

CROATIA

BRIEFING TO THE UNITED
NATIONS COMMITTEE
AGAINST TORTURE

AMNESTY
INTERNATIONAL



Amnesty International Publications

First published in 2010 by
Amnesty International Publications
International Secretariat
Peter Benenson House
1 Easton Street
London WC1X 0DW
United Kingdom
www.amnesty.org

© Copyright Amnesty International Publications 2008

Index: EUR 64/001/2010
Original Language: English
Printed by Amnesty International, International Secretariat, United Kingdom

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted, in any form or by any means, electronic, mechanical, photocopying, recording or otherwise without the prior permission of the publishers.

Amnesty International is a global movement of 2.2 million people in more than 150 countries and territories, who campaign on human rights. Our vision is for every person to enjoy all the rights enshrined in the Universal Declaration of Human Rights and other international human rights instruments. We research, campaign, advocate and mobilize to end abuses of human rights. Amnesty International is independent of any government, political ideology, economic interest or religion. Our work is largely financed by contributions from our membership and donations

**AMNESTY
INTERNATIONAL**



CONTENTS

Introduction	5
Failure to thoroughly, promptly and impartially investigate and prosecute acts of torture or cruel, inhumane and degrading treatment which occurred in the context of the 1991-1995 war.....	6
Failure to Conduct Prompt, impartial and full investigations and to prosecute the perpetrators	7
Ethnic Bias in sentencing in war crimes trials.....	9
Failure to ensure fair and adequate reparation, including compensation to victims of war crimes, including those involving or resulting in torture or other ill-treatment	11
Failure to ensure full cooperation with the international criminal tribunal for the former yugoslavia (ICTY)	13
Failure to enforce all relevant legislation providing for the protection of witnesses and other participants in proceedings	14
Failure to make judges, prosecutors and lawyers fully aware of croatia's international obligations in the field of human rights, particularly those enshrined in the convention	17

INTRODUCTION

This briefing is submitted by Amnesty International in advance of the Committee against Torture's adoption of the list of issues prior to the submission by the Republic of Croatia of its fourth periodic report on its implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereafter, the Convention). It outlines Amnesty International's concerns about the failure of the authorities to take adequate measures to implement some of the provisions of the Convention and some of the recommendations made by the Committee against Torture (hereafter, the Committee) following its examination of Croatia's third periodic report in May 2004 (UN Doc: CAT/C/CR/32/3). Amnesty International considers that these failures have resulted in ongoing violations of the rights of individuals which are guaranteed under the Convention. In particular, this submission highlights the organization's concerns with regards to the failure of the authorities to fully implement the Committee's 2004 recommendations to:

Thoroughly, promptly and impartially investigate and prosecute acts of torture or cruel, inhumane and degrading treatment which occurred in the context of the 1991-1995 war;

Provide adequate reparation for such acts to victims and their families;

Ensure full cooperation with the International Criminal Tribunal for the Former Yugoslavia (ICTY);

Enforce all relevant legislation providing for the protection of witnesses and other participants in proceedings;

Ensure that judges, prosecutors and lawyers are fully aware of Croatia's international obligations in the field of human rights, particularly those enshrined in under the Convention against Torture.

FAILURE TO THOROUGHLY, PROMPTLY AND IMPARTIALLY INVESTIGATE AND PROSECUTE ACTS OF TORTURE OR CRUEL, INHUMANE AND DEGRADING TREATMENT WHICH OCCURED IN THE CONTEXT OF THE 1991-1995 WAR

In its Concluding Observations on the Republic of Croatia in May 2004 the Committee expressed its concerns in relation to torture and ill-treatment which occurred in the context of the 1991-1995 war. Those concerns included:

- “(i) 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;
- (ii) Allegations that double standards were applied at all stages of the proceedings against Serb defendants and in favour of Croat defendants in war crime trials;
- (iii) The reported harassment, intimidation and threats faced by witnesses and victims testifying in proceedings and the lack of adequate protection from the State party.”¹

The Committee recommended that Croatia undertake “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.”²

Amnesty International is concerned that despite some efforts undertaken in the recent years the authorities have failed to adequately implement the above-mentioned recommendations by the Committee.

FAILURE TO CONDUCT PROMPT, IMPARTIAL AND FULL INVESTIGATIONS AND TO PROSECUTE THE PERPETRATORS

In the course of the conflict war crimes, including arbitrary killings, torture including rape, enforced disappearances, arbitrary detention and forcible expulsions were committed on a large scale by both members of the Croatian Army and police forces on one side, and members of the Yugoslav People's Army (JNA – *Jugoslovenska Narodna Armija*) and Serb paramilitary groups on the other side.³

To date only a very limited number of those crimes have been investigated and a limited number of those responsible have been brought to justice in proceedings in line with international fair trial standards. According to Amnesty International's research, most of the prosecutions which have taken place relate to crimes committed by members of the Croatian Serb population while the crimes committed by members of the Croatian Army and police forces remain largely unaddressed.

