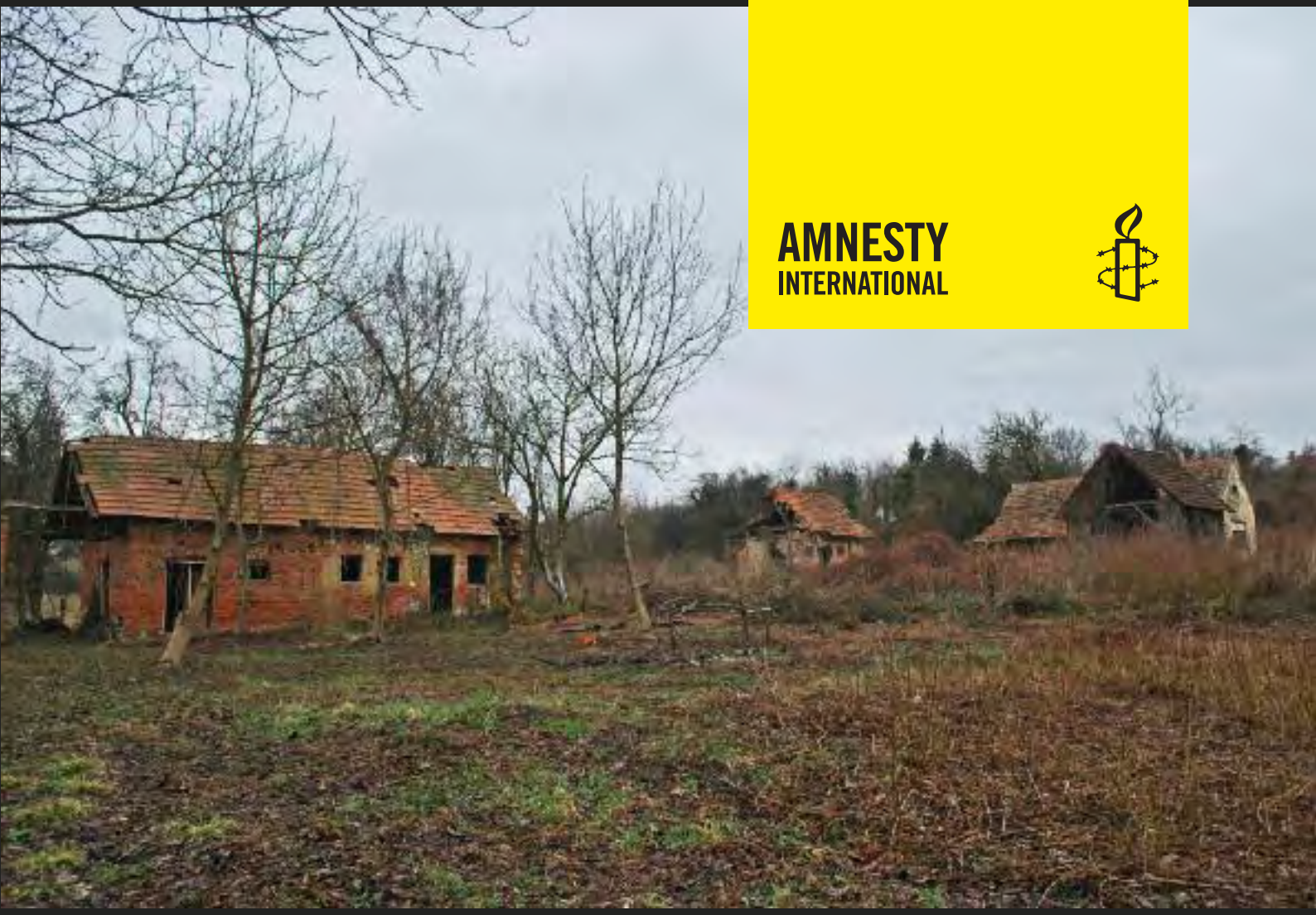
BEHIND A WALL OF SILENCE

PROSECUTION OF WAR CRIMES IN CROATIA



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CAMPAIGN FOR INTERNATIONAL JUSTICE

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Cover photo: Many places in Croatia still bear traces of the 1991-1995 conflict. The village of Sibenik in Bjelovar-Bilogora County was almost destroyed by the war. Only two families have returned.

CONTENTS

1. INTRODUCTION

"The biggest problem is gathering personal evidence – which means witnesses.

We had a situation here that during the police investigation everybody remembered everything, everybody was making allegations. However, when we brought the same people – preliminary witnesses – in front of an investigative judge to confirm what they said so that it could become evidence....everybody has suddenly forgotten everything... No one could remember anything anymore...A wall of silence.... I do not need to explain any more I guess...

Whether they are being threatened? I do not want to speculate about it..."

Deputy Chief State Prosecutor, interviewed by Amnesty International in February 2008.

This report, which is based on more than three years of continuous research by Amnesty International, documents how the authorities of Croatia have failed to provide the victims of war crimes and their families with access to truth, justice and reparation for human rights violations committed during the 1991-1995 war in Croatia.

The war finished almost 15 years ago, but only a very limited number of perpetrators have been brought to justice before the Croatian courts, and these proceedings have in majority not been in accordance with international criminal law and international fair trial standards.

Amnesty International considers that despite consistent international criticism, and the progress that has been made in some areas, the Croatian authorities have failed to develop the capacity of the justice system to effectively prosecute war crimes cases.

The organization is also concerned that complicated legal procedures and their application by the courts in Croatia prevent victims of war crimes and their families from accessing reparations for human rights violations they experienced during the war.

This report focuses on the efforts undertaken by the authorities in Croatia in the last five years, from 2005 until mid 2010, in prosecution of war crimes. It aims at identifying the areas in which improvements need to be made in order to tackle continued impunity for the crimes committed during the 1991-1995 war and in order to provide the victims of those crimes and their families with access to justice and reparation as stipulated by international standards.

One of the key findings of Amnesty International's research is that the legal framework itself in Croatia is inadequate for prosecution of war crimes cases. This is because it fails to define in accordance with current international standards the crucial concepts related to prosecution of crimes under international law such as command responsibility, war crimes of sexual violence and crimes against humanity. Amnesty International is therefore concerned that the application of the current Croatian legal framework may result in impunity for many crimes committed during the 1991-1995 war.

Another major concern is that the court system is also inadequate to ensure that justice is delivered and redress provided. The overwhelming majority of war crimes proceedings in Croatia take place before county courts, where trial panels are rarely formed exclusively of criminal judges, and panel judges all too often lack sufficient expertise in international criminal law and other relevant international standards. Furthermore, these county courts do not have basic facilities to provide witness support and protection, and in many cases Amnesty International has documented pressure and intimidation of witnesses in war crimes proceedings before the county courts in Croatia.

With the aim of addressing the problems in prosecution of war crimes by the country courts, four specialized war crimes chambers have been established in Osijek, Rijeka, Split and Zagreb. They have yet to prove effective, however. To date they remain without the investigative centres envisaged as part of their establishment, and so far only two cases - both heard in Zagreb - have been prosecuted under a Special War Crimes Chamber.

The capacity of the Croatian justice system to prosecute war crimes cases also appears to be very low, with government statistics indicating that as few as 18 war crimes cases are concluded a year. Given the figure of almost 700 cases which are yet to be prosecuted, most of those responsible may never face justice if capacity were to continue at such a limited level.

Beyond the inadequacies of the legal system itself, however, there is another major flaw which distorts the provision of justice. This is the failure of political will to pursue prosecutions in a way that is not one-sided and selective. On the one hand this manifests itself in an ethnic bias against Croatia Serbs: based on statistics provided by the government Amnesty International concludes that the prosecution of war crimes cases in Croatia in the period from 2005 to 2009 has been disproportionately targeted against Croatian Serbs who were the accused in nearly 76 per cent of all cases.

On the other hand, cases in which the alleged perpetrators were ethnic Croats have received very little attention. Of particular concern to Amnesty International is the lack of investigation and prosecution of several high profile military and political officials allegedly responsible for war crimes, some of them in command responsibility. The cases which are documented in detail in the report are an indication and an example of the lack of political will to deal with the war-time human rights violations in Croatia.

As it is documented in the final chapter of this report, the ongoing support of the top political leaders of the country for the persons indicted by the International Criminal Tribunal for the former Yugoslavia (ICTY) seriously undermines efforts to bring justice to the victims of war crimes and sends a very negative political message.

There is also a further aspect to this selective justice. While some persons indicted or convicted for war crimes either by the domestic Croatian judiciary or by the ICTY continue to enjoy privileges and state support, many victims of war crimes are denied access to reparation as defined by international standards. Some of them, who have had their civil compensation claims rejected, have been ordered to cover costs of the civil proceedings, sometimes amounting to €10,000.

Amnesty International calls on the authorities of Croatia to make the prosecution of war crimes their top priority. The victims who still await truth, justice and redress deserve robust and concrete measures to tackle this long-neglected problem, which needs to be at the forefront of the government's political agenda. The authorities must bring the country's legal framework in line with international standards; develop a state strategy for prosecution of war crimes cases; and bring to justice senior officials allegedly responsible for committing crimes during the 1991-1995 war.

Pending urgent reforms that must be undertaken to improve the capacity of county courts to prosecute crimes under international law in accordance with international standards, such crimes should only be prosecuted by the four specialized war crimes chambers in Osijek, Split, Rijeka and Zagreb. Measures of witness protection and support must be made available to all victims and witnesses in war crimes proceedings.

The authorities, with no further delay, must undertake steps to end ethnic bias against Croatian Serbs in prosecution of war crimes cases and they must provide all victims of war crimes with access to reparation, as prescribed by international law, including restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.

1.1 METHODOLOGY AND RESEARCH BACKGROUND

Amnesty International has been working on the issue of war crimes in the former Yugoslavia since 1991 when the war in Croatia started.[1] Since then the organization has been actively involved in documenting the occurrence of war crimes in Bosnia and Herzegovina, Croatia, Macedonia, Montenegro and Serbia (including Kosovo). In all of the countries the organization has been calling on the authorities to bring those responsible for the war crimes to justice in proceedings which meet international fair trial standards, and to provide the victims, including the families of those forcibly disappeared, abducted or killed with access to reparation as defined by international law. [2]

The research for this report started in January 2007 when Amnesty International visited Croatia to collect information about the measures undertaken by the authorities to address the issue of war crimes committed in the country. Researchers met with members of the Croatian judiciary, victims of war crimes and their families, lawyers representing victims, representatives of the international community and government officials. In February 2008 another research mission took place.

In April 2008, the Secretary General of Amnesty International travelled to Croatia, where she met and discussed the organization's findings with senior officials including the Chief State Prosecutor Mladen Bajić, the then-Minister of Justice Ana Lovrin, and the then-President Stipe Mesić. A meeting with the then-Deputy Prime Minister and current Prime Minister Jadranka Kosor also took place. The authorities were urged to undertake urgent measures to address the issue of war crimes.

During these meetings Amnesty International was assured that the authorities of Croatia treated prosecution of war crimes and addressing the legacy of the conflict as their highest priority. The officials committed themselves to undertaking a series of urgent measures to address the issue.

Between April 2008 and January 2010 Amnesty International continued monitoring the implementation of those commitments by the Croatian authorities by conducting a desk research from its headquarters in London.

In January 2010 Amnesty International visited Croatia again, and met the then-Minister of Justice Ivan Šimonović and other representatives of his ministry. The meeting was also attended by officials from other government departments including the Ministry of Foreign Affairs, the Ministry of the Interior and the Government Commission on Missing Persons. During their visit, Amnesty International delegates also met with the Chief State Prosecutor Mladen Bajić and his deputies. Meetings with Croatian non-governmental organizations, lawyers representing victims of war crimes and journalists took place in Zagreb and Osijek. The research team also visited the county courts in Zagreb and Osijek and talked to the presidents of those courts as well as the staff responsible for providing witness support services. Amnesty International representatives met with the representatives of the UN Development Programme (UNDP) to discuss the implementation of their project on witness support services in Croatia.

Between March and April 2010 an Amnesty International team spent a month conducting field research in Croatia. They talked to victims of war-time human rights violations in different locations in the country. Visits to the county courts in Sisak, Vukovar and Bjelovar took place where Amnesty International conducted war crimes trial monitoring and met with the presidents of those courts. In Vukovar an Amnesty International delegate meet the court staff providing witness support services. In Sisak, a meeting was also held with the Head of the Police and his deputies as well as with the Sisak County Prosecutor and his deputy.

The report is based on the interviews conducted by Amnesty International with the above-mentioned interlocutors between 2007 and 2010. Official documents and statistics provided by the Croatian authorities were also taken into consideration along with their written replies to questions from Amnesty International.[3] Other information used included public reports by NGOs monitoring war crimes cases in Croatia, war crimes judgments available in the public domain or obtained directly from the authorities, and public reports and recommendations issued by international human rights bodies. International legal standards and jurisprudence of international courts as well as domestic legislation relevant to prosecution of war crimes was also analysed in this report.

1.2 THE CROATIAN WAR OF INDEPENDENCE

The declaration of independence of Croatia from the Socialist Federal Republic of Yugoslavia (SFRY) on 25 June 1991 was followed by an armed conflict between the Croatian Army and Croatian Serb armed forces, aided significantly by the Yugoslav People's Army (Jugoslovenska narodna armija – hereinafter JNA).

From early 1991 to 1995 large parts of the country's territory, in particular those areas bordering Bosnia and Herzegovina (BiH) and Serbia with a significant or majority Croatian Serb population, were controlled by 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 1992 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 1992 Croatia gained international recognition as a member of the UN.

In 1993 two major military operations conducted by the Croatian forces took place namely, operation Maslenica (January-February 1993) near Zadar and the Međak Pocket military operation near Gospić (September 1993).

In May and August 1995 the Croatian Army and police forces recaptured UN Sectors West, North and South from the de facto Croatian Serb authorities, 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 in Bosnia and Herzegovina under Serb control.

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 were perpetrated on a massive scale by Croatian and Serb forces, as well as by the JNA which officially participated in the first stage of the armed conflict. [4]

These violations included unlawful killings, torture and other ill treatment including rape, enforced 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 unlawful killings, enforced disappearances, torture including rape, and the forcible expulsion of a large part of the non-Serb population. This included the torture and the killing, in an agricultural farm in Ovčara outside Vukovar, of at least 194 non-Serbs who had been taken there from the Vukovar hospital.[5]

The fate and whereabouts of many others arrested and detained after the fall of Vukovar remain unknown. Many people are still listed as missing in the region of Vukovar, some of whom are believed to have been the victims of enforced disappearances by the JNA and Serb paramilitary units during or after the fighting.

Between 1992 and the "Flash" and "Storm" operations in 1995, there was no major escalation or renewed full-scale armed conflict but instances of unlawful killings, torture and arbitrary detention continued to be reported mainly against the non-Serb population, including during the Međak Pocket operation in September 1993.

In the aftermath of operations "Flash" and "Storm" in 1995 widespread human rights violations, in particular killings, 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. [6]

Throughout the period of the armed conflict hundreds of thousands of people were internally displaced or sought protection abroad; between 300,000 and 350,000 Croatian Serbs are estimated to have left Croatia.[7]

1.3 PROSECUTION OF WAR CRIMES COMMITTED DURING THE 1991-1995 WAR

Some individuals responsible for genocide, war crimes and crimes against humanity committed during the war in Croatia have been prosecuted by the International Criminal Tribunal for the former Yugoslavia (ICTY) which was established by the UN Security Council in 1993. [8] Cases included those in which the alleged perpetrators were members of the Croatian Serb armed forces and paramilitary units as well as several cases against members of the Croatian Army and police forces.

In 2003, the Security Council adopted Resolution 1503 calling on the ICTY to "take all possible measures to [...] complete all trial activities at first instance by the end of 2008, and to complete all work in 2010." Since then the implementation of the Completion Strategy has been regularly reviewed by the Security Council and the Tribunal is now expected to finish all pending trials, including appeals, by 2014. In its efforts to implement the Completion Strategy, the ICTY has focussed on prosecuting cases against those who held senior leadership positions. Several other cases have been referred or transferred to the national courts in the former Yugoslavia, including the case against Croatian Army Generals Rahim Ademi and Mirko Norac, which was transferred to Croatia in November 2005.

In parallel with the work of the ICTY, the states of the former Yugoslavia, including Croatia, were required to undertake measures in order to be ready to prosecute all outstanding cases arising from the conflict before their domestic courts in accordance with international standards.

Amnesty International has, on numerous occasions, expressed its concerns regarding the Completion Strategy of the ICTY. The organization remains concerned over the continuing obstacles in Croatia, and in other countries of the former Yugoslavia, to the prosecution of cases arising in the context of the conflict, including war crimes, crimes against humanity and genocide, in accordance with international law and international fair trial standards. [9]

However, from its establishment the ICTY was not intended to be the sole institution responsible for prosecution of crimes committed during the wars in the former Yugoslavia. The Statute of the ICTY explicitly states that the Tribunal and national courts shall have concurrent jurisdiction to prosecute persons for serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1 January 1991.[10] By the time the ICTY completes the cases pending before it, including against the two accused still at large (Ratko Mladić and Goran Hadžić), it will have tried 163 accused in 104 cases and only a limited number of them is related to the crimes committed in the territory of the Republic of Croatia.

Therefore the main responsibility for bringing those responsible for serious violations of international humanitarian law and human rights during the war to justice lies within the judicial system of Croatia.

Prosecutions for war crimes have been taking place in Croatia since the 1991-1995 war and they continue today. However, during the war and immediately after it (and especially during the regime of Franjo Tuđman who died in December 1999) prosecution of war crimes was disproportionately targeted against Croatian Serbs while allegations of war crimes committed by members of the Croatian Army and police forces remained unaddressed. The authorities of

Croatia have also been actively supporting people who had been indicted by the ICTY. These practices continue today, albeit to a lesser extent.

1.4 PROGRESS MADE TO ADDRESS IMPUNITY FOR WAR CRIMES

Following the Republic of Croatia's application for accession to the European Union (EU) in February 2003 the Croatian authorities pledged to improve their poor record on war crimes prosecutions which has been subjected to a consistent international scrutiny, including by the EU.

One of the most significant measures undertaken by the authorities in the last five years to address the legacy of war crimes included the adoption by the Chief State Prosecutor's Office of instructions for the county prosecutors which aimed at addressing the apparent bias against Croatian Serbs in the prosecution of cases.[11] The instructions, adopted in October 2008, established general criteria for work on war crimes cases, including their selection. In December 2008 the Chief State Prosecutor's Office developed an action plan which intended to provide for the review 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.[12] In addition, county prosecutors were requested to identify priority cases for immediate prosecution.

Most of the cases which were reviewed based on the December 2008 action plan were the cases initiated during or after the war and in which majority of the alleged perpetrators were Croatian Serbs. The move by the Chief State Prosecutor's Office was intended to address the previous politically motivated prosecution against Croatian Serbs.

Those measures resulted in the reduction in the number of cases where indictments had been issued or which were being investigated but where there was not enough quality evidence to press charges against the accused.

In 2009, the review of indictments and investigations considered 1,242 individuals. Out of these, the charges against 254 were either reduced or reclassified, or the proceedings annulled.[13] In addition, the review process considered judgements in which the accused were convicted in *in absentia* proceedings. In 2009 the Chief State Prosecutor's Office requested that trials were reopened against 93 out of 464 individuals convicted in their absence. Requests were granted by the relevant courts in cases involving 48 people and cases against another 24 were rejected.[14] The remaining requests were pending.

Amnesty International welcomes these measures and urges the Chief State Prosecutor's Office to continue with the review of cases so that the injustice done by the politically motivated prosecutions in the past can be rectified.

In order to address the growing concern of the international community pointing to 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 88 war crimes cases have been prosecuted in this five-year period before county courts in Croatia.[15]

One of the obstacles contributing to impunity for war crimes in the countries of the former Yugoslavia has been the introduction of clauses to their legal systems or constitutions which forbid the extradition of their own citizens to the neighbouring countries. In order to address this issue, in February 2010 an agreement was signed by the Croatian Minister of Justice and his counterpart from Bosnia and Herzegovina which envisaged extradition of persons convicted for military, fiscal and political crimes in one country to another. A similar agreement has been signed with Serbia in July 2010. Amnesty International recognizes the signing of the agreements as an important step forward in addressing impunity for war crimes in the region.

The lack of adequate witness protection and support services in Croatia has been identified by a number of NGOs and international organizations, including by the UNDP, as one of the issues requiring to be addressed.[16] Under a project developed by the UNDP together with the Croatian Ministry of Justice, witness support services have been developed in four courts in the country, namely Vukovar, Osijek, Zadar and Zagreb. In November 2009 the responsibility for the project, including funding, was taken over by the Ministry of Justice. It is expected that following the successful development of the project, witness support services provided will be extended to all county courts in Croatia.

