



BOSNIA AND HERZEGOVINA

SUBMISSION TO THE UNITED NATIONS HUMAN RIGHTS COMMITTEE
119TH SESSION, 6-29 MARCH 2017

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1. INTRODUCTION

Amnesty International is presenting this submission to the United Nations (UN) Human Rights Committee (the Committee) ahead of its review of Bosnia and Herzegovina's (BiH) third periodic report on the implementation of the International Covenant on Civil and Political Rights (the Covenant). The document highlights Amnesty International's concerns in relation to a number of questions on the Committee's List of Issues (LOI) to be taken up in connection with this consideration of the BiH State Report.¹

These concerns relate to human rights violations linked to the legacy of the 1992-1995 conflict in BiH, and they include the continued failure of the authorities to adopt and implement legal and policy framework to enable full and effective access to justice and reparations for survivors of crimes of sexual violence committed during the war.²

2. CONSTITUTIONAL AND LEGAL FRAMEWORK WITHIN WHICH THE COVENANT IS IMPLEMENTED (ARTS. 2, 6 AND 7, QUESTION 4 AND 5 OF THE LOI)

In its Concluding observations on the second periodic report of BiH in 2012, Human Rights Committee instructed BiH, inter alia, to “ensure that the judiciary in all entities strongly pursues efforts aimed at harmonizing jurisprudence on war crimes and that charges for war crimes are not brought under the archaic Criminal Code of the former Socialist Federal Republic of Yugoslavia, which does not recognize certain offences as crimes against humanity”.³ It further recommended that BiH should “take practical measures to ensure that survivors of sexual violence and torture have equal access to justice and reparations,” and “harmonise disability benefits among entities and cantons so that personal disability benefits received by civilian victims are adjusted to ensure that they are in line with the personal disability benefits received by war veterans.”⁴ In January 2011, the UN Committee Against Torture recommended that the BiH authorities “adopt the draft law on the rights of victims of war and civilian victims of war and the strategy for transitional justice without delay in order to fully protect the rights of victims, including the provision of compensation and as full a rehabilitation as possible, with the aim of obtaining physical and psychological recovery and their social integration.”⁵ In 2013, UN Committee on the Elimination of Discrimination against Women recommended that BiH “expedite the adoption of pending draft laws and programmes to ensure effective access to justice for all women victims of wartime sexual violence, including adequate reparation, such as the draft law on the rights of victims of torture and civilian war victims, the programme for victims of sexual violence in conflict and torture (2013-2016) and the draft strategy on transitional justice aimed at improving access to justice,” and “(d) develop a comprehensive approach to improve the status and position of all women victims of the war, including by combating the stigma attached to sexual violence; and expand the provision of compensation, support and rehabilitation measures and

¹ The Committee's list of issues to be taken up in connection with the review of BiH's third periodic report under the ICCPR can be found at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/267/93/PDF/G1526793.pdf?OpenElement>. The state party report is available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fBIH%2f3&Lang=en

² 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 2015 and 2016, 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 earlier publications, including *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/>

³ UN Human Rights Committee, Concluding observations on the second periodic report of Bosnia and Herzegovina, Para 7, CCPR/C/BIH/CO/2, 13 November 2012.

⁴ UN Human Rights Committee, Concluding observations on the second periodic report of Bosnia and Herzegovina, Para 8, CCPR/C/BIH/CO/2, 13 November 2012.

⁵ UN Committee against Torture, Concluding observations on the combined second to fifth periodic report of Bosnia and Herzegovina, Para. 18, CAT/C/BIH/CO/2-5, 20, January 2011.

benefits, and ensure equal access to such services for all women victims, irrespective of their place of residence”.⁶

Amnesty International welcomes the efforts of BiH authorities, in particular Ministry of Human Rights and Refugees and Ministry of Justice, over the past years to develop the recommended legal and policy framework and propose measures to address the rights of civilian victims of war. However, Amnesty International considers that, overall, BiH has failed to fully implement the above recommendations and notes with concern that the persistent inability and unwillingness of the authorities to agree on the adoption of these crucial measures continue to prevent the survivors from realizing their rights 22 years after the conflict. The organization is concerned that the authorities in BiH continue to ignore their obligation to provide survivors with full and effective measures of reparations, including restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition, particularly to survivors of wartime sexual violence.

