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Croatia

A shadow on Croatia's future: Continuing impunity for war crimes and crimes against humanity

Introduction

The continuing impunity for war crimes and crimes against humanity committed during the 1991-1995 armed conflict remains the main human rights problem in the Republic of Croatia. The many perpetrators of such crimes committed against Croatian Serbs largely continue to enjoy impunity while the victims and their families are denied access to justice and redress. Courts are still applying ethnic criteria in investigating and prosecuting war crimes and crimes against humanity and the Croatian judicial system has overwhelmingly failed to address violations allegedly committed by members of the Croatian Army and police forces. Although the Croatian government has pledged full cooperation with the International Criminal Tribunal for the former Yugoslavia (Tribunal), the authorities have so far been unwilling or unable to arrest and transfer to the Tribunal's custody Ante Gotovina, charged with crimes against humanity and war crimes committed against the Krajina Croatian Serb population in 1995. Ante Gotovina is currently at large and believed to be on the territory of Croatia.

In its bid to join the European Union (EU), Croatia must ensure respect for fundamental human rights and the rule of law. The failure of the Croatian authorities to ensure that all perpetrators of war crimes and crimes against humanity are brought to justice, regardless of their ethnicity or of that of the victims, and to award full reparations to the victims and their families, is a serious obstacle to the realization of these principles and rights. In this report Amnesty International details its concerns on

the unresolved human rights legacy of the 1991-1995 armed conflict¹ focusing in particular on:

- the failure of the authorities to investigate thoroughly and promptly allegations of unlawful killings and extrajudicial executions committed during the 1991-1995 armed conflict by members of the Croatian Army and police forces, and to ensure that the perpetrators are brought to justice in proceedings that meet international standards of fairness;
- the failure of the authorities to disclose information on the fate and whereabouts of Croatian Serbs who went missing during the 1991-1995 armed conflict and of victims of "disappearances", whose alleged perpetrators were members of the Croatian Army and police forces, and to bring to justice those responsible for the "disappearances".

This report is not intended as a comprehensive examination of these issues; instead, it sets out illustrative examples of a pattern of continuing impunity for past human rights violations and of ongoing war-related violations in Croatia.² It also concludes with a series of recommendations to the Croatian authorities urging them to fully address the human rights legacy of the war, to end impunity for war crimes and crimes humanity committed against Croatian Serbs, and to conduct exhumation and identification procedures with a view to disclosing the fate and whereabouts of all missing and "disappeared" persons, regardless of the ethnicity of the victims or of that their families.

Croatia's EU accession process

Since 2000, when parliamentary and presidential elections produced significant changes in the Croatian political climate, Croatia has moved quickly towards European integration.³ The European Commission adopted in July 2000 a proposal on

¹ For Amnesty International's other concerns about Croatia, see also *Croatia: Briefing to the United Nations Committee against Torture*, AI Index: EUR 64/001/2004, May 2004; and *Croatia: Briefing to the United Nations Committee on the Rights of the Child, 37th Session, September 2004*, AI Index: EUR 64/003/2004, October 2004.

² Some of the information contained in this report was provided to Amnesty International by relatives of the victims.

³ Croatia joined the Council of Europe (CoE) in 1996. To fulfil the accession criteria, Croatia formally committed, *inter alia*, to "take all necessary measures, including adequate police protection, to guarantee the safety and human rights of the Serb population in Croatia, in particular in the former UN Protected Areas, to facilitate the return of people who left these areas and to allow them, through a specific procedure established by law, to effectively exercise their rights to recover their property or receive compensation"; "co-operate with, and actively assist, the Prosecutor of the International

the opening of a Stabilisation and Association Agreement (SAA) between the EU and Croatia. Negotiations on the SAA were officially opened in November 2000 and the Agreement was signed in October 2001.⁴ Article 2 of the SAA states that "[r]espect for the democratic principles and human rights as proclaimed in the Universal Declaration of Human Rights and as defined in the Helsinki Final Act and the Charter of Paris for a New Europe, respect for international law principles and the rule of law [...] shall form the basis of the domestic and external policies of the Parties and constitute essential elements of this Agreement". Moreover, Article 3 states that "[t]he conclusion and the implementation of this Agreement come within the framework of the conclusions of the Council of the European Union of 29 April 1997, and are based on the individual merits of Croatia".⁵

The 2003 Stabilisation and Association Report criticized the Croatian authorities for lack of cooperation with the Tribunal and noted that "domestic trials [for war crimes] have shown severe shortcomings"⁶ including the intimidation of witnesses and the continuous postponement of the hearings, which "raise some concern about the judiciary's ability to prosecute fairly ethnic Croat defendants".⁷ The 2003 Stabilisation and Association Report also stated that "[t]he Government maintains its stated commitment to implementing all obligations related to the return of refugees and displaced persons contained in the Dayton/Paris Agreements"⁸ citing, however, obstacles which continued to prevent the return of refugees and internally displaced persons.

Criminal Tribunal for the former Yugoslavia, in bringing before the Tribunal without delay persons indicted for war crimes, crimes against humanity and genocide". See PACE, *Croatia's request for membership of the Council of Europe*, Doc. no. 7510, 29 March 1996.

⁴ The United Kingdom (UK) and the Netherlands had initially suspended the ratification of the SAA over Croatia's lack of cooperation with the Tribunal. The Netherlands and the UK have completed the procedure for the ratification of the SAA in May and September 2004, respectively.

⁵ The EU Council conclusions of 29 April 1997 established political and economic conditions with regard to the Stabilisation and Association Process for countries in Southeastern Europe. These include the "[c]redible offer to and a visible implementation of real opportunities for displaced persons (including so called 'internal migrants') and refugees to return to their places of origin, and absence of harassment initiated or tolerated by public authorities"; "[c]ompliance of the countries which are signatories of the GFAP with the obligations under the peace agreements, including those related to cooperation with the International Tribunal in bringing war criminals to justice"; "[a] credible commitment to engage in democratic reforms and to comply with the generally recognized standards of human and minority rights"; "[a]bsence of generally discriminatory treatment and harassment of minorities by public authorities". See Council conclusions on the principle of conditionality governing the development of the European Union's relations with certain countries of south-east Europe, 29 April 1997.

⁶ p. 12.

⁷ *Ibid.*

⁸ *Ibid.*, p. 10.

The Croatian government officially applied for EU membership in February 2003. Following the general election held in November 2003, the HDZ (Croatian Democratic Union – *Hrvatska demokratska zajednica*) became the strongest party in the Parliament and its leader Ivo Sanader took office as prime minister. The HDZ was formerly led by Franjo Tuđman, the first president of independent Croatia. The new government has continued to include among its stated priorities Croatia's integration into the EU and has pledged cooperation with the Tribunal. However, the authorities have been unwilling or unable to date to arrest and transfer to the Tribunal Ante Gotovina, a retired Croatian Army general, indicted by the Tribunal with crimes against humanity and violations of the laws or customs of war, for his alleged responsibility for crimes committed by the Croatian forces during Operation "Storm". It has been alleged that the suspect has enjoyed the protection of criminal circles and of some members of the Croatian intelligence community.⁹ Moreover, despite formal reassurances, the Croatian authorities have often maintained an ambiguous attitude towards the issues of cooperating with the Tribunal in general and Ante Gotovina's arrest in particular. In June 2003, Croatian President Stipe Mesić reportedly proposed to transfer Ante Gotovina to the Tribunal in exchange for a revision of his indictment and after the suspect had been given the opportunity to make a statement to Tribunal investigators: this proposal was refused by the Tribunal. Croatian Prime Minister Ivo Sanader reportedly suggested in December 2003 that his cabinet may legally challenge the indictment against Ante Gotovina¹⁰ and in October 2004 he reportedly reiterated his belief in Ante Gotovina's innocence.¹¹

⁹ On 23 November 2004, in her address to the UN Security Council, the Tribunal's prosecutor stated that "there are strong indications that Ante Gotovina, whose public image of a national hero is not denied by anyone, has enjoyed, and continues to benefit from a well-organised support network, including within State structures". See Tribunal, *Address by Carla del Ponte, Prosecutor of the International Criminal Tribunal for the Former Yugoslavia, to the United Nations Security Council*, CDP/P.I.S./917-e, 23 November 2004.

¹⁰ "Amassing Acquittals", *Transitions Online*, 28 January 2004. In September 2002 the Tribunal had unsealed an indictment against retired General Janko Bobetko, the former Chief of Staff of the Croatian Army, for war crimes and crimes against humanity committed against Croatian Serbs in 1993. Ignoring the obligation to cooperate unconditionally with the Tribunal, the government first referred the case to the Constitutional Court, apparently in an attempt to stem public anger. Croatia also appealed against both the decision confirming the indictment and the arrest warrant. In November 2002 the Tribunal turned down both appeals, finding that Croatia could not challenge these decisions on political grounds and that only the accused in person could counter the indictment before the Tribunal. The Constitutional Court also ruled in November 2002 that it was not competent to decide on the merits of the indictment. Doctors appointed by the Tribunal visited Bobetko in early 2003 and decided that he was too ill to travel to the Hague and stand trial. Janko Bobetko's arrest warrant was withdrawn in April 2003 and, shortly afterwards, he died in his home.

¹¹ "Sanader: Gotovina je apsolutno nevin" [Sanader: Gotovina is Completely Innocent], *Novi List*, 19 October 2004.

