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INTRODUCTION

Amnesty International is submitting this briefing to the Human Rights Committee (the Committee) ahead of its examination of Bosnia and Herzegovina's (BiH) second 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 to be taken up in connection with its 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 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 a failure to bolster capacity for the investigation and prosecution of these crimes, and the provision of support services to victims, in order to provide full access to justice and reparations for survivors of war crimes of sexual violence.²

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>.

¹ The Committee's list of issues to be taken up in connection with the review of BiH's second periodic report under the ICCPR can be found at: <http://www2.ohchr.org/english/bodies/hrc/docs/CCPR.C.BIH.Q.2.pdf>. The state party report is available at: http://www2.ohchr.org/english/bodies/hrc/docs/CCPR.C.BIH.2_en.doc.

² 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 the international community present in the country, representatives of civil society, victims' associations and a number of survivors of sexual violence.

RIGHT TO LIFE AND PROHIBITION OF TORTURE AND CRUEL, INHUMAN OR DEGRADING TREATMENT; REMEDIES AND ADMINISTRATION OF JUSTICE (ARTS. 6, 7, 2(3), AND 14)

CONCERNING QUESTION 9 ON THE LIST OF ISSUES

Please provide up-to-date statistical information on the investigation and prosecution of war-related crimes committed during the 1992–1995 conflict, including war-time rape and other crimes of sexual violence. Please provide updated information on the progress made in implementing the National War Crimes Processing Strategy adopted in December 2008 with the aim of addressing the serious backlog of unresolved war-related cases (paras. 79–83 of the State party's report). Please comment on reports that the justice system lacks the capacity and resources to effectively investigate and prosecute those crimes and any plans to address the problem.

The major obstacle for 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 justice system lacks capacity and resources to effectively investigate and prosecute those crimes. Statements by high-ranking politicians denying that war crimes were committed during the conflict have fuelled political obstruction of the functioning of the State Court of BiH and an ongoing climate of impunity.³

IMPLEMENTATION OF THE WAR CRIMES STRATEGY

Amnesty International is concerned that 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 in BiH, 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.⁴ Amnesty International notes that, as part of discussions within the Structured Dialogue, competences and working methods of judicial institutions in BiH, war crimes prosecutions and the implementation of the War Crimes Strategy are being addressed among other things.

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 within BiH, in order for the

³ OSCE Report, *Delivering Justice in Bosnia and Herzegovina: An Overview of War Crimes Processing from 2005 to 2010* (May 2011), p. 85
(http://www.oscebih.org/documents/osce_bih_doc_2011051909500706eng.pdf).

⁴ 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.

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. According to this submission, there were approximately 1200 criminal cases against known persons suspected of criminal responsibility for war crimes (known as "KT-RZ cases"), distributed among 17 jurisdictions.⁵ Based on this information, the Prosecutor's Office of BiH started sending some case files to the State Court for allocation to the territorially-competent cantonal or district jurisdiction, following the criteria set out 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-level 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 allocated to 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 completed until late 2011, a year behind the schedule) was the main cause of the delay in the implementation of the Strategy. The possibility of parallel investigations and prosecution at both 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 to 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-level Prosecutors' Offices for many years prior to the 2012 review and transfer process, and the preceding processes under the Book of Rules and the Rules of the Road.⁶ The fact that an additional 120 case files were transferred to the entity-level Prosecutors' Offices does not automatically imply that the investigations are going to be accelerated.

⁵ Interview with the Head of the Special Department for War Crimes of the Prosecutor's Office of BiH, July 2011.

⁶ OSCE Report, *Delivering Justice in Bosnia and Herzegovina: An Overview of War Crimes Processing from 2005 to 2010* (May 2011), at pp. 32 et seq (available at http://www.oscebih.org/documents/osce_bih_doc_2011051909500706eng.pdf).

