitution and compensation issues remain unresolved for minority religious communities while property restitution for the Catholic Church is being addressed more comprehensively."

Croatia's solution for former holders of tenancy rights: an exception in the region (2006)

- Return of refugees and displaced is still hampered by the lack of adequate solution for former holders of occupancy rights on publicly owned apartments (occupancy/tenancy right holders)
- In former Yugoslavia, enterprises would allocate socially-owned flats to their workers through an occupancy right
- During the war, private properties and socially-owned flats of refugees and displaced persons were allocated to other people
- In Bosnia and Herzegovina and Serbia and Montenegro, the restitution process provides for repossession of both private property and socially owned property
- Croatia does not allow for repossession or compensation for lost occupancy right but only offers housing care to those who wish to return
- In Croatia, privatization of socially-owned flats allocated during the war prevented repossession and return of former holders of occupancy rights on those flats
- International pressure exerted in Bosnia and Herzegovina and Serbia and Montenegro on this issue did not apply to Croatia
- The solution offered to former holders of tenancy rights consists of housing care limited to those who want to return
- EU has so far refused to take a strong line on terminated occupancy rights in Croatia until the European Court of Human Rights issues a judgment.
- This situation creates resentment among refugees and displaced persons who do not understand this double standard situation in the region
- Insufficient funds have been made available for the housing care programmes
- Croatia, unlike other countries in the Balkans never recognised occupancy rights as ownership rights

IWPR, 4 August 2005:
"Ten years after Operation Storm, the return of Serbs to Croatia is still being obstructed, especially those who formerly lived in publicly-owned housing. Bosnia and Hercegovina has resolved the housing restitution problem under the scrutiny of the international community. But it seems a blind eye has been turned to Croatia's treatment of analogous cases.

During the Yugoslav communist era, enterprises reinvested profits in apartments for their workers, which resulted in a form of public-sector housing known as "socially owned property". Workers granted occupancy rights were entitled to keep the property for life, and transmit the right to their heirs. They could even sublet part of the property to generate income.
Such rights could be cancelled only by judicial procedure in cases where, for example, a worker did not use his or her apartment for more than six months without good cause. However, such cancellations were exceptional.
In the former Yugoslavia, socially-owned apartments were the sole homes of hundreds of thousands of families.
After the 1992-95 war in Bosnia, residents of socially-owned property there were deemed to be on a par with private owners, and such apartments were thus subject to restitution to their pre-war occupants.
Besides displaced persons and refugees who were provided temporary housing, in most cases the socially-owned apartments had been seized by people who profited from the conflict to obtain second homes. In the general atmosphere of anarchy, there was a scramble to occupy such apartments.
A massive programme of restitution under international monitoring largely resolved the problem in Bosnia, and by now almost 200,000 houses and apartments have been returned to their pre-war

occupants. Many have not actually returned home but have at least been enabled to sell or exchange their homes.
The process defused a potential crisis over these returnees, whose unresolved grievances could have made them prey to political manipulation.
But practice in Croatia has not followed that of neighbouring Bosnia. Here, the new occupants of seized apartments were often ethnic Croat refugees from Bosnia who quickly obtained the right to privatise the properties and thereby transform occupancy rights into private ownership. In many cases, they resettled permanently in Croatia.
In Bosnia, such practices were forbidden by the international community as contrary to the right to return, as set out in Annex 7 of the Dayton Peace Agreement. The cancellation of occupancy rights was forbidden as contrary to the European Convention for Human Rights and Essential Freedoms (whose application in Bosnia is ensured by the domestic human rights commission) and to Annex 6 and 7 of the Dayton agreement.
In Bosnia, the aim was to return all properties, both private and socially-owned, without distinction.
Yet in Croatia, the widespread privatisation of socially-owned apartments deprived refugees and displaced persons of any possibility of returning. More than 30,000 families - the overwhelming majority non-Croats - which had occupied socially-owned apartments lost the possibility of returning to these homes forever.
Croatia's practice is at variance with that of other former Yugoslav states. In Kosovo, for example, socially-owned property is being returned to its pre-war occupants, while in Serbia and Montenegro, the supreme court has declared that the cancellation of occupancy rights of displaced persons is illegal, and that such people have a right to reclaim socially-owned apartments.
The succession treaty between the former Yugoslav republics includes an obligation on all new states to respect pre-war property rights.
The disparity of treatment between Bosnia and Croatia has created tensions, especially in the Bosnian town of Banja Luka where many Croatian Serbs settled after 1995. These Serbs feel unfairly deprived of the right to return or to freely dispose of their property, which has instead been given over to Bosnian Croats.
At the same time, they have also lost out because when the laws on property restitution were put into effect in Bosnia, they faced the prospect of eviction from the properties they occupied, because these formerly belonged to Muslims and Croats who fled from or were expelled from the Serb entity in Bosnia, Republika Srpska.
This sense of injustice led to demonstrations in Banja Luka against the eviction of Croatian Serbs, which the government of Republika Srpska exploited to slow down the return of Muslims and Croats to Banja Luka.
International pressure on Croatia has achieved little, and successive Croatian governments have failed to shift from their position of denying restitution or compensation to the former occupiers of socially-owned apartments. Zagreb has simply dismissed the issue as a legacy of a socialist system that no longer applies to Croatia.
Within the context of Croatia's accession to the EU, the issue has not been given much consideration or placed under particular scrutiny.
In Bosnia, the so-called Property Law Implementation Programme provided precise statistics about the number of properties returned to pre-war owners and occupiers, and the statistics were used to assess Bosnia's performance on the road to joining the Council of Europe, CoE, in 2002.
Only after it was determined that more than 50 per cent of more than 200,000 properties had been returned was Bosnia deemed to have discharged its obligations and allowed to join the CoE. The authorities in Bosnia have now returned around 200,000 habitable properties to their pre-war owners, as virtually all claims were decided positively.
No such obligation was placed on Croatia when it joined the CoE in 1997, at a time when no property restitution process was under way. Nor was the issue raised when discussions began over EU accession, even though the membership requirements are stricter than those of the council.

That is not to say that no property has been returned to Croatian Serbs. The process of returning some 19,000 private properties is currently in train, and with luck it will be completed by the end of this year. But this offers no remedy to the 30,000 families who were not private owners and whose occupancy rights have been cancelled. They represent the largest single group of refugees in the former Yugoslavia in need of housing whose case has not been addressed.
The solutions that Croatia has proposed are inadequate, as the housing care schemes it has put in place for former tenants whose occupancy rights have been terminated are limited to those who want to return. This disregards the now widely-accepted principle that property ownership or peaceful enjoyment of possession is a right in itself which, when violated, should receive due remedy, compensation or restitution, quite independently of intentions to return.
The current housing schemes for refugees and displaced persons do not amount to restitution in kind, as they are also subject to numerous legal limitations.
The whole programme is short of funding, so that only a few hundred new apartments have been constructed. Nor is it clear how many of these have actually been allocated to returnees.
The EU has so far refused to take a strong line on terminated occupancy rights in Croatia until the European Court of Human Rights issues a judgment.
In spite of the clear differences between the standards set for Croatia and Bosnia, in April 2004 the EC recommended that accession negotiations with Croatia should begin. Commending the measures Croatia had taken in terms of refugee returns, it urged the country to remain actively engaged in the issue.
But in subsequent documents, the issue of refugee returns disappeared from the conditions that Croatia has to fulfil. The only one now outstanding is full cooperation with the Hague tribunal, where the main outstanding issue is the need to detain and hand over Gotovina.
This disparity in treatment is resented by the displaced persons and refugees themselves, who cannot understand why similar solutions have not been more uniformly applied wherever the same problems exist. They feel their rights are being decided by distant political elites rather than by the application of sound and clear principles based on international standards. Their frustration may yet become another factor for instability in the Balkans."

Rhodri Williams, April 2005, p.1:
“Most observers agree that refugee return is a central issue in redressing the 1990s conflicts in the former Yugoslavia and ensuring prospective political stability. In practice, the goal of refugee return is not that every person displaced by conflict actually goes back to their former home, but that each refugee is able to take a free and informed choice regarding whether to return or resettle elsewhere. This means that minimum conditions must be created such that both return and resettlement are objectively viable options.

Experience in both Croatia and neighboring Bosnia indicates that a crucial factor in such choices is the restitution of pre-war homes and property to those who were forced to flee during the conflict. For those who wish to return, repossession of their home is an absolute minimum condition. For those who prefer to resettle where they were displaced, repossession and sale of their pre-war homes – which often constitute their sole remaining pre-war asset – assists them to finance their own resettlement, avoiding dependence on local social welfare systems. For instance, in Bosnia, sustained international support and pressure has been instrumental in the return of virtually all claimed homes to their pre-war residents, including about 110,000 private properties and nearly 90,000 “socially-owned” apartments. (…) This unprecedented achievement has facilitated the return of over one million people – half of those displaced by the war in Bosnia – and been crucial to the durable resettlement of many more.(…)

The Dayton Accords that ended the 1992-1995 war in Bosnia committed both Croatia and Bosnia to respect the rights of refugees to return to their pre-war homes.(…) Croatia’s progress in restitution of private property and abolition of administrative barriers to return has been considerable, if slow. (…) However, the question of “socially-owned” apartments is a crucial exception. Unlike Bosnia, which allowed 90,000 displaced apartment residents to repossess their

homes as of right, Croatia has permanently reallocated as many as 34,000 such apartments, offering derisory assistance to the displaced and overwhelmingly minority Serb victims. Although the passage of time means that actual restitution of apartments is no longer likely to be a realistic option, fair compensation for these lost homes would provide real assistance to those affected in rebuilding their lives, either as returnees to Croatia or elsewhere."

See also: "European Court of Human Rights' judgment stops short of defining Croatia's obligations towards former occupancy rights holders (2006)

EU should request adequate remedy for loss of occupancy rights (2005)

- While international community has imposed restitution of terminated occupancy rights in Bosnia and Herzegovina, it seems to have accepted lack of remedy in Croatia
- Emerging international law standards on post-conflict restitution do not support limiting legal remedies to claims for privately-owned homes
- Housing care solution proposed to former occupancy rights holders is limited to those who wish to return and does not represent a compensation

Rhodri Williams, April 2005, p.1-2:
"Aside from the issue of compliance with the ICTY, Croatia's candidacy to join the European Union should be considered in light of the fact that it permanently appropriated urban apartments comprising the long-term homes of as many as 34,000 Croatian Serb families, transferred them to ethnic Croats, and subsequently declined to provide even rudimentary legal remedies such as compensation to the victims, largely preventing their return. Tacit international acceptance of this state of affairs stands in marked contrast to settled policy in neighboring Bosnia that all homes abandoned by ethnic minorities during the war should be (and were) subject to restitution. (…)

[***In Croatia]*** [d]omestic legal remedies for Serbs who lost their apartments have been manifestly ineffective.(…) Limited international pressure on the Croatian authorities has yielded only a vague offer of "housing care" on a low priority basis to the subset of apartment claimants who meet conditions such as not having access to other housing.(…) Even were it to be implemented, such a minimal response falls well short of legal compensation arguably due to all victims and critical to their viable return or resettlement. In addressing the issue in the context of Croatia's candidacy, the EU appears to have accepted provision of "housing care" as an adequate response, barring a judicial finding that cancellation of apartment rights in Croatia constitutes a violation of the European Convention on Human Rights (ECHR). (…)

The broader political ramifications of the apartments issue in Croatia provide an argument for the EU to affirmatively consider for itself whether the matter is relevant to Croatia's candidacy, rather than leave the onus on the victims to prove that it is in court. Emerging international law standards on post-conflict restitution do not support limiting legal remedies to claims for privately-owned homes.(…) More important, neither does international practice in Bosnia, which was praised by the EU Commission in a November 2003 report for "having guaranteed to refugees and displaced persons the right to reclaim and/or return to their property" – including apartments.(…) The report went on to note that "return of displaced people to homes within [Bosnia] is frustrated by the presence of refugees from other countries," a reference to the ongoing presence of some 23,000 Croatian Serbs in Bosnia, many of whom are unable to return precisely because of the permanent and unremedied loss of their apartments in Croatia.

A perceived double standard in the international community's approach to property restitution in Croatia vis-à-vis Bosnia is likely to impact negatively on Croatia's stature as a role model for other countries in the western Balkans aspiring to EU membership. Croatia's neighbors have not made return of the refugees they are forced to harbor a major issue, in part due to their overriding interest in bilateral trade and good diplomatic relations.xiii However, the perception that the international community has tacitly allowed Croatia to permanently dispossess a large group of vulnerable displaced persons and held Bosnia to a higher standard is unlikely to improve confidence in either Croatia as the regional messenger of accession or the institutions it will come to speak for."

See also:
"Make the Sarajevo Declaration compliant with the UN Principles on Housing and Property Restitution for Displaced Persons and Refugees", ICHR, 31 March 2006
UN Principles on Housing and Property Restitution for Refugees and Displaced Persons, 28 June 2005

European Court of Human Rights' judgment stops short of defining Croatia's obligations towards former occupancy rights holders (2006)

- The Grand Chamber of the European Court of Human Rights declared case related to cancellation of occupancy rights inadmissible therefore reversing the admissibility decision in first instance
- The Grand Chamber did not examine the merits of the case i.e whether the judicial removal of occupancy rights amounted to a violation of the convention
- The Court ruled in another case that a claim to a "social tenancy apartment" was protected under Article 1 Protocol 1 of the Convention
- Other cases of terminated occupancy rights could be presented to the European Court and result in a different outcome
- Some 30,000 ethnic Serbs lost their occupancy rights during the war through discriminatory application of the law
- Blecic illustrates the adverse human rights consequences of a pattern of discriminatory terminations of occupancy rights to socially owned flats during and after the war in Croatia
- In its 2004 judgment, the ECHR ruled that Croatia's courts had been right to accept that Blecic's absence from the apartment for more than six months justified the termination of her rights to her "socially owned" apartment.
- The fact that most cancellations of rights became legally final prior to Croatia's 1996 ratification of the ECHR does not allow the European Court to consider such cases

ICHR, 8 March 2006:
"The European Court of Human Rights has ruled against Krstina Blecic in her bid to repossess her property in the Croatian city of Zadar. The Grand Chamber ruled that the case was not admissible, not at all discussing the case's merit, which was the original reason for re-opening the case in 2004. The Court considered that the European Convention for Human Rights does not apply in this specific case as the events complained of occurred before its entry into force in November 1997, therewith reversing its admissibility decision in first instance. It ruled with eleven votes against six that 'an examination of the merits of this application could not be undertaken without extending the Court's jurisdiction to a fact which, by reason of its date, is not subject thereto.' It did specifically not rule whether or not a violation of Ms. Blecic rights had taken place. The judgement therefore stops short of defining the obligations of Croatia towards former occupancy rights holders.

On the issue of admissibility, ICHR had argued that the interference with the applicant's right to respect for her home and the peaceful enjoyment of her possessions, became complete with the decision of the Constitutional Court dated 8 November 1999, that is to say, after the Convention and its Protocols came into force in respect of Croatia. The same position is reflected in the 6 dissenting opinions attached to the Judgment. Massimo Moratti, ICHR's Executive Director said, "While we are disappointed with the result of the judgment, we would like to emphasise that the Court did not discuss the merits of the case at all. They did not comment whether the judicial removal of occupancy rights for displaced persons and refugees amounts to a violation of the European Convention or not. By doing so, the hopes of displaced persons and refugees who are struggling to repossess their apartments or to be compensated for their loss, have been put on hold. Dismissing this case was the easy way out for the Court. It sends a mixed signal – why re-open a case based on merits, and then rule against it as inadmissible?

It is of interest to note that on a similar case *Teteriny v Russia* the Court ruled that a claim to a 'social tenancy agreement', similar to occupancy rights in former Yugoslavia, is protected under Article 1 Protocol 1 of the Convention. Also the UN principles on housing and property restitution for displaced persons and refugees state that occupancy rights should be "recognized within restitution programmes". ICHR continues advocating for the implementation of the same standards in terms of property repossession across the whole region as a fair solution to the plight of displaced persons and refugees. ICHR will furthermore continue to pursue cases before the European Court of Human Rights of individuals claiming repossession of the pre-war properties in any of the countries of former Yugoslavia. Moratti continued, "With the huge need out there, ICHR will continue fighting the good fight – as there are around 30,000 similar cases of people who have had their legal rights trampled on by Croatia. We are in it for the long haul."

OSCE, Stat rep 17, 18 November 2005, p.7:
"The legal issues involved in the termination of OTR are currently being reconsidered by the European Court of Human Rights (ECHR) in a review of the Blecic case which began in September 2005. Regardless of the outcome, it appears likely that the Blecic case will not be the last word on the contentious issue of judicial OTR terminations, as the numerous cases proceeding through the domestic courts present different factual or procedural circumstances that could lead to different legal results."

USDOS, 8 March 2006:
"In September the ECHR Grand Chamber began reconsideration of the 2004 ECHR ruling that termination of a person's tenancy rights in an apartment did not violate the right to a home or to peaceful enjoyment of possessions. In the case, the tenant left an apartment at the outset of war and did not return within six months as required by law in order to maintain tenancy rights. The ECHR ruling effectively confirmed the government's assertion that tenancy rights could not be treated as a form of ownership and set a precedent for many potential claimants—mostly ethnic Serbs—who had lost tenancy rights on similar grounds."

Amnesty International, 14 September 2005:
"Amnesty International considers the case of Kristina Blecic to be illustrative of the adverse human rights consequences of a pattern of discriminatory terminations of occupancy rights to socially owned flats during and after the war in Croatia. Provisions ending the occupancy right, in those cases where the property had been vacated for six months, were in the vast majority of cases strictly applied only against Croatian Serbs (and Montenegrins). In applying such provisions the Croatian authorities typically failed to take into consideration the circumstances of the war which may have prevented Croatian Serbs from remaining in their flat. These circumstances included violent attacks, harassment and discrimination against Croatian Serbs and, in some cases, their forced eviction by members of the Croatian Army and police forces. (…)

Amnesty International considers that one of the greatest obstacles to the sustainable return of thousands of Croatian Serbs has been the failure to date of the Croatian authorities to provide adequate housing solutions to Croatian Serbs who were stripped of their occupancy rights, including where possible by reinstating occupancy rights to those who had been affected by their discriminatory termination."

Rhodri Williams, April 2005, p.2:
"In addressing the issue in the context of Croatia's candidacy, the EU appears to have accepted provision of "housing care" as an adequate response, barring a judicial finding that cancellation of apartment rights in Croatia constitutes a violation of the European Convention on Human Rights (ECHR).(…)However, the sole relevant case before the European Court of Human Rights is likely to remain unresolved for an indeterminate time to come. (…) Moreover, due to the fact that most apartment appropriations in Croatia became legally final prior to Croatia's 1996 ratification of the ECHR, virtually all other cases will be technically barred from the Court's consideration. (…) As a result, the current proceedings are likely to produce an ambiguous outcome, based solely on the facts of the single technically admissible case among over 30,000 apartment appropriations."

Human Rights Watch, 17 November 2004:
"The European Court of Human Rights should reconsider a landmark case on housing rights in Croatia, Human Rights Watch said today. The case concerns the wartime termination of the right to occupy socially-owned property (so-called "tenancy rights")—a continuing obstacle to the return of Serb refugees to Croatia. In July this year, the Court held that a refugee would have had to return to a war zone in Croatia to preserve her tenancy rights there—a ruling that runs counter to international humanitarian and refugee law. In the assessment of Human Rights Watch, the Grand Chamber (appeals chamber) of the European Court should accept the request for referral in the case of Blecic v. Croatia, lodged by the applicant on October 25, 2004. The referral request follows a July 29 decision by the first-instance chamber of the court that Croatia did not violate the applicant's right to a home and the peaceful enjoyment of her property when it stripped Krstina Blecic, a refugee from Croatia, of her tenancy rights to an apartment.

The European Court ruled that Croatia's courts had been right to accept that Blecic's absence from the apartment for more than six months justified the termination of her rights to her "socially owned" apartment."

See also:
Grand Chamber judgment Blecic v. Croatia, ECHR, 8 March 2006
Principles on housing and property restitution for refugees and displaced persons, Final report of the Special Rapporteur, Paulo Sérgio Pinheiro, 28 June 2005
"OSCE amicus curiae brief to the European Court of Human Rights in Blecic v. Croatia", OSCE Croatia, April 2003

Termination of occupancy rights against Croatian Serbs differed depending on the area (2005)

- During and after the war 30,000 households, almost exclusively Serb, lost their occupancy-right on their apartment
- In urban centres which always remained under control of the Croatian authorities those rights were cancelled through Court procedures
- In war affected areas 5-6000 Serb households lost their rights ex-lege immediately after the war.
- Former occupancy rights holders remain the largest category without housing option

- In the Danube region of Eastern Slavonia which remained under UN administration until 1998, occupancy rights holders did not lose physical access to their flats but lost their status and need to regularize their stay in those flats
- Legal vaccum remains in Vukovar

OSCE, 29 July 2005, p.3:
"Up to 30,000 households throughout Croatia, almost exclusively Serb, who used to live in former socially owned apartments as holders of occupancy/tenancy rights (OTR) lost these rights and physical access to their homes during and after the war2. In the urban centres, which always remained under the control of the Croatian authorities, their rights were cancelled in the course of and after the armed conflict through nearly 24,000 court procedures primarily because of 'unjustified absence' of more than six months. In the war affected areas, additional estimated 5-6,000 Serb households lost these rights *ex lege* immediately after the war. This is the largest remaining refugee and IDP category still without a housing option."

Note 2
Former OTR holders in the Danube Region of Eastern Slavonia, as a rule, did not lose physical access to their flats. They, however, with the abolishment of the legal institution of occupancy/tenancy rights (*stanarsko pravo*) in 1996 lost their formal OTR status. In consequence, they are not in need to be provided by the authorities with flats, but only with an authorization to remain in their flats or a contract on *protected lease*. In many cases the authorities have reconstructed these flats. In such cases, tenants were either allowed to return to their reconstructed apartment or were provided with an alternative flat."

OSCE, 21 November 2004, p29, note 11:
"In the Danube region OTR were not terminated either *ex lege* or through individual court proceedings. The concept of OTR was abolished in 1996 by the Law on the Lease of Apartments. OTR holders that did not purchase their apartments became protected lessees. However, at that time the Danube Region was not under the control of the Government, given the fact that the peaceful reintegration of the Region was realized only in January 1998 following the end of the mandate of the UN Transitional Administration in Eastern Slavonia (UNTAES). Subsequently some of former OTR holders in Baranja could sign contracts on protected lease with local authorities while those in Vukovar were left in a legal vacuum."

Stability Pact, MARRI-DRC, 30 June 2005, p.22:
"Former OTR holders on this territory (***Eastern Slavonia under UN administration, UNTAES)*** have been living in a legal limbo since their acquired rights have not been cancelled, but they have not universally been granted the status of so called protected lessees as foreseen by law, as it happened to former OTR holders from other parts of Croatia who eventually did not manage to privatise their former socially owned apartments."

Termination of occupancy rights did not affect ethnic Croats who often benefited from it (2005)

- Socially-owned apartments represented over 70% of housing units in former Yugoslavian cities
- During the war several thousands occupancy rights were cancelled by Courts for unjustified absence of more than 6 months from the apartments
- Many such apartments were then allocated to Croat refugees and displaced persons aiming at limiting Serb return

- Contrary to ethnic Serbs, ethnic Croats could regain possession of their apartments upon their return
- In 1996, the system of socially-owned property was terminated allowing tenants to purchase their flat or become protected tenants which also benefited people of Croat origin against Serb displaced or refuges who had lost their occupancy right
- Former occupants of housing in collective property are in fact the most important category of refugees whose housing problems have not yet been resolved

COE, 4 May 2005, par.52-56:
"52. Before the conflict, several thousand of Serbs lived in socially-owned or public company-owned apartments. The right to use these apartments was quasi similar to full property right but excluded the possibility of selling this right and with the possibility for the State to end the lease in limited cases. This category of housing represented more than 70% of housing units in former Yugoslavian cities.

53. During and just after the conflict, the authorities in charge at the time cancelled several thousand of leases granted to Serbs through judicial decisions brought in the absence of the tenant in the majority of cases. In order to terminate these contracts, the State or the State-own companies submitted requests to courts calling for the application of Article 99 of the Law on Housing, which provides for an ending of the renting contract in cases of an unjustified absence of the occupant for more than six months.

54. Afterwards, apartments were re-allocated to Croat refugees and displaced persons. Obviously, such procedures aimed to limit, as much as possible, the return of Serbs who had fled during the conflict. Moreover, a great number of Croats could regain possession of their apartments upon their return even in cases where it had been occupied by another person while members of the Serb minority were not able to do the same. Despite courts action submitted by previous occupants who claimed abusive interpretation of the law or possibility of defending their interests – which they could not do during the first procedure due to their absence–courts have refused to rule on these requests.1 Finally, Serbs who fled Croatia following the operations "Storm" and "Flash" lost their rights in accordance with one legislative provision, seeing themselves deprived of any possibility of court action to challenge their contract's termination.2"

55. The system of socially-owned property was terminated on 5 November 1996, giving way to a new system of renting, with tenants enjoying the possibility of purchasing their accommodation off the state at prices lower than the market value (…). Once again, people of Croat origin have found themselves *de facto* privileged in comparison with those of Serb origin who left the country and lost their tenancy rights. (…)

56. Consequently, the present Government again inherited a situation where, either through decisions of courts or through laws, a number of individuals, and notably a large part of the Serb community, sees the possibility of returning to their cities of origin hindered by housing problems. Recently, the European Court of Human Rights found, for the time being, no violation of an applicant rights who challenged the allocation to another person of an apartment left unoccupied during the conflict. (…) Beyond the facts relating to an applicant who was neither a refugee nor a displaced person , (…) this decision does not take away the historic and political responsibility of Croatia in terms of solving housing problem within its territory. Furthermore, if Croatia considers that former tenants have lost their rights on apartments they occupied; it is its duty to find alternative solutions in order to allow refugees and displaced persons to return to their municipality of origin. Former occupants of housing in collective property are in fact the most important category of refugees whose housing problems have not yet been resolved."

[Note 1: Norwegian Refugee Council, *Triumph of Form over Substance ? Judicial Termination of Occupancy Rights in the Republic of Croatia and attempted Legal Remedies*, 18 May 2002.]

[Note 2: Law on Renting of Apartments in Liberated Areas in Croatia, no. 73/1995, 27 September 1995.]

