

BOSNIA AND HERZEGOVINA

**BRIEFING TO THE UN
COMMITTEE ON THE
ELIMINATION OF
DISCRIMINATION AGAINST
WOMEN**

55TH SESSION OF THE COMMITTEE

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INTRODUCTION

Amnesty International is submitting this briefing to the Committee on the Elimination of Discrimination against Women (the Committee) ahead of its examination of Bosnia and Herzegovina's (BiH) combined fourth and fifth periodic report on the implementation of the Convention on the Elimination of All Forms of Discrimination against Women (the Convention). The document highlights Amnesty International's concerns in relation to question 4 on the Committee's list of issues to be taken up in connection with its consideration of the BiH state report.¹

These concerns relate to human rights violations committed during the 1992-1995 war in Bosnia and Herzegovina (BiH), and were raised in the organization's submission to the Committee in 2012. These include the ongoing failure of the authorities to bring legislation criminalising war crimes² of sexual violence in line with international standards, which may result in impunity for such acts; the failure of the authorities to bolster capacity for investigation and prosecution and support services to victims; and the failure of the state authorities to provide full reparation to survivors of war related crimes of sexual violence.³

Further details on these concerns can be found in the Amnesty International publications enclosed with this briefing:

- *Bosnia and Herzegovina: Old crimes, same suffering: no justice for survivors of wartime rape in North-East Bosnia and Herzegovina*, AI Index: EUR 63/002/2012, 29 March 2012, <http://www.amnesty.org/en/library/info/EUR63/002/2012/en>.
- *Whose Justice? The women of Bosnia and Herzegovina are still waiting*, AI Index: EUR 63/006/2009, 30 September 2009, <http://www.amnesty.org/en/library/info/EUR63/006/2009>.
- *When Everyone is Silent: Reparation for Survivors of in Republika Srpska*, AI Index: EUR 63/012/2012, November 2012 <http://www.amnesty.org/en/library/info/EUR63/012/2012/en>

¹ The Committee's list of issues to be taken up in connection with the review of BiH's combined fourth and fifth periodic report under the Convention can be found at: <http://www2.ohchr.org/english/bodies/cedaw/cedaws55.htm>

² For the purpose of this submission, the term "war crimes" is used colloquially as used in the region to describe and encompass a range of different crimes that could be prosecuted as crimes against humanity, war crimes, genocide or torture.

³ Amnesty International has been active in this field since 2008. The information in this submission was gathered during research missions to the country in November 2012 and February 2013 and in meetings with local and international stakeholders, including authorities from the State and Entity levels, representatives of international community present in the country, representatives of civil society, victims' associations and a number of survivors of sexual violence. The information is current at the time of submission.

CONCERNING QUESTION 4 ON THE LIST OF ISSUES

Women in post-conflict situations:

Please indicate what steps have been taken by the State party to amend the definition of rape and other forms of sexual violence, as war crimes and crimes against humanity, in order to bring it in line with international jurisprudence, as recommended by the Committee against Torture in its concluding observations?

In January 2011, the UN Committee against Torture called on the authorities in BiH “to amend the 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”.⁴ The BiH 2003 Criminal Code required that the victim be subjected to force or threat of immediate attack on his or her life or body. This definition arguably does not take into account of the circumstances in which these crimes took place, namely armed conflict. As the jurisprudence of the International Tribunal for the former Yugoslavia has established, the armed conflict was inherently coercive and a person commits rape if they take advantage of such coercive circumstances. In this context, ‘force’ is inherent and ‘consent’ to sexual intercourse cannot be given. Amnesty International is therefore concerned that the definition of rape as a war crime may not be in line with international jurisprudence and standards. There does not appear to be any government proposal to amend this legal framework.

Furthermore, the entity courts continue to rely on the Criminal Code of the former Socialist Federal Republic of Yugoslavia (SFRY) in prosecuting crimes committed during the conflict. This Code has serious gaps and does not include crimes against humanity or command responsibility, contrary to international law and standards. While rape is defined as a war crime, the full array of crimes of sexual violence recognised under international law (including sexual slavery and forced pregnancy) are not defined in the SFRY Criminal Code.