This report recognizes that measures have been undertaken by the authorities of Croatia to address some of the obstacles to effective prosecution of war crimes in the country. However, it also notes that the pressure by the international community, including the EU and its Member States, was instrumental in bringing about those positive changes which very often took place with its crucial support. Of particular importance in this regard has been the insistence of the EU and some of its Member States that all outstanding issues contributing to impunity for war crimes are fully addressed before Croatia joins the EU. In this context the EU designed detailed negotiation benchmarks which need to be fully met before the accession.

Amnesty International is concerned that despite the pressure and support by the international community much remains to be done to ensure that those responsible for grave human rights violations committed during the conflict in Croatia are brought to justice in proceedings which meet international standards and that the victims of the crimes receive adequate reparation.

2. INADEQUATE LEGAL FRAMEWORK

Amnesty International is concerned that the current legal framework used to prosecute crimes under international law in Croatia is inadequate and not in line with international standards. The way flawed national law defines crimes under international and how it is applied will inevitably lead to impunity for many crimes committed during the 1991-1995 war and it will obstruct justice for victims.

In Croatia, cases are initiated by county prosecutors, who are in charge of supervising police in conducting investigations. County prosecutors are also responsible for issuing indictments and representing the public interest in war crimes trials. The head of the prosecutorial service in Croatia is the Chief State Prosecutor who supervises the work of 20 county prosecutors who have territorial jurisdiction over war crimes cases.

The prosecution of cases in Croatia can take place before 21 county courts. Appeals are heard before the Supreme Court of Croatia.

In 2003, Croatia enacted a new Act on the Application of the Statute of the International Criminal Tribunal and on the Prosecution of Criminal Offences against International Military and Humanitarian Law, which enables the Chief State Prosecutor to request that a case involving crimes under international law be transferred from a county court to one of the four special war crimes chambers in Osijek, Split, Rijeka and Zagreb.[17] Such requests need to be approved by the President of the Supreme Court of Croatia.

In practice, however, most trials of persons accused of crimes under international law committed between 1991 and 1995 are prosecuted before regular chambers of the county courts in Osijek, Zadar, Sisak, Vukovar and Šibenik.[18] To date, only two cases have been transferred to and prosecuted by the special war crimes chambers. Both cases were prosecuted at the County Court in Zagreb.

Upon independence in 1991, Croatia initially continued to use the Criminal Code of the Socialist Federal Republic of Yugoslavia of 1976 (the SFRY Code). In 1993, the parliament adopted the Basic Criminal Code of the Republic of Croatia (the 1993 Basic Criminal Code) which was still largely based on the SFRY Code. In 1997, a new Criminal Code was adopted which significantly revised the 1993 Basic Criminal Code, including by expanding on the definitions of war crimes. The code has subsequently been amended on several occasions, most notably in 2004, when crimes against humanity and the principle of command responsibility were defined in national law.

In practice, Croatian courts do not apply the 1997 Criminal Code to crimes under international law committed between 1991 and 1995 on the basis that the retroactive application of the 1997 Criminal Code and its amendments is prohibited by the principle of legality.19 Instead they apply the SFRY Code or the 1993 Basic Criminal Code. This interpretation of national law, however, ignores Article 31 (1) of the Constitution and Article 2 of the 1997 Criminal Code which provide that the principle of legality does not apply to acts which - like war crimes and crimes against humanity - were criminal offences under

international law at the time they were committed. Article 15 (2) of the International Covenant on Civil and Political Rights (ICCPR) and Article 7 of the European Convention on Human Rights (ECHR), to which Croatia is a party both state "Nothing in this article [on the principle of legality] shall prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by the community of nations."

The application of the SFRY and the 1993 Basic Criminal Code contributes to impunity for crimes under international law in Croatia.

2.1 FAILURE TO PROVIDE FOR THE PROSECUTION OF CRIMES AGAINST HUMANITY COMMITTED DURING THE CONFLICT

The 1993 Basic Criminal Code includes war crimes provisions set out in the SFRY Criminal Code. However, both codes omit crimes against humanity completely.

A 2004 amendment to the 1997 Criminal Code appears to address this gap. However, the definition of crimes against humanity in Article 157a is very vague and contains some flaws. For example, the catch-all provision "or an act similar to any of these offenses so as to maintain such a regime (the crime of apartheid)" does not cover all "other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or mental or physical health", covered in Article 7 of the Rome Statute.

The application of the 1993 Criminal Code and the SFRY Criminal Code by the courts in Croatia means that crimes against humanity committed between 1991 and 1995 are not being prosecuted before national courts. Amnesty International is not aware of cases where a person accused of crimes under international law between 1991 and 1995 has been prosecuted for crimes against humanity despite many acts which were clearly committed in the context of widespread attacks against the civilian population.

2.2 LACK OF EXPRESS PROVISION ENSHRINING THE PRINCIPLE OF SUPERIOR AND COMMAND RESPONSIBILITY

The SFRY Criminal Code and the 1993 Basic Criminal Code, which the courts and prosecutors in Croatia currently apply to cases, do not explicitly recognize superior and command responsibility – a vital principle of criminal responsibility in relation to crimes under international law. Unless this is addressed, impunity will exist for military and civilian leaders responsible for crimes by subordinates under their command.

International standards on superior and command responsibility

Article 86 of Additional Protocol I to the Geneva Conventions, which Croatia ratified on May 1992 stipulates the following

"Failure to act

1. The High Contracting Parties and the Parties to the conflict shall repress grave breaches, and take measures necessary to suppress all other breaches, of the Conventions or of this Protocol which result from a failure to act when under a duty to do so.

2. The fact that a breach of the Conventions or of this Protocol was committed by a subordinate does not absolve his superiors from penal or disciplinary responsibility, as the case may be, if they knew, or had information which should have enabled them to conclude in the circumstances at the time, that he was committing or was going to commit such a breach and if they did not take all feasible measures within their power to prevent or repress the breach."

Article 87 of Additional Protocol I to the Geneva Conventions sets out the duty of commanders:

"1. The High Contracting Parties and the Parties to the conflict shall require military commanders, with respect to members of the armed forces under their command and other persons under their control, to prevent and, where necessary, to suppress and to report to competent authorities breaches of the Conventions and of this Protocol [….]

3. The High Contracting Parties and Parties to the conflict shall require any commander who is aware that subordinates or other persons under his control are going to commit or have committed a breach of the Conventions or of this Protocol, to initiate such steps as are necessary to prevent such violations of the Conventions or this Protocol, and, where appropriate, to initiate disciplinary or penal action against violators thereof."

Command responsibility is described in the Statute of the ICTY as criminal responsibility of a commander or other superior who knew or had reason to know that a subordinate was about to commit or had committed acts which violate international humanitarian law and are subject to the ICTY's jurisdiction under the Statute "and the superior failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof."[20]

Although Article 167a of the 1997 Criminal Code (added by amendment in 2004) defines command responsibility the national authorities are failing to apply the principle to crimes under international law between 1991 and 1995 on the basis that retrospective application of the principle before 2004 is inconsistent with the principle of legality (see above). This conclusion exists despite the fact that superior and command responsibility for crimes under international law has been an accepted principle of international law since the end of the Second World War.

Some courts in Croatia, ruling on war crimes trials, have however sought to apply elements of the principle of command responsibility by relying on Article 28 of the 1993 Basic Criminal Code which while defining in general different kinds of criminal acts, makes a distinction between criminal acts of commission and criminal acts of omission. Under the 1993 Basic Criminal Code "a criminal act may be committed by omission only when the perpetrator has failed to perform the act which he was obliged to perform".[21]

In his 2006 academic analysis of Croatian law related to the prosecution of crimes under international law, the current President of Croatia Ivo Josipović opined that in situations where the commander knew that subordinates were about to commit the crime and failed to take the necessary and reasonable measures for it to be prevented, such commanders could be prosecuted under Article 28 of the 1993 Basic Criminal Code as a crime of omission "in failing to take action to prevent a crime he knew was about to be committed, the commander

obviously agreed to the prohibited consequence."[22] This analysis has been applied in practice in some cases prosecuted in Croatia.

For example, in the case of Rahim Ademi and Mirko Norac prosecuted before the Special War Crimes Chamber in Zagreb and appealed to the Supreme Court, Mirko Norac was convicted for war crimes against civilians and war crimes against prisoners of war under the 1993 Basic Criminal Code because he knew that his subordinated officers were committing crimes but did not do anything to prevent them from doing that in his capacity as a commander. However, the Supreme Court found that Mirko Norac could not be criminally liable for the crimes which were committed by the units under his command on the first day of the military operation "Međak Pocket" because he could not have prevented them until he learnt that those crimes took place.[23] The Court did not appear to consider whether he should have known that the crimes were about to be committed nor did it consider his failure to take measures to ensure the perpetrators were punished for their actions to be criminal and that their cases were submitted to prosecuting authorities for the purpose of prosecution.

Although the Supreme Court's interpretation of Article 28 of the 1993 Basic Criminal Code has resulted in conviction based on command responsibility in this case, Amnesty International is concerned that the precedent set is not consistent with the definition of superior and command responsibility under international law and in some cases it may, in fact result in impunity for war crimes, both for military commanders and civilian superiors.

2.3 FAILURE TO DEFINE WAR CRIMES OF SEXUAL VIOLENCE EFFECTIVELY

Amnesty International is concerned that existing national laws in Croatia limit the ability of national courts to follow the progressive prosecutions of crimes of sexual violence by the ICTY and the International Criminal Tribunal for Rwanda (ICTR) and provided for in the Rome Statute of the International Criminal Court – which Croatia has ratified. Indeed, Amnesty International is not aware of any case where Croatian courts have taken into account the jurisprudence of the ICTY and other international criminal tribunals, in the prosecution of crimes of sexual violence committed during the 1991-1995 conflict. The practice threatens to entrench impunity for many crimes of sexual violence and obstruct survivors from accessing justice.

2.3.1 FUNDAMENTALLY FLAWED DEFINITIONS OF CRIMES OF SEXUAL VIOLENCE AS GENOCIDE, CRIMES AGAINST HUMANITY, WAR CRIMES AND TORTURE.

The jurisprudence of the ICTY and the ICTR established that, depending on the circumstances, rape and other forms of sexual violence may be considered as torture,[24] war crimes, crimes against humanity or genocide.[25] The Rome Statute of the International Criminal Court expressly provides that rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity can amount to war crimes and crimes against humanity. As a state party to the Rome Statute, Croatia is obliged to investigate and prosecute these crimes committed after 1 July 2002 before their national courts. However, it also has duty to investigate and prosecute these crimes under international law committed before that date.

The 1993 Basic Criminal Code currently being applied by Croatian courts only recognizes rape and coercing a person into prostitution as war crimes in Article 120. No definition is provided for either crime. The 1997 Criminal Code that is not being applied by Croatian court

in relation to crimes committed in the conflict appears to recognize most acts of sexual violence identified in the Rome Statute.

2.3.2 FAILURE TO DEFINE ACTS AMOUNTING TO RAPE IN ACCORDANCE WITH INTERNATIONAL LAW.
The ICTY and the ICTR have both considered the physical elements of the crime of rape.[26] The International Criminal Court's Elements of Crimes most clearly sets out the physical elements defined under international law:

"the perpetrator invaded the body of a person by conduct resulting in penetration, however slight, of any part of the body of the victim or the perpetrator with a sexual organ, or of the anal or genital opening of the victim with any object or any other part of the body."

International standards on definition of war crimes of sexual violence

The jurisprudence of the ICTY and the ICTR established that, depending on the circumstances, rape and other forms of sexual violence may be considered as torture, war crimes, crimes against humanity or genocide.[27]

The Akayesu case prosecuted by the ICTR was the first case in which an attempt was made by an international tribunal to define war crimes of sexual violence. The understanding of the Tribunal was that rape was a specific crime included in a broader concept of sexual violence which was defined as "any act of a sexual nature which is committed on a person under circumstances which are coercive. Sexual violence is not limited to physical invasion of the human body and may include acts which do not involve penetration or even physical contact." [28]

The "coercive circumstances" reflect the evidence in this case that, due to the aggressive nature of the situation and the presence of armed men, the victims were not able to make informed, free and voluntary choice about whether or not to engage in sexual activity. The ICTY also attempted to define rape in several cases, including Delalić, [29]Furundžija[30] and Kunarac.[31] While doing so it drew on the definition developed by the ICTR in the Akayesu case.

Therefore, as established in a number of judgments of the ICTY, and particularly in the Appeals Chamber judgment in the Kunarac case, the use of force or the threat of force should not be the only means available to establish that rape or other sexual act was not consensual.[32] The jurisprudence of the international tribunals favours the notion of "coercive circumstances" as well as direct force or the threat of force as an element of rape. This approach was also taken by the Trial Chamber of the ICTR in the Akayesu Trial Chamber where its judgment states that "coercive circumstances need not be evidenced by a show of physical force. Threats, intimidation, extortion and other forms of duress which prey on fear or desperation may constitute coercion, and coercion may be inherent in certain circumstances, such as armed conflict."[33]

In the context of prosecution of war crimes of sexual violence, based on the current international criminal law standards, the existence of direct force against the victim in a specific case does not have to be proven by a prosecutor in order to charge a perpetrator with a crime of sexual violence. The victims of such crimes do not have to prove to the court that they have been actively opposing the perpetrator. Instead, the prosecutor has to show that coercive circumstances existed and therefore the victims could not have made an informed, free and voluntary choice about whether or not to engage in sexual activity.

The 1993 Criminal Code contains no definition of which acts amount to the crime of rape.

Article 188 of the 1997 Criminal Code provides that rape involves "sexual intercourse or an equivalent sexual act." Without any definition of "equivalent sexual act" it is impossible to determine whether this covers all the conduct covered by the definition in international law. This would require a detailed analysis of the application of the law by Croatian courts – which is beyond the scope of this paper. Amnesty International however has serious concerns that such vague definition in national law would be interpreted inconsistently with international law – particularly taking into account the fact that Croatian courts are not referring to international jurisprudence and standards in their cases.

2.3.3 REQUIREMENT OF FORCE AS AN ELEMENT OF RAPE

The case law of the ICTR and the ICTY have both rejected that force or threat of force is a requirement of rape – although it may exist in many cases. In the Kunarac case, the ICTY approached the crime of rape as a violation of sexual autonomy and noted that such autonomy was violated "wherever a person subjected to the act has not freely agreed to it or is otherwise not a voluntary participant." The Tribunals went on to determine that coercion and coercive environments may also amount to rape even where there was no direct use or threat of force. The International Criminal Court's Elements of Crimes states:

"The invasion was committed by force, or by threat of force or coercion such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against a person or another person , or by taking advantage of a coercive environment , or the investigation was committed against a person incapable of giving genuine consent."

Although Article 188 of the 1997 Criminal Code, recognizes the principle of coercion, it only applies where someone "coerces another by force or by threat of immediate attack upon his life or limb, or the life or limb of a person close to him." A separate offence of sexual intercourse by duress in Article 190 in similarly limited to "a serious threat or serious harm." Although Article 189 recognizes sexual violence taking advantage of vulnerable persons, the offence is based on their inability to resist rather than their inability to provide genuine consent. Importantly Article 191 does provide for a crime of sexual intercourse by Abuse of Position. Nevertheless, it is clear that the national provisions fail to implement many of the provisions on coercion and taking advantage of a coercive environment set out in international law.

2.3.4 INADEQUATE PRINCIPLES OF EVIDENCE IN CASES OF SEXUAL VIOLENCE.

The Rules of Procedure and Evidence of the International Criminal Court set out important rules on the prosecution of crimes of sexual violence to ensure that inappropriate consideration is not given to the issue of consent. Rule 70 states:

"(a) Consent cannot be inferred by reason of any words or conduct of a victim where force, threat of force, coercion or taking advantage of a coercive environment undermined the victim's ability to give voluntary and genuine consent;

(b) Consent cannot be inferred by reason of any words or conduct of a victim where the victim is incapable of giving genuine consent;

(c) Consent cannot be inferred by reason of the silence of, or lack of resistance by, a victim to the alleged sexual violence."

Rule 71 further prohibits the admissibility of evidence of prior or subsequent sexual conduct of a victims or witness.

Amnesty International is calling on all states to incorporate these important provisions into national law for both crimes under national and international law as vital protections to ensure that survivors are not inappropriately put on trial for their conduct or humiliated in the justice process, and that courts focus instead on the conduct of the accused. The Croatian Criminal Procedure Act does not appear to include any of these protections.

2.4 CONCLUSION

Amnesty International calls on the Croatian government to undertake urgent measures to address the weaknesses in national laws and practice identified in this chapter. In particular, measures must be taken to ensure that national authorities stop applying the 1993 Criminal Code and the SFRY Criminal Code, both of which fall well short of the rules of international law.

Although the 1997 Criminal Code is a significant improvement over the 1993 Basic Criminal Code, it contains some flaws that are inconsistent with international law, as reflected in the jurisprudence of the ICTY and in the 1998 Rome Statute, as well as the Elements of Crimes with regard to the definition of rape. An urgent review of the 1997 Criminal Code should be conducted as soon as possible to ensure national provisions meet the strictest requirements of international law, including amending the definition of some elements of crimes against humanity and the laws defining crimes of sexual violence and rules regulating their prosecution.

In addition to weak legislation, national authorities are failing to ensure that the prosecution of crimes under international law committed between 1991 and 1995 satisfies international law and standards. The refusal of Croatian authorities to apply definitions of crimes and principles of criminal responsibility which were general principles of law recognized by the community of nations at the time the crimes were committed is unacceptable and must be addressed. Given that Croatia is permitted to apply these crimes and principles under the ICCPR and the ECHR, Amnesty International considers the failure to do so as a matter of unwillingness, as opposed to inability.

Furthermore, Amnesty International calls on the authorities in Croatia to provide judges, prosecutors and lawyers in the country with adequate training related to international criminal standards and jurisprudence of international criminal courts.

3. LACK OF PROMPT, IMPARTIAL AND FULL INVESTIGATIONS AND PROSECUTIONS OF ALL WAR CRIMES

Amnesty international is concerned that the authorities of Croatia have failed to conduct prompt, impartial and full investigations and prosecutions of war crimes and they have failed to bring those responsible to justice. The failure, among others, manifests itself in the very limited number of cases of crimes under international law prosecuted to date.

The organization is also concerned that the Chief State Prosecutor's Office has failed to develop clear criteria for prioritization and selection of cases which continues to result in ethnic bias against Croatian Serbs in prosecution of war crimes cases.

Among others, the organization notes that serious allegations of war crimes alleged to have been committed by Croatian senior political and military leaders remain unaddressed.

3.1 LOW CAPACITY OF THE JUSTICE SYSTEM TO PROSECUTE CRIMES UNDER INTERNATIONAL LAW

Amnesty International is concerned that the justice system of Croatia has a very low capacity to prosecute crimes under international law. Unless significant measures and resources are put in place, the slow progress in prosecution of war crimes cases in Croatia will result in an irreversible impunity for those crimes.

As of 31 December 2008, the Chief State Prosecutor's Office had records of 703 registered war crimes cases. In 301 of those cases criminal proceedings had been initiated but in the remaining 402 cases the perpetrators had not been yet identified and criminal proceedings had not been initiated. [34] Statistics for 2009 were not available as of November 2010.

According to statistics provided by the Ministry of Justice in the five-year period between 2005 and 2009, the authorities prosecuted 195 persons in 88 war crimes cases – on average less than 18 cases a year.[35] However, these figures include also 71 people who were prosecuted *in absentia* (65 members of the Croatian Serb forces or JNA and six members of the Croatian Army and police forces). This raises two important issues.

Firstly, trials *in absentia* often violate fair trial rights enshrined in international law, as the accused cannot effectively defend themselves before the court. Secondly, most of those cases will need to be tried again when the accused becomes available to the judiciary and therefore verdicts in the *in absentia* trials should not be included in the number of final war crimes verdicts in the first place.

Amnesty International is concerned that if the current pace of prosecutions continues at 18 cases each year it would take almost 40 years for national authorities to deal with the 703

unprosecuted cases currently registered with the Chief State Prosecutor's Office (provided that the suspected perpetrators are immediately identified and come within the jurisdiction– which is highly unlikely to be the case).

The organization considers that this low capacity of the Croatian justice system could lead to irreversible impunity for the majority of war crimes, as with the passage of time fewer witnesses are likely to be available to testify in war crimes proceedings as their memories may fade and thus crucial evidence may be lost.

3.2 CONCERNS ABOUT THE COMPREHENSIVENESS OF INVESTIGATIONS TO DATE

Amnesty International is also concerned that the above-mentioned statistics on the number of registered war crimes cases might not correspond in full with the real number of alleged war crimes incidents which took place during the 1991-1995 war. Research conducted by the organization in the Sisak area indicates that not all allegations of war crimes have been recorded by the county prosecutor, suggesting that the statistics provided by the State Prosecutor's Office may be incomplete.[36] This problem seems to be also relevant in many other areas of the country.

