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Submission to the UN Universal Periodic Review

**Seventh session of the UPR Working Group of the
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Executive summary

In this submission, Amnesty International provides information under sections B, C and D as stipulated in the *General Guidelines for the Preparation of Information under the Universal Periodic Review*:¹

- In Section B, Amnesty International calls for the Criminal Code to be amended in accordance with current standards of international criminal law related to prosecution of war crimes of sexual violence. The organization also recommends that the Criminal Code should be applied in all jurisdictions in the country.
- Section C highlights Amnesty International's concerns in relation to the failure of the authorities to provide an adequate level of protection of and support for witnesses in cases of war crimes of sexual violence. The organization is also concerned that the authorities have denied the needs of the survivors of war crimes of sexual violence by failing to provide them with meaningful measures of reparation, including restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.
- In section D, Amnesty International makes a number of recommendations for action by the government.

¹ Contained in Human Rights Council Decision 6/102, Follow-up to Human Rights Council resolution 5/1, section I adopted 27 September 2007.

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Introduction

The use of rape and other forms of sexual violence was widespread during the 1992-1995 war in Bosnia and Herzegovina (BiH).² Rape was committed on a large scale by all parties to the conflict, although according to information available, the majority of victims were Bosnian Muslims.³

Evidence collected by the International Criminal Tribunal for the former Yugoslavia (ICTY) suggests that in some cases rape was organized in a systematic way, where women were deprived of their liberty in camps or in other locations, specifically for the purpose of sexual exploitation. In other cases acts of rape took place during military attacks on the civilian population, with the purpose of forcible displacement of civilians.⁴ The perpetrators of rape were members of organized armies, police forces and paramilitary groups. Amnesty International is also aware of several cases of rape allegedly committed by international peace-keepers. To date none of the peace-keepers allegedly responsible for those crimes has been brought to justice.

There are no reliable statistics on the number of women and men who were raped or were subjected to other forms of sexual violence. Early estimates by the BiH government suggested the number of 50,000 victims although this estimate was questioned as unreliable and politicized.⁵ The Parliamentary Assembly of the Council of Europe estimated that 20,000 women were subjected to rape and other forms of sexual violence.⁶

Amnesty International has not made its own estimate of the number of women and men raped during the war and is unable to verify any of the estimates produced by others. However, it considers that the evidence collected to date by the ICTY and domestic courts, as well as information reported by national and international NGOs, constitute strong evidence that the incidence of rape during the armed conflict was widespread and the number of those raped amounts to at least several thousand.

Despite the widespread occurrence of rape during the 1992-1995 war, the majority of those responsible enjoy impunity. Since its creation, the ICTY has prosecuted and concluded 18 cases which included charges of rape and other forms of sexual violence related to the war.⁷ As of July 2009, the State Court of Bosnia and Herzegovina had delivered final judgments in 12 cases against 15 accused related to war crimes of sexual

² Report on the situation of human rights in the territory of the former Yugoslavia submitted by Mr. Tadeusz Mazowiecki, Special Rapporteur of the Commission on Human Rights, pursuant to Commission resolution 1992/S-1/1 of 14 August 1992. Commission on Human Rights. Forty-ninth session. 10 February 1993. E/CN.4/1993/50. Annex II. p. 63. para.6.

³ Ibid. and *Bosnia-Herzegovina: Rape and Sexual Abuse by Armed Forces*. January 1993. (Index: EUR 63/01/93). p. 4.

⁴ Ibid.

⁵ Vranic, Seada, *Breaking the Wall of Silence. The Voices of Raped in Bosnia*. Antibarbarus: Zagreb 1996. p.239.

⁶ Parliamentary Assembly of the Council of Europe. Resolution 1670 (2009). Sexual violence against women in armed conflict. Adopted on 29 May 2009. para. 6.

