

# COALITION FOR RECOM

## DRAFT STATUTE OF THE REGIONAL COMMISSION FOR ESTABLISHING THE FACTS ABOUT WAR CRIMES AND SERIOUS HUMAN RIGHTS VIOLATIONS COMMITTED ON THE TERRITORY OF THE FORMER YUGOSLAVIA

### PART VI – GOALS AND ASSIGNMENTS OF THE COMMISSION

#### **Article 11**

##### *The Goals of the Commission*

The Commission has the following goals:

- a) To establish the facts about the wars/armed conflicts and war crimes and serious human rights violations committed on the territory of the former SFRJ in the period from January 1, 1991 until December 31, 2001, the political and societal circumstances that led to the commitment of the acts, and the impact of those crimes and human rights violations;
- b) To help make political elites and societies in the member states accept the facts about war crimes and human rights violations;
- c) To help clarify the fate of the missing;
- d) To acknowledge injustices inflicted upon victims in order to establish mechanisms and build strategies for developing a sense of compassion and solidarity with victims;
- e) To help victims exercise their rights; and
- f) To help prevent the recurrence of such crimes and serious human rights violations in the future.

#### **Comment:**

And now we come to the year with which the investigation should begin. For us, it is undoubtedly **1990**. (Ljiljana Canjuga, Association of Volunteers and Veterans of the Homeland War of the Republic of Croatia, City of Zagreb Chapter (UDVDR PGZ), Zagreb, Croatia, National Consultation with Local Communities on the Draft RECOM Statute, Pakrac, Croatia, October 22, 2010).

#### **Article 12**

##### *The Assignments of the Commission*

The Commission has the following assignments:

- (a) To collect information on war crimes and serious human rights violations, give their detailed account, and demonstrate human rights violation patterns and their consequences;
- (b) To collect information pertaining to the fate of the missing and to cooperate with competent bodies conducting the search for the missing;

- (c) To compile a register of human losses:
1. Civilians whose loss of life or disappearance was caused by the war or other form of armed conflict;
  2. Veterans whose loss of life or disappearance was caused by the war or other form of armed conflict;
- (d) To collect information on all detention locations connected to the war or other form of armed conflict and to compile a comprehensive description of all such locations;
- (e)
- [OPTION A: To research political and societal circumstances that directly instigated the war or other forms of armed conflict as well as the commitment of war crimes and other human rights violations];
- [OPTION B: To research political and societal circumstances beginning in the 1980s which have directly instigated the war or other forms of armed conflict as well as the commitment of war crimes and other human rights violations];
- (f) To hold public hearings on war crimes and serious human rights violations;
- (g) To recommend measures to help prevent the recurrence of such human rights violations in the future;
- (h) To compile, publish, and present its Final Report.

**Comments:**

*We don't really understand why RECOM decided to deal with human losses. It is a responsibility of the state to establish how many living and how many dead or killed citizens each state has. The fundamental goal of RECOM according to the Draft Statute is to establish a register of human losses. I can't emphasize enough – **victims** should be the focus of RECOM's activity.* (Ljiljana Canjuga, UDVDR PGZ, Zagreb, Croatia, National Consultation with Local Communities on the Draft RECOM Statute, Pakrac, Croatia, October 22, 2010).

*I second the proposal made by Ljiljana Canjuga and I am, too, convinced that it should read "**victims of war crimes**". Victims must be the focal point of our investigation and that is the only thing that is keeping me interested in this initiative and motivated to participate.* (Veljko Vičević, UDVDR PGZ, Zagreb, Croatia, National Consultation with Local Communities on the Draft RECOM Statute, Pakrac, Croatia, October 22, 2010).

*(...) for us it is much more important to take year **1974** as the beginning of the period to be investigated because that's when the Constitution of the SFRJ was changed influencing a change in the constitutions of the republics (...) which gave them the right to self-determination to secession.* (Ljiljana Canjuga, UDVDR PGZ, Zagreb, Croatia, National Consultation with Local Communities on the Draft RECOM Statute, Pakrac, Croatia, October 22, 2010).

*We have for centuries allowed ourselves to vilify the other side. Even today, and especially during the time of war, people would often say: "what they did to us in that war". **Do you think that maybe, because of that, we should go further into the past?*** (Nermin Karačić,

Center for Non-Violent Action, Sarajevo, BiH, National Consultation with Local Communities on the Draft RECOM Statute, Pakrac, Croatia, October 22, 2010).

