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Special Rapporteur on Truth, Justice and Reconciliation

Dear Colleagues,

Thank you for your continued interest for dealing with the past processes in Croatia and other post-Yugoslav countries. Find bellow *Documenta*'s contribution.

1. Please indicate any relevant norms, state practice and/or jurisprudence at the national and regional level regarding the obligation to document gross violations of human rights and serious violations of international humanitarian law in transitional justice contexts?

The most important obligation fall in categories of criminal investigation of war crimes, searching for missing persons, research/documentation and reparations, defined in respective laws (Criminal Law; Law on the implementation of the Statute of International Criminal Court and the Prosecution of Crimes against International Law of War and Humanitarian Law adopted in 2003; Law on Missing Persons in Homeland War adopted in 2019; Law on Memorial-Documentation Center of Homeland War (Hrvatski memorijalno-dokumentacijski centar Domovinskog rata) adopted in 2004; Law on protection of Cultural Heritage adopted in 2024, Law on the Rights of the Victims of Sexual Violence during armed Aggression against the Republic of Croatia in Homeland War adopted in 2015; Law on Civilian Homeland War Victims adopted in 2021). Some of laws mentioned are important regarding documenting and remembering humanitarian laws violations related to wars in ex-Yugoslavia in period 1991 – 2001. Others are very important for complex earlier layers of events 20th century history, which still influence Croatian and other post-Yugoslav societies today.

Two Declarations, Declaration on Homeland War adopted in 2000 and Declaration on Storm adopted in 2006, also influence quality of public dialogue on recent past. There are also agreements regulating exchange regarding prosecution of war crimes, between State Attorney of Republic Croatia and Bosnia-Hercegovina, Montenegro and Serbia. In 2013 Memorial center of Homeland War Vukovar was established. All elementary schools are invited to visit, with pupils of 8th class.

2. Please inform about State initiatives to register, map, collect and preserve (archive) evidence, data and testimonies (including victim's testimonies) of serious violations of human rights and humanitarian law in transitional contexts for truth-seeking, accountability and memorialization purposes, among others. How have States to date documented such violations? Which good practices, obstacles, challenges and gaps are found in State practice? Are documentary

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archives accessible to plaintiffs, victims and their legal representatives and what regulations govern such access?

Most Important State decision is linked with establishing Memorial-Documentation Center of Homeland War (in 2004), as key official research institution, as well as Memorial center of Homeland War Vukovar (in 2013), as key official education center. Both institutions base their work on two Declarations of Croatian Parliament, narrowing and simplifying interpretation of war events, through national(istic) perspective, avoiding full dealing with the past and consequences of war atrocities.

More than thirty years since the beginning of the war in 1991, there is no integral and publicly available list of war victims and missing persons who resided in the territory of the Republic of Croatia. Throughout the years, relevant state and civil institutions and organizations have published various victims' lists focused on individual segments of the population that suffered in the war, such as the civilian population of certain villages, cities or regions, and lists of killed soldiers published by veteran organizations of their individual units.

In *Documenta* we believe that the facts about war suffering can no longer harm anyone, but only have a beneficial effect on reducing manipulations in public space. We are certain that a public list of all victims who resided in Croatia at the time of suffering is a civilizational obligation to pay tribute to the killed and disappeared, and at the same time a try to create an authentic, verifiable and factually based overview of their sufferings.

Relevant efforts include: a) Directorate on Detained and Missing (Uprava za zatočene i nestale) at Ministry of Croatian War Veterans (Ministarstvo hrvatskih branitelja) works on search for missing and collects data since 1991. Although list of missing is continually updated, name by name list is not published in easily accessible way (like in separate book, as practiced up to 2015). b) Ministry of Croatian War Veterans maintains and updates registries of missing persons, of war veterans, of survivors with status of civilian war victims most of which are not publicly accessible c) Judiciary, including courts and state attorney offices, collects data relevant for war crimes prosecution. State attorneys use Case Tracking System regarding war crimes in their internal work d) Research and publishing activities of Memorial-Documentation Center of Homeland War; e) Ministry of Culture and Media maintain Registry of Cultural Heritage; f) Ministry of Science and Education with Department for education, preparing opinions on textbooks and didactic Materials..