In April 2004 the European Commission issued an opinion (*avis*) on Croatia's candidacy to join the EU formulated on the basis of the Copenhagen Membership Criteria¹² and taking into account the Stabilisation and Association Process conditionalities which were established by the EU Council in April 1997. The Copenhagen Criteria, in particular, require that institutions in candidate countries guarantee democracy, the rule of law, human rights and respect for and protection of minorities.¹³ The *avis* stated that "co-operation with ICTY has improved significantly in the past months"¹⁴ stressing however Croatia's need "to take all necessary steps to ensure that the remaining indictee is located and transferred to ICTY".¹⁵ The European Commission's Opinion further noted that statistical data suggested that a single standard of criminal responsibility is not yet applied equally to all those who face war crime charges before Croatian courts and concluded that defendants of Serb ethnicity are disadvantaged at various stages of judicial proceedings compared to Croats.¹⁶ The *avis* acknowledged that the Croatian government has put in place provisions to provide housing solutions to refugees and internally displaced persons who wish to return.¹⁷ However, it stressed that the implementation of some of these provisions should be accelerated and improved and that the return of some other types of property than housing has still not been addressed in the same legal way as the repossession of housing.¹⁸ Moreover, the European Commission's Opinion emphasized that additional efforts are needed to ensure the sustainability of returns.¹⁹

Despite unresolved human rights issues, with regard to the first of the Copenhagen criteria, pertaining to political institutions, the *avis* concluded that Croatia has "stable democratic institutions"²⁰ and that "there are no major problems

¹² Adopted by the European Council in June 1993.

¹³ The Copenhagen criteria also require the existence of a functioning market economy as well as the capacity to cope with competitive pressure and market forces within the Union. Moreover, membership presupposes the candidate's ability to take on the obligations of membership including adherence to the aims of political, economic and monetary union. See Conclusions of the Presidency, Copenhagen, 21-22 June 1993, p. 12.

¹⁴ European Commission, Opinion on the application of Croatia for membership of the European Union, p. 31

¹⁵ *Ibid.*

¹⁶ *Ibid.*

¹⁷ *Ibid.*, p. 29.

¹⁸ *Ibid.*

¹⁹ *Ibid.* See also p. 28 where it is stated that "[t]he main issues refugees face upon return are housing, mines, economic re-integration, potential harassment based on 'war crimes' allegations and the inhospitable atmosphere within the receiving local communities". The *avis* also quoted "administrative problems such as non recognition of pension rights based on working years in the formerly Serb controlled areas".

²⁰ *Ibid.*, p. 119.

over assuring the rule of law and respect for fundamental rights".²¹ On this basis the Commission confirmed that Croatia met the political criteria set by the Copenhagen European Council in 1993 and the Stabilisation and Association Process conditionalities established by the Council in 1997²² and recommended the opening of negotiations on EU accession. A draft European Partnership for Croatia was also proposed by the European Commission in April 2004, listing the priorities for Croatia's preparations for further integration with the EU and serving as a checklist against which to measure progress. These in particular included the strengthening of the judicial system, improved protection for minorities, speeded up refugee returns and full cooperation with the Tribunal.

In June 2004 the EU Council granted Croatia the official status of candidate country, emphasizing Croatia's need to maintain full cooperation with the Tribunal and "to make additional efforts on minority rights, refugee returns, reform of the judiciary, regional cooperation and the fight against corruption".²³ The date for the beginning of the accession negotiations is expected to be decided during the European Council to be held in Brussels on 16 and 17 December 2004.

Amnesty International takes no position on whether or not any candidate country, including Croatia, should be admitted as a member of the EU. Amnesty International understands that during the accession process Croatia, like other candidate states, will benefit from EU encouragement and support for its reforms. As it was recognized in the European Commission's *avis*, as well as in the June 2004 Presidency Conclusions, Croatia's human rights situation has improved in the past few years; however, there remain concerns about the failure of the Croatian authorities to fully address the human rights legacy of the 1991-1995 conflict. Member governments of the EU, as well as EU institutions, should use their influence for a further improvement in the human rights situation in Croatia ensuring in particular that the Croatian authorities bring to justice before domestic courts those responsible for crimes against humanity and war crimes in trials that meet international standards of fairness, and arrest and transfer to the Tribunal's custody persons indicted by the Tribunal for such crimes.

The 1991-1995 armed conflict

Croatia's declaration of independence from the Socialist Federal Republic of Yugoslavia (SFRY) in June 1991 was followed by an armed conflict between the

²¹ *Ibid.*

²² *Ibid.*, p. 120.

²³ Presidency Conclusions, Brussels, 17-18 June 2004, p. 7.

Croatian Army and Croatian Serb armed forces, aided significantly by the Yugoslav People's Army (*Jugoslovenska narodna armija* – JNA). In May 1992 Croatia gained international recognition as a UN member state. From early 1991 to 1995 large parts of the country's territory, in particular areas bordering Bosnia-Herzegovina and Serbia with a significant or majority Croatian Serb population, were under control of the *de facto* Croatian Serb political and military leadership of the self-proclaimed autonomous Republic of the Serbian Krajina (*Republika srpska krajina* – RSK). In January 1992 a UN-brokered cease-fire came into effect and in April UN Protection forces (UNPROFOR) were stationed in the areas under Croatian Serb control (which became known as UN Sectors North, South, West and East).

In May and August of 1995 the Croatian Army and police forces recaptured UN Sectors West, North and South, during operations "Flash" (*Bljesak*) and "Storm" (*Oluja*). During and after these military offensives, some 200,000 Croatian Serbs, including the entire RSK army, fled to the neighbouring Federal Republic of Yugoslavia (FRY) and areas of Bosnia-Herzegovina under Serb control (now the Republika Srpska entity). In November 1995 the Croatian Government and the *de facto* Croatian Serb authorities signed the Basic Agreement on the Region of Eastern Slavonia, Baranja and Western Sirmium (Erdut Agreement). This agreement foresaw the peaceful return of the remaining UN Sector East to complete Croatian Government control by January 1998, following a period of interim management of the region by the UN Transitional Administration for Eastern Slavonia (UNTAES).

War crimes and crimes against humanity were perpetrated on a massive scale by Croatian and Serbian forces, as well as by the JNA, during the first stage of armed conflict in 1991.²⁴ These violations included murders, torture including rape, "disappearances", arbitrary detention and forcible expulsions. Instances of mass human rights violations, which are among the most serious in the 1991-1995 conflict, took place in November 1991 following the fall of the town of Vukovar in eastern Croatia. After a protracted and destructive siege of the city by the JNA, its eventual surrender was followed by grave human rights violations, including murders, "disappearances", torture including rape, and the forceful expulsion of a large part of the non-Serb population. The fate and whereabouts of many of those arrested and detained after the fall of Vukovar remain unknown. According to official data, over 500 people are still listed as missing in the Vukovar County region, many of whom are believed to have "disappeared" during or after the fighting.

²⁴ For further information see *Yugoslavia: Torture and deliberate and arbitrary killings in war zones*, AI Index: EUR 48/26/91, November 1991 and *Yugoslavia: Further reports of torture and deliberate and arbitrary killings in war zones*, AI Index: EUR 48/13/92, March 1992.

Between 1991 and 1995, many of those members of the Croatian Serb armed forces believed to be responsible for human rights violations, while technically within the borders of the Republic of Croatia, were not within its effective control as the territory was held by the *de facto* RSK. The Croatian authorities, who remained in control of the largest part of the country, also failed to respect human rights, which was manifested in their restrictions on freedom of expression, unfair trials of political prisoners and torture and ill-treatment in police custody. From 1992 until the "Flash" and "Storm" operations in 1995, there was no major escalation or renewed full-scale armed conflict but instances of killings, torture and arbitrary detention continued to be reported mainly against the non-Serb population in the UN Sectors.

In the aftermath of operations "Flash" and "Storm" widespread human rights violations, in particular murders, torture, and forcible expulsions were committed by members of the Croatian Army and police against Croatian Serb civilians who had remained in the area, and to a lesser degree against members of the withdrawing Croatian Serb armed forces.²⁵ These human rights violations met with vigorous international condemnation.²⁶

Throughout the period of armed conflicts hundreds of thousands of people became internally displaced or refugees abroad and approximately 300,000 Croatian Serbs left Croatia during the 1991-95 conflict. According to estimates of the UN High Commissioner for Refugees, more than 200,000 Croatian refugees, mostly Croatian Serbs, are still displaced in neighbouring countries and beyond. Tens of thousands of Croatian Serbs could not return and many returns were not sustainable.²⁷ The Croatian authorities had pledged to return illegally occupied property by the end of June 2004 and other occupied property by the end of 2004, as part of their obligation to award reparations, including restitution of property, to Croatian Serbs displaced by the conflict. However, the repossession rate continues to remain slow. Many Croatian Serbs, especially those who formerly lived in urban areas, could not return because they had lost their tenancy rights to socially owned apartments. Lengthy and in some cases unfair proceedings, particularly in lower level courts, continue to remain a major problem for returnees pursuing their rights in court. Moreover, Croatian Serbs continue to face discrimination in employment, property claims and access to other economic and social rights.

²⁵ See *Croatia: Impunity for killings after Storm*, AI Index: 64/04/98, August 1998.

²⁶ See also UN Security Council Resolution no. 1009, UN Doc. S/RES/1009, 10 August 1995.

²⁷ For a detailed analysis of the obstacles to the return of Croatian Serb refugees see Human Rights Watch, *Croatia: Broken Promises: Impediments to Refugee Return to Croatia*, 2 September 2003.

Impunity for unlawful killings and extrajudicial executions allegedly committed by members of the Croatian Army and police forces

A considerable number of trials for war crimes and crimes against humanity have been held before Croatian courts over the past few years and the Croatian judiciary continues to actively investigate and prosecute war-time human rights violations. However, in the vast majority of cases, criminal proceedings have been initiated only when victims of such crimes were ethnic Croats.

Amnesty International welcomes the stated commitment of the Croatian authorities to tackle impunity for war crimes through full cooperation with the Tribunal and through criminal proceedings instituted before Croatian courts. Moreover, Amnesty International notes that in 2003 the Rijeka County Court issued the first domestic convictions for war crimes of relatively high-level perpetrators of war-related human rights violations committed against members of the Croatian Serb communities.²⁸ Amnesty International also notes that the Croatian Supreme Court has played an increasingly positive role in addressing some of the shortcomings in trials for war crimes and crimes against humanity conducted before lower level courts.²⁹ However, Amnesty International remains concerned that the Croatian authorities overwhelmingly failed to address crimes allegedly committed by members of the Croatian Army and police forces against the Croatian Serb population and that most of the perpetrators have continued to enjoy impunity for their crimes.

