



YOUTH INITIATIVE FOR HUMAN RIGHTS
INICIJATIVA MLADIH ZA LJUDSKA PRAVA
NISMA E TË RINJVE PËR TË DREJTAT E NJERIUT

Shadow Report

on **Croatia** by the Youth Initiative for Human Rights (Croatia)
for the Adoption of List of Issues Prior to Reporting in the 105th Session

June 2012

CONTENT

EXECUTIVE SUMMARY

1. Failure in addressing prevailing discriminatory practice in investigation and prosecution of war crimes

- 1.1. The disproportionate number in the selection of war crime cases directed at ethnic Serbs
- 1.2. Prevailing ethnic bias in trials conducted in absentia
- 1.3. Prevalent judicial partiality and bias in war crimes proceedings

2. Failure in ensuring efficiency and impartiality of judicial framework in the prosecution of war crimes

- 2.1. Inefficiency and partiality in judicial framework for war crime cases
- 2.2. Failure to implement and enforce witness protection legislation

3. Lack of political will to prosecute war crimes

- 3.1. Law on Nullity: Granting of impunity to members of political groups
- 3.2. Inadequate prosecution of command responsibility

4. Inadequacy of existing domestic legal framework for the prosecution of crimes of sexual violence

The Youth Initiative for Human Rights – Croatia (YIHR Croatia) is concerned with education on transitional justice, promotion of facts about war crimes and advocacy of new mechanisms for establishing facts, all with a view of combating denial and impunity for crimes. Through various forms of reports, education, campaigns, public actions and direct work with victims of war crimes and their families, YIHR Croatia seeks to contribute to creating a social situation in which young people are proponents of the message that victims deserve respect and criminals condemnation. YIHR Croatia operates at a local level with a view to empowering youth to institute processes that contribute to creation of democratic and open communities in which there are no politically or socially excluded minorities. YIHR Croatia works on establishment of regional ties among young people who are capable of fighting against hatred and prejudices and advocates the advancement in regional cooperation between the governments and societies in the region.

EXECUTIVE SUMMARY

This is a Shadow Report on Croatia for the Adoption of List of Issues Prior to Reporting in the 105th Session by the Youth Initiative for Human Rights – Croatia.

The Report provides a comprehensive review of current human rights practices and situation in Croatia, with a focus in the area of transitional justice.

In light of a State Party's obligation under *Article 2* of the Covenant to provide an '*effective remedy*' to individuals whose rights are violated and to ensure individuals have access to a fair and public hearing by a competent, independent and impartial tribunal under *Article 14*, YIHR is concerned about the inadequate efforts taken by the Croatian Government in addressing the existing deficiencies in the current legal framework in the prosecution of war crimes.

The discriminatory practice in the domestic investigation and prosecution of war crimes remains unaddressed and partiality of courts in war crimes proceedings still prevailed in many cases.

YIHR is particularly concerned about the Law on Nullity that was adopted by the previous Government that has the effect of granting impunity to those responsible for war crimes and still remains in force today.

Finally, YIHR would like to bring the attention to failure to bring justice to victims who suffered crimes of sexual violence in the 1991 – 1995 conflict due to the the inadequacy of existing domestic legal framework.

Current issues in Croatia

1. Failure in addressing prevailing discriminatory practice in investigation and prosecution of war crimes

Relevant Provisions	<ul style="list-style-type: none"> • Article 2 Right to equality and non discrimination; Right to effective legal remedy for violation of rights • Article 14 Right to equality before courts and tribunals
Committee's Concern(s)	<ul style="list-style-type: none"> • The selection of cases in which has been disproportionately directed at ethnic Serbs • War crimes trials held in absentia • Lack of detailed information on cases in which Amnesty Law has been applied
Committee's Recommendation(s)	<ul style="list-style-type: none"> • Paragraph 10(b) State party should take effective measures in order to ensure that all cases of war crimes are prosecuted in a non discriminatory manner, <i>independently of the perpetrator's ethnicity</i> • Paragraph 10 (d) Ensure that the Amnesty Law is not applied in cases of serious human rights violations or violations that amount to crimes against humanity or war crimes; • Paragraph 11 The State Party should ensure that the persons convicted in absentia <ul style="list-style-type: none"> ○ have access to effective remedies with the possibility to open a case; and ○ <i>such trials are held in conformity with Art 14 in light of General Comment No 32</i>
Response received from the Croatian Government	<ul style="list-style-type: none"> • <i>Ethnicity of persons involved in the selection of cases</i> <ul style="list-style-type: none"> ○ Regarding ethnicity of persons involved, the above analysis was conducted according to their participation as members of either JNA or HV; rather than their ethnic backgrounds. Some were self declares Muslims; one was Albanian minority and another was Slovenian. ○ Further, in the last 5 years of war, crimes proceedings that were held in 16 county courts in the same community and environment in which crime was committed, thus indicates the readiness and maturity in processing war crimes regardless of ethnicity of perpetrators. • <i>Analysis regarding total number and range of war crimes</i> <ul style="list-style-type: none"> ○ An analysis of proceedings in war crime cases before county courts for period 2005 – 2009 were conducted. ○ With final convictions, 24 out of 146 (16%) are members of Croatian Army (HV) while 122 persons are member of JNA. (84%) ○ With pending convictions, 23 out of 49 (47%) are members of HV, while 26 are members of JNA. (53%) <ul style="list-style-type: none"> ▪ Further, regarding the vast disproportionality of convictions between Serbian defendants and other ethnicities, the context of Homeland war should be considered in that HV were defenders and JNA were the aggressors. As such a large number of convictions of JNA member should be expected. • <i>Regarding war crime trials conducted in absentia</i> <ul style="list-style-type: none"> ○ The State Attorney's Office (DORH) created the <i>Action Plan for the Implementation of Instruction number O – 4/08 regarding the work on war crimes cases, number A 223/08 – pursuant to the Criminal Procedure Act, dated 12th December 2008.</i>

