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CROATIA:

Briefing to the United Nations Committee against Torture

32nd Session, May 2004

Introduction

On 12 October 1992 Croatia became a party to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture) by succession from the Socialist Federal Republic of Yugoslavia (SFRY), and recognizing the competence of the Committee against Torture (CAT) to receive complaints, as provided for in articles 21 and 22 of the Convention against Torture. Amnesty International notes with satisfaction that Croatia signed the Optional Protocol to the Convention against Torture on 23 September 2003. To date the Optional Protocol has not been ratified by Croatia.

Croatia submitted its initial report to the CAT in 1996 and its second periodic report in 1998. Croatia's third report on measures to give effect to the rights enshrined in the Convention against Torture was due on 7 October 2000 and was submitted on 22 July 2002. The CAT examined it on 6 and 7 May 2004 and issued its Conclusions and Recommendations on 14 May 2004.

Prior to the examination of Croatia's report, Amnesty International submitted a written briefing to the CAT, detailing its concerns with regard to issues related to torture and other forms of cruel, inhuman or degrading treatment or punishment in Croatia. The organization's concerns focused in particular on:

- the failure of the Croatian authorities to thoroughly and promptly investigate acts of torture or cruel, inhuman and degrading treatment, which occurred during the 1991-1995 armed conflict between the Croatian Army and Croatian Serb armed forces, aided by the then Yugoslav People's Army (*Jugoslovenska narodna armija* - JNA), and to ensure that the perpetrators of these human rights violations are brought to justice, either before domestic courts or before the International Criminal Tribunal for the former Yugoslavia (Tribunal);
- the failure of the authorities to thoroughly and promptly investigate violent attacks by non-state actors against returnees and members of ethnic minorities and to ensure that the perpetrators of these human rights abuses are brought to justice;
- reports of harassment, ill-treatment and arbitrary detention of refugees and asylum-seekers detained in the Ježevo Reception Centre for Foreigners;
- the failure of the authorities to prevent serious violence and bullying between children and young adults placed in social care institutions.

Amnesty International urges the Croatian authorities to fully implement the recommendations of the CAT. The CAT recommended that the Croatian authorities "take effective measures to ensure impartial, full and prompt investigations into all allegations of torture and other cruel, inhuman or degrading treatment, the prosecution and punishment of the perpetrators as appropriate and irrespective of their ethnic origin, and the provision of fair and adequate compensation for the victims". The CAT also recommended that Croatia fully cooperates with the Tribunal ensuring that all indicted persons present on Croatian territory are arrested and transferred to the Tribunal's custody.

The authorities were also urged to ensure the protection of ethnic and other minorities by undertaking all effective measures to prosecute and punish all violent acts against these individuals, establishing programs to increase awareness raising, preventing and combating this form of violence, and including this issue in the training of law-enforcement officials and other relevant professional groups.

In addition, the CAT recommended that the authorities refrain from detaining asylum-seekers and illegal migrants for prolonged periods and adopt all necessary measures to improve the material conditions of the reception centres for asylum-seekers and immigrants, ensuring the physical and psychological integrity of all individuals accommodated in these centres.

The CAT also recommended that the authorities "increase the protection of children and young adults placed in social care institutions, inter alia, by ensuring that violent acts are reported and investigated, providing support and treatment for children and young adults with psychological problems, and ensuring that these institutions employ trained personnel, such as social workers, psychologists and pedagogues".

The following four sections were contained in Amnesty International's written briefing to the CAT. In the final section the organization presents its recommendations to the Croatian authorities.

Failure to investigate acts of torture or cruel, inhuman and degrading treatment, which occurred during the 1991-1995 armed conflict and to ensure that their perpetrators are brought to justice

Croatia's declaration of independence from the SFRY in June 1991 was followed by an armed conflict between the Croatian Army and Croatian Serb armed forces, aided significantly by the JNA. From early 1991 to 1995 large parts of the country's territory, in particular, areas bordering Bosnia-Herzegovina and Serbia with a significant or majority Croatian Serb population, were under the control of the *de facto* Croatian Serb political and military leadership of the self-proclaimed autonomous Republic of the Serbian Krajina (*Republika Srpska Krajina* - RSK). In January 1992 a UN-brokered cease-fire came into effect and in April 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 and August of 1995 the Croatian Army and police forces recaptured UN Sectors West, North and South, during its 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 and areas of Bosnia-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 (Erduť Agreement) which 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).

Serious human rights violations were perpetrated by Croatian and Serbian forces, as well as by the JNA, during the first stage of armed conflict in 1991. These violations included arbitrary killings, torture including rape, "disappearances", arbitrary detention and forcible expulsions. From 1992 to 1995, there was no major escalation or renewed full-scale armed conflict but instances of killings, torture and arbitrary detention continued to be reported mainly against the non-Serb population in the UN Sectors.

In the aftermath of operations "Flash" and "Storm" widespread human rights violations, in particular arbitrary killings and torture, were committed by members of the Croatian Army and police against Croatian Serb civilians who had remained in the area. To a lesser degree violations of international humanitarian law also occurred against members of the withdrawing Croatian Serb armed forces. These violations met with vigorous international condemnation.¹ Throughout the period of armed conflict hundreds of thousands of people became internally displaced or refugees abroad.