In June 2004 the UN Committee against Torture (CAT) issued its Conclusions and Recommendations, after having examined Croatia's third periodic report on measures taken by Croatia to give effect to the rights enshrined in the Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment.³⁰ The CAT expressed concern at the "reported failure of the State party to carry out prompt, impartial and full investigations, to prosecute the perpetrators and to provide fair and adequate compensation to the victims [of torture and ill-treatment which occurred during the conflict]", at "[a]llegations that double standards were applied at

²⁸ In March 2003, the Rijeka County Court convicted three Croatian Army officers, including retired General Mirko Norac, after a trial for war crimes against Croatian Serb civilians in the Gospić area in 1991. The accused were sentenced to prison terms of up to 15 years. The sentence was confirmed in appeal by the Croatian Supreme Court in June 2004.

²⁹ According to statistics provided by the OSCE (Organization for Security and Co-operation in Europe) Mission to Croatia, in the first eight months of 2004 the Supreme Court reversed approximately 65 per cent of verdicts issued by lower level courts in trials for war crimes and crimes against humanity. See OSCE Mission to Croatia, *Status Report No. 15 on Croatia's Progress in Meeting International Commitments since July 2004*, 21 November 2004, p. 20.

³⁰ Of which Croatia became a party in 1992, by succession from the SFRY.

all stages of the proceedings against Serb defendants and in favour of Croat defendants in war crime trials" as well as at "[t]he reported harassment, intimidation and threats faced by witnesses and victims testifying in proceedings and the lack of adequate protection from the State party".³¹ The CAT recommended, *inter alia*, that the Croatian authorities "[t]ake effective measures to ensure impartial, full and prompt investigations into all allegations of torture and other cruel, inhuman or degrading treatment, the prosecution and punishment of the perpetrators as appropriate and irrespective of their ethnic origin, and the provision of fair and adequate compensation for the victims".³² A recent OSCE report on domestic war crimes trials in Croatia noted that "the national origin of defendants and possibly even more importantly that of victims continued to affect war crimes proceedings in 2003".³³ According to statistical data compiled by the OSCE Mission to Croatia,³⁴ in 2003 19 of 20 people arrested, 137 of 148 under investigation, three of three indicted, 83 of 102 on trial, and 10 of 12 people convicted were ethnic Serbs.³⁵ The total number of ethnic Croats arrested, indicted and put on trial for war crimes and crimes against humanity decreased from 2002 to 2003.³⁶

In a few cases, investigations into violations committed against members of the Croatian Serb communities were launched during the armed conflict, or soon afterwards, and the trials that followed were conducted in a politically charged atmosphere which was not conducive to the fair administration of justice. Croatian Serbs Mihajlo Zec, his wife Marija and his 12-year-old daughter Aleksandra were killed in Zagreb in December 1991, allegedly by members of the Croatian police.³⁷ In 1992 the suspected perpetrators of the murder were acquitted by the Zagreb County Court reportedly because their confessions were considered to be inadmissible in court since they were made to the investigative judge in the absence of their legal

³¹ UN Doc. CAT/C/CR/32/3, Para. 8.

³² *Ibid.*, Para 9.

³³ OSCE Mission to Croatia, *Background Report: Domestic War Crimes Trials 2003*, 22 June 2004, p. 1. See also, Human Rights Watch Briefing Paper, *Croatia: The Case of Ivanka Savic*, 19 July 2004.

³⁴ On the basis of its monitoring of proceedings for war crimes conducted by the Croatian authorities in 2003.

³⁵ OSCE Mission to Croatia, *Background Report: Domestic War Crimes Trials 2003*, 22 June 2004, p. 6.

³⁶ *Ibid.* According to the latest Status Report of the OSCE Mission to Croatia, "the national origin of defendants and victims continued to have an impact on the adjudication of domestic war crimes proceedings in lower courts throughout 2004". In this respect, the report also noted that "Serbs continue to represent the overwhelming majority of individuals alleged to have committed war crimes in 1991-1995 conflict". See OSCE Mission to Croatia, *Status Report No. 15 on Croatia's Progress in Meeting International Commitments since July 2004*, 21 November 2004, p. 20.

³⁷ Amnesty International reported the killing of members of the Zec family in *Yugoslavia: Further reports of torture and deliberate and arbitrary killings in war zones*, AI Index: EUR 48/13/92, March 1992.

representatives.³⁸ Reportedly, during the proceedings the court was subjected to strong political pressure.³⁹ In 1994, the ninth periodic report on the situation of human rights in the territory of the former Yugoslavia by the Special Rapporteur of the UN Commission on Human Rights noted that "[i]ndependence and impartiality in the administration of justice constitute one of the basic foundations of effective protection of human rights"⁴⁰ and quoted the unresolved murder of members of the Zec family as a case which "casts serious doubts on measures taken to ensure such a system in Croatia".⁴¹ The report in particular stated:

"In December 1991, Mr. and Mrs. Zec and their 12-year-old daughter were murdered in Zagreb and several days later five persons were arrested as alleged perpetrators of the crime. According to reliable sources, four of the suspects were members of a special police unit. The five admitted having committed the murders; however, they were released soon after their arrest for procedural reasons, and have never been punished".⁴²

In April 2004 the Croatian authorities pledged to pay compensation amounting to approximately 200,000 Euros to the two surviving members of the Zec family and the Croatian Prime Minister has reportedly recently stated that the murder of members of the Zec family must be solved. However, the perpetrators of this crime continue to enjoy impunity.

The intimidation of witnesses,⁴³ as well as the tribunals' perceived or actual lack of impartiality, have often been serious obstacles to the delivery of justice also in

³⁸ "La Croazia in Europa, con i fantasmi della guerra" [Croatia in Europe, with the Ghosts of the War], *Osservatorio sui Balcani*, 28 April 2004. The right of suspects to have a lawyer present during questioning must be fully respected. Nevertheless, it is a matter of concern that the investigating judge reportedly prevented an effective determination of guilt or innocence by failing to respect this fundamental right.

³⁹ The prosecutor did not appeal the verdict. See also "Kako smo ubijali u Pakračkoj Poljani" [How We Killed in Pakračka Poljana], *Feral Tribune*, 1 September 1997. Reportedly one of the accused subsequently received a military decoration in 1995.

⁴⁰ Ninth periodic report on the situation of human rights in the territory of the former Yugoslavia, submitted by Mr. Tadeusz Mazowiecki, Special Rapporteur of the Commission on Human Rights pursuant to Para. 37 of Commission resolution 1994/72 of 9 March 1994 and Economic and Social Council decision 1994/262 of 22 July 1994, UN Docs. A/49/641 and S/1994/1252, Para. 98.

⁴¹ *Ibid.*

⁴² *Ibid.*

⁴³ In November 2004 the OSCE Mission to Croatia noted that the security of witnesses and court personnel during war crime trials "warrant additional measures, particularly in cases against former members of the Croatian armed forces". Despite the adoption of a Law on Witness Protection in 2003, the Mission reported that the Witness Protection Unit at the Ministry of the Interior is not fully operational. See OSCE Mission to Croatia, *Status Report No. 15 on Croatia's Progress in Meeting International Commitments since July 2004*, 21 November 2004, pp. 21 and 23.

recent trials for crimes committed against members of the Croatian Serb communities. The "Lora" trial against eight former members of the Croatian Military Police, held at the Split County Court in 2002, is a case in point. The suspects, accused of having tortured non-Croat civilians and of having murdered two of them in Split's Lora military prison in 1992, were reportedly welcomed by loud applause from the public at the start of the trial.⁴⁴ It was reported that, during the trial, the president of the panel of judges repeatedly addressed the accused by their first names and shook their hands when they entered the courtroom.⁴⁵ Moreover, the presiding judge reportedly appeared to mock a statement made by one of the witnesses who claimed he had been tortured in the Lora prison.⁴⁶ Widespread witness harassment and intimidation was also reported and several prosecution witnesses heard by the court retracted the detailed statements they had made during the criminal investigation into human rights violations in Lora prison. Many of the witnesses were former detainees who suffered human rights violations, or former prison guards. The "Lora" trial ended with the acquittal of all the accused in November 2002.⁴⁷ In August 2004 the Croatian Supreme Court overturned the verdict ruling that the Split County Court had incorrectly and incompletely established the facts and ordered a retrial of the suspects before a new panel of judges.⁴⁸ A new trial is reportedly expected to begin in January 2005.

In another high profile case, a former member of the Croatian special police forces was twice acquitted by the Karlovac County Court of charges of having killed 13 disarmed JNA reservists in 1991, by firing bursts from his machine gun. The accused was first acquitted in 1992 and the Croatian Supreme Court overturned the verdict in 1993. The retrial, which started in 2000, was completed after various delays in 2003. Also in this case the proceedings, which were reportedly accompanied by public demonstrations of support for the defendant,⁴⁹ ended with an acquittal. The Karlovac court reportedly ruled that the accused acted in "self-defence". The Croatian Supreme Court overturned the verdict, ruling that, in the trial, facts had been

⁴⁴ "Regional Report: Lora Trial Prosecutors Seek Relocation", *Institute for War and Peace Reporting*, 24-30 June 2002; "Amassing Acquittals", *Transitions Online*, 28 January 2004.

⁴⁵ OSCE Mission to Croatia, *Supplementary Report: War Crime Proceedings in Croatia and Findings from Trial Monitoring*, 22 June 2004, p. 13.

⁴⁶ In explaining his decision to free the suspects, the judge reportedly stated that had the witness been tortured as much as he claimed, "not even Rambo would have survived". See "Croatia: Lora Retrial Eases Pressure on Sanader", *Institute for War and Peace Reporting*, 27 August 2004.

⁴⁷ Reportedly, for lack of evidence.

⁴⁸ Croatian Supreme Court Decision no. I Kž 259/03-6.

⁴⁹ OSCE Mission to Croatia, *Supplementary Report: War Crime Proceedings in Croatia and Findings from Trial Monitoring*, 22 June 2004, p. 13. See also "Etnička mjera za zločin" [Ethnic Criminal Standards], *Novi List*, 4 October 2002. The accused reportedly received a military decoration in 1995.

incorrectly established.⁵⁰ The Supreme Court ordered the suspect's retrial for the third time in March 2004. The retrial before the Karlovac County Court began in September 2004.

