



Ms. Nathalie Prouvez
Secretary of the Human Rights Committee
Human Rights Treaties Branch
Office of the High Commissioner for Human Rights
UNOG-OHCR
CH-1211 Geneva 10
Switzerland

12 December 2008

Re: Proposed Issues on the report of Croatia the Human Rights Committee

Dear Madame Secretary,

COHRE respectfully submits the following proposed issues for discussion when the Committee undertakes preliminary review of Croatia's compliance with the Covenant during its 95th session. The matters following below do not constitute a comprehensive assessment of Croatia's human rights record, nor even a comprehensive assessment of all issues arising in Croatia under the Covenant. COHRE confines its comments below solely to those matters on which it has, in the recent period, undertaken research.

1. A major issue regarding Croatia's compliance with the International Covenant on Civil and Political Rights is the ongoing failure to resolve and remedy, in a manner consistent with the rule of law and Croatia's international human rights obligations, the arbitrary and discriminatory frustration of the right to adequate housing and related rights for ethnic Serbs and other minorities. These are a result of systematic cancellations by the Croatian government of socially owned property rights – so-called “occupancy rights” (*stanarsko pravo*) or “specially protected tenancies”¹ – and the failure to make available

¹ “Occupancy Rights” under the former Yugoslavia, are also referred to as “Specially Protected Tenancies,” “Socially Owned Apartments,” or “Right of Tenancy.” Occupancy Rights, was understood and treated as “a real property right, and in most aspects amounted to ownership, except that holders of tenancy rights could not sell the right and the state could terminate the right in certain narrow circumstances.” Human Rights Watch (HRW), *Croatia: A Decade of Disappointment*, Volume 18, No. 7 (D), 4 September 2006, p. 4.

modes which would ensure equity with ethnic Croats in the provision of replacement housing. This has resulted in systemic discriminatory denial of Covenant rights prevailing to the present day.

2. The conflict in the former Yugoslavia created a massive displacement of the ethnic Serb population in Croatia. The exceptional circumstances created by the war were characterized by forced evictions, intense racial discrimination against ethnic Serbs and other minority populations, and impossibility for occupancy right holders to return due to security issues.² The Croatian courts undertook the massive cancellation of occupancy rights, mainly with rights-holders *in absentia*, and often without even notifying the occupancy right holders.³ Shortly thereafter, another round of cancellations took place *ex lege* with the entry into force of legislation cancelling the existence and concept of occupancy right.⁴ These flats were then preferentially allocated to members of the majority or appropriated by the public authority.⁵ After the war, Croatia refused to consider restitution or compensation for former holders of occupancy rights, justifying these refusals with the argument that such a manner of property right no longer existed.⁶
3. Although the Croatian government has recently begun implementing programs to make housing available to some of the persons excluded from their housing during the conflict, such as the “housing care” program adopted in 2002, these programs (i) lack a human rights basis; (ii) do not constitute adequate remedy for Covenant violations; and (iii) are otherwise inadequate for a number of reasons. Moreover, the government has explicitly stated that, among applicants for housing, former tenancy rights holders have the lowest priority after other groups that are almost exclusively ethnic Croat.⁷ In addition, property restitution proceedings in Croatia have been ineffective for this purpose as they have discriminated between two classes of property owners: those whose private property was arbitrarily seized on the one hand, and those holding the property status of “occupancy rights” on the other. The latter persons have been denied adequate remedy on an equal footing with persons who, prior to the conflict, owned private property. Restitution for those internally displaced persons and refugees who lost their occupancy rights has not been completed.

² HRW, *Croatia: A Decade of Disappointment*, 2006, pp.4-5.

³ Internal Displacement Monitoring Center, Norwegian Refugee Council (IDMC), *Croatia: Reforms Come Too Late for Most Remaining Ethnic Serb IDPs A Profile of the Internal Displacement Situation*, 18 April 2006, p.161, available at [http://www.internal-displacement.org/8025708F004BE3B1/\(httpInfoFiles\)/FD4BFE6F3D368707C125714F0053ABFA/\\$file/Croatia+-April+2006.pdf](http://www.internal-displacement.org/8025708F004BE3B1/(httpInfoFiles)/FD4BFE6F3D368707C125714F0053ABFA/$file/Croatia+-April+2006.pdf), accessed 12 December 2008.

