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HUMAN RIGHTS MONITORING IN CROATIA : AMNESTY INTERNATIONAL'S RECOMMENDATIONS TO STRENGTHEN THE NEW OSCE MANDATE

Amnesty International is deeply concerned about continued reports of human rights abuses in Croatia, many of which appear to be linked to the issue of the return of displaced persons in the country and to be aimed at preventing or discouraging the return of Croatian Serb displaced persons or refugees. The issue is particularly relevant at the moment as the mandate of the United Nations Transitional Authority in Eastern Slavonia (UNTAES) is due for review and possibly renewal and the Eastern Slavonia area is due to return to the control of the Croatian authorities.

In the light of Amnesty International's concerns, the organization recommends to the OSCE that:

- the human rights monitoring role of the Mission becomes the prime objective;
- the future Mission be expanded to coverage of the whole of Croatia with particular emphasis on those areas to which refugees are to return;
- monitoring of the judicial system, both from the point of view of preventing impunity and respecting the rights of defendants under international law and standards concerning fair trial, becomes a specified task for the Mission;
- the Mission issues frequent, comprehensive and publicly available reports of its findings and recommendations.

These recommendations are given in more detail at the end of this document.

Background

The Mission of the Organization for Security and Co-operation in Europe (OSCE) to Croatia was established 18 April 1996 and with a current composition of just five

members at its headquarters in Zagreb and three members at each of its regional offices in Vukovar and Knin, the Mission is mandated to last until 30 June 1997 to:

"provide assistance and expertise to the Croatian authorities at all levels, as well as to interested individuals, groups and organizations, in the field of the protection of human rights and of the rights of persons belonging to national minorities. In this context and in order to promote reconciliation, the rule of law and conformity with the highest internationally recognised standards, the Mission will also assist and advise on the full implementation of legislation and monitor the proper functioning and development of democratic institutions, processes and mechanisms".

At present the Mission does not make public its findings and recommendations, but addresses them to the Croatian authorities and other members of the OSCE.

UNTAES, which includes elements of human rights monitoring in its operations has a mandate to operate in the Eastern Slavonia region. The current mandate expires on 15 July, when the Croatian authorities are due to take full control of the region. There are currently many uncertainties about the future of the UNTAES mission including whether it will assume a monitoring-only role from 15 July without the executive authority which it currently exercises or whether the current mandate will be prolonged and the transfer of authority delayed. UNTAES is in any case expected to remain until 15 January 1998.

Amnesty International believes that regardless of whether or not the transfer of authority is delayed and the UNTAES mission continues with the current mandate or a very similar one, the OSCE should use this opportunity to build up its own deployment to ensure that an extended field presence with experienced staff is already fully operational by the time UNTAES eventually withdraws or scales down its operations.

Amnesty International also emphasizes the need for human rights monitoring throughout the whole of Croatia and believes that the OSCE should expand its field presence with more offices which could cover the areas to which Croatian Serb displaced persons are to return. (The only mission other than the OSCE which specializes in human rights and which has a country-wide mandate is the UN Centre for Human Rights which currently has two field offices in the country. Amnesty International believes that expansion of this mission would also significantly boost the international human rights monitoring operations in the country.)

The Basic Agreement on the Region of Eastern Slavonia, Baranja and Western Sirmium (the Erdut Agreement which paved the way for the establishment of the UNTAES mission) provides that *"After the expiration of the transition period and consistent with established practice, the international community shall monitor and report on respect for human rights in the Region on a long-term basis"*. To this end, Amnesty International is aware of diplomatic discussions in which the OSCE is being proposed as the leading organization for human rights monitoring in Eastern Slavonia after the UNTAES withdrawal. Amnesty International believes firmly that in taking over the leading role for human rights monitoring in Croatia, the OSCE must ensure that it

assumes a public role by providing frequent, comprehensive and publicly available reports of its findings and recommendations.

Moreover, although it is clear that the UNTAES Region will require particular attention after the eventual withdrawal of the UNTAES mission, Amnesty International considers it vital that the OSCE and other international organizations are also given adequate mandates and resources for human rights monitoring in the other areas of Croatia. This applies most of all to the other former United Nations Protected Areas (UNPAs), Sectors North, South and West, to which large numbers of Croatian Serb displaced persons and refugees wish to return. The desire or willingness to return is intimately linked to the issue of confidence on the part of the potential returnees and it is clearly essential that international organizations are immediately able to contribute effectively to confidence building.

At the same time, the restoration of civil society in the former UNPAs is a prerequisite to sustaining returns to these areas. A key problem to this is the fact that in the former Sectors North and South, the remaining population of Croatian Serbs is composed predominantly of elderly persons who live in remote villages and who are neither able to defend themselves physically, nor in a position to organize their own community or political representation.

By contrast, Croats who have moved into the areas as newcomers (as opposed to those Croats who have returned or remained) appear to be well organized and well connected to the authorities. It also appears that the greatest influx of Croatian newcomers to the former Sectors North and South has been into the towns and their presence, both in terms of the possible security problems and their occupation of Serbian-owned property, is a key impediment to achieving sustainable returns of the displaced Croatian Serbs.

With regard to returns to the UNTAES Region, Amnesty International is given to understand that at least 40,000 displaced persons (predominantly Croats) are expected to return this year. The majority of these people have been displaced since 1991 and many are impatient to return. Yet, despite repeated statements by the Croatian authorities that the return of Croats is a priority for the government, their homes will continue to remain occupied until the obstacles to the safe return of Croatian Serbs to their original homes are removed. The main obstacles for Croatian Serbs who want to return are the fear of physical harassment, lack of confidence that they will be protected by the police, discriminatory property legislation, problems in obtaining documentation and a lack of confidence in the judicial system.