Although some documentary archives are accessible to plaintiffs, victims and their legal representatives, with exception of confidential documents, accessing full complex picture of war events to general public is limited. The main challenge remains lack of transparency, which makes accessing relevant data difficult. Due to restrictive understanding of Declarations of Parliament regarding character of Homeland War, space for interpretation of war events in spirit of multi-perspectivity is shrinking.

Certain good practices were linked with previous governments e.g. publishing book of missing (Knjiga osoba nestalih na području Republike Hrvatske), which had 4 editions in period 2006 - 2015 Innovative practices are linked with Government in period 2011 – 2016 lead by Zoran Milanović, when Ministry of Croatian War Veterans led by Minister Mr. Predrag Matić, prepared and published in 2012 Registry of Veterans (Registar veterana), with data on former soldiers. When short lived

illiberal government appointed in 2016 has taken over, Register of Veterans was removed from publicly accessible collections.

As judicial prosecution of war crimes is most relevant governmental activity we inform about specific challenges. More than thirty years after the beginning of the war, new investigations are being opened, the number of trials is large, but the problem is the dynamics and pace of the trials. Among them, four long-standing trends are particularly concerning: i) a high number of trials in absentia; ii) a small number of proceedings against members of Croatian forces; iii) a lack of transparency due to only partial access to first-instance and final verdicts for war crimes; iv) limited regional cooperation; v) denial of facts about war crimes, despite final verdicts from courts in the Republic of Croatia and the International Criminal Tribunal for the former Yugoslavia. More detailed summarized findings are available at: https://documenta.hr/wp-content/uploads/2024/10/Annual-report-on-monitoring-war-crimes-trials-for-2023-summary.pdf Full report is available at: : https://documenta.hr/novosti/izvjestaj-o-pracenju-sudenja-za-ratne-zlocine-za-2023-godinu/

High number of trials in absentia

The fact that the trend of trials in absentia is still dominant is a concern. It was recorded exclusively in criminal proceedings carried out against members of Serbian paramilitary units/Yugoslav People's Army. In the reporting period, in four competent courts, 42 out of 64 (66%) criminal proceedings were conducted against absent defendants who mostly reside in the territory of the Republic of Serbia. While we understand the need to question surviving witnesses, which the State Attorney's Office of the Republic of Croatia regularly emphasizes, we would like to remind that a large number of trials in absentia further diminishes the already damaged public trust in the judiciary. More at: https://documenta.hr/wp-content/uploads/2024/10/Annual-report-on-monitoring-war-crimes-trials-for-2023-summary.pdf

A small number of proceedings against members of Croatian forces

We would like to point out the lack of indictments for crimes committed against Serbs in Vukovar from late spring and summer of 1991 until the fall of Vukovar, when people were disappearing from their workplaces and homes. Investigations are still ongoing within the framework of so-called preliminary proceedings under the jurisdiction of the State Attorney's Office. The response from the State Attorney's Office is also lacking when it comes to the crimes committed by the Croatian Army and police during the military-police operation "Flash" in May 1995, in places in western Slavonia, such as Medari and Rajići. In more than 29 years since the operation, not a single indictment has been issued for these crimes. In more than twenty-nine years since Operation "Storm" in August 1995, the Croatian judiciary has issued three indictments for war crimes against Krajina Serbs, involving a total of seven members of Croatian military and police forces. The trials resulted in two final convictions for crimes in Prokljan and Mandići, as well as for the crime in Kijani near Gračac (the first-instance verdict has been reached in March 2019 and confirmed in July 2021). In two criminal proceedings, acquittal verdicts were issued for crimes in Prokljan and Mandići, as well as for the crime in Grubori. One criminal proceeding was suspended during the investigation phase (the crime in Ramljani). We also emphasize the lack of investigation into the suffering of Montenegrin prisoners who were brought to the Military Investigative Center Lora in Split during the autumn of 1991 and the first half of 1992, in the case Lora 3, despite the fact that human rights organizations have pointed out a witness who has not yet been questioned. More information at:

https://documenta.hr/novosti/ocekujemo-aktivniji-pristup-dorh-a-u-istrazi-odgovornih-za-mucenje-i-stradanje-ratnih-zarobljenika-niksicko-savnicke-grupe/

Lack of transparency due to only partial availability of first-instance and final verdicts

It is increasingly difficult to obtain information, not only about ongoing trials, but also about finally concluded trials. The first level and final verdicts, accompanied by indictments are still available only on pages of human rights organizations like *Documenta* and Center for Peace Osijek.

