

Burnier (79)

18/5'04

173



*The Status of the Croatian Serb Population
in Bosnia and Herzegovina:
Refugees or Citizens?*

Sarajevo, May 2003

Executive Summary.....	1
1. Introduction.....	2
2. The Question of Citizenship in an Evolving Legal Framework.....	2
The Republic Citizenship	2
The 1992 RS Citizenship Law.....	4
The 1999 RS Citizenship Law.....	5
Citizenship Status Review	6
BiH Passports and the Risk of Statelessness.....	7
Right to Vote.....	8
Military Service.....	9
3. Rights and Entitlements of Croatian Serbs in BiH.....	10
The Applicable Law.....	10
The Problem of Alternative Accommodation.....	11
Land Plot Allocation.....	12
Health Care	12
Education.....	13
Pensions Rights	14
Employment	15
Social Welfare	15
4. Voluntary Repatriation Prospects	16
Repatriation and Citizenship	16
Property Law Implementation and Return to Croatia	17
Spontaneous Returns.....	18
5. Conclusion.....	20
 <i>Annex: Glossary of Acronyms</i>	

Executive Summary

Bosnia and Herzegovina (BiH) hosts an estimated 22,000 Croatian Serbs, who mainly reside in the Republika Srpska (RS). The Croatian Serbs started arriving in BiH from 1990 onwards, with a large scale influx in 1995. In this paper, the various legal, administrative and operational issues effecting the continuing search for durable solutions for the Croatian Serb population in BiH are described, with a special focus on their situation and prospects in the RS.

The central issue of what citizenship and therefore legal status the Croatian Serbs in the RS possess or should possess highlights the complex and varied nature of the population at hand. It is important to note that 75 percent of the Croatian Serb heads of households registered in BiH stated that they were currently possessing BiH citizenship. There are several difficulties related to the legal status of Croatian Serbs in the RS, a number of these specifically relate to the manner in which persons acquired RS/BiH citizenship.

Further, given the current lack of a bilateral agreement with the Republic of Croatia on dual citizenship, it is not certain that many who registered citizenship under the 1992 RS citizenship legislation and /or who obtained BiH passports actually wished to give up their Croatian citizenship in favour of BiH citizenship. Based on information available from Croatian Serbs approaching UNHCR, many simply wished to acquire viable documents which would permit travel to Croatia.

At the same time, despite continuing obstacles that Croatian Serb returnees have to overcome in order to return and regularise their status in the Republic of Croatia, property law implementation in BiH has fostered an increased interest in the return option. While initially, emphasis in promoting return had been placed on the organised procedure as it allowed for additional guarantees, more recently all persons with valid travel documents have been encouraged to return spontaneously, without undergoing the time consuming housing verifications and other procedural checks of the Return Programme.

A significant number of these individuals receive their pension from Croatia today and all have rights to health care, education and employment depending on their status. A number of the Croatian Serb population in the RS, however, have encountered problems because of invalid refugee cards. Depending on the actual number of Croatian Serbs with verified BiH citizenship, this group of individuals may wish to integrate locally in the RS. As the situation stands today, most Croatian Serbs do not have the means to start a life as well-integrated citizens of BiH. The lack of clarity regarding citizenship issues directly affects the ability to accurately assess local integration versus repatriation prospects for the Croatian Serbs.

1. Introduction

Bosnia and Herzegovina (BiH) hosts an estimated 22,000 Croatian Serbs, who mainly reside in the Republika Srpska (RS), one of the two Entities as defined by the General Framework Agreement for Peace (GFAP) of December 1995. Although the first Croatian Serbs arrived in BiH from 1990 onwards, the large majority fled in 1995 following the military operations *Flash* and *Storm* launched by the Croatian armed forces to retake large areas of the Krajina and Eastern Slavonia. UNHCR estimates that between 30,000 to 40,000 Croatian Serbs fled to BiH during this period.

Until the entry into force of the 1999 *Law on Displaced Persons, Refugees and Returnees in the RS*, there was no distinction in law or practice between displaced persons within BiH (defined as DPs in BiH) and refugees who had arrived from outside BiH. Exact numbers were difficult to determine. Moreover, the reception of the Croatian Serbs in the RS was highly politicised, with estimates ranging from 20,000 to 100,000 depending on the source.

To bring some clarification into the statistics, UNHCR sponsored a re-registration of Croatian Serbs in BiH in the latter half of 2000, during which a total of 8,036 households comprising 24,877 persons re-registered in the RS. Taking into account organised and estimated spontaneous returns of Croatian Serbs, it is estimated that of these, less than 22,000 still remain in BiH.¹ This paper seeks to outline the situation of the Croatian Serbs, problems faced by them in displacement, and potential durable solutions.

Field research has indicated that in practice there is little distinction made between the Croatian Serbs, who have maintained their refugee status as provided for in the *RS Law on Refugees and DPs*, and BiH displaced persons in accessing these rights in the Republika Srpska of BiH, although in practise the rights might be difficult to realise due to the financial constraints of the RS authorities.

Croatian Serbs who have obtained BiH citizenship appear to fear no discrimination with respect to employment, education, property, social welfare and military service, compared to other BiH citizens, although several of them seem to claim these rights based on their refugee status rather than on their status as BiH citizens.

2. The Question of Citizenship in an Evolving Legal Framework

The Republic Citizenship

Citizenship generally is held to reflect a genuine and effective link between an individual and a State. Citizenship in the successor republics of the former Socialist Federal Republic of Yugoslavia (SFRY) is more complicated, however, and bears closer analysis. The SFRY was characterised by a dual level of citizenship. All former SFRY citizens were citizens of the State and additionally had internal citizenship of one of the six Republics of the SFRY. Only the SFRY citizenship was of international

¹ It should be noted that refugee representatives indicate that there may be up to 10,000 individuals who never re-registered for a variety of reasons including registration fatigue, and it appears that a number of applications were not considered, since they were received after the prescribed deadline.

significance. Which internal Republic a person was registered in was considered of minor consequence. Individuals often did not change their republic citizenship, even if they took up permanent residence in another republic.

The first determination of Republic citizenship depended on a variety of elements, including the place of domicile in 1947, even if this was of a temporary nature. Republic citizenship was subsequently passed on, normally through the father. Only with the dissolution of the SFRY did the former internal republic citizenship suddenly gain crucial importance. The citizenship of SFRY residents following its dissolution was therefore not necessarily that of the State in which they had a genuine and effective link.

Although the *Principles on Citizenship Legislation Concerning the Parties to the Peace Agreements on Bosnia and Herzegovina*² prescribe that states shall allow persons with a genuine and effective link to the state to acquire its citizenship and shall facilitate the acquisition of citizenship for former habitual residents,³ these provisions in practice met with difficulties in implementation. To complicate matters further, Republic citizenship was not necessarily granted in the Republic of birth, but rather in the Republic of birth of the father, which might be a Republic which the individual in question had never resided in.

The matrix below, based on data from the re-registration, indicates the Republic of birth against current citizenship status for the Croatian Serbs registered. It should be underlined that these data are based on the statements of the persons registered and therefore reflect their assessment of their citizenship status and not their actual legal status as confirmed by the competent authorities.

