



BOSNIA AND HERZEGOVINA: IMPUNITY FOR WAR CRIMES AND RIGHTS OF REFUGEES AND MIGRANTS

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INTRODUCTION

This submission was prepared for the Universal Periodic Review (UPR) of Bosnia and Herzegovina (BiH) in November 2019. In it, Amnesty International evaluates the implementation of recommendations made to BiH in its previous UPR, including in relation to the harmonisation of the constitutional and legislative framework with international norms, impunity for crimes committed during the 1992-1995 armed conflict and the right to effective remedy for the victims of war.

It also assesses the national human rights framework with regard to the prosecution of wartime rape under applicable criminal codes and access to justice and reparation for the victims.

With regard to the human rights situation on the ground, Amnesty International raises concern about persisting challenges in effort to provide truth, justice and reparation, including compensation, to the survivors of wartime rape and sexual violence, as well as the failure of the authorities in BiH to adequately respond to the growing number of refugees and migrants arriving in or transiting through the country since 2018.

FOLLOW UP TO THE PREVIOUS REVIEW

During its second UPR in 2014, BiH received a total of 167 recommendations, of which it accepted 128, partially accepted a further 38 recommendations, and rejected one recommendation.¹

PROSECUTION OF WARTIME SEXUAL VIOLENCE: LIMITED PROGRESS; PERSISTING CHALLENGES

A number of the recommendations addressed human rights issues linked to the legacy of the 1992-1995 conflict in BiH.² While BiH has made considerable advances in this area since the last review, this submission highlights Amnesty International's remaining concerns in relation to the persisting impunity for crimes under international law, in particular the crime of wartime sexual violence, and the challenges facing victims in their attempts to obtain justice and reparation.

Since the last review, BiH has made some notable advances in terms of addressing the consequences of the crimes committed under international law. Despite this, however, Amnesty

¹ Report of the Working Group on the Universal Periodic Review, Bosnia and Herzegovina, A/HRC/28/17 and *Note verbale* dated 3 June 2015 from the Permanent mission of Bosnia and Herzegovina to the United Nations Office and other international organizations in Geneva, addressed to the Office of the High Commissioner for Human Rights, A/HRC/29/G/4, 18 June 2015.

² A/HRC/28/17, recommendations 107.58-107.64 (Uruguay, Finland, Iceland, Ireland, Norway, Lithuania, UK), 107.94 (Belgium), 107.97-107.100 (France, Argentina, Switzerland, Chile).

International notes with concern the slow delivery of justice for these crimes and the continued failure of the authorities to provide full and effective reparation, including compensation, to victims of war-related torture, and specifically, to the victims of wartime sexual violence.³

Amnesty International welcomes considerable efforts to improve the number and quality of prosecution of cases of wartime sexual violence, strengthen witness protection and support in courts and prosecutor's offices across BiH, develop institutional networks for victims and witnesses,⁴ and improve the capacity of service providers working with the victims. With the assistance of donors, most notably European Union and United Kingdom, witness protection capacity and support have expanded significantly over the past several years. This includes the establishment of physical infrastructure, advanced technical capabilities in courtrooms, the hiring and training of dedicated witness protection staff and the provision of psychosocial assistance to witnesses before, during and after the trials. Under the project implemented by Vive žene, a local NGO, an association of NGOs has supported local Social Welfare Centres in setting up networks for psychological and social support mechanisms for witnesses in cases of conflict-related sexual violence. Today, 15 such protocols have been agreed, covering the entire territory of BiH and enabling the NGOs to provide perhaps the most tangible support to the survivors, including helping them overcome psychological trauma, organizing referrals to medical and social services and legal aid, and acting as a liaison between survivors and the prosecutors' offices. In addition to providing support to the victims, these organisations train the authorities and others who come into contact with survivors in order to imbue the services with a trauma- and gender-sensitive approach to dealing with vulnerable persons.