- The *Act and Amended Act* in 2009 allows the renewal of certain criminal proceedings for which a new judgment may be rendered if it was based on new found facts or evidence with regards to *in absentia* judgments.
- Between 2008 – 2010, 17 requests for the renewal were submitted for proceedings in war crime trial cases in relation to 94 persons; requests were *accepted* with regards to 90 persons (2 rejected, 2 still awaiting decision)

Overview:

YIHR is concerned about the *prevalent* discriminatory practice in the prosecution and investigation of war crimes which are indicated from:

- 1.1. The disproportionate number in the selection of war crime cases directed at ethnic Serbs;
- 1.2. Prevailing ethnic bias in trials conducted *in absentia*; and
- 1.3. Prevalent judicial partiality and bias in war crimes proceedings.

1.1. The disproportionate number in the selection of war crime cases directed at ethnic Serbs

In the *Concluding Observations 2009*, the Committee has raised its concern about '*the selection of cases in which has been disproportionately directed at ethnic Serbs.*' Similar concerns have been put forward by relevant international non-governmental organizations¹ and international bodies². In particular, EU Commission Report on Croatia in 2011 stated that '*impunity for war crimes remains a problem and needs to be thoroughly addressed, especially where the victims were ethnic Serbs or the alleged perpetrators were members of the Croatian security forces.*'³ YIHR is aware of the measures adopted by the State Attorney's Office and the Ministry of Justice in establishing the criteria to determine priorities and selection of war crime cases. However, YIHR is unaware of any significant improvements that have been made to the situation as the discriminatory practice in the selection of cases is still ongoing.

This discriminatory selection of cases can be discerned through statistical information provided by the State Attorney's Office of Croatia. It was shown that the number of war crime investigations instigated against members of Serbian forces and minority ethnic groups is highly disproportionate in comparison to those instigated against members of Croatian forces. By the end of June 2011, a total of 3513 of war criminal proceedings were instigated of which 108 proceedings were directed at Croatian forces, or just over three percent. Further, according to the data published on the website of the State Attorney's Office⁴, there are a total of 274 pending investigations of which 20 are against Croatian forces.⁵ Moreover, a total of 555 defendants were convicted of which 31 were members of the Croatian forces⁶.

Despite the pressing concerns expressed by the international community and statistical information as above, the Croatian Government has *continuously* failed to ensure that investigations and prosecutions are conducted in an impartial manner and in accordance to the Art 2 and Art 14 of the Covenant.

1.2. Prevailing ethnic bias in trials conducted in absentia

In the *Concluding Observations 2009*, the Committee has raised its concern about '*war crime trials held in absentia*'. Similar issues have been observed by the Council of Europe High Commissioner of Human Rights in that '*war-related criminal trials in absentia against ethnic Serbs continued, despite the reported*

¹ Amnesty International (2011) *Briefing to the Human Rights Committee on Follow Up to the Concluding Observations on Croatia* and Human Rights Watch (2012) *World Report Chapter: Croatia 2012*

² European Commission (2011) *Croatia 2011 Progress Report*; Council of Europe Commissioner for Human Rights (2010) *Report by Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe, following his visit to Croatia from 6 to 9 April 2010*

³ European Commission (2011) *Croatia 2011 Progress Report*, p. 48

⁴ Report of the SAO; Državno odvjetništvo Republike Hrvatske, *Postupanje u predmetima ratnih zločina*, 2011. Available at: <http://dorh.hr/PostupanjeUPredmetimaRatnihZlocina>

⁵ Ibid.

⁶ Ibid.

opposition from the State Attorney's Office'⁷ Trials conducted *in absentia* constitute a potential violation of Art 14 as these trials deprive the right of an individual to a fair trial and that criminal proceedings is to be tried in his presence; noting in particular that General Comment 32 which further emphasized that all trials in criminal matters '*must be in principle conducted orally or publicly*' and that access to administration of justice must be '*guaranteed...to ensure that no individual is deprived, in procedural term for claim of justice*'.⁸

(a) *Data indication of trials 'in absentia' conducted on an ethnic basis*

A high number of war crime trials continue to be conducted *in absentia* in Croatia. YIHR is aware of the amendments made to the *Criminal Procedure Act* in 2009 that allows renewal of certain criminal proceedings if a different judgment would have been concluded in light of newfound evidence⁹. However, the continuous use of trials *in absentia* is cause for concern as data findings indicated that these cases were and still are largely targeted against members of Serbian forces.¹⁰

Statistical reports have shown that, amongst 554 proceedings that have been conducted *in absentia*; 538 ethnic Croatian Serbs were convicted and sentenced *in absentia* to long-term imprisonment.¹¹ In 2009 54% of ethnic Croatian Serb defendants were reported to be tried *in absentia*.¹² In 2010, the OSCE has recorded 60 defendants, 42 of which are of Serb ethnicity, and of which 38 were indicted *in absentia*.¹³ Further, in the first 8 months of 2011, 20 of 33 active war crime trials took place at least partially *in absentia*, and of the 20 newly indicted individuals in 2011, 10 were indicted *in absentia* and the defendants were primarily ethnic Serbs¹⁴.

