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Croatia:

**Set of recommendations to combat
impunity for war crimes**



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1. Introduction

Progress in prosecution of war crimes committed during the 1991-1995 war in Croatia remains very slow, especially taking into account the fact that many of the crimes were committed almost 17 years ago. The majority of the unresolved war crimes cases are the ones where the alleged perpetrators were members of the Croatian Army or police forces and the victims Croatian Serbs or members of other minorities.

This briefing paper focuses on Amnesty International's concern in relation to an ongoing problem of impunity for war crimes. It identifies the main gaps and obstacles in prosecution of war crimes and suggests practical solutions for the Croatian authorities in order to tackle the problem. It recommends that Croatia should deal with its war time past in line with the Updated Set of Principles for the Protection and Promotion of Human Rights Through Action to Combat Impunity (Set of Principles or Principles) which was developed by the United Nations Commission on Human Rights in order to assist post-conflict countries to deal with the problem of impunity.¹ Using an operational framework of three rights (the right to know; the right to justice and the right to reparation) the Principles set specific recommendations on how to deal with the issue.

Based on the Set of Principles as well as on other human rights standards, Amnesty International calls on the authorities of Croatia to establish an independent commission on war crimes which would be tasked to investigate the scale and the nature of the problem. The Croatian authorities should also develop an action plan to address the unresolved war crimes cases.

Croatia is the first country in the process of accession to the European Union (EU) which has to address the problem of impunity for war crimes and crimes against humanity. The way the problem will be approached by the Croatian authorities and the EU will set a precedent for other former Yugoslav countries and could serve as a good and positive model on how to deal with the war crimes legacy in other post-conflict countries.

2. The right to know

The Set of Principles enshrines the inalienable right to truth about past war time events. It specifies that:

*Every people has the inalienable right to know the truth about past events concerning the perpetration of heinous crimes and about the circumstances and reasons that led, through massive or systematic violations, to the perpetration of those crimes. Full and effective exercise of the right to the truth provides a vital safeguard against the recurrence of violations.*²

¹ United Nations, Commission on Human Rights. *Updated Set of principles for the protection and promotion of human rights through action to combat impunity*. E/CN.4/2005/102/Add.1, 8 February 2005.

² Ibid. Principle 2.

In order to give effect to the right to know the authorities should take steps to investigate and prosecute war crimes that have been committed. This obligation derives from both international humanitarian law and international human rights law. The four Geneva Conventions of 1949 oblige High Contracting Parties to prosecute or else extradite for prosecution anyone suspected of committing “grave breaches” of these Conventions. The Convention on the Prevention and Punishment of the Crime of Genocide (1948) and the UN Convention against Torture and Other Cruel, Inhuman Or Degrading Treatment Or Punishment (1984) provide explicitly for the criminalisation of relevant offences and prosecution of persons suspected of committing them.

Article 2 of the International Covenant on Civil and Political Rights provides that states parties must “give effect to the rights recognized” within it, including by ensuring “an effective remedy” to those whose rights have been violated and enforcing judicial and other remedies. In its authoritative General Comment on this Article, the Human Rights Committee has emphasised that states have a duty to investigate allegations of human rights violations “promptly, thoroughly and effectively through independent and impartial bodies,” and “[W]here the investigations... reveal violations of certain Covenant rights, States Parties must ensure that those responsible are brought to justice.”³

The Set of Principles recognizes that states may also need to complement the role of the criminal justice system with other non-judicial mechanisms.

Since the end of the war the Croatian judiciary prosecuted a considerable number of war crimes cases. However the prosecutions for war crimes committed by the members of the Croatian Army and police forces against Croatian Serbs continue to be rather rare. There still exists a lack of will to investigate and prosecute these cases, especially in smaller towns. The local prosecutors tend to prioritize other cases instead of investigating those as they may be unpopular.