Overview: progress and shortcomings of the legislation on reconstruction (2005)

- 1996 Law on Reconstruction included several provisions which effectively discriminated Serb applicants
- Amendments to the Law on reconstruction in 2000 removed most discriminatory provisions
- Until 2003 only very few Serbs benefited from reconstruction
- 2003 Law on Terrorist Acts provides that property owners who originally sought compensation in Court for damages should seek an alternative remedy under the Law on Reconstruction.
- Since some claims are not eligible under the Law on Reconstruction, claimants end up without remedy
- Eligibility rate for reconstruction is 30 percent
- Commissions assessing the damages disregard more lenient provisions of the 2000 Law and conclude that property is not eligible to reconstruction
- Some 10,000 complaints against eligibility decisions have been filed

Legislation:
Stability pact, MARRI-DRC, 30 June 2005, p.13-14:
"The Law on Reconstruction came into force in 1996 (…) and different legal acts regulating the reconstruction prior to the spring of 1996 were annulled (…). The Law sets the number of provisions and eligibility criteria that effectively discriminate Serb applicants. Such Law opened wide possibility for harassment and arbitrary behaviour of officials authorised for its implementation, and the possibility for the reconstruction of houses belonging to Serbs in practice almost did not exist. However, the real problem was not in the quality of the Law since such a law demonstrated political will focused on the prevention of Serb return. Although official statistic of ethnic composition of the beneficiaries is not available, according to data gathered by non-governmental organisations, from 118.580 housing units being reconstructed by the beginning of 2003, only very few belonged to Serbs. Their claims for the reconstruction were rejected or stalled – and, for years, they received neither positive nor negative answers. The owners of the houses destroyed in "terrorist acts" were not entitled to the reconstruction.

• The Amendment to the Law on reconstruction (…) was adopted in June 2000 and the majority of discriminatory provisions were repealed. However, because of some vagueness of the Law, the Government issued the Guidelines and a number of different by-laws and instructions for its implementation that caused many problems not only to the beneficiaries of reconstruction rights but to the county officials in its practical enforcement as well.
The Amendment determines: (a) that reconstruction areas cover the entire territory of the Republic of Croatia and reconstruction refers to damaged or destroyed material goods exposed to destructive effect of the armed conflict or to the consequences of those effects (previously the reconstruction areas referred only to the areas that were temporary occupied and were exposed to destructive effects of Serbs, Montenegrins and terrorist unites). (b) The persons with habitual residence in Croatia in 1991 shall be entitled to exercise the rights on reconstruction (previously only Croatian citizens were eligible if they proved their citizenship with "Domovnica", a document that majority of Serbs could not obtain at that time); (c) the individuals convicted of war crimes are

not eligible to reconstruction, and those indicted for the same criminal acts will have their reconstruction rights deferred till the finality of court verdict. In both cases, the family members of the proprietor are not excluded from the right to reconstruction (previously the right to reconstruction excluded the individuals under penal procedure for the criminal acts committed in armed conflicts and in war against Croatia, the denial extended to the family members as well.); (d) The article which determined the priority for the reconstruction and which gave minimal chances to the Serb returnees to exercise their reconstruction rights was deleted. However, deleted provision was replaced with the list established in by-law of the relevant Ministry and it placed the Serbs at the bottom of the priority list.

According to the Governmental Decision of February 15, 2001, the deadline for the application for the State provided reconstruction assistance was set by 31 December 2001. In March 2004, pursuant to the Agreement on Co-operation with SDSS and OSCE proposal the Government reopened the deadline for submission of new request for state provided reconstruction assistance from 1 April to 30 September 2004."

Implementation:

OSCE, 21 November 2004, p.12:

"The 2003 Law on Terrorist Acts provides that property owners who originally sought ***compensation for damages resulting from terrorist acts*** through civil lawsuits initiated in the early to mid-1990s should seek an alternative remedy under the Law on Reconstruction. However, since the Law's adoption in July 2003, few if any property owners have been granted reconstruction assistance by the Ministry. Although court claims have been pending for years, there is no continuity between the two procedures and property owners must submit a new claim to the Ministry. Because some pending property claims involve property that is ineligible under the Law on Reconstruction, it is foreseeable that the Ministry will deny these claims, with the result that the property owners have no right to compensation either from the courts or the Ministry."

OSCE, 18 November 2005, p.7:

"The Law's retroactive elimination of such pending civil claims, without any remedy, has been the basis for several complaints against Croatia lodged at the ECHR."

Stability Pact, MARRI-DRC, 30 June 2005, p.14:

"As the right on reconstruction of the houses destroyed by "terrorist act" was not specifically mentioned, it was not clear whether the owners of such houses were eligible or not for the assistance in reconstruction. A year later, relevant Ministry issued the instruction saying "that bodies in charge for the implementation of the Law must also take the applications for reconstruction of houses destroyed in "single act of terrorism" including those previously turned down. Filed applications will be processed but final decision will follow after the co-ordinating of legislative regulations"

OSCE, 29 July 2005, p.5-7:

"So far, the rate of positive decisions regarding ***eligibility[to reconstruction]*** is below 30 percent. The main reason is that many residential properties have been assessed as 'no-war damage', following the restrictive definition of the 1996 Law, but disregarding the June 2000 Amendments to the Law on Reconstruction. These amendments foresee the eligibility also for properties not damaged by direct war operations. These damages, such as planting of mines, explosive devices, detonations, and pillage etc, often referred to as *terrorist acts*, disproportionately affect Serb properties, mainly in areas which always remained under the control of the Croatian Government. The main condition according to the 2000 Amendments county commissions is still conducted in accordance with laws and instructions (…) pre-dating the June 2000 amendments to the Law on Reconstruction, which contain criteria contradicting the damage definition of these amendments to the Law on Reconstruction and which exclude from

reconstruction assistance. The Mission has repeatedly called upon the Government to apply the latest revisions and amendments to the law adopted in June 2000, and to stop using the discriminatory parts of the 1996 Law on Reconstruction which no longer apply(…). Mission spot checks in the field continue to identify destroyed houses whose damage has been superficially or wrongly assessed by county commissions for war damage assessment. As a result of the high proportion of questionable decisions rendering the applicant ineligible for reconstruction assistance, the ***number of new appeals*** against first instance negative decisions has reached approx. 1,500. The total number of pending complaints against eligibility decisions amounts to approx. 10,000. The Ombudsman recently noted excessive delays in processing reconstruction applications, observing however that his intervention in some individual cases proved successful (…). He stressed that State officials needed to issue decisions in a timely fashion because it was legally required, rather than doing it on the basis of political arbitration(…). The Ministry intends to speed up processing of these appeals by hiring new lawyers. Through the 2003 Law on Responsibility for Damage Caused by Terrorist Acts and Public Demonstrations (Law on Terrorist Acts), Parliament changed the nature and scope of the remedy available for ***property damage resulting from terrorist acts*** in pending court cases. While under the prior law owners could seek financial compensation for any type of property through court proceedings, the Law on Terrorist Acts limits the right to recovery to reconstruction of residential property through an administrative remedy(…). As acknowledged by the Government, few property owners have received a remedy after the application of the Law on Terrorist Acts because much of the property for which owners had submitted claims is no longer eligible for the substituted remedy of reconstruction. The Supreme Court has confirmed Parliament's action, finding that property owners whose pending claims were stopped since 1996 and then re-started under the new law since 2003 are no longer eligible for a financial remedy, but only reconstruction (…). This retroactive elimination of previously valid claims in which property owners had a "legitimate expectation" of having their claim decided could result in ECHR review."

Restitution of private property

Repossession of private property is nearing completion but its impact on return is limited (2006)

- A total of 1,100 houses were repossessed in 2005 and 32 properties remained occupied
- Repossession of private property should be completed by first semester of 2006
- Impact of repossession on sustainability of return is limited by two main factors: selling of properties or extensive looting rendering the house uninhabitable
- Two thirds of remaining properties are located in Dalmatia
- Repossession pace depends on reconstruction of accommodation for occupant since his interest prevails over the owners
- A state agency is encouraging Serb owners to sell their property

MMATTD, 9 February 2006, p.1:
"The majority of the total of 19,280 housing units that had been occupied and sequestered by the Croatian Government has been repossessed by their owners and at present there are 32 cases of occupied property in Kistanje, Biskupija and Vojnic. Repossession of these remaining cases of occupied property is in the final phase, as well as purchase of houses by APN to be used for housing of temporary occupants of private property. A total of 1,100 houses were repossessed by their owners in 2005 after beeing abandoned by temporary occupants. Former occupants were

provided with housing either in houses purchased by APN or they received construction material to build their own homes, and a small number of them were accommodated in state-owned apartments. The majority of property repossessed in 2005 was connected to completion of construction of new houses in Golubic (Knin), Obrovac (Karin Slana), Benkovac (three settlements), Tušilovic, Gracac and Kistanje. A total of 12 new housing settlements with 800 houses have been built since 2004. The Ministry donated both construction material and construction parcels and also built the complete infrastructure in all settlements"

OSCE, 18 November 2005, p.8:
"The pace of property repossession slightly increased during the summer due to the self-imposed deadline of the Government to resolve all the outstanding cases by 10 August 2005. Out of a total of approximately 19,500 private residential properties belonging to Croatian Serbs which had been allocated for temporary use before and after 1995, mainly to Bosnian Croats and Croatian settlers, only 338 remain occupied. (…) The Government should achieve essential completion of the property repossession process by the first trimester of 2006, when the alternative housing for temporary users will be allocated, mainly in the Dalmatian hinterland. Unclaimed occupied properties and cases pending with the judiciary at different stages might remain outstanding long into 2006."

OSCE, 29 July 2005, p.7:
"The impact of the repossession on the sustainability of return remains limited. ***Physical repossession*** by the owners takes place in only half of the resolved cases. Up to 8,000 of the properties considered as having been returned were in fact sold by the owners to the State, mainly while still occupied. A significant number of owners prefer to sell their properties to the State and remain in their countries of refuge (…). In addition, more than 3,000 properties considered as having been returned remain empty and often devastated. In most such cases the authorities have no knowledge of the whereabouts of the owners. Many of the physically repossessed houses are ***devastated and looted***, mainly by their departing occupants, and are not inhabitable. As of June 2005, few owners had received at least some kind of State assistance in the form of building materials, to which they are entitled under the 2002 Amendments to the Law on Areas of Special State Concern /LASSC. In June, the European Commission against Racism and Intolerance (ECRI) strongly recommended the Croatian Government to "make every effort to prevent occupants who are obliged to relinquish property from looting and damaging it, by taking effective measures with regard to prevention, compensation and punishment". (…) Two-thirds of the remaining occupied properties are located in ***Dalmatia*** and more than half are concentrated in three municipalities: Knin, Benkovac and Obrovac. (…) The repossession primarily depends on the pace of construction of alternative housing for the temporary users. Since the beginning of the year, 198 houses in five newly established settlements (Benkovac, Knin, Korenica, Gracac, Obrovac) have been handed over to temporary users of Croatian Serb properties, mainly Croats from Bosnia and Herzegovina.

Various ***administrative or judicial impediments*** still hamper the successful completion of the repossession process, by continuously favouring occupants' interests over owners' rights. Although the process of property repossession has entered its completion stage, the effects of these serious shortcomings relate to earlier repossessed properties as well, and remain unresolved. This refers to the continued *housing care* requirement for occupants as a *precondition (…)* for their vacating property, the lack of assistance for owners of houses devastated and looted, as well as pending lawsuits against owners for compensation of occupants' investments in properties while under State administration."

OSCE, 21 November 2004, p.11:
"The Mission's spot checks indicate that ***physical repossession of property*** takes place in only around half of monitored cases. This is because many property repossession cases are not being resolved through the actual hand-over of the properties to the owners, but are being resolved

when the State purchases the occupied house, mainly as alternative housing for the occupant. According to the Government, this pertains to approximately 25 percent of the 2,071 cases resolved since January 2004. Alternatively contractual agreements have been reached between the occupants and the owners (such as lease contracts)."

Stability Pact, MARRI-DRC, 30 June 2005, p.12:
"Many owners whose houses are occupied, are the subject of persuasion by the State Agency for Real Estate Transaction (APN) to sell their property, which is than used for alternative housing care for occupants. The Government has intensified the purchase of residential houses from Croatian Serbs in municipalities with high number of illegal occupancy but in the same time with a high return rate. Measures used include rising the offered price above market level and public invitation to owners to put their houses on sale. Thus the policy of selling the houses rather than their repossession, initiated in 1998 Program of Return, has continued to the present days. As it was reported by OSCE, repossession in up to half of cases takes place through the purchase of the occupied properties through APN."

Progress in legislative and administrative framework, yet repossession of private property remains slow (2003-2004)

- Private property repossession has not accelerated despite progress in the legal and administrative framework for return
- 3,300 houses remained occupied as of late 2003
- State attorneys are not using expedited court procedures to resolve property repossession
- Repossession in some parts of Croatia has improved, including in Ogulin, Pakrac, and Korenica
- Property repossession in the key return area of Knin has been almost stagnant (as of early March 2004)
- There has been little or no progress in the eviction of temporary occupants who own habitable and vacant property in Bosnia and Herzegovina
- In contrast, government efforts on property reconstruction are advancing well

OSCE 8 July 2003:
"We have seen progress on the legislative and administrative framework for return, but practical implementation still remains slows. Regarding property possession, we have not seen an increase in the pace of return of occupied housing, due in significant part to the policy choices reflected in the applicable legislation. Conversely, Government efforts on property reconstruction have been advancing well, with the number of Serb beneficiaries receiving reconstruction assistance being substantially increased."

HRW 13 May 2004, pp.7-9:
"While Croatia is making some progress in the implementation of the legislation on repossession of property, movement continues to be unjustifiably slow. After the end of the war in 1995, the Tudjman government issued some 19,300 decisions authorizing use of abandoned Serb houses by temporary occupants. As of late 2003, more than 3,300 of these houses were still occupied, effectively blocking the return of their rightful owners.[…]

State attorneys are still not using expedited court procedures for resolving repossession cases, and verdicts are not executed promptly. The OSCE Mission to Croatia has found that, in 2002 and 2003, state attorneys took six months on average to initiate lawsuits at municipal courts after receiving cases from the Directorate for Expellees, Returnees, and Refugees (ODPR). Delays were often due to the incomplete documentation provided by ODPR. It took a further four more

months, on average, before the first hearing in the case was scheduled. As of February 2004, only 3 to 3.5 percent of all repossession cases transferred to state attorneys, pursuant to the relevant legislation from July 2002, have been concluded.[…]

The actual repossession rate since July 2002 has been higher than 3 percent, because temporary occupants often leave the property before the court proceedings have been completed.[1] However, the deadlock that results when temporary occupants refuse to vacate remains a problem. During follow-up research in February 2004, Human Rights Watch checked the current status of three repossession cases described in its September 2003 report. All three owners—Dusan Vilenica (from Karlovac),[…] Danilo Stanic (from Gracac),[…] and Petar Djuric (from Knin)[…]—have been trying to repossess their homes for six years. As of February 2004, their cases were still pending.[…]

Since the publication of the report *Broken Promises* in September 2003, OSCE representatives monitoring the return process in the field have told Human Rights Watch that housing authorities and state attorneys in some parts of Croatia, including in Ogulin,[…] Pakrac, […] and Korenica, […] are making efforts to speed up the process of repossession. In the key return area of Knin, however, property repossession remained "virtually stalled" as of early March 2004. […] Lack of movement on repossessions, coupled with the ongoing failure to resolve lost tenancy rights (see below), has hampered returns to Knin. The Serbian Democratic Forum registered 950 returns to Knin during 2003, contrasted with 1,260 in 2002.[…]

In November 2003, the authorities resolved one of the most prominent cases of use of a Serb-owned house for business purposes.[…]The house, in the town of Krnjak, belongs to returnee Petar Kunic. The temporary occupant, Vinko Petrovic, used the house as a restaurant.[…] The illegal use of Serb houses for business purposes is particularly striking along the road connecting the capital Zagreb with the Dalmatian coast, where Kunic's house is also located. The new government should promptly resolve other similar cases.

Overall, the pace of repossession remains slow, because authorities have yet to use the full complement of measures available to vacate Serb houses. Most repossession currently takes place only when Croat occupants of Serb properties are allocated a plot and materials by the authorities to construct a house. By contrast, there has been little or no progress toward the eviction of temporary occupants who own vacated and inhabitable property in Bosnia and Herzegovina. Such occupants are ineligible for alternative accommodation and should be promptly evicted.[…] State attorneys have initiated eviction procedures in some areas.[…] However, the procedures through which courts verify the status of the properties in Bosnia are inefficient. As a result, NGOs and OSCE officials monitoring return on the ground are either unaware of any case of eviction on this basis in the areas they monitor,[…] or have registered only a handful of cases.[…]

There has been no progress since September 2003 toward amending legislation which blocks repossession within a reasonable timeframe.[…] Croatian law still protects family members who lived in the same household before the war and now occupy two or more Serb houses; under the law these occupants are entitled to government-provided alternative accommodation before they can be evicted.[…] In a similar vein, temporary occupants who are financially or otherwise able to make other housing arrangements are nonetheless entitled to alternative accommodation prior to eviction.[2]"

[Footnote 1] According to the government, 3,873 properties were returned to their owners during 2003, leaving 3,376 cases still to be resolved. *Return of Refugees and Displaced Persons in Croatia, ibid.* The figures would indicate that more than half of the occupied properties were vacated during the year. The figure is misleading, however, because many official "repossessions" pertained to abandoned properties that were unoccupied. Human Rights Watch

interview with international officials in Korenica and Knin, February 2004. Nevertheless, a number of houses—clearly exceeding 3 percent of all occupied properties—were returned to the owners during 2003.

[Footnote 2] On February 20, 2004, the Croatian government adopted a Conclusion entitling the authorities to accommodate the owner within the excess living space of his house prior to the occupant receiving alternative housing. *See:* Organization for Security and Cooperation in Europe & United Nations High Commissioner for Refugees, *5th Report on Issues of Property Repossession under the July 2002 Amendments to the Law on Areas of Special State Concern (LASSC) (November 2003- March 2004)*, Zagreb, April 19, 2004, p. 3. The measure is likely to have a negligible impact on repossessions.

See also, "OSCE sees progress on Croatia key laws, urges faster return", OSCE, 8 July 2003 [Internet]

Only a small number of property owners have benefited from compensation payments for late repossession (2005)

- Owners of houses occupied under the 1995 law are entitled to compensation payments until they repossess their homes, compensation payments were to begin from 1 November 2002
- The Ministry began paying such compensation in the summer of 2003
- Only a small number of owners have received compensation payments and many owners have questioned the refusal of national authorities to pay interest for delayed payments
- Ministry implements a policy limiting compensation rights based on criteria not included in the law
- Amount of compensation represents less than half of what the owner could have obtained by renting his property if he had repossessed it

OSCE, 29 July 2005, p.8:
"As stipulated in the Law on Areas of Special State Concern, the owners of properties not returned within the foreseen deadlines (1 November 2002/1 January 2003) were to receive ***compensation for the continued use*** of their residential properties by the State. Out of approx. 3,500 potential beneficiaries, 1,693 had received this compensation as of 1 July. The increase since Status Report 15 amounts to only 165 beneficiaries (…). In the above-mentioned case *Radanovic v. Croatia,* the ECHR specifically noted that the compensation offered by the Government to the applicant for its use of her apartment did not cover the entire period during which the plaintiff was denied access to property."

OSCE, 18 November 2005, p.8
"The Ministry has implemented a policy under which the owner's right to obtain compensation is limited by when the application is received although no such limitation is stated in the Law on the Areas of Special State Concern. Hence, for example, the Ministry denied compensation to an owner in Knin who repossessed his property in September 2005, on the grounds that he submitted the compensation application in December 2004."

COE CHR, 4 May 2005, par.48:
"48. After 31 December 2002, financial compensation for occupancy of private accommodation in Areas of Special State Concern was offered to owners. The principle of this compensation mechanism is laudable but in practice it remains only partially implemented (…) and the amount allocated to owners on these grounds represents less than half of what an owner could obtain by renting his property."

OSCE 18 December 2003, p.5:
"Owners of houses occupied under a 1995 Law are entitled to compensation payments until they repossess their houses, but only a small number of owners have so far been able to benefit from such payments. This special compensation payment was to start from 1 November 2002.[1] This summer, the Ministry started paying such compensation to about 450 owners of occupied housing. Compensation settlement forms[2] have been sent for signing to more than 1,200 of more than 3,900 owners of claimed properties.[3] At least 400 owners have questioned the content of the compensation settlement sent to them. In particular, owners disagree with the Ministry's refusal to pay interest for the delayed payment after 31 October 2002. The Ministry maintains that owners who have not participated in a survey conducted in 2002 will have to apply for settlement forms. This is contrary to the Minister's statement to the Mission, the EC and UNHCR in January 2003."

[Footnote 1] Although it is positive that timely limited compensation payments finally are being considered, it has to be noted that a constitutional obligation for the State to compensate every use of private property remains unaddressed. Art. 12 par. 7 of the Law on the Areas of Special State Concern sanctions the occupants in light of their responsibility for the damage incurred in the occupied object during the period of allocation.

[Footnote 2] The settlement (*nagodba*) form contains the square-meters of living space of the house in question and contains a provision according to which the owner renounces his right for payment of interests for delayed payment by the State (such interests payments are foreseen by the Law on Obligations).

[Footnote 3] 3,900 is the number of claimed occupied properties on 30 October 2002, which is the first statutory deadline after which the Ministry is obliged to pay compensation to the owners who were unable to repossess their property within that date.

See also "OSCE welcomes Croatia's refugee project, recalls compensation deadline for non-returned properties", OSCE, 31 October 2002 [Internet]

Compensation for investment made by the occupant threatens repossession (2006)

- Some temporary occupants attempt to prevent their eviction by requesting compensation for investment on the owner's property
- Despite a constitutional court decision confirming that investment claims should be separate from repossession claims, courts keep joining procedures thereby postponing repossession
- Courts have ordered compensation payment from owners while the possibility for the owner to receive compensation for the period his property was occupied has been denied
- EU recommends to exclude the possibility of claims for compensation for unsolicited investments being made against the owner
- An intervention from the international community was necessary to prevent an ethnic Serb owner to lose his repossessed property
- The property had been put on auction because the owner could not pay the amount required by the Court for unsolicited investments
- OSCE recommends that a legal remedy is found to address similar cases
- 24 similar cases are currently before Croatian Courts

ECRI, 14 June 2005. par.112:
"[I]t is still difficult to secure an eviction order from the courts, particularly because the occupants ask the owners to reimburse them for the outlay they have made on the property without the owners' consent. This procedure delays the conclusion of the proceedings. (…) Human rights NGOs regret that, as a rule, priority is given to the interests of the occupants-even illegal ones-over those of the owners in the restitution process."

Stability Pact, MARRI-DRC, 30 June 2005, p.13:
"Temporary occupants often refuse to vacate the property demanding from the owners to reimburse them for the investments made during temporary occupancy, and most courts also join repossession dispute and investments claim and it results with delay of repossession claims. The constitutional court has determined that investment claims filed by temporary occupant can be decided in a procedure separate from repossession claims. However, court practice continues to be contrary to the Constitutional Court's decision. (…)
Although temporary users invested illegally, and often with a permission or under protection of relevant local authorities (for what they were not authorised), the state bodies do not consider them responsible, and temporary occupants are filing the counterclaims against the owners (…). Increasing number of counterclaims filed by occupants against owners to obtain payment for their investments and common court practice in such cases could potentially have significant impact on property repossession. The result of the continuation of such a practice would be that the owner, after repossessing the property, could lose it again. In number of cases, courts have ordered such payments, while, at the same time, they did not allow the owners to file "counterclaims" for obtaining the rent for the period their properties were occupied."

COE CHR, 4 May 2005, par.61:
"There are recent examples of justice decisions condemning the owner to compensate the temporary user, even in case of illegal use, for the "investments" made during the occupancy. I was also informed of court decisions where the owner was condemned to a pay large amount to the occupant of his house even though he did not consent for the use of his property or for the work undertaken. Certainly, occupants may have undertaken work in the habitation from which the owner may benefits. However, the compensation practice seems worrying to me if we consider, on the one hand, that authorisation to use the property was given by the State without the consent of the owner and that, on the other hand, the occupancy was given free of charge. Therefore one can consider the possibility for the Parliament to adopt legislation on this subject with the aim of avoiding a situation where owners have to bear the full responsibility of a situation which they have neither created nor consented to."

EU, 9 November 2005, p.29:
"In any case, it would be advisable to exclude the possibility of claims for compensation for investments made without the owner's consent being made against the owner"

OSCE, News in brief, 12 January 2006, p.1-2:
"Swiftly following a joint appeal by International Community (IC) Principals from the OSCE, UNHCR and EC, the Ministry for Maritime Affairs, Tourism, Transport and Development (MMATTD) successfully intervened to block the public auction of a house owned by Stevo Zabrdac, a Croatian Serb.
As previously reported, Stevo Zabrdac faced the loss of his property in Daruvar, Western Slavonia, due to his inability to abide by a court order to reimburse unsolicited investments made by a former temporary user.
In an attempt to prevent the sale of Mr. Zabrdac's house via public auction, IC Principals sent a letter to the Minister for MMATTD on 16 December requesting intervention. On 30 December, the MMATTD initiated trilateral consultations between the owner, the temporary occupant and the State, resulting in a settlement agreeable to all, with the Ministry taking over the financial

obligations assigned to the owner by the court. As a consequence, Mr. Zabrdac and the former temporary user then signed an out-of-court settlement withdrawing their respective court requests.
The Mission welcomes the Ministry's initiative, although a legal remedy preventing the emergence of similar cases in the future would be preferable. According to the MMATTD, similar *ad hoc* trilateral settlements will be used to deal with the 24 reimbursement claims currently pending before various Croatian courts."