⁷ The cases related to war crimes of sexual violence were the following: Tadic (IT-94-1); Nikolic (IT-94-2); Dosen, Kolundzija and Sikirica (IT-95-8); Todorovic (IT-95-9/1); Simic (IT-95-9/2); Cesic (IT-95-10/1); Rajic (IT-95-12); Bralo (IT-95-17); Furundzija (IT-95-17/1); Delalic, Delic, Mucic, and Landzo (IT-96-21); Kovac, Kunarac, and Vukovic (IT-96-23, IT-96-23/1); Stakic (IT-97-24); Kos, Kvočka, Prcac, Radic, and Zigic (IT-98-30/1); Brdanin (IT-99-36); Plavsic (IT-00-39 & 40/1); Krajisnik (IT-00-39); Banovic (IT-02-65/1); Zelenovic (IT-96-23/2).

violence.⁸ Twelve of those accused were convicted and three were acquitted.⁹ One trial ended upon a plea agreement between the accused and the prosecutor's office, which was approved by the Court.¹⁰ In all other cases, impunity for those responsible prevails.

Amnesty International is concerned that many perpetrators of war crimes of sexual violence continue to evade justice, and they often live in the same communities as their victims. Survivors of those crimes suffer trauma and other psychological and physical problems. Psychological support is often not available and access to health services is limited, especially for women in remote areas of the country. Many survivors are unemployed and live in poverty and cannot afford medicines.

Amnesty International is concerned that the authorities have failed to develop a comprehensive strategy to address the needs of the survivors of war crimes of sexual violence and to provide them with reparation including, restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.

B. Normative and institutional framework of the State

Failure to provide survivors with access to justice

Amnesty International is concerned at continued impunity for crimes of sexual violence arising from the armed conflict in Bosnia and Herzegovina (BiH). Only a few prosecutions have been conducted before the War Crimes Chamber (WCC) of the State Court of BiH or, in some cases, the cantonal and district courts in the Federation of Bosnia and Herzegovina (FBiH) and the Republika Srpska (RS).¹¹

The organization considers that the failure of the BiH authorities to provide survivors of war crimes of sexual violence with access to justice derives from a number of reasons, including the inadequate definition of those crimes in the legal framework of the country, as well as from inadequate protection of and support for witnesses in those cases (addressed in Section C).

The War Crimes Chamber (WCC) of the State Court of BiH adjudicates on cases of war crimes, crimes against humanity and genocide as set out in the Criminal Code (chapter XVII, under the heading *Crimes Against Humanity and Values Protected by International Law*).

Crimes of sexual violence as crimes against humanity are defined by the Criminal Code as follows: "Coercing another by force or by threat of immediate attack upon his life or limb, or the life or limb of a person close to him, to sexual intercourse or an equivalent sexual act (rape), sexual slavery, enforced prostitution, forced pregnancy, enforced sterilisation or any other form of sexual violence of comparable gravity."¹² According to the Criminal Code, to constitute crimes against humanity, such crimes have to be part of "a widespread or systematic attack directed against any civilian population".¹³ Rape and other forms of sexual violence as war crimes against the civilian population are defined in a similar way in Article 173 of the Criminal Code, except that such acts do not have to be a part of a widespread or systematic attack. Amnesty International is

8 The cases were against the following accused: Veiz Bjelic (X-KR-07/430-1); Damjanovic Dragan. (X-KRZ-05/51); Jankovic Gojko (X-KRZ-05/161); Lelek Zeljko (X-KRZ-06-202); Mejakic and others (X-KR-06/200); Paliija Jadranko (X-KRZ-06/290); Samadzic Nedo (X-KRZ-05/49); Simsic Boban (X-KRZ-05/04); Stankovic Radovan (X-KRZ-05/70); Tanaskovic Nenad (X-KRZ-05/165); Vukovic Radmilo (X-KRZ-06/217); Vukovic Ranko and Vukovic Rajko (X-KRZ-07/405).

9 Those acquitted were: Vukovic Radmilo (X-KRZ-06/217); Vukovic Ranko and Vukovic Rajko (X-KRZ-07/405).

10 Veiz Bjelic (X-KR-07/430-1).

11 The Federation of Bosnia and Herzegovina (FBiH) and Republika Srpska (RS) are the two semi-autonomous, administrative entities which constitute Bosnia and Herzegovina.

12 Criminal Code of Bosnia and Herzegovina. "Official Gazette of Bosnia and Herzegovina" No. 3/03, 32/03, 37/03, 54/04, 61/04, 30/05, 53/06, 55/06, 32/07. Article 172 (1) (g).

13 Ibid. Article 172 (1).

concerned that the definition of “sexual violence” in the Criminal Code is not consistent with the definition of such crimes in international standards and jurisprudence of international courts.