## **PART V – COMPETENCIES OF THE COMMISSION**

### **Article 14**

#### *Competencies of the Commission*

War crimes and serious human rights violations the Commission will investigate include but are not limited to:

- (a) Murder;
- (b) Enslavement;
- (c) Illegal detention;
- (d) Torture;
- (e) Forced disappearance;
- (f) Deportation and forced and forced relocation of populations;
- (g) Rape and other forms of sexual abuse;
- (h) Large-scale property confiscation and destruction;
- (i) Hostage taking;
- (j) Destruction of religious and cultural-historical objects;
- (k) The use of civilians and prisoners of war as “human shields”;

#### **Comment:**

*(...) I think that it would be a good idea to accept the initiative from Bosnia and Herzegovina to change Article 14 to read: (...) **concerning all crimes against humanity and international humanitarian law.*** (Mirjana Bilopavlović, Delfin, Pakrac, Croatia, National Consultation with Local Communities on the Draft RECOM Statute, Pakrac, Croatia, October 22, 2010).

## **PART VII – ELECTION PROCEDURE OF MEMBERS OF THE COMMISSION**

### **Article 21**

#### *The Composition of the Commission*

The Commission has 20 (twenty) members:

- (a) Five members are elected in Bosnia and Herzegovina;
- (b) Three members are elected in Croatia, in Kosovo, and in Serbia;
- (c) Two members are elected in Montenegro, Macedonia, and Slovenia.

#### **Comment:**

*(...) why don't we choose the option to have a deputy member elected automatically? That means that not 20 but 40 people would be elected and that would easily satisfy the quorum criteria necessary for the work of the commission. And there is so much work to be done that I am sure they will all be pretty busy.* (Veljko Vičević, UDVDR PGZ, Zagreb, Croatia, National Consultation with Local Communities on the Draft RECOM Statute, Pakrac, Croatia, October 22, 2010).

## **Article 22**

### *Election Criteria for Members of the Commission*

1. Members of the Commission are:
  - (a) Citizens of one of the member states;
  - (b) Persons fostering high ethical standards, respectable persons of integrity dedicated to nurturing a culture of tolerance and constructive dialogue in solving disputes, and persons enjoying the trust of the people in all State Parties to this Agreement;
  - (c) Mentally and physically fit to efficiently and continuously perform their duty as members of the Commission.
2. Each member state will elect at least one woman and at least one man as members of the Commission.
3. The member states will make every effort to ensure equal representation of all ethnic groups in the Commission, so that in addition to the largest ethnic group, at least one member of other ethnic communities from that member state will also be elected as a member of the Commission.
4. The following individuals cannot be members of the Commission:
  - (a) An individual who held a political office two years before the election procedure for members of the Commission began, or an individual who was a prominent political figure during the period which is the subject to the Commission's investigation;
  - (b) An individual who was a professional member of the military, police, intelligence, or other state security structures;
  - (c) If there is reasonable doubt that an individual is in any way responsible for the commitment of an act violating human rights or international humanitarian law, or that the individual has close ties with persons responsible for the commitment of human rights violations or persons being investigated for the commitment of such acts, or that the individual supported or instigated the commitment of human rights violations, that individual cannot be elected as member of RECOM.

### **Comments:**

*I think that this Article should be rewritten to be less complicated. We should simply emphasize that gender equality must be respected. That would cover it all. The way it is written now, one man and one woman, it does not belong in a Statute like this. It is too demanding.* (Željko Špelić, Croatian Officer Corps, Pakrac, Croatia, National Consultation with Local Communities on the Draft RECOM Statute, Pakrac, Croatia, October 22, 2010).

*(...) also, what body can be tasked with determining the validity of someone's integrity, moral reputation and everything else enumerated as election criteria? And then those people are expected to establish the facts about war crimes in the same way courts do it. And there is no vocational requirement for RECOM commissaries. (Željko Špelić, Croatian Officer Corps, Pakrac, Croatia, National Consultation with Local Communities on the Draft RECOM Statute, Pakrac, Croatia, October 22, 2010).*

*(...) all three of these points of paragraph 4 should be removed. (Veljko Vičević, UDVDR PGZ, Zagreb, Croatia, National Consultation with Local Communities on the Draft RECOM Statute, Pakrac, Croatia, October 22, 2010).*