OSCE, News in brief, 3 January 2006, p.5:
"On 15 December, the Municipal Court (MC) in Daruvar, Western Slavonia, publicly auctioned the house of a Croatian Serb who was unable to reimburse unsolicited investments made by a former occupant. Investments to the property in question were made by the occupant without the owner.s consent while the property was under State administration between 1996 and 2003**.** During this period the occupant was exempt from paying rent to the owner following an authentic interpretation by the Croatian Parliament of art. 14 of the Law on the Status of Expelled Persons and Refugees.
On 5 July 2002, the MC in Daruvar ordered the owner, Stevo Zabrdac, to pay 44,000 KKN to Romeo Tunic, the temporary user, following the user's claim for reimbursement of investments he made in the property. Unable to pay the court order, the MC offered Mr. Zabrdac.s house for sale as his only valuable asset. During the third auction attempt, the former occupant offered to purchase the house for less than half its current market value. If this amount is paid to the court within 15 days, it will result in Mr. Zabrdac losing ownership of a house he repossessed in the course of 2003. Court decisions ordering reimbursement by legal owners to former occupants clearly run counter to efforts to ensure the repossession of private property. With returnees exposed to the loss of their properties for a second time, the Government will face further potential cases of forced displacement. This highlights a gap in the current legal framework. In May 2004, the Mission proposed draft amendments to the Code on Civil Procedure, which would foresee a ban on such investment claims by former occupants.
In the most recent meeting between the Minister of Maritime Affairs Tourism Transport and Development (MMATTD) and International Community (IC) partners held on 9 December, the Assistant Minister of Justice and the Deputy State Attorney for Civil Affairs stated that a trilateral out-of-court settlement between the State, the occupant and the owner of the property would be the most likely legal solution to this case. Unfortunately, no such legal solution has presented itself, despite the case being mentioned regularly in meetings with the MMATTD since November 2004.
In light of the 15-day deadline facing Mr. Zabrdac, IC representatives sent a letter to the Minister for MMATTD on 16 December advocating a speedy solution to this case. In addition, IC Principals stressed the urgency of a concrete legal remedy, bearing in mind that 24 such cases are currently pending before various courts in Croatia."

Governments adopts measure to compensate owners of looted properties (2005)

- Looting of repossessed properties has been a major obstacle to return and affects several hundreds of Croatian Serb owners
- Implementation of the compensation model has started for the first 145 of the 600 identified cases
- Remedies established by the 2002 amendments to the LASSC were never implemented in practice
- An effective remedy for owners of looted houses is one of the benchmarks that the International Community recommended the Government to include in the Croatian "Road Map" on Refugee Return

OSCE, 18 November 2005, p.8:
"On 22 July 2005, the Government adopted a long awaited conclusion aimed at compensating owners of devastated properties upon repossession through State-organized repair assistance or cash grants. The implementation of the new model has started for the first 145 out of the 600 cases identified so far and the Ministry intends its completion in the first months of 2006. The Mission is working with Government officials on the refinement of the legal and administrative contours of this compensation model.."

OSCE, News in Brief, 13 September 2005, p.3-4:
"Following consultations with the International Community partners, the Government adopted on 22 July a "Conclusion" to address the consequences of looting/devastation of Serb private residential properties upon the departure of the temporary occupants. The properties were allocated by the State under the 1995 Law on Temporary Takeover and Administration of Specified Property to refugees, internally displaced persons and other ethnic Croats for temporary use. Looting is a major obstacle to return and prolongs the displacement in many cases because the properties are handed over in uninhabitable conditions. The Mission observes that this problem affects at present several hundreds of Croatian Serbs owners. Prior to the adoption of the Government's Conclusion, there was no effective remedy for owners of looted/devastated property apart from lengthy and costly individual civil court proceedings. Amendments to the Law on Areas of Special State Concern in 2002 established general remedies which, however, have not been implemented in practice. The Government's Conclusion anticipates that owners of looted/devastated property would be eligible for limited State assistance based on a professional engineer's assessment of damage. However, the Ministry of Maritime Affairs, Tourism, Transport and Development still needs to define effective operational details through administrative instructions. An effective remedy for owners whose houses were looted/devastated while under State administration is one of the benchmarks that the International Community recommended the Government to include in the Croatian "Road Map" on Refugee Return. The latter one results from joint declaration on refugee return signed by the Ministers responsible for refugee issues from Croatia, Bosnia and Herzegovina, and Serbia and Montenegro on 31 January 2005 in Sarajevo to undertake the necessary measures to complete the process of return by the end of 2006."

Looting and destruction of properties occurs regularly (2005))

- OSCE estimates that 30 to 55 percent of repossessed properties are looted and rendered uninhabitable
- Owners are entitled to make request for repair material but are not given priority and are discouraged by authorities to do so
- Some owners waited more than a year to obtain construction material
- Police is reluctant to intervene in housing disputes and has failed to remain impartial in numerous circumstances
- Authors of looting are rarely charged and convicted due to overload of the judiciary
- Looting by occupants of both fixtures and moveable property prior to vacating government allocated property continues to occur on a routine basis
- Looting remains common in the municipalities of Glina, Petrinja, Vojnic, Gvozd, Plaski, Karlovac, Hrv. Kostajnica and D. Kukuruzari
- There has been limited compensation to owners for damage done by looting

- The OSCE has undertaken a number of activities to prevent looting and intentional damage to properties, including sensitisation of local police
- Although local authorities issue oral and written warnings, in most return areas these warnings have been ineffective
- State prosecutors are mandated to sue temporary occupants who intentionally damage or loot property yet no such prosecutions have taken place
- Serb returnees have been reluctant to bring court action themselves, because many temporary occupants continue to reside in the same area

OSCE, 1 April 2005, p.5:
"Field observations confirm that looting and deliberate devastation of properties, often through removal of integral parts by temporary occupants prior to their departure, takes place in 30 to 55 percent of the monitored repossessions."

COE CHR. 4 May 2005, par.59-60:
"Victims of these acts, who are mostly of Serb origin, can make a request for repair materials, but are not given priority with regards to houses destroyed during the conflict or to needs in new construction. Therefore construction support is given to them after a long delay - often after more than a year. Sometimes local Ministry officials even discouraged them to make such a request. During the visit, we visited houses looted in 2003 – doors, windows, heating systems, bathrooms as well as electricity equipments were pulled out or removed – and the Serb owners were still waiting to receive requested reconstruction materials.

The action undertaken to stop these acts, which represent criminal offences of theft and damaging of other people's properties does not seem to be very fruitful. No information campaign was made by the Office for Displaced Persons, Returnees and Refugees (ODPR) to inform occupants that looting the accommodation they occupy could lead to the lost of their right to alternative accommodation and could ultimately lead to financial sanctions. In cases of vandalism, an expert records the damage, the ODPR then transmits a documented case to the Prosecutor's office concerning the acts committed. During my discussions with the Head of the ODPR, he showed me some case files concerning acts of vandalism which were transferred to the public prosecutor's office. Yet, due to the work load of tribunals and priority not being given to these cases, it seems that court actions are rarely initiated. In the few cases where action was undertaken, owners were sometimes requested to prove that damages were committed by the occupant or that he/she owned the stolen objects."

USDOS, 28 February 2005, Sect.1 f:
"Police were sometimes unwilling to intervene in housing disputes, which occasionally involved attack against property, looting, and arson (see Section 5). There were allegations that the police did not always remain impartial and uphold the law when it came to housing disputes between ethnic Croats and ethnic Serbs. For example, in Vojnic, police did not intervene on any occasion, despite requests from the original owner that the property was being damaged and that an illegal occupant renovated the property without proper permits. He continued to use it for business purposes and was offered alternative housing, but refused to vacate. Also, near Hrvatski Kostajnica, when a woman whose home was being looted called police, they took no action, indicating that they would not take action unless the incident became violent. "

HRW 13 May 2004, p.7:
"Another lingering problem related to repossession of properties is that temporary occupants often loot and seriously damage Serb-owned houses before vacating them.
The latest information suggests that ODPR officials throughout the country issue oral or written warnings to temporary occupants, to advise them that looting and property destruction are illegal

and may lead to a loss of entitlement to housing care. [...] In most returnee areas, however, these warnings have failed to prevent the destruction of premises and the looting of furniture.

State prosecutors are mandated under the law to sue temporary occupants who intentionally damage or loot property that has been allocated to them, but organizations monitoring returns have no knowledge of any such prosecutions taking place. [...]Serb returnees are unlikely to bring court action themselves: the temporary occupants usually continue to live in the same area, making returnees reluctant to sue. Moreover, court proceedings are expensive, and returnees remain skeptical about their ability to obtain justice before the courts.[...]"

OSCE/UNHCR 28 October 2003, pp.19-20:
"A negative aspect of some progress in the repossession of property by owners is that looting by the occupant of both fixtures and moveable property prior to vacating Government allocated property continues to occur on a routine basis. The [OSCE] Mission's field office in Hrvatska Kostajnica reported several cases in the Sunja municipality in which users destroyed or severely damaged before vacating the premises they had occupied. Similarly, the field office in Petrinja reported seven cases in which when the owner repossessed the property it had been significantly damaged and looted.

To date, State Attorneys have not initiated any actions against occupants seeking compensation for damage, although so authorized by the LASSC. For their part, owners have been reluctant to approach State Attorneys for purposes of initiating such claims, expressing skepticism about the possibility of succeeding in obtaining compensation through civil lawsuits against the occupants. However, the Mission has advised owners to pursue this remedy provided by law.
[…]
Given its perspective that the prevention of looting and intentional damage is preferable to after-the-fact attempts to obtain compensation for damage incurred, the Mission has undertaken a number of activities with RODPR and police to sensitize them to this issue as well as to engage them in preventive efforts. In mid-September, field staff arranged a multi-agency meeting in Benkovac to discuss looting with representatives of local police and ODPR. The Mission's Police Adviser has also initiated discussions with the Ministry of Interior in Zagreb concerning the possible issuance of instructions to local police concerning operational procedures on looting. The Ministry has expressed a willingness to address this issue, acknowledging police under-performance in this area."

OSCE/UNHCR 28 October 2003, pp.19-20:
"Given the limited field monitoring capacity of UNHCR Field Offices, looting cases submitted with the last report have not been followed up further physically by UNHCR for this report. All new cases are exclusively based on partner NGO reports (SDF Vojnic and Pakrac, CHR, IPC) and could not be physically verified by UNHCR staff. However, UNHCR partner agencies are continuously reporting incidences of looting, a lack of will on the side of most RODPRs to prevent this and a deficient legal framework, leaving owners unprotected and vulnerable.
[…]
'[L]ooting', remains common in the municipalities of Glina, Petrinja, Vojnic, Gvozd, Plaski, Karlovac, Hrv. Kostajnica and D. Kukuruzari."

For more detailed information regarding response by national authorities toward looting, see the full report of the OSCE/UNHCR "4th Report on Issues of Property Repossession under the July 2002 Amendments to the Law on Areas of Special State Concern (June 2003-September 2003)," 28 October 2003 [Internet]

See also, p. 30 of "Broken Promises: Impediments to Refugee Return to Croatia, Vol. 15, No. 6(D)", HRW, September 2003 [Internet]

Government adopts exceptional measures to speed up property repossession but rate of property repossession continues to be low particularly in southern Croatia (2003)

- Delay in the repossession process is due to a number of factors including a high number of temporary occupants who are still eligible for state housing prior to moving out
- The repossession process has also been delayed due to slow legal proceedings in the courts and to delayed or thwarted court-ordered evictions
- Illegal occupants are not actually being evicted and efforts on behalf of the government to address the issue of illegal occupancy have been meager
- In October 2003, the Government adopted exceptional measures to speed up property repossession and to return by end 2003 all remaining residential properties allocated to temporary users under a 1995 law
- Measures included the purchasing of vacant houses and apartments, expediting court proceedings to evict temporary occupants and faster delivery of construction material and electrification of alternative housing
- The rate of repossession of occupied property improved in central Croatia (particularly Petrinja, Glina) because physical allocation of housing to temporary occupants has been accelerated
- A very low repossession rate persists in other areas, particularly in the Knin area

“The repossession of housing[1] has not improved significantly during the reporting period. Most of the concerns raised by the Mission remain, in particular the precedence given to the interests of temporary users above the rights of owners. There are several reasons for the delay of the repossession process. First, a high number of temporary occupants (3,700) are still eligible for state-provided housing (housing care/temporary accommodation) to be provided *prior* to their moving out. Second, legal proceedings in courts are generally slow. Third, legal proceedings are often held on cases already decided by administrative authorities. Finally, court-ordered evictions are regularly delayed or thwarted. Efforts of the Government including the State Attorney’s office as well as the courts to address cases identified as illegal occupancy remained far from satisfactory. As a result, illegal occupants are actually not evicted. They vacate occupied properties only when they decide that they no longer need the house and voluntarily move out .

On 16 October 2003, the Government adopted exceptional measures in order to speed up property repossession and to return by the end of 2003 all remaining 2,700 residential properties that were allocated to temporary users under a 1995 law. The measures foresee the purchasing of vacant houses and apartments, expediting court proceedings to evict temporary occupants (although the authority to do so lies with the judiciary), and ensuring a faster delivery of construction material and electrification of alternative housing. The competent Ministry was instructed to rent a number of housing units as a temporary solution for occupants. The Ministry was also requested to appoint representatives for those owners with whom contact has not been established in order to repossess over 1,500 houses in the name of the owners. Still, the return of all claimed housing properties by the mentioned deadline remains unlikely.

The deadline for repossession of housing properties - originally set for the end of 2002 through legislation adopted in 2002 - has been extended, but the Minister for Public Works, Reconstruction and Construction acknowledged in October 2003 that the new deadline (end of 2003) would not be met.

The rate of repossession of occupied property has improved in a number of municipalities in central Croatia (Petrinja, Glina), because physical allocation of housing to temporary occupants has been accelerated, while the very low repossession rate persists in other areas, particularly in the Knin area in southern Croatia.[2]

Towards the end of 2003, some progress was observed regarding the work of the county and municipal state attorneys and the courts in property repossession cases. Impediments at all stages of the proceedings are, however, still the rule.[3] Although the Ministry has substantially increased the number of administrative eviction orders, particularly in cases where the occupant has access to other housing or occupies several properties, this has had only a limited effect on the number of repossessions. The Administrative Court has annulled 11 such eviction orders, contesting the ground for the decisions taken.[4] Of more than 1,150 administrative eviction orders in 2003, approximately 720 have been referred by the Ministry to the State Attorney for initiation of eviction/repossession proceedings in court.[5] In approximately 40 per cent of the transferred cases, state attorneys have initiated proceedings in the municipal courts, with the largest numbers of cases pending in Benkovac, Karlovac, Obrovac, and Sisak. However, to date courts have issued few verdicts on eviction and even fewer verdicts have been executed. Thus, there has been no significant increase to date in the number of homes repossessed by owners through the court procedures established by the Law on Areas of Special State Concern (ASSC).

Field reports show that Ministry representatives in some locations have begun discouraging occupants from looting occupied properties upon vacating them by warning that they will be held responsible for any looting.[6]" (OSCE 18 December 2003, pp.4-5)

[Footnote 1] Based on the Law on Amendments to the 1996 Law on Areas of Special State Concern (LASSC), Official Gazette, 88/02.

[Footnote 2] The number of occupied properties whose occupants have been held eligible for alternative housing is more or less equivalent in FC Sisak (1.966) and FC Knin (1.864) AoR. Nevertheless, the Ministry has in October approved housing care options for 37 per cent of the eligible occupants in the FC Sisak AoR and only 18 per cent in the FC Knin AoR.

[Footnote 3] Despite a significant increase in the number of cases transferred to state attorneys, deficiencies remain in the co-operation between the MPWRC and the state attorneys who function as the state administrator of occupied property in court proceedings under the LASSC. Delays arise because of incomplete documentation in a significant number of transferred files, for example in Sibenik three quarters of the files are incomplete.

[Footnote 4] The Administrative Court ruled that the administrative eviction orders issued by the Ministry lacked legal ground since they failed to adequately prove that the occupants had access to their original properties in Bosnia-Herzegovina.

[Footnote 5] During autumn 2003, there has been a significant increase (more than 50 per cent) in the number of cases transferred from the MPWRC to state attorneys. Users, particularly in the Sisak and Knin areas, are increasingly likely to vacate after the involvement of the state attorney. In the cases where state attorneys have initiated court action they have adhered to legal deadlines. Their efforts are, however, often thwarted by municipal courts, where proceedings suffer chronic delays.

[Footnote 6] In the Sisak area, Ministry representatives have cancelled previous eligibility decisions for State provided housing care to few occupants because they removed integral parts of the building including doors and windows before their departure.

See also, "4th Report on Issues of Property Repossession under the July 2002 Amendments to the Law on Areas of Special State Concern (June 2003-September 2003)", OSCE/UNHCR, 28 October 2003 [Internet]

Many Croat returnees to Eastern Slavonia pressure Serb temporary occupants to leave (1999)

- Harassment and intimidation of secondary occupants is a contravention of Croatian law and the 1997 Operational Agreement on Return
- Police in Eastern Slavonia frequently fail to protect such displaced Serb occupants and their housing rights as secondary occupants

"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. 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." (HRW March 1999, "Security")

Socially-owned apartments

Ongoing termination of tenancy rights threatens to create new displacement (2005)

- In hundreds of judicial proceeding, the Croatian state continues to seek termination of occupancy rights which often result in eviction of the former tenancy right holder
- Some of these Court terminations are based upon alleged participation in enemy activity in the absence of any conviction which is contrary to a Constitutional Court decision
- Court-ordered evictions mainly affect Croatian Serb families who still reside in apartments belonging to the Ministry of Defence or other state bodies.
- In January 2005, the Government accepted the proposal of the international community to adopt a moratorium on the execution of those evictions until housing care is provided to those persons
- Despite instruction to local attorneys to delay evictions in July 2005, the state continued to seek eviction in September 2005

OSCE, 18 November 2005, p.7:
“In hundreds of judicial proceedings, the State continues termination proceedings against persons who never left their OTR flats, and is moving ahead with eviction proceedings (…) in a manner contrary to established Constitutional Court interpretations. In July 2005, however, the Attorney General instructed local state attorneys to delay seeking enforcement of eviction orders against former OTR holders if they had applied for the housing programme, until such time as housing is physically provided.”

OSCE, News in Brief, 27 September 2005, p.3:
"Despite the lack of the legal prerequisites articulated by the Constitutional Court, lower court decisions have terminated occupancy/tenancy rights (OTRs) on the grounds of the participation in enemy activity by the OTR holder, without any previous criminal conviction, and are moving ahead in eviction proceedings. These court actions also indicate that Croatia, in particular the Ministry of Interior, continues to seek to evict persons who never left OTR flats in a manner contrary to established Constitutional Court interpretation. In a series of decisions starting in 1999, the Constitutional Court ruled that terminations of occupancy/tenancy rights under Article 102a of the Law on Housing Relations on the ground of the OTR holder's participation in enemy activity could only comply with constitutional guarantees if the OTR holder had been subject of a prior criminal conviction.

In late August 2005, the Karlovac Municipal Court (Central Croatia) denied the request of Dragica and Dragomir Miljenovic to stop the eviction sought by the State. Their OTRs had been terminated in 1999. The 2005 court decision indicated that unconstitutionality is not a legal ground to stop an eviction. As found by the court, two members of the Miljenovic family resided in the apartment during the entire war period. Nevertheless, the occupancy/tenancy rights of the holder were terminated due to the fact that he spent some time in occupied territory. Croatian authorities never charged him for any acts related to war. In mid-September, the Split Municipal Court scheduled the eviction of Stevan Babic and his family whose OTR was terminated in 1996. Again, as found by the court, family members never left the apartment, while Stevan Babic took care of his disabled father in occupied territory returning after the war. Again, he was never charged for criminal activities against the state. Numerous evictions have been attempted in both cases, but so far postponed due to interventions of non-governmental organizations, the international community or the poor health of the OTR holders. Complaints to the Constitutional Court have been pending in both cases since early 2004 and 2003, respectively."

OSCE, 29 July 2005, p4-5:
"Hundreds of proceedings involving the ***termination of OTR*** continue in the Croatian courts. The State continues to seek termination against OTR holders who reside in their apartments; they will be evicted if the State's lawsuit succeeds. The State also seeks to terminate even where the OTR holder's absence resulted from forcible eviction by members of the military or police during the conflict and the OTR holder used all available legal means to regain possession. Finally, the Government continues to seek termination and eviction of Serb residents although to date no alternative housing has been provided under the housing care programme. The Council of Europe recently recommended that in "cases concerning the legality of the termination of occupancy/tenancy rights, particular care should be taken to ensure that each case is examined carefully and in a non-discriminatory manner."10 The Mission and its international partners have long advocated for moratorium on the execution of evictions in ongoing court-ordered OTR terminations, which threaten to cause new displacement in 2005, almost ten years after the war. At the end of 2004, the Ministry of Defence agreed to forego eviction of former OTR holders until – if eligible - they receive housing under the above-mentioned options. While the Ministry continues to seek termination, no new executions of evictions from MoD flats have come to the knowledge of the Mission since January. Other State bodies have not yet followed this suggestion."

OSCE, Access to housing, April 2005, p.16:
"The state has within recent years implemented some evictions based on final decisions of termination,(…) while other evictions remain pending and subject to execution at any time.(…) The Mission is continuing to monitor such court-ordered evictions mainly affecting Croatian Serb families, many of these former OTR holders still reside in apartments belonging to the Ministry of Defence or other state bodies. In the course of 2004, the Mission and its international partners proposed to the Government to adopt a moratorium on the execution of those evictions until potential evictees are provided with housing by the State provided that they are eligible to receive

it. This suggestion has been accepted by the Ministry of Maritime Affairs Tourism Transport and Development and the Ministry of Defence in January 2005."

Housing care programmes for former occupancy right holders differs depending on region (2006)

- Two housing schemes for former occupancy right holders were adopted in 2002 and 2003
- Implementation of housing programmes just started at the end of 2005 and in very limited number
- As of March 2006, only 41 former occupancy/tenancy rights holders (OTR) had received housing care both inside and outside areas of special state concern
- Programmes differ in geographical scope, legal aspects and housing options
- One programme applies to urban areas and the other to war affected areas
- Complexity of housing care creates confusion among potential beneficiaries and authorities supposed to implement them
- The total number of beneficiaries of housing care programme in areas of special state concern does not specify how many of those are former occupancy right holders
- Both programmes propose status of protected tenant or purchase of apartments but conditions differ
- Access to housing for former OTR holders would enable the return of the relatively skilled and educated urban population
- Housing care programmes do not represent a recognition of tenancy rights as property/possession rights but a measure to facilitate return
- Croatian Government did not take into account NGO's request to allow restitution of flat or compensation
- Little publicity on the existence of the housing care programme and reluctance at local level limited its impact
- Information campaign only occurred in late 2004 necessitating an extension of the deadline to apply in urban areas
- Center for Peace considers that the difference between the two programmes reflects a discriminatory intent

OSCE, 18 November 2005, p.6:
"Former holders of occupancy/tenancy rights (OTR) who lived in socially owned flats remain the largest refugee and IDP (internally displaced persons) category lacking access to housing (…). Housing solutions adopted by the Government in 2000 and 2003 for former OTR holders who used to live in socially owned flats have only just begun to be implemented, and only in very limited numbers."

OSCE, 3 March 2006, p.3:
Interview with Head of the OSCE Mission in Croatia:
"Some cases have been resolved recently, more precisely those that needed urgent housing care. For the time being, this is a symbolic, yet very important number. A total of 41 former occupancy/tenancy rights holders were provided with housing care. In my opinion, it is possible to resolve most requests for housing care by former occupancy/tenancy rights holders by the end of this year."

OSCE, 29 July 2005, p.3:

"Two housing schemes were adopted by the Croatian Parliament in 2000/2002 and by the Government in 2003 for former OTR holders inside and outside the areas directly affected by the war (*Areas of Special State Concern* / ASSC). The programmes differ in geographical scope, procedural and legal aspects, and in housing options available4.

Stability Pact, MARRI-DRC, 30 June 2005, p.21-22:
"According to the presented legal framework there are two models of housing. These models are not based on the recognition of legal essence of the problem of the loss of tenancy right, instead, they satisfy more or less imposed international commitment to enable the return of those refugees who lived in so called socially owned apartments and for that purpose the housing accommodation must be provided. Also different rights of former OTR based on their pre-war residence lead to the inequality before the law.
The first model is regulated by 2002 Amendment to the Law on the Areas of Special State Concern and the accompanying Priority Criteria of the Housing Care regulate the first model
The second model is created by the 2003 GoC Conclusion with the accompanying Implementation Plan for Provision of the Housing Care.
Besides these two models**,** the specific situation refers to the tenancy rights holders on the territory that was under transitional administration of UN (so called UNTAES) that was peacefully returned under the control of the Croatian Government in January 1998. Former OTR holders on this territory have been living in a legal limbo since their acquired rights have not been cancelled, but they have not universally been granted the status of so called protected lessees as foreseen by law, as it happened to former OTR holders from other parts of Croatia who eventually did not manage to privatise their former socially owned apartments. There is another, still unsolved problem and it refers to the tenants who held OTRs over private/nationalised apartments before the tenancy rights were cancelled. (…)
Obviously, such a controversial legal framework and different position of the eligible applicants, depending in which part of Crotia they reside or resided before the war, makes the confusion not only among potential beneficiaries but also among those who are going to implement such as confused regulation."

OSCE, 29 July 2005, p.3, note 4:
"Applicants for both programmes can be provided, if eligible, with housing in the form of lease of State owned apartments under favourable conditions (the average monthly rent amounts to around € 0,20 per square meter.) Nevertheless the purchase option differs within the ASSC where it is regulated by the 2003 Decree on conditions for the purchase of a State owned family house or apartment in the Areas of Special State Concern, NN (48/03) and outside the ASSC where one of the requirements for the purchase of subsidized apartments is the Croatian citizenship. This would potentially exclude a portion of the refugee population from applying for the purchase option since in many cases it might take several years for them to acquire the Croatian citizenship. In addition, outside the ASSC the purchase price of State owned apartments is around 60 percent of the market price. Therefore the subsidized price still amounts to more than € 900 in cities like Zagreb, which is not affordable for most of the minority returnee households."

EU, 9 November 2005, p.28:
"The Government has been particularly slow in terms of publicity of the housing care programme; the publicity campaign outside Croatia got under way with UNHCR support relatively late in 2004, thereby necessitating a further extension of the deadline to the end of September 2005. Resistance to the programme at local authority level has also hampered progress.

Potential beneficiaries – amounting to around 30,000 families in total, 24,000 of which in urban areas – are also not fully convinced they should apply. It would seem that the majority of them would prefer to be given the opportunity to buy "their" apartment at the same favourable price as in the 1990s and, then, sell. This option is not available to them."