In light of the facts above, the Croatian Government has failed to ensure that the parties to the proceedings in question are given equal access and are treated without discrimination (Art 14) by allowing trials *in absentia* to continue and to be conducted in a discriminatory manner.

(b) *Low quality of trials 'in absentia'*:

The quality of trials *in absentia* was reported to be low. EU Commissioner of Human Rights expressed concerns that in some cases the right to a defense counsel was reported not to have been properly safeguarded.¹⁵ Trials were often conducted in an unprofessional manner where they were based on poor indictments and without sufficient evidence; the courts were rendering convictions against which court-appointed defence counsels often did not lodge appeals.¹⁶ It was also observed in some cases where rigorous judgments were made without sufficient evidence, and on very shaky foundations.¹⁷

1.3. Prevalent judicial partiality and bias in war crimes proceedings

YIHR is concerned about the ongoing partial treatment and bias displayed by courts towards cases involving Croatian forces. Manifestations of partiality are evident in the:

- (a) regular granting of mitigating circumstances for sentences of members of Croatian security forces;
- (b) the treatment of witnesses and defendants of Serbian ethnicity;
- (c) the tendency to conduct trials in context of 'social tolerance towards 'own crimes'' due to pressure from local communities; and
- (d) reluctance to commence proceedings involving Croatian forces.

⁷ Council of Europe Commissioner for Human Rights (2010), above n2, p. 16.

⁸ Human Rights Committee (HRC), *General Comment no.32, Article 14, Right to equality before courts and tribunals and to fair trials*, 23 August 2007, CCPR/C/GC/32, available at <http://www.unhcr.org/refworld/docid/478b2b2f2.html>

⁹ Croatian Law on Criminal Proceedings (Zakon o Kaznenom Postupku), Article 497 - 508.

¹⁰ Center for Peace, Nonviolence and Human Rights Osijek (2011) *Praćenje Suđenja za Ratne Zločine*, available at http://www.centar-za-mir.hr/uploads/godisnje_izvjesce_za_2011_hrvatsko.pdf

¹¹ Ibid.

¹² Council of Europe Commissioner for Human Rights (2010), above n2, p. 16.

¹³ OSCE (2011), *War Crime Comparative Data from 2002 - 2010*.

¹⁴ Human Rights Watch (2012) *World Report Chapter: Croatia 2012*

¹⁵ Council of Europe Commissioner for Human Rights (2010), above n2, p.17

¹⁶ Civic Committee for Human Rights, Documenta - Centre for Dealing with the Past, Centre for Peace, Nonviolence and Human Rights Osijek (2010), *Monitoring of War Crime Trials in Croatia, Report for 2010*, p.2.

¹⁷ See judgments K-12/01-109 and I Kž 829/11-4.

(a) regular granting of mitigating circumstances for sentences of members of Croatian security forces

YIHR is concerned about the widespread practice of Croatian courts in the granting of mitigating circumstances for sentencing in cases against members of the Croatian forces. Further, YIHR is of the opinion that some of these circumstances such as the defendant's *participation in the Homeland War*, the *homeland fervor* and the *special contribution to the defense of the State* should not be assessed as 'mitigating' grounds as it is not in accordance with the ICTY jurisprudence as well as it is applicable only to Croatian forces and so discriminatory and not in accordance with Article 14 of the Covenant. Furthermore, Croatian courts tend to grant mitigating circumstances to members of Croatian and Serbian forces in a discriminatory manner. The courts usually grant members of Croatian forces the fact they were young *tempore criminis* as a mitigating circumstance or the passing of time, while they deny the same to members of Serbian forces in similar cases.¹⁸

(b) the treatment of witnesses and defendants of Serbian ethnicity

YIHR Croatia is deeply concerned about practice of Croatian Courts in cases where witnesses and defendants are of Serbian ethnicity. It has been observed that witnesses of Serbian ethnicity were repeatedly dismissed as unreliable when testifying as witnesses for defendants of Serbian ethnicity. YIHR is of the opinion that this practice is in the violation of Article 2 and 14 of the Covenant insofar because practice is different when defendants and witnesses are ethnic Croats. In some cases, ethnic Croats were taken as more reliable witnesses in compassion to ethnic Serbs.¹⁹ Further, it has been observed that during the trials judges were treating Serb ethnic defendants and witnesses inadequately by examining issues that are not closely related to the subject. A judge, who during the proceeding directed the court reporter to address ethnic Serbs as "hostiles" or "enemy forces", illustrates an instance of such bias treatment.²⁰

