

---

# **amnesty international**

---

**Amnesty International's concerns on the implementation of the "completion strategy" of the International Criminal Tribunal for the former Yugoslavia**



---

# **amnesty international**

---

**Amnesty International's concerns on the implementation of the "completion strategy" of**

# the International Criminal Tribunal for the former Yugoslavia

June 2005

Summary

AI Index: EUR 05/001/2005

---

Amnesty International believes that the International Criminal Tribunal for the former Yugoslavia has played a major role in addressing impunity for war crimes, crimes against humanity and genocide committed during the violent break-up of Yugoslavia and, through its judgments and decisions, has contributed significantly to the development of international, humanitarian and criminal law.

Under the terms of the "completion strategy", laid down in UN Security Council Resolutions 1503 and 1534, the Tribunal has completed all investigations and indictments for war crimes, crimes against humanity and genocide at the end of 2004 and is expected to complete, indeed, all cases, including appeals, by 2010. Amnesty International believes that the "completion strategy" should be reviewed as it ignores crucial facts.

- ***Continuing problems with arrests and surrenders.*** The countries in the former Yugoslavia that have been asked to arrest and surrender accused persons or to provide other assistance to the Tribunal are continuing to fail to do so in a number of significant respects.
- ***Lack of political will to investigate and prosecute crimes in national courts in the former Yugoslavia.*** In Serbia and Montenegro (including Kosovo), Bosnia and Herzegovina, Croatia and Macedonia there are serious concerns about the political will to investigate all war crimes, crimes against humanity and genocide and, where there is sufficient admissible evidence, to prosecute the suspects.
- ***National law is inadequate.*** Domestic legal frameworks define crimes and principles of criminal responsibility in a manner that is inconsistent with international law.
- ***Absence of effective victim and witness protection, participation and support.*** Victim and witness protection is generally non-existent or insufficient to permit effective investigations or successful prosecutions. Victims do not have an effective role in the proceedings and court staff are neither sensitive to gender concerns nor trained in how to deal with crimes of sexual violence.

- ***Inadequate reparations provisions.*** Provisions on reparations, including compensation, to victims, and families of the victims, of war crimes, crimes against humanity and genocide are inadequate.
- ***Resource constraints on the Tribunal.*** The Tribunal's "completion strategy" appears to be mostly dictated by financial constraints influenced by a changing geopolitical setting, where countries of the former Yugoslavia have become less of a priority in the international scene, and based on the assumption that local courts in former Yugoslav countries would be able to perform the Tribunal's tasks at a lower cost. In fact, the lack of financial resources has already adversely affected the Tribunal's work and serious financial problems beyond the Tribunal's control have undermined its efforts to meet the completion deadline set by the Security Council.

In light of the inability of domestic judicial systems to deal effectively with such cases and of the serious financial problems that have hampered the work of the Tribunal, a closure of the Tribunal in line with the existing timetable must be immediately halted. As long as the authorities of countries in the territory of the former Yugoslavia are unwilling or unable to tackle impunity for such crimes, it is the task of the international community to ensure that justice is done, both at the international level and at the national level, both within the countries of the former Yugoslavia and in other countries. Therefore, Amnesty International calls on the Security Council and UN member states to ensure that the Tribunal's activities should be extended beyond the originally envisaged deadline of 2010; that assessed contributions to the Tribunal's budget are paid and that the Tribunal is afforded adequate material and other resources; and that sufficient personnel, material and financial resources are devoted to the development of a long-term, comprehensive action plan to end impunity in the countries of the former Yugoslavia.

This report summarizes a 15-page document (5,900 words): *Amnesty International's concerns on the implementation of the "completion strategy" of the International Criminal Tribunal for the former Yugoslavia* (AI Index: EUR 05/001/2005) issued by Amnesty International on 6 June 2005. Anyone wishing further details or to take action on this issue should consult the full document. An extensive range of our materials on this and other subjects is available at <http://www.amnesty.org> and Amnesty International news releases can be received by email: [http://www.amnesty.org/email/email\\_updates.html](http://www.amnesty.org/email/email_updates.html)

---

**INTERNATIONAL SECRETARIAT, 1 EASTON STREET, LONDON WC1X 0DW, UNITED KINGDOM**

## **Amnesty International's concerns on the implementation of the "completion strategy" of the International Criminal Tribunal for the former Yugoslavia**

Amnesty International welcomes the recent surrender of a number of major war crimes indictees to the International Criminal Tribunal for the former Yugoslavia (Tribunal) including, for the first time, from the Republika Srpska (RS) in Bosnia and Herzegovina. However, in view of the forthcoming consideration in June 2005 by the UN Security Council (Security Council) of reports by the Tribunal President and Prosecutor on the implementation of the "completion strategy", the organization wishes to express its grave concerns about the present timetable imposed on the Tribunal to conclude its work.