Center for Peace, 31 August 2004, p.15-16:
"Discrimination can also be noticed in the fact that two separate housing "programs" were adopted, one for so called areas of special state concern (former areas of conflict), where mostly ethnic Croats exiled from Bosnia and Herzegovina need to be taken care off, and second one related to other parts of the country mostly concerning housing of exiled Serbs. This presents a duality within Discrimination and different approach in exercise of rights on basis of ethnicity is also visible in the fact that the first housing "program" is regulated by the law and the second one only by the Government's Conclusion and through sub-legal acts. The Government never took into consideration NGO suggestions on possible solutions of former tenancy rights holders. These included the following options: 1.natural restitution where ever possible, 2. allocation of substitute apartment of building and 3. financial compensation. Some NGOs in the region criticised the Conclusion of the Government of the Republic of Croatia on Housing of Returnees to Croatia – Former Tenancy Rights Holders dated June 12, 2003."

OSCE, 21 November 2004, p.4:
"Access to housing for former OTR holders would enable the return of the relatively skilled and educated urban population and would thus contribute to a more dynamic Serb community in Croatia."

See also, Croatia: 2005 progress report, European Commission, 9 November 2005

Housing care programme for former occupancy/tenancy rights

holders outside the areas of special state concern is still not operational (2006)

- Government declares it is making a particular effort in urban areas where purchase of apartments for OTR is under way
- Government announces integral plan for housing of OTR with construction to be completed in the 3 to 5 years to come
- In urban areas, applications to housing care are subject to a deadline which was postponed several time, from December 2004 to September 2005
- Increased applications during extended deadline shows interest in return if adequate housing is available
- Funds earmarked in 2005 for housing care had not yet be spent as of July 2005Under pressure from the international community, the government enacted provisions for housing assistance to former OTR holders who wish to return to areas outside the Areas of Special State Concern in June 2003
- Provisions for beneficiaries inside the ASSC were enacted in July 2000/July 2002 amendments to the 1996 Law on the ASSC
- Beneficiaries will be able to apply for lease of apartments or purchase them, although the envisaged purchase price is likely to be beyond the means of most beneficiaries
- An amended version of the July 2003 Implementation Plan for the program outside the ASSC was signed by the Minister in October 2003
- The October 2003 amendments incorporate suggestions made by the OSCE/UNHCR/EC, including eligibility criteria which initially addressed only refugees and not IDPs
- The housing care programme for former OTR holders inside the ASSC is still not operational after more than three years
- The government has not yet addressed the underlying legal and human rights aspects of the termination of occupancy/tenancy rights

MMATTD, 9 February 2006, p. 2:
"The Ministry has intensified the implementation of the program of housing of ex-tenancy right holders as the last remaining refugee group in need of housing after the return to Croatia. A particular effort is being made concerning the housing in urban centres (outside ASSC) where as purchase of a large number of apartments for ex-tenancy right holders is under way (in Zagreb, Osijek, Karlovac). At the moment a considerable number of housing requests is in the proceeding on their right to housing outside ASSC – some 800 requests. An integral plan of housing of ex-tenancy right holders is being prepared, and it will include purchase of apartments on the real-estate market as well as construction of a significant number of apartments in the three to five year period.
Out of applications for housing of returnees – ex-tenancy right holders submitted to date 9,700 remain to be solved, i.e. 7,900 housing units should be provided: Outside ASSC: A total of 4,463 applications for housing were submitted until the end of the set deadline which expired on 30 September, among them 2,218 are applications for the rent of an apartment and 2,245 are applications for the purchase of an apartment. Majority of applicants are residing in SMN – 2,061 in SMN, 674 in B-H, 1,508 in RC and 220 elsewhere.

OSCE, 29 July 2005, p.
For the ***urban areas*** of Croatia, the application deadline for possible inclusion in the housing programme was extended from 31 December 2004 until the 30 June 2005, upon the request of the Zagreb-based International Community and of the Serb MPs in Parliament. As of first July, only 16 of the 2,598 applications received had been administratively processed by the responsible Ministry. The Minister earlier had agreed with the IC to provide housing for a first group of beneficiaries, well before the 30 June deadline, to encourage potential applicants. As of end July, however, no households had been provided with flats. Therefore, confidence in the programme remains very low and this could account in part for the low number of new applications. At the encouragement of the mission and its international partners the Government decided to extend the application deadline. The Minister reiterated on 6 July to the IC partners the commitment of the Government to finally provide housing to a first number of eligible beneficiaries before the expiration of the new application deadline on 30 September 2005. The European Commission against Racism and Intolerance (ECRI), an independent human rights monitoring body established by the Council of Europe, recommended to the Croatian Government in its third report published in June "to implement without delay the programmes for providing alternative housing to former OTR holders" (…).

OSCE, 18 November 2005, p.6:
"Since the beginning of the year, i.e. the period corresponding to the extension of the application deadline for OTR holders, more than 1,000 applications have been filed for housing care programmes in the urban areas of Croatia. The significant increase in the rate of applications shows that there is still a strong interest in return among the displaced refugee population provided satisfactory conditions for return are in place. This also comes as a result of increased public awareness efforts by the Government and NGOs in order to promote the housing care programmes in SaM and BiH and to defer the lingering scepticism among potential applicants. Nevertheless, a forceful implementation of the housing care programmes would reinforce the displaced populations' trust in the Government's true commitment.."

OSCE July 2003, p.6:
"The lack of redress for terminated occupancy/tenancy rights of Serb refugees and displaced persons who previously lived in socially owned apartments in Croatia has for some time been one of the central unresolved issues that impeded return. The issue of terminated occupancy/tenancy rights is particularly relevant in urban centres outside the Areas of Special State Concern, which remained under Government control during the armed conflict. According to data received from

the Ministry of Justice, 23,700 families lost their occupancy/tenancy rights during and after the armed conflict through court rulings in areas that were under Government control."

OSCE 18 December 2003, pp.6-7:
"Although the Government continues to avoid a discussion on the underlying legal and human rights aspects of the termination of OTR, it has, after intervention by the Mission and its partners, enacted provisions for housing assistance to former OTR holders who wish to return and stay in Croatia. This has been done through two different programs, none of which are yet operational. Provisions for beneficiaries *inside the ASSC* are contained in the July 2000 and July 2002 amendments to the 1996 Law on the ASSC. In June 2003, the Government enacted provisions applying *outside the ASSC*. The geographical area covered by the latter programme includes most of Croatia's large cities.

The Mission and its partners have recommended to the Government to make the two programs user friendly, which includes standardization of procedures for applications, eligibility criteria, decisions and provision of housing care inside and outside the ASSC. The Mission is concerned that the Government's June 2003 *Conclusion* and the *Implementation Plan* for the programme outside the ASSC allow for arbitrary delays by leaving a large degree of discretion to low-ranking officials in determining eligibility.

The programme for the areas *outside the ASSC* applies to former residents from these areas who want to return and stay in Croatia, including those who never left the country after being displaced from their apartments. Beneficiaries will be able to apply for lease of apartments or purchase them under favourable conditions.[1] The envisaged purchase price of about 80 per cent of the market value is, however, likely to be beyond the means of most beneficiaries.

An amended version of the July 2003 *Implementation Plan* for the program outside the ASSC was signed by the Minister in October 2003. The plan incorporates several suggestions [2] made by the Mission, UNHCR and the EC. Nevertheless, it still places an arbitrary burden on the potential applicants for housing care in the process of submitting proof for their eligibility to the programme. With the assistance of UNHCR, the Ministry will conduct a publicity campaign on the program in Croatia, S-M and B-H. The application deadline is 31 December 2004, although an extension might be contemplated in view of the delays already experienced in the process of launching the programme.

The housing care programme for former OTR holders *inside the ASSC* is still not operational after more than three years. The Mission and its partners have voiced concern over the delay as well as over problematic legal provisions that assign a low priority to former OTR holders in the distribution of housing care benefits. The Minister for Public Works, Reconstruction and Construction has asserted that former OTR holders will still enjoy priority. He has also indicated that a special budget item would be dedicated to
housing for returning former OTR holders inside the ASSC, starting in September 2003, but this has not yet materialized.
[…]
The legal and human rights aspects of OTR terminations in Croatia are expected to be addressed by the European Court of Human Rights (ECHR) in the case of *Blecic v. Croatia*."

[Footnote 1] The purchase conditions of the apartments are regulated by the Law on Social Subsidized Housing, while for the lease option the legislative framework is provided by the Law on Lease of Apartments and the LASSC in the regard to the amount of rent.

[Footnote 2] The recommendations of the Mission and its IC partners revolved around the eligibility criteria for the Programme which addressed initially only refugees and not displaced

persons or remainees, the deadline for applications and the procedure of appeal during the administrative processing of the applications.

Note: The housing care programme for beneficiaries outside the ASSC is still not operational, as of May 2004 (OSCE 14 May 2004)

Housing care programme for former tenancy/occupancy rights

holders inside the areas of special state concern: uncertainty over figures (2005)

- In areas of special state concern, housing care is available to various categories of beneficiaries including former occupancy rights holders who have the lowest priority
- No official data on how many former tenancy rights holders received housing care in ASSC is availableThe Ministry of Public Works, Reconstruction and Construction's "Rulebook on housing care in the areas of special state concern" came into force on 11 October 2002
- The law will ensure that housing care is provided for former tenancy/occupancy rights holders, who lost their rights pursuant to the 1995 Law on the Allocation of Flats
- The Rulebook however does not envisage care for the citizens who were tenancy right holders in other regions outside the Areas of Special State Concern (ASSC) which includes mostly big cities, such as Zagreb and Osijek
- The housing care programme has not yet been implemented (May 2004)

OSCE, 29 July 2005, p.4:
"In the mostly rural ***areas directly affected by the war*** (ASSC), a housing care option for various beneficiaries has been in force since 2000/02, but former OTR holders have the lowest priority behind all other beneficiaries. No application deadline has been established for this option. By now only a very limited number of beneficiaries, who had lost physical access to their formerly socially owned home *ex lege* in 1995, have been provided with housing."

MMATTD, 9 February 2006, p. 2:
"The Ministry has intensified the implementation of the program of housing of ex-tenancy right holders as the last remaining refugee group in need of housing after the return to Croatia. An integral plan of housing of ex-tenancy right holders is being prepared, and it will include purchase of apartments on the real-estate market as well as construction of a significant number of apartments in the three to five year period.
Some number of applications in ASSC will be solved through reconstruction of damaged apartments. Other applicants will be provided with housing through other housing models envisaged by the law – the majority will be provided with housing in apartments and houses purchases by APN.
Out of applications for housing of returnees – ex-tenancy right holders submitted to date 9,700 remain to be solved, i.e. 7,900 housing units should be provided:
Outside ASSC: A total of 4,463 applications for housing were submitted until the end of the set deadline which expired on 30 September, among them 2,218 are applications for the rent of an apartment and 2,245 are applications for the purchase of an apartment. Majority of applicants are residing in SMN – 2,061 in SMN, 674 in B-H, 1,508 in RC and 220 elsewhere.
In ASSC: A total of 2,440 families of ex-tenancy right holders have been provided with housing to date, majority of them in the town of Vukovar, in apartments reconstructed by the Ministry.
There are 5,236 applications by ex-tenancy right holders that remain to be solved, among them:
- 1,719 are applications by beneficiaries who are already temporarily residing in apartments, waiting for the conclusion of the administration procedure to determine their right to housing, and
- 3,517 are applications by beneficiaries for whom the housing objects should be provided."

Comment:
The 2,400 families of ex-tenancy right holders who received housing care refer for the majority of them to displaced persons or refugees (mostly Croats but also some Serbs) who came back to the UNTAES area and took back their pre-war flats. In UNTAES area, occupancy rights had not been formally terminated. However, since occupancy right does not exist anymore in Croatia those people applied for housing care to formalize their stay in the apartment. They received housing care in their pre-war flat. This means that those were "easy cases" which did not require reconstruction effort.

Stability Pact, MARRI-DRC, 30 June 2005, p.21-22:
"There is no official data on how many former tenancy rights holders received housing care in the areas of special state concern since 2000 when such a possibility was foreseen by the law.
According to the official data, by the end of February 2005, total of 11,488 families has been provided with housing in ASSC. Most of them were temporary occupants – refugees who fled from BiH and S/MN "but also other returnees without any private property, including the **tenants in socially-owned apartments** whose tenancy right was cancelled." However, the number of those tenants was not specified. Without statistical breakdown of the data it is impossible to find out how many former tenancy rights holders received housing care. The failure to highlight these figures in the statistics (although they should be highlighted because this special category was mentioned in Art. 3, paragraph 3 of the Rulebook of Priority in the Eligibility to Housing Care in the Areas of Special State Concern, Official Gazette 116/2002) raises grave doubts implicating that the statistical data can not show things that do not exist or that this category is only a handful of cases among otherwise important number of people who have received housing care.
To date, these programs had no significant practical impact on the availability of housing for this segment of population. (…) Inside the ASSC, i.e. in the mainly rural war-affected areas, only few applicants had received housing."

OSCE, 11 October 2002:
"As of today, the Ministry of Public Works, Reconstruction and Construction's Rulebook on housing care in the areas of special state concern comes into force. This Rulebook will ultimately start to resolve the issue of housing care for former tenancy/occupancy right holders. They are mostly citizens of Serb ethnicity that fled from Croatia, and whose rights ceased pursuant to the Law on the Allocation of Flats for Lease in the Liberated Territory in 1995. The Rulebook however does not envisage care for the citizens who were tenancy right holders in other regions, mostly in big cities such are Zagreb or Osijek.

In the Government's Office for Displaced Persons and Refugees do not know how many citizens would apply with a request, i.e. how many of them were tenancy/occupancy right holders, but they assume that there are several thousands of them. However, none of them will automatically obtain the right over the flat in which he previously resided but the state will allocate a house or flat in its possession within the state's financial possibilities. The other solution is the allocation of a building site along with construction materials, and the returnee will be able to build his house. However, the right to the state assistance will have only those former tenancy right holders who do not (co-) own any property within the territory of the former SFRY as well as those who did not sell or gave away their houses or flats following Croatia's declaration on independence in 1991.

The OSCE Mission [to Croatia] has welcomed the adoption of the Rulebook as the issue of lost tenancy rights is finally raised in an official document. However, [the Mission] reproaches Croatia for not providing housing for the former tenancy right holders in the areas which are not under the special state concern, mostly in big cities.

Milorad Pupovac, Head of the Serb National Council (SNV) also agreed that it is an unacceptable regulation, adding that the Rulebook is just one in a series of documents that will have to be revised as it does not guarantee rights that certain citizens deserve.

'Non-providing housing in big cities for former tenancy right holders is contrary to the agreement reached between the Government's Office for Displaced Persons and Refugees and the FRY Commissariat for Refugees. The Rulebook places refugees together with those who have not had any tenancy rights. We fear that due to different criteria the Serb refugees will hardly exercise their rights,' told Pupovac Glas Slavonije concluding that the Rulebook is favourable towards those who have never been tenancy right holders.

Namely, before former tenancy right holders, the state have to provide housing for some 6,000 people from the priority list, people who occupy somebody's private property and are to return to their former places of residence or want to settle in the areas of special state concern. People accommodated in expellees' settlements or in collective centres are also on this list.

Only after them, confirms the Office for Refugees and Expellees, there come former tenancy right holders within the areas of special state concern. The implementation of this program will begin in the end of next year, announced Lovre Pejkovic, Assistant Minister in the office for refugees and expellees."

Note: The Housing Care Programme was not yet implemented as of May 2004 (OSCE 14 May 2004). In 2003, the government adopted legislation addressing housing care to tenancy rights holders outside the areas of special state concern, which has also not been implemented as of May 2004 (OSCE 14 May 2004). See "Housing care programme for former occupancy/tenancy rights holders outside the areas of special state concern is still not operational (2006)".

Tenancy rights issue has not yet been resolved (2004)

- Lack of resolution regarding tenancy rights is a key obstacle to the return of Serbs to urban areas where most housing was under the regime of tenancy rights
- The current government has undertaken to provide accommodation to all tenancy rights holders by the end of 2006, though in practice little progress has been made
- A number of apartments remain empty because the issue of ownership rights remains unresolved
- Even if the June 2003 government-subsidised programme begins, there is concern that it may be inaccessible to most returnees
- In June 2003, the Government adopted legislation that will provide housing to former occupancy/tenancy rights holders outside the Areas of Special State Concern
- The underlying issue of whether terminations of occupancy/tenancy rights of refugees and IDPs was legally justified however remains to be addressed

2003
"The outlook for displaced former occupancy/tenancy rights holders was improved through the Government's decision in June 2003 to secure housing for such persons outside the Areas of Special State Concern (ASSC). This decision complemented the existing similar decision for the ASSC. Implementation has not yet started. Although conditions for leasing or buying the apartments are favourable compared to the market value, it remains to be seen how many potential beneficiaries have the means to make use of the programme. The programme does not

address the larger issues of whether the terminations of occupancy/tenancy rights of refugees and displaced persons were legally justified." (OSCE 18 December 2003, p.2)

"It is significant that the authorities have recognized that the issue of housing for former occupancy/tenancy rights must be addressed. The programme must, however be judged on the basis of implementation." (OSCE 8 July 2003)

The Law on Areas of Special State Concern, as amended in July 2002,provides for housing care for those former tenancy rights holders who do not own property in other parts of Croatia and former Yugoslavia, and who wish to return to Croatia. In practice, however, implementation of this aspect of the law has not even started. The government is still merely collecting applications for housing care from former tenancy right holders.[…] Some of the obstacles to implementation would be simple to overcome. A number of apartments in towns like Udbina, Licki Osik, Gracac, or Knin, are still empty. With fairly modest investments the government could repair and allocate them to former tenancy rights holders.[…] It appears that the apartments have not been used for these purposes because the dissolution of socialist enterprises, which owned the apartments before the war, has left the issue of ownership over the apartments unresolved.[…] The government, however, should speed up the process of revision of the ownership status and set out a deadline for its completion.

Elsewhere in Croatia, the implementation of the June 2003 government-subsidized housing program in those areas has yet to begin. More than 23,000 Serb families lost tenancy rights in those areas, which remained under Croatian government control during the war. During 2004, the government will be mainly receiving applications from former tenancy rights holders.[…] Even when the implementation of the program begins, however, there are concerns that it may be inaccessible to its purported beneficiaries. The purchase price of the apartments available to former tenancy rights holders is not significantly below the market price. In contrast, those former tenancy right holders whom the government had not divested of tenancy right were able to purchase their apartments for a much lower price.[…]

The program's value will be tested during 2004, when government-subsidized housing will be offered for the first time to returnees, according to the Croatian official in charge of returns policies. The official told Human Rights Watch in February 2004 that an unspecified number of newly built state-owned apartments are available in Sisak and Slavonski Brod. During 2004, former tenancy rights holders outside the areas of the special state concern will be given an opportunity to lease or purchase these apartments.[…]" (HRW 13 May 2004, pp.8-9)

[Footnote 1] It is estimated that of all residential properties in urban areas in the former Yugoslavia, 70-80 percent were under the tenancy rights regime. OSCE Mission to Croatia, 'Prethodne informacije po pitanju izgubljenih stanarskih prava u Hrvatskoj' (Background Information Concerning Lost Tenancy Rights in Croatia), November 26, 2001 (version in Croatian), p. 2.
[Footnote 2] There are no government statistics or reliable estimates of the number of tenancy rights in the areas controlled by Serbs during the war. More than 23,000 Serb families lost tenancy rights in the areas controlled by the government.

See also:

"OSCE amicus curiae brief to the European Court of Human Rights in Blecic v. Croatia", OSCE, 2003 [Internet]

"Broken Promises: Impediments to Refugee Return to Croatia, Vol. 15, No. 6(D)", HRW, September 2003 [Internet].

Reconstruction

Croatian Serbs represent the majority of reconstruction beneficiaries since 2003 but are still faced with difficulties (2006)

- Out of 200,000 destroyed properties, 138,000 have been reconstructed
- After reconstruction for Croats was almost completed in 2003, Croatian Serbs became the main beneficiaries of reconstruction
- Reconstruction have clearly benefited return in particular in Western Slavonia
- Further to an agreement between the Government and a Serb party the deadline to apply for reconstruction was extended to September 2004
- 14,500 claims for reconstruction were filed during the extended period
- The rate of positive decision for eligibility is 30 percent
- Persons who submitted claims after amendments to the law will not be entitled to certain benefits which other areas (mainly Croats) obtained
- Assessment of damages made several years ago and used as basis for reconstruction assistance are no longer valid as many properties deteriorated since the assessment
- OSCE and the Ministry have set up a joint monitoring system in order to facilitate a correct war damage assessment of the damaged property

MMATTD, 9 February 2006, p.1-2:
"Reconstruction of housing: In the last few years (since 2002) majority of beneficiaries of reconstruction have been ethnic Serbs – cc. 70%. Most of them) submitted their claims during two extended deadlines for submission – in 2001 and between March and September 2004 (a total of 38,000 reconstruction claims). There remain 4,100 reconstruction claims to be solved. Among them 3,100 are claims submitted during the last extended period, and 1,000 are claims submitted earlier for which the ownership proceedings have not been concluded or the documentation is incomplete and can not be processed without the owner's cooperation. All of concluded reconstruction claims have already been included into reconstruction. In 2005 a total of 9,510 houses and apartments were reconstructed: 5,207 cash grants have been paid for houses of lower damages, 3,930 houses of higher degree of damages and 373 apartments.

For 2006 it is planned to finish organised reconstruction of 3,000 houses that started last summer, as well as to start a new program of reconstruction and payment of cash grants for remaining 4,000 to 5,000 houses. This should bring to an end the process of reconstruction of housing stock damaged and destroyed in the war.
A total of 138,523 destroyed and damaged houses and apartments have been reconstructed to date in Croatia at a cost of KN 15.2 billion (135,043 family houses and 3,480 apartments)."

EU, 9 November 2005, p.27-28:
"To date, the Government has reconstructed over 130.000 out of the 200,000 destroyed houses and apartments (…). There appear to be no major delays in implementing the reconstruction programme for the estimated 10,000 houses currently scheduled.(…) Completion of the outstanding reconstruction programme should make possible the return of approximately 30,000 people."

OSCE, 18 November 2005, p.7:
"Since 2003, Croatian Serb applicants have been the main beneficiaries of the State reconstruction programme for residential properties: they account for approximately 70 percent of

the 8,200 houses and flats being reconstructed in 2005. The administrative processing of the pending 6,500 requests for reconstruction and 12,000 appeals proceed according to the pace agreed by the Ministry with the IC and included in the draft Croatian Road Map.."

HRW, 14 May 2004, pp.9-10:
"While the government has done impressive work in reconstructing damaged or destroyed ethnic Croat houses, reconstruction assistance to returning Serbs began only at the end of 2002. (…) Current information from the field seems to support the government's claims that a large number of Serb houses are currently under reconstruction. (…) While belated, the current efforts of the government in reconstructing Serb houses are to be commended. These efforts clearly benefit return, as manifested by the numbers of returns in Western Slavonia, which had suffered major destruction of properties: mainly due to reconstruction efforts, the number of returnees (around 1,000) in Western Slavonia in 2003 remained at the level of the previous year"

OSCE, 21 November 2004, p.12:
"More than 14,500 applications for state-provided reconstruction were filed since the Government extended the deadline in March until 30 September 2004, pursuant to the Cooperation Agreement signed between the Government and the representatives of the Serb Independent Democratic Party (SDSS). These potential beneficiaries either missed the previous deadline at the end of 2001, or did not consider this option at the
time because of a less favourable return climate. The total number of pending applications has therefore increased from 2,200 to more than 16,700. It appears likely that State reconstruction assistance would need to continue in 2006 as well. (…)"

JRS, September 2005, p.368:
"It is arguable that the deadline for reconstruction assistance of 31 December 2002 is evidence of state discrimination, since not only is there no deadline for other ethnic groups, but the imposition of a deadline infringes refugees' rights to freedom of movement and the principle of returns"

OSCE, 29 July 2005, p.5:
"A six-month temporary extension of the application deadline for State reconstruction assistance in 2004 brought an additional 16,000 claims for reconstruction, mainly from those displaced abroad. Many of these claims, however, are repeated applications or requests not covered by the Law on Reconstruction 1. .
[Note 1: There is nonetheless a limited category of repeated applications concerning cases which were rendered ineligible for reconstruction assistance under the 1996 Law on Reconstruction, but should now be granted assistance in light of the June 2000 Amendments to the same Law, which had removed discriminatory limitations of the cause and definition of damage as well as territorial limitations. The Mission advised the Ministry to separate those cases from the broader category of repeated applications and to assess them in accordance with the more favourable regulations in force since five years.]

As of 1 July 2005, around 9,500 new requests have been processed by the local State administration offices. So far, the rate of positive decisions regarding eligibility is below 30 percent."

OSCE, 3 March 2006 p.3:
Interview of OSCE Croatia Head of Mission:
"There is a certain weakness related to criteria determining who is eligible for reconstruction. We are also aware of complaints regarding the state's conduct in certain cases, and this is something we have also been discussing with the competent ministry. Likewise, people whose request for reconstruction has been denied are sometimes offered an alternative - the state allocates building material enabling them to reconstruct their houses themselves. I know this is not an ideal

solution, particularly for the old and helpless. However, we are constantly in touch with the relevant ministries in order to resolve issues related to refugee return and
attempts are being made to resolve such problems."

Stability Pact, MARRI-DRC, p.14-15:
"the applicants who submitted an application for reconstruction after the Amendment to the Law came into force (mostly Serbs), will not be granted the rights to state assistance in household furniture and appliances. However, according to the Regulation on deadline for submission of applications for reconstruction in Eastern Slavonia 23 (predominantly Croats), the assistance for re-furnishing will be granted."

Stability Pact, MARRI-DRC, 30 June 2005, p.15:
" A particular problem within the enforcement of the Law is the categorisation of damages, performed several years ago, when majority of owners of houses were unable to return. In the meantime, many houses were vandalised or devastated in criminal acts but they were also fallen into decay due to lack of maintenance or protections. Damages degrees established in 1996 are presently completely unrealistic and with amounts of money earmarked for reconstruction it is impossible to make those houses habitable. Many houses that were categorised as the first damage category (the lowest one) got so damaged in the meantime that they came under fifth or sixth damage category by now. Demands for re-categorisation were rejected."

OSCE, 10 November 2005, p.7:
"Concerns still remain over the process of re-categorization of war damage assessment of destroyed properties because this process has often been conducted in a manner contrary to the favourable regulations foreseen by the June 2000 Amendments to the Law on Reconstruction. The Mission and the Ministry have set up a joint monitoring system in order to facilitate a correct war damage assessment of the damaged property. The Ministry has clearly instructed officials working in the State Administration Offices in the field to make a careful preliminary review of requests of re-categorization of war damage in accordance with the Law on Administrative Procedure and Mission suggestions."