Please provide updated information on the implementation of the National Strategy for War Crimes, on the prosecution of war crimes perpetrated against women, in particular sexual violence, as well as on protective measures for victims and witnesses.

Amnesty International is concerned that in 2012 the authorities of BiH made little progress to ensure survivors’ rights and calls on the Committee to address this issue in its next concluding observations as a matter of urgent concern.

The major obstacle for tackling impunity and bringing the perpetrators to justice is the lack of

⁴ Concluding observations of the Committee against Torture: Bosnia and Herzegovina (CAT/C/BIH/CO/2-5): www2.ohchr.org/english/bodies/cat/docs/CAT.C.BIH.CO.2-5_en.pdf, p.3

political will to investigate and prosecute war crimes, including rape and other forms of sexual violence. As a result, the justice system lacks capacity and resources to effectively investigate and prosecute those crimes. Despite the redistribution of cases in the complex judicial system across BiH, the overall pace of investigations and prosecutions of war crimes remains slow.

IMPLEMENTATION OF THE WAR CRIMES STRATEGY

There has been some progress in the implementation of the National Strategy for War Crimes Prosecutions (War Crimes Strategy) adopted in December 2008 with the aim of addressing the massive backlog of cases. However, it is still not being implemented at an adequate rate. In June 2011, the European Commission launched the Structured Dialogue on Justice as a newly-established mechanism intended to advance structured relations on the rule of law with potential candidate countries.⁵ Amnesty International notes that, as part of the discussions on the institutional framework, competencies and working methods of judicial institutions in BiH, war crimes prosecutions, i.e. the implementation of the War Crimes Strategy, has inevitably been addressed and tackled through the Dialogue.

According to the War Crimes Strategy, by 2010 the Prosecutor's Office of BiH was supposed to obtain an overview of cases investigated by all jurisdictions of BiH in order for the State Court of BiH to decide whether a case should be prosecuted at the state or entity level, depending on the complexity of the case. At the end of 2011, following the second meeting of the Structured Dialogue, the Prosecutor's Office of BiH submitted the total number of war crimes case files pending in all Prosecutors' Offices across BiH. In this submission, there were approximately 1200 war crimes cases against known adult perpetrators across all 17 state, entity and cantonal jurisdictions.⁶ Based on this information, the Prosecutor's Office of BiH started transferring some case files to the BiH State Court for allocation to the territorially competent cantonal or district jurisdiction, following the criteria set in the War Crimes Strategy. In the period January-February 2012, around 120 case files were transferred from the Prosecutor's Office of BiH to the entity Prosecutors' Offices. The process of reviewing and transferring cases has continued throughout 2012, so as of March 2013, a total of 1322 case files were pending in all Prosecutor's Offices across BiH.

As of 13 February 2013 there were 92 final judgments rendered in war crimes cases at the State Court of BiH since the beginning of the work of the Court. Out of this, 29 judgments were delivered in cases of war crimes of sexual violence, and two more such cases are on appeal.

The above figures indicate an important step forward in the implementation of the War

⁵ The purpose of the Structured Dialogue is to assist Bosnia and Herzegovina to consolidate an independent, effective, efficient and professional judicial system. Three meetings of the EU-BiH Structured Dialogue on Justice have been held so far: in June and November 2011 and July 2012, resulting in a set of recommendations for the relevant authorities.

⁶ Interview with the Head of the Special Department for War Crimes of the Prosecutor's Office of BiH, February 2013. Updated figures provided from the same source in March 2013

Crimes Strategy in 2012. The significant delay in establishing the exact number of war crimes case files (which was not completed until late 2011) was the main cause for the delay in the implementation of the War Crimes Strategy. The possibility of parallel investigations and prosecutions at state and entity level is also now greatly reduced.