In some areas of Croatia war crimes committed against Croatian Serbs have not been yet investigated and prosecuted despite the fact that they were committed in some cases 17 years ago. For example, since 2004 Amnesty International has been campaigning for the Croatian authorities to address impunity for murders and enforced disappearances committed in the Sisak area in 1991-92 (allegedly by members of the Croatian Army and police forces) where more than 100 people have been killed. According to information provided by the Croatian authorities to Amnesty International, only in the case of one enforced disappearance of a Romani man, which was perpetrated in 1991 by members of the Croatian Army, those directly responsible were convicted. For all other crimes impunity remains prevalent and proceedings are still at the “pre-investigative” stage. Local authorities point to their lack of capacity as the main reason for the delay in investigating these crimes.

Moreover, the local prosecutor in Sisak informed Amnesty International in 2007 that only approximately 30 killings of Croatian Serbs are treated as war crimes, although reliable sources point to a significantly larger number of crimes which should be

³ Human Rights Committee, General Comment No. 31 on Article 2 of the Covenant: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, UN Doc. CCPR/C/74/CRP.4/Rev.6, 21 April 2004, paras. , 18.

qualified as war crimes. This raises concern over the possibility that, for the remaining murders and other crimes not treated as war crimes, a statute of limitations may apply.

The situation in the Sisak area illustrates the problem which is present in many other war affected areas in Croatia (such as Vukovar, Osijek, Gospić or Pakrac) where very little or no prosecutions have taken place and the problem remains unaddressed.

3. The right to justice

Principle 19 of the Set of Principles established a duty of states to investigate and prosecute war crimes. It stipulates that

States shall undertake prompt, thorough, independent and impartial investigations of violations of human rights and international humanitarian law and take appropriate measures in respect of the perpetrators, particularly in the area of criminal justice, by ensuring that those responsible for serious crimes under international law are prosecuted, tried and duly punished. [...]

As was illustrated above the Croatian authorities are very ineffective in the investigation of cases of war crimes committed by the members of the Croatian Army and police forces. Since investigations have been pending for almost 17 years or have never been opened, victims of war crimes or their families in fact have no access to justice.

Apart from the low level of investigations and prosecutions international organizations monitoring proceedings in Croatia, including the Organization for Security and Cooperation in Europe (OSCE), have in recent years repeatedly raised concerns about ethnic bias in the prosecution of war crimes resulting in the disparity in the number of investigations and prosecutions for crimes committed by Croatian Serb and Croatian forces, as well as, in some cases, in differences in the severity of the charges raised and in sentencing practices. According to a report by the OSCE “[i]n May 2007, the Chief State Attorney, in response to a request from a veteran’s organization, indicated that more than 98 per cent of those charged with war crimes since 1991 had been members of Yugoslav Army or Serb paramilitary forces, while less than two per cent had been members of the Croatian armed forces.”⁴

The latest EU Commission Progress Report on Croatia, issued in November 2007, noted that “[l]imited steps have been taken by the authorities to investigate and prosecute war crimes against Serb civilians. Concerns also remain about the right to a fair trial as regards war crimes, in particular given the continued presence of ethnic bias in cases and difficulties regarding witness protection”.⁵

Prosecutions against members of the Croatian Army and police forces, even if they take place, are often conducted in an atmosphere of intimidation against witnesses and their families as well as against investigative journalists reporting on these cases.

⁴ Organization for Security and Cooperation in Europe. Mission to Croatia. Background report: domestic war crimes proceedings 2006. 3 August 2007. 4.

⁵ European Commission, Croatia: Progress Report 2007, Brussels 6 November 2007. 10.

In July 2008 the Croatian Journalists' Association (Hrvatsko Novinarsko Društvo) reported that in the last 15 years there have been at least 40 cases of physical attacks or death threats received by journalists in the country.⁶ The majority of those cases were against journalists investigating and reporting on war crimes.⁷

Despite the fact that witness protection legislation was adopted in 2003 there are still many gaps in its actual implementation.

