

ACTION TO COMBAT IMPUNITY IN SERBIA: OPTIONS AND OBSTACLES

IMPUNITY WATCH

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ABOUT IMPUNITY WATCH

Impunity Watch is an international research and policy initiative which seeks to contribute to the reduction of impunity for gross violations of human rights in post-conflict countries, where impunity constitutes a threat to sustainable peace and the (re)construction of the democratic rule of law.

Impunity Watch's work is composed of three distinct intervention strategies. The first is to research and rigorously analyse the factors that influence impunity, particularly in post-conflict countries, employing a specially designed methodology. Secondly, on the basis of its research findings, recommendations and public policy proposals are formulated in consultation with a wide-range of key actors involved in the topic. Lastly, Impunity Watch conducts lobbying and advocacy at national and international levels to promote the implementation of the recommendations proposed. The research findings also provide the basis for monitoring systems that measure advances and setbacks in the struggle against impunity, and state compliance with legal obligations related to truth-seeking, justice, reparation and guarantees of non-recurrence.

One of Impunity Watch's fundamental goals is, using the methods described, to support and strengthen the work of civil society organisations and the wider circle of domestic actors engaged in the struggle against impunity in selected countries, through joint work and the strengthening of national capacity for research, public scrutiny, making policy and advocating its implementation.

Impunity Watch was founded in 2005 as a project of Dutch non-governmental organisation Solidaridad, and became independent as the Impunity Watch Foundation in 2008. Impunity Watch is currently running pilot projects in Guatemala and Serbia, where these different strategies are being implemented simultaneously. These apparently dissimilar countries were selected with the intention of demonstrating the global usefulness of Impunity Watch's methodology in different political and social contexts. In addition, working with similar methodological parameters in different contexts provides a foundation for structured exchange on diverse experiences of impunity and successful strategies used by state and civil society actors to combat it.

Serbia was chosen because of the problem of impunity for crimes committed during the wars on the territory of the former Yugoslavia in the 1990s. This choice was further justified by the verdict of the International Court of Justice (ICJ) which found Serbia in violation of the Convention on the Prevention and Punishment of the Crimes of Genocide (Genocide Convention) because of its failure to prevent and punish the commission of this crime in Srebrenica in 1995.¹

Impunity Watch has completed the research and policy-making phase of its project in Serbia in partnership with four civil society organisations, the Youth Initiative for Human Rights (YIHR), the Lawyers' Committee for Human Rights (YUCOM), the Humanitarian Law Centre (HLC) and the Helsinki Committee for Human Rights in Serbia (HOS). These organisations have years of experience and a prominent role in dealing with the problem of impunity in Serbia from various aspects.

¹ International Court of Justice, Verdict, *BiH vs. SCG, Dispute regarding the implementation of the Convention on the Prevention and Punishment of the Crime of Genocide*, 26 February 2007.

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I Research methodology

Over recent decades, awareness has steadily grown that it is only by combating impunity for past grave crimes under international law that sustainable peace, a modern society and a state based on the rule of law can be established. The establishment of *ad hoc* international tribunals for the former Yugoslavia and Rwanda², followed by the founding of the permanent International Criminal Court (ICC)³ represented a revolutionary turning point in the combat of impunity. One might say that the foundations of combating impunity were laid in 1997 when, on the request of the United Nations Subcommittee on the Prevention of Discrimination and the Protection of Minorities, Louis Joinet summarised existing international standards relating to impunity as the *Principles for the Protection and Promotion of Human Rights Through Action to Combat Impunity*.⁴ In 2005, on the request of the UN Human Rights Committee, these were updated by Diane Orentlicher⁵ (Joinet-Orentlicher Principles). The Joinet-Orentlicher Principles are based on three basic rights held by victims of such crimes: 1. the right to truth; 2. the right to justice; and 3. the right to reparation. Impunity Watch's methodology, on which this research into the causes of impunity in Serbia is based, was created to provide information that enables identification and analysis of the influence of specific obstacles on the securing of each of these three rights. In accordance with the Joinet-Orentlicher Principles, this methodology takes into account the exceptional importance of promoting and implementing measures aimed at preventing crimes and repression. By collecting relevant information, we have attempted to identify and analyse the results obtained to date, as well as the obstacles preventing these measures from taking full effect. Through six key areas of research, which include normative framework, resources and capacities of relevant state institutions, institutional independence and willingness, political will, and entrenched interests and societal factors, we have attempted to identify the obstacles to the struggle against impunity, securing of victims' rights and provision of guarantees that crimes will not recur, as well as to determine the level to which the latter have been secured.

Together with researchers from the YIHR, YUCOM, HLC and HOS, the four partner organisations working on the Impunity Watch project, we have collected basic information required by the research methodology and which is available in public documents, published reports and analyses conducted by various organisations, as well as information available to our partners which has not been previously published. After collecting and systematising the existing information according to the Impunity Watch methodology, we created a summary of the information and of those areas that require further research and harmonisation of strategies and methods of research.

² The International Criminal Tribunal for the former Yugoslavia (ICTY) was established on 25 May 1993 by UN Security Council Resolution 827 (S/RES/827 (1993)), and the International Criminal Tribunal for Rwanda (ICTR) on 8 November 1994 by UN Security Council Resolution 955 (S/RES/955 (1994)).

³ The first permanent International Criminal Court was established in 1989 by adopting the Rome Statute, which took effect in 2002, and officially became active as an independent international organisation in March 2003, after 89 countries ratified its statute.

⁴ *Set of Principles for the Protection and Promotion of Human Rights Through Action to Combat Impunity*, E/CN.4/Sub.2/1997/20/Rev.1.

⁵ *Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity*, E/CN.4/2005/102/Add.1.

A significant number of documents were collected by way of requests for free access to information of public importance. In areas where we were not granted access to documents or where there were no other reliable sources, we identified and interviewed persons who, based on their current or former activities, had or may have had the required information. We talked to former members of the government and other officials, representatives of the judiciary, lawyers, former members of the Truth Commission, journalists, historians and others. In certain areas, which demand specific combinations of expertise and experience, such as the analysis of budgets of relevant institutions, or the police and security services, we hired relevant experts to conduct the necessary analyses. Finally, to obtain the most precise picture of the work of official institutions active in combating impunity, we, in cooperation with the OSCE Mission and the Fund for an Open Society, carried out the *Study of Perceptions of Transitional Justice in Serbia* with officials and employees of institutions which are at the forefront of the processes involved in combating impunity. The study was conducted by Argument, an agency for applied sociological and political research. By means of this study, we also sought to see the processes of combating impunity and their obstacles from the perspective of the persons who implement them in the name of the state, and update our findings in this way.

Owing to the complexity of the issue of impunity in Serbia, which is mostly due to the presence of a strong regional element and dynamic political processes, we did not manage to examine certain aspects sufficiently. These relate primarily to the perceptions of the issue of impunity from the point of view of victims who mostly live in neighbouring or other countries, as well as those of young people in Serbia and the region, which represent an important indicator for determining the level to which guarantees of non-recurrence of crimes have been secured. Finally, further research is needed into other complex social factors and the influence of hidden centres of power.

During the next phase of the project, in which we plan to monitor the dynamics of overcoming the obstacles to combating impunity identified here, we will redirect our focus from Serbia and include the entire region. We shall seek to share our findings and experiences with experts in neighbouring countries, as well as to update existing knowledge through additional research.

Additional information about our research, methodology, findings and future studies can be found on the Impunity Watch website: www.impunitywatch.org.

II Summary of the historical and social-political framework

Although the former Yugoslavia (Socialist Federal Republic of Yugoslavia, SFRY) was not part of the Soviet bloc, it was affected by the same democratisation and liberalisation processes that took place there at the end of the 20th century. This led to the weakening of the role of the League of Communists, but also to an increase in nationalistic tendencies.⁶ In 1987, Slobodan Milošević came to power in Serbia; in 1989,⁷ he revoked the autonomy of the provinces of Vojvodina and Kosovo, which had been guaranteed by the SFRY constitution of 1974.⁸ Milošević continued to foster Serbian nationalism and the idea of a Greater Serbia.⁹ Simultaneously, tendencies towards independence developed in the other republics, caused by an increase in their own nationalist sentiments and ignited by the threats of increasing

⁶ V Goati, *Political elites, civil war and the breakup of the SFRY*, Ogleđi, Republika no 147, 1-15 September 1996; ICTY, IT-94-1 "Prijedor", *Prosecution vs Duško Tadić*, verdict, 7 May 1997, p70.

⁷ Amendments IX-XLIX to the Constitution of the Republic of Serbia, *Official Gazette of the Republic of Serbia*, No 11/89, p585.

⁸ Constitution of the SFRY, *Official Gazette of the SFRY* No 9/74; Constitution of the Republic of Serbia, *Official Gazette of Serbia* No 8/745.

⁹ "Greater Serbia", a political idea aiming to unite all ethnic Serbs and territories which were formerly occupied by Serbs in one entity. See: ICTY, *Prosecution vs Duško Tadić*, *Supra* n 6, p72.

Serbian expansionist nationalism.¹⁰ The Yugoslav People's Army (JNA) lost its support within the Communist Party and its leadership took the side of the interests of Serbia, although declaratively it continued to advocate maintenance of the SFRY's integrity.¹¹

a) Wars on the territory of the former SFRY

Slovenia – JNA forces attacked Slovenia two days after it declared independence, on 27 June 1991, but Slovenia managed to defend its independence during the so-called Ten-Day War. On 7 July 1991, representatives of Slovenia, the SFRY and the European Community signed a three-month moratorium on Slovenia's pursuit of independence.¹² Slovenian military and police forces retained control over the territory, however, and on 18 July 1991, the rump Presidency of the SFRY decided to withdraw JNA troops from Slovenia.¹³

Croatia – The conflict between Croatian armed forces, Croatian Serbs' armed forces and the JNA lasted from 1991 until 1995. On the territory that fell under the control of Serb forces, several thousand non-Serb civilians were captured, many of whom lost their lives.¹⁴ The non-Serb population was forcefully transferred to locations controlled by the Croatian government or deported, while those who refused to leave were killed.¹⁵ In May 1995, the Croatian Army gained control over Western Slavonia during a military operation codenamed *Bljesak* ("Flash"), while in August that year, in cooperation with the 5th Corps of the Army of Bosnia and Herzegovina, the Croatian Army carried out operation *Oluja* ("Storm"), which restored Croatian control over most of the remaining area held by Serb forces. The offensive prompted a mass exodus of the Serb population from Croatia and led to many crimes. The confrontation ended in 1995 with the signing of the Erdut Agreement,¹⁶ by which the last Serb-held part of Croatia in the east of the country was peacefully reintegrated.¹⁷

Bosnia and Herzegovina – The JNA withdrew from Slovenia and Croatia to Bosnia and Herzegovina (BiH) after the international community recognised its independence on 6 April 1992. This was followed by a war that lasted until September 1995.¹⁸ Serbian forces kept the capital, Sarajevo, under siege for almost four years, during which period around 10,000 people were killed. Thousands of non-Serbian civilians were held as prisoners in facilities in BiH and elsewhere, where they suffered torture, sexual molestation, assault, mutilation and execution. In July 1995, Serbian forces captured the UN protected zone of Srebrenica, where during one week they executed at least 7,000 Bosniak men and boys. Serbia is the only state in

¹⁰ ICTY, *Prosecution vs Duško Tadić*, *Supra* n 6, p73.

¹¹ Goati V, "Political elites", *Supra* n 6.

¹² The so-called. "Brijuni Declaration", named after the island of Brijuni in Croatia where it was signed; "Joint declaration (Brijuni Declaration)." *Official Gazette of the Republic of Slovenia*, no 9/91- I – International contracts, [Uradni list RS, št. 9/91- I – international agreements].

¹³ Republic of Slovenia, Government Information Agency, 10 years of Slovenian independence, 25 June 2001, available at Slovenian government's website: <http://www.ukom.gov.si/10let/> (accessed 17 May 2008).

¹⁴ ICTY, Case No IT-03-72-I, *Prosecution vs Milan Babić*, Statement, 27 January 2004.

¹⁵ *Ibid.*

¹⁶ Erdut Agreement, available on the Vukovar Municipality website: http://www.zvo.hr/files/erdutski_sporazum.doc (accessed 17 May 2008).

¹⁷ ICTY-02-54 "Kosovo, Croatia and Bosnia and Herzegovina", *Prosecution vs Slobodan Milošević*, transcripts, 16 June 2003, testimony of Peter Galbraith, p23,122.

¹⁸ Bosnian Serb political leader Radovan Karadžić presented his war goals at the 16th session of the Assembly of the Republic of Srpska 1992: 1) separation from the other two ethnic communities; 2) a corridor between Semberija and Krajina; 3) elimination of the Drina river as a border, ie erasure of the existing border which separates BiH from Serbia; 4) establishment of a border on the rivers Una and Neretva; 5) division of the city of Sarajevo into Serbian and Muslim parts; and 6) spreading of the Serbian republic within BiH to the coast. "Decision on the strategic goals of the Serbian people in BiH." ICJ verdict in *BiH vs Serbia and Montenegro (SCG)*, *Supra* n 1, 26 February 2007, p371.

the world that has been found in violation of the Genocide Convention by the ICJ.¹⁹ After the massacre of civilians at Sarajevo's Markale market in 1995, NATO forces intervened and bombed Serbian positions surrounding the city. This was followed by an agreement to lift the siege.²⁰ Following this, the Presidents of BiH, Croatia and Serbia, Alija Izetbegović, Franjo Tuđman and Slobodan Milošević, meeting in Dayton, Ohio, reached an agreement on a peaceful solution, which was signed on 14 December 1995 in Paris, ending the war.²¹

Kosovo (Kosova) – After the autonomy of Kosovo, a Serbian province, was revoked in 1989, a state of emergency was declared. Local ethnic Albanians lived in fear and, as they were unable to get jobs in state, public, social and economic institutions, began forming parallel health and educational institutions.²² The mid-1990s saw the formation of a Kosovo Albanian guerrilla group named the Kosovo Liberation Army (KLA) (in Albanian: Ushtria Çlirimtare e Kosovës, UÇK), which began armed resistance of Serbian forces and advocated an independent Kosovan state.²³ Growing tensions escalated into an armed conflict between the KLA and Serbian forces that lasted from February 1998 until June 1999. The confrontation culminated in January 1999 in a massacre in the ethnic Albanian village of Raçak (Reçak), where 45 villagers were killed.²⁴ Following this, an international conference was called in Rambouillet, France, where a peace agreement was formulated. However, the Serbian side refused to sign it.²⁵ Following this failed attempt to find a diplomatic solution, NATO air forces began military intervention.²⁶ During the same period, Serbian forces began a campaign of ethnic cleansing, which resulted in the flight of 800,000 Kosovo Albanians and other cruel crimes, including the killing of thousands of civilians, many of whom are still registered missing.²⁷ NATO intervention ended on 9 June 1999, with the signing of a Military-Technical Agreement in Kumanovo (the Kumanovo Agreement) between the Army of Yugoslavia (VJ) and NATO.²⁸ The next day, the UN Security Council adopted Resolution 1244, placing Kosovo under the transitional protection of the UN and establishing the UN Interim Administration Mission in Kosovo (UNMIK).²⁹ Kosovo declared independence on 17 February 2008. To date it has been recognised by more than 50 countries, a development strongly opposed by the Serbian authorities.³⁰

(b) The fall of the Milošević regime

Milošević's decision not to recognise the victory of his opponent Vojislav Koštunica in the presidential elections of September 2000 led to a mass protest by several hundred thousand citizens on the streets of Belgrade. The pillars of Milošević's regime began to crumble; the demonstrators took over and set fire to the parliament building and the state-owned television offices, while numerous members of the police went over to the side of the demonstrators. Milošević was forced to publicly accept defeat and hand over power to an

¹⁹ ICJ, verdict, *BiH vs SCG*, *Supra* n 1.

²⁰ NATO Review, R C Hendrickson, *History Crossing the Rubicon*, 1995.

²¹ OHR, *The General Framework Agreement for Peace in BiH* (4 December 1995).

²² YIHR, D Popović, A. Nosov, *Justice for Kosovo – A Chance for Serbia*, Belgrade, 22 February 2008, available on: http://ssla.oneworld.net/external/?url=http%3A%2F%2Fyihhr.org%2Findex.php%3Fid%3D293%26lang%3D_bhs (accessed on 8 December 2008).

²³ B92, *Insajder* TV programme, *Kosovo: How the madness started*, 12 June 2006, transcript available at the B92 website: http://www.b92.net/info/emisije/insajder.php?yyyy=2006&mm=06&nav_id=201054 (accessed on 12 September 2008).

²⁴ ICTY, *Prosecution vs S Milošević*, *Supra* n 16, Transcripts, 28 May 2002, testimony of Barney Kelly, pp 5,651–5,764.

²⁵ M Weller, *The Rambouillet Conference on Kosovo*, Royal Institute of International Affairs, 1999.

²⁶ The intervention took place from 24 March to 10 June 1999.

²⁷ HRW, *Following Orders – War Crimes in Kosovo*, Samizdat B92, October 2001, pp 43-59.

²⁸ Government of the Republic of Serbia, Facts on Serbia, *Military-Technical Agreement between international security forces ("KFOR") and the governments of FRY and RS*, Kumanovo, 9 June 1999, available at the Serbian government website: <http://www.arhiva.srbija.sr.gov.yu/cms/view.php?id=1028> (accessed on 15 June 2008).

²⁹ UN Security Council, S/RES/1244, 10 June 1999.

³⁰ DANAS, *A Total of 50 Countries Recognized Kosovo*, 10 October 2008.

opposition coalition.³¹ He was arrested in April 2001,³² and charged with the misuse of his official position for personal gain and for the benefit for the Socialist Party of Serbia (SPS). In June he was extradited by the Serbian government to the International Criminal Tribunal for the former Yugoslavia (ICTY), which had issued an indictment against him in 1999.³³ Milošević died during the course of his trial on 11 March 2006 at the ICTY detention unit.³⁴ After much public speculation on the cause of his death, an autopsy showed he died from the consequences of a “myocardial infarction”.³⁵

(c) Assassination of the first democratic prime minister

Prime Minister Zoran Đinđić was murdered on 12 March 2003 in the courtyard of the government’s offices in Belgrade. The assassination was followed by the issuing of arrest warrants for the members of a criminal gang known as the Zemun clan which was held responsible for organising the assassination. A state of emergency was introduced and a police action codenamed Sabre launched, resulting in the arrests of all persons in any way linked to this group. This action was presented as the state’s decisive answer to the threat posed by organised crime. The trial of indictees for the murder of the former prime minister began on 22 December 2003, before the Special Division of the Belgrade District Court. The first instance verdict, delivered on 23 May 2007, determined that the assassin was Zvezdan Jovanović, an officer of the Special Operations Unit of the Interior Ministry. All the indictees were found guilty and sentenced to prison terms ranging from eight to 40 years.³⁶ A hearing at the Special Division of the Supreme Court of Serbia, which decides on appeals relating to first instance verdicts, began on 8 September 2008, but a second instance verdict on the appeals lodged in this case had not been issued by the time this report was published.³⁷

(d) The political map of Serbia*

According to its 1990 constitution,³⁸ Serbia was a parliamentary democracy. In practice, the leading role was for a long time played by only one political faction, the SPS, led by Milošević.³⁹ Although Serbia had had a multi-party system since 1990, there was no true political pluralism. According to many estimates, the new constitution of 2006⁴⁰ also failed to create space for the development and democratisation of the political system.⁴¹

³¹ D Bujošević, I Radovanović, *October 5 – Twenty-four Hours of Revolution*, Media Centre, Belgrade 2001.

³² GLAS JAVNOSTI, *Milošević Surrenders*, 1 April 2001.

³³ ICTY, Public announcement PR-597-T, *Slobodan Milošević transferred to ICTY*, 29 June 2001.

³⁴ ICTY, Public announcement t P1050-T, *Slobodan Milošević found dead in his cell at the detention unit*, 11 March 2006.

³⁵ ICTY, Public announcement P1056-T, New announcement by the Court president regarding the death of Slobodan Milošević, 17 March 2006.

³⁶ Belgrade District Court, Murder of Prime Minister Đinđić, verdict of the special division for organised crime, 23 May 2007, available on the Belgrade District Court website: <http://www.okruznisudbg.org.yu/content/2005/predmeti/posebno/ubistvopremijera> (accessed on 21 May 2008).

³⁷ BLIC, Tanjug, *Supreme Court considering appeals to the verdict in the Prime Minister’s murder*, 7 September 2008.

³⁸ Constitution of the Republic of Serbia, *Official Gazette of the Republic of Serbia*, No 1b/90.

³⁹ HOS, S Sikavica, *Political image*, 17 October 2007.

⁴⁰ Constitution of Serbia 2006, *Supra* n 40, No 83/06.

⁴¹ HOS, *Annual report for 2006, New Constitution of Serbia – continuity of the legal system*, p133-134; Belgrade: 2007.

The National Assembly is the highest representative body and the main holder of constituent and legislative authority in the Republic of Serbia.⁴² Its jurisdiction, *inter alia*, includes adopting and amending the constitution, laws and other acts; approving international agreements; overseeing the work of the security agencies; adopting the budget; granting amnesties; electing and dissolving the government; and appointing and relieving Constitutional Court judges, court presidents, public prosecutors and their deputies, and the Ombudsman.⁴³ The assembly is unicameral and consists of 250 deputies, directly elected with a four-year mandate.⁴⁴ Deputies enjoy immunity.⁴⁵ The National Assembly can be dissolved by the President of the Republic on the basis of a justified government motion.⁴⁶

The President of the Republic represents the state, proclaims laws, nominates the prime minister and other state officials, grants amnesties and presents awards, commands the army, and appoints, promotes and relieves army officers.⁴⁷ He or she is directly elected by secret ballot with a five-year mandate⁴⁸ and enjoys the same immunity as a parliamentary deputy. The President's immunity is determined by the National Assembly.⁴⁹

The Government holds executive power⁵⁰ and is authorised to establish and carry out policies, implement laws, adopt regulations, propose laws and give its opinion on the motions of others, and direct, harmonise and oversee the work of state bodies.⁵¹ The government is responsible to the National Assembly.⁵² It consists of the prime minister, one or more deputy prime ministers and ministers. The government's mandate coincides with that of the National Assembly.⁵³ The prime minister and members of the government enjoy the same immunity as parliamentary deputies, which is determined by the government.⁵⁴

Passage of Laws – Individual parliamentary deputies, the government, the autonomous province assembly, or a group of at least 30,000 voters, have the right to propose laws, while the Ombudsman and the National Bank of Serbia have the right to propose laws which fall within their jurisdiction.⁵⁵ The procedure for the adoption of laws is regulated by the National Assembly's Rules of Procedure.⁵⁶ Each proposal needs to be justified and must be consistent with European Union law and the universal rules of international law.⁵⁷

⁴² Constitution of Serbia 2006, *Supra* n 40, Art 98.

⁴³ *Ibid*, Art 99.

⁴⁴ *Ibid*, Art 102.

⁴⁵ Deputies cannot be held criminally responsible for a stated opinion or vote while performing their duty and without the approval of the National Assembly cannot be arrested or stand trial and be punished by a prison sentence. Constitution of Serbia 2006. *Supra* n 40, Art 103.

⁴⁶ Constitution of Serbia 2006. *Supra* n 40, Art 109.

⁴⁷ *Ibid*, Art 112.

⁴⁸ *Ibid* Art 114 and 116.

⁴⁹ *Ibid*, Art 119.

⁵⁰ *Ibid*, Art 122.

⁵¹ *Ibid*, Art 123.

⁵² *Ibid*, Art 124.

⁵³ *Ibid*, Art 128.

⁵⁴ *Ibid*, Art 134.

⁵⁵ *Ibid*, Art 107.

⁵⁶ Rules of Procedure of the National Assembly of the Republic of Serbia, *Official Gazette of the Republic of Serbia*, No 53/05.

⁵⁷ *Ibid*, Art 135.



Appendix 1: Summary of parliamentary election results since the fall of the Milošević regime

The first democratic parliamentary elections after the fall of the Milošević regime were held on 23 December 2000 ⁵⁸ Turnout: 57.65%												
Parties that passed the threshold (5%)	Serbian Radical Party (SRS)			Serbian Renewal Movement (SPO)			Socialist Party of Serbia (SPS)			Democratic Opposition of Serbia (DOS)		
Number of seats	23			1			37			176		
Early parliamentary elections after the murder of Zoran Đinđić held on 28 December 2003 ⁵⁹ Turnout: 58.75%												
Parties that passed the threshold (5%)	SRS		Democratic Party of Serbia (DSS)		Democratic Party (DS)		G17 Plus		SPO		SPS	
Number of seats	82		53		37		34		22		22	
Early parliamentary elections held on 21 January 2007 ⁶⁰ Turnout: 60.4%												
Parties that passed the threshold (5%)	SRS	DS	DSS	G17 Plus	SPS	LDP	Alliance of Vojvodina Hungarians	Coalition List for Sandžak ○ . Ugljanin	Roma Union of Serbia	Preševo Valley Albanians Coalition	Roma Party	
Number of seats	81	64	47	19	16	15	3	2	1	1	1	
Early elections held on 11 May 2008 ⁶¹ Turnout: 60.7%												
Parties that passed the threshold (5%)	For a European Serbia		SRS	DSS	SPS, Party of United Pensioners of Serbia and United Serbia		LDP	Hungarian Coalition	Bosniak List for a European Sandžak	Preševo Valley Albanians Coalition		
Number of seats	102		78	30	20		13	4	2	1		

(e) Victims

A great number of victims of the crimes that were committed, organised or contributed to in any way by Serbian armed forces or other state organs are located in neighbouring or third countries, making their visibility in Serbia minimal. The faces of non-Serbian war crimes victims can be seen only in certain documentary films or telecasts of ICTY trials. Victims' voices can be heard at public testimonies organised in Serbia by civil society organisations such as the HLC and the YIHR, and in courtrooms at the War Crimes Chamber in a form limited by the rules and requirements of court procedure.⁶² It has become possible for non-

⁵⁸ Report by the Republic Election Commission (RIK), *Official Gazette of the Republic of Serbia*, No 2/01.

⁵⁹ Report by the Republic Election Commission, No 131/03.

⁶⁰ Ibid, No 16/07.

*** Based on analysis produced for this research project by YUCOM, authors Biljana Kovačević-Vučo, Lena Pelić and Milan Antonijević.**

⁶¹ Ibid No 013-2586/08.

⁶² Victims often appear anonymously in trials before domestic courts. Apart from the procedural limitations which exist, the problem, according to the HLC, is that "Serbian prosecutors do not see themselves in the role of representatives of the victims". HLC, *Legal and psychological support to witnesses/victims*, available on the HLC website: <http://www.hlc-rdc.org/PravdaIReforma/Sudjenje-za-ratne-zlocine/PravnoPsiholoskaPodrskaSvedocimaZrtvama/469.sr.html> (accessed 17 May 2008).

Serb victims to testify in Serbia because of the work of the HLC and the trust the victims have in this non-governmental organisation, which they did not initially have in state institutions.⁶³

(f) Civil society organisations*

There are 177 non-governmental human rights organisations in Serbia.⁶⁴ A special law on non-governmental organisations, despite all attempts to date,⁶⁵ had not yet been adopted by the time this report went to print. Hence, their status is still regulated by the old Law on the Association of Citizens.⁶⁶ However, a much more significant problem appears to be presented by the related tax laws, which are not appropriate for civil society organisations.⁶⁷ According to research conducted by the International Centre for Not-for-Profit Law (ICNL), more than half of non-governmental organisations in Serbia pointed to the legal and tax framework as the main obstacle to securing their financing. In addition, most organisations are financed by more than one source,⁶⁸ while only a small portion of funding is provided by the Serbian state. Many organisations believe this reflects the government's negative attitude towards non-governmental organisations and the state's unwillingness to finance organisations that are critical of the authorities.⁶⁹

According to research done by the Centre for Free Elections and Democracy (CESID), larger non-governmental organisations are publicly well known, but non-governmental organisations covering human rights are frequent targets of verbal attacks, which are aimed in particular at the persons who lead them, such as Sonja Biserko,⁷⁰ Nataša Kandić,⁷¹ Biljana Kovačević-Vučo⁷² and others. Besides these direct attacks and open threats, an overall atmosphere of hatred and insecurity has been created. Campaigns against the leaders of these non-governmental organisations are carried out through the print and electronic media, but also in speeches by deputies in the National Assembly. In addition, a series of court proceedings is ongoing against the leaders of non-governmental organisations, which also represents a form of obstruction of their work.⁷³

⁶³ In addition, owing to the lack of adequate regulations and practice in this field, witness protection was created as the first cases were being held, through the cooperation of the HLC, as victims' representative, and the Interior Ministry's Unit for Investigating War Crimes. HLC, *Legal and psychological support to witnesses/victims*, *Supra* n 62.

⁶⁴ Centre for the Development of the Non Profit Sector (CRNPS), Database on non-governmental, non-profit organisations in FRY, available on the CRNPS website: www.crnps.org.yu (accessed 8 November 2008).

⁶⁵ In 2007, the Ministry of Public Administration and Local Self-Government presented a draft Law on Associations. In early July 2007, the ministry held a series of meetings with representatives of local and international non-governmental organisations. These provided numerous suggestions and remarks about the draft law, none of which were adopted. The final draft law was formulated on 15 October 2007. Since then, the law has been in parliamentary procedure but has not yet been adopted. National Assembly, acts in procedure, Law on Associations, proposed by the Government of the Republic of Serbia, available on the National Assembly website: http://www.parlament.sr.gov.yu/content/lat/akta/akta_detalji.asp?Id=562&t=P# (accessed 17 June 2008).