Despite the recent progress in the number of tried cases of wartime rape and sexual violence, the overall pace of prosecutions remains very slow and the courts and prosecutors' offices continue to struggle to address the huge backlog of cases. Since 2004, when the War Crimes Chamber of the Court of BiH was established, a total of 123 such cases have been completed and 134 perpetrators convicted of sexual violence crimes. The years of 2015 and 2016 saw the highest completion rates on record, with 20 and 19 completed cases, respectively. While encouraging overall, these numbers still represent less than 1% of the total estimated 20,000 victims of war crimes of sexual violence and a fraction of the potential cases. At the time of writing, nearly 260 war crimes cases were pending before the courts in BiH, while over 900 cases were still in the pre-investigation stage. At the current rate, it could take decades to clear the existing backlog of cases.⁵

³ Amnesty International has conducted research missions in BiH with specific focus on the survivors of conflict-related sexual violence since 2009, and most recently in the period between 2015- 2017, with the aim of gathering information on the status of the survivors and their access to reparations and services. During these missions, the organization met with relevant local and international stakeholders, representatives of the international community present in the country, representatives of civil society, victims' associations and survivors of sexual violence. See Amnesty International's publications, including *We Need Support, not Pity: Last Chance for Justice for Bosnia's Wartime Rape Survivors*, AI Index: EUR 63/6679/2017, 12 September 2017, available at: <https://www.amnesty.org/en/documents/eur63/6679/2017/en/>, *Bosnia and Herzegovina: Old crimes, same suffering: no justice for survivors of wartime rape in Northeast Bosnia and Herzegovina*, AI Index: EUR 63/002/2012, 29 March 2012, available at: <https://www.amnesty.org/en/documents/EUR63/006/2009/en/> and *Whose Justice? The women of Bosnia and Herzegovina are still waiting*, AI Index: EUR 63/006/2009, 30 September 2009, available at: <https://www.amnesty.org/en/documents/EUR63/006/2009/en/>

⁴ For more detail, see Amnesty International, *We need support, not pity*, p. 27-29.

⁵ For a more comprehensive study of progress concerning the prosecutions, see Organisation for Security and Cooperation in Europe (OSCE) Mission in BiH, *Towards Justice for Survivors of Conflict-Related Sexual Violence in Bosnia and Herzegovina: Progress before Courts in BiH between 2014 and 2016*, June 2017 (hereinafter: OSCE, *Towards Justice for Survivors*).

The authorities in BiH have not done enough to ensure that all victims of war crimes of sexual violence can access compensation for the harms suffered. These failures are evident in the obstacles victims face in claiming and collecting compensation from convicted perpetrators or the state in judicial proceedings and in the inadequate legal assistance provided to survivors seeking compensation through the courts.

Amnesty International notes with concern that the complicated and dysfunctional constitutional structure, as well as the persistent inability and unwillingness of the authorities to agree, even within their own separate jurisdictions, on the adoption of crucial measures in line with BiH's international obligations, continue to prevent the survivors from realizing their rights 25 years after the conflict.

THE NATIONAL HUMAN RIGHTS FRAMEWORK

PROSECUTION OF WARTIME SEXUAL VIOLENCE UNDER CRIMINAL CODES

BiH has partially complied with the recommendations of the previous review concerning the need to harmonize with the international law the provisions in its criminal codes pertaining to the crimes of wartime sexual violence.⁶

Amnesty International welcomes the adoption in 2015 of amendments to the BiH Criminal Code to include a definition of crimes of sexual violence as underlying offences of war crimes against civilians and crimes against humanity, in line with international criminal standards and jurisprudence of international courts and tribunals⁷ and recommendations of the UN Committee against Torture.⁸ The amendments removed the earlier condition of force, i.e., the requirement to prove the perpetration of the crime through the use of force or the threat of use of force.⁹ Instead, the amended law favours the concept of coercive circumstances as elaborated by the jurisprudence of the International Criminal Court, the International Criminal Tribunal for former Yugoslavia and the International Criminal Tribunal for Rwanda. This was an important change as the inclusion of the condition of force had limited the means by which sexual acts could be declared non-consensual and, until recently, had had a significant adverse effect on the proceedings in cases of sexual violence.

Amnesty International is concerned, however, that the entity-level courts, Brčko District Court, and increasingly the Court of BiH, continue to rely on the Criminal Code of the former Socialist

⁶ A/JRC/28/17, recommendations 107.58 (Uruguay), 107.59 (Finland), 107.63 (Norway), 107.99 (Switzerland).

⁷ The amendments brought this section of the BiH Criminal Code into compliance with Article 7 of the Statute of the International Criminal Court (ICC) and with the practice of the International Criminal Tribunal for Former Yugoslavia (ICTY).

⁸ See UN Committee against Torture, Concluding observations on the combined second to fifth periodic report of Bosnia and Herzegovina, Para. 9, CAT/C/BiH/CO/2-5, 20, January 2011.

