BOSNIA AND HERZEGOVINA

SUBMISSION FOR EUROPEAN COMMISSION PROGRESS REPORT

MAY 2012
1. AMNESTY INTERNATIONAL – SUBMISSION FOR EUROPEAN COMMISSION PROGRESS REPORT

In this briefing, Amnesty International sets out its primary concerns in relation to human rights violations linked to the legacy of the 1992-1995 war in Bosnia and Herzegovina (BiH). These concerns include the ongoing failure of the authorities to bring legislation criminalising war crimes of sexual violence in line with international standards, which may result in impunity for such acts, as well as failure to bolster capacity for investigation and prosecution and support services to victims in order provide full access to justice and reparations to survivors of war crimes of sexual violence.

2. IMPUNITY FOR CRIMES OF SEXUAL VIOLENCE COMMITTED DURING THE WAR IN BOSNIA AND HERZEGOVINA

2.1. Denied access to justice for the survivors of wartime sexual violence

In its 2010 Progress Report, the European Commission (EC) raised concerns about the lack of access to justice for survivors of crimes of sexual violence committed during the war. While Amnesty International welcomed the focus on this important human rights concern, unfortunately, the 2011 Progress Report contained little reference to it. Amnesty International is concerned that in 2012 the authorities of BiH have made very little progress to ensure survivors’ rights and calls on the EC to address this issue in its next progress report as a matter of urgent concern.1

The major obstacle for tackling impunity and bringing the perpetrators to justice is lack of 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. Political obstruction of the functioning of the State Court of BiH and an ongoing climate of impunity has been strengthened by statements by high ranking politicians denying crimes committed during the war.2

- Implementation of the War Crimes Strategy

The National Strategy for War Crimes Processing (War Crimes Strategy) adopted in December 2008 with the aim of addressing the issue of the massive backlog of cases is not being implemented at an adequate rate.

In June 2011, the European Commission launched the Structured Dialogue on Justice as a newly-established mechanism aimed to advance structured relations on the rule of law with potential candidate countries.3 Amnesty International notes that, as part of the discussions on the framework, competences 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.

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1 Amnesty International conducted research missions to BiH in November 2011 and March-April 2012 with the aim of gathering additional and updated information on the matter. During these missions, the organization met with all relevant 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.


3 The purpose of the Structured Dialogue is to assist Bosnia and Herzegovina to consolidate an independent, effective, efficient and professional judicial system. Two meetings of the EU-BiH Structured Dialogue on Justice were held so far: in June and November 2011, and they resulted in a set of recommendations for the relevant authorities.
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 criminal cases against known adult perpetrators of crimes for war crime criminal offences (known as “KT-RZ cases”) distributed among 17 jurisdictions. Based on this information, the Prosecutor’s Office of BiH started sending 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.

As of March 2012, a total of 1271 “KT-RZ” cases were pending in all Prosecutor’s Offices across BiH, of which 53% were kept at the Prosecutor’s Office of BiH.

The above figures indicate an important step forward in the implementation of the War Crimes Strategy in early 2012. The significant delay in establishing the exact number of war crimes case files (which was not complete until late 2011) was the main cause for the delay in implementation of the 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. At the time of writing, Amnesty International considers that the High Judicial and Prosecutorial Council together with other relevant actors should begin to plan the workload of the relevant judicial institutions to correspond to the progress in allocating the caseload of unresolved cases.

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. The fact that an additional 120 case files were transferred to the entity Prosecutors’ Offices does not automatically entail that the investigations are going to be accelerated.

- Attempts to abolish the State Court of BiH and the Prosecutor’s Office of BiH

In February 2012, a coalition party from Republika Srpska filed a motion to abolish the State Court and Prosecutor’s Office of BiH. The Legal - Constitutional Committee of the House of Representatives of the BiH Parliament rejected the principles of the draft proposals of the Law on Cessation of Application of the Law on the Court of BiH and the Law on Cessation of Application of the Law on Prosecutor’s Office of BiH and the draft proposals were rejected in the plenum of the BiH Parliament due to lack of votes from the

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4 Interview with the Head of the Special Department for War Crimes of the Prosecutor’s Office of BiH, July 2011.

parties coming from the Republika Srpska. Nevertheless, politicians continue to make public declarations undermining the work of the state judicial institutions.\(^6\)

- **Prosecutions of crimes of sexual violence**

According to the War Crimes 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 courts.