To date 37 people have received final sentence for war crimes, crimes against humanity and genocide after proceedings conducted at the Tribunal. Amnesty International believes that the Tribunal has played a major role in addressing impunity for such crimes and, through its judgments and decisions, has contributed significantly to the development of international, humanitarian and criminal law. It has defined notions of internal armed conflict and international armed conflict; identified general principles such as the prohibition of torture; broadened the norms of humanitarian law to include crimes of violence against women; and specified the constituent elements of crimes against humanity, the crime of genocide and war crimes. In addition, it has established essential procedural innovations, particularly in terms of the protection of witnesses and command responsibility.

Under the terms of the "completion strategy", laid down in Security Council Resolutions 1503 and 1534, the Tribunal has completed all investigations and indictments for war crimes, crimes against humanity and genocide at the end of 2004 and is expected to complete, indeed, all cases, including appeals, by 2010. On 16 March 2005, the spokeswoman for the Office of the Prosecutor of the Tribunal confirmed that "it is indeed true that after the disclosure of the indictment against Boskoski and Tarculovski, for crimes committed in Macedonia, the ICTY will not issue any more indictments". Tribunal Prosecutors have recently asked for the transfer of 10 cases involving 18 accused to local courts in the former Yugoslavia, a step that appears to be dictated by the tight deadline imposed by the "completion strategy".

## I. Overview of the problems

Amnesty International believes that the "completion strategy" should be reviewed as it ignores crucial facts.

- ***Continuing problems with arrests and surrenders.*** The countries in the former Yugoslavia that have been asked to arrest and surrender accused persons or to provide other assistance to the Tribunal are continuing to fail to do so in a number of significant respects.
- ***Lack of political will to investigate and prosecute crimes in national courts in the former Yugoslavia.*** In Bosnia and Herzegovina, Serbia and Montenegro (including Kosovo), Croatia and Macedonia there are serious concerns about the political will to investigate all war crimes, crimes against humanity and genocide and, where there is sufficient admissible evidence, to prosecute the suspects. Domestic criminal justice systems in these countries, including new special chambers in certain countries, are not yet up to the task of investigating and prosecuting these crimes, and police and prosecutors in other states where suspects are located have not made investigations and prosecutions of these crimes a priority. In any event, they would only be able to investigate and prosecute a handful of cases. Criminal justice systems in the former Yugoslavia lack resources to process more than a handful of the cases of crimes under international law committed since 1991.
- ***National law is inadequate.*** Domestic legal frameworks define crimes and principles of criminal responsibility in a manner that is inconsistent with international law.
- ***Absence of effective victim and witness protection, participation and support.*** Victim and witness protection is generally non-existent or insufficient to permit effective investigations or successful prosecutions. Victims do not have an effective role in the proceedings and court staff are neither sensitive to gender concerns nor trained in how to deal with crimes of sexual violence.
- ***Inadequate reparations provisions.*** Provisions on reparations, including compensation, to victims, and families of the victims, of war crimes, crimes against humanity and genocide are inadequate.
- ***Resource constraints on the Tribunal.*** The Tribunal's "completion strategy" appears to be mostly dictated by financial constraints influenced by a changing geopolitical setting, where countries of the former Yugoslavia have become less of a priority in the international scene, and based on the assumption that local courts in former Yugoslav countries would be able to perform the

Tribunal's tasks at a lower cost. In fact, the lack of financial resources has already adversely affected the Tribunal's work. Whereas the budget of the Tribunal is unarguably significant, serious financial problems beyond the Tribunal's control have undermined its efforts to meet the completion deadline set by the Security Council. In May 2004 the failure of some UN member states to pay their assessed contributions led to a recruitment freeze which was lifted only in January 2005, after payments by a number of member states reduced the financial shortfall. Furthermore, a decision by the General Assembly not to exclude the 2005 budget of the Investigation Division in the 2004-2005 biennial budget, although subsequently approved at the end of 2004, had significant, negative effect. Delays caused by uncertainty over and lack of financial resources will have to be added to those caused by the lack of cooperation of countries in the territory of the former Yugoslavia. The target date of 2010, when the Tribunal is expected to complete its work, may seriously compromise the delivery of justice.