In its concluding observations, issued after examining Croatia's second periodic report in November 1998, the CAT had recommended that Croatia "should take account of the evidence transmitted to it by the International Tribunal for the Former Yugoslavia and some non-governmental organizations concerning violations of human rights and, in particular, cases of torture and cruel, inhuman or degrading treatment or punishment".² Croatia's third periodic report to the CAT states that "[t]he Republic of Croatia has, in the last few years, strengthened its cooperation with the Hague Tribunal and expressed full cooperation with it and is, at this moment, sanctioning war crimes itself, regardless of the citizenship, nationality, religion, political affiliation and sex of the offenders".³ However, Amnesty International

¹ See also UN Security Council Resolution no. 1009, UN document S/RES/1009 (1995).

² CAT, UN Document A/54/44, Paragraph 70.

³ Third periodic report to the CAT, UN Document CAT/C/54/Add.3 (State Party Report), Paragraph 6.

remains concerned that the government failed to address the reported crimes by fully cooperating with the Tribunal, as well as through its criminal justice system, and that most of the perpetrators have continued to enjoy impunity for their actions.⁴

During the 1991 conflict tens of Serbian civilians were killed or "disappeared" in the Sisak region.⁵ In many cases the alleged perpetrators of these human rights violations were members of the Croatian Army and police. Dušan Komosar, a 64-year-old ethnic Serb, went missing on 19 October 1991, when armed men reportedly entered his apartment in Sisak, beat him and abducted him. His fate and whereabouts remain unknown to date. His wife Milja, who was present when Dušan Komosar was abducted, had reportedly informed the police of the abduction immediately after it took place, naming those responsible, whom she was able to identify.⁶ Reportedly, no serious investigation into the events was launched at the time.

In June 2003 the Croatian police began an investigation into the murder or "disappearance" of 35 Croatian Serbs in the Sisak region in 1991-1992. Siniša Mažuran, Vlado Josić and Vlado Buzuk, three former members of the Croatian Army, were arrested on 30 June on suspicion that they were involved in the abduction and "disappearance" of Dušan Komosar. However, in January 2004 the investigation of the three suspects was discontinued at the request of the County Prosecutor's Office in Sisak, due to lack of incriminating evidence. To Amnesty International's knowledge, no other suspects were under investigation or had been indicted in connection with the "disappearance" of Dušan Komosar.

Amnesty International believes that the failure of the Croatian authorities to thoroughly investigate massive human rights violations, including acts of torture, cruel, inhuman and degrading treatment, which took place during the 1991-1995 armed conflict, constitutes a violation of Articles 2, 12 and 13 of the Convention against Torture. To the extent that the lack of investigation and prosecution of these acts leaves the victims without any form of redress, it constitutes a violation of Article 14 of the Convention against Torture. Moreover, the failure of the Croatian authorities to investigate cases of "disappearances"⁷ with a view to disclose to the relatives of the missing the truth about the fate and whereabouts of their loved ones, may amount to a violation of the relatives' right to be free from inhuman and degrading

⁴ See also *Croatia: Impunity for killings after Storm*, AI Index: EUR 64/004/1998.

⁵ "Sisačka knjiga mrtvih ognjem i maljem", *Feral Tribune*, 21 April 2001; *Yugoslavia: Further reports of torture and deliberate and arbitrary killings in war zones*, AI Index: EUR 48/013/1992. Unofficial reports put the number of victims at several hundreds.

⁶ "Još trojica muškaraca jučer uhićena u Sisku", *Novi List*, 1 July 2003; "Uhićena trojica bivših hrvatskih vojnika zbog ratnog zločina protiv civila", *Vjesnik*, 1 July 2003.

⁷ As of February 2004, the Croatian Government Office for Missing and Detained Persons was still searching for over 1,200 missing people. However, the total number of missing persons of Serb nationality is disputed with unofficial Serb sources claiming that approximately 2,800 Croatian Serbs are still missing.

treatment.⁸

Ante Gotovina, a retired Croatian Army general, was charged by the Tribunal with counts of persecution, murder, plunder of property, wanton destruction of cities, towns or villages, deportation and forced displacement, and other inhuman acts, for his alleged responsibility for crimes committed by the Croatian forces during operation "Storm". According to the indictment, Ante Gotovina was the overall operational commander of the Croatian forces that were deployed as part of the operation in the southern portion of the Krajina region. The indictment alleges that at least 150 Krajina Serbs were killed during operation "Storm", when Croatian forces directed violent and intimidating acts against Krajina Serbs, including the plunder and destruction of their property, forcing them to flee the southern portion of the Krajina. Moreover, the indictment alleges that "between 4 August 1995 and 15 November 1995, large numbers of Krajina Serbs were subjected to inhumane treatment, humiliation and degradation by Croatian forces beating and assaulting them".⁹

Ante Gotovina went into hiding immediately prior to the publication of his indictment in July 2001 and the Tribunal Prosecutor has repeatedly criticized the Croatian authorities for their inability, to date, to arrest Ante Gotovina and transfer him to the Tribunal. While the Croatian authorities have pledged their cooperation with the Tribunal, Ante Gotovina has reportedly enjoyed the protection of criminal circles and of some members of the Croatian intelligence community. Moreover, despite formal reassurances, the Croatian authorities have often maintained an ambiguous attitude towards the issues of cooperation with the Tribunal and Gotovina's arrest. In June 2003, Croatian President Stipe Mesić reportedly proposed to transfer Ante Gotovina to the Tribunal in exchange for a revision of his indictment and after the suspect had been given the opportunity to make a statement to Tribunal investigators, an arrangement which the Tribunal refused. The new Croatian Prime Minister Ivo Sanader reportedly suggested in December 2003 that his cabinet may legally challenge the indictment against Ante Gotovina.¹⁰

Ante Gotovina is accused of several counts of crimes against humanity and violations of the laws or customs of war, including acts of cruel, inhuman and degrading treatment. Amnesty International believes that the failure of the Croatian authorities to apprehend him and ensure that he is brought to justice before the Tribunal amounts to a violation of Croatia's obligations under Article 12 of the Convention against Torture.¹¹

⁸ See European Court of Human Rights (ECHR), *Çakici v. Turkey*, no. 23657/94, judgment of 8 July 1999; *Cyprus v. Turkey*, no. 25781/94, judgment of 10 May 2001.