Limited regional cooperation

Judicial cooperation in the region is still the most significant open issue. Certain positive developments have been achieved in the cooperation between Croatia and Bosnia and Herzegovina, and criminal proceedings against defendants residing in Croatia for crimes committed on the territory of Bosnia and Herzegovina are being conducted before Croatian courts. There is no cooperation between Serbia and Croatia in this sense. For the sake of illustration, in Serbia, for the first time, criminal proceedings are being conducted for a crime committed in Croatia, against an unreachable defendant who resides in Croatia. More at: https://documenta.hr/wp-content/uploads/2024/10/Annual-report-on-monitoring-war-crimes-trials-for-2023-summary.pdf

Denial of facts about war crimes

We cite an example from December 2024. At the commemoration of the anniversary of the establishment of the 72nd Battalion of the Croatian Military Police in Split, during which the film '72nd Battalion MP – The Truth' was shown, an attempt was once again made to ignore the judicially established facts about the war crimes committed at the Military Investigative Center Lora. To claim, after three decades, that no war crimes occurred in Lora is primarily a denial of the rule of law, which all citizens of the Republic of Croatia, including individuals mentioned as participants in the aforementioned film, presumably want and advocate for. This calls into question the work of the police and the State Attorney's Office that concluded the investigation, as well as the relevant judicial bodies of the Republic of Croatia, particularly the County Court in Split, followed by the High Criminal Court in Zagreb, and the Supreme Court of the Republic of Croatia, which have lawfully, impartially, and professionally established who the victims of the committed war crimes are, who the perpetrators are, as well as the time and place of the commission of the criminal acts. The entire statement from civil society organizations is available at the link: https://documenta.hr/novosti/prosvjedujemo-zbog-poricanja-ratnih-zlocina-pocinjenih-u-lori/ We are currently preparing two public discussions on the topic of crimes in Lora, which will be held in Zagreb and Split.

Rights of Victims

Advocating rights of war victims lead to adoption of much needed reparations. *Documenta* and other organizations have been monitoring implementation of Law on Rights of Victims of Sexual Violence during Armed Aggression against the Republic of Croatia in the Homeland War (Official Gazette 64/15, 98/19) and the Law on the Civilian Homeland War victims (Official Gazette 84/21).

Particularly problematic in implementation of Law on the Civilian Homeland War victims the first-instance verdicts based on Article 5, which deny civil victims their rights without clear evidence or justification. Examples include civil victims of displacement during Operation "Storm" and cases of abuse in captivity, where requests for recognition of rights have been rejected based on vague and insufficiently substantiate decisions. Relevant institutions often employ extremely mechanical interpretations and applications of the Law on the civilian Homeland War victims. In these cases, we believe that the Law is applied in first-instance verdicts without the necessary understanding of the context of suffering and injury during the wartime events of 1991 – 1995, during the Homeland War. Such practices often lead to victims withdrawing from further proceedings, resulting in a loss of justice, additional trauma, and a weakening of trust in the legal system.

The withdrawal of civilian victims from additional legal proceedings in the pursuit of justice carries serious consequences, not only for themselves but also for society. The absence of justice can transmit a sense of injustice to future generations and society at large, increasing the risk of ongoing social tensions, revisionism and conflict. Justice serves not only the victims but also as a foundation for a more stable and equitable society. The examples we have gathered over years of monitoring the implementation of the Law indicate that the withdrawal from further legal proceedings is often not the result of a free choice, but rather a consequence of systemic issues, such as a lack of support for victims, complex and lengthy procedures, financial costs, or pressures from the community. It is precisely for this reason that it is important to create an environment in which victims have access to justice and feel that their struggle is worthwhile.

Victims who have appealed against first-instance negative verdicts sometimes succeed in obtaining the status of a civilian war victim, while at other times they must file lawsuits with the Administrative Court. The proceedings are still ongoing.