For more details on implementation of the law on reconstruction see Law and policy sub-section

Former holders of occupancy rights are not entitled to reconstruction (2004)

Former holders of occupancy rights who owned another property destroyed during the war are not entitled to reconstruction under the law since only the main residence could be reconstructed and this was usually the socially-owned flat.
HRW, 13 May 2004, p.10:
"Despite the progress in reconstruction, Serb families continue to face serious obstacles in accessing reconstruction assistance. A number of owners of destroyed or damaged properties are ineligible for reconstruction assistance under the law because their pre-war registered residence does not match the property they now seek to repair. Prior to the war, many Croatian residents had tenancy rights to an apartment as well as a private house, and were usually registered as residing in the apartment. (…) Having lost the tenancy rights through the blatant violation of pre-1991 laws and the imposition of discriminatory legislation in 1995, (…) these individuals have been unable to repossess the apartments or receive substitute housing; at the same time, they are barred from receiving reconstruction assistance from the government"

Housing reconstruction: governmental assistance targets primarily Croatian properties (2002)

- The vast majority of reconstructed houses so far belong to ethnic Croats
- End of 2001, the Government, supported by the UNHCR, encouraged Serb refugees in the place
- of asylum to file reconstruction applications
- The Government instructed local authorities to provide reconstruction assistance regardless of the
- cause of damage and without territorial limitations
- However, negative decisions for properties damaged by "terrorist acts" were still issued in 2002

"Of approximately 195,000 residential properties that were damaged or destroyed during the conflict, more than 111,000 have been reconstructed. The vast majority of reconstructed houses belong to ethnic Croats. Over 90 per cent of this reconstruction has been implemented through the Government reconstruction programme and the Government has recently taken a HRK one billion loan from the Croatian Bank for Reconstruction and Development for this purpose. According to the Government, the total number of reconstructed houses will be 118,000 at the end of 2002. In the past year, the Government signed partnership agreements with major international donor organizations active in this field. 34
In the latter months of 2001, the Government, supported by the UNHCR, for the first time encouraged and promoted the conditions for filing reconstruction applications to Serb refugees in their place of asylum. This was accompanied by a public information campaign in the Federal Republic of Yugoslavia and Bosnia and Herzegovina. By the Government deadline of 31 December 2001, these efforts resulted in approximately 19,000 new applications from Serb refugees currently residing in these countries. The processing of the approximately 42,000 pending applications for reconstruction has continued over the past half year, although at a slow pace. The Law on Reconstruction was amended in June 2000 to provide for the reconstruction of properties regardless of the cause of damage and without territorial limitations, thus including houses damaged or destroyed by 'terrorist acts' in areas of Government control. This was followed by ministerial instructions of 23 May and 17 December 2001, reminding offices competent for reconstruction of the June 2000 amendments and legal changes allowing the reconstruction of properties damaged by such acts. However, a number of such offices throughout Croatia, and in a few cases the Ministry for Public Works, Reconstruction and Construction itself, have continued until February/March 2002 to issue negative decisions for properties damaged in this manner. The Government has made a strong commitment to correct these practices. The Mission also encourages the Government to revise applications previously rejected." (OSCE 21 May 2002, p. 13)

See also "Housing Programme Development Study – Bosnia Herzegovina, Croatia, Federal Republic of Yugoslavia, Stage 1 Report", Stability Pact for South-eastern Europe, December 2001

Access to reconstruction assistance is discriminatory against ethnic Serbs (2000-2001)

- Overwhelming majority of government-reconstructed properties are owned by ethnic Croats, while most of destroyed Serb housing remains to be repaired
- In June 2000, the Parliament removed discriminatory provisions from the 1996 Law on Reconstruction
- Implementing regulations of the amended Law (the "Rulebook") partially reintroduced discriminatory prioritization of reconstruction assistance in favour of "Croatian Defenders"
- In March 2001, the government announced that measures would be taken to ensure more global coverage of the reconstruction programme

"Between 1991-1998 about 195,000 residences were destroyed. It is estimated that more than 110,000 have been reconstructed: about 105,000 by the Government and another 4,500 by the international community. The overwhelming majority of these Government-reconstructed properties are owned by ethnic Croats. Most of destroyed Serb housing remains to be repaired or reconstructed. In 1996, Parliament adopted the Law on Reconstruction, which sets the criteria and guidelines for the provision of Government funding for reconstruction. The Law contained a number of provisions, including priorities and eligibility criteria, which effectively discriminated against Serb applicants. In June 2000, the Parliament amended the Law to remove most of the shortcomings. However, implementing regulations in the 'Rulebook' of July 2000 partially reintroduced discriminatory prioritization. The authorities have continued to deny reconstruction assistance to individuals whose property was damaged or destroyed by so-called 'terrorist acts' or by the Croatian armed forces. This adversely affects primarily Serb property owners. In March 2001, the Ministry for Public Works, Reconstruction and Construction stated that it would initiate 'harmonization of legal regulations in place, so that all objects damaged or destroyed in terrorist actions could be included in the programme of reconstruction.' Action in this regard remains pending. The final deadline for applying for reconstruction assistance has been set for December 31, 2001." (OSCE 2001, "Government Action on Return")

See the Instruction of the Ministry of Reconstruction on "procedures in relation to damages caused as a result of 'terrorist' activities, and in relation with exercise of the right to reconstruction", 23 May 2001

The June 2000 amendment to the Reconstruction Law
"Amendments to the 1996 Reconstruction Law were adopted by Parliament on 1st June 2000. The amended law prolongs the deadline for applying for reconstruction assistance and makes eligible for such assistance all Croatian citizens and persons who lived in Croatia before the war and whose houses are damaged regardless of the way and time of return. In this respect, the bill originally introduced by government contained no discriminatory provisions. Regrettably, following criticism expressed by the parliament, the government amended its original draft to include a provision delegating power to the executive to issue regulations defining priorities of eligibility for reconstruction assistance in accordance both the new law and with the Law on the Rights of Croatian Homeland War Defenders and Members of their Families. A so-called 'Rulebook' was published on 14 July 2000 by the Ministry of Public Works, Reconstruction and Construction defining four main priority categories of beneficiaries. But contrary to the advise of representatives of the international community, the Rulebook gave top priority in all four categories to Croatian Defenders. As such are defined all those who spent at lest three months in military service during the conflict, and thus, on this basis, thousands of persons can take precedence over any other applicants for reconstruction assistance. [Note 8: It should be noted though that since Croatian Defenders have already been given top priorty for reconstruction assistance or were the exclusive beneficiaries under the two laws of 1996, in practice the number of Croatian Defenders who will benefit from the priority established by the newly issued Rulebook may not be that high.]" (OSCE 13 September 2000, para. 86)

PATTERNS OF RETURN AND RESETTLEMENT

General

Integration upon return varies according to ethnicity (2002-2005)

- Many returning refugees go through a phase of internal displacement before going back home
- Ethnic Croat returnees integrate much more easily than ethnic Serb
- While Croat displaced persons consider that the main obstacle to return is the bleak economic situation, ethnic Serb DPs face a wider array of obstacles
- To avoid employing Serbs, some employers bus migrant workers to fill low level jobs
- Comparison with former Croat displaced persons shows that they received more support for the
- reconstruction of their homes than minority returnees

Journal of Refugee Studies, September 2005, pp.373, 374-375:
"Most of the Serbian participants interviewed had moved from Croatia to Bosnia, then to Western or Eastern Slavonia before returning home. The experience of the Croatian participants was more varied and included settlers who had arrived from Bosnia. In almost all cases, those who identified as returnees had participated in some form of convoy and group exit during the war. The living conditions that greeted migrants upon their return were markedly different from one ethnic group to another, and from one set of migrants to another. For example, one Serbian couple, Rado and Mile, had been living in a one-room wooden cabin in a collective centre outside Sisak. The cabin was dark and the only decor to be seen consisted of plastic soft drink bottles that had been filled with earth and turned into hanging planters. By contrast, most of the ethnic Croat participants interviewed had been able to return to permanent housing, often at the invitation of the Croatian government.

Some participants returned to formerly occupied but otherwise functional accommodation; others waited in collective centres while damaged housing was reconstructed; former tenancy rights holders lived in collective centres without a clear plan for the future. The most fortunate were the Bosnian Croats, who at the very least were housed in semi-permanent structures complete with heating and double glazing which the OSCE mockingly described as like 'Club Med'.

They and their neighbours owned cars and thus were able to move more freely. Others were even more fortunate and had received a formal invitation to settle. In Josip's case, the state authorities had offered him the possibility of securing temporary property which he immediately followed up by requesting a temporary permit for housing from the municipal authority. (…)

In general, ethnic Croat returnees and settlers quickly found social acceptance and opportunities for integration in post-war Croatia while ethnic Serbs did not. The lack of opportunities for non-Croats was made evident in the following account by a senior Serbian local in Knin:

"After Operation Storm, the political structures told me I couldn't get a job because I am Serb. Nobody here was choosing to which nation I was to belong. Now if you are looking for a job, they

are still looking at what type of blood is flowing through your veins (D. C., interview 21 April 2004, Knin).
(…)
He claimed that since the war ended, there had been some obvious changes in policies towards minorities but suggested that covert discrimination was now the rule. Contrary to the Croatian constitution, he argued that:

"Patterns of discrimination are not as direct as after Operation Storm but are more 'hidden' . . . Still, there is obstruction that we feel in every aspect of life . . . property and unemployment, rights of national minorities (D. C., interview 21 April 2004, -(Knin)."

His colleague developed the picture painted with some examples of local employment policy in Knin, where migrant workers are bussed in to fill low level jobs. Her account sustained the common view that the use of migrant labour was closely linked to the settlement programme of the Tudjman and subsequent governments and that these policies only served to reinforce the divide between Serbs and Croats of working age.

"People are not employing Serbs. Here's one example, a lady got a job in hospital. She had 20 years of experience. But the very same day, the doctors signed a petition to say they wouldn't work with her. Another bad example . . . we have 16 teachers in secondary school. Perhaps 8 are from Knin . . . the rest are from other parts of Croatia. While we have others registered, there are 10 buses coming in on a daily basis with workers from outside the city (D. M., interview 21 April 2004, Knin)."

OSCE, 18 November 2002, p12:
"While Croatian Serb refugees and displaced persons continue to return, the sustainability of minority return remains a concern as a result of legal and administrative obstacles and the current economic situation. In contrast, the return of the majority population, i.e. ethnic Croats, to their pre-conflict domiciles has almost been completed. The remaining Croat internally displaced persons frequently note that it is almost exclusively the bleak economic situation that prevents their return to their places of origin. Return figures for Bosnian Croats to Bosnia and Herzegovina remain low."

The main purpose of the2001 UNHCR survey was to gather information on returned refugees (ethnic Serbs), returned IDPs (ethnic Croats) were interviewed only as a control group with a view to compare their answers to those of ex-refugees.
Puls, January 2001, p.24:
"75% of minority returnees live on the pre-war address, while almost 20% live at their family's, friends' or hosts' place
[…]
It is also significant that more than 90% of the returnees, before fleeing, lived in the house/flat which was their family's private property. Currently, almost two thirds of the respondents have their house/flat damaged or destroyed, and 64% of those haven't had the category of damage officially estimated. It is also important to notice that 73.6% of former DPs' houses have been restored while only 10.8% of the minority returnees' damaged/destroyed houses have been restored. "

Puls January 2001, p. 33:
[A]s their greatest problems, minority returnees see problems with property, such as destroyed/damaged or occupied house (28%), no income (23.4%) and also no job (14.3%) while for the former IDPs the greatest problem would be that there is no job (23%) and then no income (15.2%). Problems with property don't seem to be that significant for former IDPs as for the minority returnees.

Opinions over the end of the return process diverge (2005)

- Some observers consider that the return process nears completion
- Return of ethnic Croats is virtually complete
- An OSCE survey indicates that ethnic Serbs refugees do not want to return
- New measures come late for refugees and displaced who after years of exile have often given up on return
- Abrogation of discriminatory laws has not remedied past violations which still obstruct return
- Intention of Serb refugees not to return is not the result a free choice and could be modified by positive measures

USDOS, 28 February 2005, p.11:
"Despite an ongoing government program to reconstruct thousands of homes damaged in the 1991-95 war, government officials, NGOs, and international observers assessed that the returns process was nearing its completion with significant changes in the ethnic composition of most communities. The return of ethnic Croats to their prewar domiciles was virtually complete. An OSCE survey indicated that the majority of Croatian Serb refugees did not want to return to their prewar domiciles. While ethnic tensions continued in the Danube region and parts of Dalmatia, the overall security situation was stable (see Section 5). The largest disincentive to returns was the poor state of the regional economy and the absence of a concrete solution that provides housing to former tenancy rights holders."

CHR, 4 May 2005, par.38:
"Despite the establishment of financial help and social protection for a period of 6 months upon their return, a great number of refugees remain reluctant to return due to difficulties related to access to housing. In addition, there are fears due to the changes in their place of origin, of discrimination or of being indicted of war crimes.(…) Here one cannot neglect the impact of the time – between 8 and 12 years – spent by the refugees and displaced persons without being able go back to their place of origin. During this period of time they created a life elsewhere, integrated in a new community and now found themselves faced with a dilemma: return to Croatia or continue with their "new life" abroad. However, these difficulties fade progressively as the decrease of the average age returnees proved it. With the aim of shifting away from this difficult period, it is up to the Croatian authorities to put in place, as soon as possible, a complete programme to resolve the housing issue thus permitting the return of those who wish to return."

Stability Pact, MARRI-DRC, 30 June 2005, p.4:
"To gain better understanding of the background of obstacles that refugees still face in exercising their rights, it is important to give an overview, not only of the actual legal framework but also of the laws that serve as a legal ground for various restrictions, in the period from 1990 to 2000.

This legislation contained a number of unconstitutional and discriminatory provisions that affected the position of Croatian pre-war residents belonging to the minorities, mainly of Serb ethnicity, who had fled from Croatia during the war. (…)

It may seem that presenting the regulations, which were revised, or which are no longer in force belongs to the "history". However, their consequences, to a great extent, determine refugee position at the present time. After 2000 Parliamentary elections, the new Government failed to make radical law revision, and to establish legal framework that would ensure the restitution of deprived rights and equality before the law for all Croatian citizens. Contrary to the endeavours and proposals of international organizations (OSCE in particular) and NGOs this did not happen. The "modest" law revision which was made, as well as other insufficient and inadequate measures, in fact, reflected the government's attitude towards minority return – the Government

has never genuinely tried to facilitate the return of Serbs. Being prevented to return and realize their property rights and all other rights within reasonable time after the armed conflict was over, and more than 8 years after they fled form their homes, their willingness to return had faltered. The majority were forced to find other solution.

To day, all relevant national and international politicians, without analyzing why more than 200.000 Croatian Serbs opted to stay in the country of exile or third countries, and could more be done for their return, state that the return process came to its end. It is hard to say that majority of them was in a position to make free choice. Someone's decision to stay or to return largely depends to the possibilities offered by the country of their origin or the country of their exile. But, they were forgotten by both. In fact, their exile lasted for to long, and this will, certainly, reduce the number of returnees.

However, it is too early to categorically state that very few refugees are willing to return under new, more favourable circumstances considering Government's commitment to meet all EU requirements regarding refugee and minority. The return will be significantly determined by the concrete measures the Government will pass, the timeframe in which those measures should be brought to the effect, and, to a great instant, by resolute response from international community and degree of tolerance towards the GoC when fail to respect their obligations. It will be also influenced by good or bad experiences of those who have already returned. But, what one has to take into consideration is that the legacy of the policy led during the last decade of the past century shall be a big burden for the government. Ten years of doing nothing and accumulating unresolved issues imposed considerable financial problem to the Croatian Government that could be considered justified limit to meet all requirements for sustainable return but could also be used as an excuse for doing less than possible."

Resolution of housing issue is a pre-condition to return but does not necessary lead to return (2004)

Centar za mir Vukovar, email 9 February 2006:
"The main obstacles to the return of Croatian Serb IDPs or their permanent integration in places of their current residence are those related to housing issues. This mainly refers to former occupancy tenancy rights (OTR) holders. Cancellation of OTRs continues to be an impediment to either return or permanent local integration in CDR. Although some IDPs in the Croatian Danube Region (CDR) obtained a kind of temporary housing decisions, implementation of housing programs for former OTR holders could be considered a complete failure so far.
It's difficult to estimate discrimination against ethnic Serb IDPs (former OTR holders) in accessing housing assistance in the Areas of Special State Concern as, for example, Regional ODPRs in Vukovar-Sirmium and Osijek-Baranja counties data are not disaggregated on categories of the housing assistance beneficiaries."

MRG, July 2005, p.1:
"An independent survey of December 2003 showed that up to 42 percent of Serb refugees in Serbia and Montenegro and Bosnia and Herzegovina might return if there were access to housing and improvements in the economy."

OSCE, 21 November 2004, p. 11:
"The Mission's spot checks indicate that ***physical repossession of property*** takes place in only around half of monitored cases. This is because many property repossession cases are not being resolved through the actual hand-over of the properties to the owners, but are being resolved when the State purchases the occupied house, mainly as alternative housing for the occupant. According to the Government, this pertains to approximately 25 percent of the 2,071 cases

resolved since January 2004. Alternatively contractual agreements have been reached between the occupants and the owners (such as lease contracts)."

The majority of returnees are elderly (2001-2004)

- Lacking economic opportunities have resulted to a large extent in only the elderly returning, particularly in certain areas such as the Knin regio

EC 26 March 2004, p.11:
"The lack of economic opportunities is a further important factor discouraging return. As a consequence, to a large extent only the elderly return, notably in some of the return areas which were already experiencing economic difficulties (such as the Knin region). The Government attempts to address these problems through support for the Areas of Special State Concern. In addition, tensions in local communities towards returnees is not always conducive to return."

ECRE January 2001, para. 3.2.6:
"The vast majority of returnees [refugees and internally displaced persons] are elderly - over 50% of the total are aged over 60 years, and the average age of returnees in the past six years is 57. Returnees of school age represent only 4% of the total.

Return movements

Total registered returns of displaced persons: 242,684 (as of February 2006) 234,684 (as of April 2004))

- Registered IDP returns in 2005: 2.792 ethnic Croats and no ethnic Serb IDP compared to some 5,700 IDP return in 2003
- Over the years, the majority of IDP returnees have been ethnic Croats (approximately 65%)
- The total number of returnees registered between 1995 and February 2006 is over 338,200 of which approximately 35% are minority returns of ethnic Serbs (out of which some 23,800 are IDPs from the Danube region)
- Observers assess minority return as significantly lower

MSTTD, 9 February 2006, p.1:
Return of displaced persons and refugees
A total of 338,618 returnees :
218,478 are displaced persons, mostly Croats (65%), and
120,140 are ethnic Serb returnees (35%) – 87,688 from SMN, 8,807 from B-H and 23,645 displaced persons who had resided in the Croatian Danube region (CDR).
In 2005 a total of 7,537 returnees to Croatia have been registered, among them 37% formerly displaced Croats (2.792) and 63% ethnic Serb returnees who had returned from SMN and B-H (4,745). Out of that, some 3,676 returnees are still on the state welfare.
• The exact number of refugees who want to return to Croatia is not available. Based on the return applications and housing requests submitted by refugees still residing abroad, the number of potential returnees is estimated at approx. 20,000 – 25,000 persons. Refugees from SMN and B-H have submitted 11,868 individual applications for their return to Croatia. However there are 4,100 unsolved reconstruction claims submitted mostly by refugees from SMN an B-H, as well as

9,700 housing requests by ex-tenancy right holders among whom approx. 40% are residing abroad."

HRW, January 2006, p.1:
"Between three hundred thousand and 350,000 Croatian Serbs left their homes during the 1991-95 war, mostly for Serbia and Montenegro, and Bosnia and Herzegovina. As of September 2005, the government had registered 122,000 Serb returnees. Croatian Serb associations and the Organization for Security and Co-operation in Europe (OSCE) mission to Croatia assessed the actual number of returnees as significantly lower—between 60 and 65 percent of the registered figure—because many Croatian Serbs had left again for Serbia and Montenegro or Bosnia and Herzegovina after only a short stay in Croatia."

MMATTD, 5 April 2004:
"A total of returnees in Croatia since the beginning of return process in 1995:
320,496 returnees, out of which:
108,986 minority returns of ethnic Serbs (34%) – 77,553 from Serbia and Montenegro, 7,625 from Bosnia and Herzegovina and 23,808 internally displaced persons from Danube region, and 211,510 displaced persons, mostly of Croatian ethnicity (66%).
In the first three months of 2004 a total of 2.247 returnees has been registered:
1.133 of Serb refugees (50%) and 1.114 of Croatian displaced (50%).
A total of returnees in Croatia in 2003:
12,871 returnees, out of which 76% of Serb ethnicity and 24% of displaced persons mostly of Croatian ethnicity"

Overview of registered IDP returns between 1995 and February 2006

- Of 315,102 registered returns approximately 66% (209,297) are former displaced persons, mainly ethnic Croats
- Over 80,000 people returned to the Danube region and over 120,000 to other areas of Croatia
- Approximately 34% of the overall registered returnees are minority Serbs

Ministry for Public Works, Reconstruction and Construction October 2003, p. 3
"Since the beginning of the return process in 1995, the number of registered returnees at the end of September 2003 reached *315,102*.
• *209,297 returnees – former displaced persons*, mostly Croats who resided during their banishment in other areas of Croatia which were not engulfed by the war (approx. 66% of the overall number of returnees):
• 83,142 returnees to the Croatian Danube region and 125,782 returnees to other areas of Croatia
• *105,805 minority returns of ethnic Serbs* (approx. 34% of the overall number of returnees):
82,3 57 cross-border returns (75,295 from Serbia and Montenegro, and 7,062 from B-H) and 23,448 returnees from the Croatian Danube region

Total returnees registered in Croatia until 01 Oct. 2003: **315,102B**"

Note:
Among returnees from the Croatian Danube region at the end of 1997, 1998 and 1999 there is a significant number of persons who have returned from S&MN and B-H, not from the Croatian Danube region. This was confirmed when they were registering upon return at the Directorate for Displaced Persons, Returnees and Refugees of the Ministry for Public Works, Reconstruction and Construction – approx. 8,000 persons who stated S&MN and B-H as states of their refuge.

These are persons who were primarily registered in 1997 in the Croatian Danube region as resettled persons. In official statistics these persons were deregistered at the beginning of 2000 as returnees from the Croatian Danube region and then re-registered as returnees from S&MN and B-H. Reduction of number of returnees from the Croatian Danube region which came as a result of deregistration, i.e. re-registration is obvious in the table cell on return in December 2000. Since the majority of resettled persons, ethnic Serbs, returned to their homes before 2000, their number has been stable after that with no further significant changes." (Ministry for Public Works, Reconstruction and Construction October 2003, pp. 3-4)

See also "Return of displaced persons and refugees to the Republic of Croatia from 2000 – 2003 per counties (Appendix 1)", Ministry for Public Works, Reconstruction and Construction, October 2003 [Internet link]

Minority returns are slow and only 2/3rds of registered returnees move back to Croatia on a permanent basis (2003-2004)

- As of November 2003, up to 210,000 people were outside of the country, around 190,000 in Serbia and Montenegro and 22,000 in Bosnia and Herzegovina
- Spot checks carried out by UNHCR, the OSCE and NGOs at different times suggest that about two thirds of the registered returnees moved to Croatia on a permanent basis
- Whereas in 1998 there were 30,019 recorded minority returns, in the year 2003, there were only 8,826 minority returns (November 2003)

"The displaced population originating from Croatia which remains out of the country amounts to around 210,000 individuals (around 190,000 in Serbia-Montenegro (S-M) and 22,000 in Bosnia-Herzegovina (B-H)). About 107,000 Croatian Serb refugees and IDPs have registered as having returned.[...] Spot checks carried out by UNHCR, the Mission and NGOs at different times suggest that about two thirds of the registered returnees moved to Croatia on a permanent basis. The pace of minority return has decreased since 1998.[1] The number of Croatian Serb refugees in S-M has decreased and is likely to continue to do so in the next months due to the ongoing deregistration of individuals who have acquired S-M citizenship or have registered as returnees in Croatia." (OSCE 18 December 2003, p.3-4)

[Footnote 1] By 1998: 30.019; 1998: 24.922; 1999: 12.329; 2000: 10.576; 2001: 10.572; 2002: 9.640; by Nov. 2003: 8.826. Total: 106.884

Return movements of IDPs: pace slowing down since 1999 (2002)

- Of the 220,000 IDPs of Croatian ethnicity, 202,000 have returned to their home of origin as of April 2002
- More than 22,500 IDPs and 67,500 refugees of Serb ethnicity have returned to their home of origin since 1995
- Around 300,000 Croatian Serbs were displaced internally or became refugees between 1991 and 1995
- Estimated number of returnees in the field is much larger as the ratio between organised and spontaneous return is 1:3

Total return figures as of April 2002
"Total of returns to Croatia (1.04.2002)

202,295 returnees – exIDPs, mostly of Croatian ethnicity, who were residing temporary as displaced persons in other parts of Croatia. 78,314 returnees to Danube Region and 123,981 to other Croatian war-affected areas (out of total of 220,000 DPs in 1995: 90,000 from Danube Region and 130,000 from other Croatian areas).

90,271 minority returnees of Serb ethnicity: 67,551 cross-border returnees (62,595 from FRY and 4,956 from B-H) and 22,720 returnees from Danube Region.

Total return to Croatia as of 1.04.2002: 292,566 returnees." (Ministry of Reconstruction April 2002)

Return since the beginning of 2000 (1.01.2000 – 1.04.2002): total of 57,620 returnees
Since the beginning of 2000 the total of 57,620 returnees has been confirmed in Croatia, as it follows:

(i) 27,086 returnees, ex-displaced Croats: 22,217 to Croatian Danube Regiona and 4,869 to other areas of Croatia that were war-affected; and
(ii) 30,534 returnees from FRY, B-H and Danube Region, Croatia citizens of Serb ethnicity: 29,676 returned cross border from FRY (26,907) and B-H (2,769), and 858 returnees from Croatian Danube Region (minority return organized following the Program on Return – GoC/ODPR and UNHCR procedure and 'putni list' procedure as well as registered spontaneous returnees).