In recent years, under significant pressure from the international community, authorities have taken some action with a view to improving the prosecution of war crimes cases in a manner which is consistent with international fair trial standards. One of the most significant measures undertaken included the adoption by the State Prosecutor's Office of instructions for the county prosecutors which aimed at addressing the issue of bias against Croatian Serbs in the prosecution of cases.⁴ The instructions, adopted in October 2008, established general criteria for work on war crimes cases, including their selection. In December 2008 an action plan was developed which intended to provide for the review by the State Prosecutor's Office of all cases and the elimination of those in which no "quality" evidence was available, as well for the review of cases in which judgments had been adopted in *in absentia* proceedings, with a view to requesting the renewal of the proceedings.⁵ In addition, county prosecutors were requested to identify priority cases for immediate prosecution.

In order to address the growing concern of the international community pointing to the impunity for war crimes in Croatia and the apparent bias in the judiciary, the authorities in recent years have attempted to compile statistics on the number of prosecuted cases. Based on the analysis of war crimes proceedings in the country in the period from the beginning of 2005 to the end of 2009, the government concluded that 80 war crimes cases have been prosecuted in this five-year period in Croatia.⁶ The organization believes that the number of prosecuted cases is far from satisfactory considering the scale of war crimes committed by both sides in the 1991-1995 war.

While welcoming the measures undertaken so far by the authorities to prosecute war crimes, Amnesty International remains concerned that these measures remain largely unimplemented and that they have failed to significantly resolve the issue of impunity for war crimes in Croatia.

Amnesty International is extremely concerned that the low capacity of the justice system in Croatia to deal with war crimes cases may cause an irreversible impunity for those crimes as together with the passage of time less and less potential witnesses are available to the prosecution and other evidence might be harder to collect.

The organization is particularly concerned that the number of cases under prosecution clearly indicates that ethnic bias still exists in Croatia, as a result of which war crimes committed by members of the Croatian Army and police forces remain largely unaddressed.

SISAK

Proceedings related to the war crimes committed in the Sisak area, southeast of Zagreb, highlight Amnesty International's continuing concerns about the lack of progress in investigating and prosecuting crimes committed against Croatian Serbs.

The town of Sisak itself has a population of approximately 37,000 inhabitants.⁷ Before the war 24 per cent of its population were Croatian Serbs. Incidents of war crimes committed by both members of the Croatian Army and police forces on one side, and members of the Yugoslav People's Army (JNA – *Jugoslovenska Narodna Armija*) and Serb paramilitary groups on the other side, were common. According to the Head of Police in Sisak there have been 410 criminal reports filed against 520 perpetrators in relation to war crimes committed in the area. By the end of 2009 bodies of 684 persons were exhumed and another 599 persons are still registered as missing.⁸

The research of Amnesty International and many other non-governmental organizations (NGOs) and international organizations indicates that the events in Sisak and surrounding villages followed a pattern which included killings, torture and enforced disappearances of Croatian Serbs in the town of Sisak; cases of killings, torture and other ill-treatment in the ORA detention facility in Sisak; as well as the 22 August 1991 military operation conducted by the "Thunders" unit in the surrounding villages. The estimates on the numbers of victims vary from 35 to more than 600 with the most reliable number of around 100 persons killed or disappeared.⁹

As of March 2010, there has been only one case in relation to war crimes against Croatian Serbs which finished with a conviction, against one defendant who was a member of the Croatian Army.¹⁰ The accused was charged with killing of a civilian whom he had abducted from a hospital in Zagreb and killed in the woods near Sisak. Another case relating to war crimes against Croatian Serbs, brought against two individuals, started in January 2010 and as of 1 April 2010 remained pending.¹¹ The accused were charged with killing, torturing and treating in an inhuman manner civilian population. In December 2009 an indictment was issued against two former Croatian Army members for beating to death a Croatian Serb civilian.¹²

Amnesty International believes that the response of the Croatian authorities to address the war crimes committed against Croatian Serbs in Sisak has been insufficient and that it continues to result in impunity, including for war crimes involving or resulting in torture and other ill-treatment.¹³

In contrast, the authorities have been very active in the prosecution of cases of war crimes committed by the Croatian Serbs against ethnic Croats.

Since the war ended, the County Court in Sisak has been one of the busiest courts in the country prosecuting war crimes cases.¹⁴ In total to date, more than 100 Croatian Serbs have

been tried and convicted for war crimes committed in the Sisak area.

As of March 2010 315 war crimes cases had been registered with the County Prosecutor's Office in Sisak. This number included the following categories of cases:

1. Cases in which indictments were issued: 16 cases
2. Cases under investigation by the prosecutor: 22 cases
3. Cases at the pre-investigative stage where the alleged perpetrators have not yet been identified: all remaining 277 cases.

