

CROATIA

**BRIEFING TO THE
EUROPEAN COMMISSION
ON THE ONGOING
CONCERNS OVER
IMPUNITY FOR WAR
CRIMES IN CROATIA**

OCTOBER 2011

**AMNESTY
INTERNATIONAL**



1. Ongoing concerns

In this briefing Amnesty International sets out its primary concerns in relation to continuing impunity for crimes under international law committed during the 1991-1995 war in Croatia¹. The organization also considers that the European Union (EU) should ensure international monitoring of Croatia's progress in prosecuting war crimes and other crimes under international law. The progress should be measured in six concrete areas of the justice system, namely: financial and organizational capacity of the judiciary, legal framework, alleged command responsibility for war crimes by high level officials, witness support and protection, application of evidence collected by the ICTY in domestic proceedings and access to justice for survivors of war-time rape and other crimes of gender-based violence.

Despite recent progress made by the Croatian judiciary in combating impunity, there are persisting obstacles to the effective investigation and prosecution of those crimes in Croatia, which have not been adequately addressed by the Croatian government. Many of the obstacles identified in Amnesty International's December 2010 report *Behind a Wall of Silence: Prosecution of war crimes in Croatia* (EUR 64/003/2010)² remain unaddressed. As a result, victims and their families are denied the right to truth, justice and reparation and the majority of perpetrators remain at large.

Amnesty International is in particular concerned about the lack of access to remedy and reparation for women who were victims of crimes of gender-based violence during the war, including torture, rape, sexual slavery and sexual exploitation.

Amnesty International condemns recent statements made by high level Croatian government officials, which undermine the International Criminal Tribunal for the former Yugoslavia (the Tribunal). In these statements the authorities refused to investigate and prosecute crimes committed by the Croatian military and police forces and denied the right of the victims to truth, justice and reparation.

Amnesty International believes that the EC and EU member states could play an important role in ensuring that Croatian authorities show genuine political will to tackle impunity for crimes committed during the war.

Lack of political will to prosecute crimes committed by Croatian armed forces

Amnesty International is concerned that the Prime Minister of Croatia and other key political figures in the country have recently made statements undermining the international justice system, reinforcing the climate of impunity and reflecting the lack of political will to investigate and prosecute crimes committed by the Croatian armed forces during the war.

In August 2011, Croatian state officials celebrated the 16th anniversary of "Operation Storm" carried out by Croatian armed forces between August and November 1995 in the Krajina region of Croatia. As established by the Tribunal, crimes under international law, in particular killings, torture, and forcible expulsions were committed on a large scale 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 forces³. Some 200,000 Croatian Serbs fled the country during and after military offensives carried out by Croatian armed forces at the time.

On 15 April 2011, the Tribunal found two Croatian army generals, Ante Gotovina and Mladen Markac, guilty of command responsibility for crimes against humanity committed during the 1991-1995 war. They were found guilty of having participated in a joint criminal enterprise during and after the "Operation Storm" carried out between August and November 1995 with the aim of forcibly and permanently removing the ethnic Serb population from the Krajina region of Croatia. The Tribunal found Croatian military forces and the Special Police responsible for a "large number of crimes" against the Serb population during "Operation Storm". In May 2011, both generals appealed the judgment.

¹ This briefing updates Amnesty International concerns and recommendations documented in organizations Submission to the European Commission and EU Member States published in May 2011: <http://amnesty.org/en/library/info/EUR64/008/2011/en>

² The report is available at: <http://www.amnesty.org/en/news-and-updates/report/croatia-urged-speed-war-crimes-prosecutions-2010-12-09>

³ Prosecutor v. Ante Gotovina, Ivan Cermak & Mladen Markac IT-06-90

Immediately after the judgment was announced, Croatian government representatives made statements rejecting the findings of the Tribunal and denying the crimes committed during the war by Croatian armed forces. The Prime Minister, Jadranka Kosor, among other officials, stated that the Croatian government found the judgment unacceptable⁴. She also stated that “Operation Storm” was a legitimate military and police operation, and that the Croatian nation should be proud of all people who took part in the operation and contributed to the Croatian victory. She added that the government would take all possible measures to successfully appeal the judgment⁵. The Speaker of Parliament, Luka Bebic, stated that the judgment was political and that generals Gotovina and Markac were not war criminals⁶. Similarly, the vice president of the ruling Croatian Democratic Union (HDZ), Andrija Hebrang, who took part in “Operation Storm” denied that war crimes were committed⁷. The President of the Social Democratic Party (SDP), Zoran Milanovic rejected the verdict as political⁸.