It is worrying that until now there has been no evaluation of laws that affect the position of civilian victims of war and victims of criminal acts. More on proposal for evaluation you can find here: https://documenta.hr/novosti/inicijativa-za-vrednovanje-i-poboljsanje-zakona-o-pravima-civilnih-zrtava-rata/

Protecting locations of crimes

To many locations of crimes committed in 20th century are not marked. Examples include former Slana Ustasha Concentration Camp from WWII: https://documenta.hr/en/slana-concentration-camp-1941/, Goli otok from period of Socialist Yugoslavia: https://documenta.hr/wp-content/uploads/2020/07/Goli-otok_ENGLESKI_web.pdf and Medak Pocket where war crimes were committed in 1993: https://documenta.hr/wp-content/uploads/2023/09/Studija-slucaja-Vojna-operacija-Medacki-dzep.pdf

New challenges

In 2024, two issues have drawn public attention. The inconsistencies in the protection of the rights of war victims have not been completely resolved by the decision on the write-off and reimbursement of litigation costs made at the 274th session of the Government of the Republic of Croatia in December 2023. The decision to waive costs for war victims is justified, albeit delayed. This may finally end the struggle for the cancellation of litigation costs that began with the first rulings

under the Law on Liability for Damage Caused by Terrorist Acts and Public Demonstrations and the Law on the Responsibility of the Republic of Croatia for Damage Caused by Members of Croatian Armed Forces and Police during the Homeland War. However, the Government of the Republic of Croatia, which has not wanted to waive litigation costs for victims for more than thirty years after the war began, has now, to the surprise of the public, included convicted perpetrators of war crimes in this decision. This part of the decision undermines the fragile trust in government institutions. More information can be found at: https://documenta.hr/novosti/otvoreno-pismo-vladi-rh-i-drzavnom-odvjetnistvu-rh-u-povodu-primjene-odluke-o-otpisu-i-povratu-troskova-parnicnog-postupka/ We have been monitoring the submission of requests for reimbursement following the Decision on the write-off of claims for costs of civil proceedings awarded to the Republic of Croatia, claims for damages, and other claims awarded to the Republic of Croatia in certain proceedings. We have noted that some proceedings have concluded with the reimbursement of paid costs, thereby rectifying the injustice towards survivors and family members of victims, while in other cases, applicants are still awaiting reimbursement. We will continue to monitor the implementation of the decision.

The regulation regarding the possible rehabilitation of individuals convicted of war crimes has also drawn public attention due to its ambiguity. As the legally prescribed rehabilitation deadline approaches, the fear increases that in the case of those convicted of war crimes who have already served their sentences, the original noble intention of the legislator in applying principles such as crime prevention and justice, may in reality be misused as a legal basis for denying the victims and erasing the already difficult-to-accept criminal aspects of the national past. We are preparing a public discussion on this topic.

3. Please inform about civil society initiatives to register, map, collect and preserve evidence, data and testimonies (including victim's testimonies) of serious violations of human rights and humanitarian law in transitional contexts for truth seeking, accountability and memorialization purposes, among others. How has civil society supported documentation efforts in transitional contexts? What lessons can be learnt from these experiences? What support has civil society received from concerned States and/or donor states and institutions to carry out initiatives in this field? What obstacles has civil society faced in implementing initiatives to document human rights violations (state blockages, lack of resources, insecurity for staff conducting documentation or archiving efforts, challenges to the preservation of documentation/evidence/archives, impeded access to archives or victims, etc.)?

Documenta has been systematically working on research and documentation of the murdered and missing for 15 years. From 2009 until now, we have conducted more than 8000 interviews with individual witnesses, covering tens of thousands of kilometers across Croatia. Our researchers analyzed the available lists of official state bodies, monographs, and plenty of court and administrative documentation. Comparison of sources and contradictory information often require additional field verification of data - through interviews with surviving witnesses or victims' family members, collection of documentation or verification of new information. this responsible and time-consuming job, *Documenta* currently has only two field researchers, while in previous years, with better financial conditions, eight team members worked in a field research team. The slowdown in field research makes all of *Documenta*'s work more difficult and time demanding. Despite this, we

strive to prove that an impartial and fact-based approach to war events and all victims and missing persons can bring the much-needed mutual understanding and reconciliation. Some of published results of human losses research are available at: https://documenta.hr/novosti/objavljeni-rezultati-istrazivanja-ljudski-gubici-1991-1995-u-hrvatskoj-za-podrucje-karlovacke-zupanije/

