



Organization for Security and Co-operation in Europe
OSCE Mission to Croatia

**STATUS REPORT No. 18 ON CROATIA'S PROGRESS IN MEETING
INTERNATIONAL COMMITMENTS SINCE JUNE 2006**

19 July 2007

TABLE OF CONTENTS

OVERVIEW	2
CLOSURE OF FOUR PROGRAMMATIC AREAS.....	4
<i>Police Reform</i>	<i>4</i>
<i>Civil Society Development.....</i>	<i>4</i>
<i>Freedom of the Media</i>	<i>4</i>
<i>Minority Elections and Electoral Reform</i>	<i>5</i>
REFUGEE RETURN AND INTEGRATION.....	5
<i>Sarajevo Process</i>	<i>5</i>
<i>Access to Housing.....</i>	<i>6</i>
<i>Re-integration Issues and Infrastructure</i>	<i>7</i>
<i>Remaining judicial aspects of return.....</i>	<i>8</i>
THE RULE OF LAW	8
<i>Human Rights Protection and Access to Justice.....</i>	<i>8</i>
<i>Minority Employment in the Judiciary, State and Local Administration</i>	<i>9</i>
<i>Prosecution of War Crimes</i>	<i>10</i>
CONCLUSIONS	13

OVERVIEW

Croatia has continued since the last Status Report of June 2006 to register steady and significant progress in implementing policies and programmes linked to the Mission's mandate.

By December 2006 the Mission determined in consultation with the Chairman-in-Office and Permanent Council that four areas of mandate interest, reform of media and electoral legislation, police reform and the establishment of an effective framework for civil society, had progressed to the point where active Mission work in these areas could cease. In the past six months it has been clear that this was an appropriate decision. In the main, achievements obtained in these areas continue to be sustained and where questions have arisen they have been resolved without the need for external intervention.

The Government, working closely with the Mission at the national and field level, has resolved six out of eight aspects in the Sarajevo Process on regional refugee return. Regarding the two issues which remain open - a fair settlement for former occupancy tenancy rights holders unwilling to return to Croatia and the convalidation of working years in formerly occupied areas – the Government has committed itself at the highest levels to put in place irrevocable guarantees and procedures to address these. The Government has proposed practical solutions for both, within and outside the framework of the Sarajevo Process, to be addressed either bilaterally or multi-laterally, leaving only a final Ministerial Summit Agreement to complete this major regional political undertaking.

In the area of rule of law, the Government adopted a draft *Law on Free Legal Aid* in July and gave a written commitment to provide adequate funding for the Ombudsman and the Constitutional Court. Parliament's nomination of five Constitutional Court's judges later in 2007 should further aid that Court in functioning as an effective judicial remedy. Some progress has been made toward implementation of public service minority employment guarantees but concrete plans for implementation and assessing progress toward stated minority hiring goals are still required. In general, Croatia continued to improve its record toward balanced and fair war crimes prosecution. Further progress is needed, however, to ensure even-handed and impartial accountability, including enhanced inter-state judicial co-operation. Recent public statements made by senior Government officials have stressed the need to end impunity and promote the impartial adjudication of war crimes.

In the late Spring of 2007, at the initiative of the Government, the successful consultative and planning Plenaries held between relevant Ministers and the Mission, were expanded to incorporate 'plenaries in the field', conducted in five key regional centres – Zadar, Vukovar, Sisak, Gospic and Knin. The aim of the field plenaries was to articulate directly to local authorities, NGOs, minority groups and the media, the policies agreed upon at the central level. These field plenaries sent a strong political message to local authorities in the presence of civil society, the media and minorities that the Government is fully committed to fulfil mandate-related agreements regarding minority employment, refugee return and war crimes and that it expected full compliance with these policies, particularly in war affected areas.

Progress in all areas of the mandate has been sufficient to allow the Mission to close two of its Field Offices, Karlovac in March and Split in June, and to make plans to close two further

offices, Pakrac and Gospić by the end of September. Staff at Mission Headquarters and in neighbouring Field Offices will cover any open issues in these areas, as required.

The Government has set as its goal the completion of all mandate-related issues by the end of 2007. Together with the Mission it has set specific targets nationally and at the local level. To reach its goal the Government must continue to work hard to complete as yet unimplemented policies and goals throughout the usual August lull and during the run-up to the Parliamentary elections scheduled for November. The greatest challenge will involve war crimes proceedings.

