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Promoción y protección de todos los derechos humanos, civiles, políticos, económicos, sociales y culturales, incluido el derecho al desarrollo

Visita a Croacia

Informe del Relator Especial sobre la promoción de la verdad, la justicia, la reparación y las garantías de no repetición, Fabián Salvioli*

Resumen

En el presente informe, presentado al Consejo de Derechos Humanos por el Relator Especial sobre la promoción de la verdad, la justicia, la reparación y las garantías de no repetición, Fabián Salvioli, sobre la visita que realizó a Croacia del 26 de noviembre al 3 de diciembre de 2021, el Relator Especial expone su evaluación de las medidas adoptadas por el Gobierno para hacer frente a las graves violaciones de los derechos humanos y del derecho humanitario cometidas durante la guerra que tuvo lugar entre 1991 y 1995.

En el informe se reseñan también los continuos y encomiables esfuerzos realizados tras la guerra, con el apoyo de la comunidad internacional, para responder a los abusos cometidos en el pasado, en particular en lo tocante a la búsqueda de personas desaparecidas, el enjuiciamiento penal de los criminales de guerra y las reformas institucionales y jurídicas destinadas a promover el estado de derecho y la gobernanza democrática. Pese a ello, el Relator Especial señala también deficiencias en varias esferas, como la reparación íntegra debida a las víctimas civiles, los procesos de memorialización integral y los mecanismos de búsqueda de la verdad, la promoción de la diversidad cultural y el entendimiento mutuo entre los grupos étnicos, la lucha eficaz contra el odio nacional y étnico y el aumento de la glorificación de los crímenes de guerra y del revisionismo con respecto a las condenas pronunciadas por el Tribunal Internacional para la ex-Yugoslavia. Además, señala el estancamiento observado en el programa de justicia transicional en los últimos nueve años y el riesgo que esa falta de avances supone para la sostenibilidad del proceso de justicia transicional y para la paz y la reconciliación.

El informe concluye con unas recomendaciones dirigidas al Gobierno de Croacia y a la comunidad internacional.

* El resumen del presente informe se distribuye en todos los idiomas oficiales. El informe propiamente dicho, que figura en el anexo, se distribuye únicamente en el idioma en que se presentó.



Annex

Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Fabián Salvioli, on his visit to Croatia

Contents

	<i>Page</i>
I. Introduction	3
II. General background	3
A. Historical context.....	3
B. Legal framework.....	4
III. Truth-seeking initiatives.....	4
A. Search and identification of missing persons.....	4
B. Regional cooperation in the search for missing persons	6
C. Other truth-seeking initiatives	7
IV. Accountability for past violations and abuses	7
A. International prosecutions.....	7
B. Domestic prosecutions.....	8
C. Regional cooperation	10
V. Reparations.....	11
Restitution of returnees' rights	12
VI. Memorialization	13
VII. Guarantees of non-recurrence	13
A. Institutional and security sector reform	13
B. Education, culture and the media	14
C. Hate crimes, glorification of war criminals and denial of war crimes	15
D. Civil society working on transitional justice issues	17
VIII. Conclusions	17
IX. Recommendations	19
A. Recommendations addressed to the State	19
B. Recommendations addressed to the international community	20

I. Introduction

1. From 26 November to 3 December 2021, the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence conducted an official visit to Croatia. He thanks the Government of Croatia for extending the invitation, as well as for its openness and cooperation during the visit and expresses his sincere gratitude to the Office of the United Nations High Commissioner for Refugees (UNHCR) for its support in preparation for and during the visit.
2. The objective of the visit was to assess the measures adopted by the Government of Croatia in the fields of truth, justice, reparations, memory and guarantees on non-recurrence to address the serious violations of human rights and humanitarian law committed during the 1991–1995 war.¹
3. The Special Rapporteur visited Knin, Osijek, Split, Vukovar and Zagreb. He also carried out field visits to memorials, exhumation locations, former concentration camps and sites of mass graves, including the Memorial Centre of Homeland War, the Vukovar Tower and the Jasenovac Memorial Site, although administrative and timing constraints hampered access to the Lora naval base in Split.
4. He met with officials from the Ministry of Foreign Affairs; the Ministry of Culture and Media; the Ministry of Justice and Public Administration; the Ministry of the Interior; the Ministry of Science and Education; the Ministry for Croatian Veterans; the Central State Office for Reconstruction and Housing Care; the State Attorney’s Office; the Supreme Court; Parliament and its selected judiciary committee, the Committee on Human Rights and National Minority Rights; the Ombudswoman of Croatia; and local administrations and councils.
5. The Special Rapporteur also met with victims and their families, human rights practitioners, academic experts and representatives of civil society and international organizations.

II. General background

A. Historical context

6. Following the declaration of independence by Croatia in June 1991, Croatian Serbs, aided by the Yugoslav People’s Army, seized control of one third of the territory of Croatia. During the aggression, those forces expelled non-Serbs from the occupied territories, shelled the city of Dubrovnik, designated a World Heritage site by the United Nations Educational, Scientific and Cultural Organization (UNESCO), and laid siege to and ultimately destroyed the city of Vukovar.
7. Grave human rights violations were reported during the siege of Vukovar in November 1991, including unlawful killings, enforced disappearances, torture, rape and the forcible expulsion of a large part of the non-ethnic Serb population. At a farm in Ovčara, about 200 non-ethnic Serbs, taken from the hospital in Vukovar, were killed.²
8. In 1992, there was a United Nations-monitored ceasefire. At that time, Croatia was recognized internationally as a sovereign State and became a State member of the United Nations.³
9. In May and August 1995, the Croatian military launched Operation Flash and Operation Storm and recaptured most of the occupied territory (except for eastern Slavonia),

¹ The period 1991–1995 is officially named in the Constitution of Croatia as “the Homeland War” (hereinafter the war); see https://www.constituteproject.org/constitution/Croatia_2010.pdf?lang=en, p. 4.

² Amnesty International, *Behind a Wall of Silence: Prosecution of War Crimes in Croatia*, December 2010, p. 9.

³ *Ibid.*, p. 8

which resulted in a major exodus of ethnic Serbs. At that time, serious violations of human rights and humanitarian law were committed by Croatian forces in the Krajina area, including the bombardment of a column of retreating Serbian civilians and soldiers, the killing and disappearance of civilian Serbs who remained in the area (including elderly and infirm people) and the extensive burning and destruction of Serbian villages and property.⁴

10. In the fall of 1995, the war in Croatia effectively ended, and in January 1998 Croatia reasserted its authority over the entire territory, with eastern Slavonia reverting to its rule following a peaceful transition under the administration of the United Nations. Croatia became member of the Council of Europe in 1996, of the North Atlantic Treaty Organization (NATO) in 2009 and of the European Union in 2013.

11. The establishment of the International Tribunal for the Former Yugoslavia in 1993 and the adoption of transitional justice measures at the national level were aimed at addressing the egregious legacy of the war, as described below.

12. The present report focuses on the situation as it pertained during the visit, although references are made to subsequent developments.

B. Legal framework

13. Croatia adopted its Constitution in 1990 and amended it in subsequent years to establish the guarantees required for the foundation and strengthening of an independent, democratic and pluralistic State, as well as to accommodate the requirements for membership in the Council of Europe and the European Union. The constitutional framework established in the Constitution guarantees State independence, democratic development, individual rights and freedoms and equality and non-discrimination, including special protections and collective rights for ethnic and national minorities.

14. Croatia has ratified all international human rights instruments except for the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. The ratification of the International Convention for the Protection of All Persons from Enforced Disappearance, a recommendation contained in the preliminary observations of the Special Rapporteur at the end of his visit,⁵ was enacted in January 2022. He congratulates the authorities on this important step and hopes it is accompanied by the necessary domestication, including the codification of this crime as an autonomous and continuous offence in criminal legislation.