Amnesty International has been informed by the Chief State Prosecutor that of the 38 war crimes cases in which investigations are underway or indictments have been issued by the County Prosecutor's Office in Sisak, in six cases the alleged perpetrators were members of the Croatian Army or police forces and in 32 the alleged perpetrators were members of JNA or Serbian paramilitary groups.¹⁵

In an interview with Amnesty International the County Prosecutor in Sisak acknowledged that of the remaining 277 registered cases at pre-investigative stage (in which the alleged perpetrators have yet to be identified), the great majority of the alleged perpetrators were believed to be Croatian Serbs.¹⁶ The County Prosecutor in Sisak also informed Amnesty International that of the 10 priority cases (among the remaining 277 at the pre-investigative stage) which will receive urgent attention in future, only one case, against several perpetrators based on their command responsibility, is against alleged perpetrators believed to be ethnic Croats; all remaining nine cases are ones in which the alleged perpetrators are believed to be Croatian Serbs.

Amnesty International is concerned that these statistics indicate that a considerable discrepancy in prosecutions based on the ethnicity of the accused continues.

Concern about the issue of impunity for crimes committed against Croatian Serbs and other minorities has been raised by several international organizations and human rights bodies.

The European Union (EU) Progress Reports on Croatia have pointed to the issue several times in the past years. The last report observed “[...] *impunity for war crimes remains a problem, especially where victims were ethnic Serbs or perpetrators were allegedly members of the Croatian armed forces. Many crimes remain unprosecuted, often due to a combination of lack of evidence, unwillingness of witnesses to come forward, e.g. due to intimidation, and unwillingness or reluctance of police and prosecutors, particularly in certain localities.*”¹⁷

The UN Human Rights Committee, which in October 2009 reviewed the second periodic report submitted by the government of Croatia on its implementation of the International Covenant on Civil and Political Rights, raised concerns about “*reports that many potential cases of war crimes remain unresolved, and that the selection of cases has been disproportionately directed at ethnic Serbs*”.¹⁸

ETHNIC BIAS IN SENTENCING IN WAR CRIMES TRIALS

Amnesty International is concerned that the apparent ethnic bias is reflected not only in decisions by prosecutors on cases to prosecute but also in the sentencing of persons convicted of war crimes.

In particular Amnesty International is concerned that, as a general rule the ethnicity of the accused has had an effect on the sentence received following conviction for war crimes. From its analysis of war crimes verdicts in Croatia in recent years, Amnesty International considers that it is apparent that mitigating circumstances have been considered more often when the perpetrators were ethnic Croats and their victims Croatian Serbs or members of other ethnic communities.

Amnesty International also notes that service by the perpetrator in the Croatian Army or police forces during the war was itself considered to be a mitigating factor in sentencing in war crimes trials in county courts in Croatia. Amnesty International considers that such a practice runs counter to the duty of judges presiding over war crimes trials to ensure that sentences for such crimes are commensurate with the gravity of the crimes and are not affected by the ethnicity of the accused or the victim.

The organization is extremely concerned that the apparent practice of Croatian county courts of considering service in the Croatian Army or police forces during the war as mitigating circumstances in sentencing has been approved and endorsed by the Supreme Court of the Republic of Croatia.

For example, in the case against *Rahim Ademi* and *Mirko Norac* in which the accused among other counts of the indictment were charged with torture, inhumane and degrading treatment of Croatian Serb civilians and which was one of the most high-profile and rare cases in Croatia in which the accused were members of the Croatian Army, the Supreme Court in its March 2010 verdict, while considering the sentence for the second accused, concluded that the first instance court correctly established the mitigating circumstances in the case. Those circumstances were, among others: the fact that war crimes were committed as part of a lawful military action by the Croatian Army as well as the participation of the accused in the war for independence and that he had received medals and decorations for his contribution to the defence of the country. Further, the Supreme Court expanded the application of the mitigating circumstances by concluding that the accused was no longer able to repeat the same acts and that while committing the crimes he was exposed to a war situation. In its verdict the Supreme Court also stated that the accused was pursuing the legitimate goal of defending his country against an armed aggression. The verdict concluded that the sentence of seven years imposed by the first instance court was too severe because the mitigating circumstances were applied in too narrow a sense. Consequently, Mirko Norac's sentence was reduced to six years' imprisonment. (The other accused, Rahim Ademi, was acquitted).¹⁹

A different panel of judges of the Supreme Court also considered the ethnicity of the accused and their service in the Croatian Army as a mitigating factor in the war crimes case against Mihajlo Hrastov.²⁰

These aspects of these two Supreme Court judgments - which indicate a bias in favour of ethnic Croats convicted for war crimes against Croatian Serbs - serve as precedent to be followed by the county courts presiding over war crimes trials.