⁹ Law on Changes and Amendments to the Criminal Code of BiH of 19 May 2015, Official Gazette no. 40/15. See Articles 9 and 10 on relevant changes to the Articles 172 (crimes against humanity) and 173 (war crimes against civilians) defining underlying offences of sexual violence.

Federal Republic of Yugoslavia (SFRY Criminal Code) in prosecuting crimes committed during the conflict. Unlike the more progressive BiH Criminal Code, the SFRY Criminal Code has serious gaps when applied to crimes under international law. Most notably, it does not criminalize crimes against humanity and does not recognize the mode of liability of command and other superiors' responsibility, in contradiction with international standards. While rape is defined as a war crime, the full array of crimes of sexual violence recognized in international law (including sexual slavery and forced pregnancy) is not defined in the SFRY Criminal Code.¹⁰ This has serious consequences for the adjudication of cases involving rape and other war crimes of sexual violence, as many such acts have been committed in the context of widespread attacks against the civilian population and could, therefore, constitute crimes against humanity.

Despite the deficiencies, the SFRY Criminal Code continues to be applied by the courts in the entities and Brčko District, and in recent years, increasingly by the Court of BiH as well.¹¹ This has become of greater concern since the 2013 ruling by the European Court for Human Rights (ECtHR) in the case *Maktouf and Damjanović v. Bosnia and Herzegovina*.¹² The ECtHR ruling found that the application of the sentencing provision of the BiH Criminal Code in *Maktouf and Damjanović* constituted a violation of Article 7 of the European Convention of Human Rights (ECHR), which prohibits the retroactive application of criminal law if it is to the disadvantage of the accused. The ruling stated that the court in BiH ought to have used the more lenient sentencing provisions of the SFRY Criminal Code¹³ when sentencing the defendants who were charged with war crimes and received penalties that were within the lower range of punishment foreseen under the BiH Criminal Code.¹⁴

Although the ECtHR ruling did not provide a further view as to whether the sentencing provisions of the BiH Criminal Code, especially those in the higher range, i.e., 15 years or above, are compatible with Article 7, courts in BiH have interpreted it as requiring that the more lenient

¹⁰ Under provisions for war crimes provided by SFRY Criminal Code of 1976, sexual violence can be prosecuted as torture, inhumane treatment or the causing of great suffering or serious injury to bodily integrity or health. See chapter XVI of the SFRY Criminal Code, entitled "Criminal Acts against Humanity and International Law." Also, see Organization for Security and Cooperation in EUROPE (OSCE), "Combating Impunity for Conflict-related Sexual Violence in Bosnia and Herzegovina: Progress and Challenges, An Analysis of Criminal Proceedings before the Courts of the Federation of Bosnia and Herzegovina, Republika Srpska and Brčko District between 2004-2014", Sarajevo, June 2015. In April 2017, UN Human Rights Committee expressed concern about the practice of courts in BiH to prosecute the crimes committed in conflict under the SFRY Criminal Code and instructed BiH to "ensure that judicial authorities in all entities pursue efforts aimed at harmonising jurisprudence on crimes committed during the conflict, and apply the law in a manner consistent with the applicable international legal standards." See UN Human Rights Committee, Concluding observations on the third periodic report of Bosnia and Herzegovina, paras. 15-16, CCPR/C/BIH/CO/3, April 2017.

¹¹ While, following the ECtHR ruling, the Court of BiH decided to apply the SFRY Criminal Code to all cases of genocide and war crimes, some cases involving crimes against humanity – which are not covered by the SFRY Criminal Code – continue to be tried under the BiH Criminal Code

¹² *Maktouf & Damjanović v. Bosnia & Herzegovina* (2312/08 and 34179/08), European Court Grand Chamber (2013).

¹³ Article 142 of the SFRY Criminal Code codifies rape only as a crime against the civilian population and foresees a minimal sentence of five years of imprisonment. As a comparison, Article 173 of the BiH Criminal Code foresees a minimum of ten years of imprisonment for the same crime.

¹⁴ The principle of non-retroactivity under Article 7 of ECHR prohibits the retrospective application of criminal law where it is to an accused's disadvantage. For more discussion on the effects of the *Maktouf & Damjanović v. Bosnia & Herzegovina* decision on the proceedings, see OSCE Mission to BiH, Combating Impunity for Conflict-Related Sexual Violence in Bosnia and Herzegovina (Entity Courts, 2004-2014), June 2015, p. 17-18.