WAR CRIMES DATABASE

According to an NGO representative "a complete mapping of war crimes, although very much needed, was not yet done in Croatia. Unfortunately, a full overview of the human losses – disclosing the identity of each killed or missing citizen of Croatia – was not done either. The names of all victims on the different sides of the war in Croatia are not known".[37]

In October 2009, in the context of its periodic review of the government's implementation of its obligations under the ICCPR, the UN Human Rights Committee (HRC) recommended that the Croatian authorities "promptly identify the total number and range of war crimes committed, irrespective of the ethnicity of the persons involved, with a view to prosecuting the remaining cases expeditiously." [38]

For a number of years Amnesty International has been calling on the authorities of Croatia to establish the total number of war crimes incidents, including the numbers of all persons killed as well as the victims of enforced disappearances, torture, rape and other crimes committed during the war. [39]

Amnesty International is aware of the initiative by the Chief State Prosecutor's Office to establish a database of war crimes in Croatia. Although welcome, this initiative is only a first step and a comprehensive mapping exercise must be developed in full consultation with non-governmental organizations and journalists that have to date conducted detailed investigative work on cases. In addition, any mapping tools should take into account information and the evidence which have emerged in proceedings for civil compensation claims in cases submitted by victims and their families against the Republic of Croatia. The organization is aware of at least 50 such cases.

Any mapping tools must also be available to the public to understand the truth about the full extent of the crimes and to victims and their representatives to assist their efforts to seek justice.

3.3 BIAS AGAINST CROATIAN SERBS IN PROSECUTION OF WAR CRIMES

Amnesty International is concerned that the ethnicity of the accused has played an important role in the decisions which have been made about which cases to investigate and prosecute. In particular, there are indications that a disproportionate number of cases investigated and prosecuted involve incidents in which the alleged perpetrators are Croatian Serbs while the cases in which the alleged perpetrators are ethnic Croats have received very little attention.

This concern has been raised not only by non-governmental organizations, including Amnesty International but also by international human rights monitoring bodies and intergovernmental organizations. [40]

The HRC in October 2009 raised concern about "reports that many potential cases of war crimes remain unresolved, and that the selection of cases has been disproportionally directed at ethnic Serbs".[41]

EU Progress Reports on Croatia have referred to the issue several times in the past. The 2010 progress report observed that "[...]impunity for war crimes remains a problem, especially where the victims were ethnic Serbs or the alleged perpetrators were members of the Croatian security forces. Many hundreds of cases remain to be investigated and prosecuted, despite recent action by the police and prosecutors. Problems persist in certain localities." [42]

Amnesty International is aware of some measures undertaken by the Chief State Prosecutor's Office to address the issue of bias against Croatian Serbs. These have included the adoption by the State Prosecutor's Office of instructions for the state county prosecutors aimed at establishing general criteria for work on war crimes cases, including their selection. [43]

However, Amnesty International is concerned that since the adoption of those instructions in October 2008 the situation has not changed significantly as the county prosecutors have failed to act on them. No disciplinary measures against those prosecutors have been applied, and neither has there been an analysis of the reasons for an ongoing bias.

The bias in prosecution is evident from the statistical information provided by the government of Croatia. In official statistics for the period 2005-2009, out of the total number of 88 war crimes verdicts adopted in Croatia, 73 related to members of the JNA or Croatian Serb forces or paramilitary units.[44] Cases against Croatian Serbs constituted nearly 83 per cent of all war crimes cases prosecuted in Croatia in the last five years.

In terms of the number of prosecuted persons in the same period, 148 members of the JNA or Croatian Serb forces or paramilitary units were prosecuted out of the total number of 195 individuals prosecuted for war crimes in Croatia in the same period. [45] Thus nearly 76 per cent of individuals prosecuted for war crimes in Croatia were members of the JNA or Croatian Serb forces or paramilitary units.

Many of the prosecutions which took place in *in absentia* trials were largely targeted against Croatian Serbs. Out of 148 members of the JNA or Croatian Serb forces or paramilitary units prosecuted for war crimes nearly 44 per cent (65 individuals) were tried in their absence.[46] In contrast, only six out of 47 members of the Croatian Army or police forces prosecuted for war crimes

in the same period were tried *in absentia,* amounting to approximately 13 per cent.

In his report on the latest visit to Croatia the Commissioner for Human Rights of the Council of Europe observed that "the quality of trials in absentia was reported to be low. For example, in some cases the right to a defence counsel was reported not to have been properly safeguarded. This practice has so far led to a perception, especially in the refugee community, that ethnic Serbs, regardless of their war-time past, are potentially subject to arrest and prosecution upon return to Croatia."[47]

3.4 BIAS AGAINST CROATIAN SERBS IN SENTENCING

The apparent ethnic bias is reflected not only in the decisions by prosecutors on which cases to prosecute but also in the sentencing by trial panels of persons convicted of war crimes. Amnesty International's analysis of Croatia's war crimes verdicts shows that mitigating circumstances have been considered more often and more broadly when the perpetrators were ethnic Croats and their victims Croatian Serbs or members of other ethnic communities.

A glaring example of this is the 2009 trial panel verdict at the Požega County Court of members of the Croatian military in the case of Damir Kufner and five other accused.[48]

The case against the accused related to war crimes committed by members of the Croatian military police in Marino Selo, near Pakrac. Twenty-five Croatian Serb civilians were detained and interrogated between November 1991 and February 1992. The court concluded that during the course of detention the civilians were subjected to torture and other ill-treatment which included cutting off their ears and fingers, rubbing salt into their wounds, stamping on them, hitting them with metal bars and wooden batons as well as application of electric shocks. As a result of the torture and ill-treatment 18 of the detained civilians died.

The crimes for which the accused were charged carry a sentence either between five to 15 years in prison or the long-term prison sentence of 20 years. Nevertheless, the two accused who were charged in relation to their command responsibility, Damir Kufner and Davor Šimić, received prison sentences of four and a half years and one year, respectively. Both of these sentences are below minimum prescribed by law. They were imposed following the consideration by the court of "mitigating circumstances". These included among other things, the fact that the crimes were committed in a war situation; the young age of the accused at the time when the crimes were committed; their present family situation as well as the fact that according to the Court's assessment, the first accused "was obviously led by patriotic enthusiasm" at the time when the crimes were committed.

Amnesty International considers that some of the circumstances that the trial court considered as "mitigating" are inappropriate and discriminatory and that the sentence imposed by the Požega County Court was also inconsistent with international standards as it was not commensurate with the gravity of the crimes for which the two accused were found guilty.

The other four accused, Pavao Vancaš, Tomica Poletto, Željko Tutić and Antun Ivezić, were also convicted and sentenced to prison sentences of three, 16, 12 and 10 years in prison, respectively.

On 23 March 2010 the Supreme Court of Croatia quashed the verdict of the Požega County Court on procedural grounds and ordered the case to be retried before the same court.[49]

Amnesty International notes with concern that service by the accused in the Croatian Army or police forces during the war is itself considered to be a mitigating factor in sentencing in war crimes trials in county courts in Croatia. Amnesty International considers that such 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 a mitigating circumstance in sentencing has been approved and endorsed by the Supreme Court of the Republic of Croatia.

The case against Rahim Ademi and Mirko Norac which was one of the most high-profile and rare cases in Croatia in which the accused were members of the Croatian Army is such a case. The Supreme Court, in its March 2010 verdict, concluded that the trial panel of the Zagreb County Court correctly established the mitigating circumstances in the sentencing of Mirko Norac. The circumstances considered to be mitigating included, among others: the fact that war crimes were committed as part of a lawful military action by the Croatian Army; 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. In its verdict, 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 he had committed the crimes in the context of 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 Supreme Court considered that the mitigating circumstances were applied too narrowly and that the sentence of seven years' imprisonment imposed by the first instance court was too severe. Consequently, Mirko Norac's sentence was reduced to six years' imprisonment. The acquittal of the other accused, Rahim Ademi, was upheld.[50]

Similarly, in the case against Branimir Glavaš and five other co-accused, the ruling of the Supreme Court of Croatia in July 2010, considered the service of the accused in the Croatian Army and the fact that the Republic of Croatia was under attack by foreign forces to be mitigating circumstances to be taken into account in sentencing. The Supreme Court while explaining its decision to decrease the sentence of Branimir Glavaš from 10 to eight years' imprisonment by the application of mitigating circumstances stated that:

"the accused Branimir Glavaš is a person who has not been convicted before, with a very significant contribution to the defence of the Republic of Croatia against the aggressive war, from which he left with the rank of General of the Croatian Army. It should also be appreciated that the underlying criminal acts were committed in the most difficult moments for the survival of the Republic of Croatia, the incriminating acts of the second point were committed after the collapse of Vukovar and the horrible crime that took place against the Croatian civilian population, which does not justify the commission of this crime, but refers to a situation of panic and fear in which the City of Osijek found itself after the fall of Vukovar [...]." [51]

A different panel of judges of the Supreme Court in November 2009 also considered the service of the accused in the Croatian Army as a mitigating factor in the appeal of the sentence imposed in a war crimes case against Mihajlo Hrastov.[52]

In relation to the verdict in the case against Rahim Ademi and Mirko Norac Amnesty International is extremely concerned that the Supreme Court of Croatia concluded that it was permissible for the Zagreb County Court to consider as a lawful mitigating factor the fact that the war crimes which Mirko Norac was found guilty of were committed as part of a lawful military action by the Croatian Army. Of similar concern is that the Supreme Court also expanded the application of mitigating circumstances by ruling that the sentencing court should have also considered when sentencing him that the accused was pursuing the legitimate goal of defending his country against an armed aggression.

The organization believes that such assessment of the Supreme Court is inconsistent with international criminal law as highlighted in the ICTY's judgment in the case against Dario Kordić and Mario Čekez. The ICTY Appeals Chamber stated that:

"The unfortunate legacy of wars shows that until today many perpetrators believe that violations of binding international norms can be lawfully committed, because they are fighting for a "just cause." Those people have to understand that international law is applicable to everybody, in particular during times of war. Thus, the sentences rendered by the International Tribunal have to demonstrate the fallacy of the old Roman principle of *inter arma silent leges* (amid the arms of war the laws are silent) in relation to the crimes under the International Tribunal's jurisdiction." [53]

The ICTY has repeatedly rejected assertions contained in rulings of the Supreme Court of Croatia that it was lawful to consider as a mitigating circumstance that the crimes perpetrated by the accused were committed in the context of a war situation. For example in its judgment in the appeal of case against Tihomir Blaškić the ICTY Appeals Chamber explained that:

"[A] finding that a 'chaotic' context might be considered as a mitigating factor in circumstances of combat operations risks mitigating the criminal conduct of all personnel in a war zone. Conflict is by its nature chaotic, and it is incumbent on the participants to reduce that chaos and to respect international humanitarian law. While the circumstances in Central Bosnia in 1993 were chaotic, the Appeals Chamber sees neither merit nor logic in recognizing the mere context of war itself as a factor to be considered in the mitigation of the criminal conduct of its participants."[54]

Amnesty International is concerned that the Supreme Court of Croatia's rulings on the lawfulness of consideration of particular mitigating circumstances has resulted in judicially approved discrimination, as it endorses more favourable sentencing treatment of individuals for war crimes for those who fought in the war in defence of Croatia. The fact that these rulings, unless and until challenged in an international forum, will serve as a precedent to be followed by the county courts presiding over war crimes trials is of extreme concern.

Amnesty International's concerns about this issue, raised in numerous meetings with the Croatian authorities, have been echoed by others. For example, the European Commission, in its Progress Report on Croatia in October 2010, observed that "the use of mitigating factors in sentencing gives rise to different treatment linked to ethnicity."[55]

The Commissioner for Human Rights of the Council of Europe in his latest report on Croatia urged the Croatian authorities "to take effective measures to ensure that cases of war-related crimes are always prosecuted in an unbiased manner, independently of the alleged perpetrator's ethnic or other background, in accordance with the general prohibition of discrimination of Protocol No 12 to the European Convention on Human Rights. Service in the Croatian army or police forces should not be a mitigating circumstance for serious human rights violations."[56]

3.5 FAILURE TO ADDRESS ALLEGATIONS OF WAR CRIMES COMMITTED BY SENIOR OFFICIALS

Amnesty International believes that the readiness of a country to deal with its war-time past is indicated not only in the prosecution of low-ranking officials accused of isolated, low profile crimes but by a willingness to expose the systemic nature of the crimes. This includes by pursuing investigations and, where there is sufficient admissible evidence, prosecuting in fair trials all those suspected of responsibility for those crimes, including military commanders and civilian superiors, even if they remain politically powerful today, and regardless of the ethnicity or nationality of the victims or alleged perpetrators. Of course, merely being a commander or a civilian superior is not sufficient to demonstrate criminal responsibility. However, military commanders and civilian superiors have clear responsibilities under international law to prevent crimes, punish them and refer cases involving their subordinates to prosecuting authorities.[57]

For the most part, the authorities of Croatia have failed to ensure the prompt, impartial, independent and thorough investigation of allegations that senior officials committed war crimes. As highlighted in Chapter 2, Croatian laws and their current application by Croatian courts prevents them in many cases from doing so. The examples described in this chapter are only the most well-known cases, where no steps – or no effective steps - were taken by police or prosecutors to investigate judicial findings of possible responsibility or allegations that were brought to public attention by Croatian journalists and NGOs. Information about these alleged war crimes and crimes against humanity exists in the public domain and is easily available. It is thus of great concern that the Chief State Prosecutor's Office has failed to undertake prompt, thorough, independent and impartial investigations in accordance with international law and standards or even to take any action on this information. As a result of these failures, Croatia is in breach of its obligations under international law.

3.5.1 COMMAND RESPONSIBILITY FOR CRIMES COMMITTED IN OSIJEK IN 1991

Amnesty International is concerned that to date a prompt, thorough, independent and impartial investigation in accordance with international law and standards has not been conducted to identify not only direct perpetrators, but also those who may have command or superior responsibility, including those who might have been in charge when crimes under international law were committed in Osijek in 1991. In particular, the organization notes that no investigation has ever been conducted into public allegations against Vladimir Šeks for crimes under international law to determine whether there is sufficient admissible evidence for a prosecution.

Vladimir Šeks is a very influential Croatian politician. He has been a member of the Croatian Parliament since the country's independence as a representative of the Croatian Democratic Union (Hrvatska Demokratska Zajednica – HDZ). He occupied several senior positions

including the posts of the Speaker of the Parliament (December 2003-January 2008), Vice-Speaker of the Parliament (from January 2008 until present), Deputy Prime Minister (1992-1995) and the State Prosecutor (April – August 1992).

During the trial against Branimir Glavaš and five other co-accused, several persons, including Vladimir Šeks himself, testified that he was in a position of command in Osijek in 1991 when crimes under international law were committed.[58]

In May 2009 Branimir Glavaš was convicted for having failed to prevent his subordinates from detaining, ill-treating and killing Croatian Serb civilians and for having directly participated in some of the crimes in his capacity as local military leader in 1991 in Osijek. He was sentenced to 10 years' imprisonment by the Zagreb County Court and upon appeal before the Supreme Court which announced its verdict in the case in July 2010, the conviction was upheld but the sentenced reduced to eight years' imprisonment.

One of the witnesses during the trial before the Zagreb County Court was Vladimir Šeks.

As established by the Zagreb County Court in the verdict of 8 May 2009 in the above-mentioned case, on 29 July 1991 Vladimir Šeks was appointed President of the Regional Crisis Headquarters for the Eastern Slavonija Region.[59] In this post, Vladimir Šeks was responsible for "general supervision of the activities of the Headquarters and managed the work of the Headquarters as a whole", while the military commander of the Headquarters, Colonel Franjo Pejić, was responsible for the military command of armed units.[60] Apart from Vladimir Šeks and Franjo Pejić, five more people were appointed members of this Headquarters, including Branimir Glavaš.[61]

As it appears from the testimony of Branimir Glavaš, as referred to in the verdict of the Zagreb County Court of 8 May 2009:

"Vladimir Šeks performed the duty of the President of the Regional Crisis Headquarters for Eastern Slavonija and Baranja from July until September 1991 and in that capacity he had supreme military and political powers in Slavonija, and he was informed about all events which took place in Osijek."[62]

The same verdict referring to the events which took place in Osijek on 31 August 1991 reads:

"the target of the alleged terrorist was exactly the 1st defendant Branimir Glavaš, although at the time there were persons who were formally more significant in the chain of command than the 1st defendant, including Vladimir Šeks in the capacity of the President of the Regional Crisis Headquarters."[63]

Other witnesses testified that in addition to his formal role, Vladimir Šeks, together with Branimir Glavaš, were unofficial leaders in the town of Osijek. This was claimed by witness Josip Boljkovac who, according to the May 2009 verdict in the Glavaš case, said that:

"[D]uring 1991, Osijek was outside of the control of the then leadership of the Republic of Croatia and that it was impossible to do anything in the city without Vladimir Šeks and the first defendant Branimir Glavaš, who were in charge."[64]

In the context of his potential liability for command responsibility, Amnesty International is concerned by the statement of Vladimir Šeks cited in the above-mentioned verdict of the Zagreb County Court:

"The witness Vladimir Šeks testified that on 31 August 1991 around midnight, he was returning from the field. On that occasion he found a group of men in the yard of the complex where the Regional Crisis Headquarters was located, and he saw a man lying on the ground who was probably dead. At that moment the on-site investigation was taking place and when he asked what had happened, one of the soldiers present told him that it was a terrorist who jumped over the fence and headed towards the Municipality building in which the Regional Crisis Headquarters, the SNO [Sekretarijat narodne obrane – Secretariat of National Defence] and other bodies were located. After that, he went to the SNO, to Branimir Glavaš' office, where he also met Colonel Franjo Pejić, from whom he heard with regard to that terrorist the same thing that he had already heard in the yard. He stated that in the period from July, August and September 1991 he did not see civilians being brought to the garages next to the SNO building or to the building itself or that they were abused, that is tortured, there, nor did he ever receive information about such events."[65]

From this public information, it appears that Vladimir Šeks may not have taken any steps with respect to members of the armed forces under his command or other persons under his control, to prevent and, where necessary, to suppress or to report to competent authorities breaches of the Geneva Conventions and of Protocol I.

The Zagreb County Court in its May 2009 verdict established that indeed individuals were brought in to the garages next to the SNO building and to the building itself, and that some of them were tortured there. Part of conviction against Branimir Glavaš was based on this assessment. [66]

Given that Vladimir Šeks claimed that during a period of three months he did not see any civilians being brought to the garages, saw torture or other abuses or received information about such events, it appears possible that he may not have acted on information which should have enabled him to conclude in the circumstances at the time, that some of his subordinates were committing or were going to commit such breaches and that he may not have taken all feasible measures within their power to prevent or repress the breach.

In a letter to the Chief State Prosecutor of the Republic of Croatia dated 27 July 2010 Amnesty International communicated its concerns related to the alleged responsibility of Vladimir Šeks for war crimes committed in Osijek in 1991. The organization asked the Chief State Prosecutor to explain whether an attempt had been made to investigate the command responsibility of Vladimir Šeks for war crimes committed in 1991 in Osijek.

The letter also addressed the other cases outlined below in this section, and Amnesty International asked the Chief State Prosecutor to provide his response by 25 September 2010. No reply had been received by that date to any of the queries raised.

3.5.2 COMMAND RESPONSIBILITY FOR CRIMES COMMITTED IN MEĐAK POCKET

The prosecutor has also failed to open investigations of allegations suggesting that some of those in command of the 1993 military operation in Međak Pocket near Gospić, during which

war crimes against civilians and prisoners of war were committed, may have command responsibility for those crimes.[67]In addition, it appears that there has been no investigation to determine whether their civilian superiors may have superior responsibility.

Amnesty International is concerned that the authorities have failed to investigate allegations suggesting that commanders of the 1993 military operation in Međak Pocket, including Janko Bebetko - Croatian Army Chief of Staff at the time of the operation (who died in April 2003) - and General Davor Domazet-Lošo, could have command responsibility for these crimes.

A case against General Rahim Ademi and General Mirko Norac in relation to crimes under international law committed during the Međak Pocket operation**,** in which the two generals were accused of having command responsibility during the operation, was prosecuted before the special war crimes chamber of the Zagreb County Court.

In May 2008, the Zagreb County Court acquitted Rahim Ademi, although Mirko Norac was found guilty of some of the charges and sentenced to seven years' imprisonment. On appeal, the Supreme Court in March 2010 reduced the sentence of Mirko Norac to six years' imprisonment and upheld the acquittal of Rahim Ademi.

In the course of the proceedings the trial panel of the Zagreb County Court, established that during the operation in Međak Pocket a parallel chain of command existed.

In the verdict, the court concluded that the superior command of the operation rested with General Janko Bobetko (Croatian Army Chief of Staff).[68] He appointed Davor Domazet-Lošo as his envoy in the field.[69] Therefore, as a result, the command responsibility of Rahim Ademi, as the official commander of the operation, was significantly reduced and overstepped by Davor Domazet-Lošo who was *de facto* in charge of the operation.[70]

Based on this assessment the trial panel acquitted Rahim Ademi, as the *de jure* commander, as it had attributed command responsibility for the operation in the field to General Davor Domazet-Lošo and to General Janko Bobetko, as the superior commander.