This concern, which Amnesty International has raised several times in meetings with the Croatian authorities, remains unaddressed and has been echoed by other institutions. For example, the European Commission, in its Progress Report on Croatia in October 2009, observed that *“where cases are brought, judgments often take the convicted person’s role in the defence of the homeland as a mitigating factor, which creates a clear ethnic bias in sentencing for comparable crimes”*.²¹

FAILURE TO ENSURE FAIR AND ADEQUATE REPARATION, INCLUDING COMPENSATION TO VICTIMS OF WAR CRIMES, INCLUDING THOSE INVOLVING OR RESULTING IN TORTURE OR OTHER ILL-TREATMENT

In its Concluding Observations on the Republic of Croatia in May 2004, the Committee recommended that, in relation to the crimes committed during the 1991-1995 war, the government provide *“fair and adequate compensation for the victims”*.²²

Amnesty International is concerned that rather than implementing this recommendation, additional obstacles -- based on the implementation of a law on compensation for war crimes which went into effect in 2003 -- have prevented many victims of war crimes, including those involving or resulting in torture or other ill-treatment, from successfully claiming compensation.

Until 1996 compensation for material and non-material damage was regulated in Croatia by Article 180 of the Obligations Act.²³ In 1996, when a new Obligations Act entered into force, all pending compensation proceedings, related to the war, were suspended. It was assumed in the law that all proceedings would be re-opened when a new law on the responsibility of the Republic of Croatia for wartime damages entered into force.

In July 2003 new laws entered into force based on which the suspended compensation proceedings were automatically re-opened.²⁴

According to the Croatian law now in force applicable to war-related compensation claims against the Republic of Croatia, the interest of the state is represented by the State Prosecutor’s Office. Under the law, the burden of proof lies on the applicants, who have to prove that the damage they seek compensation for was caused in the period between 17

August 1990 to 30 June 1996 and that it was as a result of an action by the Croatian Army or police forces.

Amnesty International believes that this law creates a conflict of interest for the State Prosecutor's Office, which must both investigate and prosecute those responsible for war crimes and then under this compensation law, it must defend the interest of the state in compensation claims for such crimes.

Amnesty International is also concerned about the implementation of the law in practice.

According to a Croatian NGO, families of victims of war crimes, including those involving or resulting in torture, have filed at least 50 compensation claims.²⁵ Amnesty International is aware that out of this number at least 22 compensation cases have been filed by inhabitants of the Sisak area.²⁶ In all but one of the cases from Sisak, compensation claims have been rejected.²⁷

In all of the cases which Amnesty International has examined in which compensation claims have been rejected, the reasoning by the courts was the same, namely that the statute of limitation applied and that the applicants had failed to prove that the damage was caused by the members of the Croatian Army or police forces and therefore that the Republic of Croatia was not liable for the damage.

The Obligation Act which is used by the Croatian courts in compensation cases to establish whether the statute of limitation applies prescribes the period of 3 years since the claimant became aware of the damage but no more than five years starting from when the damage occurred. Compensation claims related to criminal acts are an exemption from this rule and the statute of limitation in those cases equals the same period prescribed for statute of limitation in criminal proceedings. However, according to the practice established by courts in Croatia in order to benefit from the extended statute of limitation the applicants have to prove that the acts they claim compensation for were indeed criminal acts. This, in all compensation cases filed by the families of victims of war crimes, proved to be impossible as criminal proceedings have not been either initiated or concluded by the State Prosecutor's Office and as a result nobody has been convicted in criminal proceedings in relation to those acts.

This practice is inconsistent with the principle enshrined in international standards that a victim's status is not dependent on the identification, prosecution or conviction of the perpetrator of human rights violations or crimes under international law²⁸.

Amnesty International is also concerned that the applicants whose compensation cases have failed, many of whom are pensioners, have been ordered to cover the costs of the proceedings. Some of the cost orders amounted to almost € 10,000.²⁹ Amnesty International is also aware of several cases in which proceedings have been initiated to seize the property of the applicants who have lost their compensation cases against the Republic of Croatia and who were not able to pay the costs of those proceedings.³⁰

In May 2009, by a decision of the government, the costs of the compensation proceedings brought under the compensation law in effect until 1996, Article 180 of the Obligation Act,

and which had been resumed under the 2003 laws, were annulled and the applicants were exempted from paying them. However, the decision does not include compensation proceedings which have been initiated *after* 1996 - which are the majority of the claims. For compensation cases initiated *after* 1996, under the government decision, the costs of the proceedings would be annulled only if applicants withdrew the claims.

Amnesty International also notes that the granting of other measures of reparation - restitution, rehabilitation, satisfaction and guarantees of non-repetition - which should be available to the victims of wartime torture and other ill-treatment are not even regulated by the Croatian law. In that regard, Amnesty International notes that the authorities have yet to translate and disseminate in the Croatian language the UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law.