⁴ McCallin, Barbara, “Property Restitution and the Right to Adequate Housing for Refugees and Displaced Persons in the Balkans,” unpublished paper presented at Council of Europe Housing Rights Seminar, Budapest, 24-25 September 2007, p.2, on file at COHRE; see also HRW, *Croatia: A Decade of Disappointment*, 2006, p.5, referring to Law on the Lease of Apartments in Liberated Areas, *Narodne novine* (Official Gazette of the Republic of Croatia), no. 73/1995, September 27, 1995.

⁵ McCallin, 2007, p.2; see also IDMC, 2006, p.94-97; HRW, *Broken Promises, Impediments to Refugee Return*, Vol.15 No.6 (D), September 2003, p.35.

⁶ McCallin, 2007, p.2; U.S. Dept. of State, Report on Human Rights Practices in Croatia 2006, §d. Freedom of Movement Within the Country, Foreign Travel, Emigration and Repatriation. <http://www.state.gov/g/drl/rls/hrrpt/2006/78806.htm>.

⁷ HRW, *Croatia, A Decade of Disappointment*, 2006, p. 8.

4. These matters give rise to systemic violations by Croatia of the right to be equal before the law and to be entitled, without any discrimination, to the equal protection of the law, as required by Article 26 of the Covenant.⁸ Croatia has undertaken, through ratifying Article 26 of the Covenant on 12 October 1992,⁹ to “prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”¹⁰ The requirements of Article 26 have been described by the Committee *inter alia* as follows:

It derives from the principle of equal protection of the law without discrimination, as contained in article 7 of the Universal Declaration of Human Rights, which prohibits discrimination in law or in practice in any field regulated and protected by public authorities. Article 26 is thus concerned with the obligations imposed on States in regard to their legislation and the application thereof.¹¹

5. Where the ethnic Serbs are concerned -- as comprising the majority of affected internally displaced persons or returning refugees -- the Covenant’s Article 26 requirements are not upheld at present in Croatia. Croatia’s Covenant Article 26 and related commitments are not respected as a result of the Croatian government’s continuing violation of former occupancy rights holder’s housing rights through the adoption and/or toleration of a number of policies and practices that strike at the fundamental basis of equal protection. Specifically, these include the need for security, privacy, and shelter, and freedom from racial and other discrimination constituting the foundation for the successful realization of fundamental human rights, including but not limited to the right to adequate housing. At the core of this issue is the disproportionate discriminatory impact that continuing housing rights violations have on Croatia’s ethnic Serb population, in particular, those persons who previously resided in socially-owned flats or otherwise enjoyed the status of occupancy rights-bearer.
6. For these reasons, COHRE proposes, as an issue to be raised with the Croatian government by the Task Force, the following:

What actions is the government taking to ensure that all persons whose property was arbitrarily seized and/or whose property or housing rights have been arbitrarily nullified – including via the racially discriminatory nullification of “occupancy rights” and/or the seizure of property or housing derived from an occupancy rights status -- have equal access to compensation for lost property; how will the government implement such actions while ensuring all persons equal protection without discrimination under the law?

A Collective Complaint under the European Social Charter mechanism against the government of Croatia on similar matters is currently pending before the European

⁸ International Covenant on Civil and Political Rights (1966).

⁹ <http://www2.ohchr.org/english/bodies/ratification/4.htm>, accessed 5 December 2005.

¹⁰ International Covenant on Civil and Political Rights, Article 26 (1966).

¹¹ *Case of F. H. Zwaan-de Vries v. the Netherlands*, Communication No. 182/1984, U.N. Doc. Supp. No. 40 (A/42/40) at 160 (1987).

Committee of Social Rights. The document complaint, which includes extensive further factual material, is appended here for reference.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read 'Claude Cahn', with a long, vertical flourish extending downwards from the end of the signature.

Claude Cahn
Head of Advocacy

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