Even though the Zagreb County Court in May 2008 concluded that Davor Domazet-Lošo was the *de facto* commander and that conclusion was confirmed by the Supreme Court in March 2010, the Chief State Prosecutor had, as of November 2010, not yet opened an investigation to determine whether Davor Domazet-Lošo, as a *de facto* commander had command responsibility for the crimes.

3.5.3 TOMISLAV MERČEP

Amnesty International is also concerned at the lack of an investigation into allegations that Tomislav Merčep, reportedly a commander of the reserve police unit, 1st Zagreb Special Unit under the jurisdiction of the Croatian Ministry of Internal Affairs, who was allegedly involved in crimes in various locations in Croatia, may have command responsibility for some of those crimes.

The allegations relating to Tomislav Merčep became public as early as in August 1995 when the newspaper *Feral Tribune* published an article entitled *Dossier: Pakračka Poljana, Part 1*

and 2 in which it was claimed that war crimes were committed in Pakračka Poljana in Western Slavonia by the units under the command of Tomislav Merčep. The article was based on files from an investigation which was conducted during the war by the Zagreb Police against some members of the units. The article also claimed that the investigation into those war crimes which had been opened during the war had been terminated due to political pressure. The article described, in detail, killings, torture, plunder and destruction of property reportedly carried out by units commanded by Tomislav Merčep. It contained testimonies of some of the alleged perpetrators.[71]

Two years later in September 1997, the same newspaper published an interview with Miro Bajramović who was a member of the Merčep unit and a close collaborator of Tomislav Merčep. Miro Bajramović admitted to killing 72 people himself, including nine women. He alleged that the units under the command of Tomislav Merčep acted on the latter's orders to kill and torture civilians and steal their property. The interview provided detailed accounts of such incidents.[72]

Miro Bajramović provided examples of how his units killed between 90 and 100 people in Gospić in October 1991; how they tortured civilians in prison in Pakračka Poljana at the end of 1991 and beginning of 1992; how they killed both Serbs and Croats in Pakračka Poljana and how they stole their property. Other examples he relayed in the interview included the killing of the Zec family in Zagreb in December 1991 and the multiple rape and killing of a 19- year-old woman Marina Nuić in 1991.

Another article, which included testimonies of several individuals who claimed to be victims of war crimes allegedly committed by units under Tomislav Merčep's command, was published by *Feral Tribune* in October 2000.[73]

In October 2002 the same newspaper published an interview with Ferdinand Jukic, an agent of the Service for Protection of Constitutional Order (SZUP) who reportedly during the war conducted an investigation into the alleged responsibility of Tomislav Merčep for the killings of Croatian Serbs in Vukovar.[74]

Other newspapers in Croatia have also been reporting allegations that war crimes were committed by the units under command of Tomislav Merčep. One of the most recent articles was published by *Slobodna Dalmacija* in May 2010.[75]

Prosecutions have been conducted in relation to some crimes committed by the "Merčep units". These include those detailed in the case against Munib Suljić, Igor Mikola, Siniša Rimac, Miro Bajramović and Branko Šarić who were all convicted in September 2005 by the Zagreb County Court. As it appears from the verdict in the case, several witnesses, including Višnja Iris, Stjepan Mañarelo and Ivan Vekić (Minister of Interior Affairs in the government of Croatia in the period from 1 August 1991 to 15 April 1992) stated that the unit, which the accused were members of, was commanded by Tomislav Merčep. [76] This was also confirmed by Tomislav Merčep himself.[77]

Amnesty International is extremely concerned that as of November 2010, despite the large number of crimes committed by his subordinates, the possibility that Tomoslav Merčep may have command responsibility for those crimes has not been yet thoroughly, independently

and impartially investigated. There also appears to have been no investigation of the possible responsibility of his civilian superiors.

Amnesty International is also extremely concerned that, according to an April 2010 press statement by a senior official of the ICTY, the ICTY had already investigated a case against Tomislav Merčep and had transferred the evidence in that case to the authorities in Croatia in 2006.[78] Since then, no action was undertaken to investigate the case.

Reportedly, also in April 2010 another senior official of the ICTY Prosecutor's Office was quoted by the Croatian media as saying that: "Croatia has received enough evidentiary material so that it could continue with the investigation against Tomislav Merčep."[79]

The same ICTY official stated to the Croatian media that the Tribunal had recently asked the Chief State Prosecutor of Croatia to be provided with the information on what kind of measures had been undertaken to prosecute the case.[80]

In its letter of 27 July 2010, Amnesty International asked the Chief State Prosecutor whether any investigative work was taking place in Croatia to determine if Tomislav Merčep was criminally responsible for war crimes committed by his units.

3.6 FAILURE TO DEVELOP A PROSECUTION STRATEGY AND CASE SELECTION CRITERIA

Amnesty International is concerned that the Croatian authorities have to date failed to develop a comprehensive strategy for prosecution of war crimes as well as their selection criteria. As a result prosecution of particular war crimes cases and their selection is often motivated by the ethnicity of the accused or is prompted by either international pressure or by investigative work by Croatian journalists. The lack of an overall strategy for prosecution of crimes under international law in Croatia, coupled with the lack of clear case selection and prioritization criteria, creates a situation in which cases selected for prosecution are random and unrelated, often targeting low level perpetrators accused for crimes of lesser gravity while the cases of the gravest violations of international humanitarian law and the cases against persons in command remain unaddressed.

In a normal peace-time situation prosecutors making decisions on which cases and when to prosecute can conduct their work on the "first come, first served" basis. The cases are prosecuted one by one depending on when they were registered.

However, prosecution of large scale crimes under international law is significantly different and faces several important and distinctive challenges. In war-time, the extent and the number of the criminal acts committed are usually much larger than in peace-time, creating a huge backlog of cases to be prosecuted. Also, criminal acts committed are much more complex and are rarely reduced to single incidents. They usually follow a bigger pattern which needs to be explored and investigated. They also often involve multiple violations (for example one incident may involve acts of torture, rape and murder) and by many perpetrators, some in command responsibility. Very often the documentation related to war crimes gets destroyed or is not kept, which creates additional problems for prosecutors working on war crimes cases after the conflict is over. When crimes are committed by the authorities or otherwise by persons in the position of power, victims and their families may fear bringing complaints.

These and other challenges need to be taken into consideration by prosecution services while addressing all war crimes incidents and bringing justice to the victims.

For those practical reasons, and also to avoid accusation of politically motivated prosecutions - or its perception - the Chief Prosecutor's Office needs to establish clear criteria on the selection and prioritization of cases. Based on those criteria cases for prosecution should be categorized and a prosecution strategy should be developed. It is in the public interest as well as in the interest of justice that some cases are prioritized and prosecuted first. Some war crimes cases should not be prosecuted in the communities where those crimes were committed and should be transferred to the four special war crimes chambers. Transparent case selection and prioritization criteria would also help the Chief State Prosecutor to make decisions on the transfer of those cases.

Amnesty International is concerned that such case selection and prioritization criteria have not been developed in Croatia. The criteria for work on war crimes cases which were adopted by the Chief State Prosecutor's Office in October 2008 were aimed at providing guidance to the county prosecutors on what kind of incidents should be classified as war crimes and how to avoid ethnic bias while making those decisions. However, those instructions have failed to establish which criteria should be applied by the county prosecutors while making decisions on which cases should be prioritized for prosecution and for which reasons.

The organization believes that several examples of good practices in development of case selection and prioritization criteria exist, put in place both by the international criminal tribunals and other countries of the former Yugoslavia.[81] Amnesty International urges the Croatian authorities to consider those good practices in developing their own case selection and prioritization criteria.

4. FAILURE TO ADDRESS IMPUNITY FOR WAR CRIMES AT THE LOCAL LEVEL: THE EXAMPLE OF SISAK

Amnesty International is concerned that prosecution of war crimes in many local communities in Croatia faces serious obstacles.

Often it is not in the interest of the victims for those crimes to be prosecuted in their local communities. The pressure on the victims might be too high or the prosecution in the local courts might fall short of international criminal standards, which may result in impunity for crimes committed against them or their families.

For several years Amnesty International has been monitoring the response of the authorities to war crimes committed in the Sisak area. The organization believes that the way the local authorities deal with the issue of war crimes in Sisak is an indicative example relevant to other areas of Croatia. As it is explained later in the chapter, the number of open war crimes cases in Sisak constitutes almost half of all war crimes cases in Croatia.

The town of Sisak itself has a population of approximately 37,000 inhabitants.[82] Before the war 24 per cent of its population were Croatian Serbs. Incidents of war crimes committed both by members of the Croatian Army and police forces on one side, and members of the JNA 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 the bodies of 684 persons had been exhumed in the area and another 599 persons were still registered as missing.[83]

The research of Amnesty International and many other NGOs and international organizations indicates that the crimes in the Sisak area, which still remain unaddressed, followed a pattern which included unlawful 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 reportedly conducted by the "Thunders" unit of the Croatian Army in the surrounding villages. The victims of those yet unaddressed crimes were mostly Croatian Serbs and the alleged perpetrators are believed to be members of the Croatian Army and police forces.

Estimates on the numbers of victims vary. The Croatian authorities, including the County Prosecutor in Sisak, estimate that 35 Croatian Serbs were killed or forcibly disappeared in the Sisak area. However, the associations of victims give much higher estimates. Vjera Solar, the president of the Civic Association against Violence (Građanska Udruga Protiv Nasilja) collected the names of 115 victims; 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 provided names of 600 people who were killed or forcibly disappeared.

Although Amnesty International takes no position on which figure of Croatian Serb victims is accurate, the organization is of the opinion that those significant discrepancies in the reports of numbers of possible victims may indicate that the real number of victims in Sisak has not yet been established.

4.1 FAILURE TO INVESTIGATE AND PROSECUTE WAR CRIMES COMMITTED BY THE MEMBERS OF THE CROATIAN ARMY AND POLICE FORCES

As of November 2010, only three cases tried before the County Court in Sisak in relation to war crimes committed by members of the Croatian Army or police forces had resulted in convictions.

In the first case the accused was convicted in August 2009 for killing of a civilian whom he had abducted from a hospital in Zagreb and killed in the woods near Sisak.[84] On 13 April 2010, the Supreme Court quashed the conviction and remanded the case for a re-trial. On 10 July 2010, the defendant was convicted again and sentenced to 9 years' imprisonment. As of November 2010 an appeal in the case was pending before the Supreme Court.

The trial in the second case relating to war crimes against Croatian Serbs, brought against two individuals, started in January 2010.[85] The accused were charged with killing, torturing and treating the civilian population in an inhuman manner. In April 2010 the verdict was announced and one of the accused was acquitted of all charges and the other was convicted *in absentia* and sentenced to 20 years' imprisonment.

In December 2009 an indictment was issued against two former Croatian Army members for beating a civilian to death. [86] The trial started in February 2010 and finished on 12 May 2010. Both of the accused were convicted and both were sentenced to seven years in prison.

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.

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.[87] In total as of November 2010, 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. Sixteen cases in which indictments were issued;

2. Twenty-two cases under investigation by the prosecutor;

3. All remaining 277 cases at the pre-investigative stage where the alleged perpetrators have not yet been identified.

Amnesty International observes that the total of 315 registered war crimes cases arising from

incidents in the Sisak area constitute almost half of all war crimes cases registered in Croatia (in total 703 cases). The 277 cases which have been at the pre-investigative stage relating to incidents in Sisak constitute more than a half of all cases at this stage registered throughout the country, as according to official statistics there were in total 402 cases registered in the pre-investigative stage in Croatia.

Based on the government's analysis of the proceedings in war crimes cases in Croatia, it appears that the County Court in Sisak in the period between 2005 and 2009 prosecuted only 13 war crimes cases. Amnesty International is concerned that if all of the 315 outstanding cases, which are registered at the moment with the County Prosecutor's Office in Sisak, were to be prosecuted before the County Court in Sisak, considering its current capacity, it would take decades to reach even first instance judgments in those cases.

The organization is concerned that both the Chief State Prosecutor's office and the County Prosecutor's office in Sisak have failed to address the problem of the huge backlog of unresolved cases in the Sisak jurisdiction. Amnesty International calls on the authorities, as a matter of urgency, to conduct an assessment of the reasons for such backlog. Based on the outcome of this assessment the Chief State Prosecutor's office should allocate all necessary resources, including assigning more specialised prosecutors, to deal with the war crimes cases in the Sisak area. The organization also calls on the Chief State Prosecutor to consider transferring some of the war crimes cases currently registered within the jurisdiction of the County Prosecutor in Sisak to one of the four special war crimes chambers.

Amnesty International is also concerned at the apparent discrimination on the basis of the ethnicity of the victims and perpetrators, which has resulted in prosecution of what appears to be a disproportionate number of war crimes cases against Croatian Serbs in the Sisak area.

The Chief State Prosecutor told Amnesty International 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, there are six cases where the suspected perpetrators were members of the Croatian Army or police forces and 32 where the alleged perpetrators were members of the JNA or Serbian paramilitary groups.[88] This means that Croatian Serbs are the accused in approximately 84 per cent of all cases currently under prosecution in Sisak, and in only 16 per cent of the cases are the suspected perpetrators former members of the Croatian Army and police forces. These official statistics are a clear indication of ethnic bias favouring the prosecution of war crimes cases against Croatian Serbs in Sisak.

In an interview with an Amnesty International delegate in March 2010 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 suspected perpetrators were believed to be Croatian Serbs.[89] The County Prosecutor in Sisak also informed Amnesty International that of the 10 priority cases (among the 277 at the pre-investigative stage) which will receive urgent attention in future, in only one case, against several suspected perpetrators based on their command responsibility, were the suspects believed to be ethnic Croats. In the remaining nine cases the alleged suspects were believed to be Croatian Serbs.

Amnesty International is concerned that these statistics indicate that discrimination in the

cases prioritised for investigation and prosecution based on the ethnicity of the suspected perpetrators and victims continues in Sisak.

4.2 FAILURE TO PROSECUTE WAR CRIMES CASES IN ACCORDANCE WITH INTERNATIONAL STANDARDS

As outlined above, the County Court in Sisak had as of November 2010 prosecuted only three war crimes cases in which the accused were members of the Croatian Army and police forces. Following an appeal, the Supreme Court of Croatia sent one of those cases sent back to the County Court in Sisak for a retrial. The remaining two cases are awaiting appeal proceedings before the Supreme Court. Therefore, as of November 2010, nobody had been brought to justice for war crimes reported to have been committed in the Sisak area by members of the Croatian Army and police forces.

While noting that no final verdict in any of the three cases had been issued as of November 2010, Amnesty International is concerned that the first instance trials held in these three cases before the Sisak County Court against the accused members of the Croatian Army or police forces, fell short of international criminal law standards.

IVICA MIRIĆ

The first indictment in a war crimes case in Sisak in which the accused was an ethnic Croat was issued on 1 April 2009 - almost 15 years after the war finished and almost 18 years after the alleged crimes were committed. The trial in the case in which the accused, Ivica Mirić, was charged with the unlawful killing on 9 October 1991 of a Croatian Serb civilian started in May 2009 before the County Court in Sisak and was concluded on 26 August 2009. The accused was convicted and sentenced to nine years in prison. On 13 April 2010, the first instance verdict was quashed by the Supreme Court of Croatia on procedural grounds and the case was sent back for a retrial before the County Court in Sisak. On 10 July 2010, the defendant was convicted again and sentenced to 9 years' imprisonment. As of November 2010 an appeal in the case was pending before the Supreme Court.

Amnesty International considers that the prosecution of the case before the County Court in Sisak has exposed several serious problems faced by this county court in prosecution of war crimes cases.

The trial proceedings before the Sisak County Court are reported to have taken place in an atmosphere of intimidation. It was reported by the media that when the trial started, Vjera Solar, the president of the Civic Association against Violence (an NGO created by the families of victims from Sisak), had already received death threats by telephone and by letter.[90] The authorities have so far failed to identify and apprehend those responsible.

As it was reported by NGOs monitoring the trial, from the start the proceedings took place under considerable pressure from the members of the associations representing former Croatian combatants. There were reports that in several instances people in the courtroom verbally abused prosecution witnesses when they were giving their testimony. During the first hearing in the case on 18 May 2009 one of the witnesses, clearly distressed and intimidated by the presence of the former Croatian combatants in the public gallery, expressed fears for his own and his family's safety. In response to that the presiding judge excluded the public from part of the hearing. It was also reported that after the completion of the hearing on 19

May 2009 some members of the public gathered in front of the courtroom to applaud the accused.[91]

In addition to the atmosphere of intimidation surrounding the trial, there were errors in the verdict delivered by the Sisak County Court upon the completion of the trial.

The accused was convicted of having been the direct perpetrator of the killing although the trial panel failed to establish beyond any doubt whether the accused in fact was the one who killed the victim.

The pertinent part of the verdict reads

"Considering the above mentioned, the court undoubtedly determined, that the accused Ivica Mirić *tempore criminis* did commit a criminal offence of a war crime against the civilian population based on Article 120 paragraph 1 of the Basic Criminal Code against the deceased Miloš Ćalić, a person of Serbian ethnic origin, by establishing that the accused proceeded with a clear intention; although during the procedure it was not determined that it was precisely the accused who fired the lethal bullets into Miloš Ćalić because there were two other armed, unidentified persons present with him at the time; it is the assessment of the court that the accused during the critical event, was aware of the fact that the killing of the deceased Miloš Ćalić would take place and therefore wanted this to happen. In other words, regardless of who had fired the lethal bullets into Ćalić, the accused acted *cum animus auctoris* because he wanted this act as his own."[92]

Amnesty International is concerned that the reasoning of the trial panel is in violation of international fair trial standards as the accused was convicted with committing a crime which the trial panel failed to establish could be attributed to him.

Amnesty International also observes that some witnesses had testified that the accused had been the commander of a police unit in Sisak and that he was in fact in command of the operation during which the victim was killed. Therefore, the organization believes that during the trial the prosecutor should have attempted to establish whether the accused had any criminal liability under the principle of command responsibility, as defined by international law, for the crimes he was convicted for. Amnesty International is concerned that this avenue was not presented by the prosecutor or even considered by the presiding judge.

Amnesty International is further concerned that the trial panel adjudicating in the case has failed to take into consideration relevant provisions of international criminal law or other international standards or jurisprudence of international tribunals which could be useful in adjudicating on the case. The verdict only briefly mentioned the Geneva Conventions with their Additional Protocols but did not elaborate on the meaning of the specific convention articles which it referenced to in connection with the case.

Amnesty International is also concerned that among mitigating circumstances the verdict took into account the service of the accused in the Croatian Army, which is in contravention with international criminal law standards.

DAMIR RAGUŽ-VIDE AND ŽELJKO ŠKLEDAR

In the second case prosecuted by the Sisak County Court in which the two accused were members of the Croatian Army, Amnesty International also noticed several serious problems related to the application of international criminal law standards.

The war crimes trial against Damir Raguž-Vide and Željko Škledar started on 8 March 2010 before the County Court in Sisak. While Željko Škledar was present (and detained) during the trial proceedings, Damir Raguž-Vide was tried *in absentia.*

The accused were charged with committing a war crime against civilians by killing four Croatian Serbs on 21 November 1991 in Novska. The incident followed the same pattern as two other incidents in the same area and in the same period (November-December 1991) in which soldiers of the 1st Croatian Army Brigade ('Tigers') were said to have entered the victims' houses during the night, tortured them and then shot and killed them.[93]

According to the indictment both accused, together with four other members of the 1st Croatian Army Brigade, entered the house of Mišo and Sajka Rašković and brought in with them Mihajlo Šeatović and Ljuban Vujić who lived in the neighbouring houses. The accused verbally and physically abused the three male victims, and hitting them around the head, forcing them sing Croatian nationalist songs, and stabbing them with knives and bayonets. They broke the arms, legs and fingers of their victims. They also cut off the genitals of one of their victims and made a wound in the testicles of the other one. Later they killed all three men with a burst from a machine gun.

The accused took Sajka Rašković to the bedroom upstairs where she was forced to undress and lie down on the bed. The accused cut her neck and chest with knives and bayonets and killed her by firing several bullets at her. According to witnesses the victim was found naked in the bed with her legs spread wide.

Amnesty International is concerned that there were several serious gaps in the prosecution of the case which indicate that both the prosecutor working on the case as well as the judge presiding over the panel adjudicating on the case failed to apply international criminal law standards.

For example war crimes of sexual violence 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. Despite the clear indication that acts of sexual violence might have been perpetrated against both male and female victims, the prosecutor working on the case decided not to charge the accused with any of such acts.

It is also unclear why the case was prosecuted separately from two other similar cases in which war crimes were allegedly committed in the Novska area during the same period of time, for which the members of the same military unit (1st Croatian Army Brigade) were allegedly responsible. Such a decision significantly weakened the case, which failed to establish command responsibility of the perpetrators, in accordance with international criminal law standards. It also resulted in the remaining crimes not being comprehensively addressed.