Information on crimes against the Croatian Serb population in and around Sisak,⁵¹ a town in central Croatia situated approximately 50 km southeast of Zagreb, became available in the early phase of the armed conflict. In several cases, the suspected perpetrators were members of the Croatian Army or police forces. Between 1991 and 1992 Croatian Serbs in Sisak and in the surrounding area became victims of a campaign of killings, abductions, "disappearances", assaults and threats. In November 1991 Amnesty International reported that "[u]p to 21 Serbian villagers are said to have been killed on 22 August [1991] in the villages of Kinjacka, Cakle and Trnjani near Sisak when Croatian security forces undertook a house-to-house search for Serbian paramilitaries who had fired mortars at the town of Sisak".⁵² In a report published in March 1992, Amnesty International provided information on the killing of 12 Croatian Serbs in Sisak,⁵³ some of whom had been employed in the INA oil refinery.

This report documents further examples of impunity for human rights violations committed in Sisak during the armed conflict. Crimes committed in Sisak, relatively little known outside of Croatia, were chosen as illustrative examples of a widespread pattern of violations committed against the civilian population allegedly by members of the Croatian Army and police forces. To Amnesty International's knowledge, in no cases have these crimes resulted in a conviction. Some of those who may have directly committed, ordered or tolerated these crimes, or may have participated in their subsequent cover-up, remain in powerful positions at the local level of state institutions or in the police and are thus still in a position to undermine the investigation of these crimes.

The climate of intimidation against Croatian Serbs, and in general, those suspected of not supporting Croatian independence, which was prevailing in Sisak already at the start of the conflict, is illustrated by the publication on 29 June 1991, in the Croatian tabloid *Slobodni Tjednik*, of a list of 14 Sisak residents. The list included the names and, in some cases, the addresses and telephone numbers of alleged "enemy collaborators" and members of the Yugoslav military intelligence (*Kontraobaveštajna*

⁵⁰ Croatian Supreme Court Decision no. I Kž-948/02-8.

⁵¹ In 1991 Croatian Serbs amounted to approximately 24 percent of the population of Sisak.

⁵² *Yugoslavia: Torture and deliberate and arbitrary killings in war zones*, AI Index: EUR 48/26/91, November 1991, p. 8.

⁵³ The report notes that, according to some accounts, the numbers of Serbs who had been killed in the previous months is much greater. See *Yugoslavia: Further reports of torture and deliberate and arbitrary killings in war zones*, AI Index: EUR 48/13/92, March 1992, pp. 11-12.

Služba – KOS). Jovo Crnobrnja, a retired police officer from Sisak and one of the Croatian Serbs named in the *Slobodni Tjednik* list, was reportedly killed on 27 August 1991 by armed men in uniform who attacked him in his house.

On the evening of 22 August 1991 Croatian Serb Miljenko Đapa, a worker at the Sisak oil refinery, was arrested by armed men in his home.⁵⁴ Miljenko Đapa's mother, in the days following his arrest, tried to obtain information on the fate and whereabouts of her son, addressing the Croatian police and military authorities. However, for several days she was kept in the dark about her son's fate and she reported having been intimidated by members of the Croatian police, who alleged that her son was a "spy". On 29 August she was informed by the police authorities that Miljenko Đapa's body had been found near the village of Čigoč, approximately 20 km from Sisak. Reportedly, Miljenko Đapa died as a result of gunshot wounds. The Croatian authorities failed to thoroughly investigate this crime, whose perpetrators continue to enjoy impunity.

On 13 September 1991 the family home of Croatian Serb Damjan Žilić in the small town of Petrinja was bombarded with machine guns and hand grenades, allegedly by members of the Croatian Army. Damjan Žilić, aged 52, a chemical engineer and chief of production at the INA oil refinery in Sisak, was not injured, but the house was considerably damaged. Although he was not a member of any political party, and had signed an oath of loyalty to the Republic of Croatia, he was aware of hostility at his place of work, apparently based on his nationality (the security guards had on a number of occasions refused him entry to the premises). After the attack on their home, he and his wife (an ethnic Croat) moved to Zagreb. On 23 November 1991 he was abducted from outside his home in Novi Zagreb. Reportedly, he was killed by blows to the head and his body was thrown in the Sava River.⁵⁵ On 7 December four reservists of the Croatian Army, two of whom had been employed at the INA refinery, were arrested and charged with his murder. Their trial began on 20 February 1992. It is reported that a large group of Croatian Army soldiers were present in the court building and shouted abuse and threats at Damjan Žilić's wife and daughter.⁵⁶ The president of the court reportedly suspended proceedings, after declaring that she had received death threats and that in these circumstances it was not appropriate to try the case in a civilian court. Reportedly, the four were amnestied in 1993.

⁵⁴ "Ubijeni i Nestali" [Killed and Missing], *Hrvatska Ljevica*, July 2002.

⁵⁵ "Sisačka knjiga mrtvih ognjem i maljem" [Sisak's Book of the Dead by Fire and Hammer], *Feral Tribune*, 21 April 2001; "Sisački eskadroni smrti" [Sisak's Death Squads], *Globus*, 16 November 2001.

⁵⁶ Reportedly, the suspects were visited in prison by Ivan Bobetko, the then president of the Crisis Headquarters and the commander of the Croatian National Guard, and by Bosiljko Misetić, the then Croatian Minister of Justice.

Croatian Serb Petar Pajagić, employed in the Sisak oil refinery as the head of the control unit, was killed following his arrest, in September 1991. Reportedly, after having had lunch with his daughter, on 20 September 1991 Petar Pajagić left her house, walked to his nearby flat,⁵⁷ where he was later arrested by three men in police uniform.⁵⁸ Following his arrest, the family was unable to obtain information on Petar Pajagić's fate and whereabouts. There are indications that in the case of Petar Pajagić, and possibly of other Croatian Serbs killed and "disappeared" in Sisak, the perpetrators may have acted chiefly in pursuit of their individual interest, taking advantage of the ongoing campaign of intimidation against Croatian Serbs and of the impunity for crimes against members of these communities. Reportedly, Petar Pajagić's position in the refinery was occupied by another person immediately on the first working day which followed his "disappearance". Moreover, four days after the "disappearance" of Petar Pajagić, his flat, to which he had tenancy rights, was occupied by another person.⁵⁹ The body of Petar Pajagić was found in 2002 in the Danube river near Novi Sad, in the territory of the then FRY.⁶⁰ The identification was reportedly conducted at the Military Medical Academy (*Vojnomedicinska Akademija*) in Belgrade (FRY). Reportedly, the settlement request⁶¹ filed by Petar Pajagić's daughter Diana Pajagić was rejected in 2004 by the State Attorney, *inter alia*, on the grounds that the documents issued by the Serbian authorities related to the identification conducted in Belgrade were not recognized as evidence of the victim's death.⁶² Moreover, after Diana Pajagić's statements to the Croatian press on impunity for the murder of her father, she reported that she was on several occasions subjected to intimidation and anonymous threats.

⁵⁷ "Ubijeni i Nestali" [Killed and Missing], *Hrvatska Ljevica*, July 2002; "Sisački eskadroni smrti" [Sisak's Death Squads], *Globus*, 16 November 2001; "Nakon 10 godina ubrzava se istraga o nestancima Srba u Sisku 1991. godine" [After 10 Years the Investigation of the Disappearance in 1991 of Serbs in Sisak Is Stepped Up], *Jutarnji List*, 16 May 2001; "Petar Pajagić ubijen iz koristoljublja? [Petar Pajagić Killed for Material Reasons?], *Novi List*, 16 November 2001.

⁵⁸ Reportedly, one of the witnesses who testified at the trial for the murder of Damjan Žilić had stated that Petar Pajagić was arrested by the same persons who had arrested Damjan Žilić. See "Izbjegnuta odgovornost za ubojstva sisačkih Srba" [Escaping Responsibility for the Killing of Sisak's Serbs], *Vjesnik*, 4 May 2004.

⁵⁹ "Petar Pajagić ubijen iz koristoljublja?" [Petar Pajagić Killed for Material Reasons?], *Novi List*, 16 November 2001.

⁶⁰ It appears likely that his body was thrown in the river in Croatia, and then was carried by the flow downstream.

⁶¹ Before pursuing their rights in court persons seeking compensation from the state are required to file an out of court settlement request with the State Attorney.

⁶² "Izbjegnuta odgovornost za ubojstva sisačkih Srba" [Escaping Responsibility for the Killing of Sisak's Serbs], *Vjesnik*, 4 May 2004.

On 17 September 1991 19-year-old student Ljubica Solar was killed in her boyfriend's flat in Sisak by a bullet fired from outside the building.⁶³ Ljubica Solar was the daughter of an ethnic Croat mother and of a Croatian Serb father, and her boyfriend, Duško Malović, was a former JNA soldier.⁶⁴ Ljubica Solar's mother, Vjera, has repeatedly addressed the Croatian authorities demanding a thorough investigation into her daughter's killing and that the perpetrators be brought to justice. Reportedly, in 2001 a former member of the "Wolves" (*Vukovi*), a special police unit, stated to the investigating judge in Sisak that the perpetrators of the killing of Ljubica Solar were former members of his unit.⁶⁵ The Croatian authorities are reportedly still investigating this crime and so far, to Amnesty International's knowledge, no one has been indicted in connection with the murder of Ljubica Solar. Moreover, Vjera Solar's settlement request was rejected, apparently because criminal proceedings in her daughter's murder have not been completed.

In the past years Vjera Solar has brought to the attention of the Croatian public her daughter's unresolved murder. She has also founded the Civic Association against Violence (*Građanska udruga protiv nasilja*) to raise awareness and collect data on crimes allegedly committed by members of the Croatian army and police forces, mostly against Croatian Serbs. To date, Vjera Solar has gathered information on approximately 115 people, mostly members of Croatian Serb communities, killed or "disappeared" in and around Sisak. In July 2002, the Croatian magazine *Hrvatska ljevica* published a dossier on war crimes in Sisak, as well as a list of 107 names of victims of killings or "disappearances", the majority of which occurred during the second half of 1991.