In light of the inability of domestic judicial systems to deal effectively with such cases (see below) and of the serious financial problems that have hampered the work of the Tribunal, a closure of the Tribunal in line with the existing timetable must be immediately halted. As long as the authorities of countries in the territory of the former Yugoslavia are unwilling or unable to tackle impunity for such crimes, it is the task of the international community to ensure that justice is done, both at the international level and at the national level, both within the countries of the former Yugoslavia and in other countries. In establishing the Tribunal under Resolution 827, the Security Council was determined "to take effective measures to bring to justice the persons who are responsible [for widespread and flagrant violations of international humanitarian law]". Amnesty International urges the Security Council and UN member states to ensure that the following steps are taken:

- ***Extension of the Tribunal's mandate.*** The Tribunal's activities should be extended beyond the originally envisaged deadline of 2010, including by extending the 2004 deadline for issuing new indictments, until an effective action plan for ending impunity in Serbia and Montenegro (including Kosovo), Bosnia and Herzegovina, Croatia and Macedonia has been adopted and put into effect;
- ***Payment of assessed contributions for the Tribunal.*** UN member states should pay their assessed contributions to the Tribunal's budget and should ensure that the Tribunal is afforded adequate material and other resources, enabling it to perform its tasks effectively.
- ***Establishment of a long-term comprehensive action plan in the former Yugoslavia to end impunity.*** All states should contribute sufficient personnel, material and financial resources to the countries of the former Yugoslavia enabling them to develop a long-term, comprehensive action plan to end

impunity. They should do so in a transparent manner in close consultation with civil society. As part of that plan, all states outside the Balkans should agree to cooperate in the investigation and prosecution of crimes under international law committed in the former Yugoslavia, including, if necessary, through the exercise of universal jurisdiction.

## **II. The inability of national criminal justice systems to tackle impunity for war crimes, crimes against humanity and genocide**

At present, a large number of perpetrators continue to enjoy impunity for war crimes, crimes against humanity and genocide committed during the Yugoslav wars. This impunity is a serious obstacle to post-war reconciliation and has a negative impact on the return of hundreds of thousands of refugees and internally displaced persons, who left their homes during the conflicts and have the right to return to their homes and to obtain full compensation for the damage to them. For peace to be sustainable in the former Yugoslavia, the perpetrators of war crimes, crimes against humanity and genocide committed during the violent break-up of Yugoslavia must be brought to justice.

### **A. Continuing failure to cooperate with the Tribunal**

The authorities in Serbia and Montenegro, Bosnia and Herzegovina and Croatia have so far failed to cooperate fully and unconditionally with the Tribunal. This failure to cooperate remains one of the most serious obstacles hindering and slowing down the Tribunal's activities. Ten individuals publicly indicted by the tribunal are still at large. Three of them, Radovan Karadžić, Ratko Mladić, and Ante Gotovina, are key indictees mentioned repeatedly in Security Council resolutions. The Tribunal's Prosecutor, in her address to the Security Council in November 2004, has clearly stated that "if some of the most important indictees, like Karadžić, Mladić and Gotovina, are not arrested and transferred in the months to come, it may be necessary to revise the target dates of the completion strategy".

In **Serbia and Montenegro** of significant concern is the current lack of political will by the authorities to fully address war crimes and crimes against humanity committed by Serbs through full cooperation with the Tribunal. Despite the recent surrender and transfer to the Tribunal in 2005 of a significant number of indicted suspects, the authorities continued with a policy of not arresting Tribunal indictees but rather encouraging those indicted to voluntarily surrender apparently fearing a public backlash and loss of electoral support. Such policy appears also to have been motivated by the timetable set for the decision (which was adopted in April 2005 by the EU Commission) on the beginning of talks with Serbia and Montenegro

on the EU Stabilisation and Association Agreement. Although the surrenders that have taken place are to be welcomed, the policy of relying exclusively on voluntary surrenders has meant that persons indicted a long time ago have remained at large until recently, leading to concerns about whether, under the "completion strategy", it will be possible for the Tribunal to try them or it will be necessary to simply transfer their cases to the national authorities, with all the problems that entails. The voluntary surrender policy has also meant that those unwilling to surrender remain free, with no prospect that they will ever be brought to trial before the Tribunal or any other court.