Over the last year in Croatia, there has been evidence of an increasing general awareness and endorsement of democratic and rule of law values, as well as a more ready acceptance of the need to work harmoniously with other states in the region.

Croatia concluded its successful one-year chairmanship of the South East European Co-operation Process (SEECP) by hosting an SEECP Summit of Heads of State and Government in May, at which the countries of the region agreed to assume the responsibilities of the Stability Pact for Southeast Europe. This established an intra-regional framework for co-operation based on shared responsibility and joint leadership as well as respect for each other's sovereignty. Croatia's role in coordinating this transition from European tutelage to regional responsibility demonstrated a clear commitment and ability to set standards and provide assistance to other nations in the region seeking to join the Euro-Atlantic community.

During the past twelve months, civil society and democratic institutions in Croatia have continued to mature. Throughout the course of the year agreements between local authorities, NGOs and local minority councils have been reached. As a result the quality and frequency of interaction between civil society and local government has steadily improved, opening up and increasing popular participation in the governance process. When concerns over Government policy toward NGOs and the media have arisen, the resulting public controversy could be favourably compared with that in any other western country. Compared to a year ago, issues are increasingly being resolved through appropriate channels in the media, the non-governmental sector and by Government bodies.

Croatia's increasing openness is also a result of a growing daily interaction with Europe and Euro-Atlantic institutions. The processes of EU and NATO accession, committed efforts to work more closely with neighbouring countries and the influx of some ten million tourists a year, all contribute to connecting Croatia to European and Atlantic societies. Public acceptance and support for the values espoused by the OSCE are indirectly reflected in growing support for EU and NATO membership, which is now around 50 per cent.

Public attitudes toward the prosecution of war crimes are evolving, with a growing appreciation that there should be accountability for all serious war crimes, though this issue remains sensitive and complicated.

CLOSURE OF FOUR PROGRAMMATIC AREAS

In the past six months events have demonstrated that the decision to cease on December 31 2006 active Mission activities in the areas of media and electoral legislation, civil society development, police reform and the political and educational rights of minorities was appropriate. Achievements obtained in these areas with one or two specific exceptions have been sustained and where questions have arisen they have been, for the most part, effectively resolved by Croatian institutions without the need for external intervention. The one area in question has been the conduct of elections for local minority councils.

Police Reform

Progress on residual issues in all areas of police reform, previously covered by the Mission – human resources management (HRM) within the Ministry of Interior, community policing and hate crime - was maintained over the past twelve months. Continued progress in these areas can be expected under the 2005 EU PHARE project supporting HRM reform in Croatia. With completion of this project, an organizational structure able to meet modern European policing standards should permit the finalization of the 2004 'Road Map for Development of the Croatian Police' drawn up by the Ministry of Interior with Mission assistance. At the beginning of 2007, the Ministry redesigned its Action Strategy for Community Policing (CP) with a renewed focus on crime prevention strategies, establishing national level working standards for CP contact officers and the exchange of best practices between police administrations. In the past six to eight months incidents of ethnically-related hate crime have fallen slightly compared with the past several years. No specific reasons have been established for this positive development, nor could a reappearance of these problems be ruled out.

Civil Society Development

Most of the legal and institutional conditions for sustainable civil society development in Croatia are now in place. The Croatian model could even serve as an example for other parts of the region. In February 2007, Parliament adopted the *Code of Good Practice, Standards and Measures for the Realization of Financial Support to NGO Programmes* followed by adoption of the *Law on Volunteerism* in May. Both bring greater transparency in the allocation of State funds for NGOs and further stimulate the development of civil society. Efforts to regulate the status of public benefit organizations, adopt the draft *Law on Foundations* and formalize the consultation process between governmental authorities and civil society organizations are ongoing. The March 2007 appointment of an independent expert on civil society and EU integration issues as Head of the Government Office for Associations and the long awaited selection of Government members for the National Council for Civil Society further strengthened civil society in the country.

Freedom of the Media

The Croatian media now operates largely in accordance with international conventions and agreements and Croatia is in the process of finalising legislation guaranteeing media freedom, freedom of information and freedom of expression in line with European Union and Council of Europe standards.