In June 2003 two former Croatian police officers were arrested and charged with having killed a Croatian Serb, Nikola Drobnjak,⁶⁶ on 5 April 1992, in the village of Blinjski Kut, near Sisak. Reportedly, following the arrest of the suspects, a group of former Croatian soldiers, as well as representatives of veterans' organizations, protested in front of the Sisak County Court building. According to the findings of trial monitoring conducted by the OSCE, during the trial supporters of the defendants directed comments at prosecution witnesses during their testimony.⁶⁷ Moreover, the OSCE reported that one of the witnesses stated that he "was contacted by three former

⁶³ "Prasak policijskog sata" [Blast During the Curfew], *Feral Tribune*, 24 April 1995.

⁶⁴ Reportedly, there are indications that the bullet may have been fired from the nearby police station. However, ballistic tests conducted in January 2003 have reportedly ruled out this possibility.

⁶⁵ "Ljubicu Solar ubili su 'Vukovi'" [The 'Wolves' Killed Ljubica Solar], *Feral Tribune*, 17 November 2001.

⁶⁶ Whose name appears in the list published by *Hrvatska Ljevica*. See "Ubijeni i Nestali" [Killed and Missing], *Hrvatska Ljevica*, July 2002.

⁶⁷ OSCE Mission to Croatia, *Supplementary Report: War Crime Proceedings in Croatia and Findings from Trial Monitoring*, 22 June 2004, p. 17.

high ranking army officials prior to the hearing all of whom inquired into the content of his testimony".⁶⁸ According to the OSCE, the witness reported that one of the former army officials threatened him and his family. At the end of the trial, the prosecution amended the indictment by charging the suspects for the killing of an unidentified person, reportedly because the fact that the body of the victim had remained for 28 days in the Sava River prevented the identification.⁶⁹ In June 2004 the defendants were acquitted, reportedly for lack of evidence.

Despite information on widespread human rights violations against Croatian Serbs in Sisak, which were documented in the Croatian press, as well as by local organizations, the Croatian authorities have failed to bring the perpetrators of these crimes to justice. The direct perpetrators of these crimes, as well as officials with chain-of-command responsibility in the civil and military administration, who may have ordered or tolerated killings and other human rights violations, continue to enjoy impunity.

Missing persons and unresolved "disappearances"

During the first phase of the conflict in 1991-1992, as well as during operations "Flash" and "Storm", thousands of people went missing in war-affected areas of Croatia. Amnesty International believes that many of them were victims of "disappearances" committed by members of armies, police forces and paramilitary groups involved in the conflict. Amnesty International considers that a "disappearance" has occurred whenever there are reasonable grounds to believe that a person has been taken into custody by the authorities or their agents, and the authorities deny that the victim is or was ever in custody, thus concealing his or her whereabouts or fate.⁷⁰ Victims of "disappearances" thus constitute a component of

⁶⁸ *Ibid.*, p. 17-18.

⁶⁹ "Pritisak na hrvatsko pravosuđe zbog skorašnjeg preuzimanja haaških slučajeva" [Pressure on the Croatian Judiciary for the Forthcoming Transfer of Cases from The Hague], *Vjesnik*, 8 July 2004.

⁷⁰ By putting the term in quotation marks, the organization intends to underline that the victim has not simply vanished, and that their fate and whereabouts are known by the current or previous authorities or their agents. See *"Disappearances" and political killings – Human rights crisis of the 1990s; A manual for action*, AI Index: ACT 33/01/94, 1994, Chapter 7. The Rome Statute makes clear that the crime against humanity of enforced disappearance can be committed by persons acting pursuant to or in furtherance of a state or organizational policy to commit such an attack and that the perpetrators need not be members of state authorities. Article 7[2.i] states: "Enforced disappearance of persons means the arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of, a State or a political organization, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time" (emphasis added).

the total number of people who went missing as a result of the armed conflict, which also includes members of the warring parties who went missing in combat.

Tracing missing persons

Since 1991, the International Committee of the Red Cross (ICRC), in cooperation with local Red Cross organizations, has been actively involved in the process of tracing missing persons in the former Yugoslavia,⁷¹ including through the collection of *ante-mortem* data and the transmission of the relevant information to the authorities. In 1996, following the Lyon G7 Summit,⁷² the International Commission on Missing Persons (ICMP) was created as an intergovernmental organization tasked with addressing the issue of persons missing as a result of armed conflict in the former Yugoslavia. Since its creation, the ICMP has endeavoured to secure the cooperation of the Croatian authorities in locating and identifying persons missing as a result of armed conflict. The ICMP's Forensic Science Department has assisted the authorities in the exhumation, examination, and identification of missing persons, including through the use of deoxyribose nucleic acid (DNA) identification techniques. Moreover, since 1996 the Tribunal has carried out exhumations of mortal remains in Croatia, as well as monitored exhumations conducted by the Croatian authorities, in those cases where it was believed that evidence could be obtained to support indictments.

In late 1991, during the first phase of the armed conflict, the Croatian authorities created the Commission for Persons Captured in Armed Conflict (*Komisija za postupanje s osobama zarobljenim u oružanim sukobima u Republici Hrvatskoj*) and the Commission for Tracing Persons Missing in War Operations on the Republic of Croatia (*Komisija za traženje osoba nestalih u ratnim djelovanjima u Republici Hrvatskoj*). These bodies were tasked with dealing with the issue of persons who went missing or were detained as a result of war operations. The Decree on the Establishment of the Commission for Persons Captured in Armed Conflict (*Uredba o osnivanju i radu Komisije za postupanje s osobama zarobljenim u oružanim sukobima u Republici Hrvatskoj*) provided that "the task of the Commission is to apply the Geneva Convention Relative to the Treatment of Prisoners of War of 12 August 1949" (Art. 4). In 1993 the two commissions were merged into a Commission for

⁷¹ In December 1991 an inter-governmental Commission involving the authorities in Zagreb and Belgrade was set up under the auspices of the ICRC to clarify the fate of missing persons.

⁷² G7/G8 is a group of major industrial countries whose heads of state or government, since 1975, have taken part in an annual summit to discuss economic and political issues. The G7 comprised Canada, France, Germany, Italy, Japan, the United Kingdom, and the US. In 1998 these countries were joined by Russia to form the G8 group.

Detained and Missing Persons (*Komisija za zatočene i nestale*), which in 2000 became the Office of the Republic of Croatia for Detained and Missing Persons (*Ured Vlade Republike Hrvatske za zatočene i nestale*). In 2004 the tasks of the Office of the Republic of Croatia for Detained and Missing Persons were transferred to the Bureau for Detained and Missing Persons (*Uprava za zatočene i nestale*) at the Ministry of the Family, Veterans' Affairs, and Intergenerational Solidarity.⁷³ Since 1991, Zagreb and Belgrade have maintained official contacts in order to clarify the fate of persons reported missing during the conflict. However, cooperation significantly improved only in 2001, when an agreement was signed between the Office of the Republic of Croatia for Detained and Missing Persons and the FRY Council of Ministers Commission for Humanitarian Issues and Missing Persons.

The 2004 Decree on the Internal Organization of the Ministry of the Family, Veterans Affairs and Intergenerational Solidarity (*Uredba o unutarnjem ustrojstvu Ministarstva obitelji branitelja i međugeneracijske solidarnosti*) states that the "Bureau for Detained and Missing Persons performs professional activities which are related to the tracing of detained and missing and to the exhumation and identification of the mortal remains from mass and individual graves of persons who were victims of armed conflict" (Art. 64). The Decree also states that the Bureau for Detained and Missing Persons works in cooperation with the ICRC, the ICMP, the European Union Monitoring Mission,⁷⁴ the OSCE, the UN Commission on Human Rights, the Tribunal, and other international and humanitarian organizations which deal with issues related to detained and missing persons (Art. 64).

Most of those who went missing⁷⁵ during operations "Flash" and "Storm" in 1995 were members of the Croatian Serb communities. The final report of the Expert Member of the Working Group on Enforced or Involuntary Disappearances, responsible for the Special Process stated in 1997:

"A list of 2,925 names of persons of Serb origin for whose disappearance the Croatian forces are allegedly responsible was transmitted to the Government of Croatia. A number of these names concerned persons who reportedly disappeared during the armed conflict in 1991. The majority concerned

⁷³ For background information on the bodies established by the Croatian authorities responsible for the tracing of missing persons see Tribunal, *Prosecutor v. Slobodan Milošević*, Case no. IT-02-54-T, Prosecution Submission of the Expert Report of Ivan Grujić.

⁷⁴ The EU agency tasked primarily with monitoring political and security developments, border monitoring, inter-ethnic relations and refugee returns in the former Yugoslavia.

⁷⁵ Including victims of "disappearances".

persons who were reported as missing in 1995, subsequent to the operations 'Flash' and 'Storm'.⁷⁶

Moreover, the report quotes figures from the Croatian Helsinki Committee (*Hrvatski helsinški odbor za ljudska prava*) which, in 1997, estimated that some 2,000 Croatian Serbs who went missing during operations "Flash" and "Storm" were still unaccounted for.⁷⁷

Public statements by Croatian officials usually cite a figure of approximately 1,200 missing persons, whose fate and whereabouts the Bureau for Detained and Missing Persons is still seeking to clarify. In August 2004 Ivan Grujić, head of the Croatian Bureau for Detained and Missing Persons, reportedly stated that the Croatian Bureau for Detained and Missing Persons was looking for 1189 [ethnic] Croats who went missing during the conflict.⁷⁸ However, this figure does not include those who went missing in 1995, during operations "Flash" and "Storm". Although the Croatian authorities acknowledge that there are approximately 600 missing persons, mostly Serbs, who are still unaccounted for since operations "Flash" and "Storm",⁷⁹ this figure appears very seldom in public statements by Croatian officials. Moreover, it is contested by Serbian NGOs, which claim that the number of missing Croatian Serbs is significantly greater.⁸⁰

Amnesty International is not in a position to ascertain the truth of allegations that the number of Croatian Serbs who are still reported as missing as a result of the armed conflict is significantly greater than the number acknowledged by the Croatian authorities. However, Amnesty International notes with concern that the lack of transparency in the process of exhumation and identification of the victims of the armed conflict, as well as the distinction, which is made (often implicitly) between

⁷⁶ Report submitted to Mr. Manfred Nowak, expert member of the Working Group on Enforced or Involuntary Disappearances, responsible for the special process, pursuant to Commission resolution 1996/71, UN Doc. E/CN.4/1997/55, Para. II.B.16.