Amnesty International notes with concern the fact that there are no reliable publicly available figures concerning the number of cases under investigation and prosecution related to charges of rape and other forms of sexual violence.

One of the most serious obstacles to successful prosecution of wartime sexual violence cases is lack of adequate witness support and protection measures at the entity level, which prevents victims from seeking justice. Amnesty International is concerned that not all measures to improve witness and support system identified in the War Crimes Strategy have been implemented.

The organization welcomes 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 report documented how survivors of war-time sexual violence are afraid to file criminal complaints against their perpetrators or testify in court due to the prevailing climate of impunity and lack of trust in the justice system. Since then, little has changed. This is the case particularly in smaller communities, where perpetrators who live in the same communities as their victims or even hold positions of power, continue to enjoy impunity.

Amnesty International is concerned that the entity judicial institutions do not have adequate measures to support and protect witnesses, which is likely to result in witnesses refusing to give statements and testify in these instances. Amnesty International is urging the BiH authorities as well as the international community to set a priority in ensuring the introduction of the witness support and protection measures at the entity courts and Prosecutors' Offices.

Amnesty International welcomes the technical improvements in courts initiated in 2009 and supported by the EC to ensure that district and cantonal courts will be equipped with the technical means to conduct a hearing from a distant location outside the courtroom using audio-video link. The works are on-going and are expected to be finalised by the end of 2012 in all major courts.

Amnesty International also welcomes the United Nations Development Programme 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 will ensure that vulnerable witnesses in criminal cases will have access to the support of qualified staff in order to mitigate distress or retraumatisation during the testifying process.

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The initiative encompasses the creation of offices and waiting rooms in the courts and prosecutors' offices and employment of qualified staff. In 2011, UNDP-run pilot offices in Sarajevo and Banja Luka were created and by the end of the year their management was transferred to internal judicial structures. Those four offices reportedly provided support to over 500 witnesses in over 340 cases over a period of one year. By mid-2012, a new WSO in the district of East Sarajevo will be established, followed by all remaining cantonal and district courts and prosecutors' offices.

- Definition of crimes of sexual violence and other serious crimes under international criminal law in the BiH legal framework

In its 2010 report the EC noted with concern that the definition of rape as a crime against humanity in the BiH Criminal Code is not consistent with the definition of such crimes in international law and the jurisprudence of international courts. 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”. Amnesty International is concerned that since then the legal framework has not been amended.

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. However, the Criminal Code of the SFRY has serious gaps including the lack of definition of crimes against humanity and command responsibility, in contradiction with current international law and standards. While rape is defined as a war crime, the full array of crimes of sexual violence recognised in international law (including sexual slavery and forced pregnancy) are not defined in the SFRY Criminal Code.

2.2. Failure to provide access to a remedy and reparation

In its 2010 Progress Report, the EC stated that victim support mechanisms for women were insufficient across the country.

In January 2011 the UN Committee against Torture 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”.

Amnesty International welcomes the Ministry for Human Rights and Refugees (MHRR) initiative to establish a Programme for Victims of Sexual Violence in Conflict and Beyond and considers it a positive step. However, Amnesty International notes with concern that the delayed process of developing and adopting the Programme prevents survivors realising their rights. The organization is concerned that the authorities in BiH overall continue to ignore their obligation to provide survivors with access to reparations, including restitution,

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7 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
compensation, rehabilitation, satisfaction and guarantees of non-repetition to survivors of wartime sexual violence.\(^9\)

“Reparations” is a term for the concrete measures that should be taken to address the suffering of the victims and their families and to help them rebuild their lives. It is about wiping out, as much as possible, the consequences of the human rights violation, and re-establishing the situation which would in all probability have existed if that act had not been committed. 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 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 rarely seek their rights due to the stigma attached to rape. This is an important human rights and rule of law concern that should be addressed in the EC’s progress report on BiH as a matter of priority.

Amnesty International is concerned that in most parts of the country, especially in rural areas, survivors are unable to enjoy their right to reparation. Many are stigmatized as rape victims. They are denied access to adequate healthcare services even if they suffer from medical conditions developed as a result of crimes of sexual violence.\(^10\) Only a few of those who suffer from post-traumatic stress disorder are able to seek psychological assistance. Many survivors live in poverty. Most cannot get help to find employment or continue with their education. There are a number of reasons for this, including the country’s poor economic situation, inadequate resources for public services, lack of proper training, lack of clarity about the applicable laws, and the deadlocked political situation. The extent of these gaps is unclear: the BiH authorities have not gathered information on whether local institutions have the capacity to provide the services, and have not given them guidance on how to implement existing legislation.\(^11\) Additionally, survivors, like all other civilian victims of war, are discriminated against in access to social benefits in comparison to combatants. Some key political figures in the country violate survivors’ right to reparation by failing to acknowledge the harms suffered by survivors as a result of crimes of sexual violence, evidenced in particular by the atmosphere of denial regarding systematic targeting of women and girls for wartime sexual violence.