Republic of Birth (household)	Current citizenship (household)		
	BiH	Croatia	FRY
BiH: 4428	4230	190	4
CRO: 3451	1667	1770	7
Serbia & Montenegro: 109	70	16	3
Other: 50	31	15	0
Total: 8038	5998	1991	34⁴

According to the head of household information, 56 percent of the Croatian Serbs in BiH were originally born in the Socialist Republic of Bosnia and Herzegovina (SR

² Adopted at the Expert meeting on Citizenship Legislation, convened on the basis of the decision of the Ministers' Deputies of the Council of Europe at their 573rd meeting, reproduced in *Citizenship and Prevention of Statelessness Linked to the Disintegration of the Socialist Federal Republic of Yugoslavia*, European Series, volume 3, no. 1, June 1997, UNHCR.

³ Articles 3 and 5 of the Principles, *ibid.* The *Draft Articles on Nationality of Natural Persons in Relation to the Succession of States*, Report of the International Law Commission, Sixth Committee, A/54/610, provides further guidance. Article 5 states that "Subject to the provision of the present articles, persons concerned having their habitual residence in the territory affected by the succession of States are presumed to acquire the nationality of the successor State on the date of such succession."

⁴ The data for current citizenship includes '15 Unknown'. This figure is not expressed in the chart.

BiH). Of these, only 4.3 percent would appear to have acquired Croatian citizenship, while the remainder constituted former habitual residents.

Of the Croatian Serbs born in the Socialist Republic of Croatia, only 51 percent currently seem to hold Croatian citizenship⁵. The remaining 48 percent appear to hold BiH citizenship and would include children of parents with BiH citizenship, JNA officers who were outside of Croatia during the 1947 registration, and Croatian Serbs who obtained BiH citizenship either under the *1992 RS Law on Serb Citizenship* with its amendments, the *1998 BiH Law on Citizenship*, or the *1999 RS Law on Citizenship*.

A husband and wife who both could have been born and lived all their lives in the Socialist Republic of Croatia (SR Croatia), could conceivably have different Republic citizenship with the head of household registered in the SR BiH and his spouse in the Socialist Republic of Serbia. The children born to this couple would receive the internal Republic citizenship of their father registered in SR BiH. As there was no particular significance attached to Republic citizenship and to the change of place of domicile under the previous legislation, no efforts might have been made to change it. None of the family members would be considered citizens of the Republic of Croatia (RoC) following dissolution, despite having been born and lived in Croatia all their lives.

A number of Croatian Serbs therefore could be citizens of BiH under the *1998 BiH Citizenship Law* and the *1999 RS Citizenship Law* based on former SR BiH citizenship. This group would likely include a considerable number of persons who migrated to the SR of Croatia during the SFRY period as well as their descendants.

The 1992 RS Citizenship Law

Under the *1992 RS Law on Serb Citizenship*, as amended in 1996 and 1997, RS citizenship was conferred on all citizens of the former SFRY, who registered permanent residence in the RS before 30 June 1998.⁶ At the same time, however, the

⁵ Sources from Croatia indicate that the majority of Croatian Serbs who left Croatia for BiH are citizens of the Republic of Croatia (RoC). According to data on return provided by the Croatian Office of Displaced Persons, Returnees and Refugees (ODPR), out of a total of 3,395 Croatian Serbs who returned to Croatia in 2002, only 708 were former habitual residents. The majority returned on the basis of a Croatian passport (1,665). 32 returned on the basis of a one way travel document (also citizens of Croatia) and 518 returned on the basis of verified citizenship status.

⁶ The *RS Law on Citizenship*, introduced in 1992 and later amended (RS O.G. nos. 19/92, 16/96 & 8/97). Article 32, as amended, states:

"In the sense of this Law, the following persons are considered as Serb citizens:

persons who until the passing of this Law were Serb citizens of the Socialist Republic of BiH, in the part of territory of the former Socialist Republic of BiH which became the territory of RS;
persons who were citizens of former Socialist Republic of BiH and acquired the status of refugees in the RS;

citizens of the former SFRY who were born in the part of the territory of the former SRBiH which does not belong to the RS, but who registered permanent residence in the RS, are RS citizens. Persons who have temporary registered residence can acquire RS citizenship upon application;

citizens of the former SFRY who were born in the territory of other former Republics of SFRY, and who until 30 June 1998 registered their permanent residence in the territory of RS, are citizens of the RS."

Paragraph 4, which facilitates RS citizenship for Croatian Serbs, was only incorporated in the 1996 amendments, where the majority of the Croatian Serbs had arrived in the RS after the Croatian military

1995 RS Law on Refugees and Displaced Persons,⁷ provided refugees with the right to an RS ID card, which appeared to confer a more permanent status and often associated with RS citizenship, although this was not necessarily the case. Although refugees were to be registered at the municipality level with *temporary residence* in accordance with the *Law on Permanent and Temporary Residence of Civilians*,⁸ in many cases the RS authorities appear to have registered persons with permanent residence instead, thereby bringing into effect the RS citizenship law.

Although the citizenship provisions would appear to provide for *ex lege* acquisition of RS citizenship, according to pre-conflict legislation all eligible persons had to subsequently register with the municipal registry offices to be entered into the books of citizens.⁹ Registration was therefore constitutive, and these individuals were not otherwise considered RS citizens. Internal instructions passed by the RS Ministry of Interior (MUP) in 1996 confirmed the obligation for subsequent registration in the Book of Citizens. According to the MUP, all refugees who came to see them were informed of this requirement, but this does not appear to have been the case in all municipalities. In some, subsequent registration may therefore have happened very sporadically only.

It should be noted that the 1992 RS Citizenship Law and its subsequent amendments were not recognised at the international level, since the RS itself was not recognised at the time. Croatian Serbs that "acquired" RS citizenship under the 1992 RS Law on Serb Citizenship and its amendments are thus not recognised as citizens of the RS and BiH under the 1998/99 laws, and would have to apply for BiH citizenship to regularise their status. Moreover, it would appear to go against international legal principles, that citizenship be attributed so haphazardly, without any examination as to effective and genuine link to the State, even with the requirement for subsequent registration.

The 1999 RS Citizenship Law

A new RS Law on Citizenship was adopted in December 1999,¹⁰ in line with the 1998 BiH Citizenship Law and international legal principles. As with the earlier RS law, the new RS Citizenship Law, provides for acquisition of RS citizenship on a voluntary and individual basis. Article 40 provides that "all persons who were citizens of the former SFRY and who from 6 April 1992 to 1 January 1998 took up permanent residence in the territory of Republika Srpska, and who have maintained this residence on that territory for a continuous period of two years after that date, shall upon application receive the citizenship of Republika Srpska".¹¹

operations. Prior to this only citizens of FBiH or persons born there and now residing permanently in the RS had this option.

⁷ RS O.G. 26/95, article 13 (3).

⁸ RS O.G. no. 27/1993, 31 December 1993.

⁹ *Instruction on Keeping Registry Books* (O.G. SR BiH, no. 16/91) and the *Book of Rules on the Procedure for Keeping Records of Citizens of the SR BiH and Citizens of SFRY, on the Format and the Content of the Application Form, as well as on Records and Citizenship Certificates* (O.G. SR BiH, no. 1/79).