⁷⁷ *Ibid.*, Para III.82.

⁷⁸ "Kosor: Pozivam sve koji išta znaju o nestalima da progovore" [Kosor: I Call on All Who Know Something on the Missing to Begin to Speak], *Vjesnik*, 31 August 2004.

⁷⁹ Ivan Grujić, in an interview with an Amnesty International delegate in February 2004, stated that 608 persons who went missing during operations "Flash" and "Storm", mostly Croatian Serbs, were still unaccounted for. See also US Department of State, *Country Report on Human Rights Practices – Croatia*, 25 February 2004 where it is reported that, as of June 2003, "607 ethnic Serbs remained missing in unresolved cases from the 1991-95 military conflict". In his testimony at the Tribunal during the trial against Slobodan Milošević, in February 2003, Ivan Grujić cited a figure of approximately 800 persons who were still missing after operations "Flash" and "Storm" (see Tribunal, *Prosecutor v. Slobodan Milošević*, Case no. IT-02-54-T, trial transcripts, pp. 17351-17352).

⁸⁰ The Belgrade-based NGO Veritas, for example, claims that the number of Croatian Serbs who went missing during operations "Flash" and "Storm" amounts to approximately 2,800. Research conducted by the Croatian Helsinki Committee has apparently not confirmed the accuracy of this figure.

persons who went missing during the first phase of the conflict and those who went missing after operations "Flash" and "Storm", has led to uncertainty over the issue of the number of Croatian Serbs missing and to the politicization of the issue. In July 2004, the Council of Europe Parliamentary Assembly (PACE) report on "persons unaccounted for as a result of armed conflicts or internal violence in the Balkans" noted that "not all Serbs who went missing during the war on the territory of Croatia are included in the Croatian record of missing people".⁸¹ The report also emphasized that no comprehensive list of persons who went missing during the armed conflict in Croatia has yet been published.⁸²

Amnesty International is also concerned at reports suggesting that the Croatian authorities are not acting with due diligence in order to clarify the fate and whereabouts of all missing people, regardless of their ethnic origin. The Croatian authorities claim to have exhumed the bodies of 499 persons who went missing after operations "Flash" and "Storm" and were buried in mass graves in Knin, Gračac, and Korenica.⁸³ According to official figures, approximately 200 of these bodies were identified. However, according to information Amnesty International has received from associations of families of missing Croatian Serbs, the efforts by the Croatian authorities to clarify the fate and whereabouts of missing Croatian Serbs have been largely insufficient. This has led to considerable delays, particularly in conducting identification procedures. Moreover, cooperation with the ICMP, particularly in the identification of victims who are not believed to be ethnic Croats, was reported as being unsatisfactory.⁸⁴

Almost ten years after the end of the conflict, the activities of the Bureau for Detained and Missing Persons are still affected by the perceived ethnic origin of the missing and their families in a way that is effectively discriminatory against members of the Croatian Serb communities. The failure of the Croatian authorities to address the issue of persons missing as a result of armed conflict in a non-discriminatory manner, acknowledging the scale of the problem and investigating all cases of missing persons, constitutes a grave violation of the right to be free from discrimination. The collection of information on missing persons, as well as exhumations and identification procedures, should be carried out regardless of the believed ethnic identity of the victims and their families, in accordance with Croatia's obligations as a

⁸¹ PACE, Committee on Migration, Refugees and Population, *Persons unaccounted for as a result of armed conflicts or internal violence in the Balkans*, Doc. no. 10251, 8 July 2004, Para 34.

⁸² *Ibid.*

⁸³ Data provided to an Amnesty International delegate by Ivan Grujić, February 2004. See also *Vaš lik – naš put* [Your Face – Our Path], Udruženje porodica nestalih i nasilno odvedenih lica, Vukovar, 2004.

⁸⁴ Reportedly the ICMP, with the assistance of the EU, has recently reached an agreement with the Croatian authorities improving cooperation on the issue of missing persons.

state party to the International Covenant on Civil and Political Rights (ICCPR),⁸⁵ the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR),⁸⁶ and the International Convention on the Elimination of All Forms of Racial Discrimination (Convention against Racial Discrimination).⁸⁷

Article 2[1] of the ICCPR stipulates that "[e]ach State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status". Moreover, Article 26 states:

"All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall 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".

Similarly, Article 14 of the ECHR stipulates that the "enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status". Article 1 of Protocol 12 to the ECHR⁸⁸ prohibits discrimination in the enjoyment of any right set forth by law and stipulates that no one shall be discriminated by public authorities.

The Convention against Racial Discrimination defines "racial discrimination" as "any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life" (Article 1[1]). Article 2[1.a] of the Convention against Racial Discrimination stipulates that "[e]ach State Party undertakes to engage in no act or practice of racial discrimination against persons, groups of persons or institutions and

⁸⁵ Croatia became a party to the ICCPR by succession from the SFRY in October 1992.

⁸⁶ Croatia became a party to the ECHR in November 1997.

⁸⁷ Croatia became a party to the Convention against Racial Discrimination by succession from the SFRY in October 1992.

⁸⁸ Ratified by Croatia in February 2003

to ensure that all public authorities and public institutions, national and local, shall act in conformity with this obligation".⁸⁹

Unresolved "disappearances"

As already mentioned, Amnesty International believes that in many cases those who went missing as a result of the armed conflict were victims of the crime against humanity of "disappearance". These "disappearances" were often part of deliberate campaigns of the warring parties to remove, both directly and indirectly, members of other ethnic groups from territories under their control.

It has been recognized that, generally, "disappearances" violate or threaten the right to life, the right to liberty and security of a person, and the right not to be subjected to torture or cruel, inhuman or degrading treatment or punishment. The Human Rights Committee, a body of independent experts which monitors states' implementation of the ICCPR, has consistently held that Articles 6, 7 and 9 (the right to life, the right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment, and the right to liberty and security of a person) were violated in determinations on individual complaints. The equivalents of these rights were used by the European Court of Human Rights in examining "disappearance" cases on the basis of the rights enshrined in the ECHR.⁹⁰ Moreover, the European Court of Human Rights (ECHR) has found that the failure of the authorities to investigate cases of "disappearances", with a view to disclose to the relatives of the missing the truth about the fate and whereabouts of their loved ones, may amount to a violation of the relatives' right to be free from inhuman and degrading treatment.⁹¹ As

⁸⁹ Articles 32, 33 and 34 of the 1977 Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflict (Additional Protocol 1), protect the rights of the families to know the fate of their missing relatives. Article 33, in particular, provides that "[a]s soon as circumstances permit, and at the latest from the end of active hostilities, each Party to the conflict shall search for the persons who have been reported missing by an adverse Party". However, the issue of the internal or international nature of the Croatian conflict and, therefore, of the applicability of Additional Protocol 1, has not been resolved by the Tribunal. For example, in *Prosecutor v. Miodrag Jokić*, Case no. IT-01-42/1-S, Sentencing Judgement of 18 March 2004, the Tribunal recognized that in Croatia there was an armed conflict "whether international or non-international in character".

⁹⁰ For example in the cases of *Laureano v. Peru*, Communication No. 540/1993 of 25 March, and *Kurt v. Turkey*, Judgment of 25 May 1998.

⁹¹ See for example ECHR, *Çakici v. Turkey*, Application no. 23657/94, Judgment of 8 July 1999; *Cyprus v. Turkey*, Application no. 25781/94, Judgment of 10 May 2001.

"disappearances" can violate several human rights simultaneously, they have been referred to as "multiple" or "cumulative" human rights violations.⁹²

In situations of armed conflict, "disappearances" breach provisions of international humanitarian law, relating to international and internal conflict, and laid down in the Four Geneva Conventions of 12 August 1949, and their two Additional Protocols. Common Article 3 of the Four Geneva Conventions, which applies both in international and internal armed conflicts, stipulates that "[p]ersons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria". Common Article 3 prohibits, with respect to prisoners of war and other persons taking no active part in the hostilities, "violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture" as well as "outrages upon personal dignity, in particular humiliating and degrading treatment".⁹³ Similarly, Article 4 of the 1977 Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflict (Additional Protocol 2) enshrines the right to be treated humanely for those who do not take a direct part or who have ceased to take part in hostilities in internal

⁹² *Civil and Political Rights, Including Questions of: Disappearances and Summary Executions*, Report submitted by Mr. Manfred Nowak, independent expert charged with examining the existing international criminal and human rights framework for the protection of persons from enforced or involuntary disappearances, pursuant to paragraph 11 of Commission resolution 2001/46, UN Doc. E/CN.4/2002/71, Para 44. For a more detailed analysis of "disappearances" as crimes under international law, see *"Disappearances" and political killings – Human rights crisis of the 1990s; A manual for action*, AI Index: ACT 33/01/94, 1994, Chapter 8; and *Bosnia-Herzegovina: Honouring the ghosts – challenging impunity for "disappearances"*, AI Index: EUR 63/004/2003, March 2003, pp. 5-9.