III. Truth-seeking initiatives

A. Search and identification of missing persons

15. Official truth-seeking initiatives in Croatia have been predominantly focused on the search for missing persons. There were massive disappearances in Croatia during the war.⁶ While the total number of missing persons during this period is unclear, the Government reported that some 18,000 individuals were detained or disappeared in 1991 and that 1,226 individuals disappeared in 1995. The country started an institutional search for missing persons in 1991, entailing the collection of information and the maintenance of comprehensive records. Since the end of the war, the country has devoted significant attention and resources to the search for missing persons and has established a legal and institutional framework that has helped to bring about positive outcomes. To date, more than two thirds of the missing persons have been located and identified. The sustained domestic efforts have been accompanied by cooperation with the relevant authorities in Bosnia and Herzegovina and in Serbia, and the support of regional and international actors, including the

⁴ See <https://www.hrw.org/reports/1996/Croatia.htm>; and <https://www.icty.org/sid/322>.

⁵ See <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?LangID=E&NewsID=27891>.

⁶ See <https://www.icmp.int/news/missing-persons-from-the-conflict-in-croatia/>.

International Commission on Missing Persons, the International Committee of the Red Cross, the International Tribunal for the Former Yugoslavia and the Croatian Red Cross.

16. In the two decades since the end of the war, no specific legislation has been adopted in Croatia to regulate the non-material rights of families of missing persons. However, in 2019, the Law on the Missing Persons in the Homeland War was adopted by Parliament. The law regulates the rights of families of missing persons to uncover the fate and whereabouts of their relatives and to know the truth about the circumstances surrounding their disappearance. It also establishes the process for the search, exhumation, identification, registration, safekeeping and burial of human remains of missing persons. The rights of families apply, without discrimination, with regard to citizens of Croatia or individuals with a reported place of residence in Croatia, as well as with respect of foreigners who were defenders of Croatia during the war. The law establishes the duty of institutions and individuals to provide relevant information (stipulating fines for those who refuse) and regulates the cooperation with other States, international organizations and victim associations.⁷

17. Institutionally, the question of missing persons is under the competence of the Commission of the Croatian Government for Detained and Missing Persons, an advisory body, and the Directorate for Detained and Missing Persons within the Ministry for Croatian Veterans, which is mandated to collect data on missing persons and perform tasks related to the search, exhumation and identification of missing persons. Previous iterations of such institutions have existed since 1991 when the war began. The directorate has established a technical department in charge of collecting, processing and researching information, and another department mandated to undertake identification of human remains and funeral services. Both entities employ personnel with experience and expertise in gathering, processing and analysing data.⁸

18. Croatia has acquired, regularly used and upgraded both: (a) forensic technology for the identification of missing persons, including DNA technology, laboratories and banks; and (b) technological equipment for the search for clandestine gravesites, including aerial imagery, drones and ground-penetrating radar. An electronic database of missing persons that contains relevant data regarding missing persons, including ante-mortem data, has also been established.

19. The structure and resources in place have allowed Croatia to make good progress in the search for missing persons. Reports indicate an increase in technical, financial and human resources devoted to the search for missing persons in recent years.⁹ As at June 2022, the remains of 5,217 persons were exhumed, and 4,340 were identified. Although DNA was extracted from 86 per cent of unidentified remains it did not match with the samples collected in the DNA database. Croatia is still searching for 1,838 persons.¹⁰

20. The Government reported that 62 per cent of unidentified remains were exhumed from graves dating from 1991–1992, while 38 per cent of unidentified remains were exhumed from graves (dating back to Operations Flash and Storm) that were sanitized and reburied in 1995 pursuant to the Geneva Conventions of 12 August 1949.¹¹ The lack of resolution with regard to unidentified remains is mainly due to the degradation of the remains or of the DNA obtained or to the lack of blood samples from relatives. To address this challenge, the Government has made continuing efforts to collect samples and acquire modern equipment and has established a joint project on DNA-led identifications with the International Commission on Missing Persons.

21. The difficulties in identifying remains have been compounded by misidentifications before DNA analysis became more commonly available in 2002–2003. The scale of the

⁷ See <https://www.icmp.int/wp-content/uploads/2021/11/Croatian-Law-on-Missing-Persons-translation-ENG.pdf>.

⁸ See <https://www.icmp.int/wp-content/uploads/2021/10/icmp-croatia-stocktaking-EN-2021-2-August-2021.pdf>, p. 14.

⁹ *Ibid.*, p. 6.

¹⁰ Information provided by the Government.

¹¹ *Ibid.*

problem could be significant, considering that 3,190 missing persons were exhumed and 2,734 were identified between 1995 and 1999.¹² The Ministry for Croatian Veterans conducts regular revisions of all exhumed unidentified remains to address this challenge. The Special Rapporteur had the opportunity to visit a recent mass grave found in Vukovar where excavations and exhumations are currently taking place.

22. International human rights mechanisms, which have noted a lack of transparency in the methodology used in the selection of regions for investigation and exhumation,¹³ have also noted the concerns expressed by civil society about disparities in the attention paid to the search, exhumation and identification of missing persons, depending on ethnicity.¹⁴ Similar concerns were brought to the attention of the Special Rapporteur by multiple stakeholders during the visit. However, the authorities underscored that the registry, search, exhumation, identification and burial of missing persons is conducted in full compliance with international standards (as prescribed in the law on missing persons of 2019) and without discrimination on grounds of origin, nationality, religion or other characteristics of the victims. Following its country visit, the Working Group on Enforced or Involuntary Disappearances noted that all missing persons, regardless of their nationality and circumstances of disappearance, are recorded in the official records of missing persons using the same criteria.¹⁵ The authorities stated that, between 2013 and 2022, 78 per cent of the number of remains exhumed belonged to persons of Serbian nationality and that 77 per cent of the number of remains identified belonged to persons of Serbian nationality, which points to neutral practices. The largest number of unsolved cases relate to the Banovina region and the Croatian Podunavlje district. The competent authorities in neighbouring countries where families of missing persons reside are allowed to monitor these processes.¹⁶

B. Regional cooperation in the search for missing persons

23. Croatia is part of regional cooperation agreements to facilitate the search for missing persons. Such agreements, which have been evolving since the 1990s, have led to the joint co-monitoring of excavations and exhumations, joint reconnaissance visits, transfers of human remains and the exchange of information and materials among the authorities of Bosnia and Herzegovina, Croatia and Serbia. In August 2014, Bosnia and Herzegovina, Croatia, Montenegro and Serbia signed the Declaration on the Role of the State in Addressing the Issue of Persons Missing as a Result of Armed Conflict and Human Rights Abuses, which was followed by bilateral protocols of cooperation to operationalize it.

24. In 2017, Croatia joined a project of the International Commission on Missing Persons to create a database on active missing persons cases from the armed conflicts in the former Yugoslavia and submitted an updated list of all active cases in its portfolio, as did all other participating countries. In 2018, Croatia signed a joint declaration on missing persons alongside 15 countries participating in the Berlin process,¹⁷ which was followed by a framework plan derived from the declaration and the establishment of a missing persons group by the authorities of Bosnia and Herzegovina, Croatia, Montenegro, Serbia and Kosovo.¹⁸ In July 2019, Bosnia and Herzegovina and Croatia signed rules of procedure to operationalize a protocol of cooperation on missing persons.

25. Despite noted progress, cooperation in the region has been hampered by claims of an insufficient exchange of information and evidence and a trend whereby each country is constantly measuring the others' efforts. These patterns of behaviour have often been cited as a major impediment to enhancing bilateral cooperation.

¹² See <https://www.icmp.int/wp-content/uploads/2021/10/icmp-croatia-stocktaking-EN-2021-2-August-2021.pdf>, p. 43; and <https://www.icmp.int/news/missing-persons-from-the-conflict-in-croatia/>.

¹³ CCPR/C/HRV/CO/3, para. 12.

¹⁴ See A/HRC/30/38/Add.3.

¹⁵ *Ibid.*, para. 34.

¹⁶ Information provided by the Government.

¹⁷ See <https://www.icmp.int/wp-content/uploads/2018/09/Deklaracije.pdf>.