¹⁰ RS O.G. No. 35/99, entered into force 14 December 1999. Amended by the *Law on Amendments to the Law on Citizenship of Republika Srpska*, RS O.G. No. 17/2000.

¹¹ Article 40 of the 1999 RS Citizenship Law and Article 38.3 of the 1998 BiH Citizenship Law. According to the RS Ministry of Administration and Local Self-Government (MALSG), an applicant

The majority of Croatian Serb refugees, having been in RS/BiH for more than two years, would therefore be entitled to apply for RS/BiH citizenship under the law. Although the citizenship legislation requires permanent residence in RS/BiH as opposed to temporary residence that should have been granted to refugees, as noted, in practice, the large majority were registered as permanent residents, including collective centre residents.¹²

According to the RS Ministry for Administration and Local Self-Government (MALSG), the number of applications under this provision has remained fairly limited. The low number of applications can likely be attributed to the fact that a large number of Croatian Serbs already believe themselves to have acquired RS and therefore BiH citizenship, while the remainder may not wish to acquire BiH citizenship.

But a different challenge arises with the new legislation, as it does not, in principle, recognise attributions of citizenship under the *1992 RS citizenship law*. According to the RS authorities, it is impossible to identify the persons who received citizenship under the 1992 law and its amendments, since they were simply entered into the municipal citizenship registries along with ordinary RS citizens, and there was no distinction made between DPs and refugees. No separate records were kept. As these citizenship attributions were not considered to be based on applications, there were no records of individual cases or decisions issued.

Citizenship Status Review

At present, the RS authorities do not intend to review the status of such persons, nor would they be reviewed by the Naturalisation Commissions.¹³ Even if all Croatian Serbs were required to apply for citizenship under current legislation, the result would likely be double registration in the Books of Citizens, while persons who would chose not to apply would still be included in the Book of Citizens. A practical solution would be needed in this regard, whereby all Croatian Serbs who did not wish to have

needs to present the following documentation in order to acquire citizenship based on Article 40 of the current *RS Citizenship Law*:

- 1) Birth Certificate; if the respective register is destroyed, then a document issued by the authority of the former SFRY will suffice.
- 2) Certificate of registered permanent residence issued by the SJB (Public Security Station).
- 3) RS ID Card issued before 1 January 1998. (Where an ID Card has been issued after that date, a certificate of registered permanent residence prior to 1 January 1998 is required).
- 4) Documentation indicating former SFRY internal Republic citizenship and current citizenship.

¹² According to information received by UNHCR, some Croatian Serbs have been rejected when applying for citizenship on the basis that they were originally registered with temporary residence, and therefore have not been permanently resident for the required period.

¹³ A Naturalisation Commission has been established by the *BiH Citizenship Law* (Art. 40-41) to review all individual cases of naturalisation from 6 April 1992 until 14 December 1995, in accordance with the requirements of Art 1.7 (c) of the BiH Constitution. These cases relate solely to naturalisations, and not to other forms of acquisition of the RS citizenship, such as those acquired under the *1992 RS Law on Citizenship*. More recently, the BH Council of Ministers passed a *Decision on Establishment of the Commission for Review of the Status of Persons Naturalised After the Entry into Force of the Constitution of Bosnia and Herzegovina until the Entry into Force of the Law on BH Citizenship*, which was published in the BH Official Gazette no. 27/201 on 24 October 2001.

BiH citizenship but who had been registered would be asked to come forward for simple de-registration.

In this regard, it should be noted that a related problem is the apparent lack of communication and information flow between the municipal and entity authorities. Furthermore, the RS MALSG and the Ministry for Civil Affairs and Communication (MCAC) appear to receive only part of the information about registrations in the municipalities, with the effect that neither is in a position to make any revision of the citizenships granted before the current laws entered into force.

Review of citizenship will only occur when the individual's ID card/passport expires and needs to be renewed. At that stage, the local police will consult the RS citizenship registries and the Book of Citizens of BiH to verify whether the individual is registered as an RS citizen or not. If it is then determined that the individual was never registered as a citizen of BiH, he/she will have to apply for BiH citizenship and the local police will then forward the application for the MCAC to give consent. Another possibility is that a number of Croatian Serbs may have realised that they were not considered BiH citizens when they wished to vote at the October 2002 elections in BiH. It is estimated that 4,000-5,000 Croatian Serbs were eligible to vote.¹⁴

A number of persons may believe themselves to have acquired citizenship under the 1992 legislation even if they did not register, since the law itself is not clear on this. In addition, many of the Croatian Serbs were issued ID cards in the RS, which are normally reserved for citizens, and most were registered as permanent residents. The municipal offices of the RS Ministry of Interior are not likely to have reached all persons to inform them of the requirement for subsequent registration. In 1998 the RS Ministry of Interior issued a new instruction on the modalities of subsequent registration of applications for citizenship under the *Law on Serb Citizenship* for persons who registered their permanent residence in the RS before 30 June 1998.¹⁵

BiH Passports and the Risk of Statelessness

It is important to note that at the beginning of 1998, many Croatian Serbs obtained BiH passports under the *1998 Law on Travel Documents*,¹⁶ based on ID cards, which many Croatian Serbs had already obtained. A number of Croatian Serbs may therefore hold BiH passports without being citizens of BiH. These elements put together, might very well have led a number of Croatian Serbs to consider themselves RS citizens, although not formally recognised as such by the RS authorities and BiH authorities. This belief may well be affirmed when the CIPS project, providing new ID cards to BiH citizens, is implemented.

The current laws preparing for the implementation of the Citizens Identification Protection System (CIPS), in particular the *Law on Identity Cards of Citizens of Bosnia and Herzegovina*,¹⁷ prescribes that the new ID cards for citizens shall be

¹⁴ Statement by RS Vice President Petar Kunic, Glas Srpski 24 January 2002. The Serb Democratic Forum (SDF) estimates a similar number.

¹⁵ 06/2-541/98 of 13 July 1998.

¹⁶ In June 1998, the Parliament of the Republic of Croatia adopted the Return Programme. In order to enable refugees in the RS to cross the border in order to apply for returnee status and access to their rights in Croatia, the RS authorities proceeded to issue passports, which were effectively recognised as valid BiH travel documents..

¹⁷ BiH O.G. no. 32/2001, 28 December 2001.

issued based on evidence of BiH citizenship as regulated in relevant legislation. The *Law on Citizenship of Bosnia and Herzegovina*¹⁸ states that either a citizenship certificate or a BiH passport can serve as evidence of BiH citizenship, and thus to the right of getting a new ID card under CIPS. As the majority of the Croatian Serbs will be able to provide a BiH passport, they most likely will be issued a new ID card, without being registered as full-fledged citizens entered in the Books of Citizens, unless this is addressed in the CIPS legal framework.¹⁹

Persons who indicated BiH citizenship during the re-registration may therefore include persons who had SR BiH citizenship, persons who “acquired” citizenship under the 1992 RS legislation, persons who naturalised under the 1999 law, and persons who falsely believe themselves to have BiH citizenship. Finally, it would appear from field interviews that statelessness may be, in practice, an issue, particularly for children born to Croatian Serbs in the Srpska Krajina in the years 1990-1995.