Amnesty International notes that the policy of "voluntary surrenders" is in violation of Serbia and Montenegro's obligation, as a UN member state, to cooperate fully with the Tribunal including by arresting and transferring to the Tribunal's custody indicted suspects. Amnesty International notes that several suspects indicted by the Tribunal are believed to remain at large in Serbia and Montenegro. On 13 July 2004 Goran Hadžić, former head of the Krajina Serbs in Croatia, fled his house in Novi Sad a few hours after a sealed indictment for him had been forwarded from the Tribunal to the Foreign Affairs Ministry, and before a warrant for his arrest was issued, giving rise to suspicions that he had been warned of the impending arrest. In November 2004 Tribunal President Theodor Meron reported to the UN General Assembly that Serbia and Montenegro had virtually not cooperated at all with the Tribunal throughout the year. Similarly, Tribunal Prosecutor Carla Del Ponte reported in the same month to the Security Council that Serbia was not willing to arrest indictees, and that networks supporting persons accused of war crimes were so powerful there that they could interfere with judicial proceedings, including by intimidating witnesses, exerting political pressure on judges and prosecutors, or even by threatening the stability of the country. She reported that both in Serbia proper and in Kosovo, aggressive nationalist rhetoric was being used in smear campaigns against the Tribunal and herself. Furthermore, in a speech to the European Council on 11 October 2004 she reportedly stated that in **Kosovo**, the Tribunal was not being assisted in their investigations by either the international community or the local authorities, highlighting in particular, the absence of cooperative witnesses.

In **Bosnia and Herzegovina** lack of cooperation with the Tribunal, in particular on the part of the RS authorities, continues to be a major obstacle to justice. So far not a single person indicted by the Tribunal has been arrested by the RS police. Recently the RS authorities have pledged to improve their poor record of cooperation with the Tribunal through a policy of "voluntary surrenders". Despite its limited successes, which resulted in a number of "voluntary surrenders" from the RS, or which apparently saw the involvement of the RS authorities, such policy is in violation of the obligation of the RS authorities to cooperate fully with the Tribunal including by arresting and transferring to the Tribunal's custody indicted suspects.

Some of the suspects at large are believed to be in the territory of the RS and to enjoy the protection of the local military and police authorities. For example, it was reported that three years ago Ratko Mladić was still officially employed in the RS



Army. An operation carried out by troops of the Stabilisation Force in November 2004 to locate and arrest Gojko Janković, indicted by the Tribunal for war crimes and crimes against humanity, reportedly failed because the suspect had been tipped off by the local police in Foča, RS. Gojko Janković was subsequently transferred to the Tribunal's custody on 14 March 2005, after having voluntarily surrendered to the RS authorities.

The High Representative Paddy Ashdown noted in December 2004 that in the RS, "[t]he police are not doing their job – in fact they are in some cases doing the exact opposite of their job, helping wanted individuals escape justice rather than helping to apprehend these individuals". In November the Tribunal Prosecutor, in her address to the Security Council, pointed to fundamental systemic weaknesses built into the law enforcement and security structures in Bosnia and Herzegovina, and in particular the RS, as significant obstacles hindering cooperation with the Tribunal.

In **Croatia**, the major outstanding issue in relation to cooperation with the Tribunal remains the failure of the authorities to arrest and transfer to the Tribunal Ante Gotovina, a retired Croatian Army general indicted for war crimes and crimes against humanity. Ante Gotovina is one of the key suspects indicted by the Tribunal who are still at large. It has been alleged that Ante Gotovina has enjoyed the protection of criminal circles and of some members of the Croatian intelligence community. Moreover, the Croatian authorities have often maintained an ambiguous attitude towards the issues of cooperating with the Tribunal in general and Ante Gotovina's arrest in particular.