¹⁸ References to Kosovo shall be understood to be in the context of Security Council resolution 1244 (1999).

26. In particular, bilateral cooperation with Serbia, while still formally in place, has apparently reached a standoff. In this connection, the Croatian authorities noted the need for better cooperation from Serbia and for access to the military archives of the former Yugoslav People's Army to resolve the lack of information on unregistered and secondary graves from 1991–1992. The Government of Croatia reports that it has transferred all available information and documentation to the competent authorities of Bosnia and Herzegovina and Serbia on their citizens or nationals who disappeared during the war.¹⁹

C. Other truth-seeking initiatives

27. The Special Rapporteur has noted a scarcity of measures in the field of truth-seeking. A truth commission has never been set up in Croatia nor in the region. Faced with this concerning vacuum, an alliance of non-governmental organizations in countries in the region of the former Yugoslavia spearheaded a campaign to establish a Regional Commission Tasked with Establishing the Facts about All Victims of War Crimes and Other Serious Human Rights Violations Committed on the Territory of the Former Yugoslavia (referred to as RECOM). Despite strong domestic and international support, the initiative to establish the regional commission has not received unanimous support from the Governments of the concerned countries.

28. Domestically, initiatives aimed at collecting testimonies of victims and at collecting data of all violations suffered by victims during the war have been found only in civil society; those initiatives have not received official support. According to representatives of civil society, Croatia is lacking a complete mapping of war crimes and a full overview of the human losses. This is a subject that requires the further attention of the Government, including increased resources, as this information forms an essential part of any transitional justice strategy aimed at preserving a reliable account of the harm suffered by victims and the circumstances surrounding war crimes. Furthermore, such information is vital in order to ensure the transmission of accurate records of those violations to future generations, with a view to preventing their recurrence.

IV. Accountability for past violations and abuses

A. International prosecutions

29. The International Tribunal for the Former Yugoslavia was established in 1993 as a temporary institution to investigate and prosecute the perpetrators of serious violations of humanitarian law committed during the wars in the former Yugoslavia, at a time when domestic judicial systems were unable or unwilling to do so themselves. The International Tribunal focused on the prosecution and trial of the most senior leaders and referred cases involving intermediate and lower ranks to national courts to finalize the process, assisted by evidence received from the Tribunal. The Tribunal issued 161 indictments, 11 of which were related to the war in Croatia, and convicted 91 perpetrators.²⁰ In addition to indicting individuals for specific war crimes, the Court prosecuted members of the Croat, Croat Serb and Serb leadership for their responsibility as part of a “joint criminal enterprise”.

30. The International Tribunal had a strategy to close down in 2010 to encourage the ownership of domestic judicial systems for war crimes in the former Yugoslavia: the last indictments of the International Tribunal were issued in 2004. Out of the eight cases (involving 13 accused) transferred to domestic jurisdictions, one was transferred to Croatia in 2005. The Croatian Supreme Court issued its final judgment on the *Ademi-Norac* case in 2009.²¹

¹⁹ See also A/HRC/39/46/Add.2, pp. 7–8 and 23.

²⁰ See <https://www.icty.org/en/cases/key-figures-cases>.

²¹ See <https://www.icty.org/en/cases/transfer-of-cases/status-of-transferred-cases>.

31. As a follow-up to the transfer of cases, the International Tribunal contributed, through its outreach programme, to the establishment of specialized entities in charge of war crimes investigations and prosecutions. In 2014, a memorandum of understanding was concluded between the International Residual Mechanism for Criminal Tribunals and the State Attorney's Office of Croatia to ensure the achievement of the objectives of the Residual Mechanism in prosecuting war crimes and ensuring the transfer of material and evidence to local prosecuting authorities.

32. As noted by several observers, Croatian cooperation with the International Tribunal was initially poor, characterized by insufficient exchange of information and measures to protect Croatian suspects indicted by the Tribunal. Cooperation was markedly improved during the country's process of accession to the European Union as the Union demanded progress in the domestic prosecution of war crimes and cooperation with the Tribunal (a requirement that had already delayed the accession process). In response to international pressure, Croatia strengthened its legal and institutional framework for the domestic prosecution of war crimes and increased cooperation in the exchange of information and the surrender of suspects with the Tribunal and the International Residual Mechanism.

B. Domestic prosecutions

33. The General Amnesty Law, adopted by Parliament in 1996, granted general amnesty from criminal prosecution to the perpetrators of criminal offences committed during or in connection with the aggression, armed rebellion or armed conflicts in Croatia between 1990 and 1996. Although article 3 of the law excluded the "perpetrators of most serious violations of humanitarian law having the character of war crimes" from the amnesty,²² reports from international and regional mechanisms have pointed to the incorrect application of the law to cases of war crimes and the lack of transparency in this area.²³ Attempts to remedy the misapplication of the amnesty law have been reported since 2010.²⁴

34. Prosecutions for war crimes have been taking place in Croatia since the early 1990s. The Constitutional Act on the Cooperation of the Republic of Croatia with the International Tribunal for the Former Yugoslavia was passed in 1996. However, during the war and in its aftermath, the prosecution of alleged war crimes was disproportionately targeted against Croatian Serbs and alleged war crimes committed by Croatian forces were insufficiently investigated or prosecuted, as reported by numerous international and regional mechanisms.²⁵ Reports also noted discrepancies in the sentences received by ethnic Serbs and ethnic Croats, which were reportedly due to the application of mitigating circumstances in favour of the latter for having defended Croatia in the war. In addition, proceedings conducted in this period have faced strong criticism as a result of the significant number of prosecutions conducted in absentia, which mostly affected defendants of Serb ethnicity residing in the territory of another State.²⁶

35. Following the initiation of the accession of Croatia to the European Union in 2003, the authorities pledged to improve their record on the prosecution of war crimes, which had been subjected to consistent scrutiny and negative assessment from regional and international partners. During this period, Croatia sought to harmonize its domestic criminal law with international standards so that domestic courts would be competent to prosecute cases transferred from the International Tribunal for the Former Yugoslavia, including by passing through Parliament: the Law on the Application of the Statute of the International Criminal Court and the Prosecution of Criminal Acts against the International Law of War and International Humanitarian Law; the Constitutional Act on Cooperation of the Republic of

²² See <https://www.refworld.org/docid/3ae6b4de2c.html>.

²³ CAT/C/HRV/CO/4-5, para. 11.

²⁴ See https://ec.europa.eu/neighbourhood-enlargement/croatia-progress-report-2010_en, p. 49.

²⁵ CAT/C/HRV/CO/4-5, para. 11, and CCPR/C/HRV/CO/3, para. 11; see also https://ec.europa.eu/neighbourhood-enlargement/croatia-progress-report-2009_en, p. 9, and https://ec.europa.eu/neighbourhood-enlargement/croatia-progress-report-2010_en, p. 49.

²⁶ See, for example, CCPR/C/HRV/CO/3, para. 11, CAT/C/HRV/CO/4-5, para. 11, and A/HRC/30/38/Add.3, para. 52.

Croatia with the International Tribunal for the Former Yugoslavia; the Act on International Legal Assistance in Criminal Matters; and the Law on Witness Protection.