On 5 August, during the official celebrations marking the 16th anniversary of Operation Storm, the Prime Minister said: *“I am extremely proud that ... I can congratulate the Day of Victory and Homeland Gratitude to all Croatian defenders and all generals and I especially thank and congratulate generals Ante Gotovina and Mladen Markac. ... From Knin where Milosevic's Greater Serbia politics was defeated I send a message that we shall let no-one revise Croatian history and touch our sanctities”*⁹.

Amnesty International is extremely concerned that such statements undermine the Tribunal and its judgments. Glorification of “Operation Storm” and persons allegedly responsible for crimes committed as part of the Operation sends a negative political message which undermines justice. It may discourage the justice system from investigation and prosecuting crimes committed as part of “Operation Storm”.

Amnesty International notes that to date nobody has been brought to justice by Croatian courts for crimes committed during “Operation Storm” in the country.

In October, Amnesty International was informed by State Attorney’s Office that in June 2011 there were two indictments issued against six individuals in total for crimes committed by the Croatian forces during Operation Storm. One of the individuals was charged for command responsibility¹⁰.

In addition, Amnesty International notes that despite the progress in issuing the recent indictments overall the number of investigations remains low in comparison to the scope of crimes committed during the operation. For example, according to the Croatian Helsinki Committee for Human Rights at least 677 persons were killed during “Operation Storm”¹¹. The Tribunal found that large number of crimes was committed against the Serb population of the Krajina region in a relatively short period of time. The Tribunal heard 145 witnesses, of whom 81 were called by the prosecution. They testified about crimes committed in Mokro Polje in Ervenik municipality, Očestovo, Palanka, Knin, Benkovac, Gračac, and Obrovac. In its verdict, the trial chamber concluded that Ante Gotovina ordered an unlawful attack on civilians and civilian objects through the shelling of Benkovac, Knin and Obrovac on 4 and 5 August 1995. The Tribunal also concluded that Mladen Markač ordered the Special Police’s shelling of Gračac on 4 and 5 August 1995, which constituted an unlawful attack on civilians.

⁴ “President Josipovic and Prime Minister Kosor shocked by the judgement” Vecernji List, 15 April 2011. Available at: : <http://www.vecernji.hr/vijesti/predsjednik-josipovic-premierka-kosor-sokirani-presudama-clanak-276870>;

⁵ “The judgement is unacceptable” TPortal, 15 April 2011. Available at: <http://www.tportal.hr/vijesti/hrvatska/122662/Presuda-je-neprihvatljiva.html>; <http://www.index.hr/vijesti/clanak/jadranka-kosor-istine-se-ne-bojimo-ova-presuda-ce-se-ponistiti/547323.aspx>

⁶ “Flash was an excellent and clear operation” Jutarnji List 2 May 2011. Available at: <http://www.jutarnji.hr/luka-bebic--bljesak-je-brilijantna-cista-akcija-koja-nam-moze-sluziti-na-cast/942901/>

⁷ “Opposition leader says generals paying others debt” TPortal, 15 April. Available at: <http://daily.tportal.hr/122730/Opposition-leader-says-generals-paying-others-debt.html>

⁸ “The judgement was political” Dalmacija News 15 April 2011. Available at: <http://www.dalmacijanews.com/Vijesti/View/tabid/74/ID/52859/Milanovic-Optuznica-protiv-Gotovine-politicka-inkriminacija.aspx>

⁹ “Kosor during celebrations of “Storm”: It was a war for freedom, I am grateful to Markač and Gotovina” Slobodna Dalmacija, 5 August 2011. Available at: <http://www.slobodnadalmacija.hr/Hrvatska/tabid/66/articleType/ArticleView/articleId/145370/Default.aspx>

¹⁰ Email received by Amnesty International from Croatian State Attorney on 10 October 2011

¹¹ *Vojna operacija "Oluja" i poslije*.2001, Hrvatski Helsinški Odbor za Ljudska Prava (Croatian Helsinki Committee for Human Rights).

Political interference with the justice system

Amnesty International is extremely concerned about the recent proposal made by the Croatian government to introduce a new law, which would render unlawful the indictments issued by judicial bodies of the former Yugoslav National Army (JNA), the former Socialist Federal Republic of Yugoslavia (SFRY) and by the Republic of Serbia. The law, if adopted, would be in breach of Croatia's obligation to investigate and prosecute crimes under international law and would result in impunity for many of the crimes.