Amendments to the *Law on Croatian Radio and Television* (HRT) are largely agreed but have been postponed until 2008, after the conduct of Parliamentary elections in November. The Mission continued to advise the Government on revisions to the current *Law on Electronic Media*, and the proposed draft *Law on Data Secrecy*, both due to be adopted in the course of this year. The appointment in May of a qualified and experienced candidate as Director General of the national broadcaster HRT was carried out in accordance with the law.

Minority Elections and Electoral Reform

While overall implementation of minority election legislation and agreements was satisfactory, the Mission has noted a series of irregularities in relation to the June elections for local councils of national minorities (CNMs) - advisory bodies to local government mandated by the *Constitutional Law on the Rights of National Minorities*. Although the actual elections were carried out without problems, the Government had postponed them by one month, contrary to the legislation governing the timing of elections, and unilaterally reduced the number of localities in which elections for CNMs were called. While the Mission openly questioned the Government's handling of these issues, some minority representatives in Parliament endorsed these changes in political discussions with the Government. While several complaints were lodged with the State Election Commission (SEC) by prominent CNM coordinations and two minority parliamentarians publicly challenged the Government decisions, no legal action has been taken to date.

In terms of electoral legislation, a *Law on the Financing of Political Parties, Independent Lists and Candidates* was adopted on 15 December 2006 and the *Law on Voter Registration Lists* on 9 February 2007. The Mission continues to advocate the adoption of specific legislation governing the financing of electoral campaigns.

Amendments to the 2006 *Law on the State Election Commission* in February 2007 saw a return to the practice of appointing the President of the Supreme Court as Chair of the State Election Commission (SEC) and two Supreme Court Judges as Deputies, replacing the earlier 2006 provision stipulating the appointment of a full-time SEC Chair. The return to a system that directly involves Supreme Court judges in highly political matters runs contrary to governmental judicial reform efforts, intended to free judges of non-judicial duties. In the absence of further reform, judges will also continue to administer and conduct elections at the local level.

REFUGEE RETURN AND INTEGRATION

Sarajevo Process

The Sarajevo process has provided strong impetus to inter-State dialogue on regional refugee return. In this respect, Croatia has made considerable progress, agreeing to include in its Road Map six out of the eight open issues identified by the International Community and the other participant States in November 2005. It is also the first country to include earmarked financial commitments in its national Road Map.

Currently, completion of the political phase of the process, following Ministerial adoption of the four respective Road Maps, remains conditional upon resolution of two remaining issues:

a) a comprehensive solution to former occupancy tenancy rights (OTR) holders unwilling to return to Croatia and b) convalidation of working years spent in former occupied areas of Croatia.

The Government of Croatia has proposed that a comprehensive solution for former OTR holders unwilling to return to Croatia be handled bilaterally or multilaterally outside the Process. This has been accepted by all other States except Serbia. The Government has also verbally committed at the highest level to resolve the issue of convalidation. Consultations with the most affected parties within Croatia on how to concretely resolve the issue in light of existing legislation are ongoing.

Long post-election delays in forming Governments in Serbia and Bosnia and Herzegovina have also contributed to the delay in scheduling the Ministerial Conference, where individual Road Maps are due to be adopted and the technical implementation phase of the Sarajevo Process officially opened.

Access to Housing

In the course of the past twelve months the Government has committed itself to improving implementation of both the 2002 and 2003 housing care programmes for former OTR holders, targeting war affected areas inside the 'Area of Special State Concern' (ASSC) and the main urban centres outside the ASSC, respectively. Implementation plans were drafted, setting timeframes for processing the approximately 8,500 applications which remain unresolved in both programmes.

The Government has pledged to complete the processing of pending applications for OTR housing care by the end of 2007. However, this remains dependent on a number of unpredictable variables such as: obtaining documentation for 1,600 incomplete files from former OTR holders in Serbia; uniformity of practice and improved performance of regional offices of the Ministry of Maritime Affairs, Tourism, Transport and Development (MMATTD) particularly in the war-affected areas; and establishment of an appropriate appeals procedure. Conditions for the purchase of flats within both programmes and the guarantee that family members may be allocated the same housing after the main protected lessee is deceased remain unresolved but the Government has indicated it is prepared to find a solution in the post-election period.