36. These reforms were accompanied by the establishment of an institutional framework for the investigation and prosecution of war crimes. Four specialized war crimes chambers were established in the county courts of Osijek, Rijeka, Split and Zagreb. In addition, four specialized war crime sections were established in State Attorney's Offices in the same counties and special departments dealing with war crimes were established in police offices located in the county courts. The Government reported that the best qualified personnel was selected to work in those entities. However, several years after their creation, international and regional mechanisms noted that the war crime chambers were vastly underused and called on the authorities to reverse the trend.²⁷ There have been some improvements reported, starting in 2012.²⁸ In her 2018 annual report, the Ombudswoman noted that 16 cases were received in the war crime chambers, 14 were resolved and 97 were still pending in 2017.²⁹

37. Further legal reforms included the adoption of amendments to the Criminal Code in 1997 and 2004 and the adoption of a new code in 2011, introducing changes regarding the offence of "crimes against humanity" and the principle of "command responsibility". However, courts have failed to apply the updated framework in application of the principles of the most favourable law and of intertemporality in criminal law.³⁰ The Criminal Code, as amended, codifies the crime of genocide, the crime of aggression, crimes against humanity and war crimes³¹ and exempts those crimes from the application of the statute of limitations from criminal prosecution. Enforced disappearances are solely defined and prosecutable in the context of crimes against humanity and are not codified as autonomous and continuous crimes.³²

38. In 2008, in response to international pressure and accession requirements demanding that Croatia revert the bias against ethnic Serbs, the low pace of prosecutions against Croatian suspects and the lasting impact of trials conducted in absentia, the Chief Prosecutor launched a plan of action for the review of all cases and the elimination of those in which no "quality" evidence was available, as well as for the review of trials conducted in absentia. The plan was accompanied by amendments to the Criminal Procedure Act to facilitate the review and the issuance of instructions to county prosecutors aimed at addressing the apparent bias against Croatian Serbs. As a result of the review process and the application of improved prosecution standards to those cases, several flawed criminal cases were retried or halted.

39. Further international pressure to remove biases and improve prosecutorial standards and strategies led, in 2011, to the adoption of a strategy for the investigation and prosecution of war crimes committed between 1991 and 1995, as well as operational documents to ensure its effective implementation. In addition, the State Attorney's Office and the police established criteria for the selection of cases, which included: the number of civilian victims; the cruelty of the crimes; the seniority of the accused; the availability of evidence; and the significance for local communities. The Office also established a database and electronic case management system to systematize information, evidence and analysis from all reported war crimes, including from the archives of the International Tribunal for the Former Yugoslavia.

40. Early on, national and international reports noted with concern the lack of adequate witness protection and support services, and the insufficient investigation and prosecution of

²⁷ CCPR/C/HRV/CO/2, para. 10; see also https://ec.europa.eu/neighbourhood-enlargement/croatia-progress-report-2008_en, p. 9, and https://ec.europa.eu/neighbourhood-enlargement/croatia-progress-report-2009_en, p. 8.

²⁸ See https://ec.europa.eu/neighbourhood-enlargement/comprehensive-monitoring-report-croatia-2012_en, p. 7.

²⁹ See <https://www.ombudsman.hr/en/download/annual-ombudsman-report-for-2018/?wpdmdl=6777&refresh=624ff8ae712b11649408174>, p. 187.

³⁰ Information provided by the Government; see also Amnesty International, *Behind a Wall of Silence*.

³¹ See https://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=111330&p_count=8&p_classification=01.

³² *Ibid.*, para. 90; see also A/HRC/30/38/Add.3, para. 27.

cases of intimidation and attacks against witnesses.³³ In 2005, in response to the criticism, the Ministry of Justice established the Department for Support to Witnesses and Participants in War Crimes Proceedings. Victims' and witnesses' protection units were established in seven county courts. The Government reported that the programme aims at ensuring that witnesses and victims are treated humanely, which would, in turn, increase the quality and efficiency of testimonies. While greatly welcomed, the Special Rapporteur notes that the programme should be expanded to all county courts.

41. Sustained international pressure, particularly the insistence that all outstanding issues contributing to impunity for war crimes be fully addressed before Croatia joined the European Union, matched by international and regional support and commendable domestic efforts, led to improved legal and procedural standards for the investigation and prosecution of war crimes, as well as increased public awareness within Croatia of the need to prosecute war crimes regardless of the nationality of the perpetrator and the victim. As a result of the framework in place, progress was made in the prosecution of war crimes in Croatia, as noted by numerous interlocutors during the visit of the Special Rapporteur. The Government reported that, as at September 2021, proceedings had been initiated against 3,736 alleged war criminals and that 666 final convictions had been issued.

42. Nevertheless, numerous stakeholders stated that progress has stalled in recent years, particularly after the accession of Croatia to the European Union, as has regional cooperation in this field. Political interference has also reportedly risen, affecting progress. In 2018, the Ombudswoman of Croatia reported that the average of 7 years required to resolve war crimes cases was particularly worrying.³⁴

43. In addition, stakeholders from different spectrums of society expressed concern about remaining bias in the selection of cases for prosecution. Despite requests from the Special Rapporteur, the State Attorney's Office was unable to provide information about cases initiated and adjudicated disaggregated by the ethnic origin of the accused. During the visit, civil society organizations reported that out of the 43 cases they had monitored in 2020, 61 defendants (86 per cent) were members of Serb paramilitary units and the Yugoslav People's Army,³⁵ while 10 defendants (14 per cent) were members of the Croatian Army and the Croatian Defence Council. In that context, in 2018, the Ombudswoman continued to stress the need to improve the non-selective prosecution of war crimes.³⁶

C. Regional cooperation

44. Official measures have been adopted to increase cooperation among the relevant prosecutorial authorities in the region, which is commendable. In 2006, the State Attorney's Office signed cooperation agreements with its counterparts in Montenegro and Serbia, and in 2013 with Bosnia and Herzegovina. In 2015, relevant prosecutorial entities in Bosnia and Herzegovina, Croatia and Serbia signed guidelines for the advancement of regional cooperation in processing war crimes, the search for missing persons and the establishment of coordination mechanisms. They also participated in the United Nations Development Programme's project on strengthening regional cooperation in the prosecution of war crimes and search for missing persons, aimed at improving the efficacy of their work and the exchange of information.³⁷ The Government reported that judicial cooperation initiatives

³³ See Amnesty International, *Behind a wall of silence*; see also European Commission, Croatia 2005 Progress Report (SEC (2005)), Brussels, 9 November 2005, pp. 25–26 (available at <https://op.europa.eu/en/publication-detail/-/publication/912708c7-81c4-4aef-9c9b-3aeb83ff47b1/language-en>).

³⁴ See <https://www.ombudsman.hr/en/download/annual-ombudsman-report-for-2018/?wpdmml=6777&refresh=624ff8ae712b11649408174>, p. 23.

³⁵ The Government indicated that the figures stem from cases initiated in the 1990s in absentia, a procedure that was later discontinued.

³⁶ See <https://www.ombudsman.hr/en/download/annual-ombudsman-report-for-2018/?wpdmml=6777&refresh=624ff8ae712b11649408174>, p. 183.

³⁷ Information provided by the Government.

agreed upon with Serbia in 2018 were later discontinued due to the latter's unwillingness to continue with such cooperation.

V. Reparations

45. In 2003, Croatia adopted a set of laws establishing the framework for reparations afforded to wartime victims, including a law on the rights of Croatian Homeland War veterans and their family members, which provided allowances for families of killed or missing persons, and a law on the protection of military and civilian war-disabled persons. In addition, the law on the responsibility for damage caused by the acts of terrorism and public demonstrations and the law on the liability of Croatia for damage caused by members of the Croatian army and police forces during the Homeland War allow war victims and their families to file compensation claims against the State. Despite this legislative framework, victims still face numerous difficulties trying to obtain compensation from the State due to complex legal procedures and their inadequate application by the courts.

46. Attempts by the families of many victims to receive compensation through the filing of lawsuits against the State have failed due to the application of statutes of limitations by the courts or because the courts set the burden of proof on the applicant to prove that the damage was caused as a result of actions by the armed and police forces or to prove that someone has been convicted of a crime.³⁸ This practice has led to the rejection of the majority of war-crime compensation claims against the State, except where criminal responsibility had already been established. This is inconsistent with international standards according to which a victim's status is not dependent on the identification, prosecution or conviction of the perpetrator.