For instance, proceedings in the case against Branimir Glavaš sitting member of the Croatian parliament and the leader of the Croatian Democratic Council of Slavonia and Baranya - Hrvatski Demokratski Sabor Slavonije i Baranje, HDSSB) had to be transferred to Zagreb following intimidation of witnesses, including by Anto Đapić, president of the Croatian Party of Rights (Hrvatska Stranka Prava, HSP) and mayor of Osijek who in December 2005 disclosed to the media a list of witnesses cooperating with investigators. Journalists reporting on the case continue to be under pressure. In April 2008 Drago Hedl, a journalist of the Croatian weekly *Feral Tribune* received death threats following his reports about Glavaš's role in murders of Croatian Serbs in the Osijek area. Reportedly on 3 June 2008 Branimir Glavaš disclosed the identity of one of the protected witnesses in a news programme at a local Television of Slavonija and Baranja.⁸

It has to be noticed however that the investigation and prosecution of the case of Branimir Glavaš, despite the problems mentioned above, can be seen as a positive example of how the Croatian judiciary can deal with complicated war crimes cases. In this particular case an external investigative team was assigned by the State Attorney General to gather evidence. Also upon a request by him aiming at reducing pressure on witnesses the proceedings were transferred to Zagreb.

In the high profile case against two Croatian Army generals, Mirko Norac and Rahim Ademi, which was transferred to the Croatian judiciary by the International Criminal Tribunal for the Former Yugoslavia (Tribunal), the Zagreb County Court had to deal with difficulties in getting witnesses to testify. Despite a very proactive role of the judge, including by the use of a video link with Serbia, many of them did not come forward due to the fear for their safety. Eventually Rahim Ademi was acquitted and Mirko Norac was found guilty of part of the charges and sentenced to seven years' imprisonment.

Witnesses cooperating with the Tribunal are also exposed to the same problems as the ones in the local proceedings. One of the potential witnesses of the Tribunal, Milan Levar was killed in August 2000 by an explosive device planted underneath his car, following his statements to the media in which he alleged that Mirko Norac and some high level Croatian politicians were responsible for war crimes committed against the Croatian Serb population in the Lika region. Eight years after the crime was committed no one has been brought to justice and the case is still being investigated by the local prosecutor in Gospić.

Following his murder, the wife of Milan Levar continued to receive death threats from unknown individuals after giving interviews to the media about her husband's death.

⁶ Nacrt Izvješća Hrvatskog novinarskog društva i Zbora istraživačkih novinara o dosadašnjim slučajevima napada na novinare i vlasnike medija u Republici Hrvatskoj (1992. – 2008.) <http://www.hnd.hr/novost.php?id=2030>

⁷ Jutarnji List, U 15 godina napadnuto 40 novinara, 02 July 2008. <http://www.jutarnji.hr/vijesti/clanak/art-2008,7,2,,125201.il>

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

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In the more recent case of Vladimir Gojanović who was called by the Tribunal in May 2008 to testify in the case against three Croatian generals Ante Gotovina, Ivan Čermak and Mladen Markač, the atmosphere of intimidation is still present. Both Gojanović and his family were exposed to threats allegedly by associations of former combatants. Reportedly on 28 May 2008 a group of 20 men tried to assault him in front of the Šibenik University where he went to take an exam. Following intervention by the police, Gojanović managed to avoid being physically assaulted by the crowd.

4. The right to reparation

According to the Set of Principles:

*Any human rights violation gives rise to a right to reparation on the part of the victim or his or her beneficiaries, implying a duty on the part of the State to make reparation and the possibility for the victim to seek redress from the perpetrator.*⁹

In view of the failing of the criminal justice system some victims and their families have been trying to receive compensation in civil proceedings for the war time human rights violations they experienced.