As established in a number of judgments of the ICTY, and particularly in the Appeals Chamber judgment in the *Kunarac* case, the use of force or the threat of force should not be the only means available to establish that the rape or other sexual act was not consensual.¹⁴ The jurisprudence of the international tribunals favours the notion of “coercive circumstances” as well as direct force or the threat of force as an element of rape.¹⁵ This approach was also taken by the Trial Chamber of the International Criminal Tribunal for Rwanda (ICTR) in the *Akayesu* Trial Chamber. That judgment states that “coercive circumstances need not be evidenced by a show of physical force. Threats, intimidation, extortion and other forms of duress which prey on fear or desperation may constitute coercion, and coercion may be inherent in certain circumstances, such as armed conflict.”¹⁶ The relevance of this reasoning to the context of the war in Bosnia and Herzegovina was confirmed by the Trial Chamber of the ICTY in its judgment in the *Delalic* case.¹⁷

In contrast to the WCC which applies the BiH Criminal Code, the entity courts in the FBiH and RS continue to apply the Criminal Code of the former Socialist Federal Republic of Yugoslavia (SFRY), the law in force during the period of armed conflict. The SFRY Criminal Code does not define or specifically criminalize “crimes against humanity”. It only mentions “criminal acts against humanity” under a general heading in Chapter XVI. This is in contradiction with current standards of international criminal law. Amnesty International considers that this may have serious consequences in the adjudication by entity courts of cases involving rape and other war crimes of sexual violence, as many of these acts have been committed in the context of widespread attacks against the civilian population and thus would qualify as crimes against humanity.

Furthermore, while the SFRY Criminal Code recognizes “forced prostitution” and “rape” as war crimes against the civilian population, it fails to include definitions of those crimes. Bearing in mind the significance of the definition of “rape” in international criminal law elaborated in the jurisprudence of the ICTY and the ICTR, Amnesty International considers that the lack of this in the SFRY Criminal Code may have serious negative consequences when rape and other war crimes of sexual violence are prosecuted before the entity courts.

Amnesty International considers that the justifications provided by entity authorities for applying the SFRY Criminal Code rather than the BiH Criminal Code are not consistent with international law. The entity authorities have claimed that they cannot apply the BiH Criminal Code, which was adopted in 2003 in cases of war crimes committed in 1992-1995, because doing so would violate the prohibition of retroactive application of criminal law. However, Amnesty International believes that the use of the BiH Criminal Code by entity courts would not violate the prohibition in international law against the retroactive application of criminal law, because, as specified in Article 7 of the European Convention on Human Rights (ECHR) and Article 15 of the International Covenant on Civil and Political Rights (ICCPR), the prohibition against retroactive application of criminal law does *not* apply to the trial and punishment of any person for any act or omission which, at the time of its commission, was criminal according to national or international law, including customary international law. As all relevant acts and omissions were prohibited both under the SFRY Criminal Code and international law at the time they were committed, the application of the BiH Criminal Code, which criminalises these acts, in both entity courts would be consistent with international law.

14 *Prosecutor v. Kunarac et al.* IT-96-23, IT-96-23/1. Appeals Chamber Judgment. 12 June 2002. para.129.

15 See the discussion about the definition of rape, “coercive circumstance” and the issue of consent in Chapter 2.

16 *Prosecutor v. Akayesu.* ICTR-96-4-T, Trial Chamber Judgement, 2 September 1998. para. 688.

17 *Prosecutor v. Delalic, Delic, Mucic and Landzo.* IT-96-21. Known also as the *Celebici* case. Trial Chamber Judgment, 16 November 1998. para. 478-479.

C. Promotion and protection of human rights on the ground

Inadequate witness protection and support

Amnesty International is concerned that witness protection and support programmes for witnesses in criminal proceedings both at the State Court and before the entity courts are inadequate and that this has resulted in witnesses being unwilling to testify and may lead to unsuccessful prosecutions and consequent impunity for the perpetrators.