FAILURE TO ENSURE FULL COOPERATION WITH THE INTERNATIONAL CRIMINAL TRIBUNAL FOR THE FORMER YUGOSLAVIA (ICTY)

In its Concluding Observations in May 2004 the Committee recommended that the authorities ensure *“full cooperation with the International Criminal Tribunal for the Former Yugoslavia (ICTY), inter alia by ensuring that all indicted persons in their territory are arrested and transferred to the custody of the Tribunal”*.³¹

Amnesty International is concerned that this recommendation has only partially been implemented. While Amnesty International has welcomed the fact that since 2004 Croatia has surrendered to the ICTY all remaining accused, the organization is concerned that the authorities have failed to provide the ICTY with the military documents related to the 1995 Operation Storm in relation to which three Croatian Army generals Ante Gotovina, Ivan Čermak and Mladen Markač were on trial before the ICTY.

The ICTY's Prosecutor has claimed that the Croatian authorities have intentionally hidden or concealed military documents concerning Operation Storm. In June 2008 the ICTY's Prosecutor filed an application for an order requesting the Croatian authorities to provide his office with all outstanding documentation in the case.³²

In September 2008 the ICTY Trial Chamber ordered the Croatian authorities to continue the investigation into the whereabouts of the documents, which had yet to be provided and to

provide the Tribunal with a further report on the steps undertaken to obtain the requested documents.

In his last report to the UN Security Council in November 2009, the ICTY Chief Prosecutor stated that “since the previous report to the Security Council [...] no substantial progress has been made in locating a number of key military documents related to Operation Storm of 1995, which the Office of the Prosecutor had first requested in 2007.”³³

In October 2009 the UN Human Rights Committee recommended that the authorities in Croatia “*expedite the recovery and delivery of the records of Croatian military operations required by the ICTY in the completion of its investigative work*”.³⁴

According to information available to Amnesty International, as of 1 April 2010 the authorities of Croatia had failed to provide the ICTY with the requested documents.

FAILURE TO ENFORCE ALL RELEVANT LEGISLATION PROVIDING FOR THE PROTECTION OF WITNESSES AND OTHER PARTICIPANTS IN PROCEEDINGS

In its last Concluding Observations on Croatia in May 2004 the Committee recommended that the government “*enforce all relevant legislation providing for the protection of witnesses and other participants in proceedings and ensure that sufficient funding is allocated for effective and comprehensive witness protection programmes*.”³⁵

Amnesty International is concerned about several examples which indicate that witness protection, especially in war crimes cases, has not been adequately provided by the authorities. The organization also considers that the lack of investigation and prosecution of cases of intimidation of witnesses perpetuates an atmosphere of impunity, not only for war crimes but also for perverting the course of justice.

For several years Amnesty International has raised concern that the authorities have failed to investigate the killing of Milan Levar. Milan Levar was a potential witness at the ICTY and had campaigned for justice for war crimes victims. He was killed in August 2000 by an explosive device planted underneath his car, after making statements to the media alleging that Mirko Norac and some other high level Croatian politicians were responsible for war crimes committed against the Croatian Serb population in the Lika region. Ten years later no one has been brought to justice for his death. Milan Levar’s wife has received death threats from unknown individuals, which began after she was interviewed by the media about her

husband's death. When asked by Amnesty International about the investigation of the case, the authorities of Croatia responded that the case could not be further investigated because the alleged perpetrator, who was identified and interrogated, gave his testimony without his lawyer present. They stated that the evidence collected in the case was therefore inadmissible. They also rejected the possibility of re-opening the case.

In relation to the crimes highlighted by Milan Levar in the Lika region two Croatian Army generals, Mirko Norac and Rahim Ademi, were initially indicted by the ICTY in relation to war crimes committed during and after the "Međak Pocket" Operation in 1993. The case was transferred from the ICTY to the Croatian courts in September 2005. The accused were charged with ordering indiscriminate artillery attacks, failing to prevent or punish their subordinates for the torture and murder of Croatian Serb civilians and prisoners of war, and the destruction of property.

In this case the court was faced with difficulties in getting witnesses to testify, especially at the early stage of the trial. Despite the use of a video link, some prosecution witnesses refused to testify citing fears for their safety as the main reason. Others decided to do so only after having been promised that their identity would be protected.

In the end, 30 out of 74 of prosecution witnesses who testified did so through video link. One-third of them were "endangered" witnesses residing in Croatia; video links were used with the aim of protecting their identities from public disclosure.

In May 2008 Rahim Ademi was acquitted and Mirko Norac was found guilty of some of the charges and sentenced to seven years' imprisonment. As noted in section 2.2 above, on appeal, the Supreme Court reduced the sentence of Mirko Norac to six years' imprisonment, and upheld the acquittal of the other accused, Rahim Ademi.