SFRY Criminal Code be applied to cases of war crimes and genocide.¹⁵ While cases of crimes against humanity, including some cases of wartime sexual violence, have continued to be tried under the BiH Criminal Code, the BiH Constitutional Court's interpretation of the ECtHR ruling affected trials and sentencing in all other genocide and war crimes proceedings before the Court of BiH. In at least 23 instances, this has led to the reopening of cases with final and binding decisions and a reduction of the sentences handed down to perpetrators of crimes of sexual violence.¹⁶

Beyond the impact on sentencing practices, in several cases, the courts have also interpreted the ECtHR ruling as requiring the re-qualification of acts in order to apply the SFRY Criminal Code. Amnesty International considers that the ECtHR ruling addresses only the sentencing practice and, therefore, does not preclude the courts in BiH from using the definitions of crimes under the BiH Criminal Code. Article 7 of the ECHR and Article 15 of the International Covenant on Civil and Political Rights allow for the trial and punishment of any person for any act, which, at the time of its commission, was criminal under international law, even if appropriate domestic legislation was not in force at the time of the commission of the act. The view of the courts in BiH that the criminal code in force at the time of the conflict should typically apply has resulted in a situation where some serious crimes under international law, including crimes of sexual violence, are not adequately classified and tried.

These deficiencies in the SFRY Criminal Code make it an unsuitable normative framework to address sexual violence in armed conflicts.¹⁷

LEGAL AND POLICY FRAMEWORK

Despite several efforts to do so, the authorities have failed to adopt key policy and legal documents to put in place a system to address the rights of civilian victims of war, including victims of wartime sexual violence, in a manner consistent with international standard and practice.

The text of the revised National Strategy for Processing of War Crimes was agreed by a working group in September 2018, yet the document has not been officially adopted by the Council of Ministers at the time of this writing. The Strategy envisages new measures to ensure the completion of all cases of war crimes by 2023. The Court of BiH and Prosecutor's Office of BiH have failed to meet the targets set in the original five-year Strategy adopted in 2008.¹⁸

BiH has also failed to adopt the Draft National Strategy on Transitional Justice, which was drafted in 2011/2012 by the Ministry of Human Rights and Refugees and the Ministry of Justice. The draft Strategy was meant to provide a comprehensive platform to provide truth and justice and

¹⁵ See OSCE, *Towards Justice for Survivors*, p. 13 and Korner, Joanna, *Processing of War Crimes at the State Level in Bosnia and Herzegovina*, June 2016, p.29, available at: <http://www.osce.org/mission-to-bosnia-and-herzegovina/247436>

¹⁶ See OSCE Mission, *Towards Justice for Survivors*, p. 13-14. See also Association of NGOs, *Follow up Report of the Implementation by BiH of the Recommendations issued by the UN Committee on Elimination of Discrimination against Women*, July 2015, para. 13.

¹⁷ Amnesty International, *Submission to UN Human Rights Committee*, March 2017 (Index: EUR 63/5554/2017). Also, see Amnesty International, *Whose Justice?*, p. 30.

¹⁸ See Balkan Insight, "Strategija za rad na predmetima ratnih zločina nije ispunjena", 29 January 2016, available at <http://www.balkaninsight.com/rs/article/bih-strategija-za-rad-na-predmetima-ratnih-zlo%C4%8Dina-nije-ispunjena-01-29-2016>. In its Concluding observations on the third periodic report of BiH, the UN Human Rights Committee expressed concern about the slow pace of prosecuting war crimes and the failure of the courts to meet the targets set out in the original War Crimes Strategy and urged BiH to expedite the proceedings. See *UN Human Rights Committee, Concluding observations on the third periodic report of BiH*, CCPR/C/BiH/CO/3, 13 April, 2017, paras. 13-14.

ensure effective institutional access to reparations and other forms of support for civilian victims of war, including survivors of sexual violence, regardless of their place of residence. Despite the attempts by the Ministry of Justice to reinvigorate the process, at the time of this writing, there were no indications that the political commitment necessary for the adoption of this policy document was forthcoming.¹⁹

BiH authorities have also failed to adopt the Programme for Victims of Sexual Violence in Conflict, which was jointly launched in 2011 by the Ministry of Human Rights and Refugees and the UN Population Fund (UNPFA), with the aim of ensuring an inclusive and systematic approach to improving the lives of victims. In the absence of political consensus on this document, UN agencies in BiH are implementing several segments of the programme, including those related to witness support, psychosocial assistance and empowerment. Amnesty International notes with concern, however, the lack of concrete effort by the authorities in BiH to secure the necessary political support and resources to take over these programs in the future.