The Government has undertaken to construct or purchase approximately 5,800 apartments in urban centres outside the ASSC by the end of 2009, significantly reducing the earlier projected completion date of 2011. To date, approximately one half of the decisions (633) have been positive and 70 applicants have actually received housing. So far, a total of 136 apartments have been purchased, but more than half of these are still under construction, to be completed within the course of 2007. Efforts to purchase and allocate 400 apartments by the end of 2007 have been intensified. Adequate funds in the State budget have been earmarked and the construction is planned to begin in all those towns identified, including in the cities of Zagreb, Split, Zadar, Osijek, Karlovac, Sisak and Dubrovnik.

In war-affected regions inside the ASSC, the Government has identified sufficient available housing stock. However, the repair and upgrading of substandard housing is required, and former OTR holders must be given priority over other categories of applicants for State housing if the Government's goal of providing 1,000 housing units per year until 2009 is to

be met. As of June, 329 families in the war-affected areas have received housing. The Government has recently taken steps to more speedily clarify State ownership of some 14,000 formerly socially owned apartments inside the ASSC, so that the availability of housing stock can be determined. In terms of the purchase conditions for apartments allocated as housing care to former OTR holders in war affected areas, the Government, following a Mission recommendation, has adopted a Decree determining a symbolic price comparable to that in force in the 1990s.

Croatia remains the only country in the region to have a State reconstruction programme for war-damaged residential properties. Of 195,000 destroyed housing units, 142,144 have been reconstructed since 1996, some 95 per cent with State funds. Since 2003, the majority of reconstruction beneficiaries have been Croatian Serbs. Croatian Serbs also make up most of the 13,878 reconstruction applicants appealing against earlier negative decisions to their reconstruction requests. In view of the strict eligibility criteria required in order to qualify for reconstruction assistance, the MMATTD recently adopted a decision whereby appeal cases by applicants deemed ineligible for reconstruction can be transferred to another, less stringent, housing programme providing State assistance in the form of building materials. If this alternative solution is accepted by Serb applicants and implemented correctly, this mechanism, long advocated by the Mission, could see approximately half of the pending appeals resolved by the end of the year.

As of June 2007, only around 60 cases of property repossession out of an original 19,000 remained unresolved. In addition, a few hundred post-repossession cases involving repair to houses devastated by departing occupants, counterclaims by former occupants for unsolicited investments made to property while under State administration and State compensation to owners for the use of private properties await systematic resolution. The Mission estimates that approximately 100 agricultural land plots in the Zadar hinterland remain illegally occupied. A Mission-funded legal aid programme has resulted in the resolution of one case to date, although this project could result in the positive resolution of other cases in the near future.

Re-integration Issues and Infrastructure

To assist pre-war habitual residents willing to return to Croatia to regularize their civil status and ultimately acquire Croatian citizenship, the Mission together with the UNHCR continued to encourage uniform application of a Government decision to apply more favorable conditions and humanitarian legal provisions to this category of people. These included a 'best practices' work shop for relevant Government officials in February and recent correspondence with potential beneficiaries in Serbia, who previously received negative decisions on the regularization of their status under previous regulations, encouraging them to re-apply under the current more flexible system. The Ministry of Interior promised to handle these reapplications in a more pragmatic and flexible manner in light of the authentic link these applicants have to Croatia.

Since 2004, extensive field work and close co-operation between the Mission, the MMATTD and the Croatian Electricity Company, has ensured that two thirds of 300 returnee villages identified as lacking electricity have been prioritized for re-electrification. The Government worked closely with minority representatives and the Mission over the past twelve months to set re-electrification priorities with relevant authorities who displayed a positive attitude toward resolving outstanding electrification problems. If funding and work on the ground

proceed at the current pace, reconnection for virtually all localities can be completed by the end of 2008.

Similarly, in order to support and prioritize improvements to the water supply system and road conditions in minority return areas, the Mission currently provides expertise and advice within the framework of the Social Economic Recovery Project (SERP), a €60 million project co-funded by the MMAATD and the World Bank to finance economic recovery projects in war-affected areas with a focus on communal infrastructure, de-mining, social inclusion and entrepreneurship.

Remaining judicial aspects of return

Among those issues which remain open, there are numerous individual court cases related to the return of private property, including agricultural land and business premises, judicial termination of OTR, and State compensation for conflict-related property damage resulting from so called 'terrorist acts'. Because the State is a party to many of these individual court proceedings or is otherwise involved in the legal dispute, it could resolve these cases positively in the short-term by dropping them or resolving them out of court. Of particular concern are ongoing proceedings to terminate the OTR of people who have lived continuously in their former socially-owned flats as well as terminations based on participation in enemy activity that do not follow the Constitutional Court's interpretation. Clarification of legal issues involved in the judicial termination of OTR may be forthcoming from the European Court of Human Rights (ECHR). The ECHR has previously found that the compensation provided by the Government to owners for use of their property was inadequate.

