

BOSNIA AND HERZEGOVINA: FOLLOW UP PROCEDURE TO THE FORTY-FIFTH SESSION OF THE COMMITTEE AGAINST TORTURE

Amnesty International welcomed the Concluding Observations made to Bosnia and Herzegovina (BiH) in November 2011 (UN.doc.CAT/C/BIH/CO/2-5) and submits this letter for the Committee's consideration to illustrate ongoing areas of concern related to the extracts for follow-up. This submission focuses on paragraphs 9, 12 and 18 in the hope that this information is of use to the Committee.

PARAGRAPH 9: WAR CRIMES OF RAPE AND OTHER FORMS OF SEXUAL VIOLENCE

With regard to the Committee's recommendation in paragraph 9, Amnesty International remains concerned by the little progress that has been made by the domestic justice system in BiH to ensure prosecution of those responsible for torture committed during the 1992-1995 war and in particular for acts involving sexual violence. As of July 2011 the Court of BiH had delivered final judgments in 21 cases related to war crimes of sexual violence, and 100 cases, which included charges of crimes of sexual violence, were under investigation by the Prosecutor's Office of BiH¹. In light of the estimated several thousand war time rape cases, Amnesty International is concerned that the number of prosecutions and investigations is extremely low.

With regards to the Committee's serious concern that the definition of crimes of a sexual nature in the BiH Criminal Code was inadequate, Amnesty International notes that the Criminal Code Implementation Assessment Team (CCIAT) is scheduled to discuss possible amendments to the definition of crimes of sexual violence in the 2003 BiH Criminal Code at the end of 2011 so that it is in accordance with international law. Amnesty International urges the BiH Ministry of Justice to ensure that amendments are brought forward swiftly following full consideration by the CCIAT and appropriate consultation with civil society and representatives of the judiciary.

PARAGRAPH 12: IMPUNITY FOR CRIMES UNDER INTERNATIONAL LAW COMMITTED DURING THE CONFLICT

With regard to the Committee's recommendations in paragraph 12, Amnesty International is concerned about persisting obstacles that hinder the prosecution of crimes under international law committed during the conflict.

Amnesty International notes 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 has not yet been fully implemented.

¹ As of July 2011 the State Prosecutor's Office was unable to estimate the number of finalized and ongoing prosecutions of cases of crimes of sexual violence committed during the conflict before entity courts.

The major obstacle to tackling impunity and bringing the perpetrators to justice is a persistent lack of political will to investigate and prosecute war crimes, including those 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 Court of BiH and an ongoing climate of impunity has been perpetuated by statements by high ranking politicians that deny that certain crimes were committed during the conflict, including the genocide in Srebrenica.

Amnesty International is concerned about the delay in adopting the state budget for 2011, which negatively impacts the work of the state Court of BiH and the State Prosecutor's Office. The organization is also concerned that up to date the authorities of BiH have failed to ensure adequate funding for exhumations of grave sites and identification of victims, which may further hamper investigations into cases of enforced disappearances and abductions committed during the conflict².

Lack of political will to address the core issues identified in the War Crimes Strategy as obstacles to tackling impunity is also of major concern. The complex and fragmented institutional and legal framework applicable to war crimes processing results in limited cooperation and coordination between state and entity institutions, which negatively affects effective planning of the workload of prosecutors and courts, as envisaged by the War Crimes Strategy. Little progress has been made to implement the solutions designed to bring coherency to the distribution of war crimes cases in the BiH criminal justice system.

Amnesty International is also concerned that the legal framework of BiH is inadequate and inconsistent with international law and jurisdiction of international courts. Amnesty International notes that while the Court of BiH relies on 2003 Criminal Code, the entity courts continue to refer to the Criminal Code of the former Socialist Federal Republic of Yugoslavia (SFRY) in prosecuting crimes committed during the conflict. The Criminal Code of the SFRY has serious gaps including the lack of definition of crimes against humanity and command responsibility and inadequate penalties for war crimes and genocide, in contradiction with the current international criminal law standards. Only the definition of rape, and not of other forms of sexual violence, is included in the Criminal Code of the SFRY, which leads to impunity for those crimes. Amnesty International is concerned that the application of the Criminal Code of the SFRY in war crimes cases results in BiH failing to meet its obligation to effectively investigate, prosecute, and punish crimes under international law

In addition to the issues mentioned above, Amnesty International also notes that other issues of interest to the Committee, including the non-implementation of decisions of the BiH Constitutional Court; the functioning of the Missing Persons Institute; the establishment of the Fund for Support of the Families of Missing Persons; the functioning of the Central Record of the Missing; investigation of cases of enforced disappearance and the non-ratification of the International Convention for the Protection of All Persons from Enforced Disappearance are documented in the follow-up submission of the non-governmental organization - TRIAL (Track Impunity Always) written with 18 other organizations from BiH.