THE BiH DRAFT LAW ON THE RIGHTS OF VICTIMS OF TORTURE

The BiH draft law on the rights of victims of torture had not been adopted at the time of this submission. The previous three attempts to pass the draft legislation were unsuccessful, as the versions presented failed to obtain the required political support in the BiH Council of Ministers. Entity representatives from Republika Srpska (RS) continue to refuse to participate in efforts by the Ministry of Human Rights and Refugees to develop a BiH-wide draft law through an inter-ministerial working group.²⁰

In June 2018, the RS National Assembly adopted its own law on the protection of victims of wartime torture. While largely harmonized with international standard, the law does contain provisions that could prevent some victims from fully realizing their rights. For example, the law limits the evidence necessary to prove torture to only that which is available to the official institutions of RS. Such restrictive provisions could create insurmountable obstacles for many victims whose cases were not documented by the bodies in RS, but were recorded in other parts of the country, and could result in discrimination. This would be in contravention of the general provisions of this law as well as international standards, and in particular the UN Basic Principles on the Right to a Remedy which stress that the “principle of reparation must be applied without any discrimination of any kind or on any ground, without exception”.²¹ In addition, the law prescribes a strict five-year cut-off limit to apply for the status of victim of wartime torture. Amnesty International considers that any time limitations for applications, in particular for the victims of wartime sexual violence, would limit the ability of victims, many of whom remain reluctant to speak about their experience, to apply and obtain the status or reparation.

While the adoption of the law by RS is a welcome development, the authorities must undertake additional measures throughout the implementation to ensure that all victims are able to access the rights guaranteed by this law without unnecessary restrictions which could result in their applications being rejected.

¹⁹ Interviews with BiH Ministry of Justice, civil society organizations and international organizations conducted during research missions, Sarajevo, September and November 2016 and June and September 2017.

²⁰ Interviews with BiH Ministry of Justice, Sarajevo, November 2016 and September 2017.

²¹ See Basic Principles and Guidelines on the Right to Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (Basic Principles), A/RES/60/147/, principle 25, United Nations Committee against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, General Comment no. 3, para. 32.

HUMAN RIGHTS SITUATION ON THE GROUND

ACCESS TO REPARATION FOR VICTIMS OF WARTIME SEXUAL VIOLENCE

COMPENSATION IN CRIMINAL PROCEEDINGS

Amnesty International welcomes recent decisions by courts in BiH to start awarding financial compensations to victims of wartime sexual violence in criminal proceedings.²² To date, courts in BiH have ruled in eight cases, including four at the second instance, to order convicted perpetrators to pay compensation to the victims of conflict-related sexual violence.²³ While this is a positive development, to date, not one of the court decisions has been implemented nor has compensation been paid to the victims. The perpetrators often lack funds, making it impossible for the courts to enforce such decisions. In interviews with Amnesty International, associations of survivors and the lawyers representing them said that in many instances the alleged perpetrators have moved their assets, i.e., signed them over to family members, since the end of the war or early on in the proceedings. The courts have mostly failed to implement measures to identify and secure assets belonging to perpetrators in order to enable later enforcement of the compensation decisions. BiH does not have a victim compensation fund or alternative mechanism to compensate survivors of criminal acts in cases when the convicted perpetrators are not able to pay damages, leaving the victims unable to effectively enforce their right to this form of compensation.

COMPENSATION IN CIVIL PROCEEDINGS

In September 2018, BiH Ministry of Justice established a working group to agree a harmonized text for the amendments to the Laws on Civil Proceedings at all levels in BiH in order to provide for the continued witness protection for the victims of wartime sexual violence who are directed by criminal courts to seek their compensation claims in separate civil proceedings. For the time being, however, most victims who are required to pursue compensation claims in separate civil proceedings, do so before local courts that lack adequate witness protection.²⁴ Separate civil proceedings often compromise the privacy of witnesses and expose victims to unnecessary re-traumatization when they have, yet again, to provide their testimonies. While pursuing claims before civil courts, victims bear the burden of proof, have to hire a lawyer and, until recently, have been responsible for the payment of court fees in instances when their claims have been dismissed. The Constitutional Court of BiH broke that practice in April 2018 when it ruled that the

²² The two decisions before BiH court were confirmed in second instance. See *BiH v. Marković Bosiljko*, Case no. S1 1 K 012024 15 KRZ, 29 February 2016 and *BiH v. Slavko Savić*, Case no. S1 1 K 017213 15 KRZ, 24 November 2015.