A number of official books from this area went missing during the war and parents reported that it has been difficult for them to even prove that their children were born there, let alone get unique identification numbers (JMBG) for these children²⁰. These children have also faced problems applying for RS citizenship as they can not submit a citizenship certificate or any other kind of documentation. Additionally, persons who never registered in 1947 and therefore never were attributed a Republic citizenship could find themselves stateless.

Right to Vote

In previous elections, the Provisional Election Commission restricted the right to vote to citizens of BiH based on proof of citizenship according to the 1991 census or, alternatively, on confirmation of registration of birth in the municipal official register. For the April 2000 local elections, other evidence of citizenship, including passports or birth certificates and marriage registers, was not accepted.

Although Croatian Serbs who were former habitual residents in Croatia (and SR BiH Citizens) were typically not present in BiH during the 1991 census, in practise they were able to vote through procedures, albeit complicated, specifically addressed to their situation. Those Croatian Serb who became RS citizens, however, were not eligible to vote as they were neither recorded in the 1991 census nor had birth records in the municipality of residence, irrespective of how they obtained RS/BiH citizenship.

Under the current *BiH Election Law*, the right to vote is again based on citizenship, but is not exclusively linked to the 1991 Census. The law instead states that all BiH

¹⁸ Article 34.

¹⁹ In accordance with the *Rulebook on the form of request for issuance and replacement of ID cards, procedure of issuance and replacement of ID cards and method of keeping records of these requests* (BiH O.G. no. 39/2002, 24 December 2002), persons who are not born in BiH must include a proof of BiH citizenship along with previously issued ID cards when they submit a request for issuance of the new ID cards (art 3.3.).

²⁰ The Ministry of Interior, Republic of Croatia has established a system in order to replace the missing data by using other relevant information. In Croatia, the citizenship status can be checked through the Ministry of Interior and the Ministry of Justice, Administration and Local Self-Government.

citizens registered in the Central Voters Register will be able to vote.²¹ This would include all persons registered according to the 1991 Census, and all persons who obtained citizenship subsequently.²² Although not explicitly stated in the law, OSCE has confirmed that citizenship under the law refers to BiH citizenship, according to the *1998 BiH Citizenship Law*, and not to Entity citizenship.

Under the current law, Croatian Serbs who were eligible for RS citizenship would appear ineligible to vote, as their citizenship is not recognised at the State level unless the individuals registered this subsequently at the municipal registry offices, and this information was then forwarded to the MCAC. As noted earlier, this was often not the case. Croatian Serb citizens who became RS citizens under the *1999 RS Citizenship Law*, however, would appear eligible to vote, as Entity citizenship under the new RS law is recognised at the State level. It is currently estimated that around 4,000-5,000 Croatian Serbs were able to participate in the elections in 2002 based on their RS/BiH citizenship.

Military Service

The *RS Law on Refugees* of 1992 states that refugee status shall cease if a refugee refuses to perform military service.²³ The same paragraph appears in the *RS Law on Refugees* from 1993. These paragraphs appeared in direct contradiction of the purpose and provisions of international refugee law and humanitarian law.²⁴

Reports from the Legal Aid and Information Centres (LAICs) and individuals interviewed by UNHCR indicate that most male Croatian Serbs were drafted into the RS Army upon arrival in the RS, regardless of where they arrived in the RS. Individuals reportedly had to register with the RS Ministry of Defence before receiving refugee status. They were then sent to training camps and subsequently to the front line. An individual who refused to serve in the military would reportedly risk detention by the MUP. There appears to have been no distinction between refugees and DPs in this regard. It should be noted that at that point in time most of the Croatian Serbs were not RS citizens, as this was regulated later, unless they had SR BiH citizenship by descent, although the RS Law on the Army did provide for foreign citizens joining the army on a voluntary basis, which may have been the case for some Croatian Serbs.

²¹ Article 1.4.

²² The transitional provisions in the law state that "[t]he initial basis of the Central Voters Register shall be the voters register for the entire territory of Bosnia and Herzegovina which was used by the Provisional Election Commission at the time this law goes into full force and effect" [i.e. the 1991 Census] (Art. 20.5). The Election Commission of Bosnia and Herzegovina is to establish in its Regulations the method and procedure for entering of new voters into the Central Voters Register (Art 3.11 and 3.12), including new BiH citizens.

²³ RS O.G. no. 7/92, 7 June 1992, article 18.

²⁴ The traditional purpose of granting asylum is to offer protection to an individual in need, by admitting him/her into safety. It is recognised as a social and humanitarian act, which should not cause tension between states (Preamble of the *1951 Convention Relating to the Status of Refugees*, United Nations Treaty Series, vol. 189, p. 137). International humanitarian law prohibits compelling nationals of a hostile party to take part in operations of war directed against their own country, even if they were in the belligerent's service before the war (*1907 Hague Convention IV Respecting the Laws and Customs of War on Land, Annex*, article 23). This provision would cover refugees as well, when nationals of the hostile party, even when the hostile party itself has contributed to their departure from its territory.

Croatian Serbs who are RS citizens, are required to perform military service once they have reached 18 years of age.²⁵ However, persons who acquired BiH/RS citizenship based on their father's nationality, although born and raised in Croatia, or persons who for religious or conscientious reasons do not want to serve in the military may declare conscientious objection and apply for duty under "civil service".²⁶ In practise it appears that the RS authorities are calling all residents for military service when they turn 18, including Croatian Serbs who do not possess RS/BiH citizenship. The LAICs have addressed a number of these cases to the RS authorities, who have accepted on a case by case basis not to draft non-citizens.

Naturalised persons who are older than 27 years of age and who have already performed military service in their "former" country of origin are exempted from military duty.²⁷ Service in the former military of the so-called Republic of Srpska Krajina (RSK) is recognised as military service, although Croatian Serb RSK veterans are not entitled to all the benefits of regular VRS (RS Armed Forces) veterans as regards, *inter alia*, privatisation vouchers and war invalidity benefits.

3. Rights and Entitlements of Croatian Serbs in BiH

The Applicable Law

As already noted, both in practice and in law, little distinction was made between Croatian Serbs and DPs until the entry into force of the 1999 *Law on Displaced Persons, Refugees and Returnees*.²⁸ Even thereafter, the rights and obligations remained largely the same and little distinction was made in practice between the two categories. In recognition of the division of competencies prescribed by the BiH Constitution, however, the 1999 RS Law provided that the articles relevant to refugees would cease to apply as soon as state-level legislation on non-BiH refugees would enter into force.²⁹

In principle, the *BiH Law on Immigration and Asylum*, which entered into force on 31 December 1999, represents this legislation. In accordance with the 2000 *BiH Law on the Council of Ministers*, the new Ministry for Human Rights and Refugees (MHRR) is responsible for all refugees, including Croatian Serbs.³⁰ In practice, however, this transfer has proved to be somewhat of a challenge. The RS authorities continue to provide for the Croatian Serbs on a daily basis through its municipal offices while the MHRR does not have the capacity nor the financial resources to take into its care an additional 22,000 and possibly more individuals. The *BiH Law on Immigration and Asylum* is scarcely implemented, and much is left for further elaboration in Rulebooks.

²⁵ RS *Law on the Army*, RS O.G. 31/96, articles 201, 204 and 210.