47. Moreover, where lawsuits brought by victims against the State have failed, the plaintiffs have reportedly been forced to pay substantial court fees of up to 10,000 euros, forcing some plaintiffs to sell their homes. More worryingly, several proceedings have been initiated by the authorities to seize the property of applicants who have lost their compensation cases against Croatia and who have not been able to pay the related fees. It is reported that this situation has disproportionately affected ethnic Serbs. Significant differences have been identified in the implementation of these laws between the benefits received by families of veterans and the significantly lesser benefits received by civilians.³⁹

48. Other measures to provide full reparation owed to victims beyond compensation, such as restitution, rehabilitation, satisfaction and guarantees of non-recurrence are not regulated under this legal framework. In her 2018 report, the Ombudswoman of Croatia stressed that victims have not been given appropriate institutional, psychosocial or other types of support. She noted, however, the existence of the national programme for the provision of psychosocial and other forms of health run by the Ministry for Croatian Veterans through 21 county centres for psychosocial assistance.⁴⁰ Those programmes have been running since 1999 and earlier iterations of such programmes existed during the war.

49. In 2015, in order to reverse the lack of attention or care that victims of wartime rape and sexual violence had received up until that time, Croatia adopted the Law on the Rights of Victims of Sexual Violence during the Armed Aggression against the Republic of Croatia in the Homeland War. The law was drafted upon the initiative of the Ministry for Croatian Veterans, with existing, albeit scant, consultation with victims. The law regulates the status of civilian victims of sexual violence and provides for compensation and other forms of reparation, including medical care and rehabilitation, psychosocial support, health insurance and free legal aid. Under the law, the Commission for Victims of Sexual Violence was established to decide on the provision of benefits to victims. The law is a welcome initiative,

³⁸ See <https://rm.coe.int/16806db73b>, para. 92; see also Amnesty International, *Behind a Wall of Silence*, pp. 55–56.

³⁹ See <https://www.icmp.int/wp-content/uploads/2021/10/icmp-croatia-stocktaking-EN-2021-2-August-2021.pdf>, p. 54; see also A/HRC/30/38/Add.3, para. 60.

⁴⁰ See <https://www.ombudsman.hr/en/download/annual-ombudsman-report-for-2018/?wpdmdl=6777&refresh=624ff8ae712b11649408174>, p. 182.

although some shortcomings were identified, including the non-inclusion of all forms of sexual violence provided for in the Statute of the International Criminal Court; reference to non-consent that unnecessarily points to the behaviour of the victim; and the requirement of medical documents or criminal proceedings or documentation as assessment factors.⁴¹

50. The Government reported that as at November 2021, 283 applications for recognition of the status of victim of sexual violence were registered under the new law. This is a relatively small number considering that, for example, the estimated number of victims of more serious forms of sexual violence is estimated at 1,500 to 2,200,⁴² which could point to challenges in reaching out and/or offering a trusting environment for victims. Representatives of civil society reported that access to the psychosocial support foreseen in the law is also challenging as the support centres established in 21 counties are not necessarily adapted to the needs of victims of sexual violence.

51. To complement the existing framework and to improve the status of civilian victims of sexual violence, who have historically been afforded lesser benefits than veteran victims, in July 2021, Parliament passed the Law on Civilian Homeland War Victims. The law provides reparations for various categories of civilian wartime victims, including people who became disabled, and the families of persons killed or disappeared during the war. It remains to be seen how the law will be implemented in practice. Several interlocutors expressed concern that Serb civilians could have difficulties proving that they did not aid or collaborate with the enemy, as requested in the law.⁴³ According to the data provided by the Ministry for Croatian Veterans, approximately 2,500 beneficiaries will be eligible under the new legislation.

52. While noting the recent improvements in the legislative framework on reparations, the Special Rapporteur considers that it is important to adopt a national reparation programme to enable its effective implementation.

Restitution of returnees' rights

53. It is estimated that 134,000 Serb refugees had returned to Croatia by January 2017. As noted by the European Commission against Racism and Intolerance, while the overall conditions conducive to return are positive, returnees continue to experience problems in accessing housing and health care, as well as legal status and access to legal aid.⁴⁴

54. The sustainable return of minorities and the reintegration of Serbs has been hampered by: delays and obstruction in the restitution of returnee's rights (including housing rights of former holders of tenancy rights); decades' long delays in the reconstruction of war-damaged houses; insufficiencies in the reconstruction and housing-care system in areas of special State concern; and exposure to multiple grounds of discrimination, especially for those returning to their pre-war residences. In certain areas, particularly in Slavonia, poor or non-existent water, electricity, gas, health, education and transport infrastructure has prevented returnees from availing themselves of vital public services, compounding their marginalization and social exclusion.⁴⁵ The Special Rapporteur witnessed the lack of investment in reconstruction, which has led to some towns being completely uninhabited, turning them into virtual ghost towns.

55. The Ombudswoman reported that increased investment in this area in recent years led to a 76.2 per cent fall in the number of pending cases brought by returnees in 2019.⁴⁶

⁴¹ See <https://academic.oup.com/jhrp/article/8/1/128/1752564?cited-by=yes&legid=jhuman%3b8%2f1%2f128&login=true>.

⁴² See <https://www.ombudsman.hr/en/download/annual-ombudsman-report-for-2018/?wpdmdl=6777&refresh=624ff8ae712b11649408174>, p. 184.

⁴³ See <https://balkaninsight.com/2021/07/08/campaign-for-civilian-war-victims-rights-launched-in-croatia/>.

⁴⁴ See <https://rm.coe.int/fifth-report-on-croatia/16808b57be>, para. 85.

⁴⁵ *Ibid.*; see also <https://snv.hr/en/publikacije/snv-bulletin-21/>, p. 33.

⁴⁶ See <https://www.ombudsman.hr/hr/download/izvjesce-pucke-pravobraniteljice-za-2019-godinu/?wpdmdl=7580&refresh=62554c67691c11649757287>, p. 39.

VI. Memorialization

56. Memorialization processes in Croatia have been mainly focused on the commemoration of the victory and the conduct of the war and in honouring Croatian veterans and victims. A variety of commemorative ceremonies take place annually, monuments have been erected and plaques have been installed in different parts of the country. Commemorative days are also celebrated. In addition, memorials have been established to preserve the memory of the war, such as the Memorial Centre of Homeland War, and some to mark the site of killings or mass graves, such as the mass grave of Ovčara.

57. While these efforts are welcome, they show a prevalent focus on memorializing the victory of Croatia in the war and Croatian victims, albeit the latter to a lesser extent. Memorialization efforts aimed at commemorating all victims, and in particular victims of Serb ethnic origin or other minorities, seem restricted to civil society efforts, with the notable exception of the commemoration of Day of Remembrance of Missing Persons in the Homeland War. In a similar vein, the Special Rapporteur noticed a scarcity of memorials, plaques or ceremonies remembering all violations committed during the war. For example, there is a lack of adequate signalization or memorialization of the war crimes committed in the 1990s against ethnic Serb civilians and prisoners of war in the Lora naval base and the Kerestinec prison camp. Conversely, a memorial was inaugurated in 2016, with the participation of local government representatives, to honour the 72nd battalion of the Croatian military police stationed at the Lora naval base, some of whose members are convicted war criminals. Progress in this area is urgent and will be vital to reconciliation efforts to prevent the recurrence of violence and to restore the dignity of victims.

58. The Special Rapporteur commends the recent efforts of some high-ranking officials to commemorate all victims of the war and to recall violations suffered on all sides and encourages other officials, political and religious leaders to follow suit.

59. Memorialization and education efforts should also encompass previous periods of Croatian history in which gross human rights violations were committed. A memorial site has been established in Jasenovac on the grounds of the concentration and extermination camp run by the Ustasha regime during the Second World War, where Serbs, Jews and Roma people were exterminated, although financial support for the site is insufficient. The Kerestinec prison camp has a plaque outside its grounds commemorating the victims of the Ustasha regime during the same period, but it is not maintained or accessible to the general public. The Roma Memorial Centre has been established in the village of Uštica in part of the Jasenovac camp complex where Roma people were held and killed, and the marking of the Roma Holocaust Memorial Day has been broadcast on national television. These are positive steps which should be maintained, adequately supported and amplified.