* Based on an analysis written by Sonja Biserko, HOS and a report by Stipe Sikavica, HOS.

⁶⁶ "Law on the Association of Citizens in Associations, Social Organisations and Political Organisations on the Territory of the SFRY." *SFRY Official Gazette*, No 42/90 and *FRY Official Gazette* Nos 16/93, 31/93, 41/93, 50/93, 24/94, 28/96 and 73/00.

⁶⁷ YUCOM, M Antonijević, *Case study based on the experience of a nongovernmental organisation*, Belgrade, July 2007.

⁶⁸ Sources of financing are primarily foundations, international organisations, and foreign governments.

⁶⁹ The International Journal of Not-for-Profit Law, *Enabling Organisational Development*, available on the ICLN website: http://www.icnl.org/KNOWLEDGE/ijnl/volgiss4/special_1.htm (accessed 8 November 2008).

⁷⁰ HOS Executive Director.

⁷¹ HLC Executive Director.

⁷² YUCOM Chairwoman .

⁷³ Group of eight non-governmental organisations (CZKD, HOS, HLC, YUCOM, YIHR, ŽUC, Civic Initiatives, Belgrade Circle), Public announcement, *Serbian authorities are leading a campaign against nongovernmental organisations which advocate facing our past*, Belgrade, 29 July 2005.

(g) The army *

Although the Constitution of the SFRY provided that JNA recruits should reflect the total composition of the mixed Yugoslav population, in practice around 60% of professional officers were from Serbia and Montenegro. In the early 1990s that number increased, and at the moment of the breakup of the SFRY and its transformation into the Federal Republic of Yugoslavia (FRY), only a few officers were not of Serbian or Montenegrin nationality. This trend reflected the new national structure of the recruits caused by the gradual breakup of the federation and discrimination against non-Serb recruits.⁷⁴ The transformed JNA took part in combat on the territory of the former Yugoslavia, fighting on the side of Serbia, that is, the FRY, for the creation of a new Yugoslavia under Serbian domination with a core consisting of Serbia and Montenegro.⁷⁵ This transformation also led to an overall decrease in personnel, which was compensated for by growing reliance on paramilitary forces recruited in Serbia and Montenegro. The JNA cooperated with those formations in military operations and supplied them with weapons.⁷⁶ Much evidence points to the fact that these units were under the control of the JNA.⁷⁷ Concluding that the JNA was no longer neutral, the UN Security Council on 15 May 1992 adopted Resolution 752.⁷⁸ According to that resolution, the JNA had to withdraw from BiH. Parts of the JNA with a predominantly Bosnian cadre formed the Army of the Republika Srpska, with General Ratko Mladić appointed as its commander-in-chief. The rest of the JNA retreated to the FRY where the VJ⁷⁹ was formed. The VJ took part in the conflict in Croatia,⁸⁰ and in operations against the Albanian population in Kosovo.⁸¹ After the war it was reformed, first as the Army of Serbia and Montenegro; following the split with Montenegro in May 2006, it was divided into the Army of Montenegro (VCG) and the Army of Serbia (VS).⁸² Today, the army is under the jurisdiction of the Ministry of Defence, which encompasses the General Headquarters of the VS; the Defence Policy, Human Resources and Material Resources Sectors; the Military Security Agency (VBA) and Military Intelligence Agency (VOA); and the Secretariat. The VS is structured on the principle of brigade organisation, in accordance with NATO standards. The chain of command consists of the Land Forces Command, Training Command, and the Air Force and Air Defence Commands.⁸³

In early 2001, the VS formed a commission for cooperation with the ICTY. It worked for two years to examine files from army archives and establish a comprehensive archive, which was used for the defence of Slobodan Milošević and other Serbian indictees before the ICTY. Information on the existence of the commission did not become public until late 2002. In April

⁷⁴ ICTY, *Prosecution vs D Tadić*, *Supra* n 6, pp108-109.

⁷⁵ *Ibid*, p104.

⁷⁶ *Ibid*, p110.

⁷⁷ This is indicated by the Decree on the Registration of Volunteers for Territorial Defence, *Official Gazette of the Republic of Serbia* No 50/91, Art 1: "Recruiting volunteers to the JNA is performed according to federal regulations", or the Order on the Recruitment of Volunteers to the SFRY Armed Forces during Immediate Danger of War, *Official Gazette of SFRY*, No 89/91.

⁷⁸ UN SC 3069th Meeting Resolution S/RES/752, 15 May 1992.

⁷⁹ ICTY, *Prosecution vs D Tadić*, *Supra* n 6, pp113.-114.

⁸⁰ ICTY, IT-95-13/1 "Vukovar hospital", *Prosecution vs Mile Mrkšić, Miroslav Radić and Veselin Šljivančanin*, Verdict, 27 September 2007, p85.

⁸¹ ICTY, EXPERT REPORT OF PHILLIP COO, OTP *Military Analysis Report: Forces of the FRY and Serbia in Kosovo. Part II: Kosovo Operations Narrative*; EXPERT REPORT OF REYNAUD THEUNENS *The SFRY Armed Forces and the Conflict in Croatia - JNA Activity in BiH and JNA (VJ) Support to Bosnian-Serb Forces*, 16 December 2003.

⁸² S Sikavica, *New Beginning of the Serbian Army*, *Helsinki Charter* No 95-96, 2006, pp17-18.

⁸³ Army of Serbia, Organisation of VS in 2008, available on the VS website: <http://www.vojaska.mod.gov.yu/cir/organizacija/struktura.htm> (accessed 14 August 2008).

2003, after Boris Tadić became defence minister, he responded to public pressure and shut down the commission.⁸⁴ Around 14,000 files were found in the committee's vaults.⁸⁵

It is important to mention that in November 2006, Serbia was accepted into NATO's Partnership for Peace.⁸⁶ After a delay, Serbia's foreign minister, Vuk Jeremić, signed the programme's Presentation Document in September 2007. According to the document, the VS is to adopt NATO standards⁸⁷ in its organisation and management of human and material resources, although current assessments find this reform process to be stalling.⁸⁸

A serious shadow is cast over the VS by the considerable evidence showing that, after the fall of the former regime, it helped certain war crimes indictees to hide. During trials of persons charged with helping the ICTY indictee, Ratko Mladić,⁸⁹ retired VS Lieutenant-Colonel Srboľjub Nikolić stated that Mladić's stay in military facilities until May 2002 had been completely legal. The former prime minister of Serbia confirmed this, adding that official notes existed on this issue and that the hiding of ICTY indictees was discussed at Supreme Defence Council (VSO) meetings.⁹⁰ The public image of the VS has also suffered as a result of unsolved cases of soldiers killed under suspicious circumstances during regular military service; it is widely believed that they were killed because they accidentally caught sight of Ratko Mladić in military facilities.⁹¹

(i) Police *

To understand the role of the police during the 1990s, it is necessary to know that, during that period in the Republic of Serbia, the police and the secret services (the State Security Service, RDB) were unified and placed under the joint administration of the Interior Ministry, and effectively under the direct control of Milošević. When Milošević took power in Serbia, the Federal Security Service had already been dissolved, while the Service for the Protection of the Constitutional Order (SZUP) had stopped meeting as early as the mid-1980s, meaning that the influence of the federal secret services, until their final dissolution, was insignificant. Until 1992, with Milošević's consent, the head of the RDB, Jovica Stanišić, destroyed or subjugated rival federal security services. In 1992, the head of the Counter-Intelligence Service (KOS) was arrested on charges of embezzlement and treason. In October 1992, police took over the building of the Federal Security Service and confiscated its archives.⁹² The Federal Security Service was dissolved while the KOS continued to exist, but under the leadership of persons loyal to Milošević and Stanišić. During preparations for war, the RDB was deeply involved both in the political life of Serbia and in the formation of paramilitary groups. According to latest information, the Serbian Radical Party (SRS) was founded with the assistance of the RDB and

⁸⁴ VREME, N Lj Stefanović, *Abolishing the Army Commission for Cooperation with the Tribunal: Topčider Hague*, No 641, 17 April 2003.

⁸⁵ GLAS JAVNOSTI, *Honorariums for Retired Generals*, 14 April 2003.

⁸⁶ NATO, Press Release no (2006) 150 *Riga Summit Declaration Issued by the Heads of State and Government participating in the meeting of the North Atlantic Council in Riga on 29 November 2006*, 29 November 2006, available on the NATO website: <http://www.nato.int/docu/pr/2006/p06-150e.htm> (accessed on 29 May 2008); ODBRANA, Editorial office text, *Serbia in the Partnership for Peace*, No 29, 1 December 2006, p3.

⁸⁶ DANAS, S Sikavica, 9 September 2007, p8.

⁸⁸ HOS, *Self-isolation: Reality or Goal*. (Belgrade: 2008). 09.2003.

⁸⁹ The trial of a group of 12 persons for taking part in the hiding of Mladić began in September 2006 before the 2nd Municipal Court in Belgrade; in December 2007, the court declared it was not competent to hear the case.

⁹⁰ B92, *Political Leadership Knew about Mladić*, 28 November 2006, available on the B92 website: http://www.b92.net/info/vesti/index.php?yyyy=2006&mm=11&dd=28&nav_id=221606&nav_category=64 (accessed on 11 July 2008).

* **Based on the analysis of Dejan Anastasijević and report by Milan Antonijević for the Impunity Watch project.**

⁹¹ An analysis of the case of murdered soldiers was made by Jelena Milić, Centre for Euro-Atlantic Studies (CEAS), for the Impunity Watch project.

⁹² ICTY, *Prosecution vs S Milošević*, *Supra* n. 17, Transcripts, testimony of Lord D Owen, p28372-28580, 3-4 November 2003.



quickly became a significant factor on the Serbian political scene.⁹³ Such right-wing political parties were used to recruit volunteers and fill the ranks of the paramilitary formations that took part in combat on the territory of the former Yugoslavia. Their involvement in operations in Croatia and BiH was not clearly visible, which helped Milošević to continue to deceive the public that Serbia was not an actor in those conflicts. The fact that many members of the Interior Ministry, and especially the RDB, were indicted by the ICTY,⁹⁴ as well as that RDB members were charged in Serbia for a series of crimes and political murders,⁹⁵ testifies to the great extent and depth of their criminal involvement.

After the changes of 5 October 2000, the then-Prime Minister of Serbia, Zoran Đinđić, planned to replace Rade Marković, who had been appointed head of the RDB under Milošević. However, the newly elected FRY President, Vojislav Koštunica, insisted that, for the sake of security, Marković should remain at his post for a few more months. Marković used that period to destroy thousands of incriminating documents from the RDB archive.⁹⁶ In 2002, the RDB officially became the Security Information Agency (BIA), no longer under the auspices of the Interior Ministry.⁹⁷ Although this was presented as an improvement, it did not have the effect expected and the BIA stayed entirely outside the control of government. Simultaneously, around 300 mostly younger and reform-oriented members of the BIA were replaced by older cadre, some of whom had already been retired. Prime Minister Đinđić tried to regain control over the BIA by way of staff changes but was murdered in March 2003.⁹⁸

The Law on the BIA does not foresee the possibility of any other institution outside the BIA itself investigating the past or current activities of this agency. The head of the BIA is responsible only to the prime minister, and only the prime minister is authorised to remove and appoint him or her.⁹⁹ The only form of control provided for by this law is the obligation of the head of BIA to submit a report on the agency's activities to the parliamentary committee for defence and security twice a year;¹⁰⁰ although the committee did not have the authority to investigate the agency's activities in detail until the adoption in December 2007 of the Law on Security Agencies of Serbia.¹⁰¹ However, this law cannot be implemented before changes are made to the existing Law on the BIA.¹⁰² After the parliamentary elections of 2008, the head of the BIA was replaced and the first signs that this agency was opening up appeared, but it is still too early to make more serious predictions.¹⁰³

⁹³ BLIC, M Maleš, T N Đaković, *Radicals were a Service of the State Security for Years*, 5 October 2008.

⁹⁴ The ICTY indicted Stanišić and Simatović based on reasonable suspicions that they committed crimes during these confrontations; the process is still ongoing. ICTY, Case No IT-03-69, *Prosecution vs Jovica Stanišić and Franko Simatović*, Indictment, 1 May 2003 (9 July 2008, ICTY).

⁹⁵ Trial for the murder of former President of Serbia Ivan Stambolić, trial for the murder of four members of the SPO and the attempted murder of Vuk Drašković – the “Ibar highway” case.

⁹⁶ See: *ARCHIVES AND ARCHIVE MATERIAL IN SERBIA*.

⁹⁷ Law on the Security-Information Agency (BIA), *Official Gazette of the Republic of Serbia*, No 42/02.

⁹⁸ Government of the Republic of Serbia, *ZORAN ĐINĐIĆ (1952-2003)*. Available on the government website: <http://www.arhiva.srbija.sr.gov.yu/cms/view.php?id=1077> (accessed on 23 May 2008).

⁹⁹ Law on BIA, *Supra* n 98, Art 5.

¹⁰⁰ *Ibid*, Art 18.

¹⁰¹ Law on the Security Services of the Republic of Serbia, *Official Gazette of the Republic of Serbia*, No 116/07.

¹⁰² VREME, D Anastasijević, *Secret Services: Spies and Controllers*, No 884, 13 December 2007.

¹⁰³ DANAS, J Tomašević, *Saša Vukadinović New Director of BIA*, 18 July 2008.

I Overview of the process to date of securing the right to truth

(a) Truth Commissions

(i) Truth and Reconciliation Commission of the Federal Republic of Yugoslavia

The first initiatives to found a truth commission in the former Yugoslavia appeared after the signing of the Dayton Peace Agreement in BiH.¹⁰⁴ In Serbia, the foundation of such a commission was endorsed by civil society organisations and other local intellectuals,¹⁰⁵ with the support of experts and organisations around the world working in the field of transitional justice,¹⁰⁶ as well as certain government representatives.¹⁰⁷ A debate on this topic was also initiated.¹⁰⁸ However, in 2001, in addition to the above-mentioned processes, the then-President of the FRY, Vojislav Koštunica, issued the Decree on the Truth and Reconciliation Commission.¹⁰⁹ This commission, established by presidential decree as an *ad hoc* body with a three-year mandate, ceased to operate two years later with no decision regarding its closure. It produced no reports or significant results.

(ii) Regional initiative to set up an official regional commission for establishing the facts about war crimes (RECOM)

In spite of this failed attempt, the idea and realisation of the need for regional initiatives within the transitional justice processes underway in the former Yugoslavia began to take

¹⁰⁴ Thus the president of the BiH Jewish community, Jakob Finci, with the support of the United States Institute of Peace (USIP) and the director of its Rule of Law Program, Neil J Kritz, set up the Truth and Reconciliation citizens' association, which began to promote the project of establishing a truth and reconciliation commission.

¹⁰⁵ Alex Boraine, *A Country Unmasked*, Samizdat FREEB92, 2001; REC, Dejan Ilić, *Jugoslovenska Komisija za istinu i pomirenje*. [Yugoslav commission for truth and reconciliation]. No 73 19/2005.

¹⁰⁶ Alex Boraine, president of the International Center for Transitional Justice (ICTJ), and vice-president of the Truth and Reconciliation Commission of South Africa, was involved from the very beginning, through the USIP and Open Society Institute (OSI), in efforts to promote the idea of setting up a truth and reconciliation commission in BiH, as well as Serbia. See: D Ilić, "Komisija." *Supra* no 105.

¹⁰⁷ Among government representatives, the first to mention the commission in public, immediately after the fall of the Milošević regime, was Goran Svilanović, foreign minister in the FRY federal government. See: BG Centar, *Izveštaj o stanju ljudskih prava u Jugoslaviji za 2001. godinu* [Report on Human Rights in Yugoslavia for 2001], Belgrade, 2002, p284; A Krajnc and E Marinkov, *Komisija za istinu i pomirenje, Zbornik studentskih radova* [Commission for Truth and Reconciliation, Student papers collection], Belgrade, 2005, p13. Available on the MOST website: <http://www.most.org.yu/RADOVI/komisija.pdv> (accessed on 7 May 2008).

¹⁰⁸ Transcripts from the Ulcinj conference, available on the B92 website: <http://www.b92.net/trr/konferencija/diskusija/pomirenja-12.html> (accessed on 7 April 2008); VREME, Biljana Vasić and Tamara Skrozza, *Povodom ideje da se formira Komisija za istinu – Drmanje tihe vecine* [On the Idea of Setting up a Truth Commission – Shaking the Silent Majority], No 519, 23 November 2000; B92, news archive, *Konferencija Pomirenja: Kako to rade drugi* [Conference on Reconciliation: How others do it], 28 April 2000. Available on the B92 website.

¹⁰⁹ Decision to Establish the Truth and Reconciliation Commission, *Official Gazette of FRY*, No 15/2001.

root. Although this started much earlier,¹¹⁰ the first concrete steps were taken in 2004 when three non-governmental organisations, the HLC in Belgrade, Serbia, the Research and Documentation Centre (IDC) in Sarajevo, BiH, and Documenta in Zagreb, Croatia, signed a protocol on regional cooperation.¹¹¹ They agreed to cooperate in documenting and establishing the truth on the conflicts of the 1990s; ending impunity for grave violations of humanitarian law committed in the past; and providing justice for victims.¹¹² Within a framework of broad consultations conducted by these three organisations, the need for the initiative was clearly recognised and the proposal to form a joint Regional Commission for Establishing the Facts about War Crimes (RECOM) upheld. The management of this initiative was entrusted to the Regional Coalition for the RECOM, which was officially established in October 2008 at the Regional Forum in Pristina, Kosovo.¹¹³

(b) Forensic research

After the end of the clashes in the former Yugoslavia, 40,000 people were registered as missing.¹¹⁴ The clashes that took place during the 1990s mostly occurred outside of Serbia, meaning that the missing persons were last seen during combat operations in BiH, Croatia and Kosovo. For that reason, the issue of forensic research in Serbia was not considered important and there was no state plan for it.¹¹⁵ Nevertheless, the question of exhumation has been addressed in three specific forms.

(i) Exhumation of unidentified bodies in war affected areas

These are cases where bodies were exhumed at different locations in Serbia and connected to the armed conflicts that took place in Croatia and BiH as a result of their identification via DNA analysis methods employed by the FRY Commission on Missing Persons¹¹⁶ during the

¹¹⁰ In 2001 a group of independent intellectuals founded a steering committee for regional cooperation entitled *Odgovornost, uzroci i posledice događaja* [Responsibility, causes and consequences of events]. They believed a regional initiative was necessary in order to objectively and without prejudice expose and analyse events that led to the conflicts and form a comprehensive study of crimes committed during and in connection to them. See: ICTJ, Đorđević, *Summary Report regarding Local, Regional and International Documentation of War Crimes and Human Rights Violations in the former Yugoslavia*, April 2002, p31.

¹¹¹ *Protocol on regional cooperation for the purpose of investigation and documentation of the crimes of war in post-Yugoslav countries between IDC, Sarajevo, Documenta, Zagreb and HLC*, Belgrade, 6 April 2004.

¹¹² Ibid.

¹¹³ HLC, *Regional consultations on mechanisms of truth-finding and truth-telling*, available on the HLC website: <http://www.hlc-rdc.org/Outreach/Regionalne-konsultacije-o-mehanizmima-utvrdjivanja-i-kazivanja-istine/index.1.en.html> (accessed on 3 October 2008).

¹¹⁴ Some 30,000 people were reported missing in BiH, around 5,500 in Croatia and around 4,400 in Kosovo. The fate of another 17,500 is still unknown, of whom 13,500 are in BiH, 2,000 in Croatia and around 2,000 in Kosovo.

¹¹⁵ Republic of Serbia, Commission on Missing Persons, document No 021-01-1/2007-59 of 20 June 2007, sent to HLC by Veljko Odalović, president of the Commission on Missing Persons in response to a request for free access to information of public importance.

¹¹⁶ During clashes in the former Yugoslavia, a Federal Government Commission for Humanitarian Affairs and Missing Persons was founded in FRY. This commission was restructured on various occasions, only to become the Council of Ministers' Commission for Missing Persons in 2003 and, in 2006, the Serbian Government Commission for Missing Persons. See: Decision to Establish the Federal Government Commission for Humanitarian Affairs and Missing Persons, *Official Gazette of FRY* No 83/94, p1,298; Decision amending the Decision to establish the Federal Government Commission for Humanitarian Affairs and Missing Persons, *Official Gazette of FRY* No 55/97, p9; Decision amending the Decision to found the Federal Government Commission For Humanitarian Affairs and Missing Persons, *Official Gazette of FRY* No 47/98, p1; Decision to Appoint the President and Members of the Council of Ministers' Commission for Missing Persons. *Official Gazette of SCG*, No 50/03, p2; Decision to Establish the Council of Ministers' Commission for Missing

period 2002-2007. The bodies exhumed were those that had floated down waterways from war-affected areas between 1991 and 1995 and been buried in cemeteries in various locations around Serbia, as well as those sent unidentified to the Military Medical Academy (VMA) in Belgrade from the war-affected areas and those of people who were transported from those areas to receive medical treatment but died without their identity being established; finally, the commission acted on individual requests for exhumation based on information received from the official bodies of Croatia, BiH and UNMIK. The foundations for regional cooperation in the search for missing persons were laid in 1995 with the signing of the Dayton Peace Agreement.¹¹⁷ The plan and the dynamics of work were discussed at meetings between the FRY Commission on Missing Persons (later of Serbia and Montenegro (SCG), and then Serbia) and the respective body in Croatia.¹¹⁸

(ii) Exhumation of mass graves in Serbia in 2001 and 2002

The second type of exhumation relates to mass graves discovered after the fall of the Milošević regime. Bodies of murdered Kosovo Albanians were brought to Serbia from Kosovo in the spring of 1999 by members of the Serbian armed forces in order to cover up any evidence of crimes.¹¹⁹ Exhumations were performed in Serbia at Batajnica, Petrovo Selo and Perućac. After exhumation and identification, it was confirmed that the bodies belonged to Albanians killed in Kosovo.

(iii) Verifying information on the existence of a mass grave in Raška

During mid-2007 in the town of Rudnica, near Raška, under the supervision of Milan Dilparić, investigative judge of the Belgrade District Court War Crimes Chamber, excavation was performed in order to verify information received from various individuals that there were bodies of Albanians murdered during the conflict in Kosovo in an abandoned quarry. The ground was excavated over a period of a few days using mechanical diggers, but no

Persons. *Official Gazette of SCG*, No 50/03, p1; Decision to Establish the Commission for Missing Persons, *Official Gazette of the Republic of Serbia*, Nos 49/06, 73/06, and 116/06.

¹¹⁷ As specified in this agreement, the signatories agreed to collect information on all missing persons using ICRC tracing mechanisms, and that they will fully cooperate with the ICRC in the effort to discover the identity, circumstances and destiny of missing persons. Seven days later, in Dayton, the then-foreign ministers of Serbia and Croatia signed the Agreement on Cooperation in the Search for Missing Persons. Afterwards, in Zagreb in April 1996, a Protocol of Cooperation was signed between the FRY Government Commission for Humanitarian Affairs and Missing Persons and the Croatian Government Commission for Detained and Missing Persons. See: Law on Confirming the General Framework Agreement for Peace in BiH, *Official Gazette of FRY*, int. agr, No 12/02, p3 and Annex 7, Article V; Republic of Serbia, Commission on Missing Persons, document No 021-01-1/2007-58 of 20 June 2007 under which was submitted a copy of the Agreement on Cooperation in the Search for Missing Persons with Croatia signed by foreign ministers in Dayton on 17 November 1995, and a copy of the Protocol on Cooperation between the FRY Government Commission for Humanitarian Affairs and Missing Persons and the Croatian Government Commission for Detained and Missing Persons signed in Zagreb on 17 April 1996, sent by the President of the Commission on Missing Persons Veljko Odalović to HLC pursuant to a request for free access to information of public importance submitted by Bojana Vujošević, HLC researcher, for the Impunity Watch project.

¹¹⁸ Republic of Serbia, Commission on Missing Persons, document, *Supra* n 116.

¹¹⁹ During the NATO military intervention in 1999, when it became clear that they would lose control of Kosovo, Serbian armed forces, in an effort to hide evidence of mass crimes committed against the Albanian population, and to prevent the evidence falling in the hands of ICTY investigators, launched the so-called "restoration of the terrain". The bodies of the murdered were exhumed, loaded onto refrigerated lorries and driven to various locations in Serbia where they were buried again in secondary mass graves. In April 1999, the media announced that a refrigerated lorry with dead bodies inside had been discovered in the Danube near Kladovo, after which an investigation was launched and secondary mass graves were discovered in Serbia. See: NATO, *Briefing: NATO in the Balkans*, 8. *Combating Ethnic Cleansing in Kosovo*, February 2005, available on the NATO website: http://www.nato.int/docu/briefing/balkans/html_en/balkans08.html (accessed 1 May 2008); ICTY, CASE MILOŠEVIĆ (IT-02-54) "Kosovo, Croatia and Bosnia and Herzegovina", Transcripts, pp8,367, 8,373, 8,395 and 8,396, available on the ICTY website <http://www.un.org/icty/transes54/020722ED.htm> (accessed on 1 May 2008).

human remains were discovered.¹²⁰ According to confidential information possessed by the HLC, the digging was undertaken at the wrong location. Later, the Serbian Prosecutor's Office received information on the correct location, according to the HLC's source, but did not proceed to verify it.¹²¹

(iv) Forensic research within the system of international legal assistance in criminal affairs

International legal assistance in criminal affairs is offered according to the provisions of international conventions or, in cases not regulated by convention, in accordance with the domestic Criminal Procedure Act,¹²² and includes various evidence-related and other court proceedings.¹²³ This area is regulated by memoranda signed by Serbia's War Crimes Prosecutor and Public Prosecutor with the state prosecutors of Croatia and BiH. According to these agreements, persons in Serbia authorised to cooperate are the Deputy Public Prosecutor and Deputy War Crimes Prosecutor and, in the field of cooperation with BiH, the Prosecutor responsible for liaising with the Southeast European Prosecutors Advisory Group (SEEPAG Prosecutorial Focal Point).

(v) The Serbian Government Commission on Missing Persons

The Commission was founded in 1994 in the FRY.¹²⁴ After Montenegro became independent in 2006, the Serbian Government Commission for Missing Persons¹²⁵ was formed with a mandate to deal with the issue of persons missing in the armed conflicts in the former Yugoslavia and Kosovo. It was not involved in the exhumations of mass graves in Serbia in 2001 and 2002 because it was only granted authority over the issue of missing persons in Kosovo in 2003. In accordance with its mandate, it has been involved in the organisation of identifications and the handover of remains from these locations to UNMIK.¹²⁶

(vi) International Commission on Missing Persons

The ICMP was founded in 1996 with a mandate to ensure the cooperation of state agencies in locating and identifying persons missing in armed conflicts or human rights violations, as well as to assist in these activities.¹²⁷ Since its conception, the ICMP has been active in the former Yugoslavia where it has, amongst other things, cooperated with the Commission on Missing Persons of the FRY/SCG/Serbia. In accordance with cooperation agreements signed,¹²⁸ the ICMP observed and was engaged in many exhumations, identifications and

¹²⁰ Present during the investigation of this location were the representatives of UNMIK, OSCE, the ICRC representative Krasimir Naumov, Veljko Odalović of the Serbian government's Commission on Missing Persons, Arif Mucoli of the Kosovo Governmental Commission for Missing Persons and Haki Kosumi of Association of Families of Missing Persons of Prishtina. POLITIKA, M Dugalić, *Provera podataka o masovnoj grobnici u kamenolomu* [Verification of data on the mass grave in the quarry], 6 June 2007, pA7; B92, *Bez dokaza o masovnoj grobnici* [No evidence of mass grave], 8 June 2007, available on the B92 website: http://www.b92.net/info/vesti/index.php?yyyy=2007&mm=06&dd=08&nav_id=250481/ (accessed 22 May 2008).

¹²¹ Interview with HLC representatives, Č Lazić, YIHR researcher, for the Impunity Watch project, 11 March 2008.

¹²² Criminal Procedure Act, *Official Gazette of Republic of Serbia*, Nos 46/06, Art 507.

¹²³ Ibid, Art 508.

¹²⁴ Decision to establish the Federal Government Commission for Humanitarian Affairs and Missing Persons, *Official Gazette of FRY*, No 83/94, p1,298.

¹²⁵ Decision to found the Commission for Missing Persons, *Official Gazette of the Republic of Serbia*, Nos 49/06, 73/06, and 116/06.

¹²⁶ Republic of Serbia, Commission on Missing Persons, document, *Supra* n 116.

¹²⁷ ICMP, Fact Sheet, available on the ICMP website. <http://www.ic-mp.org/wp-content/uploads/2007/12/fact-sheet-bos.pdf> (accessed 12 May 2008).

¹²⁸ Memorandum of understanding signed in 2001 with the then-foreign minister. The ICMP also signed an agreement with the Serbian Government Coordination Centre for Kosovo, which regulated its participation in

body repatriation.¹²⁹ It set up a DNA analysis laboratory in Belgrade for the purpose of identifying bodies during exhumation from mass graves in Serbia in 2001 and 2002. This laboratory later became the property of the Serbian government.¹³⁰

(vii) Exhumations within the system of international legal assistance in criminal affairs.