2.1. CRIMINAL CODES

Amnesty International welcomes the adoption 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, which are in line with the international criminal standards and jurisprudence of international courts and tribunals and with the previous recommendations of the UN Committee against Torture. The amendment removed the earlier condition of force, i.e., the requirement to prove the perpetration of the crime through the use of force or threat of use of force, which limited the means by which sexual acts could be rendered non-consensual to the circumstances that involved direct use of force or threat of use of force.⁷

However, Amnesty International is concerned that the entity-level courts and Brčko District court continue to rely on the Criminal Code of the former Socialist Federal Republic of Yugoslavia (SFRY) in prosecuting crimes committed during the conflict. The Criminal Code of the SFRY has serious gaps; most notably, it does not criminalize crimes against humanity and does not recognize the mode of liability of command 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, making it an unsuitable normative framework to address sexual violence in armed conflicts.⁸

2.2. DRAFT NATIONAL STRATEGY ON TRANSITIONAL JUSTICE

Amnesty International is concerned about the failure of BiH to adopt the Draft National Strategy on Transitional Justice, which was drafted in 2011/2012 by the Ministry of Human Rights and Refugees and Ministry of Justice. The draft Strategy provides comprehensive platform to ensure effective access to reparations, as well as benefits and support services, for all civilian victims of war, including survivors of sexual violence, regardless of their place of residence. The text of the Strategy failed to obtain support for adoption in 2012 after the authorities of Republika Srpska (RS) expressed reservations about segments of the document.⁹ At the time of the writing, there were no indications that the political commitment for the adoption of this policy document was forthcoming.¹⁰

⁶ UN Committee on the Elimination of Discrimination (RS) against Women, Concluding observations of the combined fourth and fifth periodic reports of Bosnia and Herzegovina, Para 10, CEDAW/C/BIH/CO/4-5, 30 July 2013.

⁷ Law on Changes and Amendments to the Criminal Code of BiH of 19 May 2015 (*Zakon o izmjenama i dopunama Krivičnog zakona BiH od 19. maja 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.

⁸ Under provisions for war crimes provided by SFRY Criminal Code of 1976 (*Krivični Zakon Socijalističke Federativne Republike Jugoslavije od 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.

⁹ UN Committee against Torture, State party report to the Committee against Torture on the sixth periodic report, Para. 214, CAT/C/BIH/6, 17 May 2016.

¹⁰ Interviews with BiH Ministry of Justice, civil society organizations and international organizations conducted during research missions, Sarajevo, September and November 2016.

2.3. PROGRAMME FOR VICTIMS OF SEXUAL VIOLENCE IN CONFLICT

BiH authorities failed to adopt the Programme for Victims of Sexual Violence. The aim of the Programme, which was jointly launched in 2011 by Ministry of Human Rights and Refugees and UN Population Fund (UNPFA), is to create tools that ensure access to reparations for the survivors. Apart from the solutions proposed for improving the social and economic situation of the survivors and reducing the stigma they face in the society, the Programme defines the basis for realizing of survivors' rights to social welfare and healthcare at the local level and provides concrete measures for economic empowerment. The programme document was completed in 2012 and sent to the entities for formal opinions. However, failing to receive positive response on the content from the government of Republika Srpska, Ministry of Human Rights and Refugees never submitted it to the BiH Council of Ministers for adoption.¹¹ UN agencies in BiH are implementing several segments of the programme, but Amnesty International notes with concern the continued failure of the authorities in BiH to implement their obligations and address the rights of the still living survivors of wartime sexual violence.

2.4. DRAFT LAW ON THE RIGHTS OF VICTIMS OF TORTURE

The BiH draft law on the rights of victims of torture has 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. Apart from the current political deadlock that afflicts all initiatives at the state level, entity representatives from Republika Srpska are not participating in the latest efforts of the Ministry of Human Rights and Refugees to develop a BiH-wide draft law through an inter-ministerial working group.¹² It is unclear if the version of the draft law developed without entity representatives will have the necessary political support to be passed and implemented.

In December 2016, government of Republika Srpska presented its own pre-draft law on victims of wartime torture in the Republika Srpska. While the pre-draft purports to address the status and benefits available to the survivors, Amnesty International is concerned that some of the proposed solutions are restrictive or vague and may exclude many survivors and their families.¹³ In addition, the organisation holds that the legislation guaranteeing rights to survivors and their families must be passed at the level of the state in order to ensure equal access to all.