ATTEMPTS TO ABOLISH THE STATE COURT OF BIH AND THE PROSECUTOR'S OFFICE OF BIH

In February 2012, a coalition party from the Republika Srpska (RS) 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 the Prosecutor's Office of BiH. The draft proposals were also rejected in the plenum of the BiH Parliament. Nevertheless, politicians continue to make public declarations undermining the work of the state judicial institutions.

DEFINITION OF CRIMES OF SEXUAL VIOLENCE AND OTHER SERIOUS CRIMES UNDER INTERNATIONAL CRIMINAL LAW IN THE BIH LEGAL FRAMEWORK

In January 2011, the United Nations 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"⁷. Amnesty International is concerned that since then the legal framework has not been amended. Furthermore, the entity-level 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 a 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 recognized in international law (including sexual slavery and forced pregnancy) are not defined in the SFRY Criminal Code.

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.

Amnesty International calls on the BiH government to:

- **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;**

⁷ Concluding observations of the Committee against Torture: Bosnia and Herzegovina, UN Doc. CAT/C/BIH/CO/2-5, 20 January 2011, http://www2.ohchr.org/english/bodies/cat/docs/CAT.C.BIH.CO.2-5_en.pdf, para.9.

- Recognize the need to ensure adequate prioritization 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.

CONCERNING QUESTION 12 ON THE LIST OF ISSUES

Please indicate the status of the following draft legislation and policy proposals: (a) the draft National Strategy on Transitional Justice (paras. 20–21); (b) the State-level Programme for Women Victims of Sexual Violence in Conflict and Beyond, which is intended to complement the Transitional Justice Strategy; and (c) the draft Law on the Rights of Victims of Torture and Civilian Victims of War. In this respect, please provide updated information on the measures taken by the State party to ensure that the personal disability benefits received by civilian victims of war are harmonized among Entities and cantons.

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”.⁸

Amnesty International welcomes the initiative of the Ministry for Human Rights and Refugees (MHRR) 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 from 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, compensation, rehabilitation, satisfaction and guarantees of non-repetition, particularly to survivors of wartime sexual violence.

BiH has an obligation to provide 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. Reparation 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

⁸ Concluding observations of the Committee against Torture: Bosnia and Herzegovina, UN Doc. CAT/C/BIH/CO/2-5, 20 January 2011, http://www2.ohchr.org/english/bodies/cat/docs/CAT.C.BIH.CO.2-5_en.pdf, para. 18.

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 the state party should address as a matter of priority in its implementation of the ICCPR.

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 particular healthcare services necessary for medical conditions they developed as a result of crimes of sexual violence. 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 shortcomings 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. 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.

For more details on Amnesty International's concerns in relation to the failure of the authorities to provide survivors of wartime sexual violence with access to reparation, see the enclosed documents:

- *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), in particular pp. 8-11; and
- *Whose Justice? Bosnia and Herzegovina's Women Still Waiting* (AI Index: EUR 63/006/2009), pp. 39-60.

MEASURES TAKEN SO FAR

There are three initiatives at the state level initiated in 2010, but none of them have been adopted yet.

The Draft Strategy on Transitional Justice, developed by the Ministry of Justice (MoJ) and the MHRR, was finalized in July 2011. The first presentation of the draft Strategy before the BiH Parliament was held in April 2012, which opened a political dialogue for its implementation. The Strategy on Transitional Justice aims at ensuring access to justice and reparation for all civilian victims of war, including survivors of sexual violence. However, despite the fact that the draft Strategy contains a number of solutions to the ongoing problems faced by war victims, Amnesty International is concerned regarding the lack of political will for adoption of this document.

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 have equal

access to social benefits and other measures of social support. However as of September 2012, the Law has not been adopted.

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 UN 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 face in society, the Programme will define the 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 work on the content of the Programme, the success of this process 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 conducted by the working group in 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 Protection⁹, RS Ministry of Health and Social Welfare¹⁰ and the RS Ministry of Refugees and Displaced Persons¹¹. Despite the fact that relevant officials from both entities were appointed to the working group, representatives of all three of the abovementioned ministries from the RS 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 entirely at the local level.