Regular harassment of those who remained and those who have returned continues in the former Sectors North and South and appears to be increasing. Recently, in the villages around Hrvatska Kostajnica (in the former Sector North) confrontations

following the return of nine people (two Croats, one Muslim and six Croatian Serbs) from Eastern Slavonia led to the destruction of houses, the ransacking of property and the severe ill-treatment of individuals, most of whom were elderly. Some of those who were harassed fled their homes and went into hiding. At least three people who had been victims of the riot on 13 May were arrested and taken to the local police station, where they were reportedly ill-treated. After considerable international outcry and pressure the Croatian authorities last week charged 10 people in connection with these events.

Besides the incidents around Kostajnica, Amnesty International has also received other reports of violent harassment. For example, there are regular reports of explosives being used against Croatian Serbs (including many who fled and then returned) or their property in the former Sector North. The victims have been maimed or even killed, yet the authorities appear to have done little to apprehend the perpetrators.

Many of the homes owned by displaced persons who wish to return are occupied, some under the provision of the law on Temporary Taking over and Administration of Specified Property which came into force in September 1995. This law makes it possible for the authorities to place "abandoned" private property under temporary public administration and to give that property to others. The OSCE has noted its concern that the unclarity of this law may be used to postpone or avoid the decision on return of property to the legitimate owner and, in effect, facilitate the continued displacement of Croatian Serbs. Furthermore, many other homes were destroyed and the laws regarding eligibility for compensation and credit for rebuilding their homes are highly discriminatory.

There is also a considerable lack of confidence in the judicial system, in particular over the lack of accountability for war crimes and human rights abuses perpetrated during the war on both sides, the lack of prosecutions by Croatian authorities for war crimes and human rights abuses perpetrated by Croats, mainly in 1991 and 1995 and the current lack of fair trials for Croatian Serb defendants. Problems have included the inability of defendants to secure the attendance of witnesses because the authorities will not guarantee their safe conduct to and from the court, and that defendants have not been able to cross-examine the witnesses against them because their testimony has been introduced by affidavit. The Croatian authorities have appeared unwilling to admit to the problems and there is particular concern that, in effect, perpetrators of abuses on all sides appear to have been able to act with impunity.

Amnesty International notes that the OSCE has made particular efforts to follow some of the criminal proceedings which have been taking place, as have UNTAES, the UN Centre for Human Rights field offices and other domestic and international non-governmental organizations. At the same time, no single international organization has been able to take the lead, either because of their mandate, resources or lack of

expertise. We therefore believe that the issues of impunity and lack of fair trial will remain significant human rights concerns for some time to come.

Amnesty International's recommendations in detail

Given that UNTAES will eventually be withdrawn and given the indications that the OSCE is to become the lead agency for human rights monitoring in Croatia, Amnesty International recommends to the OSCE that:

- the focus of the mandate of the OSCE Mission be changed from “*provide[ing] assistance and expertise*” to one in which the human rights monitoring role of the Mission becomes the prime objective. This is fundamental.
- the future OSCE Mission be expanded to ensure coverage of the whole of Croatia with a particular emphasis on balancing the coverage of the former Sectors North, South and West with that of Eastern Slavonia, with field offices to cover all these areas. An OSCE presence in some population centres in the former Sectors North and South other than Knin, for example in Glina, Vojni_ or Udbina, could play a vital part in both human rights monitoring and in promoting the establishment of local non-governmental organizations in these areas which could draw in returnees as well as activists from other parts of Croatia. OSCE offices in these towns would also help the Mission to monitor the rural areas in these former Sectors where the population is very scattered and where both remainees and returnees are extremely vulnerable.
- monitoring of the judicial system, both from the point of view of preventing impunity and respecting the rights of defendants under international law and standards concerning fair trial, becomes a specified task for the Mission, that sufficiently qualified international and local staff are engaged and trained in relevant international law and standards and that advice is sought from other agencies experienced in the field. Resource factors such as the need to employ suitably qualified court interpreters should also be taken into account. It appears particularly important that one international organization with a planned long-term presence needs to maintain an overview and inform other potential observers when trials are scheduled to ensure adequate coverage without duplication and needs to take the lead in the impunity issue. The Mission should develop a comprehensive program based on the experience of the UN Centre for Human Rights. The Mission could also build on the initiatives of local non-governmental organizations and train them for future work in this field in the absence of international organizations;
- the new OSCE mandate and plans should reflect the need for the organization to coordinate with other international and domestic organizations, particularly the UN Centre for Human Rights field offices, and build upon what has been done so far. As the leading agency, the OSCE would be the organization mandated to

carry out this task over the whole of Croatia and this should be acknowledged by the Croatian authorities who would be obliged to respond to requests for action, information or meetings;

- an expanded mandate would make it ever more necessary for the OSCE Mission to issue frequent, comprehensive and publicly available reports of its findings and recommendations. Public reporting of human rights abuses and analysis of trends by the UN Special Rapporteur, the UN Secretary General and other organizations has been an key role in ensuring they are addressed.¹ With the future reduction of a UN presence in Croatia, Amnesty International believes that public reporting of the OSCE Mission's findings and recommendations will become vital to the successful monitoring of human rights on a long-term basis, as provided in the Basic Agreement.

¹See Amnesty International's 15 Point Program for Implementing Human rights in International Peace-Keeping Operations in *Peace-Keeping and Human Rights* (AI Index: IOR 40/01/94), January 1994.