Amnesty International would also like to bring to your attention the position paper, which TRIAL, Amnesty International and six associations of families of the missing persons submitted to the BiH Prosecutor's Office

² "The Search for the Missing Slowed down by Lack of Finances", BIRN, 12 October 2011. Available at: <http://www.bim.ba/en/291/10/33552>

in February 2011. The paper highlights in detail the human rights violations resulting from the non-implementation of the Constitutional Court's decisions³.

PARAGRAPH 18: REDRESS, INCLUDING COMPENSATION AND REHABILITATION

With regard to the Committee's recommendation in paragraph 18, Amnesty International is concerned that the authorities in BiH continue to ignore their obligation to provide survivors with access to reparation, including restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition to survivors of war time rape and other forms of sexual violence.⁴

Amnesty International is concerned that several strategies and legal changes related to the right to justice, truth, and reparation initiated in 2010 have still not been implemented in 2011. This is largely due to the major political deadlock following the October 2010 elections, which resulted in an inability to form a new government.

The Draft National Strategy on Transitional Justice, developed by the Ministry of Justice (MoJ) and the Ministry for Human Rights and Refugees (MHRR), was finalized in July 2011. The National Strategy on Transitional Justice aims at ensuring access to justice and reparation for all civilian victims of war, including survivors of rape. 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. Both of these initiatives have been frustrated and delayed, to different extents, due to political opposition related to disagreement over the division of competences between the state and entity level of government. Thus, victims of war crimes continue to wait for improvements in the quality of access to justice and reparation.

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

The aim of the Programme is to develop tools that will ensure access to reparation for the survivors, including restitution, compensation, rehabilitation and guarantees of non-repetition. The Programme will also include solutions for improving the social and economic situation of the survivors and reducing the stigma they are facing in the society. It will also address failings in the protection and support of survivors-witnesses in the testifying process. The Program will define the responsibility of each institution for establishing a set of concrete measures to ensure the right to reparation.

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. As of July 2011 the working group is conducting an assessment of availability, accessibility and quality of services available to

³TRIAL (Track Impunity Always), *Non-enforcement of Constitutional Court's Decisions relating to Missing Persons in Bosnia and Herzegovina* : http://www.trial-ch.org/fileadmin/user_upload/documents/CAJ/BH/PositionpaperConstitutionalCourtBIHENG.pdf

⁴ Amnesty International, *Whose Justice? Bosnia and Herzegovina's Women Still Waiting* (Index: EUR 63/006/2009), p. 36: <http://amnesty.org/en/library/info/EUR63/006/2009/en>

survivors at entity level in five cantons: Sarajevo, Unsko-Sanski, Zenica, Tuzla and Prijedor. The MHRR plans to finalize the assessment by end of 2011. The group will also map the necessary budget, as well as develop methodologies for drafting the Programme and collect necessary data. The MHRR received a donation of US\$90,000 from United Nations Population Fund Agency (UNFPA) to develop the Programme, which, taking into account the scope of the exercise may not be sufficient.

Although the MHRR is coordinating the work on the content of the Strategy, the success of the process is entirely dependant on the political will of the future government and of the entity authorities, who will need to generate additional financial and human resources to ensure the implementation of the Strategy.

The organization also welcomes several positive developments in the provision of protection and support to witnesses in war crimes cases in 2011, most notably the creation of a Witness Support Unit at the BiH Prosecutor's Office in January. The unit provides assistance and psychological support to witnesses during the investigative phase, including special assistance to victims providing evidence about crimes of sexual violence. The Unit includes two psychologists, who have assisted six individuals to date in relation to war crimes of sexual violence. Five out of these six survivors have agreed to testify. This service is complemented by the work of the Witness Support Unit at the Court of BiH, which provides assistance to witnesses during the trial. Amnesty International is concerned, however, that no mechanism exists to ensure support to witnesses after the end of the trial. However, Amnesty International remains concerned that such measures are not available to all witnesses testifying in cases carried out by all courts and prosecutor's offices across the country.

Although the establishment of two pilot witness support programmes (in Banja Luka District Court and Prosecutor's Office and Sarajevo Cantonal Court and Prosecutor's Office respectively) by the UN Development Programme in 2010 was another positive step, the continued lack of a witness support services throughout the country and the continued total absence of a Witness Protection Programme at the entity level are of serious concern. In the latter regard, the establishment, in August 2011, of a Working Group by the BiH Ministry of Security to propose a new law on the BiH Witness Protection Programme is a welcome development. Amnesty International urges the BiH Ministry of Security, parliamentarians and all other relevant authorities to ensure that the draft includes a provision to allow all chief prosecutors in the RS, Federation of BiH, and Brčko District to formally request the involvement of SIPA in providing witness protection programme services whenever necessary to ensure that the security and privacy of witnesses is protected. Moreover, BiH authorities must ensure that the Witness Protection Programme is adequately resourced.

The overall failure by the authorities to introduce an adequate witness protection and support system means that BiH is still not adequately ensuring the rights of victims willing to cooperate with the justice system to have their safety, security, and wellbeing protected before, during, and after the process.