In March 2005 the Tribunal Prosecutor reportedly sent a letter to the European Union (EU) Presidency stating that "Ante Gotovina remains within reach of the Croatian authorities, and until such time as he is brought to the Hague, it cannot be said that Croatia is cooperating fully with the international tribunal". The letter also alleges that, as recently as in March 2004, the Croatian intelligence was conducting operations against the Tribunal's staff. As a result of the failure of the Croatian authorities to cooperate fully with the Tribunal, the EU Council decided on 16 March 2005 to delay the start of accession negotiations with Croatia.

## **B. Lack of political will and inability of national criminal justice systems to investigate war crimes, crimes against humanity and genocide and to prosecute the suspects**

The lack of courage and political will of the authorities of countries in the territory of the former Yugoslavia to tackle impunity through full and unconditional cooperation with the Tribunal, poses the serious question of whether the criminal justice systems in these countries will be able to confront and address the human rights legacy of the war. In this respect, so far the record of national criminal justice systems has been patchy at best. Moreover, lack of cooperation between countries of the former

Yugoslavia, as well as the absence of provisions on extradition and mutual legal assistance, have often been obstacles to the delivery of justice.

In **Serbia and Montenegro**, the special War Crimes Panel within the District Court of Belgrade appears to be handling its first case, that of Serbs indicted by Serbia's special war crimes prosecutor in connection with the Ovčara massacre near Vukovar in Croatia in 1991, in accordance with internationally accepted norms. However, concerns have been expressed about the apparent selective nature of the indictment, in that it failed to acknowledge the responsibility of former Yugoslav People's Army (JNA) officers in the crime, in spite of the testimony of many witnesses indicating such involvement. There is also concern about the ability of this sole court to cope with the huge number of outstanding cases in Serbia. It was set up after war crimes trials held before local district courts outside of Belgrade had been criticized by human rights groups and other bodies such as the Organization for Security and Cooperation in Europe (OSCE). Moreover, to date, the few other war crimes trials held in Serbia have only concerned low-level perpetrators which, the Tribunal spokesperson Jim Landale noted in January 2004, has helped promote a culture of impunity for the military and political leadership.

The organization has previously expressed concern, for example, at the continuing failure of the War Crimes Panel to make public any indictments arising from investigations, which reportedly commenced in 2001, into the transfer and reburial of the bodies of ethnic Albanians transferred in 1999 from Kosovo in refrigerated trucks, and subsequently exhumed on Ministry of the Interior property, including at the Batajnica training grounds.

In **Bosnia and Herzegovina** the national criminal justice system has so far persistently failed to take steps to diligently prosecute alleged perpetrators of war crimes and crimes against humanity. A War Crimes Chamber within the Bosnia and Herzegovina State Court became operational in March 2005. However, concerns remain over the lack of financial and other resources needed to meet its requirements. Moreover, according to a recent OSCE report<sup>1</sup> on war crimes before domestic courts, confusion over which war crimes cases already in procedure should be sent for review to the Bosnia and Herzegovina State Court is causing serious delays and in some cases has been used as an excuse for inactivity by the entities' authorities. The OSCE report also points at the serious difficulties the Bosnia and Herzegovina Office of the Prosecutor is facing, due to lack of personnel, in responding to referrals from entities, even when reasoned requests have been made for the Bosnia and Herzegovina Prosecutor to take over cases.

The establishment and effective functioning of the War Crimes Chamber could be a first step in tackling impunity for war crimes and crimes against humanity,

---

<sup>1</sup> OSCE, *War Crimes Trials Before the Domestic Courts of Bosnia and Herzegovina: Progresses and Obstacles*, March 2005.

but only if part of a wider strategy which embraces the entire criminal justice system dealing with cases of war crimes, crimes against humanity and genocide. However, current plans appear to be essentially based on short-term objectives aiming to effect the quickest and cheapest possible withdrawal of the international community and the acceleration of the "completion strategy" of the Tribunal.

In **Croatia**, a number of trials for war crimes and crimes against humanity have been held before domestic courts over the past few years. However, in the vast majority of cases, criminal proceedings have been initiated only when victims of such crimes were ethnic Croats and impunity remains widespread for crimes allegedly committed by members of the Croatian Army and police forces. In those cases where trials were held for war crimes and crimes committed against Croatian Serbs, the intimidation of witnesses, as well as the tribunals' perceived or actual lack of impartiality, have often been serious obstacles to the delivery of justice.