The framework law at the level of BiH is an outstanding obligation of BiH vis-à-vis the UN Convention against Torture and intends to provide all victims of torture and civilian victims of war with equal status and access to rights and protection regardless of where they live in BiH. The current situation whereby these matters continue to be regulated at the entity level and level of Brčko Districts is inherently discriminatory, with civilian victims of war's status and access to their rights and entitlements being dependent on their place of residence, rather than universally guaranteed by the state.¹⁴

2.5. FREE LEGAL AID

Amnesty International welcomes the adoption of the BiH Law on Free Legal Aid in November 2016. The Law will ease access to justice to socially vulnerable citizens, including victims of wartime sexual violence, before the courts at the state level. However, the system of free legal aid in BiH remains fragmented overall, with adequate legislation missing at the level of Federation and two cantons.¹⁵ Furthermore, the free legal aid agencies are not fully functioning in at least two cantons in the Federation, and the department for legal aid within BiH Ministry of Justice is yet to be established. The lack of a fully harmonized and integrated free legal aid system is preventing the delivery of consistent, non-discriminatory and effective free legal aid

¹¹ 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. 64, CCPR/C/BiH/3, July 2015.

¹² Interviews with Ministry of Justice, Sarajevo, November 2016

¹³ Similarly to the existing Law on Protection of Civilian Victims of War in RS, the pre-draft law on protection of victims of wartime torture excludes persons "who had been members of enemy forces or their helpers". Given the complex nature of the 1992-1995 conflict and the difficulty of ascertaining with precision the status and allegiances of survivors and their families, this provision could be widely interpreted to exclude many victims.

¹⁴ As a result of different and disharmonized legislation at different levels of authority and complexities of the constitutional structure that does not encourage effective cooperation between them, survivors residing in some parts of the country have access to allowances that is significantly lower in comparison with their peers living elsewhere. As noted, many survivors in RS are not able to obtain the status of civilian victim of war and accompanying benefits due to strict application cut of deadlines, residency requirements, excessive documentation and burden of proof that are difficult to meet.

¹⁵ European Commission, "Bosnia and Herzegovina 2016 Report", p. 26 available at: https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key_documents/2016/20161109_report_bosnia_and_herzegovina.pdf

system across the country, including to the survivors of wartime sexual violence, who are among the more vulnerable population groups.¹⁶

¹⁶ 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. 70. CCPR/C/BiH/3, July 2015.

Amnesty International calls on the authorities in BiH to:

- Ensure that legal framework concerning crimes of sexual violence at entity levels is amended to bring it in line with international law and standards;
- Adopt Strategy for Transitional Justice;
- Adopt Programme for Victims of Sexual Violence in Conflict;
- Adopt Law on the Rights of Victims of Torture;
- Ensure that all levels of authority pass appropriate legislation on free legal aid and harmonise existing legislation with the BiH Law on Free Legal Aid;
- Ensure that adequate resources and capacity are dedicated to free legal aid agencies at all levels in order to provide civilian victims of war, and especially survivors of wartime sexual violence, with effective access to free legal aid and fair access to justice regardless of their place of residence.

3. RIGHT TO LIFE, ENFORCED DISAPPEARANCES AND PROHIBITION OF TORTURE AND CRUEL, INHUMANE OR DEGRADING TREATMENT OR PUNISHMENT (ARTS. 3, 6, 7, 9 AND 14, QUESTION 14 OF THE LOI)

3.1. ACCESS TO JUSTICE AND REPARATIONS

BiH has an obligation to provide full and adequate reparation, which requires that the authorities take concrete measures to address the suffering of the victims and their families and to help them rebuild their lives. In the context of mass atrocities committed during the war in BiH, reparations have a particularly important role to play in rebuilding individual and community lives, by advancing truth and acknowledging the depth and consequences of the crimes committed. This is especially important for survivors of wartime crimes of sexual violence, who are often reluctant to seek their rights due to the stigma attached to rape. In addition to ensuring effective investigation of crimes of sexual violence arising from the armed conflict and the prompt prosecution of those responsible, BiH has an obligation to provide victims with effective remedies.