Although in the Ademi-Norac case witness protection measures for those who agreed to testify were used effectively, Amnesty International is concerned that the high number of witnesses who were initially reluctant to testify points to the fact that there is still an atmosphere in Croatia which is not conducive to prosecution of war crimes. According to Amnesty International's research, the unresolved killing of Milan Levar had a strong negative impact on the confidence of some witnesses to testify.

Amnesty International is also concerned about the intimidation of witnesses in another high-profile war crimes case, in which Branimir Glavas is one of the accused.

Since 1995 Branimir Glavas has been an influential member of the Croatian Parliament. In 2006 he split from the Croatian Democratic Union (*Hrvatska Demokratska Zajednica* – HDZ) and created his own political party the Croatian Democratic Council of Slavonia and Baranya (*Hrvatski Demokratski Sabor Slavonije i Baranje*, HDSSB).

Branimir Glavas, together with five other co-accused, was charged with unlawful detention, ill-treatment and killing of Croatian Serb civilians in Osijek. He has been charged for command responsibility, in his capacity as the local military leader, for having failed to prevent his subordinates from committing war crimes as well as for ordering some of them.

Serious intimidation of witnesses in the case started at a very early stage of investigation. For example, in December 2005 Anto Dapić, president of the Croatian Party of Rights (*Hrvatska Stranka Prava*, HSP) and mayor of Osijek disclosed to the media a list of 19 witnesses cooperating with investigators. Some of the potential witnesses consequently refused to testify.

In 2006, with a view to reducing pressure on the witnesses, the case against Branimir Glavas and the other co-accused was transferred to the Zagreb County Court. This, however, did not prevent the first accused from taking action which reportedly resulted in the intimidation of witnesses. On several occasions in 2006 and 2007 Branimir Glavas published court records, witnesses' statements and other evidence related to the case on his website.³⁶

In February and in April 2008, Drago Hedl, a journalist from Osijek, received death threats following his reports about Branimir Glavaš's role in the murders of Croatian Serbs.³⁷ The journalist later on refused to testify in the case giving the death treats as one of the reasons.

On 3 June 2008 Branimir Glavaš disclosed the identity of the protected witnesses in a news programme at a local Television of Slavonija and Baranja.³⁸

In May 2009, Branimir Glavas was convicted by the Zagreb County Court and sentenced to 10 years' imprisonment. The other co-accused were also convicted and sentenced to between five and eight years in prison. Appeal proceedings before the Supreme Court in the case are due to start in 2010.

Prior to the announcement of the verdict, Branimir Glavas fled to Bosnia and Herzegovina where he has been living since. On his website he has continued to make statements about the witnesses' role in the proceedings and during the war in Croatia, having the effect of intimidating witnesses.

Amnesty International is extremely concerned that neither the judge presiding over the case nor the State Prosecutor's Office has investigated or addressed the intimidation of the witnesses, other than by transferring the venue of the proceedings. The organization is concerned not only about the threats themselves and the impact on this case but also that the failure to take action has sent a message to potential witnesses in war crimes cases that they risk not being protected, if they agree to come forward. This may have a chilling effect on the participation of witnesses in future trials.

Amnesty International is concerned that intimidation of witnesses and human rights defenders also takes place at the local level in relation to war crimes cases where there is little media attention, and the risks for witnesses may be greater. The threats received by Vjera Solar, highlighted below, are an example.

Vjera Solar, the mother of 19-year-old student Ljubica Solar who was killed in Sisak on 17 September 1991, established her own NGO called the Civic Association against Violence (*Gradjanska Udruga Protiv Nasilja*) in order to raise awareness and collect data on crimes committed by members of the Croatian Army and police forces against Croatian Serbs and other minorities. She has collected the names of 115 people who were killed or disappeared in the Sisak area during the war. Together with other families of victims she has been campaigning for the perpetrators of the crimes committed in Sisak to be brought to justice.

When the first war crimes trial of a member of the Croatian Army started in Sisak in 2009, Vjera Solar started receiving death threats by telephone and by letters.³⁹ The authors of the threats have so far evaded apprehension and Vjera Solar continues to live in fear for her safety.

FAILURE TO MAKE JUDGES, PROSECUTORS AND LAWYERS FULLY AWARE OF CROATIA'S INTERNATIONAL OBLIGATIONS IN THE FIELD OF HUMAN RIGHTS, PARTICULARLY THOSE ENSHRINED IN THE CONVENTION

In May 2004 the Committee recommended that the authorities of Croatia undertake measures to *"make judges, prosecutors and lawyers fully aware of Croatia's international obligations in the field of human rights, particularly those enshrined in the Convention against Torture"*.⁴⁰

Based on its analysis of a substantial number of verdicts and indictments in war crimes proceedings as well as its observations of hearings in several war crimes proceedings, Amnesty International is concerned that judges, prosecutors and lawyers often do not demonstrate knowledge of Croatia's international obligations in the field of human rights and in particular those related to prosecution of torture and other ill-treatment in the context of war.