⁹ Case Number IT-01-45, Amended Indictment, Paragraph 26. See also Paragraph 40.

¹⁰ "Amassing Acquittals", *Transitions Online*, 28 January 2004.

¹¹ In September 2002 the Tribunal unsealed an indictment against retired General Janko Bobetko, the former Chief of Staff of the Croatian Army, for war crimes and crimes against humanity committed against Croatian Serbs in 1993. The indictment alleged that the crime of persecution was perpetrated also through "cruel and

Failure to investigate violent attacks by non-state actors and bring the perpetrators to justice

Over the past few years members of Romani communities continued to be targets of ethnically motivated violent attacks by non-state actors.¹² Many of these attacks were not promptly and thoroughly investigated by the Croatian authorities.¹³ In April 1999 a 36-year-old Romani man, Šemso Šečić, was physically attacked by three men while he was collecting scrap metal in a dump in Zagreb.¹⁴ Reportedly, Šemso Šečić was knocked to the ground and beaten with a wooden plank, while one of the assailants was pressing his foot on Šemso Šečić's chest. The attack ended when the police and an ambulance were called to the scene by a passer-by. Šemso Šečić was initially taken to the Merkur hospital in Zagreb, where reportedly he did not receive adequate medical assistance. The following day he was diagnosed with two broken ribs at another Zagreb clinic, where he was hospitalized for six days. After the attack Šemso Šečić filed a criminal complaint with the Zagreb Municipal Public Prosecutor's Office. However, to date no steps have been taken to bring the perpetrators of this human

inhumane treatment of Serb civilians and captured and/or wounded soldiers from the Medak Pocket, by *inter alia*, causing serious injuries by means of shooting, stabbing, cutting of fingers, severe beatings, burning with cigarettes, jumping on bodies, tying bodies to a car and dragging them along the road, mutilation and other forms of mistreatment" (Case Number IT-02-63, Indictment, Paragraph 34[b]). Ignoring the obligation to cooperate unconditionally with the Tribunal, the government first referred the case to the Constitutional Court, apparently in an attempt to stem public anger. Croatia also appealed against both the decision confirming the indictment and the arrest warrant. In November 2002 the Tribunal turned down both appeals, finding that Croatia could not challenge these decisions on political grounds and that only the accused in person could counter the indictment before the Tribunal. The Constitutional Court also ruled in November 2002 that it was not competent to decide on the merits of the indictment. Doctors appointed by the Tribunal visited Bobetko in early 2003 and decided that he was too ill to travel to the Hague and stand trial. Janko Bobetko's arrest warrant was withdrawn in April 2003 and, shortly afterwards, he died in his home. See also Croatia's entry in Amnesty International, *Report 2003*.

¹² Croatian law does not specifically criminalize acts of violence committed on racial grounds. However, Article 174 of the Criminal Code prohibits racially or ethnically motivated violations of "fundamental human rights and freedoms recognized by the international community" (*temeljna ljudska prava i slobode priznate od međunarodne zajednice*). According to the fourth and fifth periodic reports to the Committee on the Elimination of Racial Discrimination, submitted by Croatia in 2000 as one document (UN document CERD/C/373/Add.1), between 1997 and 1999 only one person was convicted for an offence under article 174 of the Criminal Code. More recent data on criminal proceedings for ethnically and racially motivated human rights violations are not available to Amnesty International, but reports from IGOs and NGOs suggest that in most cases racially and ethnically motivated attacks continue to be treated by the Croatian police and courts as street violence.

¹³ In April 2000 Darko Beganović, a 25-year-old Romani man, was reportedly beaten up by a group of seven persons near Zagreb. An initial investigation into the attack was subsequently terminated by the Public Prosecutor. See European Roma Rights Center, *Written Comments of the European Roma Rights Center Concerning the Republic of Croatia for Consideration by the United Nations Committee on the Elimination of Racial Discrimination at its 60th Session, March 4-5, 2002*. See also *Roma Rights*, no. 2, 2000.

¹⁴ European Roma Rights Center, *Written Comments of the European Roma Rights Center Concerning the Republic of Croatia for Consideration by the United Nations Committee on the Elimination of Racial Discrimination at its 60th Session, March 4-5, 2002*. See also *Roma Rights*, no. 2, 1999, "Law Suit Filed at the European Court of Human Rights in Croatian Racist Violence Case", European Roma Rights Center Press Release, 12 November 2002. Some of the information contained in this briefing was provided to Amnesty International by Šemso Šečić's legal representative.

rights abuse to justice. In April 2001 Šemso Šečić filed a complaint with the Croatian Constitutional Court claiming that the failure of the Croatian authorities to investigate the attack and initiate criminal proceedings against its perpetrators amounted to a violation of Šemso Šečić's constitutional rights. As of March 2004 no decision has been taken by the Constitutional Court on the complaint. In January 2001 Ševko Šečić, Šemso Šečić's son, was verbally and physically attacked in Zagreb and filed a criminal complaint against unknown perpetrators. Yet again, the Croatian police failed to launch a thorough investigation into the assault, whose perpetrators remain unknown. In November 2002 Šemso and Ševko Šečić, with the support of the European Roma Rights Center (ERRC), filed an application to the European Court of Human Rights claiming that, through their inaction, the Croatian authorities had violated Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, which prohibits torture and inhuman or degrading treatment of punishment. The case is still pending.