On 22 September, the Croatian Prime Minister announced Government's plans to introduce such a law, following information released by the media that the State Attorney of Croatia had received an indictment processed by the Higher Court in Belgrade. The indictment was apparently issued by the Military Prosecutor of the JNA in 1992 and includes charges for crimes committed by Croatian military and police forces in Gospic. Vladimir Šeks¹², Tomislav Merčep¹³ and Branimir Glavaš¹⁴ are among the accused.

Amnesty International does not support prosecutions of civilians suspected of committing crimes under international law that are carried out by military courts. The organization always calls for thorough and impartial investigations by independent judicial institutions.

However, the organization considers that the Croatian State Attorney, as an independent judicial body, should review all indictments and requests sent by foreign judiciaries, including Serbian, in accordance with international law and decide on grounds for further investigations by the Croatian justice system, based on existing evidence. The review of judgments and indictments can only be conducted on a case by case basis, by independent judicial organs and with respect to due process.

Amnesty International is concerned that the calls by the Croatian Government to introduce a law, which would consider all requests and indictments issued by the Serbian justice system (as well as the JNA and the SFRY) in relation to crimes committed during the war in Croatia may result in impunity. The adoption of such law would *de facto* amount to amnesty for such crimes, which is prohibited under international law.

Furthermore, Amnesty International considers the introduction of such a law would amount to political interference in the justice system and it would violate the principle of universal jurisdiction.

Amnesty International notes that according to the media the Croatian State Attorney, Mladen Bajic criticized the proposed law on the basis that it could result in impunity for those responsible for crimes committed during the war. Reportedly, he also indicated that an agreement already exists between the Croatian State Attorney and the Serbian War Crimes Prosecutor on the rules and procedures of handling indictments issued by the JNA, SFRY, Serbia and Croatia.¹⁵

Amnesty International believes that investigations and prosecutions of crimes committed during the war should be carried out by the independent Croatian judiciary.

The Croatian government should refrain from interfering in the work carried out by the justice system and it should provide full political and financial support to the justice system to ensure full capacity of prosecutors and courts to carry out their work.

¹² Currently Deputy Parliament Speaker, who was a leading political figure in the Eastern Slavonija region in 1991. In relation to the alleged responsibility of Vladimir Šeks, the Amnesty international report documented allegations about the potential command responsibility of Vladimir Šeks for crimes committed in the town of Osijek in 1991. The allegations are based on publicly available information such as court judgments and court testimonies of several witnesses. See pages 27-28 of Amnesty International's 2010 report: <http://www.amnesty.org/en/news-and-updates/report/croatia-urged-speed-war-crimes-prosecutions-2010-12-09>

¹³ Commander of the reserve police unit, 1st Zagreb Special Unit under jurisdiction of the Croatian Ministry for Internal Affairs against whom there is an ongoing investigation by the Croatian State Attorney for crimes committed in Pakracka Poljana in 1991-92. Amnesty international also documented allegations about the alleged command responsibility of Tomislav Mercep for crimes committed in Pakracka Poljana. See pages 29-31 of Amnesty International's 2010 report: <http://www.amnesty.org/en/news-and-updates/report/croatia-urged-speed-war-crimes-prosecutions-2010-12-09>

¹⁴ Military leader in Slavonija, convicted in May 2009 by a the Zagreb County Court for having failed to prevent his subordinates to commit crimes under international law against Croatian Serb civilians in the town of Osijek in 1991. The appeal judgment was rendered in 2010.

¹⁵ "The Law Will Only Be Useful To War Criminals", Dnevnik, 6 October 2011. Available at: <http://www.vecernji.hr/vijesti/bajic-zakon-optuznicama-koristi-samo-zlocincima-to-mi-smeta-clanak-333726>; <http://dnevnik.hr/vijesti/hrvatska/zlocinci-se-nece-moci-skrivati-iza-zakona-o-nistetnosti.html>

2. Recommendations

- In light of the evident lack of political will by the Croatian Government to prosecute war crimes and other crimes under international law, Amnesty International calls on the EU to continue providing support to the Croatian judiciary in its efforts to prosecute crimes committed during the war.
- The EU should allocate resources where necessary and provide international monitoring of war crimes trials.
- Amnesty International also calls on the EU to continue to measure Croatia's progress in prosecuting war crimes and other crimes under international law. The organization considers that in order to ensure effective functioning of the justice system, tangible progress should be made in particular in the following areas:

1. The specialized courts, state attorneys and police investigative teams have full capacity to carry out their functions

In 2011, The State Attorney Office has developed an Operation Plan for Implementation of the *Strategy for the Investigation and Prosecution of War Crimes Committed in the Period 1991-1995* adopted by the Government in February 2011. The Operational Plan reportedly includes concrete objectives and timelines of the State Attorney Offices and a list of priority cases according to “number of victims”, “importance of the case at the local level” and “exposure of the case in Croatia”¹⁶.