²⁶ *Ibid*, article 215.

²⁷ *Ibid*, article 225.

²⁸ RS O.G. no. 33/99, 26 November 1999, amended in RS O.G. no.13/02.

²⁹ Article 9.

³⁰ *Law on the Council of Ministers of Bosnia and Herzegovina and the Ministries of Bosnia and Herzegovina*, O.G. no. 11/2000, 17 April 2000, which entered into force on 25 April 2000. This competency appears to remain with MHRR according to the February 2003 Law on Ministries and other Bodies of Administration of Bosnia and Herzegovina.

A Tripartite Protocol was signed between the Ministry for Human Rights and Refugees (MHRR), the RS Ministry for Refugees and Displaced Persons (RS MRDP) and UNHCR in July 2000, outlining that the RS MRDP would carry out the registration of Croatian Serbs and then pass on the applications to MHRR for revision of their status with UNHCR providing the necessary financial and technical assistance. Although planned subsequent to the re-registration in 2000, there has been no revision of status as of yet. Moreover in June 2001, the MHRR requested the RS Ministry for Refugees and Displaced Persons (RS MRDP) to continue with all administrative affairs until the revision of the Croatian Serbs had been concluded.

The Problem of Alternative Accommodation

Croatian Serbs, regardless of status, were allocated property in the RS based on war time legislation regulating the use of property for refugees and other persons. After October 1999, when the RS property legislation was imposed by the Office of the High Representative (OHR) to ensure return of property to pre-conflict right holders, the RS authorities have begun to implement the property legislation, under pressure from the international community, with the consequence that an increasing number of Croatian Serbs are being evicted from occupied property.

In view of the lack of clarity surrounding the status of Croatian Serbs, their right to alternative accommodation under the *RS property law*, and to temporary basic accommodation under the *RS Law on Displaced Persons, Refugees and Returnees* is also unclear. In October 2002, the RS Ministry for Refugees and Displaced Persons issued a note to all housing offices in the RS informing them on how to proceed with entitlements to alternative accommodation for Croatian Serbs. It specifies that alternative accommodation can be provided upon proof of occupancy right, claim for repossession of pre-war property or claim for reconstruction. If such proof is not available, a statement certified by two witnesses, can be considered.

As noted, many Croatian Serbs appear to have not initiated claims for repossession of private property, as they were under the impression that their physical presence in Croatia was required, which proved impossible for individuals without documents or individuals who feared arrests. The housing authorities in Banja Luka have tried to deal with this in a practical way and accept a number of documents proving that some procedure has been initiated with regard to repossession of property in the Republic of Croatia, be it claims for reconstruction assistance or for reinstatement of the property.

Under the *RS Law on Displaced Persons, Refugees and Returnees*, there is an additional obligation of the RS MRDP to find temporary basic accommodation for refugees,³¹ which also would apply to refugees who are illegal occupants, thereby not qualifying for alternative accommodation under the property law.³² Croatian Serbs who obtained citizenship under the 1992 or 1998 laws, would presumably not be entitled to alternative accommodation or emergency accommodation under the *Law on Refugees and Displaced Persons*.

³¹ Article 10.

³² It is arguable whether the provisions relating to refugees under the *RS Law on Refugees and Displaced Persons* have been superseded with the entry into force of the *BiH Law on Immigration and Asylum*. However, as the latter is not specific on the situation of Croatian Serbs, this may need regulation under an additional Instruction.

Croatian Serbs who are illegal occupants and who do not hold refugee status have thus been evicted in the RS without alternative, unless they meet the criteria of a social welfare beneficiary as stipulated in the *Law on Social Welfare* and basic accommodation is available. Many Municipal Offices of the RS MRDP (OMIs) appear to be uncertain about how to deal with Croatian Serbs when it comes to evictions and alternative accommodation. The increase in the number of applications for return through the ODPH procedure, may in part be due to a belief that an application for return will secure the Croatian Serbs the right to alternative accommodation, since this has been accepted as proof of a claim for repossession of property.

Land Plot Allocation

One way in which the RS government is attempting to address the needs of Croatian Serbs and other categories of persons, is to allocate land plots for the construction of new homes with a view to settling families permanently in the RS. Information available to UNHCR indicates that allocation is based on the *Law on Construction Land*³³ and the *Regulations on the Conditions and Ways of Allocating Land Plots*.³⁴

The OHR has issued a decision nullifying the allocation of land plots by Entity authorities over state-owned real property, including former socially-owned property.³⁵ Exemptions to this decision may be granted upon clear proof by the authorities that the proposed transfer of state-owned property is non-discriminatory and in the best interest of the public. Nonetheless, municipalities have proceeded with the allocation of socially owned land, often located close to Croat/Bosniak villages.

Health Care

The *RS Law on Health Insurance*³⁶ provides for the access to health care by refugees as insured persons in the RS, if they are not insured on another basis,³⁷ although information provided to UNHCR from local authorities indicates that contributions for health care in this category were not paid, which most probably affected access to health care.

The RS MRDP further issued an *Instruction on the Application of Article 10 Paragraph 1 Item 12 and Article 53 Paragraph 1 Item 10 of the Law on Health Insurance*,³⁸ which sets out obligations of the RS MRDP as the competent body with respect to health insurance for refugees and displaced persons in the RS. According to the Instruction, refugees along with displaced persons, together with all members of their households residing in the RS are entitled to full health insurance. Registration

³³ Pre-conflict SRBH Law taken over by RS(SR BH O.G. no. 34/86, 1/90, 29/90 and RS O.G. no. 24/94, 23/98 and 5/99), article 52.

³⁴ RS Government Instructions in O.G. no. 11/99 article 8.

³⁵ OHR Decision No. 23/00 (27 April 2000). The decision has been extended until 31 March 2003.

³⁶ RS Official Gazette no. 18/99, 50/01 and 70/01.

³⁷ The relevant Article 10 of this Law refers to a non-legal term "izbegla lica" which can only be translated as refugees.

³⁸ Published in the RS Official Gazette no. 15/2002 dated 25 March 2002; entry into force on 2 April 2002. Article 53 regulates who is obliged to pay contributions for health insurance.

for health insurance for persons who are not insured on some other basis is to be done by the head of the OMI of the temporary residence of such persons.³⁹

Nonetheless, the RS authorities have encountered several practical problems when dealing with the Croatian Serbs. In a number of cases Croatian Serb refugees have had problems in accessing health care and the welfare system as the individuals need to possess a valid refugee card. The RS Law on Refugees and DPs contains a transitional article, which prescribes that the refugee cards of all refugees who fail to re-register or whose refugee cards do not contain data of the revision will become invalid, even though re-registration should have no bearing on the legal status of the refugees, in accordance with the *BiH Law on Immigration and Asylum* and the Protocol that was signed by MHRR, RS MRDP and UNHCR. As noted, this revision has not been carried out by the MHRR yet.

A number of offices of the MUP in the RS have expressed their concerns that they cannot legally issue new refugee cards to the Croatian Serbs as this matter has been transferred to the MHRR, neither do they have the competency to re-validate the cards. As the cards are the main documents, which identifies the bearer as entitled to the rights granted to refugees, this has complicated access to health care considerably for a number of Croatian Serbs who did re-register but whose cards were not stamped. A similar problem is facing an estimated 10,000 Croatian Serbs who allegedly did not re-register.