²³ Email correspondence with TRIAL Int., June 2017. Examples of cases confirmed in the second instance are: *BiH v. Marković Bosiljko*, Case no. S1 1 K 012024 15 KRZ, 29 February 2016, and *BiH v. Slavko Savić*, Case no. S1 1 K 017213 15 KRZ, 24 November 2015.

²⁴ For discussion on challenges of seeking compensation in civil proceedings, see TRIAL, “Enforcement of damage compensation claims of victims of war in criminal proceedings in Bosnia and Herzegovina, Situation, Challenges and Perspectives”, Sarajevo 2016, and, TRIAL, “Compensating survivors in criminal proceedings: Perspectives from the field, December 2016”, available at: https://trialinternational.org/wp-content/uploads/2016/11/TRIAL-International_compensation-publication_EN_web.pdf.

victims in civil proceedings claiming compensation should be freed from paying court fees in cases when their requests have been dismissed.²⁵

Some level of legal support is available to survivors in criminal proceedings, however, such assistance is not readily accessible in civil courts due to the systemic shortage of legal aid in BiH. Given the low socio-economic status of the survivors, these costs present a further deterrent to filing compensation claims.²⁶

From 2014 to 2016, the BiH Constitutional Court issued several decisions²⁷ that if directed at the state or entities, the claims for pecuniary damages resulting from war crimes are subject to a statute of limitations, although war crimes are imprescriptible in national and international law.²⁸ According to the laws on civil obligations across BiH, the statute of limitations for pecuniary damages related to criminal acts is directly proportionate to the statute of limitations imposed on these acts; this makes the Constitutional Court's views even more difficult to understand or justify. The BiH Constitutional Court appears to interpret the term "responsible person" as denoting only persons directly responsible for the crime, i.e., the perpetrators, and not also the persons or entities who have objective responsibility, such as the state or the entities.

That view has resulted in widespread dismissal of compensation claims filed by the survivors before courts in all parts of the country²⁹ in civil proceedings,³⁰ forcing survivors to pay high court fees or face administrative seizure of their assets.³¹ Amnesty International has documented several cases of victims who had to face court police attempting to confiscate their personal property in order to recover the court costs following a negative outcome of civil litigation. Amnesty International considers that the BiH Constitutional Court's position stands in the way of survivors' ability to realise their right to reparation. As the statute of limitations does not apply to crimes under international law, such as genocide, crimes against humanity and war crimes, they should not apply to criminal or civil proceedings in which victims of crimes against humanity seek full reparation. Due to the long-term physical and psychological effects of torture on the victims,

²⁵ See: Klix, "Ustavni sud BiH: Žrtva silovanja ne mora platiti sudske troškove," 3 April 2018, <https://www.klix.ba/vijesti/bih/ustavni-sud-bih-zrtva-silovanja-ne-mora-platiti-sudske-troskove/180403049>.

²⁶ TRIAL, "Compensating survivors", UN Human Rights Committee, TRIAL & Association of civil society organizations: Written information for the Adoption of the List of Issues by the Human Rights Committee with regard to Bosnia and Herzegovina, Para 98, CCPR/C/BiH/3, July 2015. Also, Amnesty International's interview with Nedžla Šehić, the lawyer representing victims in the cases involving compensation claims for the crimes of sexual violence committed during the war, 8 November, 2016, Sarajevo.

²⁷ See for example BiH Constitutional Court Decision of 10 November 2015, referenced at: <http://www.pravosudje.ba/vstv/faces/vijesti.jsp?id=58140>, and Decision of 21 September 2016, available at: <http://www.pravosudje.ba/vstv/faces/vijesti.jsp?id=63824>, as well as *Mustafa Karahasanović & Others v. Republika Srpska*, (AP-4128), BiH Constitutional Court, 28 March 2014.

²⁸ See International Committee of the Red Cross, Customary International Humanitarian Law, Rule 160 ('Statutes of limitation may not apply to war crimes'). See also Article 29, Rome Statute of the International Criminal Court ('The crimes within the jurisdiction of the Court shall not be subject to any statute of limitations').