The prosecutor for the case failed to make use of the relevant standards of international criminal law and the jurisprudence of international criminal courts by not applying the principle of command responsibility, which may result in impunity. Namely, one of the prosecution witnesses in the case was the commander of the unit which committed the crime against the four civilians. Some individuals from the same unit, supervised by the same commander, are suspected to be responsible for other crimes against civilians in the same area and in the same period of time. In relation to those allegations, an indictment was issued in July 2010 by the Sisak County Prosecutor which charged Željko Belina, Dejan Milić, Ivan Grgić and Zdravko Plesec - all members of the 1st Croatian Army Brigade - with the unlawful killing of three Croatian Serb civilians and severely injuring another.[94] As in the previous case, the commander of the unit was called by the Sisak County Prosecutor as a witness in the case.

Amnesty International considers that the Sisak County Prosecutor should have considered investigating and, if sufficient evidence was available, prosecuting the person in command of the unit, based on the principle of command responsibility, for having failed to repress the commission of the crimes.

The organization calls on the County Prosecutor in Sisak to open an investigation aimed at establishing who exercised command responsibility for crimes in the Novska area, with no further delay.

On 16 April 2010, Damir Raguž-Vide, who was tried *in absentia,* was found guilty and was sentenced to 20 years in prison, whereas Željko Škledar was acquitted on all charges. As of November 2010 an appeal of this case was pending before the Supreme Court.

IVICA KOSTURIN AND DAMIR VRBAN

The trial in the third case in which the accused were members of the Croatian Army started before the County Court in Sisak on 22 February 2010. The two accused, Ivica Kosturin and Damir Vrban, were indicted for committing a war crime against civilians. In particular it was alleged that on 7 September 1991 in Letovanić near Sisak they arrested and removed Slavko Ivanjek from his house on the basis of information that while in an intoxicated state, Slavko Ivanjek had insulted the Croatian president and had said that Serbs would win the war. According to the indictment, the accused tied Slavko Ivanjek up and beat him severely with truncheons all over his body. They were then alleged to have taken him to the premises of the ORA detention facility, where he died of the injuries inflicted.

On 12 May 2010 both defendants were convicted and each was sentenced to seven years' imprisonment.

Amnesty International is concerned that in sentencing the accused, the Sisak County Court considered the service of the accused in the Croatian Army as a mitigating factor.

Amnesty International is also concerned by the lack of a sensitive approach to the witnesses by the trial panel, as well as the lack of witness support services during the proceedings.

Representatives of NGOs monitoring the proceedings reported that on 11 May 2010 the wife of the victim testified for the second time during the trial. During her first appearance in the

court it had been already established that she suffered post-traumatic effects of her husband's killing to the extent that she had been hospitalized. Despite that, neither the trial panel nor the prosecutor for the case requested any measures of witness support from the relevant institutions. Reportedly during her testimony on 11 May 2010, despite her repeated objections, the witness was shown the crime-scene pictures of her dead husband and was asked to identify him. When the pictures were shown to the witness, the president of the panel failed to explain their content or that they could evoke a strong reaction from her. Instead he insisted that the witness identify her husband.[95] As a result of being forced to look at the pictures, she broke down screaming, crying and trembling. She had to be carried out of the courtroom by medical emergency services.

Amnesty International believes that possibly some other solution could have been found to establish the identity of the woman's husband.

Amnesty International is concerned that the prosecutor did not file an objection to the insistence of the trial panel that the witness be confronted with the pictures despite her repeated objections.

Amnesty International urges the authorities of Croatia to provide adequate measures of witness support in war crimes proceedings. Those measures should include, but not be limited to, psychological support for witnesses.

4.3 CONCLUSION

Amnesty International notes with concern that in all three war crimes cases which have been prosecuted before the Sisak County Court and in which the accused had been members of the Croatian Army or police forces, not all of the trial panel judges were criminal judges. This may have been one of the reasons why the prosecution of these cases fell short of international standards.

Amnesty International believes that the examples given in this chapter, including the insufficient number of criminal judges being able to form a trial panel, indicate that the County Court in Sisak is not equipped to try cases of war crimes.

The organization urges the Croatian authorities to ensure that all war crimes cases are prosecuted by trial panels which are composed exclusively of criminal judges with sufficient experience to deal with such complex criminal cases.

5. FAILURE TO PROVIDE ADEQUATE SUPPORT AND PROTECTION TO WITNESSES

Amnesty International believes that the authorities of Croatia have failed to developed an adequate system of witness support in the country. Only four out of the 21 county courts in Croatia where war crimes proceedings are conducted have facilities to provide witness support.

In addition, by failing to address and investigate cases of intimidation of the witnesses in war crimes proceedings and in some cases the journalists reporting on them, the authorities have created an atmosphere of impunity, enabling this intimidation to continue.

5.1 INADEQUATE MEASURES OF WITNESS SUPPORT

Amnesty International believes that participation of victims and their families as witnesses in war crimes proceedings is crucial to address impunity by bringing those responsible for the crimes to justice but also because participation of victims in the criminal process is essential for them to experience justice. Due to the nature of those crimes, which were committed more than 15 years ago, witness testimony plays a more pronounced role in prosecution of these cases than in other criminal cases which were committed more recently and in which plenty of other evidence might be available.

However, the lack of adequate witness support can expose victims and their families to re-traumatization and can become a disincentive to other potential witnesses to provide information and testimony in war crimes investigations and proceedings.

Amnesty International considers that the provision of psychological support for witnesses in war crimes cases can be critical to the effective prosecution of those crimes. If provided in a professional manner it can enhance not only the witnesses' experience of the justice process but also the quality and efficiency of justice in Croatia.

One of the biggest problems faced by the prosecutors is how to ensure that the trial panel is presented with credible evidence and witness testimonies. Gathering credible testimonies in war crimes cases can be extremely challenging. Many survivors of war crimes and their family members continue to suffer the consequences of trauma including effects on their memory. Often they have gaps in recall and cannot account for important facts. The credibility of victims as witnesses can sometimes be affected by the consequences of their trauma. For example, some give inconsistent evidence, are emotionally unstable and readily show signs of irritation, particularly under cross-examination. These are well-documented consequences of traumatic stress seen in survivors of torture.[96]

In the previous chapter an example was provided of how the lack of witness support services

caused re-traumatization of the wife of the victim in the trial against Ivica Kosturin and Damir Vrban which was pending before the County Court in Sisak in May 2010.

The lack of adequate witness support services in Croatia has been identified by a number of NGOs and international organizations, including by the UNDP, as one of the issues to be addressed.[97] Thanks to a project developed by the UNDP together with the Croatian Ministry of Justice, witness support services have been developed in four courts in the country, namely Vukovar, Osijek, Zadar and Zagreb. In November 2009 responsibility for the project, including funding, was taken over by the Ministry of Justice.

The witness support units which were established in the four above-mentioned courts provide basic psychological support to witnesses before, during and after proceedings. They also provide information about the rights of witnesses, familiarize them with the court, and provide them with basic information about criminal proceedings. The employees or volunteers of the units await the witnesses when they come to the court and take them to a specially provided waiting room. They can also be present with witnesses in the courtroom when they give their testimony.

Information about the availability of support services is attached to the court summons together with contact details for the witness support unit.

While conducting research for this report an Amnesty International delegation visited witness support units in Osijek, Zagreb and Vukovar where the organization was impressed by the motivation of the staff of those units and the quality of their work. However, the organization regrets that only four out of 21 county courts provide such services.

Amnesty International calls on the authorities to take immediate steps in order to expand the provision of witness support services to other courts in Croatia. When allocating resources for the creation of new witness support units, the organization urges the authorities to prioritize those courts in which the special war crimes chambers were supposed to be established and which currently lack such units, namely the county courts in Split and Rijeka.

5.2 INADEQUATE MEASURES OF WITNESS PROTECTION

Amnesty International is concerned about several instances which indicate that the authorities have failed to provide adequate witness protection in war crimes cases. The lack of investigation and prosecution of cases of intimidation of witnesses perpetuates an atmosphere of impunity, obstructing the course of justice and more broadly for war crimes.

Amnesty International is also concerned by the lack of capacity of the Croatian county courts to provide measures of protection in the courtroom.

MILAN LEVAR

For several years Amnesty International has raised concern that the authorities have failed to fully 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. Over a decade

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, had given his testimony without a lawyer being 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 a 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. 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 has had a strong negative impact on the confidence of some witnesses to testify.

BRANIMIR GLAVAŠ

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

Branimir Glavaš has been an influential member of the Croatian Parliament since 1995. 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 Baranja (Hrvatski Demokratski Sabor Slavonije i Baranje - HDSSB).

Branimir Glavaš, together with five other co-accused, was charged with the unlawful detention, ill-treatment and killing of Croatian Serb civilians in Osijek in 1991. He has been

charged 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 incidents of witness intimidation are reported to have started at very early stages of investigation. For example, in December 2005 Anto Đapić, president of the Croatian Party of Rights (Hrvatska Stranka Prava - HSP) and mayor of Osijek, disclosed to the media a list of 19 people who had co-operated 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 Glavaš and the other co-accused was transferred from Osijek to the Special War Crimes Chamber of the Zagreb County Court. However, witnesses continued to feel intimidated reportedly because Branimir Glavaš published court records, witnesses' statements and other evidence related to the case on his website.[98]

In February and in April 2008, Drago Hedl, a journalist from Osijek, received death threats following his reports about Branimir Glavaš' role in the murders of Croatian Serbs.[99] The journalist later refused to testify in the case, citing the death threats he had received as one of the reasons.

On 3 June 2008 Branimir Glavaš disclosed the identity of the protected witnesses in a local television news programme.[100]

In May 2009, Branimir Glavaš 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. The conviction of all accused was upheld by the Supreme Court of Croatia in its verdict announced in July 2010. However, the sentences of all accused were reduced by the Supreme Court on grounds of "mitigating circumstances": that against Branimir Glavaš was reduced to eight years' imprisonment.

Prior to the announcement of the verdict before the Zagreb County Court in May 2009, Branimir Glavaš fled to Bosnia and Herzegovina (BiH) and continued to make statements on his website about the witnesses' roles in the proceedings and during the war in Croatia.

In July 2010, the conviction of Branimir Glavaš became final following the ruling of the Supreme Court of Croatia on the appeal. On 28 September 2010 Branimir Glavaš was arrested in Drinovci in BiH based on a verdict of the State Court of BiH which earlier that month confirmed the previous verdict of the Supreme Court of Croatia in the same case.

As of November 2010 Branimir Glavaš was detained in the detention facility of the State Court of BiH in Sarajevo pending appeal in the case.

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 that the failure of the authorities to take action on the witness intimidation affects not only the victims themselves but also sends a message to potential witnesses in war crimes cases that they may also be threatened if they agree to come forward, and that they risk not receiving justice if they are threatened.

VJERA SOLAR

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.

Vjera Solar is the mother of 19-year-old student Ljubica Solar who was killed in Sisak on 17 September 1991. She established the Civic Association against Violence (Građanska udruga protiv nasilja) in order to raise awareness of, and collect data on, war crimes allegedly committed by members of the Croatian Army and police forces against Croatian Serbs and other minorities in the Sisak area. She has collected the names of 115 people who were killed or disappeared in the Sisak area during the war. Together with the families of other victims she has campaigned for the perpetrators of war crimes committed in Sisak to be brought to justice.

In 2009, during the first war crimes trial of a member of the Croatian Army to take place in Sisak, Vjera Solar received death threats over the telephone and in letters.[101] The authorities have so far failed to identify and prosecute those responsible, and Vjera Solar continues to live in fear for her safety.

5.3 CONCLUSION

In many Croatian county courts, protection measures in the courtroom for witnesses are non existent. The Council of Europe Commissioner for Human Rights in his latest report on Croatia observed that "a number of courts lack the expertise and infrastructure for witness protection and support. For example they do not have separate entrances for the public, the accused and the witnesses."[102]

As noted in chapter four, the first trial of an ethnic Croat in Sisak was marked by considerable pressure from the members of the associations of Croatian Army veterans. There were reports of several instances of verbal abuse in the courtroom while prosecution witnesses were giving their testimonies. For example on 18 May 2009, during the first hearing in the case, one of the witnesses, clearly distressed and intimidated by the presence of the former Croatian Army combatants, expressed fears for his own safety and that of his family.[103]

Amnesty International calls on the Croatian authorities, as a matter of urgency, to improve measures of witness protection in the courtroom. This should include training for judges in the application of relevant legislation providing for witness protection as well as improving technical and material conditions of the courts.

The organization believes that until those measures are in place, war crimes proceedings should not take place in those country courts where adequate witness protection cannot be provided as the lack of such measures exposes the witnesses to unnecessary pressure and trauma and often compromises the outcome of war crimes trial which might result in impunity.

6. FAILURE TO IMPLEMENT WAR CRIMES LEGISLATION

As documented in the previous chapters, war crimes trials in Croatia take place before county courts, and these courts lack capacity and infrastructure to prosecute those crimes.

This lack of capacity manifests itself in the limited number of cases prosecuted so far: trials which fall short of international criminal law and international fair trial standards; lack of measures of witness support and protection; pressure on victims and witnesses in war crimes proceedings by local communities and members of the associations of Croatian veterans; ethnic bias against Croatian Serbs in case selection by county prosecutors and in sentencing by trial panels. In addition, allegations of war crimes committed by senior military and political leaders remain unaddressed as those allegedly responsible are still in positions of power.

Amnesty International is concerned that the failure of the authorities to increase the capacity of Croatia's justice system to prosecute cases of war crimes fails to comply with commitments related to the implementation of the Completion Strategy of the ICTY.

Under the terms of the Completion Strategy adopted in 2003, the ICTY was supposed to complete all work in 2010. Since then the deadline has been extended several times. In parallel with the work of the ICTY the countries of the former Yugoslavia, including Croatia were supposed to undertake measures in order to be ready to prosecute all outstanding cases before their domestic courts in accordance with international criminal law and international fair trial standards. The UN Security Council Resolutions 1503 and 1534 observed that "the strengthening of competent national judicial systems is crucially important to the rule of law in general and to the implementation of the ICTY and ICTR Completion Strategies in particular."[104]

In this context in 2003, Croatia adopted the Act on the Application of the Statute of the International Criminal Tribunal and on the Prosecution of Criminal Offences against International Military and Humanitarian Law.[105]

The law mandated the establishment of special war crimes chambers in four county courts in Croatia, namely in Osijek, Rijeka, Split and Zagreb. The aim of the establishment of the special war crimes chambers was to try war crimes cases outside of the community where those crimes were committed which was supposed to decrease pressure on witnesses in war crimes proceedings. The law envisaged that war crimes cases could be transferred from the county courts which have primary territorial jurisdiction over those cases to the special war crimes chambers upon a request by the Chief State Prosecutor. Such request had to be approved by the President of the Supreme Court of Croatia.

The law also envisaged the primary jurisdiction of the special war crimes chambers over cases transferred to the Croatian judiciary by the ICTY or other international criminal courts.

Since the law was adopted only two cases have been prosecuted in the special war crimes chambers, as of November 2010. These cases were the war crimes case against Branimir Glavaš and five other co-accused which was transferred from the Osijek County Court and the war crimes case against Rahim Ademi and Mirko Norac transferred to the Croatian judiciary from the ICTY. Both cases were tried before the Special War Crimes Chamber of the Zagreb County Court.

Before the 2003 law was adopted county courts in Croatia lacked the necessary material conditions to provide for witness protection and support. Most of them did not have separate entrances for the public, accused and witnesses. Reports about trials against members of the Croatian Army and police forces indicate that members of the associations of former combatants were frequently present in the public gallery, and sometimes made threats and otherwise intimidated witnesses. This exposed witnesses to unnecessary pressure and often reduced their ability to give structured testimonies due to the stress related to giving testimony in such circumstances.

An example of reports of witness intimidation by members of associations of former combatants in the courtroom was provided in chapter four which described the prosecution of the war crimes case against Ivica Mirić before the Sisak County Court.

The three Croatian NGOs monitoring war crimes trials - Documenta, Centre for Peace, Non-Violence and Human Rights and Civic Committee for Human Rights - have been raising this issue for several years in their annual reports, including most recently in March 2010 as well as in case-monitoring reports.[106]

It was also recognized that many county courts lack sufficient number of criminal judges experienced in trying war crimes cases. As was documented in chapter four, at Sisak County Court the lack of criminal judges to form a trial panel has resulted in civil department judges sitting on war crimes trials. The Supreme Court of Croatia addressed this issue in the case of I. H. et al. which had been pending before the County Court in Virovitica. It recommended that the trial panels presiding over war crimes cases should only be comprised of experienced criminal judges.[107]

While welcoming the recommendation of the Supreme Court of Croatia that war crimes cases should be prosecuted only by experienced criminal judges, Amnesty International notes that the Supreme Court decided to transfer the case to the County Court in Bjelovar, instead of referring it to one of the special war crimes chambers, as is envisaged by the Act on the Application of the Statute of the International Criminal Tribunal and on the Prosecution of Criminal Offences against International Military and Humanitarian Law. The decision was particularly surprising in view of reports from the NGOs carrying out war crimes trial monitoring which indicate that the County Court in Bjelovar is among the courts which have lacked sufficient number of criminal judges to form a trial panel in war crimes cases.[108]

Amnesty International, which visited the County Court in Bjelovar in March 2010, fully supports the findings of the NGOS and is also concerned at the lack of witness protection measures in this court. This deficiency manifests itself in the lack of separate entrances for the accused, witnesses and public and well as in the lack of technical equipment for witness protection such as video-links or other devices allowing for voice or image distortion. In

addition, the biggest courtroom at the disposal of this county court is not big enough to meet the public interest in a war crimes trial. While attending the hearing on March 2010 in the case against Ivan Husnjak and Goran Sokol Amnesty International observed that some members of the public were not allowed into the courtroom due to the limited space; this included some trial monitors as well as members of veteran associations.

The court also does not have facilities and staff to provide witness support services.

Amnesty International also noted with concern that one of the prosecution witnesses while testifying was clearly distressed by the presence of the veterans associations; he avoided eye contact with the members of the public while entering and leaving the courtroom and his voice and hands were shaking while he was giving his testimony. The organization is concerned that the presiding judge has failed to create an atmosphere conducive to giving free testimony in the case by not addressing the needs of the witness who was clearly distressed during giving his testimony. The judge has also failed to react to an attempt by the defence lawyer to further distress the witness and undermine his credibility by asking him whether he suffered post-traumatic stress disorder (PTSD). The presence of many members of the veteran associations might also have had a negative impact on the witness and his ability to freely express himself.

Amnesty International believes that the insensitive approach of the trial panel to witnesses in war crimes proceedings in the County Court in Bjelovar as well as the lack of material and technical measures of witness protection in the courtroom makes prosecution of war crimes below acceptable standards of international criminal law.

Another example of the fact that the county courts lack capacity to prosecute war crimes cases is the case against Mihajlo Hrastov which was pending before the Croatian judiciary from 1992 when the initial indictment against the accused was filed until the final judgment was issued by the Supreme Court of Croatia on 24 November 2009, 17 years later.[109]

The accused was charged with unlawfully killing 13 JNA reservists with his automatic rifle on 21 September 1991 at the Korana Bridge in Karlovac.

The case had been initiated before the County Court in Karlovac which twice acquitted the accused based on the assessment that the accused acted in self-defence when he committed the crime. Ruling on appeals to both of these verdicts, the Supreme Court ordered re-trials on the basis that serious violations of criminal procedure had occurred in each of the trials. When in 2008 the case was appealed to the Supreme Court for the third time the Supreme Court decided that it would preside over a third re-trial itself, as the two previous attempts to serve justice before the County Court in Karlovac had been unsuccessful. In the third trial before the Supreme Court of Croatia the accused was convicted and sentenced to eight years in prison. On appeal, which was delivered on 24 November 2009, the conviction was upheld but the sentence was reduced to seven years' imprisonment.

All the concerns related to the examples of failure to prosecute war crimes cases before the county courts in Croatia were supposed to be addressed by the 2003 Act on the Application of the Statute of the International Criminal Tribunal and on the Prosecution of Criminal Offences against International Military and Humanitarian Law.

The law envisaged the creation of special war crimes chambers in Osijek, Split, Rijeka and Zagreb where war trials panels consisting only of judges with extensive expertise in criminal law were supposed to be established. The law also provided for increasing the material capacity for witness protection and support in those courts. In addition, special investigative centres were supposed to be created in these four county courts with the aim of assisting the prosecution.

Amnesty International considers that the Croatian authorities have failed to implement the 2003 Act. By doing so, they have also failed to strengthen the capacity of its judiciary, which was required by the ICTY Completion Strategy.

6.1 WAR CRIMES CHAMBERS

The organization notes with concern that the special war crimes chambers have not been formally established in Osijek, Split and Rijeka and that these courts have not received any war crimes cases for prosecution which could be transferred to them based on the 2003 Act on the Application of the Statute of the International Criminal Tribunal and on the Prosecution of Criminal Offences against International Military and Humanitarian Law. Since the law was adopted in 2003 only the Zagreb County Court has received war crimes cases from outside of its jurisdiction based on the provisions of the 2003 Act, and then only two such cases.