Violent attacks against Croatian Serb returnees in Croatia have decreased in frequency in the past few years.¹⁵ However, there continue to be concerns about the lack of investigation and prosecution of these offences, whose perpetrators remain at large. Between 1996 and 1998 several Croatian Serb returnees died, and scores of others were wounded, in some cases seriously, by the detonation of explosive devices planted in Croatian Serb houses, fields, and places of religious worship in the area of Gospić. In June 1996 Dušan Cvijanović died as a result of the explosion of a mine he activated while working in the fields in Krbava.¹⁶ Đuro Masnikosa, who was working with him, was seriously wounded by the explosion and died approximately four weeks later.¹⁷ In August 1996 Milorad Mišćević was killed by the detonation of a bomb placed in the yard of his house, in the village of Zavode. Željko Lemaić and Ljubica Nikšić were killed in May 1996 by the explosion of a mine placed in a graveyard in the village of Svračkovo Selo. Jovan Čanković died in April 1997 after the explosion of a hand grenade planted in his yard. In September 1997, in the village of Ostrovica, Milena Vidović stepped on an explosive device and died weeks later as a result of the wounds.¹⁸

In September 2002 the Gospić County Court initiated an investigation into the above cases, which led to the arrest of Ivica Rožić in March 2003, on suspicion that he was involved in preparing and planting the explosive devices. The trial began in July 2003 and ended with an acquittal for lack of evidence. Reportedly, Rožić had

¹⁵ See also *Croatia: Fear for safety: violent attacks against Serbs in eastern Slavonia*, AI Index: EUR 64/004/1999.

¹⁶ Apparently the mine was not laid during the 1991-1995 conflict but was deliberately placed in the field at a later stage, in order to kill or wound Serbian returnees.

¹⁷ Croatian Helsinki Committee for Human Rights Bulletin, February 1999; "Ivica Rožić: I ovdje ću dokazati da sam nevin", *Slobodna Dalmacija*, 22 July 2003.

¹⁸ Reportedly the device was also laced with poison. See "Amassing Acquittals", *Transitions Online*, 28 January 2004; "Rožić mi je opisao kako je postavljao 'mine iznenađenja'", *Novi List*, 14 October 2003.

confessed to the Croatian police of being responsible for planting explosive devices on property belonging to Croatian Serb refugees hoping to return to Croatia. However, the confession was not considered to be admissible in court because it was given in the absence of Rožić's legal representative.¹⁹ To Amnesty International's knowledge, no other suspects were under investigation or had been indicted in connection with these attacks.

Amnesty International is concerned at the failure of the Croatian authorities to thoroughly and effectively investigate violent attacks against returnees and members of the Romani communities and to bring the perpetrators of these human rights abuses to justice. Croatia's obligation under the Convention against Torture is to prevent acts of torture, cruel, inhuman and degrading treatment or punishment, where these are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity (Articles 1 and 16).²⁰ Amnesty International believes that the Croatian authorities' inaction in cases of racially or ethnically motivated attacks by non-state actors constitutes a violation of Articles 2, 12, 13 and 16 of the Convention against Torture. To the extent that the lack of investigation and prosecution of these attacks leaves the victims without any form of redress, it constitutes a violation of Article 14 of the Convention against Torture.

Harassment, ill-treatment and arbitrary detention of refugees and asylum-seekers held in the Ježevo Reception Centre for Foreigners

The Foreigners Act (*Zakon o strancima*), which entered into force in January 2004, regulates the position of foreign citizens in the Republic of Croatia. Previously the matter was regulated on the basis of the Act on the Movement and Residence of Foreigners (*Zakon o kretanju i boravku stranaca*) of 28 June 1991. Article 66 of the old law stated that, in those cases where the expulsion of a foreign citizen could not be carried out, the Ministry of the Interior could order the placement of the foreign citizen in question in a reception centre for foreigners. Article 5 of the new Foreigners Act states that "[a] foreigner who cannot at once be forcibly deported and a foreigner who has not been identified shall have their freedom of movement restricted by being quartered in the reception centre for foreigners of the Ministry of the Interior".

In June 2003 the Croatian Parliament adopted a new Asylum Act (*Zakon o azilu*) defining the procedure to apply for asylum in Croatia. The law will be implemented in July 2004, after renovation works in the Ježevo Reception Centre for Foreigners are completed. Pending the implementation of the Asylum Act, Articles 31-38 of the old Act on the Movement and Residence of Foreigners still regulate

¹⁹ "Amassing Acquittals", *Transitions Online*, 28 January 2004; "Rožić oslobođen optužbe za postavljanje mina na imanja Srba povratnika", *Vjesnik*, 6 November 2003.