Moreover, without the total number of case files, it was also previously impossible to effectively plan the workload of prosecutors and courts and put in place the necessary financial and human resources.

However, establishing the total number of pending cases and definitively allocating them to the State or entity level Prosecutors' Offices does not provide assurance to victims and their families that the actual investigations and prosecutions will take place in the immediate future. Around 50% of the above case files were previously pending in entity Prosecutors' Offices for many years prior to the above review and transfer process, and the preceding processes under the Book of Rules and the Rules of the Road.⁷

Finally, Amnesty International notes with concern the fact that there are no reliable publicly available figures concerning the number of cases under investigation and being prosecuted that include charges of rape and other forms of sexual violence.

CONCERNS RELATED TO THE TRANSFER OF CASES TO ENTITY PROSECUTORS' OFFICES

ENSURING PROPERLY TRAINED STAFF AND COURT FACILITIES TO PROTECT WITNESSES AND VICTIMS

Amnesty International welcomes the fact that there have been more cases reviewed and transferred to the entity Prosecutors' Offices in the previous year than any other year since the adoption of the War Crimes Strategy. However, with such a significant increase in the number of cases transferred to entity Prosecutors' Offices, it is essential to ensure their staff are properly trained and have the capacity to prosecute such complex cases. According to the representatives of the State Court of BiH, there is an insufficient number of prosecutors at the entity level able to carry out such a large number of complex cases, particularly as neither entity prosecutors' offices have dedicated war crimes departments.

Furthermore, the facilities in most entity courts and prosecutors offices are inadequate in a number of respects, especially in relation to the protection of the safety and well-being of victims and witnesses. For example, unlike the specially designed State Court of BiH and Prosecutor's Office, very few entity courts are equipped with the technical means to conduct a hearing via video link. Many witnesses and victims no longer live in BiH and entity prosecutors have told Amnesty International that some are willing to give evidence via video link but are not willing to return to BiH to give evidence in person. This has been particularly so in cases of crimes of sexual violence. Other facilities, such as separate entrances or waiting rooms for victims and witnesses and defendants are not available in entity courts. This can be very intimidating and traumatizing for some victims. Commitments were made to

⁷ OSCE Report, *Delivering Justice in Bosnia and Herzegovina: An Overview of War Crimes Processing from 2005 to 2010* (May 2011), at 32 et seq (available at http://www.oscebih.org/documents/osce_bih_doc_2011051909500706eng.pdf).

renovate entity court facilities in 2012, but no progress has been made during the year.

Additionally, even if the number of prosecutors at the entity level was increased, Amnesty International would be concerned to ensure that they had the expert knowledge and experience needed to prosecute complex crimes under international law.

The rich expertise developed by the BiH Prosecutor's Office at the State Court should be transferred to entity Prosecutors' Offices, along with the transfer of cases. Failure to do so could undermine the efficiency and justice gains of the transferring project. This could be done through various training activities, mentoring, skill-sharing and practical experience exchange and could include, for example, how the Prosecutor's Office of BiH uses all available evidence (including evidence collected by the ICTY) when investigating and prosecuting a war crimes case, and other lessons learnt.

WITNESS PROTECTION AND SUPPORT

The National War Crimes Prosecution Strategy emphasized that "it is very important to create an atmosphere in which witnesses will give evidence [in war crimes trials] free of fear or threats or pressures that may pose a threat to their lives or lives of people close to them."⁸

The Strategy envisaged the development of witness support and protection services across the country⁹.

According to the Strategy "acts of the most serious rape (repeated or systematic rape; establishment of centres of detention with the aim of sexual slavery)" will be prosecuted before the State Court of BiH. Further consideration must be given to "the interests of the victims and witnesses" and "the consequences of the crime in the local community" and "possible public and societal reactions" while deciding on the allocation of war crimes cases to entity courts.

Since the State Court began its work, 34 war crimes cases involving charges of sexual violence have been transferred to the entity Prosecutors' Offices. Of these 31 were transferred in 2012. Decisions on whether to transfer a case are based on the criteria specified in the Strategy, and include the need to ensure adequate witness protection and support services in entity Courts and Prosecutors' Offices. Amnesty International is concerned that this key criterion has not been met.