*(...) it is against my nature to accept that in one Article we speak affirmatively and non-affirmatively, so to speak. The first three points of paragraph 1 of this Article stipulate who can be a member of the commission and they specify some criteria. Paragraph 4, points a), b), and c) stipulate who should not be a member of the commission, i.e. who cannot be eligible to become a member of the commission, and all that is already under Article 22. My suggestion is to think about adding a new article so that separate non-affirmative criteria are separated from the election criteria. It is not a good idea to keep it all in one Article. (Veljko Vičević, UDVDR PGZ, Zagreb, Croatia, National Consultation with Local Communities on the Draft RECOM Statute, Pakrac, Croatia, October 22, 2010).*

## **Article 30**

### *Quorum and Decision Making*

1. The working and decision making quorum is 14 members of the Commission.
2. The Commission will attempt to make all decisions unanimously, and when a consensus is impossible to reach, the 14 vote majority will decide.
3. The Commission can decide that in order to adopt a specific procedural decision it is necessary to secure a simple majority vote of its members.

#### **Comment:**

*This is a rather imprecise definition. What is a fourteen vote majority? What kind of majority is that? We said that it was necessary to secure a two-third majority, we said that in paragraph 1 and in paragraph 2 it reads that decisions will be made unanimously, i.e. decisions will be made by a consensus – a fourteen vote majority. We never said that a majority vote must be 14 and that it is subject to arbitrary interpretation. So, we need to redefine (...) Article 22. (Veljko Vičević, UDVDR PGZ, Zagreb, Croatia, National Consultation with Local Communities on the Draft RECOM Statute, Pakrac, Croatia, October 22, 2010).*

## Part XI – FINAL REPORT OF THE COMMISSION

### Article 42

#### *Compilation and Publication of the Final Report*

1. Shortly before the expiration of its mandate, the Commission will make its Final Report public.
2. The Commission will submit its Final Report to the Heads of State / Presidencies of member states and publish it at the same time in all official languages of the member states.
3. The Commission has an obligation to make public a short version, i.e. an abstract, of the Final Report at the same time that the complete version is made public.

#### **Comment:**

*In Article 42 it would be important to include, before paragraph 1 or in the subtitle that **the Final Report of the Commission must be accurate and truthful.** (Đorđe Gunjević, civil victim of war, Pakrac, Croatia, National Consultation with Local Communities on the Draft RECOM Statute, Pakrac, Croatia, October 22, 2010).*

### Article 43

#### *Contents of the Final Report*

1. The Final Report includes an introduction, relevant facts about war crimes and serious human rights abuses, the register of human losses, a list of missing persons, a list of detention locations, and recommendations.
2. Recommendations refer to but are not limited to:
  - (a) Further steps to be taken by member states in view of advancing confidence among the states and communities on the territory of the former Yugoslavia;
  - (b) Appropriate forms of financial and symbolic reparations, proposed institutional reform models, and mechanisms which will help integrate the established facts into educational systems of member states;
  - (c) Ways to monitor the implementation of recommendations of the Commission, which may include a proposal to form a separate mechanism for that purpose.

#### **Comment:**

*It would be very good if those **key recommendations would become mandatory for member states.** (Đorđe Gunjević, civil victim of war, Pakrac, Croatia, National Consultation with Local Communities on the Draft RECOM Statute, Pakrac, Croatia, October 22, 2010).*

### Article 44

#### *Findings on Perpetrators*

1. The Commission is mandated to indicate in its Final Report based on established facts whether an individual committed a criminal act of war crime or serious human rights violation. Such finding will have no impact on court decisions.
2. In its Final Report, the Commission cannot indicate that an individual committed a criminal act of war crime or serious human rights violation if it failed to take all reasonable measures to:
  - (a) Inform that individual of its intention to publish the unfavourable finding;
  - (b) Present to that individual the content of the finding, information that led to the conclusion contained in the finding, and arguments on which the finding was based;
  - (c) Offer that individual the possibility to respond to the finding within a reasonable period of time.
3. With respect to cases processed in the presence of the accused by an international or domestic court, in its Final Report the Commission may recommend an appropriate sentence.

**Comment:**

*Just one very specific recommendation for Article 44: it should be edited to read: “The Commission is mandated **and requested to...**” (Đorđe Gunjević, civil victim of war, Pakrac, Croatia, National Consultation with Local Communities on the Draft RECOM Statute, Pakrac, Croatia, October 22, 2010).*