There exists the possibility of performing exhumations outside Serbia based on the system of international legal assistance in criminal affairs, but as a part of war crimes investigations in proceedings before Serbian courts.

(c) Archives and archive materials in Serbia

The archival fund of Serbia consists of archive materials and work registries of state bodies, institutions or other organisations conferred by law with public authority.¹³¹ Archive materials and registries are the property of Serbia and represent a public cultural asset.¹³² They are used for scientific research, professional and other needs of private citizens and legal entities, as well as in the work of state institutions and organisations.¹³³

(i) Destruction of State Security Agency archives

After the fall of Milošević, top RDB officials made the unlawful¹³⁴ decision to destroy the agency's files relating to the period between 1998 and 2000.¹³⁵ At RDB headquarters alone, 11,490 documents were destroyed, including microfilms. Documents were also destroyed in other RDB centres around Serbia, where 363,638 documents were burned in total.¹³⁶ The B92 broadcasting company in 2001 supplied the Prosecutor's Office with proof on this matter gathered by its journalists, but an investigation was only launched against Radomir Marković, the former head of the RDB.¹³⁷

the exhumation of the bodies of persons missing in the conflicts in Kosovo; Memorandum of Understanding between the ICMP and the Federal Ministry of Foreign Affairs of the FRY, 2001; in 2002, the ICMP signed the Agreement on Cooperation with the FRY Federal Government Commission for Humanitarian Issues and Missing Persons. This made it possible for them to assist in the location of persons who went missing during the conflicts in Croatia and BiH in the period between 1991 and 1995.

¹²⁹ ICMP took part in the exhumation of over 800 bodies from mass graves in Serbia and managed to identify over 90% of these and perform their repatriation; 300 bodies of missing persons were returned to Croatia and BiH.

¹³⁰ Interview with Ana Kron, former Director of ICMP's Belgrade office, Č. Lazić, YIHR researcher, for the Impunity Watch project, 2 May 2008; Interview with Dušan Dunjić and Oliver Stojković, Belgrade Institute for Court Medicine, Č. Lazić, YIHR researcher, for the Impunity Watch project, 6 May 2008.

¹³¹ Law on Archival Materials, *Official Gazette of the FRY*, No 12/98, Art 5.

¹³² Ibid.

¹³³ Law on Archival Materials, *Supra* n 131, Art 20.

¹³⁴ Ibid, Art 31.

¹³⁵ Journalists from the B92 television station and *Vreme* weekly magazine obtained documents with, amongst other things, orders for the urgent destruction of documents.

¹³⁶ Documents pertaining to the destruction of documents in RDB centres in Valjevo, Zrenjanin, Užice, Kraljevo, Leskovac, Vranje, Kragujevac, Sremska Mitrovica, Smederevo, Zaječar, Niš and Požarevac, and in the RDB for Kosovo and Metohija – Niš, as well as in the cabinet of the head of the RDB and V RDB headquarters, based on 36 decisions passed by the head of the RDB, available on the B92 web site: [http://www.b92.net/info/vesti/index.php?yyyy=2004&mm=11&dd=17&nav_id=155968&nav_category=11/](http://www.b92.net/info/vesti/index.php?yyyy=2004&mm=11&dd=17&nav_id=155968&nav_category=11) (accessed on 11 May 2008).

¹³⁷ Dispatch of the Head of the RDB, Radomir Marković, No 3,210 of 6 October 2000; B92, Programme, Insajder, *Rukopisi ne gore* [Manuscripts do not Burn], part 1, broadcast on 15 November 2004, programme transcript available on the B92 website:

http://www.b92.net/info/vesti/index.php?yyyy=2004&mm=11&dd=17&nav_id=155968&nav_category=11 (visited on 11 May 2008); *DB uništio preko 35.000 stranica* [State Security Destroys over 35,000 pages], 17 November 2004, available on the B92 website:

http://www.b92.net/info/vesti/index.php?yyyy=2004&mm=11&dd=17&nav_id=155968&nav_category=11 (accessed on 11 May 2008).

(ii) Yugoslav Army Headquarters Commission for Cooperation with the ICTY

For the purpose of his defence before the ICTY, Slobodan Milošević had in his possession documents from top secret military archives and RDB analyses provided by his legal defence team,¹³⁸ collected and organised by the VJ Headquarters Commission formed in 2001 in nearly complete secrecy, and of which the general public became aware only when it was abolished in 2003 by the then-Defence Minister, Boris Tadić. Goran Svilanović, then serving as foreign minister, stated that the commission was in possession of 14,000 documents from military archives and that he suspected it had been formed with the sole aim of assisting Milošević in his defence before the ICTY, although he did not discount the possibility that it could also have been formed to maintain control over documents that might have led to indictments against members of the army.¹³⁹

(iii) Important army documents in private archives

Božidar Delić, a retired VJ general, was in possession of nearly 600 army documents pertaining to the area of responsibility of his brigade in Kosovo between 1998 and 1999. The ICTY prosecution requested some of these documents from the Serbian authorities. They replied that they did not possess them. This was correct, as it was later discovered that these documents were in the private archives of the aforementioned general.¹⁴⁰

(iv) Concealment of Supreme Defence Council session transcripts

In 2002, the ICTY prosecution demanded that the FRY grant it access to the minutes of VSO meetings, but representatives of the FRY did not wish to turn them over and demanded additional measures for the protection of these documents.¹⁴¹ The ICTY approved these measures for specific sections of the minutes. The Chief Prosecutor was not opposed to these measures, considering that only compromise could win her access to the necessary evidence. The use of these documents was thus limited to the trial against Milošević, with publication or quotation of their content in the verdict, or their provision to other legal institutions, prohibited.¹⁴² In the case of *BiH v. SCG* before the ICJ, representatives of BiH asked the court to request that Serbia provide an uncensored version of the documents, which the court refused to do, with the explanation that BiH had access to and had used other documents from the ICTY archives, that enough evidence had been presented of the relations between the authorities in the FRY and the Republika Srpska (RS), and that additional documents were not necessary.¹⁴³

¹³⁸ BETA, *Milošević koristi poverljive arhive* [Milosevic Uses Confidential Archives], 26 February 2005.

¹³⁹ DANAS, S Sikavica, *KOS pod kontrolom civilne vlasti* [KOS intelligence agency under civilian control], 19-20 April 2003.

¹⁴⁰ BLIC, M Ivanović, Ž Jevtić - V Z Cvijić, *General Delić dostavlja vojni dokumenta Tribunalu* [General Delić forwarded army documents to the Tribunal], 9 May 2008.

¹⁴¹ FRY representatives, Goran Svilanović and Vladimir Đerić, explained to the then-ICTY Chief Prosecutor Carla Del Ponte that the secrecy of these documents needed to be guaranteed to prevent them being used against FRY in the genocide case brought by BiH against it before the ICJ. See: F Hartmann, *Mir i Kazna* [Peace and Punishment], Bybook, Sarajevo, 2007, pp75–81; Carla Del Ponte, *La Caccia – Io e i criminali di guerra* [The Hunt – Me and the War Criminals], Milano, Feltrinelli, 2008; ICTY Rules of Procedure and Evidence, Rule 54*bis*.

¹⁴² F Hartmann, *Peace and Punishment*, *Supra* n 141, pp75–81; C Del Ponte, *The Hunt – Me and the War Criminals*. *Supra* n 141.

¹⁴³ ICJ, Ruling, *BiH vs SCG*, Case regarding the implementation of the Convention on the Prevention and Punishment of the Crime of Genocide, 26/02/2007, pp205, 206.

(d) Access to information of public importance

The right to information is guaranteed by Serbia's constitution of 2000.¹⁴⁴ The Law on Free Access to Information of Public Importance¹⁴⁵ came into force in 2004, prior to the constitutional protection of this law, and as a result of a four-year dialogue and pressure from a number of civil society organisations and media outlets on institutions with executive and legislative power.¹⁴⁶ Rodoljub Šabić was elected for a seven-year term as Commissioner for Information of Public Importance (hereinafter: the Commissioner).¹⁴⁷ In mid-2005, the Commissioner, after the state at long last provided proper working conditions for his office, approved instructions for the publication of a handbook on public bodies,¹⁴⁸ as well as a guidebook on enforcing this law.¹⁴⁹

(e) Committee for Compiling Data on Crimes against Humanity and International Law

The Committee for Compiling Data on Genocide and Crimes against Humanity and International Law Committed against Serbs and Other National Groups during the Wars in Croatia and Other Parts of the former Yugoslavia¹⁵⁰ was founded in 1992. The following year, it was renamed the Committee for Compiling Data on Crimes against Humanity and International Law.¹⁵¹ A related Law on Compiling and Delivering Information on Crimes Committed against Humanity and International Law was also adopted.¹⁵² The committee's mandate included investigating the causes, character and consequences of the wars in the former Yugoslavia since 1990, and it was given wide authority.¹⁵³ The committee was close to the Milošević regime and the government at the time, and had access to the archives of the Justice and Interior Ministries.¹⁵⁴ After the fall of the regime, the significance of the committee declined and it was

¹⁴⁴ 2006 Serbian Constitution, *Supra* n 40, Art 51.

¹⁴⁵ Law on Free Access to Information of Public Importance, *Official Gazette of the Republic of Serbia*, Nos 120/04.

¹⁴⁶ Coalition for Free Access to Information, Dr J Jelinčić, Executive Director, Fund for an Open Society, *Introductory word*, 5 June 2005, available on the Fund's website in Serbian: http://www.spikoalicija.fosserbia.org/index.php?option=com_content&task=view&id=20&Itemid=44 (accessed 17 April 2008).

¹⁴⁷ Decision to Elect a Commissioner for Information of Public Importance, *Official Gazette of the Republic of Serbia* No 137/04, p5.

¹⁴⁸ Guide for Publishing a Handbook on the Work of a Public Body, *Official Gazette of the Republic of Serbia*, No 57/05.

¹⁴⁹ Legal Guidebook, *Official Gazette of the RS*, Nos 67/05 and 74/06.

¹⁵⁰ Decision to establish a State Commission for Compiling Data on Genocide and Crimes against Humanity and International Law Committed against Serbs and other National Groups during the Wars in Croatia and other parts of the Former Yugoslavia, *Official Gazette of the SFRY*, No 18/92, p273.

¹⁵¹ Decision to establish a Committee for Compiling Data on Crimes against Humanity and International Law, *Official Gazette of the FRY*, No 68/93, p1,515; Decree on the Committee for Compiling Data on Crimes Committed against Humanity and International Law, *Official Gazette of the FRY*, No 37/93, p824; Decree Amending the Decree on the Committee for Compiling Data on Crimes against Humanity and International Law, *Official Gazette of the FRY*, No 29/99, p2.

¹⁵² Law on Compiling and Delivering Data on Crimes Committed against Humanity and International Law, *Official Gazette of the FRY*, Nos 37/93 and 44/99.

¹⁵³ The law stipulated the obligation to deliver relevant information and documents to the committee, which had the right to demand from the authorised court a temporary confiscation of the relevant case from the person refusing to hand it over to the committee, while that person would then have the right to a compensation for damages. Refusal to render information to the committee was also considered an offence for which a fine or imprisonment could be levied. Judicial and other bodies were obliged to render legal assistance to the committee. See: The Law on Compiling and Delivering, *Supra* n. 152, Arts 1, 2, 4, 8 and 10.

¹⁵⁴ Đ Đorđević, "Condensed report." ICTY, *Supra* n 110.

closed in 2003.¹⁵⁵ During its existence, it published ten reports and several books. The data that the committee compiled related solely to crimes committed against Serbs.¹⁵⁶

(f) Truth-telling

The mechanisms in Serbia for truth-telling are few, and state authorities did not participate in their set-up. The HLC has developed a model of truth-telling that consists of promoting the “judicial truth” of the rulings of the ICTY and victims’ public statements. In cooperation with the ICTY Outreach Programme, and with the financial support of the Council of Europe, the HLC organised five gatherings¹⁵⁷ during the period 2006-2008 where ICTY prosecutors and prosecution investigators revealed the results of their investigations. Following this, representatives of the judges recounted the facts established by the rulings, while the last session was dedicated to the testimonies of victims.

II Identification of obstacles and evaluation of the political will to secure the right to truth

(a) Analysis – Truth Commissions

The Truth Commission for the FRY was formed without previous public consultation or debate, while its members were appointed by its founder, then-President Koštunica, which goes against principles recommended by the UN.¹⁵⁸ It did not have the status of a legal entity but was an *ad hoc* body within the General Secretariat of the President of the FRY, which significantly reduced its independence. With the approval of two-thirds of commission members, the President had the right to appoint commission members and to relieve them of their duty. Initially the commission members were to be Serbian citizens only;¹⁵⁹ minority, national and ethnic groups were inadequately represented; there were no representatives of any religious community except the Serbian Orthodox Church; non-governmental organisations and professional associations were not adequately represented. Moreover, the inadequate representation of groups whose members were very often victims of human rights violations went against the recommended principles for setting up an effective truth commission.¹⁶⁰ This structure brought into question the legitimacy of the body and its ability to draw impartial and relevant conclusions regarding the events it was researching.¹⁶¹

The decision to set up the commission was defined in its mandate framework, while its members adopted the programme and organisational documents which allowed it to develop

¹⁵⁵ GLAS JAVNOSTI, M Cvejić, *Zatvara se savezni Komitet za zločine protiv čovečnosti - Uzrok smrti ne pominjati* [The Federal Committee for Crimes against Humanity is closing down – Cause of death not to be mentioned], 15 February 2003.

¹⁵⁶ See: Committee report, 01–10; *Međunarodna mreža pomoći* [International Aid Network] (IAN), Ž Špirić, G Knežević, V Jović, G Opačić, *Torture during war, the consequences and rehabilitation: the Yugoslav experience*, B Radović, *The Yugoslav Wars 1991-1999 and some of their social consequences* IAN, Belgrade, 2004.

¹⁵⁷ Without any doubt – “Foča ’92”, “Prijedor ’92”, “Srebrenica ’95”, “Čelebići ’92” and “Brčko ’92”.

¹⁵⁸ *Updated Set of Principles*, *Supra* n 4.

¹⁵⁹ Professor Vojin Dimitrijević pointed out that there were no outside members, even from Montenegro, Interview with Vojin Dimitrijević, Executive Director of the Belgrade Centre for Human Rights, Č Lazić, YIHR researcher, for the Impunity Watch project, 18 April 2008.

¹⁶⁰ *Updated Set of Principles*, *Supra* n 4.

¹⁶¹ ICTY, Serbia and Montenegro – Selected developments in transitional justice, October 2004.

further, formulate rules, and deal with procedural and other issues.¹⁶² However, in order to make them legally binding, it was necessary to obtain the approval of the President. This placed the mandate, scope and rules of operation of the commission entirely in the hands of the President.¹⁶³ The commission was given a mandate to deal primarily with the causes, and not the consequences, of the wars of the 1990s.¹⁶⁴ The interpretation by Vera Marković of the Institute of Social Sciences in Belgrade that instead of “facing the past and establishing a discontinuity of values”, the real mandate of the commission was “to establish the balance of crimes”, appears realistic.¹⁶⁵ This opinion is confirmed by the activities and statements of commission members, which show an alarming effort to justify the crimes committed by one side. Thus, the only text written by Slavoljub Đukić, as a member of this body, was dedicated to justifying the theory that neither Milošević nor Karadžić were responsible for the crimes committed in Srebrenica, for which there was apparently no plan; it was nothing more than one man’s madness.¹⁶⁶ During a presentation by the Netherlands Institute for War Documents of its report on Srebrenica, Zoran Stanković questioned the statement of Dutch expert Dick Schoonoord that 7,540 people were considered missing in the Srebrenica area, of whom 6,000 were presumed killed, stating that, according to an ICTY report on related exhumations, it was only certain that 2,082 people had died in Srebrenica, amongst whom were one woman and seven boys.¹⁶⁷ In her polemics against the criticisms of non-governmental organisations, Mirjana Vasović was mostly concerned with countering the “negative image of Serbia and the Serbs”.¹⁶⁸

The role foreseen for victims and their family members in the work of this body was extremely passive, as set out in provisions stating that commission’s research teams would talk to “participants of the events”, including, among others, witnesses and victims of crimes.¹⁶⁹ The commission was to hold public talks, debates and testimonies. This provision was not clarified further and, since the public testimony on genocide in Srebrenica that the commission was planning did not take place, it cannot be known how this would have been done, what the role of victims would have been, nor whether the commission would have had any credibility to ensure their presence.¹⁷⁰ There were no provisions regulating how to hold interviews with victims and witnesses or public testimonies, nor articles that guaranteed secrecy to the people who supplied confidential information.

Bearing in mind that the aim of the commission was to establish the reasons for the break-up of the SFRY, the wars in its regions, and violations of human rights and humanitarian law committed during those conflicts, and that it was founded in only one of the countries of the former Yugoslavia and consisted exclusively of citizens of that country, it can be concluded that it was not set-up to adequately represent either the various nations or regions.

The commission was granted an initial budget of around US\$20,000.¹⁷¹ However, when its special budget was finally approved, the commission had already ceased to operate.¹⁷² The

¹⁶² Decision to establish, *Supra* no 109.

¹⁶³ Ibid.

¹⁶⁴ ICTY, *Serbia and Montenegro*, *Supra* n 161.

¹⁶⁵ International Conference: “Establishing facts in a post-conflict period: Initiatives and perspectives on the Western Balkans,” HLC transcripts, Vera Marković, Commission for Truth in FRY: What was the problem? Sarajevo, May 2006.

¹⁶⁶ “Srebrenica was all about Mladić where he was displaying his power, force and madness”, Impunity Watch interview with Slavoljub Đukić.

¹⁶⁷ BLIC, N J B, *Sporan broj ubijenih u Srebrenici* [Controversial number of people killed in Srebrenica], 12 June 2002.

¹⁶⁸ PRIZMA, Centre for Liberal-Democratic Studies, M Vasović, *Pobornici ‘Zvanične verzije’* [Supporters of the “Official Truth“], June 2002, pp40-44.

¹⁶⁹ The view that very little importance was given to victims and witnesses is further substantiated by the fact that, in the programme document where the “participants in the events” are listed, the victims and witnesses take only the fourth place after prominent political figures, organisers and perpetrators.

¹⁷⁰ Basic programme document, Work method, Art 4, Organisation of work, Art 7.

¹⁷¹ HRW, World Report 2003, *Serbia and Montenegro – Human Rights Developments*, p392.

commission did not possess its own account. Rather, all payments were made through the President's Office; it had only limited access to funds in a sub-account, requiring approval of the President's Office for transactions.¹⁷³ The commission was initially located in the Federation Palace, moving into its own space in the centre of Belgrade around six months later. Those premises were well furnished and technically well equipped.¹⁷⁴ The commission members received no salary, only compensation for expenses incurred during their work.¹⁷⁵ The commission secretary was the only person officially employed, although she was essentially a member of the President's Office, which paid her salary. One researcher was temporarily employed by the commission. It appears that the resources mentioned above were adequate in relation to the extent of activities of the commission. Considering there were practically no employees in the commission, the issue of specialised training was not relevant, and only one two-day seminar was given in June 2001 by an ICTY representatives.¹⁷⁶

It appears that there was no need for additional political pressure or outside involvement in the work of the commission, which was directly controlled by the President. The members of the commission were unanimous in their opinion that the commission was dismantled just as it was ready to start working.¹⁷⁷ However, it should be pointed out that the commission was established as an *ad hoc* body with a three-year mandate, which was terminated after only two years of existence. Therefore it was only operational for two-thirds of its mandate, and during that time it did practically nothing. The question is whether it would have managed to do all that was planned had it been allowed to work until the end of its mandate. Interviews with former members and employees of the commission do not provide the impression that they met very often or had a clear plan of action. Until the very end of its existence, the commission did not ask its founder for the funding necessary to implement the activities planned.¹⁷⁸

Possibly the most serious problem here was the real motivation behind the establishment of the commission. According to certain people, it was established mainly to relieve pressure exerted by the international community on the FRY to cooperate with the ICTY,¹⁷⁹ or to do something in terms of facing the past by condemning, and distancing the government from, the former regime.¹⁸⁰ Even then, many non-governmental human rights organisations saw the establishment of this commission as an attempt by President Koštunica to convince the international community that, in the process of transitional justice in the FRY, the commission should take precedence over the trials at the ICTY.¹⁸¹ The focus on establishing the causes of the

¹⁷² Within the Federal Budget Law for the period between 2001–2003, when the commission was active, the costs of the work of this body were not specifically mentioned in the expense list of the General Secretariat of the President of FRY. See: 2001 Federal Budget Law, *Official Gazette of FRY*, No 73/2000, 3/2001 – amm. 21/2001, 53/2001 and 69/2001; 2002 Federal Budget Law, *Official Gazette of FRY*, Nos 3/2002 and 68/2002; 2003 Federal Budget Law, *Official Gazette of FRY*, Nos 86/2002 and 35/2003; Interview with former member of Commission for Truth and Reconciliation Radovan Bigov, Č Lazić, YIHR researcher, for the Impunity Watch project, 21 June 2007.

¹⁷³ Interview with Gordana Ristić, former Secretary of the Commission for Truth and Reconciliation, Č Lazić, YIHR researcher, for the Impunity Watch project.

¹⁷⁴ Ibid; Interview with Radovan Bigović, *Supra* no 172.

¹⁷⁵ These expenses were mostly for sandwiches and drinks at meetings, Interview with Gordana Ristić, *Supra* n 173.

¹⁷⁶ ICTY, Annual report for 2001/2002, *Supra* n 161.

¹⁷⁷ Interview with Slavoljub Đukić; Interview with Gordana Ristić; Interview with Radovan Bigović.

¹⁷⁸ Ibid; Draft budget submitted only towards the end of its operations.

¹⁷⁹ HLC, *Izveštaj o tranzicionoj pravdi 1999-2005* [Report on transitional justice 1995-2005]; BG Centar, *Izveštaj za 2001* [Report for 2001], *Supra* n. 107.

¹⁸⁰ ICTY, *Serbia and Montenegro*, *Supra* no 161.

¹⁸¹ HLC, *Izveštaj* [Report], *Supra* no 179.

war and researching the events during the decade preceding the conflicts, entrusting the commission to establish dialogue with, amongst others, the international community and its bodies and institutions, was interpreted as an attempt to justify Serbia's role in the eyes of the international community. The commission's task was to improve the "image of Serbia and the Serbs" (which, according to a letter by Vojin Dimitrijević, was mentioned in the initial commission documents), and ensure that the crimes committed by Serbs during the conflicts remained hidden, diluted and forgotten.¹⁸²

The reasons for founding the Regional Commission for Establishing the Facts about War Crimes (RECOM)

The organisations which launched this initiative (HLC, IDC and Documenta), as well as the majority of the participants in consultations and debates on it, strongly support war crimes trials but are at the same aware of the objective limitations they have, such as the time needed for prosecution, finding witnesses and dealing with their fear, and the age and death of witnesses and perpetrators of crimes. If they continue to operate at the same rate, the courts in the region will be able to try no more than 1,200 alleged war criminals by the end of 2020, which is not sufficient to provide a detailed overview of all crimes committed: nor to restore human dignity to the victims and trust between ethnic communities in the region.¹⁸³ Nearly two-thirds of the officials and employees of the institutions involved in combating impunity in Serbia believe that there should be a regional body or a commission.¹⁸⁴ Such a commission could provide a just, objective and official record of the past, which all the countries in the region need in order to counter invented and exaggerated accounts, and dilute and minimise their effects, as well as to help locate missing persons. It could also help the work of prosecutors by gathering, using, organising and preserving proof that could be used to launch and conduct court proceedings. RECOM could provide a public platform for victims and create the public space they have so far never had.

The initiative to found RECOM resulted from long-term, wide-ranging consultations, which is in accordance with the recommended principles for establishing an effective truth commission.¹⁸⁵ The fact that it is regional also provides a good basis for a potentially strong territorial and staff representation for this body. This broad-based platform also reduces the possibility of the body becoming dependent on any political group or on outside influences in general. The fact that the initiative has come from societies around the region makes it almost impervious to the possibility of one-sided (hidden) political motives for the founding of RECOM. Such an official regional body would have good potential for its findings to have strong legitimacy.

(b) Forensic research analysis in Serbia

In view of the fact that the conflicts did not take place in Serbia, and that mass graves there are more of an exception than a rule, it was not expected that the state would adopt a general plan on forensic research, including exhumations. Local regulations do not recognise specific forensic procedures in investigating mass crimes, that is, war crimes, and standard criminal procedure is applied in these cases. In view of the very limited need for such investigations, this does not represent a significant limitation.

Investigation is performed by the body in charge of the case,¹⁸⁶ for which purpose it is entitled to request expert help and opinions,¹⁸⁷ leaving enough room to achieve good results.¹⁸⁸ The

¹⁸² Dejan Ilić, *Komisija* [Commission], *Supra* no 105.

¹⁸³ Dejan Ilić, *Komisija* [Commission], *Supra* no 105.

¹⁸⁴ Perception Study: *Officials and employees of institutions involved in the fight against impunity in Serbia*, conducted by the Argument agency and supported by the Fund for an Open Society and OSCE as part of a project developed by Impunity Watch in cooperation with the OSCE Mission in Serbia.

¹⁸⁵ *Updated Set of Principles*, *Supra* no 4.

¹⁸⁶ Criminal Procedure Act, *Supra* no 122, Art 123.

municipal or city authority in charge instructs a medical doctor to establish the cause of any death which occurred outside of a health institution and is obliged to meet the costs of doing so.¹⁸⁹ If the corpse has already been buried, exhumation is ordered in order to permit examination and postmortem.¹⁹⁰ In cases where it is believed that the death was the result of, or was caused by, a criminal act, the corpse is invariably examined and a postmortem performed to establish the time and cause of death.¹⁹¹ It is extremely positive that the law allows such a wide scope for requesting a postmortem, and that this right is available to the family of the deceased.¹⁹² The law gives a significant role to the family of the deceased and allows it insight into the proceedings.¹⁹³

The issue of expenses is clearly dealt with in the general rules of criminal procedure, in that the expenses of forensic research form part of criminal procedure expenses.¹⁹⁴ Therefore, in the case of offences subject to public prosecution (such as the offences which are the subject of this report), costs must be paid in advance by the body leading the proceedings and are later charged to the person found liable for expenses in the court ruling or the decision to discontinue proceedings. The injured person or his family may bear the cost of the proceedings only in exceptional situations when, usually as a result of a conscious decision to delay or withdraw, he or she is rendered liable.¹⁹⁵

¹⁸⁷ Ibid, Art 124.

¹⁸⁸ The law provides a wide range of possibilities for naming an individual or institution to provide expert opinion, as well as the possibility, under special circumstances and in order to obtain a superior expert opinion, to entrust a foreign person or foreign legal entity or a person living abroad with providing expert opinion. Criminal Procedure Act, *Supra* no 122, Art 127.

¹⁸⁹ Health Protection Act, *Official Gazette of the Republic of Serbia*, No17/92, 26/92, 50/92, 52/93, 53/93, 67/93, 48/94, 25/96 and 18/02, Art 219.

¹⁹⁰ Ibid, Art 220.

¹⁹¹ Criminal Procedure Act, *Supra* no 122, Art 136.

¹⁹² Taking fingerprints of the corpse, DNA sample analysis and matching the DNA profile obtained with a missing person's DNA or that of blood relations of the person who is presumed identified, etc. Health Protection Act, *Supra* no 189, Art 222.

¹⁹³ When the time and cause of death are established, an adult member of the family of the deceased who has the right of access to the body, in the presence of the medical doctor who established the cause and time of death, is informed in the shortest possible time and a report is written and signed by the family member (Health Protection Act, *Supra* no 190, Art 221). Family members, as the injured person or subsidiary plaintiff in the proceedings, have the right to access documents and see objects used as evidence, but this right can be temporarily revoked, if their testimony is planned, until they are heard as witnesses (Criminal Procedure Act, *Supra* no 122, Art 60). Also, family members have the right to demand copies of the postmortem report by submitting a request for free access, on condition that these requests have not, for some reason, been declared official or top secret. The injured party or his proxy has the right to point out any of the facts and suggest evidence they consider to be of importance not only to the proceedings but also for their eventual request for indemnification, and suggest different courses of investigation to the public prosecutor (Criminal Procedure Act, Art 277). Also, the injured party is permitted to file a petition to an immediate higher public prosecutor in case it is believed that the public prosecutor in charge is responsible for the delays in the proceedings or any other irregularities, or to the president of the court if it is considered that the appointed investigating judge is responsible for these irregularities (Criminal Procedure Act, Arts 59 and 282).

¹⁹⁴ Criminal Procedure Act, *Supra* no 122, Art 224.

¹⁹⁵ Family members acting as the injured person or subsidiary plaintiff, as well as others involved in the proceedings, are obliged, regardless of the outcome of the proceedings, to pay expenses caused by their culpability as well as a proportional amount of the lump sum of the expenses of the proceedings. The private prosecutor, ie subsidiary plaintiff, bears the costs (including the necessary expenses of the defendant and of his defence council as well as the defence council fees) if the proceedings are terminated by a judgement of acquittal, a judgement rejecting the charge or a ruling discontinuing the proceedings, unless the proceedings are discontinued or if a judgment rejecting the charge is rendered because of the death of the defendant. If the proceedings are discontinued because the prosecutor withdraws the charge, the defendant and the private prosecutor may reach a settlement on their mutual expenses. If there is more than one private

To date, forensic research related to war crimes has largely been performed properly. The process has been mostly transparent, and representatives of international and civilian organisations were allowed to be present and have insight into the methods applied and the course of the procedures.

