



BOSNIA AND HERZEGOVINA

AMNESTY INTERNATIONAL SUBMISSION FOR THE UN UNIVERSAL PERIODIC REVIEW 20TH SESSION OF THE UPR WORKING GROUP, OCTOBER-NOVEMBER 2014

INTRODUCTION

Amnesty International's concerns detailed in this submission relate to human rights violations committed during the 1992-1995 war in Bosnia and Herzegovina (BiH), and reiterate many of the issues included in the organization's submission to the previous Universal Periodic Review (UPR) of BiH in 2010.¹ These concerns have also been set out in reports to other UN treaty bodies, including the Committee on the Elimination of Discrimination against Women.² Amnesty International is concerned at the ongoing failure of the authorities to bring legislation criminalizing war crimes³ of sexual violence in line with international standards, which may result in impunity for the perpetrators of 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 crimes of sexual violence.

FOLLOW-UP TO THE PREVIOUS REVIEW

In the 2010 UPR,⁴ BiH accepted a number of recommendations aimed at enabling victims of war crimes of sexual violence to access justice and reparations. These included, *inter alia*, effective investigation of crimes of sexual violence arising from the armed conflict and the prompt prosecution of those responsible,⁵ and the adoption of further measures⁶ to provide victims with effective remedies, including rehabilitation, improved access to affordable health services and the establishment of psycho-social support centers.⁷

Amnesty International considers that BiH has failed to implement the above recommendations both of which it accepted in the first UPR. The organization is concerned that the BiH authorities have denied the rights of the survivors of war crimes of sexual violence by failing to prosecute these crimes, and by not providing them with meaningful measures of reparation, including restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition. The authorities have failed to provide an adequate level of protection of and support for witnesses in cases of war crimes of sexual violence, as detailed further in this submission.

THE NATIONAL HUMAN RIGHTS FRAMEWORK

The national legislative framework has demonstrated ongoing difficulties in dealing with war crimes of sexual violence and other crimes against humanity. Legislation that would enable effective reparation, as well as legal aid services to victims of torture and civilian victims of war are, despite repeated calls, are yet to be adopted.

Amnesty International is further concerned that the definition of rape as a war crime is not in line with international jurisprudence and standards as the state level 2003 Criminal Code defines that the victim must have been subjected to force or threat of immediate attack on his or her life or body to be considered a victim of a war crime of sexual violence.⁸ This definition arguably does not take into account 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. There does not appear to be any government proposal to amend this legal framework.

THE HUMAN RIGHTS SITUATION ON THE GROUND

BiH has taken some measures which have the potential to improve the protection and promotion of human rights. In practice, however, long-standing violations of international and human rights law remain to be addressed. Amnesty International is concerned that none of the legal and policy documents initiated in 2010, in line with the recommendations at the UPR for providing for reparation for survivors of war crimes of sexual violence, have been adopted. The Draft Strategy on Transitional Justice, developed by the Ministry of Justice and the Ministry of Human Rights and Refugees, was finalized in July 2011. The Strategy aims at ensuring access to justice and reparation for all civilian victims of war, including survivors of sexual violence. Due to the political deadlock at the state level, the document had not been adopted as of March 2014. The lack of effective policy implementation is reflected in the state's failure to prosecute war crimes of sexual violence and to provide redress and reparation in a timely manner.

Failure to prosecute

Amnesty International is concerned that over the reporting period, the authorities of BiH have made little progress to ensure survivors' rights. The major obstacle to tackling impunity and bringing perpetrators to justice is the lack of political will to investigate and prosecute war crimes, including rape and other forms of sexual violence. As a result, the judicial 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.

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

Failure to provide witnesses with protection and support

One of the most serious obstacles to successful prosecution of wartime sexual violence cases is the lack of adequate witness support and protection measures at the level of the two constituent members of BiH.⁹ This prevents victims from accessing justice within the jurisdiction of their places of residence.

In 2009, Amnesty International documented how survivors of wartime sexual violence are reluctant to file complaints or testify in court due to the prevailing climate of impunity and a lack of trust in the criminal justice system.¹⁰ 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. Because effective protection is not available for victims and witnesses, re-traumatization is a prevalent risk for the affected individuals.

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 to testify. According to the Head of the Special Department for War Crimes of the Prosecutor's Office of BiH, fewer and fewer survivors of sexual violence are willing to testify. The facilities in most courts and prosecutors' offices are inadequate, especially in relation to ensuring the safety and well-being of victims and witnesses.

Very few 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 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 for defendants are not available in courts. This is intimidating and traumatizing for some victims. Commitments were made to renovate entity court facilities in 2012, but to date there has been no progress. Budgetary cuts and reports of harassment near the court buildings raise further concerns regarding the adequacy of protection for witnesses and victims willing to testify.

A direct obstacle to providing justice for all victims, and particularly survivors of war crimes of sexual violence, is the disestablishment of Witness Support Offices (WSO) in Banja Luka and in Sarajevo Canton. In 2011, UNDP-run pilot offices in the Sarajevo and Banja Luka courts and prosecutors' Witness Support Offices were created. The initiative had separate waiting rooms for witnesses and defendants in the courts and prosecutors' offices, and employed qualified staff. 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 also established.