Since the beginning of war crimes prosecutions in BiH, one of the most serious obstacles to successful prosecution of wartime sexual violence cases has been the lack of adequate

⁸ National War Crimes Prosecution Strategy, http://www.geneva-academy.ch/RULAC/pdf_state/War-Crimes-Strategy-f-18-12-08.pdf p. 31

⁹⁹ "in order to strengthen the witness support in proceedings conducted before district/cantonal courts and prosecutor's offices, a network of witness and victim support at the level of entire BiH will be created and developed. Witness Support Section of the Court of BiH will play a key role in coordinating activities and will serve as a model for other offices." National War Crimes Prosecution Strategy, http://www.geneva-academy.ch/RULAC/pdf_state/War-Crimes-Strategy-f-18-12-08.pdf p. 31

witness support and protection measures at the entity level, which prevents victims from seeking justice.

In its previous submission, Amnesty International welcomed the creation of a Witness Support Unit at the Prosecutor's Office of BiH in January 2011. The unit provides assistance and psychological support to survivors of crimes committed during the war, including survivors of crimes of sexual violence. The Unit includes two psychologists, who have assisted several individuals in the process of investigating six war crimes cases involving crimes of sexual violence to date.

Amnesty International's 2009 report¹⁰ documented how survivors of war-time sexual violence are afraid to file criminal complaints or testify in court due to the prevailing climate of impunity and a lack of trust in the justice system. Since then, little has changed. This is the case particularly in smaller communities, where people accused of crimes may live in the same communities as victims, or hold positions of power.

Amnesty International is concerned that the lack of adequate support and protection measures in the entity judicial institutions leads to witnesses refusing to give statements or testify. This is particularly important at this point in time as, according to the Head of the Special Department for War Crimes of the Prosecutor's Office of BiH, there are fewer and fewer survivors of sexual violence willing to testify.

In its previous submission, Amnesty International welcomed the United Nations Development Programme (UNDP) initiative to establish Witness Support Offices (WSO) at all district and cantonal courts and prosecutors' offices. This new service within judicial and prosecutorial institutions in both entities was supposed to ensure that witnesses in criminal cases with particular support needs would have access to the qualified staff to mitigate their distress or re-traumatisation during the trial process. The initiative encompassed the creation of separate waiting rooms for witnesses and defendants in the courts and prosecutors' offices, and the employment of qualified staff. In 2011, UNDP-run pilot offices in the Sarajevo and Banja Luka courts and prosecutors' Witness Support Offices were created. According to UNDP they provided support to over 500 witnesses in over 340 cases over a period of one year in 2012. By mid-2012, a new WSO in the district of East Sarajevo was established. It was to be followed by all the remaining cantonal and district courts and prosecutors' offices.

By the end of 2012 management of the WSOs was supposed to be transferred to internal judicial structures and at the end of the UNDP project, the entity governments were to take over the financing of the salaries of the psychologists.

Although Banja Luka District court and the Cantonal Sarajevo Court continued offering services to witnesses, as of 1 January 2012, the Banja Luka and Canton Sarajevo WSOs stopped functioning. From 1 January 2013, these services ceased to be provided by the East Sarajevo court or prosecutor's office because, upon the completion of the financing by the

¹⁰ For more information see: *Whose Justice? Bosnia and Herzegovina's Women Still Waiting* (Index: EUR 63/006/2009), Amnesty International, pp. 52-58: <http://amnesty.org/en/library/info/EUR63/006/2009/en>

UNDP, the governments did not include these posts in their budget plans. This caused enormous problems and represents a direct obstacle to providing justice for all victims, and particularly survivors of war time crimes of sexual violence. Amnesty International is concerned that the Court of BiH relied on the availability of the WSO services when deciding whether to transfer cases to the entity judicial bodies. Unfortunately, there is no simple mechanism to transfer these cases back to the State Prosecutor's Office where these services exist, with potentially serious consequences for the well-being of witnesses and victims who do want to testify. It is also likely to further discourage people from giving evidence.