In May 2011, four specialized courts in Zagreb, Osijek, Rijeka and Split were established in order to prosecute most significant war crimes cases. The courts prosecute new war crimes cases. Significant cases currently prosecuted by other courts have also been transferred to the chambers. According to information available to Amnesty International, at least 29 cases have been transferred to the specialized courts so far. The State Attorney Office informed Amnesty International that State Prosecutors from the Specialised Courts conduct regular coordination meetings with the police investigative teams working on investigations into war crimes cases which are at the pre-investigative stage (in which the perpetrators have not been yet identified).

According to the State Attorney Office currently there are around 540 cases at the pre-investigative stage¹⁷. According to the State Attorney Office improved coordination resulted in opening of new investigations and indictments. Amnesty International in particular welcomes recently opened investigations in cases, which were documented in Amnesty International's 2010 report as unprosecuted war crimes.

The first of the cases relates to killings of Croatian Serb civilians in 1991 – 1992 in Sisak. In June 2011, an investigation was opened against three persons, among them the war time Chief of Police in Sisak Đuro Brodarac. All three suspects have been placed in detention. Đuro Brodarac died while in custody in July 2011. Two others are still detained and the investigation against them continues¹⁸.

The second case relates to killings and enforced disappearances of Croatian Serb civilians in 1991-1992, in the area of Zagreb and Pakračka poljana. In December, an investigation was opened against the former advisor to the Interior Minister and commander of the Ministry's special reserve unit Tomislav Merčep and he was detained. The charges allege that due to his orders and omissions 43 people were killed or went missing. The indictment against Tomislav Merčep was issued in June 2011¹⁹.

Amnesty International welcomes recent progress made by the State Attorney Office in investigating crimes under international law committed during the war. However, the organization notes that many of the crimes remain unprosecuted.

¹⁶ Email received by Amnesty International from the State attorney's Office on 10 October 2011

¹⁷ <http://www.dorh.hr/PodaciOPrijavama2>

¹⁸ <http://www.dorh.hr/osij2206>

¹⁹ <http://www.dorh.hr/zagr0906>

According to the State Attorney Office there are ongoing investigations against 373 perpetrators²⁰ in addition to the 540 cases (some of them may possibly involve several perpetrators in each case) mentioned above at the pre-investigative stage. Based on government statistics the capacity of the justice system is extremely low and only 18 cases on average are prosecuted each year.²¹

- Taking into account the scope of the ongoing and future investigations and prosecutions, it is crucial that the Croatian Government allocates adequate financial resources and provides full political support to the Croatian judiciary. Otherwise, prosecution of war crimes will take decades. With such slow pace of investigations, many potential and crucial witnesses will die before proceedings will take place.

2. International law is adequately applied during war crimes proceedings

The legal framework applied in Croatia to prosecute crimes committed during the 1991-1995 war continues to be inadequate and in some cases may result in impunity.

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 law 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.

The 1993 Basic Criminal Code and the 1976 Criminal Code of the Socialist Federal Republic of Yugoslavia (the SFRY Code) which are used in Croatia to prosecute crimes committed during the 1991-1995 war do not adequately define crucial concept related to prosecution of crimes under international law such as:

- principle of command and superior responsibility,
- definition of rape and other gender-based crimes,
- definition of crimes against humanity.

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, however, 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 their interpretation of the principle of legality. 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 since at least the Second World War.²²

²⁰ Amnesty International notes that this number is inconsistent with the number provided by the Ministry of Justice in the *Strategy for the Investigation and Prosecution of War Crimes Committed in the Period 1991-1995* adopted by the Croatian government in February 2011, where it states that there are 596 ongoing investigations.

²¹ The information is based on a 2005-2009 analysis of war crimes proceedings done by the Ministry of Justice, which stated that there were 88 cases prosecuted in five years.