In some instances, while attending war crimes hearings, the organization observed the lack of awareness of presiding judges of standards related to examination of traumatized witnesses which resulted in exerting undue pressure on those witnesses by the defence counsel.

Amnesty International also noted with concern that war crimes of sexual violence, as a form of torture, were not included in the indictment, despite the fact that, according to the jurisprudence of the ICTY, acts described in the indictment would qualify to be prosecuted as such.⁴¹

The organization is not aware of a single indictment or a verdict in a war crimes case which has been brought in Croatian courts between 2005 and 2010 in which a reference was made to the text of the Convention against Torture. The organization has also noted with concern that the jurisprudence of the ICTY about torture and other ill-treatment in a war context, including rape, is rarely relied upon by judges, prosecutors and lawyers in Croatia.

¹ Croatia: Conclusions and recommendations of the Committee against Torture, Thirty-second session, 3-21 May 2004, CAT/C/CR/32/3, Paragraph 8(a).

² Croatia: Conclusions and recommendations of the Committee against Torture, May 2004, Paragraph 9(a).

³ For information about Amnesty International's documentation of such war crimes, please see: *Yugoslavia: Torture and deliberate and arbitrary killings in war zones*, (AI Index: EUR 48/26/91), November 1991; *Yugoslavia: Further reports of torture and deliberate and arbitrary killings in war zones*, (AI Index: EUR 48/13/92), March 1992; and *Croatia: A shadow on Croatia's future: Continuing impunity for war crimes and crimes against humanity*, (AI Index: EUR 64/005/2004).

⁴ *Naputak u svezi primjene odredbi OKZRH i ZKP u predmetima ratnih zlocina – kriteriji (standardi) za kazneni progon. Drzavno Odvjetnistvo Republike Hrvatske. Broj: O-4/08*, 9 October 2008.

⁵ *Action Plan for the implementation of Instructions Number o-4/08 related to work on war crimes cases*. The Chief State Prosecutor's Office, Number: A-223/08-2, 12 December 2008.

⁶ *Analysis of proceedings in war crimes cases at county courts of the Republic of Croatia from 2005 to 2009. December 2009. Ministry of Justice of the Republic of Croatia*. On file with Amnesty International. Document received by email on 08 February 2010.

⁷ Official website of the Town of Sisak: http://www.sisak.hr/?page_id=716

⁸ Amnesty International interview with the Head of the Police in Sisak, 23 March 2010.

⁹ The estimate of 35 persons is quoted by the Croatian authorities including the State Prosecutor in Sisak. The figure of 115 persons was given by Vjera Solar, president of the Civic Association against Violence (*Gradjanska Udruga Protiv Nasilja*). The number of 600 killed and disappeared people was quoted by the Union of Serbs in the Republic of Croatia (*Zajednica Srba u Republici Hrvatskoj*) in their criminal complaint filed in April 2007 with the County Prosecutor in Sisak.

¹⁰ *RH vs. Ivica Miric*. The accused was convicted and sentenced to nine years' imprisonment.

¹¹ *RH vs. Damir Raguz and Zeljko Skledar*, K-DO-16/09.

¹² *RH vs. Ivica Kosturin and Damir Vrbana*,. K-DO-22/09.

¹³ The unresolved cases of enforced disappearance in of themselves may amount to torture with respect to the disappeared persons but also in cruel, inhuman and degrading treatment of families of the disappeared who are not able to establish the fate of their beloved ones.

¹⁴ According to the *Analysis of proceedings in war crimes cases at county courts of the Republic of Croatia from 2005 to 2009. December 2009. Ministry of Justice of the Republic of Croatia*, the County Court in Sisak was the third busiest court in the country with 13 judgments in which 16 persons were convicted.

¹⁵ Letter of 23 February 2010 received by Amnesty International from Mr Mladen Bajic, the Chief State Prosecutor.

¹⁶ Amnesty International interview with the State County Prosecutor in Sisak, 23 March 2010.

¹⁷ Croatia: 2009 Progress Report, European Commission, 14 October 2009, p. 9.

¹⁸ Croatia: Concluding observations of the Human Rights Committee, CCPR/C/HRV/CO/2, 29 October 2009, para. 10.

¹⁹ *RH vs. Rahim Ademi and Mirko Norac*, I Kž 1008/08-13.

²⁰ *RH vs. Mihajlo Hrastov*, III Kž 12/09-10.

²¹ Croatia: 2009 Progress Report, European Commission, 14 October 2009, p. 9.

²² Croatia: Conclusions and recommendations of the Committee against Torture. 3-21 May 2004, Paragraph 9(a).

²³ *Zakon o obveznim odnosima. Sluzbeni list SFRJ 29/78* together with later amendments.