Documenta has been monitoring and documenting war crimes trials since 2005, with aim of strengthening the rule of law in the area of war crimes proceedings by increased efficiency and improved legal framework for the war crimes proceedings as well as the improvement of the victim's status in the proceeding. At the same time, the goal is also to build a strong regional cooperation, to initialize a public debate on the reparation of victims of war, to create a public dialogue and an inter-sectoral cooperation as well as to have an impact on local /national /regional level and to proceed with the capacity building, partnership, and human resources building. Processing war crimes until joining EU is described in book Prosecuting "War Crimes – Guarantee of the Process of Dealing with the Past and Sustainability of Judicial Reforms in Croatia". English Summary of book is available at: https://documenta.hr/wp-content/uploads/2020/12/prosecuting_fin.pdf Annual reports on monitoring war crimes trials are available here: https://documenta.hr/kategorija/godisnji/

Documenta has been recording personal memories of all interested witnesses of political events in Croatia in order to preserve them from falling into oblivion. We believe that it is possible to obtain a deeper understanding of seemingly hidden aspects of political turmoil and conflicts, which happened in these areas, through recording and conveying people's personal experience. Our aim is also to initiate and strengthen personal and social processes of dealing with the past, which we see as necessary prerequisites for building sustainable peace and stability in societies. In collection there are more than 500 interviews. More than 200 interviews were translated to English and were published on web: http://www.croatianmemories.org/en/

Documenta is also documenting work of civic initiatives. On the occasion of the twentieth anniversary of the founding of the Antiwar Campaign of Croatia, we edited and published this book with the aim of mapping the other, hidden and contested history of anti-war, women's and human rights initiatives during the 1990s. Since we are aware of the scarcity of existing written traces about our activities, as well as the need for systematic research, we conceived it as a cross section of subjective and factual, personal memories and documentary material. In order to fulfill this task, we used different approaches in portraying the structure and development of Antiwar Campaign of Croatia, as well as the dispersion of its entire human, material and spiritual heritage. Thanks to the translation work of Will Firth, one of the numerous collaborators of the Antiwar Campaign, we presented this book in English, more than ten years after its original publication. Book can be downloaded at: https://documenta.hr/en/ark_eng_2022_small/

Documenta is one of initiators of RECOM Reconciliation Network established in follow up to work of The Coalition for RECOM, a non-political regional gathering of civil society organizations. It consists of a network of more than 1800 non-governmental organizations, associations, and individuals who represent and promote the Intiative for RECOM towards the establishment of a Regional Commission Tasked with Establishing the Facts about All Victims of War Crimes and Other Serious Human Rights Violations Committed on the Territory of the Former Yugoslavia in the period from 1991-2001 (RECOM). More information on: https://www.recom.link/en/ Due to lack of political will RECOM Reconciliation Network focuses on documenting lives and circumstances of killing and enforced disappearance of victims of wars 1991 – 2001.

4. Please inform if documentation efforts are sufficiently and timely included in the design and implementation of transitional justice processes? Do concerned States, the international community, and donor institutions or donor States consider documentation mechanisms when negotiating, designing and implementing transitional justice processes. If not, which variables affect their inclusion or exclusion in these processes and how can documentation be better integrated in transitional justice from the outset.

Documentation efforts, although present, are not synchronized. Since the moment when Croatia joined EU, on July 1 2013, most of monitoring mechanisms regarding transitional justice processes became obsolete. Annual report of state attorney brings numerical data on war crimes investigations, without content analysis. In reporting about challenges, Annual Ombudsperson report of Croatia brings data on status of civilian victims. On international level regular reports of Prosecutor of International Residual Mechanism to Security Council, remain one of the tools still available. Also, the very important impulses came with publishing report of Special Rapporteur on Truth, Justice and Reconciliation as well as with report on Dealing with the Past (and lack of thereof) by Commissioner for Human Rights Ms. Dunja Mijatović in 2023.