60. On the other hand, reports indicate a concerning trend of destruction or degradation of anti-fascist monuments as part of increasing denialism and historic revisionism with regard to the Second World War. Some are carried out with the support of public officials, such as the incipient removal of a memorial ossuary in the town of Perušić, despite local resistance.

61. The Special Rapporteur recalls that memorialization efforts must aim at establishing the conditions for a debate within society about the causes, responsibilities and consequences of past violence, thus allowing society to live more peacefully with the legacy of past divisions without falling into a dangerous revisionism, forcing homogeneous thought or resorting to the denial or relativization of the violations committed.

VII. Guarantees of non-recurrence

A. Institutional and security sector reform

62. During the 1990s, institutional changes in Croatia were characterized by a process of nation-building and the creation of State institutions, including in its security sector (defence, intelligence and police). The transition during that period was conducted in a turbulent environment with a marked democratic deficit. The electoral and constitutional reforms

adopted in 2000 opened new perspectives and led to an upgrading and a democratization of the institutional apparatus, as required for a successful accession to NATO and the European Union among other Euro-Atlantic institutions. The reform of the legislative and institutional framework to promote the rule of law, democracy and the protection of human rights resulted in reduced executive power, enhanced election processes, increased civil liberties and political rights, improved media independence and measures to tackle corruption. While these measures were not specifically adopted with a transitional justice focus, they were carried out with the rigor required to comply with accession requirements.

63. In 2002, Croatia initiated a comprehensive reform to enhance the efficiency, transparency and professional skills of the police and the judiciary. Police reform, which was aimed at transforming the existing outdated and repressive model, centred on depoliticizing the police, enhancing the professional and financial capacities of the police academy and developing transparent recruitment and promotion procedures, and adopting a new Act of Police (in 2009).⁴⁷ The security sector also underwent reforms of its internal regulations, downsizing, vetting of new officials and the establishment of oversight by Parliament, although this is not always practiced.

64. Judicial reform entailed the establishment of the Judicial Academy, a new code of ethics, improved criteria for judiciary performance evaluation, new disciplinary measures, training and enhanced technological capacities. There was also a reorganization of the courts and caseload, and an increased budget allocation. The amendment of the Criminal Procedure Act in 2009 transferred investigative responsibility from judges to prosecutors and defined closer collaboration with the police.⁴⁸

B. Education, culture and the media

65. Regarding the measures adopted in the fields of education, culture and the media to address the legacy of the war, the Special Rapporteur notes with concern the uniformity of existing narratives about the war and about its victims, which permeate the educational and cultural spheres. As noted above, memorials and also school curricula and the teaching of history, do not appear to include different narratives about the war or, more importantly, allow all voices of victimhood to take centre stage. The Special Rapporteur has observed an excessive focus on war rhetoric and language and the placement of greater attention on Croat victims than on others. This was particularly evident at the Memorial Centre of Homeland War, where such patterns were clearly displayed on the memorial's artefacts and narratives. In addition, the Special Rapporteur found particularly troubling the disdain shown by museum personnel against the artefacts on display commemorating the important legacy of the International Tribunal for the Former Yugoslavia. While the centre is a commendable cultural initiative, its focus on the conduct of the war and the Croat victory should be permeated by other narratives of the war, victimhood, inter-ethnic solidarity and peacebuilding to promote mutual understanding, tolerance and, ultimately, reconciliation.

66. The Memorial Centre of Homeland War conducts the educational project, entitled "Eighth graders visit Vukovar", during which pupils from across the country visit memorial sites in Vukovar and surrounding areas, including the Memorial Centre and the Vukovar Tower. The project entails a two-day visit to Vukovar where students learn about the values of the Homeland War and the battle of Vukovar.⁴⁹ Despite this focus, the project is also expressly aimed at educating students about coexistence, understanding and tolerance⁵⁰ and therefore includes attending a "School of Peace" where children are "equipped with an understanding of the value of peace and tolerance".⁵¹ While this initiative is very valuable, it is important that it be framed as part of educational curricula and accompanied by cultural activities that inform students about the full spectrum of accounts and lived experiences of the war, especially those established by domestic and international courts. Exposing students

⁴⁷ See <https://en.ru.is/media/domac/Domac-10-KM-Croatia.pdf>, pp.75–76.

⁴⁸ Ibid.

⁴⁹ See <https://www.mcdrvu.hr/en/school-program/eighth-graders-visit-vukovar/>.

⁵⁰ Ibid.

⁵¹ See <https://www.mcdrvu.hr/en/school-program/school-of-peace/>.

to comprehensive and accurate information about past violence will provide them with tools to critically assess present and future challenges to reconciliation and peace, which, as observed during the visit, are not minor and are increasing. Other memorialization initiatives, such as the commendable Jasenovac Memorial Site, receive only a small fraction of the number of students visiting Vukovar. The Special Rapporteur would like to encourage the authorities to consider replicating the experience of Vukovar in Jasenovac, as well as in other cultural and educational sites where plural accounts of past violence, including those during the Second World War and the war in the former Yugoslavia, and the responses of the national and international community – such as the Nuremberg Tribunal – can be explored by children.

67. The Special Rapporteur stresses that in order for a process of transition and reconciliation to be truly effective, the suffering and dignity of all victims must be acknowledged and their stories must be transmitted to current and future generations, not only through school curricula and textbooks, but also through cultural activities and through the media. The legacy of past violations in all their complexity must be accurately and comprehensively addressed to assist in the process of social reconciliation, with the victims placed at the centre of the process.

68. Concerns also remain about the insufficient progress made in education as well as in cultural fields and in the media to promote cultural diversity and mutual understanding and to promote education about the culture and history of ethnic and national minorities. In its 2021 report, the Advisory Committee on the Framework Convention for the Protection of National Minorities urged the authorities to step up the teaching of the culture and history of national minorities and their contribution to society at large in all schools.⁵²

69. The issue of segregation of school students taught in Croatian from those taught in Serbian in the Danube region, which is not reflected in classes taught in other minority languages (for example, Czech, Hungarian and Italian), is a further concerning example of strained inter-ethnic relations⁵³ that hamper reconciliation efforts and must be reversed.

70. In addition, in certain parts of the country national minorities continue to face problems in collectively enjoying their constitutionally guaranteed right to use their own languages, particularly those written in Cyrillic script. Public authorities in the city of Vukovar have refused to introduce bilingual signs on public institutions, which remains a chronic stumbling block in inter-ethnic relations and has prompted nationalistic and violent incidents.⁵⁴

71. Progress in this field is vital to promote reconciliation and to neutralize the concerning resurgence of divisive rhetoric and violence. The Special Rapporteur observed successful official initiatives in the town of Osijek aimed at promoting cultural diversity and coexistence among ethnic groups.

C. Hate crimes, glorification of war criminals and denial of war crimes

72. The Special Rapporteur received reports of numerous and concerning instances of the glorification of convicted war criminals and/or denial of their crimes, as well as of the relativization of the work of the International Tribunal for the Former Yugoslavia and/or of domestic courts, some undertaken by high-ranking Government officials. For example, in April 2021, the President of Croatia publicly claimed that the conviction of war criminal Tihomir Blaškić by the International Tribunal was political and that the Commander of the

⁵² See <https://rm.coe.int/5th-op-croatia-en/1680a2cb49>, p. 5.

⁵³ See <https://www.ombudsman.hr/en/download/annual-ombudsman-report-for-2018/?wpdmml=6777&refresh=624ff8ae712b11649408174>, p. 47.

⁵⁴ CCPR/C/HRV/CO/3, para. 22; see also [https://rm.coe.int/ref/CommDH\(2016\)31](https://rm.coe.int/ref/CommDH(2016)31), para. 57, <https://rm.coe.int/5th-op-croatia-en/1680a2cb49>, p. 27, and <https://www.ombudsman.hr/en/download/annual-ombudsman-report-for-2018/?wpdmml=6777&refresh=624ff8ae712b11649408174>, p. 42.