Amnesty International considers that the protection of witnesses outside the courtroom at the WCC, provided by the State Investigation and Protection Agency (SIPA), lacks professionalism, including because SIPA officers have allegedly disclosed the names of some witnesses to the public and been unable to react quickly when the security of witnesses was at risk.¹⁸

According to information provided to Amnesty International in March 2009 by NGOs supporting survivors of war crimes of sexual violence, SIPA has failed to take appropriate account of the situation for this particular category of victims. According to NGO representatives, the SIPA officers responsible for delivering summons to witnesses or for escorting them to and from the courtroom at the WCC, may have exposed such witnesses to unnecessary negative consequences in the community in which they live. The appearance of marked SIPA cars in small communities gives rise to speculation and creates pressure on witnesses who may be forced to explain to their neighbours the reasons for SIPA visits.¹⁹ Given the fact that many survivors may never have disclosed that they were sexually abused during the war, and would prefer to keep this fact secret, Amnesty International considers that SIPA should take measures to ensure respect for the right to privacy of the survivors.

Amnesty International is also concerned that SIPA is unable to provide witnesses at serious risk with long-term or permanent protection measures, including providing them with a protected identity or arranging their relocation within or outside of BiH. According to the director of SIPA, Mirko Lujic, the Agency can only provide this level of protection to a limited number of witnesses. Only 10 per cent of witnesses are eligible for such complex protection due to lack of resources and legal obstacles to the implementation of such measures.²⁰

Witness protection programmes similar to those provided by SIPA do not exist in the entity courts, which leaves witnesses in cases before those courts exposed to serious risks.

Witness support

Amnesty International considers that the provision of psychological support for witnesses in cases of war crimes of sexual violence is critical to the effective prosecution of such crimes. If provided in a professional manner it can enhance not only the witnesses' experience of the justice process, but also the quality and efficiency of justice. One of the biggest challenges faced by the prosecutor's office is to ensure that the trial panel is presented with credible evidence and witness testimonies. In cases of rape and other war crimes of sexual violence gathering credible testimonies can be extremely challenging. Many survivors of such crimes continue to suffer the consequences of trauma, including effects on their memory. Often they have gaps in their recall and cannot account for facts, although they still remember such details as the smell of the perpetrator's clothes or the colour of his shoes. The credibility of rape survivors as witnesses may be affected by the consequences of trauma. For example, some may give inconsistent evidence, be emotionally labile and

¹⁸ Tolbert, David and Aleksandar Kontic. *Final Report of the International Criminal Law Services (ICLS) Experts on the Sustainable Transition of the Registry and International Donor Support to the Court of Bosnia and Herzegovina and the Prosecutor's Office of Bosnia and Herzegovina in 2009*. International Criminal Law Services Foundation. 15 December 2008. p. 21.

¹⁹ Consultation meeting with BiH NGOs, Sarajevo, 27 March 2009.

²⁰ *SIPA stitila nekoliko stotina svjedoka*. Nezavisne Novine. 28 July 2008.

show signs of irritation, particularly under cross-examination. These are well-documented consequences of traumatic stress seen in survivors of torture.

Despite this, the psychological support provided to witnesses at the WCC is limited to a short period before and two weeks after the trial. Once the trial is completed, witnesses are left without long-term psychological support despite the fact that they may have been re-traumatized as a result of giving testimonies in court. The entity courts do not provide even this form of limited psychological support to witnesses.

Failure to provide survivors with reparation

Amnesty International is concerned that the BiH authorities have denied the needs of survivors of war crimes of sexual violence by failing to provide them with meaningful measures of reparation, including restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.

As provided for by law in both entities, the status of “civilian victim of war” entitles them to receive social benefits. However, gaps in the laws and in their implementation often result in discrimination against victims of sexual violence.

The BiH authorities have largely failed to ensure adequate rehabilitation to victims of war crimes of sexual violence, including by failing to ensure the right to the highest standard of mental health for women survivors of rape. It has not provided them with support from the state-run social welfare and public health system, nor has it provided adequate resources to domestic NGOs who provide psychological support to women. Victims are required to pay for medicines, but few have sufficient income to afford such medicines even when prescribed by a doctor. A representative of one NGO told Amnesty International that 90 per cent of survivors of war crimes of sexual violence do not receive any psychological assistance.

In the RS, the law on protection of civilian victims of war required them to register their claims by 31 January 2007. However, according to information gathered by Amnesty International, many of those who should have been eligible, were still too traumatized to come forward at that time to register their claims. Others were unaware of the law or the deadline; still others could not obtain all of the medical documentation required to support their claims. All claims for reparation, including those from victims of rape, submitted after 31 January 2007 have been automatically rejected. The RS authorities have stated that they have not kept records on how many women have received reparations based on their status as civilian victims of war.