(c) the tendency to conduct trials in context of 'social tolerance towards 'own crimes'' due to pressure from local communities

YIHR is aware of the granting of special jurisdictions to hear war crime proceedings to four largest county courts in Croatia (Osijek, Rijeka, Split and Zagreb) and the transfer of many war crime cases from local county courts to these courts. Despite the granting of special jurisdictions to the courts in 2011, local county courts still continue to handle war crime cases that commenced prior to 2011. In many instances, the impartiality of local courts are compromised due to the pressure from local communities, which have resulted in these cases to be tried in the social tolerance towards 'own' crimes. An example of such instance is observed in the case of *'Korana Bridge'*²¹ where 16 members from the veteran's association were present during the proceeding where they insulted and exerted pressure upon witnesses and victims. Further, the car tires of the prosecutor were punctured as an indication of indirect threat towards her. Further, a judge who was sitting for a case in County court of Sisak for the case in Novska²² publicly stated that: *'It is distressing that courts must try Croatian soldiers for things which we've got used to be perpetrated by the opposite side, especially during the time when all of us were lighting candles for Vukovar victims'*²³

(d) reluctance to commence proceedings involving Croatian forces

YIHR is concerned with the reluctance of Croatian authorities to commence proceedings against perpetrators who were members of Croatian forces. At the end of 2011, there were 31 ongoing war crime trials: eight of them are against Croatian forces (22 defendants) and twenty-three against members of Serbian forces (47 defendants).²⁴ It has been shown that there is enough evidence to create strong indictments against members of Croatian forces imminently after strong international pressure on the

¹⁸ See judgment in cases: I Kž 1027/10-4, III Kž 12/09-10, I Kž 992/08-8

¹⁹ Youth Initiative for Human Rights (2011) *Croatia: NGO Submission on the Follow - Up of the Concluding Observations*
²⁰ Humanitarian Law Center (2012) *Regional Report on the Progress of Transitional Justice* (to be published)

²¹ Centar za mir, nenasilje i ljudska prava Osijek (2011) *Zločin na Koranskom Mostu*, available at http://www.centar-zamir.hr/index.php?page=article_sudjenja&trialId=28&article_id=48&lang=hr

²² Ibid.

²³ Drago Pilsel, *'Ubili jer se su bili revoltirani slikama pada Vukovara'*, Vijesti, 19 November 2010. Available at <http://www.tportal.hr/vijesti/hrvatska/97276/Sramota-hrvatskog-pravosuda.html>

²⁴ Center for Peace, Nonviolence and Human Rights Osijek (2011) *Praćenje Suđenja za Ratne Zločine*, available at http://www.centar-za-mir.hr/uploads/godisnje_izvjesce_za_2011_hrvatsko.pdf

Croatian Government, like in the cases of Merčep and Brodarac. International pressure has contributed with prosecuting some of those members of Croatian forces who were subjects of suspicions for a long time. Still, there are not any signs of progress in prosecuting those members of Croatian forces whom are responsible for war crimes committed in Vukovar in 1991, Bljesak in 1995 or Oluja in 1995. On 2nd of March 2011 Youth Initiative for Human Rights – Croatia published a report “*Against Impunity of Power: prosecution of war crimes in Croatia*”²⁵ and Amnesty International published its report “*Behind the Wall of Silence: prosecution of war crimes in Croatia*”²⁶ that both emphasize this problem.

YIHR request the HR Committee to:

1. To *strongly recommend* the Croatian Government to revise the domestic legal framework and undertake all necessary steps to guarantee equal treatment of witnesses and defendants irrespective of their ethnicity;
2. To *urge* the Croatian Government to ensure the transfer of all war crimes cases to four county courts with special jurisdiction;
3. To *urge* the Croatian Government to take necessary steps to ensure that the judicial system is able to function in an utmost impartial setting.

²⁵ Youth Initiative for Human Rights (2011) *Against Impunity of Power: Prosecution of war crimes in Croatia*, available at <http://dl.dropbox.com/u/4484840/YIHR%20Against%20Immunity%20of%20Power.pdf>

²⁶ Amnesty International (2010) *Behind a Wall of Silence: Prosecution OF War Crimes in Croatia*, available at <http://www.amnesty.org/en/library/asset/EUR64/003/2010/en/81544213-9880-4a5e-acead5269d0bc8ad/eur640032010en.pdf>

2. Failure in ensuring efficiency and impartiality of judicial framework in the prosecution of war crimes

Relevant Provisions	<ul style="list-style-type: none"> • Article 2 Right to equality and non discrimination; Right to effective legal remedy for violation of rights • Article 14 Right to fair trial and equality before courts and tribunals
Committee's Concern(s)	<ul style="list-style-type: none"> • Concerned over the low number of cases prosecuted before special war crimes chambers
Committee's Recommendation(s)	<ul style="list-style-type: none"> • Para 10 (c) Increase its efforts to ensure that the possibility to refer cases to the special war crimes chambers is utilized to the fullest extent.
Response(s) received from the Croatian Government	<ul style="list-style-type: none"> • Establishment of Specialized War Crime Chambers and SAO • Amendments to <i>Book of Rules of Courts</i> in which specialized war crimes chambers were established in 4 county courts: Osijek, Rijeka, Split and Zagreb in which they will be solely responsible for war crime cases; and specialized war crime divisions were established 4 county State Attorney's Office in March 2011. • Ongoing trainings for war crime trials are provided for judges and State Attorneys since 2004.