Croatian Defence Council, Milivoj Petković, convicted by the International Tribunal, was not a war criminal.⁵⁵

73. As indicated above, the Special Rapporteur also received concerning reports about the establishment of memorials commemorating war criminals, with the support of certain officials. In September 2021, the town assembly of Karlovac renamed a bridge where 13 prisoners of war were killed during the 1990s war after the name of the “Grom” special police unit accused of carrying out the killings, whose leader was convicted by the Supreme Court of Croatia.

74. The rise in the use of fascist slogans and insignia, such as those of the Ustasha regime, has also been reported. The Ustasha slogan “Za dom spremni” (Ready for the Home(land)) is currently being used by some right-wing groups and veterans of a military unit that adopted it during the 1990s war. A plaque containing the slogan was unveiled in November 2016 near the location of the Jasenovac concentration camp to commemorate 11 members of the Croatian Defence Forces killed in the 1990s. The slogan was also used on the shirts of veterans during the anniversary commemoration of Operation Storm. On both occasions the President of Croatia openly condemned the use of the slogan.⁵⁶ The slogan, which is not expressly prohibited in Croatia, is also chanted at right-wing events, concerts and football matches and is visible in graffiti sprayed on walls.

75. The Special Rapporteur has been informed that many of these actions have not been appropriately addressed by the relevant authorities and that the courts’ jurisprudence has been mixed.⁵⁷

76. The Special Rapporteur notes the ever-increasing number of instances of hate crimes in the country, which he considers to be an extremely worrying trend. Most reported hate crimes are directed against members of national or ethnic minority groups, particularly Serbian, Bonsiak and Roma populations, and include instances of physical assaults, threats, calls for violence against minorities and the destruction of their property.⁵⁸ The Serb National Council reported 400 cases of historical revisionism, hate speech and violence against Serbs in 2019, an increase over the 82 cases reported in 2014.⁵⁹ In 2021, the Advisory Committee on the Framework Convention for the Protection of National Minorities expressed concern about the increase in hate crimes and hate speech in the media and in political discourse. It also stressed that the surge in radical nationalism has had an overall negative impact on the enjoyment of minority rights, particularly in heavily affected post-conflict areas. Anti-minority rhetoric and prejudice and historical revisionism affect the Serb, Roma and Jewish minorities in particular.⁶⁰

77. Reports further indicate that public authorities usually fail to condemn hate crimes, hate speech, incitement to hatred and anti-minority rhetoric, in particular in areas that were heavily affected by the war.⁶¹ Lack of action from the authorities transmits a message to the general public that such acts are tolerable in Croatian society.

78. The Special Rapporteur welcomes the measures adopted to curb hate crimes, such as the establishment of the Working Group for Monitoring Hate Crimes in 2010, the adoption of a Protocol for Procedure in Cases of Hate Crimes and the establishment of a tracking and recording system to monitor hate crimes. Data on hate crimes are collected by several ministries and public entities (albeit with different methodologies, which complicates analysis) and are regularly published by the Office for Human Rights and Rights of National Minorities. The Special Rapporteur also welcomes the amendment to the Criminal Code in 2011 to provide for the criminalization of hate crimes, public incitement to violence and

⁵⁵ See <https://balkaninsight.com/2021/04/27/croatian-president-defends-bosnian-croat-war-crime-convicts/>.

⁵⁶ See <https://www.dw.com/en/croatian-president-milanovic-protests-wwii-ustasha-slogan/a-53305754>.

⁵⁷ See <https://www.ombudsman.hr/en/download/annual-ombudsman-report-for-2018/?wpdmdl=6777&refresh=624ff8ae712b11649408174>, pp. 230–231.

⁵⁸ See <https://hatecrime.osce.org/croatia>; see also <https://www.ombudsman.hr/en/download/annual-ombudsman-report-for-2018/?wpdmdl=6777&refresh=625071c87b0811649439176>, p. 36.

⁵⁹ See <https://snv.hr/en/publikacije/snv-bulletin-21/>, p. 19.

⁶⁰ See <https://rm.coe.int/5th-op-croatia-en/1680a2cb49>.

⁶¹ *Ibid.*, p. 21.

hatred and the criminalization of the “denial or significantly belittlement of criminal acts of genocide, acts of aggression, crimes against humanity or war crimes” directed against groups of persons because of their race, religion, ethnic or national origin.⁶² He stresses that such measures should be implemented in full compliance with international standards, particularly article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination, articles 19 and 20 of the International Covenant on Civil and Political Rights and the relevant jurisprudence of the human rights treaty bodies.⁶³

79. The Special Rapporteur understands that the implementation of the framework to address hate crimes has not been equally satisfactory. In her 2018 report, the Ombudswoman of Croatia took note of the frequent failure to adequately recognize, process and prosecute hate crimes, which are often prosecuted as misdemeanours rather than criminal offences. The lack of prosecution reduces trust in the capacity of the judicial system to redress such crimes and leads to underreporting, furthering a vicious cycle. In fact, it is estimated that only one fifth of potential claims from Serb or Roma minorities are reported.⁶⁴ In her report, the Ombudswoman also revealed that the courts passed judgment in nine cases in 2018, of which eight led to convictions with suspended prison sentences or community service, and none to custodial sentences.⁶⁵ The Government reported that in 2020 there were 87 cases of hate crimes recorded by the police, 138 prosecutions and 18 convictions,⁶⁶ although the type of charges were not specified. Regarding the use of Ustasha slogans or insignia, although there have been some court convictions, most are still charged under misdemeanour legislation and punished with fines. To promote the appropriate handling of hate crimes, national and international actors have urged Croatia to provide training to members of the judiciary and police officials on identifying and processing hate crimes. Such training was started in 2018.

D. Civil society working on transitional justice issues

80. The Special Rapporteur was surprised by insufficient resources and support available to civil society organizations working on transitional justice issues, which, nonetheless, manage to carry out work of excellent quality. Moreover, since the accession of Croatia to the European Union, civil society initiatives have received less attention and support from the international community and international donors, which compounds matters further and hampers the scope of support that those organizations are able to provide to the transitional justice initiatives that are still acutely needed in the country to redress the legacy of the war.

81. He also noted with outmost concern the lack of support that civilian victims belonging to ethnic minorities receive and the scarcity (or weakness) of civil society institutions representing their interests.

82. The Special Rapporteur underscores that a strong and dynamic civil society engaged in the promotion and protection of human rights is vital for the effective functioning of transitional justice processes in Croatia, today more than ever, in light of the growing challenges posed by divisive elements of society. Supporting the segments of civil society that have been working tirelessly for decades to promote redress and reconciliation will provide an effective response to such challenges.

VIII. Conclusions

83. **In the almost three decades that have elapsed since the war in Croatia, the Government has adopted a number of measures in the fields of truth, justice, reparations and guarantees of non-recurrence to address the legacy of the war. Both**

⁶² Criminal Code of Croatia, arts. 87 (21) and 325.

⁶³ Committee on the Elimination of Racial Discrimination, general recommendation No. 35 (2013), and Human Rights Committee, general comment No. 34 (2011).

⁶⁴ See <https://rm.coe.int/5th-op-croatia-en/1680a2cb49>, p. 21.

⁶⁵ See <https://www.ombudsman.hr/en/download/annual-ombudsman-report-for-2018/?wpdmdl=6777&refresh=625071c87b0811649439176>, pp. 36–37.

⁶⁶ See <https://hatecrime.osce.org/croatia>.

during and in the immediate aftermath of the war, and particularly during the accession of Croatia to the European Union, discernible progress was made in several areas, including the search for missing persons, the prosecution of war criminals and the pace and quality of legislative and institutional reforms to promote the rule of law and democratic governance. The Special Rapporteur commends the efforts made by the State institutions over a sustained period of time to achieve these goals. The progress made has placed Croatia in an advantageous position to consolidate its transitional justice processes.

84. However, progress in other areas has lagged behind and requires immediate action, including: full reparations for civilian victims and victims of sexual violence; comprehensive truth-seeking and data-collection initiatives; memorialization and education processes aimed at conveying comprehensive accounts of past violence and at preventing revisionism of war crimes; and educational and cultural policies aimed at fostering mutual understanding and cultural diversity.