There are currently no laws or instructions permitting the RS authorities to stamp and validate the refugee cards. The RS authorities have in practise dealt with the first group by asking the individuals to show a copy of the re-registration form and have on that basis stamped the refugee cards. However, the latter group of non-registered Croatian Serbs are facing difficulties in realising their rights. Reports from the UNHCR supported Legal Aid and Information Centres (LAICs) show that a number of Croatian Serbs are being asked to access health care through their employer or pension funds.

Croatian Serbs with RS citizenship have health care covered under the *RS Law on Health Care* and the *RS Law on Health Insurance*.⁴⁰

Education

Croatian Serbs, regardless of status, have equal access to Primary, Secondary and Higher education institutions under the same conditions as all BiH/RS citizens.⁴¹ Evidence from the field indicates that all educational certificates from Croatia are recognised by the RS educational system.

³⁹ The following documents are needed to register for health care with the OMI as a refugee: a certificate of refugee status, a copy of the ID Card, a list of members of the household, a health booklet, forms for registration to health insurance, de-registration from health insurance and a certificate on submitted registration/de-registration to health insurance. All of these documents must be submitted.

⁴⁰ O.G. RS no. 18/99, 58/01 and 70/01.

⁴¹ *BiH Law on Immigration and Asylum*, article 54. BiH O.G. 23/99, 23 December 1999.

Pensions Rights

Depending on the area in which the Croatian Serbs are residing in the RS, a number of them have no regular income. Some may work on a very irregular basis, but the majority depend on pensions as their main source of income. These are often paid out based on accrued years of work experience in Croatia, and it is thus crucial that agreements are in place to ensure the payment of these pensions in BiH.

An *Agreement on Social Insurance* was signed by the Presidents of BiH and of the Republic of Croatia on 4 October 2000, and entered into force in November 2001. It is not clear, however, whether it recognises pension entitlements of refugees in the respective countries. Some key provisions may be interpreted as requiring either permanent or a strictly-defined temporary residence status from refugees for payment of their pensions. In the past, this requirement was imposed by the Croatian Pension Fund, who considered Croatian Serb refugees in the RS to have temporary residence, despite the practise of permanent residence applied by the RS authorities. More recently, this Pension Fund has been more flexible and has made pension payments without these requirements.

One concern for Croatian Serbs is the recognition of pension rights for periods of employment (and contributions) from 1991–1995 on the territories of the RoC, which were not controlled by the Croatian Government at the time. To have this period recognised, individuals were required to validate (or ‘convalidate’) documents or decisions, pertaining to employment and related rights acquired during that period in these areas in accordance with the *Law on Convalidation* adopted by the Croatian Parliament on 1 October 1997,⁴² and the *1998 Decree on Implementation of the Law on Convalidation*.

In principle, almost the entire period of employment and contributions are thereby included, provided that the individuals had the status of insured persons registered with the respective registers of pension and disability insurance bodies in the areas covered by the Decree. However, persons who do not have residence in Croatia may realise their pension and disability insurance rights only pursuant to related international agreements between Croatia and relevant countries. Requests for convalidation of service/employment performed in the RSK region during 1991–1995 and in the UNTAES region during 1991–1997 had to be submitted prior to 10 April 1999.⁴³

In practice, the law and instructions received only scant publicity, and many Croatian Serbs could not apply in time due to lack of awareness and due to the residency requirements, which they did not meet. The only remaining possibility available under

⁴² Official Gazette No. 104/97, dated 8 October 1997. Article 1 of the *Law on Convalidation* provides that: “All individual documents and decisions passed or issued by various bodies or legal entities with public authority, passed or issued with respect to cases of judicial and administrative nature in the territories of the Republic of Croatia which were or which are under the protection and administration of the United Nations, are hereby convalidated pursuant to this Law, in accordance with the Constitution of the Republic of Croatia, the Constitutional Law on Human Rights and Freedoms and the Rights of Ethnic and National Communities or Minorities in the Republic of Croatia and the laws of the Republic of Croatia.”

⁴³ The deadline was set at 30 days upon registration of domicile and at the latest 12 months upon entry into force of the Decree.

Croatian law for recognition of such rights is therefore through international agreements, such as the Agreement on Social Insurance⁴⁴.

Employment

Legally, the right to employment for Croatian Serbs is derived from their status. If the Croatian Serb is a refugee, he/she derives the right to work from this status under the *BiH Law on Immigration and Asylum*,⁴⁵ as per the same conditions applicable to BiH citizens. If the Croatian Serb was or is now a BiH citizen then the right to work is derived from his/her status as a citizen.

In practice, all Croatian Serbs have been able to work, open businesses and conduct business regardless of their status. The *RS Labour Law* does not require evidence of citizenship when applying for or engaging in employment. However, Croatian Serbs without RS/BiH citizenship cannot hold certain positions, such as that of judges or prosecutors.⁴⁶ In practice many of them appear to be working illegally in the RS. Field research shows differences in employment rates both according to which RS municipalities the Croatian Serbs reside in, whether they are in urban or rural areas and their educational background. Reports from the Banja Luka area in particular, indicate that a number of Croatian Serbs work illegally, with the consequence that they do not enjoy health care nor pay pension contributions.

Croatian Serbs who are employed legally in the RS can have their years of service in Croatia recognised towards pension payments in the RS, if they have written proof/original documents of their employment. However, according to information received from the LAICs, the majority of Croatian Serbs have not been able to obtain such proof.

Social Welfare

Croatian Serbs who are BiH/RS citizens are covered by the *RS Law on Social Welfare*. Croatian Serbs with BiH/RS citizenship may not be able to access this entitlement due to the fact that, in accordance with Article 79 of the RS law, "financial means necessary for the realisation of rights determined by this Law are provided through the budget at the disposal of the municipalities, and of the Republic."

The budgets dedicated for this purpose varies from municipality to municipality and rarely meet the demands of the existing beneficiaries, and under no circumstances appear to be enough to sustain a livelihood. If the Croatian Serb population cease to have their needs covered under the *RS Law on Displaced Persons and Refugees*, e.g. by losing their refugee status, the numbers of beneficiaries at the Social Welfare Centres could swell, overwhelming their already stretched capacity and thereby

⁴⁴ At the beginning of 2003, the GoC through the work of the Joint Legal Working Group for Legislation expressed the willingness to extend the deadline and to remove certain administrative obstacles in that regard. However, the Ministry of Labour and Social Welfare did not submit the final proposal to the GoC as yet.

⁴⁵ Article 54.

⁴⁶ Article 47 of the *RS Law on Courts and Court Administration* (Official Gazette RS, No.13/2000), and Article 31 of the *RS Law on Public Prosecutor's Office* (Official Gazette RS, 13/2000), stipulates that BiH and RS citizenship certificate is required to hold such posts.

limiting the possibility for Croatian Serbs to attain their rights. This, however, would leave them in the same situation as other citizens of the RS.