Local forensic institutions were not entirely ready, especially with regard to equipment, for such undertakings. However, international organisations (the ICTY, the ICMP, the International Committee of the Red Cross - ICRC, and the OSCE) managed to provide the necessary equipment in good time.¹⁹⁶ In Serbia there were no facilities for conducting DNA analysis and so the Institute of Forensic Medicine in Belgrade, in cooperation with the ICTY, handed over samples collected by it and the ICMP from mass graves and family members of missing persons to the National Toxicology Institute in Madrid, which performed the analysis. Their findings were submitted to the Belgrade institute and the ICTY Office of the Prosecutor (OTP).¹⁹⁷

The process of exhumation was closely observed by representatives of the ICTY, ICMP, OSCE and HLC.¹⁹⁸ According to the HLC, exhumations and postmortems on bodies discovered in mass graves in Serbia were performed efficiently and speedily, although it was unclear why the Institute of Forensic Medicine in Belgrade was unable to establish the cause of death of the bodies found in Batajnica,¹⁹⁹ whereas the forensic pathologist of the UNMIK Office on Missing Persons and Forensics (OMPF), who performed postmortems on these bodies a few days later, discovered, based on evident gunshot wounds, that in most cases death was caused by a bullet shot through the head or chest. Experts from the VMA who performed postmortems at the Perućac location confirmed that in some cases death was caused by a bullet to the back of the head.²⁰⁰

No information is available of any kind of pressure exerted on forensic pathologists in connection with their involvement in these cases.²⁰¹ The process of exhumation, identification and repatriation of unidentified bodies that floated down waterways into the FRY, as well as a number of cooperation agreements on war crimes proceedings signed by Serbia with neighbouring countries, without doubt represent positive steps. However, it must be recalled that according to certain sources,²⁰² there are still undiscovered mass graves in Serbia and that it is the responsibility of the Prosecutor's Office to initiate proceedings for their discovery. The Serbian Justice Ministry in 2004 signed a Memorandum of Understanding with the OSCE in accordance with the Strategy for Providing Assistance in Improving the Justice System and Police in Serbia, adopted by the OSCE in 2003. The main aim of the strategy is to improve

prosecutor, i.e. subsidiary plaintiff, they shall be jointly liable for costs. If the injured person desists from the motion to prosecute, he/she shall bear the total cost unless the defendant has declared that he/she will do so.; Criminal Procedure Act, Arts 224, 226 and 228.

¹⁹⁶ Impunity Watch interview with A Kron, *Supra* no 130; Impunity Watch interview with D Dunjić and O Stojković, *Supra* no 130; ICMP, Report on forensic monitoring in connection to the exhumation and gathering of human bodily remains at various related locations in Batajnica, SCG, August–December 2002, April 2004.

¹⁹⁷ ICTY, Milošević Case *Supra* no 17, Transcripts, testimony of William Fulton, ICTY investigator, 28 May 2002, pp 5, 674, 675.

¹⁹⁸ Personal notes of author Ljiljana Hellman, who was present at the exhumation as a representative of the OSCE Mission in Serbia.

¹⁹⁹ Death reports: 2BA/002, 2BA/004, 2BA/018, 2BA/026, 2BA/062, 2BA/077, 2BA/082, 2BA/098, 2BA/110, 2BA/114, 2BA/118, 2BA/128, 2BA/132, 2BA/138, 2BA/161, 2BA/167, 2BA/171, 2BA/184, 2BA/200, 2BA/211, 2BA/212, 2BA/216, 2BA/221, 2BA/229, 2BA/233, 2BA/241, 2BA/242, 2BA/243, 2BA/247, 2BA/248, 2BA/251, 2BA/254.

²⁰⁰ HLC, report: *Sudbina nestalih* [Fate of Missing Persons], Belgrade: 2005.

²⁰¹ Interview with D Dunjić and O Stojković, *Supra* n 130.

²⁰² Former speaker of the Assembly of Vojvodina Nenad Čanak stated that there were 17 mass graves in Serbia. VREME, P Karanović, *Tajna tereta u Majdanu* [Secret of the Majdan Load], No 852 (3 May 2007); E-NOVINE, B Tončić, Interview with Azem Vlası, *Srbija zagorčava život Kosovu* [Serbia Makes Life Difficult for Kosovo], 30 August 2008, available on the *E-Novine* website: <http://www.e-novine.com/sr/intervju/clanak.php?id=16483> (accessed 1 September 2008).

regional cooperation in war crimes prosecution in accordance with internationally recognised standards. This was followed by a number of initiatives, the most important being the so-called Palić process. This was a series of regional meetings of high representatives of the judiciary and competent ministries with the aim of discussing concrete methods of cooperation in war crimes prosecutions. The process began in 2004, and under its umbrella some concrete mechanisms to improve cooperation were defined, along with the aforementioned memoranda between the War Crimes Prosecutor and Serbia's Public Prosecutor with the public prosecutors of Croatia and BiH.

(c) Analysis of archives and archival materials in Serbia

Acts regulating these issues have not been codified and many are extremely outdated. The principal law regulating these issues is the Law on Archival Materials of the Federal Republic of Yugoslavia, passed in 1998, which is still in force as a law of the Republic of Serbia.²⁰³ The Serbian Ministry of Culture has prepared the Draft Law on Archival Materials and Archival Services, but it is not yet known when this bill will enter parliamentary procedure for adoption.²⁰⁴ Archival materials become available to the general public no later than 30 years after the date of their generation, in special cases after 50 years. The authorities reserve the right to reduce that time if necessary.²⁰⁵ Before they become available to the general public, these documents are considered operational and remain within the institutions that generated them.²⁰⁶

Punitive fines were introduced for cases of failure to classify, register or keep archival materials safe, as well as for persons who unlawfully obtain archival materials for themselves or for some other person.²⁰⁷ Anyone who usurps, conceals, causes gross damage to, destroys, or makes useless in some other way archival or registry materials, or who takes them abroad without the prior approval of the competent state agency or organisation, is liable to be punished with between three months' and five years' imprisonment.²⁰⁸ The regulation of such criminal acts is incomplete and does not contain the grading of aggravating circumstances, that is, no special significance is attributed to archival materials generated by the army, police, intelligence and security agencies, archives that could contain important information related to violations of human rights and humanitarian law.

The procedures regulating the use of archival materials are adopted separately by each archive and are usually complicated and slow. They are most often reduced to submitting a request stating the purpose of the use of the archives,²⁰⁹ becoming a member of a reading room,²¹⁰ announcing the arrival of a researcher,²¹¹ and so on. In the case of some archives, extensive authority is given to their directors who then have the possibility of personally establishing rules for recording, processing, keeping, protecting and handing over documents and information to

²⁰³ Law on Archival Materials, *Supra* n. 131.

²⁰⁴ Serbian Ministry of Culture, Regulations, available on the official website of the Serbian Ministry of Culture: <http://www.kultura.sr.gov.yu/?jez=sc&p=56/> (accessed on 27 August 2008).

²⁰⁵ Law on Archival Materials, *Supra* n. 131, Art 21.

²⁰⁶ *Ibid*, Art 14; Interview with Belgrade Archive Director Branka Prpa by I Stojanović, HLC researcher, for the Impunity Watch project, 3 April 2008.

²⁰⁷ Law on Archival Materials, *Supra* n. 131, Arts 32 and 33.

²⁰⁸ *Ibid*, Art 31.

²⁰⁹ Archives of Serbia website: <http://www.arhiv-beograda/> (accessed on 17 September 2008).

²¹⁰ *Ibid*.

²¹¹ Historical Archives of Belgrade website: <http://www.arhiv-beograda.org/> (accessed on 17 September 2008).

competent state agencies.²¹² The OTP has often encountered serious problems in obtaining documents and access to archives in Serbia²¹³ even in relation to victims of Serbian nationality,²¹⁴ while other important documents have been accessible without control to private persons.²¹⁵ The director of the Central State Archives (Archive of Yugoslavia) claims that this institution has not had the necessary means to classify the materials in its possession. He was also worried about the lack of control over the use of state archives for the purpose of prosecuting persons responsible for war crimes before the ICTY.²¹⁶

The democratic government that replaced the Milošević regime did not manage to prevent destruction of archives. Information on the destruction of RDB documents reached the general public, but this was not convincing enough to persuade it that this was the only archival material that was destroyed. Over a period of at least two years, the VJ Headquarters Commission used a large number of documents pertaining to crimes committed in the former Yugoslavia for the preparation of the defence of persons indicted by the ICTY. The number of important documents taken out of different official archives by private persons like General Delić is not known. According to statements by Miroslav Perišić, director of the Archive of Serbia, some documents stolen from this archive a few years ago were later discovered at a market in Vienna. A number of documents in the archives of the Foreign Ministry perished in a fire in 2002, and the authorities are still unable to discover where the text of the Dayton Agreement signed in 1995 has been archived. During mid-August 2008, a large number of documents of immense historical importance dating as far back as the 17th century were discovered in the depot of the Archive of Serbia, whose existence had been unknown until then.²¹⁷

The Serbian authorities have shown interest in the archives of the ICTY, but it is not clear what their real motives are. That there is no true interest in approaching this problem in a systematic way is demonstrated by the fact that, on one hand, the Commissioner has constantly referred to a lack of adequate legislation in regulating use of those archives, and on the other, that only the HLC is involved in copying these documents, transferring them to Serbia and making them available to the judiciary.

There is some information that, owing to their limited resources, the archives are not in a position to process incoming materials in good time.²¹⁸ However, Impunity Watch's research has confirmed that the archives propose their own budgets, while there is no information as to whether any have requested significantly greater funding; on the contrary, research shows that they have been receiving as much as they have requested.²¹⁹ The archives operate with ample sums of money in comparison to the state budget and that of other institutions.²²⁰ More than

²¹² Decree on the Means of Recording, Processing, Keeping, Using, Protecting and Supplying other State Authorities with Information and Documents on the Activity of the Security and Information Agency, *Official Gazette of the Republic of Serbia*, No 68/02, Art 8.

²¹³ See example: ICTY, Press Release, Prosecutor Brammertz's Address before the UN Security Council, 4 June 2008.

²¹⁴ See example: ICTY, Press Release, Prosecutor Carla Del Ponte's Address before the UN Security Council, 30 October 2002.

²¹⁵ M Ivanović, Ž Jevtić, V Z Cvijić, *General Delić*, *Supra* no 140.

²¹⁶ Bg2, *Perišić: Dosije BIA još nedostupni* [Perišić: BIA Files Still Unavailable], 21 November 2007, available on the Bg2 website.
http://www.bg2.net/info/vesti/index.php?yyyy=2007&mm=11&dd=21&nav_id=273188&nav_category=11/ (accessed on 12 May 2008).

²¹⁷ BLIC, M Graf, *Pronađen i najstariji spis*, [Oldest document discovered], 29 August 2008.

²¹⁸ Bg2, *Perišić: BIA files*, *Supra* n 216.

²¹⁹ Impunity Watch Interview with B Prpa, *Supra* n 206.

²²⁰ The Archives of Serbia has an annual budget of close to EUR 1 million, whilst the annual budget of the city archives is around EUR 100,000. See: Letter sent to Impunity Watch/YIHR, Archives of Serbia, Archives of Nis, etc. Information on the budget of the Archives of Serbia in the form of a request for free access to information

half of the personnel working in the archives hold university or college degrees. The internal structure of different archives is individual, but most have a director, management and supervisory board, departments according to the division of materials and other employees. They are reasonably well equipped; they own information technology and other necessary equipment for their work and the preservation of materials.²²¹ The Archive of Serbia runs archive courses on a regular basis, which is one of the main forms of expert training. Archival consultative meetings on different topics are also held regularly and international cooperation has been established, as well as exchanges of experiences with other similar institutions abroad.²²² The general impression is that the problem lies not with the resources at the disposal of the archives, but rather with the fact that most of the materials referring to the conflict periods are missing from them, that there is no organised data regarding the content of the documents which will become available after the expiration of the legally required period, and that there are no guarantees regarding the safety of the materials which are still not in the possession of the official archives.

There are no transparent criteria for including or excluding information from archives or registers, or for replacing or publishing such information, but in spite of this, there is no data pertaining to direct political control or disturbance of the work of these institutions. However, there appears to be a certain amount of self-censorship on the part of the management of these institutions, that is, the management of many of the archives seem not to seek any increase in their budgets or submit more ambitious projects so as not to upset the competent ministries and to keep their positions.²²³ Various state institutions reserve the right to consent to general acts, appoint directors and exert similar types of control over the work of official archives. Thus, the Archive of Serbia is under the jurisdiction of the Ministry of Culture, the Military Archives is under the jurisdiction of the Ministry of Defence and local archives are under the jurisdiction of municipal authorities.²²⁴

The issue of accessibility of the archives relevant to the period of conflicts in the 1990s has still not been addressed because the 30-year period has not yet expired. The documents relevant to that period are still in the archives of the bodies or institutions that generated them in the form of operational documents. In such a situation it is not possible to obtain reliable information concerning which of the archives could contain the relevant data. Over the past two years, Impunity Watch has sent requests for free access to all known civil archives in Serbia in an attempt to discover whether they are in possession of such materials, but the replies have been negative.²²⁵ The Military Archives informed Impunity Watch that they were about to “receive archival materials for the period 1991-99 according to the orders of the Defence Minister”, but it is not clear what these documents refer to.²²⁶

of public importance was collected by Č Lazić, YIHR researcher, for the Impunity Watch project between April and August 2007.

²²¹ Ibid; Impunity Watch interview with B Prpa, *Supra* n. 206.

²²² Archives of Serbia, *About the Archives of Serbia*, available on the Archives of Serbia website: <http://www.archives.org.yu/index.html> (accessed on 17 May 2008).

²²³ Impunity Watch interview with B Prpa, *Supra* n. 206.

²²⁴ Letter sent by the Serbian Ministry of Culture in reply to a request for free access to information of public importance by YIHR researchers, for the Impunity Watch project, April 2007.

²²⁵ Letter sent by the Military Archives in reply to a request for free access to information of public importance by YIHR researchers, for the Impunity Watch project, October 2007.

²²⁶ Ibid.

Impunity Watch has learned of the existence of the so-called Presidential Archives which belonged to the former President of the SFRY and were located in the Federation Palace, and contain potentially important materials. Two members of the Truth and Reconciliation Commission, Professors Mihajlo Vojvodić and Ljubodrag Dimić, had access to this archive and for the purposes of their research copied a small number of documents referring to the break-up of the SFRY. At the time they were not interested in the period of conflicts even though they confirmed that this archive contained documents relevant to it.²²⁷ Towards the end of 2007, the Archive of Serbia received the documents and files of BIA,²²⁸ but these materials have yet to be processed. The director of the Archive of Serbia has stated that it will not be possible to do so for a long time to come.²²⁹

The ICTY has gathered a huge number of documents containing detailed information on nearly all the important events that took place in the former Yugoslavia during the 1990s,²³⁰ and it is very important that after the Tribunal is shut down these documents are made available to all prosecutor's offices and legal institutions in the region, as well as to the families of victims, the media, researchers and all those interested in studying events related to the wars in the former Yugoslavia.²³¹ This archive could be a very important factor in achieving stability in the region. Through proven and documented facts, it could and should be used to "bring peace", that is, create a coherent recent history in and of the region. In this way, the archive could help create an atmosphere in these countries which holds no danger of such crimes being repeated.²³²

More than one-third of the officials and employees of institutions involved in the process of combating impunity in Serbia also believe that the ICTY archives should be made available to the legal institutions of all interested countries of the former Yugoslavia, and the majority believes that these documents should not be archived in any of the countries of the former Yugoslavia.²³³ The consensus is that these archives should be readily available to the general public with easy access, but that they need to be properly secured and professionally sorted and organised.²³⁴ Depending on the point of view of different professions, certain aspects of a possible solution are considered more important. Thus, for the judiciary, it is important that the archives should contain internal reports used by prosecutors and court councils to sum up certain stages in the investigations, evidence groups and suchlike, because without these, 15 precious years of ICTY experience would for them be practically lost.²³⁵ For the Interior Ministry, however, only free and total access to the archives is important.²³⁶

²²⁷ Impunity Watch, Interview with Ljubodrag Dimić, former member of the Truth and Reconciliation Commission, Č. Lazić, YIHR researcher, for the Impunity Watch project, 10 June 2008.

²²⁸ More than 300,000 documents and around 50,000 citizen files.

²²⁹ B92, *Perišić: BIA files*, *Supra* n 216.

²³⁰ Presentation by Florence Hartmann at the HLC managing board press conference, *Fate of the Missing and the future of the Hague archives*, 17 June 2008. Transcript available on the HLC website: <http://www.hlc-rdc.org/Outreach/Konferencije-okrugli-stolovi-seminari/Konferencija-za-stampu-Upravnog-odbora-Fonda-za-humanitarno-pravo/1042.sr.html> (accessed on 24 June 2008).

²³¹ Presentation by Nataša Kandić, Executive Director of the HLC, at the conference, *Forum on the future of the archives of the Hague Tribunal*, held by the HLC on 21 March 2008. Film recording available on the You Tube website: <http://youtube.com/watch?v=lSX7dj2lCo> (accessed on 17 May 2008).

²³² Presentation by Florence Hartmann, *Supra* n 230.

²³³ *Perception Study*, *Supra* n 184.

²³⁴ Presentation by Florence Hartmann, *Supra* n 230; Presentation by Dragan Popović, YIHR, *Forum on the future of the archives*, HLC, Transfer of the Hague archives, available on the HLC website: <http://www.hlc-rdc.org/Outreach/Konferencije-okrugli-stolovi-seminari/Konferencija-za-stampu-Upravnog-odbora-Fonda-za-humanitarno-pravo/1042.sr.html> (accessed on 19 May 2008).

²³⁵ Presentation by Miroslav Alimpić, investigating judge at Novi Sad municipal court, *Forum on the future of the archives*, HLC, *Supra* n 230.

²³⁶ Presentation by Goran Marković, War Crimes Detection Service of the Serbian police, *Forum on the future of the archives*, HLC, *Supra* n 230.

The next question, a very important one for Serbia, is how the classification will be made that determines which of the archive's documents are to be made public, and which are not.²³⁷ A large part of this archive is obviously public and much of it has already been made available on the ICTY website.²³⁸ Still, statements and documents related to protected witnesses must be classified and adequately protected. Then there is the question of the possible use of these documents in new cases, and finally, how to organise the protection of personal data, which has still not been properly resolved. It seems obvious that the question of classification will largely have to be left to the judiciary, but the main problem is that there is no common solution or even a framework for a solution.²³⁹ The first steps towards resolving the issue of the ICTY archives in Serbia, as with many other issues related to transitional justice processes, were made by non-governmental organisations. Based on an agreement with the Registrar of the ICTY, and with the help of the US Congress, the HLC began to copy the ICTY archives in February 2005. The aim is to transfer the public part of this archive to the HLC so that it can be used for future prosecutions, social dialogue on the past, and to create favourable conditions for making these documents available to the widest possible audience.²⁴⁰

(d) An analysis of the right to free access to information of public importance in Serbia

This law regulates the rights of citizens to access information of public importance held by public bodies in order to fulfill and protect the public interest to know, a free democratic order and an open society.²⁴¹ The public's right to know is a legal presumption and the burden of proof to rebut it lies on the relevant public authority,²⁴² which represents a positive aspect of this law. Equally relevant is its anti-discriminatory provision. This stipulates that everyone has the right to access information of public importance under equal conditions, regardless of nationality, residence or seat, or personal attributes such as race, religion, nationality, ethnicity or gender.²⁴³ The rights flowing from this law may only be subject to limitations prescribed in law²⁴⁴ that are acceptable to and in accordance with international standards. The protection of this right is guaranteed in procedures before the Commissioner and the Supreme Court. An administrative dispute may be lodged before the Supreme Court when a complaint cannot be

²³⁷ Presentation by Rodoljub Šabić, Commissioner for Information of Public Importance, *Forum on the future of the archives*, HLC, *Supra* n 230.

²³⁸ Presentation by Silvija Panović-Đurić, Legal Advisor, Council of Europe Office in Belgrade; Presentation by Matias Hellman, ICTY Registry Liaison Officer in Belgrade, *Forum on the future of the archives*, HLC, *Supra* n 230.

²³⁹ Presentation by Silvija Panović-Đurić, Legal Advisor, Council of Europe Office in Belgrade, *Forum on the future of the archives*, HLC, *Supra* n 230.

²⁴⁰ *Forum on the future of the archives*, HLC, *Supra* n 230.

²⁴¹ Law on Free Access, *Supra* n 145, Art 1.

²⁴² *Ibid*, Art 4.

²⁴³ Law on Free Access, *Supra* n 145, Art 6.

²⁴⁴ The right to access can be denied: 1) if it is necessary to protect the higher interests of democratic society from serious harm; 2) if the applicant is abusing the right to access information (for example, if the request is irrational, frequent, when the same or already obtained information is being requested again, or when too much information is requested), the public authority body is not obliged to allow the applicant to exercise the right to access information of public importance; and 3) if the applicant's right to access information of public importance would thereby violate the right to privacy, the right to reputation or any other right of a person that is the subject of information, except if the person has agreed to it, if such information regards a personality, phenomenon or event of public interest, especially a holder of a state or public post, and is relevant with regard to the duties that person is performing, and if a person has given rise to a request for information about him/her by his/her behaviour, especially regarding his/her private life. Law on Free Access, *Supra* n 145, Arts 8, 13 and 14.

filed with the Commissioner or to appeal against a decision of the Commissioner.²⁴⁵ However, complaints may not be made to the Commissioner in relation to decisions of the National Assembly, the President of the Republic, the government, the Supreme Court, the Constitutional Court or the Public Prosecutor's Office. Only administrative complaints may be filed against the decisions of these authorities.²⁴⁶ This provision very seriously limits the application of the law and its significance. The "unnatural aspect" of this provision is best demonstrated by the fact that even the Public Prosecutor's Office is unaware of it, having stated in its official response refusing to provide information requested by YUCOM researchers working on the Impunity Watch project that they have the right to lodge a complaint with the Commissioner.²⁴⁷ If necessary, enforcement of the Commissioner's decisions and conclusions is to be procured by the government of the Republic of Serbia.²⁴⁸ In practice, however, this solution has not proven particularly effective. There are numerous examples of abuse of the right to free access of information of public importance, a drastic example being when BIA refused to provide information requested by YIHR even after a ruling of the Supreme Court.²⁴⁹ In the end, the requested information was partially provided after three years' silence²⁵⁰. Moreover, the government, although obliged to enforce the Commissioner's decisions and conclusions if necessary, did not fulfill its legal duty in this case.

The second problem is the non-existence of a law on the classification of classified information. This gives the public authorities a broad discretionary right to define what is classified information, that is, a state or business secret. Currently, there is strong pressure from civil society organisations for the adoption of such a law.²⁵¹

According to the results of the Perception Study,²⁵² the prevailing opinion is that the Commissioner and his office lack adequate resources and capacity, which is primarily reflected in a staff shortage. There is also a conviction that the office as a whole, as well as its employees, are overworked.²⁵³ Those surveyed gave a positive assessment of the Commissioner's Office itself as an institution, as well as the legal framework and concrete results, but many mention certain limitations of the institution, such as its inability to achieve results. Some see the legislative framework as the obstacle, others an insufficiently firm stand on the part of the institution itself. Yet it can be concluded that the Commissioner's Office is an exemplary and indispensable institution, which should have greater "leverage".²⁵⁴ Due to the inefficiency of the government in securing proper working conditions for it, the work of the Commissioner's Office began only after a six-month delay.²⁵⁵ During 2005 and 2006, the Commissioner, with much effort and by means of the amendments adopted in the National Assembly, acquired sufficient funds from the state budget to operate. The Commissioner's Office was provided with resources for its operation by the 2007 Budget Law of the Republic of Serbia.²⁵⁶ Nevertheless, in spite of

²⁴⁵ Law on Free Access, *Supra* n 145, Arts 22 and 27.

²⁴⁶ *Ibid*, Art 22.

²⁴⁷ Report of the Public Prosecutor to YUCOM researchers, for the Impunity Watch project, August 2007.

²⁴⁸ Law on Free Access, *Supra* n 146, Art 28.

²⁴⁹ DANAS, IP, *BIA ignoriše Vrhovni sud* [BIA ignores the Supreme Court], 31 May 2006.

²⁵⁰ BLIC, *Plata direktora BIA 150 hiljada dinara* [Salary of BIA Director 150 Thousand Dinars], 4 October 2008; DANAS, *Broj prisluški vanih u Srbiji ostaje tajna* [Number Tapped in Serbia Remains Secret], 10 October 2008.

²⁵¹ Coalition for Free Access to Information of Public Importance, *Petition with 72,000 signatures for the adoption of two draft laws delivered to the National Assembly*, available on the Coalition for Free Access to Information of Public Importance website: http://www.spikoalicija.org/index.php?option=com_frontpage&Itemid=1&limit=4&limitstart=8 (accessed on 3 October 2008).

²⁵² Perception Study *Supra* no 183.

²⁵³ *Ibid*.

²⁵⁴ *Ibid*.

²⁵⁵ *Report on the Commissioner's Work for 2007*, available on the Commissioner's website: <http://www.poverenik.org.yu/dokumentacija.asp?ID=6>.

²⁵⁶ 2007 Budget Law of the Republic of Serbia, *Official Gazette of the Republic of Serbia* No 58/07.

the adopted budget and the approval of the staffing plan by the Ministry of Finance,²⁵⁷ the Commissioner's Office was unable to employ five additional employees²⁵⁸.

On the other hand, in spite of all these difficulties, the Commissioner's Office managed to use the available capacity and possibilities in the best possible way, protecting the citizens' right to free access to information of public importance. According to the assessment of numerous organisations for the protection of human rights, the Commissioner's Office is the most efficient, transparent and productive democratic institution in Serbia.²⁵⁹ From the time of its foundation, that is, when conditions were created for the start of its work in mid-2005, until the end of 2007, the Commissioner had resolved over 2,400 complaints concerning violations of the right to free access to information of public importance. What gives grounds for worry, however, is the impression that this body's excellent results are largely due to the personal qualities and commitment of Rodoljub Šabić, and are thus only to a lesser extent the results of a solid and well-established institution.

²⁵⁷ Approval of the Ministry of Justice of the RS No 11-00-243/2007-01, 25 May 2007.

²⁵⁸ *Report on the Commissioner's Work for 2007*, *Supra* no 255.

²⁵⁹ Open letter to deputies from YIHR and CUPS supported by the NGO Coalition in relation to Article 5 of the Draft Constitutional Law.

I Summary of the process to date of securing the right to justice

a) Conditions for achieving justice for victims at international level

(i) The International Criminal Tribunal for the former Yugoslavia

○ The establishment of this *ad hoc* court had as its aim to bring to justice those responsible for the afore-mentioned crimes and thus contribute to the prevention of any further crimes being committed, as well as to establish and maintain peace.²⁶⁰ The jurisdiction of the ICTY is to determine individual criminal responsibility²⁶¹ for grave violations of international humanitarian law committed in the former Yugoslavia since 1 January 1991,²⁶² that is serious violations of the 1949 Geneva Convention, violation of the laws and customs of war, genocide and crimes against humanity.²⁶³ The jurisdiction of the ICTY extends as far as establishing individual criminal responsibility on the bases of direct and command responsibility.²⁶⁴ It is composed of three organs: the Trial Chambers,²⁶⁵ the OTP,²⁶⁶ and the Registry.²⁶⁷ A strategy for completing the work of the ICTY was adopted in 2003 by the UN Security Council,²⁶⁸ stipulating that this body is to conclude work by the end of 2010. It also stipulated that the ICTY should focus on top officials while helping to strengthen the capacity of the domestic jurisdictions in the region and enable them to take over the criminal prosecution and trials of remaining alleged perpetrators. When conditions are met, the OTP returns to national courts those cases which it has investigated but for which an indictment has never been raised before the ICTY, as well as a smaller number of cases where an indictment has already been raised.²⁶⁹ So far, 114 proceedings have been concluded before the ICTY. These cases include major crimes committed during the conflicts in BiH, Croatia and Kosovo.

²⁶⁰ UN Security Council Resolution 827 (1993), (S/RES/827 (1993)).

²⁶¹ ICTY Statute, adopted on May 25 1993 by Resolution 827, amended on 13 May 1998 by Resolution 1166 UN SC, Art 6.

²⁶² Ibid, Art 8.

²⁶³ Ibid, Arts 1-5.

²⁶⁴ Ibid, Art 7.

²⁶⁵ The trial chambers conduct trials, render judgments and sentences, and issue various orders and decisions on many other practical issues necessary for the work of the ICTY. There are three Trial Chambers and one Appeals Chamber. An Appeals Chamber serves the ICTY, and the other *ad hoc* Tribunal founded by the Security Council, the International Criminal Tribunal for Rwanda (ICTR).

²⁶⁶ The Office of the Prosecutor conducts investigations and prepares indictments and presents prosecutions.

²⁶⁷ The Registry provides administrative and judicial support services to the trial chambers and the prosecution.

²⁶⁸ UN SC Resolution 1503, adopted at the 4817th session, 28 August 2003.

²⁶⁹ Ibid.