²² For example, the prohibition of crimes against humanity has been recognized as part of customary international law since the Second World War. The prohibition is also recognized as *jus cogens*. All states are obliged under international law to punish perpetrators of crimes against humanity, or extradite them to a state capable of doing so, regardless of whether crimes against humanity were explicitly criminalized under their domestic law at the time of their commission or not. Since crimes against humanity are universally recognized as crimes under international law – and were so during the time these acts were committed in the former Yugoslavia – prosecution and punishment does not violate the principle of legality, even if they were not expressly criminalized in domestic law at the time they were committed.

Principle of command or superior responsibility was developed during the Nuremberg Trials and was also defined in Article 86 of Additional Protocol I to the Geneva Conventions, which Croatia ratified on May 1992.

Croatia is obliged to recognize in all circumstances the supremacy of both conventional international law and customary international law with regard to its national law. This obligation applies to all national law, including Croatia's constitution and other legislative framework. Therefore, Croatia should have undertaken all legislative and constitutional amendments necessary to comply with its obligations under treaties and customary international law – such as the obligation to investigate and prosecute those responsible for crimes under international law.

- Amnesty International calls the Croatian authorities to ensure that the legal framework used for prosecution of crimes under international law committed between 1991-1995 is in line with relevant international standards, including those related to war crimes of sexual violence, command and superior responsibility and crimes against humanity.

3. Allegations against high profile military and political officials for command responsibility are investigated

To date, prompt, thorough, independent and impartial investigations in accordance with international law and standards have not been conducted to identify those who may have command or superior responsibility, including those who might have been in charge when crimes under international law were committed during the war in Croatia. As highlighted above gaps in the Croatian legal framework prevent investigation and prosecution of those who held command responsibility when crimes were committed. Lack of political will is an even greater obstacle to tackling impunity of high level 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.

Despite the existence of publicly available information, including evidence from public court proceedings in Croatia, allegations against some high profile military and political officials have not been investigated. The allegations are detailed in Amnesty International's 2010 report²³. Examples include Vladimir Šeks (Deputy-Chairman of the Croatian Parliament, who is alleged to have been involved in crimes committed in Osijek in 1991) and General Davor Domazet-Lošo (identified in a trial judgment as, effectively being in command of the 1993 military operation in Medak Pocket). In March 2011, a Croatian NGO, The Youth Initiative for Human Rights (YIHR) published a report "Against Immunity of Power" on lack of prosecution of war crimes allegedly committed by political and military senior officials.²⁴

- Amnesty International calls on the State Attorney to undertake prompt, thorough, independent and impartial investigations in accordance with international law and standards, and where sufficient evidence is available, prosecute cases of war crimes allegedly committed by senior military and political officials of Croatia.

4. Witness protection and support system is effective and accessible to all witnesses

Amnesty International documented problems relating to witness protection and support in its 2010 report²⁵. Regrettably, due to very limited progress made by the Croatian authorities in this field, organization's concerns remain the same.

In 2011, Witness Protection Offices were opened in county courts in Split, Rijeka and Sisak (two of which are specialized war crimes courts), in addition to the existing ones in Vukovar, Osijek, Zadar and Zagreb. The

²³ *Behind a Wall of Silence: Prosecution of war crimes in Croatia* (EUR 64/003/2010). Available at: <http://www.amnesty.org/en/news-and-updates/report/croatia-urged-speed-war-crimes-prosecutions-2010-12-09>, pp.26-31.

²⁴ The report is available at: <http://hr.yihr.org/en/article/68/Against-immunity-of-power-report-on-prosecution-of-war-crimes>

²⁵ *Behind a Wall of Silence: Prosecution of war crimes in Croatia* (EUR 64/003/2010). Available at: <http://www.amnesty.org/en/news-and-updates/report/croatia-urged-speed-war-crimes-prosecutions-2010-12-09>, pp. 45-46.

Croatian authorities have to ensure that those offices are fully equipped to provide psychological support to all witnesses.

Despite progress made in providing psychological support to the witnesses, witness protection measures continue to be inadequate. In addition, those responsible for intimidation of witnesses have to be brought to justice. For example, Amnesty International is concerned that up to date the person responsible for the killing of Milan Levar has not been held responsible.

For several years, Amnesty International has raised concern that the authorities have failed to fully investigate the killing of Milan Levar, a potential witness at the ICTY who had also campaigned for justice for war crimes victims. In August 2000, he was killed 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. She was provided with police protection but the threats were never investigated.