The Croatian judiciary however has been very reluctant in granting compensation in cases where criminal proceedings have not been completed despite the fact that according to international legal standards exhaustion of the criminal procedure should not be pre-requisite to grant compensation. Most of the cases are rejected and often the applicants have to bear very high costs of the proceedings. In one case, a wife of a person who was murdered in Sisak in 1991, allegedly by the members of the Croatian Army, had to pay costs of proceedings of 45,700 Croatian Kuna (6,300 €) as she has lost her case for compensation.¹⁰ Being a pensioner she is unable to pay that large amount of money. As a result an execution order was issued by the Sisak Municipal Court against her and her property may soon be confiscated to cover the costs incurred in the proceedings.¹¹

Amnesty International is aware of many similar cases in Sisak as well as in other places in Croatia.

Amnesty International is concerned that the combination of delays, over several years, in criminal investigations and proceedings and the reluctance of courts to grant compensation in civil cases pending the conclusion of such proceedings amounts to a violation of victims' rights to "effective remedy", as provided in Article 2(3)(a) of the ICCPR. The Human Rights Committee has found that lack of, or unreasonable delays in criminal investigations constitute a violation of this Article, implying that the lack of (timely) availability of civil remedies and compensation due to inadequate criminal proceedings violated the right to an effective remedy.¹²

⁹ Principle 31.

¹⁰ Decision of the Sisak County Court of 22 March 2007, case GŽ-1200/06.

¹¹ Decision of the Sisak Municipal Court of 14 May 2008, OVR-1112/08.

¹² *Rodríguez v. Uruguay*, Communication No. 322/1988, UN Doc. CCPR/C/51/D/322/1988, 9 August 1994. See similarly the ruling of the European Court of Human Rights in *Mikheyev v. The Russian Federation*, Application No.77617/01, Judgment of 26 January 2006, para.142. para.14; *Rubio v. Colombia*, Communication No. 161/1983, UN Doc. CCPR/C/31/D/161/1983, para.10.3. *Rajapakse v. Sri Lanka*, Communication No. 1250/2004, UN Doc. CCPR/C/87/D/1250/2004, paras.9.4; 9.5.

5. Putting the Principles into practice

In order to overcome the obstacles which result in impunity for war crimes in Croatia as well as to implement the Set of Principles, Amnesty International calls on the authorities of Croatia to develop an action plan on how to deal with impunity for war crimes. The action plan should clearly identify areas of special concern where no or very little progress has been made. It should set up specific time-bound goals and objectives for prosecutors and judges including by identifying priority cases. The action plan should be supported by additional resources to enable its implementation. Detailed recommendations on the action plan are outlined below.

As part of the action plan the Croatian authorities should also establish an independent commission which would be tasked with documenting and analysing all war crimes committed in the country. It should also have a mandate to monitor implementation of the action plan. The commission should operate in line with the recommendations suggested below.

5.1. Action Plan on War Crimes

As outlined above, Amnesty International urges the Croatian authorities to develop, as a matter of urgency, an action plan to address the issue of impunity for war crimes in the country.

The action plan should include a set of specific, time-bound goals and objectives for prosecution of war crimes.

The Ministry of Justice together with the State Attorney General should draft the action plan. It should be however broadly consulted with the Croatian non-governmental organizations, especially those representing victims of war crimes and their families. It is essential that representatives of ethnic minorities, especially Croatian Serbs take part in the consultation process. The Croatian authorities should also involve the international community in the development of the action plan. Especially support and expertise from the Tribunal, OSCE and the EU should be sought.

The action plan should identify priority areas of the country where very little or no progress has been made in the prosecution of those crimes (i.e. areas of Sisak, Gospić, Pakrac, Osijek, Vukovar). It should suggest and develop disciplinary measures against inactive prosecutors who do not investigate war crimes cases.

The action plan should also identify priority, high profile cases which should be prosecuted as soon as possible. This should also include the prosecution of cases of intimidation and attacks on witnesses in war crimes cases (such as the killing of Milan Levar, described above) which impact on the willingness of other potential witnesses to testify and their feeling of safety.