Additionally, Amnesty International notes that the aforementioned 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 2006 recommendations of the UN Committee on the Elimination of Discrimination against Women (CEDAW)¹², which raised concerns about the situation of victims of sexual violence

⁹ Interview with the Minister, April 2012.

¹⁰ Interview with the Assistant Minister, April 2012.

¹¹ Interview with a representative of the Ministry, April 2012.

¹² Concluding Observations of the UN Committee on the Elimination of Discrimination against Women, UN Doc. CEDAW/C/BIH/CO/3, 2 June 2006, paras 37-38, http://www.un.org/ga/search/view_doc.asp?symbol=CEDAW/C/BIH/CO/3.

and called on BiH to ensure that they can effectively access justice and reparation. The Action Plans also mention specific steps which 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. However, since the adoption of the Action Plans these measures have still not been adequately implemented in practice.

Amnesty International calls on the BiH government to:

- **Adopt the Strategy on Transitional Justice;**
- **Adopt the BiH Law on the Rights of Victims of Torture and Civilian Victims of War;**
- **Develop the Programme for Victims of Sexual Violence in Conflict and Beyond, and ensure that the BiH Ministry for Human Rights and Refugees is allocated all financial and human resources necessary;**
- **Ensure the participation of all relevant entity-level authorities in the development of the Programme for Victims of Sexual Violence in Conflict and Beyond, and that adequate consultation is carried out with civil society and victims' representatives.**

CONCERNING QUESTION 10 ON THE LIST OF ISSUES

Please provide further information on the measures taken to address deficiencies in the witness protection and support services in light of the recommendations made by the rapporteur of the Council of Europe Parliamentary Assembly in the report on his visit to Bosnia and Herzegovina in March 2010 and by the Council of Europe's Commissioner for Human Rights, following his visit to Bosnia and Herzegovina in November 2010

One of the most serious obstacles to successful prosecution of wartime sexual violence cases is lack of adequate victim and 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 victim and witness protection and support systems 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 to date have assisted several individuals in the course of investigations into six war crimes cases involving crimes of sexual violence.

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.¹³ Since then, little has

¹³ *Whose Justice? Bosnia and Herzegovina's Women Still Waiting*, AI Index: EUR 63/006/2009, 30 September 2009, <http://amnesty.org/en/library/info/EUR63/006/2009/en>, pp. 24-27.

changed. This is the case particularly in smaller communities, where perpetrators who live in the same communities as their victims, some of whom hold positions of power, continue to enjoy impunity.

Amnesty International is concerned that entity-level judicial institutions cannot provide adequate measures to support and protect witnesses, which discourages witnesses from giving statements, testifying and participating in proceedings.

Amnesty International welcomes the European Commission supported plan of technical improvements in courts, initiated in 2009, which will equip district and cantonal courts with the means to conduct hearings from a remote location outside the courtroom using audio- and video-link technology, allowing for greater security and enabling identity protection, for witnesses and victims. The works are on-going and are expected to be finalized by the end of 2012 in all major courts.

Amnesty International also welcomes the UN Development Programme (UNDP) initiative to establish Witness Support Offices 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 retraumatization during the process of testifying. 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. In 2012, a new Witness Support Office in the district of East Sarajevo will be established, followed by all remaining cantonal and district courts and prosecutors' offices.

The authorities of BiH should work together with the international community to ensure the effective implementation of these and other future projects to address deficiencies in witness and victim support services in order to bring perpetrators to justice and end impunity for wartime crimes of sexual violence.

Amnesty International calls on the BiH government to:

- **Ensure that the entity-level courts and prosecutors' offices have adequate measures for witness support and protection, so that allocation of cases to entity-level judicial institutions does not result in impunity, particularly in cases of crimes of sexual violence;**
- **With the support of the international community, prioritize the introduction of witness support and protection measures at the entity-level courts and prosecutors' offices.**

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