²⁰ The CAT has held that attacks against persons, committed with the acquiescence of public officials, constitute a violation of Article 16[1]. See Communication no. 161/2000: Yugoslavia 02/12/2002, Paragraph 9.2. UN document CAT/C/29/D/161/2000 (Jurisprudence).

asylum procedures. Under the current system, the Ministry of the Interior, in consultation with the Ministry of Labour and Social Welfare, decides on asylum applications (Article 35). Asylum-seekers who are refused asylum are only allowed to appeal to have the decision reviewed by the Administrative Court of the Republic of Croatia. According to official data, none of the asylum applications received by the Ministry of the Interior between 2000 and 2003 were accepted.²¹ Article 32 of the Act on the Movement and Residence of Foreigners provides that during the asylum application procedure, asylum-seekers may be placed in a reception centre for foreigners.

The new Asylum Act provides that decisions on asylum applications are taken, in the first instance, by the Ministry of the Interior. Appeals against the Ministry's decision can be submitted to a Commission of the Government of the Republic of Croatia for Processing Appeals by Asylum Seekers and Asylees.²² Article 22 of the Asylum Act states that foreigners "under the procedure for the recognition of asylum are accommodated at the Reception Centre for Asylum-Seekers".

Asylum-seekers awaiting a decision on their asylum application, as well as foreign citizens who are found to be illegally on the territory of Croatia, including migrants who have not applied for asylum and cannot be immediately deported, are held in the Ježevo Reception Centre for Foreigners. The Ježevo Centre is effectively a detention facility,²³ which comes under the authority of the General Police

²¹ Croatia's third periodic report to the CAT, Paragraph 51, UN Document CAT/C/54/Add.3 (State Party Report), states that in 2000 the Croatian Ministry of the Interior received 23 applications for refugee status but fails to mention that none of these applications were accepted. See also Government of the Republic of Croatia, *Information Provided by the Government to the Questionnaire of the European Commission*, Chapter 24, Page 127 available at <http://www.vlada.hr/zakoni/mei/Chp24/Chp24.pdf>.

²² An appeal to have the decision on asylum reviewed by the Administrative Court of the Republic of Croatia remains possible, after a first appeal to the Commission of the Government of the Republic of Croatia for Processing Appeals by Asylum Seekers and Asylees.

²³ Amnesty International believes that the detention of asylum-seekers in Croatia is in some cases in breach of Croatia's obligation as a party to the 1951 Convention relating to the Status of Refugees (Refugee Convention). Article 31[1] of the Refugee Convention exempts refugees coming directly from a country of persecution from being punished on account of their illegal entry or presence, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence. Article 31[2] also provides that contracting states shall not apply to the movements of such refugees restrictions other than those which are necessary, and that any restrictions shall only be applied until such time as their status is regularized, or they obtain admission into another country. The introduction to the United Nations High Commissioner for Refugees (UNHCR) Revised Guidelines on Applicable Criteria and Standards Relating to the Detention of Asylum Seekers states that the detention of asylum-seekers who come "directly" in an irregular manner should not be automatic nor should it be unduly prolonged. This provision applies not only to recognized refugees but also to asylum-seekers pending determination of their status. The introduction to the UNHCR Guidelines further notes that the expression "coming directly" in Article 31[1] of the Refugee Convention covers the situation of a person who enters the country in which asylum is sought directly from the country of origin, or from another country where his or her protection, safety and security could not be assured. It is understood that this term also covers a person who transits an intermediate country for a short period of time without having applied for, or received, asylum there and that no strict time limit can be applied to the concept "coming directly" and that each case must be judged on its merits. Similarly, given the special

Directorate of the Croatian Ministry of the Interior, as one of the departments of the Border Directorate. It is situated near Zagreb, in a former motel, and it accommodates approximately 100 refugees and asylum-seekers (as of February 2004) in separate dormitories for men and women.

In the answers to the European Commission questionnaire on political and economic criteria for accession and on Croatia's ability to assume the obligations of membership the Croatian government admitted that the Ježevo Centre is in "poor condition".²⁴ Amnesty International delegates who visited the Ježevo Reception Centre for Foreigners in 2003 and 2004 noted in particular that some of the toilets and bathrooms were in a bad state of maintenance, with poor hygienic conditions.²⁵ Moreover, the organization's delegates received several complaints relating to the almost complete lack of access to recreational activities for individuals detained in the centre.

Amnesty International is concerned about reports of ill-treatment and harassment of refugees detained at the Ježevo Reception Centre for Foreigners. Tony Atkinson, an Iranian citizen of British origin, applied for political asylum in Croatia in 2001. Following the rejection of his asylum application he attempted to illegally cross the border between Croatia and Slovenia, and was apprehended by the Croatian police. He was detained in the Ježevo Centre in January 2002. On 30 June 2003 he was reportedly ill-treated by policemen guarding the Centre after he had tried to escape from the detention facility. Tony Atkinson alleged that he was physically ill-treated by the guard who arrested him during the escape attempt. Following his arrest he was reportedly beaten up by two other policemen who kicked him and pushed him against a wall. As a result of the ill-treatment Tony Atkinson reported bruises on his left knee, right elbow, and right shoulder and was subsequently treated at a hospital in Dugo Selo.

Cases of human rights violations against migrants in Ježevo often go underreported, owing to the very condition of detention in which the asylum-seekers are held, to linguistic barriers, the refugees' lack of access to information and a climate of intimidation discouraging detainees to report such violations. However, Amnesty International has received reliable reports from organizations working in the area of refugee protection of ill-treatment and harassment of asylum-seekers and undocumented migrants by the centre's guards, particularly following escape attempts.

problems faced by asylum-seekers, there is no time limit which can be mechanically applied to the expression "without delay".