(ii) Universal jurisdiction

During the 1990s, while the conflicts were still raging, certain countries that recognised the principle of universal jurisdiction for prosecuting war crimes initiated criminal proceedings against persons found on their territory who were suspected of committing various crimes in the former Yugoslavia. Thus, Elvir Javor was tried in France,²⁷⁰ Goran Grabec in Switzerland for crimes committed in camps in Prijedor, Duško Cvjetković in Austria for the murder of civilians in the Bosnian village of Kućice, Darko Knežević in the Netherlands, Siniša Jažić in Sweden for the murder of Bosniak civilians,²⁷¹ Refik Sarić in Denmark, and, in Germany, Đurađ Kusljić,²⁷² Maksim Sokolović,²⁷³ Nikola Jorgić,²⁷⁴ and Novislav Đajić.²⁷⁵ The only two civil proceedings conducted outside the country for damages inflicted by a criminal act were initiated against Radovan Karadžić at the instigation of victims residing in the USA, in accordance with the US Alien Torts Claim Act.²⁷⁶

(iii) The International Court of Justice

The ICJ was established in 1945 by the UN Charter as the primary court of the UN, based in the Peace Palace in The Hague, in the Netherlands, its main functions being to settle legal disputes submitted to it by member states and give advisory opinions on legal questions. BiH filed a suit for genocide before the court in 1993 against what was then the FRY. In 2006, the ICJ ruled Serbia responsible of having failed to prevent and punish genocide but cleared it of participating in its planning and direct involvement.²⁷⁷ A case against Serbia was initiated before the court by Croatia in 1999 for violation of the Genocide Convention.²⁷⁸

²⁷⁰ Information on the Elvir Javor case, available on the Trial Watch website: http://www.trial-ch.org/en/trial-watch/profile/db/facts/affaire_elvir-javor_111.html (accessed on 11 August 2008).

²⁷¹ Information on the Siniša Jažić case, available on the Trial Watch website: <http://www.trial-ch.org/en/trial-watch.html> (accessed on 11 August 2008).

²⁷² Information on the Đurađ Kusljić case, available on the Trial Watch website: http://www.trial-ch.org/en/trial-watch/profile/db/facts/djuradj_kusljic_140.html (accessed on 11 August 2008).

²⁷³ Information on the Maksim Sokolović case, available on the Trial Watch website: http://www.trial-ch.org/en/trial-watch/profile/db/facts/maksim_sokolovic_139.html (accessed on 11 August 11 2008).

²⁷⁴ Information on the Nikola Jorgić case, available on the Trial Watch website: http://www.trial-ch.org/en/trial-watch/profile/db/facts/nikola_jorgic_283.html (accessed on 11 August 11 2008).

²⁷⁵ Information on the Novislav Đajić case, available on the Trial Watch website: http://www.trial-ch.org/en/trial-watch/profile/db/facts/novislav_dajic_135.html (accessed on 11 August 11 2008).

²⁷⁶ *Doe vs Karadžić*, 866 F. Supp. 734, 738 (S.D.N.Y. 1994); *Kadić vs Karadžić*, 70 F.3d 232 (2d Cir. 1995), cert. denied, 518 U.S. 1005 (1996).

²⁷⁷ ICJ, Judgment, *BiH vs SCG*, Supra n 2.

²⁷⁸ ICJ, *Croatia vs Serbia*, [ICJ], Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia vs. Serbia)], 2 July 1999.

b) Conditions for securing justice for victims at local level

Even during the conflicts, local laws were mostly in accordance with international standards.²⁷⁹ After the conflicts ended and Milošević fell from power, Serbia ratified the Rome Statute,²⁸⁰ the European Convention on the Protection of Human Rights²⁸¹ and a series of other Council of Europe documents.²⁸² After harmonising local regulations with the Rome Statute within Serbia's criminal code, all crimes defined by international law in this area were adequately incorporated. However, considering that the current criminal code was adopted after the end of the conflict,²⁸³ the applicability of its provisions on crimes against humanity and command responsibility to crimes committed during the 1990s remains unclear, although both are today more or less redundant. Witness protection in criminal proceedings is covered by the Criminal Procedure Act, according to which courts are obliged to protect witnesses and defendants from insult, intimidation and other assaults.²⁸⁴

(i) Cooperating witness. The Public Prosecutor can, until the end of the main investigation, suggest that the court interrogate as a witness a member of the criminal organisation against which criminal charges have been brought, or initiate criminal proceedings under the condition that there are mitigating circumstances that may clear individuals of charges or reduce their sentences.²⁸⁵

(ii) Protected witness. The new Criminal Procedure Act,²⁸⁶ which came into effect in its entirety on 31 December 2008, introduces the institution of protected witness. The provisions that regulate the investigation, status, confidentiality of identity and facts regarding the protected witness have already come into effect.²⁸⁷

(iii) The witness protection programme in criminal proceedings. The Law on the Witness Protection Programme in Criminal Proceedings regulates the conditions and procedure for

²⁷⁹ During the wars of the 1990s, Serbia was mainly bound, among others, by the Hague Conventions of 1899 and 1907, the Geneva Conventions of 1949 with the 1977 Additional Protocols, the Convention on the Non-ApPLICability of Statutory Limitations to Crimes against Humanity and War Crimes, Convention on the Prevention and Punishment of the Crime of Genocide, Convention against Torture, International Pact on Civil and Political Rights, as well as the Vienna Convention on the Law of Treaties. According to the constitution then in force, ratified and published international treaties and generally accepted regulations of international law were an integral part of national law and the state was obliged to fulfill the commitments ensuing from those international treaties. The current constitution of Serbia stipulates direct application of generally accepted provisions of international law and confirmed international treaties and states that they are an integral part of the Serbian legal system, but adds that “ratified international treaties must be in accordance with the Constitution” which opens the issue how to resolve a potential conflict between an accepted international treaty and the constitution, in light of the basic principles of international law, that is, the Vienna Convention.

²⁸⁰ The Rome Statute of the International Criminal Court, 17 July 1998, came into force on 1 July 2002, *Official Gazette of the FRY, International treaties*, No 5/2001.

²⁸¹ Law on the Ratification of the European Convention for the Protection of Human Rights and Basic Freedoms, *Official Gazette of SCG, International treaties*, No 13/03.

²⁸² Law on the Ratification of the European Convention on International Validity of Criminal Rulings, *Official Gazette of the SCG, International treaties*, No 13/02; Law on the Ratification of the European Convention on Mutual Provision of Legal Aid in Criminal Cases with Additional Protocol, *Official Gazette of the SCG, International treaties*, No 10/01; Law on the Ratification of the European Convention on Extradition with Additional Protocols, *Official Gazette of the SCG, International treaties*, No 10/01; Law on the Ratification of the European Convention of the Ceding of Proceedings in Criminal Cases, *Official Gazette of the SCG, International treaties*, No 10/01.

²⁸³ Criminal Code of Serbia, *Official Gazette of the Republic of Serbia*, Nos 85/05, 88/05 and 107/05.

²⁸⁴ Criminal Procedure Act, *Official Gazette of the FRY*, Nos 70/01, 68/02, *Official Gazette of the Republic of Serbia*, Nos 58/04, 85/05, 115/05, 49/07.

²⁸⁵ Criminal Procedure Act, *Supra* n 122, Art 504d.

²⁸⁶ Criminal Procedure Act, *Supra* n 284.

²⁸⁷ *Ibid*, Arts 117-122.



extending protection and assistance to participants in criminal proceedings and to those close to them who are exposed to certain danger.²⁸⁸ It can be implemented before, during and after the effective conclusion of criminal proceedings.²⁸⁹

(iv) Protection Unit for participants in criminal proceedings. This unit was formed in 2005, based on the Law on the Protection Programme for Participants in Criminal Proceedings.²⁹⁰ The USA provided assistance in developing this unit, administered by the US Department of Justice's Resident Legal Advisor's Office and the US Marshals Service.²⁹¹

(v) The role of victims and their families in criminal proceedings. Victims and their family members are known in the domestic legal system as plaintiffs.²⁹² Their position is regulated by the Criminal Procedure Act.

(vi) The position of the accused in criminal proceedings. According to the Criminal Procedure Act, standard rights are applied to the accused: the constitution guarantees the right to a fair trial, especially the rights of the accused,²⁹³ and prescribes legal certainty in criminal law.²⁹⁴ The Serbian criminal code guarantees that criminal offences and punishment can be prescribed only by law, and that a sentence can be imposed only where guilt has been established.²⁹⁵

(vii) State bodies authorised to conduct proceedings against perpetrators of war crimes. The first reformist government in Serbia, under the strong influence of the international community and in light of the adoption of the ICTY's completion strategy, passed the Law on the Organisation and Jurisdiction of Government Bodies in Prosecuting Perpetrators of War Crimes (ZORZ),²⁹⁶ which created a legal framework for the investigation, criminal prosecution and judgment of crimes committed during the conflicts in the former Yugoslavia in the 1990s.

(1) Executive organs

(A) The War Crimes Discovery Unit is part of the Ministry of Interior and acts on the request of the War Crimes Prosecutor, in accordance with the law.²⁹⁷

(B) The Prosecution

The constitution defines Serbia's Public Prosecution as an independent state body which, based on relevant domestic regulations and ratified international treaties, prosecutes

²⁸⁸ Law on Programme for the the Protection of Participants in Criminal Proceedings, *Official Gazette of the Republic of Serbia*, No 85/05, Art 1.

²⁸⁹ Ibid, Art 6.

²⁹⁰ Ibid.

²⁹¹ The assistance includes a comprehensive professional development and training program, 25 specialised radio sets and two grants for specific and specialized technical assistance in the amount of USD\$75,000.

²⁹² Criminal Procedure Act, *Supra* n 284.

²⁹³ 2006 Serbian Constitution, *Supra* n 40, Art 33, Special rights of the accused.

²⁹⁴ Ibid, Art 34, Legal security in criminal law.

²⁹⁵ Criminal Code of Serbia, *Supra* n 283, Arts 1, 2.

²⁹⁶ Law on the Organisation and Competences of State Authorities in Proceedings against the Perpetrators of War Crimes (ZORZ), *Official Gazette of the Republic of Serbia*, Nos 67/03, 135/04, 61/105 and 101/07, Art 8.

²⁹⁷ ZORZ, *Supra* n 296.

perpetrators of criminal offences and takes measures to protect the constitution and the law.²⁹⁸

The Public Prosecutor's Office, headed by Serbia's Public Prosecutor, is the highest public prosecution office in the country.²⁹⁹

The State Council of Prosecutors is an independent body whose function is to secure and guarantee the autonomy of public prosecutors and their deputies.³⁰⁰

The jurisdiction of military judicial bodies which previously existed was definitively revoked and transferred to civilian judicial bodies by the Law on the Transfer of Authority of Military Courts, Military Prosecution and the Military Attorney, which came into force in 2005. Where war crimes are concerned, exclusive jurisdiction for their discovery, criminal prosecution and judgement is given to special bodies set up by ZORZ in 2003.

The War Crimes Prosecution, founded on the basis of ZORZ in 2003, has exclusive jurisdiction over the prosecution of war crimes. Vladimir Vukčević was selected as the first War Crimes Prosecutor by the National Assembly in 2003.³⁰¹

(2) The Judiciary

According to the Serbian constitution, the judicial branch of government is autonomous, and courts are independent bodies, self-sufficient in their work. The authority, organisation, structure and composition of the courts are regulated by the Law on the Structure of Courts.³⁰² In regard to this basic law, ZORZ represents a *lex specialis*.

A) War Crimes Chamber of the District Court in Belgrade. Based on ZORZ, the War Crimes Chamber was formed within the Belgrade District Court and was authorised to conduct first instance trials in war crimes cases.³⁰³

B) War Crimes Chamber of the Supreme Court of Serbia. The Supreme Court, which includes a War Crimes Chamber, is Serbia's highest court, and hears and decides cases on appeal in accordance with ZORZ.³⁰⁴

C) The High Judicial Council is an independent body whose function is to secure and guarantee the independence and autonomy of the courts and judges. It appoints and dismisses judges, proposes judges to the National Assembly, and proposes the president of the Supreme Court as well as all the court presidents. It is possible to lodge an appeal with the Constitutional Court against its decisions in circumstances stipulated by law. It consists of eleven members, including the president of the Supreme Court, the minister in charge of the judiciary, one member of the National Assembly and another eight members elected by the National Assembly. The members elected by the National Assembly serve five-year terms.³⁰⁵

²⁹⁸ 2006 Serbian Constitution, *Supra* n 40, Art 156.

²⁹⁹ *Ibid*, Art 157.

³⁰⁰ *Ibid*, Art 164.

³⁰¹ Decision to elect the War Crimes Prosecutor, RS, No 33 adopted in the session of the thirteenth extraordinary sitting in 2003, held on 22 July 2003; available on the official website of the Serbian government: <http://www.arhiva.srbija.sr.gov.yu/vesti/2003-07/22/338345.html> (accessed on 10 July 2007).

³⁰² 2006 Serbian Constitution, *Supra* n 40, Arts 4, 142, 143; Law on the Structure of Courts, *Official Gazette of the Republic of Serbia*, Nos 63/2001, 42/2002, 27/2003, 29/04, 101/05, 46/06, Arts 1, 3.

³⁰³ ZORZ, *Supra* n 296, Arts 9, 10.

³⁰⁴ ZORZ, *Supra* n 296, Arts 9, 10; the Law on the Structure of Courts, *Supra* n. 302.

³⁰⁵ 2006 Serbian Constitution, *Supra* n 40, Arts 153-155.



(3) Special Pre-Trial Detention Unit

A Special Pre-Trial Detention Unit was formed within the Belgrade District Prison for detaining alleged perpetrators of war crimes during criminal proceedings, in accordance with ZORZ.

(4) Public Relations

Both the War Crimes Chamber and the Public Prosecutor's Office have spokespersons in order to help these institutions reach the Serbian public, while the latter also has a public relations service. This is a new concept in the domestic judicial system which, especially with regard to war crimes, has proven very significant.

(5) Proceedings

In criminal proceedings for war crimes, the special provisions on proceedings for organised crime are applied.³⁰⁶ Pending the adoption of ZORZ in 2003,³⁰⁷ eight proceedings for war crimes were initiated in Serbia. The first trial began in 1994 for crimes against civilians in Zvornik, BiH, while all the other trials involved crimes committed against Albanian civilians in Kosovo in 1999. Since the adoption of ZORZ, three final verdicts (convicting four Serbs and one Albanian) and six first-instance verdicts (convicting 20 Serbs and one Albanian) have been reached, while 14 cases are in the investigative stage (involving indictments of 61 Serbs and one Albanian).³⁰⁸

II Identification of obstacles and evaluation of the political will to secure the right to truth

a) Analysis of conditions for obtaining justice for victims at international level

The ICTY is by far the most significant institution at international level. The Tribunal, based on a mixture of Anglo-Saxon and continental legal systems, was at the beginning considered an entirely foreign body by local experts.³⁰⁹ With time, however, and following revisions of the regulatory framework on both sides, as well as numerous consultations between local and international legal experts, these differences became almost insignificant. Today most representatives of the local judiciary and other official institutions involved in the process of transitional justice consider the regulatory framework of this body appropriate, applicable and satisfactory.³¹⁰ Trials before this court opened the way for the prosecution of war crimes in the former Yugoslavia. In this way the ICTY has influenced the region as well as Serbia in several ways.

³⁰⁶ ZORZ, *Supra* n 296, Art 13.

³⁰⁷ ZORZ, *Supra* n 296, Nos 67/03, 135/04, 61/05 and 101/07.

³⁰⁸ War Crimes Prosecution Office of the Republic of Serbia, Cases, available on the Prosecution's official website: http://www.tuzilastvorz.org.rs/html_trz/PREDMETI_LAT.htm (accessed on October 2008).

³⁰⁹ See for example: HLC, *Conference: Information on the ICTY and ways of cooperating*, Belgrade, March 2000; HLC and the Croatian Association for Criminal Sciences and Practice, *Conference: Command responsibility in domestic and international law*, Belgrade (SCG) and Zagreb (Croatia), May 2003.

³¹⁰ Perception Study, *Supra* n 184.

First, it has opened the issue of war crimes and their prosecution. Without these trials, especially in Serbia, there would be fewer possibilities for raising public awareness and confronting crimes committed. The judicial truth defined by the ICTY represents a significant step in imparting the truth in the entire region.³¹¹ In addition, the ICTY has conducted investigations, collected documents, unveiled facts on crimes and unearthed many mass graves, which has speeded up the process of bringing to light the fate of persons missing in these wars. This has created the possibility for initiating proceedings before domestic courts, but also for laying the foundations of a new history which will at some point have to become universal once more for the entire region. The ICTY's exit strategy has speeded up the process of creating conditions for prosecuting war crimes before domestic courts, while the trials that have taken place before the ICTY have served as a model for court proceedings in the region. A highly significant innovation introduced by the ICTY to the domestic judiciary is transparency and openness to the public. The ICTY's public information service has inspired the foundation of similar institutions within the domestic judiciary, which has helped bring proceedings closer to the public.³¹² By raising indictments, even though it has still not succeeded in bringing all those accused to justice, the ICTY has in a very short time removed many infamous authors of crimes from the public and political scenes.³¹³

What the ICTY can be reproached for is insufficient orientation towards the needs of victims.³¹⁴ According to many assessments, the ICTY has not managed to respond to the seriousness of crimes with an adequate sentencing policy. Through omissions in its exit strategy, the ICTY has significantly weakened its capacity, and especially the functioning of the prosecution, in its final years of work, a time when some of the most significant trials are taking place. The ICTY is forced to depend on the cooperation of the states in the region and international organisations responsible for assisting it in carrying out its mandate, as well as relocating sensitive witnesses or serving sentences.³¹⁵ In 2002, the FRY, and in 2003, SCG, adopted the Law on Cooperation with the ICTY. This law regulates in detail the issue of cooperation and carrying out obligations that ensue from Resolution 827,³¹⁶ and the ICTY Statute, on the basis of which the authorised state bodies decide on the handing over of criminal proceedings and extradition of indictees to the ICTY.³¹⁷ To improve the quality of cooperation, the National Council for Cooperation with the ICTY was founded in 2002.³¹⁸ In spite of a lack of visible results, the outgoing ICTY prosecutor praised this body for its help in obtaining certain documents.³¹⁹ According to the assessment of the ICTY Registry Liaison Officer in Serbia, the existence of the National Council contributes to a more functional cooperation. He added that the area of cooperation in which this ICTY body is involved is the least contentious.³²⁰ Without doubt, the council's work is significant when it comes to releasing witnesses from the duty to keep state and official secrets and delivering documents requested by the ICTY. However, there is an impression that this institution, at least in regard to statements accessible to the public, focuses to a significant extent on justifying and refuting accusations of non-cooperation made by the ICTY from time to time,³²¹ assuring the

³¹¹ See: Report by Nataša Kandić, promotion of report by D Orentlicher, Media Centre, Belgrade, July 2008.

³¹² Ibid.

³¹³ D Orentlicher, *Shrinking the Space for Denial: The Impact of the ICTY in Serbia*, ICTJ, Belgrade, May 2008, p20.

³¹⁴ Ibid, p15.

³¹⁵ ICTY Statute, *Supra* n 261, Art 29.

³¹⁶ Ibid.

³¹⁷ Law on Cooperation of the FRY with the ICTY, *Official Gazette* No 18/2002 and *Official Gazette of SCG* No 16/2003.

³¹⁸ Decision on the founding of the National Council for Cooperation with the ICTY, *Official Gazette of the FRY*, No 23/04, p217.

³¹⁹ Perception Study, *Supra* n 184.

³²⁰ Interview with Matias Hellman, the ICTY Registry Liaison Officer in Serbia.

³²¹ Radio Slobodna Evropa, *Ljajić nezadovoljan Brammertzovim izvještajem* [Ljajić dissatisfied with Brammertz's report], 4 June 2008.

Serbian public that the state is meeting all its commitments, and condemning the work of the ICTY, especially with regard to indictments against those of Serbian nationality.³²²

With regard to the ICJ, the primary problem is that the cases before this court relate exclusively to the Genocide Convention,³²³ since this was the only way to initiate proceedings against Serbia in relation to the conflict periods, as the latter did not acknowledge the court's jurisdiction until 1999. The verdict in the suit filed by BiH against Serbia had, unfortunately, only negative consequences for the combat of impunity in Serbia, strengthening those elements in society, mostly official, that deny a link between Serbia and the crimes committed in neighbouring countries, even though the ICJ ruling stressed that lack of proof of Serbia's direct involvement in committing genocide in Srebrenica did not mean that it did not participate in committing other crimes on the territory of BiH. However, the ICJ itself has no authority to discuss this matter.

Finally, the trials that took place in third countries based on universal jurisdiction remained entirely unknown to the Serbian public, and thus without any significant impact.³²⁴

b) Analysis of the conditions for attaining justice for victims at domestic level

As already stated, the discrepancy between domestic laws and international standards is primarily reflected in the fact that the applicability of provisions on crimes against humanity and command responsibility to crimes committed during the 1990s has not yet been settled, with uncertainty stemming from the fact that they were incorporated into the criminal code after the conflicts ended.³²⁵ Even though, at the time of the conflicts, both were part of the Serbian legal system by way of ratified international treaties,³²⁶ and were even present in some other domestic regulations,³²⁷ the possibility of their application to crimes of that period is brought into question by a constitutional provision, in place then and to this day, that requires crimes and their punishment to be defined in law at the time the relevant act is committed.³²⁸ Due to this provision, the application of the afore-mentioned concepts to crimes committed in the past could represent a breach of the constitutional ban on *ex post facto* laws.³²⁹

The issue of applicability of crimes against humanity has been resolved by adopting ZORZ, which gives the bodies founded by this law the authority to discover, prosecute and judge crimes stipulated by domestic laws, as well as those stipulated by the ICTY Statute,³³⁰ committed in the former Yugoslavia since January 1991, regardless of the nationality of the perpetrator or victim. The only limitation is that the definition of crimes against humanity has been taken from

³²² GLAS JAVNOSTI (Tanjug), *Ljajić: skandalozno oslobađanje Haradinaja* [The scandalous acquittal of Haradinaj], 5 April 2008; KURIR, *Ljajić: Oslobođenje Haradinaja i Orić a otežava saradnju* [The acquittal of Haradinaj and Orić makes cooperation difficult], 5 July 2008.

³²³ Convention on the Prevention and Punishment of the Crime of Genocide (1948), *Official Gazette of the SFRY, International Treaties*, Nos 56/50 and 69/50.

³²⁴ ICJ, Verdict, *BiH vs SCG*, *Supra* n 1.

³²⁵ Criminal Code of Serbia, *Supra* n 284.

³²⁶ Geneva Convention, Additional Protocol I, *Supra* n 279.

³²⁷ Instructions on the application of the international rules of war in the military forces of the SFRY, *Official Military Gazette*, No 10/88, t. 21.

³²⁸ 1990 Serbian Constitution, *Supra* n 38, art 23; 2006 Serbian Constitution, *Supra* n 40, Art 34.

³²⁹ *Ibid.*

³³⁰ ICTY Statute, *Supra* n 261, Art 5 – A crime against humanity as defined by the ICTY Statute is linked to armed conflict, unlike the provisions of the new Criminal Code of Serbia, which taking the definition of this part from the ICC Statute, does not stipulate this condition.

the ICTY Statute, which envisions crimes committed during armed conflict, unlike the new Serbian criminal code which, taking the definition used in the Rome Statute, does not require conflict to be present.³³¹ The same ZORZ provision also provides a solution concerning the problem of crimes committed by Serbian nationals or dual nationals (of Serbia and some of the neighbouring countries) against the territory and citizens of neighbouring countries.

In the case of command responsibility, in spite of long discussions on this topic, there has been no consensus,³³² while the domestic judiciary avoids explicit application of this concept to the period of conflict even though there is essentially no doubt that legal conditions exist for this.³³³ Domestic regulations contain a succession of definitions, such as criminal failure to undertake a particular act,³³⁴ joint commission of a crime,³³⁵ abetting a crime,³³⁶ aiding the commission of a crime,³³⁷ and organising a criminal organisation,³³⁸ which can in large part compensate for the application of command responsibility.³³⁹ Thus, prosecutors often apply these principles or use command responsibility in a generalised way.³⁴⁰

The constitution forbids statutes of limitation on criminal prosecution and enforcement of sentences for these crimes.³⁴¹ The highest officials in the country are immune to all liability related to the carrying out of their duties and can be held responsible for crimes only with the approval of the authorised institutions.³⁴² Domestic laws stipulate that obeying superior orders cannot be used as a defence or as a mitigating circumstance if the person following orders is aware that a criminal offence is being committed. A series of amnesty laws relate to the period mentioned, although they do not include amnesty for the crimes covered in this report. However, the President of the Republic has the authority to pardon crimes defined in domestic regulations. Pardon may be given to a specific person and can relate either to freedom from prosecution, total or partial lifting of a sentence, sentence reduction, rehabilitation, reduction, shortening or total revocation of the legal consequences of an indictment, or shortening the time of security measures or their total revocation. In the previous five years, the President has pardoned 18 persons sentenced to five or more years in prison, of whom 17 were accused of murder. It should be noted, however, that there is a significant type of *de facto* amnesty concealed in the status of cooperating witness.

The law for prosecuting war crimes was passed with the strong support of the international community, and specialised institutions were founded. Thus, the War Crimes Prosecution Office was established, as well as the War Crimes Chambers in the district courts and Supreme Court, a Special Police Unit and a Special Detention Unit.³⁴³ Consequently, basic conditions were created to deal with war crimes.

There are, however, significant problems concerning the prosecutor's position. Namely, the 2006 constitution made the prosecution practically a part of the executive instead of the judicial branch as before, and the stability of the prosecution's function was revoked, significantly

³³¹ Criminal Code, *Supra* n 283.

³³² HLC, *Command Responsibility in International and Domestic Law*, Belgrade, May 2003.

³³³ HRW, *Unfinished Business – War Crimes Council*, June 2007.

³³⁴ Criminal Code of the FRY, *Official Gazette of FRY*, Nos 35/92, 16/93, 37/93, 37/93, 24/94, 61/2001, Art 30; Criminal Code of Serbia, *Supra* n 283, Art 15.

³³⁵ Criminal Code of the FRY, *Supra* n 334, Article 22; Criminal Code of Serbia, *Supra* n 283, Art 33.

³³⁶ Criminal Code of the FRY, *Supra* n 334, Article 23; Criminal Code of Serbia, *Supra* n 283, Art 34.

³³⁷ Criminal Code of the FRY, *Supra* n 334, Article 24; Criminal Code of Serbia, *Supra* n 283, Art 35.

³³⁸ Criminal Code of the FRY, *Supra* n 334, Article 26; Criminal Code of Serbia, *Supra* n 283, Art 346.

³³⁹ HLC, I Rangelov, J Nicić, *Command Responsibility: Contemporary Law*, 2004.

³⁴⁰ HRW, *Unfinished Business*, *Supra* n 333.

³⁴¹ *There are no statutory limitations on criminal prosecution and enforcing sentences for war crimes, genocide and crimes against humanity*, 2006 Serbian Constitution, *Supra* n 40, Art 34.

³⁴² 2006 Serbian Constitution, *Supra* n 40, Arts 119, 134, 103 and 138.

³⁴³ ZORZ, *Supra* n 296.

reducing its independence. Furthermore, even though the position of the accused is regulated well, the position of defendants in criminal proceedings is not satisfactory. In cases of crimes subject to *ex officio* prosecution when the prosecutor insists on public prosecution, the rights of the defendant are very limited. The biggest setback is that the defendant cannot appeal the verdict and that she or he depends on the Public Prosecutor in the proceedings. The procedure to determine the status of protected witness does not ensure this is dealt with fast enough, nor does it guarantee a high degree of security for witnesses whose identity at the beginning of the proceedings is unprotected.³⁴⁴

After the fall of Milošević and the opening up of possibilities to initiate war crimes as well as organised crime proceedings in Serbia, a system of witness protection was developed with the support of the international community, and the status of cooperating witness and protected witness were established, the Protection Programme of Participants in Criminal Proceedings adopted,³⁴⁵ and a Protection Unit for participants in criminal proceedings founded.³⁴⁶ This improved conditions for prosecuting war crimes. However, confidence in Serbian institutions was not fully reinstated, and therefore the role of non-governmental organisations in securing the presence of certain witnesses remains crucial.

Officials in these institutions consider the means at their disposal insufficient to carry out their work.³⁴⁷ Expert analyses of the state budget and allocations for these institutions have established that, in relation to the entire state budget, their resources are nonetheless significant. Namely, in 2005, in comparison with 2004, the initial year of analysis, there was a 35% increase in funding for these institutions which, in comparison to the 11% rise in Serbia's overall expenditure, represented the largest increase for any judicial body. That increase was even greater the following year, in 2006 amounting to 61%. In 2007 and in 2008, growth was smaller but still significantly higher than the increase in Serbia's total expenditure.³⁴⁸ What makes the analysis of means available to these institutions difficult is an inability to define their exact number of employees, which often varies. The budget is calculated according to an official job systematisation which forecasts more employees than in reality exist.³⁴⁹

The results of the Perception Study conducted among officials and employees working in these institutions and organisations show that more than two-thirds of those surveyed mentioned various and numerous problems in their everyday lives. Most often mentioned was a lack of employees, expert and support staff, and thus an overload of work and a shortage of time, followed by a lack of space, courtrooms and equipment, and budgetary restrictions. The most significant financial outgoings are for the travel and accommodation expenses of victims arriving from other countries in the region, testifying, organising expert testimony from foreign institutions and cooperation with the other countries in the region.³⁵⁰ The Decree on the Salaries of Employees in the War Crimes Prosecution Office and Special Organisational Units of State Bodies in War Crimes Proceedings stipulates that employees of these institutions earn double

³⁴⁴ Based on a YUCOM analysis by L Pelić and M Antonijević.