In the course of 2001, some 10,572 minority returns from FRY and B-H have been registered and 10,846 returns of displaced persons mostly to Danube Region, the total of 21,418 returnees. (Ministry of Reconstruction April 2002)

Return movements in 2001
"According to the latest UNHCR figures to date, 103,891 returns from abroad (FRY and BiH) have been registered (e.g. 17,483 in 2000 and 11,867 in 2001). Overall 223,469 internally displaced persons returned to their places of origin (e.g. 15,308 in 2000 and 11,196 in 2001)." (European Commission 4 April 2002, p. 9)

"The pace of refugee and internally displaced returns slowed in 2001, compared to 2000. about 22,500 refugees and internally displaced persons returned to their places of origin in Croatia in 2001, compared to about 36,000 combined refugee and internally displaced returns in 2000. Croatian authorities estimated that 327,000 persons had returned to their homes since the 1995 Dayton peace agreement, of whom about 223,000 had been internally displaced and 104,000 had been refugees." (USCR 2002, p. 202)

Return movements in 2000
"RETURN IN THE YEAR 2000: total of 32,817 returnees
· Return of displaced Croats from 01.01.2000 to 1.01.2001 - total of 14,708 new returnees:
a) To Croatian Danubian Region: 12,978 returnees (total of 69,000 returnees by now);
b) To other war-affected areas of Croatia: 1,730 returnees (total of 121,000 returnees).

· Minority return from 01.01.2000 to 1.01.2001 – total of 18,109 new returnees have been confirmed (number of organized returns following the Program on Return - GoC/ODPR and UNHCR procedure and “putni list” procedure, as well as registered spontaneous returnees):
a) Cross-border return: 17,323 returnees - from FRY 15,778 and from B-H 1,545
b) From Croatian Danubian Region: 786 returnees.
Note: It is estimated that the actual number of returnees in the field is much larger as the ratio between organized and spontaneous return is 1:3. The estimated number of unregistered

spontaneous returnees is more than 20,000, and some of them has been registered by ODPR in the year 2000.

The number of returnees is smaller then it was case in the previous years for the remainder are the most vulnerable cases: DPs and refugees whose houses are totally destroyed and are still awaiting reconstruction, old and disabled, and families who need housing solution instead of reconstruction." (MPWRC/Office for Displaced Persons, Returnees and Refugees 8 May 2001)

"To date, UNHCR in conjunction with the government's Office for Displaced Persons and Refugees (ODPR) estimate that some 318,000 people of all ethnicities have returned to their place of domicile in Croatia. This figure includes 109,000 refugee returns and 210,000 IDP returns, of which, nearly 26,000 refugees returned during until end of September 2000 – more than double the 10,500 who returned in 1999. Returns of internally displaced Croatians slowed in 2000, however, with 12,500 people returning compared with some 30,000 in 1999. More than 10,000 people had returned to the Eastern Slavonia region (also known as the Croatian Danube region) to November 2000.

Of these returns, ODPR records 12,500 organised minority ethnic Serb returns during 2000, of which 10,700 are from FRY, 1,300 from BiH and some 500 are from the Eastern Slavonia region. ODPR estimates that an additional 20,000 Serbs refugees returned spontaneously." (ECRE January 2001, paras. 3.2.3-3.2.4)

Policy

Implementation of the Sarajevo Declaration : Croatian road map presents several unresolved issues (2006)

- 4th meeting of the Task force of the Sarajevo Declaration reviewed country road maps
- Most unresolved issues were identified in the Croatian road map
- Croatian Government strongly rejected inclusion of compensation for former holders occupancy rights
- Outstanding issues not included in the Croatian road map will be discussed at a further Ministerial meeting in Sarajevo
- Internal Community recalls that to be effective, road maps needs to be comprehensive

OSCE, News in Brief, 22 November 2005, p.1-2:
"The fourth meeting of the Task Force of the Sarajevo Declaration, regrouping representatives of Croatia, Bosnia and Herzegovina (BiH) and Serbia and Montenegro and the international community took place in Budva, Montenegro on 17 November. The Government representatives managed to identify all the open issues in the respective Road Maps and came to the following conclusion: the BiH Road Map can be considered as final, since there were no additional comments on the document; in the Serbian Road Map two rather technical benchmarks were identified as still problematic while most of the open unresolved issues were identified in the Croatian Road Map. These unresolved issues relate in particular to the following benchmarks which had been suggested to be included by the Serbian Government and international community partners: compensation for lost occupancy tenancy rights (OTR) ; convalidation for working years spent in Serb-controlled areas during the war; amendments to the Law on Reconstruction; equal representation of minority returnees in public administration; extension of the deadline for regularization of status (article 115 of the Law on Foreigners); remedies for

unsolicited claims for investments; repossession of agricultural land and business premises; inter-state exchange of data on war crime proceedings.

Apart from the firm statement by the representative of the Croatian delegation in the Task Force that the compensation for lost OTR would not be included into the Road Map, there was no in-depth discussion on the open issues and reasons for their non inclusion into the Road Map by the Croatian Government. Therefore the conclusion of the meeting was that all open issues should be dealt with in a ministerial consultative meeting in Sarajevo, which should take place before the official ministerial meeting where the Road Maps would be signed. The jointly agreed international community position is that in order to achieve the political resolution of all refugee returns issues, the Road Maps need to be as comprehensive as possible. For all the open issues that the governments have chosen not to include into the respective Road Maps or the Operational Matrix, a clear reference in the respective Road Maps should set the mechanisms by which those issues would be resolved."

OSCE, 18 November 2005, p.5:
"The Ministerial Declaration on Refugee Return, which was signed by Bosnia and Herzegovina, Croatia, and Serbia and Montenegro at the Regional Conference held in Sarajevo on 31 January 2005 with the aim of resolving the remaining refugee issues through a concerted regional approach, should provide impetus to removing the remaining obstacles to return to and within Croatia. The Ministerial Declaration foresaw the adoption of national Road Maps that are supposed to contain concrete benchmarks as well as the financial commitments for their implementation, and the development of a joint regional matrix in which the national plans shall be unified. The Government officially shared its draft Road Map on refugee return with the UNHCR Representation, EC Delegation and OSCE Mission and adopted it at its 14 July session. Subsequently, at a meeting between the principals of the three organizations and the Minister of Maritime Affairs, Tourism, Transport and Development held on 20 October the Government agreed to include some of the benchmarks proposed by the international community partners. More specifically these refer to: a) an ameliorated explanation of implementation timeframes and financial commitments in regard to the housing care programmes for former OTR holders; b) remedies for properties that were devastated while under State administration; c) creation of a legal framework for local integration of refugees of non-Croatian ethnicity3, and a uniform set of criteria for the cessation of refugee status. In regard to other issues which were suggested by the international community (IC) such as validation of working years spent in former occupied areas, regularization of status upon return and claims for unsolicited investments in occupied properties, the government announced on 28 October in the third Task Force meeting of the Sarajevo Declaration that those issues would not be included in the Croatian Road Map. A final position will be discussed in the course of the forthcoming meeting of the Task Force, which will take place on 17 November in Budva, Serbia and Montenegro. This meeting should prepare the ground for the Ministerial Conference of the three Governments where the respective Road Maps and the Regional Operational Matrix will be put forward for adoption in accordance with the Sarajevo Declaration. During the reporting period, Croatian NGOs expressed interest in their participation in the implementation of the Sarajevo Declaration. Discussion about their role in the process officially started at the meeting of the Open Forum for Legal Aid Provider NGOs at the end of September, and then continued at its November meeting. Participants agreed to appoint representatives with the mandate of articulating NGOs' common positions about the Sarajevo process."

For further details on implementation of the Sarajevo Declaration see also in sources below:
Road map of the Government of the Republic of Croatia, Serbian Democratic Forum, September 2005
and

Background report on refugee return in Croatia and the status of implementation of the January 2005 Sarajevo Ministerial declaration on refugee return, OSCE, 29 July 2005

Sarajevo Declaration: regional agreement on refugee return can positively impact return of displaced persons (2005)

- During 31 January 2005 Sarajevo Ministerial Conference, Bosnia and Herzegovina, Croatia and Serbia and Montenegro committed themselves to resolving the remaining displacement situation by the end of 2006
- According to the joint Declaration resulting from the conference, each country has to produce a road map to reach this objective

CHR, 29 December 2005, par.31:
"**Importance of comprehensive, overarching regional arrangements**. It is rare that a situation of internal displacement is limited in its effects and implications to a single country. By contrast, it is much more common for a situation of internal displacement to have numerous bilateral and regional dimensions. A situation of internal displacement is a function of both refugee and IDP movements in flux across a number of States, and a solution seeking simply to address a single issue such as the IDP situation in one State risks neglecting broader issues in the regional context that are necessary for comprehensive resolution of the situation. With respect to Croatia, the 2004 Agreement on Succession Issues only recently entered into force, some 10 years after the conclusion of armed conflict on its territory, and the 2005 Sarajevo Declaration remains to be implemented. Inter-State agreements regulating return of refugees, which have a direct impact on the resolution of situations of internal displacement, are of vital importance to resolution of the underlying displacement issues. In the Croatian context, such agreements have been slow in coming and durable solutions of displacement issues have been accordingly delayed."

EU, 9 November 2005, p.29:
"There has been relatively good progress in terms of regional cooperation on the refugee issue. A regional ministerial conference on refugee return was held in Sarajevo on 31 January 2005. At that conference, the relevant ministers from Bosnia and Herzegovina, Croatia and Serbia and Montenegro adopted a joint Declaration which now forms the policy basis for dealing with refugee issues at regional level. In so doing, the three countries committed themselves to resolving the remaining population displacement by the end of 2006; to facilitating the return or local integration of refugees, depending on the latter's decision, without any discrimination; to granting refugees the same rights and and the same responsibilities as all other citizens; to providing assistance and support to refugees in cooperation with UNHCR, the EU and OSCE; and to ensuring access to all rights and entitlements, including the right to accommodation, in a fair and transparent manner. According to the Sarajevo Declaration, each country should produce a 'roadmap' for the implementation of the above mentioned goals. These roadmaps would then be unified in a joint implementation matrix. A task force working group has been set up to assist this process and while a certain degree of progress on technical issues has been made, deadlines are slipping and road maps are being finalised with a certain delay. If further delays occur, the deadline set of end 2006 for resolving the refugee issue will become increasingly unrealistic. The Sarajevo initiative is a positive development and an important political opportunity for Croatia: for the first time ever, it is proposed to address not only refugee return but also local integration in Bosnia and Herzegovina and Serbia and Montenegro, such that the refugee file can be closed once and for all."

Government of Croatia and OSCE launch media campaign on return (2006)

OSCE, NIB, 3 January 2006, p.3:
"At a press conference in Zagreb on 30 November, the Government and the Mission jointly launched a media campaign aimed at raising awareness about the return process. The campaign forms part of a broader venture entitled *Public Awareness Campaign on Reconciliation and Sustainable Return in Croatia*, initiated in 2003 by the Government, the Mission, the EC Delegation, UNHCR, and USAID. The campaign was composed of TV spots, radio jingles, a website (www.povratak.hr) and billboards displayed and broadcast across the region. With the slogan, C*roatia is Home to All its Citizens,* the campaign which ended on 15 December primarily focused on providing factual information to Serb refugees living outside Croatia . mainly in Serbia and Montenegro (SaM) and Bosnia and Herzegovina (BiH) - but also displaced persons within Croatia. In addition, by raising awareness among the domestic receiving population and the Croatian public more generally, the campaign hoped to create a climate more favourable to sustainable return. Talking at the launch, Croatian Minister for Foreign Affairs and European Integration, Kolinda Grabar-Kitarovic, reiterated the two-fold purpose of the campaign and stressed that the Government will continue to pursue its legal obligation to facilitate the return of refugees. Speaking at the same conference, Minister for Maritime Affairs, Tourism, Transport and Development, Bozidar Kalmeta said that the State had the task of ensuring equal conditions of return for all. The media campaign was met by resistance from some interest groups in SaM. The Commissariat for Refugees in the Republic of Serbia issued a statement on the poor timing of the campaign. They pointed out that talks were still underway between Croatia, SaM and BiH regarding the Sarajevo Declaration on return. In a stronger statement, the Belgrade Association of Croatian Serbs called the Government campaign .hypocritical and disgraceful. as the Croatian authorities are, in their views, doing all they can to prevent the return of Serbs. Visiting Zagreb on 13 December (…), the SaM President Svetozar Marovic said it was the responsibility of all in SaM to inform refugees that Croatian institutions are not intent on deceiving anyone. He expressed his conviction that the campaign demonstrated the Croatian Government.s genuine desire for the return process to succeed."

Improvement of political climate towards return although resistance remain within the population (2005)

- Government of Croatia display positive attitude towards minorities
- However, proclaimed policies still have not produced convincing results
- Obstacles to return are numerous and civil society is weak
- Study shows strong anti-Serb feelings within the population
- Need for the Government to promote confidence and reconciliation building measures at local level

Stability-Pact, MARRI-DRC, 30 June 2005, p.38:
"It could be concluded that the situation is much better when compared with the previous period, especially normatively and institutionally, but also in overall social and political climate. The incumbent authorities, particularly the Government of the Republic of Croatia, display positive attitude towards minorities, sending encouraging messages. Although the previous government greatly contributed to the democratisation of the society after 2000 elections, it failed to send such a clear signal of the profound breakthrough in their minority policy.

In order to improve minority's rights, in December 2003, the new Government signed an agreement with the representative of Serb minority and, at the end of 2004, the Agreement between the RoC and S&MN on National Minorities has been signed. In Danube region, some important provisions of the Erdut agreement and the Government's Letter of Intent have been implemented. Obviously, the efforts in recognition of the rights of Serb minority are developing in

the right direction. However, the proclaimed policies still have not produced convincing results in many areas important for the position of Serb minority. Therefore, the State still needs to make additional efforts to integrate the Serb community into Croatian society at all levels. Also Serb community shall act in same direction."

OSCE, 21 November 2004, p.3:
"The local political climate is becoming more favourable to refugee return but problems with ethnic incidents remain in some heavily war-affected areas. Property repossession has progressed well in some areas, but remains slow moving in parts of Dalmatia and Southern Croatia. A persistently difficult economic situation also hinders reconciliation efforts. Civil society organisations are weak and under-financed. Minorities have gained a forum at the local level through the creation of Councils of National Minorities, but in many cases these remain weak."

ECRI. 14 June 2005, par.86, 88-91:
"86. ECRI is pleased to learn that the government has recently made numerous symbolic gestures aimed at fostering mutual understanding between the different ethnic communities, for instance by portraying national minorities as an "asset" to the country. The government has also repeatedly expressed its disapproval of racist or intolerant acts and statements in a manner that should have a positive impact on public opinion. (…)

88. In its, second report, ECRI recommended that the Croatian authorities give high priority to the issue of reconciliation and confidence-building between ethnic communities in the wake of the conflict, especially in the areas directly affected by the war.

89. A study carried out in 2004 indicates that further progress is needed to improve the climate between ethnic communities in Croatia, especially as regards the return of refugees and displaced persons. According to the study's findings, only 14% of ethnic Serb refugees have expressed their intention of returning to Croatia, though 42% said they might consider returning to Croatia if their homes were properly refurbished. 63% of the ethnic Croats who answered the questionnaire said that they did no believe the return of ethnic Serbs was a good thing for Croatia. Lastlym the study concludes that both ethnic Serbs and ethnic Croats exhibited a high percentage of social distance in relation to ethnic groups other than their own.

90. Interethnic incidents still occur, albeit infrequently, targeting both ethnic Serbs in places where ethnic Croats are in the majority and ethnic Croats in areas where ethnic Serbs are in the majority. Representatives of the Serb community have indicated that neither tolerance nor understanding could as yet be said to exist between the different ethnic communities. A form of parallel co-existence appears to be developing in the war affected areas. Human rights NGOs describe interethnic relations in Croatia in terms of indifference or even a degree of hostility, though it is widely acknowledged that the climate has improved since the ed of the armed conflict.

91. Despite the government's symbolic gestures in favour of the Serb community, ECRI notes that little action has so far been taken to foster communication and mutual understanding between the majority Croatian population and members of the Serb community."

UN CHR, 29 December 2005, par. 34 and 44-45:
"While a degree of local administration is appropriate and indeed necessary, care must be taken to preserve the rights of IDPs from arbitrary and at times capricious actions on the part of local administrators. The housing commissions operating at local and regional levels, which were abolished in the reform of 2002, illustrated a number of these difficulties. Local and regional administrators often wield a disproportionately large degree of practical power in such situations which, when coupled with significant discretion contained in legislation and administrative mechanisms, permits readily administrative action to reflect bias on the part of the administrator or that of wider sections of the local population. It is also essential that central authorities have

the capacities, including necessary legal powers, to enforce full and proper application of the relevant law by local and regional authorities. (…)

"44. The Representative was concerned to hear that in a number of regional and local areas the respective authorities had fallen short of the political lead set by the central Government. The Representative was concerned that signals of exclusion and resistance to moving forward exhibited by local politicians and certain media are likely to create uncertainty amongst members of both majority and minority ethnic groups as to the current situation in the country and the degree to which the course of reintegration and forward development was in fact guaranteed.

45. Such divisions on ethnic bases were also shown at regional and local levels by oft-heard complaints that participation of ethnic minorities in local administrations, even when specifically provided for by law, was either non-existent or existed at insufficient levels. Such attitudes on the part of the State at this level also found reflection in behaviours of private individuals, with landlords, employers and others exhibiting hostile and dissuasive attitudes towards members of ethnic minorities seeking to live and work in certain areas. In some cases in recent years, physical attacks on members of ethnic minorities had been the most aggressive manifestations of such attitudes. Taken together, these manifestations have a particularly corrosive effect on communities at the local level and entrench mistrust and mutual apprehension. The Representative emphasizes that resolution of such latent issues at the local level and in the general population are indispensable to durable, sustainable resolution of issues of internal displacement. While (re-)creation of the physical and property infrastructure to accommodate returnees is a necessary first step, that is not of itself sufficient. On the contrary, measures to build social confidence, particularly through appropriate representation of minorities in local mechanisms of Government and effective enforcement of non-discrimination laws, are essential to lock in progress achieved and to build a durable basis for a common future."

Government signs agreement with Serb party pledging commitment to support return, property restitution and compensation (2003-2004)

- Members of Serb party express reservations regarding implementation of the Cooperation agreement with the Croatian Government
- The Agreement was made between the Prime Minister Ivo Sanader and the Independent Serb Democratic Party (SPSS)
- It provides for the full return of refugees, restitution of illegally used Serb property within 6 months and compensation for destroyed property outside areas covered by the existing laws

OSCE, 21 November 2004, p.3:
"In September and October, Members of Parliament from the Independent Democratic Serb Party (SDSS) expressed reservations about the implementation of the *Cooperation Agreement* signed with the Croatian Democratic Union (HDZ) in December 2003. After SDSS leaders publicly criticized the Government's policy, mainly regarding refugee return and minority representation in the State administration, the judiciary and the police, Prime Minister Sanader held a series of meetings with representatives of the SDSS and Bosniak minority. Subsequently, both the Serb and Bosniak delegations stated their overall satisfaction with discussions and the Serb delegation expressed the view that the *Cooperation Agreement* was leading toward positive results."

USDOS, 28 February 2005, Section 3:
"In 2003, the SDSS signed an agreement with the Government in exchange for a commitment from the Government on the full return of refugees, the restitution of illegally used Serb property within 6 months, and compensation for destroyed property outside of areas covered by the

existing Reconstruction Act. The agreement also committed the Government to fulfill, within 3 months, provisions within the Constitutional Law on National Minorities that guarantee minority representation in local and regional Government units. This commitment was generally carried out by local and regional elected representative bodies; however, the Government's commitment to ensure proportional representation in the police, judiciary and public services was not systematically addressed. "

Croatian Government agrees with Serbia-Montenegro and Republika Srpska to facilitate the return of refugees and displaced persons (2000-2004)

- On 15 November 2004Croatia and Serbia and Montenegro signed a bilateral agreement on the protection of minorities
- On 9 March 2000, Croatia and Republika Srpska signed a Joint Declaration on the two way return of 2,000 refugees from each side from Bosnia and Herzegovina and Croatia (the "Banja Luka Declaration)
- A number of legislative and administrative reforms impacting the right of return and treatment of returnees have also taken place
- Despite these positive trends, resistance to return by some authorities at the municipal level still needs to be overcome

OSCE, 21 November 2004, p.18:
"Croatia and Serbia and Montenegro concluded on 15 November a ***bilateral Agreement on the Protection of Minorities*** (Croats in Serbia and Montenegro, and Serbs and Montenegrins in Croatia). The Agreement was signed by the Ministers of Justice during the Croatian Prime Minister's first visit to Belgrade the same day. The agreement emphasizes that minority rights contribute not only to the political and social stability of each country, but also to the return of refugees and their integration into each society. The agreement largely recapitulates guarantees provided by the CLNM as well as other minority protection laws. It does, however, also introduce several new guarantees, including a Mixed Commission on minority rights. Croatia has previously signed such agreements with Italy and Hungary."

UNHCR EXCOM July 2000, para. 4:
"In Croatia the new Government has made fundamental policy changes regarding the return of refugees and displaced persons. The Government has pledged to enable all Croatian Serb refugees to return to their homes and to restore their civil rights, and to respect international commitments and standards on return. Following her meetings with the new President and other Government officials in March 2000, the High Commissioner described the main shift as a movement from 'acceptance' to 'welcome'. Some 6,000 refugees have officially returned to Croatia this year. More are believed to have returned, but have not yet registered with local authorities. On 9 March 2000, Croatia and Republika Srpska signed a Joint Declaration on the two way return of 2,000 refugees from each side from Bosnia and Herzegovina and Croatia (the 'Banja Luka Declaration'). A number of legislative and administrative reforms impacting the right of return and treatment of returnees have also taken place. Amendments to the Law on Reconstruction were passed by the Parliament in June, while a revision of discriminatory provisions in the Law on Areas of Special State Concern has been initiated. The Government has also agreed to simplify existing and cumbersome administrative procedures on return."

HIWG 11 September 2000, para. 26:
"Despite these positive trends, resistance to return by some authorities at the municipal level still needs to be overcome. Moreover, the streamlined administrative procedures have yet to become fully functional, with undue delays and procedural errors continuing. In addition, an effective legal

framework and mechanisms must be established that will allow returnees to recover their property and restore occupancy rights. At least half of the returning population are not able to return to their pre-war homes because they are either illegally occupied or destroyed. Central to this issue is the identification of alternative accommodation or other solutions for Bosnian Croats still occupying properties of returning Serbs."

Return policy of the Croatian government: persistent discrimination against Serb returnees (1997-2001)

- An agreement between Croatia and UNHCR was signed in April 1997 to implement return to and from the Danube region
- In 1998, the government issued the Return Programme which states that property repossession by pre-war owners as a key principle
- Once an owner has applied for return of his occupied property, the temporary users of that property are to be offered alternative accommodation
- The government promised to remove discriminatory provisions regulating reconstruction aid (2001)

"Croatia first began to address the return of displaced populations in the context of Eastern Slavonia. The Agreement on the Operational Procedures of Return, signed by the Croatian Government, the United Nations High Commissioner for Refugees (UNHCR) and UNTAES in April 1997, established procedures for return to and from the Danube Region. As part of this agreement, the Government also created the Agency for Legal Transactions and Mediation of Real Estate (known as APN, after its Croatian title) to facilitate displaced persons and refugees in buying, selling or exchanging property.

In April 1998, the Government issued the Procedures for Return of Persons who have left the Republic of Croatia. They followed this with Mandatory Instructions for implementing these procedures. These two documents put into place mechanisms that guaranteed the physical return of refugees from countries of asylum. Once applicants are cleared for return, they can return via UNHCR/ODPR convoy or travel on their own with a one-way travel document.

In June 1998, the GOC issued the Programme for Return and Accommodation of Displaced Persons, Refugees and Resettled Persons (hereafter: the Return Programme), which established procedures for property repossession throughout Croatia. The Return Programme, which became operational in August 1998, 'recognizes the inalienable right to return of all Croatian citizens' and states that 'regardless of the way of return, all returnees will receive equal treatment.' The key principle under the Return Program is property repossession by pre-war owners. However the Return Programme makes repossession by owners contingent upon the provision of 'alternative accommodation' for the temporary users. Thus the Return Programme contravenes international property standards as well as the Croatian Constitution. Owners of occupied property submit claims for repossession of property to municipal-level Housing Commissions. Once an owner has applied for return of his occupied property, the legal users of that property are to be offered alternative accommodation in a state-owned house or flat.

The lack of 'alternative accommodation' has indefinitely delayed the process of property repossession by the majority of lawful owners. In the Programme, the Government also agreed to change certain existing laws (the Law on the Status of Expellees and Refugees, the Law on Areas of Special State Concern, and the Law on Reconstruction) within 3 months so that all returnees would be equal under the law. The former government did not meet this obligation,

amending only one of the laws in the autumn of 1999. However, the new government, following intensive consultations with the OSCE and other international partners in Croatia, amended the other two in June/July 2000.

Between 1991-1998 about 195,000 residences were destroyed. It is estimated that more than 110,000 have been reconstructed: about 105,000 by the Government and another 4,500 by the international community. The overwhelming majority of these Government-reconstructed properties are owned by ethnic Croats. Most of destroyed Serb housing remains to be repaired or reconstructed. In 1996, Parliament adopted the Law on Reconstruction, which sets the criteria and guidelines for the provision of Government funding for reconstruction. The Law contained a number of provisions, including priorities and eligibility criteria, which effectively discriminated against Serb applicants.

In June 2000, the Parliament amended the Law to remove most of the shortcomings. However, implementing regulations in the 'Rulebook' of July 2000 partially reintroduced discriminatory prioritization. The authorities have continued to deny reconstruction assistance to individuals whose property was damaged or destroyed by so-called 'terrorist acts' or by the Croatian armed forces. This adversely affects primarily Serb property owners. In March 2001, the Ministry for Public Works, Reconstruction and Construction stated that it would initiate 'harmonization of legal regulations in place, so that all objects damaged or destroyed in terrorist actions could be included in the programme of reconstruction.' Action in this regard remains pending. The final deadline for applying for reconstruction assistance has been set for December 31, 2001." (OSCE 2002, Government Action on Return)

Obstacles to return and resettlement

Surveys by UNHCR and other international organisations indicate that only 60 per cent of returns are sustainable (2003-2004)

- Sustainability of return require multi-dimensional initiatives
- Field surveys carried out by a number of international and national organisations suggest that in most areas only 60% of returnees stay in their place of origin
- In some parts of Croatia, including Benkovac and Gracac, the percentage of sustainable returns falls far below 50%

UN CHR, 29 December 2005, par.36:
“In recent years, the Government of Croatia has recognized that legal measures laying the groundwork for return and reintegration, including with respect to property issues, are not sufficient to ensure durability of return. Rather, such steps must be accompanied by positive targeted measures with respect to the economy, and social and physical environment of areas affected by displacement. In order to make returns permanent and sustainable, the affected areas must be in a position to offer reasonable employment prospects and economic opportunities. The physical environment must also be rendered free of physical dangers such as those posed by landmines and unexploded ordnance, as well as environmental damage such as the release of heavy metals and poisonous materials into the environment as a direct or indirect result of the armed conflict that led to displacement. In Croatia, the late stage at which such measures have been undertaken and begun to be implemented with sufficient conviction has delayed achievement of a situation that is sustainable over the medium and long terms.”