²⁴ Government of the Republic of Croatia, Information Provided by the Government to the Questionnaire of the European Commission, Chapter 24, Page 124, available at <http://www.vlada.hr/zakoni/mei/Chp24/Chp24.pdf>.

²⁵ Amnesty International notes that the Ježevo Centre was undergoing renovation works, which appeared to be almost completed at the end of February 2004.

To Amnesty International's knowledge no investigation was initiated into any of these incidents. Amnesty International believes that the failure of the authorities to prevent acts of inhuman, cruel and degrading treatment against individuals held at the Ježevce Centre, as well as the failure to investigate allegations of such human rights violations and bring the perpetrators to justice, constitutes a violation of Article 12, in conjunction with Article 16, of the Convention against Torture. To the extent that the lack of investigation and prosecution of these incidents leaves the victims without any form of redress, it constitutes a violation of Article 14 of the Convention against Torture.

Moreover, Amnesty International is concerned that the arbitrary and prolonged detention of migrants at the Ježevce Centre, as allowed by the asylum procedure currently in force, may in some cases amount to cruel, inhuman and degrading treatment. AB,²⁶ a 17-year-old citizen of Cameroon, was detained in the Ježevce Centre in February 2004 after the expiry of his Croatian visa, which he had obtained in order to take part in a series of football matches in Croatia. AB did not apply for asylum in Croatia and stated in an interview he had with an Amnesty International delegate, who visited the Ježevce Centre, that his only request was to be repatriated to Cameroon. However, the Croatian authorities failed to promptly repatriate AB who, after approximately three weeks of detention, reportedly tried to commit suicide on 23 February 2004.²⁷

The Introduction to the UNHCR Revised Guidelines on Applicable Criteria and Standards Relating to the Detention of Asylum Seekers states that the detention of asylum-seekers is inherently undesirable, particularly in the case of members of vulnerable groups such as single women, children, unaccompanied minors and those with special medical or psychological needs. Given the very negative effects of detention on the psychological well-being of children and of other vulnerable persons, the arbitrary and, in some cases, prolonged detention of these individuals may constitute cruel, inhuman and degrading treatment and thus a violation of Article 16 of the Convention against Torture.²⁸

²⁶ The identity of the victim is known to Amnesty International but is not disclosed in this briefing.

²⁷ In a letter sent on 25 March 2004 to Amnesty International the Croatian Ministry of the Interior had informed the organization that the Croatian authorities were planning to repatriate AB to Cameroon in early April 2004.

²⁸ Amnesty International believes that the detention in the Ježevce Reception Centre for Foreigners of unaccompanied children constitutes a violation of Croatia's obligations under the Convention on the Rights of the Child, to which Croatia has been a party since 1991. Article 38[a] of the Convention on the Rights of the Child enshrines the principle that no child shall be deprived of his or her liberty unlawfully or arbitrarily and that the detention or imprisonment of a child shall be used only as a measure of last resort and for the shortest appropriate period of time. Moreover, the Convention on the Rights of the Child explicitly states that "every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so" (Article 37[b]).

Failure to prevent violence and bullying between children in social care institutions

The Juvenile Courts Act (*Zakon o sudovima za mladež*) of 29 September 1997 regulates cases of criminal offences committed by children (according to the law, persons under the age of 18) and young adults (according to the law, persons over the age of 18 and under the age of 21). The act defines different types of measures which may be ordered against children and young adults who commit criminal offences. These include re-educational measures, juvenile detention and supervisory measures (Article 4[1]). Article 6 of the Juvenile Courts Act details various types of re-educational measures against young offenders, and specifies that orders of "placement in an institution for re-education" (*upućivanje u odgojnu ustanovu*), "placement in a semi-open institution for re-education" (*upućivanje u odgojni zavod*), and "placement in a special institution for re-education" (*upućivanje u posebnu odgojnu ustanovu*) should be issued only as a last resort, when permanent and intensive re-education is necessary, or when isolation from the offender's previous social milieu is needed.

The placement of children and young adults in social care institutions, as well as their treatment, does not always follow clearly defined criteria and standards.²⁹ The general purposes of different social care and re-educational institutions are set out in a regulation issued in 1997 by the Croatian Ministry of Labour and Social Welfare.³⁰ The regulation defines a "home for re-education" (*odgojni dom*) as an institution which provides accommodation, care, education, schooling, and professional training to children and young persons who have reached the age of 14 and are under the age of 21, who exhibit behavioural problems. The regulation specifies that homes for re-education are institutions where court orders of "placement in an institution for re-education" may be executed. The regulation also states that placement in a home for re-education may be ordered by a centre for social welfare (*centar za socijalnu skrb*), which is a locally based state-run social care institution. Usually children and young adults placed in homes for re-education have exhibited significant behavioural problems and/or were responsible for criminal offences. However, there are cases where the placement in a home for re-education has been simply ordered when for different reasons it was deemed necessary to isolate a child or a young adult from his or her social environment.

Amnesty International is concerned about recent reports of serious violence between children and young adults placed in homes for re-education. On 14 October 2003 three residents of the home for re-education in Ivanec physically attacked 17-

²⁹ Antonija Žizak and Nivex Koller-Trbović, *Odgoj i tretman u institucijama socijalne skrbi: Deskriptivna studija*, Zagreb: Edukacijsko-rehabilitacijski fakultet, p. 134.