By the end of 2012, management of the WSOs was supposed to be transferred to local judicial structures and at the end of the UNDP project, the entity governments were to take over the financing of the salaries of the professional staff. No actions were taken by the governments to secure functioning of the WSOs. As of 1 January 2012, the Banja Luka and Canton Sarajevo WSOs stopped functioning, and a year later, services ceased to be provided by the East Sarajevo court as well, as the governments did not include these posts in their budget plans. No further actions were taken since then.

There is very little awareness among judges across BiH about the importance of witness support in war crimes cases, and particularly in cases of war crimes of sexual violence.¹¹ There is an urgent need for judges to receive training to support effective trials and to avoid causing further harm to victims and witnesses.¹²

The right to reparation

Amnesty International is disappointed that the Programme for Victims of Sexual Violence in Conflict and Beyond, drafted at the end of 2012, has never been adopted and implemented. The aim of the Programme is to develop tools that would ensure access to reparations for the survivors of wartime rape and other forms of sexual violence. Amnesty International is concerned that the failure to adopt the programme prevents survivors from realising their rights to full reparation, including restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.

Amnesty International is concerned that in most of the country, especially in rural areas, most survivors are not able to enjoy their right to reparation. Many face stigma and are ostracised 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 as a direct result of the crimes of sexual violence committed against them. Many survivors live in poverty and have no assistance in finding employment or continuing their education which was interrupted by the war. The survivors are discriminated against in access to social benefits in comparison to combatants. Further, some key political figures in BiH 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 Ministry of Human Rights and Refugees has prepared a draft of the state Law on the Rights of Victims of Torture and Civilian Victims of War, aiming to ensure that all civilian victims of war in BiH have equal access to social benefits and other measures of social support. At the time of this submission, the Law has not been passed. Apart from the political deadlock that afflicts all initiatives at the state level, entity representatives further stress that legislation at their level pre-empt the need for such a law at the state level. Amnesty International is concerned that the result of this view is discriminatory, with civilian victims of war' access to their rights being dependent on which entity they live in.

RECOMMENDATIONS FOR ACTION BY THE STATE UNDER REVIEW

Amnesty International calls on the government of Bosnia and Herzegovina to:

Prosecution

- Amend the Criminal Code of Bosnia and Herzegovina to bring it into line with the current standards of international criminal law related to prosecution of war crimes of sexual violence;
- Provide sustained political and financial support to the State Court and to the Prosecutor's Office, as well as to judicial and investigative bodies at the entity level.

Witness protection and support

- Ensure that entity courts and Prosecutors' Offices have adequate measures for witness support and protection, so that the transfer of cases to these institutions can be effective and not lead to impunity, particularly in cases of war crimes of sexual violence.

Right to reparation

- Ensure the immediate adoption of a state Law on the Rights of Victims of Torture and Civilian Victims of War;
- Ensure the harmonisation of the entity laws regulating the rights of civilian victims of war, including through the application of the 2003 Criminal Code in all jurisdictions in BiH when prosecuting war crimes of sexual violence;
- Adopt, implement and monitor implementation of all initiatives aimed at ensuring the rights of the survivors of war crimes of sexual violence, including the Strategy on Transitional Justice and the Programme for Victims of Sexual Violence in Conflict and Beyond.

ENDNOTES

¹ Amnesty International: Bosnia and Herzegovina - Submission to the UN Universal Periodic Review: Seventh session of the UPR Working Group of the Human Rights Council, February 2010. Index: EUR 63/007/2009 <http://amnesty.org/en/library/info/EUR63/007/2009/en>

² Submission for the UN Committee on the Elimination of Discrimination against Women. For the 55th Session of the Committee (8 – 26 July 2013) Index: EUR 63/003/2013 <http://amnesty.org/en/library/info/EUR63/003/2013/en>

³ 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.

⁴ Report of the Working Group on the Universal Periodic Review Bosnia and Herzegovina Addendum: Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review. 10 June 2010. A/HRC/14/16/Add.1

⁵ A/HRC/14/16, recommendation 90.67 (Chile)

⁶ A/HRC/14/16, recommendation 90.68 (Spain)

⁷ A/HRC/14/16 Add.1, paras. 23-24.

⁸ Article 173 of the 2003 Criminal Code of BiH outlines the scope of war crimes against civilians:

(1) Whoever in violation of rules of international law in time of war, armed conflict or occupation, orders or perpetrates any of the following acts: [...]

e) 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) or forcible prostitution, application of measures of intimidation and terror, taking of hostages, imposing collective punishment, unlawful bringing in concentration camps and other illegal arrests and detention, deprivation of rights to fair and impartial trial, forcible service in the armed forces of enemy's army or in its intelligence service or administration; [...] shall be punished by imprisonment for a term not less than ten years or long-term imprisonment.

http://sudbih.gov.ba/files/docs/zakoni/en/Criminal_Code_of_BH_-_Consolidated_text.pdf

⁹ The Federation of Bosnia and Herzegovina and Republika Srpska are the two autonomous political entities of BiH that independently perform their constitutional, legislative, executive and judicial functions.

¹⁰ See Amnesty International: *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>

¹¹ This was confirmed by the representatives of the State Court of BiH with whom Amnesty International met in February 2013.

¹² By February 2013, there were 92 final judgments rendered in war crimes cases at the State Court of BiH. Out of this, 29 judgments were delivered in cases of war crimes of sexual violence, and two more such cases were on appeal as of the same date.