Many Croatian Serbs have been convicted and sentenced, often *in absentia*, in trials which Amnesty International considers may have violated international fair trial standards. The latest OSCE report<sup>2</sup> on domestic war crimes trials in Croatia states that "the national origin of defendants remained a critical factor in war crimes prosecution in Croatia in 2004, raising systemic concerns as well as concerns about some individual trials". The report also notes that "the extreme disproportion observed over the course of years including 2004 between thousands of war crime cases initiated against Serbs in contrast to tens of cases against Croats supports a conclusion that the numerical discrepancies cannot be attributed only to different levels of criminality of certain members of the warring parties".

In a ruling on 4 October 2002 the Tribunal gained primacy over the domestic legislature in **Macedonia** for "all investigations and prosecutions with regard to the 'NLA (National Liberation Army) leadership' case, the 'Mavrovo Road Workers' case, the 'Lipkovo Water Reserve' case and the 'Ljuboten' and 'Neprošteno' investigations". However, indictments were only issued in connection with the 'Ljuboten' case against former Minister of Internal Affairs Ljube Boshkovski and Jovan Tarchulovski, who were transferred to the Tribunal's detention unit on 24 March 2005 and 16 March 2005 respectively, and on 4 April the Macedonian authorities established a ministerial body in order to cooperate with the Tribunal in the case of the two indictees. On 25-26 April, Carla del Ponte informed the Macedonian authorities that the remaining four cases would be returned to Macedonia, and that technical details concerning the return of these cases, which will be handled by the Ministry of Justice, would be agreed between the Tribunal and the public prosecutor's office. Nevertheless, there is serious concern that the other cases, which include the abduction and murder of civilians, will not be thoroughly investigated and that the perpetrators will not be brought to justice.

---

<sup>2</sup> OSCE, *Background Report: Domestic War Crimes Trials 2004*, 26 April 2005.

The organization has already expressed concerns that the amnesty granted in March 2002 to all those involved in the 2001 conflict, except for those accused of war crimes under the jurisdiction of the Tribunal, would prevent the emergence of the truth and subsequent accountability before the law for people reasonably suspected of serious human rights abuses or breaches of international humanitarian law which might not fall within the remit of the Tribunal.

### **C. Inadequate domestic legal provisions on crimes and criminal responsibility**

The prosecution of war crimes, crimes against humanity and genocide before domestic courts in the former Yugoslavia may be seriously hampered by domestic legal frameworks defining crimes, principles of criminal responsibility and defences in a manner that is inconsistent with international law. It is yet unclear if and to what extent the Tribunal's jurisprudence will be transferred to proceedings before local courts.

In October 2004 the **Serbian** government introduced amendments to legislation governing the prosecution of war crime suspects under urgent procedures to make it possible for cases to be tried in local courts based on evidence amassed by the Tribunal. The amendments changed the name of the Act from "Law on the Organisation and Jurisdiction of Government Authorities in Prosecuting Perpetrators of War Crimes" to "Law on the Organisation and Competence of Government Authorities in War Crime Proceedings". In addition to the change in the law's name, a new Article 14a was added, providing for the local war crimes prosecutor to begin criminal proceedings on the same basis and facts as the Tribunal's indictments. The prosecutor was also empowered to undertake criminal prosecutions based on the data and evidence collected by the Tribunal in cases in which an indictment had not necessarily been issued.

However, despite these signs of progress, to date there have been no trials in Serbia and Montenegro of senior military or political officials for war crimes or crimes against humanity in connection with the Yugoslav conflicts. The trials which have taken place have exclusively been of low-level perpetrators, and the continuing absence of legal provisions or jurisprudence within the domestic courts regarding the implementation of international legal standards, such as command responsibility, may continue to mitigate against the prosecution of senior political or military officials responsible for war crimes, including the "Vukovar Three" (in February 2005, the Tribunal Prosecutor asked for the transfer to Croatia or to Serbia of the trial of Mile Mrksić, Veselin Šljivančanin and Miroslav Radić, all former JNA commanders, charged with playing leading roles in the Ovčara massacre).