COMPENSATION

Amnesty International welcomes the recent decisions of courts in BiH to start awarding financial compensations to victims of wartime sexual violence in criminal proceedings.¹⁷ However, the organization has concerns about the recent opinions of the Constitutional Court of BiH declaring that statute of limitations may apply to the compensation claims for non-material damage and that such claims could be directed only against the perpetrators, not the state or the entities, removing the subsidiary liability of the state and entities for the damage.¹⁸ Adding to the already low likelihood of collecting the awarded compensation from the perpetrators, the view of the Constitutional Court will further limit the ability of victims to effectively claim and obtain compensation as a means of redress for the suffered violence. The organization notes with concern that BiH does not have a victim compensation fund or other mechanisms to compensate the survivors of criminal acts in cases where perpetrators are not able to pay the damages. Pecuniary compensation is an important element of restorative justice that could help alleviate financial hardship faced by many survivors of wartime rape.

Amnesty International is also concerned that the majority of the victims continue to be required to pursue compensation claims in separate civil proceedings before local courts that lack adequate witness protection

¹⁷ 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.

¹⁸ See for example BiH Constitutional Court Decision of 10 November 2015, referenced at:

<http://www.pravosudje.ba/vstv/faces/vijesti.jspx?id=58140>, and Decision of 21 September 2016, available at: <http://www.pravosudje.ba/vstv/faces/vijesti.jspx?id=63824>, as well as *Mustafa Karahasanović & Others v. Republika Srpska*, BiH Constitutional Court, AP-4128, 28 March 2014.

standards and capacities.¹⁹ Separate civil proceedings compromise the privacy of witnesses and often expose victims to unnecessary re-traumatization. While pursuing claims before civil courts, victims bear the burden of proof, need to hire a lawyer and are responsible for the payment of court fees. Given the socio-economic status of the survivors, most of whom subsist on the margins of society, these costs serve as an additional deterrent to filing compensation claims.²⁰ Civil litigation before local courts in BiH regularly results in the dismissal of claims based on statute of limitations forcing survivors to pay high court fees or face repossession of their assets.²¹

SOCIAL AND DISABILITY BENEFITS

In absence of an integrated state-level legislation, survivors continue to access their rights at the level of entities and Brčko District. Amnesty International is concerned that in most parts of the country, especially in rural areas, survivors are still unable to enjoy their rights to reparation. In addition to facing numerous legal barriers to access social benefits available to civilian victims of war, the survivors of wartime sexual violence living in different parts of BiH are entitled to vastly different welfare packages and, in some cases, completely excluded from the system.²²

The Law on Protection of Civilian Victims of War in RS does not recognize survivors of wartime sexual violence as a separate category of civilian victims of war.²³ The law established a strict cut-off deadline of January 2007 for the applications, which resulted in many survivors failing to gain status and eligibility for a monthly pension and other benefits available to civilian victims, including free healthcare, rehabilitation and psychological support. Furthermore, in order to qualify for the status and related benefits in RS, a person has to demonstrate a bodily damage of at least 60%. This requirement excludes the remaining survivors of conflict-related rape who are often unable to provide medical proof of physical disability and predominantly suffer from ailments that are not physical in nature.

In comparison, the Law on the Basis of the Social Protection, Protection of Civilian Victims of War and Families with Children in the Federation provides somewhat better protection to the survivors of sexual violence.²⁴ It recognizes the survivors as a separate category and requires them only to prove that they suffered sexual violence during the war, but not a proof of a bodily damage. The amendments to the law adopted in 2016 introduced an independent expert commission with a mandate to issue certificates to the survivors. By the time of this submission, the Rulebook establishing the commission had not yet been adopted by the government in the Federation and the body had not started working, delaying the assessments, and therefore access to benefits, to new applicants.²⁵

The 2015 Amendments to the Decision on the Protection of Civilian Victims of War in Brčko District ended the previous discriminatory provision, which recognized the status of the survivor of sexual violence only to those who could prove that a perpetrator has been found and convicted in their case in addition to the proof of a bodily damage.²⁶ The current provisions are less restrictive and recognize psychological injury as a ground for the status, but require a certificate that the victim suffered sexual violence and a medical proof of permanent psychological harm issued by an independent expert commission.²⁷ Some of the nominations for the Commission have been met with criticism by associations representing survivors. At the time of writing, the commission had not started working.