²⁹ Prior to these decisions, the practice between the courts in RS and FBiH was different; the courts in RS had held this view for year prior to the BiH Constitutional Court decisions, while the courts in FBiH changed their practice only after the position of the BiH Constitutional Court changed in 2015.

³⁰ Interview with lawyer Nedžla Šehić, 8 November 2016. Also, see TRIAL Int., "Compensating survivors in criminal proceedings: perspectives from the field", p. 39.

³¹ Also, interview with Jasmin Mešković, president of the BiH Association of Camp Inmates, 11 November 2016 and 28 March 2017, Sarajevo.

statutes of limitations should not apply in these cases, as they deprive the victims of their right to redress, compensation and rehabilitation.³²

The absence of state-wide legislation on administrative reparation, the inability of the authorities to enforce court decisions on compensation and BiH Constitutional Court's position on statutory limitations leave many victims without an enforceable right to a remedy, contrary to international law.³³

REFUGEE AND MIGRANT RIGHTS

BiH has failed to provide refugees and migrants with effective access to international protection and adequate reception conditions.³⁴ Since early 2018, tens of thousands of people have travelled through BiH, most of them intending to seek international protection in the EU. Following the closure of the so-called "Balkan route" through Hungary in 2015 and subsequently through Croatia and Slovenia in 2017, refugees and migrants started arriving in BiH in significant numbers. By the end of 2018, the authorities registered over 24,000 arrivals.³⁵

A small minority of them attempted to apply for asylum and stay in BiH. Yet, out of 24,000 refugees and migrants who transited through the country in 2018, some 23,000 expressed their intention to apply for asylum, with less than seven percent (1,579) actually managing to do so.³⁶ Numerous bureaucratic obstacles to registration, lack of adequate legal assistance and translation, limited capacity within the Ministry of Security and scarce support for potential asylum-seekers³⁷ caused many refugees and migrants to proceed to other European countries.

³² The UN Human Rights Committee also expressed concern about the opinions of the BiH Constitutional Court, which "limit the ability of victims to effectively claim compensation". In 2017, the Committee urged BiH to "urgently adopt legislative and practical measures to ensure that survivors of torture and sexual violence have access to effective remedies". See UN Human Rights Committee, *Concluding observations on the third periodic report of Bosnia and Herzegovina*, CCPR/C/BIH/CO/3, para. 17-18.

³³ Art. 14 of the UN Convention against Torture states that "each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible". Also, see UN Committee against Torture, *General Comment no. 3 on the implementation of Art. 14 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment*, CAT/C/GC/3, November 2012, paras. 38-39: The states have to ensure that the victims have not only de jure, but also de facto access to timely and efficient mechanism to exercise their right to compensation and remedy of violation and must endeavor to eliminate all forms of formal and informal barriers that could prevent access. The failure of any member state to implement the ruling that ordered reparation to victims of torture represents a significant limitation of and an obstacle to the victims' right to compensation.

³⁴ See Amnesty International, *Pushed to the edge: Violence and abuse against refugees and migrants along the Balkans Route*, 13 March 2019, EUR 05/9964/2019, <https://www.amnesty.org/en/documents/eur05/9964/2019/en/>

³⁵ BiH Council of Ministers, *Information on migration*, December 2018, and European Commission, Bosnia and Herzegovina, Factsheet, available at: https://ec.europa.eu/echo/where/europe/bosnia-and-herzegovina_en

³⁶ Inter-agency operational update Bosnia and Herzegovina, January 2019, <http://ba.one.un.org/content/dam/unct/bih/PDFs/UNCTBiHSitReps/Inter-agency%20refugee%20and%20migrant%20operational%20update-%20January%202019.pdf>. See also, BiH Council of Ministers, Report from the 160th session, 4 December 2018, http://www.vijeceministara.gov.ba/saopstenja/sjednice/saopstenja_sa_sjednica/default.aspx?id=29623&langTag=en-US

³⁷ United Nations High Commissioner for Refugees (UNHCR), *Refugee and migrants situation in Bosnia and Herzegovina: The multi-clustered/sector initial rapid assessment (MIRA) report*, May 2018, <https://data2.unhcr.org/es/documents/download/63869>

BiH has only one official reception centre for asylum-seekers near Sarajevo, in Delijaš. The centre is operated by Ministry of Security and has the capacity to accommodate only 150 people. In addition, the national authorities also operate a refugee centre in Salakovac, managed by the Ministry of Human Rights and Refugees, with the capacity to accommodate 250 people. However, this centre is designated for people who have already obtained refugee status. In the absence of adequate facilities or a meaningful support system, refugees and migrants often travel to the towns of Bihać and Velika Kladuša, closer to the Croatian border. By March 2019, an estimated 5,500 refugees and migrants remain trapped in BiH,³⁸ the vast majority of them in overcrowded temporary accommodation camps in Bihać and Velika Kladuša, operated by International Organization for Migration, living in inhumane and unsanitary conditions.