2.1. Inefficiency and partiality in judicial framework for war crime cases

YIHR is aware of the granting of special jurisdictions to hear war crime proceedings to four largest county courts in Croatia (Osijek, Rijeka, Split and Zagreb) and the transfer of many war crime cases from local county courts to these courts. Nevertheless, YIHR *stresses* that these efforts are still *insufficient* to ensure the efficiency and impartiality of judicial framework in the investigation and prosecution of war crime cases. The European Commission and relevant international organizations have put similar concerns forward.²⁷

Despite the granting of special jurisdictions to the courts in 2011, local county courts still continue to handle war crime cases that commenced prior to 2011. It was observed that the main reason for the continuation of this practice is to enable war crimes to be heard in the jurisdiction closest to the where the crimes were committed²⁸. While YIHR is aware that the reason for war crimes to be prosecuted in local communities is due to the proximity of witnesses, this is nonetheless a cause of concern as county courts in local communities do not have established practice in war crimes trials, and suffer from a lack of implementation of international standards regarding processing of these cases. Legal assistants in local courts are often not trained in war crime trials. Further, the impartiality of local courts towards these cases is often compromised due to pressure from the local community. An example of such instance is observed in the case of 'Korana Bridge'²⁹ where 16 members from the veteran's association were present during the proceeding where they insulted and exerted pressure upon witnesses and victims. Further, the car tires of the prosecutor were punctured as an indication of indirect threat towards her. It was also noted by the OSCE³⁰ that trials could not be conducted in an impartial manner in small communities; because in many cases these communities have been directly exposed to war destruction and victims are still often traumatized. This a reason why YIHR is recommending to either organize safe transport of witnesses to four county courts or organize so witnesses give their testimonies via video-links.

Further, judicial shortage due to overloading of cases is often an issue. The same judges who sit in War Crime cases often try for other offenses.³¹ As such, judges are often overwhelmed with criminal

²⁷ Council of Europe Parliamentary Assembly (2011) *The Protection of Witnesses as a cornerstone for justice and reconciliation in the Balkans*; Amnesty International (2011) *Croatia: Briefing to the European Commission on the Progress made by the Republic of Croatia on Prosecution of War Crimes* and Human Rights Watch (2012) *World Report Chapter: Croatia 2012*

²⁸ Council of Europe Parliamentary Assembly (2011) *The Protection of Witnesses as a cornerstone for justice and reconciliation in the Balkans*, p. 46.

²⁹ Center for Peace, Nonviolence and Human Rights Osijek (2011) above n. 20.

³⁰ OSCE monitored trials for war crimes in Croatia since 2002; Presentation by Nebojsa Paunovic, the OSCE monitor for war crime trials at the International Forum on Transitional Justice in post-Yugoslav countries, delivered in Sarajevo on 27 June 2011

³¹ For example, Zvonko Vekic, the President of the Criminal Division is also a sitting judge for Office for Combating Corruption and

caseloads and additional funds are not provided for additional work in war crime cases. Specially trained legal advisors are not employed to assist judges of the war crime chambers.

2.2. Failure to implement and enforce witness protection legislation

Relevant Provisions	<ul style="list-style-type: none">• Article 2 State Party obligation• Article 10 Respect for the inherent dignity of human persons• Article 17 Right to privacy where no one shall be subject to arbitrary and unlawful interference with his privacy, family or correspondence or to unlawful attacks on his honor and reputation
----------------------------	--

YIHR is extremely concerned about the failure of the Croatian Government in implementing and enforcing existing witness protection legislations in the context of war crime cases, noting especially its unwillingness to sanction serious ongoing violations. YIHR also notes with concern about the inadequate measures taken to protect potential witnesses during early stages of investigations which often result in their refusal to testify out of fear of personal safety.

The Criminal Code governs the area of witness protection and provides that acts such as the revealing of the identity of protected witnesses, threats, aggravated murder, violation of secrecy of data and the obstruction of the collection of evidence as criminal offenses³². However, the law has not been adequately implemented. Appropriate sanctions have not been enforced in cases of serious violations which have allowed the ongoing intimidation of witnesses. It was observed that those responsible for these acts were never prosecuted or been convicted.³³ Further the Council of Europe has recently voiced its serious concerns in that it was '*disturbed to hear that despite...obvious and public breaches of court decisions, no sanctions were imposed on those revealing the identities of the witnesses.*'³⁴