³⁴⁵ Law on the Protection Programme, *Supra* n 288, Art 1.

³⁴⁶ *Ibid.*

³⁴⁷ Impunity Watch, Interview with Bruno Vekarić, Spokesperson of the Serbian War Crimes Prosecutor's Office, by Časlav Lazić, YIHR researcher, for the Impunity Watch project, 12 June 2008.

³⁴⁸ Impunity Watch, S Petronijević, Budget Analysis, Belgrade, February 2008.

³⁴⁹ Interview with Bruno Vekarić, *Supra* n 347

³⁵⁰ Perception Study, *Supra* n 184.

the salaries of those employed in other judicial areas.³⁵¹ Hence, there is no general dissatisfaction with earnings among the employees of these institutions.³⁵²

During this investigation, researchers were faced with an inadequately organised and inefficient system of filing cases and court statistics.³⁵³ Obviously the problem of resources has not been solved in an adequate manner. It is evident that the state is allocating considerable funds and the international community is providing donations, but the results are only partial. The financial dissatisfaction of employees has been dealt with, but there are insufficient funds for carrying out investigations, or, rather, funds are not adequately allocated and organised. With regard to human resources, there is an impression that ample resources were invested in training relevant judicial representatives. According to the results of the afore-mentioned Perception Study, although there is satisfaction with the training, the majority of those surveyed believe they need additional instruction.³⁵⁴

A serious shortcoming is that officials and employees of special institutions for prosecuting war crimes are exposed to persistent pressure and threats. The War Crimes Prosecution Office, and especially Prosecutor Vukčević, receive threatening letters, while SRS deputies make inflammatory speeches in parliament against the War Crimes Prosecution Office, disclosing information on the whereabouts and activities of the Prosecutor's close family. The fact that the Prosecution's spokesperson was assaulted in a shopping mall was attributed to propaganda of this kind.³⁵⁵ Representatives of other judicial institutions are also exposed to incidents. According to the results of the Perception Study, the pressure and threats are serious, and mostly personal. They come from alleged war crimes perpetrators, their families and friends, and people connected with them, but also from the media. Some of those surveyed claim that they have been threatened by representatives of the executive and members of the SRS.³⁵⁶

Besides this, it seems as though there are two problems when it comes to the war crimes cases themselves: one is the issue of bringing to light the context of the events in question and linking crimes to higher command levels, even the state itself; the second, ensuing from this, is that cases against those in high command positions are not being opened.

³⁵¹ Decree on Salaries of Employees in the War Crimes Prosecution Office and Special Organisational units of State Bodies in War Crimes Proceedings, *Official Gazette of the Republic of Serbia* Nos 97/03 and 67/05, Arts 2 and 3.

³⁵² Perception Study, *Supra* n 184.

³⁵³ Notes and analyses of Bojana Vujošević, HLC researcher, for the Impunity Watch project, March 2006.

³⁵⁴ Perception Study, *Supra* n 184.

³⁵⁵ Impunity Watch, Interview with B Vekarić, *Supra* n. 347.

³⁵⁶ Perception Study, *Supra* n. 184.

I Summary of the process to date of securing the right to reparation

The fact that the state refuses to accept responsibility for the crimes that its armed forces, or the armed forces that were under its control or that had its support, committed mainly against the citizens of neighbouring states, leaves very little scope for raising the issue of providing reparations to victims at state level. Nevertheless, the possibilities and processes that have emerged and continue to develop irrespective of the position taken by the state can be discussed. Included among these are initiatives launched by civil society organisations,³⁵⁷ on the basis of which certain victims have exercised their right to material reparations by using the existing legal possibilities within the Serbian legal system, several isolated gestures of certain statesmen to provide symbolic reparations and finally, the cases against Serbia brought before the ICJ. The possibility for a victim to file an action to obtain material reparations in the court of a third country is provided only by the US Alien Tort Claims Act, which has been used by victims from BiH in lawsuits against Radovan Karadžić.³⁵⁸

II Identification of obstacles and evaluation of political will for securing the right to reparation

a) Material reparations

Serbia has not adopted a programme for providing reparation to victims of gross human rights violations and humanitarian law for which members of the Serbian armed forces are responsible. Despite this fact, the possibility exists within the framework of the legal system for victims to exercise their right to material reparations. Criminal law specifies the possibility of filing so-called ownership-legal claims by victims of criminal acts (plaintiffs) or other parties entitled to filing such claims on certain grounds (eg victim's heirs). Victims also have the possibility of filing a classic action for damages specified by the Law on Contracts and Tort. Within the framework of this action, the victim or another authorised person may demand settlement of damages, repossession of an object that has been taken away, or cancellation of a

³⁵⁷ The activities of the HLC in this area are very significant, see: HLC, Reparations, Monetary, available on the HLC website: <http://www.hlc-rdc.org/PravdalReforma/Reparacije-Novcane/index.1.sr.html> (accessed on 22 September 2008).

³⁵⁸ *Doe vs Karadžić; Kadić vs Karadžić, Supra* n 276.

certain legal transaction.³⁵⁹ However, the court will only discuss this action in criminal proceedings if it does not cause significant procrastination.³⁶⁰ Otherwise, the victim or another authorised person will be instructed to resort to a civil lawsuit, which must be brought within a period of six months.³⁶¹ Although this principle is absolutely justified in view of the rationalisation of standard criminal proceedings, it creates even more difficulties for war crimes victims, who are already faced with a long and complicated procedure to exercise their rights. Many have not been able, or will not be able, to do so. This points to the need to introduce a special reparations programme that would be adjusted to the specific circumstances of each case. An additional obstacle to the exercise of the right to reparation is the impossibility of filing certain ownership-legal claims within the framework of criminal proceedings, such as for having had to vacate an apartment, or any claim deriving from personal-legal or family-legal relations, the plaintiff being automatically referred to civil proceedings.³⁶² What is positive, indeed, in cases where the defendant has been acquitted in a criminal proceeding, or where the legal proceedings have been discontinued for certain reasons, or the court has cited its lack of jurisdiction, is the fact that the plaintiff still has the possibility of filing an ownership-legal claim in civil proceedings.³⁶³

The victims also have access to a certain scope of protection on the basis of the Law on Contracts and Tort which specifies the right of persons who have suffered material or intangible damage to file an action for damages within five years of the occurrence of such damage, and/or three years from the moment of learning about its occurrence.³⁶⁴ If the damage has been caused by the perpetration of a criminal offence, the right to file an action is subject to the statute of limitations applying to the criminal offence itself,³⁶⁵ meaning that in the case of the acts discussed in this report, the right of the victim to file an action for damages is not limited.

Serbia also has old laws in effect regulating the system of material support for war veterans, war invalids, members of their families and families of fighters killed, as well as for civilian war invalids, members of their families, and families of civilian war victims.³⁶⁶ Unfortunately, these provisions are not applicable to the victims of the wars of the 1990s for whom Serbian armed forces were responsible because their applicability is limited to victims for whose deaths or injuries responsibility is ascribed to “the enemy”.³⁶⁷

Apart from legal restrictions, victims encounter numerous obstacles in practice as they attempt to exercise their right to material reparations, which are not directly related to the current legal framework. According to the HLC, which represents numerous victims in legal proceedings for reparations, victims encounter the following problems in practice. The first relates to jurisprudence, which has set high criteria for the extent and quality of evidence that victims have to submit in order to be able to exercise their rights, a requirement difficult to meet in cases of gross violations of human rights and humanitarian law committed mainly within the framework of armed conflicts. Practice in relation to statutes of limitation has posed a serious problem. Namely, despite the fact that the Law on Contracts and Tort specifies that deadlines

³⁵⁹ Law on Contracts and Torts, *Official Gazette of the SFRY*, Nos 29/78, 39/85, 45/89, 57/89, 57/89, *Official Gazette of the FRY*, Nos 31/93, 22/99, 23/99.

³⁶⁰ Law on Criminal Procedure, *Supra* n 122, Art. 232.2.

³⁶¹ *Ibid*, Art 232.1.

³⁶² Criminal Code of Serbia, *Supra* n 283, Art 93.

³⁶³ Law on Criminal Procedure, *Supra* n 123, 237, Arts 3, 4.

³⁶⁴ Law on Contracts and Torts, *Supra* n 359, Art 376.

³⁶⁵ *Ibid*, Art 377.

³⁶⁶ The laws regulating this field are: the Law on the Basic Rights of War Veterans, War Invalids and Families of Soldiers Killed, *Official Gazette of the FRY*, No 24 of 15 May 1998, 29/98, 25/2000; the Law on the Rights of War Veterans, War Invalids and the Families of the Soldiers Killed, *Official Gazette of the Republic of Serbia*, Nos 54/89, 137/04; and the Law on the Civilian Victims of the War, *Official Gazette of the Republic of Serbia*, No 52/96.

³⁶⁷ Law on the Rights of War Civilian Invalids, *Official Gazette of the Republic of Serbia*, No 52/96, Art 2.

applicable to cases of damage caused by the perpetration of criminal acts should be those applied to the criminal offences in question, that is, that the cases discussed here are not subject to statutes of limitation, the Supreme Court of Serbia in 2004 dismissed the applicability of longer terms in cases where victims of human rights violations were suing Serbia for the acts of its army or police.³⁶⁸ That year, the International Assistance Network (IAN), the Belgrade Human Rights Centre and the HLC filed a petition to challenge this legal opinion, but the Supreme Court has not yet reviewed it.³⁶⁹ According to the HLC, another obstacle to exercising the right to reparation is lack of confidence and the fear of retaliation among victims who live in areas where the perpetrators are at large, often as distinguished and powerful citizens, policemen and prosecutors who have been promoted in their work. In addition, despite the free legal assistance that has been provided to victims by certain human rights organisations, a large number of victims are still unable to institute legal proceedings for damages because they cannot afford to do so.³⁷⁰ On the basis of its overall experience so far in initiating proceedings for material reparations for victims, the HLC concludes that judges have displayed bias in favour of the state, ordering it to pay lower amounts in damages to victims than in other similar cases.³⁷¹ The HLC also has objections concerning the poor and humiliating treatment of victims by the Public Prosecutor's Office, as well as objections about the judiciary in general for its unjustifiably dilatory proceedings, which have lasted five years on average.

b) Intergovernmental legal disputes before the ICJ

At international level, two legal proceedings against Serbia (FRY/ SCG) have been brought before the ICJ for violation of the Genocide Convention. In addition to what has been mentioned already regarding these cases, it ought to be noted that Serbia invested great effort to conceal any key evidence that could have led to it losing the case.³⁷² Finally, the ICJ itself did not demonstrate much skill in making a precedent of this case.

c) Proceedings before third country courts

The only examples of this have been the two proceedings instigated against Radovan Karadžić in the USA in accordance with its specific legal provision, the US Alien Tort Claims Act, which permits a foreign national to file an action against another foreign national as long as it can be delivered to the accused in the USA.³⁷³

d) Symbolic reparations

As in the case of material reparations, it appears that in this area there is not, nor has there been, a uniform governmental stance or plan. Even though certain moves by the state have been noted, they appear to have been solely the acts of certain individuals. The first apology expressed in Serbia after the fall of Milošević for the crimes committed in Vukovar and elsewhere was made by the then-Foreign Minister, Goran Svilanović, following his meeting with

³⁶⁸ The legal opinion of the Civil Law Department of the Supreme Court of Serbia adopted in a session on 10 February 2004.

³⁶⁹ Based on the analysis of HLC, S Orlović, September 2008.

³⁷⁰ S Orlović, *Supra* n 369.

³⁷¹ *Ibid.*

³⁷² C Del Ponte, *The Hunt*, *Supra* n 142.

³⁷³ *Doe vs Karadžić; Kadić vs Karadžić*, *Supra* n 276.

his Croatian counterpart, Tonino Picula, late in 2001.³⁷⁴ In September 2003, the then-President of SCG, Svetozar Marović, and Croatian President Stjepan Mesić expressed mutual apologies on behalf of the citizens of their respective countries for the crimes and/or damage that citizens of the two countries had perpetrated against one another, emphasising that guilt for the crimes committed must be considered the responsibility of individuals.³⁷⁵ That year, Marović also conveyed apologies to the citizens of BiH “for any evil or distress suffered by anyone in BiH” because of SCG.³⁷⁶ In view of the heavy criticism that he was exposed to at home as a result of these acts, President Marović finally apologised also to all citizens of Montenegro who had been opposed to the war and for the crimes they had suffered as a result.

The President of Serbia, Boris Tadić, expressed his apology in Sarajevo in 2004, although this was more limited and more restrained than earlier apologies, and it might be said contained too many reservations. The apology was addressed to all the victims of crimes committed by members of the Serbian people. However, President Tadić added that only individuals were responsible for those crimes and not the nation as a whole. Tadić also said that he was expecting an apology from those who had perpetrated crimes against members of the Serbian people. A much stronger impression than the apology itself was generated by President Tadić’s attendance at the commemoration of the tenth anniversary of the genocide committed in Srebrenica, which was interpreted as Serbia’s recognition of responsibility of a kind, although he delivered no speech and acknowledged no responsibility on the occasion. Finally, in a 2007 interview for Croatian television, President Tadić also apologised to the citizens of Croatia and, making a very significant and essential step forward with regard to other acts, acknowledged responsibility.³⁷⁷

As regards commemorations, the complete absence of any initiative by the state should be noted. There are only isolated cases, such as 11 July, the Day of Commemoration of Bosniak Victims of the Crime in Srebrenica, started on the initiative of the Bosniak National Council in Serbia, the commemoration of the hijackings in Sjeverin, Bukovica and Strpci in Sandžak,³⁷⁸ and the gathering dedicated to the Srebrenica victims held in the Assembly of Vojvodina.³⁷⁹

³⁷⁴ NIN, Z Stanivuković, *Rečnik bolje budućnosti* [Dictionary of a Better Future], G Svilanović, *Strah i zločin* [Fear and Crime], 20 December 2001, No 2660.

³⁷⁵ BLIC, I C, *Izvinjenja za budućnost* [Apologies for the Future], 11 September 2003.

³⁷⁶ GLAS JAVNOSTI, J Mitić, *Visoka cena izvinjenja* [The High Price of the Apology], 15 November 2003.

³⁷⁷ BLIC, T Spaić, *Izvinjenja još nisu dobrodošla* [Apologies Not Welcome Yet], 6 August 2008.

³⁷⁸ B92, Malkić, *Bez genocida nad Srbima* [Genocide against Serbs Excluded], 04/07/2005, available on the B92 website: http://www.b92.net/info/vesti/index.php?yyyy=2005&mm=07&dd=04&nav_id=171922 (accessed on 3 October 2008).

³⁷⁹ S Orlović, *Supra* n 369.

7 GUARANTEES OF NON-RECURRENCE OF CRIMES

I Summary of the process to date of securing guarantees of non-recurrence of crimes

In the period immediately following the fall of the Milošević regime, the issue of institutional reform was launched almost automatically, as well as the attempt to dismiss from office persons earlier involved in serious criminal acts and gross human rights violations under international law, and prevent them from holding public office in future. This led to a series of attempts to institute proceedings similar to lustration and vetting.

a) Special measures to guarantee non-recurrence of crimes

(i) Dismissals from office in the judiciary

The Ministry of Justice of Serbia tried to carry out reforms in the area of human resources in the judiciary by itself. As a result, about one hundred court presidents were relieved of their duties in the second half of 2001,³⁸⁰ while a number of incumbents in the judiciary were relieved of their duties at their own request.³⁸¹ This procedure was criticised by experts given the fact that the General Meeting of the Supreme Court did not state its opinion on the matter, and because the replacement of court presidents was not followed by significant system-related changes, resulting in the right to appoint a court president remaining with parliament, rather than being delegated to the president's colleagues, judges.³⁸² Later that year, the Ministry of Justice initiated proceedings before the Supreme Court to dismiss 118

³⁸⁰ The constitution of Serbia then in force envisaged that the court presidents be elected directly by parliament. The court presidents relieved of duty kept their position as judges. Many were simply replaced after the expiration of their mandate, five were relieved of duty due to objective responsibility for the ineffective organisation of the court's functioning, some resigned, while others retired. Constitution of the Republic of Serbia, Decision on the Relief of Duty of Presidents of Courts, *Official Gazette of the Republic of Serbia*, No 10/01, p. 2; National Assembly of the Republic of Serbia, Decision on the Relief of Duty of the President of the Supreme Court of Serbia, *Official Gazette of the Republic of Serbia*, No 10/01, p2; National Assembly of the Republic of Serbia, Decision on the Relief of Duty of the Republic Public Defender, *Official Gazette of the Republic of Serbia*, No 10/01, p4.

³⁸¹ National Assembly of the Republic of Serbia, Decision on the Relief of Duty of the President of the Municipal Court in Kragujevac, *Official Gazette of the Republic of Serbia*, No 10/01, p2; National Assembly of the Republic of Serbia, Decision on the Relief of Duty of the Judges of the Municipal Court of Niš and the Municipal Court in Preševo, *Official Gazette of the Republic of Serbia*, No 10/01, p3; National Assembly of the Republic of Serbia, Decision on the Termination of the Term of Office of the Incumbent Public Prosecutors, *Official Gazette of the Republic of Serbia*, No 10/01, p4; B92, Vesti, *Zasedanje skupštine Srbije* [Session of the Serbian Assembly] 14 February 2001, available on the B92 website: http://www.b92.net/info/vesti/index.php/yyyy=2001&mm=02&dd=14&nav_category=1&nav_id=21087/ (accessed on 29 April 2008).

³⁸² HERETICUS, V Rakić-Vodinelić, *Neuspešan pokušaj lustracije u Srbiji* [Lustration Attempt in Serbia Fails], No 2003-2, 10 December 2003, available on the website of the Hereticus magazine published by the Centre for Advanced Legal Studies: <http://www.hereticus.org/arhiva/2003-2/neuspesan-pokusaj-lustracije-u-srbiji.html> (accessed on 4 May 2008).

general jurisdiction judges.³⁸³ It launched an initiative before the government to terminate the judicial role of 69 misdemeanour court judges who had tried cases against the independent media by applying the restrictive Law on Information.³⁸⁴ The ministry published the names of all 187 judges who were subjected to dismissal proceedings,³⁸⁵ prompting a very negative reaction from representatives of the judiciary. Even though it would be fair to say that the prevailing opinion in the public at the time was that fundamental reform of the judiciary was indispensable, the manner in which the ministry proceeded was widely seen as inadequate.³⁸⁶ Early in 2002, the Supreme Court of Serbia brought a decision to relieve the duties of only one of the 118 general jurisdiction judges, while the Ministry of Justice relieved 21 misdemeanour court judges of their duties.³⁸⁷

(ii) The Law on Responsibility for Human Rights Violations (known as the Law on Lustration)³⁸⁸

The Law on Lustration was adopted in 2003 at the proposal of parliamentarians of the Civic Alliance of Serbia party, on the basis of a draft produced by the Belgrade non-governmental organisation, CUPS.³⁸⁹ Deputies from the DSS, SRS and SPS abstained from the vote in strong opposition to the adoption of the law.³⁹⁰ The implementation of the law was at the outset marked by problems with the appointment of a full set of members of the Lustration Committee, and the lack of conditions for this body to commence its activities, as well as its failure to implement the lustration procedure pursuant to its mandate during the presidential and early parliamentary elections, as well as at the initiative of citizens. After a change in the balance of powers in parliament, the Law on Lustration lost its political support, as a result of which it has not yet been implemented.

(iii) Lustration provisions in certain laws

The Law on the University:³⁹¹ This Law anticipates a review of the procedures for the appointment of teachers and associates put in place when the Law on the University of 1998 was in force,³⁹² under which the autonomy of the university was abolished and about two hundred teachers and associates lost their jobs for reasons of political unsuitability or disobedience.³⁹³ Review procedures were conducted during the course of 2002, having been initiated within the legally prescribed term of 60 days.

³⁸³ 58 judges on the grounds of forgery of election results, involvement in public political show trials, acquisition of numerous apartments and housing loans, and 60 judges on grounds of inefficiency.

³⁸⁴ Numerous fines were levied on the basis of the law adopted in 1998 under the regime of Slobodan Milošević, which devastated certain media. The Law on Public Information, *Official Gazette of the Republic of Serbia*, No 36/98, p890, NEZAVISNA SVETLOST, V Didanović, *Sudije na stubu srama* [Judges Pilloried], No 321, 17–24 November 2001, available on the website of Nezavisna Svetlost: <http://www.svetlost.co.yu/arhiva/2001/321/321-2.htm> (accessed on 4 May 2008).

³⁸⁵ ABA/CEELI, *Index of the Reform of the Judiciary in Serbia*, May 2002, p25; V Didanović, *Supra* n 384.

³⁸⁶ V Didanović, *Supra* n 384.

³⁸⁷ V Rakić-Vodinec, *Supra* n 382.

³⁸⁸ The Law on the Responsibility for Human Rights Violations (The Law on Lustration), *Official Gazette of the Republic of Serbia*, No 58/03, p1.

³⁸⁹ Nataša Mičić, Dragor Hiber, Miloš Lučić, Ljubiša Kesić, Šandor Melank and Sima Radulović; BLIC, *Nije bilo političke volje za moralno pročišćenje* [There Was No Political Will for Moral Purification].

³⁹⁰ Information included in the communication No 9-75/08 of 30 August 2008 by Aleksandra Šašo, the officer responsible for processing requests filed on the basis of the Law on the Freedom of Access to Information of Public Importance, forwarded on behalf of the National Assembly to the YUCOM researchers working on the Impunity Watch project, in response to their request; B92, *Kažiprst, Lustration in Serbia*, 9 June 2003, available on the B92 website: http://www.b92.net/info/emisije/kaziprst.php?yyyy=2003&mm=06&nav_id=110761 (accessed on 26 April 2008).

³⁹¹ The Law on the University, *Official Gazette of the Republic of Serbia*, No 21/02.

³⁹² The Law on the University, *Official Gazette of the Republic of Serbia*, No 20/98.

³⁹³ VREME, S Ast, *Zakon o univerzitetu: Akademska amnezija* [The Law on the University, Academic Amnesia], No 590, 25 April 2002.

The Law on Judges:³⁹⁴ The amendments to the Law on Judges adopted in 2002 introduced the so-called “lustration provision”,³⁹⁵ which stipulates that special reasons for a judge’s relief from duty are professional negligence and involvement in distorting citizens’ electoral will, political and public show trials, and gross human rights violations.³⁹⁶ This provision was valid until 1 July 2003, the date prescribed by the law as the deadline for instituting dismissal proceedings.

(iv) Vetting

An initiative for systematic implementation of a thorough vetting process in Serbia has never been launched at government level. In spite of this, civil society groups requested vetting on several occasions, contributing to a positive outcome in certain cases. The vetting process has been initiated most frequently by the HLC, although significant initiatives in certain cases were also launched by Bg2, the LDP and the ICTY. Of a total of five vetting petitions filed, two resulted in the removal of certain persons from the posts they had held,³⁹⁷ while the other three attempts had no results.³⁹⁸

(v) Disbanding and reintegration

The authorities in Serbia have never fully disclosed the truth about the Serbian units that took part in the wars on the territory of the former Yugoslavia.³⁹⁹ Accessible sources provide overlapping information about the activities of different paramilitary, police and military formations and their members, without making a clear distinction among them. There is practically no data in official documents about their establishment and disbanding. This can be explained by the fact that Serbia has taken the position that it was not involved in the conflicts in BiH and Croatia, and that local units that took part in the wars in neighbouring countries had no connection to the authorities in Serbia. As regards the conflict in Kosovo, such units did not participate independently, rather their members were placed at the disposal of the police, a fact regarding which Impunity Watch has received official information from Serbia’s Interior Ministry.⁴⁰⁰ The state has failed to launch any notable

³⁹⁴ Law Amending the Law on Judges, *Official Gazette of the Republic of Serbia*, Nos 63/01, 42/02, 27/03, 29/04, 44/04, 61/05 and 101/05.

³⁹⁵ BG Centar, *Ljudska prava u Srbiji i Crnoj Gori 2003* [Human Rights in Serbia and Montenegro 2003] p199, Belgrade 2004.

³⁹⁶ The Law on Judges, *Supra* n. 394, Art 79a.

³⁹⁷ Case involving the Head of the Serbian Ministry of Interior War Crimes Detection Service, Slobodan Borisavljević, and an investigator of the War Crimes Detection Service, Danilo Bulatović.

³⁹⁸ *Ibid.*

³⁹⁹ The most significant were certainly the two largest units, the so-called Knindže, later known as the “Red Berets”, and the Serbian Volunteers Guard, known as the “Tigers”. Among the numerous smaller units, the “Scorpions”, known to the public its the atrocious crimes for which many of its former members have been sentenced, stand out. Despite numerous pieces of evidence, expert analysis, witness testimonies, and testimonies by former members of these formations that indicate unequivocally that these units were founded, trained, financed and directly controlled by the RDB, the state has adhered to its official position that these were paramilitary groups. Another significant group within the armed forces was made up of volunteers recruited by certain political parties, the most relevant among them being the SRS, who were sent to the theatre of operations via the Serbian Interior Ministry, often in different units, but retaining their loyalty to the parties that had retained effective control over them. Following the end of the wars in Croatia and BiH, in 1996, the members of the “Red Berettas” and the “Tigers” were recruited for the Special Operations Unit of the RDB. The unit was disbanded in 2003 after the assassination of the Prime Minister of Serbia by its members. This is the only unit whose disbanding has been officially recorded. Decision on disbanding the Special Operations Unit of the Interior Ministry, *Official Gazette of the Republic of Serbia* Nos 31/03, 25 March 2003.

⁴⁰⁰ Republic of Serbia Ministry of Interior, Police Directorate, Criminal Police Administration, War Crimes Detection Service, communication 03/4-2 No 230-9179/07 of 23 November 2007. Forwarded to YUCOM on

programmes for providing assistance and support to war veterans; rather this problem has been dealt with primarily by civil society organisations, war veterans associations and certain international bodies. As regards the members of the above-mentioned units, according to the information available to the public, many of them have been indicted or sentenced before local, international or foreign courts, either for war crimes or organised crime. Some of them have established private businesses or have been working for certain American or British companies in Iraq, Sudan and similar locations.⁴⁰¹ A number of members of the Special Operations Units have been incorporated into other units of the Serbian Ministry of Foreign Affairs.⁴⁰² The fate of the majority of the members of these units is unknown. However, it appears that the majority of these persons are without any profession and prospects in their lives, living on the brink of poverty.⁴⁰³

b) General measures to guarantee non-recurrence of crimes

(i) Protection of human rights at the domestic level

Serbia is bound by all the significant universal international human rights agreements, the majority of which were signed by the SFRY.⁴⁰⁴ After the political shift on 5 October 2000, the country's membership in significant international organisations (UN, OSCE, Council of Europe) was either renewed or established, and the country signed and ratified a series of international agreements on human rights and international cooperation in criminal matters.⁴⁰⁵ After the separation of Montenegro from Serbia in 2006,⁴⁰⁶ Serbia, as the legal successor of the State Union and its predecessor, the FRY, took over all international obligations previously assumed by those states.⁴⁰⁷ However, the validity of the Constitutional Charter and the Charter on Human and Minority Rights of Serbia and Montenegro ceased at that same time,⁴⁰⁸ leaving the Constitution of Serbia from 1990 in effect.⁴⁰⁹ The latter did not recognise any provisions on the protection of national minorities, constitutional appeals or

the basis of a request for access to information of public importance made by researcher Lena Pelic, for the Impunity Watch project.

⁴⁰¹ Impunity Watch, Interview with Philip Schwarm, journalist, by I Stojanovic, HLC researcher, for the Impunity Watch project.

⁴⁰² Impunity Watch, Interview with Nenad Milic, former deputy Interior Minister of the Serbian Government, Ć Lazic, YIHR researcher, for the Impunity Watch project, 6 April 2008.

⁴⁰³ Interview with Jovan Dulović, journalist, I Stojanovic, HLC researcher, for the Impunity Watch project, 15 April 2008.

⁴⁰⁴ Following the disintegration of the SFRY, the FRY proclaimed uninterrupted subjectivity of Yugoslavia in the preamble of its constitution from 1992, while the Federal Assembly stated that it would observe all the international obligations assumed by the SFRY. See: BG Centar, Human Rights in Yugoslavia 2000, Belgrade 2001.

⁴⁰⁵ The Law on the Ratification of the Rome Statute of the ICJ, *Official Gazette of the FRY, International Agreements*, No 5/01, p3; Law on the Ratification of the European Convention on Mutual Legal Assistance in Criminal Matters with Additional Protocol, *Official Gazette of the FRY, Int. Agreements*, No 10/01, p14; Law on the Ratification of the European Convention on Extradition with Additional Protocols, *Official Gazette of the FRY, Int. Agreements*, No 10/01, p24; Law on the Ratification of the European Convention on the Transfer of Proceedings in Criminal Matters, *Official Gazette of the FRY, Int. Agreements*, No 10/01, p36; Law on the Ratification of the European Convention on the International Validity of Criminal Judgments with Additional Protocols, *Official Gazette of the FRY, Int. Agreements*, No 13/02, p32; Law on the Ratification of the European Convention on the Protection of Human Rights and Fundamental Freedoms, *Official Gazette of S&M, Int. Agreements*, No 9/03, p16; Law on the Ratification of the Convention on the Prevention of Torture and Inhuman or Humiliating Treatment or Punishment, amended by Protocol 1 and Protocol 2 to the Convention, *Official Gazette of S&M, Int. Agreements*, No 9/03, p7.