The Ministry of Security in BiH, which has competence over matters of asylum and migration, has failed to actively engage or meaningfully support the local authorities or to meet the needs of the growing population of refugees and migrants arriving in or transiting through BiH.

RECOMMENDATION FOR ACTION BY THE STATE UNDER REVIEW

WITH RESPECT TO IMPUNITY FOR WAR CRIMES

Amnesty International calls on the authorities in Bosnia and Herzegovina to:

- Put in place a comprehensive state-wide rights-based framework for redress for civilian victims of war, including survivors of wartime sexual violence, including by adopting the Draft Strategy for Transitional Justice and Programme for Victims of Sexual Violence in Conflict;
- Develop and adopt a BiH Framework Law on Protection of Victims of Torture, including criteria for obtaining the status of victim of wartime torture, providing specific rights and entitlements for victims throughout the territory of BiH;
- Remove legal and practical obstacles to enforcing decisions on compensation and put in place measures to ensure that the right to compensation in civil and criminal proceedings is enforceable in practice;
- Continue the practice of awarding compensation for damages for wartime sexual violence in criminal proceedings before state and entity-level courts, without excluding the possibility for compensation in civil proceedings;
- Put in place measures to ensure that the courts and prosecutor's offices identify early in the proceedings the property belonging to those suspected of criminal responsibility, in order to take protective measures for the purpose of a potential forfeiture;

³⁸ Interagency operational update Bosnia and Herzegovina, 31 January 2019, <http://ba.one.un.org/content/dam/unct/bih/PDFs/UNCTBiHSitReps/Inter-agency%20refugee%20and%20migrant%20operational%20update-%20January%202019.pdf>

- Reconsider the Constitutional Court's position that the statute of limitations applies to compensation claims related to crimes under international law, and not to any proceedings related to these crimes or civil tort claims;
- Establish a victim compensation fund for the survivors of wartime sexual violence, including to address cases where the convicted perpetrators are not able to pay the damages.

Amnesty International calls on the authorities of Republika Srpska to:

- Put in place additional measures to ensure that the provisions in the 2018 Law on Civilian Victims of Wartime Torture do not restrict its application or exclude any victims of wartime sexual violence from obtaining the status of civilian victims of war and accompanying social and welfare benefits;
- Remove the strict five-year deadlines for applications in the Law on Civilian Victims of Wartime Torture.

WITH RESPECT TO REFUGEE AND MIGRANT RIGHTS

Amnesty International calls on the authorities in Bosnia and Herzegovina to:

- Ensure that all asylum-seekers have access to fair and effective asylum procedures, including an assessment of their claim for international protection on its merits in an individualized procedure;
- Take concrete steps to ensure that the country is better prepared to adequately respond to the needs of refugees and migrants transiting through or staying in the territory of Bosnia and Herzegovina, including by providing them with adequate and safe accommodation, food, sanitation, medical care and legal aid, as required by national and international law.

ANNEX

AMNESTY INTERNATIONAL DOCUMENTS FOR FURTHER REFERENCE³⁹

Bosnia and Herzegovina, *Submission to UN Human Rights Committee*, March 2017, EUR 63/5554/2017

Bosnia and Herzegovina: "We Need Support, not Pity: Last Chance for Justice for Bosnia's Wartime Rape Survivors", 12 September 2017, EUR 63/6679/2017

Bosnia and Herzegovina, "Pushed to the edge: Violence and abuse against refugees and migrants along the Balkans Route," 13 March 2019, EUR 05/9964/2019

Amnesty International Report 2017/18, Bosnia and Herzegovina, POL 10/6700/2018

³⁹ All these documents are available on Amnesty International's website:
<https://www.amnesty.org/en/countries/europe-and-central-asia/bosnia-and-herzegovina/>

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