The 2003 Act also mandated the establishment of special investigative centres within the special war crimes chambers which were supposed to assist in investigation of crimes under international law. Those investigative centres have not been created by the authorities in any of the special war crimes chambers.

In January 2010, the president of the Osijek County Court informed Amnesty International that a special war crimes chamber had not been established in Osijek. He said that he did not consider it to be necessary due to the very small number of war crimes cases prosecuted in within the county.

The failure of the authorities to establish the special war crimes chambers in Osijek, Split and Rijeka as well as the very limited number of only two war crimes cases prosecuted in the only special war crimes chamber established in Croatia, the one in the Zagreb County Court, run counter to recommendations made by several international human rights bodies. In 2001 the UN Human Rights Committee (HRC), in the context of its review of the Croatian government's implementation of its obligations under the ICCPR recommended the establishment of the special war crimes chambers.[110] In 2009 the HRC urged the Croatian authorities to "increase [their] efforts to ensure that the possibility to refer cases to the special war crimes chambers is utilized to the fullest extent".[111]

The authorities of Croatia were due to report to the Human Rights Committee by November 2010 about the measures undertaken to implement this and other recommendations.[112] Amnesty International believes that the Croatian authorities have failed to fulfil this recommendation of the Committee.

The Commissioner for Human Rights of the Council of Europe, in a report following his visit to Croatia in April 2010 encouraged "the reinforcement of the four county courts which

specialise in war-related crime trials, as well as the establishment of efficient, special investigation departments therein."[113]

The problem of the lack of use of the special war crimes chambers has also been also recognized in the 2008, 2009 and 2010 EU Progress Reports on Croatia.

Further, witness support services exist in only two out of four county courts in which the special war crimes chambers were supposed to be established (the County Court in Osijek and the County Court in Zagreb).

Amnesty International is concerned that the failure of the authorities to effectively establish and support the special war crimes chambers in Croatia may reflect a lack of political will to make prosecution of war crimes in the country a priority.

6.2 PROSECUTION OF CORRUPTION AND ORGANIZED CRIME

The lack of action by the authorities of Croatia in relation to the prosecution of war crimes stands in stark contrast to the action taken in relation to tackling organized crimes. In taking action to ensure the suppression of organized crime, the authorities have shown that addressing challenging issues in the administration of justice is possible when sufficient political will exists. In 2008 special court departments were established in the county courts in Osijek, Rijeka, Split and Zagreb (the same courts in which the special war crimes chambers were supposed to be established), which were tasked exclusively with the prosecution of cases of corruption and organized crime (so-called USKOK courts).The judges serving in those special USKOK courts are recruited from amongst the most experienced criminal law judges in the country, and unlike the judges presiding over war crimes trials, the USKOK court judges receive higher salaries. Special investigative centres were also established in those courts in order to make their work more effective.

Amnesty International urges the authorities in Croatia to allocate the same high priority to the prosecution of war crimes and to apply the lessons learnt in the course of the establishment of the USKOK courts in order to establish effective special chambers for prosecution of war crimes cases as mandated by the 2003 Act.

6.3 CONCLUSION

While Amnesty International takes no position on how the authorities of Croatia organize their justice system the organization believes that it should be capable of providing justice to victims of war-time human rights violations in line with international criminal law and international fair trial standards.

Amnesty International believes that at the moment the Croatian county courts do not have enough capacity to prosecute cases of war crimes in accordance with international criminal law and international fair trial standards. The organization is concerned that urgent action is needed to address the lack of capacity in order to ensure that impunity for grave human rights violations which were committed during the 1991-1995 war does not prevail.

Amnesty International notes that the failure to ensure that war crimes are prosecuted before the four special war crimes chambers runs counter to recommendations made by the European Union, the UN Human Rights Committee and the Council of Europe Commissioner for Human Rights.

Amnesty International believes that the prosecution of war crimes cases before the Croatian county courts, including in the cases analyzed in this report, has exposed the lack of readiness of those courts to prosecute war crimes cases in accordance with international standards. This has often compromised the rights of the victims and the accused in war crimes trials.

The organization calls on the Croatian authorities, as a matter of urgency, to establish the special war crimes chambers in Osijek, Rijeka and Split and to make the Special War Crimes Chamber of the Zagreb County Court fully functional.

Amnesty International also calls on the authorities to establish the special investigative centres within the Special War Crimes Chambers as it was mandated by the 2003 Act on the Application of the Statute of the International Criminal Tribunal and on the Prosecution of Criminal Offences against International Military and Humanitarian Law.

Pending urgent reforms that must be undertaken to improve the capacity of county courts to prosecute crimes under international law in accordance with international standards, all cases should be referred to the special war crimes chambers.

7. FAILURE TO ENSURE FAIR AND ADEQUATE REPARATION TO VICTIMS

Amnesty International is concerned that the authorities of Croatia have failed in their obligation under international standards to provide the victims of war-time human rights violations with access to a remedy and reparation, including restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.

7.1 THE OBLIGATION TO PROVIDE THE VICTIMS AND THEIR FAMILIES WITH THE RIGHT TO A REMEDY AND REPARATION

The obligation of the Croatian authorities to ensure the rights of the victims of human rights violations, including violations which have occurred in the context of the armed conflict, to an effective remedy, including reparation, is enshrined inter alia in the European Convention on Human Rights (ECHR) and the ICCPR, both of which Croatia is party to.

As set out in the United Nations 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 (UN Basic Principles), all victims of war crimes, have a right to a remedy and reparation.

Reparation is the term for the concrete measures that should be taken to address the suffering of the survivors and victims and to help them rebuild their lives. The aim of reparation measures is to "as far as possible, wipe out all the consequences of the illegal act and re-establish the situation which would, in all probability, have existed if that act had not been committed."[114] Of course, in situations where victims suffer serious harm or when family members are killed, it is impossible to fully restore them to the situation which existed before the violation occurred. Nevertheless, the obligation to ensure that as much as possible is done to address the suffering of the victims remains.

States bear the primary responsibility for providing reparation to victims of human rights violations in their country. There is an express legal obligation on the state to provide reparation when violations are committed by agents of the state or under the state's authority. In some cases, it may be appropriate for authorities to establish reparation programmes to ensure that victims have access to a range of services and benefits. [115] When crimes are committed by agents of other states or non-state actors then the state has an obligation to ensure that victims can claim reparation against those responsible, including by making claims before national courts. When obtaining redress from other states or non-state actors is not possible or where there are obstacles that will delay vital measures of assistance required by survivors or victims, the state should step in and provide reparation to survivors and victims and then seek to reclaim any costs from those responsible.

There are five internationally recognized forms of reparation which include a broad range of measures aimed at repairing the harm caused to victims: restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.

Restitution includes measures aimed at re-establishing, as much as possible, the situation that existed before the violation happened, including restoration of property rights, employment, liberty, citizenship or residency status.[116]

Compensation involves monetary payment for "any economically assessable loss."[117] Although the damage caused by the violation and the amount of compensation related to it has to be evaluated in economic terms, it does not mean compensation only covers material damage. In fact the UN Basic Principles defines damage quite broadly, including: "a) physical or mental harm; b) lost opportunities, including employment, education and social benefits; c) material damages and loss of earnings, including loss of earning potential; d) moral damage; e) costs required for legal or expert assistance, medicine and medical services, and psychological and social services."[118]

Rehabilitation aims to address any physical or psychological harm caused to victims including "medical and psychological care as well as legal and social services."[119]

Satisfaction includes important symbolic measures such as: verification of the facts and full and public disclosure of the truth; the search for the whereabouts of the disappeared, for the identities of the children abducted, and for the bodies of those killed; the recovery, identification and reburial of the bodies of those killed in accordance with the wishes of the victims, or the cultural practices of the families and communities; an official declaration or a judicial decision restoring the dignity, the reputation and the rights of the victim and of persons closely connected with the victim; public apology, including acknowledgement of the facts and acceptance of responsibility; judicial and administrative sanctions against persons liable for the violations; and commemorations, memorials and tributes to the victims.

Guarantees of non-repetition involve measures aimed at ensuring that victims are not subject to other crimes or that the crimes are not committed again. Such measures include: reforming the army and the police; strengthening the justice system, including ensuring the independence of the judiciary; educating different sectors of society in human rights and international humanitarian law; re-integrating child soldiers back into society; and reviewing and reforming laws which contribute to or allow crimes under international law.

Not all of these forms of reparation will be required for all human rights violations. In each situation or case, a determination will need to be made about what reparation measures are needed to address the specific harm caused. This process should take into account the views of the victims, who will best know their needs, and the ultimate decision should be proportionate to the gravity of the violation.

Amnesty International believes that it is important that reparations are not perceived as a humanitarian gesture, but rather they are viewed for what they are – a rights-based framework for redress. They should be based on effective consultation with the victims and related to their needs and status as victims. The underlying principle of reparation programmes should be that victims are entitled to specific rights in addition to all other rights they have, because specific crimes were committed against them which require special remedies.

Amnesty international is calling on the Croatian authorities to ensure that addressing the suffering of the victims is placed at the top of their agenda and that reparation projects receive the political commitment and funding they require.

7.2 FAILURE TO ENSURE FAIR AND ADEQUATE REPARATION TO VICTIMS

Amnesty International is concerned that the Croatian authorities have failed to meet their obligations to ensure the right to reparation for victims of war crimes and their families.

At the moment the only form of reparation for the victims of war crimes and their families envisaged by the law in Croatia is compensation. However, the relevant laws and in particular their interpretation by the courts impede victims and their families from receiving compensation.

In 2010, the Commissioner for Human Rights of the Council of Europe expressed his concern that "national authorities in the countries of the former Yugoslavia, including Croatia, have not managed so far to establish an effective mechanism that would ensure reparation for the victims of war-related crimes and their families. Indeed, post-war justice may not be obtained solely by prosecuting and convicting war criminals but also by restoring the human dignity of all victims who have suffered pecuniary and especially non-pecuniary damages."[120]

The Commissioner urged the Croatian authorities "to take measures to ensure fair and adequate reparation to victims of war-related crimes and their families, in line with the established principles of international law as reiterated in the 2005 UN Basic Principles and Guidelines."[121]

Until 1996 compensation for material and non-material damage was regulated in Croatia by Article 180 of the Obligations Act.[122] 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 related to compensation would be re-opened when a new law on the responsibility of the Republic of Croatia for wartime damages entered into force. This did not happen until seven years later, in July 2003, when new laws entered into force, based on which the suspended compensation proceedings were automatically re-opened.[123]

According to the Croatian law now in force, the interest of the state in compensation claims 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, the families of victims of war crimes have filed at least 50 compensation claims.[124] Amnesty International is aware that out of this number at least 22 compensation cases have been filed by inhabitants of the Sisak area.[125] In all but one of the cases from Sisak, compensation claims have been rejected. [126]

In all of the cases examined by Amnesty International in which compensation claims have been rejected, the courts gave the same reasoning, namely that the statute of limitations (requiring claims to be filed within a certain time, see below) 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 applied by Croatian courts in compensation cases to establish whether the statute of limitation applies, prescribes the period in which a claim must be filed, of three years from the date the claimant became aware of the damage but no more than five years from the date when the damage occurred. Under the Act compensation claims related to criminal acts are exempt from this rule; the statute of limitation for compensation claims arising from criminal acts is the same period prescribed for the 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. To do this, the courts ruling on war crimes compensation claims have required proof that someone has been convicted of a crime. This proved to be impossible in all compensation cases filed by the families of victims of war crimes which Amnesty International has examined, as criminal proceedings have either not been initiated by the State Prosecutor's Office or have yet to be concluded and, as a result nobody has been convicted in criminal proceedings in relation to those acts.

The practice of the Croatian courts in this regard 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 law.[127]

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.[128] Several 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 due to the court.[129]

In May 2009, the government decided that orders against unsuccessful applicants to pay the costs of the compensation proceedings which were brought initially under the compensation law in effect until 1996, and which had been resumed under the 2003 laws, were to be annulled and the applicants were exempted from paying them. However, the decision does not include annulment cost assessments made against the majority of victims who initiated compensation proceedings after 1996. For pending 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 war crimes - are not regulated by law in Croatia. The authorities have yet to translate and disseminate the UN Basic Principles into Croatian.

Amnesty International calls on the authorities of Croatia to develop a comprehensive strategy which ensures the rights of victims of war crimes (including families in relevant cases) to access to effective remedies including the five elements of reparation: restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.

8. LACK OF POLITICAL WILL TO DEAL WITH THE PAST

Amnesty International is concerned that many of the failings of the Croatian justice system outlined in this report may result in large part from a lack of political will to deal with the war-time past.

It appears that the authorities have not yet made it a clear priority to bring those responsible for war crimes as defined in international law to justice, without discrimination and in a manner that is otherwise consistent with international law and fair trial standards. They have as of yet failed to meaningfully ensure the capacity of the justice system in Croatia so that it is able to effectively address the huge backlog of unaddressed war crimes cases. They have failed to ensure the establishment, capacity and transfer of cases to the four special war crimes chambers mandated by the 2003 Act. They have also failed to ensure thorough, independent and impartial investigation of allegations that senior military and political leaders of the country were involved in war crimes.

Highlighted below are illustrations of statements made or actions taken by Croatian officials, which Amnesty International considers are indicative of a lack of political will by the Croatian authorities to address the war related human rights issues.

8. 1 THE TRIAL OF THE THREE CROATIAN GENERALS

When Ante Gotovina, Ivan Čermak and Mladen Markač (all of them retired generals) were awaiting their trial in The Hague, the government of Croatia asked the ICTY in September 2006 to be allowed to act in the capacity of *amicus curiae* in the case. The then Prime Minister Ivo Sanader explained the motivation behind this request stating that Croatia "shall thus try to refute the unacceptable allegations in the indictments."[130] The government's request was rejected by the ICTY on 18 October 2006.[131]

The government demonstrated its support of the indictees; in February 2008 the then Deputy Prime Minister Jadranka Kosor (now Prime Minister) visited the three Croatian retired generals in the detention facility in The Hague in order to express her support for them. [132]

According to media reports, since the case against the three Croatian retired generals started in The Hague, the government has paid at least 23 million euro from its budget to cover the expenses of their defence.[133]

Some authorities have provided key support to fundraising for the defence. For example, on 13 June 2010 the Croatian public TV station (HRT) broadcast a live music event which aimed to raise funds to support the defence of the three Croatian retired generals. Several senior Croatian civilian and army figures as well as the Croatian Navy orchestra participated.

On this occasion, however the Croatian President, Ivo Josipović, criticised the event and indicated that the concert took place just as Croatia was finishing the EU accession

negotiations. He expressed concern that the organization of the concert could create long lasting negative consequences for the country.[134]

Amnesty international also considers that the failure of the authorities to provide the ICTY with all the relevant military documents related to the 1995 Operation Storm, which were requested by the ICTY in relation to the trial of the three Croatian retired generals, is another example of a lack of political will to ensure justice for war crimes without discrimination.

The ICTY Chief Prosecutor believed that the Croatian authorities had intentionally hidden or concealed military documents concerning Operation Storm.[135] In June 2008, the ICTY Chief Prosecutor filed an application for an order requesting the Croatian authorities to provide his office with all outstanding documentation in the case.[136]

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.

Following their failure to do so, 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".[137]

However in his latest report to the UN Security Council in June 2010, the ICTY Chief Prosecutor stated that

"While the Office of the Prosecutor notes a general improvement in the quality of Croatia's administrative investigation in terms of the manner in which interviews were conducted, the investigation falls short of providing a full account of the whereabouts of the requested documents. Key investigative avenues remain unexplored.

"[...] In the most recent submissions to the Trial Chamber regarding this longstanding issue, the Office of the Prosecutor has maintained its position that documents have not been provided or accounted for and areas of investigation have not been adequately pursued."[138]

A detailed account of how the search for the missing documents has been conducted by the relevant authorities was given by Rahim Ademi – a retired general of the Croatian Army – who in March 2010 was acquitted by the Supreme Court of charges related to war crimes committed in Međak Pocket. In an interview published in the Croatian newspaper *Novi List*, on 16 March 2010 he alleged that senior military and political officials were involved in concealing evidence and documents from the army archives in relation to his case.

He stated that during the search for the military documents related to the case against the three Croatian Army generals his house was searched but no relevant documents were found. In this context he stated

"The problem is that people who spoke with me prior to the apartment search do not know what they are looking for or do not have any familiarity with military documents. These are

people who lack expertise and competence. At the last, fourth interview, the investigator from Zagreb took out a paper with questions drafted for me and admitted that he was no expert in military documentation since he dealt with investigating narcotics. That is tragic. They wander about with no clear guidance. They do not know what they are looking for, they burst into apartments and even if they did come across the logs they would not know that they were artillery logs. I was in charge of the documents related to the operational and strategic issues and the documents they are looking for were kept by the commanders of squads, platoons, batteries, divisions and artillery groups, heads of those units. If they are looking for them then they should be looking with those people and not with the Head of the HQ for the Military District."

He concluded that

"That was a performance for Europe, to show that something was being sought but nobody was searching in the right place, so nothing was found. How it was done, was also evident from the people who were entrusted with the search since the task was not given to people who were experts in the field."

On 26 July 2010 the Trial Chamber of the ICTY, while emphasizing that the Croatian authorities were still obliged to co-operate with the ICTY Chief Prosecutor's Office, rejected the application of the ICTY Prosecutor for an order to the Croatian authorities to produce documents related to the case against Ante Gotovina, Ivan Čermak and Mladen Markač. The Trial Chamber observed that due to the nature of the proceedings it was unable to establish whether the authorities of Croatia would be in position to comply with the order, if it was issued. The Trial Chamber also refrained from deciding whether the documents sought existed or not.[139]

8.2 BRANIMIR GLAVAŠ

The lack of political will was more than apparent through the investigation and prosecution of the case against Branimir Glavaš. Amnesty International considers that significant political involvement in the case enabled the accused to evade justice.

Branimir Glavaš has been a Member of the Croatian Parliament since 1995. When the criminal case against him was initiated, the State Prosecutor requested that the Parliament lift his immunity. This was granted in November 2006 and due to the possible risk of tampering with witnesses the Parliament granted its approval for the suspect to be detained. During his time in detention, Branimir Glavaš went on hunger strike and as a result in December 2006 he was pronounced unfit to continue with proceedings as a result. The investigation was suspended, and resumed in February 2007 once he had recovered.

In November 2007, Branimir Glavaš was re-elected as a Member of the Croatian Parliament which resulted in him being granted full immunity once again. In early January 2008 the Supreme Court decided that, due to the gravity of the crime with which he was charged, his immunity should be lifted. On 12 January 2008, the Croatian Parliament allowed his immunity from prosecution to be waived but did not allow for his detention and so as of January 2008 Branimir Glavaš was at liberty. On 8 May 2009 when the verdict of the Zagreb County Court in his case was announced, the accused fled to Bosnia and Herzegovina, where he had acquired citizenship in the meantime. In July 2010, the conviction of Branimir Glavaš became final following the ruling of the Supreme Court of Croatia on the appeal.

In September the verdict of the Supreme Court of Croatia was confirmed by the State Court of BiH which resulted in arrest of Branimir Glavaš on 28 September 2010.

As of November 2010 Branimir Glavaš was detained in the detention facility of the State Court of BiH in Sarajevo pending appeal in the case.

Amnesty International is extremely concerned about the political involvement in the case obstructing the course of justice, including by the January 2008 decision of the Croatian Parliament which overruled the earlier decision of the Supreme Court and resulted in Branimir Glavaš remaining at liberty while the criminal case against him was pending. This also included the testimony given in the county court in Zagreb by the Vice-President of the Croatian Parliament Vladimir Šeks which the Zagreb County Court found "unconvincing", biased and aiming at exculpating Branimir Glavaš.[140]

In October 2010 an investigation was launched by the Office for the Suppression of Corruption and Organised Crime against five persons, among them a member of the Croatian Parliament, who were alleged to attempt to influence the verdict in the case against Branimir Glavaš.[141] Reportedly, in June and July 2010, the group was trying to recruit persons who were supposed to hand bribes to the judges adjudicating in the case at the Supreme Court in return for a more favourable sentence for Branimir Glavaš. As of November 2010 the investigation was pending.

Amnesty International is also concerned at media reports alleging that since Branimir Glavaš fled to BiH he continued to receive his monthly salary as a member of the Croatian Parliament, which together with other allowances paid to him from the Croatian state budget reportedly amounted to 33 738,14 Kuna (€ 4 600) per month.[142] His parliamentary mandate and the salary were only revoked after 14 months, in July 2010 when the Supreme Court of Croatia announced the final verdict in his case.