The most recent illustration of such instances can be seen in the 'Garage' and 'Sellotape' cases, where Branimir Glavaš, a high profile Croatian parliamentarian, was charged in his capacity as a local military leader for war crimes against Croatian Serb civilians in Osijek in 1991. Serious instances of witness intimidation have occurred from the very early stages of investigation. Ante Đapić, the former mayor of Osijek disclosed the names of 19 people (who were cooperating with the public prosecutor office at the time) to the media in which many of them have subsequently refused to testify.³⁵ No action was taken against Đapić to address this incident. During the war crime proceeding, Glavaš revealed the identities of protected witnesses by publishing their personal details and photographs, court documents, witness statements and other court filings on his website³⁶. In 2008, Glavaš further disclosed the identities of protected witnesses in a local television news program. Despite his final conviction in 2010, he has continued to reveal identities of witnesses through a dissemination of a video. In light of such blatant and repetitive breaches of law, no sanctions were taken against Glavaš nor has any action been taken to remove his website. In May 2012, YIHR has submitted criminal charges against Glavaš on grounds of revealing identities of protected witnesses to the State Attorney's Office and is waiting for the outcome of the investigation. Unsurprisingly, Glavaš has continued threatening to do so in response to these charges³⁷ of which his party has explicitly mentioned that they will '*continue to reveal identities of fake protected witnesses.*'³⁸

YIHR notes that the rights under witness protection measures are recognised by Art 10 of the Covenant as it refers to '*respect for the inherent dignity of human persons*' and Art 17 in that '*no one shall be*

Organised Crime (USKOK).

³² Croatian Law on Criminal Proceedings (*Zakon o Kaznenom Postupku*), Article 305.

³³ Council of Europe Parliamentary Assembly (2011) above n 30.

³⁴ Ibid p.18

³⁵ Ibid

³⁶ See <http://branimirglavas.com/>

³⁷ '*Inicijativa Mladih za Ljudska Prava - Hrvatska kazneno prijavila Branimira Glavaš*', 15 May 2012, available at <http://www.index.hr/vijesti/clanak/incijativa-mladih-za-ljudska-prava-hrvatska-kazneno-prijavila-branimira-glavasa/615163.aspx>

³⁸ See http://hdssb.hr/index.php?option=com_content&task=view&id=1162&Itemid=1

*subjected to arbitrary or unlawful interference with his privacy, family or correspondence, or to unlawful attacks on his honour and reputation'. Further, in accordance to Art 2, States have a general obligation to undertake necessary steps 'to adopt such laws or other measures as may be necessary to give effect to the rights recognised in the Covenant'. Accordingly, the Croatian Government has breached these provisions by continuously failing to implement adequate measures to protect witness from fear of their lives and safety as illustrated above. Also YIHR wants to emphasize a fact that State Attorney's Office should prosecute this cases *ex officio*, according to existing legislature.*

YIHR request the HR Committee to:

1. To *remind* the Croatian Government of its obligation under Art 14 to ensure individuals' right to a fair trial with an impartial tribunal are protected;
2. To *urge* the Croatian Government to take further efforts in transferring war crime cases to specialised war crime chambers to address the issue of impartiality In local courts;
3. To *urge* the Croatian Government to provide safe transport for witnesses or the possibility of use of video-links from local courts due to the local pressure.
4. To *remind* the Croatian Government to uphold its obligation as a State Party under Art 2 to provide adequate measures to protect the rights of witnesses as recognised under Art 10 and 17.
5. To *urge strongly* the Croatian Government to take *urgent* steps to implement and enforce existing legislative framework, in order to stop and prevent similar incidents of witness intimidation as illustrated above through investigating, prosecuting and imposing adequate sanctions to those who are responsible.
6. To *strongly recommend* the Croatian Government to implement legislative framework for witness protective measures during pre-investigation and investigation phases.

3. Lack of political will to prosecute war crimes

Relevant Provisions	<ul style="list-style-type: none">• Article 2 State Party's obligation to provide effective legal remedy for violation of Covenant rights• Article 14 Right to fair trial and equality before courts and tribunals
----------------------------	---

Overview:

YIHR is aware of the measures undertaken by the Croatian Government to improve its efforts in prosecution of war crime. However, YIHR notes with concern that there is still a general lack of political will to do so, in particular evident through

3.1. Law on Nullity: Granting of impunity to members of political groups

3.2. Inadequate prosecution of command responsibility.

3.1. Law on Nullity: Granting of impunity to members of political groups

YIHR is deeply concerned about the adoption of Law on Nullity by the former Government in October 2011 that is still in force today.

The Act was passed as the Croatian government's response to the receipt of indictment issued by the Prosecution Office of the Republic of Serbia against current Vice-Speaker of the Croatian Parliament Vladimir Seks, former Croatian Army general Branimir Glavas (already serving time for war crimes), wartime Interior Minister Ivan Vekic, wartime Assistant Interior Minister Tomislav Mercep and 40 other veterans of the Croatian war of independence from former Yugoslavia.

This Act would declare void certain legal acts issued by former Yugoslav People's Army (JNA), Socialist Federal Republic of Yugoslavia and Republic of Serbia involving Croatian citizens. However, in effect, this Act will invalidate indictments issued by other countries and protect war criminals from prosecution. YIHR is of the opinion that the adoption of this law as a response to the above indictment is excessive. YIHR notes with concern that the Act was passed regardless of overwhelming concerns expressed by the European Commission³⁹ which expressed that this law would '*jeopardise regional cooperation in the prosecution of war crimes*' and objections put forward by Croatian President Ivo Josipovic as 'unconstitutional' and Chief State Attorney Mladen Bajic. Further, YIHR along with Amnesty International have voiced their concerns to President Josipovic in a letter in which he has replied expressing similar concerns in that he has '*publicly expressed my negative opinion on the bill and called on both the Croatian Government and Parliament not to adopt such a piece of legislation because...the Act does not contribute to the principle under which every crime should be punished*'.⁴⁰ Although the legislation is undergoing constitutional review, it is still nonetheless in effect.