4. Voluntary Repatriation Prospects

Figures obtained from the re-registration of Croatian Serbs in 2000 show that only 11 per cent of the population of Croatian Serbs then residing in the RS expressed a wish to return to Croatia, while 71 percent stated they did not wish to return. This figure has been publicised in the RS media as an indication that the majority of Croatian Serbs wish to remain in the RS, although sources such as the SDF and others indicate that more would return if conditions were more favourable. The results received from this question at the re-registration may therefore be misleading. Most respondents cited security risks⁴⁷ and lack of access to rights as their main concerns.

Nevertheless, between November 2000 and February 2003, it was reported that some 5,000 individuals repatriated to Croatia from BiH and FRY under UNHCR/ODPR auspices and/or other return modalities, as explained in the statistical chart below.

In short, the procedure in place for return to the Republic of Croatia is well established. Those refugees in the RS who are citizens of Croatia can acquire one way travel document (so called "putni list") at the Consulate Office of the RoC in Banja Luka. A one way travel document is also proof of Croatian citizenship. Upon return, these individuals are issued with passport, ID card and other Croatian documents. Former habitual residents can not obtain Croatian documents in order to return to Croatia. Therefore, a mechanism was put in place to facilitate their return under ODPR/UNHCR auspices and to assist them with transport and a reintegration allowance. Upon return, the Ministry of Interior (MoI), Republic of Croatia reinstates them into their previous legal status of permanently residing foreigners, in accordance with a procedure regulated in Instructions passed by the MoI in February 2000.⁴⁸

Repatriation and Citizenship

The right of all citizens to leave and to return to their country is a basic human right enshrined, inter alia, in Article 13(2) of the 1948 Universal Declaration of Human Rights and Article 12 of the 1966 International Covenant on Civil and Political Rights. Voluntary repatriation, where feasible, also constitutes the preferred durable solution for refugees as affirmed in numerous UNHCR Executive Committee Conclusions.⁴⁹ The attainment of this solution, however, requires that refugees shall be repatriated in conditions of safety and dignity. In addition, in Annex 7 of the

⁴⁷ The highly publicised arrests of indicted war criminals in the Republic of Croatia have had a very negative impact on the general attitude towards return among Croatian Serbs. There is much uncertainty as to the legitimacy of the indictments, in particular in relation to the various lists of alleged war criminals being circulated in the press and on the internet, and their prosecution. However, according to the monitoring reports of UNHCR Croatia and its implementing partners, the security situation in Croatia has significantly improved in the last two years.

⁴⁸ UNHCR Croatia, through its implementing partners and other legal NGOs, is closely monitoring the implementation of these Instructions and intervenes with the MoI, when necessary. Among the refugee and returnee population in Croatia, the number of former habitual residents appears much smaller than the number of citizens of Croatia. In accordance to the GoC/ MoI, 1150 ID cards for returnees, who were former habitual residents were issued in 2002 (letter of 13 January 2003).

⁴⁹ e.g. UNHCR EXCOM Conclusions 18(XXXI), 1980, and 40 (XXXVI), 1985

General Framework Agreement for Peace in Bosnia and Herzegovina (GFAP), emphasis was placed on the right to return to one's pre-conflict home. Given that the repossession and/or reconstruction of property often represents the first step in the return process, the removal of any such obstacles would appear to be central towards facilitating the return of Croatian Serb refugees. Furthermore, within a regional context, Croatian Serbs are seen as a major impediment to the property law implementation in BiH, since they largely occupy the property of others in the RS.

As noted, however, voluntary repatriation generally is associated with return to one's own country, i.e. country of citizenship. The Croatian Serbs are unusual in this regard, since approximately 75 per cent of the Croatian Serbs indicated BiH citizenship during the re-registration exercise, while only about 25 per cent indicated Croatian citizenship. These statistics cannot be considered as fully reliable, since no proof or verification of citizenship was required during re-registration and only the citizenship of the head of household was requested. Citizens normally cannot be considered refugees. Nonetheless, the very fact that they registered as Croatian Serb refugees appears to indicate that they do not consider themselves to be in their home country. The citizenship of BiH should not act in any case as an obstacle for return of Croatian Serbs to their country of former habitual residence and for property repossession.

Property Law Implementation and Return to Croatia

With the increasing implementation of the property laws in BiH, UNHCR has noted a considerable increase in the number of applications for return to Croatia through the ODPH procedure. To the extent that Croatian Serbs are citizens of Croatia, the GOC is obliged under the Return Programme to find alternative accommodation for evicted refugees wishing to return, if their homes in Croatia are occupied or damaged, in the form of collective centres, unless they can identify a host family. However, residence in a collective centre does not imply resolution of the property issue and therefore does not represent a durable solution. Moreover, the availability of alternative accommodation is limited, and former habitual residents in particular have faced difficulties with access to collective centres.

Even where host families are identified, a number of Croatian Serbs have later moved back to BiH because the host family did not wish to extend its hospitality forever. Many individuals also cite the lack of schools and employment opportunities in the areas of return as a problem. Generally elderly persons who receive pensions return, whereas younger individuals remain in BiH. It therefore appears primarily to be the implementation of the property laws in BiH, in addition to continuing improvements in the reception of Croatian Serbs in Croatia, which is providing a new impetus for returns to Croatia..

Repossession of property and cancellation of occupancy rights remain one of the major obstacles for return. It has been addressed to some extent with the recent amendments to the *Law on the Areas of Special State Concern*.⁵⁰ The Government of Croatia has also acknowledged some international initiatives for the provision of permanent alternative accommodation, but such initiatives need to be followed up

⁵⁰ *Law on Amendments to the Law on Areas of Special State Concern*, RC O.G. 88/02, 24 July 2002, entered into force on 1 August 2002.

closely to ensure implementation and enforcement as well as solutions on a more general basis.⁵¹

Spontaneous Returns

While the ODPB Programme has assisted a number of returnees, it has proved rather time consuming and cumbersome, in particularly for persons with No Ministry of Interior (MoI) records. To date, approximately 22 percent of the total number of processed return applications have been identified as having "No MoI records". This terminology refers to the situation of a variety of categories of individuals, including those without domicile in Croatia, those for whom the domicile was cancelled/deleted from the registries as well as former habitual residents (non-citizens).⁵² Considering the number of returnees through the ODPB procedure in comparison with spontaneous returns, it may be more effective to work on procedures facilitating the latter, such as through info campaigns, transportation and re-integration assistance.

Croatian citizens can return to Croatia outside the Return Procedures. As mentioned above, citizens without passports or other travel documents may obtain one-way travel documents (*putni lists*) through consular offices abroad if they can show a valid Croatian ID card, although in past practise this have taken up to one or two months. Once issued, it is valid for 30 days from the day of issuance. Problems have persisted for citizens who can not show an ID or a citizenship certificate, and whose records have purportedly been destroyed or taken to Serbia and Montenegro.

Agreements concluded between BiH and Croatia in 2000, 2001 and in 2002, which permitted the use of ID cards as valid documents for travel between the two countries for three-months periods during the summer, further facilitated travel by Croatian Serbs to Croatia on RS refugee ID cards. Further, as noted earlier, many Croatian Serbs have obtained BiH passports in the meantime, which they use to return to Croatia.

It is estimated therefore that the majority of the Croatian Serbs in BiH are able to access valid travel documents enabling them to cross the border without going through the Procedures, although UNHCR continues to encounter cases without valid travel documents.