8.3 REJECTION OF RESPONSIBILITY FOR WAR CRIMES

Amnesty International is also concerned that apart from President Ivo Josipović, who has on several occasions paid tribute to the victims of all sides in the wars in the former Yugoslavia, very little effort has been undertaken by other Croatian politicians to deal with the war-time past.

The organization is also concerned at the recent statements by some of the highest officials of the country aimed at undermining the efforts by the president.

On 14 April 2010, during a speech in the Parliament of Bosnia and Herzegovina, the President of Croatia apologized for the Croatian policy in the 1990s, which had contributed to the killing of many innocent people and other wartime atrocities. He called on the perpetrators of all crimes to be brought to justice.[143] On 15 April 2010, he visited the village of Ahmići to pay tribute to the 116 Bosnian Muslim civilians, including many women, children and elderly people, who were killed in April 1993 members of the Croatian Defence Council (Hrvatsko Vijece Odbrane – HVO). Several Croatian military officials had been convicted in relation to the crime, including Dario Kordić, who was sentenced by the ICTY in February 2001 to 25 years in prison.

The president's action was condemned on 15 April 2010 by one of the leaders of the governing party, the Croatian Democratic Union (Hrvatska Demokratska Zajednica – HDZ) who said that the President by his statement "placed Croatia in the ranks of the world's aggressors" , which was unacceptable.[144]

Statements by other officials followed shortly. The Prime Minister, Jadranka Kosor, while condemning the President's speech, stated that the war for independence was a "just, defensive war for liberation" and that Croatia had never attacked Bosnia and Herzegovina which, "as well as Croatia, was a victim of the Great Serbian aggression by Slobodan Milošević".[145] She added that the President should have consulted her before making the speech.

On 16 April 2010 at a press conference four former Prime Ministers of Croatia (Hrvoje Šarinić, Nikica Valentić, Franjo Gregorić and Zlatko Mateša) together with former deputy Prime Minister and Minister of Foreign Affairs Mate Granić, all supported the statement made earlier by Jadranka Kosor.[146]

Amnesty International believes that these are not isolated incidents in which the Croatian authorities have been trying to reject their responsibility for war crimes by claiming that the occurrence of war crimes was justified by an armed aggression against their country.

Amnesty International considers that such views are also promoted in the official documents produced by the government. The organization is particularly concerned by the following assertion in the "Analysis of proceedings in war crimes cases at county courts of the Republic of Croatia from 2005 to 2009", developed by the Ministry of Justice of the Republic of Croatia in January 2010 and given to Amnesty International by the authorities:

"War crimes committed on the territory of the Republic of Croatia are the consequence of the military aggression on the Republic of Croatia, the fact which was acknowledged by the UN resolution. If the aggression on the Republic of Croatia - and the war as its consequence had not occurred, war crimes would not have occurred as well".[147]

8.4 CONCLUSION

Amnesty International urges the authorities of Croatia and the leading politicians of the country to refrain from making statements aiming at rejecting their responsibility for war crimes and undermining efforts to ensure reparation for all victims of the wars. The organization calls on Croatia to follow the United Nations 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. Thus the authorities should undertake immediate efforts ensure that the victims of war crimes, without discrimination have effective access to and receive adequate reparation, including an official apology, for the war crimes which, beyond any doubt and as confirmed by the ICTY, have been committed by Croatian military and political officials.

Amnesty International urges the authorities and politicians of Croatia to undertake urgent efforts to show their political will to tackle impunity for war crimes committed during the 1991-1995 war.

RECOMMENDATIONS

Amnesty International calls on the Ministry of Justice to:

- undertake urgent measures to ensure that in proceedings related to crimes under international law the national authorities stop applying the 1993 Basic Criminal Code which falls well short of standards in international law.

- initiate an urgent review of the current Criminal Code to update the Code in accordance with the highest standards of international law, including amending the definition of crimes against humanity, provisions on command responsibility and the laws defining crimes of sexual violence and rules regulating their prosecution.

- provide judges, prosecutors and lawyers in the country with adequate training related to international criminal standards and jurisprudence of international criminal courts.

- take immediate steps in order to expand the provision of witness support services to all courts in Croatia. When allocating resources for the creation of new witness support units, the organization urges the authorities to prioritize those courts in which the special war crimes chambers were supposed to be established and which currently lack such units, namely the county courts in Split and Rijeka.

- as a matter of urgency, improve measures of witness protection in the courtroom. This should include training for judges in the application of relevant legislation providing for witness protection as well as improving technical and material conditions of the courts.

- as a matter of urgency, to establish the special war crimes chambers in Osijek, Rijeka and Split and to make the Special War Crimes Chamber of the Zagreb County Court fully functional.

- establish the special investigative centres within the Special War Crimes Chambers as it was mandated by the 2003 Act on the Application of the Statute of the International Criminal Tribunal and on the Prosecution of Criminal Offences against International Military and Humanitarian Law.

- develop relevant legislation to grant victims of crimes under international law which took place in the context of the 1991-1995 war with access to reparation including restitution, rehabilitation, satisfaction and guarantees of non-repetition.

- develop a comprehensive strategy which ensures the rights of victims (including their families in relevant cases) to access to effective remedies including the five elements of reparation: restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.

Amnesty International calls on the Chief State Prosecutor to:

- develop clear and transparent case selection and prioritization criteria which would aim at addressing impunity for crimes under international law in a comprehensive manner based on the nature of the crimes and an overall prosecution strategy so that ethnic bias is avoided in deciding which cases to select for prosecution.

- ensure that pending urgent reforms that must be undertaken to improve the capacity of county courts to prosecute crimes under international law in accordance with international standards, cases should be referred to the special war crimes chambers.

- undertake urgent measures to review all war crimes cases in which verdicts were adopted in *in absentia* proceedings in the view of re-opening those cases and prosecuting them with the accused being present and in accordance with international fair trial standards.

- investigate and, if sufficient evidence is available, prosecute cases of war crimes allegedly committed by senior military and political officials of Croatia which are documented in this report.

- investigate and prosecute all cases of death threat and witness intimidation in war crimes proceedings.

Amnesty International calls on the Ministry of Justice together with the Chief State Prosecutor to:

- establish the total number of war crimes incidents, including the numbers of all persons killed as well as the victims of enforced disappearances, torture, rape and other crimes committed during the war. A comprehensive mapping exercise must be developed in full consultation with non-governmental organizations and journalists that have to date conducted detailed investigative work on cases. Any mapping tools should take into account information and the evidence which have emerged in proceedings for civil compensation claims in cases submitted by victims and their families against the Republic of Croatia.

Amnesty International calls on the judges adjudicating in cases of crimes under international law to:

- refrain from applying mitigating circumstances which create ethnic bias in favour of Croats accused of war crimes and otherwise contravene international law, such as the service of the accused in the Croatian Army or police forces; the fact that the crimes with which the accused are charged were committed in the context of a war situation; and the lawfulness of the military operation during which the crimes were committed.

Amnesty International calls on the Croatian authorities and public figures to:

- refrain from supporting persons indicted for or convicted of war crimes by the ICTY and by the domestic judiciary.

- undertake urgent efforts to show their political will to tackle impunity for war crimes committed during the 1991-1995 war.

Amnesty International calls on the international community and in particular the European Union to:

- continue exerting pressure on the Croatian authorities to prosecute all cases of crimes under international law which were committed during the 1991-1995 war and to grant the victims of those crimes and their families with access to reparation including restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.

ENDNOTES

[1]As examples of the work done by Amnesty International please see: *Yugoslavia: Torture and deliberate and arbitrary killings in war zones*, Index: EUR 48/26/1991, November 1991 and *Yugoslavia: Further reports of torture and deliberate and arbitrary killings in war zones*, Index: EUR 48/13/1992, March 1992.

[2] See: *Whose Justice? The Women of Bosnia and Herzegovina Are Still Waiting*, Index: EUR 63/006/2009; *Serbia: Burying the Past: Impunity for enforced disappearances and abductions in Kosovo*, Index: EUR 70/007/2009; *Serbia (Kosovo): The challenge to fix a failed UN justice mission*, Index: EUR 70/001/2008.

[3] Between 2008 and 2010 Amnesty International addressed the Croatian authorities in relation to prosecution of war crimes cases on several occasions and asked the authorities to provide written answers. These letters included, a letter to the Chief State Prosecutor dated 9 July 2009 (reference number TG EUR 64/2009.001); letter to the Minister of Justice dated 9 July 2009 (reference number TG EUR 64/2009.002); letter to the Minister of Justice dated 11 February 2010 (reference number TG EUR 64/2010.002); letter to the Chief State Prosecutor dated 11 February 2010 (reference number TG EUR 64/2010.003); letter to the Minister of Justice dated 03 March 2010 (reference number TG EUR 64/2010.005); letter to the General Director of the EU and International Cooperation, Ministry of Justice (reference number TG EUR 64/2010.015). All of the letters apart from the one addressed to the Chief State Prosecutor dated 11 February 2010 remained unanswered.

In addition, Amnesty International's members have been contacting the authorities asking them about the measures undertaken in several individual cases of war crimes. Most of those letters have remained unanswered by the authorities.

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

[5] *Prosecutor v. M. Mrksic, M. Radic, V. Sljivancanin*. Trial Judgement of 27 September 2007. ICTY Case IT-95-13/1-T. Para. 509 and Schedule: List of Persons Killed at Ovčara in the Evening Hours of 20/21 November 1991.

[6] See *Croatia: Impunity for killings after Storm*, Index: EUR 64/04/98, August 1998.

[7]*Croatia: Broken Promises: Impediments to Refugee Return to Croatia*, Human Rights Watch, 2 September 2003. p3.

[8] UN Security Council Resolution 808 (1993). Adopted by the Security Council at its 3175th meeting, on 22 February 1993 (UN Security Council Resolution 808 (1993)) and UN Security Council Resolution 827 (1993). Adopted by the Security Council at its 3217th meeting, on 25 May 1993. (UN Security Council Resolution 827 (1993)).

[9] *Appeal to the United Nations Security Council to ensure that the International Criminal Tribunal for the former Yugoslavia fulfils its mandate*. Amnesty International. Public Statement. 11 December 2006. Available at: http://www.amnesty.org/fr/library/asset/EUR05/006/2006/fr/01a0a560-d3cb-11dd-8743-d305bea2b2c7/eur050062006en.pdf and *Amnesty International calls for an urgent review of the completion strategies of the International Criminal Tribunals for the former Yugoslavia and Rwanda*.

Public Statement. 9 December 2008. Available at: http://www.amnesty.org/en/library/asset/IOR53/006/2008/en/c1dd8565-c789-11dd-ac96-b9013ebbff4b/ior530062008en.pdf

[10] Statute of the International Criminal Tribunal for the former Yugoslavia. Article 7.

[11] *Naputak u svezi primjene odredbi OKZRH i ZKP u predmetima ratnih zlocina – kriteriji (standardi) za kazneni progon.* The Chief State Prosecutor's Office (Drzavno Odvjetnistvo Republike Hrvatske). Number: O-4/08, 9 October 2008.

[12] *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.

[13] Amnesty International interview with the Chief State Prosecutor, Mladen Bajić, January 2010. See also *Report by Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe following his visit to Croatia from 6 to 9 April 2010*. CommDH(2010)20, Strasbourg, 17 June 2010. Para 80.

[14] Amnesty International interview with the Chief State Prosecutor, Mladen Bajić, January 2010. See also *Report by Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe following his visit to Croatia from 6 to 9 April 2010*. Para 80.

[15] According to the document entitled *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, which was received by Amnesty International from the Ministry of Justice of the Republic of Croatia by email on 08 February 2010, the number of cases prosecuted in Croatia between 2005 and 2009 was 80. It appears that after the above-mentioned document has been provided to Amnesty International the government of Croatia has re-examined and updated it and now the authorities maintain the number of 88 prosecuted cases in the 2005-2009 period. Please see *Comments of the Government of the Republic of Croatia on the Report by Mr Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe, following his visit to Croatia from 6 to 9 April 2010*. The document is an appendix to the *Report by Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe following his visit to Croatia from 6 to 9 April 2010* (hereinafter *Government Comments on the report by Mr Thomas Hammarberg).*

[16] *Support to Victims and Witnesses of Criminal Offences in the Republic of Croatia*, United Nations Development Programme, Zagreb, 2007.

[17] Act on the Application of the Statute of the International Criminal Tribunal and on the Prosecution of Criminal Offences against International Military and Humanitarian Law (Zakon o primjeni Statuta Medjunarodnoga kaznenog suda i progona za kaznena djela protiv medjunarodnoga ratnog i humanitarnog prava). Adopted by the Croatian Parliament on 17 October 2003. Narodne Novine, br. 175/2003, 4 November 2003.

[18] *Government Comments on the report by Mr Thomas Hammarberg.*

[19] Criminal Code of the Republic of Croatia (Kazneni Zakon Republike Hrvatske) adopted by the Croatian Parliament on 19 September 1997. Narodne Novine, br. 110/1997, 29 September 1997 with later changes. Article 157 a.

[20] Statute of the International Criminal Tribunal for the former Yugoslavia, as amended on 7 July 2009 by Resolution 1877. Article 7.3.

[21] Basic Criminal Code of the Republic of Croatia (Osnovni krivicni zakon Republike Hrvatska), Narodne

Novine 31/1993. Article 28 "1) Criminal act may be committed by commission or omission; 2) A criminal act may be committed by omission only when the perpetrator has failed to perform the act which he was obliged to perform."

[22] I.Josipović, "Responsibility for war crimes before national courts in Croatia", *International Review of the Red Cross*, Vol. 88, number 861, March 2006, p165.

[23] *RH vs. Rahim Ademi and Mirko Norac*, verdict of the Supreme Court of Croatia of 18 November 2010, I Kz 1008/08-13.

[24] *Prosecutor v. Akayesu*, Case No. ICTR-96-4-T (ICTR Chamber I, 2 September 1998), para597; *Prosecutor v. Delalić*, Case No IT-96-21 (ICTY Trial Chamber II,16 November 1998), paras.943 and 965; *Prosecutor v. Furundžija*, Case No IT-95-17/1-T (ICTY Trial Chamber, 10 December 1998), paras264-269.

[25] The ICTR in *Prosecutor v. Akayesu*, Case No. ICTR-96-4-T (ICTR Chamber I, 2 September 1998), decided that rape and other forms of sexual violence could fall under "causing serious bodily or mental harm to members of the group" and "imposing measures intended to prevent births within the group." A footnote to the International Criminal Court's Elements of Crimes states in relation to causing serious bodily and mental harm: "This conduct may include, but is not necessarily restricted to acts of torture, rape, sexual violence or inhuman or degrading treatment." See also: Ch. Campbell, "The Gender of Transitional Justice: Law, Sexual Violence and the International Criminal Tribunal for the Former Yugoslavia", *The International Journal of Transitional Justice*, Vol.1 (2007). pp414-415.

[26] *Prosecutor v. Akayesu*, Case No. ICTR-96-4-T (ICTR Chamber I, 2 September 1998), paras.596 and 688; *Prosecutor v. Furundžija*, Case No IT-95-17/1-T (ICTY Trial Chamber, 10 December 1998), paras.179-185.

[27] Ch. Campbell, "The Gender of Transitional Justice: Law, Sexual Violence and the International Criminal Tribunal for the Former Yugoslavia", *The International Journal of Transitional Justice*, Vol.1 (2007). pp414-415.

[28] *Prosecutor v. Akayesu,* Case No. ICTR-96-4-T, Trial Chamber Judgment, 2 September 1998. para688.

[29] *Prosecutor v. Delalić, Delić, Mučić and Landžo* (IT-96-21). Known also as the *Čelebići* case.

[30] *Prosecutor v. Furundzija*, (IT-95-17/1). para184-186. Known also as the Lašva Valley case.

[31] *Prosecutor v. Kunarac et al*. (IT-96-23, IT-96-23/1). Known also as the Foča case.

[32] *Prosecutor v. Kunarac Appeals Chamber Judgment*. 12 June 2002. para129.

[33] *Prosecutor v. Akayesu,* Trial Chamber Judgment, para688.

[34] *Izvješće o radu državnih odvjetništva u 2008. godini*, The Chief State Prosecutor's Office June 2009. Table 24, p142.

[35] *Government Comments on the report by Mr Thomas Hammarberg.*

[36] Please see chapter four for more information about prosecution of war crimes in Sisak.

[37] V.Teršelič, "Criteria for prioritising and selecting core international crimes cases: the situation in Croatia" in: M.Bergsmo (ed), *Criteria for Prioritizing and Selecting Core International Crimes Cases*, International Peace Research Institute (PRIO), Oslo 2009. p105.

[38] *Croatia: Concluding observations of the Human Rights Committee*, CCPR/C/HRV/CO/2, 29 October 2009, para 10.a.

[39] See for example *Croatia: Set of Recommendations to Combat Impunity for War Crimes*. Amnesty International. Index no. EUR 64/004/2008, July 2008.

[40] See as examples, *Croatia: Briefing to the European Commission and Member States of the European Union on the Progress Made by the Republic of Croatia in Prosecution of War Crimes Cases*. Amnesty International. Index no. EUR 64/002/2010, April 2010; *Croatia: Briefing to the Human Rights Committee on the Republic of Croatia*. Amnesty International. Index no EUR 64/001/2009, 21 January 2009.

[41] *Croatia: Concluding observations of the Human Rights Committee*, CCPR/C/HRV/CO/2, 29 October 2009, para10.

[42] *Croatia: 2010 Progress Report*, European Commission, 9 November 2010, p8.

[43] *Naputak u svezi primjene odredbi OKZRH i ZKP u predmetima ratnih zlocina – kriteriji (standardi) za kazneni progon.* The Chief State Prosecutor's Office (Drzavno Odvjetnistvo Republike Hrvatske*).* Number: O-4/08*,* 9 October 2008.

[44] Official statistics provided by the Government of Croatia in the *Government Comments on the report by Mr Thomas Hammarberg*.

[45] *Government Comments on the report by Mr Thomas Hammarberg*.

[46] *Government Comments on the report by Mr Thomas Hammarberg*.

[47] *Report by Mr Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe, following his visit to Croatia from 6 to 9 April 2010*. p. 17, para 82.

[48] *RH vs. Damir Kufner, Davor Šimić, Pavao Vancaš, Tomica Poletto, Željko Tutić and Antun Ivezić*, Požega County Court, case number K 11/o9.

[49] *RH vs. Damir Kufner, Davor Šimić, Pavao Vancaš, Tomica Poletto, Željko Tutić and Antun Ivezić*. Decision of the Supreme Court of the Republic of Croatia, case number I Kz 585/09-11.

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

[51] *RH vs. Branimir Glavaš, Ivica Krnjak, Gordana Getoš-Magdić, Dino Kontić, Tihomir Valentić and Zdravko Dragić*, Case No. I Kz 84/10-08. Verdict of the Supreme Court of Croatia announced on 30 July 2010.

[52] *RH vs. Mihajlo Hrastov*, III Kž 12/09-10.

[53] *Prosecutor v. Kordić & Čerkez*, ICTY, Case No. IT-95-14/2-A, Judgment (Appeals Chamber), December 17, 2004. para1082.

[54] *Prosecutor v. Blaškić*, ICTY, Case No. IT-95-14-A, Sentencing Judgment (Appeals Chamber), July 29, 2004, para711.

[55] *Croatia: 2010 Progress Report*, European Commission, 9 November 2010. p50.

[56] *Report by Mr Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe, following his visit to Croatia from 6 to 9 April 2010*. p19, para99.

[57] Articles 86 and 87 of Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977, which reflect customary international law, provide

> "Art 86. Failure to act
>
> 1. The High Contracting Parties and the Parties to the conflict shall repress grave breaches, and take measures necessary to suppress all other breaches, of the Conventions or of this Protocol which result from a failure to act when under a duty to do so.
>
> 2. The fact that a breach of the Conventions or of this Protocol was committed by a subordinate does not absolve his superiors from penal or disciplinary responsibility, as the case may be, if they knew, or had information which should have enabled them to conclude in the circumstances at the time, that he was committing or was going to commit such a breach and if they did not take all feasible measures within their power to prevent or repress the breach.
>
> Art 87. Duty of commanders
>
> 1. The High Contracting Parties and the Parties to the conflict shall require military commanders, with respect to members of the armed forces under their command and other persons under their control, to prevent and, where necessary, to suppress and to report to competent authorities breaches of the Conventions and of this Protocol.
>
> 2. In order to prevent and suppress breaches, High Contracting Parties and Parties to the conflict shall require that, commensurate with their level of responsibility, commanders ensure that members of the armed forces under their command are aware of their obligations under the Conventions and this Protocol.
>
> 3. The High Contracting Parties and Parties to the conflict shall require any commander who is aware that subordinates or other persons under his control are going to commit or have committed a breach of the Conventions or of this Protocol, to initiate such steps as are necessary to prevent such violations of the Conventions or this Protocol, and, where appropriate, to initiate disciplinary or penal action against violators thereof."