It is important to note that Croatia is obliged under Art 2 to provide "*effective remedy*" by a "*competent judicial...authority*" for all those alleging that their human rights have been violated. By granting impunity to members of political groups that allegedly caused countless human rights abuses during the war, the Law on Nullity bars victims from effective judicial remedy, thereby violating Art 2 of the Covenant by demonstrating a disregard for victims' human rights. Further, where the 'investigations' referred to in paragraph 15 reveal violations of certain Covenant rights, States Parties must ensure that those responsible are brought to justice. As with failure to investigate, failure to bring to justice perpetrators of such violations could in and of itself give rise to a separate breach of the Covenant. These obligations arise under Art 7 - freedom from torture and similar cruel, inhuman and degrading treatment and Art 6 - right to life and freedom from summary and arbitrary killing. Accordingly, where public officials or State agents have committed violations of the Covenant rights referred to in these paragraphs, the States Parties concerned may not relieve perpetrators from personal responsibility with amnesties⁴¹ or in present case, relieving the responsible persons from such violations through granting of impunity.

³⁹ Croatian Times above n 55.

⁴⁰ YIHR Croatia Archive, s/76 – IN/36, 9 November 2011.

⁴¹ Human Rights Committee (HRC), *General Comment no.20, Article 7, Replaces general comment 7 concerning prohibition of torture and cruel treatment or punishment*, 1992, available at <http://www2.ochchr.org/english/bodies/hrc/comments.html>

In light of the above provisions, YIHR stresses that the Croatian Government has failed to uphold its obligation under Art 2 in providing effective remedy to the victims of war crimes by the adoption of the Law on Nullity which remains in force today.

3.2. Inadequate prosecution of command responsibility

YIHR remains concerned about the inadequate prosecution of person who were commanders of security forces or heads of civilian institutions in charge for security operations for command responsibility of non prevention of crimes and non sanction of committed crimes.

The definition of 'command responsibility' in the context of war crimes prosecution still remains unclear in Croatia. As a result, several civil and military officials were not properly investigated on the basis of publicly expressed indications, which has lead to impunity for war crimes. The Criminal Law⁴² from 1993 does not explicitly recognize the notion of 'command responsibility'. Further, an omission can only constitute a criminal act 'when the perpetrator has failed to perform the act in which he was obliged to perform'. Under International law, an individual could be criminally liable for failure to act 'if they knew, or had information which should have enabled them to conclude in the circumstances at the time, that he was committing or was going to commit such the breach and if they did not take all feasible measures within their power to prevent or repress the breach'.⁴³ YIHR is aware that the amendments made to the Criminal Law in 2004 to include standards according to the Geneva Convention as above and judicial practice of *ad hoc* Tribunals for former Yugoslavia and Rwanda. However, these amendments are not being used for the prosecution of war crimes from the 90's, as the Constitution of Croatia forbids retrospective application of law; although the notion of command responsibility for crimes under international law has been an accepted principle of international law since the end of the Second World War.⁴⁴

YIHR is also aware that some positive changes have been made such as the trial for war crimes in Medački Džep on the Supreme Court⁴⁵ in November 2009 has applied the combination of domestic and international definition. This was the first case that was transferred from the ICTY to Croatian judiciary in a stage of indictment and in accordance to the rule 11*bis* of the ICTY Rules of Procedure and Evidence. However, a long list of former political and military high-ranking officials with strong indications of their involvement in war crimes remained unprosecuted due to ongoing application of the old 1993 legal definition. Amongst them are mentioned in the report '*Against Impunity of Power*' are former Public Prosecutor and current Vice-Speaker of Croatian Parliament Vladimir Šeks, former Interior Minister Ivan Vekić, retired Major General Karl Gornišek, former member of intelligence service and Main headquarters Davor Domazet Lošo⁴⁶, former Interior Minister Ivan Jarnjak and former Commander of Military Police Mate Laušić⁴⁷.

YIHR request the HR Committee to:

1. To *remind* the Croatian Government of its obligation under Art 2 in the provision of effective legal remedy to those who have suffered violations of Covenant rights during the war;
2. To *strongly urge* the Croatian Government to abolish the Law on Nullity.

⁴² Osnovni krivični zakon Republike Hrvatske 1993 (pročišćeni tekst), Article 28(1).

⁴³ Additional Protocol I to Geneva Conventions, Art 86(2) and Art 87, available at http://www.icrc.org/customary-ihl/eng/docs/v2_rul_rule153

⁴⁴ Amnesty International (2010) *Behind a Wall of Silence: Prosecution of War Crimes in Croatia*. p.15

⁴⁵ See judgment II K-rz-1/06.

⁴⁶ Domazet Lošo was alongside with deceased general Janko Bobetko and Commander of Special Police Forces Željko Sačić specified as a "parallel line of command" in Medački Džep case.