⁹³ In international armed conflicts, the "disappearance" of a prisoner of war would violate the prisoner's right to be treated humanely, to be protected against acts of violence and not to be subjected to physical and mental torture or other forms of coercion (Articles 13 and 17 of the Third Geneva Convention). Furthermore, it violates their right to notify their family and the Central Prisoners of War Agency (the ICRC) upon capture or transfer to another camp (Article 70 of the Third Geneva Convention), the right to correspondence (Article 71 of the Third Geneva Convention) and the requirement that prisoners of war must be released at the end of hostilities (Article 118 of the Third Geneva Convention). In many cases, prisoners of war have "disappeared" after they were removed from detention or holding facilities, which were under the control of the regular military, by unknown perpetrators, usually members of paramilitary formations. Government authorities have often exploited such circumstances in order to escape responsibility for these "disappearances". However, the Geneva Conventions require that any transfer of prisoners of war should be carried out in a humane way and while ensuring their safety, that the detaining party (usually the military authorities) must draw up a list of all transferred prisoners before their departure, and imply that the prisoners themselves should have the opportunity to inform their next of kin of their transfer (Articles 47 and 48 of the Third Geneva Convention).

armed conflicts.⁹⁴ The Rome Statute of the International Criminal Court (Rome Statute) makes clear that "enforced disappearance" can be a crime against humanity, "when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack".⁹⁵

An inherent characteristic of "disappearances" is that of the continuing nature of this crime. In other words the violation continues as long as the fate and whereabouts of the victims have not been established and as long as no one has been brought to justice for these crimes. The UN Declaration on the Protection of All Persons from Enforced Disappearance (UN Declaration on Disappearances) states expressly in Article 17:

"1. Acts constituting enforced disappearances shall be considered a continuing offence as long as the perpetrators continue to conceal the fate and the whereabouts of persons who have disappeared and these facts remain unclarified.

2. When the remedies provided for in Article 2 of the International Covenant on Civil and Political Rights are no longer effective, the statute of limitations relating to acts of enforced disappearances shall be suspended until these remedies are re-established"⁹⁶

⁹⁴ Article 4 of Additional Protocol 2 prohibits violence to the life, health and physical or mental well-being of persons, in particular murder as well as cruel treatment such as torture, mutilation or any form of corporal punishment; collective punishments; taking of hostages; acts of terrorism; outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form or indecent assault; slavery and the slave trade in all their forms; pillage; threats to commit any or the foregoing acts. Article 5 of Additional Protocol 2 protects the rights of persons whose liberty has been restricted for reasons related to the armed conflict, whether they are interned or detained, enshrining, *inter alia*, the right "to be provided with food and drinking water and be afforded safeguards as regards health and hygiene and protection against the rigours of the climate and the dangers of the armed conflict"; "to receive individual or collective relief"; "to send and receive letters and cards". Article 5[2.e] specifically stipulates that the physical or mental health and integrity of persons, who have been deprived of their liberty for reasons related to the armed conflict, shall not be endangered by any unjustified act or omission.

⁹⁵ See Articles 7[1.i] and 7[2.i].

⁹⁶ These remedies refer to the possibility of resolving cases of human rights violation through the domestic legal institutions. Article 2.3 of the ICCPR states:

"Each State Party to the present Covenant undertakes: (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity; (b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of

This particular feature of "disappearances" as a continuous crime is important in order to counter the often used assumption that "disappearances" are crimes of the past and that therefore no one can be prosecuted on the basis of criminal provisions (adopted after the victim was last sighted) as these would then be applied retroactively. In this context the Declaration on Disappearances, the Inter-American Convention on Forced Disappearances of Persons, as well as the Rome Statute of the International Criminal Court underline the necessity to define "disappearances" as a separate criminal offence. Such a step could also solve the problems connected to the complex nature of this violation and the fact that each individual case may represent a number of offences, in which various actors may have been involved at various stages, carrying criminal responsibility for various elements of the crime in total.

Amendments to the Croatian criminal code, which entered into force on 1 October 2004, have criminalized acts committed by those who in the name of, or with the authorization, the support, the acquiescence of the state or a political organization, arrest, keep in detention or captivity other persons and subsequently do not acknowledge that these persons are deprived of their liberty or do not disclose information on their fate and whereabouts.⁹⁷ However, this provision appears to apply only when the "disappearance" occurred in the context of a widespread or systematic attack against the civilian population⁹⁸ and not, for example, in those cases when the "disappeared" person was captured in the course of armed conflict not affecting the civilian population.

Although in 2003 a Law on the Responsibility for Damage Caused by Terrorist Acts and Public Demonstrations (*Zakon o odgovornosti za štetu nastalu uslijed terorističkih akata i javnih demonstracija*) and a Law on the Responsibility of the Republic of Croatia for the Damage Caused by Members of the Croatian Armed Forces and Police During the Homeland War (*Zakon o odgovornosti Republike Hrvatske za štetu uzrokovanu od pripadnika hrvatskih oružanih i redarstvenih snaga tijekom domovinskom rata*) were passed, which regulate compensation for war-related damages as well as for personal injury resulting from "terrorist acts" committed during and after the war, it is not yet clear whether the Croatian judiciary will apply these laws in a way which will ensure access to all forms of reparations, including compensation, to the relatives of the "disappeared".

judicial remedy; (c) To ensure that the competent authorities shall enforce such remedies when granted".

⁹⁷ Article 157[a] of the revised text of the Croatian criminal code.

⁹⁸ This article prohibits "disappearances" as crimes against humanity as they are defined in Article 7 of the Rome Statute, that is, as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack.

As has been noted above, the Croatian authorities have largely failed to address through the domestic criminal justice system war crimes and crimes against humanity committed against members of the Croatian Serb communities. The investigation and prosecution of human rights violations surrounding the "disappearance" of Croatian Serbs during the 1991-1995 conflict is made even more difficult by the secret nature of these violations,⁹⁹ and by the fact that, by the very definition of "disappearance", the fate and whereabouts of the victims remain unknown and, in those cases where the victim was killed in an extrajudicial execution, the mortal remains are not available to the investigating bodies. In this respect, the failure of the Croatian authorities to carry out exhumation and identification procedures of missing persons believed to be Croatian Serbs is another factor contributing to the current climate of impunity. This lack of due diligence may have deprived the investigating organs of forensic evidence which could clarify the circumstances in which the victims died and could provide further evidence of those responsible for any crimes that may have been committed.

The numerous crimes committed against Croatian Serbs in Sisak include several cases of "disappearances", which remain unresolved. Dragan Rajšić, named in the list of "enemy collaborators" published by *Slobodni Tjednik* in June 1991, was a security guard at the Sisak oil refinery until his retirement in 1986. He "disappeared" on 26 August 1991 after having been reportedly arrested by three men, one of them wearing a uniform, near his home. It appears that some witnesses saw his arrest and others later saw him being taken into a building used by the Croatian National Guard.¹⁰⁰ His fate and whereabouts remain unknown to date.

Dušan Komosar, a 64-year-old Croatian Serb, "disappeared" on 19 October 1991 when armed men, reportedly members of the Croatian Army, entered his apartment in Sisak, beat him and arrested him.¹⁰¹ His fate and whereabouts remain unknown to date. His wife Milja, who was present when Dušan Komosar was abducted, had reportedly informed the police of the abduction immediately after it took place, naming those responsible, whom she was able to identify.¹⁰² Reportedly, no thorough investigation into the events was launched at the time. In June 2003 the

⁹⁹ See "Disappearances" and political killings – Human rights crisis of the 1990s; A manual for action, AI Index: ACT 33/01/94, 1994, pp. 89 and ff.

¹⁰⁰ "Vampiri KOS-a su spremni" [KOS's Vampires Are Ready], *Slobodni Tjednik*, 29 June 1991; "Ubijeni i Nestali" [Killed and Missing], *Hrvatska Ljevica*, July 2002; "Nakon 10 godina ubrzava se istraga o nestancima Srba u Sisku 1991. godine" [After 10 Years the Investigation of the Disappearance in 1991 of Serbs in Sisak Is Stepped Up], *Jutarnji List*, 16 May 2001.

¹⁰¹ "Ubijeni i Nestali" [Killed and Missing], *Hrvatska Ljevica*, July 2002.

¹⁰² "Još trojica muškaraca jučer uhićena u Sisku" [Three More Men Arrested Yesterday in Sisak], *Novi List*, 1 July 2003; "Uhićena trojica bivših hrvatskih vojnika zbog ratnog zločina protiv civila" [Three Former Croatian Soldiers Arrested for War Crimes against Civilians], *Vjesnik*, 1 July 2003.

Croatian police began an investigation into the murder or "disappearance" of 35 Croatian Serbs in the Sisak region in 1991-1992. Three former members of the Croatian Army were arrested on 30 June on suspicion that they were involved in the abduction and "disappearance" of Dušan Komosar. However, in January 2004 the investigation of the three suspects was discontinued at the request of the County Prosecutor's Office in Sisak, due to lack of evidence. To Amnesty International's knowledge, no other person was under investigation or has been indicted in connection with the "disappearance" of Dušan Komosar.

Amnesty International has received information from associations of relatives of persons reported missing during the conflict, such as the Association of the Families of the Missing and Abducted Persons of Vukovar (*Udruženje porodica nestalih i nasilno odvedenih lica Vukovar*) and the FRY Association of Parents and Families of Arrested, Captured and Missing Persons (*Udruženje roditelja i porodica uhapšenih zarobljenih i nestalih lica SR Jugoslavije*), on a number of cases of Croatian Serbs from the Vukovar region, who "disappeared" during the first phase of the conflict.¹⁰³ Slobodan Vučković, born in 1955, was a member of the Borovo Territorial Defence and "disappeared" after having been reportedly arrested in Borovo on 4 July 1991 by members of the Croatian Army. Thirty-eight-year-old Obrad Drača and 40-year-old Bogdan Stupar, on 29 July 1991 between 2pm and 3pm, were reportedly travelling by car from Bogdanovci to Vukovar, when they were stopped by members of the Croatian Army and arrested. Their fate and whereabouts have remained unknown ever since. Mladen Mrkić, born in 1938, "disappeared" on the afternoon of 31 July 1991, when he was reportedly arrested by members of the Croatian National Guard, who took him away in a car without licence plates. Slavko Miodrag, born in 1932, and Branko Mirjanić, born in 1935, "disappeared" after they were both reportedly arrested in Borovo, near Vukovar, by members of the Croatian National Guard on the night of 30-31 July 1991. Reportedly, Slavko Miodrag was subsequently seen by another detainee in the Osijek investigative centre (*istražni centar*).