Another point of concern is that there is very little awareness amongst judges across BiH about the importance of witness support in war crimes cases, and particularly in cases of war crimes of sexual violence. This was confirmed by the representatives of the State Court of BiH with whom Amnesty International met in February 2013. There is a real and urgent need for judges from entity courts to receive training on the importance of such support for effective trials and to avoid causing further harm to victims and witnesses participating in them.

Please indicate if any evaluation mechanisms have been established to assess and measure the impact of the Action Plan for Implementation of the UNSCR 1325 adopted in July 2010 (para. 10), and describe the concrete activities developed so far through its implementation, in particular with regard to measures taken to ensure compensation to women victims of the war. Please provide information on the status of the National Strategy for Transitional Justice (para. 30)

This section focuses on the provision of compensation to women victims of war.

In November 2012, the UN Human Rights Committee recommended in its concluding observations for BiH that the BiH authorities "should take concrete measures to ensure that survivors of sexual violence and torture have access to justice and reparations".¹¹

In January 2011 the UN Committee against Torture also recommended that the BiH authorities "adopt the draft law on the rights of victims of torture and civil 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 reintegration". The authorities were also asked "to reduce politicization of these efforts, to finalize a plan of action with clearly identified activities and corresponding responsibilities among State and entity authorities and to ensure the allocation of adequate financial resources".¹²

Amnesty International welcomes the Ministry for Human Rights and Refugees (MHRR)

¹¹ Concluding observations of the Human Rights Committee: Bosnia and Herzegovina (advance unedited version): <http://www.ohchr.org/en/countries/enacaregion/pages/baindex.aspx>, p.3

¹² Concluding observations of the Committee against Torture: Bosnia and Herzegovina (CAT/C/BIH/CO/2-5): www2.ohchr.org/english/bodies/cat/docs/CAT.C.BIH.CO.2-5_en.pdf, p.7

initiative to establish a Programme for Victims of Sexual Violence in Conflict and Beyond 2012-1016, which was finalized at the end of 2012. The aim of the Programme is to develop tools that will ensure access to reparations for the survivors, including restitution, compensation, rehabilitation and guarantees of non-repetition, and measures to reduce the stigma they face. The Programme is still awaiting official comments from the government of Republika Srpska before it can be sent to the BiH Council of Ministers.

Amnesty International is concerned that this has been significantly delayed, preventing survivors from realising their rights to full reparation, including restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.¹³

Measures of reparation complement the slow and complex process of delivering justice in the courts. In the context of mass atrocities committed during the war, as in BiH, reparations have a particularly important role to play in helping individuals and communities rebuild their lives, advancing truth, and acknowledging the depth and consequences of the harm caused by the crimes and other human rights violations. This is especially important for survivors of wartime crimes of sexual violence, who rarely see anyone prosecuted for the crimes committed against them.

Amnesty International is concerned that in most parts of the country, especially in rural areas, most survivors are unable to enjoy their right to reparation. Many face stigma and are ostracized because they are rape victims. They have inadequate access to appropriate healthcare services for physical and psychological medical conditions, including post-traumatic stress disorder and gynaecological injuries developed as a direct result of the crimes of sexual violence committed against them.¹⁴

Many survivors live in poverty and have no assistance in finding employment or continuing their education interrupted by the war.¹⁵ Additionally, survivors, like all other civilian victims of war, are discriminated against in access to social benefits in comparison to combatants. Further, some key political figures in the country continue to deny the systematic targeting of women and girls for wartime sexual violence, undermining their right to reparation, as well as justice and truth.

The Programme is intended to address some, if not all, of these issues. However, Amnesty International notes with concern that despite the fact that the Working Group that developed

¹³ *Bosnia and Herzegovina: Old crimes, same suffering: no justice for survivors of wartime rape in North-East Bosnia and Herzegovina (Index: EUR 63/002/2012)*, Amnesty International: <http://www.amnesty.org/fr/library/info/EUR63/002/2012/en>.