THE RULE OF LAW

Human Rights Protection and Access to Justice

Effective human rights remedies are of key importance for all Croatians, but especially for national minorities, displaced persons and refugees. Hence, the Mission has focused on strengthening Croatia's human rights institutions, the Ombudsman and the Constitutional Court. In May, the Prime Minister provided a written guarantee that the Government would ensure increased funds for these institutions. This guarantee, while welcome, needs to be further specified, particularly to ensure that additional funding is earmarked for the field work activities of the Ombudsman, which until now have been funded by the Mission.

The Constitutional Court (CC) continued to expand its role in ensuring respect for human rights, but gaps remain in its effectiveness as a court of last resort in human rights cases. As a result, the ECHR continues to serve as the primary remedy for some Croatian human rights concerns, including those affecting displaced persons, refugees, and minorities. The CC's effectiveness is also undermined when other State bodies fail to adhere to its decisions as demonstrated in June by a CC report to Parliament on a decision that remains unimplemented after nine years.

In 2007, Parliament, through its appointment of nine of the CC's thirteen judges, has the opportunity to ensure that the CC becomes a more robust and effective institution. The

appointments will constitute the first major changes in the CC's composition since the Administration of former President, Franjo Tudman. After several months delay, in mid-June Parliament filled the first vacancy. In mid-July, just prior to adjourning for the summer break, the Parliament in a three-day period interviewed 24 candidates and voted on a short list of ten, with the result that three candidates received sufficient votes to be appointed. The process for appointing five additional judges in the autumn prior to the Parliamentary elections should be conducted in a transparent manner, which supports the independence and authority of the CC.

In mid-July, the Parliament also agreed to debate a draft law proposed by the Government for the establishment of a system of free legal aid in civil cases. Under the proposed draft, legal services would be available for some types of cases in 2009. The Mission will continue to press for thorough consideration of the proposed system and implementation of new legislation as early as 2008. Over the past 12 months the Mission continued to fund projects ensuring legal assistance for refugees and displaced persons, bringing the total provided since 1999 to more than €500,000.

Minority Employment in the Judiciary, State and Local Administration

The *Constitutional Law on the Rights of National Minorities* (CLNM) guarantees employment of national minorities at all levels of public service – including State and local administration, which incorporates the police - and the judiciary. While the legal framework is in place, concrete plans for implementation and a means of assessing progress toward stated goals are still required. Implementation is particularly important in refugee return areas, with the link to return made explicit in the Sarajevo Declaration. To facilitate fulfilment of commitments related to minority employment guarantees, the Mission and Government co-organised two round tables for local and national authorities, with plans for an additional event later in 2007.

In May, the Government adopted the 2007 *Civil Service Employment Plan*, which for the first time includes targets for minority hires in the State administration. Of approximately 21,200 civil servants employed at the national level (excluding the Ministry of the Interior), approximately three per cent are minorities, contrasted with the total minority population of 7.5 per cent. The Plan sets a goal of minorities constituting 7.5 per cent of all new hires, with the largest targets set for the Ministries of Justice and Interior. Statistics about the distribution of minorities throughout the country and individual minority groups are necessary to fully assess implementation. Obtaining such information is frustrated by the fact that most statistics related to the police are legally classified as a State secret.

Of almost 4,000 civil servants employed at the county level, six per cent are minorities, a number approaching the national average for minorities. However, because minority percentages at the county level vary considerably from county to county compared with the national average, the Plan foresees an overall goal of new minority hires of 25 per cent, with the highest targets set for the two counties in Eastern Slavonia.

Of more than 60 local and regional self-governments obligated to produce employment plans for local administration based on the 2001 census, only 11 per cent have done so. According to the Government, all such local and regional self-governments taken together employ minorities at approximately 65 per cent of proportionality. Some local and regional self-

governments claim they are unable to implement the CLNM, given the absence of vacancies or new positions as well as imprecise information on staff and applicant's national origin.