[58] *RH vs. Branimir Glavaš, Ivica Krnjak, Gordana Getoš-Magdić, Dino Kontić, Tihomir Valentić and Zdravko Dragić*, Case No. X K-rz-1/07, Zagreb County Court. Judgment of 8 May 2009. The following persons testified that Vladimir Šeks was in command in Osijek when the crimes prosecuted in the case were committed: Branimir Glavaš (page 9 of the Judgment); Ivica Krnjak (page 15 of the Judgment), Josip Boljkovac (page 54 of the Judgment) as well as Vladimir Šeks himself (page 48 of the Judgment).

[59] *RH vs. Branimir Glavaš, Ivica Krnjak, Gordana Getoš-Magdić, Dino Kontić, Tihomir Valentić and Zdravko Dragić,* Case No. X K-rz-1/07, Zagreb County Court. Judgment of 8 May 2009. p43 and the Decision of the President of the Republic of Croatia of 29 July 1991, (case sheets 8876-8884).

[60] *RH vs. Branimir Glavaš, Ivica Krnjak, Gordana Getoš-Magdić, Dino Kontić, Tihomir Valentić and Zdravko Dragić*, Case No. X K-rz-1/07, Zagreb County Court. Judgment of 8 May 2009. p43.

[61] *RH vs. Branimir Glavaš, Ivica Krnjak, Gordana Getoš-Magdić, Dino Kontić, Tihomir Valentić and Zdravko Dragić*, Case No. X K-rz-1/07, Zagreb County Court. Judgment of 8 May 2009. p43 and case

sheets 8876-8884.

[62] *RH vs. Branimir Glavaš, Ivica Krnjak, Gordana Getoš-Magdić, Dino Kontić, Tihomir Valentić and Zdravko Dragić*, Case No. X K-rz-1/07, Zagreb County Court. Judgment of 8 May 2009. p9.

The text of the verdict in Croatian reads "Vladimir Šeks je dužnost predsjednika Regionalnog kriznog štaba za Istočnu Slavoniju i Baranju obnašao od srpnja do rujna 1991. i u tom svojstvu je imao vrhovnu vojnu i političku vlast u Slavoniji, te je bio upućen o svim događajima u Osijeku [...]"

[63] *RH vs. Branimir Glavaš, Ivica Krnjak, Gordana Getoš-Magdić, Dino Kontić, Tihomir Valentić and Zdravko Dragić*, Case No. X K-rz-1/07, Zagreb County Court. Judgment of 8 May 2009.p93.

The text of the verdict in Croatian reads "Meta navodnog teroriste bio upravo I optuženi Branimir Glavaš, iako se u to vrijeme tamo nalazile osobe koje su formalno u zapovjednoj hijerarhiji bile značajnije u odnosu na I optuženog, te Vladimir Šeks, kao predsjednik Regionalnog kriznog štaba, potvrđuje njegovu povezanost s ovim događajem."

[64] *RH vs. Branimir Glavaš, Ivica Krnjak, Gordana Getoš-Magdić, Dino Kontić, Tihomir Valentić and Zdravko Dragić*, Case No. X K-rz-1/07, Zagreb County Court. Judgment of 8 May 2009. p54. Case sheets 9054-9057.

[65] *RH vs. Branimir Glavaš, Ivica Krnjak, Gordana Getoš-Magdić, Dino Kontić, Tihomir Valentić and Zdravko Dragić*, Case No. X K-rz-1/07, Zagreb County Court. Judgment of 8 May 2009. p82.

The text of the verdict in Croatian reads "Svjedok Vladimir Šeks je iskazao da se 31. kolovoza 1991. godine oko ponoći vraćao s terena. Tom prilikom je u dvorištu kompleksa gdje se nalazio i Regionalni krizni štab zatekao skupinu ljudi, a na tlu je vidio čovjeka koji je vjerojatno bio mrtav. U tom trenutku vršen je očevid, a na upit što se dogodilo, netko od prisutnih mu je rekao da je to terorist koji je preskočio ogradu te se uputio prema zgradi općine u kojoj su se nalazili Regionalni krizni štab, SNO i drugi organi. Nakon toga on je otišao u SNO, u ured Branimira Glavaša gdje se nalazio i pukovnik Franjo Pejić, od kojih je u vezi tog teroriste čuo isto ono što su mu rekli i na dvorištu. Navodi da u razdoblju od srpnja, kolovoza i rujna 1991. godine nije vidio da bi se u garaže pokraj zgrade SNO-a, pa niti u samu zgradu, dovodili civili i da bi tamo bili zlostavljani odnosno mučeni, niti je o takvim događajima dobio informaciju."

[66] *RH vs. Branimir Glavaš, Ivica Krnjak, Gordana Getoš-Magdić, Dino Kontić, Tihomir Valentić and Zdravko Dragić*, Case No. X K-rz-1/07, Zagreb County Court. Judgment of 8 May 2009. p3.
The pertinent part of the verdict, attributing criminal responsibility to Branimir Glavaš, reads: "On 31 August 1991, after members of the same unit brought up two persons to one of the garages in the yard next to the Secretariat, one of whom was Čedomir Vučković, they were hitting Čedomir Vučković the whole day with hands, legs and weapon parts, while in the evening hours a member of the aforementioned unit, Zoran Brekalo, poured acid from a battery and forced Čedomir Vučković to drink it. After Čedomir Vučković, due to strong pain caused by the acid, broke through the garage door and went out to the yard, Krunoslav Fehir fired several shots in his direction, two of which hit him in the abdomen and hand causing him a gunshot wound to the abdomen and a gunshot wound to his right forearm, but the death of Čedomir Vuković was the result of sulphuric acid poisoning."

The text of the verdict in Croatian reads: "31. kolovoza 1991. nakon što su u jednu od garaža u dvorištu pored Sekretarijata pripadnici iste postrojbe priveli dvije osobe od kojih je jedna bila Čedomir Vučković, cijeli dan Čedomira Vučkovića udarali rukama, nogama i dijelovima oružja, a u večernjim satima pripadnik navedene postrojbe Zoran Brekalo istočio kiselinu iz akumulatora te natjerao Čedomira Vučkovića da je popije, pa nakon što je Čedomir Vučković zbog jakih bolova uzrokovanih kiselinom

provalio vrata na garaži i izašao van na dvorište, Krunoslav Fehir u njega ispalio nekoliko hitaca od kojih su ga dva pogodila u trbuh i ruku zadavši mu prostrijelnu ozljedu trbuha i prostrijelnu ozljedu desne podlaktice, ali je smrt Čedomira Vukovića nastupila od otrovanja sumpornom kiselinom."

[67] The Judgment of the Zagreb County Court of 30 May 2008 established the responsibility of Mirko Norac for killing only five out of 32 victims included in the indictment. According to Croatian NGOs the real number of victims was much higher and included around 40 persons whose bodies were intentionally hidden in an unknown location. See: *Presuda VSRH za Medački džep*. Press release of Documenta – Center for Dealing with the Past and Civic Committee for Human Rights available under the following web address:
http://www.documenta.hr/documenta/index.php?option=com_content&view=article&id=189%3Apresuda-vsrh-za-medaku-dep&catid=55%3Apravomocno-presudjena&Itemid=63&lang=en

[68] *RH vs. Rahim Ademi and Mirko Norac*, Case II K-rz1/06, Zagreb County Court, Judgment of 30 May 2008.

The pertinent part of the judgment reads "In relation to the command of the operation "Pocket '93", and bearing in mind the analysis and assessment of the credibility of witnesses interviewed and documents presented, the Court established the following facts. The limited military operation "Pocket '93" was commanded by the Croatian Army Chief of Staff". Page 137 of the Judgment.

The original text: "U odnosu na zapovijedanje operacijom „Džep '93", a imajuci na umu ocjenu vjerodostojnosti i analizu ispitanih svjedoka i izvedene dokumentacije, Sud je utvrdio sljedece cinjenicno stanje. Ogranicenu vojnu operaciju „Džep '93" zapovjedio je NGSHV."

[69] *RH vs. Rahim Ademi and Mirko Norac*, Case II K-rz1/06, Zagreb County Court, Judgment of 30 May 2008. p137 as well as page 138 of the same verdict ("It is clear from the above that the witness Domazet was the envoy of the Croatian Army Chief of Staff in charge of the operation "Pocket 93" and in this capacity he indeed exercised command powers, which he as the envoy had").

[70] *RH vs. Rahim Ademi and Mirko Norac*, Case II K-rz1/06, Zagreb County Court, Judgment of 30 May 2008. p140. The pertinent part of the judgment reads

"All these circumstances lead only to the conclusion that the 1st accused Rahim Ademi had no command authority in its full and necessary extent over all subordinate and assigned units and formations of the Military District as the envoy of the Croatian Army Chief of Staff took over the command authority, and he exercised it. In other words, the scope of the command authority of the 1st accused was in this way narrowed and reduced so that in this way the command authority of the 1st accused was reduced as well."

The original text in Croatian "Sve navedene okolnosti upucuju jedino na zakljucak da I optuženi Rahim Ademi nije imao zapovjedne ovlasti u punom i potrebnom opsegu nad svim podredenim i pridodanim postrojbama i formacijama ZP jer je zapovjedne ovlasti preuzeo izaslanik NGSHV te ih i koristio. Drugim rijecim, opseg zapovjednih ovlasti I optuženika bio je u toj mjeri sužen i smanjen da je time bila smanjena i zapovjedna moc I optuženika."

[71] The articles "Dossier: Pakracka Poljana, Part 1" and "Dossier: Pakracka Poljana, Part 2" were published in *Feral Tribune* on 21 August 1995. They are available in English under the following web addressed: "Dossier: Pakracka Poljana, Part 1": http://www.ex-yupress.com/feral/feral13.html and "Dossier: Pakracka Poljana, Part 2": http://www.ex-yupress.com/feral/feral13a.html

[72] The article entitled "How We Killed for Croatia" (which is available in English under the following web address: http://www.tol.org/client/article/4759-how-we-killed-for-croatia.html) was originally published on 1 September 1997 by Feral Tribune.

[73] "Hunt on Civilians", *Feral Tribune*, Split, Croatia, October 14, 2000. Available in English under the following link: http://www.ex-yupress.com/feral/feral125.html.

[74] "Merčep's Men Are Trying To Kill Me!" *Feral Tribune*, Split, Croatia, October 31, 2002. Available in English under the following link: http://www.ex-yupress.com/feral/feral192.html.

[75] "Haag poslao dokumentaciju, CIA otvorila dosje, ali 'slučaj Merčep' u Hrvatskoj i dalje službeno ne postoji" *Slobodna Dalmacija*, 15 May 2010. Available at: http://www.slobodnadalmacija.hr/Spektar/tabid/94/articleType/ArticleView/articleId/102581/Default.aspx

[76] *RH vs. Munib Suljić, Igor Mikola, Siniša Rimac, Miro Bajramović and Branko Šarić*. Case no. VIII-K-16/01, Zagreb County Court. Verdict of 15 September 2005.

[77] *RH vs. Munib Suljić, Igor Mikola, Siniša Rimac, Miro Bajramović and Branko Šarić*. Case no. VIII-K-16/01, Zagreb County Court. Verdict of 15 September 2005.

[78] ICTY - Weekly Press Briefing - 14 April 2010. Available at: http://www.icty.org/sid/10373/en

[79] "Haški sud Hrvatskoj predao dokaze protiv Merčepa", *Jutarnji List*, 13 April 2010. Available at: http://www.jutarnji.hr/haski-sud-hrvatskoj-predao-dokaze-protiv-mercepa/712743/

[80] "Haški sud Hrvatskoj predao dokaze protiv Merčepa", *Jutarnji List*, 13 April 2010, and also "Haag poslao dokumentaciju, CIA otvorila dosje, ali 'slučaj Merčep' u Hrvatskoj i dalje službeno ne postoji" *Slobodna Dalmacija*, 15 May 2010. Available at: http://www.slobodnadalmacija.hr/Spektar/tabid/94/articleType/ArticleView/articleId/102581/Default.aspx

[81] See: M.Bergsmo, K.Helvig, I.Utmelidze and G.Žagovec. "The Backlog of Core International Crimes Case Files in Bosnia and Herzegovina". *Forum for International Criminal and Humanitarian Law (FICHL) - International Peace Research Institute, Oslo (PRIO)*, Oslo 2009. Chapter 5 entitled "Case selection and prioritization criteria" provides a very useful and practical explanation of the need to develop such criteria and gives examples from different jurisdictions where such criteria were developed, including the ICTY, ICC and Bosnia and Herzegovina.

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

[83] Amnesty International interview with the Head of the Police in Sisak, 23 March 2010.

[84] *RH vs. Ivica Mirić*. The accused was convicted and sentenced to nine years' imprisonment.

[85] *RH vs. Damir Ragužˇ-Vide and Željko Škledar*, K-DO-16/09.

[86] *RH vs. Ivica Kosturin and Damir Vrban*,. K-DO-22/09.

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

[88] Letter of 23 February 2010 received by Amnesty International from Mr Mladen Bajić, the Chief State Prosecutor.

[89] Amnesty International interview with the State County Prosecutor in Sisak, 23 March 2010.

[90] „Prijetnje zbog traganja za ubicama sisačkih Srba", *Radio Free Europe*: http://www.slobodnaevropa.org/content/sisak_vjera_solar/1504080.html

[91] *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, p94-96.

[92] *RH vs. Ivica Mirić*. Sisak County Court verdict No. K-14/09.

[93] All three cases were tried during the war by the Zagreb Military Court and in 1992 the accused were amnestied for the crimes which were qualified as murders.

[94] *RH vs. Željko Belina, Dejan Milić, Ivan Grgić and Zdravko Plesec*. Indictment of the Sisak County Prosecutor, dated 9 July 2010, case K-DO-35/08.

[95] A trial monitoring report in the case is available under the following web address: http://www.centar-za-mir.hr/uploads/LETOVANIC_izvjestaji_sa_sudjenja.doc

[96] M. Basoglu, M. Paker , Ö. Paker, E . Özmen, M. Marks, C. Incesu, D. Sahin, N. Sarimurat "A comparison of tortured with matched non-tortured political activists in Turkey" *American Journal of Psychiatry*,151, (1994), pp. 76-81.

[97] *Support to Victims and Witnesses of Criminal Offences in the Republic of Croatia*, United Nations Development Programme, Zagreb, 2007.

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

[99] *Croatia: Briefing for the Human Rights Committee on the Republic of Croatia*, Amnesty International, Index: EUR 64/001/2009, p12.

[100] "Gospodar Fascikla", *Feral Tribune*, 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

[101] "Prijetnje zbog traganja za ubicama sisačkih Srba", *Radio Free Europe*: http://www.slobodnaevropa.org/content/sisak_vjera_solar/1504080.html

[102] *Report by Mr Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe, following his visit to Croatia from 6 to 9 April 2010*. p18, para90.

[103] *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, pp94-96.

[104] UN Security Council Resolution 1503 (2003), preamble; UN Security Council Resolution 1534 (2004), para9.

[105] Act on the Application of the Statute of the International Criminal Tribunal and on the Prosecution of Criminal Offences against International Military and Humanitarian Law (Zakon o primjeni Statuta Medjunarodnoga kaznenog suda i progona za kaznena djela protiv medjunarodnoga ratnog i humanitarnog

prava). Adopted by the Croatian Parliament on 17 October 2003. Narodne Novine, br. 175/2003, 4 November 2003.

[106] *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, p27 onwards.

[107] *RH vs. I.H.* Decision of the Supreme Court of 03 February 2009. Case number II 4 Kr 11/09-3.

[108] *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 10.

[109] *RH vs Mihajlo Hrastov*, indictment number KT-48/91, issued on 25 May 1992.

[110] *Croatia: Concluding observations of the Human Rights Committee*, CCPR/CO/71/HRV, 30 April 2001, para10.

[111] *Croatia: Concluding observations of the Human Rights Committee*, CCPR/C/HRV/CO/2, 29 October 2009, para10.

[112] *Croatia: Concluding observations of the Human Rights Committee*, CCPR/C/HRV/CO/2, 29 October 2009, para21.

[113] *Report by Mr Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe, following his visit to Croatia from 6 to 9 April 2010*. pp19-20, para100.

[114] Permanent Court of Arbitration: Chorzow Factory Case (*Germany v. Poland*), 1928

[115] For example governments of Argentina, Chile, Peru, East Timor, Brazil or South Africa have developed different reparation programmes depending on the needs of the victims.

[116] The UN Basic Principles and Guidelines on the Right to Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law. Adopted by the UN General Assemly on 16 December 2005. Art. 19. (UN Basic Principles)

[117] UN Basic Principles, Art. 20.

[118] UN Basic Principles, Art. 20.

[119] UN Basic Principles, Art. 21.

[120] *Report by Mr Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe, following his visit to Croatia from 6 to 9 April 2010*. p18, para91.

[121] *Report by Mr Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe, following his visit to Croatia from 6 to 9 April 2010*. p19, para95.

[122] Obligation Act (*Zakon o obveznim odnosima). Sluzbeni list SFRJ 29/78* together with later amendments.

[123] Act on the Responsibility for Damage Caused by the Acts of Terrorism and Public Demonstrations [*Zakon o odgovornosti za štetu nastalu uslijed terorističkih akata i javnih demonstracija* (NN broj 117/03)] and Act on the Responsibility of the Republic of Croatia for Damage Caused by Members of Croatian Armed and Police Forces during the Homeland War[*Zakon o odgovornosti RH za štetu uzrokovanu od pripadnika hrvatskih oružanih i redarstvenih snaga tijekom Domovinskog rata* (NN broj 117/03)].

[124] *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 p32.

[125] *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.*

[126] 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.

[127] Principle 9 of 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; Article 2 of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power.

[128] *Vjera Solar, Jovan Solar, Djorde Solar vs. RH*, Municipal Court of Sisak, 18 December 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 Trivkanović the applicants were ordered to pay HKN 71,480 (approximately €10,000).

[129] 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.

[130] "Croatia seeks to defend itself at Hague tribunal", *Reuters*, 01 September 2006.

[131] *Prosecutor v. Ante Gotovina, Ivan Čermak, and Mladen Markač*, Case No. IT-06-90-PT, Decision on Requests of Republic of Croatia to Appear as *Amicus Curiae*, 18 October 2006.

[132] Statement from the official website of the government of Croatia: http://www.vlada.hr/hr/naslovnica/priopcenja_za_javnost/2008/veljaca/potpredsjednica_vlade_kosor_u_den_haagu

[133] „*Za obranu generala do sada smo dali barem 23 milijuna eura"*. Jutarnji List, 26 June 2010. Available under the following web address: http://www.jutarnji.hr/najstroze-cuvana-hrvatska-tajna--obrana-generala-do-sada-je-stajala-barem-23-milijuna-eura/841944/?pageNumber=1#page_1 Accessed on 18 July 2010.

[134] "Nastup klape HRM-a na koncertu za Gotovinu potencijalno je štetan". *Jutarni List*, 16 June 2010. Available under the following web address: http://www.jutarnji.hr/ivo-josipovic--nastup-klape-na-koncertu-za-generale-je-potencijalno-stetan/836208/ Accessed on 18 July 2010.

[135] *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. p3. The document states "[t]he following factors lead to the conclusion that the only

plausible explanation for the fact that these documents are missing is that they have been removed or concealed as a result of purposeful efforts by Croatian officials to collect and conceal documentation related to ICTY investigations [...]."

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

[137] *Croatia: Concluding observations of the Human Rights Committee*, 29 October 2009, para10(e).

[138] *Letter dated 31 May 201o 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/2010/270, 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), p36, para54-55.

[139] *Decision on Prosecution's Application for an Order Pursuant to Rule 54bis Directing the Government of the Republic of Croatia to Produce Documents or Information*, ICTY Trial Chamber, 26 July 2010. para129-137.

[140] Please see chapter 3 for more information about the involvement of Vladmir Šeks in the case.

[141] "Podmićivanje sudaca: USKOK naložio istragu protiv Tadića i četvoro njegovih suradnika koji su pokušali namjestiti Glavašu," *Jutarnji List*, 18 October 2010. Available at: http://www.jutarnji.hr/slucaj-branimir-glavas---uskok-nalozio-istragu-protiv-tadica-i-cetvoro-njegovih-suradnika/896124/

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PROSECUTION OF WAR CRIMES IN CROATIA

Although the war in Croatia ended almost 15 years ago, the Croatian authorities still lack the political will to deal fully with their past.

This leads to impunity for members of the Croatian Army and police forces who allegedly committed war crimes against Croatian Serbs. This attitude also prevents the victims of war crimes from accessing justice and receiving full reparation. Only a very few perpetrators have been brought to justice in accordance with international law and international fair trial standards.

The legal framework in Croatia remains inadequate for prosecuting war crimes as it does not explicitly define crimes against humanity, the principle of command responsibility or war crimes of sexual violence. There is a continuing ethnic bias against Croatian Serbs in prosection of war crimes cases. The cases are heard in local county courts where witness support and protection measures are inadequate, and intimidation is a problem.

Amnesty International calls for the Croatian authorities to make these prosecutions a top priority and bring to justice all those responsible for committing crimes during the 1991-1995 war.

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