¹⁴ For more information see: *Whose Justice? Bosnia and Herzegovina's Women Still Waiting (Index: EUR 63/006/2009)*, Amnesty International, pp. 52-58: <http://amnesty.org/en/library/info/EUR63/006/2009/en>

¹⁵ For more information see: *Bosnia and Herzegovina: Old crimes, same suffering: no justice for survivors of wartime rape in North-East Bosnia and Herzegovina (Index: EUR 63/002/2012)*, Amnesty International: <http://www.amnesty.org/fr/library/info/EUR63/002/2012/en>

the Programme included officials of both entities, representatives from the Republika Srpska did not participate in it. This is particularly problematic given that it is entity authorities that have the responsibility to deliver the services covered by the Programme. Amnesty International is therefore concerned that, without the buy-in of the Republika Srpska authorities, the Programme's implementation, which has to take place at the local level, will be limited.

MEASURES TAKEN SO FAR

Amnesty International is concerned that none of the legal and policy documents initiated in 2010 providing for reparation for survivors of wartime sexual violence have been adopted. The details on these documents are as follows:

- The Draft Strategy on Transitional Justice, developed by the Ministry of Justice (MoJ) and the MHRR, was finalized in July 2011. The Strategy on Transitional Justice aims at ensuring access to justice and reparation for all civilian victims of war, including survivors of sexual violence. Unfortunately, due to the political deadlock at the state level, this document had still not been adopted as of March 2013.

- The MHRR has also prepared a draft of a state Law on the Rights of Victims of Torture and Civilian Victims of War to ensure that all civilian victims of war in the country have equal access to social benefits and other measures of social support. Unfortunately, this Law has not been passed by Parliament. Apart from the political deadlock that afflicts almost all initiatives at the state level, entity representatives stress that there is already legislation at the entity levels regulating the issue of civilian war victims and therefore there is no need for such a law at the state level. Amnesty International is concerned that the result of this view is discriminatory, with civilian war victims' access to their rights being dependent on which entity they live in.

The initial draft Law was rejected and the MHRR proceeded with a consultation process with victims' groups to draft a State Law on Victims of Torture, without including civilian victims of war in it. The draft Law was completed at the beginning of 2013, and is now awaiting adoption by the BiH Council of Ministers.

In February 2013, the MHRR informed Amnesty International that the state level Programme for Victims of Sexual Violence in Conflict and Beyond 2012-2016, developed with the support of the United Nations Population Fund (UNFPA), was finalized at the end of 2012. Amnesty International's concerns about the delay in its adoption linked to the lack of political will in Republika Srpska are outlined above.

RECOMMENDATIONS TO THE STATE

Amnesty International urges the authorities in BiH to:

- **Provide sustained political and financial support to the State Court of BiH and to the Prosecutor's Office of BiH, as well as to judicial and investigative bodies at the entity level;**
- **Ensure that the National War Crimes Prosecution Strategy is effectively implemented without any further delay;**
- **Ensure that the legal framework concerning crimes of sexual violence is amended to bring it into line with international law and standards;**
- **Ensure that the entity courts and Prosecutors' Offices have adequate measures for witness support and protection, so that the transfer of cases to entity judicial institutions can be effective and does not result in impunity, particularly in cases of crimes of sexual violence. Amnesty International is urging the BiH authorities as well as the international community to make the introduction of a sustainable, country-wide witness support and protection system a priority.**
- **Ensure the timely adoption of all initiatives aimed at ensuring the rights of the survivors of wartime crimes of sexual violence, including the Strategy on Transitional Justice and the Programme for Victims of Sexual Violence in Conflict;**
- **Ensure the adoption of the BiH Law on the Rights of Victims of Torture**
- **Ensure the harmonisation of the entity laws regulating the rights of civilian victims of war.**

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