Ministry of Justice statistics showed that as of May 2007, nation-wide, minorities constituted approximately four per cent of judges, with Serbs comprising 2.5 per cent. These statistics indicate that minority representation in the judiciary, including Serbs, has essentially remained the same since 2002. Additional statistics are needed to assess how individual minority groups are distributed throughout the judiciary. Criteria for how the State Judicial Council and State Attorneys Council will ensure minority representation in appointing judges and State attorneys respectively, have not been established. The Minister of Justice has stressed that ensuring minority representation in the judiciary would take place in the context of the judicial reform process, which includes a reduction in the number of courts. The need to coordinate reform efforts with CLNM implementation remains a challenge, particularly in areas with significant minority populations.

Officials accurately point to the need for minorities to invoke their minority status during the recruitment process in order to benefit from the legal priority for qualified candidates "under equal conditions." It is equally true, however, that officials need to establish a climate and recruitment procedure that facilitates and encourages people to declare their minority status. How officials should balance the CLNM guarantee for minorities with guarantees for preferred treatment for other categories of applicants, including veterans and disabled persons, also remains unresolved.

Prosecution of War Crimes

Over the past year Croatia has remained very active in the prosecution of war crimes. As of June, the Mission was following approximately 90 cases involving over 280 persons in investigations, fourteen trial courts and the Supreme Court as well as extradition proceedings in third countries. Eighteen trials were ongoing, including that of Rahim Ademi and Mirko Norac, whose indictment was transferred from the ICTY under Rule 11 *bis*. Proceedings based on investigative materials transferred from the ICTY Office of the Prosecutor in 'Category II' cases were also in process.

In general, Croatia continued to improve its record toward balanced and fair war crimes prosecution. Several war crimes against Serb victims, which had previously gone unprosecuted were investigated, with trials underway or imminent. These cases, however, remain the exception. There is a continued need to establish accountability for crimes committed by members of the Croatian armed forces, for example the crimes underlying the Ademi-Norac case. Prosecutors continued to encounter what they term a 'wall of silence,' which hampers the investigation and prosecution of such cases. Some questionable amnesty decisions by military courts during the conflict may inappropriately shield members of the armed forces.

While diminishing, the factor of national origin continued to affect whom and what crimes were prosecuted, with discrepancies seen in the types of conduct charged, the qualification of charges and the severity of sentencing. The effect of past ethnic bias remained through the continuation of cases from earlier years when Serbs were accused in large groups, with little individualized accountability, and for types of crimes or conduct for which Croats have not been prosecuted. As in previous periods, *in absentia* proceedings and convictions affected Serbs almost exclusively. Irregularities in the quality of defense provided by court-appointed

counsel – including multiple representation - disproportionately affected Serb accused. Service in the Croatian armed forces, on the other hand, continued to be used as a mitigating circumstance, although membership in a military unit is a virtual *sine qua non* of any war crimes charge. Thus, even though progress has been noted toward more balanced treatment, overall the system continued to apply a different standard of accountability apparently based on national origin.

Croatia has tended not to take advantage of the more neutral setting provided by 'special war crimes courts'. In the more than three years since the adoption of authorizing legislation, only five cases have been referred to a special court, primarily to Zagreb. The vast majority of cases continued to be investigated and tried in the community where the war crimes occurred, raising concerns related to the participation of witnesses and fair trial for the accused. The first transfers to a special court based on concerns regarding impartiality and witness intimidation were made in the two cases against independent parliamentarian Branimir Čičavaš.

While the number of fully *in absentia* trials remained low, more than half of all accused currently on trial are *in absentia*. Past *in absentia* convictions also occupy the Croatian judiciary as well as judiciaries in third countries considering extradition requests. There is growing official acknowledgement that at least some of the final *in absentia* convictions are flawed. However, no mechanism currently exists to review final verdicts, bar the arrest and re-trial of the accused in Croatia. The Mission continues to recommend that a means be found to review final *in absentia* convictions, which frequently resulted from proceedings with few legal safeguards. Questionable *in absentia* convictions reflect negatively on the Croatian judiciary in general and its war crimes prosecution process in particular.

Over the last 12 months, repeated proceedings have continued to be frequent. The Supreme Court reduced the backlog of appeals in 2006-2007, handling numerous cases which had been pending for more than three years – a delay found by the ECHR to violate the right to a fair trial. Supreme Court delays prevented re-trials in several cases due to the intervening death of both accused and witnesses and due to the fact that they exceeded the length of some sentences for convictions. Several acquitted persons remained under the cloud of prosecution for up to five years.