The action plan should identify areas of additional support required by the Croatian justice system in order for it to be able to prosecute war crimes more effectively. This should include training for judges, prosecutors and legal experts as well as additional resources for witness protection and support programmes.

The action plan should provide recommendations on how to best use already existing mechanisms of dealing with war crimes in Croatia, such as the transfer of cases to the four specialised courts tasked with dealing with war crimes or sending external

prosecutors and investigative teams to the areas where very little or no progress has been made in the prosecution of those crimes.

The action plan should also recommend the ways for Croatia to provide reparations to all victims of war crimes and their families.

The Croatian authorities should secure sufficient resources in the budget for the prompt and full implementation of the action plan.

The action plan should be made public and should be subject to monitoring by the commission on war crimes which in more detail is described in the following paragraphs.

5.2. Independent commission on war crimes

5.2.1. Mandate

The Croatian authorities should establish a commission on war crimes which should be tasked with monitoring the realization of the action plan. It should also investigate and collect information on all war crimes committed during the 1991-1995 war. In doing so it should seek information from all government bodies, including the judiciary and military. All public institutions should be obliged to cooperate fully with the commission and submit all documents and any other material requested by it. The commission should have subpoena powers.

The commission should also be able to receive information on war crimes from individuals and civil society organizations, especially associations of victims of war crimes and their families.

The task of the commission should be to collect the accounts of war crimes as well as create a wider picture of these crimes, including by identifying the total number of war time casualties. This data should be stored on a database and should be disaggregated, among other indicators, by the ethnicity and gender of the victims and the region of the country in which the crimes were committed. In setting up the database the commission should cooperate with NGOs from other former Yugoslav republics as they have already started collecting statistics about war time casualties.

¹³

The work of the commission should encompass but not be limited to investigation and documentation of all war time killings, abductions, enforced disappearances, rapes and torture committed on the territory of Croatia against all individuals.

The commission should be mandated to recommend to the authorities opening criminal investigations into cases which have not been prosecuted. It should also have power to ask the State Attorney General to take disciplinary measures against prosecutors not complying with its orders for investigation. It should also be able to recommend that the State Attorney General asks for the transfer of sensitive cases to four specialised courts tasked with dealing with war crimes or to send external prosecutors to the areas where progress in the investigation of war crimes is slow.

¹³ One of the examples of their work is the database that was created by the Research and Documentation Centre in Sarajevo which documents all human losses during the war in Bosnia and Herzegovina - <http://www.idc.org.ba>

The commission should have the power to propose new legislation or amendments to existing laws concerning all matters related to prosecution of war crimes to the parliament.

The commission should issue annual reports on the progress of prosecution of war crimes. The reports should be made public and be subject of a parliamentary debate.

For its independence and impartiality the commission should be guaranteed financial independence together with sufficient budgetary allocation to cover expenses.

5.2.2. Membership

Members of the commission should be nominated by the Croatian Parliament in a transparent process involving consultations with civil society. They should be chosen for their impartiality, integrity, expertise and competence. They should include experts on international human rights and humanitarian law and other experts known for their expertise in the area of research, investigation and prosecution of war crimes. They should be independent of any institution or individual that may be a subject of investigation by the commission.

In order to further ensure the credibility and independence of the commission its members should be appointed in consultation with the OSCE.

The commission should be representative of Croatian society, including gender parity and representation for non-governmental organizations, families of victims and minorities, especially Croatian Serbs.

The selection procedure should be monitored by the OSCE.

5.2.3 Archives and work of the commission

In order to give effect to the realization of the right to know explained in paragraph 2, the work of the commission should generally be public and its results should be made available to all people interested.

However, for the protection of witnesses, victims or other sources of sensitive information, as well as for other considerations of fairness, some parts of its work may be partly excluded from the public.

Archives of the commission and its database should be stored in Zagreb and should be available to all persons interested.