It is concerning that the space for questioning past events, particularly those related to the Homeland War and World War II, is narrowing. We highlight the example of the reaction to the December 2024 action of the Youth Initiative for Human Rights , which featured messages on a Christmas tree saying: "For Christmas, I want to know what REALLY happened in '91" and "In the following year, I hope that as a society, we will more often think: 'What did we do to them?' " This took place in Ban Jelačić Square in Zagreb and escalated into a real witch hunt against the young women who, in their valuable work, are drawing attention to the denial of undoubtedly committed war crimes, as well as the glorification of war criminals. Between the statements of support we want to mention one of Antifascist League of RoC, whose member is *Documenta*, available here: https://portalnovosti.com/antifasisticka-liga-poruke-inicijative-mladih-ne-sire-mrznju

We cite the example of the decision by the Ministry of Science and Education to withdraw the textbook “Why is History Important? 4”, authored by Miljenko Hajdarović, Nikica Torbica and Vedran Ristić, from the Catalogue of Approved Textbooks, made in December 2023, which has affected the quality of history education. The consequence of this decision is a de facto ban of the textbook. We cannot recall another situation where a history textbook was banned without the possibility of correction, neither in Croatia nor in the European Union. More information is available at: https://historiografija.hr/?p=38607 i https://documenta.hr/novosti/otvoreno-pismo-u-povodu-povlacenja-udzbenika-povijesti/

5. How can States better integrate documentation efforts that can promote, in a complementary manner, the five pillars of transitional justice (truth, justice, reparation, memorialization and guarantees of non-recurrence) while also avoiding revictimization?

To increase the capacities of the competent county state attorney's offices, the State Attorney's Office of the Republic of Croatia and the police for revision and investigation of unsolved cases of war crimes, it is necessary to provide regular professional training when it comes to the prosecution of war crimes, in cooperation with the Police and Judicial Academy and civil society organizations;

It is necessary to continue the development of the support network for witnesses and victims and improve the laws regulating the position of victims of criminal acts. It is also necessary to consider the possibilities of expanding the support system to individuals who are applicants for the status of civilian war victims, according to the laws regulating the status of civilian war victims.

It is necessary to enable the publication of indictments and court decisions on a publicly accessible website (not only for ongoing trials); it is especially important to enable the publication of final verdicts, along with indictments and first-instance verdicts, for proceedings completed in the period from the nineties until today. We propose to consider the option of amending the Law on Courts, which would regulate the creation of a new website on which indictments, first-instance and final verdicts, passed from the nineties to the present day, would be published, in order to make the work of the courts public and transparent.

It is necessary to end the anonymization of personal data (names) of those accused of war crimes, due to the importance of the prosecution of war crimes for societies in Croatia and other post-Yugoslav states. Priority must be given to the right of the public to be informed about the course of proceedings and the identity of those accused of war crimes.

In order to improve the position of civilian victims, it is necessary to evaluate the application of the Law on the Rights of Victims of Sexual Violence during Armed Aggression against the Republic of Croatia in the Homeland War (Official Gazette 64/15, 98/19) and the Law on the Civilian Homeland War victims (Official Gazette 84/21) in order to propose possible amendments.

It is necessary to sign agreements among the states in the region with the aim of more efficient prosecution of the perpetrators of crimes while avoiding the politicization of trials for war crimes.

It is necessary to improve regional cooperation by enabling trials in the countries of the defendant's current residence and to consider the prerequisites for the formation of joint investigative teams in cases that require coordinated work and/or investigation in several countries.

It is necessary to make the judicial staff independent of any political influence and to enable the standardization of the principles of conduct between the judicial bodies of the states in the region, in order to bring as many perpetrators as possible to justice, but also in order to end the persecution of persons for whom there is no evidence that they are perpetrators of criminal offenses and to overturn the verdicts against those unjustly convicted.

It is necessary to publish data on killed and missing in easily accessible way. The families of the missing face unique life situations. For years, they believed their missing loved ones were still alive. As the years passed, families found solace in the hope of finding the remains and burying them, and having a grave to lay flowers on, and so to be able to remember, and to show others that they had “found their own.” Data on ongoing search should be regularly published.

It is necessary to mark and protect now neglected places where humanitarian law violations were committed. It is necessary to support education programs which will include also now neglected places of atrocities.

If you need additional information do not hesitate to contact me, at vesna.terselic@documenta.hr

Sincerely,

Vesna Teršelič