The inter-linkage between Croatian proceedings and those at the ICTY became increasingly apparent over the past year. Transfer from the ICTY of the Ademi/Norac indictment as well as investigative materials in 'Category II' and 'Category III' cases demonstrated that Croatia's war crimes prosecutions have entered a new phase, with increased responsibility and activity, particularly in relation to crimes committed by members of its armed forces.

At the same time, Croatia's highest political figures continued to equate the interests of Croatian ICTY indictees with the interests of the State. The impact of this message on the atmosphere in which national prosecutions take place, as well as on the public, witnesses, prosecution and the judiciary, conflicts with the legal obligation to prosecute war crimes impartially. An effort to balance the Government's position has been made by the Minister of Justice and her deputies during the May-June plenaries in the field through statements stressing the Government's commitment to ending impunity and the impartial adjudication of war crimes. The role of local officials in creating a positive atmosphere in which war crimes trials can be conducted was also emphasized. On the other hand, while the *Book of Missing Persons from Croatia* issued in February by the International Committee of the Red Cross

includes over 2,100 persons, regardless of ethnicity, citizenship or war-time affiliation, the Deputy Prime Minister in charge of this issue as well as veterans' affairs, has been selective in her use of this figure. In some public statements this number is cited while in others she indicates that Croatia is searching for 1,100 persons, a number that corresponds primarily to missing Croats.

The Chief State Attorney, in partnership with his counterparts in other states of the former Yugoslavia, continued to lead the way in inter-state co-operation. Concrete steps were taken in 2007 toward handover of evidence to Serbia and Montenegro for the initiation of prosecutions in those states against persons inaccessible to Croatia. There was little or no progress by the Ministries of Justice in the region to reform those laws that significantly limit inter-state judicial co-operation, resulting in impunity for accused that remain outside state borders. The differing approaches of prosecutors and judges has become increasingly evident as courts seek to try defendants *in absentia*, while prosecutors seek to have defendants tried in person, even if that occurs outside Croatia's borders.

Reflecting the work accomplished, and looking toward the future, the Mission and Government will continue to address the following:

- 1) Continue to hold regular plenary meetings with the Minister of Justice, Chief State Attorney and representatives of the Supreme Court to improve or move forward inter alia, inter-state co-operation, security and integrity of witness testimony, including integrity of proceedings, adequate representation for defendants, a mechanism for review of final *in absentia* convictions, the establishment of a uniform and universally applied threshold for prosecution of war crimes that eliminates ethnic differences, including renewed efforts to establish accountability for unresolved war crimes, and the creation of a social and political atmosphere which is more neutral and precludes intimidation of judges, legal staff and witnesses;
- 2) Encourage a high-level summit of regional leaders to provide political support for interim confidence-building measures and legislative reforms to enable more extensive inter-state judicial co-operation in war crimes proceedings;
- 3) Encourage greater use of the option to transfer trials from local to special courts to improve impartiality of the processes;
- 4) Co-operate with the President of the Supreme Court and the Judicial Training Academy to improve the quality of war crimes proceedings, with a special focus on judges;
- 5) Improve the capacity of NGO's to assume a greater role in monitoring war crimes cases;
- 6) Continue to seek an adequate formula to provide independent and expert monitoring of nationally-initiated war crimes proceedings;
- 7) Identify, in accordance with the 2005 ICTY-OSCE agreement, an acceptable means to monitor the Rule 11 *bis* referred case as well as 'Category II' cases.

CONCLUSIONS

The efforts of the Croatian Government over the past 12 months have brought it considerably closer to fulfilling mandate commitments and responsibilities. Improvements do not mean perfection.

It is clear that a positive climate for democracy, a more open society and the growing operational transparency of Government bodies are all more firmly established and will continue to improve as Croatia pursues its twin goals of EU and NATO membership.

Some issues, like the construction and allocation of adequate housing for former OTR holders and the repair of community infrastructure in minority return areas lend themselves to quantifiable verification. These have been registered, or will be verifiable in the course of the next 18 months to two years.