³⁰ Regulation on Types of Homes for Children and Adults and their Functions and on Provisions Regarding Premises, Equipment, and Required Professional and other Employees of Homes for Social Care (*Pravilnik o vrsti doma za djecu i doma za odrasle osobe i njihovih djelatnosti, te uvjetima glede prostora, opreme i potrebnih stručnih i drugih djelatnika doma socijalne skrbi*).

year-old CD,³¹ another resident of the institution. CD died a few days later in hospital as a result of brain injuries.³² In another case, which has received significant media attention in Croatia, EF,³³ a 15-year-old resident of the home for re-education in Mali Lošinj, was allegedly severely ill-treated on 8 February 2004 by four other residents of the institution, including one 19-year-old young adult, who reportedly led the group of attackers.³⁴ EF was savagely beaten and as a result sustained a fractured leg. Moreover, the victim was tortured by the attackers who burned his back with cigarettes and stabbed him with sharp objects.³⁵

Amnesty International is aware of other, less serious cases of violence between children and young adults hosted in homes for re-education in Rijeka and Osijek. Furthermore, violent incidents in other types of re-educational institutions have been reported. In one of them, a 13-year-old resident of a "centre for the re-education of children and young people" (*centar za odgoj djece i mladeži*) in Pula reportedly sustained wounds on 11 February 2004 after three other residents set fire to the mattress on which he was sleeping.³⁶ Self-harming behaviour is also common. According to unconfirmed reports, in 2003 one resident of the re-educational home in Mali Lošinj committed suicide and three others attempted suicide.³⁷ In a recent incident, a 14-year-old resident of the Mali Lošinj institution reportedly cut himself with a razor blade all over his body.³⁸

The cases mentioned in this briefing, which all (excluding the suicide and the suicide attempts) refer to a period of less than six months between 2003 and 2004, suggest that there is a worrying pattern of violence between children and young adults placed in Croatian social care institutions. Moreover, violent incidents in these institutions may be underreported, given that they often involve marginalized children, who are frequently victims of parental neglect. The serious incident that led to the death of CD in Ivanec was reported in the Croatian press only three months after the event.

³¹ The identity of the victim is known to Amnesty International.

³² See also "O smrti štíćenika u Odgojnom domu šuti se još od 14. listopada", *Vjesnik*, 29 January 2004. The article reports that the attack was carried out by one of the residents of the institution while, according to information available to Amnesty International, there were three attackers.

³³ The identity of the victim is known to Amnesty International and was disclosed in media reports of the event.

³⁴ "Kašner: Odgajatelji nemoćni pred nasiljem pojedinih štíćenika", *Novi List*, 11 February 2004.

³⁵ Information on the death of CD and the torture and ill-treatment of EF was provided to Amnesty International by the Croatian Office of the Ombudsperson for Children.

³⁶ Centres for re-education of children and young people are institutions where children with behavioural problems are placed, usually for short periods of time. See "Lakše opekline jedina posljedica incidenta", *Novi List*, 14 February 2004; "Pula: Šestorica zapalila maloljetnika dok je spavao", *Slobodna Dalmacija*, 14 February 2004.

³⁷ "Lani u Domu jedno samoubojstvo i tri pokušaja samoubojstva?", *Novi List*, 12 February 2004.

³⁸ "Mali Lošinj: Štíćenik se sam izrezao žiletom", *Slobodna Dalmacija*, 14 February 2004.

Amnesty International is concerned that an unclear and confused legal framework provides that orders to place children and young adults in social care institutions can be issued by courts, as well as by centres for social welfare. In those cases where children are placed in social care institutions by order of centres of social welfare, Amnesty International is not aware whether the procedure followed by the centres for social welfare constitutes a fair procedure in accordance with the principle of the best interest of the child. Amnesty International is concerned that children and young adults who have committed criminal offences are in some cases placed in the same type of institution as children who exhibit behavioural problems, who suffer from parental neglect, or whose separation from their social milieu is deemed necessary. Several of these institutions, including the homes for re-education, host children and young adults of very different age groups, ranging in age from 14 to 20. The separation of children according to age, conviction status, and type of offence committed is in the best interest of children and should be in general maintained. Social care institutions like the homes for re-education, although described as "open", are still custodial and effectively involuntary, and fall under the provisions of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty. Rule 28, in particular, states: "The detention of juveniles should only take place under conditions that take full account of their particular needs, status and special requirements according to their age, personality, sex and type of offence, as well as mental and physical health, and which ensure their protection from harmful influences and risk situations. The principal criterion for the separation of different categories of juveniles deprived of their liberty should be the provision of the type of care best suited to the particular needs of the individuals concerned and the protection of their physical, mental and moral integrity and well-being.

Amnesty International is concerned that many of the social care institutions in Croatia where children and young adults are placed lack trained staff able to respond to the needs of the residents, to deal with a variety of behavioural problems and to effectively perform supervisory tasks to prevent violence. Reported incidents of self-harm indicate that the Croatian authorities are failing to provide support and treatment to children with serious psychological problems. A study published in 1999 showed that a very significant proportion of Croatian social care institutions for children and young adults did not employ social workers, psychologists and pedagogues.³⁹ The situation has not changed significantly since then. For example, as of February 2004, no psychologist, psychiatrist, and indeed no medical doctor was reportedly employed in the home for re-education in Mali Lošinj.⁴⁰

³⁹ Antonija Žizak and Nivex Koller-Trbović, *Odgovori i tretman u institucijama socijalne skrbi: Deskriptivna studija*, Zagreb: Edukacijsko-rehabilitacijski fakultet, p. 56.