⁴⁰⁶ Decision on the Declaration of Independence of the Republic of Montenegro, *Official Gazette of the Republic of Montenegro*, No 36/06 of 3 June 2006.

⁴⁰⁷ The Constitutional Charter of the State Union of Serbia and Montenegro, *Official Gazette of Montenegro*, No 00-11-014, p1, 14. January 2003, Art 63; BG Centar, *Supra* n. 24, p41.

⁴⁰⁸ The Constitution Charter of the S&M, *Official Gazette of Serbia and Montenegro*, No 00-11-014, p1, 14 January 2003.

⁴⁰⁹ 1990 Serbian Constitution of the RS, *Supra* n 38.

ombudsmen.⁴¹⁰ The new Constitution of Serbia was adopted in 2006, through a poorly implemented procedure, providing significantly less guarantees for the protection of human rights.⁴¹¹

(ii) The Protector of Citizens (Ombudsman)

○ The establishment of the Ombudsman institution in Serbia took place gradually and slowly. The first ombudsman to be established was at provincial level in 2002,⁴¹² opening the way for the establishment of Local Ombudsmen. This was followed by the statutory introduction of the national Ombudsman in 2005, and a year later, the Ombudsman institution was finally recognised in the constitution.⁴¹³

Citizens' Defender/Protector of Citizens (Local Ombudsman). The adoption of the Law on Local Self-Government in 2002/2007,⁴¹⁴ provided for the possibility of introducing the institution of citizens' defender (since 2007 – protector of citizens) in local government units.⁴¹⁵ The potential protector of citizens has the mandate to protect individual and collective rights and interests of citizens by scrutinising the work of the authorities and public services. In the territory of Serbia, there are 192 municipalities and 29 districts respectively, while only 14 Local Ombudsmen have been established thus far.

Provincial Citizens' Defender (Provincial Ombudsman). The 2002 law regulating the competences of Serbia's autonomous provinces specifies the possibility for the authorities in an autonomous province to establish and regulate the function of Provincial Ombudsman.⁴¹⁶ In 2002, the Assembly of Vojvodina adopted a resolution⁴¹⁷ establishing a Provincial Ombudsman as an independent and autonomous body responsible for overseeing the protection and promotion of human rights and freedoms of each individual.⁴¹⁸ Petar Teofilović was appointed as Provincial Ombudsman after a long delay, and provided with the necessary office premises.⁴¹⁹

⁴¹⁰ D Pavlović, *Novi Ustav Srbije* [The New Constitution of Serbia], Prva Ruka, 9 March 2005, p3, 14, available on the website of the International Policy Fellowships (IPF) programme:

http://www.policy.hu/pavlovic/Bibliografija/Ustavna_%20reforma_2005.pdf (accessed on 7 May 2008).

⁴¹¹ BG Centar, *Ljudska prava u Srbiji 2007* [Human Rights in Serbia in 2007], Belgrade 2008, p40-41; Impunity Watch, YIHR, HLC, YUCOM, HOS, *Analiza nepravilnosti tokom referenduma o potvrđivanju predloga ustava Srbije* [An analysis of the irregularities during the referendum on the confirmation of the Constitution of Serbia]; 28 local and foreign NGOs signed a statement entitled *Halt the Lowering of the Level of Human Rights Protection*, criticising human rights protection anticipated by the new Constitution of Serbia, 25 October 2006, available on the YIHR website: http://www.yihr.org/sao.php?id=123&lang=_bhs/ (accessed on 7 May 2008).

⁴¹² Law on the Establishment of Certain Competences of the Autonomous Province, *Official Gazette of the Republic of Serbia*, No 6/02, p1, Art. 56; Decision on the Provincial Ombudsman, *Official Gazette of the Autonomous Province of Vojvodina*, Nos 23/02 and 5/04.

⁴¹³ Human Rights Committee, A Milijašević, *The Institution of Ombudsman in Serbia – The First Step*, Valjevo, November 2006, available on the website of the Human Rights Committee: <http://www.odbor.org.yu/Institucija%20Ombudsmana.html> (accessed on 7 May 2008).

⁴¹⁴ The Law on Local Self-Government, *Official Gazette of the Republic of Serbia*, Nos 9/02, 129/07

⁴¹⁵ Ibid, Art 126.

⁴¹⁶ Law on the Establishment of Certain Competences, *Supra* n 413, Art 56.

⁴¹⁷ Decision on the Provincial Ombudsman, *Supra* n 419.

⁴¹⁸ Ibid, Arts 1, 2.

⁴¹⁹ Republic of Serbia, Autonomous Province of Vojvodina, Provincial Ombudsman, official presentation, available on the website of the Provincial Ombudsman: <http://www.ombudsmanapv.org/onama.html/> (accessed on 7 May 2008).

National Protector of Citizens (National Ombudsman). The Law on the Protector of Citizens was adopted in 2005⁴²⁰ and amended in 2007⁴²¹. Provisions on the Protector of Citizens were included in the new constitution of Serbia.⁴²² After various procedural problems lasting for about a year, the National Assembly appointed Saša Janković as the National Ombudsman in June 2007. He assumed office in July, while the necessary premises for his work were provided only at the end of the year.⁴²³

(iii) The Constitutional Court

The constitution defines the Constitutional Court as an independent and autonomous state body responsible for protecting constitutionality and legality, as well as human and minority rights and freedoms, its decisions being final, legally binding and generally binding.⁴²⁴ The Constitutional Court is also competent to decide on the compatibility of laws and other enactments with the constitution, generally accepted rules of international law and ratified international agreements. In 2006, when the then-President of the Constitutional Court of Serbia, Slobodan Vučetić, became eligible for retirement, the work of the court, which had been functioning for the past two years with seven instead of nine judges,⁴²⁵ was practically blocked. The current regulations do not provide for the appointment of a deputy or acting president of the Court in the event of the term of office of the president being terminated, regardless of the reason, while court sessions may only be convened by the president.⁴²⁶ The obstruction of the court ended after more than a year, following the adoption of the Law on the Constitutional Court in 2007,⁴²⁷ after which ten of the 15 judges required were appointed on the basis of a new procedure,⁴²⁸ with the appointment of Bosa Nenadić as President.⁴²⁹

Assessment of the constitutionality and legality of enactments. The procedure for assessing constitutionality and legality may be initiated by state authorities, the authorities of the autonomous province or local government, or by not less than 25 deputies, as well as by the Constitutional Court itself on the basis of a two-thirds majority of all its judges.⁴³⁰ Also, any legal entity or physical person is entitled to request an assessment of constitutionality and legality.⁴³¹

Constitutional appeal. The new constitution⁴³² and the Law on the Constitutional Court adopted in 2007 introduced the constitutional appeal⁴³³ into the legal system of Serbia for

⁴²⁰ The Law on the Protector of Citizens, *Official Gazette of the Republic of Serbia*, No 79/05, p74.

⁴²¹ The Law on the Protector of Citizens, *Official Gazette of the Republic of Serbia*, No 54/07.

⁴²² 2006 Serbian Constitution, *Supra* n40.

⁴²³ Bg2, *Ombudsman položio zakletvu* [Ombudsman Takes the Oath of Office], 23 July 2007, available on the Bg2 website:

http://www.bg2.net/info/vesti/index.php?yyyy=2007&mm=07&dd=23&nav_id=256505&nav_category=11 (accessed on 22 April 2008).

⁴²⁴ 2006 Serbian Constitution, *Supra* n40, Art 166.

⁴²⁵ 2006 Serbian Constitution, *Supra* n40, Art 126.

⁴²⁶ Law on Proceedings before the Constitutional Court and the Legal Effect of its Decisions, *Official Gazette of the Republic of Serbia*, Nos 32/91, 67/93 and 101/05, Art 43.

⁴²⁷ Law on the Constitutional Court, *Official Gazette of the Republic of Serbia*, No 109/2007.

⁴²⁸ The appointment of the remaining five of the 15 judges required, to take place after the formation of the High Judicial Council, the State Prosecutors Council, and the Supreme Cassation Court; TANJUG, *Decision to be rendered in 15 days*, 9 April 2008.

⁴²⁹ Constitutional Court, Vesti, *Izbor predsednika Ustavnog suda*, [Appointment of the President of the Constitutional Court], available on the website of the Constitutional Court:

http://www.ustavni.sud.sr.gov.yu/vesti/lat_vesti_full.php?idvesti=32 (accessed on 24 April 2008).

⁴³⁰ 2006 Serbian Constitution, *Supra* n 40, Art 168; the Law on the Constitutional Court of Serbia, *Supra* n 427, Art 50.

⁴³¹ 2006 Serbian Constitution, *Supra* n 40, Art 168.

⁴³² *Ibid*.

⁴³³ Note: A type of constitutional appeal existed in Serbia in the period 1963-74 under the 1963 Constitution of the Socialist Republic of Serbia, art 229, which defined the competence of the Constitutional Court of Serbia in deciding directly “on the protection of self-management rights and other fundamental freedoms and

the first time, or more precisely, for the first time after more than four decades.⁴³⁴ The provisions provide for the filing of constitutional appeals against enactments or acts by state authorities or organisations with delegated powers that infringe or deny human or minority rights and freedoms guaranteed by the constitution. Constitutional appeals may be filed only if other legal remedies for the protection of these rights and freedoms have been exhausted, or if they have not been provided at all.⁴³⁵

(iv) Protection of national minority rights

The constitution defines Serbia as a state “of the Serbian people and all the citizens living in it”,⁴³⁶ thus declaring that the state must protect the rights of national minorities as well as guarantee their special protection to ensure their full equality and the preservation of their identity.⁴³⁷ In addition to the rights that it guarantees for all citizens, it provides for the protection of additional individual or collective rights for national minorities, including the possibility of members of national minorities electing national councils in order to exercise their rights to self-government in the sphere of culture and education and official use of their respective languages and scripts.⁴³⁸ In reference to special rights guaranteed to members of national minorities, the constitution specifies a ban on discrimination⁴³⁹ and forceful assimilation,⁴⁴⁰ equality in managing public affairs,⁴⁴¹ the right to preserve specific national characteristics,⁴⁴² and the right to association and cooperation with members of the same nationality.⁴⁴³

The Law on the Protection of National Minority Rights and Freedoms⁴⁴⁴ (The Law on the Protection of National Minorities) was adopted in 2002 as a federal law of the FRY. After the FRY ceased to exist in 2003, the State Union established thereafter enacted its Constitutional Charter specifying that the laws of the FRY would be applicable as laws of its member states until the adoption of new laws, or unless their assemblies decided otherwise.⁴⁴⁵ The Assembly of Serbia decided that the Law on the Protection of National Minority Rights and Freedoms should be implemented as a framework law, while a series of other laws would regulate different areas in greater detail.⁴⁴⁶

rights established by the Constitution”, *Official Gazette of the SRK*, No 14/63, p257; at federal level, the constitutional appeal was introduced by the constitution of the FRY of 27 April 1992, the constitution of the FRY, O.G. of the FRY, No 1/92, art 124, and then pursuant to the Constitutional Charter of the State Union of SCG, however, this appeal was a completely ineffective legal remedy in practice. BG Centar, *Ljudska prava u Srbiji* 2006 [Human Rights in Serbia 2006], Belgrade 2007, p38.

⁴³⁴ Law on the Constitutional Court, *Supra* n. 427.

⁴³⁵ 2006 Serbian Constitution, *Supra* n 40, Art 170.

⁴³⁶ *Ibid*, Art 1.

⁴³⁷ *Ibid*, Art 14.

⁴³⁸ 2006 Serbian Constitution, *Supra* n 40, Art 75.

⁴³⁹ *Ibid*, Art 76.

⁴⁴⁰ *Ibid*, Art 78.

⁴⁴¹ *Ibid*, Art 77.

⁴⁴² *Ibid*, Art 79.

⁴⁴³ *Ibid*, Art 80.

⁴⁴⁴ The Law on the Protection of the Rights and Freedoms of National Minorities, *Official Gazette of the FRY*, Nos 11/02 and 57/02.

⁴⁴⁵ The Constitutional Charter of SCG, *Supra* n 408, Art 64,

⁴⁴⁶ BG Centar, *Ljudska prava u SCG 2005* [Human Rights in SCG in 2005], Belgrade, 2006, p213.

The Law on Local Self-Government was adopted in 2007, regulating all aspects relating to the establishment and exercise of the rights and responsibilities of local-self-government units.⁴⁴⁷

The Legislative Reform Programme in the Field of Human Rights in the Republic of Serbia⁴⁴⁸ was adopted in 2006 within the framework of the State Union Ministry for Human and Minority Rights Support Initiative, a project supported by the Ministry of Foreign Affairs of Denmark, which was implemented by the Ministry of Human and Minority Rights of the State Union, the Danish Institute for Human Rights and the European Centre for Minority Issues. The programme includes a detailed overview of existing legislative solutions and applicable international documents, as well as problems and gaps in the legislation identified on the basis of a “law-by-law analysis”, that is, by comparison of individual laws with the Constitution of the Republic of Serbia, current legislation and international standards that were the basis for identifying appropriate solutions.⁴⁴⁹

(v) Official institutions for minority rights protection

The Council for National Minorities of the Republic of Serbia was founded in 2004 by a government decree, which was subsequently amended on two occasions.⁴⁵⁰ Its establishment was anticipated by the Law on the Protection of National Minority Rights and Freedoms.⁴⁵¹ The purpose of establishing the Council for National Minorities is the preservation, promotion and protection of national, ethnic, religious, language and cultural specificities of national minorities.⁴⁵²

Ministry for Human and Minority Rights. Following the dissociation of the State Union, the Ministry for Human and Minority Rights was dissolved, having functioned until then at the level of the State Union. Thereafter, the government of Serbia established the Service for Human and Minority Rights,⁴⁵³ which was to assume the role of the former ministry, taking over the necessary number of employees from the former ministry, as well as rights, obligations, cases, equipment, work resources and archives.⁴⁵⁴ Petar Ladjević, who had until then held the office of Secretary of the Council for National Minorities of the Republic of Serbia,⁴⁵⁵ was appointed director of the new service. After the formation of the new government following early parliamentary elections in May 2008, after a brief period of uncertainty and the exertion of public pressure, the Ministry of Human and Minority Rights was reinstated, with Svetozar Čiplić as minister.⁴⁵⁶

⁴⁴⁷ The Law on Local Self-Government, *Supra* n 415, Art 1.

⁴⁴⁸ Ministry of Human and Minority Rights of the State Union of Serbia and Montenegro, *Legislative Reform Programme in the Area of Human Rights – Overview for the Republic of Serbia*, 19 May 2006.

⁴⁴⁹ *Ibid*, p7.

⁴⁵⁰ Decree on the Establishment of the Council for National Minorities of the Republic of Serbia, *Official Gazette of the Republic of Serbia*, No 104/04; Decree Amending the Decree on the Establishment of the Council for National Minorities of the Republic of Serbia, *Official Gazette of the Republic of Serbia*, No 117/05; Decree Amending the Decree on the Establishment of the Council for National Minorities of the Republic of Serbia, *Official Gazette of the Republic of Serbia*, No 49/06.

⁴⁵¹ Law on the Protection of the Rights and Freedoms of National Minorities, *Official Gazette of the FRY*, No 11/02.

⁴⁵² Decree on the Establishment of the Council for National Minorities, *Supra* n. 450, Art 1.

⁴⁵³ Decision on the Establishment of the Service for Human and Minority Rights, *Official Gazette of the Republic of Serbia*, No 55/05 and 71/05 - corrected

⁴⁵⁴ *Ibid*, Art 7.

⁴⁵⁵ Government of the Republic of Serbia, Human Resource Solutions, *142nd Meeting of the Government of Serbia*, 22 June 2006, available on the website of the Government of Serbia:

http://www.srbija.sr.gov.yu/vesti/dokumenti_pregled.php?id=43279/ (accessed on 18 April 2008).

⁴⁵⁶ B92, *Coalition for a European Serbia withdraws the disputed amendment*, 2 July 2008, available on the B92 website: http://www.b92.net/info/vesti/index.php?yyyy=2008&mm=07&dd=02&nav_id=306592 (accessed on 18 August 2008); BLIC, *Nova vlada za brži put u Evropu* [New Government Opts for a Faster Track to Europe], 8 July 2008.



National Councils of the National Minorities of the Republic of Serbia. The law on the protection of minorities provides members of national minorities with the possibility to establish national councils, the purpose of which is to safeguard their right to self-government in matters involving use of their respective languages and scripts, education, information and culture.⁴⁵⁷

Councils for Inter-ethnic Relations. The Law on Local Self-Government provides for the establishment of councils for inter-ethnic relations in ethnically mixed local-self-government units,⁴⁵⁸ which function as independent working bodies composed of representatives of the Serbian people and representatives of national minorities where they comprise more than 1% of the population in the given territory. The councils have competence to review issues relating to the implementation, protection and promotion of national equality in accordance with the law. If established, national councils of national minorities are obliged to nominate candidates for inter-ethnic council membership from the ranks of their national minority.

(vi) Education – the period of conflicts and other topics relating to the issue of transitional justice within the framework of the curriculum

No special regulations have been adopted in Serbia envisioning the introduction of topics discussing the conflicts on the territory of the former Yugoslavia and the crimes committed within their framework, or topics discussing the period of the regime of Slobodan Milošević.⁴⁵⁹ The Ministry of Education avoided providing Impunity Watch with precise information about the coverage of these topics in the curriculum,⁴⁶⁰ as a result of which a survey was made of the textbooks approved by the Ministry of Education that include a significant volume of information about the above-mentioned topics. The results of this survey support the widespread thesis that the events of the recent past are inadequately portrayed in the curriculum.⁴⁶¹ The textbooks include an extremely one-sided presentation of the recent past with a clear emphasis on the negation and relativisation of the crimes that took place.

⁴⁵⁷ Rules of Procedure for the Election of National Minority Councils by Electoral Assemblies, *Official Gazette of the FRY*, No 41/02, Art 9.

⁴⁵⁸ Nationally mixed local self-government units, for the purposes of art 98 of the Law on Local Self-Government, are local self-government units where members of one national minority account for more than 5% of the total number of inhabitants or where members of all national minorities account for more than 10% of the total number of inhabitants in accordance with the last census in the Republic of Serbia.

⁴⁵⁹ See: *Laws Adopted* and *Other Enactments*, on the website of the National Assembly of Serbia: <http://www.parlament.sr.gov.yu/content/lat/index.asp> (accessed on 27 May 2008), as well as *Regulations* on the website of the Ministry of Education and Sports: <http://www.mps.sr.gov.yu/code/navigate.php?Id=473> (accessed on 17 May 2008).

⁴⁶⁰ YUCOM researchers working on the Impunity Watch Project, Lena Pelić and Milan Antonijević, forwarded a request to the Ministry of Education of the Republic of Serbia referring to the freedom of access to information and requesting to be provided with information about the method and the way in which the period of conflicts, political oppression and grievous crimes and violations of international law have been incorporated in the elementary and secondary school curricula. Rather than following the standard procedure, the Ministry of Education sent a reply to the Office of the Commissioner instead of to the applicant, stating that it had no such information. YUCOM was not provided any information to that effect. The Commissioner forwarded a letter to the ministry requesting that it submit the information requested and that it review the request submitted to it once again, considering that it was highly unlikely that the Ministry of Education had no such data at its disposal. Since YUCOM received no reply to its request within the legally specified term, it filed an appeal with the Commissioner, following which the ministry submitted only a list of 117 regulations that the ministry had applied in defining the curricula, however, without providing the contents of the curricula, which were the subject of the request.

⁴⁶¹ HOS, HOS website: www.helsinki.org.yu (accessed on 4 October 2008).

II Analysis of guarantees of non-recurrence of crimes and identification of obstacles

a) Analysis of special measures to guarantee non-recurrence and identification of obstacles

(i) Lustration

The implementation of lustration in Serbia began in several ways – with the adoption of the general Law on Lustration,⁴⁶² the introduction of specific lustration provisions in several different laws,⁴⁶³ and with a number of removals of judges from office, relying on the applicable regulations in that process.⁴⁶⁴ The Law on Lustration itself is an appropriate legal basis, although it contains certain omissions. As noted by the Belgrade Human Rights Centre, the authoritarian period which is the subject of the law is imprecisely defined, as a result of which the law applies to both the present and the future in a confusing manner, which may lead to lustration losing all sense as an instrument for overcoming the authoritarian past.⁴⁶⁵ Taking the date of the adoption of the International Covenant on Civil and Political Rights (ICCPR) as the date for commencing application of the Law on Lustration raised the issue of the need to delineate the period of the former one-party system and the period following the establishment of a multi-party system, which provided the framework for an even more authoritarian regime.⁴⁶⁶ Similarly, the law does not define the character of coercion, threat, blackmail and other forms of impermissible pressure which constitute the basis for excluding responsibility for human rights violations,⁴⁶⁷ failing to emphasise that only serious and significant forms of pressure should be taken into account. Likewise, the provision specifying the exclusion from responsibility of persons who provided information during interrogation or detention by the police, or while in prison or custody, is not precise, because it is possible that a person who found him/herself in any of these unexpected situations could have provided information to BIA or another such service for personal reasons or for reasons of personal benefit, which should not constitute grounds for excluding responsibility.⁴⁶⁸ In practice, the problematic provisions of this law are those whose essential premise cannot be objected to, such as the one requiring the members of the Lustration Committee drawn from the ranks of the parliamentary deputies to be from different lists.⁴⁶⁹ This provision, which is quite proper, has caused a blockage in the election of members to the committee because of the specific circumstances under which the elections that preceded the formation of the National Assembly were conducted.⁴⁷⁰ The second problem was emphasised by the members of the Committee itself. It relates to the consistency between the deadlines in the lustration process and those specified by election laws.⁴⁷¹ The most serious problem in terms of the legislative framework, however, is the dependence of the application of the Law on Lustration on the adoption of a law regulating

⁴⁶² Law on Lustration, *Supra* n 389.

⁴⁶³ Law on the University, *Supra* n 392.

⁴⁶⁴ Decision on the Relief of Duty of Court Presidents, *Supra* n 381; Decision on the Relief of Duty of the President of the Supreme Court, *Supra* n 381; Decision on the Relief of Duty of the National Public Prosecutor, *Supra* n 381.

⁴⁶⁵ BG Centar, *Ljudska prava u SCG 2003* [Human Rights in SCG in 2003] p198, Belgrade 2004; Lawyers' Committee for Human Rights – YUCOM, Bulletin No 2: *Lustracija* [Lustration], January 2004.

⁴⁶⁶ YUCOM, *Lustracija*, *Supra* n 465, January 2004.

⁴⁶⁷ The Law on Lustration, *Supra* n 389, Art 8.

⁴⁶⁸ BG Centar, *Ljudska prava u SCG 2003*, Belgrade 2004, p199.

⁴⁶⁹ The Law on Lustration, *Supra* n 388, Art 23.

⁴⁷⁰ *Ibid*, Arts 15, 16.

⁴⁷¹ Law on the Election of Representatives to the National Assembly, *Official Gazette of the Republic of Serbia*, no 35/00, Art 26.

the opening of secret service files, which is still pending, along with the complete opening of the files. Without this, the committee cannot objectively perform its tasks.⁴⁷²

On the other hand, the former, so-called lustration provision in the Law on Judges⁴⁷³ was based on a very precisely defined text and description of infringement of rights,⁴⁷⁴ while the Law on the University is much more precise and clearly focuses on eliminating or mitigating the negative consequences of the two years of application of the former law. The “lustration provision” of the Law on the University was adopted after long debates in parliament, in a very mild and, above all, non-compulsory form, which certain experts believe cannot be defined as lustration.⁴⁷⁵ It specifies that while lustration may be carried out, it is not necessary and is subject to a limited period of time. This solution disregarded practically all the remarks made in the parliamentary debate on the provision. It has also provided for a tacit amnesty of the rectors, deans and managing board that either permitted or organised the presence of the police and the use of oppression against students and professors.⁴⁷⁶ On the other hand, the application of the law has caused many uncertainties and, according to media reports, has opened up debates about whether the price of lustration at the university has been paid by the wrong individuals.⁴⁷⁷ Removals from office in the judiciary, considered as lustration by the general public, were not based on a defined legal framework, which evidently represents a significant omission.

The lack of funds and an inadequate budget have been very often cited as the major problem in the implementation of the Law on Lustration.⁴⁷⁸ This would have had little or no significance for the implementation of the remaining forms of lustration in Serbia, considering that they did not require significant resources. It is evident that very small financial resources have been allocated for the functioning of the committee,⁴⁷⁹ considering that all its members, except for eminent legal experts, are persons already receiving salaries from the state and are thus not entitled to receive additional payment for their employment as members of the Lustration Committee. They are only entitled to certain reimbursements, which can be settled within the existing budget. However, it is not clear why budgetary funds have been allocated annually to a committee which has not been functioning for years now. It is also difficult to find an excuse for the fact that the state has not provided office premises for the functioning of the Lustration Committee, considering that the Republic of Serbia, at present, has a large number of unused premises that once belonged to the former federal institutions and/or the institutions of the State Union of SCG.⁴⁸⁰

⁴⁷² YIHR, Report No 10, Programme for the protection of human rights, The rule of law – road to democratic development. The application of transitional laws in Serbia, Belgrade 2005, p15-18.

⁴⁷³ The Law on Judges, *Supra* n 395, Art 79a.

⁴⁷⁴ BG Centre, 2003, *Supra* n 396, p200.

⁴⁷⁵ VREME, S. Ast, *Intervju - Prof. dr Vladimir Vodinelić: Neverovatna lakoća zaborava* [The Incredible Ease of Oblivion], No 591, 2 May2002.

⁴⁷⁶ *Ibid.*

⁴⁷⁷ DANAS, Z. Miladinović, *Lustracija kao “naša posla”* [Lustration as ‘our business’], 17 July 2003.

⁴⁷⁸ DANAS, *Budući poslanici proći će lustracionu proveru* [Future Deputies to Pass Lustration Vetting], 27 November 2003.

⁴⁷⁹ The Budget Law of the Republic of Serbia for 2004, *Official Gazette of the Republic of Serbia*, no 127/04 2005, *Official Gazette of the Republic of Serbia* no 66/05, 2006, *Official Gazette of the Republic of Serbia* no 106/05, 2007 *Official Gazette of the Republic of Serbia* no 58/07, and 2008 *Official Gazette of the Republic of Serbia*, no123/07.

⁴⁸⁰ GLAS JAVNOSTI, S Jovičić, *Zajednica SCG smeštena u 150.000 kvadrata* [The Union of SCG accommodated within 150.000m²], 05/01/2004; POLITIKA, *Kakav je to potencijal - “Palata Federacije”/“Palata Srbije” na*

Another evident problem is the non-election of committee members from the ranks of parliamentary deputies, a fact unequivocally demonstrating the lack of political will to apply the law. The existence of a clear polarisation among the political parties was evident even at the time of adoption of the law, when some supported the implementation of the lustration process while others opposed it. Following elections late in 2003,⁴⁸¹ a parliamentary majority was formed by the parties which were not in favor of the adoption of the lustration law in the previous parliament, and which made public statements advocating abandoning implementation of the process.⁴⁸² As regards the Lustration Committee itself, even though it was not faced with real obstacles, it convened only three times, out of which two meetings were constitutive meetings.⁴⁸³ No preliminary lustration proceedings have been implemented despite the numerous presidential, parliamentary and other elections that have taken place in the meantime, and no sanctions have been applied for non-enforcement of the law by the authorities, organisations and the committee itself, a fact that diminishes the authority of this law and of legislation in general, according to YUCOM.⁴⁸⁴ Only two members of the committee have advocated the need to implement a preliminary lustration procedure. The removals of judges from office, even though more than justified, indirectly contributed to the compromising of the lustration concept as a result of its inadequate regulation.⁴⁸⁵ However, the fact has to be taken into account that this procedure resulted in the creation of the minimum conditions for the functioning of the courts in the period immediately after the fall of the Milošević regime. The enforcement of lustration provisions through certain laws had a very limited effect which did not play a significant role in the overall transitional justice process and/or in providing guarantees of non-recurrence of crime.

(ii) Vetting

The state has taken no serious steps towards facilitating the implementation of a thorough vetting process. It has not adopted an adequate legal framework nor provided resources, while showing an absence of political will for implementing this process. The initiatives that have been launched and the results achieved are only isolated cases demonstrating the will of civil society to implement transitional justice. State institutions have shown their readiness to respond to such initiatives by civil society organisations and public pressure only when supported by the international community. The lack of state engagement in normative regulation of this area could be justified if the Law on Lustration had been put into practice. Then it could then be said that it had opted for a specific model, believing its implementation to be sufficient, and so on. However, in a situation where that law does not function, while civil society, through its own engagement, insists on a different way of approaching the problem, one would expect the state to respond to and use the stimulus produced by the civil sector, then start a dialogue to identify the most adequate and functional solution, and attempt to legally regulate the situation.

Novom Beogradu [The Potential of the “Federation Palace/Serbian Palace” in New Belgrade], 6 October 2007.

⁴⁸¹ RIK, Report on the Results of the Election of Representatives to the National Assembly of the RS held on December 28, 2003, *Official Gazette of the Republic of Serbia*, No 131/03, p1.