Conclusion of the political phase of the Sarajevo Process now depends on the efforts of participant States to resolve the issue of assistance to former OTR holders in Serbia or Bosnia and Herzegovina who are not willing to return to Croatia. In the Mission's view, this issue could be approached bilaterally, provided that inter-State talks focus on pragmatic and durable solutions and involve the necessary exchange of data on the remaining refugee caseload. The Mission will continue to encourage the Government to resolve individual court cases related to property, OTR, and 'terrorist acts' in which it is a party or otherwise involved in the judicial dispute.

Others issues, like the functioning of a free media and the co-operation between civil society and local government bodies must be judged on a cumulative, ongoing basis. Positive results have not been registered equally in all parts of the country, but it is evident in these two areas, for example, that Croatia has passed the tipping point and there need not be an overly great concern that gains made to date will be dissipated or lost in the foreseeable future.

Further progress in police reform is still needed, but the active engagement of France and the European Commission under the proposed Phare programme should ensure progress continues in this area.

While Government decisions affecting recent elections for minority councils were questionable, minority representatives have access to the necessary legislation and institutions with which to dispute such decisions.

The commitment of the Government to strengthen the key human rights institutions of the Constitutional Court and Ombudsman have been encouraging, as is the commitment to establish free legal aid in civil cases. Final actions in these areas remain to be taken but are expected before the end of the year. The Mission will continue to encourage Parliament to nominate Constitutional Court judges able to further aid the Court's functioning as an effective remedy when the procedure for electing the remaining five commences later in 2007.

Progress has been made toward implementation of public service minority employment guarantees. The Mission will continue to encourage the development of concrete plans for such implementation and a means of assessing progress toward stated minority hiring goals.

Croatia continued to improve its record toward balanced and fair war crimes prosecution. The Mission continues to assist it in improving the quality and impartiality of war crimes proceedings. The Mission is also working with the Government toward enhanced inter-state judicial co-operation, using the facility of the Plenaries, both at the Ministry of Justice and in the Field. Recent public statements made by senior Government officials have stressed the need to create an appropriate political and social atmosphere in which such proceedings are conducted.

The Mission also hosted the fifth 'Palić Process' meeting on inter-state judicial co-operation and has discussed with the President of the Supreme Court and Head of the Judicial Academy plans for the training of judges to enhance the quality of proceedings. As progress is observed in these areas, solutions for continued monitoring of the limited number of cases referred from the ICTY as well as the larger number of domestically initiated cases need to be found.

At the recent 'Croatia Summit 2007', organized by the Government in Dubrovnik, the OSCE Chairman-in-Office, Miguel Ángel Moratinos, expressed his opinion favorable to the closure of the Mission by the end of the year. To that end, he said *"I call on the authorities to work closely with the OSCE Mission to Croatia to fulfill the remaining obligations and responsibilities as we move closer toward the OSCE Ministerial Council in November"*. With these words CiO Moratinos requested that the Croatian Government take the necessary actions to resolve those issues from the mandate that remain pending. In this regard the Croatian Government has expressed its commitment to:

- • Construct and allocate 1,400 apartments for former OTR holders in 2007;
- Provide firm, documented guarantees that the remaining 5,600 apartments will be constructed and allocated before the end of 2009;
- Resolve in practical terms open issues from the Sarajevo Process, including convalidation and bilateral agreements with Serbia and Bosnia and Herzegovina to assist refugees who have decided not to return;
- Provide necessary guarantees that the Ombudsman and the Constitutional Court will be supported financially and politically;
- Approve the draft *Law on Free Legal Aid*;
- Advance the civil service employment guarantees of national minorities.

During his address to the OSCE Permanent Council on 10 July, the Croatian Prime Minister, Ivo Sanader, reiterated his firm commitment to continue working until fulfillment of the mandate at the end of 2007. He also offered full guarantees that issues which remain pending will be resolved, adding that Croatia remains open to finding the most appropriate solution and structure for monitoring war crimes proceedings in the event of mandate completion.

With resolution of these issues, the Return and Integration and the Rule of Law chapters of the mandate will be sufficiently complete. It will remain necessary, however, to find an arrangement for the continued monitoring of domestic war crime trials until Croatia satisfies international standards, and/or or can effectively monitor trials unassisted.

Confidence is being shown in Croatia that it will go the last mile necessary to complete the chapter on refugee return; in the same vein, confidence may be given to Croatia that it will ensure trials are conducted according to international standards which the Government has committed itself to achieve in the foreseeable future.