²⁴ *The Act on the Responsibility for Damage Caused by the Acts of Terrorism and Public Demonstrations and the Act on the Responsibility of the Republic of Croatia for Damage Caused by Members of Croatian Armed and Police Forces during the Homeland War*.

²⁵ *Monitoring of War Crimes Trials. Report for 2009*. Centre for Peace Non-Violence and Human Rights Osijek, Documenta – Centre for Dealing with the Past, Civic Committee for Human Rights. February 2010. p. 32.

²⁶ *Ana Jelic vs. RH; Stojanka Trivkanovic vs. RH; Dragica Ferenc, Aleksander and Robert Trivkanovic vs. RH; Evica, Mirjana and Desa Djapa vs. RH; Dijana Pajagic request for out-of-court settlement; Vjera, Jovan and Djorde Solar vs. RH; Zahida, Radivoje and Dobrivoje Martinovic vs. RH; Bozica Perkovic, Mirjana and Branislava Bozic vs. RH; Milja and Petar Bojinovic vs. RH; Milos, Nada and Dragica Crljenica vs. RH; Radojka, Damir and Jovic Pajic vs. RH; Ruzica Vucinic vs. RH; Dragica Kladar vs. RH; Dusanka Miljevic vs. RH; Mara, Milan, Milena, Dragan and Ruza Kragulj vs. RH; Kate Martinovic, Branka Bjelic and Branko Martinovic vs. RH; Milka, Dusko, Dunjo, and Danijel Bekic vs. RH; Sofija Bekic vs. RH; Anka and Djordje Simic vs. RH; Danica, Nikola and Marija Todorovic vs. RH; Veljko Cakalo vs. RH; Jasenka Borojevic, Edita Mihic and Lahorka Maric vs. RH*.

²⁷ The only compensation case in which compensation was granted by the Municipal Court in Sisak is the one filed by Milja and Petar Bojinovic vs. RH. The case is now on appeal before the County Court in

Sisak.

²⁸ Principle 9 of the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law; Article 2 of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power.

²⁹ *Vjera Solar, Jovan Solar, Djorde Solar vs. RH*, Municipal Court of Sisak, 18/12/2007. Presuda i Rjesenje III P-1323/04. The Municipal Court of Sisak ordered the applicants to pay HKN 74,580 (approximately € 10,280). In another case regarding the killing of Zoran Trivkanovic the applicants were ordered to pay HKN 71,480.

³⁰ See for example: the Decision of the Sisak County Court of 22 March 2007, case GŽ-1200/06 in which the application for compensation was rejected and the Decision of the Sisak Municipal Court of 14 May 2008, OVR-1112/08 which ordered the seizure of the applicant's property.

³¹ Croatia: Conclusions and recommendations of the Committee against Torture, 3-21 May 2004, Paragraph 9(b).

³² Prosecution's Application for an Order Pursuant to Rule 54 bis Directing the Government of the Republic of Croatia to Produce Documents or Information, with public and confidential Appendices, 13 June 2008.

³³ Letter dated 12 November 2009 from the President of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991, addressed to the President of the Security Council. S/2009/589, Annex II. Report of Serge Brammertz, Prosecutor of the International Tribunal for the Former Yugoslavia, provided to the Security Council under paragraph 6 of Security Council resolution 1534 (2004), para. 40.

³⁴ Croatia: Concluding observations of the Human Rights Committee, CCPR/C/HRV/CO/2, 29 October 2009. para. 10(e).

³⁵ Croatia: Conclusions and recommendations of the Committee against Torture, 3-21 May 2004, Paragraph 9(c).

³⁶ The documents are still available on-line on the official website of the accused:
<http://www.branimirglavas.com> Accessed on 29 March 2010.

³⁷ Amnesty International. *Croatia: Briefing for the Human Rights Committee on the Republic of Croatia*, Index: EUR 64/001/2009, p. 12.

³⁸ Feral Tribune, *Gospodar Fascikla*, 8 June 2008.
http://feral.mediaturtle.com/look/weekly1/article_tisak.tpl?IdLanguage=7&IdPublication=1&NrArticle=18239&NrIssue=1184&NrSection=1&ST1=text&ST_T1=teme&ST_AS1=1&ST_max=1

³⁹ Prijetnje zbog traganja za ubicama sisačkih Srba, Radio Free Europe:
http://www.slobodnaevropa.org/content/sisak_vjera_solar/1504080.html

⁴⁰ Croatia: Conclusions and recommendations of the Committee against Torture, 3-21 May 2004, Paragraph 9(d).

⁴¹ Indictment in the case of *RH vs. Damir Raguz and Zeljko Skledar*, K-DO-16/09, in which one of the victims was found dead, naked and with her legs spread wide in a room upstairs of the house where allegedly she was brought by the two accused.

Amnesty International
International Secretariat
Peter Benenson House
1 Easton Street
London WC1X 0DW

www.amnesty.org

AMNESTY
INTERNATIONAL