The draft Criminal Code, which remains to come into force, also fails to include provisions which would enable the prosecution of war crimes according to

international standards. Concerns remain about the unsatisfactory definitions of crimes against humanity; the omission or unsatisfactory definitions of some war crimes; the inadequate definitions of the crimes of torture and rape, honour and reputation; inadequate definitions of criminal responsibility and command responsibility; the defence of superior orders; the requirements restricting the exercise of universal jurisdiction by national courts; and the provision of amnesties and pardons for war crimes, crimes against humanity, genocide and other international crimes such as torture.

In criminal proceedings in **Bosnia and Herzegovina** for human rights violations arising from the 1992-95 war, it is unclear which criminal code is applicable. The majority of the prosecutors apparently have taken the view that the applicable criminal law in such proceedings is the old Socialist Federal Republic of Yugoslavia (SFRY) Criminal Code, in line with the principle that applicable law must be the one in force at the time when the crime was committed.<sup>3</sup> However, in some cases the SFRY Criminal Code does not appear to define crimes and criminal responsibility in a manner that is consistent with international law and with the Statute of the Tribunal. In particular, provisions in the SFRY Criminal Code do not adequately reflect the principle of command responsibility in those cases where guilt may be established on the basis of acts of omission.<sup>4</sup>

Similarly, in **Croatia** it was only in 2004 that the Criminal Code was amended to include the principles of command responsibility for failure to prevent, or failure to punish, crimes under international law.<sup>5</sup> The issue of whether such provisions will be applied retroactively, or retrospectively, in future proceedings for war crimes committed during the 1991-95 war remains open.

In **Macedonia**, as in Bosnia and Herzegovina, the Criminal Code fails to define crimes and criminal responsibility, including command responsibility, in a manner that is consistent with international law and with the Statute of the Tribunal.

#### **D. Inadequate witness and victim protection mechanisms**

Witness protection programmes are inadequate in all countries of the former Yugoslavia, including because of lack of regional cooperation on witness protection.

In **Serbia and Montenegro** the War Crimes Panel within the District Court of Belgrade was set up after war crimes trials held before local district courts outside of Belgrade had been criticized by human rights groups and the OSCE. There was also

---

<sup>3</sup> OSCE, *War Crimes Trials Before the Domestic Courts of Bosnia and Herzegovina: Progresses and Obstacles*, March 2005

<sup>4</sup> *Ibid.*

<sup>5</sup> OSCE, *Background Report: Domestic War Crimes Trials 2004*, 26 April 2005.

concern about the attempted intimidation of prosecution witnesses. Amendments to legislation introduced in October 2004, which made it possible for cases to be tried in local courts based on evidence amassed by the Tribunal, stipulated that witness protection measures instituted by the Tribunal would continue to remain in force.

However, in proceedings in the "Sjeverin" trial, which concluded on 29 September 2003 at the Belgrade District Court, the presiding judge had reported that he had been threatened. Following the annulment of the conviction of four suspects in the trial by the Serbian Supreme Court on 27 September 2004, during the re-trial which commenced on 17 January 2005, again at the Belgrade District Court, a key prosecution witness, who had been under 24-hour police protection during the original proceedings, withdrew her testimony giving rise to fears that she also had been subjected to threats after the original trial.

Measures for witness protection envisaged under new criminal procedure codes had not been implemented in either Serbia or Montenegro at the time of writing.

In **Kosovo**, despite witness protection legislation and the existence of a programme dedicated, *inter alia*, to the protection of witnesses in war crimes trials, Amnesty International has repeatedly expressed concerns about the climate of silence which has fostered the continuing impunity of ethnic Albanians believed to be responsible for war crimes against both members of Albanian and minority communities. On 21 October 2004 Beqa Beqaj was secretly indicted by the Tribunal for contempt for an alleged attempt to threaten, intimidate or bribe or otherwise interfere with witnesses in proceedings against Fatmir Limaj, Isak Musliu and Haradinaj Bala, but on 5 May 2005 was found guilty only of wilfully and knowingly interfering with one witness and the administration of justice.

While arrests, trials and re-trials for war crimes and crimes against humanity involving both Kosovo Albanians and Serbs continue, those involving ex-members of the Kosovo Liberation Army continued to provoke mass protests by tens of thousands of Kosovo Albanians. In practice, inadequate resources limit the provision of effective witness protection to a small number of individuals; consequently only a limited number of proceedings are able to take place in domestic courts, and then before international panels. In the past, trials against Serb suspects have resulted in the majority of decisions being quashed, with suspects either sent for re-trial or released.