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.

- Amnesty International calls the Croatian authorities to urgently improve the witness protection measures, including technical and material conditions in the courts to allow full protection of witnesses' identities. The organization also calls the authorities to bring to justice all those responsible for witness intimidation, harassment and in some cases, murder, to show that impunity will not be tolerated.

5. Evidence collected by the International Criminal Tribunal for the former Yugoslavia is used during war crimes proceedings in front of domestic courts

In May 2011 the Parliament adopted an amendment to the Law on Implementation of the ICC Statute and Prosecution of Criminal Offences against International Humanitarian Law and Law on War (ICC Law), which allows for use of evidence collected by the ICTY by the Croatian judiciary. Amnesty International considers this an important step towards justice and note that in the past some perpetrators managed to evade justice due to prohibition under Croatian law to use ICTY evidence.

In one of the recent judgments relating to crimes committed in the village of Marino, three out of six defendants (former members of the Croatian forces accused of committing war crimes against Croatian Serbs) were released in appeal proceedings. The court made the decision, because evidence gathered by the Prosecution was based on witness testimonies given to the ICTY, which before May 2011 was prohibited by the Croatian law.

Amnesty International welcomes the legal amendment. The organization expects that the application of evidence gathered by the ICTY will significantly improve the quality and speed of war crimes proceedings in Croatia.

- Amnesty International welcomes the legal amendment and calls on the Croatian authorities to ensure that such evidence continues to be admitted systematically in war crimes cases, which could significantly improve the quality and speed of judicial proceedings in Croatia.

6. Survivors of war-time rape are provided with access to truth, justice and reparation

The authorities in Croatia have failed to ensure access to truth, justice and reparation to the civilian victims of war, including women who survived rape and other forms of sexual violence during the war. Crimes committed against them have not been recognized as crimes under international law and their perpetrators continue to enjoy impunity. Some live in the same communities as their victims. Women are unable to receive psychological, medical and other support.

According to information available in the media, out of hundreds of cases of sexual violence documented by Croatian NGOs, very few have been prosecuted²⁶. According to the State Attorney Office so far only 35 cases have been prosecuted (this number includes cases, which are currently under investigation). There are no official statistics and studies available on the number of victims and their needs.

In addition, due to the inadequacy of the legal framework, crimes of sexual violence are not prosecuted in accordance with international law and the jurisprudence of international courts, including the Tribunal. This has serious implications for the survivors. One of the main problems is that in prosecutions based on the 1993 Basic Criminal Code the use of force might need to be proven as an element of rape which is inconsistent with current international standards. Such practice has in fact been helping impunity for war crimes of sexual violence.

The case law of the International Criminal Tribunal for Rwanda (ICTR) and the International Criminal Tribunal for the former Yugoslavia (the Tribunal) 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 Tribunal 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 when 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.”

The notion of “coercive circumstances” is not adequately reflected in the Croatian legal framework. 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.

Apart from denied access to the justice, survivors are also unable to exercise the right to reparation. Under international law the right to reparation includes restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition. These five forms of reparation are defined in Articles 19-23 of the UN Basic Principles and Guidelines on the Right to a Remedy and Reparation of Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law²⁷.

The Croatian law does not envisage the right to reparation. As a result, survivors are denied access to psychosocial support, adequate healthcare and other support. The only available form of reparation is compensation. However, it is extremely limited, as it requires from the survivors to prove that crime was committed against them. For survivors who were raped during the war, often by unknown perpetrators, it is impossible to fulfil this requirement.

Amnesty International considers that it is the responsibility of the Croatian justice system to investigate crimes committed against the survivors and ensure that all perpetrators are brought to justice. In addition, all forms of psychosocial support must be made available to survivors, irrespectively of the ongoing judicial proceedings.

- Amnesty International calls on the Croatian authorities to take urgent steps to ensure that survivors have access to justice and reparation, including adequate psychosocial support economic support and access to healthcare services. Crimes committed against them have to be acknowledged and prosecuted in line with relevant provisions of international law

²⁶ “Shocking Testimony of a Raped Woman”, Dnevnik, 15 September 2011. Available at: <http://dnevnik.hr/vijesti/hrvatska/potresna-prica-silovane-zene-molila-sam-ga-da-to-ne-radi-rekao-je-da-ce-onda-drugih-10.html>.

²⁷ 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 available at: <http://www2.ohchr.org/english/law/remedy.htm>.