In line with recent discussions on return initiatives through the Stability Pact for South Eastern Europe and the EU, the Government of Croatia and the Council of Ministers of BiH signed an agreement on the return of refugees in December 2001.⁵³ The

⁵¹ In February 2003, a statement of the Croatian Minister for Public Works, Construction and Reconstruction was reported, according to which housing will be provided for returning refugees who used to live in apartments with occupancy/tenancy rights in areas which remained under state control throughout the 1991-1995 conflict, including large Croatian cities.

⁵² The GoC/MoI, in addition to being the body responsible for verifying citizenship, is also responsible for personal identity documents such as ID cards, passports or driving licenses, which most of the applicants do possess. As the MoI keeps records of most of these documents issued prior to the conflict, having "no MoI records" implies that there is no record either in the MOI or at the citizenship registry under the competency of the Ministry of Justice, Administration and Local Self-Government.

⁵³ *Agreement between the Government of the Republic of Croatia and the Council of Ministers of Bosnia and Herzegovina on the Return of Refugees from the Republic of Croatia and Bosnia and Herzegovina.*

agreement envisages that the parties shall arrange for conditions and procedures for the return of refugees in safety and dignity, although it appears to focus solely on organised returns. It does not define the term refugees, but does not appear to limit it to citizens only. The implementation of the agreement is to be regulated by a protocol, which has not been drafted yet. No other measures to implement the agreement appear to have been initiated to date.

Overall, former habitual residents should therefore be able to travel to Croatia. However, difficulties remain which are particular to their status as non-citizens. Under the *Instruction on Renewal of Procedure by the MoI*, issued on 12 April 2000 (12 April Instruction),⁵⁴ permanent residence status for former habitual residents, which had been cancelled during the war can be reinstated upon submission of a request at the police station of their place of former residence. In practice, however, it appears that a number of persons have faced considerable delays and obstacles when seeking to reinstate their permanent residence status, especially in view of the fact that applications have to be accompanied by proof of pre-1991 domicile. Since the second half of 2002, significant improvements in the implementation of this procedure have been reported.

Once former habitual residents have reinstated their former permanent residence status, and have obtained their ID card for foreigners, they are eligible to apply for citizenship of the Republic of Croatia. Currently the citizenship laws in both Croatia and BiH do not allow for a person to hold the citizenship of another state unless certain preconditions are met⁵⁵. Although a draft agreement on dual citizenship between BiH and Croatia has been in discussion for some time, to date no such agreement has been signed.⁵⁶

Returnees will need to be informed about their loss of refugee status in BiH upon return to Croatia. The obligations set out in the Return Agreement signed between BiH and GoC in December 2001 still need to be initiated and implemented by the respective governments.

⁵⁴ *Instructions regarding Renewal of Procedure (i.e. annulment of decision on Cancellation of permanent stay for Persons who are not Croatian Citizens and on 08/10/1991 had their domicile in the Republic of Croatia*, from the Ministry of Interior of the Republic of Croatia to All Police Stations, No. 511-01-42-19703/00; 12 April 2000.

⁵⁵ In particular, the citizenship law in Croatia does not allow for a person who is of non-Croat ethnicity to acquire the citizenship of another state. The dual citizenship for non-ethnic Croat is, however, possible if his/her spouse is a citizen of Croatia and they both have domicile in Croatia.

⁵⁶ Persons wishing to obtain Croatian citizenship must therefore renounce their BiH citizenship. Although, under article 17 of the *BiH Citizenship Law*, BiH citizenship is lost automatically as soon as a person obtains the citizenship of another state, the Croatian authorities do not accept this *ex lege* loss of BiH citizenship, and have insisted that persons formally renounce their BiH citizenship. This has resulted in a huge financial burden placed on individuals due to the high administrative costs for renunciation in BiH (originally 1700 KM per person), which has acted as a severe obstacle for persons trying to acquire Croatian citizenship. The BiH authorities decided to decrease this exorbitant fee at the end of 2001 to 200 KM per household, and an additional fee of KM 100, if the request is submitted through a BiH consular office. To acquire Croatian citizenship, former habitual residents must then pay citizenship tax of 1,500 Kuna (375 KM) per person, i.e. 6,000 Kuna (1,500 KM) for a family of four.

5. Conclusion

A number of Croatian Serbs have been residing in the RS for more than 10 years as refugees. Although there are noticeable improvements in the return to Croatia (notably in the areas of return and re-integration of former habitual residents, reconstruction, documents recognition, acquisition of Croatian citizenship), impediments remain and more efforts have to be made to satisfactorily resolve property issues. The uncertainty surrounding citizenship and the related legal status of Croatian Serbs in the BiH/RS have confused considerably the options for durable solutions for the population. The issue thus needs to be clarified and the revision of status as envisaged with the re-registration exercise in 2000 needs to be undertaken without further delay.

One possibility to clarify the status of the Croatian Serbs who wish to obtain BiH/RS citizenship or who already believes themselves to be BiH/RS citizens, would be to utilise the current citizenship laws and have these individuals apply for BiH/RS citizenship, as most of them would fulfil the requirement of two years permanent residence in the RS. This could be done in a facilitated manner in close co-operation with the relevant authorities, in particular the MCAC, now Ministry for Civil Affairs, and the RS Ministry of Administration and Local Self-Government (MALSG), to ensure that Croatian Serbs who have considered themselves BiH/RS citizens all along are recorded properly into the relevant registries.

All Croatian Serbs should be eligible for citizenship under the 1999 citizenship legislation of the RS, including those persons registered under the 1992 RS citizenship law. The difference between refugee status and acquisition of citizenship would need to be understood by all concerned, in particular with regard to cessation of refugee status if an individual acquires the protection of the BiH state as a citizen. Pending the signing of a dual citizenship agreement between BiH and Croatia, the consequences of acquisition of either citizenship would also need to be addressed.

Annex: Glossary of Acronyms

BiH	Bosnia and Herzegovina
FRY	Federal Republic of Yugoslavia (now Serbia and Montenegro)
GOC	Government of Croatia
GFAP	General Framework Agreement for Peace
LAIC	Legal Aid and Information Centres
MALSG	RS Ministry of Administration and Local Self-Government
MCAC	BiH Ministry for Civil Affairs and Communication (now Ministry for Civil Affairs)
MDIR	Croatian Ministry for Development, Immigration and Development
MDR	Croatian Ministry for Development and Reconstruction
MHRR	BiH Ministry for Human Rights and Refugees
MoI	Ministry of Interior
MoJ	Ministry of Justice
MPWRC	Croatian Ministry for Public Works, Reconstruction and Construction
MUP	RS Ministry of Interior
ODPR	Croatian Office of Displaced Persons, Returnees and Refugees
OMI	Municipal Office of the RS Ministry for Refugees and Displaced Persons
OSCE	Organisation for Security and Co-operation in Europe
PLIP	Property Legislation Implementation Plan
RS	Republika Srpska
RSK	Republic of Srpska Krajina
SFRY	Socialist Federal Republic of Yugoslavia
SR BiH	Socialist Federal Republic of Bosnia and Herzegovina
SR Croatia	Socialist Federal Republic of Croatia
UNHCR	United Nations High Commissioner for Refugees
VRS	RS Armed Forces