In **Bosnia and Herzegovina** the issue of protecting the security of victims and witnesses as a result of testifying at war crimes proceedings has been the subject of protracted discussion. Reports of harassment and intimidation of trial witnesses have emerged during many of the war crimes trials that have taken place to date, often resulting in the collapse of prosecution cases or the significant reduction of evidence as witnesses changed or revoked statements given earlier. While the adoption of witness protection legislation goes some way towards resolving the problematic

situation, much more needs to be done on the practical, financial and legal level in order to ensure adequate protection of witnesses testifying in war crimes trials before all courts in the country (including by providing adequate resources to ensure that the witnesses' needs are met). Moreover, the recently adopted Law on Witness Protection Programme in Bosnia and Herzegovina only provides for a comprehensive witness protection programme for witnesses in state-level cases, while witnesses in entity cases do not enjoy the same level of protection.

Politically charged trials have a profound social impact, both at the general level of the community at large and at the level of those participating in the proceedings. Mechanisms to ensure that practical, psycho-social and medical support are offered to all vulnerable witnesses, in particular with regards to the high risk of re-traumatization as a result of giving testimony and being subjected to cross-examination are not in place. This is especially important in cases where women survivors of crimes of sexual violence agree to testify in proceedings against the suspected perpetrators. So far, the needs of these women, ranging from protection against risks to their physical security, to psychological, social and economic support both during trial proceedings and afterwards, have not been adequately addressed and with the notable exceptions of the work of some women's non-governmental organizations, medical and psycho-social support in general is unavailable.

In **Croatia** numerous cases of witness harassment and intimidation during war crime trials have been reported particularly during proceedings against former members of the Croatian Army and police forces. Although a law on witness protection entered into force in January 2004, steps taken to ensure that the security and privacy of witnesses are guaranteed, and that their economic and psychological needs are met, continue to be insufficient. A recent OSCE report<sup>6</sup> states that the "findings of the Supreme Court and trial courts as well as Mission trial monitoring revealed numerous examples of harassment and threats to witnesses that had the potential to compromise their testimony". In a number of recent war crimes trials witness intimidation has apparently resulted in witnesses substantially changing the statements they gave during the investigation, or refusing to testify during the trial, thus undermining the prosecution's case.

In **Macedonia**, a law on witness protection was only adopted in May 2005.

## **E. Inadequate provisions on reparations, including compensation, to victims**

The right to reparations is not fully guaranteed in national law and procedures for obtaining reparations are inadequate.

---

<sup>6</sup> *Ibid.*

In **Serbia and Montenegro, Bosnia and Herzegovina and Macedonia** the majority of the civilian victims of the serious human rights violations committed during the war have never received any form of reparation for their suffering, including material or monetary compensation for damages. No concrete mechanisms to ensure that victims of war crimes and crimes against humanity have access to reparations, including compensation, are in place. In Bosnia and Herzegovina, as elsewhere, those who have benefited from compensation and social benefits for damages suffered in the armed conflict have been mainly war veterans and their families. Moreover, and given the precarious state of the domestic judiciary, the premature abolition of the Bosnia and Herzegovina Human Rights Chamber in December 2003 has closed one of the few avenues for reparations for victims of on-going violations resulting from the war.

In **Croatia** two laws were passed in 2003 on the "responsibility for damage caused by terrorist acts and public demonstrations" and on the "responsibility of the Republic of Croatia for damage caused by members of the Croatian Armed Forces and police during the Homeland War", which regulate compensation for war-related damages as well as for personal injury. However, such acts appear to be insufficient to ensure that all victims, and families of the victims, of human rights violations committed during the war will have access to all forms of reparations, including compensation.

### **III. Conclusion**

Amnesty International believes that as long as the authorities of countries in the territory of the former Yugoslavia are unwilling or unable to tackle impunity for war crimes, crimes against humanity and genocide, it is the task of the international community to ensure that justice is done. Therefore, Amnesty International reiterates its call to the Security Council and UN member states to ensure that the Tribunal's activities should be extended beyond the originally envisaged deadline of 2010; that assessed contributions to the Tribunal's budget are paid and that the Tribunal is afforded adequate material and other resources; and that sufficient personnel, material and financial resources are devoted to the development of a long-term, comprehensive action plan to end impunity in the countries of the former Yugoslavia.