⁴⁷ Available at: <http://dl.dropbox.com/u/4484840/YIHR%20Against%20Immunity%20of%20Power.pdf>

4. Inadequacy of existing domestic legal framework for the prosecution of crimes of sexual violence

Relevant Provisions	<ul style="list-style-type: none">• Article 2 State Party obligation• Article 7 Freedom from torture and similar cruel, inhuman and degrading treatment Article 17 Right to privacy where no one shall be subject to arbitrary and unlawful interference with his privacy, family or correspondence or to unlawful attacks on his honour and reputation
----------------------------	--

YIHR is deeply concerned about the existing domestic legal and procedural framework for the prosecution of crimes of sexual violence that do not provide adequate access to justice for the victims who suffered the crimes committed during the 1991 - 1995 conflict. The current domestic framework in this area is incompatible to the progressive jurisprudence of ICTY and ICTR. Further YIHR notes with concern the judicial practice in the admission of evidence that do not take into account the jurisprudence of the ICTY and other international criminal tribunals.⁴⁸

An analysis of 20 Supreme Court proceedings and 36 proceedings of County courts in Zagreb, Split, Rijeka and Vukovar showed that the current judicial process and evidentiary framework in Croatia often fails to protect victims and their human rights.⁴⁹ Victims were often exposed to secondary victimization; due to undue exposure to repeated statements about traumatic events, meetings with the perpetrator during procedure and the burden upon the victim to provide evidence for 'lack of consent' in support of his or her statement.

Rule 96 (i) in the *Rules of Procedure and Evidence of the International Criminal Court* provides that '*corroboration of the testimony for a victim of sexual violence is not required*'. The rule ensured that the crime of sexual violence, especially in the context of war crimes, would not fall under the stringent evidentiary standards applied to other criminal offenses, and in many cases addresses problems experienced in domestic systems. Further, by circumventing the need of proof in addition to the victim's statement shows a realistic understanding of the particular nature of the crime of sexual violence, which often takes place with no witnesses or only witnesses acting in collaboration with the perpetrator.⁵⁰ Notwithstanding the procedure and practice of international courts and tribunals, victims still bear the burden to provide evidence of lack of consent to validate his or her testimony in the domestic proceedings. It was observed in 14 cases where victims were required to provide further evidence of physical resistance in support of their statement; such as the defendant was physically stronger, and that the victim resisted calling for help.⁵¹ Further, it has been observed that courts have displayed a propensity to question the victim on a prejudicial basis; such as questioning the victim's behavior and how the victim was dressed.⁵²

YIHR notes with concern that the current domestic framework and practice in the prosecution of crime of sexual violence fails to take into account the private nature of the crime; particularly in the context of war crime. In most instances, victims do not have access to medical facilities during the war to gather physical evidence about the crime.

Further, victims of rape were often ashamed or afraid to go to the doctors to ask for medical examination. The courts only accept medical documentation that was not created later than 3 months after the crime

⁴⁸ *Balkans*; Amnesty International (2011) *Croatia: Briefing to the European Commission on the Progress made by the Republic of Croatia on Prosecution of War Crimes*, pg 16

⁴⁹ Women Right's Group, B.a.B.e analysis available at <http://www.silovanje.org/kaznjavanje.php>

⁵⁰ International Criminal Tribunal for the former Yugoslavia (ICTY) *Innovative Procedures: Hearing, Protecting and Counselling Survivors of Sexual Violence*. Available at <http://www.icty.org/sid/10313>

⁵¹ Women Right's Group, B.a.b.e, above n 73.

⁵² '*In 2008, 128 Women were Raped*', Dalje, 9 June 2009, available at <http://www.dalje.com/en-croatia/in-2008-128-women-were-victims-of-rape/264009>

was committed.⁵³ Given the limitations in the existing domestic framework, it is impossible to instigate domestic proceedings on the crimes of sexual violence during the 1991 - 1995 conflict.

In light of a State Party's obligation under Art 2 to provide '*effective remedy*' by a "*competent judicial...authority*" for all those alleging that their human rights have been violated; YIHR strongly urges that the current domestic framework to follow ICTY jurisprudence in order to allow the possibility of the prosecution of crimes of sexual violence during the conflict and to provide adequate justice to the victims of such crimes.

YIHR requests the HR Committee:

1. To *remind* the Croatian Government of its obligations as a State Party under *Art 2* of the Covenant to provide '*effective remedy*' by a '*competent judicial...authority*' for the victims who suffered crimes of sexual violence during the 1991 - 1995 conflict;
2. To *urge strongly* the Croatian Government to adapt the domestic legal framework to the framework of the international jurisprudence, noting in particular Rule 96 of *Rules of Procedure and Evidence of the International Criminal Court*.

⁵³ Presentation of Milena Calic Jelic, Monitor for War Crime Cases in Documenta, '*Prosecution of War Time Rape*', given in May 2012 for YIHR interns

Youth Initiative for Human Rights – Croatia

Amruševa 8, 10000 Zagreb, CROATIA, +385-98552976, croatia@yih.org, www.yih.org

YIHR Croatia is a member of the Youth Initiative for Human Rights Regional Network with organizations also in Bosnia and Herzegovina, Kosovo, Montenegro and Serbia