MRG, July 2005, p.1:

“ Of those interviewed for this study *(conducted in June 2005)*, 37 per cent have considered leaving Croatia since their return; 65 per cent know of persons who returned to Craotia intending to stay but left later on.”

HRW, 13 May 2004, p.3:
“According to the Croatian government, approximately 300,000 ethnic Serbs left their homes during the 1991-95 war. Most left for Serbia and acquired refugee status there, but 50,000 Serbs remained at the end of the war in Eastern Slavonia, as internally displaced persons.[…] As of late 2003, according to the government, 108,000 Serbs had registered as returnees. The number of returnees who actually stay in Croatia, however, is far below this number: field surveys conducted by the Organization for Security Cooperation and in Europe (OSCE) Mission to Croatia, and nongovernmental organizations (NGOs) acting as implementing partners for the office of the United Nations High Commissioner for Refugees (UNHCR), suggest that in most areas only about 60 percent of registered returnees are still in place, with the rest having moved back to Serbia-Montenegro or elsewhere. In some parts of Croatia, the percentage of sustainable returns falls far below 50 percent.[1]”

[Footnote 1] This is allegedly the situation in Benkovac and Gracac. Human Rights Watch telephone interview with an OSCE official in Knin, March 2, 2004.

OSCE July 2003, p.24:
“Out of more than 300,000 Serbs who left their homes in relation to the armed conflict in Croatia between 1991 and 1995, about 100,000 have been registered by the Government as having returned to or within Croatia. Yet in January 2003 the UNHCR conducted a review in 43 return villages in the Knin area of southern Croatia, covering approximately 11 per cent of the returnee population in the Lika-Senj, Zadar and Sibenik-Knin Counties. The results of the survey established that only 62 per cent of the registered returns could be considered as ‘sustainable’, i.e., as having returned to the area for good, while 27 per cent were classified as commuters, travelling between their place of exile and area of origin in Croatia on only a few occasions before leaving for third countries or returning to their place of exile.”

USCR 2000, p. 226:
"Some 43,000 ethnic Croats had officially returned to their homes in eastern Slavonia by year's end, including 17,000 in 1999 - more than half of the eastern Slavonian population that had been displaced. However, the OSCE noted that not all the returns appeared to be permanent. Another 38,000 displaced ethnic Croats remained outside the region. About half returned to Vukovar-Srijem, and half to Osijek-Baranja. Housing commissions in eastern Slavonia were particularly active and effective in adjudicating claims by returning ethnic Croats."

In practice, only limited progress has been achieved in the return process: overview of obstacles to IDP and refugee return (2003-2005)

- Housing problems, lack of jobs, access to documentation and discrimination constitutes major obstacles for sustainability of return
- Failure to bring to justice people suspected of war crimes create a sense of insecurity for potential returnees
- Presence of mines also hinder sustainability of return by preventing agricultural activities
- Simplification of complex administrative rule would facilitate access to rights for displaced personsThe European Commission notes that in practice limited progress has been achieved in the return process and integration of the Serb minority

- The return process has been slow due to economic reasons, including unemployment and lack of job prospects
- In addition, a number of human rights concerns such as lack of access to housing, and recognition of pension rights present obstacles to return
- Psychological factors, including inter-ethnic tensions in some areas and lack of transparency in the prosecution of war crimes have also deterred returnees

IHT, 22 December 2005:
Interview of Walter Kälin; Representative of the Secretary General on the Human Rights of IDPs:
"People from different ethnic groups still discriminate against each other. Throughout the Balkans, returnees can still expect prolonged and unjustifiable delays in having their houses connected to water and electricity. They are discriminated against when applying for jobs and are denied access to pension funds and the state health system. Too little is done so that returnees' children can go to a school in their own language. In many places the police are perceived as biased. National and religious symbols are not used to create unity but to feed divisions and insecurity among minorities. And the overburdened and cumbersome judiciary systems are not able to enforce a strong rule of law. The failure, moreover, to bring to justice thousands of people suspected of war crimes, in particular Ratko Mladic and Radovan Karadzic, who helped orchestrate ethnically motivated mass expulsions, continues to cast a pall over the progress made and has done nothing to reduce fears and insecurity. (…) Several steps are needed urgently in the Balkans. First, there must be an immediate, concerted effort to find solutions for the most vulnerable people still in collective shelters - particularly the Roma in Northern Mitrovica. Second, help must be extended to those who prefer to integrate locally, so that they have access to jobs and public services. Third, efforts must be made to better inform displaced persons and minorities about their rights, to simplify administrative rules so they can claim their entitlements, and to halt discriminatory practices against them. Fourth, donor governments and the World Bank should be encouraged to invest in rebuilding schools, health facilities, housing and other infrastructure, so that displaced persons and returnees begin to lead normal lives. Finally, all crimes and acts of violence against the displaced and those returning must be investigated and prosecuted. Only then will the promise of Dayton be fully realized."

EU, 9 November 2005, p.27:
"The main issues refugees face upon return relate to housing, a lack of public infrastructure in the return villages, especially electricity; difficulties in terms of economic reintegration and employment, and an often negative atmosphere within some receiving communities. The potential for harassment based on unfounded "war crimes" allegations, has been considerably reduced thanks to an initiative of the Croatian State Prosecutor to review and weed out the numerous unfounded cases against Croatian Serbs (*see also the section on domestic war crimes trials*). Some return areas are also still contaminated by mines. Both refugees who return and those who opt for local integration also often encounter difficulties with access to pension rights in particular with regard to the so-called "convalidation" for rights accumulated in the period 1991-1995. The principle focus of the Croatian Government since the Opinion has been on housing and de-mining. The latter has been dealt with through Croatian budget resources and is planned to be completed by 2010. In terms of economic reintegration, the Government has put in place some measures for the economic development of the areas of return but no specific measures targeted at returnees. Little has been done to date to improve the atmosphere within the receiving communities."

OSCE, 7 July 2005, p.6:
"In addition to housing problems, other factors represent disincentives to minority refugee return. Lack of jobs and economic opportunities, including discrimination against minority members in return areas, represent a major impediment for sustainability of return. Appropriate administrative

adjustments are still required to redress the persistent denial of recognition of ***working years*** (for pension benefits) in the former Serb controlled areas, a practice which is contrary to the Law on Convalidation of 1998. Administrative measures are also needed to address the difficulties that mostly displaced Croatian Serbs, who lost the status of permanent residence for foreigners after leaving the country during the armed conflict, still face to ultimately acquire Croatian citizenship. In some refugee return areas, the persistent lack of access to ***basic infrastructures*** such as electrification and water supply, undercut dignified living conditions for the returning population. The Government announced in early July that it will increase its efforts, both operational and financial, in the re-electrification of a progressive number of minority return villages that used to be connected to the electrical grid before the war."

EC 26 March 2004, pp.4,8:
"In practice only limited progress has been achieved for the return process, and de facto integration of the Serb minority.
[…]
Progress has been achieved in the refugee return process and legislative steps to allow the reintegration of the Croatian Serb minority, in particular returnees, and protecting occupancy and tenancy rights, have been taken. However, the progress has mainly concerned the establishment of a legal framework. The main Government priorities must be to ensure that this legislation is quickly implemented and the problem solved without further delay."

OSCE 18 December 2003, p.4
"The laggard return process is conditioned by economic reasons such as high unemployment and lack of job opportunities as well as human rights concerns such as lack of access to housing and the difficulty in having other acquired rights recognized, i.a. pension rights. There are also psychological factors such as remaining inter-ethnic tensions in some areas and apprehension about living as a minority in former Serb-dominated areas. This involves concerns related to bias and lack of transparency in the prosecution of war crimes often triggered by arrests of ethnic Serbs for war crimes which are at times based on weak evidence that has dissuaded some Serb refugees from returning.

The issue of terminated OTR affects more than 23,700 families of Croatian Serbs from the urban parts of Croatia, which remained under the Government's control during the war. In the Areas of Special State Concern (ASSC) there may be some further 10,000 lost OTR; the Government has not specified the number. Property repossession prevents more than 2,570 families with claimed property from accessing their houses, while the 13,500 unprocessed applications for reconstruction derive largely from Croatian Serb applicants."

US DOS 25 February 2004, Sect.2d:
"The Government's procedures to verify and document the citizenship of hundreds of thousands of ethnic Serbs who fled the country after the military operations in 1995 improved during the year; however, there were regular reports of obstruction by some local officials. Many cases existed in which Serb returnees experienced difficulties in obtaining identity cards and other forms of documentation that would allow them to verify their citizenship status. The municipal government in Gracac obstructed returns to Donji Srb and other municipalities under its jurisdiction while at the same time providing immediate assistance to ethnic Croat settlers from BiH."

See also:
"OSCE sees progress on Croatia key laws, urges faster return", OSCE, 8 July 2003 [Internet]

"Croatia fails Serb Refugees: Ethnic discrimination slows return", HRW, 3 September 2003 [Internet]

IREX and OSCE (Croatia) collaborated to produce a documentary series on IDP/refugee returns covering a wide range of issues including legal, social, economic obstacles to return. For more information, see "IREX/Croatia and OSCE/Croatia Agree on Joint Production of Documentary Series on Refugee Returns", December 2003 [Internet]

"A Half-hearted Welcome: Refugee Returns to Croatia", ICG, Section III Return Initiatives, 13 December 2002 [Internet].

High unemployment rate combined with discrimination restricts access of minorities to the labour market and affect return negatively (2006)

- Unemployment in return area is higher than in the rest of the country
- Despite legislation providing for representation of national minorities within administration and judiciary very few minority are employed in these sectors
- Majority of employed returnees work in the private sector
- Failure to facilitate repossession of agricultural land and business premises reduces opportunities of self-employment of returnees
- Private entrepreneurs, although not bound by the law to hire Serbs, have proved to be more willing to do so than government agencies

MRG, 1 July 2005, p.2-3:
"Employment is highly important in motivating and sustaining returns to urban areas.(…) The International Labour Organization (ILO) estimates the average unemployment rate in Croatia for 2004 at 13.8 per cent. According to the Croatian Employment Agency (CEA) the unemployment rate in the second half of 2004 was 17.7 per cent.(…) In the Areas of Special State Concern (ASSC) the unemployment rate is much higher. NGOs point to discrimination against Serb returnees, but CEA unemployment statistics do not include records on the ethnicity of those registered.

Our research shows that 93 per cent of interviewees believe that there is discrimination against ethnic Serbs. The European Commission Against Racism and Intolerance (ECRI) notes that there are many allegations of discrimination against ethnic Serbs regarding access to public sector jobs.(…)
'[In] Gvozd and Topusko ... with 6,989 inhabitants altogether, of which 3,430 are Serbs ... only 14 [Serbs] are employed; in Kistanje and Benkovac there are no employed Serbs; it is the same in Vojnic although Serbs are the majority in that town; 18 Serbs are employed with Knin public sector, none with the City Administration, State Administration Field Offices ... etc.'

The Constitutional Law on the Rights of National Minorities (CLNM) guarantees the right to proportional representation of minorities in the state administration and judiciary. However, minorities remain under-represented in these areas. Minorities constitute 7.5 per cent of the Croatian population, but only 4.9 per cent of those employed by judicial bodies are from minorities (ethnic Serbs make up only 2.4 per cent of judicial staff). (…) In 2003, of 66 judges employed by judicial bodies, 65 are ethnic Croats, and all state attorneys are ethnic Croats.23 Serbs make up only 2.6 per cent of civil servants and employees in the courts and state prosecutor's offices.24
'Some ethnic Serbs who applied for a post for which they were fully qualified did not obtain it, even where no one else met the requirements ... the post remained vacant ...it would appear that ethnic Croat candidates are given preference over better-qualified ethnic Serb candidates...' 25

'My husband applied ... for posts in the judiciary but all of his applications were rejected or job interviews were cancelled.... Despite his skills and experience [a graduated jurist with 15 years' experience as a judge] my husband can't get a job all these years since our return [1997].' (Interviewee from Glina)

From our research, it appears that the majority of employed returnees work in the private and civil society sectors. Of the employed interviewees, 8 per cent work in public institutions (hospitals, schools, etc.), 43 per cent in private companies/crafts; 43 per cent with NGOs and agricultural enterprises; while 6 per cent are self-employed.(…)
Fifty-eight per cent of interviewees consider self-employment as the solution to returnees' unemployment. One obstacle to this is the failure in some cases to provide prompt repossession of agricultural land and business premises to returnees. Government economic development measures in the areas of return do not include specific measures for returnees."

UNHCR, 1 September 2005, p.3:
"[I]f the present difficult socio-economic situation in the return areas remains, it may also continue to affect the pace of return negatively. Unemployment, countrywide officially at some 15%, can be as high as 90% in some return areas, where the already poor pre-war economic infrastructure has collapsed with little prospect for rapid economic revitalization. Therefore, once refugees have become returnees they still need humanitarian assistance that will facilitate their initial legal as well as social reintegration in their communities. Community based projects will help them to reach this subsistence level as a basis for a sustainable return and the preservation of their dignity, as well."

Human rights Watch, 18 January 2006:
"Limited economic opportunities for minority returnees, partly caused by employment discrimination, also greatly impedes return. A December 2002 constitutional law on minority rights obliges the state to ensure proportionate representation of minorities in the state administration and the judiciary, as well as the executive bodies and administration of self-government units. In most areas, there are no Serb returnees in the police, the judiciary, or the regional offices of the state ministries. Private entrepreneurs, although not bound by the law to hire Serbs, have proved to be more willing to do so than government agencies."

Stability Pact- MARRI-DRC, p.26:
"In the areas of refugee return the rate of unemployment is much higher and job possibilities are very restricted, except the limited possibilities in state and local administration and public institutions. Particularly in a difficult position are Serbs who are still discriminated and their access to job is almost impossible. While very few Serbs have been able to find jobs in private businesses owned by Croat entrepreneurs, virtually no Serb returnees are employed with the state, county and municipal administration or in public services, such as health centres, schools, post offices, power-supply companies etc. The situation is identical in the judiciary."

See also section on Self-reliance and public participation

Restricted access to pension discourages return of elderly ethnic Serbs who constitute the majority of returnees (2003-2005)

- The majority of returnees are elderly Serbs whose only prospect is a state pension
- Procedure of recognition of working years penalizes ethnic Serbs who worked in Republika Srpska Krajina during the war
- The return of ethnic Serb refugees is affected by the failure of the government to recognize legal and administrative documents from the period of the 1991-1995 conflict

- The 1997 Convalidation Law that allows for the recognition of documents issued by the rebel Serb para-state has been limited by Government authorities
- While the law does not contain a deadline for filing applications, the previous government had established 1999 as the deadline for filing an application
- Given that over half of the 108,000 Serbs who returned to Croatia returned after 1999, the filing deadline excluded most of those who otherwise would be beneficiaries
- Ethnic Serbs citizens continue to be unable to resolve a wide range of issues, including pensions, disability insurance and employment

JRS, September 2005, p.370-371:
" The majority of returnees are elderly Serbs whose only prospect is a state pension. (…) One additional concern is access to state pensions and the issue of convalidation—the recognition of periods of time spent in employment. The government had introduced a number of schemes that made it difficult for ethnic Serbs to claim past years of work, which should have contributed to their pension. The issue of convalidation is particularly important because it relates to final pay pension schemes. To secure a convalidation of one's working papers, it was necessary to produce two witnesses who were qualified as having worked with the applicant and whose own employment status had been certified by means of convalidation. Given the social distance between ethnic groups, this was especially difficult to achieve (A. J. and M.A., interview 19 April 2004). Returnees tended to rely onmembers of their own ethnic group for support and most were in the same situation. Further, there were obvious practical difficulties since many refugees did not have complete files and would not have copies of their employment log (stored in their employer's office) which they would not have considered when they were forced to flee."

U.S. DOS 25 February 2004, Sect.5:
"An ongoing impediment to the return and reintegration of ethnic Serb refugees is the failure of the Government to recognize or 'convalidate' their legal and administrative documents from the period of the 1991-95 conflict. Implementation of the 1997 convalidation law to allow the recognition of documents issued by the rebel Serb para-state was undermined by Ministry of Labor and Social Welfare instructions that seriously limited eligibility. While the law itself does not include a deadline for filing applications, a decree issued by the previous regime established a 1999 filing deadline. Since more than half of the 108,000 Serbs who have returned to Croatia returned after 1999, the filing deadline effectively excludes most of those who otherwise would be beneficiaries. Even persons who filed before this deadline experienced arbitrary delays and obstructions. Without the recognition conferred by the law, citizens (almost exclusively ethnic Serbs) remained unable to resolve a wide range of problems including pensions, disability insurance, and ability to establish work experience. Additionally, the state pension fund improperly denied some applications for recognition of working experience from ethnic Serbs."

See also:

The Section on Pensions, pp. 13-14 in "Croatia Returns Update", HRW, 13 May 2004 [Internet].

"Pension and Disability Insurance within and between Bosnia and Herzegovina, the Republic of Croatia and the Federal Republic of Yugoslavia in the Context of the Return of Refugees and Displaced Persons" UNHCR/Stability Pact, June 2002 [Internet]

Lack of socio-economic conditions in return areas is an impediment to the return of all IDPs and refugees (2003-2005)

- Although the economy is in transition with positive growth in macroeconomic data, the level of unemployment remains worrying, particularly in areas of return
- War affected areas lag behind the rest of the country and require economic investment
- In return areas, the already poor pre-war economic structure has collapsed and unemployment in some areas can be as high as 80-90% with little prospect for rapid economic revitalization
- Aside from returnee benefits allocated by the Government in the first six months after return, there are few national or international programs offering 'transitional' assistance to facilitate reintegration
- Ethnic Serb and Croat leaders cite unemployment in the region as significantly contributing to interethnic tensions

UN CHR, 29 December 2005, par.46:
"46. While conscious of the measures undertaken by the Government to stimulate economic growth in the conflict-affected areas of the country, the Representative was concerned at witnessing the degree to which these areas lagged behind the rest of the country. The eastern Danube region, for example, once the breadbasket of the country and an economic powerhouse, remains a shadow of its pre-conflict stature. In some respects, environmental degradation resulting from the presence of mines and/or unexploded ordnance, as well as effects of the fighting itself, has diminished the accessibility or productivity of the land. Alternatively, the effects of the fighting on infrastructure, notably communal agricultural and industrial facilities, remain grave and the displacement of experienced labour forces as a result of the fighting decimated workforces with local knowledge, which have some distance to cover to return to pre-war levels. Less readily quantifiable effects of psychological and mental injuries inflicted by the conflict and displacement have also had effects on productivity in the region. The totality of these effects has resulted in extensive tracts of the country still suffering from severe economic dislocation and underdevelopment compared to the rest of the country, and an absence in large measure of the employment and investment economic opportunities necessary to undo, over time, the effects of the conflict and provide prospects for a sustainable future to displaced persons returning to these areas. In order to address these broader issues, which are central to constructing a sustainable future in these areas, the Representative considers that the Government needs to review how, in the light of the experience of measures taken to date, the admittedly complex economic and environmental issues can best be advanced."

US DOS 25 February 2004, Sect.5:
"Both ethnic Serb and Croat leaders cite the 50-80 percent unemployment in the region as significantly contributing to interethnic tensions."

OSCE 2003, "Poor Economic Situation":
"Since most returnees are going back to 'war-affected areas', they generally face a harsh economic environment. Aside from the returnee benefits allocated by the Government in the first six months after return, there are few national or international programs offering 'transitional' assistance to facilitate reintegration. In some return areas the unemployment rate is above 80%, a reality that particularly discourages people of working age from returning. Furthermore, the lack of employment and business opportunities and widespread corruption all contribute negatively to potential return."

UNHCR 1 September 2003, p.2:
"[T]he difficult socio-economic situation in the areas of return continue to negatively influence the pace of return and reintegration. In these areas, the already poor pre-war economic structure has collapsed and unemployment in some areas can be as high as 90% with little prospect for rapid economic revitalisation. The widely accepted concept among the donor community of transition

from humanitarian interventions to more development-oriented activities, has resulted in increased investments in economic revitalisation and development projects."

See also, "Ethnic discrimination on the labour market (2003-2004)" [Internal link]

Lack of legal and practical redress for those who lived in formally socially owned apartments is the most significant housing-related human rights concern and obstacle to return (2002-2004)

- Access for former OTF holders would enable the return of skilled and educated urban population
- 50,000-60,000 holders of occupancy rights in socially-owned apartments, mostly ethnic Serbs, have been deprived their occupancy rights during and after the war
- The lack of a comprehensive remedy to the widespread termination of occupancy/tenancy rights remains one of the major obstacles to sustainable return

OSCE, 21 November 2004, pp. 4:
"Access to housing for former OTR holders would enable the return of the relatively skilled and educated urban population and would thus contribute to a more dynamic Serb community in Croatia."

OSCE 18 December 2003, p.6:
"The most significant housing-related human rights concern and obstacle to refugee return continues to be the lack of legal and practical redress available to families who lived in socially owned apartments and whose OTR were terminated, either by law (in the ASSC) or by court decisions. The total number of affected households remains unknown, since there are no available records of the *ex lege* terminations, but 23,700 households lost their dwellings by court decisions during and following the war. Termination proceedings continue in the courts today, resulting in some cases in the eviction of families from homes they have never left either during or after the conflict."

OSCE 2003, "Occupancy/Tenancy Rights Issue Still Unresoloved":
"The termination of 'occupancy/tenancy rights' in several tens of thousands of cases continues to represent a human rights problem in general and an obstacle for the return of the urban Serb population in particular. In the former Yugoslavia, an individual could acquire the right to occupy a socially-owned apartment (Croatian: '*stanarsko pravo*', English: '*occupancy/tenancy right*'). The right had virtually all of the attributes of a possession and a property interest except the right to sell the property. During and after the course of the war, the Croatian Government passed a number of decrees and laws affecting occupancy rights. Holders of occupancy/tenancy rights who fled their homes were deprived of these rights - in most cases this occurred without notice, hearing or right of appeal. Those affected by the termination of such rights were almost exclusively Croatian Serbs. They have had no effective recourse either to reclaim the apartments, to be given substitute accommodation of comparable location, size and value, or to receive compensation.

This issue has for some time been one of the central unresolved issues that impeded the return process. Following intense discussion between the international community and Croatian Government, steps were recently initiated aimed at facilitating the return of former occupancy/tenancy rights holders. Namely, through amendments to existing legislation, the Government decided to permit former occupancy/tenancy rights holders and all those from the Areas of Special State Concern, who have no property, to apply for housing. The Mission and its international partners have recommended to the Government that these returnees be given

higher priority. Also, on 12 June 2003, the Government adopted a programme designed to address the housing problems faced by former occupancy/tenancy rights holders who lived outside the Areas of Special State Concern. The procedures proposed by the Government for the country as a whole set double standards compared to the treatment of ethnic Croats who fled and returned to the Danube Region. They have the possibility of either leasing or subsequently purchasing the same apartment they lived in prior to the war."

OSCE 21 May 2002, pp. 12-13:
"The lack of a comprehensive remedy to the widespread termination of occupancy/tenancy rights (stanarsko pravo) remains one of the major obstacles to sustainable return. According to Government information as of 1998, approximately 20,000 occupancy/tenancy rights holders who were forced from their residences or who fled during the conflict had their occupancy/tenancy rights terminated through court proceedings in absentia, based on the former Yugoslav legal regime, primarily on the basis of an absence of more than six months. These terminations affected socially-owned apartments located in cities that remained under Government control such as Zagreb, Split, Osijek and Zadar. Additionally, occupancy/tenancy rights held by thousands of almost exclusively Serb households were terminated through provisions of the 1995 Law on Lease of Apartments in the Liberated Areas, which stipulated that occupancy/tenancy rights were cancelled if the occupant was absent more than 90 days from the enactment of the Law. The vast majority of Serb occupancy/tenancy rights holders could not return to their apartments within such a short time after the conclusion of military operations. Most of the remaining residents of such apartments as well as new residents, predominantly Croats, who were assigned the apartments of ethnic Serbs, were later eligible to privatize them. Those who left were thus disadvantaged further vis-à-vis those who stayed. A large number of former occupants have initiated court procedures, seeking review of in absentia decisions issued on the basis of 'unjustified' absence during and after the conflict. The vast majority of these requests for review were denied. Those individuals whose rights were terminated under the Law on the Lease of Flats in the Liberated Areas, adopted immediately after the conflict, remain without remedy.."

See also:
Section on Property
"OSCE statement on tenancy/occupancy rights in Croatia" OSCE, 2003 [Internet]
"Broken Promises: Impediments to Refugee Return to Croatia" HRW, September 2003 [Internet]
"Triumph of Form over Substance? Judicial Termination of Occupancy Rights in the Republic of Croatia and Attempted Legal Remedies", a report by the Civil Rights Project of the Norwegian Refugee Council, May 2002 [Internal link]

OSCE report: discrimination against ethnic Serbs in war crimes proceedings hinders return (2002-2005)

- Ethnic bias against ethnic Serbs is frequent in the judicial system notably in the area of war crimes
- Despite progress a number of Serb returnees are still faced arrests for charges to be later dropped as unsubstantiated
- Climate of impunity for crimes persists in Croatia in favour of ethnic CroatsThe report based on monitoring of some 75 war crime trials during 2002 indicates that defendants of Serb ethnicity are disadvantaged at all stages of judicial proceedings compared to Croats
- The monitoring process was also conducted given the impact the proceedings have on perceptions among the Serb community about the feasibility of their return and reintegration

- Half of the Serbs arrested for war crimes in 2002 were recent returnees, a trend which the report suggests appears to continue in 2003
- Head of the OSCE Mission to Croatia Ambassador Semneby noted "the lack of even-handedness in the treatment of war crimes in the courts" continues to be an obstacle to return

EU, 9 November 2005, p.16 and18:
"With respect to the *impartiality* of the judicial system, some problems remain, mostnotably in the area of war crimes trials where, despite progress since the Opinion, ethnic bias against Serbs in local courts persists. (…) Despite some progress in the reduction in the number of unfounded charges for war crimes being levelled at members of the Serb minority *(see the section on domestic war crimes trials*), a number of Serb returnees have faced arrest on return to Croatia since the Opinion only for charges subsequently to be dropped."