- **Measures taken so far**

Amnesty International is concerned that none of the legal and policy documents initiated in 2010 have been adopted.

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. The MHRR has also prepared a draft of a new Law on the Rights of Victims of Torture and Civilian Victims of War to ensure that all civilian victims of war in the country will

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have equal access to social benefits and other measures of social support. Neither of these initiatives have been adopted as of May 2012.

In July 2011, the MHRR informed Amnesty International that they were developing a state level Programme for Victims of Sexual Violence in Conflict and Beyond 2012-2016, which is being developed with the support of the United Nations Population Fund (UNFPA), and was supposed to be finalized by May 2012.

The aim of the Programme is to develop tools that will ensure access to reparations for the survivors, including restitution, compensation, rehabilitation and guarantee of non-repetition. Apart from the solutions proposed for improving the social and economic situation of the survivors and reducing the stigma they are facing in the society, the Programme is to define basis for realization of survivors’ rights to social welfare and healthcare at the local level.

The MHRR established a working group that is responsible for developing the draft Programme. The working group includes representatives of relevant state and entity institutions, NGOs and experts. Although the MHRR is coordinating the work on the content of the Programme, the success of the processes is entirely dependant on the political will and of the entity authorities, who will need to generate additional financial and human resources to ensure the implementation of the Strategy.

At a meeting held in March 2012, MHRR informed Amnesty International that the consultation process aimed at drafting the Programme is still ongoing, and will not be finalized before September. In April 2012, Amnesty International consulted with the RS Ministry of Labor, War Veterans and Disabled Persons Protection, RS Ministry of Health and Social Welfare and the RS Ministry of Refugees and Displaced Persons. Despite the fact that the Working Group included appointments for relevant officials of both entities, representatives of all three of the abovementioned ministries stated that they were not aware of the Programme. Amnesty International is concerned that the representatives of the relevant authorities from the RS are not participating in the development of the Programme, particularly because the competencies in the areas covered by the Programme lie entirely at the entity level, which means that the implementation of the Programme will have to take place at the local level.

Amnesty International notes that the above mentioned plans are reflected in the Gender Action Plan (GAP) of BiH adopted in 2006 and the Action Plan on Implementation of UN Security Council Resolution 1325 adopted in 2010. Both action plans reflect the recommendations of the 2006 UN CEDAW Committee, including BiH’s obligation to ensure that survivors of crimes of sexual violence committed during the war can access justice and reparation. The action plans also mention specific steps that need to be taken to improve the social welfare system, including access to adequate healthcare and housing. The action plans state that survivors’ rights must be guaranteed throughout the entire country at the same level as the rights of military victims of war.

The EC noted in 2010 and 2011 that the Gender Agency and the gender centres do not monitor efficiently the implementation of the gender action plans.

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12 Interview with the Minister, April 2012
13 Interview with the Assistant Minister, April 2012
14 Interview with a representative of the Ministry, April 2012
AMNESTY INTERNATIONAL URGES THE EUROPEAN COMMISSION TO RECOMMEND THAT THE AUTHORITIES IN BiH:

- Provide 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;
- Recognise the need to ensure adequate prioritisation of crimes of sexual violence in case selection, in order to address the perceived lack of attention to this group of cases;
- 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 witness protection, so that allocation of cases to entity judicial institutions does not result in impunity, particularly in cases of crimes of sexual violence;
- Ensure that the BiH Ministry for Human Rights and Refugees has the full financial and human resources to develop and implement all initiatives aimed at ensuring the rights of the survivors of wartime crimes of sexual violence, including the Strategy on Transitional Justice, the Programme for Victims of Sexual Violence in Conflict and Beyond, the Gender Action Plan and the Action Plan on Implementation of the UNSCR 1325;
- Ensure the participation of all relevant entity authorities in the development of the Programme for Victims of Sexual Violence in Conflict and Beyond, as well as adequate consultation with civil society and victims’ representatives;
- Adopt the BiH Law on the Rights of Victims of Torture and Civilian Victims of War.