⁴⁸² DSS, SRS, SPS and SNS, See: DANAS, *Vesna RAKIĆ-VODINELIĆ: Čudi me da je to prioritet SRS i DSS* [I am surprised that that is the priority of the SRS and DSS], 4 February 2004.

⁴⁸³ DANAS, *Budući poslanici proći će lustracionu proveru*, [Future deputies shall go through lustration] 27 November 2003.

⁴⁸⁴ YUCOM, *Lustracija*, *Supra* n 467.

⁴⁸⁵ HERETICUS, V. Rakić-Vodinečić, *Neuspešan pokušaj lustracije*, *Supra* n 383.

b) Analysis of general non-recurrence measures and identification of obstacles

(i) Analysis of the Ombudsman institution in Serbia

Although the Government undertook in 2002 to form the Ombudsman institution within a year of accession to the Council of Europe, the process of its establishment was very slow and, it appears, plagued with many difficulties that have not yet been overcome. It is evident that even after the adoption of the relevant laws - which seem to have been adopted in the opposite order - the process of establishing the institution went very slowly. The absence of a clear strategy for the introduction of the Ombudsman institution is highlighted by the fact that until 2007, the Ombudsmen at all three levels were referred to by different names. It was only after the introduction of the new Law on Local Self-Government that the names of the National and Local Ombudsmen were made the same (Protector of Citizens), while the Provincial Ombudsman retained the name "Ombudsman".⁴⁸⁶

As regards the Local Ombudsman, the problem is that this institution has been established in a relatively small number of local self-government units, primarily because the law does not specifically oblige them to do so.⁴⁸⁷ The next and, it appears, much more serious problem is the inclusion of a provision in the new Law on Local Self-Government that reduces the competence of the Local Ombudsman to intervening only in cases of violation of local regulations, which implies a significant narrowing of this office's role.⁴⁸⁸ As a result, the significance of the institution as a measure for guaranteeing non-recurrence of crimes is reduced to negligible.

As regards the Provincial Ombudsman, appointment and provision of conditions for his functioning, including the establishment of an office and provision of technical equipment, has exceeded the legally prescribed deadlines. The Provincial Ombudsman has publicly expressed his dissatisfaction with the resources so far provided by the budget,⁴⁸⁹ which seems to be justified given the very ambitious and advanced programmes of this body.⁴⁹⁰ However, considering the budgetary framework within which it functions, it is evident that the province is in this respect limited. Namely, the budget of the Provincial Ombudsman for 2008 corresponds to half of the budget at the disposal of the Executive Council of Vojvodina for the same period.⁴⁹¹

An issue that gives rise to concern, and that has been highlighted by the Provincial Ombudsman, is the fact that the Statute of Vojvodina⁴⁹² and the Rules of Procedure of the Assembly of Vojvodina⁴⁹³ have not yet been supplemented by the provisions regulating the functioning of the Provincial Ombudsman.⁴⁹⁴

⁴⁸⁶ Report by the Provincial Ombudsman for 2006, Autonomous Province of Vojvodina, Ombudsman, Official presentation, available on the webpage of the Ombudsman of AP Vojvodina: <http://www.ombudsmanapv.org/dokumenti.html> (accessed on 22 April 2008).

⁴⁸⁷ Law on Local Self-Government, *Supra* n 415.

⁴⁸⁸ *Ibid.*

⁴⁸⁹ DANAS, A. Roknić, *Izbor ombudsmana na sledećoj sednici parlamenta*, [Election of the Ombudsman at the Next Parliamentary Session], 7 June 2007.

⁴⁹⁰ Report by the Provincial Ombudsman, *Supra* n 486.

⁴⁹¹ Decision on the Budget of AP Vojvodina for 2008, *Official Gazette of AP Vojvodina*, No 03/08.

⁴⁹² Statute of AP Vojvodina, *Official Gazette of AP Vojvodina*, No 17/91.

⁴⁹³ Rules of Procedure of the Assembly of the AP Vojvodina, *Official Gazette of AP Vojvodina*, Nos 23/2002, 30/2004 and 4/2008.

⁴⁹⁴ DANAS, *Izbor ombudsmana*, *Supra* n 491.

The most serious problems in establishing the Ombudsman institution have been witnessed at national level. Just as in the case of the Provincial Ombudsman, the appointment of the National Ombudsman and the establishment of appropriate office premises took place after the legally prescribed deadlines. The procedure for the appointment of the National Ombudsman involved significant shortcomings.⁴⁹⁵ Only one candidate was nominated, and no expert consultations were conducted.⁴⁹⁶ Following a strong reaction by human rights organisations, the appointment of the same candidate was simply postponed by a year, after which the procedure was repeated in the same manner.⁴⁹⁷ As the Venice Commission has noted, a large failing of the constitutional solution for the National Ombudsman institution is the assignment to it of insufficient independence from the National Assembly. Namely, it provides no mechanisms for the protection of the National Ombudsman in situations where the National Assembly might try to remove him/her from office without justification and before the expiry of the incumbent's term of office. The provisions of the constitution relating to the National Assembly's supervision of the National Ombudsman and the latter's accountability to the Assembly for his/her work have been identified as potentially disputable.⁴⁹⁸ The state-level Law on the Protector of Citizens does not include the provisions of the provincial equivalent which specify that a certain number of parliamentary deputies must be appointed from the ranks of national minorities and the less represented sex.⁴⁹⁹ The Protector of Citizens cannot control the National Assembly, the prime minister, the government, the Constitutional Court, the courts and the Public Prosecutor's Offices, which reduces his/her capacity to protect human rights and freedoms to a minimum. In addition, the law seriously reduces the ability of the National Protector of Citizens to review the necessary information and documentation of administrative bodies, since the latter are entitled to turn down the National Ombudsman's request to inspect secret data if it is deemed "contrary to the law".⁵⁰⁰ The Protector of Citizens may take measures to protect the rights of citizens only when all other legal remedies have been exhausted, while retaining the discretion in exceptional cases only to determine that this condition does not have to be met.⁵⁰¹ The state-level law, like the provincial equivalent, does not anticipate protection for the individual making a submission from eventual institutional retaliation for having done so.⁵⁰²

The provision specifying that both domestic and foreign citizens and legal persons may appeal to the Protector of Citizens can be judged as positive, where protection is sought in relation to the authorities of the Republic of Serbia.⁵⁰³ However, the limitation of this right to violations occurring after the law came into force⁵⁰⁴ eliminates the possibility of engaging this body in relation to cases involving gross human rights violations committed in the past. Finally, it must be stated that the amendments made to the law in 2007 represent a significant improvement. The major decisions anticipated by this law must be adopted by a majority vote of parliamentary deputies, deputy Protectors of Citizens have been accorded the same immunity as the Protector of Citizens him/herself, and the Protector of Citizens has been entitled to present drafts laws within the office's sphere of competence.⁵⁰⁵

⁴⁹⁵ Group of NGOs, *Urušavanje kredibiliteta*, [Credibility Caving In], Bg Center. Available on the webpage: <http://www.bgcenter.org.yu/index.php?&p=130&search=ombudsmana&nid=125> (accessed on 24 April 2008).

⁴⁹⁶ National Assembly of Serbia, activities, 6th session of the Committee on Constitutional Matters.

⁴⁹⁷ National Assembly of Serbia, activities, 2nd session of the Committee on Constitutional Matters.

⁴⁹⁸ European Commission for Democracy through Law (Opinion of the Venice Commission on Constitution of Serbia adopted at 70. Plenary Session, 17-18 March 2007), par. 58, p13.

⁴⁹⁹ Decision on the Provincial Ombudsman, *Supra* n 419, Art 6.

⁵⁰⁰ The Law on the Protector of Citizens, *Supra* n 422, Art 21; YIHR, Report on the Implementation of Transitional Laws, 2006, Belgrade.

⁵⁰¹ The Law on the Protector of Citizens, *Supra* n 422, art 25; YIHR, 2006 Report *Supra* n 500.

⁵⁰² YIHR, 2006 Report *Supra* n 500.

⁵⁰³ The Law on the Protector of Citizens, *Supra* n 422, Art 1.

⁵⁰⁴ *Ibid*, Art 43.

⁵⁰⁵ *Ibid*.

(ii) Analysis of the Constitutional Court in Serbia and the constitutional appeal, and identification of obstacles

With the new Constitution of Serbia, the Constitutional Court has been established as a strong and influential institution with a balanced composition, according to the Venice Commission.⁵⁰⁶ The introduction of the constitutional appeal to the legal system of Serbia, including the possibility for individuals to file complaints of human rights infringements, is certainly a very positive step.⁵⁰⁷ However, experience of the constitutional appeal system that formerly existed at federal and State Union levels, as well as the series of problems relating to the establishment of this institution in Serbia, point to the need to dedicate additional attention to the further development of this legal remedy for the protection of human rights. The current legal framework provides general scope for the constitutional appeal to become an effective legal remedy. As regards the rights it encompasses, it is to a certain point unclear why the constitution specifies that a constitutional appeal may be submitted in the event of infringement or denial of human or minority rights and freedoms guaranteed by the constitution,⁵⁰⁸ but makes no mention of the rights and freedoms guaranteed under international law. Constitutional appeals may not be filed for human rights infringements caused by enactments (laws, decisions, decrees and other regulations), the only option in such cases being to seek a judicial review, which the Constitutional Court is not obliged to accept.⁵⁰⁹ Whether or not the constitutional appeal becomes an effective legal remedy in practice will also determine whether it will, as initially planned, represent a “filter” for submissions to the European Court of Human Rights.⁵¹⁰ Concurrently, a poorly functioning or slow Constitutional Court may present an obstacle to controlling constitutionality and legality, its main function.⁵¹¹ The Venice Commission has also warned that the right of the National Assembly to terminate the mandate of a Constitutional Court judge, even in very limited cases, may be problematic, calling for a more precise definition of the provisions regulating this in order to eliminate any potential threats to the independence of the judiciary.⁵¹²

(iii) Analysis of minority rights protection

A review of the normative framework in this field gives the impression that the state does not devote much attention to the issue of national minorities. This appears much more serious when considering that Serbia has recently emerged from a period of wars and rule by a regime whose policy was based on nationalism, international intolerance and xenophobia. Despite this fact, no codified norms regulating the protection of minorities have been introduced to date, nor has the Anti-Discrimination Law been adopted, while certain problematic normative solutions have been adopted within the framework of other laws, such as the Law on Religious Communities and Churches, serving only to deepen the problem.⁵¹³ Following the dissociation of Serbia and Montenegro, the government body in charge of the protection of national minorities was not retained at ministry level. Today,

⁵⁰⁶ Opinion of the Venice Commission, *Supra* n 498, paras 80, 83, pp17, 18.

⁵⁰⁷ See: Opinion of the Venice Commission, *Supra* n 498, para 82, p18.

⁵⁰⁸ 2006 Serbian Constitution, *Supra* n 40, Art 170.

⁵⁰⁹ *Ibid*, Art 168; BG Centar, *Ljudska prava 2006*, *Supra* n 435, p37.

⁵¹⁰ The European Convention, *Supra* n 282, Art 35, specifies that the Court may consider a case only after all internal legal remedies have been exhausted.

⁵¹¹ TANJUG, *Za petnaest dana odlučivanje*, *Supra* n 430.

⁵¹² 2006 Serbian Constitution, 2006, *Supra* n 40, Art 174; Opinion of the Venice Commission, *Supra* n 498, para 84, p18.

⁵¹³ Law on Churches and Religious communities, *Official Gazette of Serbia*, Nos.36/06.

Serbia once again has a Ministry of Human and Minority Rights, but its existence is due to the significant pressure exerted primarily by minority political parties and civil society.⁵¹⁴ The absence of results in this field is best illustrated by the fact that none of the shortcomings in the area of minority rights protection precisely identified by the 2006 Legislative Reform Programme in the Field of Human Rights in the Republic of Serbia have yet been removed.

⁵¹⁴ DANAS *Ministarstvo za manjinska prava ipak u novoj vladi* [Ministry for minority rights in the new government], 03 July 2008.

7 CONCLUSIONS

I The right to truth

- a) From very early on, there has been great awareness that war crimes trials, although without doubt extremely significant, are not sufficient when it comes to securing the right to truth. The limitations posed by rigid judicial proceedings do not provide an adequate platform for victims, nor proper information to society about the crimes committed in the recent past. From the development to date of the process of transitional justice, both at home and in the region, it seems that the truth commission has long figured as a mechanism which could complement trials, but also that this problem has not been addressed in a systematic and consistent way. Furthermore, the complexity of the conflict and the fact that its victims, witnesses and perpetrators are spread throughout various places or countries in the region means that this problem cannot be approached nationally. A regional approach is the only chance.
- b) In order to secure the right to truth, in addition to the testimonies of victims, it is necessary to provide the public with information that the state and its institutions possess. In this sense, it has become clear that it is necessary to open and make dossiers and archives sufficiently accessible to the general public, as well as to ensure their protection.
- c) Having in mind that Serbia is the only country in the world to have been found in violation of the Convention on Prevention and Punishment of Crimes of Genocide by the ICJ, as well as the fact that a recent and very fierce public debate left unanswered the question of the significance of hidden notes from Supreme Defence Council meetings, it can be concluded that the state owes its citizens a clear answer to this question, which can only be provided by opening and making public the contents of these documents.
- d) Furthermore, the institution of the Commissioner for Information of Public Importance is considered extremely significant and very effective, but it is clearly necessary to empower it further.

II The right to justice

In both Serbia and the region, securing the victim's right to justice is the most evident transitional justice process. Progress in this sphere is a direct consequence of the international community's firm engagement, both through the establishment of an *ad hoc* Tribunal and the provision of strong support for capacity-building within domestic institutions for the prosecution of war crimes. The normative framework in this sphere is of the highest quality, developed in line with international standards. These institutions, while still lacking proper funding and resources, do command significant funds provided through the state budget and numerous foreign donations.

- a) What is primarily lacking in this sphere is the construction of judicial institutions with the greatest possible independence. The clear influence of the state is evident in the systematic

covering up of links between the state, the armed forces and the crimes committed. This has been ongoing in the proceedings before these institutions. The act of putting the Public Prosecutor's Office under the control of the executive authorities points to a lack of will to see an independent judicial system established. Based on the results of this research, the conclusion can be drawn unambiguously that the influence of society and public pressure on the judiciary is very strong, and that neither state nor society are undertaking effective steps to prevent this. There have been absolutely no attempts made by the state to establish mechanisms to suppress this problem. The judiciary, which exclusively prosecutes the direct perpetrators of crimes, does not investigate higher command levels, while avoiding evidence that links state institutions with crimes, that is, evidence that points to systemic links between such crimes and the state. This cannot contribute to the proper combat of impunity. It cannot bring about the establishment of the full truth and secure justice for victims. Domestic institutions, to an even lesser extent than the ICTY, pay little regard to the significance that these processes have for the victims. The active engagement of civil society organisations in this sphere is noticeable and in a way alleviates the lack of action by the state. What is needed, therefore, is capacity-building leading towards the independence of judicial institutions, primarily prosecutorial bodies, in order to take a significant step towards opening up the most sensitive questions that were hitherto taboo for the domestic judiciary – the question of mid- to higher-level authors of crimes, those who issued the orders, and the role of the state and its institutions.

- b) The second important conclusion relates to the dynamics of prosecuting war crimes at domestic level. It is clear that, initially, when these specific cases and the challenges that accompany them were met with for the first time, they were dealt with slowly. However, it seems that solutions should have been found by now which would, in accordance with available resources and capacities, speed up proceedings.
- c) Inseparable from the above question is security, both for the employees of institutions dealing with war crimes and witnesses. It appears that this problem can be resolved only by undertaking firm and comprehensive measures. These should include typical protective measures, as well as a number of preventive measures that primarily target the media and the criminal prosecution of hate speech.
- d) Finally, steps should be undertaken to improve the position of victims and strengthen their role in the process.

III The right to reparation

- a) In order to speak of a truly qualitative approach to the issue of reparation, the state should first adopt a clear position towards the crimes committed. Such a position should certainly be based on firm, clear and extensive recognition of the facts that have already been established. Here again, there is a clear need for a mechanism that would systematically establish the facts, thus providing a healthy foundation on which state and society could build a new attitude towards the past.
- b) In parallel, efforts should be made to erect memorials to victims of the wars on the territory of the former Yugoslavia, as well as memorials, monuments and other types of non-material reparations to the victims of genocide in Srebrenica, a crime which the ICJ found Serbia to have failed to prevent and punish. The state owes such reparations both to the victims of genocide and to its own citizens.
- c) Finally, to secure material reparations for individual cases, the domestic legal system should be modified to help increase the efficiency of relevant processes and secure their widespread implementation.

IV Guarantees of non-recurrence of crimes

The degree to which a state and society in transition has succeeded in establishing guarantees that crime will not reoccur reflects the level of progress and success of its transitional justice process. Namely, for a society to be aware that it is necessary to provide such guarantees to victims, as well as to establish how they should be secured, the presumption is that all other elements of transitional justice have been fulfilled.

Therefore, any deficiencies in this sphere point to deficiencies in the previous phases of the process. It seems that through securing the right to justice, which is evidently the most progressive element in the process of combating impunity, not enough has been achieved in Serbia when it comes to establishing facts. Until the truth is clearly defined, and without greater awareness in society and among the political elite, clear institutional reform through a process of lustration and vetting cannot be achieved.

- a) For the state to be ready to offer guarantees of non-recurrence of crimes, it must first adopt a clear position towards the past, which points once more to the much-needed mechanism for establishing and imparting the truth.
- b) Guarantees of non-recurrence of crimes primarily target new generations, and in that sense great attention should be devoted to them. The problem here, clearly pinpointed in this report, lies with history textbooks. However, it is clear that this is only one in a whole series of aspects that have an impact on this part of the population, and adequate intervention is necessary for all of them.
- c) In addition to targeting youth as part of the process of securing guarantees of non-recurrence of crimes, there should be a parallel process of providing a proper system of protection that includes the creation of a more progressive culture of human rights protection. With that in mind, independent domestic institutions and existing mechanisms for protection of human rights need to be strengthened. The substantial support shown by society and the civil sector for the empowerment of the Commissioner for Information of Public Importance, and the powerful and positive role that this institution has obtained in the system for protecting human rights and in the process of transitional justice, provide an excellent model for the further development of the system of protection.

I To state bodies in Serbia:

- a) To initiate a parliamentary debate and discuss the conditions for founding RECOM, thus contributing towards the creation of a clear position towards the crimes committed in the past and enabling the creation of a stable peace and the democratic rule of law in the countries of the region.
- b) To enable full accessibility of documents and archives, the opening of dossiers and the exposure of the contents of controversial notes from the Supreme Defence Council meetings and thus restore the confidence of all citizens in state institutions.
- c) To prevent the further destruction and forging of archives and ensure their processing, classification and protection.
- d) To adopt a legal framework that would enable proper provision of reparations to victims of serious crimes under international law.
- e) To establish memorials, remembrance days and provide other types of non-material reparations to victims of crimes committed during the 1990s.
- f) To increase the independence of judicial institutions and strengthen independent mechanisms for the protection of human and minority rights.
- g) To create conditions for the increased safety of victims, witnesses, court representatives, organisations for the protection of human rights and other persons involved in the prosecution of war crimes and establishment and disclosure of evidence, and consistent implementation of international documents on human rights defenders.
- i) To establish full cooperation with the ICTY, and arrest and extradite the indictees that remain at large.
- j) To urge the widespread informing of young people about the serious nature of the crimes under international law committed in the recent past, adoption by them of a clear position towards those crimes, and the development amongst them of awareness-raising and a system of values based on universal respect for the democratic rule of law and human rights, and in accordance with this, to reform the educational system.
- k) To work on the restoration of confidence among all citizens in state institutions.

II To the international community:

- a) To support the initiative for the founding of RECOM and thus contribute to the creation of a clear position on the part of Serbia and other states in the region towards the crimes committed in the past and enable the creation of a stable peace and the democratic rule of the law.
- b) To support the efforts and advocacy of civil society organisations to establish full accessibility of documents and archives, and the opening of dossiers; prevent further destruction and forging of archives, as well as their processing, classification and protection; create a legal framework that would secure the adequate provision of reparations to victims of serious crimes under international law; establish memorials, remembrance days and other types of non-material reparations for victims; strengthen the independence of judicial institutions, as well as independent mechanisms for the protection of human and minority rights; achieve a higher degree of protection for victims, witnesses, court representatives, human rights organisations and others involved in the processing of war crimes and establishment and disclosure of evidence; and achieve the implementation of international documents on human rights defenders.
- c) To insist on Serbia's full cooperation with the ICTY, and the arrest and extradition of the indictees that remain at large.
- d) To support civil society organisations in advocating widespread informing of young people about the serious crimes under international law committed in the recent past, adoption by them of a clear position towards those crimes, and development among them of awareness-raising and a system of values based on universal respect for the democratic rule of law and human rights, and in accordance with this, reform of the educational system.
- e) To support civil society organisations in their efforts to restore the confidence of all citizens in state institutions.

III To civil society organisations:

- a) To engage in advocacy for the foundation of RECOM, and build up their capacity and strategies for advocacy and constructive participation in its creation. Building their own capacities is also necessary for them to have a stronger and better influence on state policy in the field of protection of human rights.
- b) To advocate full access to documents and archives, the opening of dossiers, their appropriate processing and classification, and exposure of the contents of controversial notes from Supreme Defence Council meetings. At the same time, they should advocate the protection of these documents and the prevention of their further destruction and forgery.
- d) To advocate for RECOM to be obliged to offer a reparations programme for victims of serious crimes under international law.
- e) To advocate for the introduction of memorials, remembrance days and other types of non-material reparations.
- f) To advocate the most appropriate solutions for the full protection and accessibility of the ICTY archives to the countries in the region.
- g) To monitor the processes of adoption, amendment and implementation of laws relevant to the process of combating impunity.
- h) To advocate for speedier prosecution of war crimes by the domestic judiciary and for a focus on the specifics of these cases so as to expose command and organisational networks, where crimes were planned, organised, carried out and concealed, as well as the consistent prosecution of all persons at all levels of responsibility.
- i) To advocate better protection of victims, witnesses, court representatives, human rights organisations and other persons involved in the prosecution of war crimes and the establishment and disclosure of evidence, as well as the consistent implementation of international documents on human rights defenders.
- j) To advocate cooperation with the ICTY and the arrest and extradition of remaining indictees.
- k) To investigate the degree of knowledge amongst youth about the serious crimes under international law committed in the recent past and the events linked to them. In accordance with these results, to advocate reform of the entire educational system.
- l) To advocate the restoration of confidence among all citizens in state institutions and to creation of guarantees of non-recurrence of crimes through various methods, including the creation of an analytical cross-linking of persons who held key positions in society at the time of conflict.

ANNEX I

GLOSSARY

AP – Autonomous Province
BIA – Security Information Agency
BiH – Bosnia and Herzegovina
CESID – Centre for Free Elections and Democracy
CUPS – Centre for Legal Studies
DOS – Democratic Opposition of Serbia
DS – Democratic Party
DSS – Democratic Party of Serbia
EU – European Union
EC – European Community
FRY – Federal Republic of Yugoslavia
GSS – Civic Alliance of Serbia
HLC – Humanitarian Law Center
HOS – Helsinki Committee for Human Rights in Serbia
HRW – Human Rights Watch
IAN -International Aid Network
ICC – International Criminal Court
ICJ – International Court of Justice
ICMP - International Commission on Missing Persons
ICNL - International Centre for Not-for-Profit Law
ICRC – International Committee of the Red Cross
ICTJ – International Centre for Transitional Justice
ICTR – International Criminal Tribunal for Rwanda
ICTY – International Criminal Tribunal for the Former Yugoslavia
IDC – Research Documentation Centre
JNA – Yugoslav People’s Army
KLA – Kosovo Liberation Army
KOS – Counter-Intelligence Service
KZS – Criminal Code of Serbia
LDP – Liberal Democratic Party
NATO –North Atlantic Treaty Organisation

NBS – National Bank of Serbia
OMPF - Office on Missing Persons and Forensics
OSCE – Organisation for Security and Co-operation in Europe
OTP – Office of the Prosecutor, ICTY
RDB – State Security Service
RECOM – Regional Commission for Establishing the Facts about War Crimes
RIK – National Election Commission
RS – Republika Srpska
SCG – Serbia and Montenegro
SFRY - Socialist Federative Republic of Yugoslavia
SPO – Serbian Renewal Movement
SPS – Socialist Party of Serbia
SRS – Serbian Radical Party
SZUP – Service for the Protection of the Constitutional Order
UN – United Nations
UNMIK -United Nations Interim Administration Mission in Kosovo
VBA – Military Security Agency
VCG – Army of Montenegro
VJ –Army of Yugoslavia
VMA – Military Medical Academy
VOA – Military Intelligence Agency
VS – Army of Serbia
VSO – Supreme Defence Council
YIHR –Youth Initiative for Human Rights
YUCOM – Lawyers’ Committee for Human Rights
ZKP – Criminal Procedure Code
ZORZ - Law on the Organisation and Jurisdiction of Government Authorities in Prosecuting Perpetrators of War Crimes

ANNEX II

PARTICIPANTS IN THE DISCUSSION GROUPS TO FORMULATE IMPUNITY WATCH RECOMMENDATIONS

A. CIVIL SOCIETY REPRESENTATIVES

Adam Puškar - Queeria

Aleksandar Popov - Centre for Regionalism

Andrej Nosov, YIHR

Anja Potkonjak – Lawyers for Democracy

Biljana Kovačević-Vučo, YUCOM

Boban Stojanović - Queeria

Dragan Popović, YIHR

Drago Kovačević – Serbian Democratic Forum

Dženeta Agović - Impuls – Tutin

Ilda Habota – Sandžak Committee for Human Rights

Indira Caković – Sandžak Human Rights Committee

Ivana Franović- Center for Nonviolent Action

Ivana Ristić – Women for Peace

Ivana Stelja – Lawyers for Democracy

Jelena Bakalić - IAN

Jelena Cakić – Women for Peace

Jelena Nešić – Initiative for Democratic Transition

Jelena Simić, HLC

Ljiljana Radovanović – Women in Black

Marija Gajicki - Vojvođanka – Novi Sad

Marija Radoman, HOS

Marko Veličković – Centre for Development of Civil Resources – Niš

Milan Antonijević, YUCOM

Mirjana Vojvodić – Committee for Civic Initiative – Niš

Nataša Kandić, HLC

Nedim Sejdinović – Independent Journalists’ Association of Vojvodina

Nenad Dimitrijević, HLC
Nenad Vukosavljević – Centre for Nonviolent Action
Sandra Orlović, HLC
Sedat Vrcić - Flores – Sjenica
Sonja Biserko, HOS
Srđan Popović - Fraktal
Tamara Kaliterna – YIHR
Vladan Sudić – Citizens' Library Libergraf – Užice

REPRESENTATIVES OF INTERNATIONAL ORGANIZATIONS AND GOVERNMENTS

Bogdan Ivanišević, ICTJ
Goran Miletić, Swedish Helsinki Committee
Ivan Jovanović, OSCE
Jelena Stevančević, OSCE
Ksenija Lazović, US Embassy
Matias Hellman, ICTY
Mihajlo Čolak, Fund for an Open Society

MEDIA

Aleksandar Roknić -Danas
Aleksandar Trifunovic – Buka, Banjaluka, BIH
Boro Lazukić – RTV Panonija
Dinko Gruhonjić – Independent Journalists' Association of Vojvodina
Dorotea Čarnic – Politika
Dragan Banjac – Oslobođenje
Dragan Gmizić – Vreme
Eugen Jakovčić – Cenzura, Split, Hrvatska
Gizela Stanjo – Mađar So
Gordana Perunović Fijat - Kikindske novine
Gordana Petrović – Radio Television Serbia
Ivan Benašić – TV Apolo
Ivana Jovanović - BETA
Jelena Perković – Ruske slovo
Juraj Bartoš - Hlas ludu
Kristina Demetar Filipčev - Bečejski mozaik
Larisa Inić - Radio Subotica
Marija Obrenović - Svetlost
Miomira Melank – Kikindske novine
Miroslav Stajić - Dnevnik



Nenad Vulović – FoNET news agency
Nenad Živadinović – TV Kragujevac
Niku Čobanu - Libertatea
Noemi Sabo - Hrvatska riječ
Predrag Filipčev -Local press
Senada Kalić - TV Jedinstvo
Senka Vlatković - TV B92
Smiljana Milinkov - Radio 021
Svetlana Jajić – Radio Beograd
Tamara Kaliterna -Monitor
Vera Raškov – Tanjug
Vladimir Đoković – Pančevac Press
Vojislav Novaković - TV Avala
Vuk Cvijić - Blic
Zlatko Romić – Subotičke novine
Željko Balaban – Zrenjaninske novine

STATE INSTITUTIONS

Ivana Ramić, Belgrade District Court War Crimes Chamber Spokesperson
Jasna Janković-Šarčević, War Crimes Prosecution Office, Public Relations
Jovan Ničić, National Council for Cooperation with the ICTY
Nenad Vujić, Director of the Judicial and Prosecutorial Training Center Judge
Omer Hadžiomerović, Vice President of the Judges' Association of Serbia
Judge Siniša Važić, President of the War Crimes Chamber
Judge Tanja Vuković, War Crimes Chamber
Prosecutor Aleksandar Milosavljević, Prosecutor Association of Serbia

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