UN CHR, 29 December 2005, par.15:
"15. As to human rights issues which currently subsist, issues of impunity remain of primary concern. Over recent years, the extent of the cooperation of Croatia with the International Criminal Tribunal for the Former Yugoslavia as well as indications of selectivity and unfairness in domestic criminal proceedings have been criticized, and despite important progress made in recent times, a certain climate of impunity for war crimes and crimes against humanity is reported to linger. Similarly, a still substantial number of cases of disappeared persons arising out of the armed conflicts remain unresolved, with a number of perpetrators of such incidents still at large."

OSCE, 21 November 2004, p.5-6:
"The Croatian Chief State Prosecutor completed in October a *review of pending domestic war crime proceedings*, resulting in the abandonment of a significant number of unsubstantiated charges against Serbs, thus leaving 1,900 substantiated cases. Nevertheless, arrests of Serb returnees and Serbs travelling in several other European countries continued on the basis of charges that were later dropped as unsubstantiated. Efforts to improve the quality and fairness of *domestic war crime proceedings* remain largely targeted on ICTY transfer issues rather than viewing domestic war crimes adjudication in a comprehensive fashion. This could contribute to the creation of a two-tier system of justice for war crimes. National origin of both victims and defendants continues to affect the adjudication of war crimes."

OSCE 1 March 2004:
"The OSCE Mission to Croatia has prepared a report based on monitoring of some 75 war crime trials during 2002 which shows that defendants of Serb ethnicity are disadvantaged at all stages of judicial proceedings compared to Croats.

The report, to be released today on the OSCE Mission's website, acknowledges some improvements in recent years, but concludes that further reform is necessary in order to achieve the even-handed administration of criminal justice in war crime cases.

'There must be one standard of criminal responsibility applied equally to all those who face war crimes charges before the Croatian courts, regardless of ethnic or religious affiliation', said Peter Semneby, Head of the OSCE Mission. The report suggests that further reform is needed in order to meet this goal, which the authorities have pledged to pursue.

The report's analysis and conclusions are based on first-hand court monitoring by Mission staff during 2002 at 12 county courts and the Supreme Court. The proceedings monitored by the Mission account for 80 to 90 per cent of all war crime proceedings reported by the Chief State Prosecutor in his 2002 Annual Report. This is a sufficiently representative sample from which general conclusions can be drawn.

Some of the report's findings are that:

- Serbs are much more likely than Croats to be convicted when put on trial. 83 per cent of all Serbs put on trial for war crimes (47 of 57) were found guilty, while only 18 per cent of Croats (3 of 17) were convicted. According to preliminary findings, the differential appears to have decreased somewhat in 2003.

- While there is no imperative that an equal number of Serbs and Croats should face prosecution, Serbs represented the vast majority of defendants at all stages of judicial proceedings. For example, in 2002 Serbs represented 28 of 35 arrests; 114 of 131 persons under judicial investigation; 19 of 32 persons indicted; 90 of 115 persons on trial; and 47 of 52 persons convicted. From preliminary data, this trend appears to continue in 2003.

- Trials *in absentia*, used primarily for Serbs, continued. Many of these trials have a large number of defendants, which means that the principle of individual guilt is often not observed. Nearly 60 per cent of all Serb convictions were convictions *in absentia.* This trend continues, according to preliminary data for 2003, particularly in Zadar.

- Procedural shortcomings in lower courts are proven by the high reversal rate (95 per cent) of Serb convictions which are examined by the Supreme Court. Also, in re-trials, a majority of Serbs previously convicted are exonerated. The Supreme Court's reversal rate in 2003 appears to have decreased, but more than half of all verdicts in war crime cases were sent back for re-trial due to errors by the trial courts.

-Half of the Serbs arrested for war crimes in 2002 were recent returnees. This trend appears to continue in 2003. Ambassador Semneby also pointed out that 'the lack of even-handedness in the treatment of war crimes in the courts continues to be an obstacle to refugee return.'

The Mission's concerns have been validated by senior Government officials. The Chief State Prosecutor has acknowledged irregularities and has mandated a review of approximately 1,850 pending war crime cases.

A similar report containing the Mission's observations about war crimes trials conducted in 2003 will be forthcoming."

OSCE, 1 March 2004, "Background Report: Domestic War Crime Trials 2002":
Extracts from the report relating to returnees
"The Mission devoted considerable resources to this monitoring not only because of the rule of law questions involved, but also due to the significant impact such proceedings have on the perception among the Serb community, both inside and outside Croatia, regarding the feasibility of their return and re-integration into Croatian society as a national minority.
[…]
The distribution of cases among county courts to some extent reflects the geographic location of major war activities. The early tendency was to focus on crimes by Serbs against Croats in the areas where a significantly large Serb population remained after the conflict. The engagement of an increasing number of courts in these procedures reflects an increased number of proceedings against Serbs in return areas as well as proceedings against Croats for crimes related to Croatian military and police actions against Serbs. At least one court outside the areas of direct conflict, e.g., Rijeka County Court, has become involved as a result of a change of venue sought by the prosecution.
[…]
The Mission monitored war crime proceedings through all procedural stages. The following sections set forth statistical information and findings for each procedural step. Serbs accounted for the vast majority of all persons arrested, while Serb returnees and long-term residents were

nearly evenly represented among those arrested. Nearly two-thirds of all those arrested in 2002 were released from detention during the year, some as a result of the prosecution abandoning further proceedings while others continued to face criminal proceedings while at liberty. More than one-third of cases pursued to judicial investigation were dropped in 2002, while indictments, against both individuals and groups, were issued in the remaining two-thirds of cases.
[…]
Both long-term residents and recent returnees were among those arrested. Long-term residents constituted a slight majority of all persons arrested (19 persons –13 Serbs, 6 Croats). Three active service police officers from the Danube Region were among the Serb long-term residents arrested.

Recent returnees account for more than half of all Serbs (15 of 28) arrested in 2002. In earlier years, a greater percentage of Serb arrests were returnees."

See also:
War Crimes Trials in "Croatia returns update: Human Rights Watch briefing paper", pp. 10-12, HRW, 13 May 2004 [Internet]

Impunity for War Crimes and Discriminatory Prosecutions in "Legacy of War: Minority Returns in the Balkans", HRW, 26 January 2004 [Internet]

"Croatia: Benchmarks for meeting E.U. requirements on refugee returns and war crimes accountability", HRW, 8 January 2004 [Internet]

The Section on Impunity for war-time human rights violations, in "Concerns in Europe and Central Asia, January – June 2003", Amnesty International, October 2003 [Internet]

"Concluding Observations of the Human Rights Committee: Croatia", Principal subjects of concern and recommendations, paras. 10-11, UN Human Rights Committee, 30 April 2001 [Internet]

Physical attacks against returnees are isolated, but returnees continue to be concerned about their safety (2003-2005)

- Local and international NGOs report a tangible of atmosphere for ethnic minorities but violence continue to occur occasionally against Serb returnees

USDOS, 28 February 2005, Section 3, p.16:
"Local and international NGOs reported a tangible improvement in the atmosphere for ethnic minorities during the year, attributed in part to the 2003 agreement with the ethnic Serb party. On several occasions, the Prime Minister and members of his cabinet visited the homes of ethnic Serb returnees and expressed the Government's commitment to ensuring returns of ethnic minorities and their equal treatment. However, violence against Serbs occurred occasionally. In March, two persons physically assaulted an elderly Serb in his house in Zemunik Gornji, injuring his shoulder, destroying furniture and stealing several household items. The police investigated and identified three minors from the nearby village of Skabrnja. The local population protested against the investigation; however, the perpetrators were charged. (…)

Vandalism and looting of Serb property, including ethnic Serb housing, was also a problem. There was also one report of destruction of ethnic Serb housing. On two occasions during the year, a Serb NGO headquarters was broken into and data regarding Serb returnees, a camera

and a computer were stolen. In the past 5 years, the organization has experienced eight break-ins and believes they were politically motivated. Police identified no suspects.
In February, local NGOs registered a series of incidents involving Serb returnees in the Zadar hinterland area. In most cases, police conducted investigations, but rarely discovered perpetrators or made arrests. The newly reconstructed house of a Serb returnee in the village of Biljane Donje, which was repeatedly vandalized, looted and subjected to arson, was set on fire again in February accompanied by the note that there was no return for Chetniks. In May, OSCE and government representatives visited the village drawing widespread media attention and the house was subsequently reconstructed. The police investigated, but did not identify the perpetrators.
In February, an ethnic Serb returnee reported that the windows in his reconstructed house in the village of Gornja Obrijez in Western Slavonia were shot at.
A newly reconstructed house belonging to an ethnic Serb in Lisane Tinjske was damaged and looted on several occasions during the year."

HRW 26 January 2004:
"By 2003, physical attacks against returnees in Croatia, already rare in comparison to Kosovo and Bosnia, had all but disappeared. However, in certain areas, including Benkovac, Zadar, Gospic, and Petrinja, Serbs continue to be concerned about their safety, due to general hostility from local populations or authorities."

OSCE 2003, "Security":
"The security issue is generally assessed to be one of perception rather than reality. However, fears about security and unclear application of the amnesty law (with regard to participation in military and paramilitary formations of the '*RSK*') are still factors impeding minority return (Croatian Serbs), particularly for young men. Limited incidents that do occur are widely discussed among Croatian Serb refugee populations in Bosnia-Hercegovina and Serbia-Montenegro."

See also, "OSCE Mission to Croatia concerned about attack on house of Serb returnee", OSCE, 20 May 2004 [Internet]

Inter-ethnic discrimination and tensions in return areas (2003-2004)

- Ethnic Serbs face discrimination in numerous areas, including in administration of justice, employment, housing, and freedom of movement
- Harassment, intimidation, and occasional violence against ethnic Serbs has been concentrated in former conflict/return areas, particularly in central Dalmatia
- A number of incidents against returning ethnic Serbs including disputes over property ownership, verbal and legal harassment, forcible evictions and assaults were reported
- Inter-ethnic incidents were also directed against ethnic Croats
- Ethnic Croat returnee associations and local authorities accused some ethnic Serb leaders of encouraging ethnic hatred
- In a majority of the cases, police and prosecutors were reluctant to identify the cases as ethnic discrimination

"Occasional violence toward ethnic minorities, particularly Serbs and Roma, continued; some faced serious discrimination. While some progress was made, ethnic tensions in the war-affected areas remained high, and abuses, including ethnically motivated harassment and assaults, continued to occur." (US DOS 25 February 2004)

“In several areas, including in administration of justice, employment, housing, and freedom of movement ethnic Serbs were discriminated against. Ethnic Serbs in war-affected regions continued to be subject to harassment, intimidation, and occasional violence. Weapons left over from the war, including firearms and explosives, were readily available and were used in incidents of harassment during the year, particularly in the areas of return in central Dalmatia. Property destruction and other forms of harassment often arose from disputes between home occupiers of one ethnicity and returning homeowners of another. Verbal and legal harassment, forcible evictions, and assaults continued to occur regularly.

In May, an ethnic Serb woman was verbally abused and attacked with a whip by her neighbor in the village of Kljucar in Vojnic municipality. Police took the attacker into custody, and the woman sought medical treatment for head and back injuries. In June, a group of young men smashed the windows of a home owned by a Serbian woman in Daruvar. Police intervened and caught the perpetrators; however, the owner of the home complained that police treated her inappropriately during questioning. In Benkovac, in July, police intervened on behalf of an ethnic Serb returnee whose neighbor has verbally harassed and threatened him since his return in 1999; however, despite the fact of repeated instances of extremely provocative hate speech and an attempt to break into the returnee's home, the police said they would cite the offense only as a public disorder. In August, an ethnic Serb returnee was physically attacked by his neighbor in Pakrac and suffered injuries when he tried to re-connect his house to the local water supply. Although police investigated, the returnee expressed dissatisfaction with the security in the area and stated his intention to leave the country. Also in August, a Bosnian Croat settler who occupies a Serb house in Donji Lapac was alleged to have shouted abuse and attacked an ethnic Serb youth with an axe. The incident was reported to police, but no criminal charges were filed.

In September, the third war documentary in a series—‘Neighbors’--was screened in Western Slavonia. As with the prior installments, the film appears to accurately depict historical events and facts surrounding activities of the Yugoslav People's Army and ethnic Serb paramilitary units during the 1991-95 war; however, the international community remained concerned that the overall promotion of the film by right-wing nationalist politicians and the film's use of derogatory language to describe ethnic Serbs stimulated ethnic tensions and complicated the process of return for ethnic Serb refugees.” (U.S. DOS 24 February 2004, Sect. 5)

“Inter-ethnic incidents were also directed against ethnic Croats. In August, a series of incidents occurred in Eastern Slavonia, Karlovac, and Lika. Ethnic Croat returnee associations and local authorities accused some ethnic Serb leaders of encouraging ethnic hatred, but senior government officials downplayed the incidents. Serb nationalist graffiti appeared on traffic signs in Beli Manastir and in the village of Jagodnjak near Osijek. An investigation by the police led to the arrest of an underage ethnic Serb from Jagodnjak. In October, prosecutors at the Municipal Court in Vukovar issued an indictment against a person who allegedly poured paint over the bust of an ethnic Croat military commander. Police also investigated the desecration of a cross in Vukovar dedicated to ethnic Croat victims of the 1991-95 war in the center of this ethnically divided town. In the village of Donji Srb, a flag with Serb nationalist symbol was placed on the hilltop and Croatian children near by were harassed. In September, ethnic Serb members of the local government in Karlovac and in Vojnic publicly spoke out against Serb nationalist graffiti written on the World War II monument in the Petrova Gora memorial and the toppling of the Croatian flag in the nearby town of Turanj in August. In both cases, there were strong indications that these acts were the work of visiting refugees who are now living in Serbia and Montenegro.” (US DOS 25 February 2004, Sect.5)

“The OSCE reported on several ethnically related incidents where the perpetrators were charged with misdemeanor offenses, such as disturbing public order, rather than criminal offenses; in a majority of the cases, police and prosecutors were reluctant to identify the cases as ethnic discrimination.” (US DOS 25 March 2004, Sect.5)

See also "OSCE Mission to Croatia concerned about attack on house of Serb returnee", OSCE, 20 May 2004 [Internet]

Mines and unexploded ordinances continue to pose security threat mainly in agricultural return areas (2000-2005)

- Land mines and unexploded ordinance continue to pose security threats in many agricultural return areas, and prevents agriculture and self-reliance of returnees
- Over 6,000 square km out of 56,538 square km of Croatia is covered in mines (2002-2003)
- 1,395 landmine incidents have been recorded since 1991 (2003)
- Returnees are among the highest percentage of mine casualties (2001)

UN CHR, 29 December 2005, par.36 and 46:
"In order to make returns permanent and sustainable, the affected areas must be in a position to offer reasonable employment prospects and economic opportunities. The physical environment must also be rendered free of physical dangers such as those posed by landmines and unexploded ordnance, as well as environmental damage such as the release of heavy metals and poisonous materials into the environment as a direct or indirect result of the armed conflict that led to displacement. In Croatia, the late stage at which such measures have been undertaken and begun to be implemented with sufficient conviction has delayed achievement of a situation that is sustainable over the medium and long terms. (…)
46. While conscious of the measures undertaken by the Government to stimulate economic growth in the conflict-affected areas of the country, the Representative was concerned at witnessing the degree to which these areas lagged behind the rest of the country. The eastern Danube region, for example, once the breadbasket of the country and an economic powerhouse, remains a shadow of its pre-conflict stature. In some respects, environmental degradation resulting from the presence of mines and/or unexploded ordnance, as well as effects of the fighting itself, has diminished the accessibility or productivity of the land. Alternatively, the effects of the fighting on infrastructure, notably communal agricultural and industrial facilities, remain grave and the displacement of experienced labour forces as a result of the fighting decimated workforces with local knowledge, which have some distance to cover to return to pre-war levels."

UNHCR September 2003, p.3:
"The security situation in the region should continue to improve, and by 2004, the enforcement of the rule of law, in general, will have progressed. However, land mines and unexploded ordinance continue to pose security threats in many agricultural return areas, particularly those in the former zones of separation"

USCR 2003, p.188:
"Mines and unexploded ordinances continue to pose a threat to returnees, with over 6,000 square km out of 56,538 square km of Croatia covered in mines."

U.S. DOS 31 March 2003, Sect.1:
"During the year, six persons were killed in landmine incidents, most caused by landmines laid during the 1991-95 war. The Croatian Mine Action Center reported that from 1991 through the end of the year, 1,395 land mine incidents were recorded in which 429 persons were killed."

OSCE 2003, "Poor Economic Situation":

“A related impediment is the presence of landmines and unexploded ordinance (UXO) in what would otherwise be viable agricultural land. Over 6,000 square km in Croatia are estimated to be mine and UXO-contaminated. Historically, the highest percentage of mine casualties in Croatia is estimated to be returnees. There is therefore a close relationship between the quality of return and the mine issue.”

U.S. DOS 4 March 2002, sect. 1a:
"The Croatian Center for Demining reported that from 1991 through the end of the year [2001]¨, 1,350 land mine incidents were recorded in which 418 persons were killed."

U.S. DOS 4 March 2002, sect. 1c:
"In the first ten months of [2001], 21 persons were injured in landmine incidents, most caused by landmines laid by Croatian and Serb forces during the 1991-95 war."

UNCHR 29 January 2001, para. 63:
"With more than one million landmines and sites of unexploded ordnance contaminating an area of approximately 4,500 square kilometres (out of the country's total area of 56,538 square kilometres), Croatia ranks among the most heavily mined countries in the world. The Croatian Mine Action Centre (HCR) has records indicating the location of some 270,000 mines. The need for de-mining is directly relevant to the return process, since it would help revive arable land and local economies, and clear landmine areas of strategic, economic or cultural importance, such as railway lines, utility substations, pipelines and churches. Returnees are at present among the highest percentage of mine casualties in Croatia. The HCR hopes that Croatia will be cleared of all mines by 2010."

Relocation of displaced Croats and refugees in Krajina hampers the return of the ethnic Serbs to their homes of origin (1995-1998)

- In many cases, displaced Croatian Serbs who have returned from the Danube region to their former areas of origin elsewhere in Croatia have not been able to return to their own homes
- Authorities encouraged ethnic Croat refugees from Bosnia and Herzegovina to settle in the Krajina region and in Knin, where they occupy Croatian Serb properties
- Croats sometimes enjoy double or triple occupancy of the homes of departed Croatian Serbs, having applied for such accommodation on behalf of several members of the same family

"[A]lthough according to official statistics 26,039 displaced Croatian Serbs have returned from the Danube Region to their former areas of residence in Croatia, in many cases they have not been able to return to their own homes, where these are occupied by Croat displaced persons or Bosnian Croat refugees (or 'settlers'), or destroyed, or where they have lost tenancy rights." (COE 9 April 1999, para. 48)

"According to representatives of UNHCR and other international organisations and NGOs in Knin, the town has indeed become a focal point for ethnic Croat refugees and displaced persons, encouraged to settle there by the authorities. This means that there is very little alternative accommodation to move them into to allow the Croatian Serbs who left in August 1995 during Operation Storm to reclaim their property. Nevertheless it appears that Bosnian Croats sometimes enjoy double or triple occupancy of the homes of departed Croatian Serbs, having applied for such accommodation on behalf of several members of the same family. This should obviously be remedied. But there appears to be a lack of political will or enthusiasm to address the housing issue, as borne out by the disappointing performance of the Housing Commissions. The members of these commissions were appointed by the mayors and worked on a voluntary

basis. However, ownership of property was sometimes difficult to prove or to trace because land registers had not always been properly kept." (COE 9 April 1999, para. 57)

"After Croatia wrested control of UNPA Sector West and the Krajina (UNPA Sectors North and South) from the ethnic Serb rebels, it had a new task of assisting previously displaced Croats to return to areas from which they had previously fled. As new areas became open for Croat settlement, it was not clear that formerly displaced persons were returning to their original homes. In fact, it appeared that some of the persons moving into the Krajina were Bosnian Croat refugees who only recently had been expelled from the Banja Luka areas. ODPR estimated that more than 130,000 people would be able to return to areas from which they had been displaced, but another 80,000 could not return to eastern Slavonia (Sector East), still under Serb control." (USCR 1996, p. 135)

HUMANITARIAN ACCESS

General

NATIONAL AND INTERNATIONAL RESPONSES

National response

Improved response under international pressure (Overview 2006)

Up to 2000, the national framework and policy for return and property repossession favoured the return and resettlement almost exclusively of majority ethnic Croats rather than minority ethnic Serbs (UN CERD, 21 May 2002). The 2000 elections marked the end of the 10-year rule of the nationalist party led by the late President Franjo Tudjman, the Croatian Democratic Party (HDZ), and a significant change of the national policy towards return. The new government initiated wide legislative reform aiming at upholding minority rights and facilitating the return of Croatian Serb refugees and displaced people. Several discriminatory legislative provisions were amended or cancelled, including the Law on the Status of Displaced Persons and Refugees, the Return Programme, the Law on Reconstruction and the LASSC dealing with property repossession. The return of the HDZ to government in 2003 did not change this trend as illustrated by the cooperation agreement on measures to facilitate return signed between the HDZ and members of parliament representing Croatian Serbs in December 2003. Further to this agreement a Commission for the Return of Refugees and Displaced Persons and Restitution of Property was established in March 2004 to coordinate government activities on those issues (ECRI, 14 June 2005, par.103).

The accession process to the European Union (EU) has also been a significant incentive for Croatia to make statements and take measures more favourable to return since the EU considers the return of Croatian Serbs a pre-condition for deepening relations with Croatia (HRW, 13 May 2004; EU, 8 November 2005). In January 2005, a regional ministerial conference on refugees took place in Sarajevo and resulted in a joint declaration establishing principles and measures to facilitate the return of refugees and close the chapter of displacement by the end of 2006. Like the European Union, the Sarajevo declaration signed by relevant ministers from Bosnia and Herzegovina, Croatia and Serbia-Montenegro, focuses on refugees rather than displaced persons. However, since both are faced with the same obstacles prior to and upon return, a process addressing such obstacles also benefits displaced people.

Overall, Croatia's approach towards Serb return has been characterised by piecemeal legislation and measures obtained progressively under strong international pressure from the EU, OSCE and the office of the United Nations High Commissioner for Refugees (UNHCR). The result is that most reforms come at a stage where their impact on return is likely to be limited by the fact that, after ten years of displacement, people have become more hesitant to return. Despite an improved political climate at national level, significant resistance to return persists at local level and limits the impact of the new measures (UN CHR, 29 December 2005, par.34). To address this situation, the government and the OSCE Mission to Croatia launched a media campaign in November 2005 intending to raise public awareness on, and create an environment more favourable to, return (OSCE, 3 January 2006).

A number of outstanding issues still remain to be addressed by the government. The new legislation has not, in several cases, suppressed the violations of rights resulting from past legislation. Displaced persons and refugees who missed the deadline to apply for validation of pension-related documents are still unable to obtain full pension rights. Former occupancy rights holders who lost their apartments during and after the war are offered inadequate solutions which

are not even being implemented. Funds for the housing care programme remained unspent in 2004 and 2005 (OSCE, 21 November 2004, p.4; OSCE, 29 July 2005, p.2). In addition, at a meeting of the task force resulting from the Sarajevo declaration on refugee return which took place in March 2006, Croatia refused again to consider compensation for former occupancy rights holders, as requested by Bosnia-Herzegovina and Serbia-Montenegro.

International response

International Response (Oberview 2006)

The return of IDPs and refugees to Croatia has been carefully monitored by the international community. The EU and regional organisations such as the OSCE and the Council of Europe, including the European Court for Human Rights, have played a significant role in monitoring or upholding the rights of displaced people and minority groups. UNHCR has mainly focused on displaced people within the Croatian Danube Region which is where most Croatian Serb IDPs moved following the 1995 offensive of the Croatian army. Since the closure of its field offices at the end of 2003, UNHCR efforts have focused on finding durable solutions for refugees, IDPs and returnees by the end of 2006 in particular through provision of legal advice (UNHCR, 1 September 2005; UNHCR, 7 January 2004). The Return and Integration Unit of the OSCE Mission to Croatia has been mandated since 1997 to ensure and monitor the protection of IDP and refugee rights. The OSCE Mission has worked closely with the government, providing advice on property repossession and rule of law. Its in-depth reports on various issues have been an essential source of information and advocacy for the EU, the Council of Europe and other organisations following the situation in Croatia. The combined efforts of the OSCE, the EU and UNHCR have been instrumental to convince the government to make reforms in favour of the return of Croatian Serbs. It is largely due to their efforts that the government agreed on several occasions to postpone legislative deadlines which were limiting access to the rights of displaced persons and refugees.

The EU is the main provider of assistance to Croatia. Between 1991 and 2004 Croatia received €631 millions to support democracy, the economy and the rule of law as well as reconstruction and support for the process of sustainable return of refugees and IDPs (EU, 9 November 2005, p.6). Within the framework of Croatia's application for EU membership, the EU's support to Croatia has shifted from humanitarian aid to regional development, including support for sustainable development of war-affected areas (EC, 6 May 2004). This last point has been identified by the Representative of the Secretary-General on the Human Rights of IDPs as essential to facilitate return. Further to his visit to Croatia in June 2005, Walter Kälin called on the international community to support the government's efforts to revitalise the economy of war-affected areas (UN CHR, 29 December 2005). Finally, given that EU pressure has been one of the main incentives to make reform in favour of return, many put their hopes on the EU to take on the issue of lost occupancy rights and advocate for measures in line with solutions adopted in neighbouring countries (Rhodri Williams, April 2005). Such measure, in favour of this group which concerns almost exclusively Serb refugees and IDPs would provide a remedy to their lost rights and remove one of the main remaining obstacles to return.

Policy and recommendations

Reference to the Guiding Principles on Internal Displacement

Known references to the Guiding Principles (as of April 2006)

Reference to the Guiding Principles in the national legislation

None

Other References to the Guiding Principles (in chronological order)

None

Availability of the Guiding Principles in local languages

The Guiding Principles have been translated into the Serb-Croatian language.
Date: unknown
Documents: · GP in Serb-Croatian [Internet]

Training on the Guiding Principles

None

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