¹⁹ 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

²⁰ 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. This was confirmed in 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.

²¹ Interview with the president of the BiH Association of Camp Inmates, Sarajevo, November 2016

²² The findings were confirmed through Amnesty International-conducted research missions to BiH in November 2014, May 2015, July and November 2016 intended to gather updated information on the status of the survivors of conflict-related sexual violence and their access to reparations and services. Amnesty International conducted interviews with associations of survivors, international organizations and other stakeholders.

Also, see Medica Zenica, "Manual on the rights of women survivors of rape and sexual violence", Zenica, 2014, available at:

<http://medicazenica.org/download/Medica%20Zenica%20-%20Prirucnik%20o%20socioekonomskim%20%20pravima%20prezivijelih.pdf>

²³ Law on protection of civilian victims of war of RS (*Zakon o zaštiti civilnih žrtava rata RS-a*), Official Gazette of RS, nos. 25/93, 32/94, 37/07, 60/07.

²⁴ Law on the basis of social protection, protection of civilian victims of war and families with children of FBiH, (*Zakon o osnovama socijalne zaštite, zaštite civilnih žrtava rata i zaštite porodice s djecom FBiH*), Official Gazette of FBiH nos. 36/99, 54/04, 39/06, 10/16.

²⁵ Interview with the Federation Ministry of Labor and Social Policy, Sarajevo, November 2016

²⁶ Decision on the protection of civilian victims of war of Brčko District (*Odluka o zaštiti civilnih žrtava rata Distrikta Brčko*), Official Gazette of Brčko District, 33/2012 and 15/2015)

²⁷ Decision on the protection of civilian victims of war of Brčko District, Art. 2.

Amnesty International is concerned about the vastly varied legislation regulating the status of survivors of wartime sexual violence and, as is the case in RS, restrictive deadlines and criteria, as well as excessive documentation required to assess the eligibility. It is of further concern that only a small fraction of the estimated 20,000 victims have ever managed to gain the status of the civilian victim of war: 800 in the Federation, and vastly lower numbers in Republika Srpska and Brčko District.²⁸

STEPS TAKEN TO HARMONISE DISABILITY BENEFITS

The civilian victims of war, including survivors of wartime sexual violence, in both entities continue to face discrimination in comparison to the war veterans. This is manifested in the entitlements, which are significantly lower, often only 70% of the maximum monthly allowance that is available to war veterans.

In the Federation, the survivors obtain the status of civilian victim of war at the entity level, but collect their monthly allowance in the canton where they live. The monthly allowances vary from canton to canton, as the Federation provides 70% of the funding and the cantons provide the rest, sometimes not in a timely manner.

Ministry of Labor and Social Policy in the Federation prepared the draft law on uniform principle and framework of the material support for people with disabilities with the aim to address the inequalities in the levels of social benefits between civilian victims of war and war veterans. However, at the time of this submission, the law was still pending adoption in the House of Peoples of the Federation Parliament.

Amnesty International calls on the authorities in BiH to:

- Continue the practice of awarding compensation for damages for wartime sexual violence in criminal proceedings before state and entity-level courts. This should not exclude the possibility of being able to seek and receive compensation in civil proceedings irrespectively of criminal conviction of the alleged perpetrators;
- Establish a victim compensation fund for the survivors of wartime sexual violence, in particular to address the cases where perpetrators are not able to pay the damages;
- Put in place measures to free victims of wartime sexual violence from bearing the burden of cost of civil proceedings on damage compensation claims;
- Adopt the Law on Protection of Civilian Victims of War, and in the interim, ensure that legislation governing the status, rights and social benefits for survivors of wartime sexual violence is fully harmonized and provides equal protection to all survivors regardless of where they live in BiH;
- Implement measures to remove the discrepancy between the social benefits available to civilian victims of war, including survivors of wartime sexual violence, and those of war veterans.

²⁸ Interviews with Federation Ministry of Labor and Social Policy, November 2016 and RS Ministry of Labor and Veterans' Affairs 2015.

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These concerns relate to human rights violations linked to the legacy of the 1992-1995 conflict in BiH, and they include the continued failure of the authorities to adopt and implement legal and policy framework to enable full and effective access to justice and reparations for survivors of crimes of sexual violence committed during the war.