⁴⁰ "Kašner: Odgajatelji nemoćni pred nasiljem pojedinih štićenika", *Novi List*, 11 February 2004.

The authorities have a duty to protect institutionalized children and young adults placed in social care institutions⁴¹ ensuring that their needs are taken into account and their different problems addressed. Amnesty International welcomes recent steps in this direction, which include the establishment in October 2003 of an Ombudsperson for Children and government plans to implement organizational changes within the system of social care institutions and to hire trained personnel to be employed in social care institutions. Amnesty International believes that the failure to date of the authorities to exert due diligence and prevent acts of torture, cruel, inhuman and degrading treatment in homes for re-education and in other similar institutions constitutes a violation of Articles 2 and 16 of the Convention against Torture.

Recommendations to the Croatian authorities

Amnesty International urges the Croatian authorities to ensure that perpetrators of war crimes and crimes against humanity, including acts of torture, cruel, inhuman or degrading treatment or punishment committed during the 1991-1995 conflict are brought to justice, either before the Tribunal or before domestic courts in proceedings that meet recognized international standards of fairness. The authorities must fully and unconditionally cooperate with the Tribunal with a view to ensuring that Ante Gotovina is arrested and transferred to the custody of the Tribunal.

Amnesty International urges the authorities to ensure that the police and courts are equipped and professionally trained to investigate and prosecute cases of war crimes and crimes against humanity ending impunity in particular for those human rights violations allegedly committed by members of the Croatian army and police forces. The authorities must ensure that trials for war crimes and crimes against humanity of Croatian Serb suspects are conducted in accordance with international standards for fair trial and are not used as a form of harassment against members of the Croatian Serb communities. Moreover, Amnesty International urges the authorities to clarify the fate of the "disappeared" during the 1991-1995 conflict, fully cooperating with the ICMP (International Commission on Missing Persons).

⁴¹ Amnesty International believes that the failure to protect children placed in Croatian social care institutions constitutes a violation of Croatia's obligation under the Convention on the Rights of the Child. Article 3 of the Convention on the Rights of the Child states that "[i]n all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration". Article 6 protects the children's right to life and Article 19 enshrines the principle that states parties should take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child. Moreover, the failure of the authorities to provide adequate support and specialized treatment for children who may suffer from severe psychological problems may amount to a violation of the principles enshrined in Article 24[1] of the Convention on the Rights of the Child. Article 24[1] asserts the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health and specifically states that "States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services".

Amnesty International calls on the authorities to protect Croatian Serb refugees returning to Croatia and to end impunity for violent attacks against returnees. The authorities must ensure that all such attacks are thoroughly investigated and that their perpetrators are brought to justice. The authorities should also promptly and thoroughly investigate all racially motivated attacks against members of Romani communities ensuring that the perpetrators are brought to justice.

Amnesty International urges the authorities to stop automatically detaining asylum-seekers and undocumented migrants, in some cases for prolonged periods. International law provides that the authorities may be permitted to detain an asylum-seeker or undocumented migrant for a limited period if it can be justified in the individual case, on grounds particular to the individual such as security, or risk of absconding. In addition, and in accordance with international standards, reasons for detention must be given and the need for detention must be subject to prompt, fair, individual review before a judicial or other similar authority whose status and tenure afford the strongest possible guarantees of competence, impartiality and independence. The detention of refugee children, in particular, should normally be avoided and should be used only as a measure of last resort. Moreover, Amnesty International urges the authorities to ensure that all individuals held in detention facilities for asylum-seekers and undocumented migrants who do not wish to exercise their right to seek asylum, or who have been found not to be in need of international protection, or who otherwise have no other basis on which to remain in the country and have declared themselves willing to return to their countries of origin, are promptly repatriated with full respect for their human rights and in conditions of safety and dignity. If there is no realistic possibility for them to return to their country of origin or travel to another country due to circumstances out of their control, such as lack of travel documents, they should be released from detention. Failure to do so would render the detention arbitrary. In those cases where migrants and asylum-seekers are detained, their conditions of detention should be improved, ensuring in particular that the detainees have access to legal assistance, recreational activities and medical care, where necessary. Amnesty International urges the authorities to promptly, thoroughly and impartially investigate all alleged cases of harassment and ill-treatment in detention facilities for asylum-seekers and undocumented migrants. Where members of the police guarding the detention centres are reasonably suspected of being responsible for serious misconduct and human rights violations, they must be subjected to criminal prosecution and disciplinary procedures.

The authorities must ensure that children resident in social care institutions are protected from violence. Amnesty International urges the authorities to clearly define the legal framework regulating the placement of children in social care institutions ensuring that, in general and according to the principle of the best interest of the child, children and young adults who were found responsible for violent criminal offences are held separately from children who exhibit behavioural problems, who suffer from parental neglect, or whose separation from their social milieu is

deemed necessary. Moreover, the authorities must ensure that social care institutions for children and young adults are appropriately staffed by trained personnel, including psychologists, social workers and pedagogues.

Finally, Amnesty International urges the authorities to ensure that all victims of acts of torture, cruel, inhuman or degrading treatment or punishment, including the relatives of the "disappeared", are granted fair and adequate compensation, including the means for as full rehabilitation as possible.