85. Sustained international attention and cooperation in the aftermath of the war, including but not limited to the work of the International Tribunal for the Former Yugoslavia and the process of accession to the European Union, has been instrumental in the effective design and implementation of the transitional justice measures advanced in the country since the 1990s. The Special Rapporteur wishes to pay tribute to the International Tribunal for its work and to commend the European Union for the decisive impact that its accession process has had on progress in Croatia.

86. However, the pace of the transitional justice agenda in Croatia appears to have stalled over the last nine years, as has the attention that the Croatian Government has placed on it. During this period, worrying delays or setbacks have been observed in the: investigation and prosecution of war crimes; regional cooperation on missing persons; provision of official support for the decisions of national and international tribunals; and responses to the rise in hate crimes, anti-minority rhetoric; and violence and the glorification of war crimes. The Special Rapporteur expresses grave concern at this regression and its concerning prospects for the achievement of effective and sustainable peace and reconciliation in the country and the region.

87. Numerous observers have pointed out that the stalemate in advancing the transitional justice agenda coincided with the membership of Croatia in the European Union. In fact, on many occasions during the visit, the Special Rapporteur was told that Croatia did not need to focus on certain aspects of the agenda since membership in the European Union was a sufficient guarantee of progress. Apparently, membership to the European Union not only shifted the focus of the Government, but also that of regional and international partners, who either abandoned their presence in the country or stopped supporting State or civil society initiatives in the field of transitional justice due to an understanding that such membership was evidence of satisfactory progress.

88. With its eyes firmly set on a future of full European integration, Croatia has gradually abandoned its past-sensitive gaze, which was aimed at redressing and preventing the recurrence of previous violations. The international community, including the European Union, has followed suit. In the vacuum left by State, regional and international actors risk being co-opted by social elements more inclined to sowing division and advancing bigoted agendas – a recipe, as many pointed out to the Special Rapporteur, for a renewal of violence.

89. While the Special Rapporteur commends the progress made in Croatia to address the legacy of the war, he wishes to recall that for a transitional justice process and reconciliation to be effective and sustainable it is vital to adopt a comprehensive approach, encompassing the fields of truth, justice, reparation, memory and guarantees of non-recurrence. Uneven progress in these areas runs the risk of invalidating or reversing the progress made, as seen in some of the cases described above.

90. The Special Rapporteur calls on the Government of Croatia to renew its efforts to advance the transitional justice agenda in the country through a comprehensive approach in the above-mentioned areas, and calls on the international community, including the European Union, to actively support Croatian institutions and civil society

in this vital endeavour. The success of the transitional justice agenda will aid in the achievement of effective reconciliation in the country and in the region, an aim as yet elusive.

IX. Recommendations

A. Recommendations addressed to the State

91. The Special Rapporteur recommends that the State:

(a) Harmonize and domesticate all ratified international legal instruments to make the rights therein justiciable and enforceable, including by criminalizing enforced disappearances as an autonomous and continuous crime in the domestic legal framework of Croatia;

(b) Provide the judiciary with continued financial, material and human resources to undertake effective, prompt and adequate criminal investigations and prosecutions of war crimes, crimes against humanity and international crimes;

(c) Accelerate the processing of pending cases, ensure that all alleged perpetrators of such crimes are investigated and prosecuted in a non-discriminatory manner, regardless of the ethnicity of the victim or the perpetrator or the circumstances in which they were committed, and ensure full cooperation with the countries in the region affected by the war;

(d) Ensure that the existing framework for witness protection is fully implemented and adhered to by the relevant judicial and police authorities;

(e) Accelerate the search for and identification of all unresolved cases of missing persons based on objective and transparent criteria and provide continued financial, material and qualified technical and human resources for that purpose;

(f) Ensure full access to relevant information to the families of missing persons and full cooperation with the countries in the region affected by the war;

(g) Adopt official initiatives aimed at establishing the truth and collecting data and testimonies of victims about all the violations committed during the war and support existing documentation and truth-seeking efforts by civil society, including regionally, as well as the adoption of measures to guarantee the preservation and public access to the documentation collected;

(h) Adopt a comprehensive reparations policy aimed at implementing the existing legal framework in order to provide effective and timely reparations to all categories of victims, including compensation, rehabilitation, satisfaction, restitution and guarantees of non-recurrence: the reparations programme should be adopted in full consultation with victims, be fully compliant with international standards and include a gender and disabilities perspective;

(i) Adopt the necessary measures to promote the universal registration of all categories of victims in order to apprehend the full extent of victimhood in the country and to provide victims with tailored reparations; registration procedures should be clearly communicated and accessible to all victims, require a low threshold of evidence of victimhood and not be time-bound; and a mechanism should be established to monitor the registration and awarding of reparations to victims disaggregated by gender, ethnicity, violations suffered and reparations granted;

(j) Halt immediately the application of statutes of limitations for reparation claims and the imposition of related legal fees on victims, cancel their related debts and compensate those who have had their income or assets seized;

(k) Adopt, in consultation with victims, comprehensive legislation and policies on memorialization processes that entail plural and accurate accounts of past violations (as established by international and domestic courts) and narratives of victimhood, set

out the criteria and processes for establishing memorials in full compliance with international standards, facilitate and support memorialization efforts of victims and/or their families and ensure the adequate signage and preservation of sites of atrocity crimes;

(l) Adopt policies in the fields of education, culture and the media to provide society with plural and accurate accounts of past violations (as established by international and domestic courts) and narratives of victimhood, as well as to educate the public about the history and culture of ethnic and national minorities and their contributions to society at large, with a view to promoting mutual understanding, cultural diversity and coexistence;

(m) End any form of segregation, including according to national/ethnic affiliation of students, and promote inclusive practices and policies in the educational system;

(n) Adopt positive measures to promote inter-ethnic tolerance and fully implement the right to equal usage of minority languages and scripts in accordance with the constitutional and legal framework of Croatia;

(o) Accelerate the realization of rights of all returnees and the establishment of conditions conducive to sustainable minority return and the reintegration of Serbs in Croatia;

(p) Abstain from undertaking and address instances of the glorification of war criminals and the denial of atrocity crimes established by international and domestic courts in full compliance with international standards;

(q) Investigate and where necessary prosecute and sanction, publicly condemn and monitor all instances of hate crimes, hate speech and incitement to violence on racial, national, ethnic or religious grounds, in compliance with international standards;

(r) Provide the necessary training and ensure that all relevant police and judicial authorities adequately identify and respond to such incidents within the existing legal framework and the purview of their mandates;

(s) Train public officials, the judiciary and security personnel on human rights and historical memory, including an examination of comprehensive and accurate accounts of violations committed, on the responsibilities of State institutions, as established by domestic and international courts, and on narratives of victimhood;

(t) Provide institutional, financial and administrative support to the work of civil society institutions working on transitional justice issues, including victims' organizations supporting civilian victims and victims belonging to ethnic minorities;

(u) Ensure that victims and civil society actively participate in the design and implementation of all aspects (truth, justice, reparation, memorialization and guarantees of non-recurrence) of transitional justice processes.

B. Recommendations addressed to the international community

92. Governments and agencies providing international cooperation should support the work of victims' associations and civil society organizations working on transitional justice issues.

93. Regional and international partners, including Governments and agencies, should consider: providing or maintaining technical collaboration and assistance to support the unfinished transitional justice process in Croatia, with particular focus on combating hate crimes and incitement to national or ethnic violence; adopting comprehensive memorialization processes that provide plural and accurate accounts of the violations and harm suffered by all parties to the conflict; adopting policies in the fields of education, culture and the media to promote cultural diversity and mutual

understanding; and accelerating criminal investigations and prosecutions and the search for remaining missing persons.

94. The European Union should consider instituting mechanisms to monitor the progress made by Croatia in achieving a comprehensive transitional justice process.