In the FBiH, the authorities have designated one NGO to carry out the initial interviews of survivors of rape who wish to claim the status of civilian victim of war. The NGO does not employ a psychologist to assist survivors when giving their testimonies. Interviews take place in the presence of several people, causing unnecessary stress. The appeals process is not independent, as the only recourse is to appeal to the same NGO which has rejected their application. Amnesty International believes this procedure is not sensitive to the psychological needs of rape survivors, and is concerned that the procedure itself can lead to further trauma. It may also discourage victims from applying for civilian victim of war status and receiving the related social benefits. According to information received from the authorities, as of December 2008 only 500 women in the FBiH had been granted the status of a civilian victim of war, and received social benefits.

Furthermore, existing programmes of property restitution for refugees and internally displaced persons have failed to take into account gender needs of the survivors of sexual violence as well as their psychological condition. As a result, survivors have all too often been forced to return to their pre-war places of residence, which in many cases has caused their re-traumatization.

Amnesty International is also concerned that the BiH authorities have not provided survivors with meaningful measures of employment restitution or enabled them to re-integrate in the labour market, including by providing vocational training or other employment programmes.

D. Recommendations for action by the State under review

Amnesty International calls to the authorities of Bosnia and Herzegovina:

- To ensure that survivors of war crimes of sexual violence have access to justice, and that all cases of rape and other war crimes of sexual violence are promptly, independently, impartially and effectively investigated and prosecuted in accordance with international fair trial standards.

With regard to the inadequate definition of crimes of sexual violence in the BiH legal framework:

- To amend the BiH Criminal Code to include a definition of “sexual violence” in accordance with international standards and jurisprudence related to the prosecution of war crimes of sexual violence and to remove the condition of “force or threat of immediate attack” from the present definition;
- To ensure that all cases of war crimes in BiH, including in the entity courts, are adjudicated based on the BiH Criminal Code.

With regard to inadequate witness protection and support:

- To develop programmes and allocate adequate resources for the long-term protection of witnesses who testify in war crimes proceedings before the WCC of the State Court and before the entity courts. Such programmes should include the possibility of re-location of witnesses within the country or internationally;
- To develop programmes and allocate resources for long-term witness support. Such programmes should include preparation of potential witnesses at least several months before the start of the trial and should be devised and implemented in close cooperation with NGOs providing support to the survivors of war crimes of sexual violence. They should include measures of adequate psychological, economic and social support.

With regard to the failure to provide adequate reparation:

- To develop a state strategy on reparation for victims of war crimes of sexual violence. The strategy should ensure restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition to the victims. The strategy should also include provisions guaranteeing access to psychological assistance and other support and should be developed with the involvement of the survivors and NGOs that represent and/or work with them.
- To develop a system by which persons wishing to apply for the status of civilian victim of war are assisted by a psychologist and social worker in the application process. The role of a psychologist should be to ensure that applicants do not suffer re-traumatization during the application process. The role of a social worker should be to assist survivors by explaining the procedure to them as well as helping them to collect and present the relevant documentation;
- To ensure that the process of applying for the status of the civilian victim of war in the FBiH is transparent and independent and that the institutions conducting it, including NGOs, are well equipped to conduct interviews with the survivors, including by providing assistance of a psychologist in the process and other professional staff and adequate facilities guaranteeing privacy;
- To amend the law on the civilian victims of war in RS by removing the discriminatory deadline for application for the status of the civilian victim of war and re-open to procedure for applying.

Appendix: Amnesty International documents for further reference²¹

'Whose Justice?' Bosnia and Herzegovina's Women Still Waiting. Amnesty International. September 2009. EUR 63/006/2009.

'Nobody listens to us and nobody cares' – Women Still Waiting for Justice in Bosnia and Herzegovina. Amnesty International. June 2009. EUR 63/005/2009

Bosnia and Herzegovina: No Justice for Rape Victims. Press Release. 21 July 2009.

²¹ All of these documents are available on Amnesty International's website: <http://www.amnesty.org/en/region/bosnia-herzegovina>