Many instances of "disappearances" were reported during operations "Flash" and "Storm" in 1995; in several cases the victims were members of armed forces involved in the conflict. Milorad Milosavljević, born in 1968, was on active duty with the RSK army during operation "Flash". He was reportedly captured by the Croatian Army on 3 May 1995 near Okučani and, on the same day, was reportedly seen on the news magazine programme *Slikom na Sliku* being interviewed by a Croatian television journalist. The Croatian authorities, addressed by Milorad Milosavljević's

¹⁰³ See also *Vaš lik – naš put* [Your Face – Our Path], Udruženje porodica nestalih i nasilno odvedenih lica, Vukovar, 2004 and *Do Not Let the Missing Be Forgotten*, Udruženje roditelja i porodica uhapšenih zarobljenih i nestalih lica SR Jugoslavije, Novi Sad, 2001, pp. 10-11.

mother, have failed to disclose the fate and whereabouts of the victim and have disputed that the interviewed soldier was Milorad Milosavljević.¹⁰⁴

Dražen Spasić, born in 1972 in Borovo near Vukovar, on 21 July 1995 was sent as a soldier in the RSK army to the Lika region, near the town of Korenica. He was last seen near the village of Bunić on 5 August 1995, during operation "Storm", while his unit was retreating. The fate and whereabouts of Dražen Spasić, as well as of two other soldiers in his unit, Fatmir Gegić and Aleksandar Maletić,¹⁰⁵ remain unknown to date.¹⁰⁶ Reportedly, Dražen Spasić's family learned that their son had been captured during the offensive of the Croatian Army and was being detained in a prison in Zagreb. There are reports, for instance, that Croatian Army general Đuro Dečak had negotiated an exchange of prisoners with the RSK army general Dušan Lončar, which involved the release of Dražen Spasić.¹⁰⁷ His fate and whereabouts remain unknown.

To Amnesty International's knowledge, in all cases of "disappearances" detailed in this report the Croatian authorities have failed to investigate the events surrounding the "disappearance" of Croatian Serbs with a view to clarifying the fate of the missing, and have failed in their duty to ensure that the perpetrators of these crimes are brought to justice and that the victims and their families are awarded reparations. This illustrates a pattern of impunity for "disappearances" of Croatian Serbs which took place in the context of the 1991-1995 armed conflict. Although the sentence¹⁰⁸ in the trial before the Rijeka County Court against Croatian Army officers, including retired General Mirko Norac, for crimes committed against the non-Croat population in Gospić, mentions cases of Croatian Serbs still reported missing, the perpetrators of the vast majority of "disappearances" committed against members of the Croatian Serb communities continue to enjoy impunity.

Conclusions and recommendations

Almost ten years after the end of the armed conflict in Croatia, there continues to be widespread impunity for war crimes and crimes against humanity allegedly committed by members of the Croatian Army and police forces against Croatian Serbs. The steps taken by the Croatian authorities to investigate such crimes, to bring to

¹⁰⁴ *Ibid.* See also *Croatia: Impunity for killings after Storm*, AI Index: 64/04/98, August 1998.

¹⁰⁵ There are reports that Aleksandar Maletić may also have been a victim of "disappearance"; Amnesty International has no further information on the case of missing Fatmir Gegić.

¹⁰⁶ *Vaš lik – naš put* [Your Face – Our Path], Udruženje porodica nestalih i nasilno odvedenih lica Vukovar, 2004.

¹⁰⁷ *Ibid.*

¹⁰⁸ Sentence no. K-11/01, 24 March 2003.

justice those responsible, and to award reparations to the victims and their families have been largely insufficient. Those responsible, including those who may have ordered or tolerated these crimes, continue to enjoy impunity and in some cases are still in positions of power at the local level; the victims and their families continue to be denied access to justice and reparations. Furthermore, the relatives of the "disappeared" and missing continue to live in anguish and uncertainty, as a result of the failure of the Croatian authorities to investigate cases of "disappearances" and of the effectively discriminatory way in which the Croatian authorities have so far conducted exhumation and identification procedures.

The failure of the Croatian authorities to investigate war crimes and crimes against humanity and, where there is sufficient admissible evidence, to prosecute the suspects, is a matter of particular concern in view of the Tribunal's "completion strategy" and its envisaged closure in 2010. Moreover, impunity for grave human rights violation has had a negative impact on the return of Croatian Serb refugees. This is true particularly in those cases where the suspected perpetrators remain members of the local police forces or state administration and, as a consequence, the level of public confidence in the police and legal system among member of the minority and returnee communities remains low.

Amnesty International notes that the European Commission and Council have concluded that Croatia meets the political criteria set by the Copenhagen European Council in 1993. The EU Copenhagen Membership Criteria require that institutions guarantee "democracy, the rule of law, human rights and respect for and protection of minorities".¹⁰⁹ However, Amnesty International considers that the failure of the Croatian authorities to address the human rights legacy of the war seriously undermines the rule of law and remains a major obstacle to post-war reconciliation. Amnesty International believes that it is imperative, in particular, that the issue of impunity for war crimes and crimes against humanity is adequately addressed by the Croatian authorities in the domestic judicial system and through full and unconditional cooperation with the Tribunal.

¹⁰⁹ Conclusions of the Presidency, Copenhagen, 21-22 June 1993, p. 12.

Recommendations

TO THE CROATIAN AUTHORITIES

- The Croatian authorities at all levels should fully and unconditionally cooperate with the Tribunal with a view to bringing the perpetrators of war crimes and crimes against humanity to justice, including by arresting and transferring to the Tribunal's custody Ante Gotovina, who is currently at large and believed to be on the territory of Croatia.
- The Croatian authorities should enhance their cooperation with the authorities of Bosnia-Herzegovina and Serbia and Montenegro, in particular in the areas of investigation of war-time human rights violations; exchange of evidence and other relevant documentation including military records and intelligence materials; in ensuring adequate and effective witness protection; in the tracing of those who went missing, including those who "disappeared", during the armed conflict.
- The Croatian authorities should adopt or amend legislation so as to ensure that all acts of "disappearances" are criminalized, including in those cases where the victim is a prisoner of war, or where the violation does not occur in the context of an attack against the civilian population. These provisions should explicitly recognize the continuing nature of this crime and recognize the right to reparations, including restitution, compensation, rehabilitation, satisfaction and guarantees of non repetition to the victims and the families of victims, with effective procedures to obtain such reparations.
- Recently enacted legislation on witness protection should be implemented through the development of a comprehensive and properly funded witness protection programme and, where necessary, through cooperation with the authorities of Bosnia-Herzegovina and Serbia and Montenegro, to protect the safety of witnesses not residing on the territory of Croatia and who are willing to testify before Croatian courts. The material, social and psychological needs of those testifying in war crimes proceedings need to be fully addressed, including with the support and cooperation of the domestic health and social service system as well as local organizations and individuals with experience in supporting vulnerable witnesses and victims.
- During the investigation and prosecution of war crimes and crimes against humanity, the Croatian police and security authorities should protect – from harassment, intimidation, reprisals, or any interference with the investigation – the victims and their families, the witnesses, as well as prosecutors and judges.

- The Croatian authorities should ensure that comprehensive and effective training on international human rights standards, international humanitarian law, as well as on the Tribunal's jurisprudence, with effective monitoring and follow-up, is provided to Croatian judges and prosecutors at all levels of the Croatian judiciary, with a view to ensuring that the Croatian judicial system is prepared to conduct trials for war crimes and crimes against humanity. Sufficient material and other resources should be provided to the Croatian judiciary, enabling it to adequately address war-time human rights violations.
- The Croatian authorities should conduct thorough, independent and impartial investigations into all cases of war-time human rights violations, regardless of the ethnicity of the victims or of the suspected perpetrators, with a view to bringing to justice those responsible for these crimes, both directly or by virtue of command responsibility, in proceedings that meet international standards of fairness. In those cases where individual violations are covered by a statute of limitations, this should not be applicable where the crime was part of a pattern of human rights violations amounting to war crimes or crimes against humanity.
- The Croatian authorities should ensure that in all cases where police officers or other officials are reasonably suspected of having committed war crimes or crimes against humanity, the relevant public prosecutor is informed and, pending the outcome of an investigation, the suspect is immediately removed from active service and from any position of control or power over the relatives, witnesses and others involved in the investigation, or which would allow them in any other way to interfere with the investigation. If convicted of such offences, police officers and other officials should be dismissed.
- The Croatian police and military authorities should fully cooperate with the investigations of war crimes and crimes against humanity conducted by the Tribunal and national authorities, including by providing access to the relevant information and documentation. In those cases where this cooperation is not forthcoming those responsible should be investigated and, in those cases where there is sufficient admissible evidence, prosecuted.
- The Croatian authorities should without delay provide families of the "disappeared" and missing with information as to the fate and whereabouts of their loved ones, in line with international human rights and humanitarian law standards.
- The Croatian Bureau for Detained and Missing Persons should collect information on missing persons, including victims of "disappearances" and conduct exhumations and identification procedures regardless of the believed

ethnic affiliation of the victims and their families. The Croatian authorities, and in particular the Bureau for Detained and Missing Persons, should fully cooperate with the ICMP, with the families of the missing and their associations, with other relevant national and international organizations, as well as with the authorities of Bosnia-Herzegovina and Serbia and Montenegro, with a view to clarifying the fate and whereabouts of the missing.

- In those cases where, on discovery of a grave site, as well as during or following the exhumation procedure, there is the suspicion or *prima facie* evidence that a deceased person may have been victim of an extrajudicial execution or other human right violations, a prompt, thorough, independent and impartial investigation should be conducted on the circumstances surrounding the death of the deceased, in accordance with international standards, including the UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions.

TO THE TRIBUNAL

- The Tribunal should not stop investigations or prosecutions until an effective action plan for ending impunity in Croatia, Bosnia-Herzegovina, and Serbia and Montenegro has been adopted and put into effect. No such plan has been developed or adopted yet.

TO THE EU AND ITS MEMBER STATES

- The EU and its member states should ensure that the organization's concerns are addressed by the Croatian authorities and use their influence for a speedy, comprehensive and effective improvement in the human rights situation in Croatia, in line with international standards set by the CoE and the UN.